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Parent and Child--Can a Parent Emancipate Without his Consent?

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Alcorn it may be doubted whether Wheeler v. Gahan would now be followed in Kentucky."

Regardless of what may be the true meaning of the words in the Wheeler case, the Kentucky court definitely reaffirmed the doctrine that the vendee becomes the equitable owner from the date of the contract in the case of Benjamin v. Dinwiddie, though not referring specifically to the risk of loss.

In view of the extreme meagreness of case authority for the proposition that the risk of loss should be upon the vendor it is to be seriously doubted that many courts will feel inclined to change their present views. The change, if any, will probably come from the legislature.

But regardless of the source of the change, it is the firm conviction of this writer that the risk of loss should be borne by the party who is in possession. Cogent reasons seem to demand such a change: (1) The analogous situation of contracts for the sale of chattels where the vendee has the risk of loss. (2) The better position of the party in possession to take steps to protect his interest. (3) The common belief of laymen who contract with reference to real estate that the risk of loss is on the one in possession. (4) Such a holding will practically always effectuate the intention of the parties. (5) The arguments of such authorities as Williston, Stone, and Langdell. (6) The extremely narrow and isolated application of the present rule, i.e., to contracts for the conveyance of a fee simple in realty. (7) The "homespun justice" of the rule.

ROBERT EDWIN HATTON, JR.

PARENT AND CHILD—CAN A PARENT EMANCIPATE A MINOR WITHOUT HIS CONSENT?

The problem stated briefly is to determine the age, if at all, at which a father can emancipate his son, without that son's consent, without rendering himself liable criminally for non-support or abandonment, and, at the same time, avoiding liability for debts made by the son, by pledging his father's credit for necessaries.

The statement that the law must, in case of emancipation, give its primary consideration to the rights and welfare of the infant implies that there are other elements for legal consideration. That is so. The financial condition of the parent is important. If we were to set an arbitrary age at which emancipation could occur, we would make a mistake which, after a few decisions, would become so evident as to demand rectification. In a West Virginia case a father had become insolvent and his creditors sought to levy on crops raised by the labor of the minor child. It was there held that a parent in—

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*Supra, note 15.
1 Trapnell, et al. v. Conklyn, et al., 37 W. Va. 242, 16 S. E. 570 (1892).*
volved in hopeless insolvency could emancipate his child of eighteen and remove his services and earnings from the grasp of creditors. And it was held that the fact that the child still remained at home created no estoppel to the claim of emancipation. Had we here set an arbitrary age or disallowed emancipation until the infant reached legal age, we would have subjected the infant to the debts of his father for three years, during which time he would be unable to make a decent living or to lay aside funds with which to educate himself. In this case the welfare of the infant had to be considered in the light of the present and probable future financial condition of his father. But, in this case, it is certain that the infant gave his consent to be emancipated so that the product of his labor could be removed from the grasp of creditors. Leaving out these circumstances so that the consent of the child cannot be implied, could his father have emancipated him? Another case decided a few years earlier in the same state held that a father may voluntarily relinquish his right to his child’s earnings, and when he does so, the child is said to be emancipated. This case also advances the proposition that a father is entitled to the earnings of the child at least until the child is fourteen years of age; the weight of modern authority is that the father has the right to a child’s earnings until he reaches legal age. As may be seen, these cases deal only with the right of the father to waive his rights in regard to the child.

After a careful perusal of cases affected by the general problem of emancipation one would come to the conclusion that extremely few, if any cases, have ever directly been decided on the point of involuntary emancipation. The cases when touching the point, have been decisions as to the right of the child to his own earnings as against the right of the father to them, the element of emancipation being treated as already settled. In these cases the question whether the emancipation was effected legally or illegally by the father was not treated because the present purpose of the court was to protect the interests of the child. Many cases may be found which hold that a father has a right to renounce his common law right to his son’s services and to give the minor child the benefit of his earnings. The question which we are endeavoring to answer is, has he the power to renounce his common law duties as regards that son? These cases all presuppose that the child has a method of earning, and, hence, is willing to be emancipated. The point in these cases is that the child has a means of live-

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3 Rounds Bros. v. McDaniel, 133 Ky. 669, 118 S. W. 956 (1909); Vincennes Bridge Co. v. Guinn’s Guardian, 231 Ky. 772, 22 S. W. (2d) 300 (1929) (case expressly states that parent has right to earnings until the child reaches 21); State, for Use of Strepay v. Cohen, 172 Atl. 274 (1934).
4 Inhabitants of Town of Liberty v. Inhabitants of Town of Levant, 122 Me. 300, 119 Atl. 811 (1923); Mathews v. Fields, 12 Ga. App. 225, 77 S. E. 11 (1913). (By statute, Civil Code 1910, Section 3021.)
lihood and wishes to be left alone to enjoy it, without the common law obligation to turn over his earnings to his parents. The writer finds no case directly holding, as a part of its decision, that a father may renounce all parental duties in regard to a child who is under legal age.

There is dictum in a Kentucky case which would seem to indicate that, if the question of forcible emancipation came before that court, they would disallow it. They infer that emancipation could only occur where the infant has the present ability to earn a living and has consented to do so and has been earning and receiving wages and is able to pay for his necessaries.

Authority is well settled that where a father abandons, neglects, or refuses to support his child, or denies him a home, the law will imply an emancipation so as to defeat the father's claim on the earnings of the child; and such conduct by the father is held to amount to irrevocable emancipation. But it may readily be seen that such holding is only for the purpose of creating a bar against the father laying claim to the child's earnings under his common law right. The father's liability for such an act is not dealt with.

A Kentucky statute provides that any parent who deserts his child under sixteen years of age, leaving him in destitute circumstances, is guilty of a felony. This seems to be the only legislation affecting the subject in this state. This statute could be construed to mean that if the child under sixteen had a visible means of support and was not destitute, then the father would not be punishable under the statute; certainly the statute intends that the father shall not be penalized if the child is over sixteen, although said child is in indigent circumstances. Doubtless both these constructions are correct when affecting the felony as created by the statute; but assuming that they are correct, what of the parent's liability as to misdemeanors under the common law?

A New York case holds that, beyond what is required by the school system, it being compulsory under this system to provide support and educational facilities until the child is aged sixteen, the parent's liability thereafter is a matter of fact, consideration being given to health, resources and station in life of the child. A stronger case decided in Kentucky holds the parents legally bound to support their children during infancy, even though the children have estates of their own, unless the parents' estate is limited and the children have an income ample for their support. Yet another Kentucky case

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*Simmons v. Stewart, 198 Ky. 330, 248 S. W. 892 (1923).*

*Swift and Co. v. Johnson, 77 C. C. A. 619, 138 Fed. 867 (1905); Smith v. Gilbert, 80 Ark. 525, 98 S. W. 115 (1906).*

*Ky. Stat. 1930, Section 3311-1.*


stated by way of dictum that the parents' duty to support does not necessarily end when the child becomes of age, the question being determined by the facts. This case may be construed to overrule an earlier Kentucky case holding that a parent is not legally bound to support a child after it becomes of legal age, and that no such obligation can be imposed by statute. Yet, if we are to give cognizance to a very strong inference, even this early Kentucky case recognized the common law duty to support at least until the child became of legal age.

A New York statute provides a penalty for the abandonment in destitute circumstances of a child under sixteen. Another New York statute provides a heavier penalty in the case of such abandonment of a child under fourteen. These provisions indicate a slight trend in the law toward lifting the burden of support from the shoulders of the parent. This trend is evidenced by the omissions in the statutes of the states to provide penalties for nonsupport or abandonment of children over sixteen years of age. The gap between the age of sixteen and legal age, however, is still filled by the common law, making it a misdemeanor to commit such abandonment. Where injury has or is being done the infant the law will act to punish, or to prescribe a remedy. Where no harm is done, and, perhaps, the infant is benefited by the cutting of parental bonds, the law will remain discreetly silent.

Howard H. Whitehead.

EQUITY—EQUITABLE CONVERSION—OPTION CONTRACT—DEATH OF VENDOR.

One Bisbee leased certain real estate to two lessees for a period of two years, and gave these lessees an option to purchase the real estate at any time within the two years upon the payment of a certain sum. Almost a year later Bisbee died intestate. A month after Bisbee's death the lessees exercised their option to purchase. The property was conveyed to the lessees by Bisbee's administrator, and the purchase money was ordered to be, and was, distributed as personal property. The heirs of Bisbee sought to have the order set aside.

Held: for the plaintiffs, who as heirs of Bisbee were entitled to the

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20 Crain v. Mallone, 130 Ky. 125, 113 S. W. 67 (1908).
22 Cahill's Cons. Laws of N. Y., Ch. 41, Section 480.
23 Cahill's Cons. Laws of N. Y., Ch. 41, Section 481.