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Liability of an Infant Partner to Firm Creditors

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entire title, and that no new estate is conferred on the survivor on the death of the spouse. Therefore the tax is a direct tax upon property, requiring apportionment according to the U. S. Constitution, [20] and is not a tax upon the transfer of property[21] which according to the Constitution requires merely that it be subject to geographical uniformity.[22]

Morton Klaus

LIABILITY OF AN INFANT PARTNER TO FIRM CREDITORS—The contracts of an infant, with few exceptions, are not void, but merely voidable. An infant has a general contractual capacity quite the same as an adult, but protection is extended by affording him a personal opportunity to avoid obligations which otherwise would be binding.[1]

An infant may become a partner, and, as in other contracts, the partnership agreement is voidable at the option of the infant.[2] However, the infant's liability is rendered somewhat peculiar and is not the same as in ordinary contracts.

By weight of authority, an infant who has contributed property to the firm upon becoming a member, may not withdraw his contribution so as to jeopardize firm creditors; although he may exempt himself from personal liability by repudiating his contract,[3] and he thereby frees his individual estate from attack. A few Pennsylvania cases have more or less directly passed upon this rule.

Although *Dulty v. Brownfield*[4] is hardly on point, it was deemed advisable to note it as there is a dearth of

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[20]Art. 1, sec. 2, Subsec. 3.

[21]Tyler v. United States, 28 Fed. 2nd 887.

[22]Art. 1, Sec. 8, Subsec. 1, Knowlton v. Moore, 178 U. S. 41; Randolph v. Craig, 267 Fed. 993. That the same rule should apply to joint-tenancies, see McIntosh's Estate, Supra.

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[1]31 C. J. sec. 149; Gilmore on Part. 79.

[2]31 C. J. sec. 193; Burdick on Part. (2nd Ed.) 94.

[3]31 C. J. sec. 193½; 16 A. & E. Encyc. of Law (2nd Ed.) 287; Crane and Magruder's Cases on Part. 97; Gilmore on Part. 82; Jennings v. Stannus, 191 Fed. 347, 112 C. C. A. 91; Bush v. Linthicum, 59 Md. 344; Adams v. Beall, 67 Md. 53, 8 A. 644; Dana v. Stearns, 3 Cush. (Mass.) 372; Whitemore v. Elliott, 7 Hun. (N. Y.) 518; Lovell v. Beauchamp, A. C. (Eng.) 607; Burdick's Cases on Part. 155.

[4]1 Pa. 497.

adjudications in this state involving an infant partner. In this case, an action was brought by an indorsee against the maker of a promissory note payable to the order of a firm. The court held that the defendant could not interpose as a defence, the fact that the name of the firm was indorsed by an infant partner. The case merely decides that a minor may act as a partner and may perform duties and exercise rights incident to such capacity.

In *Smith v. Eisenlord,*[5] a mortgage on land was given by partners, one of whom was an infant, for money borrowed by them for firm purposes. On an ejectment by the mortgagee, the infant partner pleaded his infancy. The court entered judgment for the plaintiff for one undivided moiety of the land and sustained the infant's defence as to the other moiety. No mention was made of the fact that the land was held by a partnership. This early case should not be too seriously considered. At present, under the Uniform Partnership Act,[6] property is held by partners as tenants in partnership.

In the case of *Bixler and Correll v. Kresge and Green,*[7] Kresge and Green held themselves out to the world as partners, but by private agreement, Green, an infant, was in Kresge's employ. Green contributed no property or money to the alleged concern, but he signed notes jointly with Kresge for a stock of store goods, upon which notes Green paid nothing. The court stated that, being a minor, he was not subject to legal liability on the notes. This intimates that when an infant partner gives his credit to the firm by notes, he may still avoid liability. It must be added, however, that the preceeding statement was a mere dictum. The controversy in the case was not in reference to the infant's liability. It was a dispute over priority between creditors of the so-called firm and individual creditors of the adult partner on distribution of the property of the alleged firm and the personalty of Kresge. It was decided that there was no partnership "equity" which would entitle the creditors of the alleged firm to a preference over the individual creditors of the partner who was the real owner of the assets levied upon as the property of the firm. Quite another problem would have confronted the court if

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[5]2 Phila. 353 (1859).

[6]1915, P. L. 19, sec. 8 (1).

[7]169 Pa. 405 (1895).

an infant partner had furnished property[8] to the firm and then sued to withdraw it.

Elm City Lumber Co. v. Haupt[9] deals more directly with the subject under discussion. A firm creditor sued a partnership of which an infant was a member. The court held that the plaintiff was entitled to judgment which bound the property of the firm and the partners personally, who were of full age, but as against the minor, the judgment was limited to the property of the firm, and did not bind him personally. This case seems to represent the law of the state. The doctrine is then evolved that an infant may not take a share of the assets of the firm, even though he contributed a portion thereof, if by doing so he would expose creditors of the firm to loss or injury. He may exempt himself from individual liability, but as against firm property, the infant has no higher rights than the adult partners.

The theory of this anomalous rule is that the firm acquires title to the property put forth into the business venture. Though the courts do not directly adopt the principle that a partnership is an entity distinct from its members, and even in view of the express repudiation of this notion by statutory enactment,[10] it is nevertheless so treated and sustained by the cases.[11] The infant may not reclaim the property as against firm creditors, he being no longer the owner.

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[8]The court explained that extending credit is not a contribution of "property" for the purpose of this question.

[9]50 Pa. Super. 489.

[10]U. P. A., 1915, P. L. 19, sec. 6 (1); But see sec. 8 (1).

[11]Burdick on Part. (2nd Ed.) 97; Gilmore on Part. 83.