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Editorial Notes

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Notes

CONTRIBUTIONS TO THIS ISSUE

MISSOURI INCOME TAX LAW AS RETROSPECTIVE LEGISLATION. By James C. Porter.

Mr. Porter, an alumnus of Washington University and member of the St. Louis Bar, discusses the changes made in the state income tax law by the Act of 1927. He gives special attention to the question of whether or not this is retrospective legislation.

JUDICIAL FINDINGS OF FACT UNDER THE MISSOURI CODE. By Tyrrell Williams.

Mr. Williams, Professor of Law at Washington University, traces the history of findings by the courts from the time of the adoption of the code to the present. Mr. Williams teaches the Procedure courses in the School of Law.

THE CONSTITUTIONALITY OF A FEDERAL ANTI-LYNCHING BILL. By Hon. L. C. Dyer and George C. Dyer.

This article was prepared by George C. Dyer, a Senior in the Washington University School of Law, with suggestions and criticisms given him by Hon. L. C. Dyer, Representative in Congress for the Twelfth Congressional District of Missouri, and author of the proposed Anti-Lynching Bill which the article discusses.

In addition to the regular members of the staff, the following students in the School of Law have written Case Comments: Max Soffer, Morris Cohn, J. J. Chused, and Robert Bruce Snow, Jr.

ACTIONS AT LAW BETWEEN PARTNERS IN MISSOURI AS COMPARED WITH OTHER JURISDICTIONS

Prior to the decision in 1897 of *Willis v. Barron*,[1] it was well settled in Missouri that no action at law could be maintained by one partner against his firm or associate for money arising out of and connected with partnership business until there had been a settlement of the partnership accounts.[2] The reason for the rule was twofold, formal and substantive. The formal barrier to the suit at law grew out of the fact that the partnership, as such, had no judicial existence as distinguished from the persons composing it,[3] and could sue and be sued only in the names of its individual partners joined in the proceeding. To be both plaintiff and defendant involved an inconsistency which the law does not permit. The result would be, moreover, that the law would give force to a contract which a man made with himself, and in the event that he should recover a judgment, he might be called upon as a member of the firm to pay it.

The substantive barrier to the action is the truer and more precise reason.[4] It results from the principle that a partner's interest in the partnership's effects is not his aliquot part thereof, but is his proper share in the balance of the surplus remaining after the payment of the

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[1] 143 Mo. 450, 45 S. W. 289, 65 Am. St. Rep. 673.

[2] Stothert v. Knox, 5 Mo. 112; McKnight v. McCutchen, 27 Mo. 436; Bambrick v. Simms, 102 Mo. 158, 14 S. W. 935.

[3] Willis v. Barron, *supra;* Cutting v. Daigneau, 151 Mass. 297, 23 N. E. 839; Summerson v. Donovan, 110 Va. 657, 66 S. E. 822; Bond v. Bemis, 55 Mo. 524.

[4] Cutting v. Daigneau, *supra;* Mulhall v. Cheatham, 1 Mo. App. 476. In Stoddard v. Wood, 9 Gray 90, the court stated: "The difficulty is not merely a matter of parties; it lies much deeper. A promise by a partner to the partnership is a promise to pay himself with other persons; and it cannot be said that anything is due until the whole is settled, until all the assets are collected, and all the debts paid. Until then, it cannot be known where there is any balance due; still less, what that balance is."