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RECENT CASES

HABEAS CORPUS – Certiorari to U. S. Supreme Court as Part of Exhaustion of State Remedies and the Effect of a Denial of Certiorari. Petitioner, Almeida, with two confederates, all armed, robbed a supermarket, and an off-duty policeman was killed. Almeida was convicted of first degree murder and sentenced to death by the trial court. At the subsequent trial of Almeida's confederate, Smith, it appeared that the policeman had been killed by a .38 caliber bullet and also that none of the robbers were armed with such weapons. The police had all been armed with .38 caliber Smith and Wesson revolvers. This evidence was in the hands of the State at the time of Almeida's trial. The judgment of the trial court was affirmed on appeal to the Supreme Court of Pennsylvania. Almeida petitioned for a writ of habeas corpus to the Pennsylvania Supreme Court and set up in detail the evidence secured at the Smith trial. This was denied in a *per curiam* opinion and order, no reasons for denial being stated. Application for certiorari was then made to the Supreme Court of the United States and was denied. The petition for habeas corpus was then filed in the federal district court, and judgment was entered for the petitioner. On appeal to the Circuit Court of Appeals, HELD, affirmed. Almeida was denied due process of law by the suppression of the evidence, and he had exhausted his state remedies when he applied for certiorari. The denial of certiorari did not preclude the district court from granting the petition. *United States ex rel. Almeida v. Baldi,* 195 F. 2d 815 (3rd Cir. 1952).

"An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the state . . . . ," 28 U. S. C. Sec. 2254 (1948). The revisor's note to the section states: "This section is declaratory of existing law as affirmed by the Supreme Court," citing *Ex parte Hawk,* 321 U. S. 114, 88 L. Ed. 572 (1944). This case held that where resort to the state court failed to afford fair adjudication of federal contentions or where the remedy in the state court is inadequate, then a federal district court may entertain a petition for habeas corpus after the petitioner has exhausted his state remedies. The crux of *Ex parte Hawk, supra,* lay in the fact that it made the first categorical statement to the effect that certiorari to

the United States Supreme Court was a part of the state remedy. The rule that a petitioner must exhaust state remedies, including certiorari to United States Supreme Court, developed from the concern of the Court over Federal-State comity. *Ex parte Royall*, 117 U. S. 241, 29 L. Ed. 868 (1886); *U. S. ex rel. Kennedy v. Tyler*, 269 U. S. 13, 70 L. Ed. 139 (1925); *Moore v. Dempsey*, 261 U. S. 86, 67 L. Ed. 543 (1923). Until *Ex parte Hawk, supra*, the only definitive statement was found in *Urquhart v. Brown*, 205 U. S. 179, 51 L. Ed. 760 (1907), where it was held that after the highest court of the state, competent under state law to dispose of the matter, had finally acted the case should be brought before the United States Supreme Court for re-examination. The recurring theme in these cases is the reluctance of the court to allow inferior federal courts to interfere with the judgments of courts of a sovereign state. *U. S. ex rel. Jackson v. Brady*, 133 F. 2d 476 (4th Cir. 1943); *Kramer v. State of Nevada*, 122 F. 2d 417 (9th Cir. 1942). In 1948, the Court retreated from the position of *Ex parte Hawk, supra*, and held that, at the discretion of the district judge, the writ of habeas corpus could be granted to the petitioner after a denial by the State Supreme Court, despite his failure to seek certiorari to the United States Supreme Court. *Wade v. Mayo*, 334 U. S. 672, 92 L. Ed. 1647 (1948). Justice Murphy placed emphasis on the safeguarding of the rights of the individual, and he suggested that comity was insufficient reason for erecting another procedural obstacle for the petitioner. This was followed in *Wing v. Commonwealth of Pa.*, 86 F. Supp. 485 (W. D. Pa. 1949); *Collingsworth v. Mayo*, 173 F. 2d 695 (5th Cir. 1949). For two years the law stood thus. In 1950, the Court again declared that certiorari to the United States Supreme Court was an essential procedure in the exhaustion of state remedies. *Darr v. Burford*, 339 U. S. 200, 94 L. Ed. 761 (1950). This recent decision is cited as controlling on the present cases with regard to the question of the necessity of certiorari. *Jones v. Mayo*, 181 F. 2d 92 (5th Cir. 1950). However, the question remains as to the effect of a denial of certiorari with regard to a subesquent application to a district court. The majority of the Court in *Darr v. Burford, supra*, refused to state the exact effect that a district court should give to the Court's denial of certiorari. Justices Burton and Clark concurred in the opinion but made it clear that a denial of certiorari by the Court should, when reasons for denial are not stated, be disregarded by a district court in considering a subsequent application. *Darr v. Burford, supra*, at 219. Cases prior to this

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decision indicated that it was a discretionary matter for the district court, but that as a general rule such a petition would be denied in the absence of new matter or exceptional circumstances. *Salinger v. Loisel*, 265 U. S. 224, 68 L. Ed. 989 (1924); *Knight v. People*, 60 F. Supp. 164 (N. D. Cal. 1945). The later cases take the opposite view that denial of certiorari should have no effect on a later petition for habeas corpus to a district court. *Agoston v. Commonwealth of Pennsylvania*, 340 U. S. 844, 95 L. Ed. 619 (1950); *Ex parte Abernathy*, 320 U. S. 219, 88 L. Ed. 3 (1943); *U. S. ex rel. Smith v. Baldi*, 192 F. 2d 540 (3rd Cir. 1952). This was the view of Justices Frankfurter, Black, and Jackson dissenting in *Darr v. Burford, supra* at 220. They stated that a denial of certiorari only meant that fewer than four members of the Court deemed it desirable to review the decision of a lower court. In *Smith v. Baldi, supra*, the court held that a denial of certiorari by the United States Supreme Court did not prove anything except that it was denied, and that the applicant had fulfilled a procedural requirement in the exhaustion of his state remedies. If he gets certiorari the question will be adjudicated by the Court, but if he does not, he may apply to the appropriate lower federal court for a writ of habeas corpus.

Under the decision of *Darr v. Burford*, the Circuit Court of Appeals was right in affirming the judgment of the district court. There is no question today that the rule is that certiorari to the United States Supreme Court is an essential part in the exhaustion of state remedies. Although the Court has not stated the exact effect of a denial of certiorari, it appears that it is not meant to bar a subsequent application to a district court. It is submitted that the point to be challenged is the decision of *Darr v. Burford*. Justice Frankfurter in his dissent points out that the rule requires a meaningless gesture on the part of the petitioner, since denial of certiorari has no legal significance in habeas corpus proceedings. The Hon. John J. Parker in his article, "Limiting the Abuse of Habeas Corpus," 8 Federal Rules Decisions 171 (1949), says that the requirement of certiorari is essential to the prevention of multiple petitions to the district courts for habeas corpus and that Federal-State comity would demand such procedure. Yet, if denial of certiorari is to have no effect on the district court, then it would seem that Justice Murphy was right in saying in *Wade v. Mayo, supra*, at 681, "Good judicial administration is not furthered by futile procedure".

TERRELL L. GLENN.

CONSTITUTIONAL LAW — Public Utilities — Broadcasting to Captive Audiences. In March, 1948, Capital Transit Company, operating an extensive bus and street railway system in the District of Columbia, installed in a bus and a street car equipment for receiving and amplifying "music as you ride" radio programs so that all the passengers heard the programs. After a poll of passengers showed ninety-two per cent favored their continuance, the company began installing such radios in all of its buses. After receiving a number of complaints, the Public Utilities Commission made an investigation and found that the broadcasts were "not inconsistent with public convenience, comfort, and safety" and that they tended to "improve conditions under which the public ride". The District Court of the District of Columbia held that the commission erred as a matter of law and that the broadcasts deprive objecting passengers of liberty without due process of law. The Court of Appeals denied a rehearing. On appeal, HELD, reversed. The constitutional right of privacy is not violated by the transmission of radio programs through receivers and loud speakers in passenger vehicles of a street railway company. *Public Utilities Commission v. Pollack,* .... U. S. ...., 96 L. Ed. 710 (1952).

No person shall be deprived of life, liberty, or property without due process of law. *U. S. Constitution, Amendment V.* The liberty of the right of privacy is often defined as the right to be let alone. *Banks v. King Features Syndicate,* 30 F. Supp. 352 (D. C., 1939); *Brents v. Morgan,* 221 Ky. 765, 299 S. W. 967, 55 A. L. R. 964 (1927); *Holloman v. Life Insurance Company of Virginia,* 192 S. C. 454, 2 S. E. 2d 169, 127 A. L. R. 110 (1940). Constitutional guaranties may not be made to yield to mere conveniences, *Weaver v. Palmer Brothers Company,* 270 U. S. 402, 70 L. Ed. 654, 46 S. Ct. 320 (1926), and if not warranted by any just occasion, the least imposition is oppressive. *Mountain Timber Company v. Washington,* 243 U. S. 219, 61 L. Ed. 685, 37 S. Ct. 260 (1917). However, rights which are preserved to the citizen by the Federal Constitution are not absolute, but are subject to proper regulation. *United Public Works v. Mitchell,* 330 U. S. 75, 91 L. Ed. 754, 67 S. Ct. (1945). In *Grosjean v. American Press Company,* 297 U. S. 233, 80 L. Ed. 660, 56 S. Ct. 444 (1936), the Court held that the word "liberty" in the provision of the Fourteenth Amendment, which provides that no state shall deprive any person of life, liberty, or property without due process of law, embraces not only the right of a person to be free from physical restraint, but the right to be free in

the enjoyment of all his faculties as well. But, in forbidding the deprivation of liberty without due process of law, the Constitution does not recognize an absolute and uncontrollable liberty, the liberty safeguarded being liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people. *West Coast Hotel Company v. Parrish,* 300 U. S. 379, 81 L. Ed. 703, 57 S. Ct. 578, 108 A. L. R. 1330 (1936). Even the fundamental rights of the Bill of Rights are not absolute. *Kovas v. Cooper,* 336 U. S. 77, 93 L. Ed. 513, 69 S. Ct. 448, 10 A. L. R. 2d 608 (1949). Nor does the liberty of a citizen include among its incidents any vested right to have the rules of law remain unchanged for his benefit. *Middleton v. Texas Power and Light Company,* 249 U. S. 152, 63 L. Ed. 527, 36 S. Ct. 227 (1918). The constitutional guaranty of liberty is only a freedom from arbitrary restraint, not of immunity from reasonable regulations and prohibitions imposed in the interest of the community. *Hardware Dealers' Mutual Fire Insurance Company of Wisconsin v. Glidden,* 284 U. S. 151, 76 L. Ed. 214, 52 S. Ct. 69 (1931). Even the privileges of citizenship and the rights inhering in personal liberty are subject in their enjoyment to such reasonable restraints as may be required for the general good. *Halter v. Nebraska,* 502 U. S. 34, 51 L. Ed. 696, 27 S. Ct. 419 (1907). The guaranty of due process demands only that the law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a real and substantial relation to the object sought to be attained. *Nebbia v. New York,* 291 U. S. 502, 78 L. Ed. 940, 54 S. Ct. 505, 89 A. L. R. 527 (1934). A municipal ordinance which forbids the use of sound amplification devices by which sound is cast directly upon the streets and public places, except with permission of the chief of police for the exercise of whose discretion no standards are prescribed, as applied to one seeking leave to amplify religious lectures in a public park and to whom upon expiration of an original permit a renewal was refused on the ground that complaints had been made, is an unconstitutional restraint on the right of free speech. *Saia v. New York,* 334 U. S. 558, 92 L. Ed. 1574, 68 S. Ct. 1148 (1948). The constitutional right of free speech is not infringed by a municipal ordinance prohibiting the operation upon the city streets of sound amplifiers or other instruments which emit loud and raucous noises; but absolute prohibition within municipal limits of all amplifications, even though reasonably subject to regulation in place, time,

and volume, is probably unconstitutional as an unreasonable interference with normal activities. *Kovacs v. Cooper, supra.*

The decision does not violate the Fifth Amendment of the Constitution and it appears consistent with earlier decisions on constitutional rights. It is clear that personal rights and liberties are not absolute; and other interests may limit one's enjoyment of his rights, especially where the general good warrants a condition which does not suit another's right of absolute privacy. When a person is traveling with the public, it is only reasonable that he should not be subject to any substantial or unreasonable interference with his right of privacy so as to be oppressive against him. But where interference is slight and the interest of the general public warrants the existence of such condition as would limit the right of another's absolute privacy in the public, earlier decisions seem to hold that the enjoyment of the right should be limited. The courts have consistently held that one's rights must yield at times when the public interest or common good warrants it, provided there is no substantial invasion of the rights and there is no interference as would be oppressive to another.

MARION S. RIGGS.

CONSTITUTIONAL LAW — FREEDOM OF SPEECH — Validity of Statutory Disqualification as Teacher if Member of Subversive Group. Appellants asked for a permanent injunction and judgment declaring unconstitutional § 12-a of the New York Civil Service Law, as implemented by the Feinberg Law. The Feinberg law provides that a person who teaches, or advocates, or is knowingly a member of an organization which teaches or advocates the overthrow of government by force and violence is ineligible for appointment to, or retention in, any position in the public schools. The Board of Regents is directed to list, after notice and hearing, organizations engaging in these activities and to issue regulations that membership in such an organization shall constitute *prima facie* evidence of disqualification. The Court of Appeals of New York affirmed a judgment for defendants by the Appellate Division, which had reversed the trial court's judgment for plaintiff. On appeal, HELD, affirmed. A state legislature may declare that membership in an organization found to be subversive is *prima facie* evidence of disqualification for a position in the public school system. *Adler v. Board of Education,* .... U. S. ...., 72 Sup. Ct. 380 (1952).

The prohibition in the United States Constitution's First Amendment of legislation abridging free speech was not intended to give immunity for every possible use of language. *Frohwerk v. United States,* 249 U. S. 204, 63 L. Ed. 561 (1919). Statutes involving restraints on freedom of speech were originally decided by applying the clear and present danger test. *Schenck v. United States,* 249 U. S. 47, 63 L. Ed. 470 (1919). Congress may define what constitutes a clear and present danger prior to its existence. *Gitlow v. New York,* 268 U. S. 652, 667-672, 69 L. Ed. 1138, 1146-1148 (1925). At the present time the court is prone to consider whether the "gravity of the evil justifies the invasion of free speech". *Dennis v. United States,* 341 U. S. 494, 95 L. Ed. 1137 (1951). The Supreme Court has held that Congress has the power to regulate the political activities of federal employees in order to promote efficiency in the federal service, *United Public Workers v. Mitchell,* 330 U. S. 75, 91 L. Ed. 754 (1947). This is true regardless of the nature of the activities. In *Communications Assn. v. Douds,* 339 U. S. 382, 94 L. Ed. 925 (1951), the court sustained the non-Communist affidavit provision of the Labor Management Relations Act, 61 Stat. 143 (1947), 29 U. S. C. § 159-h (Supp. IV, 1951), and pointed out that the conflict between freedom of speech and the necessity of keeping public order was the issue involved in the case. Under the Hatch Act, § 9, 53 Stat. 1148 (1939) as amended 5 U. S. C. § 118-i (Supp. IV, 1951), federal employees are prohibited from taking an active part in political campaigns. Also, states have the power to prescribe reasonable qualifications for teaching in the public schools, *Houghton v. School Committee,* 306 Mass. 542, 28 N. E. 2d 1001 (1940), but the authority of the board of education to change eligibility rules for teachers must be reasonably and fairly exercised. *United States v. Doyle,* 68 App. D. C. 100, 93 F. 2d 646 (1937). Laws which established a loyalty oath as a qualification of employment by the state have been upheld by the Supreme Court. *Gerende v. Election Board,* 341 U. S. 56, 95 L. Ed. 1323 (1951); *Garner v. Los Angeles Board,* 341 U. S. 716, 95 L. Ed. 1317 (1951).

As Justice Minton for the majority pointed out, the question raised in the instant case is not so much invasion of freedom of speech as it is the extent to which the state may impose qualifications for employment in the public schools without impairing constitutional rights. It remains axiomatic, however, that any form of government must protect itself from those who would destroy it; and it is also true that citizens of the United States are constitutionally guaranteed free-

dom of speech. This paradox, combined with the happenings of the past three decades, has created a situation which could have caused a complete abridgement of one, or the total destruction of the other, had it not been for the wisdom of the judiciary. The courts have continually strived for a balance between the two opposites and have thus far managed to maintain that balance by using a test which is flexible and capable of meeting the challenge of varying circumstances.

JESSE J. GUIN, JR.

JURY — DISQUALIFICATION — Relationship of Juror to Prosecuting Attorney. The defendant was tried and convicted of the offense of breaking and entering with intent to commit a crime, and of the offense of larceny. Motions were refused for new trial and directed verdict. Defendant appealed on the ground that a juror was the brother of the prosecutor and therefore disqualified from acting as a juror. The trial judge had overruled this contention, stating that the fact of relationship of a juror to one of the attorneys in the case would not disqualify the juror. On appeal, HELD, reversed in part (on other grounds), affirmed as to the count charging larceny. A juror is not disqualified by the fact of his close relationship to the prosecuting attorney. *State v. Nicholson,* .... S. C. ...., 70 S. E. (2d) 632 (1952).

The majority view is that relationship to the prosecuting attorney does not disqualify a juror. *Mathis v. State,* 97 Tex. Cr. 222, 260 S. W. 603 (1923); *Frost v. State,* 225 Ala. 232, 142 So. 427 (1932); *Logan v. State,* 251 Ala. 441, 37 So. 2d 753 (1948); *Garland v. United States,* 182 F. 2d 801 (U. S. C. A. Va. 1950). At common law persons disqualified for jury duty were aliens, persons outlawed or attainted of treason, or those guilty of a felony rendering them infamous in the eyes of the law. *People v. Harding,* 53 Mich. 48, 18 N. W. 555 (1884); *Deaton v. Comm.,* 157 Ky. 308, 163 S. W. 204 (1914). Since this was so, the common law rule was that a juror is not disqualified by the fact that he is related to one of the attorneys in the case, even though it is the prosecuting attorney. *State v. Thornhill,* 188 La. 762, 178 So. 343 (1937); *Hayes v. State,* 33 Ala. App. 364, 33 So. 2d 744 (1948); 31 Am. Jur. 663, Jury, Sec. 140. In fact, a majority of the states hold that in the absence of a statute to the contrary, a juror is not disqualified because he is related to an attorney engaged in the case. *State v. Hilton,* 87 S. C.

434, 69 S. E. 1077 (1911); *Kelso v. Kuehl,* 116 Wis. 495, 93 N. W. 455 (1903); *State v. Thornhill, supra.* Other jurisdictions limit this by holding that where the attorney is directly interested in the outcome of the action, the juror will be disqualified. *Kelso v. Kuehl, supra;* 31 Am. Jur. 661, Jury, Sec. 135; 35 C. J., p. 321 note 43. This view is found in the fourth class of common law challenges laid down by Lord Coke, known as *propter affectum,* (e. g.) a well grounded suspicion of partiality or bias. Coke Litt., 156 b.; F. X. Busch, LAW AND TACTICS IN JURY TRIAL, § 68, p. 101. Other jurisdictions, such as Tennessee, have extended this common law doctrine of challenge by statute. *Hamilton v. State,* 101 Tenn. 417, 47 S. W. 695 (1898). Although this statute disqualifies a juror where he is related to a prosecutor within the sixth degree, the fact that one of the jurors was related to the prosecutor, unknown to the accused, does not entitle him to a new trial. *Hamilton v. State, supra.* The Georgia statute, (Act of 1935), which disqualifies any juror related to the prosecutor by consanguinity or affinity within the sixth degree has been interpreted by the Supreme Court of Georgia to mean that such disqualification, not known to defendant until after the verdict, would entitle him to a new trial. *Brown v. State,* 28 Ga. 439 (1859); *Merritt v. State,* 152 Ga. 405, 110 S. E. 160 (1921). Where, however, the relationship is known, and no objection is made, the incompetency of the juror is presumed to be waived. *Miller v. State,* 139 Ga. 716, 78 S. E. 181 (1913). The fact that the relationship was not known to the juror does not prevent a new trial. *Crawley v. State,* 151 Ga. 818, 108 S. E. 238, 18 A. L. R. 368 (1921); *Ethridge v. State,* 163 Ga. 186, 136 S. E. 72 (1926).

The prevailing idea of law since the forming of our modern jury system, has been that a person accused of crime is entitled to a trial by a fair and impartial jury. So long as we have our present jury system, we of the legal profession should do everything within our power to strengthen this system. The allowing of relatives of either attorney to sit on the jury will most certainly not strengthen, but in all probability weaken the jury system. It is known of all men and has been known from the beginning of man, that the call of blood is always powerful, potent and, usually, irresistible. Therefore, the law, not only as a science of reason, but in the exercise of sound common sense, has and should recognize blood relationship as the universal producer and creator of bias and favor in the trial of causes. Where the courts are powerless to act contra to common law the legislatures should and have acted to keep the law up to date with the

changing times. It appears in the present situation that the majority of the states are behind in keeping the law abreast of the times. The instant case serves as a startling reminder that constant study, thought, and effective legislation are essential to preserve and strengthen our basic institutions such as the jury system.

CARL W. LITTLEJOHN, JR.

ADVERSE POSSESSION — Ignorance or Mistake as to Boundaries. The respondent, in using her driveway, was, for over twenty years, accustomed to veer onto a portion of appellant's lot. Neither party knew the exact location of the line dividing their lots until a survey was made shortly prior to the commencement of this action. Respondent brought action to establish title to the disputed portion, by survey shown to be a corner of appellant's lot, under a claim of adverse possession or easement by prescription. On appeal, HELD, reversed. The evidence failed to show that respondent intended to assert any adverse claim to appellant's land prior to learning of her encroachment upon such land. *Babb v. Harrison,* 220 S. C. 20, 66 S. E. (2d) 457 (1951).

Adverse possession must be open, notorious, exclusive, hostile, continuous, and unbroken for the whole period of possession. *Weston v. Morgan,* 162 S. C. 177, 160 S. E. 436 (1931); *Southern Ry. Co. v. Mayer,* 159 S. C. 332, 157 S. E. 6 (1931). Adverse possession is "hostile possession", which is possession with the intention to dispossess the owner. *Ouzts v. McKnight,* 114 S. C. 303, 103 S. E. 561 (1920). Whether the possession of land under a mistaken belief as to the true boundary is a sufficient manifestation of hostility or intention to dispossess remains unsettled in this and other jurisdictions. The question revolves around two general rules. *Courtner v. Putnam,* 325 Mo. 924, 30 S. W. (2d) 126 (1930). (1) That where the intention of the landowner is to claim adversely only to the true boundary line, wherever it may be, his possession of such extended area is not adverse or hostile to the true owner. *Ouzts v. McKnight, supra; Riley v. Griffin,* 16 Ga. 141, 60 Am. Dec. 726 (1854); *Silver Creek Cement Corp. v. Union Lime & Cement Co.,* 138 Ind. 297, 35 N. E. 125, 37 N. E. 721 (1894). And, (2) that where the intention is to claim to the visible, rather than to the true line, and as the possessor's own, and his possession is open and exclusive for the statutory period, such possession will be held to be adverse and to vest title. *Henderson v. Walker,* 157 Ga. 856, 122

S. E. 613 (1924); *Riggs v. Riley,* 113 Ind. 208, 15 N. E. 253 (1888). The trend is to adopt the second view, for in a steadily increasing number of jurisdictions, it is the visible possession, under a belief that the land is the possessor's own, that constitutes its adverse character. *Stevens v. Velde,* 138 Minn. 59, 163 N. W. 796 (1917); *Barnes v. Light,* 116 N. Y. 34, 22 N. E. 441 (1889). The old idea that there could be no disseisin by mistake is now being abandoned, and the trend of opinion is against disturbing him whose visible boundaries have existed for the period of the statute of limitations. *Christian v. Bulbeck,* 120 Va. 74, 90 S. E. 661 (1916); *Rock Springs v. Sturm,* 39 Wyo. 494, 273 P. 908 (1929); see Annotation, 97 A. L. R. 14.

The method of handling the problem in South Carolina is demonstrated in two previous decisions. In the case of *Ouzts v. McKnight, supra,* the mistaken landowner did not know he was, nor did he intend to be, on the rightful owner's tract, and the court denied his claim of adverse possession. In the later decision of *Klapman v. Hook,* 206 S. C. 51, 32 S. E. (2d) 882 (1944), the court allowed retention of a boundary strip, not because possession by the mistaken holder was adverse, but on the basis of the controlling effect of calls or monuments which marked the line. It is interesting to note that the court, while commenting that a claim of adverse possession was unnecessary, nevertheless treated the disputed line as the true line on the basis of acquiescence. By way of dissent, Mr. Chief Justice Baker contended that the problem was rather a situation comparable in principle to the *Ouzts* case and that the principle of that case should be followed.

It is thus seen that the South Carolina court has continued to shy away from the doctrine now being adopted by an increasing number of jurisdictions — that it is the visible possession, with the intent to occupy as one's own, that constitutes its adverse character, and not the remote view or belief of the possessor. Had the instant case been considered in this light, the circumstances therein might have proved to support a possession adverse in character.

JOHN K. DELOACH, JR.