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Insurance - Manslaughter No Bar to Inheritance

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CASE COMMENTS

INSURANCE — MANSLAUGHTER NO BAR TO INHERITANCE. In the case of *Strickland v. Wysowatcky,*[1] Acquilla Cole was convicted of voluntary manslaughter for having caused the death of his wife, Claudina Cole. In the probate proceedings Acquilla's representative claimed, and the court granted him the entire estate of deceased which consisted solely of the proceeds of a life insurance policy made payable to her estate.

The administrator specified as error the trial judge's ruling that the conviction for the manslaughter of Claudina Cole does not prevent his inheritance as her sole next of kin. His contention was supported on two grounds. The first being that a beneficiary of a life insurance policy who feloniously causes the death of the insured forfeits all rights he may have under the policy, and secondly, that it would be contrary to public policy for him to collect the estate because of the well established rule that one may not, in a court of law, profit from his own wrong.

The Supreme Court in affirming the lower court's decision disposed of the first theory on the grounds that this case involved the distribution of an estate and was not a suit by a beneficiary against an insurer for the proceeds of a life insurance policy. The court having found that the company had already paid the administrator, resolved the case and refuted the second theory of the plaintiff in error by the application of the Colorado Statute of Descent and Distribution and a recent Colorado case. Under our statute the husband, Acquilla Cole, was the sole next of kin of his wife, there being no issue from the marriage.[2] Also sec. 12 of chap. 176 did not disqualify Cole, because he was convicted of voluntary manslaughter, and the statute only presents a bar to the heirs or devisees who are convicted of first or second degree murder.[3] Finally, Colorado does not seem to follow the maxim that one may not profit from his own wrong when the statute is also involved in the same question.

The above may be most forcefully illustrated by a quotation from a Colorado case, *Smith v. Greenburg,*[4] which was the basis for the decision in this case. In the *Smith* case the jury found that one Milford cut his wife's throat, and then his daughter's. After these events he killed himself by carbon monoxide poisoning. Because of the proximity in time of all these happenings Milford never went to trial. Concerning the property held by Milford and

[1] Strickland v. Wysowatcky, ... Colo. ...., 1952-1953 C. B. A. Adv. Sh. No. 4, p. 50.

[2] COLO. STAT. ANN., c. 176, §1 (1935).

[3] *Id.* at §12.

[4] Smith v. Greenburg, 121 Colo. 417, 218 P. 2d 514 (1950).

his wife as tenants in common, the Supreme Court ruled that her interest descended by the statute to Milford and their daughter in equal portions. As the daughter was the next to die after Mrs. Milford, and as Milford was her sole heir, he inherited her estate also. In making this decision the Supreme Court quoted 26 C. J. S. 1055 and seemingly adopted what was therein stated to be the majority view for the law of this state:

> . . . The operation of a statute of descent is not affected by the fact that the death of the intestate was caused by the heir apparent in order to obtain the inheritance at once, and therefore an heir who causes or procures the death of the intestate in order that he may inherit the estate at once is not disqualified from taking in the absence of a statute expressly disqualifying him. There is however a strong minority view to the contrary, based on the theory that a person should not profit from his own wrong; and it is said that this view displays a tendency to become a majority view. To meet the difficulties arising in such a case, several states have enacted valid statutes intended to prevent a person who has feloniously caused the death of decedent from inheriting or receiving any part of the estate of decedent; but such a statute must be strictly construed and in some situations is held not applicable. A statute disqualifying one who has been convicted of the murder of deceased does not apply in absence of such conviction as where there has been a conviction of manslaughter only, or the person who committed the homicide was insane at the time or committed suicide shortly thereafter.

Although there was no indication that Milford had killed his wife and daughter for their money, the court indicated by this quotation and the decision in that case that the wrongful killer will not be denied his inheritance from the one killed unless he is precluded by the express terms of the statute, and it would seem that, the court made it quite clear that in these circumstances, the maxim that one may not profit from his own wrong will not apply in this state.

It thus appears that in deciding this case the court merely followed its precedent established in the *Smith* case and refused to enlarge upon the limitations found in the statute itself. Decisions such as these two seem rather harsh under the circumstances of these two cases. However, the decision seems justified where, as here, the statute of descent and distribution, or provision for succession, is plain and unambiguous in its terms and where there is no room for construction of interpretation. The statute operates solely within its own terms and vests in the heir such estate as he is entitled to immediately upon the death of the intestate from whom the inheritance comes, without reference to any question of criminal responsibility.

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