



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 49
Issue 1 *Dickinson Law Review - Volume 49,*
1944-1945

10-1-1944

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Recommended Citation

W.H. Hitchler, *Murder in the First Degree*, 49 DICK. L. REV. 30 (1944).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol49/iss1/4>

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MURDER IN THE FIRST DEGREE

A statute provided: "Every murder which shall be committed by means of poison or by lying in wait or by any kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration of or an attempt to perpetrate any arson, rape, robbery, burglary, or other felony, shall be deemed murder in the first degree." Georgia Statutes, 1935, 21-401.

In construing this statute the court said: "This definition is subject to the criticism that it uses the word murder to define itself, although it seems clear that the word is used as the equivalent of homicide." *S. v. Stephens*, 158 Kan. 453, 148 P. (2d) 488.

This interpretation would make every homicide by poison or by lying in wait murder in the first degree. A may give poison to B by mistake. The mistake may have been due to slight negligence, or ordinary negligence, or gross negligence, or to no negligence on the part of A. It would in all cases be a homicide committed by poison. But surely the homicide would not be murder in the first degree. A may lie in wait for B in order to interview him or to hit him a light blow and may accidentally kill B. Surely the homicide would not be murder in the first degree simply because it occurred after A had lain in wait. The subject is of importance in Pennsylvania because of the similarity of the Pennsylvania and Georgia statutes defining murder in the first degree.

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