Vanderbilt Law Review

Volume 9
Issue 5 *Issue 5 - August 1956*

Article 10

8-1956

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Recommended Citation
William J. Harbison, Domestic Relations -- 1956 Tennessee Survey, 9 *Vanderbilt Law Review* 990 (1956)
Available at: https://scholarship.law.vanderbilt.edu/vlr/vol9/iss5/10

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DOMESTIC RELATIONS—1956 TENNESSEE SURVEY

WILLIAM J. HARBISON*

ADOPTION OF CHILDREN

Only one reported opinion dealt with the subject of adoption during the survey period.[1] In this case the petitioners had contracted with the Department of Public Welfare to keep the subject child on a foster-home-care basis. When the Department sought custody of the child from them, however, they had become very attached to her and refused to surrender custody. Pursuant to the statute then in effect,[2] they filed a petition to the county court to adopt the child. The petition was denied, and on appeal the decision was affirmed. Immediately thereafter, petitioners filed the present suite in chancery, seeking to adopt the child. The chancellor held the prior proceedings to be res judicata and also held that petitioners were estopped to claim the child because of the foster-home contract. The court of appeals affirmed, holding that the enactment of a new adoption law[3] did not affect proceedings under the former statutes, and that the two cases involved identical parties and identical issues.

The result seems inevitable in the absence of proof of changed circumstances in the interim since the prior litigation. The petitioners urged that the rule of res judicata does not apply where the welfare of a child is the paramount consideration. The court correctly pointed out, however, that the rule applies to domestic relations cases, such as custody or adoption proceedings, as well as to other cases. While child custody decrees remain within the control of the courts,[4] a decree in any such case is final as to facts existing at the time of the hearing. It is only when there is a showing of changed circumstances since the first proceeding that such decree may be modified in the future.[5]

Perhaps more than anything else the case illustrates a problem which may arise in any system utilizing foster homes. Attachments between the temporary custodians and children placed in their care are almost inevitable, and such arrangements may well produce unfortunate litigation unless great care is exercised in the selection of foster homes and unless a thorough understanding is reached in every case as to the relinquishment of custody.

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1. Whitley v. Reeves, 281 S.W.2d 411 (Tenn. App. M.S. 1955).
2. Tenn. Pub. Acts 1949, c. 127.
3. Tenn. Pub. Acts 1951, c. 202.
4. TENN. CODE ANN. § 36-828 (1956).
5. Holloway v. Bradley, 190 Tenn. 565, 230 S.W.2d 1003 (1950); Hicks v. Hicks, 26 Tenn. App. 641, 176 S.W.2d 371 (M.S. 1943).

CUSTODY OF CHILDREN

The effect of a temporary custody decree upon the right of a parent to recover for wrongful death of a child was dealt with in *Shelton v. Shelton*.[6] In divorce proceedings between the parents, the trial court awarded a divorce to the mother but placed the child temporarily with his father, specifying that further custody orders would be entered at a later term of court. However, no further custody award was ever made. Several years later the son, then twenty years of age, was accidentally killed. His father, as administrator, settled a claim for wrongful death of the son, but refused to allow the mother to share in the proceeds. He relied upon the statutes which excluded a parent from sharing in a child's personal property when the other parent has been awarded exclusive custody by divorce decree.[7] The Supreme Court held, however that these provisions apply only when a final custody order has been entered, and that a temporary custody award is not effective to exclude either parent. The court pointed out that the son had helped support his mother and had claimed her as a dependent for tax purposes. It further emphasized that the father had never made any effort to have the custody order made permanent. The result reached seems proper in view of the peculiar fact situation presented.

In the case of *Alexander v. Alexander*,[8] the court of appeals dealt with an interstate custody dispute. The wife had been awarded a divorce and child custody in Michigan, the domicile of the parties when the suit was filed. The husband undertook to obtain custody in Tennessee, however, filing suit in that state when all of the parties were visiting there. The court of appeals applied the usual rule in such cases, recognizing that Tennessee had power to modify the Michigan decree upon a showing of a change in circumstances, but declining to interfere with that decree in the absence of such proof.[9] Full effect was given to the decree of the foreign court.

SUPPORT OF CHILDREN

Perhaps the most important decision concerning support during the survey period was that of *Sayne v. Sayne*.[10] In a divorce action the trial court had directed the father to support his twenty-seven year old daughter, who had been physically disabled and unable to work since childhood. Issues were raised as to the duty of a parent to

6. 198 Tenn. 346, 280 S.W.2d 803 (1955).
7. TENN. CODE ANN. § 31-201 (1956); Black v. Roberts, 172 Tenn. 20, 108 S.W.2d 1097 (1937).
8. 286 S.W.2d 104 (Tenn. App. M.S. 1955).
9. State *ex rel.* Sprague v. Bucher, 38 Tenn. App. 40, 270 S.W.2d 565 (W.S. 1953); Harbison, *Domestic Relations—1955 Tennessee Survey*, 8 VAND. L. REV. 1004, 1006 (1955).
10. 284 S.W.2d 309 (Tenn. App. E.S. 1955), 24 TENN. L. REV. 599 (1956).

support an invalid adult child, and as to the power of divorce courts to enforce such duty. The court of appeals recognized that there is a split of authority as to whether there is such a duty,[11] but specifically adopted the "humanitarian" view that a parent does owe such a duty of support. This rule appears now to be accepted by the majority of courts which have considered the problem.[12]

The court also upheld the power of the divorce court to enforce such duty. The divorce statutes authorize custody and support decrees for "a minor child or children" in proper cases.[13] This was construed to authorize a support decree in any case where custody of a child must be awarded, and the court held that the statute does not limit the power to make a custody award to children under twenty-one years of age. The court stated,

> There is as much need to award custody in a case like the present as in cases where the child is too young to be free from parental control.[14]

As has been pointed out in other comment on the case,[15] the result reached seems desirable insofar as the recognition of the duty of support is concerned. The logic of the decision seems to be somewhat more questionable, however, in resting the power of enforcement upon the general power of a divorce court to award custody. The result was reached only by a very liberal, if not strained, interpretation of the statutes dealing with "minor children." Perhaps, however, an extremely unfortunate situation would result if a support award to an invalid adult child could not be made by the divorce court. Tennessee follows the rather antiquated rule that a child may not enforce the parental duty of support by a direct action for future support.[16] Apart from criminal or divorce proceedings, the only means of enforcing the duty of support is by the action for reimbursement, brought by a third person who has furnished necessaries to the child.[17] This remedy, of course, is wholly inadequate as a practical matter.[18] Consistency would seem to require that the courts deny the direct action for support to the dependent adult child, if it is to be denied to the minor. Consequently, such dependent adult

11. Annot., 1 A.L.R.2d 910 (1948).
12. 39 AM. JUR., *Parent and Child* § 69 (1942); Annot., 1 A.L.R.2d 910, 920 (1948).
13. TENN. CODE ANN. § 36-828 (1956).
14. 284 S.W.2d at 311.
15. 24 TENN. L. REV. 599 (1956).
16. Davenport v. Davenport, 178 Tenn. 517, 160 S.W.2d 406 (1942). See Harbison, *Domestic Relations—1953 Tennessee Survey*, 6 VAND. L. REV. 981-82 (1953).
17. Rose Funeral Home, Inc. v. Julian, 176 Tenn. 534, 144 S.W.2d 755, 131 A.L.R. 858 (1941).
18. The primary reason for permitting a separate maintenance action by a wife for her support is the practical inadequacy of her legal remedy of pledging the husband's credit. Creditors usually are unwilling to "buy a lawsuit." See Cureton v. Cureton, 117 Tenn. 103, 96 S.W. 608 (1906); Lang v. Lang, 70 W.Va. 205, 73 S.E. 716, 38 L.R.A. (n.s.) 950 (1912).

might be without effective means of obtaining support if a divorce court had no power to order it. It would seem that remedial legislation, expressly broadening the authority of the courts to include invalid adult children, is desirable.

In *Barger v. State*[19] the defendant challenged the constitutionality of a criminal statute[20] imposing punishment upon one who leaves the state without complying with child support orders of the Tennessee courts, or who fails to so comply while out of the state. The Supreme Court upheld the statute, recognizing that a valid distinction exists between persons who have been ordered by a court to support a child and those against whom no such judgment exists. Consequently, the statute was not deemed to make an unreasonable or arbitrary discrimination. The court further pointed out that the statute was a legitimate aid to the courts in enforcing their judgments.

An unusual attempt by the state to obtain an in personam judgment against non-resident defendants was defeated in *State v. Perry*.[21] The Department of Public Welfare alleged that it had furnished and would in the future furnish financial assistance to dependent wives and children of the defendants, who had gone to other states. The Department sought judgment against the defendants for its expenditures and asked for a decree for future support for their dependents. It relied upon the Uniform Reciprocal Support Act,[22] but both the trial court and the Supreme Court held that that statute contemplates no proceedings comparable to those in the present case. Only the "responding state" to which petitions for support are forwarded from the "initiating state" can render judgment in reciprocal proceedings, and the statute does not contemplate in any case a personal judgment against a defendant who is not personally before the court rendering it. The staute does not appear to be susceptible to the construction contended for in this case, and if it were, its constitutionality would be doubtful.

Divorce and Alimony

Capacity to Sue: A very significant decision during the survey period dealt with the right of an insane person to sue for divorce while incompetent.[23] Generally it has been held that the marriage of an insane person may be annulled at the suit of a guardian or next friend if insanity existed at the time of the marriage.[24] The majority of

19. 280 S.W.2d 911 (Tenn. 1955).
20. Tenn. Code Ann. § 39-219 (1956).
21. 280 S.W.2d 919 (Tenn. 1955).
22. Tenn. Pub. Acts 1953, c. 188.
23. Turner v. Bell, 198 Tenn. 232, 279 S.W.2d 71 (1955), *cert. denied*, 350 U.S. 842 (1955). Tennessee decision commented on in 24 Tenn. L. Rev. 262 (1956).
24. Madden, Domestic Relations 22-27 (1931).

courts have held, however, that an insane person may not be awarded a divorce upon grounds arising after marriage.[25] Various reasons have been given for this rule, the principal ones being that an insane person does not have capacity to take the oath prescribed for a divorce bill[26] and that such person lacks the necessary personal volition and discretion to seek a divorce.[27] Most of the courts have held that the decision to bring such an action is so personal to the individual that it may not be exercised on his behalf by a guardian or by a court.

In the present case, however, compelling equities of the situation led the Supreme Court to depart from the majority rule and to uphold a divorce decree granted to a person who was an adjudged lunatic at the time the suit was filed and at the time the divorce was granted.

The parties had been married in 1911. In 1931 the wife had been adjudged insane and had been briefly committed to an institution. No guardian was appointed for her. In 1933 her husband filed suit against her for divorce; she filed a cross-action in her own name, seeking a divorce from bed and board. She made oath to her bill and was duly represented by counsel. The fact of her adjudication appeared in the pleadings. She testified at the hearing and the divorce court awarded her an absolute divorce from her husband. There was no appeal. In 1935 the husband remarried and thereafter acquired certain property. He died intestate in 1953. Promptly after his death the first wife, by a guardian, filed the present suit, alleging that the divorce decree was void because of her insanity and seeking a widow's rights in the husband's estate. The trial court sustained a demurrer to her bill, and the Supreme Court affirmed, specifically holding that the rule forbidding divorce to insane persons should not be unqualifiedly adopted in this state.

The court recognized that in Tennessee an adjudication of insanity creates a conclusive presumption of a continuation of that status until there is a decree of restoration.[28] Nevertheless an insane person is not necessarily incompetent to testify as a witness, and accordingly is not necessarily unable to take an oath. Accordingly, where a person adjudged insane appears before the trial court, that court may determine whether or not he is competent to testify and to take the requisite oath for divorce litigation.

As to the question of lack of personal volition, the Supreme Court simply held that such volition may be supplied by the divorce court itself under the Tennessee statutes. The divorce code permits the

25. 17 AM. JUR., *Divorce and Separation* § 272 (1938); Annots., 149 A.L.R. 1284 (1944), 70 A.L.R. 964 (1931).
26. *E.g.*, Higginbotham v. Higginbotham, 146 S.W.2d 856 (Mo. App. 1940).
27. *E.g.*, Mohrmann v. Kobb, 291 N.Y. 181, 51 N.E.2d 921 (1943), 149 A.L.R. 1274 (1944).
28. Jackson v. Van Dresser, 188 Tenn. 384, 219 S.W.2d 896 (1949).

court to award whatever relief it deems proper in a given case, whether such relief has been prayed for or not, and whether it is the relief desired or not.[29] The Supreme Court stated that if such volition may be supplied by a divorce court in cases involving sane persons, then it may be supplied for insane persons as well.

The opinion on the whole is well-reasoned and adopts for Tennessee a flexible rule which will permit insane persons to obtain divorces when their interests so demand. Presumably, of course, the courts will permit such divorces only after careful investigation and only after determining that the insane person is competent to testify and to take oath. Apparently the decision does not go so far as to permit a divorce to be obtained on behalf of one who is not sufficiently in command of his faculties to be aware of the step being taken. It would not authorize a guardian or next friend to obtain a divorce for one who was so deranged as to be unable to appreciate the consequences of the action.

Antenuptial Settlements: In a case of first impression,[30] the court of appeals construed a property settlement providing for a forfeiture of property rights if either party should seek a divorce. The husband and wife, who had been divorced on two previous occasions, entered into the agreement prior to their third marriage. The agreement placed all of their property under their joint control and provided that if either should seek a divorce he would lose all rights in the jointly owned property.

Becoming dissatisfied with the agreement, the husband brought the present suit to have it declared void as being contrary to public policy. The trial court so held, but the appellate court reversed, pointing out that no restraint on marriage was involved and that the forfeiture clause was not necessarily contrary to public policy. The court applied a rule similar to that in cases where wills provide for forfeiture of bequests if the beneficiary contests the will. In such cases the forfeiture clause is held valid, and if a contest is brought in bad faith the forfeiture is effected. In cases where the contestant acts in good faith, however, the forfeiture clause is not allowed to operate, regardless of the outcome of the suit.[31] Accordingly, in the present case the court held that the forfeiture clause in the settlement agreement would be effective if a divorce should be sought in bad faith but would not operate against a party filing such action in good faith.

Alimony: Another important case during the survey period was *Brown v. Brown.*[32] In a contested case, a circuit court had awarded

29. TENN. CODE ANN. § 36-819 (1956); see Linger v. Linger, 165 Tenn. 525, 56 S.W.2d 749 (1933).
30. Sanders v. Sanders, 288 S.W.2d 473 (Tenn. App. E.S. 1955).
31. Tate v. Camp, 147 Tenn. 137, 245 S.W. 839, 26 A.L.R. 755 (1922).
32. 198 Tenn. 600, 281 S.W.2d 492 (1955).

a divorce to the husband but gave custody of minor children to the wife, making provisions for their support. Subsequently the court undertook to divest title to certain realty out of the husband and vest it solely in the wife, the title having previously been held by the entireties. The decree ordered the husband to convey this property to the wife "as alimony." Upon his refusal to make a deed to it, he was cited for contempt. Thereupon he brought the present suit in chancery to enjoin the circuit court proceedings and to set aside the decree upon the ground that that court had no power to award alimony to the wife when a divorce was granted to the husband. The chancellor dismissed the suit, but the Supreme Court reversed and sustained the husband's position.

The court pointed out that the divorce statutes expressly prohibit an alimony award to the wife when divorce is granted to the husband.[33] Accordingly the decree purporting to award alimony in the present case was held void on its face and subject to collateral attack. No basis for estoppel or laches was shown.

In rendering this decision the court reaffirmed that in Tennessee divorces are granted upon the principle of "fault"— that divorce is a remedy of the innocent spouse against the guilty.[34] This concept is being modified in some jurisdictions, and in several states divorce and alimony are awarded upon the basis of social desirability and convenience, irrespective of the guilt or innocence of a particular spouse.[35] While justified by the express statute, the present holding indicates that Tennessee is firmly committed to the traditional concept of divorce and to the fault principle. The court stated that if the parties had entered into a property settlement, the provisions thereof would be enforced regardless of which party received the divorce. Likewise child support may be decreed regardless of fault.[36] But the award in the present case did not purport to be made for the benefit of the children of the parties and was not made pursuant to an agreement. Since it was designated as and purported to be "alimony," the award violated the express statute and was a nullity.

Condonation: In two bitterly contested cases,[37] the court of appeals reversed decrees of the trial court in favor of the wife and awarded a divorce in each case to the husband. In both cases the appellate court found long continued abuses and misconduct by the wife to be a

33. TENN. CODE ANN. § 36-826 (1956).
34. Brewies v. Brewies, 27 Tenn. App. 68, 178 S.W.2d 84 (E.S. 1943).
35. *E.g.*, Mueller v. Mueller, 282 P.2d 869 (Cal. 1955). 9 VAND. L. REV. 104 (alimony awarded to adulterous wife on basis of need); Pavletich v. Pavletich, 50 N.M. 224, 174 P.2d 826 (1946) (husband awarded divorce for incompatibility although himself charged with adultery).
36. Stargel v. Stargel, 21 Tenn. App. 193, 107 S.W.2d 520 (M.S. 1937).
37. Schwalb v. Schwalb, 282 S.W.2d 661 (Tenn. App. W.S. 1955); Humphreys v. Humphreys, 281 S.W.2d 270 (Tenn. App. W.S. 1954).

sufficient basis for a finding of cruelty, entitling the husband to relief. Likewise in each case the wife complained of conduct of her husband which had occurred in the past, and in both cases the court held that the wife had so condoned or acquiesced in her husband's alleged misconduct as to be unable to rely thereon as ground for divorce. While implied condonation from marital relations is not applicable in cruelty cases as it is in adultery cases,[38] nevertheless it is well settled that one can expressly condone cruelty or can so acquiesce therein as to be unable to complain of it unless further conduct "revives" the previous offenses.[39]

Property Rights: In each of the two contested cases referred to above the court applied the statute denying alimony to the wife when the husband is granted a divorce.[40] In each case, however, as well as in a third reported case in which a husband was granted a divorce,[41] the parties owned property as tenants by the entirety. The effect of a divorce, of course, is to sever this estate and to create a tenancy in common.[42] In each of the three cases the husband sought to have his wife's interest divested out of her and into himself pursuant to a recent statute.[43] In all three cases the court of appeals held that the statute authorizing such a decree was not mandatory, and in each case the court declined to disturb the interests of the parties in the property.

Res Judicata: The doctrine of res judicata was invoked in the case of *Rutledge v. Rutledge*[44] to prevent a collateral attack upon a divorce decree. Complainant's wife in a former proceeding had been awarded a divorce. He had contested her action, insisting that he had never been validly married to her because he was a party to a prior marriage still subsisting. His contentions had been rejected for lack of sufficient evidence to rebut the presumption of validity of a second marriage. Thereafter he brought the present suit to set aside the divorce decree, alleging its invalidity because of his prior subsisting marriage. Both the trial court and the Supreme Court held that the action was merely an attempt to relitigate issues already adjudicated in the divorce case.

Common Law Marriage

In an action under the Federal Employers Liability Act,[45] a federal

38. McClung v. McClung, 29 Tenn. App. 580, 198 S.W.2d 820 (E.S. 1946); Garvey v. Garvey, 29 Tenn. App. 291, 203 S.W.2d 912 (1946).
39. Crabtree v. Crabtree, 28 Tenn. App. 373, 190 S.W.2d 319 (E.S. 1945) (husband denied divorce for wife's abuses occurring eighteen years previously).
40. Tenn. Code Ann. § 36-826 (1956).
41. Grant v. Grant, 286 S.W.2d 347 (Tenn. App. W.S. 1954).
42. Brown v. Brown, 160 Tenn. 685, 28 S.W.2d 350 (1930).
43. Tenn. Code Ann. § 36-825 (1956).
44. 281 S.W.2d 666 (Tenn. 1955).
45. 45 U.S.C.A. §§ 51-60 (1954).

court in Tennessee dealt with the subject of informal marriages.[46] It appeared that the husband and wife had been married and divorced, but that they had resumed cohabitation without further marriage ceremony. Eight children had been born to them after the divorce decree was entered. The mother and these children brought the present suit for accidental death of the husband. The defendant challenged their status to sue. In a brief opinion the district court overruled the defendant's objections. The court pointed out that Tennessee generally does not recognize common law marriages.[47] However, it applied the principle of estoppel announced in an early leading case,[48] stating that when a man and woman have lived openly in a community as husband and wife, either of them would be estopped to deny that they were married. Accordingly, a third person would not be permitted to challenge their status.

As has been pointed out in an earlier survey issue,[49] the tendency of the recent cases in the state courts has been to limit the application of the doctrine of estoppel to similar facts. Most of the recent cases have indicated that estoppel will be applied only when there has been at least a colorable attempt to comply with the marriage statutes, or when there has been an actual deceit practiced upon an innocent person.[50] The authorities relied upon by the federal court appear to have been considerably weakened by the more recent decisions. And while it is true that there is always a general presumption of marriage from the fact of open cohabitation,[51] such presumption is generally deemed to be only a rebuttable one and is not given the conclusive effect of the rule apparently adopted by the federal court in the present case.

TENANCY BY THE ENTIRETY

In the case of *Wilson v. Clark*,[52] the court of appeals dealt with the recurring problem of unsettled titles in Tennessee during the period from 1913 to 1919. In this case a deed was made to a husband and wife in 1916. At any other period in Tennessee history, the deed would have been effective to create a tenancy by the entirety. In 1918, however, the Supreme Court held that the effect of the Married Women's Emancipation Act of 1913[53] was to abolish this estate.[54] This un-

46. King v. Clinchfield R.R., 131 F. Supp. 218 (E.D. Tenn. 1955).
47. See generally, Note, 3 VAND. L. REV. 610 (1950).
48. Smith v. North Memphis Savings Bank, 115 Tenn. 12, 89 S.W. 392 (1905).
49. Harbison, *Domestic Relations—1955 Survey*, 8 VAND. L. REV. 1015 (1955).
50. Crawford v. Crawford, 198 Tenn. 9, 277 S.W.2d 389 (1955); Rambeau v. Farris, 186 Tenn. 503, 212 S.W.2d 359 (1948).
51. MADDEN, DOMESTIC RELATIONS 66 (1931).
52. 288 S.W.2d 740 (Tenn. App. W.S. 1954).
53. TENN. CODE ANN. § 36-601 (1956).
54. Gill v. McKinney, 140 Tenn. 549, 205 S.W. 416 (1918).

fortunate and wholly unexpected decision was rectified by legislation in 1919.[55] The court's decision, however, has left numerous titles in doubt as a result of deeds to husband and wife in the years mentioned above, since a deed during this period created only a tenancy in common.

In the present case, presumably because of the foregoing situation, a second deed to the same property was made by the same grantor to the husband and wife in 1923, but there had been no reconveyance of the property to the grantor. Thereafter numerous deeds of trust were placed on the property, some of them stating the source of title to be the deed in 1916 and some of them referring to the later deed. The husband died intestate in 1939. The widow died intestate in 1942. Claims to the property were made by the heirs of each in the present case.

Both the trial court and the court of appeals held that the wife had become sole owner of the property by survivorship, so that her heirs were entitled to take exclusive title. The exact theory of the decision is unclear. The chancellor held that the effect of the second deed with the subsequent joint holding under it "was to create an estate by the entireties in the grantees under the doctrine of equitable estoppel . . . ." The court of appeals said:

> However, in our opinion, upon the death of James Bent in 1939, the interest of Fannie Bent ripened into a fee based upon more than seven years' adverse possession by her and James Bent under registered color of title, to wit, the deed of date September 17, 1923.[56]

It has recently been held by another section of the court of appeals that the estate of tenancy by the entirety cannot arise solely by virtue of adverse possession.[57] And since they already owned the property as tenants in common by the deed of 1916, it is difficult to determine in the present case how the husband and wife could hold adversely to themselves or how the character of their tenancy could be changed by a later deed without a reconveyance to the grantor. Nevertheless the result reached seems desirable and to accomplish what the parties probably intended. The holding is in accord with the spirit of other recent cases where the benefit of doubt has been resolved in favor of joint ownership.[58]

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55. TENN. CODE ANN. § 36-602 (1956).

56. 288 S.W.2d at 744.

57. Preston v. Smith, 293 S.W.2d 51 (Tenn. App. M.S. 1956).

58. *E.g.*, Oliphant v. McAmis, 197 Tenn. 367, 273 S.W.2d 151 (1954), 23 TENN. L. REV. 1068 (1955) (personalty registered in husband's name held jointly owned); Hardin v. Chapman, 36 Tenn. App. 343, 255 S.W.2d 707 (E.S. 1952) (deed to husband and wife "equally and jointly" held to create tenancy by the entirety).

TORT LIABILITY

In the interesting case of *Brown v. Harkleroad*,[59] the liability of a parent for negligence in making a gift of an automobile to an incompetent adult son was considered. The son was proved to be a known habitually reckless and drunken driver. The accident occurred some four months after the gift. The court of appeals held that the father could not be held liable under these circumstances. There are similar holdings in other states.[60] While such decisions have been criticized,[61] they seem to rest basically upon the practical proposition of fixing a limit to a liability which might otherwise be of indefinite duration.[62]

59. 287 S.W.2d 92 (Tenn. App. E.S. 1955).
60. Shipp v. Davis, 25 Ala. App. 104, 101 So. 366 (1932); Estes v. Gibson, 257 S.W.2d 604, 36 A.L.R.2d 729 (Ky. 1953); Annot., 36 A.L.R.2d 735 (1954).
61. PROSSER, TORTS 513 (2d ed. 1955).
62. "If a father incurs liability by giving an automobile to his son, knowing him to be drunken or incompetent driver, when would it end? Would it last for the life of the automobile? Would it apply to a new automobile in the event of a trade-in?" Brown v. Harkleroad, 287 S.W.2d 92, 96 (Tenn. App. E.S. 1955).