

BAHSALI v. MANSO

Supreme Court (Tew, C.J.): July 24th, 1931

- 5 [1] Contract — infants — misrepresentation — no liability to pay money due under voidable contract even if induced by misrepresentation as to age: Goods supplied to an infant for trading purposes are not “necessaries” and a plea of infancy will therefore be an absolute bar to an action against him for payment in respect of the purchase of such goods; this rule applies even if the contract specifically states that he is over 21 or if it was induced by the infant’s fraudulent misrepresentation of his age for although an infant is generally liable in tort, he is not liable when the tort is directly connected with a contract which he is entitled to avoid (page 248, lines 11–16; page 249, lines 4–32).
- 10 [2] Contract — infants — “necessaries” — goods supplied to infant for resale in course of trade not “necessaries” — infant therefore entitled to avoid contract: See [1] above.
- 15 [3] Contract — misrepresentation — fraudulent misrepresentation — infants — no liability to pay money due under voidable contract even if induced by misrepresentation as to age: See [1] above.
- [4] Tort — deceit — infants — not liable for fraudulent misrepresentation inducing contract which entitled to avoid: See [1] above.
- 20 [5] Tort — infants — infants generally liable in tort — no liability if tort directly connected with contract which infant entitled to avoid: See [1] above.

25 The plaintiff brought an action against the defendant, who was an infant, for money due on goods sold and delivered to him.

The defendant was about 13 years old when the goods in question were supplied to him for resale in the way of business. The plaintiff did not ask the defendant’s age when the contract was made, and the defendant, being unable to read English, did not understand the words “age over 21 years” which were above his own signature on the first invoice.

30 The defendant failed to pay for the goods and the plaintiff brought the present proceedings alleging that the defendant had fraudulently misrepresented that he was over 21 and contending that he was therefore liable to pay the money due under the contract.

35 The defendant denied having made any statement concerning his age and alleged that in any case the plaintiff was aware that he was an infant.

40 He also contended that in any event he was not answerable for the tort of deceit, even had it been proved, since it gave rise directly to a contract which he was entitled to avoid.

The suit was dismissed.

Cases referred to:

- (1) *Burnard v. Haggis* (1863), 8 L.T. 320; 32 L.J.C.P. 189.
- (2) *Cowern v. Nield*, [1912] 2 K.B. 419; (1912), 106 L.T. 984. 5
- (3) *Foy v. Wadsley* (1931), 71 L.J.C.C.R. 6.
- (4) *Ex p. Jones* (1881), 18 Ch.D. 109; 45 L.T. 193.
- (5) *R. Leslie Ltd. v. Sheill*, [1914] 3 K.B. 607; (1914), 111 L.T. 106. 10
- (6) *Turberville v. Whitehouse* (1823), 1 C. & P. 94; 171 E.R. 1116.

TEW, C.J.:

The plaintiff claims the sum of £87.10s.1d. as the balance due on goods sold and delivered to the defendant, after credit had been given for certain goods returned by the defendant. 15

The defendant first obtained goods from the plaintiff on July 14th, 1930, and there is no dispute that they were supplied to him for the purpose of resale and not for his personal use. He has pleaded that he was an infant at the time.

The first invoice for these goods bears the endorsement in English "age over 21 years," and below that is the defendant's signature in Arabic characters. The plaintiff and his clerk, Power, says that the defendant was asked whether he was 21 and replied in the affirmative, and that Power, on the plaintiff's directions, then wrote the words referred to before the defendant signed. 20
The defendant denies that he made any statement as to his age and says that he cannot read English. 25

The defendant sought to prove that the amount credited to him for the goods returned did not represent a fair price. As to that matter the evidence was not at all satisfactory, and there is no material to enable me to ascertain whether the price was fair or not. It seems likely that the defendant, who was hopelessly insolvent, was willing to return the goods on the plaintiff's own terms, and I see no reason to allow the defendant more than the amount with which he has already been credited. The defendant 30
further argued that the plaintiff, being only one of several partners, could not sue by himself as representing the firm. It is sufficient to say that, in my opinion, there is no substance in this objection. 35

It was argued by Mr. Betts that the evidence as to the age of the defendant is not conclusive in that no birth certificate has been 40

produced. I am satisfied however, both from his appearance and from the evidence of his elder brother, that he is well under 21 years of age. His passport, issued in 1924 states that he was born in 1918, and there seems to be no reason why he should then have made a false declaration as to his age. There was a suggestion that he had understated his age in Syria in order to avoid conscription; but there is no evidence that conscription is in force in Syria, and I feel fairly certain that a mandatory power is not entitled to introduce conscription in a country which is being administered under a mandate.

Now it is well settled that goods supplied to an infant for the purpose of trade are not necessities. This point was lately before the Southampton County Court in the case of *Foy v. Wadsley* (3). The learned judge there reviewed some of the authorities, including *Turberville v. Whitehouse* (6) and *Ex p. Jones* (4) and held that the plea of infancy must succeed.

But in the present case it has been argued that, the defendant having represented himself to be over 21, he is bound in equity to pay the value of the goods, as he is unable to restore them. I may say at once that I am by no means satisfied that the defendant did make any such representation, or, if he did, the plaintiff could reasonably have believed it. The defendant is obviously a mere boy and, though he might well be taken to be more than 13, no reasonable person could believe him to be over 21. As was said by Jessel, M.R. in *Ex p. Jones* (18 Ch. D. at 121): "In such cases the Court has taken into consideration the appearance of the infant, for that is a very material matter." [These words do not appear in the report of the case at 45 L.T. 193.] The endorsement which the defendant was unable to read on the invoice is highly suspicious and only confirms my view that the plaintiff did not really believe that the defendant was over 21 years of age. Here then is the end of the matter. I prefer, however, to consider shortly the argument to which I have referred, assuming for that purpose that the defendant did make a misrepresentation as to his age and that the plaintiff was deceived thereby.

This argument was supported by reference to *Cowern v. Nield* (2) in which the County Court judge, on facts similar to those in the present case, gave judgment against the infant on the ground that the contract was for his benefit. The Divisional Court allowed the infant's appeal, but ordered a new trial in order that it might be ascertained whether in substance the cause of action arose *ex*

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delicto — in other words whether the infant had been guilty of fraud. In the later case however, of *R. Leslie Ltd. v. Sheill* (5) this question of equitable liability was considered at much greater length by the Court of Appeal, and it was held that where the cause of action is in substance *ex contractu* the plea of infancy is an absolute bar to the claim. Lord Sumner said ([1914] 3 K.B. at 611; 111 L.T. at 107):

“So long ago as *Johnson v. Pye* 1 Sid. 258 it was decided that, although an infant may be liable in tort generally, he is not answerable for a tort directly connected with a contract which, as an infant he would be entitled to avoid” and he cited with approval the words of Byles, J. in *Burnard v. Haggis* (1) (32 L.J. C.P. at 191):

“[O]ne cannot make an infant liable for the breach of a contract by changing the form of action to one *ex delicto*.” [These words do not appear in the report of the case at 8 L.T. 320.]

Again Kennedy, L.J. said ([1914] 3 K.B. at 624; 111 L.T. at 112):

“[T]here is no case in which I can find that a Court of Equity has given judgment against an infant in circumstances like the present, that is to say, in which it has interfered on the ground of the fraud of the infant, whereby he induced the making of the contract of loan, to order the infant to pay the plaintiff a sum equal to the sum borrowed under the void contract, and so, in effect, to the amount of the principal lent, to give validity as against the infant to a void contract.”

To sum up, I find that there was no misrepresentation by the defendant and that even if there were the plaintiff was not deceived; and that even if the contract was induced by the fraud of the defendant the plea of infancy is an absolute bar to the action.

There must be judgment for the defendant with costs.

Suit dismissed.