

William and Mary Review of Virginia Law

Volume 1 (1949-1953)
Issue 4

Article 11

May 1952

Property - Acceleration of Remainderman's Interest by Murder

Peter Shebell Jr.

Follow this and additional works at: <https://scholarship.law.wm.edu/wmrval>



Part of the [Estates and Trusts Commons](#)

Repository Citation

Peter Shebell Jr., *Property - Acceleration of Remainderman's Interest by Murder*, 1 Wm. & Mary Rev. Va. L. 147 (1952), <https://scholarship.law.wm.edu/wmrval/vol1/iss4/11>

Copyright c 1952 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmrval>

PROPERTY—ACCELERATION OF REMAINDERMAN'S INTEREST BY MURDER

Micajah and Estella Jiggetts were joint tenants without survivorship of certain realty. In 1929 they executed a joint will which read in part, "Second: We hereby direct that the survivor herein shall take all of the property of the first of us to die, both real and personal, for life, with complete power to dispose of the whole or any part thereof in such manner as he or she may see fit, and whatever remains undisposed of at the death of the said survivor, we direct that it shall pass to our issue, if any, and in the event that there is no such issue, then one-half of such estate shall pass to our adopted daughter, Annie Cage Townes, and the other half to be divided equally among our nearest relatives living at the death of the survivor . . ." Thereafter, their son, William Henry Jiggetts, was born. In 1941 Estella Jiggetts died, and Micajah executed another will which provided in part, "Second: All the rest, residue and remainder of my property, real, personal and mixed, wheresoever the same may be situated, I give, devise and bequeath to my son, William Henry Jiggetts, in fee simple and absolute property." In 1948 William Henry, still an infant, killed his father for the purpose of obtaining the property, followed by a confession and conviction of murder. Suit was instituted to have it adjudged that he was barred from taking as his father's devisee. It was so decreed, on the theory that Micajah Jiggetts had taken a power of appointment under his wife's will, exercised it in his second will, and that William Henry Jiggetts was barred from taking under such will by Code of Virginia § 64-18 (1950).¹ On appeal, held, reversed. The one-half interest of Estella Jiggetts vested in William Henry Jiggetts under his mother's will, subject to a life estate and inter vivos power of disposition in the father. The rule of *May v. Joynes*, 20 Grat. 692, (Va. 1871) is not applicable because of Code of Virginia § 55-7 (1950),² and § 64-18 does not operate to take away the vested estate. *Blanks v. Jiggetts*, 192 Va. 337, 64 S. E. 2d 809 (1951).

While the facts of the case do not come within the words of § 64-18, it seems that a more equitable result could have been

-
1. VA. CODE ANN. § 64-18 (1950) ("no person shall acquire by descent or distribution, or by will, any interest in the estate of another whom he has killed in order to obtain such interest.")
 2. *Rule v. First Nat. Bank of Clifton Forge*, 182 Va. 227, 28 S.E.2d 709 (1944).

reached by application of common law principles. No issue can be taken with the finding that the gift over is preserved by § 55-7; the statutory modification of *May v. Joynes* is squarely in point, as noted in 37 VA. L. REV. 1183 (1951). Even a vested estate, however, can be forfeited under certain circumstances.

The reasoning of the Supreme Court of Appeals follows *Welsh v. James*, 408 Ill. 18, 95 N. E. 2d 872 (1950), in which it is said, "There is no law in this State that deprives appellee of his vested right in the whole of the estate as the surviving joint tenant. Our State constitution expressly provides that all penalties shall be proportioned to the nature of the offense, and that no conviction shall work corruption of blood or forfeiture of estate; . . ." In *Oleff v. Hodapp*, 129 Ohio St. 432, 195 N. E. 838 (1935) the theory is advanced that property rights are too sacred to be denied because of public policy! In bringing about a similar result in the *Jiggetts* case, Justice Whittle says, "The reason the son is allowed the benefit of the shortened life estate is because this statute does not prohibit it. Code Section 64-18 is a penal law, divesting a person of rights otherwise accorded to him under the law, and it must be strictly construed."

It is believed that the cases upon which the Supreme Court of Appeals relied can be distinguished from the case at hand. In the first place, in *Welsh v. James*, Perry C. James *unlawfully* took the life of his wife, but no mention is made of his having killed her to obtain the property. In Virginia even § 64-18 only applies when the murder was committed for the express purpose of obtaining the property.³ Therefore, the principle of this case is not applicable to the facts of *Blanks v. Jiggetts*, where the object of the killing was to obtain the property. "Corruption of blood or forfeiture of estate"⁴ has no application to the devolution of property, but is intended to protect the criminal's estate⁵ from automatic forfeiture upon suicide or conviction of a felony. The common law, so far as it is not inconsistent with the Constitution and laws of the United States or of the State of Virginia is the rule of decision in the courts of this state.⁶ Therefore, what is to prevent applying the common law maxim, "that no one shall be permitted to take advantage of his own wrong,

3. *Ward v. Ward*, 174 Va. 331, 6 S.E.2d 664 (1940).

4. VA. CODE ANN. § 55-4 (1950).

5. *Perry v. Strawbridge*, 209 Mo. 621, 108 S.W. 641 (1908).

6. VA. CODE ANN. § 1-10 (1950).

or to found any claim upon his own iniquity, or to acquire property by his own crime? . . . ?”

Secondly, in *Oleff v. Hodapp*, supra, Apostal signed a contract with his nephew Tego which provided, “We, the undersigned, owners of Joint Account . . . do hereby agree and jointly authorize and order said company to pay any and all of the credits now or hereafter on said account, to the order of any one or more of us, both before, after and notwithstanding the death or other incapacity of any one or more of us.” Apostal was killed by a third person, but Tego was also found guilty as a moral force behind the crime. Thus it can be seen that Tego’s right in the account was as absolute as Apostal’s, *before the crime*. Judge Zimmerman in his concurring opinion said, “How can we logically take his own property away from him?” In sharp contrast is the situation in *Blanks v. Jiggetts*, where the son had but a vested remainder subject to defeasance by inter vivos disposition.

Setting up a constructive trust for the benefit of those named in the joint will of 1929 in case there should be no issue was not discussed at all. RESTATEMENT, RESTITUTION § 188 reads, “where two persons have an interest in property and the interest of one of them is enlarged by his murder of the other, to the extent to which it is enlarged he holds it upon a constructive trust for the estate of the other.”⁸ Accordingly, William Henry Jiggetts should be compelled to surrender his whole interest upon a constructive trust, for there was a substantial contingency whereby he might not have received anything except for the murder.⁹ The statement by James Barr Ames that, “One and all overlooked that beneficent principle in our law by which equity, acting *in personam*, compels one who by misconduct has acquired a *res* at common law to hold the *res* as a constructive trustee for the person wronged, or if he be dead, for his representatives,”¹⁰ appears to apply to the court in this case.

In *New York Life Insurance Company v. Davis*, 96 Va. 737, 32 S. E. 475 (1899) “It was conceded that if the policies were taken

7. 9 R.C.L. § 41; *Riggs v. Palmer*, 115 N.Y. 506, 22 N.E. 188 (1889).

8. 3 SCOTT, TRUSTS § 493.1 (1939); *Bryant v. Bryant*, 193 N.C. 372, 137 S.E. 188 (1927); Note, *Right of Murderer to Acquire Property by Operation of Condition Subsequent That Property Shall Revert on Grantee's Death*, 37 MICH. L. REV. 965 (1939).

9. RESTATEMENT, RESTITUTION, § 188, comment (c); 82 U. PA. L. REV. 183 (1933).

10. AMES, LECTURES ON LEGAL HISTORY 314 (1913).

out by Davis in good faith and were valid in their incipency, their subsequent assignment to Lester, although procured by him with a view to the murder of the insured and the collection of the policies, would not prevent a recovery on them for the estate of the deceased."¹¹ There the Supreme Court of Appeals of Virginia upheld the maxim that no one should profit from his own wrong, the settled rule as to the beneficiary of a life insurance policy.¹² Since the legal title actually vests in the beneficiary of the insured,¹³ application of the principle in *Blanks v. Jiggetts* would have required that the beneficiary not be deprived of his rights in the insurance proceeds. Thus in the *Davis* case an equitable result is reached, but strictly speaking an individual is deprived of a vested interest; whereas in the *Jiggetts* case technically the result is correct, but a gross miscarriage of justice is allowed. The sound answer is set forth in RESTATEMENT, RESTITUTION § 189: The establishment of a constructive trust for the estate of the party wronged. In this manner the legal title is surrendered by the undeserving recipient to the deceased's estate. As set forth in a West Virginia case,¹⁴ "and it is likewise very uniformly held, and it occurs to us upon sound reason, that, where the beneficiary in a policy of life insurance is denied the right of recovery upon grounds of public policy, a trust results in favor of the estate of the insured, and ordinarily the personal representative of the insured can maintain a suit to recover the fund for the benefit of that estate."¹⁵

It is provided by statute¹⁶ that if a wife wilfully deserts or abandons her husband she shall lose all interest in his estate as "tenant by dower, distributee or otherwise." If such a person can lose her dower in property by desertion, *a fortiori* one should be deprived of an interest in property received as a result of murder!

It is difficult to reconcile oneself to the decision of the court with reasoning based mainly upon two cases clearly distinguishable from *Blanks v. Jiggetts*. The Supreme Court of Appeals cannot be trying to tell us that property rights are more sacred than human

11. Note that no mention is made in the *Davis* case of corruption of blood or forfeiture of estate.

12. *Johnston v. Metropolitan L. Ins. Co.*, 85 W. Va. 70, 100 S.E. 865 (1919); 4 POMEROY, EQUITY JURISPRUDENCE § 1054(e) (5th Ed. 1941).

13. VA. CODE ANN. § 38-119 (1950).

14. *Johnston v. Metropolitan L. Ins. Co.*, *supra*, at 867.

15. *Schmidt v. Northern Life Asso.*, 112 Iowa 41, 83 N.W. 800 (1900); *Cleaver v. Mutual Reserve Fund Life Asso.*, L.R. 1 Q.B. 147 (1892).

16. VA. CODE ANN. §64-35 (1950).

life. Does not the fact that the decision puts a premium on this type of murder arouse an honest citizen's sense of fair play?¹⁷ The court fails to present one convincing reason for its decision. A point worth noting is that the court does not refer to the possible solution mentioned herein, supported by cases, writers, and the RESTATEMENT. Therefore the equitable justice recommended is submitted to the Supreme Court of Appeals of Virginia with an eye to the future.

PETER SHEBELL, JR.

-
17. Certainly a court of law can not be "hindered" by the principles of a theological institution—the separation must always be distinct! *Blanks v. Jiggetts, supra*, at 343, 64 S.E.2d at 812.