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Jerry R. Duffie

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NOTES

IN RE KRAVITZ ESTATE: CONCLUSIVENESS OF A PRIOR CONVICTION UNDER THE SLAYER'S ACT

The Pennsylvania Supreme Court recently held in *In re Kravitz Estate*[1] that the record of conviction and judgment of sentence of a murderer was a conclusive bar to the convicted claimant's right to take under or against the victim's will. The court further held that a person convicted of murder could not have the question relitigated in the orphans' court. The *Kravitz* court based its holding on the Slayer's Act of 1941,[2] public policy and recent analogous cases.[3]

Ethel Kravitz was tried by a jury and convicted of the second degree murder of her husband.[4] The conviction and sentence were affirmed on appeal.[5] Decedent, Max Kravitz, left a will bequeathing to his wife his residuary estate, provided she survived him by ninety days. At audit[6] of the executor's account the accountant sought to disqualify Ethel Kravitz as a legatee under decedent's will. The accountant successfully introduced in evidence the criminal indictment, docket entries, verdict of the jury and sentence of the criminal court.[7] Counsel for Ethel Kravitz attempted to rebut the evidence admitted by having claimant and additional witnesses testify as to her innocence. The orphans' court judge refused the testimony and held the criminal conviction incontrovertible as proof of claimant's guilt. The lower court further ruled that the record of conviction[8] of "wilful and unlawful killing"[9] was a conclusive bar un-

1. 418 Pa. 319, 211 A.2d 443 (1965). The court's decision leaves several questions unanswered. Will the conviction of voluntary manslaughter be conclusive? Will an acquittal of voluntary manslaughter, second degree murder or first degree murder be held conclusive? What effect will a habeas corpus proceeding have on the civil litigation?

2. PA. STAT. ANN. tit. 20, §§ 3441-3456 (1964).

3. Hurtt v. Stirone, 416 Pa. 493, 206 A.2d 624 (1965); Pennsylvania Turnpike Comm'n v. United States Fid. & Guar. Co., 412 Pa. 222, 194 A.2d 423 (1963); Mineo v. Eureka Fire & Marine Ins. Co., 182 Pa. Super. 75, 125 A.2d 612 (1956).

4. Commonwealth v. Kravitz, No. 245, Pa. O.&T. of (Mongt.) June T., 1958.

5. Commonwealth v. Kravitz, 400 Pa. 198, 161 A.2d 861 (1960).

6. Kravitz Estate, 84 Montg. 255 (Pa. Orphans' Ct. 1964).

7. *Id.* at 257. The auditing judge refused to admit in evidence the notes of testimony of the criminal trial, the exhibits, court's charge or the opinion of the Pennsylvania Supreme Court in affirming the criminal conviction.

8. As to the issue of what constitutes the "record of conviction" the supreme court held:

der the Slayer's Act of 1941 to Mrs. Kravitz' civil right to share in the decedent's estate. This question being one of first impression in Pennsylvania, the case was appealed and the orphans' court decision was affirmed. Since there is no "*express* provision in the Act of 1941 covering the specific question,"[10] this Note will test the *Kravitz* court's construction of section 14 of the act against the history[11] of related Pennsylvania cases and legislation, and against the interpretation of similar statutes in other states.

STATUTES OF OTHER STATES

Statutes designed to prevent a slayer from acquiring property from his victim's estate have been enacted in several states.[12] The status accorded evidence of prior criminal conviction varies from conclusive to inadmissible. The statutes enacted in California,[13] Indiana[14] and West Virginia[15] make the criminal conviction incontrovertible. The California and Indiana statutes resolve the question presented in the *Kravitz* case by express wording in the acts. California's statute, which is the most complete on the question of weight to be given a prior conviction or acquittal, provides:

> No person who has unlawfully and intentionally caused the death of decedent . . . shall be entitled to succeed to any portion of the estate or to take under any will of the decedent. . . . A *conviction or acquittal* on a charge of murder or voluntary manslaughter shall be a *conclusive* determination of the unlawfulness or lawfulness of a causing of death, for the purpose of this section.[16]

> The correct rule in these "slayer" cases is that the record of her conviction includes the indictiment, the verdict of the jury, the judgment and sentence of the Court, and any decision, order and judgment of this Court and of the Supreme Court of the United States.

418 Pa. at 328, 211 A.2d at 448.

9. PA. STAT. ANN. tit. 20, § 3441 (1964).

10. 418 Pa. at 323, 211 A.2d at 445.

11. See generally van Roden, *The Pennsylvania Slayers' Act*, 22 PA. B. A. Q. 48 (1950).

12. CAL. PROB. CODE § 258 (Supp. 1965); COLO. REV. STAT. ANN. § 153-2-13 (1963); D. C. CODE ANN. § 18-109 (1961); FLA. STAT. § 731.31 (1964); IND. STAT. ANN. § 6-212 (1953); IOWA CODE ANN. §§ 633.535-37 (1964); KAN. GEN. STAT. ANN. § 59-513 (1964); MINN. STAT. ANN. § 525.87 (1947); R. I. GEN. LAWS ANN. § 33-1.1-1-16 (Supp. 1964); S. D. CODE §§ 0501-15 (1939); TENN. CODE ANN. §§ 31-109, 31-207 (1955); VA. CODE ANN. § 64-18 (Supp. 1964); WASH. REV. CODE ANN. §§ 84.010-.910 (1963); W. VA. CODE ANN. § 4095 (1961).

13. CAL. PROB. CODE § 258 (Supp. 1965).

14. IND. STAT. ANN. § 6-212 (1953).

15. W. VA. CODE ANN. § 4095 (1961). See Metropolitan Life Ins. Co. v. Hill, 115 W. Va. 515, 177 S.E. 188 (1934) (prior conviction conclusive to bar slayer from acquiring insurance proceeds).

16. CAL. PROB. CODE § 258 (Supp. 1965). (Emphasis added.) See Whitfield v. Flaherty, 39 Cal. Rep. 857 (1964) (decided under a previous act) (compares prior act with act as amended).

Under this statute a criminal determination of guilt or innocence is not a prerequisite to bar the slayer from participating in the victim's estate; but a criminal determination of either guilty or innocence is incontrovertible proof in a subsequent civil litigation involving the slayer's right to participate in decedent's estate.

The Indiana statute[17] requires a criminal conviction and makes it conclusive on the issue. Case law[18] of Indiana, however, permits the court of jurisdiction to determine the question of criminal homicide if the criminal proceedings resulted in an acquittal[19] or suicide prevented a criminal determination.[20]

The statute enacted in Tennessee makes the conviction admissible but not conclusive.[21] *Hill v. Alsobrook*[22] construed that statute to admit the prior conviction but the final determination of the question of criminal homicide had to be proved by a preponderance of the evidence in the civil litigation.[23] In the *Hill* case, a wife, convicted of voluntary manslaughter[24] in the death of her husband, was permitted to participate in his estate. The trial court, after a trial de novo, held she had acted in self-defense and was not a slayer within the meaning of the act. The appellate court affirmed the lower court.[25]

The Iowa[26] and Minnesota[27] statutes do not designate whether the conviction is admissible or what the probative weight should be. In the absence of an express provision in the Iowa statute, a prior conviction has been held to be inadmissible except to show the retention of the criminal proceeding.[28] In Minnesota the probate court has exclusive jurisdiction to determine the issue of disqualification of an heir or legatee by felonious killing and the prior criminal conviction of homicide is given no weight in the probate court proceeding.[29]

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17. IND. STAT. ANN. § 6-212 (1953) provides:

> A person who shall have been legally convicted of intentionally causing the death of another, or aiding or abetting therein, shall . . . become a constructive trustee of any property . . . acquired by him from the decedent . . . . Such conviction shall be final and conclusive in any subsequent suit to charge him as such constructive trustee.

18. National City Bank of Evansville v. Bledsoe, 237 Ind. 130, 144 N.E. 2d 710 (1957).
19. *Id.* at 142 n.15, 144 N.E.2d at 715, n.15 (dictum).
20. *Id.* at 142, 144 N.E.2d at 715.
21. TENN. CODE ANN. §§ 31-109, 31-207 (1955).
22. 51 Tenn. App. 546, 370 S.W.2d 506 (1962).
23. *Id.* at 549, 370 S.W.2d at 508.
24. Conner v. Holbert, 49 Tenn. App. 319, 354 S.W.2d 809 (1961) (held Tennessee statute included manslaughter).
25. 51 Tenn. App. 546, 370 S.W.2d 508 (1962).
26. IOWA CODE ANN. §§ 633.535-37 (1964).
27. MINN. STAT. ANN. § 525.87 (1947).
28. *In re* Johnston's Estate, 220 Iowa 328, 262 N.W. 488 (1935).
29. Vesey v. Vesey, 237 Minn. 10, 53 N.W.2d 809 (1952).

South Dakota,[30] Washington[31] and Rhode Island[32] have enacted substantially the same statute as the Pennsylvania Slayer's Act of 1941. Unfortunately, there have been no cases decided in these jurisdictions concerning the probative weight of a prior criminal conviction. The *Kravitz* court's interpretation of the Pennsylvania statute and the underlying reasoning may be beneficial to the courts of these states if such a question arises.

The statutes discussed above, and the cases construing them, are representative of the three basic views on the evidentiary status of prior homicide convictions in estate distribution cases; *i.e.*, conclusive, admissible but not conclusive, or inadmissible. If the statute does not expressly provide for the weight or admissibility of the criminal conviction, the history of the act, the wrong intended to be remedied and other related circumstances are considered to properly construe the statute.[33]

The Slayer's Act of 1941 does not contain explicit wording as to the weight the record of prior conviction, though admissible, is to be given.[34] The *Kravitz* court could not look to other states' statutes because the wording of these acts is significantly different. The states[35] having statutes similar to that of Pennsylvania have not decided the issue involved in the *Kravitz* case. Thus, the *Kravitz* court relied in part on the history of the Slayer's Act of 1941, in order to determine the intended construction.[36]

HISTORY OF THE PENNSYLVANIA SLAYER'S ACT OF 1941

The right of a slayer to participate in his victim's estate was first litigated in Pennsylvania in *Carpenter's Estate*.[37] In that case a son was tried, convicted and executed for having killed his father. The collateral heirs attempted to disqualify the son's assignees on the grounds of public policy that no person should be allowed to benefit from his own wrong, a policy which had been otherwise recognized in the administration of justice.[38] The court, however, held that in the absence of a legislative expression concerning forfeiture in the effective intestate laws[39] the son's assignees could take the intestate share. The court was unwilling to adopt a policy that was not expressed in the statute.

Slow to resolve the problem posed by *Carpenter*, the legislature

30. S.D. CODE §§ .0501-15 (1939).
31. WASH. REV. CODE ANN. §§ 84.010-.910 (1963).
32. R.I. GEN. LAWS ANN. §§ 33-1.1-1-16 (Supp. 1964).
33. Statutory Construction Act, PA. STAT. ANN. tit. 46, § 558 (1952).
34. 418 Pa. 319, 323, 211 A.2d 443, 445 (1965).
35. See, statutes cited note 12 *supra*.
36. 418 Pa. 319, 323, 211 A.2d 443, 445 (1965).
37. 170 Pa. 203, 32 Atl. 637 (1895).
38. See *e.g.*, New York Mutual Life Ins. Co. v. Armstrong, 117 U.S. 591 (1895); Cleaver v. Mutual Reserve Fund Life Ass'n, [1892] 1 Q.B. 147.
39. PA. LAWS 1833, act 315 (repealed)

subsequently enacted the "original" Slayer's Act[40] in 1917. The act provided that any person who was "finally adjudged guilty, either as a principal or accessory, of murder of the first or second degree"[41] was barred from participating in the victim's estate. It seems from the strong language of the statute that the conviction would have been a conclusive bar,[42] at least under the *Carpenter* facts. No cases were decided to affirm this contention. The strict requirement of a criminal conviction was shown in *Tarlo's Estate*[43] to be inadequate. A father committed suicide after killing his wife and daughter. The court strictly construed the Act of 1917 and held the words "finally adjudged guilty" to mean a criminal conviction. The father's administrators were awarded the estate because the suicide prevented a criminal conviction. Justice Drew, concurring in *Tarlow*, appealed to the legislature to "change the law that, on the facts such as those which have caused our division, the question of guilt will be submitted to and determined by a jury."[44]

The inadequacies of the Act of 1917[45] were remedied by the comprehensive Slayer's Act of 1941. The act was proposed by Professor John W. Wade.[46] The term "slayer" is defined in the act as "any person who participates, either as a principal or as an accessory before the fact, in the wilful and unlawful killing of any other person."[47] This definition permits the orphans' court to determine if the claimant is a slayer, or claims under one who was a slayer in fact. The circumstance of suicide or insanity does not now prevent the court from determining if any person is or was a "slayer" within the meaning of the act.[48] A criminal conviction is no longer prerequisite to barring a slayer or his assigns from taking property of decedent's estate.

In the event of a criminal conviction for the "wilful and unlawful killing" of a person claiming property in decedent's estate, section 14 provides: "The record of his conviction of having participated in the wilful and unlawful killing of the decedent shall be *admissible in evidence* against a claimant of property in any civil

40. PA. LAWS 1917, act 403, § 22 (repealed).

41. PA. LAW: 1917, act 403, § 22 (repealed).

42. BREGY, PENNSYLVANIA INTERSTATE WILLS AND ESTATES ACT OF 1947 753 (1949).

43. 315 Pa. 321, 172 Atl. 139 (1934).

44. *Id.* at 327, 172 Atl. at 141 (concurring opinion).

45. Other inadequacies of the Act of 1917 were: 1) failed to designate how the estate was to pass if the slayer was disqualified and 2) made no provisions for out-of-state criminal convictions for homicide.

46. Wade, *Acquisition of Property by Wilful Killing—A Statutory Solution*, 49 HARV. L. REV. 715 (1936) (substantially the statute enacted in Pennsylvania) (contains section by section commentaries).

48. See Estate of Sanders, 39 Wash. 196 (Pa. Orphans' Ct. 1959) (suicide); D'Amore Estate, 37 Del. 360 (Pa. Orphans' Ct. 1950) (dictum); Sobel v. National Bank & Trust Co. of Erie, 33 Erie 274 (Pa. C.P. 1950) (insanity); BREGY, *op. cit. supra* note 42, at 753; Wade, *supra* note 46, at 722-24. *But see* Paul's Estate, 28 Pa. D.&C.2d 658 (Orphans' Ct. 1962) (by implication).

action arising under this act."[49] The broad purpose of this act is enunciated in section 2: "No slayer shall in any way acquire property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following."[50] The public policy of the Slayer's Act is found in section 15: "This act shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this State that no person shall be allowed to profit by his own wrong, wherever committed."[51]

Prior to *Kravitz* the commentators[52] and the orphans' courts of Pennsylvania considered criminal conviction for "wilful and unlawful killing" as prima facie evidence that the claimant was a slayer, rebuttable by competent evidence. This was the position taken in *Pinder's Estate.*[53] In that case the court held a criminal conviction for voluntary manslaughter admissible as prima facie evidence. The *Pinder* court reasoned that the prior conviction could not be res judicata or conclusive because of the lack of identity of parties in the actions. The criminal action was between the claimant and the Commonwealth and the civil action is between the heirs and the claimant.[54] The court further said:

> [S]ection 14 of the Act of 1941 (20 P.S. §3454) provides that such record of conviction is—'admissible in evidence against a claimant of property in any civil suit,' but this does not make the conviction a conclusive bar to civil right. The record of conviction is therefore to be considered as prima facie evidence in this proceeding that the homicide was 'wilful and unlawful,' which may be rebutted by competent and satisfactory evidence to the contrary.[55]

The orphans' court inquired into the facts, heard testimony, found that petitioner acted in self-defense, and held her not a "slayer" within the definition of the act.

Another case following this reasoning is *D'Amore Estate,*[56] which concerned the admissibility of a prior acquittal. The court said:

> [T]he law of Pennsylvania at present and at the time of de-

49. PA. STAT. ANN. tit. 20, § 3454 (1964). (Emphasis added.)

50. PA. STAT. ANN. tit. 20, § 3442 (1964).

51. PA. STAT. ANN. tit. 20, § 3455 (1964). Use of the phrase "where-ever committed" apparently means that out-of-state convictions would be valid for the purpose of this act.

52. BREGY, *op. cit. supra* note 42, at 753; van Roden, *supra*, note 11, at 61; Note, 17 U. PITT. L. REV. 494, 498 (1956); Note, DICK L. REV. 99, 101 (1942).

53. 61 Pa. D.&C. 193 (Orphans' Ct. 1947).

54. *Id.* at 195. It can be argued that the right to inherit is a statutory right and that the Commonwealth has an active and substantial interest in the distributive determination in cases involving the Slayer's Act. It is conceivable that the Commonwealth has a substantial interest comparable with that of the heirs.

55. *Id.* at 195-96.

56. 37 Del. 360 (Pa. Orphans' Ct. 1950).

> cedent's death is that the mere result of a trial for criminal homicide is not the controlling factor determining the right of a person to inherit or benefit in the estate of the decedent. Thus, depending upon the evidence adduced the court may find the parties *are* entitled to inherit and to benefit in the decedent's estate, even though found guilty of criminal homicide.[57]

This construction is further supported by Professor Wade's comments concerning section 14. The comment states that without this section most jurisdictions would hold the criminal conviction inadmissible in a civil trial. Professor Wade also recognized that some legislatures "may even wish to make a conviction conclusive evidence of the guilt of the alleged slayer."[58] This statement necessarily implies that the language of section 14 would have to be altered to make the evidence conclusive. As the section was enacted, the author only intended the conviction to be admissible and was silent as to the weight it should be given.

The *Kravitz* court, however, had "no doubt of the legislative intent and of the proper construction of the Act."[59] This proposition is supported neither by the history of the legislation nor by a careful examination of the act. The silence of section 14 as to the weight of a prior conviction must be construed in terms of the Act of 1917. Under the Act of 1917 a criminal conviction of first or second degree murder would have been conclusive.[60] The legislature's action changed the wording of the Slayer's Act of 1941 to "admissible in evidence." This change in wording in the Slayer's Act of 1941 indicates that a change in construction was intended.[61]

The Pennsylvania common law rule in 1941 made a criminal conviction inadmissible as evidence in a subsequent civil litigation based on the same facts or issue.[62] There were only two jurisdictions that applied a contrary rule.[63] Section 14 providing the conviction "shall be admissible in evidence," abrogated the common law rule which prevailed at the time of the enactment. The wording of the section was deliberately designed to accomplish that result.

57. *Id.* at 361 (dictum). *Accord,* All States Ins. Co. v. Johnson, 96 Pitts. 193 (Pa. Orphans' Ct. 1948).

58. Wade, *supra,* note 46, at 750.

59. 418 Pa. at 328, 211 A.2d at 448.

60. BREGY, *op. cit. supra,* note 42, at 753.

61. *Cf.* Hudson v. Parker, 156 U.S. 277, 291 (1894) (dissenting opinion); Panil v. Didra, 370 Pa. 488, 490, 88 A.2d 730, 731 (1952); Fidelity Trust Co. v. Kirk, 344 Pa. 455, 458, 25 A.2d 825, 827 (1942); Vince v. Allegheny-Pittsburgh Coal Co., 153 Pa. Super. 333, 33 A.2d 788 (1943).

62. Wingrove v. Central Pa. Tractor Co., 327 Pa. 549, 85 Atl. 850 (1912); Bennett v. Fulmer, 49 Pa. 155 (1865); Bobereski v. Insurance Co. of Pa., 105 Pa. Super. 585, 161 Atl. 412 (1932); Estate of Gartner, 94 Pa. Super. 45 (1928).

63. Schindler v. Royal Ins. Co., 258 N.Y. 310, 179 N.E. 711 (1932) (prior conviction admissible as prima facie evidence); Eagle, Star & British Dominion Ins. Co. v. Heller, 149 Va. 82, 140 S.E. 314 (1927) (admissible as conclusive evidence).

If the legislative intent is determined as of the time of the enactment,[64] there are no circumstances indicating an intent to make the conviction a conclusive bar to the claimant's civil rights.

The *Kravitz* court may have done substantial violence to the legislative intent. The question of the weight to be given the conviction did not escape the consideration of the legislature. The possibility of making the conviction conclusive was expressed in the commentary on section 14 by the author of the proposed statute.[65] The Act of 1917 involved the question of conclusiveness. Yet the *Kravitz* court seized upon the silence of the Slayer's Act of 1941 on the question as an opportunity to legislate under the guise of interpretation.

The better reasoned view would seem to be that the legislature considered the question of probative weight but intentionally omitted an explicit statement. Careful examination of the wording of section 14 suggests that the legislature did give an indication as to the weight of the conviction. The legislature could have abrogated the common law rule of inadmissibility by using the words "shall be admissible." The words employed in section 14 are "shall be admissible in *evidence*." The use of the words "in evidence" reflects an intent for a justicable determination of the issue.[66] "Evidence" is that matter which is introduced for the purpose of inducing belief in the trier of fact.[67] In section 14 the legislature was probably using "evidence" as an aggregated concept; *i.e.*, the total of all matter introduced to support a contention. Thus, to admit the conviction "in evidence" would seem to mean that it was to be an element of the evidence and not the singular controlling factor. The probative weight of the conviction could then be determined by the trier of fact in light of the evidence presented by the claimant convict.

The *Kravitz* opinion displays considerable regard for the purpose and policy of the act to insure that the slayer will not "acquire any property or receive any benefit as a result"[68] of the killing and "that no person shall be allowed to profit by his own wrong."[69] The court apparently assumes that making criminal conviction a conclusive bar to a claimant's right to participate in the decedent's estate is necessary to effectuate this purpose and policy; but, it does not express a rationale to support this assumption. While holding the prior conviction as conclusive is one means to give effect to the policy and purpose, it is not the exclusive means. The or-

64. *Cf.* St. Joseph Lead Co. v. Potter Township, 398 Pa. 361, 157 A.2d 638 (1960).
65. Wade, *supra* note 46, at 750.
66. Brief for Appellant, p. 3, *In re* Kravitz Estate, 418 Pa. 319, 211 A.2d 443 (1965).
67. BLACK, LAW DICTIONARY (4th ed. 1951).
68. PA. STAT. ANN. tit. 20, § 3443 (1964).
69. PA. STAT. ANN. tit. 20, § 3455 (1964).

phans' court could hear rebuttal evidence and determine the slayer's civil rights based on all the evidence presented. The same policy and purpose govern those cases in which the estate asserts that a person is a slayer, but there has been no prior conviction.

The jurisdiction of the orphans' court, derived solely by statute,[70] is exclusive in determining all questions concerning the distribution of decedents' estates.[71] The court also has "all legal and equitable powers required for or incidental to the exercise of its jurisdiction."[72] Any act that has the effect of limiting its jurisdiction must be construed strictly.[73] It could be argued that the *Kravitz* court's holding of the criminal conviction as a "conclusive bar to [Ethel Kravitz'] rights to take under or against her husband's will"[74] gave the court of oyer and terminer the power to determine a right that was exclusively within the jurisdiction of the orphans' court.[75] The legatee's right to acquire property from decedent's estate was determined when the jury announced its verdict in the criminal prosecution. Section 15 of the Slayer's Act provides that the act should be "construed broadly," but not so broadly as to limit the power or jurisdiction of the orphans' court, the court of final determination of claimants' right to participate in decedents' estates.

RECENT ANALOGOUS CASES

What prompted the supreme court to construe the wording of section 14 to the effect "that a conviction of wilful and unlawful killing shall be a conclusive bar to the claimant's right to participate in decedent's estate?" Apparently, the reason for the court's decision is that holding the prior conviction conclusive represents the *most* practical and direct method to prevent a convicted slayer from becoming a beneficiary of his own wrong.

The *Kravitz* court does not discuss the practical aspects in its decision. Analogous cases[76] are advanced to demonstrate the practicality of making the prior conviction conclusive in the absence of a statute and the similarity of policy consideration under the Slay-

70. Orphans' Court Act of 1951, PA. STAT. ANN. tit. 20, §§ 2080.101-773 (1964).

71. PA. STAT. ANN. tit. 20, § 2080.301(1) (1964).

72. PA. STAT. ANN. tit. 20, § 2080.304 (1964).

73. Statutory Construction Act, Pa. STAT. ANN. tit. 46, § 558 (1952) provides: "All provisions of a law of the classes hereafter enumerated shall be strictly construed . . . [p]rovisions decreasing the jurisdiction of a court of record."

74. 418 Pa. at 329, 211 A.2d at 448.

75. PA. STAT. ANN. tit. 20, § 2080.301(1) (1964).

76. Justice Cohen, joined by Justice Musmanno, in dissent, argued:

> Stirone . . . is not applicable here. In this case we are not dealing with Pennsylvania's *common law* rules of evidence but, instead, with a *statutory provision* which regulates use of certain specified items of evidence in a proceeding to determine the right of inheritance—a subject entirely regulated by statute.

418 Pa. at 330, 211 A.2d at 449 (dissenting opinion).

er's Act of 1941 and these common law decisions. The earliest decided case was *Greifer's Estate*[77] in which a wife, who was convicted of the first degree murder of her husband, sought to recover the proceeds of a trust created by him as the designated beneficiary. The corpus of the trust was an insurance policy on the husband's life. There was no mention of the probative weight of her prior conviction. The court disallowed her claim on the "common law principle that a person will not be permitted to profit by his own wrong, particularly by his own crime."[78] The *Greifer* court was unwilling to provide a forum where a wrongdoer could bring an action to derive benefit from the criminal act.

This strong policy consideration was coupled with the conclusiveness of a criminal conviction in *Mineo v. Eureka Fire & Marine Ins. Co.*[79] There, the owners of a restaurant were convicted of arson.[80] Prior to setting the fire, the owners purchased substantial fire insurance on the restaurant. Before the criminal prosecution for arson, they assigned the insurance policies to Mineo. Mineo, as assignee of the insurance policies, attempted to recover the proceeds. At the civil trial the criminal convictions of the assignors were admitted as evidence. Additional evidence was introduced to prove the guilt of the insureds. The trial judge charged the jury that the right of Mineo to recover the proceeds of the insurance policies rested on their determination of whether the insureds had criminally caused the fire.[81] The jury returned a verdict in favor of the claimant Mineo; the insurance companies appealed and the superior court reversed. The court, holding the criminal convictions of the insureds as a conclusive bar to the assignee's claim, stated:

> This rule is founded upon the public interest which requires that the law against a crime be enforced, and that courts aid no man in any effort he may make to benefit from his violation of them. The rule is enforced upon the grounds of public policy alone. . . .
>
> To now permit them to recover for the loss which they have been convicted of fraudulently causing would be against public policy. It would tend to destroy the confidence of the public in the efficiency of the courts; it would stir up litigation that would reopen tried issues; it would impress the public with the belief that the results of trials of the gravest nature were so uncertain that the innocent could not escape condemnation; and it would convince the public that the courts themselves have no confidence in the judicial processes.[82]

77. 333 Pa. 278, 5 A.2d 118 (1939) (decided prior to the enactment of the Slayer's Act of 1941).
78. *Id.*, at 279, 5 A.2d at 118.
79. 182 Pa. Super. 75, 125 A.2d 612 (1956).
80. Conviction was confirmed in Commonwealth v. Tomaino, 168 Pa. Super. 505, 79 A.2d 274 (1951).
81. 182 Pa. Super. 75, 77, 125 A.2d 612, 615 (1956).
82. *Id.* at 84-86, 125 A.2d at 617-18.

The policy consideration employed in *Greifer* and *Mineo* is the same as underlies the Slayer's Act of 1941. Neither court permitted a wrongdoer to profit from his criminal act. In *Greifer* the court barred the wife's claim without discussing the method utilized, whereas, the *Mineo* court was faced with a jury verdict contrary to the policy consideration. Since the jury had properly considered the conviction as prima facie evidence, but had decided for the arsonists' assignee, the court had to either allow the recovery, even though against public policy, or bar the claim as a matter of law. In holding the assignors' criminal convictions as conclusive in the civil trial, the court realized that it was contrary to the law in Pennsylvania and the vast majority of jurisdictions.[83] It considered the public policy tantamount to "some technical rule of evidence."[84]

The *Mineo* position was followed in *Pennsylvania Turnpike Comm'n v. United States Fid. & Guar. Co.*[85] and *Hurtt v. Stirone.*[86] The *Pennsylvania Turnpike* decision, following the reasoning of *Mineo* in part, held a surety liable for his principal's breach of the conditions of fidelity bonds. The principal's conviction of conspiracy to defraud and misbehavior in office[87] was held in the lower court to be admissible as prima facie evidence of the breach. The Commission moved for judgment on the pleadings which was denied because the principal's prior conviction was not, in the lower court's opinion, conclusive on the issue. The Commission contended on appeal that under the policy consideration of *Mineo* and the doctrine of collateral estoppel or res judicata[88] the principal's prior conviction was incontrovertible proof of the breach of the fidelity bonds.[89] The *Pennsylvania Turnpike* court considered the *Mineo* rationale persuasive, but did not base its holding solely on that

83. Sovereign Camp W.O.W. v. Gunn, 27 Ala. 400, 150 So. 491 (1933); Minasian v. Aetna Life Ins. Co., 295 Mass. 1, 3 N.E.2d 17 (1936); Zubrod v. Kuhn, 357 Pa. 200, 53 A.2d 604 (1947); Nowak v. Orange, 349 Pa. 217, 36 A.2d 781 (1944); Seidman v. Seidman, 53 R.I. 96, 164 Atl. 194 (1933). See 2 FREEDMAN, JUDGMENTS § 653 (5th ed. 1925); Note, 40 HARV. L. REV. 909 (1927).

84. 182 Pa. Super. at 85, 125 A.2d at 618.

85. 412 Pa. 222, 194 A.2d 423 (1963).

86. 416 Pa. 493, 206 A.2d 624 (1965).

87. Commonwealth v. Evans, 190 Pa. Super. 179, 154 A.2d 57 (1959), *aff'd,* 399 Pa. 387, 160 A.2d 407 (1960) (per curiam).

88. The doctrine of res judicata or collateral estoppel has been described as follows:

> A question of fact or of law distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery or defense in a suit or action between parties sui juris is conclusively settled by the final judgment or decree therein so that it cannot be further litigated in a subsequent suit between the *same parties or their privies* whether the second suit be for the same or a different cause of action.

Oklahoma v. Texas, 256 U.S. 70, 85 (1921). (Emphasis added.) See also Helmig v. Rockwell Mfg. Co., 389 Pa. 21, 131 A.2d 622 (1957).

89. Brief for Appellant, p.6, Pennsylvania Turnpike Comm'n v. United States Fid. & Guar. Co., 412 Pa. 222, 194 A.2d 423 (1963).

ground. Rather, the court applied the doctrine of collateral estoppel to hold the prior conviction of the principal conclusive on the surety's liability, reasoning that there was substantial identity of parties in the criminal action and in the civil action. The criminal prosecution involved the principal as the defendant, and the Commonwealth as the prosecutor. The civil action was between the Turnpike Commission, an instrumentality of the Commonwealth,[90] and the surety, which is bound by the determination of the principal's breach.[91] Thus, the question of fact of the principal's breach was determined in the criminal action and the surety, as a legal consequence of the suretyship, was conclusively bound by that determination.

In the absence of identity of parties the *Stirone* court used the strong public policy to set forth the law of the state in regard to the admissibility and probative weight of prior conviction in civil litigations. Stirone was convicted of extortion[92] under a federal statute.[93] Hurtt, trustee of the victim, sought recovery in a civil action. The *Stirone* court held the criminal conviction was conclusive on the question of extortion, relying on the policy consideration set forth in *Mineo*. The opinion stated, "when one has been convicted of felony, the result of which is of financial benefit to him the record of his guilt should bar his avoidance of restitution therefor."[94] The court considered the public policy more persuasive than the "technical doctrines of res judicata or collateral estoppel regarding identity of parties."[95]

The rule of conclusiveness established in *Stirone* is not an absolute rule, but should be applied "where reason and logic so demand."[96] In these cases "reason and logic" dictated that the conviction be conclusive on the issue determined in the criminal court. In *Mineo, Pennsylvania Turnpike* and *Stirone* each defendant was indicted and tried for a serious crime, punishable by imprisonment, fine or both. Each had a fair and impartial trial with sufficient opportunity to present the best available defense and to prove his innocence. Moreover, the burden of proof of "beyond a reasonable doubt" necessarily sustained by the prosecution in each of the crimi-

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90. Rader v. Pennsylvania Turnpike Comm'n, 407 Pa. 609, 182 A.2d 199 (1962). See also Eidenmiller, Inc. v. Commonwealth, 408 Pa. 195, 182 A.2d 911 (1962).

91. See Commonwealth v. Turner, 340 Pa. 468, 17 A.2d 352 (1941); Commonwealth v. Fidelity & Deposit Co. of Md., 224 Pa. 95, 73 Atl. 327 (1909).

92. Stirone was twice convicted. First conviction, United States v. Stirone, 168 F. Supp. 490 (W.D. Pa. 1957), *aff'd*, 262 F.2d 571 (3d Cir. 1958), *rev'd*, 361 U.S. 212 (1960). Second conviction, United States v. Stirone, 311 F.2d 277 (3d Cir. 1962), *cert. denied*, 372 U.S. 935 (1963).

93. Hobbs Anti-Racketeering Act, 18 U.S.C. § 1951 (1952).

94. 416 Pa. at 498, 206 A.2d at 626.

95. *Ibid. Cf.* Bonfitto v. Nationwide Mut. Ins. Co., 406 Pa. 184, 177 A.2d 453 (1962).

96. *Id.* at 497, 206 A.2d at 625.

nal actions is theoretically greater than the "preponderance of the evidence" burden required in civil litigations. No reason exists to permit such defendants to avoid restitution or to benefit from wrongful acts by attempting to dispute facts or contest issues previously determined in criminal actions under a greater burden of proof.

It should be noted that the civil litigations of *Mineo*, *Pennsylvania Turnpike* and *Stirone* turned on the decisive fact determined in the criminal prosecutions. Civil litigation, however, cannot *always* be controlled by the fact of criminal conviction arising out of the same set of circumstances. For example, "reason and logic" would not dictate that a person found guilty of involuntary manslaughter would be conclusively liable for wrongful death based on negligence. The defense of contributory negligence would not be available in the criminal prosecution, but it may allow the person convicted to escape civil liability. Likewise, convictions of minor violations, such as misdemeanors or traffic violations, would not be conclusive. In these cases "expediency and convenience, rather than guilt, often control the defendant's trial technique."[97]

The *Stirone* case established a practical and logical rule based on public policy, to govern the effect of a criminal conviction upon related civil litigation. It creates consistency in the administration of justice and eliminates time consuming and unnecessary procedure in relitigating judicially determined issues. Finally, it gives full effect to the public policy that the court shall aid no man to benefit from his wrongdoing.

In the absence of the Slayer's Act of 1941 the facts of the *Kravitz* case would come under the rule established in *Stirone*. The second degree murder committed by Mrs. Kravitz was a serious crime and a presumption that the best available defense was presented would be justified; the criminal conviction of claimant established "beyond reasonable doubt" the fact of a "wilful and unlawful killing"[98] and that claimant "participated . . . as a principal"[99] in such a killing; and, the civil action by the claimant was for the purpose of profiting from her crime. Thus, the instant case has all the necessary elements to hold the prior conviction conclusive in civil litigation under the rationale of *Mineo* and *Stirone*.

CONCLUSION

The *Kravitz* court was faced with the alternatives of construing the act as it probably was intended, that is, to make the record of conviction admissible but not conclusive, or, to legislate and hold the conviction conclusive as it would be under present decisional law. By adopting the latter alternative the court arrived at the most

97. *Id.* at 499, 206 A.2d at 627.
98. PA. STAT. ANN. tit. 20, § 3441(1) (1964).
99. PA. STAT. ANN. tit. 20, § 3441(1) (1964).

reasonable solution and gave maximum effect to the purpose and policy of the act. Any license taken with the legislative intent is nominal and all that was clearly intended can still be accomplished. In the event of suicide or insanity[100] the orphans' court can determine if the deceased or insane is the "slayer" within the meaning of the act. If an heir or the estate asserts that a claimant is a "slayer" the orphans' court may determine the issue.[101]

In holding the conviction incontrovertible the court provided a practical method whereby an executor or administrator of an estate can disqualify a convicted slayer without incurring the expense of proving the fact. To allow a convicted slayer to present rebuttal evidence would force an estate to pay additional attorney fees, provide necessary witnesses, absorb required filing costs, and possibly participate in lengthy appeals.[102] Such expenses could significantly and unreasonably reduce if not entirely consume the amount distributable to more deserving heirs or legatees.

The Pennsylvania Supreme Court's decision demonstrates that practicality is sometimes more desirable than technicality in the administration of justice. On the strength of a strong public policy the court construed section 14 of the Slayer's Act to best promote justice. The decision is designed to further, not frustrate, the fact finding function of the orphans' court in the distribution of decedents' estates involving convicted slayers.

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100. See Estate of Sanders, 39 Wash. 196 (Pa. Orphans' Ct. 1959) (suicide); Sobel v. National Bank & Trust Co. of Erie, 33 Erie 274 (Pa. C.P. 1950) (insanity).

101. *But see* Blakely Estate, 28 Pa. D.&C.2d 648 (Orphans' Ct. 1962) (distribution postponed until completion of district attorney's investigation).

102. In the criminal prosecution of Mrs. Kravitz there was over 1500 pages of testimony. Counsel for the accused filed sixty-eight exceptions to support the motions for a new trial and in arrest of judgment. Over eighty pages of judicial opinion has been written concerning the criminal prosecution. To relitigate the question of the claimant's guilt *could* be equally as long and as expensive.