

Infants: Misrepresentation: Liability for Torts

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against it to dispose of the same, although secured through an unlawful purchase of stock." Again, in this case, Justices Brandeis, Holmes & Stone dissented and here they were joined by Chief Justice Taft.

The Clayton Act (passed Oct. 15, 1914), attempted to effect in a narrow field what the Sherman Anti Trust Act (July 2, 1890) was unable to do. Is this act more effective than its predecessor? It seems that it is not. We are living in an age of big business, of consolidation, of merger. It seems useless for the Congress or the Courts to attempt to stem the tide. It seems that we can only hope that these consolidations and mergers are for the common good and general welfare, for today they carry on.

JOHN A. WALSH

Infants: Misrepresentation: Liability for Torts.

The case of the *Wisconsin Loan & Finance Corp. v. Goodnough*, 228 N.W. 484, was an action on a note signed by defendant. The defendant set up in his answer that he was at that time a minor and could not be held on an action for payment of the note. The plaintiff demanded recovery on the grounds that the defendant misrepresented his age, maintaining that he was legally capable of executing a note.

The Wisconsin Supreme Court enforced the minor's transaction with the plaintiff, holding that a minor can be held on a tort liability for misrepresentation and deceit.

The question which seems to divide courts in consideration of this matter is whether or not the fraudulent representations enter into the contract. In *Fitts v. Hall*, 9 N.H. 411, after referring to the leading English case of *Johnson v. Pie*, 1st Keb. 913, it was held: "The representation in *Johnson v. Pie*, and in the present case, that the defendant was of full age, was not part of the contract, nor did it grow out of the contract, or in any way result from it. It is not any part of its terms, nor was it the consideration upon which the contract was founded. No contract was made about the defendant's age. The sale of the goods was not a consideration for this affirmation or representation. The representation was not a foundation for an action of assumpsit. The matter arises purely *ex delicto*. The fraud was intended to induce, and did induce, the plaintiff to make a contract for the sale of the hats, but that by no means makes it part and parcel of the contract. It was antecedent to the contract; and if an infant is liable for a positive wrong connected with a contract, but arising after the contract has been made, he may well be answerable for one committed before the contract was entered into, although it may have led to the contract.

⁸ 71 Cd. 405 at 411.

It has been said that 'all the infants in England might be ruined,' if infants were bound by acts that sound in deceit. But this cannot be a reason why the action should not be maintained for fraudulent wrongs done, for the same reason would seem to apply equally well in cases of slander, trover, and trespass."

In the English case of *Leslie, Ltd. v. Sheill*, (1914), 3 K.B. 607, this question is thoroughly discussed, and it arrives at the conclusion that an infant is not estopped to plead his infancy because he procured a loan through false representations as to his age.

The question of non-liability is also adhered to in *Raymond v. General Sales Co.*, 230 Mass. 54, 119 N.E. 359. The false claim of majority by a minor in order to effect a trade does not estop him from disaffirming the transaction. *Wieland v. Kobick*, 110 Ill. 16; *Whitcomb v. Joslyn*, 51 Vermont 79.

We have a stronger line of cases upholding the minor's liability, to-wit:

Kuehl v. Means (Iowa) 218 N.W. 907, held one who, lacking only a few months of majority and having the appearance of an adult, purchases in the name of a purported sales co. of which he represents himself to be president, an automobile, possession of which he retains until after he becomes of age, cannot disaffirm the contract. A minor who delivers his personal check to the manager of a partnership of which he is a member, for deposit to account of the partnership, cannot, after the money has been withdrawn on partnership check for a partnership, purchase in favor of one ignorant of his connection with the transaction, disaffirm the contract, and recover the money from the vendor who is innocent of any fraud.

Latrobe v. Dietrich, 114 Maryland 8, 78 Atl. 983, on this point holds: In a case where it appears that an infant entered into a contract of partnership with an adult, and subsequently sought to have the contract set aside, such a contract is not void; but only voidable. The infant can avoid it only on some other ground than the fact of his mere infancy. (Also *Lowery v. Cate*, 108 Tenn., 54, 64 S.W. 1068.

The law is solicitous in holding the infant liable for his torts, not to impair the immunity given him, against liability on his contracts. The tort must be a "tort simpliciter," and not on the essence of which is a breach of contract. 183 Mass. 317, 191 Mass. 151, 203 N.Y. 465; *Lowery v. Cate*, 108 Tenn. 54, 64 S.W. 1068, which is stated later; also 157 Wis. 113 following on this point..

And in case of doubt, the tendency has been to favor the infant and to hold it more important to preserve his immunity from contract liability, than to enforce his liability for torts. 175 Mass. 513.

The cases quite uniformly hold that the fraud must be actual, not

constructive; that mere failure of the infant to disclose his age is not sufficient. This, quite apparently for the reason that the infant himself may be unaware of the legal consequences of his acts, and that it is his affirmative wrongdoing which leads to liability.

In the instant case the plaintiff paid the money involved in this case in reliance upon the defendant's misrepresentations as to his contractual capacity. He is not held liable on the contract, but for damages in deceit; therefore the question of benefit does not arise as in cases where he is held liable by way of estoppel. Being liable in deceit for the damages sustained by the plaintiff on account of the deceit, the defendant may not escape this liability by disaffirmance or repudiation. The defendant not being liable upon the contract, he is not liable either for the attorney's fees or for interest above the legal rate.

JOHN S. BROSEMER

Inheritance Tax: Non-Resident Decedent: Bonds.

The Supreme Court of the United States in an opinion dated January 6, 1930, decides that a state cannot assess an inheritance tax on a transfer of personalty in the form of securities issued by the state so attempting to tax, where the said securities are owned by a non-resident decedent and kept within the state of his domicile. The case is that of the "*Farmers Loan and Trust Co. v. State of Minnesota*," 50 Sup. Ct. 98; 74 L. Ed. 190.

The facts were as follows: One Taylor while domiciled and residing in New York died intestate leaving as part of his estate negotiable bonds and certificates of indebtedness issued by the state of Minnesota and the cities of Minneapolis and St. Paul. These certificates passed under his will and were taxed in New York. Minnesota assessed a tax upon the same transfer which was approved by her Supreme Court (176 Minn. 634; 222 N.W. 528) and from this decision the executor of Taylor's estate appealed.

The appellant, executor, contended that such taxation by the state of Minnesota conflicts with Section 1 of the 14th Amendment of the Federal Constitution.

Counsel for the state of Minnesota contended that the obligations were debts of that state and her corporations, (Minneapolis and St. Paul), and that her laws gave them validity, protected them, and provided means for enforcing payment. On this theory Minnesota claimed *situs* for taxation purposes.

Under the rule of *Blodgett v. Silberman* (277 U.S. 1; 48 S. Ct. 410), these certificates of indebtedness are to be considered as any other