

Domestic Relations - Infant's Contract - What Constitutes Ratification

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held this to be sufficient substantial compliance with the statute which required that all original papers in the action be endorsed by the divorce counsel before the decree could be rendered. *Taylor v. Taylor*, 144 Tenn. 311, 232 S.W. 445 (1921).

The Wisconsin Supreme Court in a case where amended pleadings in a divorce action were not served on the divorce counsel held that the service of the original pleadings was substantial compliance with the statute and the failure to serve the amended pleadings was not a reversible error. *Heinemann v. Heinemann*, 202 Wis. 639, 233 N.W. 552 (1930).

GEORGE J. MANGAN.

Domestic Relations—Infant's Contract—What Constitutes Ratification.—On a question of insolvency, a father claimed as a legal asset a sum of money due from his son. The son had promised to pay his father for the expense of his schooling. At the time, the son was still a minor. After reaching his majority, the son made several payments with the understanding that the money was to be used in the education of his sister and was also to be a repayment of his debt. The father claimed that part payment was a ratification of the contract made during his son's minority.

Held: That the promise to repay after reaching his majority followed by part payments was a ratification of the son's agreement, and the fact that such payments were made pursuant to an agreement that they would be used to educate his sister does not lessen the legal effect of the ratification of the debt. *Watzel v. Beardslee*, 289 Mich. 522, 286 N.W. 813 (1939).

Some states by statute require the ratification of an infant's contract to be in writing and signed by the person to be charged. Among those states are the following: Arkansas, Dig. Stat. Crawford & Moses (1921) §§ 4869, 6881; Session L. 1933, Act 251, p. 788; District of Columbia, C. 1929, T. 11, § 6; T. 14, §§ 21, 23; Kentucky, Carroll, St. 1922, §§ 470, 862; Session L. 1928, Ch. 148, p. 481, § 2; Maine, R. S. 1930, Ch. 60, § 146, Ch. 123, § 2, Ch. 165, § 2; Missouri, R. S. 1929, §§ 2971, 3484; New Jersey, Comp. St. 1910, p. 2616, § 7; p. 2813, §§ 32, 33, p. 4647, § 2; South Carolina, C. of L. 1922, C.C. §§ 5520, 5569-72; Session L. 1923, No. 66, p. 111. The District of Columbia allows ratification by conduct. C. 1929, T. 11, § 6; T. 14, §§ 21, 23. Some statutes which require written ratification make exceptions in contracts for necessities. District of Columbia, C. 1929, T. 11, § 6; T. 14, §§ 21, 23; Maine, R. S. 1930, Cr. 60, § 146, Ch. 123, § 2, Ch. 165, § 2; South Carolina, C. of L. 1922, C.C. §§ 5520, 5569-72; Session L. 1923, No. 66, p. 11. Maine makes an exception for a promise to pay for real estate of which the infant has received the title and retains the benefit. R.S. 1930, Ch. 60, § 146, Ch. 123, § 2, Ch. 165, § 2. North and South Carolina deny students the right to ratify certain prohibited transactions, as a contract to buy liquor or a contract with the keeper of livery stable. South Carolina, C. of L. 1922, C.C. §§ 5520, 5569-72; Session L. 1923, No. 66, p. 111; North Carolina, C. 1927 §§ 5181, 5805. (All of the foregoing statute citations are from Vernier, American Family Laws, Vol. V, sec. 273).

A majority of the states are not governed by statute. In these states ratification requires a new promise. *Catlin v. Haddox*, 49 Conn. 492, 44 Am. Rep. 249 (1882); *Thompson v. Lay*, 4 Pick. 48, 16 Am. Dec. 325 (1826). An express promise is required in cases where the consideration has been used or consumed, but if the consideration is still in existence and under the control of the infant,

an implied promise may arise from its use. *Robbins v. Eaton*, 10 N.H. 561 (1840). Besides an express promise, acts which manifest an intention to be bound may constitute ratification. *Edgerly v. Shaw*, 25 N.H. 514, 57 Am. Dec. 349 (1852). A mere acknowledgement that a contract was made during infancy is not such a manifestation. *Thompson v. Lay*, *supra*.

There may also be a conditional ratification but, until the condition is fulfilled, no action can be maintained. *State v. Binder*, 57 N.J.L. 374, 31 Atl. 215 (1894). And it has been held that the promise must be unconditional. *Bresee v. Stanley*, 119 N.C. 76, 25 S.E. 870 (1896).

Part payment of an agreement after reaching majority without any other evidence of an intent to ratify is no ratification. This is true because the part payment is at best an ambiguous manifestation of intent. The payor may regard his part payment as being all which, in fairness, he should pay. *Robbins v. Eaton*, *supra* *International Accountants Society v. Santana*, 166 La. 671, 117 So. 768, 59 A.L.R. 276 (1928).

Therefore, where there was part payment, but the person "wrote nothing, said nothing, and did nothing which bore on the question of intention," there was no ratification. *International Text Book Co. v. Connelly*, 206 N.Y. 188, 99 N.E. 722, 42 L.R.A. (N.S.) 1115 (1912); *Hook v. Harmon Nat. Real Estate Corp.*, 295 N.Y.S. 249, 250 App. Div. 689 (1937).

Courts are divided on the question whether there must be knowledge on the part of the infant that his contract is voidable. The majority of the courts hold that the infant need not have knowledge of his legal right to disaffirm since such knowledge will be presumed by his acts. *Rubin v. Strandberg*, 288 Ill. 64, 122 N.E. 808, 5 A.L.R. 133 (1919); *Clark v. Van Court*, 100 Ind. 113, 50 Am. Rep. 774 (1884); *Anderson v. Seward*, 40 Ohio St. 325, 48 Am. Rep. 687 (1883); *Bestor v. Hickey*, 71 Conn. 181, 41 Atl. 555 (1898). However, some courts hold that the knowledge of the right to repudiate must be shown. *Smith v. Mayo*, 9 Mass. 62, 6 Am. Dec. 28 (1812); *Tolar v. Marion County Lumber Co.*, 193 S.C. 274, 75 S.E. 545 (1912).

JOHN A. CALLAHAN.

Security—Conditional Sale—Distinction Between Mortgages and Conditional Sale.—C advanced money to A, an oil prospector. A assigned his drilling equipment to C. This assignment was not to become operative unless a certain oil well did not produce. It did not produce. A died. B, a judgment creditor of A, levied execution on the drilling equipment. A's administrator sued to restrain execution alleging that the judgment was obtained by fraud. C intervened and claimed title under the assignment. The court held this assignment to be, in effect, a conditional sale which passed title to C upon the failure of the well to produce, not a chattel mortgage as the defendant contended. *Stroup v. Meyers*, (Indiana, 1939) 21 N.E. (2d) 75.

There is a difference in form between a conditional sale and a chattel mortgage which becomes important in determining the recording or filing requirements which must be observed. Differences in substantive rights exist also, although it has been argued that since a conditional sale is simply a short cut to a purchase money chattel mortgage and both transactions have the same purpose—security for the vendor—there should be no distinction in substantive rights. Note (1922) 36 HARV. L. REV. 740; note (1929) 14 IOWA L. REV. 329, 337.

The character of the instrument is determined by the intent of the parties as manifested by the instrument itself and the surrounding circumstances. If