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NOTES

EMANCIPATION AS AFFECTING THE DISABILITIES OF INFANTS.

“Emancipation is the entire surrender of all the parent’s right to the care, custody, and earnings of the child, as well as the renunciation of parental duties.” The foregoing is a commonly accepted definition of the legal term emancipation. A minor wishing to be free from parental control, enters into a contract with the parents by which, in return for a release of all the minor’s obligations to the parents, the minor releases the parents from all obligation to him or her.

It is our purpose to consider the effects of emancipation in whatever form it occurs on the disabilities of an infant. Does it free him from all the disabilities of infancy, and can he contract with the same freedom as an adult? Or may he still set up infancy as a defense, as he could before his emancipation? The chief factor entering into the solving of the problem is the method by which the emancipation took place.

The commonest method by which the emancipation of an infant occurs is by the neglect of the parent to support the child. This is not a complete emancipation, and it seems that the only effect of it is to put an end to the parent’s right to take the infant’s earnings, but it in no way releases the parent from any obligations to the child.¹ It does not enlarge the infant’s power to contract or affect his right to plead infancy, as a defence.

Sometimes an infant and the parent make an agreement by which the infant is emancipated. In this case, both parent and child are released from their obligations to each other. But, as before, the infant’s power to contract is not enlarged. He is not estopped from setting up his plea of infancy.²

But suppose the infant marries. Is he now emancipated for all purposes? It seems now for the first time that we have a real reason for putting the infant on the same plane as an adult.

¹ 16 Am. & Eng. Enc. Law, 2nd Ed., p. 232; 2 Page, Contr., sec. 852; Clark, Contr., p. 150; 22 Cyc. 516, 517; *Wickham v. Torley*, 36 L. R. A. (N. S.) 57; *Wuller v. Chuse Grocery Co.*, 28 L. R. A. (N. S.) 128, 89 N. E. 796.

² See cases cited, *supra*.

In the case of *Del. L. & W. R. R. Co. v. Petrowsky*,³ Judge Rogers says, "It appears to be settled that the marriage of a minor with his father's consent works an emancipation, the reason given for this proposition being that the marriage gives rise to a new relation inconsistent with subjection to the control and care of the parent. The husband is the head of a new family and as such is subject to obligation and duties to his wife and children which require him to be the master of himself, his time, his labor, earnings, and conduct. *Sherburne v. Hartland*, 37 Vt. 528; *Cochran v. Cochran*, 196 N. Y. 86, 89; *State, ex rel., Scott v. Lowell*, 78 Minn. 166." This would seem to indicate that the married infant is to be regarded as an adult, but the court is careful to point out that "the marriage of a minor does not emancipate him from *all* the disabilities of his infancy."

At least two jurisdictions hold that emancipation of a minor by marriage with the consent of the parent completely removes the disabilities of infancy and places him on the same plane as an adult.⁴ Others hold that marriage removes the disabilities of an infant to a limited extent.⁵

For example, in the case of *Taunton v. Plymouth, supra*, it was said, "The marriage, in this case, may have removed the pauper, Abraham Tisdale, from the control of his father, and perhaps have given him a right, as against his father, to apply all his earnings to the support of his family. But it did not give him a capacity to make binding contracts, beyond other infants; or any political or municipal rights, which do not belong by law to minors." And in the case of *Morgan v. Cunningham, supra*, we find the following statement, "We therefore agree with the appellant's contention that the marriage of Charles Morgan did not make him of lawful age, nor did it remove the civil disabilities imposed upon him as a minor. . . . But such marriage did have the effect of emancipating

³ 250 F. 554, Certiorari denied, 38 S. Ct. 427.

⁴ *Hoys v. Gowdoin*, 159 Ala. 600, 49 S. 122; *Roe v. Caldwell*, 145 La. 853, 53 S. W. 986.

⁵ *Bell v. Burkhalter* 183 Ala. 527, 62 S. W. 786; *Ex. p. Hollopeter*, 52 Wash. 41, 100 P. 159; *Delpit v. Young*, 51 La. 923, 25 S. 547, where it was held that an infant married woman has capacity to sue for annulment of marriage; *Taunton v. Plymouth*, 15 Mass. 203; *Austin v. Austin*, 167 Mich. 164, 132 N. W. 495; *Morgan v. Cunningham*, 109 Wash. 105, 186 P. 309.

him and making him the head of a family. He thereafter became his own man. He was bound to use his income and wages, not for the support of his mother, but for the support of his own family.”

The policy of the law is to protect the infant. The law presumes the minor immature in his judgment and reason, and liable, through the persuasion of an older mind, to enter into disadvantageous contracts, and for that reason it has given the minor a defence to such contracts, the plea of infancy. Even in the case of marriage of a minor, the law cannot add to the tender age of the minor, nor make sound his immature judgment, and therefore it will not deprive the infant who has effected his emancipation by marriage of the defense which the law has thrown around him.

Some jurisdictions have passed statutes allowing the infant to be emancipated by order of the court. These jurisdictions hold that the legislature has power to endow minors to make contracts otherwise lawful, and after he has been so endowed he becomes an adult, or at least on the same plane.⁶ In *Young v. Sterling Leather Works, supra*, the court said, “So it appears that, at common law, an infant could only legally bind himself by a contract which was for his benefit, and that obligations imposed, by statute, upon an infant were binding. But even if this were otherwise, there is no constitutional provision in the way of the Legislature to deal with the disabilities of infancy, as it, in its legislative wisdom or judgment, may see fit. Accordingly, the Legislature has the power to change the age at which a minor is privileged to exercise legal rights which shall be binding upon him. It may give him legal power to act when he is 16 or it may raise the age of majority when he shall be entitled to perform certain legal acts.”

Even under such statutes some courts have held that it must be shown that the removal of the disabilities is for the best interest of the minor, and that he is capable of attending to his own affairs or business. The cases of *Dalton v. Bradley Lumber*

⁶ *Scott v. Nashville Bridge Co.*, 223 S. W. (Tenn.) 844; *People v. Kowalski*, 138 N. E. 634 (Ill.); *Peterson v. Weimar*, 194 N. W. (Wis.) 346; *Forgis v. Folk Co.*, 147 Wis. 327, 133 N. W. 209; *Young v. Sterling Leather Works*, 91 N. J. Law 289, 102 A. 395.

Co., and *Dotes v. Hilton*¹ hold that an infant who is not shown to be capable of transacting his own business cannot have his disabilities removed, even by a court order made pursuant to legislative authority, on the ground that the statute providing for judicial emancipation should be construed as applicable only to infants who are capable of adult conduct.

EUGENE B. COCHRAN.

THE RIGHTS AND POWERS OF AN OFFICER IN SERVING A PROCESS.

A process, in the sense the term is employed in this article, is the means or method used by the court to acquire jurisdiction of a person and compel him to appear in court after suing out the original writ in civil cases and after indictment in criminal cases. The Kentucky Code defines the word "process" as a writ or summons issued in the course of judicial proceedings.¹

A process, in order to give the court jurisdiction of a party, must be served by the proper officer. Ordinarily the sheriff is the proper officer to execute all writs returnable to court. His power is defined in this state by statute: "Each sheriff, by himself or deputies, shall execute and make due return of . . . all processes which come to, and may be lawfully executed by him, against any person . . . in his county, . . ." ² In Kentucky a process may also be served by a constable, coroner, eliscr or jailer. The power of a constable to execute a process is thus defined: "Constables may execute bench warrants, warrants of arrest, distress or other warrants, summons, subpoenas, attachments, notices, rules and all orders of courts in all criminal, penal and civil cases, and shall return all such processes, noting the time of execution on them, to the courts or persons issuing them."³ The statute also provides that a process may be served by a coroner: "A coroner may execute process in criminal, penal and civil cases, and when so acting, the laws in regard to sheriffs shall apply to and govern him."⁴ The power

¹ *Dalton v. Bradley Lumber Co.*, 135 Ark. 392, 205 S. W. 695; *Dotes v. Hilton*, 48 Ark. 305, 3 S. W. 193.

² Section 732, sub. 26, Ky. Civ. Code.

³ Section 4565, Ky. Stat.

⁴ Section 436, Ky. Stat.

⁵ Section 536, Ky. Stat.