

# Wills Murder of Testatrix by Beneficiary

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**Wills Murder of Testatrix by Beneficiary.**—The recently decided case of *In re Wilkins Estate*<sup>1</sup> presented to our court for the first time a question, which, though decided before in other jurisdictions, occurs so infrequently that it has not lost its novel interest. The facts are simple enough: A, the testatrix, was murdered by B, who immediately thereafter committed suicide. By the terms of A's will, B was to receive \$5,000. The case is unique in that B had no knowledge that he was a beneficiary; this peculiar characteristic distinguishes this case from others decided elsewhere because it is apparent that fear on B's part that a change might be made in the will or that perhaps he might be left out entirely, was not the motivating force which impelled him to commit the crime.

Of course, the court held that the murderer could not take under the will, yet the reasons for so holding as given in the opinion which is written by Justice Doerfler, are somewhat different than might be expected. To be sure, the court held that the equitable doctrine that a man shall not profit by his own wrong was applicable here, yet the court lays down very emphatically and gives as one of its chief reasons for its decision that the fact that the testatrix was not given an opportunity to change her will if she so desired, made it imperative as to B. This in accordance with section 238.14 of the Statutes, "the power to make a will implies the power to revoke the same."

In advancing this argument, the court goes on to say that if the testatrix had lived "a reasonable time after the commission of the offense and during such time retains her competency to make a new will or to revoke or modify the one already made, but fails or refuses to make a change the will nevertheless becomes effective."

The leading case in the country on this subject in this country is *Riggs v. Palmer*,<sup>2</sup> which was later fully interpreted in the prominent case of *Ellerson v. Westcott*.<sup>3</sup> In the *Riggs* case, a grandson murdered his grandfather to prevent the latter from revoking a will in which he was the principal devisee; as explained in *Ellerson v. Westcott*, the court did not revoke the will in the *Riggs* case, but rather exercised its equity jurisdiction, and forced the criminal to surrender his ill-gotten title. In this connection, difficulties arise, and our court in the instant case realized them. Does the will become operative immediately at the death of the testator, or is it revoked, and if so, by what process? A further problem follows the second supposition when the statutes prescribe only certain methods by which a will may be revoked, and no mention is made of instances where a beneficiary murders the testator. That is the situation in both New York and Wisconsin.

The New York court insists that the will becomes operative at the death of the testator but that the beneficiary B "caused that death, and thus by crime made it speak and have operation. Shall it speak and operate in his favor?"<sup>4</sup> Before the *Ellerson* case, the legal remedy

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<sup>1</sup> 212 N.W. 652, Wis.

<sup>2</sup> 115 N.Y. 506, 22 N.E. 188, 5 L.R.A. 340, 12 Am. St. Rep. 319.

<sup>3</sup> 148 N.Y. 149, 42 N.E. 540.

<sup>4</sup> *Riggs v. Palmer*, see 2.

was only considered. As Mr. Ames says,<sup>5</sup> "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 person wronged, or if he is dead, for his representatives."

Our court seems somewhat hesitant in so extending equitable jurisdiction to this case. While recognizing the equitable principle that one may not profit by his own wrong, yet the distinction is made that if this equitable doctrine applies, the vesting and the taking of the property are separable acts and that once title was vested "there is visited upon the criminal a punishment in addition to that provided for by law. In other words, it amounts to an attainder or a corruption of the blood, prohibited by the Constitution," while the two actions are really simultaneous. The decision then rests upon the theory that the will may be considered revoked insofar as B is concerned, and still be within the blanket statute 238.14 "that nothing contained in this section shall prevent the revocation *implied by law* from subsequent changes in the condition or circumstances of the testator." (Italics ours.) As stated *In re Will of Battis*,<sup>6</sup> in explaining how the case is brought within the exception, "the rule rests on the idea that the changed conditions and circumstances of the testator respecting his property, his family, or beneficiaries, imposing different moral and legal duties, affords strong evidence that the testator intended that his will should become revoked as to the provisions affected by such subsequent change."

In a word, then, the rule seems to be that a beneficiary who murders his testator, causes, within the contemplation of the legislature, a revocation of the will as to him, and that in addition to that controlling reason in the case, a county court may exercise equitable jurisdiction in construing a will by preventing a wrongful actor from realizing profit from his own wrong. The mere fact that the actor did not know he was a beneficiary is immaterial.

ROBERT A. EWENS

**Wills: Precatory Words Held Sufficient to Create Trust.**—Wisconsin has added another to its list of precatory phrases that are sufficiently expressive of the intention of the testator to create a trust. In the case of *In re Doe's Will*<sup>1</sup> the testator left practically all of his property to his wife "well knowing" that she would make wise use thereof and would leave the residue to the children of their marriage. There is nothing startling about this decision for the same words have been held to create a trust in various other jurisdictions. *Nriggs v. Penny and Bardswell v. Bardswell*<sup>2</sup> had previously adjudicated upon these exact words.

<sup>5</sup> Can a murderer acquire a title and keep it? Ames' Lectures on Legal History, p. 310.

<sup>6</sup> 143 Wis. 234, 126 N.W. 9.

<sup>1</sup> (Wis.), 212 N.W. 781.

<sup>2</sup> 49 Eng. Ch. 4.

<sup>3</sup> 49 Eng. Ch. 4, 9 Sim. 319.