Writing Assignment #9

Consider the following case:

Francis Palmer executed a will nearly a decade ago in which he gave "two small legacies" to his daughters and the remainder of his estate to his grandson, Elmer. The estate left to Elmer was "considerable" and included "the farm on which Elmer and the grandfather lived." In 1882 Francis Palmer, the grandfather, remarried and Elmer, "in order to prevent the making of a new will in favor of his grandfather's second wife, murdered his grandfather by poisoning him." Elmer was arrested, tried, convicted of murder and imprisoned. The two daughters brought suit to "block" Elmer from "enjoying the disposition made in his favor" in his grandfather's will. In the first round the court decided that the will was valid and that Elmer was entitled, as the will clearly and plainly made out, to the bulk of his grandfather's estate and awarded it to him. The daughters appealed this ruling on two grounds. One, they argued that it is in the nature of a will that it can be changed at any time until the death of its maker, Elmer, "by murdering his grandfather, deprived him of this right." And two, that as a matter of any reasonable interpretation of the law of wills, "it could not have been the legislature's intent that this rule should be applied in such extraordinary circumstances." Elmer's attorney had two straightforward arguments in reply: (1) that the words of the law of wills and the will itself "should receive their plain and ordinary meaning" and (2) that "as Elmer had been imprisoned for the murder of his grandfather, to be deprived of his legacy would be to punish him for the same act twice."

Issue: Whether Elmer is entitled to his inheritance.

How would a legal positivist such as H. L. A. Hart address this issue? Do you agree with Hart’s analysis?