

Contracts--Infants--Validity--Avoidance-- Restoration of Consideration (Vichnes v. Transcontinental & Western Air, Inc., 173 Misc. 631 (1940))

St. John's Law Review

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Recommended Citation

St. John's Law Review (1940) "Contracts--Infants--Validity--Avoidance--Restoration of Consideration (Vichnes v. Transcontinental & Western Air, Inc., 173 Misc. 631 (1940))," *St. John's Law Review*: Vol. 15 : No. 1 , Article 14.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol15/iss1/14>

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CONTRACTS—INFANTS—VALIDITY—AVOIDANCE—RESTORATION OF CONSIDERATION.—Plaintiff, a fifteen-year-old infant, paid defendant \$160.00 for one meal and transportation from New York to Los Angeles. On returning to New York she repudiated the transaction, demanded the return of the amount paid, and brought this action in the Municipal Court in which she has been granted a summary judgment. On appeal, *held*, reversed. The contracts of infants are voidable, not void, and there is no basis for rescission here in view of the conceded fact that the reasonable value of the transportation was the sum paid by the plaintiff. *Vichnes v. Transcontinental & Western Air, Inc.*, 173 Misc. 631, 18 N. Y. S. (2d) 603 (1940).

The property of a minor is tenderly safeguarded by the law.¹ The contracts of infants,² except for necessities, are voidable by him, not void.³ An infant may repudiate a voidable contract at any time before arrival at majority⁴ and, if executed, must disaffirm it within a reasonable time after becoming of age, or his silence will be deemed a ratification.⁵ By the weight of authority in this country, if an infant has used, squandered, or parted with the consideration received, he may avoid his contract without any liability for what was given him in exchange.⁶ Were this not so, the result in many cases would be to hold the infant to his contract, which would be contrary to the considerate policy of the law towards those not yet of age.⁷ However, the hardship of such a situation upon the adult has produced a number of

¹ *Joseph v. Shatzkin*, 259 N. Y. 241, 242, 181 N. E. 464, 465 (1932).

² An infant or minor is a person who has not attained full maturity of mind or judgment, and, therefore, needs the protection of the law. The age has been fixed by law as twenty-one years. "A minor is a person under the age of twenty-one years. A minor reaches majority at that age." N. Y. DOM. REL. LAW § 2.

³ *In re Hunttemberg*, 153 Fed. 768 (E. D. N. Y. 1907); *Mansfield v. Gordon*, 144 Mass. 168, 10 N. E. 773 (1887); *Holmes v. Rice*, 45 Mich. 142, 7 N. W. 772 (1881); *Henry v. Root*, 33 N. Y. 326 (1865); *Continental National Bank v. Strauss*, 137 N. Y. 148, 32 N. E. 1066 (1893); *International Text Book Co. v. Connelly*, 206 N. Y. 188, 99 N. E. 772 (1912); *Union Central Life Ins. Co. v. Hilliard*, 63 Ohio St. 478, 59 N. E. 230 (1900).

For a discussion of the early law classifying infants' contracts as void, voidable, and binding, see 1 WILLISTON, CONTRACTS (Rev. ed. 1936) §§ 223 and 227.

⁴ *Heally v. Kellog*, 145 N. Y. Supp. 943 (1914).

⁵ *Beardsley v. Hotchkiss*, 96 N. Y. 201 (1884); *Sternlieb v. Normandie Securities*, 263 N. Y. 245, 248, 188 N. E. 726 (1934).

⁶ *Green v. Green*, 69 N. Y. 553 (1877); *Casey v. Kastel*, 237 N. Y. 305, 314, 142 N. E. 671 (1923); *Joseph v. Shatzkin*, 259 N. Y. 241, 181 N. E. 464 (1932); *Sternlieb v. Normandie Nat. Security Co.*, 263 N. Y. 245, 188 N. E. 726 (1934); *Kane v. Kane*, 13 App. Div. 544, 43 N. Y. Supp. 662 (4th Dept. 1897); *N. Y. Building Loan v. Fischer*, 23 App. Div. 363, 48 N. Y. Supp. 152 (1st Dept. 1897); *Wyatt v. Lortscher*, 217 App. Div. 222, 216 N. Y. Supp. 571 (4th Dept. 1926); *Schroeder v. Hitt*, 236 App. Div. 466, 260 N. Y. Supp. 2 (1st Dept. 1932).

⁷ *Wyatt v. Lortscher*, 217 App. Div. 222, 216 N. Y. Supp. 571 (4th Dept. 1926).

decisions⁸ and some statutes⁹ holding that an infant cannot disaffirm a transaction executed on both sides unless he can and does put the other party in *statu quo*.¹⁰ Furthermore, courts have said that the privilege of infancy is to be used as a shield to protect the infant, and not as a sword to inflict injuries on others.¹¹ Thus, for example, in Minnesota and New Hampshire an infant on disaffirming his contract can recover only the payments made less the benefit actually derived by him from the transaction.¹² On disaffirmance of contracts to purchase personal property infants have been held accountable also to the extent of the depreciation in value and the value of the use of the property given in consideration for the infant's payment.¹³ In the instant case the infant-plaintiff was unable to restore the consideration received, namely, one meal and transportation. Therefore, since she conceded that the reasonable value of the transportation was the sum paid by her, the plaintiff was allowed no recovery at all. It seems that this case is in accord with the tendency to modernize and limit the general rule of the complete non-liability of infants on their contracts in order to prevent imposition and hardship on others, and to conform the rule to principles of equity and justice in view of the changing position and responsibility of infants in economic life in recent times.

J. E. M.

⁸ Rice v. Butler, 160 N. Y. 578, 55 N. E. 275 (1899); Mutual Milk & Cream Co. v. Prigge, 112 App. Div. 652, 98 N. Y. Supp. 458 (1st Dept. 1906); Lefler v. Oelrichs, 173 App. Div. 759, 160 N. Y. Supp. 119 (1st Dept. 1916); Washington Street Garage v. Maloy, 230 App. Div. 266, 243 N. Y. Supp. 467 (4th Dept. 1923); Sparandera v. Staten Island Garage Co., 117 Misc. 780, 193 N. Y. Supp. 392 (1921).

⁹ By statute in California, Idaho, North Dakota, and South Dakota, a minor over eighteen must restore the consideration or its equivalent as a condition to disaffirmance. 1 WILLISTON, CONTRACTS (Rev. ed. 1936) 704, n.7.

¹⁰ 1 WILLISTON, CONTRACTS (Rev. ed. 1938) 703, 704.

¹¹ Rice v. Butler, 160 N. Y. 578, 55 N. E. 275 (1899); Mutual Milk & Cream Co. v. Prigge, 112 App. Div. 652, 98 N. Y. Supp. 458 (1st Dept. 1906); Lown v. Spoon, 158 App. Div. 900, 143 N. Y. Supp. 275 (2d Dept. 1913); Egnaczek v. Rowland, 148 Misc. 889, 267 N. Y. Supp. 14 (1933). "If an infant pays money on his contract and enjoys the benefit of it and then avoids it when he becomes of age, he cannot recover back the consideration. On the other hand if he avoids an executed contract when he comes of age on the ground of infancy, he must restore the consideration he has received. The privilege of infancy is to be used as a shield, not as a sword. He cannot have the benefit of the contract on one side without returning the equivalent on the other." 2 KENT'S COMM. *240.

¹² Berglund v. Multigraph Sales Co., 135 Minn. 67, 160 N. W. 191 (1916); Bartlett v. Bailey, 59 N. H. 408; Stack v. Cavanaugh, 67 N. H. 149, 153, 30 Atl. 350 (1892); Woodridge v. Lavoie, 79 N. H. 21, 104 Atl. 346 (1918). "The obligation to account for the benefit actually received secures ample protection from fraud and imposition, and at the same time prevents the privilege from being used to perpetrate a fraud." Hall v. Butterfield, 59 N. H. 354, 47 Am. Rep. 209, 214 (1879).

¹³ Rice v. Butler, 160 N. Y. 578, 55 N. E. 275 (1899); Gray v. Lessington, 15 N. Y. Super. Ct. 257 (1857); Bartholomew v. Finnemore, 17 Barb. 428 (N. Y. 1874); Wanish v. Wuertz, 79 Misc. 310, 140 N. Y. Supp. 573 (1913); Sparandera v. Staten Island Garage Co., 117 Misc. 780, 193 N. Y. Supp. 392 (1921).