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Adverse Possession — Husband And Wife Acquiring Title By Adverse Possession Hold As Tenants In Common. *Preston v. Smith, 293 S. W. 2d 51 (Tenn. Ct. App. 1955), Affirmed, Supreme Court of Tennessee, July, 1956.* H and W acquired title to certain realty by adverse possession, after which H died intestate and then W died intestate. The collateral heirs of H sought to eject the collateral heirs of W on the theory that H acquired title by twenty years exclusive possession adverse to the whole world, including W. The collateral heirs of W defended on the grounds that the joint adverse possession of H and W vested title in them as tenants by the entireties, that such title passed to W by survivorship, and that they succeeded to W's interest. The chancellor found that by their joint possession H and W acquired title as tenants in common with the result that the heirs at law of H collectively owned a one half undivided interest and the heirs at law of W collectively owned the other one half undivided interest. On appeal, *held,* affirmed. The estate of tenants by the entireties can only arise by devise, deed, or other instrument and not by operation of the statute of limitations. As for exclusive possession in H, under the evidence in the case, H and W did not consider the property exclusively that of H, and the intention and purpose of the two having been expressed by them, the equity court had the power as well as the duty to enforce their intention to hold the property jointly. The resulting estate therefore was a tenancy in common.

There are no Maryland cases on this point. However, tenancies by the entireties in Maryland are discussed in *Columbian Carbon Company v. Kight,* 207 Md. 203, 114 A. 2d 28 (1955), which cites *Fladung v. Rose,* 58 Md. 13 (1882), for the statement that while the legal unity of husband and wife no longer exists in Maryland as it existed at common law, where "proper words are employed" and the intention is manifest, a husband and wife are capable of holding as either joint tenants or tenants in common.

Attorneys — Highest Court Has Inherent Power To Prevent The Practice Of Law By Mortgage And Title Companies. *New Jersey State Bar Ass'n. v. Northern N.J. Mtg. Ass'n., 22 N. J. 184, 123 A. 2d 498 (1956).* Plaintiffs, the state bar association and five of its officers, sued to enjoin

the defendants, a mortgage company and an affiliate title abstract company, from practicing law in that the mortgage company and its affiliate prepared all the legal instruments used in the former's loan business, "such as bonds, mortgages, affidavits, abstracts of title, title reports and title certificates". The trial court dismissed the complaint on the ground that it was without jurisdicion since the admission and discipline of members of the bar was vested in the Supreme Court under the New Jersey Constitution (Art. VI, Sec. II, par. 3). On appeal, *held*, reversed and remanded. The jurisdiction of the Supreme Court in such matters did not rob the lower court of its original general jurisdiction. The court considered the question of whether such "practice of law" could be prohibited by the courts in view of the fact that New Jersey penal statutes condemning unauthorized practice specifically exempt those engaged in the business of searching or insuring title to real estate, in so far as their activities relate to (1) the rendering of legal advice or to the preparation and execution of conveyances or other instruments connected with or incidental to the guaranteeing or searching of titles to real estate, or (2) activities relating to documents incidental to the leasing, sale or exchange of real or personal property, or the loaning of money on mortgages on real or personal property: N. J. S. 2A: 170-81, N. J. S. A. The court held that under the State Constitution granting it jurisdiction over the practice of law, its jurisdiction is exclusive, and even in the absence of such constitutional provision, is inherent. While the legislature had acted to penalize unauthorized practice, these penal statutes are an aid to and not a limitation upon the regulatory power of the judiciary.

Although the Maryland Constitution makes no provision for controlling the practice of law, statutory control has been asserted. Md. Code (1951), Art. 10, sets forth the conditions for admission to practice and defines and imposes penalties for unauthorized practice. Art. 27, Sec. 16, provides penalties for the practice of law by corporations, but specifically exempts title companies, collection agencies, and insurance companies defending the insured. What inherent jurisdiction the courts may exercise remains to be developed.

Evidence — Privilege Of Journalist Not To Reveal His Source Of Information Is Waived By Testimony As To "Reliable Source". *Brogan v. Passaic Daily News, 22 N. J. 139, 123 A. 2d 473 (1956).* In a suit against a publisher for

printing and circulating a libelous story, the defendant pleaded, *inter alia,* good faith, fair comment, and lack of malice. The defendant's editor testified that he had received the story from a "reliable source" but claimed the privilege of a state statute (N. J. S. 2A: 81-10, N. J. S. A.) which provides that persons may not be compelled to disclose the source of information published in the newspaper by which they are employed. The trial court over objection admitted the testimony and upheld the privilege. On appeal from a judgment for actual but not punitive damages, *held,* reversed and remanded for retrial of punitive damages. If the privilege is claimed, the defendant may not assert a reliable source as indicating good faith, fair comment, and lack of malice.

Maryland has a statute substantially the same as that of New Jersey: Md. Code (1951), Art. 35, Sec. 2. The privilege extends to persons connected with or employed on newspapers and radio and television stations and may be claimed ". . . in any legal proceeding or trial or before any committee of the legislature or elsewhere . . ."

Labor Relations — Selling Of Business Can Be Termination Of Employment Requiring Seller To Pay Employees Severance Pay. *Adams v. Jersey Central Power & Light Company, 120 A. 2d 737, 21 N. J. 8 (1956).* Plaintiffs were employees of the defendant under a contract providing severance pay (one week's pay multiplied by number of years' service) if employment should be terminated through no fault of the employee. Defendant sold his business by a contract under which the purchaser refused to assume any liabilities of the defendant. Some of the plaintiffs were rehired under a contract which stipulated that severance pay would be calculated only on basis of continuous service with the purchasers. Plaintiffs sued to receive severance pay. On appeal from judgment for plaintiffs, *held,* affirmed.

Severance pay is recompense for termination of the employment relationship, in the form of relief for the privations of job loss not caused by misconduct of the employee, granted on the basis of service rendered during the period of the agreement. Defendant's sale of the business was as much a termination of the employment relation as a blanket firing, in view of the fact that the purchaser refused to continue the agreement and plaintiffs consented to no novation.

See generally 147 A. L. R. 151; 40 A. L. R. 2d 1044.

Negligence — Gift By Father Of Automobile To Adult Son Known To Be Reckless And Addicted To Drink Will Not Render Father Liable For Son's Negligent Operation Thereof. *Brown v. Harkleroad, 287 S. W. 2d 92 (Tenn. 1956).* The defendant, knowing of his adult son's propensity to recklessness and drink, nevertheless gave him a used car, in the negligent operation of which the son collided with and injured the automobile of the plaintiff. On appeal from judgment for the plaintiff against the defendant father, *held,* reversed. In that automobiles are not categorized as dangerous instrumentalities, it would be carrying the doctrine of concurrent liability to an abnormal degree to charge the donor of an automobile with liability for subsequent injuries resulting from the misuse of his gift.

Rounds v. Phillips, 166 Md. 151, 170 A. 532 (1934) and 168 Md. 120, 177 A. 174 (1935), established the primary liability of a parent who, knowing or *having reason to know* of his *minor* child's recklessness, fails to prohibit his operating an automobile. The language is strong enough to raise serious doubt whether the "gift" maneuver would be permitted as a means of insulating the parent from liability, even if the child were adult. See note, *Liability of Parents for Tort of Child,* 2 Md. L. Rev. 288 (1938).

Taxation — Liquidation Of Bad Debt, Substantially But Inadequately Secured, May Be Postponed To Obtain Tax Advantage. *Loewi v. Ryan, 299 F. 2d 627 (2nd Cir. 1956).* In 1944 Loewi liquidated, for income tax deduction purposes, a non-business debt for which he had held substantial but wholly inadequate security. The deduction was disallowed on the ground that under 26 U. S. C. A. Sec. 23(k)(4) (1948 ed.), Loewi was not justified in postponing until 1944 the liquidation of the collateral, for, at least as early as 1943, he knew that the unsecured part was completely worthless; that he should have deducted the debt in 1943 and had no privilege to postpone foreclosing the collateral until 1944 merely to secure a larger deduction in his income tax. On appeal from a dismissal of Loewi's complaint, *held,* reversed. A taxpayer is privileged to liquidate his security for whatever purpose he thinks most profitable, the reduction of taxes being a valid purpose; the taxpayer's motive being irrelevant. To encumber the privilege with the terms "good faith, economic reality", etc., used by the trial court is to deny the full measure of the privilege. Frank, Circuit Judge, dissented: when valid business considerations cease to exist, the taxpayer may

not have the benefit, for tax purposes, of postponing such foreclosure. The tax statutes were drawn to fix, so far as practicable, the precise year in which the deduction must be claimed. The debt should have been deducted in the year the debt became, aside from the collateral, wholly worthless, that is, no later than 1943. The case should be reversed solely to determine whether Loewi, in good faith postponed liquidating the collateral until 1944 for what he deemed valid business purposes.

A multitude of cases hold that before a taxpayer can deduct for a bad debt, he must foreclose the collateral security and apply it to the debt. Further, he must deduct the debt in the taxable year in which, using an objective test, the debt actually becomes worthless. In *Fidelity & Deposit Co. of Maryland v. Magruder,* 50 F. Supp. 817 (D. C. Md. 1943), reversed on other grounds, 139 F. 2d 751 (4th Cir. 1944), it was said that the true test, in determining whether a debt may be deducted from gross income by a taxpayer, as a "bad debt" in filing the return, is when the taxpayer, acting in good faith, actually ascertained the debt to be worthless. In *Reed v. Commissioner of Internal Revenue,* 129 F. 2d 908 (4th Cir. 1942), it was said that no deduction for partial bad debts need be taken, even though the taxpayer may have ascertained it to be partially worthless in a specific amount, but the taxpayer may wait until some future event definitely fixes the exact amount of the loss. See also language in the opinions of *Old Colony Trust Associates v. Hassett,* 150 F. 2d 179 (1st Cir. 1945); *Industrial Trust Co. v. Commissioner of Internal Revenue,* 206 F. 2d 229 (1st Cir. 1953), which seem to be in accord with the principal that in case of non-business debts the existence of any security, not merely nominal in value, prevents the debt from being entirely worthless.

Zoning — Refusal To Extend Non-Conforming Use. *Ranney v. Istituto Pontificio Delle Maestre Filippini, 119 A. 2d 142, 20 N. J. 189 (1955).* On appeal from a prerogative writ of township authorities permitting a parochial teacher training school — a non-conforming use in a residential zone — to erect additional facilities on its 100 acre tract, *held,* (4-3), reversed. Conceding that the land is unsuitable for residential homes, the granting of a variance in this case so as to extend a non-conforming use is "directly antagonistic to the design and purpose of the ordinance and sound zoning". The spirit of zoning has been to restrict rather than to increase non-conforming uses.

Baltimore City Code (1950) Art. 40, Sec. 11, contains the following provision: "A non-conforming use may not be extended, except as hereinafter provided. . . . A non-conforming use may be changed to a use of the same classification. . . ." *Colati v. Jirout,* 186 Md. 652, 47 A. 2d 613 (1946), did not permit a cafe owner to rebuild on a larger scale, stating that the Zoning Ordinance requires a strict interpretation pertaining to extension of non-conforming uses. *Knox v. City of Baltimore,* 180 Md. 88, 96, 23 A. 2d 15 (1941), concludes that restriction of such extension is not unreasonable, arbitrary, or oppressive. To the same effect is *Lipsitz v. Parr,* 164 Md. 222, 164 A. 743 (1933). However, *City of Baltimore v. Cohn,* 204 Md. 523, 105 A. 2d 482 (1954), allowed the building of a garage in an area zoned as a residential use district where the tract in question was only adaptable to commercial purposes.

A subtle distinction sometimes arises between extension and change of a non-conforming use. In *Roach v. Zoning Appeals Board,* 175 Md. 1, 199 A. 812 (1938), defendant operated an ice factory and a planing mill on adjoining lots. Both uses were non-conforming and of the same classification. The discontinuance of the planing mill and enlargement of the ice factory so as to encompass both lots was granted because this was a change of a non-conforming use to another use of the same classification. No mention was made that this was perhaps an extension of the non-conforming ice factory operation. In accord is *Bruning Bros. v. City of Baltimore,* 199 Md. 602, 87 A. 2d 589 (1952), where construction of a two-story warehouse on a tract of land previously used for loading and unloading purposes was held to have changed a non-conforming use rather than extended it. But compare *Fritze v. City of Baltimore,* 202 Md. 265, 96 A. 2d 4 (1953), where there was refusal of an application to build a florist shop on land upon which a neon sign and temporary stalls for the sale of flowers had stood for a number of years. This did not establish a non-conforming use and is thereby distinguished from the *Bruning Bros.* case. The *Colati* case is cited as authority. A further distinction arises in *Nyburg v. Solmson,* 205 Md. 150, 106 A. 2d 483 (1954), where *complete* utilization of an open area for the storage of new cars was an *intensification* rather than an extension of a non-conforming use, and, therefore, permissible. The area had previously been used *partially* for the overnight parking of neighborhood cars.