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Adoption — Age And Religion Of Adoptive Parents. *Frantum v. Department of Public Welfare, 133 A. 2d 408 (Md., 1957).* A two month old baby, in poor physical condition, was placed in the home of the petitioner, husband and wife, ages 54 and 48, respectively, for foster care. The petitioners nursed the child back to health and filed suit to adopt after the Department of Welfare refused to consent. The Probation Department of the court recommended the adoption. Petitioners were of the Lutheran faith, but the Catholic mother of the child had requested the child be reared a Catholic. The chancellor dismissed the petition primarily because of the advanced age of the foster parents; secondarily, because of the religious difference. The order was affirmed (4-1) on appeal. While Maryland law has established only a minimum — and not a maximum — age for adoptive parents, the age of the prospective parents was an important factor. It was held to be in the child's best interests to be placed in the home of younger parents, even though the petitioners were found to be "fine people", had given the child love and affection and had done an "excellent job" in nursing the baby back to good health. Moreover, it is the declared legislative policy of the state that the adoption be by persons of the same religious belief as the minor or his parents "whenever practicable", Md. Code Supp. (1957), Art. 16, Sec. 76. The Court pointed out that this statutory provision was not mandatory but held it practicable, nevertheless, to apply it in this case. (*Ed. Note:* Certiorari was denied by the Supreme Court, Nov. 25, 1957).

This is the first adoption case in Maryland where the age of the prospective parents has been considered such an important factor. *Ex parte Anderson,* 199 Md. 316, 86 A. 2d 516 (1952), cited by the Court as authority for this principle, denied an adoption petition almost exclusively on the bases that the petitioner was high strung and had retarded the development of the child. In reference to the question of religion, *Purinton v. Jamrock,* 195 Mass. 187, 80 N. E. 802 (1907), construed a statute similar to the one in Maryland as preferring the welfare of the child to the wishes of the natural parents, and allowed the adoption. Cases denying adoption on this ground are collected in 23 A. L. R. 2d 702 (Supp. Serv. 1957, 1422).

Corporations — By-Law Restricting Transfer Of Stock Must Be Stated On Certificate. *Hopwood v. Topsham Tele-*

phone Co., 132 A. 2d 170 (Vt., 1957). Plaintiff purchased 2 shares of stock of defendant corporation and brought an equity suit to compel defendant to transfer title to him on its books. Defendant resisted the suit on the grounds that the plaintiff, at the time of acquisition, had knowledge of non-compliance with the corporation's by-law, which prohibited the sale of any stock before first being offered for sale to the board of directors. By Vermont statute, Vermont St. (1947), Sec. 5880, there shall be no restriction on the transfer of stock unless said restriction is stated on the certificate. No restrictions were stated on the shares in question. The trial court's grant of relief to plaintiff was affirmed on appeal. The statutory requirement is absolute and is not limited to good faith purchasers without notice. Notice cannot take the place of compliance with the statute.

Decisions in at least two states are *contra, Baumohl v. Goldstein,* 95 N. J. Eq. 597, 124 Atl. 118 (1924), and *Doss v. Yingling,* 95 Ind. App. 494, 172 N. E. 801 (1930), holding that this statutory requirement is not for the protection of purchasers having notice of the corporation's by-law restricting the stock's transferability. 6 U. L. A., Stock Transfer, Sec. 15. Both of these cases were distinguished by the Vermont court because in each instance the purchaser was an officer of the corporation and thus stood in a fiduciary relationship to the other stockholders. The statute here involved is part of the Uniform Stock Transfer Act, Md. Code (1951), Art. 23, Sec. 110, and has not yet been construed by the Maryland Court of Appeals.

Husband And Wife — Husband's Liability For Wife's Attorney's Fees In Divorce Suit — Effect Of Reconciliation. *In Re De Pass, 97 S. E. 2d 505 (S. C., 1957).* A month after a wife instituted divorce proceedings against her husband, they were reconciled and the wife notified her attorney to withdraw the suit. The attorney petitioned the court to award him attorney's fees as against the husband before dismissing the case. The trial court refused the request, and the Supreme Court of South Carolina affirmed. To allow the award, which would necessarily require the continuance of the litigation against the will of the parties, would contravene public policy, which is to induce reconciliation. The decision is in accord with the rule in a majority of jurisdictions. Several states, however, allow continuance of a divorce suit after reconciliation for the sole purpose of decreeing attorney's fees of wife. See 45 A. L. R. 941, supplemented in 59 A. L. R. 355, discussing this conflict.

Although this point has never been specifically decided in Maryland, the Court of Appeals in *McCurley v. Stockbridge*, 62 Md. 422 (1884), sustained an action by a wife's attorney, in an *independent* suit against her deceased husband's estate, for counsel fees incurred by the wife in her divorce action, which was terminated by her husband's death and before any decree was issued. The prosecution of a reasonably justifiable divorce suit against husband is one of the "necessaries" of wife that is chargeable to husband. The general rule in the United States is *contra*, not allowing this type of recover by an attorney even in an independent suit against husband. See 25 A. L. R. 354, 42 A. L. R. 315.

Liens — Status Of Judgment Creditor As Against Administrator. *Smith v. Citizens National Bank In Okmulgee, 313 P. 2d 505 (Okla., 1957).* An heir was indebted to the deceased for an amount greater than his distributive share. The administrator claimed set-off and refused to give him a share in the estate. Plaintiff, a judgment creditor of the heir, filed suit to compel the distribution of the heir's one-fourth share in real property, since his judgment had been docketed before the death of the intestate. The trial court's dismissal of the petition and distribution to the other heirs was reversed by the intermediate court but reinstated by the Supreme Court of Oklahoma. Under Oklahoma statute intestate real and personal property passed through the administrator and as a result the distributive share was subject to a set-off of any amount owed by the heir to the deceased. This equitable lien was superior to that of a judgment creditor.

The jurisdictions appear to be about equally divided on this point. Courts adopting the orthodox theory, that realty passes at once to the heir, do not give the administrator such a lien; whereas in those states requiring intestate realty to pass through probate, the courts feel justified in giving the administrator a preferred lien before granting the heir his distributive share. 3 AMER. LAW OF PROPERTY (1952) Sec. 14.26. *Cf*, TURRENTINE, WILLS AND ADMINISTRATION (1954).

In Maryland in the case of intestacy title to land vests in the heirs immediately upon the ancestor's death. *Rowe v. Cullen*, 177 Md. 357, 9 A. 2d 585 (1939). Therefore, in Maryland the administrator should be in the same position as every other creditor. It is well settled that as among creditors, the one with the prior judgment lien prevails; *Messinger v. Eckenrode*, 162 Md. 63, 158 A. 357 (1932).

Option — What Constitutes An Acceptance. *Hunter Investment v. Divine Engineering, 83 N. W. 2d 921 (Iowa, 1957).* The parties entered into a five-year lease giving the lessee a two-year option to purchase, the rentals paid to the date of the exercise of the option to be applied to the purchase price. Before the expiration date, the lessee told the lessor, "We are going to exercise the option." The lessor refused to discuss the matter. No further action was taken until more than a year after the expiration date, when the lessor filed suit to quiet title to the premises and the lessee counterclaimed for specific performance of the option. The lower court's decree in the lessor's favor was affirmed on appeal. The acceptance of an option must be unqualified and unequivocal. Lessee's actions indicated only a possible future intent to purchase.

In *Foard v. Snider,* 205 Md. 435, 109 A. 2d 101 (1954), the optionee wrote the owner a letter which (1) expressed an *intention to purchase* and purported to be an exercise of the option right, (2) demanded that the owner give up possession of the land, but (3) refused to pay part of the purchase price called for by the agreement. The Court allowed the optionee to purchase the land but required him to pay the total stipulated purchase price. However, the question was avoided as to the sufficiency of this letter as an effectual acceptance of the option, because this issue had not been raised in the pleadings. *Trotter v. Lewis,* 185 Md. 528, 45 A. 2d 329 (1946) held that tender of the purchase price constituted due acceptance of an option. The Maryland cases emphasize that in addition to being "positive and unequivocal", the act purporting to be an exercise of the option (like any acceptance of an offer of contract) must be that act which the option prescribes as an acceptance or exercise.

Tenancy In Common — Tax Sale — Wife Of Co-Tenant As Purchaser. *Beers v. Pusey, 132 A. 2d 346 (Pa., 1957).* Plaintiffs and X were co-tenants of a tract of land. X's wife purchased the entire property at a public tax sale. The lower court decreed reconveyance to plaintiffs of that part of the land they formerly held as tenants in common with X. The Supreme Court of Pennsylvania affirmed. A co-tenant cannot buy at a tax sale for he stands in a confidential relationship to the other tenants. In light of the wife's knowledge of the facts and dower interest, public policy dictates that this disability be extended to her notwithstanding statutes emancipating married women from common law disabilities on account of coverture.

It has been held consistently that purchase of an outstanding title or incumbrance by one tenant inured to the benefit of the other co-tenants, 86 C. J. S., Tenancy in Common, 442, Sec. 59, even where the tenant purchased from a stranger who purchased at the sale, 86 C.J.S. 434, n. 46. These questions have not been squarely presented to the Maryland court. Assuming, however, that the Maryland Court would follow the majority of jurisdictions in holding that a co-tenant cannot buy in at a tax sale, the reasons offered by the Pennsylvania court for similarly restricting the wife would seem to be equally applicable in this state. Md. Code (1951), Art. 45 does remove the common law disability of a married woman to hold property. On the other hand, the Maryland wife does have the same dower right and presumably would have the same "knowledge of the facts" which was fatal to the wife's assertion of an independent right to purchase the property in the instant case.

Wire Tapping — Admissibility Of Evidence Procured Contrary To Statute. *Manger v. State, 133 A. 2d 78 (Md., 1957).* This is the first case arising under the recently enacted Maryland Wire-Tapping Statute, Md. Code Supp. (1957), Art. 35, Secs. 100-107. In substance, the Act makes admissible evidence procured through wire-tapping only if the wire-tapping was authorized beforehand by a court order. Police, without an order of court, tapped telephone wires leading to a certain house and overheard conversations (in which defendants were not involved) concerning the placing of bets on horse races. On this basis, a search warrant was issued for the premises and executed upon. The defendants were found in the house and arrested for violation of the gambling laws. Evidence of bookmaking was seized during the raid and admitted at the trial over defendants' objection. The conviction was affirmed on appeal and the evidence thus obtained was held admissible. The Court assumed for purposes of argument the correctness of the defendants' contention that the statute, if applicable to the case, made incompetent not only evidence as to conversations overheard by the unauthorized wire-tapping, but also evidence obtained *as a result of* unlawfully overhearing said conversations — in this case, the evidence seized in the raid. But the Court, pointing to the analagous situation of search and seizure, stated that the Wire-Tapping Statute, *supra,* must be construed with reference to the Bouse Act, Md. Code Supp. (1957), Art. 35, Sec. 5, which makes incompetent evidence obtained "by,

through, or in consequence of" an illegal search or seizure, in trials for misdemeanors. *Rizzo v. State,* 201 Md. 206, 209, 210, 93 A. 2d 280 (1952), held that one could not invoke the Bouse Act if he had no interest in the premises or property illegally searched or seized. Likewise, one who is not a *participant* in the intercepted telephone conversation (unless perhaps his own telephone is the one tapped) cannot invoke the protection of the Wire-Tapping Statute; and such evidence unlawfully obtained is admissible against him. The defendants here were not talking on the telephone when the wires were tapped. On admissibility or evidence obtained by Wire Tapping, see 3 Md. L. Rev. 266 (1939) and 13 Md. L. Rev. 235 (1953).

Workmen's Compensation — Claims By Common Law Wife And Illegitimate Child. *Humphreys v. Marquette Casualty Company, 95 S. 2d 872 (La., 1957).* This was a Workmen's Compensation proceeding by the common law wife and illegitimate child of a deceased workman. The trial court decreed an award only to the child. In affirming the judgment, the Court of Appeals of Louisiana declared that a common-law wife is not entitled to compensation under the statute either as a "surviving widow" or as a dependent member of the deceased workman's "family", since common law marriages are not recognized in the state. However, an illegitimate minor living in the household is considered a member of the family.

Recovery under the Maryland Act is based solely upon dependency and not relationship. Md. Code (1939) Art. 101, Sec. 48(4) precluding one from being a dependent who was not a wife, stepchild, or blood relative of the deceased, was supplanted by Md. Code (1951) Art. 101, Sec. 35(8)(d), which left the question of dependency to the State Industrial Accident Commission. The leading case of *Kendall v. Housing Authority,* 196 Md. 370, 76 A. 2d 767 (1950), declared that the effect of this amendment was to eliminate the requirement that a dependent be related to the deceased employee by blood or marriage. The claimant, who cohabited with the deceased for ten years prior to his fatal injury, but had refused to marry him because of religious scruples, was awarded compensation. That common law marriage was not recognized in Maryland did not bar recovery. This same Code section also abolished the requirement that an illegitimate child live in the household of the deceased workman to be entitled to compensation. See *Brooks v. Bethlehem Steel Co.,* 199 Md. 29, 85 A. 2d 471 (1952).