

# Parent and Child--Negligence--Unemancipated Infant (Reingold v. Reingold, 181 Atl. 153 (1935))

St. John's Law Review

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### Recommended Citation

St. John's Law Review (1936) "Parent and Child--Negligence--Unemancipated Infant (Reingold v. Reingold, 181 Atl. 153 (1935))," *St. John's Law Review*: Vol. 10 : No. 2 , Article 23.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol10/iss2/23>

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gence.<sup>13</sup> However, where, as in the instant case, the evidence establishes beyond a doubt that the defendant had no knowledge<sup>14</sup> concerning the action of his son, the court was sufficiently supported by analogous authority<sup>15</sup> 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—NEGLIGENCE—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.<sup>1</sup> 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.<sup>2</sup> Subsequently, relief was denied to infants for cruel and inhuman treatment;<sup>3</sup> 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;<sup>4</sup> and rape by the father upon an infant daughter.<sup>5</sup> In what appears to be the first case on the subject in New York, relief was denied.<sup>6</sup> Subsequently the Court of Appeals reached the same result by a four-to-three decision without an opinion.<sup>7</sup> Relief has been denied in other jurisdictions.<sup>8</sup>

<sup>13</sup> *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."

<sup>14</sup> *Trice v. Bridgewater*, 81 S. W. (2d) 63 (Tex. App. 1935).

<sup>15</sup> Cases cited notes 4, 5, 10, *supra*.

<sup>1</sup> *Dunlap v. Dunlap*, 84 N. H. 352, 150 Atl. 905 (1930).

<sup>2</sup> *Hewlitt v. George*, 68 Miss. 703, 9 So. 885, 13 L. R. A. 682 (1891).

<sup>3</sup> *McKelney v. McKelney*, 111 Tenn. 388, 78 S. W. 664 (1903).

<sup>4</sup> *Taubert v. Taubert*, 103 Minn. 24, 114 N. W. 763 (1908).

<sup>5</sup> *Roller v. Roller*, 37 Wash. 242, 79 Pac. 788 (1905).

<sup>6</sup> *Ciani v. Ciani*, 127 Misc. 304, 215 N. Y. Supp. 767 (1926).

<sup>7</sup> *Sorrentino v. Sorrentino*, 248 N. Y. 626, 162 N. E. 128 (1928).

<sup>8</sup> *Wick v. Wick*, 92 Wis. 260, 212 N. W. 787 (1927); *Mesite v. Kirchenstein*, 109 Conn. 77, 145 Atl. 753 (1929); *Smith v. Smith*, 81 Ind. App. 1566, 142 N. E. 128 (1924).

It is said to be a well established principle of the common law that for injury to the child by a parent no action will lie.<sup>9</sup> There were no cases of such action prior to 1891 in either the English or American reports, although there were many cases of criminal proceeding against parents by minor children which might have been brought civilly if such right of action existed.<sup>10</sup> But the theory that there never was an action at common law has been denied.<sup>11</sup> Maintenance of these actions, it was argued, would tend to destroy the peace of society and the tranquility of the home. A sound public policy designed to subserve the peace of the family and the best interests of society should, therefore, forbid the maintenance of such actions.<sup>12</sup> It is also argued, that as long as the relationship exists with its reciprocal rights and obligations, the child should not be allowed "to bite the hand that feeds it."<sup>13</sup>

While it has been the generally accepted principle to deny such right of action to the child, it seems that denying the right in certain cases defeats the purpose of the law.<sup>14</sup> However, the rule denying the right of action is established in this state.<sup>15</sup>

G. H. M.

PLEADING — PARTIES — PARTIAL ASSIGNMENTS — WORKMEN'S COMPENSATION.—Plaintiff's intestate was killed in the course of his employment by the negligent driving on the part of defendant, a party other than the employer. The deceased left surviving a wife and a dependent father as heir at law and next of kin. Under the

<sup>9</sup> 1 COOLY, TORTS (3d ed. 1906) 492.

<sup>10</sup> *Matarese v. Matarese*, 47 R. I. 131, 131 Atl. 198 (1925).

<sup>11</sup> *Dunlap v. Dunlap*, 82 N. H. 352, 150 Atl. 905 (1930).

<sup>12</sup> *Hewlitt v. George*, 68 Miss. 703, 9 So. 885.

<sup>13</sup> *Small v. Morrison*, 185 N. C. 577, 118 S. E. 12 (1923). Here the court expounds the philosophy behind the principle denying relief, and in explaining the lack of English cases says: "If this restraining doctrine was not announced by any of the writers of the common law, because no such case was ever brought before the courts of England, it was unmistakably and indelibly carved upon the tablets of Mount Sinai."

<sup>14</sup> Thus, in *Roller v. Roller*, 37 Wash. 242, 79 Pac. 788, 68 L. R. A. 893 (1905), the attorney for the plaintiff (the child seeking civil redress for the rape committed upon her by her father) argued to this effect: Every law has limitations. A law is founded upon some good reason and the object and purpose to be obtained must be looked for as a fair test of its scope and limitations. The harmonious relationship of the home had been most seriously disrupted and the father had been committed to the penitentiary. However, the court decided that there could be no practical line of demarkation and that the rule must stand for the principle permitting the action would be the same and the torts would vary only in degree.

<sup>15</sup> *Sorrentino v. Sorrentino*, 248 N. Y. 626, 162 N. E. 128 (1928).