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Contracts -- Liability of Minor Upon Disaffirmance

Richard von Biberstein Jr.
applicable where extremely dangerous specialized work is being performed on a dead ship.

The dissenters complained the Sieracki doctrine had been inverted by the majority so that a shipowner can escape his duties relative to seaworthiness by contracting the dangerous work to non-seamen. Modern ships are outfitted with modern equipment, and contracting out the dangerous maintenance work on such equipment has become the established practice. Further, the Halecki doctrine would introduce confusion. Who can tell what is traditional?

Whatever might have been the purpose behind the majority opinion, and the most cogent seems to be the substitution of the old "historical" test for a new "traditional" test, the dissent seems to have the better of the argument—at least to the extent that a rather definite standard has been traded for a somewhat nebulous one. Halecki has created a new area of confusion in a once certain field of the law already fraught with indecisiveness in other areas.

GUY C. EVANS

Contracts—Liability of Minor Upon Disaffirmance

The policy of North Carolina has been to cloak an infant with a mantle of protection in his contract dealings with adults by allowing him to disaffirm his contracts for personalty either before or within a reasonable time after attaining his majority. The dominant purpose justifying this principle is to protect the minor from his own improvidence or want of discretion, and from the wiles of designing adults. The disaffirmance when made is irrevocable, voids the contract ab initio, and entitles the infant to a return of any consideration passing from him, either in specie or its equivalent; but the infant, unless he has the consideration within his possession or control, is not required to place the other party in status quo ante.

 clearly a twilight zone in which the employees must have their rights determined case by case, and in which particular facts and circumstances are vital elements.” Id. at 256.

1 An infant's deed of realty can be neither disaffirmed nor ratified before he attains his majority. McCormic v. Leggett, 53 N.C. 425 (1862).
The recent case of *Fisher v. Taylor Motor Co.* reiterated the rule that the infant is not required to return the consideration received unless he has it in hand. Plaintiff, a 20 year old sailor, purchased from defendant an automobile for $750, four-fifths of which was his own money and one-fifth of which was furnished by his father. Four months later the vehicle was destroyed in an accident which resulted in plaintiff's being convicted of careless and reckless driving. Subsequently, plaintiff disaffirmed the contract and sued to recover the purchase price. Defendant counterclaimed for damages to the car caused by the unlawful acts of the plaintiff. The court allowed the minor to recover that portion of the purchase price actually furnished by him less the value of the automobile in its wrecked condition. Holding that defendant recovers nothing on his counterclaim, the court stated that "the infant is not required to account for the use or depreciation of the property while in his possession, or for its loss, if squandered or destroyed ...."

This case is illustrative of the majority view that a disaffirming infant who sues to recover what he has given under the contract is not required to compensate the adult for the use or depreciation of the property while in the minor's possession. The reasoning is that since the infant could avoid a contract to pay for the use or depreciation, the adult should not be able to collect for it by way of recoupment. Other courts grant the adult a set-off, on the principle that the infant should

Burkhalter, 176 Ala. 62, 57 So. 460 (1912); Barr v. Packard Motor Car Co., 172 Mich. 299, 137 N.W. 697 (1912); Craig v. Van Bebber, 100 Mo. 584, 13 S.W. 906 (1890); Blake v. Harding, 54 Utah 158, 180 Pac. 172 (1919).

*Accord,* McCarty-Greene Motor Co. v. McCluney, 219 Ala. 211, 121 So. 713 (1929).


This is true even though three-fifths of the infant's payments were earned from the use of the property purchased. Greensboro Morris Plan Co. v. Palmer, 185 N.C. 109, 116 S.E. 261 (1932). On the other hand the adult is required to compensate the infant for the use and depreciation of the chattel given in part payment by the minor. Greensboro Morris Plan Co. v. Palmer, *supra,* Murdock v. Fisher Fin. Corp., 79 Cal. App. 787, 251 Pac. 319 (Dist. Ct. App. 1926).


An affirmative recovery has been allowed against the infant when the amount the infant had paid on the contract was less than the value of the use and depreciation. Toon v. Mack Internat'l Motor Truck Corp., 87 Cal. App.
not be allowed to retain the benefits of the contract while at the same
time refusing to make an allowance for its equivalent.

Some courts have intimated that upon disaffirmance the minor would
be held to account by way of recoupment for any wanton or wilful dam-
ages to the property, apparently reasoning that the adult in dealing with
the infant only assumes the risk of his improvidence and lack of discre-
tion, and should not be required to suffer loss from the minor’s wilful
and wanton acts. Other courts seem not to have recognized such a
distinction. Our court in the instant case appears to side with this
latter view by rejecting the defendant’s contention that an infant who is
responsible to society generally for his unlawful acts should be re-
sponsible specifically to one who is directly damaged by them, even
though a contract may be involved.

Where the infant has obtained possession of the chattel under a bail-
ment or conditional sales contract, most courts agree that upon dis-
affirmance he is not liable for damage resulting from ignorance or un-
skillfulness in its use; this being the very improvidence which allows
the infant to disaffirm. However, when the infant wilfully departs from
the objects of the bailment, or uses the property in an unlawful manner,
by a fiction of the law this is construed as an election to disaffirm the
contract. The minor then becomes liable as a converter for any loss or
damage to the chattel resulting from his wilful or unlawful acts. There
appears to be no North Carolina case holding this way. How-
ever, our court has held that if an infant uses a car held under a condi-
tional sales contract in an illegal manner causing it to be confiscated and

151, 262 Pac. 51 (Dist. Ct. App. 1927). Connecticut has held the infant liable
for use but not for depreciation. Creer v. Active Auto Exch., 99 Conn. 266, 121
Atl. 888 (1923). In Minnesota and New Hampshire an infant is held bound by
his contracts found to be reasonable and provident to the extent of the benefit actu-
ally derived by him, if after demand he fails to restore the value of the benefits
so received. Bergland v. Am. Multigraph Sales Co., 135 Minn. 67, 160 N.W. 191
(1916); Hall v. Butterfield, 59 N.H. 354 (1879).

14 See, e.g., Whitman v. Allen, 123 Me. 1, 121 Atl. 160 (1923); Wooldridge v.
Lavole, 79 N.H. 21, 104 Atl. 346 (1918); Levine v. Mallon Oldsmobile Co., 127
N.J.L. 197, 21 A.2d 852 (Sup. Ct. 1941); Lowery v. Cate, 108 Tenn. 54, 64 S.W.
1068 (1901); Standard Motor Co. v. Stillians, 1 S.W.2d 332 (Tex. Civ. App.

15 See, e.g., Quality Motors, Inc. v. Hays, 216 Ark. 264, 225 S.W.2d 326
(1949); Arkansas Reo Motor Car Co. v. Goodlett, 163 Ark. 35, 258 S.W. 975
(1924); Klaus v. A. C. Thompson Auto & Buggy Co., 131 Minn. 10, 154 N.W. 508
(1915).

16 Jones v. Milner, 53 Ga. App. 304, 185 S.E. 586 (1936); Daugherty v.
Reveal, 54 Ind. App. 71, 102 N.E. 381 (1913); Stack v. Cavanaugh, 67 N.H. 149,
30 Atl. 350 (1892); Eaton v. Hill, 50 N.H. 235 (1870); Brunhoezl v. Brandes, 90
N.J.L. 31, 100 Atl. 163 (Sup. Ct. 1917); Philhoo v. Sanford, 17 Tex. 227 (1856);

17 Vasse v. Smith, 10 US. (6 Cranch) 226 (1810); Smith v. Moschetti, 213
Ark. 968, 214 S.W.2d 73 (1948); Churchill v. White, 58 Neb. 22, 78 N.W. 369
(1889); Freeman v. Boland, 14 R.I. 39 (1882); Ray v. Tubbs, 50 Vt. 688 (1878).

18 Vermont Acceptance Corp. v. Wiltshire, 103 Vt. 219, 153 Atl. 199 (1931).
sold under a forfeiture sale, the infant may be liable for negligence in failing to notify his conditional sales vendor of the proceedings.10

A different situation is presented where the infant has been guilty of misrepresenting his age to induce the adult to enter into the contract. Since a minor is generally held liable for his torts not arising out of contract,20 a majority of the courts allow an action for fraud and deceit predicated upon the infant's misrepresentation,21 reasoning that but for the fraud there would have been no contract. Since the fraud is antecedent to the making of the contract, it is considered as a separate and distinct tort not arising out of the contract. Moreover, the method of measuring damages in the tort action being different from that used to calculate damages in contract cases, the action does not indirectly enforce the contract.22 North Carolina has, however, refused to countenance this view23 and by a divided court reasoned that it would be tantamount to enforcing the contract by changing the form of action from contract to tort, and would in effect ignore the policy of the law which is more concerned with protecting infants from their contractual obligations than imposing liability on them for their torts.24

When the infant is sued on the contract, some few courts prevent him from pleading infancy by using his misrepresentation of age as the

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10 Williams v. Aldridge Motors, Inc., 237 N.C. 352, 75 S.E.2d 237 (1953). However, the vendor must show that he has not received notice of the confiscation and forfeiture sale from any other source, and that if he had intervened at the sale he would have been entitled to have the sales proceeds applied in satisfaction of his lien under N.C. Gen. Stat. § 18-6 (Supp. 1957).


24 The misrepresentation must be affirmative, not constructive. Wisconsin Loan & Fin. Corp. v. Goodnough, 201 Wis. 101, 228 N.W. 484 (1930).

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The infant is not liable, however, for misrepresentations concerning the subject matter of the contract. Collins v. Gifford, 203 N.Y. 465, 96 N.E. 721 (1911); Lesnick v. Pratt, 116 Vt. 477, 78 A.2d 487 (1951).


basis for estoppel.\textsuperscript{25} North Carolina,\textsuperscript{26} in accord with the majority,\textsuperscript{27} has consistently refused to estop the infant, saying that this would deprive him of his traditional defense of infancy and open up the way for reckless youths "to evade the law by lying."\textsuperscript{28} Where, however, the infant brings suit seeking disaffirmance and recovery of the consideration he has given under the contract, a majority of the jurisdictions invoke the estoppel doctrine.\textsuperscript{29} Several states provide for estoppel by statute.\textsuperscript{30}

The net result is that North Carolina in most instances denies the adult any relief in his dealings with the educated and sophisticated youths of today. The infant who misrepresents his age is not estopped from asserting his minority as a defense,\textsuperscript{31} nor is he liable for fraud and deceit.\textsuperscript{32} He is not held accountable for the use and depreciation of the property while in his possession,\textsuperscript{33} and is not liable for negligent and "See, e.g., Clemons v. Olshire, 54 Ga. App. 290, 187 S.E. 711 (1936); Hood v. Duren, 33 Ga. App. 203, 125 S.E. 787 (1924); Damron v. Commonwealth, 110 Ky. 268, 61 S.W. 459 (1901); Klinch v. Reeder, 107 Neb. 342, 185 N.W. 1000 (1921); La Rosa v. Nichols, 92 N.J.L. 375, 105 Atl. 201 (1918); Harseim v. Collins, 25 S.W. 977 (Tex. Civ. App. 1894).

\textsuperscript{25}See, e.g., Greensboro Morris Plan Co. v. Palmer, 185 N.C. 109, 116 S.E. 261 (1923); Chandler v. Jones, 172 N.C. 569, 90 S.E. 580 (1916); Carolina Interstate Bldg. & Loan Ass'n v. Black, 119 N.C. 323, 25 S.E. 975 (1896).\textsuperscript{26}See, e.g., Wilkinson v. Buster, 124 Ala. 574, 26 So. 940 (1899); Arkansas Reo Motor Co. v. Goodlett, 163 Ark. 35, 258 S.W. 975 (1924); Creer v. Active Auto Exch., 99 Conn. 266, 121 Atl. 888 (1923); Price v. Jennings, 62 Ind. 111 (1878); Sawyer Boot & Shoe Co. v. Braverman, 126 Me. 70, 136 Atl. 290 (1927); Raymond v. General Motorcycle Co., 230 Mass. 54, 121 Atl. 888 (1923); Folds v. Allardt, 35 Minn. 488, 29 N.W. 201 (1886); Sternlieb v. Normandie Nat'l Sec. Corp., 263 N.Y. 245, 188 N.E. 726 (1934).

\textsuperscript{26}Carolina Interstate Bldg. & Loan Ass'n v. Black, 119 N.C. 323, 25 S.E. 975, 976 (1896).


\textsuperscript{28}IND. ANN. STAT. § 18-2006 (1950); IOWA CODE § 599.3 (1954); KAN. GEN. STAT. ANN. § 38-103 (1949); MICH. COMP. LAWS § 691.531 (1948); UTAH CODE ANN. § 15-2-3 (1953); WASH. REV. CODE § 26.28.040 (1958). Virginia places an affirmative duty upon the minor to disclose his minority in his business transactions. VA. CODE ANN. § 8-135 (1957). New York denies disaffirmance where the infant is engaged in business and the contract is reasonable, N.Y. DEBT. AND CRED. LAW § 260, as do Iowa, Kansas, Utah, and Washington, supra. In Georgia an infant engaging in business as an adult with the consent of his parent or guardian cannot disaffirm contracts arising therefrom. GA. CODE ANN. § 20-203 (1936).


\textsuperscript{30}Greensboro Morris Plan Co. v. Palmer, supra note 31.

unlawful acts causing damage to the property prior to his avoidance of the contract. The only relief available for the adult in the normal case is the right to regain whatever remains in the minor’s possession at the time of disaffirmance.

Surely the policy of the law should be to discourage rather than countenance fraud, recklessness, and lawlessness in the adults of tomorrow. Several states have met this problem with statutory provisions requiring as a condition to disaffirmance that the infant, if over eighteen at the inception of the contract, restore the consideration or pay its equivalent to the party from whom it was received. This has the effect of requiring the more mature infant to pay for the depreciation and beneficial use and to account for any damages done to the property, while at the same time preserving his right of avoidance. It is hoped that our Legislature will consider enacting such a statute, in view of the tremendous number of purchases of personalty made by minors today.

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Credit Transactions—Security Agreement Stipulating That on Sale of the Security Property the Security Attaches to the Proceeds

In Presley E. Brown Lumber Co. v. Textile Banking Co., a furniture manufacturer, who was financially impoverished, needed raw materials in the form of core stock, the base to which veneer is applied. The plaintiff-lumber company had such stock to sell but was unwilling to sell to the furniture manufacturer on credit. An agreement was reached whereby the lumber company would consign the core stock to the furniture manufacturer. Title to the raw materials was to remain in the plaintiff until the finished product was sold, at which time the title to the raw materials was to transfer over to the proceeds of sale, including accounts receivable, in proportion to the value of the raw materials in the finished product. The manufacturer was to be the agent to collect the accounts and hold the funds in trust for the plaintiff. This agree-

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35 Where a statute gives the adult an interest in the chattel, however, the infant is liable for losses sustained through the minor’s failure to notify the adult of the chattel’s seizure and sale under forfeiture proceedings. Williams v. Aldridge Motors, Inc., 237 N.C. 352, 75 S.E.2d 237 (1953).
37 A minor who avoided a compromise of his legacy has been required to account for the property received under the compromise upon asserting a claim for the legacy. Tipton v. Tipton, 48 N.C. 552 (1856).
38 CAL. CIV. CODE § 35 (1954); IDAHO CODE ANN. § 32-103 (1948); MONT. REV. CODES ANN. § 64-107 (1953); N.D. REV. CODE § 14-1011 (1943); OKLA. STAT.Tit. 15, § 19 (1937); S.D. CODE § 43.0105 (1939).