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Property Law -- The Beneficiary's Rights to the Proceeds of an Insurance Policy When He Takes the Life of the Insured

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dence in his judicial system. The Commission system also adds some needed bite to the Code of Judicial Conduct. In light of the judicial commission cases from other jurisdictions, the North Carolina system seems unlikely to run afoul of the due process and equal protection challenges raised by the *Crutchfield* dissent. There are, nevertheless, some jurisdictional problems posed by the judicial article of the North Carolina Constitution. Hopefully, the General Assembly will remedy these problems, or the court will find a way to reconcile them, so that the Commission can fulfill its promise in North Carolina.

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Property Law—The Beneficiary's Rights to the Proceeds of an Insurance Policy When He Takes the Life of the Insured

Enacted in 1961, Chapter 31A of the North Carolina General Statutes precludes one who is convicted of a wilful and unlawful homicide from acquiring a proprietary benefit because of the death of his victim.[1] In *Quick v. United Benefit Life Insurance Company*[2] the North Carolina Supreme Court had its first opportunity to interpret the life insurance provisions of this chapter.[3] Faced with the issue whether

1. Bolich, *Acts Barring Property Rights*, 40 N.C.L. REV. 175, 193 (1962).
2. 287 N.C. 47, 213 S.E.2d 563 (1975).
3. For the purposes of this note the relevant sections of N.C. GEN. STAT. § 31A (1966) are:

> **§ 31A-3. Definitions.**—As used in this article, unless the context otherwise requires, the term—
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> (3) "Slayer" means
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> 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; . . . .
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> . . . .
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> **§ 31A-11. Insurance benefits.**—(a) Insurance and annuity proceeds payable to the slayer:
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> (1) As the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or
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> (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.
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> . . . .
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> **§ 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 § 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.

a beneficiary who had been convicted of involuntary manslaughter for the killing of the insured could retain the proceeds of the insurance policy, the court held that proof of a conviction of involuntary manslaughter did not disqualify the beneficiary under the statute.[4] Nevertheless, because the statute was not intended to supplant completely the common law in this area,[5] the court, in an unprecedented holding, concluded that such a conviction was sufficient to bar the beneficiary on the common-law principle that "no one shall be allowed to profit from his own wrong."[6]

Jill Quick, having shot and killed her husband, Gary Quick, was indicted for murder, convicted of involuntary manslaughter, and sentenced to serve five to seven years in state prison. At the time of the killing, Jill was the named beneficiary of an insurance policy in the amount of $10,000 on the life of her husband. The present case arose when the administratrix of her husband's estate brought an action for declaratory judgment to determine the ownership of the life insurance proceeds. Named as defendants in the action were Jill Quick and United Benefit Life Insurance Company. The insurance company, however, was permitted to withdraw after paying the proceeds to the clerk of superior court.[7]

. . . .

§ 31A-15. Chapter to be broadly construed.—This chapter 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. 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.

4. 287 N.C. at 54, 213 S.E.2d at 567.

5. *Id.* at 56, 213 S.E.2d at 569.

6. *Id.* at 59, 213 S.E.2d at 570-71. Under the statute, a beneficiary who is precluded from receiving the proceeds of insurance on the life of the insured cannot receive these proceeds indirectly as an heir of the insured's estate. N.C. GEN. STAT. § 31A-4 (1966). This section confirms prior North Carolina case law. *E.g.*, Parker v. Potter, 200 N.C. 348, 354, 157 S.E. 68, 71 (1931). In other states, however, there is authority to the contrary. *E.g.*, Moore v. Prudential Life Ins. Co., 342 Pa. 570, 21 A.2d 42 (1941).

7. 287 N.C. at 49, 213 S.E.2d at 564. As a general rule, an insurance company is not relieved of its obligation to pay the proceeds of the policy when the beneficiary kills the insured. *See, e.g.*, Murchison v. Murchison, 203 S.W. 423 (Tex. Civ. App. 1918). There are exceptions, however, (1) if the policy contains provisions voiding it when the beneficiary causes the death of the insured, Grand Circle Women of Woodcraft v. Rausch, 24 Colo. App. 304, 134 P. 141 (1913); (2) if the beneficiary obtained the policy fraudulently, that is, intending at the time he procured it to kill the insured, Goldstein v. New York Life Ins. Co., 225 App. Div. 642, 234 N.Y.S. 250 (1929), *modifying* 133 Misc. 106, 231 N.Y.S. 161 (1928); *see* Henderson v. Life Ins. Co., 176 S.C. 100,

At trial, neither party introduced evidence as to the factual circumstances immediately preceding the death of the insured.[8] The only evidence before the court that related to the killing was the record of Jill's conviction of involuntary manslaughter which was submitted without objection from the defendant. Based on this evidence and a stipulation of the parties that the only issue to be decided was whether Jill was barred under the statute,[9] the court concluded that involuntary manslaughter was an unlawful and wilful killing within the meaning of section 31A-3(3)a of the General Statutes.[10] Hence, Jill's conviction of involuntary manslaughter disqualified her as a "slayer" under the statute. Alternatively, the court held that apart from any statutory grounds for forfeiture, Jill was barred from retaining the proceeds on the basis of common-law doctrine and public policy.[11] In light of these two conclusions of law, the trial court entered judgment ordering the clerk of superior court to pay the proceeds to the ancillary administrator.[12] Jill appealed,[13] and the North Carolina Court of Appeals reversed on the grounds that involuntary manslaughter is not a wilful killing within the meaning of the statute[14] and that the enactment of the statute had abrogated otherwise applicable common-law rules.[15]

On further appeal the North Carolina Supreme Court agreed that a "wilful killing" as used in section 31A-3 of the North Carolina General Statutes means an intentional homicide, and thus, a conviction of involuntary manslaughter does not, per se, bar recovery of the proceeds.[16] The court, however, reversed the conclusion of the court of appeals that the enactment of the statute had supplanted the common law, holding instead that "G.S. § 31A-15 preserved the common law

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179 S.E. 680 (1935); or (3) if the beneficiary is the only person having an interest in the policy, Anderson v. Life Ins. Co., 152 N.C. 1, 67 S.E. 53 (1910) (dictum). *Accord*, 5 A. SCOTT, THE LAW OF TRUSTS § 494.2 (3d ed. 1967). These exceptions would still have application under chapter 31A since the statute uses the word "proceeds" and a court faced with this issue could hold that no proceeds had accrued. [N.C.] GENERAL STATUTES COMMISSION, SPECIAL REPORT ON AN ACT TO BE ENTITLED "ACTS BARRING PROPERTY RIGHTS" 26 (1961) [hereinafter cited as SPECIAL REPORT].

8. 281 N.C. at 58, 213 S.E.2d at 570.

9. *Id.* at 49, 213 S.E.2d at 564.

10. *Id.* at 49, 213 S.E.2d at 565.

11. *Id.*

12. Because Ida Mae Quick was a resident of South Carolina, an ancillary administrator, Lester G. Carter, Jr., was appointed. *Id.* at 49, 213 S.E.2d at 564.

13. 23 N.C. App. 504, 209 S.E.2d 323 (1974).

14. *Id.* at 505, 209 S.E.2d at 324.

15. *Id.* at 507, 209 S.E.2d at 325. Judge Campbell dissented on grounds that section 31A-15 controlled and Jill Quick's act was an unlawful killing which would bar recovery. *Id.*

16. 287 N.C. at 54, 213 S.E.2d at 567.

both substantively and procedurally, as to all acts not specifically provided for in Chapter 31A."[17]

Having determined that common law applied, the court confronted the issue whether the evidence presented at trial was sufficient to bar recovery under North Carolina common law. The court held that although the record of a criminal conviction was generally not admissible in a common-law proceeding,[18] the trial judge did not err in considering such evidence because Jill had failed to object to its admission.[19] Moreover, the court concluded that such evidence was sufficient to support the trial court's conclusion that Jill was disqualified under the common law since "[c]ulpable negligence proximately resulting in death comes within the purview of the common law maxim that no one shall be permitted to profit by his own wrong."[20] Accordingly, the supreme court reversed and remanded for reinstatement of the trial court's original judgment.[21]

In *Quick* the court grounded its decision barring defendant on a maxim that has been the source of many common-law rules and statutory provisions disqualifying a beneficiary from receiving insurance proceeds when he has killed the insured.[22] Several problems frequently arise in applying these common-law and statutory rules to particular cases. The principal concerns are the type of homicide that will disqualify the killer and the admissibility of the criminal conviction record in the civil proceeding.[23]

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17. *Id.* at 56, 213 S.E.2d at 569.
18. *Id.* at 57, 213 S.E.2d at 569.
19. *Id.* at 59, 213 S.E.2d at 570.
20. *Id.* at 59, 213 S.E.2d at 571.
21. *Id.*
22. *See, e.g.*, cases cited notes 25-28 and statutes cited notes 36 & 37 *infra*. *See generally* Bolich, *Acts Barring Property Rights*, 40 N.C.L. REV. 175 (1962) [hereinafter cited as Bolich]; Grossman, *Liability and Rights of the Insurer Where the Death of the Insured is Caused by the Beneficiary or by an Assignee*, 10 B.U.L. REV. 281 (1930) [hereinafter cited as Grossman]; Lipscomb, *Insurer's Liability and Rights When Insured's Death is Caused by the Beneficiary or Assignee*, 8 MISS. L.J. 476 (1936); Wade, *Acquisition of Property by Wilfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715 (1936); Annot., 27 A.L.R.3d 794 (1961).
23. A third problem is who is entitled to the insurance proceeds when the beneficiary is determined to be a slayer. The answer to this question depends on factors such as the relation of the beneficiary to the insured and the provisions of the insurance policy. If the beneficiary is not the insured's next of kin, generally the beneficiary will hold the proceeds as constructive trustee for the estate of the insured. 5 A. SCOTT, THE LAW OF TRUSTS § 494.1 (3d ed. 1967) and cases cited therein. On the other hand, if the beneficiary is the next of kin, the majority of the courts have held that the proceeds are to pass as if the beneficiary predeceased the insured. *Id.* Accordingly, the person next in line of succession would take, or if there were no possible takers other than the beneficiary the proceeds would escheat to the state. *Id.*

With respect to the first of these questions, the maxim itself provides no logical point at which to draw the line.[24] Applied literally, it could encompass all wrongs from premeditated murder to mere accident.[25] In the absence of a statute, however, courts uniformly hold that a beneficiary is not prohibited from taking insurance proceeds when the act causing death is merely a civil wrong.[26] At the other end of the scale, it is virtually certain that a beneficiary who kills the insured for the *purpose* of acquiring the proceeds would be barred.[27] Between these extremes there is at least some surface disagreement as to the test to be applied in determining which acts will preclude recovery. Several cases have held that the killing of the insured under circumstances that would constitute the crime of murder is sufficient to bar recovery;[28] other decisions hold specifically that manslaughter does not disqualify.[29]

Finally, if the primary beneficiary murders the insured and there is a contingent beneficiary named in the policy, the contingent beneficiary will take the proceeds. Parker v. Potter, 200 N.C. 348, 157 S.E. 68 (1931). *But see* Bullock v. Expressmen's Mut. Life Ins. Co., 234 N.C. 254, 67 S.E.2d 71 (1951), in which the Supreme Court of North Carolina held that when a policy designated a contingent beneficiary to take if the primary beneficiary failed to survive the insured, and the primary beneficiary feloniously killed the insured, the failure of the contingency to occur prevented the contingent beneficiary from receiving the proceeds which passed to the insured's estate. *Accord*, Beck v. Downey, 191 F.2d 150 (9th Cir. 1951), *vacated per curiam*, 343 U.S. 912 (1952).

24. Grossman, *supra* note 22, at 290.

25. Minasian v. Aetna Life Ins. Co., 295 Mass. 1, 5, 3 N.E.2d 17, 18-19 (1936).

26. *E.g.*, Schreiner v. High Court Catholic Order of Foresters, 35 Ill. App. 576 (1890). The beneficiary also is not disqualified when the killing is justifiable or excusable. *E.g.*, Holdom v. Grand Lodge of Ancient Order of United Workmen, 159 Ill. 619, 43 N.E. 772 (1895) (insanity); American Nat. Life Ins. Co. v. Shaddinger, 205 La. 11, 16 So. 2d 889 (1944) (self-defense); Campbell v. Ray, 102 N.J. Super. 235, 245 A.2d 761 (Ch. Div. 1968), *aff'd per curiam*, 109 N.J. Super. 509, 259 A.2d 473 (App. Div. 1969).

27. *E.g.*, Goldstein v. New York Life Ins. Co., 133 Misc. 106, 231 N.Y.S. 161 (1928), *modified on other grounds*, 225 App. Div. 642, 234 N.Y.S. 250 (1929); *see* New York Mut. Life Ins. Co. v. Armstrong, 117 U.S. 591 (1886). Although these cases hold that the existence of a purpose to obtain the proceeds is sufficient to disqualify a beneficiary, they do not say whether such a motive is required. That such a purpose is necessary has been suggested in a few concurring and dissenting opinions in cases not directly in point. Grossman, *supra* note 22, at 285, *citing* Gollnik v. Mengel, 112 Minn. 349, 128 N.W. 292 (1910) (concurring opinion); Box v. Lanier, 112 Tenn. 393, 79 S.W. 1042 (1904) (dissenting opinion). Other cases indicate that a purpose to accelerate the maturity of the policy is not necessary. Grossman at 286, *citing* Schreiner v. High Court Catholic Order of Foresters, 35 Ill. App. 576 (1890) (dictum); Smith v. Metropolitan Life Ins. Co., 122 Misc. 136, 203 N.Y.S. 173 (1923), *aff'd*, 125 Misc. 670, 211 N.Y.S. 755 (1925) (dictum); *cf.* Bryant v. Bryant, 193 N.C. 372, 378, 137 S.E. 188, 191 (1927) (dictum).

28. *E.g.*, Schmidt v. Northern Life Ass'n, 112 Iowa 41, 83 N.W. 800 (1900); Slocum v. Metropolitan Life Ins. Co., 245 Mass. 565, 139 N.E. 816 (1923). *See also* Garner v. Phillips, 229 N.C. 160, 47 S.E.2d 845 (1948).

29. *E.g.*, Minasian v. Aetna Life Ins. Co., 295 Mass. 1, 3 N.E.2d 17 (1936); *see* RESTATEMENT OF RESTITUTION § 187, comment *e* at 766-67 (1937).

Although these cases seem to indicate that the determinative factor is whether the homicide involved is technically murder or some lesser criminal offense, the few cases that have directly considered what elements are necessary to bar the beneficiary have held that the true test is whether the beneficiary *intentionally* killed the insured.[30] As one court noted in *Metropolitan Life Insurance Company v. McDavid*,[31] "the real reason for not permitting recovery is that the beneficiary intentionally took the life of the insured and that the intentional act should not place the beneficiary in position to enjoy a benefit which would not have been enjoyed and could not have been enjoyed except for the wicked intentional killing."[32]

In the North Carolina cases on point, the rule generally has been stated to the effect that a beneficiary is barred who "feloniously takes" the life of the insured.[33] While a felonious act in the criminal law context includes involuntary manslaughter,[34] the decisions in North Carolina, and in other jurisdictions where similar statements of the rule exist, indicate that courts have not used the word "felonious" in the strict criminal law sense but had in mind an intentional homicide.[35]

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30. *E.g.*, Tippens v. Metropolitan Life Ins. Co., 99 F.2d 671 (5th Cir. 1938); Schreiner v. High Court Catholic Order of Foresters, 35 Ill. App. 576 (1890); Commercial Travelers Mut. Acc. Ass'n v. Witte, 406 S.W.2d 145 (Ky. 1966); Schifanelli v. Wallace, 271 Md. 177, 315 A.2d 513 (1974); *cf.* Wells v. Harris, 414 S.W.2d 343 (Kansas City, Mo., Ct. App. 1967).

31. 39 F. Supp. 228 (E.D. Mich. 1941).

32. *Id.* at 232; *accord*, Throop v. Western Indemnity Co., 49 Cal. App. 322, 193 P. 263 (Dist. Ct. App. 1920). *See also* United States v. Kwasniewski, 91 F. Supp. 847, 852 (E.D. Mich. 1950).

33. *E.g.*, Bullock v. Expressmen's Mut. Life Ins. Co., 234 N.C. 254, 67 S.E.2d 71 (1951); Parker v. Potter, 200 N.C. 348, 157 S.E. 68 (1931).

34. N.C. GEN. STAT. § 14-18 (1969) provides:

> **Punishment for manslaughter.**—If any person shall commit the crime of manslaughter he shall be punished by imprisonment in the county jail or State prison for not less than four months nor more than twenty years: Provided, however, that in cases of involuntary manslaughter, the punishment shall be in the discretion of the court, and the defendant may be fined or imprisoned, or both.

In State v. Dunn, 208 N.C. 333, 180 S.E. 708 (1935), the North Carolina Supreme Court in an opinion by Justice Brogden held that the proviso to section 14-18 was intended merely to mitigate punishment for involuntary manslaughter and did not make involuntary manslaughter a separate offense classifiable as a misdemeanor.

35. In *Parker*, for example, a statement by the court that "if a husband insures his life for the benefit of his wife and afterwards *feloniously takes* her life, neither he nor his estate will be permitted to profit by his wrong," 200 N.C. at 352, 157 S.E. at 70 (emphasis added), is followed by a series of examples that suggest that the court was referring to an intentional killing. *Id.* Moreover, the court cited New York Mut. Life Ins. Co. v. Armstrong, 117 U.S. 591 (1886), a case that also contains language that "strongly suggests that the court had in mind an intentional taking." Grossman, *supra* note 22, at 289. *But see* Anderson v. Life Ins. Co., 152 N.C. 1, 67 S.E. 53 (1910), in which the supreme court noted that "[i]t is a principle very generally ac-

Thus, historically, the dividing line between homicides that bar recovery and those that do not has been drawn short of involuntary manslaughter both by the North Carolina courts and courts in other jurisdictions.

Several states have enacted statutes that deal expressly with this problem, and, of course, in these jurisdictions the language of the statute controls.[36] Although these statutes lack uniformity in describing the acts that will bar recovery,[37] the courts, in interpreting them, generally have agreed that they apply only to intentional killings.[38]

An additional issue raised where such statutes are in force is whether they are intended to abrogate the common law. Most courts have held

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cepted that a beneficiary who has caused or procured the death of the insured *under circumstances amounting to a felony* will be allowed no recovery on the policy." *Id.* at 2, 67 S.E. at 53 (emphasis added). Apparently, this statement of the rule explains the dictum in the court of appeals' opinion in *Quick* that Jill Quick could not have recovered on the policy if the statute had not superseded the common law. 23 N.C. App. at 507, 209 S.E.2d at 325. However, the precise issue in *Anderson* was whether the estate of a beneficiary could recover on a life insurance policy when the beneficiary *murdered* the insured and committed suicide. Thus, for felonies other than murder, the rule stated in *Anderson* is merely dictum. Moreover, as noted by Grossman in cases such as *Anderson*, "the requirement that the homicide be wilful as well as felonious usually appears more or less definitely from the language of the decisions *as a whole*." Grossman at 289. (emphasis added). *See also* Slocum v. Metropolitan Life Ins. Co., 245 Mass. 565, 139 N.E. 816 (1923); Johnson v. Metropolitan Life, 85 W. Va. 70, 100 S.E. 865 (1919). In addition, where statutes simply require that the killing be felonious, the courts have interpreted this to mean an intentional killing. *E.g.*, Dowdell v. Bell, 477 P.2d 170 (Wyo. 1970); *accord*, Travelers Ins. Co. v. Thompson, 281 Minn. 547, 163 N.W.2d 289 (1968), *appeal dismissed and cert. denied per curiam*, 395 U.S. 161 (1969). In *Thompson*, the court in interpreting a statute that disqualified a beneficiary who "feloniously takes" the life of the insured, held that "the statute is meant to apply to those wrongdoers who intentionally cause the wrong and not to those who have been negligent." *Id.* at 557, 163 N.W.2d at 296; *accord*, Rosenberger v. Northwestern Mut. Life Ins. Co., 176 F. Supp. 379 (D. Kan. 1959), *modified on other grounds*, 182 F. Supp. 633 (D. Kan. 1960). *See also* Hatcher v. Aetna Life Ins. Co., 105 F. Supp. 808, 810-11 (D. Ore. 1952).

36. *E.g.*, OKLA. STAT. ANN. tit. 84, § 231 (Supp. 1975); S.C. CODE ANN. § 19-5 (1962); W. VA. CODE ANN. § 42-4-2 (1966).

37. *E.g.*, IOWA CODE ANN. § 633.536 (1964) (feloniously takes); S.C. CODE ANN. § 19-5 (1962) (unlawfully kills). The South Carolina statute specifically exempts involuntary manslaughter.

38. *E.g.*, Dowdell v. Bell, 477 P.2d 170 (Wyo. 1970) in which the court held that although the word "intentionally" is not used in the Wyoming statute, the statute codifies the common law, which historically was limited to intentional and felonious acts causing the death of the insured. *Id.* at 172; *accord*, Greer v. Franklin Life Ins. Co., 148 Tex. 166, 221 S.W.2d 857 (Tex. 1949); *see* Travelers Ins. Co. v. Thompson, 281 Minn. 547, 163 N.W.2d 289 (1968), *appeal dismissed and cert. denied per curiam*, 395 U.S. 161 (1969). *But cf.* Hamblin v. Marchant, 103 Kan. 508, 175 P. 678 (1918). At the time of the *Hamblin* decision, however, the Kansas statute made conviction of *any* killing a bar. *Id.* at 509, 175 P. at 678-79. The statute was amended to require a felonious killing which has been interpreted to mean an intentional homicide. Rosenberger v. Northwestern Mut. Life Ins. Co., 176 F. Supp. 379 (D. Kan. 1959), *modified on other grounds*, 182 F. Supp. 633 (D. Kan. 1960).

that the statutes only supplement common-law rules and do not supplant them.[39] Thus, when the act of the beneficiary is not specifically barred by the statute, it is still possible to prohibit recovery if it is shown that the beneficiary *intended* to kill the insured.[40]

A second problem encountered by courts when the beneficiary kills the insured involves the admissibility and weight to be accorded the record of the criminal conviction in the civil proceeding. As a general rule of evidence, the judgment of conviction is neither admissible nor conclusive.[41] The reasons given by the courts for this rule of exclusion include lack of mutuality,[42] the fact that the record of conviction is hearsay,[43] and differences in the burdens of proof[44] and in the rules as to competency of witnesses in criminal and civil proceedings.[45] Thus, in the absence of a statute, a party seeking to bar a beneficiary must produce evidence of the circumstances surrounding the killing in

39. *See, e.g.*, Keels v. Atlantic Coastline R.R., 159 S.C. 520, 157 S.E. 834 (1931); Smith v. Todd, 155 S.C. 323, 152 S.E. 506 (1930); Metropolitan Life Ins. Co. v. Hill, 115 W. Va. 515, 177 S.E. 188 (1934). *But see* Rose v. Rose, 79 N.M. 435, 444 P.2d 762 (1968).

40. *See* cases cited note 39 *supra.*

41. *E.g.*, Beckworth v. Phillips, 6 Ga. App. 859, 65 S.E. 1075 (1909) (not conclusive); Interstate Dry Goods Stores v. Williamson, 91 W. Va. 156, 112 S.E. 301 (1922) (not admissible). The North Carolina cases follow this rule. *E.g.*, Watters v. Parrish, 252 N.C. 787, 115 S.E.2d 1 (1960); *see* cases cited in 1 D. STANSBURY, NORTH CAROLINA EVIDENCE § 143 (H. Brandis rev. 1973). There is an exception to this rule when a convicted criminal attempts to profit from his crime in a civil action. In such instances, some courts have held that a criminal conviction record is admissible, *see, e.g.*, Schindler v. Royal Ins. Co., 258 N.Y. 310, 179 N.E. 711 (1932), and others have held that the judgment of conviction is conclusive. *E.g.*, Taylor v. Taylor, 257 N.C. 130, 125 S.E.2d 373 (1962).

42. *E.g.*, Travelers Ins. Co. v. Thompson, 281 Minn. 547, 163 N.W.2d 289 (1968), *appeal dismissed and cert. denied per curiam*, 395 U.S. 161 (1969); Interstate Dry Goods Stores v. Williamson, 91 W. Va. 156, 112 S.E. 301 (1922). The courts have held that there is no mutuality of estoppel because the defendant in the criminal case could not have used an acquittal in the subsequent civil action. Clearly, it is reasonable to deny giving conclusive effect to an acquittal in the civil proceeding, if not to exclude it entirely, because of the differences in the burdens of proof and the parties in the two proceedings. However, when the defendant has been convicted by proof beyond a reasonable doubt after having a full opportunity to present his case, it would seem both logical and convenient to allow the conviction at least to be used in the civil case. Apparently, however, the courts in denying the use of the judgment of conviction have found the desirability for preserving symmetry in the law more compelling.

43. *See* Travelers Ins. Co. v. Thompson, 281 Minn. 547, 163 N.W.2d 289 (1968), *appeal dismissed and cert. denied per curiam*, 395 U.S. 161 (1969). *See also* 1 D. STANSBURY, NORTH CAROLINA EVIDENCE § 143 (H. Brandis rev. 1973).

44. *E.g.*, Webb v. McDaniel, 218 Ga. 366, 127 S.E.2d 900 (1962); State v. Roach, 83 Kan. 606, 112 P. 150 (1910).

45. SPECIAL REPORT, *supra* note 7, at 29; *see* Webb v. McDaniel, 218 Ga. 366, 127 S.E.2d 900 (1962). *See also* Interstate Dry Goods Stores v. Williamson, 91 W. Va. 156, 112 S.E. 301 (1922).

order to establish a prima facie case.[46]

Where statutes have been enacted their language controls the use of the criminal conviction in the subsequent civil proceeding. If a statute does not require a criminal conviction in order to bar recovery, the court in the civil case must itself determine whether the killer was *guilty* of a proscribed homicide.[47] In such instances, the criminal conviction is not admissible to prove guilt for the same reasons applicable where no statute is in effect.[48] On the other hand, when the statute defines a slayer as one who has been *convicted* of a wilful homicide, the principle issue in the civil action is simply whether the person has been so convicted.[49] As the court noted in *Quick*, where such statutes are in effect, the record of the conviction is admissible in the civil action "not to prove guilt, but to prove the conviction as a separate relevant fact which would of itself bar the beneficiary from acquiring or retaining the proceeds."[50]

The court in *Quick* resolved many of the problems that arise when a beneficiary takes the life of the insured. In many respects, the opinion of the court merely reiterates well established common-law rules. In particular, the holding that a criminal conviction record is not admissible in a common-law civil proceeding is clearly supported by the weight of authority in North Carolina and in other jurisdictions.[51] Similarly, the holdings of the court that the statute applies only to intentional homicides and was not intended to supplant the common law are consistent not only with the legislative history of the statute[52] but also with the majority of decisions of other courts interpreting similar statutes.[53]

However, the conclusion of the court that "culpable negligence" is sufficient to bar recovery at common law marks an unprecedented extension of the rule disqualifying a beneficiary who caused the death

46. Quick v. United Benefit Life Ins. Co., 287 N.C. at 58, 213 S.E.2d at 570. *See also* Lillie v. Modern Woodmen, 89 Neb. 1, 130 N.W. 1004 (1911).

47. *See* 5 A. SCOTT, THE LAW OF TRUSTS § 492.4, at 3508 (3d ed. 1967).

48. SPECIAL REPORT, *supra* note 7, at 29.

49. *Id.* at 29-30; *see* Metropolitan Life Ins. Co. v. Hill, 115 W. Va. 515, 177 S.E. 188 (1934).

50. 287 N.C. at 57, 213 S.E.2d at 569; *accord*, Rosenberger v. Northwestern Mut. Life Ins. Co., 182 F. Supp. 633 (D. Kan. 1960), *modifying* 176 F. Supp. 379 (D. Kan. 1959); Metropolitan Life Ins. Co. v. Hill, 115 W. Va. 515, 177 S.E. 188 (1934). As the court also notes in *Quick*, "evidence that the 'slayer' was not in fact guilty of the crime would be both immaterial and inadmissible." 287 N.C. at 57, 213 S.E.2d at 569.

51. *See* cases cited note 41 *supra*.

52. 287 N.C. at 54-56, 213 S.E.2d at 568-69.

53. *See* cases cited notes 35, 38 & 39 *supra*.

of the insured.[54] The court cited no cases from North Carolina or other jurisdictions supporting its conclusion. Instead, the court apparently justified its holding on the basis of comments to the proposed act contained in a report by the Special Drafting Committee of the General Statutes Commission.[55] Specifically, the court seems to have relied on the observation by the committee that "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."[56] The court also quoted an article by Professor Bolich, a member of the Committee, in which he stated that "the fact that this chapter covers only wilful and unlawful homicide does not necessarily preclude other wrongful killings from barring property rights by common law, such as an unintentional killing resulting from reckless disregard for human life or during the commission of a felony."[57] Apparently, the court inferred from the comments of the committee and the statement of Professor Bolich that the common-law rule of North Carolina is that a beneficiary convicted of involuntary manslaughter should not be allowed to profit by his own wrong. Yet clearly, the purpose of these comments was merely to insure that common-law remedies were preserved as to acts not specifically provided under the statute. They are not addressed to the specific problem of what elements are necessary to disqualify a beneficiary in a common-law proceeding and certainly do not support the conclusion of the court that a conviction of involuntary manslaughter alone is sufficient evidence to bar recovery of the proceeds.

Moreover, other comments by the committee indicate that the better public policy is simply to bar one who *intentionally* takes the life of the insured. For example, in their comments on section 31A-3(1)a the committee states that "[t]he requirement that the killing be wilful and unlawful isn't the only possible rule, *but does seem a fair policy criterion.*"[58] Furthermore, the opinion of the court contains a state-

54. See cases cited notes 30-32 *supra.*

55. [N.C.] GENERAL STATUTES COMMISSION, SPECIAL REPORT ON AN ACT TO BE ENTITLED "ACTS BARRING PROPERTY RIGHTS" (1961). The members of the committee were Fred B. McCall, Professor of Law, University of North Carolina Law School; W. Bryan Bolich, Professor of Law, Duke University Law School; and Norman A. Wiggins, Professor of Law, Wake Forest College Law School. SPECIAL REPORT, *supra* note 7, at 1.

56. SPECIAL REPORT at 31, *quoted at* 287 N.C. at 55, 213 S.E.2d at 568.

57. Bolich, *supra* note 22, at 221, *quoted at* 287 N.C. at 55-56, 213 S.E.2d at 568.

58. SPECIAL REPORT at 12 (emphasis added).

ment by Professor Bolich that "this section utilizes the criterion adopted by a majority of the statutes and common law decisions on the subject—an intentional criminal homicide. *As an expression of public policy it seems a fair standard which requires the killing to be both unlawful and wilful.*"[59]

While it is true that both these statements relate specifically to the meaning of the word "slayer" as used in the statute, the statutory requirement that the killing be wilful in order to bar the beneficiary is an expression of the public policy of the state preventing one who intentionally kills another from unjustly enriching himself through his criminal act. It would seem, therefore, that the same policy and the same test should govern a proceeding at common law. In sum, the holding of the court that culpable negligence will bar recovery is not only unprecedented but also arguably contrary to the intent of the legislature and the public policy of North Carolina as expressed in the statute.

Even if one accepts this unique holding of the court, the result reached in *Quick* is certainly inequitable on the facts of the case. At trial both parties stipulated that the *only* issue to be decided was whether Jill Quick was barred from taking the proceeds under chapter 31A.[60] Arguably, this stipulation could be viewed as an agreement by the parties that Jill Quick was to be disqualified as a slayer under the statute or not at all. That is, the stipulation could be interpreted as a waiver by the plaintiff administratrix of any common-law remedy.[61] In that case, Jill should have been allowed to recover the proceeds since she was not a slayer under the court's interpretation of the statute. The court, however, held that it was not bound by the stipulation since it was one of law.[62] While it is true that the parties cannot stipulate as

59. Bolich, *supra* note 22, at 193-94, *quoted at* 287 N.C. at 52-53, 213 S.E.2d at 567 (emphasis added).

60. 287 N.C. at 49, 213 S.E.2d at 564.

61. In Rickert v. Rickert, 282 N.C. 373, 193 S.E.2d 79 (1972), the court stated: "'[s]tipulations will receive a reasonable construction with a view to effecting the intent of the parties; but in seeking the intention of the parties, the language used will not be so construed as to give the effect of an admission of a fact obviously intended to be controverted, *or the waiver of a right not plainly intended to be relinquished*, . . .'" *Id.* at 380, 193 S.E.2d at 83 (emphasis added). *See also* J.L. Roper Lumber Co. v. Elizabeth City Lumber Co., 137 N.C. 431, 49 S.E. 946 (1905).

If the parties had agreed that the stipulation was a waiver of the administratrix's common law remedy, it seems that Jill would have objected to the trial court's second conclusion of law on the grounds that it was contrary to the terms of the stipulation. Thus, Quick's failure to object is evidence that there was no mutual intent that the stipulation was to have the effect of a waiver of any common-law remedy.

62. 287 N.C. at 56, 213 S.E.2d at 569.

to matters of law,[63] they can limit the issues to be considered by relinquishing otherwise available rights.[64] Thus, the manner in which the court dispenses with the stipulation fails to give sufficient consideration to the question whether the stipulation shows that the administratrix intentionally waived any common-law remedy existing independent of the statute.

Moreover, regardless of the legal effect of the stipulation, it is evident from its terms that Jill was under the impression that the "decisive question" was whether she was barred by the statute,[65] and since the statute, contrary to the common law, made the conviction record admissible, it is understandable that she failed to object.[66] Furthermore, there was simply no way she reasonably could have known that a conviction of involuntary manslaughter, even if admitted, would have been sufficient to bar recovery since all the authorities indicate that a person seeking a common-law remedy would have to prove by the preponderance of evidence that she *intentionally* killed the insured.[67] Thus, the holding of the court that the record of the criminal conviction though generally inadmissible was not only entitled to be considered in the civil case but was also conclusive as to the issue amounts to a substantial miscarriage of justice.[68]

In conclusion, the supreme court in *Quick v. United Benefit Life Insurance Company* provided "considerable guidance" in the resolution of issues that often arise when a beneficiary of a life insurance policy

63. *See, e.g.*, Moore v. State, 200 N.C. 300, 156 S.E. 806 (1931).

64. *See* Forbes v. Commissioner, 82 F.2d 204 (1st Cir. 1936).

65. 287 N.C. at 56, 213 S.E.2d at 569.

66. Moreover, it would not have been unreasonable for Jill Quick to have introduced the conviction into evidence as a defense to her prosecution under the statute. *See, e.g.*, Metropolitan Life Ins. Co. v. Hill, 115 W. Va. 515, 177 S.E. 188 (1934).

67. *See* cases cited note 30 *supra*.

68. There are a few other explanations for the result reached by the court. First, the court may have construed section 31A-15 to empower the courts to consider all the circumstances of each case in determining whether the act of the defendant was the type of unlawful killing that should prohibit recovery. That is, the legislature may have intended that the courts adopt a "functional test," *see* Hatcher v. Aetna Life Ins. Co., 105 F. Supp. 808, 810-11 (D. Ore. 1952), in deciding these cases under which "intent" would be an important but not necessarily determinative factor. Although such a test would introduce considerable uncertainty into this area of the law, it potentially would avoid the undesirable results which could be reached by barring any beneficiary who has acted in a culpably negligent manner in causing the death of the insured. Second, the court may have viewed the verdict of involuntary manslaughter as a compromise or sympathy verdict—Jill being in fact guilty of murder. However, the only significant fact from which the court could draw such an inference was the severity of the sentence handed down by the judge. Finally, the court may not have wished to remand the case for a hearing on the question of intent or for a new trial because of the likelihood that a new round of litigation would severely deplete the insurance proceeds.

takes the life of the insured. Unfortunately, the benefits gained through such guidance are more than offset by the unjust manner in which the court reached its final result. Besides the unfairness on the peculiar facts of this case, the abandonment of the heretofore universally recognized common-law test of intent to kill has the potential for producing results that most courts and commentators would find inequitable.[69] For example, under the rule laid down by the court in *Quick*, a son whose reckless driving caused the death of his father would not be allowed to recover any insurance proceeds accruing as a result of his father's death.

It is submitted that the court should have remanded the case for a hearing to determine whether Jill Quick intentionally killed the insured. In disposing of the case in this manner, the court could have avoided setting an unwarranted and inequitable precedent in North Carolina.

JOHN MULL GARDNER

Real Property—Implied Warranty: Seller of Land Limited by Restrictive Covenants Implicitly Warrants That the Land Was Usable for the Restricted Purpose

In a case of first impression and without appellate court precedent in any other jurisdiction,[1] the North Carolina Supreme Court rejected the venerable maxim that in a sale of land by deed there are no implied warranties.[2] By extending the implied warranty concept developed for new home sales,[3] the court created a new substantive right based on

69. *E.g.*, Hatcher v. Aetna Life Ins. Co., 105 F. Supp. 808, 810-11 (D. Ore. 1952).

1. Brief for Plaintiff at 13, Hinson v. Jefferson, 287 N.C. 422, 215 S.E.2d 102 (1975). *But cf.* Hyland v. Parkside Inv. Co., 10 N.J. Misc. 1148, 162 A. 521 (S. Ct. 1932) where it was held a landlord who specifically restricts the use of a leased premise for one purpose guarantees the fitness of the premise for that particular purpose.

2. Huntley v. Waddell, 34 N.C. 33 (1851). In some states the prohibition against implied warranties for real property is statutorily sanctioned. *See, e.g.*, ORE. REV. STAT. § 93.140 (1973). In these states it is unlikely that the decision of Hinson v. Jefferson, 287 N.C. 422, 215 S.E.2d 102 (1975) can be followed without statutory changes, implied warranty cases for new homes notwithstanding. Yepsen v. Burgess, 525 P.2d 1019 (1974) (en banc). For unlike the implied warranty in new home cases in which the courts attempt to avoid merger and preserve the contractual obligations, the implied warranty in *Hinson* is derived from the deed itself. 287 N.C. at 435, 215 S.E.2d at 111.

3. Hartley v. Ballou, 286 N.C. 51, 209 S.E.2d 776 (1974). The case is analyzed in Note, *Real Property—Implied Warranty of Workmanlike Quality in New Housing Sales: New Protection for the North Carolina Homebuyer*, 53 N.C.L. REV. 1090 (1975)