

## Partnership--Liability of Special Partner to Creditors (Kittredge v. Langley, 252 N.Y. 405 (1930))

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In addition, the section under consideration, as distinguished from the provisions of the General Corporation Law,<sup>5</sup> does not contemplate personal service on the Secretary of State. The decision is encouraging and indicates an appreciation for the necessity of eliminating delays incidental to litigation.

S. H.

**PARTNERSHIP — LIABILITY OF SPECIAL PARTNER TO CREDITORS.**—Plaintiff was a creditor of the limited partnership in which defendant was a special partner. The partnership was dissolved and defendant received the amount of his contribution, leaving sufficient assets to satisfy the plaintiff's claim. These assets were dissipated, a judgment against one of the general partners was unsatisfied and the other general partner was out of the jurisdiction and not amenable to process. This action in equity was brought to charge the special partner with liability to the extent of his capital contribution withdrawn from the partnership at or about the time of dissolution. *Held*, judgment for plaintiff. Where legal remedies against general partners are exhausted, an action will lie against a former special partner whose liability is limited to the amount of his contribution as long as it is left at the risk of the business. *Kittredge v. Langley*, 252 N. Y. 405, 169 N. E. 626 (1930).

Under the law in force when this partnership was organized, a special partner was held to be a true partner, but with limited liability.<sup>1</sup> The courts required a substantially full and exact compliance with statutory requirements and failure to comply with the same made the special partner liable to third persons as a general partner.<sup>2</sup> In order to discharge himself from his liabilities as a partner, every partner has a right to have the property of the partnership applied in payment of partnership debts; he may be said to have an equitable lien on the partnership property for this purpose. On the other hand, if the partnership is insolvent at the time of withdrawal, a partner is bound to respond to the extent of his withdrawn contribution since the liability of each partner for the payment of partnership debts continues *in solido* after dissolution as before. The question here presented is a new one—whether a special partner may be charged at the instance of a creditor where at the time of the withdrawal of his capital contribution, the assets left with the general

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<sup>5</sup> Sec. 217: "Service of process against a corporation upon the Secretary of State shall be made by personally delivering to and leaving with him or a deputy Secretary of State duplicate copies of such process."

<sup>1</sup> *L. 1897, Ch. 420*; *Ames v. Downing*, 1 Bradf. Sur. 326; *Casola v. Kugelman*, 33 App. Div. 428, 54 N. Y. Supp. 89 (1st Dept. 1898).

<sup>2</sup> *Van Ingen v. Whitman*, 62 N. Y. 513 (1875); *Durant v. Abendroth*, 69 N. Y. 148, 25 Am. Rep. 158; *id.* 97 N. Y. 132 (1884); *Manhattan Co. v. Laimbeer*, 108 N. Y. 578, 15 N. E. 712 (1888); *White v. Eiseman*, 134 N. Y. 101, 31 N. E. 276 (1892).

partners were sufficient to discharge the outstanding liabilities, but have become inadequate thereafter. A special partner may not receive any part of his capital contribution until all liabilities of the partnership have been paid. By statute, "when a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return."<sup>3</sup> In such a situation, his contribution may be treated as a trust fund for the discharge of liabilities,<sup>4</sup> and until those liabilities are discharged he assumes the risk of any change in circumstances whereby the remaining partners are unable to meet the demands of creditors. The equity thus established in favor of the partnership is one to which the creditors succeed,<sup>5</sup> and consequently they may pursue their remedies against a solvent partner whose obligation can be discharged by nothing less than payment to the extent of his contribution to the partnership plus interest for the use of the money.

D. J. R.

PATENTS—JURISDICTION OF STATE AND FEDERAL COURTS.—

Defendant, an inventor, applied for letters patent upon a device; simultaneously with the execution of the application, he assigned the device and invention to a corporation; while the application was pending, the corporation was adjudicated a bankrupt and the plaintiff became the owner of the device and invention by assignment from the trustee in bankruptcy of the corporation. At that time, the original application had lapsed and the inventor wrongfully obtained a patent upon the same device which he had previously assigned and is offering it for sale. Plaintiff seeks an injunction restraining the defendants from manufacturing or dealing in the invention or device. A motion to dismiss the complaint on the ground that the courts of the United States have sole jurisdiction of the subject of the action was granted by the Special Term and affirmed by the Appellate Division. On appeal, *held*, reversed; the question involved is one of title based upon the assignment and the state courts have jurisdiction even though the invention is covered by a patent. *New Era Electric Range Co. v. Serrell*, 252 N. Y. 107, 169 N. E. 105 (1929).

Independent of copyright or letters patent, an inventor or author has, by the common law, an exclusive property in his invention or

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<sup>3</sup> Uniform Limited Partnership Act, Sec. 17, Subd. 4; New York Partnership Law, Sec. 106, Subd. 4.

<sup>4</sup> *Hurd v. New York & C. Steam Laundry Co.*, 167 N. Y. 89, 60 N. E. 327 (1901); *Hazard v. Wight*, 201 N. Y. 399, 94 N. E. 855 (1911); *Irvine v. New York Edison Co.*, 207 N. Y. 425, 101 N. E. 358 (1913).

<sup>5</sup> *Saunders v. Reilly*, 105 N. Y. 12, 19, 12 N. E. 170 (1887); *Bulger v. Rosa*, 119 N. Y. 459, 24 N. E. 853 (1890).