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Right to Child of Slayer to Inherit From Slayer's Victim--Bates v. Wilson

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is practiced. Despite the fact that in other fields of educational endeavor the Equal Protection Clause seems to be satisfied by duplication of educational facilities, yet as concerns legal education Vinson declares:

“The law school, the proving ground for legal learning and practice, *cannot be effective in isolation* from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned.”¹² [Italics our own]

This language implies that the separation of Negro law students from white law students and from the association with the major racial group will be detrimental to their fullest accomplishment in their study of the law, because of the intrinsic and peculiar nature of the law. If the above excerpt is more than mere dictum it may well be said that the United States Supreme Court will reverse the North Carolina District Court's decision in the *Epps* case should that case appear on appeal before the high Court. Such a reversal would be based on something deeper than a mere consideration of the plant facilities of the two schools, namely, that because of the very nature of the subject there can be no real equality in the study of the law where segregation exists.

MYER S. TULKOFF

RIGHT OF CHILD OF SLAYER TO INHERIT FROM SLAYER'S VICTIM — BATES V WILSON

In *Bates v Wilson*¹ a son killed his father and mother, the father dying first. His property was devised to his wife. She died intestate immediately thereafter leaving as possible heirs her murderer, the murderer's daughter, and another son. The slayer's daughter, by her guardian, claimed the interest in her grandparent's estate that her father would have taken had he not murdered them. *Held*: The daughter is entitled to such interest since the slayer “should be considered as though he had preceded in death the person whom he killed.”

Before discussing the problem presented, we must look to see whether the slayer could himself take from his benefactor. At common law, a majority of states allowed an heir who killed to take from a person who died intestate.² The reason for this majority view, as stated in a Kentucky case,³ is that, since the statutes of descent and distribution make no exception for such a situation, the courts should not imply one. A few courts give as a basis for so holding the constitutional and statutory provisions against forfeitures for crime.⁴ However, a strong minority even without a statute refused to allow a slaying heir to take

² *Owens v. Owens*, 100 N. C. 240, 6 S.E. 794 (1888); *Hagna v. Cone*, 21 Ga. App. 416, 94 S.E. 602 (1917); *Wall v. Pfanschmidt*, 265 Ill. 180, 106 N.E. 785 (1914); *McAllister v. Fair*, 72 Kan. 533, 84 P. 112 (1906); *Eversole v. Eversole*, 169 Ky. 793, 185 S.W. 487 (1916); *Gillnik v. Mengel*, 112 Minn. 349, 128 N.W. 292 (1910); *Shellenberger v. Ransom* 41 Neb. 631, 59 N.W. 935 (1894).

¹ 313 Ky. 572, 232 S.W. 2d 837 (1950).

Id. at 575, 232 S.W. 2d at 838.

⁴ *Eversole v. Eversole*, 169 Ky. 793, 185 S.W. 487 (1916).

⁵ See *Whitney v. Lott*, 134 N. J. Eq. 586, — 36 A. 2d 888, 890 (ch. 1944).

from the intestate.⁶ This is based upon the inequity of allowing him to so receive. "No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime."⁷ These maxims are based upon a public policy which seems very reasonable. Some of the jurisdictions, reaching the same result as the minority, allow the slayer to take, but impress the property with a constructive trust for the heirs and next of kin of the deceased, exclusive of the murderer.⁸

Where the deceased leaves a will, there are some cases at common law denying the right of the slayer to recover.⁹ Such a holding where a will is present could justifiably be followed in a jurisdiction which would otherwise permit the slayer to recover, since a court might imply a condition to the right to take under the will. However, the cases found by the writer taking this view are from jurisdictions which follow the minority rule as to intestacy.

Present day statutes, however, have generally changed the common law majority rule.¹⁰ Many states, after their courts had followed the common law and allowed recovery, forthwith passed statutes disallowing the slayer to recover.¹¹ The Kentucky statute provides that one who takes the life of another and is convicted of a felony therefor forfeits all interest in the decedent's property and "the property interest so forfeited descends to the decedent's other heirs-at-law, unless otherwise disposed of by the decedent."¹² Since the passage of the Kentucky Act in 1940 there have been very few cases decided under its provisions. In the first case so decided, *Pierce v. Pierce*, a minor son killed his father and thereby his grandfather inherited the realty and personalty. The grandfather entered into a contract with the slayer's guardian for purchase by the slayer of the property. The court strictly construed the statute and allowed the son specific performance of the contract.¹³ The only other Kentucky case under this statute stems from the same facts as the principal case. There, the slayer attempted to circumvent the statute by mortgaging the property to pay his attorneys fees before his conviction. The court held that the mortgage was invalid and that the slayer forfeited the right to take immediately upon killing and that the conviction was merely a judicial determination that he had forfeited such right.¹⁴

Applying these principles to the principal case, was the court correct in allowing the slayer's daughter to take his share? The court added to the Kentucky statute, by judicial interpretation, the words of the Ohio statute¹⁵ that the

⁶ *Slocum v. Metropolitan Life Ins. Co.*, 245 Mass. 565, 139 N.E. 816 (1923); *Garwols v. Bankers Trust Co.*, 251 Mich. 420, 232 N.W. 239 (1930); *Perry v. Strawbridge*, 209 Mo. 621, 108 S.W. 641 (1908).

⁷ *Box v. Lanier*, 112 Tenn. 393, — 79 S.W. 1042, 1045 (1904).

⁸ *Bryant v. Bryant*, 193 N. C. 372, 137 S.E. 188 (1927); *Whitney v. Lott*, 134 N. J. Eq. 586, 36 A. 2d 888 (Ch. 1944); AMES, LECTURES ON LEGAL HISTORY p. 310 (1913).

⁹ *Riggs v. Palmer*, 115 N. Y. 506, 22 N.E. 188 (1889); *In re Wilkins Estate*, 192 Wis. 111, 211 N.W. 652 (1927).

¹⁰ *Bordwell*, *Statute Law of Wills*, 14 IOWA L. REV. 283, 304 (1929).

¹¹ *Wade*, *Acquisition of Property by Wilfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 716 (1936).

¹² KY. REV. STAT. sec. 381.280 (1948).

¹³ *Pierce v. Pierce*, 309 Ky. 77, 216 S.W. 2d 408 (1949).

¹⁴ *Wilson v. Bates*, 313 Ky. 333, 231 S.W. 2d 39 (1950).

¹⁵ OHIO GEN. CODE ANN. sec. 10503-17 (Page, 1938).

slayer " shall be considered as though he had preceded in death the person he killed." The court, it seems, took the view that the slayer was *civiliter mortus* in order that the innocent child of the slayer should not suffer merely because of his conduct. The doctrine of *civiliter mortus* has been criticized.¹⁶ The statute should be applied strictly and there is nothing in the statute which would warrant the application of this doctrine. The child is allowed to take merely because of the wrongful conduct of the father. She is the natural object of his bounty, and therefore in cases where he is given death for his crime, the court, by allowing the daughter to take, is in fact following the majority common law view that would allow the slayer to take and the daughter would take from him as his heir. Also there is a great possibility that the slayer would benefit from his act because it is only natural that his child will use the funds to aid him.

The better view would seem to be one which disallows recovery, although such a view is harsh in some cases, including the principal case. This would place the greater penalty upon the slayer's act and more nearly carry out the intention of the legislature.

GERALD ROBIN GRIFFIN

¹⁶ Note, 21 VA. L. REV. 232 (1934).