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DESCENT AND DISTRIBUTION — DISQUALIFICATION — STATUS OF HEIR WHO PROCURES DEATH OF INTESTATE. — Defendant after murdering his mother died from self-inflicted wounds. According to the statutes of descent and distribution in the state of Maine, he was his mother's sole heir and thus would normally have taken her estate, as there was no statute prohibiting a murderer of an ancestor from inheriting from the ancestor's estate. The plaintiffs, who would have inherited the estate if the defendant were disqualified, brought a bill in equity in which they sought to have the executor of the defendant's estate be declared a constructive trustee of property that the defendant's estate had acquired by the murder of his mother. In determining whether a person who murders his ancestor may inherit from the ancestor and thus profit from his own wrongful act the court *held* that the murderer could inherit the estate but equity would impose upon him, or the representatives of his estate, a constructive trust for the benefit of the person or persons who would have taken if the murderer had predeceased the victim. *Dutill v. Dana*, 113 A.2d 499 (Me. 1955).

The courts in considering the problem presented by the instant case lack unanimity. Under what is apparently the majority view, a murderer can inherit from his victim.[1] Some courts ascribing to this holding base their determinations upon the theory that the law prescribes sufficient penalties for the commission of crimes and that the courts should not add thereto. As was stated in *Wall v. Pfanschmidt*:[2] "Public policy does not demand this forfeiture, for the demands of public policy are satisfied by the proper execution of laws and punishment of crime. If other punishment be required, the duty to so provide rests upon the legislative branch of the government. Whether this accords with natural right and justice is not for the courts to decide."[3]

Other tribunals reaching the same result have concluded that as the statutes do not clearly prohibit the murderer from inheriting, to read such an exception into the statute would constitute judicial legislation.[4]

A second line of decisions, in accord with the civil law,[5] holds that as no person should be permitted to profit from his own wrong, a murderer cannot be allowed to inherit from his victim even though there is no specific statute forbidding such an inheritance.[6] This theory has been accepted in a number of jurisdictions and is gaining favor in others.[7] The result thus obtained is commendable, although the judicial legislation necessary to its achievement must be considered otherwise.

It is suggested that a third group of courts, which have held in accordance with the instant case, have effectuated the most desirable solution. While the result is identical with that reached by those courts following the civil law rule, the objectionable criticism of judicial legislation has been eliminated.

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1. Hagen v. Cone, 21 Ga.App. 416, 94 S.E. 602 (1917); Wall v. Pfanschmidt, 265 Ill. 180, 106 N.E. 785 (1914); Wilson v. Randolph, 50 Nev. 371, 261 Pac. 654 (1927); Johnson v. Metropolitan Life Ins. Co., 85 W.Va. 70, 100 S.E. 865 (1919); In re Duncan's Estate, 40 Wash.2d 850, 246 P.2d 445 (1952).
2. 26 Ill. 180, 106 N.E. 785 (1914).
3. *Ibid.* at 790.
4. In re Duncan's Estate, 40 Wash.2d 850, 246 P.2d 445 (1952).
5. Riggs v. Palmer, 115 N.Y. 506, 22 N.E. 188 (1889); Wall v. Pfanschmidt, 265 Ill. 180, 106 N.E. 785 (1914).
6. Garwols v. Banker's Trust Co., 251 Mich. 420, 232 N.W. 239 (1930): De Zotell v. Mutual Life Ins. Co. of New York, 60 S.D. 232, 245 N.W. 58 (1932).
7. De Zotell v. Mutual Life Ins. Co. of New York, 60 S.D. 232, 245 N.W. 58 (1932).

This theory, which has been adopted by the Restatement of the Law of Restitution[8] and warmly applauded by some scholars,[9] has, unfortunately, been applied by but few jurisdictions.[10]

North Dakota has a statute which prohibits any person convicted of feloniously causing the death of another from receiving any property by succession, will, or otherwise by reason of the death of that person.[11] The property would pass as though the wrongdoer had predeceased the victim.[12]

It is at once apparent that the statute is inadequate in at least two respects. First, the requirement of conviction renders the statute inapplicable in the event of the self-destruction of the perpetrator of the crime.[13] Second, the use of the term "feloniously" would require application of the statute not only when murder, but also when first and second degree manslaughter are involved.[14] This would seem to be a harsh result when compared with decisions in other states.[15] These inadequacies could easily be remedied by minor legislative changes.

ROBERT L. ECKERT

REAL PROPERTY — PERPETUITIES — SUSPENSION OF ABSOLUTE POWER OF ALIENATION THROUGH BUSINESS TRUSTS — By the terms of a trust set up to pool oil and gas interests, a one-half interest in the oil and gas in one quarter section of land was transferred by each of forty parties to the trustee for the benefit of the trust. The defendant trustee, in return, transferred to each of the forty parties twenty shares of beneficial interest which entitled the holders to a share of revenue obtained by the trust, and retained, as compensation for managing the trust income, two hundred such shares. The trust was to last for ten years unless oil and gas was struck in which case it was to last so long as oil or gas was produced. The North Dakota court held that the trust was void because it suspended the absolute power of alienation for a period longer than that permitted by statute. *Carlson v. Tioga Holding Co.*, 72 N.W.2nd 236 (N.D. 1955).

The statute in effect at the time of the execution of the instrument provided that the absolute power of alienation could not be suspended for a longer period than, "(1) During the continuance of the lives of persons in being at the creation of the limitation or conditions; or (2) For a period not to exceed twenty-five years from the time of creation of the suspension."[1] By statute, the absolute power of alienation is suspended when there are no persons in

8. RESTATEMENT, RESTITUTION §187 (2) (1936).
9. 1 Page, WILLS §232 (3d ed. 1941); 3 Scott, TRUSTS §492 (1st ed. 1939).
10. In re Duncan's Estate, 40 Wash.2d 850, 246 P.2d 445 (1952).
11. N.D. Rev. Code, §56-0423 (1943): "No person . . . feloniously causing the death of another shall . . . receive any property or benefit by succession, will or otherwise . . . by reason of the death of such person . . ., but all property shall vest . . . as if the person convicted were dead when the testator died."
12. *Ibid.*
13. See Harrison v. Hillegas, 1 Ohio Supp. 160 (1939); Winters National Bank and Trust Co. v. Shields, 3 Ohio Supp. 134 (1939).
14. N.D. Rev. Code, §12-0107, 12-2718, 12-2720 (1943).
15. Hatcher v. Aetna Life Ins. Co., 105 F. Supp. 808 (D. Ore. 1952).

1. N.D. Rev. Code § 47-0227 (1943). Now amended to read ". . . the absolute power of alienation cannot be suspended, by any limitation or condition whatever, for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition and twenty-one years." N.D. Rev. Code § 47-0227 (1953 Supp.).