

Infants--Minor's Liability When Falsely Misrepresenting Age-- Liability for Depreciation (Summit Auto Co. v. Jenkins, 153 N.E. 153 (Oh. App. 1925))

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INFANTS—MINOR'S LIABILITY WHEN FALSELY MISREPRESENTING AGE—LIABILITY FOR DEPRECIATION.—Where a minor has falsely represented himself to be of legal age and thus purchased an automobile (not a necessity), he is not estopped by such misrepresentation from setting up his infancy in avoidance of the contract, and where the seller takes possession of the automobile, the minor is entitled to recover the amount paid by him, without diminution either for the use of the automobile during the time he had possession of it or for damages accruing from depreciation and wear and tear on the same. *Summit Auto Co. v. Jenkins*, 20 Oh. App. 229, 153 N. E. 153 (1925).

It is held that an infant is not liable for torts arising out of contracts. *Moore v. Eastman*, 1 Hun. (N. Y.) 578 (4th Dept. 1874); *Raymond v. General Motorcycle Co.*, 230 Mass. 54, 119 N. E. 359 (1918). The theory being that the tort is inseparable from the contract. In *Miller v. St. Louis & S. F. R. Co.*, 188 Mo. App. 402, 174 S. W. 166 (1915), it was held, where an infant executed an instrument which recites that he is of age is not thereby estopped from relying on infancy though he reached the age of discretion.

In New York we find a modification to the rule stated. Here the rule is that where an infant misrepresents his age and the other party is injured in reliance thereon, the infant will be held for his tort. *Eckstein v. Frank*, 1 Daly (N. Y.) 334 (1863). A similar holding is found in other jurisdictions. Thus, in the case of *Thosath v. Transport Motor Co.*, 240 Pac. 921 Wash. (1925), it was held a minor could not recover payments made on a purchase of a second-hand automobile on the disaffirmance of his contract by him, where he declared that he stood silent when asked if he were of age and subsequently admitted that he may have said he was of age and in the written agreement to seller, he disclosed he was twenty-two years old, such statement constituting positive misrepresentation. New York went a step further than the Eckstein case in the case of *Rice v. Butler*, 160 N. Y. 578, 55 N. E. 275 (1899). This case directly opposes the Summit case as to without diminution either for use of the automobile, etc. The Rice case held that where an infant in an action to recover from the vendor the amount paid on the contract, upon disaffirmance of the contract he (infant) *must account* for the reasonable use of the bicycle or its deterioration in value.

The New York rule seems to be sounder than the Ohio adjudications on two grounds. It is more equitable and there is less opportunity afforded the infant to defraud innocent merchants.

MASTER AND SERVANT—LIABILITY—FINDING MOTHER RIDING IN OWN CAR DRIVEN BY MINOR DAUGHTER RETAINED CONTROL JUSTIFIED.—An automobile was driven by the minor daughter of the defendant who accompanied her daughter and was present at the time of the accident. This automobile was the property of the defendant and her husband. Through the negligence of the minor daughter a collision occurred. An action was brought against the parent on the theory of master and servant. Judgment was given to plaintiff and defendant appeals. *Held*, if the parent permits a minor child to drive an automobile under parent's direction for parents, the defendant parent is responsible for the negligent act of the daughter driving the automobile, even the minor is not receiving any pay and in the