

INNER HOUSE OF THE COURT OF SESSION

ESTATE OF MACBETH,

Appellant-Cross-Appellee

v.

No. 1059-1

ESTATE OF LADY MACBETH,

Appellee-Cross-Appellant

“WHAT’S DONE CANNOT BE UNDONE” - BUT WHO MUST PAY WHAT DAMAGES?

In this case, the estates of Macbeth and Lady Macbeth appeal to Scotland’s highest appellate court for civil matters the liability and monetary judgments against them arising from the death of Scotland’s King Duncan.

Duncan’s son Malcolm timely sued both estates for the wrongful death of Duncan. When this action commenced, the identity of the perpetrator(s) of Duncan’s grisly stabbing remained shrouded in mystery. On the morning after his death, one of Duncan’s generals found blood on the hands and faces of the king’s grooms and bloody daggers by their sides. But before any judicial inquiry established the grooms’ guilt, Macbeth killed them in what he claimed was his fury at them for killing Duncan. Shortly thereafter, Macbeth ascended the Scottish throne. A few months into his reign, when suspicions arose about the roles of the Macbeths in Duncan’s murder, Scottish officials did not pursue any criminal action or impeachment proceedings against the Macbeths because Macbeth violently squelched various perceived threats to his continued rule. The Macbeths died before any formal proceedings against them – Lady Macbeth at her own hand, and Macbeth in a battle during an English invasion. So, Malcolm’s wrongful death case could not build on any verdict in a criminal case against either Macbeth.

Because the common law did not recognize a claim for wrongful death, Malcolm’s claim rested on a recent and untested statute, the oddly named Negligence Causing Death Act (NCDA), 1038, Dunc. § 16-2701-§ 16-2703. It provides in part, “When, by an injury done or happening within the limits of the Scottish Kingdom, the death of a person is caused by the wrongful act, neglect, or default of a person . . . , and the act, neglect, or default is such as will, if death does not ensue, entitle the person injured, . . . to maintain an action and recover damages, the person who . . . is liable if death does not ensue is liable to an action for damages for the death, notwithstanding the death of the person injured, even though the death is caused under circumstances that constitute a felony.” *Id.* § 16-2701(a). This statute further states, “The damages shall be assessed with reference to the injury resulting from the act, neglect, or default causing the death, to the spouse or domestic partner and the next of kin of the deceased person; and shall include the reasonable expenses of last illness and burial.” *Id.* § 16-2701(b). The NCDA also provides, “Where more than one person engages in a wrongful act, neglect or default that gives rise to the death described in the immediately preceding subsection, any award shall identify the aggregate quantity of damages and shall apportion this sum between those at fault for the death based on their relative culpability.” *Id.* § 16-2701(b).

In light of this provision, in the trial court, Macbeth’s estate crossclaimed against Lady Macbeth’s estate and contended that, in light of his diminished capacity, her estate alone should satisfy any NCDA liability arising from Duncan’s death. Conversely, the estate of Lady Macbeth denied all liability and alternatively argued that it should be liable only for nominal damages even if the jury found Lady Macbeth liable for contributing to Duncan’s death, in light of her claim of compulsion by her husband, a madman.

The trial court admitted testimony about plans for and consequences of Duncan's murder. (Under a threatening-sounding pseudonym making him appear as an Indigenous Scot, Shake Speare, an Englishman transcribed the lower court's proceedings.) Overruling the estates' objections grounded in the spousal communications privilege, the court admitted testimony from persons who overheard conversations between the Macbeths. And it admitted testimony about soliloquies (some secretly monitored) of Lady Macbeth. But the trial court barred testimony about Macbeth's role in deaths that occurred after those of Duncan and his grooms. The trial court instructed the jury that Scottish citizenry had a legal duty not to commit regicide and not to provide plans or encouragement for such a murder. The trial court further instructed that if the jury found that both Macbeth and Lady Macbeth violated duties in connection with Duncan's death, the jury should determine the percentage of fault of each Macbeth in causing Duncan's death. Finally, the trial court instructed that the jury could elect to absolve one estate and determine the other estate to be solely responsible.

As detailed in a special verdict, the jury found both Macbeth and Lady Macbeth liable and concluded that Macbeth breached his duty not to commit regicide by wielding the knife that killed Duncan and that Lady Macbeth breached duties by planning the method for, and encouraging her husband to implement, the murder. For Duncan's death, the jury awarded aggregate damages of 10 million English pence (a currency then circulating in Scotland via Viking influence). Of this aggregate liability, the jury apportioned 75 percent to Macbeth and 25 percent to Lady Macbeth. The trial court refused to overturn these verdicts, explaining that a preponderance of the evidence supported them.

On appeal, Lady Macbeth's estate challenged the verdict against her estate and alternatively contended that the jury erred by assigning to her estate a grossly unfair proportion of the damages. Macbeth's estate challenged both the finding of his responsibility and the aggregate damages award and, like Lady Macbeth's estate, contended that the jury assigned to his estate too much of the damages. (Malcolm thus is not a party to the appeal.) Specifically, Macbeth's estate seeks reversal of its liability on the grounds that Duncan's assassination resulted primarily from supernatural forces (witches, about whose statements the lower court admitted testimony, and other dark spirits with whom Lady Macbeth sought to conspire), from his seriously diseased mental state due to battle-induced post-traumatic stress disorder and sleep deprivation, and from the overpowering persuasiveness and influence of his wife who manipulated him with full knowledge of his vulnerable state of mind. Macbeth's estate argues that in view of these factors, under § 16-2701(b), Lady Macbeth's estate should shoulder at least 35 percent of the aggregate liability. Conversely, in her cross-appeal, Lady Macbeth's estate seeks vacatur of the jury's liability verdict and alternatively of its allocation of damages against her estate, arguing that Macbeth knew that killing Duncan was morally wrong and risky but killed him anyway in hopes of gaining both political power and opportunities for profit, including from real estate. Since Macbeth wielded the murder weapon and Lady Macbeth had merely engaged in pillow talk, her estate urges that it should be liable for no more than nominal damages and Macbeth's estate should shoulder the lion's share of the aggregate liability.

Question presented:

For the wrongful death of King Duncan, should the lower court's judgment allocating the aggregate damages between the estates of Macbeth and Lady Macbeth be reversed as an abuse of discretion, and instead Lady Macbeth's estate be liable for 35 percent or more of the aggregate award?