GSC Docket No 145
G.S. Chapter 31A

SPECIAL REPORT OF THE
GENERAL STATUTES COMMISSION

ON

AN ACT TO BE ENTITLED
"ACTS BARRING PROPERTY RIGHTS"

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TO THE GENERAL ASSEMBLY OF NORTH CAROLINA:

In the regular biennial report of the General Statutes Commission to the 1961 General Assembly, it was stated that a special report would be submitted concerning an act barring property rights.

This Act was prepared by a special committee composed of Mr. Fred B. McCall, Professor of Law, University of North Carolina Law School; Mr. W. Bryan Bolich, Professor of Law, Duke University Law School; and Mr. Norman A. Wiggins, Professor of Law, Wake Forest College Law School.

With this letter of transmittal, the Commission submits for consideration by the General Assembly:

(1) A report by the special Drafting Committee to the General Statutes Commission, setting out the background of this work and explaining the same in general terms; and

(2) A copy of the text of this Act, together with the Drafting Committee's comments thereon.

In submitting this special report, the General Statutes Commission wishes to make grateful acknowledgment of the outstanding services of the Drafting Committee in undertaking and completing this project. The Commission recommends the enactment of this Act, and suggests that sufficient copies of this report be printed for distribution to interested persons throughout the State.

This the 8th day of February, 1961.

Respectfully submitted,

Robert F. Moseley, Chairman
Frank W. Hanft, Vice-Chairman
E. C. Bryson
Hugh W. Divine
W. Lunsford Crew
David M. Britt
Carl V. Venters
Fred W. Bynum, Jr.
H. Gardner Hudson

Giles R. Clark
Revisor of Statutes
Ex officio Secretary

REPORT OF DRAFTING COMMITTEE TO THE GENERAL
STATUTES COMMISSION OF THE STATE OF NORTH CAROLINA -
Mr. Robert F. Moseley, Chairman

Dear Mr. Moseley:

In the latter part of the year 1959, the General Statutes Commission, cognizant of the inadequate statutory law relating to the inheritance of property by unworthy heirs, requested Professors Fred B. McCall of the University of North Carolina Law School, W. Bryan Bolich of Duke University Law School, and Norman A. Wiggins of Wake Forest College Law School to serve on a special committee to draft new legislation on this subject in behalf of the Commission, and, subject to the approval of that body, to be submitted to the 1961 General Assembly for enactment into law. It will be recalled that at the time the new Intestate Succession Act was introduced, the Legislature requested the General Statutes Commission to prepare up-to-date legislation relating to the barring of intestate succession rights.

Pursuant to this request, the Drafting Committee agreed to undertake this work. It met first on August 28, 1959 and has since held some twenty meetings. As it began its work, your Committee realized that present provisions concerning the problem involved were scattered throughout various chapters of the statutes or dispersed at irregular intervals in the case law of this State, and were inadequate to provide for many situations likely to arise. Accordingly, collection of all such provisions in one concise correlated statutory compilation, rewriting of the present statutes so as to eliminate inadequate and inequitable remedies contained therein, and enlargement of such provisions so as to include situations and circumstances not presently provided for, were determined to be the primary objectives of the Committee.

In drafting the new provisions, the laws of other states relating to this matter were carefully studied. The Committee profited greatly from an outstanding and comprehensive study by Mr. Wade, a summary of which is set forth in 49 Harvard Law Review at Page 715. We have also had benefit of the study made by the Commission on the Revision of Laws of North Carolina Relating to Estates

(1934-1939). Numerous other sources and authorities have likewise been studied and considered.

After several month's work, your Drafting Committee presented to the General Statutes Commission in the spring of 1960 a proposed new chapter bearing the title "Acts Barring Property Rights" to be added to the General Statutes. Without going into detail at the present time, your Committee recommended an Act for your consideration which would:

(1) Collect in one comprehensive chapter of the General Statutes those provisions relating to the barring of intestate succession rights. This will bring together the provisions presently contained in several chapters of the statutes.

(2) Codify as a part of the General Statutes the case law relating to this subject.

(3) Compile, in one statute, the various provisions which bar a spouse, because of divorce or by virtue of certain misconduct, from participation in the administration or settlement of the other spouse's estate.

(4) Specifically provide that upon annulment of a marriage the property interests of the respective spouses are re-established as if the marriage relation never existed. This is an addition to the present statutory law.

(5) Rewrite those provisions setting forth acts which will bar a parent from intestate succession rights in the estate of his child. A parent deprived of custody of his child by court order may participate in the distribution of the child's estate, if the parent complies with the order requiring him to support the child.

(6) Set forth in the statutes a comprehensive article designed to effectuate by legislation the broad public policy of preventing a slayer from profiting by his own wrong. The slayer is deemed to have predeceased the decedent, and is thereby prevented from acquiring the decedent's property or otherwise obtaining a proprietary benefit through such death. Remedies applicable to tenants by the entireties, joint tenants or joint obligees, reversioners, vested and contingent remaindermen, beneficiaries of insurance policies, and other relationships not presently set forth in the statutes

are included in this article.

(7) Allow admission into evidence in any civil action for or against a claimant of the property of the decedent, the record of a judicial proceeding in which the slayer was determined to have killed the decedent.

After the proposed Act relating to the barring of property rights was submitted to the General Statutes Commission, the Drafting Committee met with the members of the Commission seven times, from February, 1960 through January, 1961, to explain the proposed new Act. At these meetings the Commission carefully analyzed and discussed in detail each section of the Act proposed by the Drafting Committee. As a result of this work there evolved a clearly-drawn, comprehensive and up-to-date Act designed to include practically every instance by which a person may be prevented from acquiring property rights by his own wrongdoing.

Your Drafting Committee has written explanatory comments on each section of the statute, copies of which are attached hereto.

In closing this report, we wish to commend Mr. Giles R. Clark, Revisor of Statutes, for his able assistance and for the fine cooperation he has given us in completing the task assigned.

It has been a great privilege for us to be associated with the General Statutes Commission in the completion of this highly necessary and important work for the State of North Carolina. We have enjoyed our association with you and have our greatest respect for the commendable job the Commission is doing for the State.

Respectfully submitted,

Norman A. Wiggins

W. Bryan Bolich

Fred B. McCall, Chairman

DOCKET NO. 145
Final Draft

A BILL TO BE ENTITLED AN ACT TO AMEND THE GENERAL STATUTES OF NORTH CAROLINA BY ADDING THERETO CHAPTER 31A, ENTITLED "ACTS BARRING PROPERTY RIGHTS".

The General Assembly of North Carolina do enact:

Section 1. The General Statutes of North Carolina are hereby amended by adding a new Chapter immediately following Chapter 31 to be numbered Chapter 31A, and to read as follows:

Chapter 31A

Acts Barring Property Rights

ARTICLE 1

Acts Barring Rights of Spouse

§31A-1. Acts barring rights of spouse.—(a) The following persons shall lose the rights specified in subsection (b) of this section:

(1) A spouse from whom or by whom an absolute divorce or marriage annulment has been obtained or from whom a divorce from bed and board has been obtained; or

(2) A spouse who voluntarily separates from the other spouse and lives in adultery and such has not been condoned; or

(3) A spouse who willfully and without just cause abandons and refuses to live with the other spouse and is not living with the other spouse at the time of such spouse's death; or

(4) A spouse who obtains a divorce the validity of which is not recognized under the laws of this State; or

(5) A spouse who knowingly contracts a bigamous marriage.

(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;

(2) All right to claim or succeed to a homestead in the real property of the other spouse;

(3) All right to dissent from the will of the other spouse and take either the intestate share provided or the

life interest in lieu thereof;

(4) All right to any year's allowance in the personal property of the other spouse;

(5) All right to administer the estate of the other spouse; and

(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage.

(c) Any act specified in subsection (a) of this section may be pleaded in bar of any action or proceeding for the recovery of such rights, interests or estate as set forth in subsection (b) of this section.

(d) The spouse not at fault may sell or convey his or her real and personal property as if such person were unmarried, and thereby bar the other spouse of all right, title and interest therein in the following instances:

(1) During the continuance of a separation arising from a divorce from bed and board as specified in subsection (a)(1) of this section, or

(2) During the continuance of a separation arising from adultery as specified in subsection (a)(2) of this section, or during the continuance of a separation arising from an abandonment as specified in subsection (a)(3) of this section, or

(3) When a divorce is granted as specified in subsection (a)(4) of this section, or a bigamous marriage contracted as specified in subsection (a)(5) of this section.

Comment:

A. Reasons.

The general rule is that in the absence of a statute the decree of absolute divorce neither imposes new responsibilities upon nor takes away vested property rights from the

respective spouses. The net effect of the proposed revision is that upon entry of the decree of absolute divorce those property interests which are contingent upon the continuation of the marriage relations are abolished. The property interests which are contingent upon the continuation of the marriage relations are (1) interests in intestate property, (2) homestead, (3) right to dissent from the will of other spouse, (4) right to year's allowance, (5) right to administer the estate of the other spouse, (6) rights or interests in property of the other spouse which by settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage.

B. Purpose.

Presently in North Carolina there are various statutory provisions which bar a spouse, because of divorce or by virtue of certain misconduct, from participation in the administration or in the settlement of the other spouse's estate. The purpose of the proposed statute is to collect these aforementioned statutory provisions and combine them for the purpose of convenience into one statute. One addition has been made to the present statutory law. This addition makes it clear that upon annulment of a marriage relation the property interests of the respective spouses are re-established as if the marriage relation never existed.

C. Source.

Existing statutory provisions affected in whole or in part by the proposed statute are: G. S. 28-10; 28-11; 28-12; 30-15; 52-19; 52-20; 52-21. See also TAYLOR v. WHITE, 160 N. C. 38, 41 (1912); Vernier, AMERICAN FAMILY LAWS, Vol. II, Secs. 96, 97, 98, 99, 100, 102, 126, 127, 128.

ARTICLE 2

Parents

§31A-2. Acts barring rights of parents.—Any parent who has wilfully abandoned the care and maintenance of his or her child shall

lose all right to intestate succession in any part of the child's estate and all right to administer the estate of the child, except—

(1) Where the abandoning parent resumed its care and maintenance at least one year prior to the death of the child and continued the same until its death; or

(2) Where a parent has been deprived of the custody of his or her child under an order of a court of competent jurisdiction and the parent has substantially complied with all orders of the court requiring contribution to the support of the child.

Comment:

A. Purpose.

With the passage of the new Intestate Succession Act which became effective July 1, 1960, N.C. GEN. STAT. Sec. 28-149(6) was abolished. The purpose of this section is to revise, broaden, and reintroduce Sec. 28-149(6).

B. Reasons.

It seems very inequitable to allow a parent who has abandoned his child to inherit from such child when the child dies intestate. However, when a question of this nature has come before the court and the intestacy law of the particular jurisdiction has made no exception because of the abandonment, the courts have been reluctant to imply an exception. It can and does happen that the child is too young to make a will cutting off the guilty parent. North Carolina adopted the rule found in former G. S. 28-149(6) as a result of the decision in the case of AVERY v. BRANTLEY, 191 N.C. 396, 131 S.E. 721 (1926); Note, 5 N.C.L. REV. 72.

The proposed law broadens the former rule. It is provided that if the abandoning parent was deprived of custody by court order and the parent substantially complied with the order of the court requiring contribution to the support of the child, such parent may participate in the distribution of the estate. A parent who abandons his child but resumes care and maintenance at least one year prior to the death of the child

may share in the distribution of the estate of the child who dies intestate.

ARTICLE 3

Wilful and Unlawful Killing of Decedent

Introductory Comment:

A. Purpose.

This Article deals with the acquisition of property by the killing of another person, and seeks to effectuate by legislation the broad public policy of preventing the slayer of the decedent from profiting by his own wrong. In summary:

§31A-3 of this Article defines the terms slayer, decedent and property and §§31A-4 through 31A-12 prevent the slayer from acquiring the property of the decedent or otherwise getting a proprietary benefit through his death in the following ways:

§31A-4 by testate or intestate succession as heir, legatee, devisee or surviving spouse;

§31A-5 by survivorship as tenant by the entirety;

§31A-6 by survivorship as co-owner or joint obligee;

§31A-7 by acceleration of a reversion or vested remainder following a life estate in the decedent or measured by his life;

§31A-8 by the vesting or increase of interest in a contingent or other future interest on the death of the decedent;

§31A-9 by the removal of a defeasibility as to any property interest benefitting the slayer by the death of the decedent prior to the slayer's death;

§31A-10 by the exercise or non-exercise of a power of appointment or revocation by the decedent;

§31A-11 by the payment to the slayer of the proceeds of an insurance policy or an annuity upon the death of the decedent as insured or beneficiary; and

§31A-12 by protecting a bona fide purchaser who has paid to the slayer adequate consideration for property divested by this Act and impressing a constructive trust upon any funds so

received by the slayer for the benefit of the persons entitled.

B. Reasons.

(1) General Rules.

When a person has been unlawfully killed by his heir, his spouse, or his legatee or devisee, it is shocking for the law to permit such a slayer to acquire the decedent's property as a result of his death. But, in the absence of statute, many cases have so held. Most of these cases reason that since statutes of descent and distribution and of wills contain no such exception the courts should not legislate by implying one; while others mention constitutional or statutory provisions forbidding forfeiture for crime. However, the recent legal trend is to prevent the slayer from profiting by his own wrong. A few cases deny any title to the slayer by writing such an exception into the statute, but most of them accomplish this result through the equitable device of impressing a constructive trust upon the legal title in the hands of the killer. And a number of states have enacted statutes dealing with the matter. In the analogous cases of the life insurance beneficiary who intentionally kills the insured, and of the co-owner of survivorship property who slays his co-owner, insurance law always deprives such beneficiary, but as to co-owned property similar conflicting rules exist as in the wills and inheritance cases.

In all of these cases, if the decedent had not been killed he might have outlived the slayer who thereby acquires property which but for the killing he might never have acquired. It seems but right to prevent such unjust enrichment by resolving all doubts against the slayer and thereby give the property to those persons who would have taken it if the slayer had predeceased his victim instead of allowing him to assure his own survival of the decedent by the killing. And there is no taint of unconstitutionality on the ground of forfeiture for crime in the cases and statutes which reach this result because no property is taken from the slayer, he is merely prevented

from getting property by killing someone - a salutory moral principle and crime deterrent. /See generally Atkinson on Wills (2d ed. 1953) §37; 4 Scott on Trusts (2d ed. 1956) §§ 492 - 494. 4; Wade, Acquisition of Property by Wilfully Killing Another - A Statutory Solution, 49 Harvard L. Rev. 715 (1936)/

(a) Resume of American Statutory Provisions.

Statutory provisions of other jurisdictions throughout this country relating to the unlawful killing of a testator, are collected in the following resume taken from Rees, American Wills Statutes: II, 46 Va. L. Rev. 856, 888 (1960).

"In twenty-six states a devisee or legatee who kills the testator is barred from receiving his devise or legacy. /The District of Columbia and Puerto Rico are also in this category. . . ./ The Statutes are varied and often apply to other situations, as where the expectant heir kills his ancestor, or the beneficiary of a life insurance policy kills the insured. Sixteen states expressly require that the slayer be 'convicted' (or 'adjudged guilty') of murder /Alaska Comp. Laws Ann. § 60-1-15 (Supp. 1959); Colo. Rev. Stat. Ann. § 152-2-13 (1953) (murder in the first or second degree); Conn. Gen. Stat. Rev. § 45-279 (1958) (murder in the first or second degree); Fla. Stat. Ann. § 731.31 (Supp. 1959); Ill. Ann. Stat. ch. 3, § 201 (Smith-Hurd 1941); Ohio Rev. Code Ann. § 2105.19 (Page 1953) (murder in the first or second degree); Va. Code Ann. §64-18 (Supp. 1958). Also the District of Columbia. D.C. Code Ann. § 18-109 (1951)./, or of intentionally causing death /Ind. Ann. Stat. § 6-212 (Repl. Vol. 1953)/, or of feloniously causing death /N.D. Rev. Code § 56-0423 (1943); Utah Code Ann. § 74-3-22 (1953)/, or of unlawfully killing /Neb. Rev. Stat. § 30-119 (Reissue Vol. 1956); S.C. Code § 19-5 (1952)/, or of feloniously killing /Kan. Gen. Stat. Ann. § 59-513 (1949); W. Va. Code Ann. § 4095(2) (1955). See also Ky. Rev. Stat. Ann. § 381.280 (1955) (convicted of a felony for taking life)./, or of taking life /Okla. Stat. tit. 84, § 231 (1951)/.

For instance, the Virginia provision forbids the acquisition by a person of an interest in the estate of another for the death of whom he has been convicted of murder [Va. Code Ann. § 64-18 (Supp. 1958)]. Ten states do not mention conviction, but specify killing [Tenn. Code Ann. §§ 31-109, -207 (1955)], or the wilful and unlawful killing [Pa. Stat. Ann. tit. 20, § 180.7(5) (1950)], or killing with malice aforethought [Ga. Code Ann. § 113-909 (Supp. 1959)], or wilfully causing death [Miss. Code Ann. § 672 (Recomp. Vol. 1956)], or feloniously taking life [Iowa Code Ann. §636.47 (1950); Minn. Stat. Ann. § 525.87 (1945); Ore. Rev. Stat. § 111.060(1) (1953); Wyo Stat. Ann. § 2-46 (1957)], or unlawfully taking life [La. Civ. Code Ann. art. 1691 (Dart 1945); S.D. Code §§ 56.0501-.0502 (1939) (wilfully and unlawfully takes life). See also La. Civ. Code Ann. arts. 966, 1560, 1710 (Dart 1945). In Puerto Rico, a person who has made attempts against the life of the testator is disqualified to succeed by reason of unworthiness. P.R. Laws Ann. tit. 31, § 2261(2) (1955)]. Several of the statutes include an accessory [Alaska Comp. Laws Ann. § 60-1-15 (Supp. 1958); Colo. Rev. Stat. Ann. § 152-2-13 (1953); Conn. Gen. Stat. Rev. § 45-279 (1958); Ohio Rev. Code Ann. § 2105.19 (Page 1953); Pa. Stat. Ann. tit. 20, § 180.7(5) (1950)], or one who aids or abets the killer [Ind. Ann. Stat. § 6-212 (Repl. Vol. 1953)], or one who conspires to kill [Ga. Code Ann. § 113-909 (Supp. 1959); Neb. Rev. Stat. § 30-119 (Reissue Vol. 1956); Tenn. Code Ann. §§ 31-109, -207 (1955); W. Va. Code Ann. § 4095 (1955)], or one who causes or procures another to kill [Ga. Code Ann. § 113-909 (Supp. 1959); Iowa Code Ann. § 636.47 (1950); Kan. Gen. Stat. Ann. § 59-513 (1949); Minn. Stat. Ann. § 525.87 (1945); Miss. Code Ann. § 672 (Recomp. Vol. 1956); Okla. Stat. tit. 84 § 231 (1951); Ore. Rev. Stat. §111.060(1) (1953); S.D. Code § 56.0501 (1939); Tenn. Code Ann. §§ 31-109, -207 (1955); Wyo. Stat. Ann. § 2-46 (1957)].

"A killing done by accident or in self-defense is

excepted from the Georgia and Tennessee provisions [Ga. Code Ann. § 113-909 (Supp. 1959); Tenn. Code Ann. §§ 31-109, -207 (1955)], while the South Carolina statute does not apply to involuntary manslaughter [S.C. Code § 19-5 (1952)]. The interests of a bona fide purchaser of the property are protected in Indiana, Mississippi, and Ohio [Ind. Ann. Stat. § 6-212 (Repl, Vol. 1953); Miss. Code Ann. § 672 (Recomp. Vol. 1956); Ohio Rev. Code Ann. § 2105.19 (Page 1953)].

"In ten of the states, the property to which the slayer would otherwise be entitled is distributed as if the slayer predeceased the testator [Conn. Gen. Stat. Rev. § 45-279 (1958); Fla. Stat. Ann. § 731.31 (Supp. 1959); Ga. Code Ann. § 113-909 (Supp. 1959); Ill. Ann. Stat. ch. 3, § 201 (Smith-Hurd 1941); Neb. Rev. Stat. § 30-119 (Reissue Vol. 1956); N.D. Rev. Code § 56-0423 (1943); Ohio Rev. Code Ann. § 2105.19 (Page 1953); S.D. Code § 56.0504 (1939) (and heirs of slayer barred); Utah Code Ann. § 74-3-22 (1953); W. Va. Code Ann. § 4095 (1955). Also the District of Columbia. D.C. Code Ann. § 18-109 (1951)]. In five states the property devised or bequeathed is disposed of to the remaining heirs according to the rules of descent and distribution [Iowa Code Ann. § 636.49 (1950); Miss. Code Ann. § 672 (Recomp. Vol. 1956); Okla. Stat. tit. 84, § 231 (1952); Ore. Rev. Stat. § 111.060(3) (1957); Wyo. Stat. Ann. § 2-46 (1957)]. Louisiana provides only that the devise or bequest in favor of the slayer is revoked [La. Civ. Code Ann. art. 1691 (Dart 1945)]; six states make various specifications for disposal of the property [Alaska Comp. Laws Ann. § 60-1-15 (Supp. 1958) (other legatees or by descent and distribution); Ind. Ann. Stat. § 6-212 (Repl. Vol. 1953) (slayer made constructive trustee for those legally entitled); Ky. Rev. Stat. Ann. § 381.280 (1955) (heirs-at-law, unless otherwise disposed of by decedent); Pa. Stat. Ann. tit. 20, § 180.7(5) (1950) (as provided by law); S.C. Code § 19-5 (1952) (estate of deceased; but if slayer a parent, to his children); Tenn. Code Ann. §§ 31-109, -207 (1955) (descent; or by will, deed or other conveyance)];

and four states have no provision on the subject [Colorado, Kansas, Minnesota, and Virginia]. In Ohio a pardon restores all the killer's rights in the property, but does not affect the rights of an innocent purchaser [Ohio Rev. Code Ann. § 2105.19 (Page 1953)]."

(2) North Carolina Law.

The first American case on the precise question whether a murderer could acquire title to the property of his victim by surviving him was Owens v. Owens, 100 N.C. 240 (1888). This leading case sounded the key-note on this subject when it held that a wife who was convicted of being an accessory before the fact to her husband's murder could not be denied dower because it would involve an unconstitutional forfeiture of property for crime and that only the legislature could change a statutory right of property. This shocking decision caused three statutes to be enacted providing that a spouse convicted of the felonious slaying or as an accessory before the fact of such slaying of the other spouse shall thereby lose all rights in the other's personal estate including distributive share, year's allowance, right of administration, dower or curtesy, and all rights of property settled on the decedent by reason of the marriage (G. S. 28-10; 30-4; 52-19). In Bryant v. Bryant, 193 N.C. 372 (1927) and Garner v. Phillips, 229 N.C. 160 (1948) murderers were permitted to take legal title, in the one case by survivorship as tenant by the entirety and in the other as heir and distributee of the decedent, but upon constructive trust for the persons who would have been entitled if the murderer had predeceased his victim. This upon the ground of public policy expressed in the equity maximum that a wrongdoer should not be permitted to profit from his crime. Upon similar principles, the beneficiary of a life insurance policy who slays the insured is not permitted to collect the proceeds. Parker v. Potter, 200 N.C. 348 (1931); Bullock v. Expressman's Mutual Life Ins. Co., 234 N.C. 254 (1951).

In view of the above mentioned North Carolina statutes

and judicial decisions, is additional legislation necessary? An affirmative answer seems called for. Since the three existing statutes are restricted to the husband-wife relation and require conviction of a felonious slaying, any other killings would not be covered. Suicide of the slayer before conviction should not be a bar to taking the victim's property, and presently only conviction of the felonious slaying of the other spouse or of being accessory before the fact of such felonious slaying will suffice to defeat the slayer's interest in the decedent's property.

And since the judicial decisions involve only murder by a tenant by the entirety, by an heir, or an insurance beneficiary, confinement to these particular instances could occur in future cases. Thus, some consideration of the details of this proposed legislation seems in order.

The proposed Model Act (Wade, 49 Harvard L. Rev. 715) has been substantially followed, as was done in 1941 in Pennsylvania. (Pa. Stats. Ann. (Purdon) tit. 20, §§ 3441 - 3456).

ARTICLE 3

Wilful and Unlawful Killing of Decedent

§31A-3. Definitions.—As used in this article, unless the context otherwise requires, the term—

(1) "Slayer" means

a. Any person who by a court of competent jurisdiction shall have been convicted as a principal or accessory before the fact of the wilful and unlawful killing of another person; or

b. Any person who shall have entered a plea of guilty in open court as a principal or accessory before the fact of the wilful and unlawful killing of another person; or

c. Any person who, upon indictment or information as a principal or accessory before the fact of the wilful and unlawful killing of another person,

shall have tendered a plea of nolo contendere which was accepted by the court and judgment entered thereon; or

d. Any person who shall have been found in a civil action or proceeding, brought within one year after the death of the decedent to have wilfully and unlawfully killed the decedent or procured his killing, and who shall have died or committed suicide before having been tried for the offense and before the settlement of the estate.

(2) "Decedent" means the person whose life is taken by the slayer as defined in subdivision (1).

(3) "Property" means any real or personal property and any right or interest therein.

Comment:

The proposed statute, §31A-3 defines the terms "slayer", "decedent" and "property".

In subsection (1) it uses the term "slayer" instead of felon or murderer and is limited to "wilful and unlawful" killings. These latter words would prevent the statute's application to cases of involuntary manslaughter, justifiable or excusable homicide, accidental killing or where the slayer was insane. It would include manslaughter if the killing was intentional and unlawful. Conviction is not mandatory because a plea of guilty or of nolo contendere suffices to bar the slayer from acquiring the decedent's property; as may the slayer's suicide or other death before his trial for the offense. The definition of the term "slayer" is very important because it signifies what kind of killing may disqualify one from acquiring property. The requirement that the killing be wilful and unlawful isn't the only possible rule, but does seem a fair policy criterion.

Subsection (2) defines decedent in terms of (1) and seems self-explanatory.

The definition of "property" in subsection (3) is wide

because similar statutes have been strictly construed. Unless the particular kind of interest comes clearly within the terms of the statute the killer will not be barred.

§31A-4. Slayer barred from testate or intestate succession and other rights.—The slayer shall be deemed to have died immediately prior to the death of the decedent and the following rules shall apply:

(1) The slayer shall not acquire any property or receive any benefit from the estate of the decedent by testate or intestate succession, or by common law or statutory right as surviving spouse of the decedent.

(2) Where the decedent dies intestate as to property which would have passed to the slayer by intestate succession, such property shall pass to others next in succession in accordance with the applicable provision of the Intestate Succession Act.

(3) Where the decedent dies testate as to property which would have passed to the slayer pursuant to the will, such property shall pass as if the decedent had died intestate with respect thereto, unless otherwise disposed of by the will.

Comment:

The slayer is by this provision prevented from taking property from the decedent as heir, surviving spouse or by will.

Marital property rights such as dower and curtesy and the statutory rights in lieu thereof are generally deemed inchoate and subject to legislative change prior to the death of the other spouse. [Hallyburton v. Slagle, 132 N.C. 1020 (1907)]. And of course the same applies to the mere expectancy of an heir or devisee.

This statute not only prevents the slayer from taking from the decedent as heir or devisee, but provides an alternative disposition. By its terms the slayer is deemed to have died

immediately prior to the intestate or testator, and the slayer's share of the decedent's estate passes to "others" next entitled to succeed by intestacy law, e.g. to the other heirs of the decedent, including issue of the slayer in their own right by representation of their "deceased" parent [Bates v. Wilson, 313 Ky. 592 (1950)], but not to one who can claim only from the slayer, such as his spouse. [Price v. Hitaffer, 164 Md. 505 (1933)]. However, where the decedent leaves a will his other heirs take the slayer's devise or bequest only if it is not otherwise disposed of by the will, e.g. to an alternative beneficiary or by way of residuary disposition.

§31A-5. Entirety property.—Where the slayer and decedent hold property as tenants by the entirety:

(1) If the wife is the slayer, one-half of the property shall pass upon the death of the husband to his estate, and the other one-half shall be held by the wife during her life, subject to pass upon her death to the estate of the husband; and

(2) If the husband is the slayer, he shall hold all of the property during his life subject to pass upon his death to the estate of the wife.

Comment:

This section provides for the situation where the slayer is a tenant by the entirety with the decedent. This is of especial importance in North Carolina where this estate still flourishes. The statute is so drawn as not to deprive, unconstitutionally, the slayer of a property interest which he already has; at the same time it does not permit him to acquire any additional interest as a result of the death of the decedent. As to which of the two would have survived the other, the doubt is resolved in favor of the innocent victim as against the wrongdoer who has deprived him of the chance of surviving. It being assumed that the decedent would have survived the slayer, the whole of the property will naturally pass

to the estate of the decedent upon the slayer's death. It will be noted that the statute differentiates between the case where the husband is the slayer and the one in which the wife is the principal actor. This is for the reason that in North Carolina the husband has the control and use of the property and is entitled to the possession, income, and usufruct thereof during their joint lives. To take this away from him would probably be considered an unconstitutional forfeiture of estate. The paragraph provides, therefore, that if he is the slayer, he shall hold the whole of the property until his death, at which time it passes to the wife's estate. He holds the property, of course, subject to this restriction and cannot alienate it. See Bryant v. Bryant, 193 N.C. 372 (1927).

§31A-6. Survivorship property.--(a) Where the slayer and the decedent hold property with right of survivorship as joint tenants, joint owners, joint obligees or otherwise, the decedent's share thereof shall pass immediately upon the death of the decedent to his estate, and the slayer's share shall be held by the slayer during his lifetime and at his death shall pass to the estate of the decedent. During his lifetime, the slayer shall have the right to the income from his share of the property subject to the rights of creditors of the slayer.

(b) Where three or more persons, including the slayer and the decedent, hold property with right of survivorship as joint tenants, joint owners, joint obligees or otherwise, the portion of the decedent's share which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one-half of the property then held by the slayer shall pass immediately to the estate of the decedent, and upon the death of the slayer the remaining interest of the slayer shall pass to the estate of the decedent. During his lifetime the slayer shall have the right to the income from his share of the property subject to the rights of creditors of the slayer.

Comment:

When one of two co-owners of property with right of survivorship slays the other, three judicial solutions have occurred: the whole property passes immediately (1) to the estate of the decedent; or (2) to the survivor; or (3) one-half of the property passes immediately to the estate of the decedent and the other half passes at the death of the slayer to the estate of the decedent. Solution (1) unconstitutionally takes the slayer's already-owned one-half, while (2) rewards the wrongdoer by permitting survivorship of the whole to the slayer. By killing the decedent the slayer assures himself of survival and deprives the decedent of his chance of surviving and taking the whole. Either could have partitioned the property while both were alive, and since the slayer did not do so his interest was subject to be divested by survivorship if he should predecease his co-owner. It therefore seems but fair to adopt solution (3) which prevents the slayer's profiting by his wrong and gives to the estate of his victim what the decedent would have received if he had been the survivor, subject to a life estate in the slayer as to one-half. Thus the proposed statute applies equally as to both co-owned property and joint bank accounts with right of survivorship.

Subsection (b) is intended to cover the situation where there are three or more joint tenants or joint obligees. When the slayer then kills the decedent, because of the interests of the other joint tenants or joint obligees, it will be impossible to say that any particular portion of the property vests in the estate of the decedent. Whatever enrichment the slayer would have acquired as a result of the death of the decedent, however, will go to the decedent's estate.

If S, D and A own as joint tenants with right of survivorship and D dies naturally, this would change the thirds to halves in A and S. If on the other hand, S kills D and there is no rule of law preventing S acquiring his portion of D's share, then A and S would own one-half each; but if S is

prevented by law from benefitting by killing D, A would get his pro rata part of D's share (one-half of one-third, or one-sixth) and D's estate would retain whatever profit would otherwise have gone to S (one-sixth). A then has one-third plus one-sixth, or one-half, and S continues the owner of one-third of the property plus a part of D's share, one-half of one-third, which one-sixth S in effect holds on constructive trust for D's estate.

§31A-7. Reversions and vested remainders.—(a) Where the slayer holds a reversion or vested remainder in property subject to a life estate in the decedent and the slayer would have obtained the right of present possession upon the death of the decedent, such property shall pass to the estate of the decedent during the period of the life expectancy of the decedent.

(b) Where the slayer holds a reversion or vested remainder in property subject to a life estate in a third person which is measured by the life of the decedent, such property shall remain in the possession of the third person during the period of the life expectancy of the decedent.

Comment:

As with entirety property (§31A-5) and survivorship property (§31A-6), so with reversions, remainders, executory interests and defeasances (§§31A-7, 31A-8 and 31A-9). The slayer and the decedent each had an interest in property prior to the killing, but the slayer's interest is enlarged by the killing. In the proposed statute the basic premise is that although the slayer should not be compelled to give up property to which he is entitled apart from the killing, he should not be allowed to improve his position by the killing and thereby profit by his crime.

As to reversions and vested remainders owned by the slayer subject to a life estate in the decedent, the slayer's vested future interests could not be constitutionally taken from him even though he accelerates their enjoyment by killing the life tenant. And since it is impossible to say when the life tenant

would have died if the remainderman had not killed him, and thus determine the exact extent of the acceleration, resort must be had to the mortality tables to determine his expectancy. As an equitable solution, (a) of the proposed section prevents the slayer benefitting from his wrongful acceleration by giving the property to the decedent's estate for such period, after which it passes to the slayer.

And upon similar principle, (b) provides that when the particular estate is an estate pur autre vie with the decedent as cestui que vie - the property will remain in the hands of the third person for the life expectancy of the decedent, and then pass to the slayer.

§31A-8. Contingent remainders and executory interests.—As to any contingent remainder or executory or other future interest held by the slayer subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent; but

(2) In any case, the interest shall not be vested or increased during the period of the life expectancy of the decedent.

Comment:

This general section seeks to include every future interest owned by the slayer which would become vested in him or increased in any way as a result of the decedent's death. The solution proposed for these numerous interests is as follows: If the interest is of such a nature that it would not have vested or increased if the slayer had died before the decedent — if it is contingent on his surviving the decedent — he will be deemed to have predeceased the man he has killed. But there are other interests which are not contingent upon the slayer's surviving his victim, and which will vest in the heirs of the slayer on the death of the decedent, even though the slayer is

also dead. To presume that the slayer had predeceased the decedent would do no good in these cases, and to take care of them the section provides that in no case shall the interest become vested or increased during the period of the life expectancy of the decedent. Thus the slayer and those holding under him are not allowed to profit by his wrong, and there is no forfeiture.

§31A-9. Divesting of interests in property.—Where the slayer holds any interest in property, whether vested or not, subject to be divested, diminished in any way or extinguished if the decedent survives him or lives to a certain age, such interest shall be held by the slayer during his lifetime or until the decedent would have reached such age but shall then pass as if the decedent had died immediately after the death of the slayer or the reaching of such age.

Comment:

Any interest in property, whether vested or not, held by the slayer subject to be divested, diminished in any way or extinguished if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age but shall then pass as if the decedent had died immediately thereafter.

The customary constitutional problem arises in cases covered by this section, and the proper course is to allow the slayer to retain his interest but to make it still subject to the chance of being divested. It not being known whether the decedent would have lived to survive the slayer or to reach a certain age, all doubt will be resolved against the slayer, and it will be presumed that he would have done so. This having served to divest the slayer of the interest at the proper time, the interest will be held to pass as if the decedent had died immediately thereafter.

For example, if property is conveyed to S but if D survives S, then to D. S kills D. S holds the property for his

own life only and then it passes to D's estate. Or, if property is conveyed to S, but if D attains age 25, then to D. S kills D who is then 24 years of age. S holds the property until D would have attained age 25, and then it passes to D's estate.

§31A-10. Powers of appointment and revocation.—(a) As to any exercise in the will of the decedent of a power of appointment in favor of the slayer, the slayer shall be deemed to have predeceased the decedent and the slayer shall not acquire any property or receive any benefit by virtue of such appointment and the appointed property shall pass in accordance with the applicable lapse statute, if any.

(b) Property held either presently or in remainder by the slayer subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent; and property so held by the slayer subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons shall pass to such person or persons or in equal shares to the members of such class of persons, exclusive of the slayer.

Comment:

By an ancient dogma of the common law of powers of appointment, the appointee takes title from the donor, the donee's exercise of the power being regarded not as a conveyance but as a mere event upon which title to the appointed property shifts from the donor to the appointee. For example, D and W, husband and wife, each own certain property and made a joint will leaving all the property to the survivor for life, with a power to dispose of the property by deed of will and whatever remained undisposed of should go to their son, S. W died and D thereafter devised all of the property to S who killed D in order to get the property. A local statute (Va. Code 1950, §64-18) prevented such a slayer from acquiring property by the decedent's will. Held, that although S could not take D's property

by virtue of his will, he was entitled to W's property by the appointment, since he took that by her will and not by D's will. Blanks v. Jiggette, 192 Va. 337, 24 A.L.R. (2d) 1114 (1951).

Subsection (a) provides that as to any exercise in the will of the decedent of a power of appointment in favor of the slayer, the slayer shall be deemed to have predeceased the decedent and the appointment to have lapsed.

The situation where the decedent is the donee of a power of appointment and exercises it in favor of the slayer in his will is covered here. The will becomes effective only upon the decedent's death, which is thus the event giving the property to the slayer, and the slayer may therefore constitutionally be prevented from receiving the property. Any exercise by the decedent of his power of appointment in an instrument which took effect prior to the decedent's death could not be affected. Under the section the property passes as in the ordinary case of lapsed appointments, and existing state law on that problem will not be changed. The express provision that the appointment shall be deemed to have lapsed as to the slayer is included in order to avoid any possible application of an anti-lapse statute. For example, if A conveys property to D for life with power to appoint it by deed or will as he shall see fit, or to appoint to such of D's children as he shall see fit, remainder in default of appointment to B in fee. S kills D, his father. The property passes to B as if the power had not been exercised.

Subsection (b) concerns the situation where the slayer holds property either presently or in remainder but subject to be divested by the decedent's exercise of a power of revocation or appointment, and the slayer kills the decedent before he exercises the power. It will also include the case where the slayer is designated by the donor as the person to take in default of appointment, since he is considered then as holding a vested remainder subject to be divested by the decedent's exercise of his power.

The first half of the subsection covers only the cases in which the decedent had a power of revocation or a general power of appointment: in both cases the property is held to go to the decedent's estate. Where the decedent had a power of revocation, there should be no objection at all to the result. In the case in which the decedent had a general power of appointment, the problem is more difficult, since it cannot be said in favor of whom the decedent would have exercised it. A general power, however, allows him to exercise it even in his own favor; and since there is no one else in whose favor he may be assumed to have exercised it, the assumption has been made that he would have appointed himself. It has therefore been decided to provide that here, too, the property will go to the decedent's estate.

The second half of subsection (b) is concerned with the cases in which the decedent had a power of appointment either to a particular person or to a class of persons. In the first case, of course, it will be assumed that the decedent would have exercised the power, and the property will go to the person in favor of whom he could have exercised it. In the second case it is provided that the property shall go in equal shares to all of the members of the class in favor of whom he could have exercised the power.

But if the slayer happens to be one of the particular persons or a member of the class, he would then take a portion of the property as such. To avoid this result it is provided that the property shall pass to particular persons or to the class of persons "exclusive of the decedent."

As an example of such a general power, A conveys property to D for life with remainder as D shall appoint by deed, and in default of such appointment remainder to S in fee. S kills D before D makes an appointment. D's estate acquires the property because D's wrong prevents D from appointing the property to himself as he might have done.

As example of such a special power would be where A conveys

property to D for life with remainder as D shall appoint to such of his children as he sees fit, and in default of such appointment, remainder to D's children in equal shares. S, a child of D, slays D before he can appoint. The property passes in equal shares to D's children, exclusive of S. Another example would be where A conveys property to D for life with power to appoint the property by deed to B, remainder in default of such appointment to S. S slays D before he exercises the power. The property passes to B because otherwise S would retain the property by preventing D from appointing. Therefore it is assumed that D would have appointed to B.

Such a power of revocation might be illustrated as follows: D by revocable inter vivos trust conveys property to T in trust to pay the net income to S for life and at S's death to pay over the corpus to B. S kills D before he revokes. The property passes to D's estate during the life of S, which prevents S from benefitting by his crime.

§31A-11. Insurance benefits.—(a) Insurance and annuity proceeds payable to the slayer:

(1) As the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or

(2) In any other manner payable to the slayer by virtue of his surviving the decedent,

shall be paid to the person or persons who would have been entitled thereto as if the slayer had predeceased the decedent.

(b) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as alternative beneficiary.

(c) Any insurance or annuity company making payment according to the terms of its policy or contract shall not be subjected to additional liability by the terms of this Chapter if such payment or performance is made without notice of circumstances tending to bring it within the provisions of this Chapter.

Comment:

Subsection (a) merely codifies the common law, since the cases are all agreed that when a beneficiary or assignee murders the insured, he cannot collect the proceeds, which will ordinarily go to the estate of the insured.

Nine states now have statutes which expressly provide for insurance proceeds. These statutes raise problems which have been provided for in the proposed section. The first seven of them provide that the proceeds shall go to the other heirs or the estate or the next of kin of the insured. But if the insurance policy itself or the by-laws of a benefit association provide for an alternative beneficiary to the slayer, the proceeds ought to be paid to him rather than in the way those statutes provide. And, when there is no statute, the cases so hold. The Nebraska and West Virginia enactments avoid this difficulty by providing that the proceeds shall pass to the persons who would have been entitled thereto if the slayer had predeceased the decedent, but this causes another difficulty. If the insurance policy provides that the proceeds shall be paid to the beneficiary "and his heirs", a literal interpretation of these statutes could mean that the proceeds were to be paid immediately to the heirs of the beneficiary, who would be thus allowed to profit through the wrongful act of their ancestor. The proposed section takes care of both difficulties by awarding the proceeds "to the person or persons who would have been entitled thereto or if the slayer had predeceased the decedent".

A similar problem arises when the insurance policy expressly excepts as a risk the killing of the insured by the beneficiary or provides that the insurance shall be forfeited; then, of course, the insurance company should not have to pay anyone. This result would be allowed by the proposed section. It speaks only of "insurance proceeds", and there would be none in that case, the insurance company being under no duty to pay at all.

Another problem which is expressly covered by this section

is that of a joint life policy held by the slayer and the decedent. On the death of the decedent the proceeds would normally be paid to the survivor, but he has disqualified himself by his act of murdering the decedent. They should, therefore, be paid to the latter's estate, and it is so provided.

This section does not in express words cover the situation where the slayer-beneficiary is one of a class, as where the policy is payable to the children of the insured. No case involving this exact problem seems to have arisen, but a somewhat analogous situation develops when one of the children predeceases the insured. Under such circumstances the cases are divided, some holding that the interest of the deceased beneficiary goes to his estate, and others that the interest is divided among the other beneficiaries. This section will probably cause the portion of the proceeds which the slayer would have received to go to the estate of the insured rather than to be divided among the other beneficiaries — a result which would appear to conform to the reasoning underlying either line of authorities.

A problem which sometimes arises in states where there are no other statutes is whether the insurance proceeds should be paid to the estate of the decedent when the slayer is the sole or even the chief heir. This problem will not arise under the proposed Act, since Section 3 provides that the slayer shall not be allowed to inherit from the estate of the decedent. Under the proposed section, also, if there is no heir of the decedent other than the slayer, the proceeds will still be paid to the decedent's estate, and if there are no creditors, they will probably be held to escheat to the state.

Four of the existing statutes provide also for the case of disability insurance when the beneficiary disables the insured. This situation was not included within the proposed Act because this Act is concerned with the situation where one party kills another, and it was feared that it might then be held to embrace two subjects and thus to violate some constitutional provisions. This conclusion was strengthened by the assurance that the

situation would adequately be taken care of by the courts, so that a statute would not be necessary. It is true that the case where the beneficiary murders the insured is also taken care of by court decisions; but it is actually within the subject covered by the Act, and its omission might therefore be construed to mean that the intention was that the slayer should be entitled to the proceeds. In addition, it is hoped that the proposed section has settled some difficulties which previously troubled the courts.

Subsection (b) takes care of the situation where the insured kills the beneficiary. By this act the insured would be causing his estate to profit, since the proceeds would then be payable to it, and this the statute forbids. If he had a right to change the beneficiary or to extinguish the latter's rights by assigning the policy, however, this right will not be taken away from him. If, therefore, subsequent to the death of the decedent, he exercises this right with the proper formalities, the assignee or the new beneficiary will take the proceeds — this even though the new beneficiary is the slayer's estate, since it will then be profiting not by his wrongful act of killing the decedent but by his subsequent legitimate act of changing beneficiaries. Likewise, if the policy itself provides for some other beneficiary in case the beneficiary predeceased the insured, the section will not interfere with the express provision.

The use of the term "proceeds" avoids a troublesome problem which might otherwise have arisen. In the majority of the cases which will arise under this subsection the slayer will have committed suicide or have been executed for the murder. According to the majority view, the insurance company will still be liable, unless there is an express provision to the contrary in the policy. But if the policy excepts such risks, or in jurisdictions where the insurance company is held not liable upon grounds of public policy, it may be held that there are no "proceeds" accruing, and this subsection will not change the provision

in the insurance contract or interfere with the pronounced policy of the state.

The few cases which have involved a problem of the nature covered by this subsection seem to be in accord. This general situation is not expressly covered by any of the existing statutes, and there are only two which could be construed to cover it.

A problem similar to this one arises when an ancestor murders his heir or one spouse murders the other (or some other variation), and the personal representative of the murdered heir or spouse on the death of the slayer enters a claim against his estate for the amount which the decedent would have received if he had survived the slayer. It is believed, however, that there is an essential difference between the two cases. Where the insured kills the beneficiary, the slayer's estate would profit by his act; that is not true when the ancestor kills his heir, —the property was already in the estate of the ancestor, and the heir, is claiming through the estate. Similar reasoning applies to the case of the spouses. This distinction is borne out by the cases.

Four of the present statutes have provisions similar to those set out in subsection (c) with regard to insurance companies. It may be suggested here that when the insurance company or obligor does have notice of circumstances tending to show that the slayer has killed the decedent and does not know who is entitled to the payment, it may then have resort to interpleader, and thus bring in the necessary parties.

§31A-12. Persons acquiring from slayer protected.—The provisions of this Chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, acquires from the slayer for adequate consideration property or an interest therein which the slayer would have received except for the terms of this Chapter provided the same is acquired without notice of circumstances tending to bring it within the provisions of this Chapter; but all consideration received by the slayer shall be held by him in trust for the persons entitled to the property under the

a principal fact in issue is simply whether plaintiff or defendant has been so adjudged to be the slayer of decedent. Thus in such civil action the record of one's conviction would be introduced and admissible in evidence, not to prove guilt, but to prove his conviction as a separate relevant fact which would of itself bar him from acquiring or retaining the property. [Metropolitan Life Ins. Co. v. Hill, 115 W.Va. 515 (1934), Note 41 W.Va.L.Q. 287.] Thus no other evidence of the crime than the specified court record would seem necessary, and evidence in the civil action that one was not in fact guilty of the crime would seem both immaterial and inadmissible. Scott, Trusts (2d ed) §492.4. The proposed type of statute seems preferable by so simplifying the procedure in the civil action. And §31A-13 is perhaps merely confirmatory of existing common law on the subject, but settles the question in advance as to such proceedings under this Chapter.

§31A-14. Uniform Simultaneous Death Act not applicable.—The Uniform Simultaneous Death Act, G. S. 28-161.1 through G. S. 28-161.7, shall not apply to cases governed by this Chapter.

Comment:

In certain cases where the title to property or its devolution depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the Uniform Simultaneous Death Act makes statutory dispositions thereof which might otherwise conflict with the dispositions made by this Chapter when one of such persons is the slayer of the other. For example, §28-161.3 provides that where two persons who are joint tenants or tenants by the entirety so die the property shall be distributed one-half as if one had survived and one-half as if the other had survived which is not in accordance with the disposition made by §§ 31A-5 and 31A-6 of this Chapter.

§31A-15. Chapter to be broadly construed.—This Chapter shall not be considered penal in nature, but shall be construed broadly in

provisions of this Chapter, and the slayer shall also be liable both for any portion of such consideration which he may have dissipated and for any difference between the actual value of the property and the amount of such consideration.

Comment:

The interest of a man who has innocently paid money for property would definitely seem to outweigh that of the other heirs of the decedent, who ordinarily are receiving a windfall. The social interest in preventing murder for the purpose of acquiring property must also be taken into account, however; and it is believed that this section makes the best compromise between the conflicting interests.

ARTICLE 4

General Provisions

Introductory Comment:

A. Purpose.

This Article contains certain general provisions applicable to one or more of the prior sections of the Act. In summary:

§ 31A-13 makes admissible in a civil action arising under this Chapter evidence relating to the claimant's guilt or innocence as established in a judicial proceeding as specified in § 31A-3 of this Chapter;

§ 31A-14 negatives application of the Uniform Simultaneous Death Act in cases governed by this Chapter;

§ 31A-15 declares affirmatively against construction of this Act as penal, and also provides that this Act shall govern as to all acts specifically provided for in this Chapter, but negatives its application to all other cases;

§ 31A-16 contains a general severability clause as to each of the Act's various provisions to be applied should questions of its validity arise. This section also contains the usual repealer clause, and fixes a specific operative date for the Act.

§31A-13. Record determining slayer admissible in evidence.—The

record of the judicial proceeding in which the slayer was determined to be such, pursuant to Section 31A-3 of this Chapter, shall be admissible in evidence for or against a claimant of property in any civil action arising under this Chapter.

Comment:

In some states this type of statute which prevents a slayer from acquiring property from or through his victim provides that "the term 'slayer' shall mean any person who wilfully and unlawfully takes or procures to be taken the life of another." Under such a statute the court in the civil action relating to the property must determine whether or not the alleged slayer was guilty of this crime. By the great weight of authority the record of a conviction in a criminal proceeding is not admissible in the civil action to prove the guilt or innocence of the person tried because the parties to the two proceedings are not the same and the rules as to competency of witnesses and weight of testimony are different. [Interstate Dry Goods Co. v. Williamson, 91 W.Va. 156, 112 S.E. 301 (1922); Note, 31A.L.R. 261 (1924); Wigmore, Evidence (3d ed.) §1617a.] However, there is growing criticism of this general rule of exclusion and departure from it. [Eagle Star & Br. Doms. Inc. Co. v. Heller, 149 Va. 82, 140 S.E. 314 (1927); Wigmore, supra.]

The proposed statute takes a different form which should and is intended to avoid both this problem of evidence and retrial of the question of guilt in the civil action. In §31A-3 it defines the terms slayer, decedent, and property, and by other sections legally disables the slayer of the decedent from acquiring or retaining certain property rights which accrue as a result of the decedent's death. Slayer is defined as one who is by a court of competent jurisdiction adjudged guilty as a principal or accessory before the fact of the wilful and unlawful killing of the decedent by one of the following four methods: (a) upon a plea of not guilty; (b) upon a plea of guilty; (c) upon a plea of nolo contendere; or (d) by a specified civil action where the one who kills another dies or commits suicide before trial for the crime. In a civil action as to the property

order to effect the policy of this State that no person shall be allowed to profit by his own wrong. As to all acts specifically provided for in this Chapter, the rules, remedies, and procedures herein specified shall be exclusive, and as to all acts not specifically provided for in this Chapter all rules, remedies, and procedures, if any, which now exist or hereafter may exist either by virtue of statute, or by virtue of the inherent powers of any court of competent jurisdiction, or otherwise, shall be applicable.

Comment:

This section specifically states that this Chapter is not penal in nature, and does not purport to abrogate the common law or to cover every case of wrongful act that might bar property rights.

There is a doctrine that if legislation undertakes to provide for the regulation of human conduct in respect to a specific matter or thing already covered by the common law, and parts of which are omitted from the statute, such omissions must be taken generally as evidences of the legislative intent to repeal or abrogate the same. In re Lord & Polk Chem. Co., 7 Del. Ch. 248, 44A. 775 (1895). And while a court might not construe this legislation to be all-embracing and thus to supplant completely the common law on the subject, Smith v. Todd, 155 S.C. 322, 156 S.E. 506 (1930), this section preserves the common law, substantive and procedural, as to all acts not specifically provided for in this Chapter. While this Chapter seeks to provide for the situations in which the slayer may benefit from the decedent's death, some situations of wrong will inevitably arise which are not so covered but should be in accordance with the stated policy to prevent one from profiting by his own wrong. Thus the fact that this Chapter covers only certain acts of wrongful killing does not necessarily preclude other wrongful acts from barring property rights by common law, such as involuntary manslaughter or an acquitted killer in some cases. In such instances the constructive trust concept and other non-statutory remedies remain available under the terms

of this Chapter. [Metropolitan Life Ins. Co. v. Hill, 115 W.Va. 515, 177 S.E. 188 (1934); Scott, Trusts (2d ed.) §492.4].

§31A-16. Chapter to be severable.—If any provisions of this Chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

Comment:

This section uses the severability clause adopted by the commissioners on Uniform Laws, contains the usual repealer clause as to conflicting laws, and sets an effective date sufficiently subsequent to the expected adjournment of the 1961 General Assembly to give the bar and the public notice of the Act.

Sec. 2. G. S. 28-10, 28-11, 28-12, 52-19, 52-20, 52-21, and all other laws and clauses of laws in conflict with this Act are hereby repealed.

Comment:

The foregoing provisions of Chapter 28 relate to the administration of estates. G. S. 28-10 provides that a divorce a vinculo or a felonious slaying shall work a forfeiture of all right of the affending party to administer the estate of the other, and to a distributive share in the personal property of the other, and every other right and estate in the personal estate of the other. G. S. 28-11 provides that elopement and adultery of the wife shall work such a forfeiture, and 28-12 constitutes a forfeiture of the husband's rights in the wife's estate if he shall separate from her and live in adultery, or abandon her or maliciously turn her out of doors. The provisions of Chapter 52 set forth above would repeal Article 2 of that chapter entitled, "Acts Barring Reciprocal Property Rights of Husband and Wife". G. S. 52-19 is generally repetitious of 28-10 and also provides that divorce a vinculo or

felonious slaying shall bar all rights of the offending spouse in the real and personal property of the other spouse. G. S. 52-20 provides that if a wife elopes with an adulterer or abandons her husband, or if a divorce from bed and board is granted on application of the husband, she shall lose all right in her husband's property. G. S. 52-21 provides that the husband's misconduct shall have the same effect on his rights on the wife's estate.

The repealed sections are included in Article 1 of this Bill, and it therefore appears unnecessary to have them repeated elsewhere in the statutes.

Sec. 3. This Act shall become effective October 1, 1961.