

Decedent Estate Law--Penal Law--Right of Person Civily Dead to Inherit Property (Matter of Shaffer, 184 Misc. 855 (1945))

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DECEDENT ESTATE LAW — PENAL LAW — RIGHT OF PERSON CIVILLY DEAD TO INHERIT PROPERTY.—George A. Shaffer died intestate on or about January 1, 1944, leaving a daughter, the administratrix of the estate herein, and a son. Under the Decedent Estate Law,¹ the son and daughter would be the sole distributees. The son was serving a sentence of life imprisonment as a fourth offender,² and was, therefore, deemed civilly dead.³ The question presented to the court was: Did the fact that the son was civilly dead preclude him from sharing in his father's estate? *Held*, the son was entitled to one-half of the estate, and a committee was authorized by the court to administer the son's share. *Matter of Shaffer*, 184 Misc. 855, 56 N. Y. S. (2d) 568 (1945).

This is a novel question which heretofore has not been directly decided in New York. Cases submitted from other jurisdictions shed no light; none has been found that holds that a man may be divested of his right to inherit property from his own father in intestacy.

It has been decided that the loss of civil rights does not work a forfeiture of a convict's property nor divest him of his right to leave property by will. Furthermore, the statutes relating to the transfer and devolution of property on the death of a convict owner contemplate the natural death of the convict rather than his civil death.⁴ In distinguishing between natural and civil death, the courts have refused to grant letters of administration upon the estate of a person found civilly dead.⁵ The court also took notice of the fact that a person serving a life sentence for various crimes may be released after serving the maximum sentence for one of the particular crimes⁶ and that a convict may be pardoned by the governor.⁷

The Penal Law provides: "A conviction of a person for any crime does not work a forfeiture of any property, real or personal, or any right or interest therein. . . ."⁸ The court concluded that in the absence of any further legislation on the subject, the fact that a person is civilly dead does not defeat his right to inherit.

A. W. K., III.

¹ N. Y. DECEDENT ESTATE LAW § 83.

² N. Y. PENAL LAW § 1942.

³ N. Y. PENAL LAW § 511.

⁴ *Avery v. Everett*, 110 N. Y. 317, 18 N. E. 148 (1888).

⁵ *Matter of Zeph*, 50 Hun 523, 3 N. Y. Supp. 460 (1888).

⁶ N. Y. PENAL LAW § 1945.

⁷ N. Y. CONST. Art. IV, § 4.

⁸ N. Y. PENAL LAW § 512.