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CAN A MURDERER, IN THE ABSENCE OF LEGISLATION, TAKE PROPERTY BY DEVISE OR DESCENT?

A Thesis Presented to the School of Law, Cornell University for the DEGREE OF BACHELOR OF LAWS.

by

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1895
CAN A MURDERER, IN THE ABSENCE OF LEGISLATION, TAKE PROPERTY BY DEVISE OR DESCENT?

It has been held in New York in the case of Riggs v. Palmer 115 N.Y. 506, that a murderer can not take property under a will. While in Nebraska in the case of Shellenberger v. Ransom 25 Law Reports Annotated 564, it has been held that a murderer can take property by descent.

In discussing these two cases it will be readily seen that the statutes in the two states are to be searched in order to determine: First:- Whether the legislatures have spoken on the particular point in question. Second:- If they have spoken, is their language clear, accurate, and unambiguous; or is it vague, inaccurate,
and ambiguous. In examining the statutes we find that there has been no legislation which prohibits a murderer from taking under a will or by descent; but we do find that the legislature in each state has provided a way for property to be inherited, and a way that a will shall take effect, pass the property thereunder, and the manner in which it shall be revoked. The Nebraska courts have held that their statute of descents is clear, accurate, and unambiguous; so have the New York courts held the same as regards their statute, which provides how a will shall be revoked. This is the particular part of the statute under discussion in the Riggs v. Palmer case Supra.

In discussing these cases the principals of law involved are the same in each. So in order that I may save time for my readers, and unavoidable repetition, I shall confine my discussion to the New York case.

In that case, the action was brought to have the will of Francis B. Palmer, so far as it devises and bequeathes property to Elmer E. Palmer, cancelled and annulled. The facts are as follows: On the thirteenth day of August, 1880, Francis B. Palmer made his last will and
testament, in which he gave small legacies to his two daughters Mrs. Riggs and Mrs. Preston, the plaintiffs in this action, and the remainder of his estate to his grandson, the defendant, Elmer E. Palmer, subject to the support of Mrs. Palmer, in case Elmer should survive him and die under age, unmarried and without issue. The testator, at the date of his will, owned a farm and considerable personal property; he was a widower, and thereafter, in March, 1882, he was married to Mrs. Breese, with whom, before his marriage he entered into an antenuptial contract, in which it was agreed, that in lieu of dower and all other claims upon his property, in case she survived him, she should have her support from his farm during her life, and such support was expressly charged upon the farm. At the date of the will, and subsequently to the death of the testator, Elmer lived with him as a member of the family, and at his death was sixteen years old. He knew of the provisions made in his favor in the will, and that he might prevent his grandfather from revoking such provisions, which he had manifested some intention to do, and to obtain the speedy enjoyment of possession of the property, he willfully murdered him by poisoning him. He now claims the property, and the
sole question is, can he have it?

After a long and careful study, I have come to the conclusion that, under the particular circumstances surrounding the case, Elmer E. Palmer should have been allowed to take the property under the will, as made by his grandfather, Francis B. Palmer, which will was admitted to probate, and which had not been revoked by the testator. I am sustained in my conclusion by the following cases, viz: Shellenberger v. Ransom, Supra; Owens v. Owens 100 N.C. 240; Deem v. Milliken, 27 Ohio L. J. 156 and 6 Ohio C. Ct. Rep. 357; also by the following judges who passed opinions in the Riggs'case. The referee, the three judges of the Supreme Court, and two judges of the Court of Appeals. So that among the eleven judges passing an opinion, six held with and five against me. In the Court of Appeals Gray J. wrote the dissenting opinion with which Danforth J. concurred.

Judge Danforth at the time this case was decided was about to leave the bench, and was therefore the oldest judge then sitting, consequently had more experience, and his dissenting opinion was regarded by his associates at that time, as a hard blow to their practically new precedent established by their negative decision of this case.
Judge Danforth saw far into the future, and foretold that such statutory construction was being carried too far for the good and welfare of the whole legal profession, as well as for the private citizen. He saw that Stare Decisis would either have to fail or else the decision of his five associates could not stand. He saw in this advancing age of civilization that the rigid rules laid down by kings and common law judges could not be followed accurately and with the same results as of old. One text writer in speaking of Judge Danforth's opinion on this case said:— "It is strange how such an old, reliable and learned judge could make such a bad mistake as to give reward for murder." That text writer recognized the great judge's ability, but did not go deep enough into the case to determine the reasons for his conclusion. And, I think, if Judge Danforth's five associates had studied the various rules for statutory construction more carefully, and deliberated longer upon the danger their negative decision would cause, they, too, would have reached the same conclusion as did their senior brother, and would have seen that any other decision than that would be clearly beyond their judicial authority.
The one point in this case is statutory construction. Can the statute be construed in the manner adopted by the majority judges in this case, or must the statute stand as the legislature made it? Turning to page 2,548 of the eighth edition of the Revised Statutes of New York, we find this statute. No will in writing except in the cases hereinafter mentioned, nor any part thereof, shall be revoked, or altered, otherwise than by some other will in writing, or some other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed, or unless such will be burnt, torn cancelled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person the direction and consent of the testator, the fact of such injury or destruction shall be proved by at least two witnesses.

It will be readily seen that the statute is a remedial statute as to personal property and should be liberally construed, but as to real property it is in derogation of the common law and should be construed strictly
It is enough for our purpose to say that a remedial statute is one that remedies the common law, while a derogatory statute is one that partly repeals the common law, or gives a law that was not allowed by the common law.

As the will in this case carried both real and personal property we will allow that the statute is only remedial, and by giving it as liberal a construction as the law will allow, determine whether or not such a construction can be given it as will warrant the final decision in this case.

Judge Earl in his opinion seems to think that by liberal construction is meant both a rational interpretation and an equitable construction. He acknowledges that the statute before him is plain and unambiguous in its term; yet he uses so called rational interpretation. He says that, it is a familiar canon of construction that thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter, etc. This is true, but to determine what the legislators intended we must look to their words and interpret them to determine their thoughts. We cannot start out upon some haphazard supposition to determine what thoughts coursed through a man's mind simply because
we suppose he would think as ourselves under like case and circumstance. We must first have some signs he has left or given us as a foundation upon which to start our gray matter in search of his intent. A rational interpretation is not applicable in this case. Rutherforth in his Institutes at pages 406 and 407 gives us the following information. "A promise or a contract, or a will gives us a right to whatever the promisor, the contractor or the testator design to make ours. But this design or intention if it is considered merely as an act of his mind, can not be known to any one besides himself. So when we speak of his design or intention as the measure of our claim we must necessarily be understood to mean the design or intention which he has made known or expressed by some outward mark; because a design or an intention which does not appear, can have no more effect, or can no more produce a claim, than a design or intention which does not exist.

In like manner the obligations that are produced by the civil laws of our country, arise from the intention of the legislator, not merely as this intention is an act of the mind, but as it is declared or expressed by some outward sign or mark, which makes it known to us.
For the intention of the legislator, which he keeps to himself, produces no effect, and is of no more account than if he had no such intention. When we have no knowledge we can be under no obligation. We can not therefore be obliged to comply with his will, when we do not know for sure what his will is, and we can no otherwise know what his will is than by means of some outward sign or mark by which this will is expressed or declared either in plain or ambiguous terms. If his will is expressed in plain words then those words are his will or intent and interpretation is not required. But if this will is expressed in ambiguous terms only so much the harder is it to determine his will or intent. It is only in the latter case that interpretation is allowed or required to find his meaning, will, or intent. It is necessary in most all cases to go outside of the legislator's ambiguous words to determine his intent, and to use some other signs or marks than his words, to find our his intent."

Judge Earl says: "The writers of law do not always express their intention perfectly, but either exceed it or fall short of it, so that judges are to collect it from rational or probable conjectures and this is called
rational interpretation." The learned judge does not give his readers the exact definition of rational interpretation, but constructs it from parts of Rutherford so that it misleads their minds and just fits his side of the case. Rutherford says: "There are three kinds of interpretation to wit: the literal, the rational, and the mixed. Where the speaker's or writer's words do not express his intention perfectly, but either exceed it or fall short of it, so that we are to collect it from probable or rational conjectures only, this is rational interpretation." But the words in this statute do express the writer's intention perfectly, so that there is no chance for any kind of interpretation.

Taking up next the equitable interpretation of statutes or rather equitable construction, nearly all text writers agree that such a construction admits within the operation a class of cases which are neither expressly named or excluded, but which, from their analogy to the cases which are named, are clearly and justly within the spirit and general meaning of the law. But in this statute under consideration it is provided that a will shall not be revoked otherwise than there expressly stated.
it would seem that this construction is not applicable in this case, because the statute by its terms excludes any other case than those there mentioned.

It is not at all uncertain but what the legislators summoned a similar case before their minds at the time this statute was enacted, and concluded that as long as the punishment had been meted out by them for all murderers, that would be sufficient, and that those persons claiming through the devisee or legatee murderer should not be deprived of their share in the property disposed of by the will. How do the courts know whether the testator wanted the plaintiffs in this action to have the property or the persons taking through the murderer? What right have they to step in and revoke a will for the testator and make a new one for him, simply because an injustice is done? Are they not going too far, and taking upon themselves the power to make laws? It has been well said that, the legislature is always at hand. Why not refer these cases to them when there is no way of determining their intent?

The equitable construction of a statute, as anciently understood, was meant a judicial interpretation of a statute which, presupposing a legislature to have intend-
ed what is right and just, pursues and effectuates that intent, even though the words of the statute were plain and unambiguous. In construction of old statutes it has been understood as extending to general cases the application of an enactment which literally was limited to a special case. This construction is tolerated now, would be resorted to with great caution (per Polluck in Miller v. Salmons 7 Ex. 475). The reasons for its being given to ancient statutes were: Firstly, In consequence of the conciseness with which they were drawn. Gwynee v. Burnell 6 Bing. N.C. 561. Secondly, Because the language was used with no great precision in early times, and that acts were framed in harmony with the lax methods of interpretation contemporaneously present. Per Lord Ellenborough in Wilson v. Kumbley 7 East 134. Thirdly, It has been accounted for by the fact that in those times the dividing line between the legislature and judicial functions was feebly drawn, and the importance of the separation imperfectly understood. Sedgwick int. of Statutes 311. Fourthly, That the jurisdiction of common law and equity was committed to the same courts, and that, by blending law and equity together, great lat-
itude was given to the judges in matters of propriety to modify the laws in order to meet the purposes of justice in particular cases. (Dwarris on Stat. Cons. 699.)

Fifthly, The ancient practice of having the statutes drawn by the judges from the petitions and the answers of the King. (Coke's Littleton 272a). The judges would naturally be disposed to construe the language in which they framed the statute as their own, and therefore with freedom and indulgence.

It can hardly be said that any of these reasons can be taken at this time as authority for equitable construction by our courts. Yet Judge Earl quotes Coke and Blackstone as freely as though this case was being tried away back in the time of those learned jurists. It will be almost impossible to refer in this paper to all of the authorities on this particular branch of statutory construction, but in order to convince my readers that the decision of this case in the Court of Appeals was wrong, I have thought it best to collect some of the most important of these authorities, both in this country and in England, which will, I think, show that in modern times this kind of construction has practically fallen into disuse.
"This principal of equitable construction has fallen into discredit, and become looked upon with distrust, and courts of chancery endeavor to adhere to the much more logical rule that, equity follows the law. Yet there are some exceptions which have been established."

(Sedgwick on Stat. Cons. P. 311). The exceptions appear mostly in cases that are based upon contract and the statute of frauds which has been found to be very loosely drawn, and impossible to bring all the cases within its letter.

"A remedial statute must be construed if possible so as to correct the mischief at which it is aimed. But if the language is very explicit there is great danger in departing from the words used to give an effect to the law which may be supposed to have been designed by the legislator."

(6 B. and C. 475; 10 Peters 524; 3 B. and C. 182). "The duty of the judge is to adhere to the legal text, and not to travel out of what expressly or impliedly says."

"We can not aid the legislature's defective phrasing of an act; we can not add and emnd, and by construction make up defects which are left out."

(Dwarris P 704). The language of statutes, but more especially modern statutes, must neither be extended beyond
its natural and proper meaning in order to supply defects nor strain to meet the justice of an individual case." (7 Queens Bench at P. 185). "It is a principal in the English law that an act of parliament delivered in clear and intelligible terms can not be questioned, or its authority controlled in any court of justice. If the statute be too palpable in its direction to admit of but one construction there is no doubt in the English law, as to the binding efficacy of the statute. The will of the legislature is the supreme law of the land." Although it is undoubtedly true that judges when interpreting the law are to explore the intent of the legislature, yet it is equally true that the construction to be put upon an act, must be such as is warranted, or at least not repugnant to the words of the act. Where the object of the legislature is plain, and the words of the act unequivocal, courts ought to adopt such a construction as will best effectuate the intent of the law makers; but they must not, even in order to give effect to what they may suppose to be the intention of the legislature, put the provision of a statute a construction not supported by the words, even though the consequences should be to defeat the objects of the act." (Rex v. Stoke Damerel 7
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B and C. 569). "Where the legislature has used words of plain and definite import, it would be dangerous to put upon them a construction which would amount to holding that the legislature did not intend to mean what they had clearly said. The courts are not to presume the intention of the legislature; they are to collect it from the words of the act." (6 B and C. 712). Lord Tenderden in one case said: "Our decision may perhaps in this particular case operate to defeat the object of the statute, but it is better to abide by this consequence than to put upon it a construction not warranted by the words of the act, in order to carry out what we may suppose to be the intent of the legislature." (Rex v. Bolton 8 B. and C. 104). Equity can not relieve against the express provisions of a statute. (11 Vesey at P 627; Law Reports ch. D. P. 297; Wilberforce on statutes at P. 238 and 9; Potters Dwarris on Statutes at Ps 239 and 44; 7 B. and C. 569. 17 Wendall 304.) The citations already referred to are mostly those from English authorities. I will now refer briefly to American authorities.

Mr. Justice Chase in Priestman v. United States for Dallas 30. said: "By the rules which are laid down in
England for the construction of statutes, and the latitude which has been indulged in their application, the British judges have assumed a legislative power and in the pretense of judicial exposition, have in part made a great portion of the statute law of the kingdom. Of these rules of construction, none can be more dangerous, than that which distinguishes between intent and the words of the legislature which declares that a case not within the meaning of the statute, according to the opinion of the judges, should not be embraced within the operation, although it is clearly within the words; and vice versa that a case within the meaning, though not within the words, shall be embraced. Sitting in an American Court he should always deem it a duty to conform to the expressions of the legislature, to the letter of the statute, when free from ambiguity and doubt, without indulgence in speculation upon the impropriety or hardship of the law."

Senator Verplanck in Stone et al v. The Mayor of New York 25 Wend. 177, said: "The experience of late years has taught the courts the danger of excess in bold interpretation, according to the presumed intent and against the plain language of acts. The ablest and safest judges
have borne testimony against the evils of the ancient de-
cisions in this spirit. It is the duty of judges to in-
terpret and apply the provisions of statute laws, and not
to supply their real or supposed effects, or to carry
out and apply their presumed policy. However rigidly
adhere courts might to this intention there would often be neces
sity for great latitude of interpretation. Whatever may
have been the policy or excuse in other countries, or in
older times, for such bold construction or alteration of
legislative language, with us it is inhostility to the
genius and spirit of our republican institution, which
aim at laying open to every citizen, as far as possible,
a knowledge of his duty and his right. The statute
books, and the laws of our annual legislation would be-
come, under such an arbitrary system of determination,
not merely a sealed book to the private citizen, or the
inferior magistrate, but would lead into constant error
when the language of the legislative, was apparently the
most simple, direct, intelligible, and technical—it
could and would be construed in a precisely contrary
sense as to its legal effect. The rule that restricted
courts to the interpretation of the statute, and inhibi-
ed them from altering or amending it on any assumed equi-
ty, or supposed legislative policy, was the rule of the well regulated republican liberty as well as that of justice and reason,"

case in Ontario recently decided but its decision really has no bearing upon this Riggs' case either one way or the other. (McKinnon v. Lundy 21 Ontario Appeals 560).

Judge Earl says: "Our law makers were familiar with the civil law, and they did not deem it wise or important to incorporate into our statute its provisions upon this subject. That so far as I can find, in no country where the common law prevails has it been deemed important to enact a law to provide for such a case. Had the judge's attention been called to the revised statutes of Mississippi he would have found that the legislature of that state deemed it important to enact such a law, and that too, before any litigation had arisen on the subject. Section 4,502 of the Annotated Code of Miss. provides, if any person shall willfully cause or procure the death of another in any manner, he shall not take the property, or any part thereof real or personal of such other, under any will, testament, or codicil; any devise to such person shall be void, and as to the property so devised the decedent shall be deemed to have died intestate, etc. Section 1554 is a like provision for property taken by
descent. This part of the judge's argument must fall through, because in his own country which follows the common law in the absence of statute, one of the states has legislated upon the subject. Butler J. in Jones v. Smart 7 Term Rep. 53 said: We are bound to take the act of Parliament as they made it, a casus omissus can in no ways be supplied by a court of law, for that would be to make the law." See also per Bronson J. 17 Wendall 304. It will make no difference if it appears that the omission on the part of the legislature was a mere oversight, and that without doubt the act would have been drawn otherwise had the attention of the legislature been called to the oversight at the time the act was under discussion. Lane v. Bennet 7. M. W. 70. N. E. R'y v. Leadgate L. R. 5, Queens B. 161.

The learned judge also relies upon the case of the N. Y. Life Ins. Co. v. Armstrong 117 U. S. 591. The statement referred to given by Mr. Justice Field, is but a mere dictum, as no representative of Hunter was a party to the action. So that case can not be taken as authority. Landon J. in referring to that case said: "That was a case of contract; it certainly could not be held that the company had promised to pay the insurance money
to the murderer of the person whose life is insured. Such a contract would be so unreasonable and against public policy that the courts could well hold that the minds of the contracting party had never met upon such a proposition, and if they had the contract would be void."

But a will is not a contract. The law has pronounced its sentence upon this murderer, Elmer E. Palmer, and that sentence does not embrace incapacity to take under the will. As the legislature had not imposed such a sentence the court surely had no legal authority to do so." Thus it seems that the law of this country must follow the decisions reached in Nebraska, South Carolina, and Ohio.

Howard Cobb