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## Property - Murder by Joint Tenant Extinguishes Right of Survivorship

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The hesitation of the courts in past decisions in affording too liberal an interpretation of the language of the Act is undoubtedly a repercussion of a fear that a contrary holding would result in persons obtaining relief who were not contemplated by the legislature to be entitled to relief.

The decision in the instant case allows recovery in an area where recovery has been heretofore denied. In the past, courts have limited recovery to those persons injured by a mob who were charged, or at least suspected of some crime. Now, the boundary lines of recovery have been extended to include those instances where an injury resulted when a mob was acting to protect what it believed was a "community interest."

There is evidence of the court's hesitation to allow any interpretation of its decision as a change or exception to any established legal concepts. The court stated:

We are of the opinion that it was the legislative intent in enacting the law to impose a penalty upon the community in the form of additional taxes when its members participate in or allow *the condition to arise that we find in the instant case.*<sup>23</sup>

It is to be remembered that the plaintiff here has not yet won his case. The decision that he has made out a *prima facie* case under the statute is a major hurdle. It is submitted that the court in the instant case has correctly effectuated the intent of the legislature in the application of the statute. The original purpose of the Act was to counteract strike violence and lynching. It can reasonably be said that these activities and the activities of the mob in the instant case are akin. Both are a dangerous disruption of law and order. Both can easily become uncontrollable. Both are inclined to cause serious bodily harm to innocent persons. If mob action is to be conquered by a pecuniary penalty on the community, it would seem that this case should occasion a valid infliction of that penalty.

#### PROPERTY—MURDER BY JOINT TENANT EXTINGUISHES RIGHT OF SURVIVORSHIP

Lawrence and Matilda Fox, husband and wife, were owners of certain real property which they held in joint tenancy. Lawrence Fox murdered his wife and three days later conveyed the premises. Fox was convicted of the murder and sentenced to the State Penitentiary.

The administrator of the estate of the decedent and her daughter by

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the common law should be strictly construed (if not both penal and remedial in character).

<sup>23</sup> Slaton v. City of Chicago, 8 Ill. App. 2d 47, 59, 130 N.E. 2d 205, 211 (1955). Emphasis added.

a former marriage brought an action against Lawrence Fox to establish a constructive trust in the property formerly held in joint tenancy by defendant and decedent. The plaintiffs also sought to recover damages for the wrongful death of the decedent. The circuit court of Winnebago County sustained defendant's motion to dismiss the complaint, and rendered judgment against plaintiffs, from which they appealed directly to the Supreme Court of Illinois. The Supreme Court reversed and remanded, holding that defendant, by his felonious act, destroyed all his rights of survivorship as joint tenant and only retained title to an undivided half interest in the property as a tenant in common with plaintiff-daughter as decedent's heir-at-law.<sup>1</sup> *Bradley v. Fox*, 7 Ill. 2d 106, 129 N.E. 2d 699 (1955).

The Supreme Court of Illinois thereby overruled its earlier decision in *Welsh v. James*.<sup>2</sup> In that case, it refused to divest a husband who murdered his wife of title to real and personal property which was held by them jointly. The decision in the *Welsh* case was based upon the legal concept that defendant, as a joint tenant, was seized of the whole estate by virtue of the original grant and could not be divested therefrom by the imposition of a constructive trust, without violating the constitutional provision against corruption of blood or forfeiture of estate.<sup>3</sup> The court also relied upon a previous Illinois case which held that under the Illinois statutes of descent a murderer could inherit from his victim since there was no legislative prohibition against it.<sup>4</sup>

An estate in joint tenancy is an estate held by two or more jointly, with an equal right in all to share in the enjoyment of the land during their lives.<sup>5</sup> Survivorship is the distinctive characteristic of an estate in joint

<sup>1</sup> The court also held that the lower court erred in denying plaintiff's claim for damages for decedent's wrongful death. The defendant argued that since he was one of the class of beneficiaries under the Wrongful Death Act (Ill. Rev. Stat., 1953, c. 70, § 2), his act barred other beneficiaries from recovering. Defendant relied upon *Hazel v. Hoopston-Danville Motor Bus Co.*, 310 Ill. 38, 141 N.E. 392, 30 A.L.R. 491 (1923), wherein it was held that the contributory negligence of one of the beneficiaries precluded all the beneficiaries from recovering. The court rejected this argument, stating that since defendant was the sole wrongdoer, his felonious conduct would not bar the other beneficiaries from recovering. See also *Welch v. Davis*, 410 Ill. 130, 101 N.E. 2d 547 (1951); and *Nudd v. Matsoukas*, 7 Ill. 2d 608, 131 N.E. 2d 525 (1956).

<sup>2</sup> 408 Ill. 18, 95 N.E. 2d 872 (1950).

<sup>3</sup> "All penalties shall be proportioned to the nature of the offense, and no conviction shall work corruption of blood or forfeiture of estate . . ." (Constitution of 1870, art. II, § 11).

<sup>4</sup> *Wall v. Pfanschmidt*, 265 Ill. 180, 106 N.E. 785 (1914). However, the result of the Wall decision was modified by statute in 1939 (Ill. Rev. Stat. 1939, c. 3, § 167) which provides that a person convicted of murder shall not inherit from his victim and that the victim's estate be distributed as though the murderer had predeceased his victim.

<sup>5</sup> 7 R.C.L. 811.

tenancy.<sup>6</sup> On the death of a joint tenant, the survivors take the whole estate,<sup>7</sup> free from the claims of the heirs or creditors of the deceased cotenant.<sup>8</sup> The joint tenant who survives does not take the share of the other free from him as successor, but by right under the conveyance, which created the joint tenancy in the first instance.<sup>9</sup> Where husband and wife hold property in joint tenancy, the right of survivorship of one joint tenant does not arise out of the marriage relationship.<sup>10</sup>

At common law four coexisting unities are necessary and requisite to the creation and continuance of a joint tenancy; namely, unity of interest, unity of title, unity of time, and unity of possession. Illinois Supreme Court decisions abound with cases that refer to the four unities,<sup>11</sup> and the words of the Supreme Court of Illinois in the *Bradley* case indicate its awareness of that common law requirement.<sup>12</sup> Therefore, any act of a joint tenant which destroys any of these unities operates as a severance of the joint tenancy and extinguishes the right of survivorship.<sup>13</sup> Whoever acquires the interest of that joint tenant becomes a tenant in common with the other tenants.<sup>14</sup> The court in the instant case concluded that defendant Fox had, by his felonious act, destroyed the four unities requisite to the continuance of the joint tenancy and thereby severed the joint tenancy and extinguished his right of survivorship.

But regard for the sanctity of technical rules relating to property law

<sup>6</sup> *Welsh v. James*, 408 Ill. 18, 95 N.E. 2d 872 (1950); *Dolley v. Powers*, 404 Ill. 510, 89 NE 2d 412 (1949); *Kane v. Johnson*, 397 Ill. 112, 73 N.E. 2d 321 (1947); *Porter v. Porter*, 381 Ill. 322, 45 N.E. 2d 635 (1942).

<sup>7</sup> *Porter v. Porter*, 381 Ill. 322, 45 N.E. 2d 635 (1942); *People v. Varel*, 351 Ill. 96, 184 N.E. 209 (1932).

<sup>8</sup> *Spikings v. Ellis*, 290 Ill. App. 585, 8 N.E. 2d 962 (1937).

<sup>9</sup> *Klajbor v. Klabjor*, 406 Ill. 513, 94 N.E. 2d 502 (1950).

<sup>10</sup> *Duncan v. Suhy*, 378 Ill. 104, 37 N.E. 2d 826 (1941).

<sup>11</sup> *Schuck v. Schuck*, 413 Ill. 390, 108 N.E. 2d 905 (1952); *Porter v. Porter*, 381 Ill. 322, 45 N.E. 2d 635 (1942); *Deslauriers v. Senesac*, 331 Ill. 437, 163 N.E. 327 (1928).

<sup>12</sup> "It is fundamental that four coexisting unities are necessary and requisite to the creation and continuance of a joint tenancy . . ." *Bradley v. Fox*, 7 Ill. 2d 106, 118, 129 N.E. 2d 699, 705 (1955). But see Ill. Rev. Stat. 1955, c. 76, § 2.1, "Whenever a transfer of tangible or intangible *personal* property shall be made in which the estate or interest created shall be declared to be an estate or interest not in tenancy in common, but in joint tenancy with right of survivorship, notwithstanding the fact that the transferor is or the transferors are also named as a transferee or as transferees, the estate or interest so created shall have all the effects of a common-law joint tenancy estate."

<sup>13</sup> *Klouda v. Pechousek*, 414 Ill. 75, 110 N.E. 2d 258 (1953); *Schuck v. Schuck*, 413 Ill. 390, 108 N.E. 2d 905 (1952); *Van Antwerp v. Horan*, 390 Ill. 449, 61 N.E. 2d 358 (1945).

<sup>14</sup> *Porter v. Porter*, 381 Ill. 322, 45 N.E. 2d 635 (1942); *Liese v. Hentze*, 326 Ill. 633, 158 N.E. 428 (1927); *Partridge v. Berliner*, 325 Ill. 253, 156 N.E. 352 (1927).

was only a secondary consideration in the determination of the instant case. The court was primarily motivated by a desire to properly construe the right of survivorship in the light of prevailing public policy. The court pointed out that by statute in Illinois a convicted murderer is prohibited from inheriting from his victim.<sup>15</sup> The court stated that this statute, “. . . while not determinative of the rights of the parties in this situation, does evince a legislative policy to deny a convicted murderer the fruits of his crime.”<sup>16</sup>

Also, in insurance cases, where the beneficiary or heir under a life insurance policy murdered the assured to acquire the proceeds of the policy, Illinois courts have construed insurance contracts as though public policy, and the common-law maxim that no man shall profit by his own wrong were part of the contract and denied recovery on the policy to the murderer or his heirs.<sup>17</sup>

The court refused to apply, as did the court in *Welsh v. James*,<sup>18</sup> the legal fiction “. . . that a joint tenant holds the entire property at the date of the original conveyance, and acquires no additional interest by virtue of the felonious death of his cotenant. . . .”<sup>19</sup> Rather, it was noted that before the murder, defendant, as a joint tenant, had to share the profits of the property, and his right to complete ownership was contingent upon surviving his wife; whereas, after, and because of, his felonious act that contingency was removed, and he became the sole owner of the property. To sanction this would thwart a sound judicial and legislative policy against allowing a criminal to profit by his crime.

Other jurisdictions have treated this problem of survivorship in various ways. Some courts have held that the murderer is entitled to succeed to the whole estate just as he would have under ordinary circumstances. They have based their decisions on the grounds of a lack of statutory authority to do otherwise,<sup>20</sup> or because of constitutional provisions against

<sup>15</sup> Ill. Rev. Stat. 1939, 1953, chap. 3, par. 167, “A person who is convicted of the murder of another shall not inherit from the murdered person or acquire as surviving spouse or otherwise under this Act any interest in the estate of the decedent by reason of the death, but the estate of the decedent descends and shall be distributed in the same manner as if the person who murdered the decedent died before the decedent.”

<sup>16</sup> *Bradley v. Fox*, 7 Ill. 2d 106, 116, 129 N.E. 2d 699, 705 (1955).

<sup>17</sup> *Illinois Bankers Life Ass'n v. Collins*, 341 Ill. 548, 173 N.E. 465 (1930); *Supreme Lodge Knights & Ladies of Honor v. Menkhausen*, 209 Ill. 277, 70 N.E. 567 (1904).

<sup>18</sup> 408 Ill. 18, 95 N.E. 2d 872 (1950).

<sup>19</sup> *Bradley v. Fox*, 7 Ill. 2d 106, 116, 129 N.E. 2d 699, 705 (1955).

<sup>20</sup> *Smith v. Greenburg*, 121 Colo. 417, 218 P.2d 514, 520 (1950), quoting *Walton v. Walton*, 86 Colo. 1, 14, 278 P. 780, 784 (1929), “. . . the question of public policy is for the Legislature. When that policy is unequivocally declared, the declaration binds the courts”; *Di Lallo v. Corea*, 19 Pa. D.&C. 282 (Penna., 1932).

corruption of blood or forfeiture of estate,<sup>21</sup> and also to avoid interference with vested legal rights.<sup>22</sup>

Other courts have allowed the murderer to retain his interest only,<sup>23</sup> while other decisions have held that one who murders his joint tenant is entitled to nothing, and, by his deed, sacrifices all of his prior interest in the joint holdings. The decisions include cases involving real property,<sup>24</sup> both realty and personalty,<sup>25</sup> and personal property only.<sup>26</sup> One court, in effect, deprived the killer of the entire estate by the equitable expedient of imposing a constructive trust on the entire estate held by the murderer for the benefit of the heirs of his victim.<sup>27</sup>

Other courts have imposed a constructive trust modified by a life interest in half the property.<sup>28</sup>

Illinois, as exemplified by the Bradley decision, has concluded that a joint tenant who murders the other tenant thereby destroys all rights of survivorship and becomes a tenant in common with the heir-at-law of the deceased tenant. This seems an altogether reasonable viewpoint in that

<sup>21</sup> *Welsh v. James*, 408 Ill. 18, 95 N.E. 2d 872 (1950); *Beddingfield v. Estill & Newman*, 118 Tenn. 39, 100 S.W. 108 (1907).

<sup>22</sup> *Oleff v. Hodapp*, 129 Ohio St. 432, 195 N.E. 838 (1935).

<sup>23</sup> *Cowan v. Pleasant*, 263 S.W. 2d 494, 32 A.L.R. 2d 1099 (1954). A husband and wife held real estate as tenants by the entireties. The husband killed his wife, then himself. One-half of the property was given to the heirs of the husband and one-half to the heirs of the wife; *Grose v. Holland*, 357 Mo. 874, 211 S.W. 2d 464 (1948). One-half of the real estate held as a tenancy by the entireties to the heirs of the wife, and one-half to the husband who murdered her; *Barnett v. Couey*, 224 Mo. App. 913, 27 S.W. 2d 757 (1930). The court divided the fee and permitted the wrongdoing spouse to retain one-half as if a divorce had occurred.

<sup>24</sup> *Van Alstyne v. Tuffy*, 103 Misc. 455, 169 N.Y.S. 173 (1918). The property was held in tenancy by the entireties.

<sup>25</sup> *In re King's Estate (Lore v. Habermeyer)*, 261 Wis. 266, 52 N.W. 2d 885 (1952); *Bierbrauer v. Moran*, 244 App. Div. 87, 279 N.Y.S. 176 (4th Dept. 1935). Real property and bank accounts held in joint tenancy.

<sup>26</sup> *Merrity v. Prudential Ins. Co.*, 110 N.J. 414, 166 A. 335 (1933); *Spicer v. New York Life Ins. Co.* (C.A. 5th, 1920) 268 F. 500, cert. denied 255 U.S. 572, 41 S.Ct. 376; *Matter of Santouran's Estate*, 125 Misc. 668, 212 N.Y.S. 116 (1925).

<sup>27</sup> *Vesey v. Vesey*, 237 Minn. 295, 54 N.W. 2d 385 (1952) The court reasoned that this does not interfere with any vested legal rights yet it gives effect to the appealing doctrine that a person should not be permitted to profit by his own wrong.

<sup>28</sup> *Neiman v. Hurff*, 11 N.J. 55, 93 A. 2d 345 (1952). The murderer was allowed to hold the realty and corporate stock formerly held in a tenancy by the entireties, in trust, subject to a lien thereon for the commuted value at the time of decedent's death of the net income of one-half from both for the number of years of his expectancy of life as determined according to the mortality tables; *Colton v. Wade*, 32 Del.Ch. 122, 80 A. 2d 923 (1951). The survivor was held entitled to the commuted value of the net income of one-half of the realty for the number of years of his expectancy of life; *Bryant, v. Bryant*, 193 N.C. 372, 137 S.E. 188, (1927). The defendant held the entire estate in trust for his deceased wife's heirs-at-law subject to his own life interest in one-half.

the murderer is thereby precluded from profiting from his crime and yet has not been denied his constitutional rights as regard forfeiture of his estate.

### PROPERTY—EQUITABLE RELIEF ALLOWED FOR IMPROVEMENTS MADE UNDER THE MIS- TAKEN BELIEF OF OWNERSHIP

Plaintiff secured a building permit to construct a dwelling on lot 15 and immediately commenced construction on lot 16, which was adjacent, under the mistaken belief that he was on lot 15. Upon discovering his mistake a month later, he undertook to purchase lot 16 from the owner and continued construction on the dwelling. After a few weeks time had elapsed, and the building was near completion, plaintiff received from the defendant lot-owner a demand to suspend construction, with which he complied. Plaintiff then filed suit in equity, alleging the mistake and praying that defendant be required to purchase the improvements placed on lot 16 or to convey said lot to the plaintiff at its reasonable value. The chancellor's decree sustained plaintiff's prayer, ordering the parties to exchange deeds; and the defendant appealed. The Supreme Court of Florida affirmed the decree of the trial court. *Voss v. Forgee*, 84 So. 2d 563 (Fla., 1956).

At common law, even in equity, improvements of a permanent nature placed on or attached to land without the consent of the owner became part of the realty and title thereto vested in the owner.<sup>1</sup> The rationale underlying the common-law rule, as stated in the Restatement of the Law of Restitution, is that one who intermeddles with the property of another assumes the risk as to his right to do so.<sup>2</sup>

The common-law rule is not wholly consistent with the principles of restitution for mistake; but its harshness to the improver, acting under the mistaken belief of ownership, has been greatly relieved, either in equity or by statute.<sup>3</sup>

The leading case among those following the common-law doctrine, and thus, denying the right to recover for improvements made on another's land in the mistaken belief of ownership, is the frequently cited decision of *Putnam v. Ritchie*, which held that the court was not authorized to introduce a new principle into the law (that of allowing recovery based on mistake) without the sanction of the legislature; and on this basis, the court declined to grant relief to the improver.<sup>4</sup>

<sup>1</sup> *McCreary v. Lake Boulevard Sponge Exchange Co.*, 133 Fla. 740, 183 So. 7 (1938).

<sup>2</sup> Restatement of the Law of Restitution, § 42 (Comment "a").

<sup>3</sup> *Ibid.*

<sup>4</sup> 6 Paige (N.Y.) 390 (1837).