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Parent and Child–Liability of Parent for Child's Tort–Negligence
(Crellesen v. Colburn, 156 Misc. 254 (Co. Ct. 1935))

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selves to prevent recovery, unless in addition the jury find from the
evidence that the holder acted in bad faith.\textsuperscript{15}

L. H. R.

\textbf{Parent and Child—Liability of Parent for Child's Tort-
Negligence.—} Plaintiff's dog, while straying about defendant's prem-
ises, was shot and killed by defendant Kenneth Colburn, an infant
over the age of 14 years. The evidence showed that the gun be-
longed to the infant's father and was kept hanging on a hook in the
residence and was not loaded. The shells were kept in a separate
place. The evidence further establishes that defendant Hiram Col-
burn, the father, had no knowledge concerning the action of his son
Kenneth, or of the presence of the dog. The plaintiff recovered $100
on a verdict rendered by a jury. Defendant's motion to set aside
the verdict for plaintiff and dismiss the complaint as to defendant
first named was denied. On appeal, \textit{held}, motion granted. The
father is not liable for the shooting of plaintiff's dog by his son,
where the father had no knowledge concerning his son's action, or
of the presence of the dog on the premises. \textit{Crellesen v. Colburn,

Under the Civil Law\textsuperscript{1} and by statute\textsuperscript{2} a parent is liable for the
torts of his child as a consequence of the relationship alone.\textsuperscript{3} This
non-fault liability has been consistently rejected by the common law
courts, which hold that a parent is not liable for the tortious acts of

\textsuperscript{15} Takayanagi, \textit{Liability Without Fault in the Modern and Civil Law} (1921)
16 ILL. L. REV. 163, 291.

\textsuperscript{2} La. CIV. CODE (Dart, 1932) arts. 2317, 2318. The reasoning under the
Louisiana rule is that "birth gives rise to parental control and authority over a
child, and paternal responsibility for torts is the consequence and offspring of
paternal authority." A similar rule exists in France, Germany, Holland, Italy,
Portugal, Spain, and Switzerland. See Note (1930) 17 CORN. L. Q. 178.

\textsuperscript{3} Rush v. Farmerville, 156 La. 857, 101 So. 243 (1924); Kern v. Knight,
La., 586, 157 So. 121 (1934) (court holding that the doctrine of contributory
negligence does not apply to a child under four years of age, where the child
bit a nurse and parents had no knowledge of dangerous disposition of the child).
a minor child on the mere ground of parental relationship. New York follows the common law rule, although it has seen fit to impose an absolute liability in certain instances. However, liability will be imposed where the child has acted at the direction of the parent; where the parent has authorized the child to act as his agent or servant; where the parent has ratified the tortious acts of the child by accepting the benefits thereof; or where the parent's negligence has made it possible for the child to gain control of agencies which in the child's incompetent hands become dangerous to others. Plaintiff contends that defendant is liable under the latter rule and relies on a recent New York case, Kuchlik v. Feuer, the evidence of which justified holding the parent liable on grounds of negligence.

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3 For example—N. Y. Vehicle and Traffic Law § 59—which makes the owner of an automobile liable for injury caused through the negligence of one driving with the permission, express or implied, of the owner. Fluegel v. Coudert, 244 N. Y. 393, 155 N. E. 633 (1927) at 395.


8 Supra note 10.

9 264 N. Y. 542, 191 N. E. 555 (1934).
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gence. However, where, as in the instant case, the evidence establishes beyond a doubt that the defendant had no knowledge concerning the action of his son, the court was sufficiently supported by analogous authority to dismiss the complaint, for to have held otherwise would have imposed too great a burden on the parent, and attached too much weight to the relationship alone.

H. T. P.

PARENT AND CHILD—NEGLECT—UNEMANCIPATED INFANT.—Plaintiff, an unemancipated infant of nineteen years, sustained injuries while a passenger in an automobile owned by her mother and negligently operated by her father. At the time of the suit the plaintiff was over twenty-one. The trial court refused to non-suit the plaintiff and returned a verdict in her favor. Held, reversed. An adult has no right of action against its parents for a tort committed during infancy. Reingold v. Reingold, — N. J. —, 181 Atl. 153 (1935).

The question presented is: may an unemancipated infant sue its parent in tort. The English cases are silent on the point. The American cases began in 1891, when recovery was denied to a married woman, living with her mother away from her husband, who sued the mother for false imprisonment and malicious confinement occurring during infancy. Subsequently, relief was denied to infants for cruel and inhuman treatment; injuries arising from the negligence of the brother of an infant while the infant was working with the brother in a factory owned by the mother; and rape by the father upon an infant daughter. In what appears to be the first case on the subject in New York, relief was denied. Relief has been denied in other jurisdictions.

13 Id. at 543. The court found that the gun belonged to the infant and that his parents knew he was using it. The father was held on the ground that "his negligence made it possible for the child to cause the injury complained of and probable that the child would do so."


15 Cases cited notes 4, 5, 10, supra.

16 Dunlap v. Dunlap, 84 N. H. 352, 150 Atl. 905 (1930).

17 Hewlitt v. George, 68 Miss. 703, 9 So. 885, 13 L. R. A. 682 (1891).

18 McKelney v. McKelney, 111 Tenn. 388, 78 S. W. 664 (1903).

19 Taubert v. Taubert, 103 Minn. 24, 114 N. W. 763 (1908).


