New Jersey Court of Errors and Appeals

ANTHONY LAROSA,
BY HIS NEXT FRIEND,
STEFANO LAROSA,
Plaintiff,
Appellee,
vs.
ARMAND T. NICHOLS,
Defendant,
Appellant.

BRIEF FOR PLAINTIFF-APPELLEE.

This appeal brings up for review a judgment entered in the Atlantic County Circuit Court and affirmed by the Supreme Court.

The facts in the case are admitted by stipulations which are found on Pages 8 and 9 of the State of Case and briefly are that the appellee, the owner of an automobile, was operating it for hire and stored his car with the appellant, the owner of the garage. That he purchased gasoline and supplies and while admitting the amount claimed by the appellant to be due, he refused to pay him. Appellant taking advantage of the Garage Keeper's Lien Act (P. L. 1915, 556, Chapter 312) refused to surrender the car until the amount due him was paid.

Appellee instituted replevin proceedings claiming that when he stored the car, he was an infant and hence is not bound by the provisions of the act above mentioned.

As a general rule, an infant may avoid all of his contracts except those for necessaries.

Blackstone—Book 1, page 466.
Woolston vs. King, 3 N. J. L., 1049.
Voorhees vs. Wait, 15 N. J. L., 343.
Patterson vs. Lippincott, 47 N J. L., 457.

Blackstone limits necessaries to "necessary meat, drink, apparel, physic, and such other necessaries; and likewise for his good teaching and instruction whereby he may profit himself afterwards."

Book 1, page 466.

It is generally conceded that as a matter of law the word "necessaries" refers only to those things proper for the support, maintenance, and instruction of the infant, regard being had to his station in life. And even then, he must be in a state of need before his contract can become binding.

Reading vs. Wilson, 38 N. J. Eq., 446.
Shelton vs. Pendelton, 18 Conn., 417.
Grace vs. Hale, 21 Tenn., 27.

Nor does the fact that an infant is trading for himself cure his incapacity to contract

Houston vs. Cooper, 3 N. J. L., 866.

Regarding the effect of misrepresentation of age by the infant, it is admitted that in some instances of fraud, a Court of Equity will deny the infant the aid of its process.

Bispham's "Principals of Equity", P. 450.
Hayes vs. Parker, 41 N. J. Eq., 630.
Pemberton B. & L. Assn. vs Adams, 53 Eq., 258.

But, on the other hand, where an attempt is made to *enforce the contract* of an infant on the ground of estoppel, such an attempt must fail.

Bispham's Prin. of Eq., p. 450.
Hayes vs. Parker, 41 N. J. Eq., 630.
Simms vs. Everhardt, 102 U. S , 300.

If an infant could qualify himself to make binding contracts by misrepresenting his age then the policy of the law in this respect would be abortive. This policy of the law is for the protection of the infant and is based on the theory that the infant lacks discretion. Certainly, the telling of a falsehood does not automatically vest the infant with that discretion, which the law presumes he lacks.

Counsel desires especially to call to the attention of the Court that the cases of Hayes vs. Parker and Pemberton B. & L. Assn. vs. Adams, heretofore cited were suits in Chancery, whereas the present matter is an action at law and that in the former of these cases the Court draws the distinction between the infant's right to repudiate a contract in an action at law and one in Equity. Also, that in neither of these cases did the Court attempt to say that the infants were bound by their contracts. In the former case, the infant was denied the aid of the Court on the ground of Equitable Estoppel, and in the latter the fraud of the infant was held to estop him from pleading infancy. Thus, it will be seen that the infants were held liable, not on the ground that their contract was made binding by their fraud, but on the ground that in Equity they were estopped from *pleading* infancy.

Paragraph 1, of the stipulations says that the lien claimed by the defendant is based on the "Garage Keepers' Lien Act" of 1915, page 556, chapter 312. Reference to the wording of the act shows that a lien only arises where goods, etc., are furnished "at the request or with the consent of the owner or his representative" Clearly, this choice of words used means that the lien arises out of a contract. If this lien must be supported by a contract, then for the defendant to prevail in this action, the court would necessarily have to hold the infant liable on the contract. His liability on any other ground, as in Hayes vs. Parker and Pemberton B. & L. Assn. vs. Adams, heretofore cited, would not support the lien.

In *Hall vs. Acken,* 47 *N. J. L.,* 341, the Court of Errors and Appeals unanimously held that an infant could make no contract whereby a lien would arise

under the Mechanics' Lien Law because the lien was incident to a legal liability to pay. It is respectfully urged that this decision controls the law in the present controversy.

Counsel for the defendant has suggested that the modern spirit of the law will not permit an infant to purchase and use goods without making compensation therefor. In reply it will suffice to say that if the law is wrong in this respect, the remedy should come from the Legislature and not from the Court.

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For the reasons above submitted, it is respectfully urged that the judgment of the court below be affirmed to the end that a judgment for possession be entered in favor of Respondent with costs

EWART & SIRACUSA,
Attorneys for Plaintiff-Appellee

MORRIS BLOOM,
Of Counsel for Plaintiff-Appellee

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New Jersey Court of Errors and Appeals

ANTHONY LAROSA,
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STEFANO LAROSA,
Plaintiff,
Appellee,
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BRIEF FOR
DEFENDANT-
APPELLANT.

This appeal brings up for review a judgment entered in the Atlantic County Circuit Court and affirmed by the Supreme Court.

The facts in the case are admitted by stipulations which are found on Pages 8 and 9 of the State of Case and briefly are that the appellee, the owner of an automobile, was operating it for hire and stored his car with the appellant, the owner of the garage. That he purchased gasoline and supplies and while admitting the amount claimed by the appellant to be due, he refused to pay him. Appellant taking advantage of the Garage Keeper's Lien Act (P. L. 1915, 556, Chapter 312) refused to surrender the car until the amount due him was paid.

Appellee instituted replevin proceedings claiming that when he stored the car, he was an infant and hence is not bound by the provisions of the act above mentioned.

Appellant resisted the writ setting up:

1. That when appellee brought the car into his garage, he had the appearance of being of full age; that he presented himself to be such and that he made an affidavit to the same effect and hence that he was estopped from setting up infancy at this time.

2. That the appellee was engaged in business operating the automobile for hire with the consent of his father (his next friend in this suit) and that under these circumstances, the storage, gasoline and supplies furnished him were "necessaries" and hence that he is bound by the contract even though he may have been an infant.

3. That even though the appellee could defend, if he were sued for the recovery of the amount due, he cannot obtain affirmative relief by pleading his infancy after leading the appellant into making the contract, through his own fraud, without placing the appellant in statu quo.

After the filing of the complaint and the answer the matter was submitted by stipulations and was tried by Judge Carrow without a jury and resulted in a finding in favor of the plaintiff (State of Case, Page 10) and judgment being entered upon the finding, an appeal was prosecuted to the Supreme Court, which finding was affirmed. The opinion of the Supreme Court is found in the State of Case, Pages 14 to 16.

I.

The stipulations show that at the time when the automobile was stored with the appellant and when the gasoline and supplies were purchased, the appellee not only represented himself to be of full age but executed an acknowledgment to a chattel mortgage reciting that he was of full age and that he had the appearance of being of full age, thus inducing the appellant to enter into business relations with him.

It is respectfully submitted that under such circumstances the appellee is estopped from setting up the defence of infancy.

A search of authorities does not disclose any precedents at law in our own State controlling the case at hand. In other jurisdictions, however, cases on "all-fours" have been determined from time to time in support of the proposition which is now urged upon this court.

In the case of *Commander vs. Brazile,* 88 *Miss.* 668, 41 *So.* 497, (9 *L. R. A.* (*new series*) 1117,) the highest court of the State of Mississippi held that:

> "A minor who by false representations that he is of age added by his mature appearance induces another to enter into a contract with him under the belief that he is of full age, of which he accepts the benefit, cannot set up his minority in defence to an action upon the contract."

In the case of *Grauman, et al., vs. Krienitz,* 142 *Wis.,* 56, 126 *N. W.* 50, the Supreme Court of the State of Wisconsin held:

> "A minor may in making a contract beneficial to himself, estop himself from subsequently avoiding it on the ground of infancy as where there is actual fraud by express representation of capacity inducing the adverse party to contract."

In the case of *Lake vs. Perry,* 49 *So.* 569, it was also held that:

> "Where a minor who has reached the stage of maturity calculated to deceive a person as to his age and asserts that he is of full age and induces a contract to be made with him and accepts the benefits thereof, he cannot deny that he was of full age and escape the obligation of the contract."

In our own State the question was raised in Chancery in the case of *Pemberton Building and Loan Association vs. Adams,* 53 *N. J. Equity,* 258; 31 *Atl.* 280, where Vice Chancellor Bird speaking on the point in question laid down the law as follows:

> "It is equally clear that the statement that he (the infant) was of age, was relied upon; and that the loan would not have been made if the answer had been according to the fact. The law will not, under such circumstances, allow a fraud doer to protect himself under the plea of infancy."

> See also *Ex-Parte Unity Joint Stock Meeting Bank Assn.* 3 *De G. & J.* 63, 44 *Eng. Rep.* 1192.

> See also *Overton vs. Banister,* 3 *Hare* 503, 67 *Eng. Rep.* 479.

It is respectfully urged that there is nothing in the theory of the law of our State that prevents a Court of law from following the principles above laid down where in doing so the court is manifestly doing justice.

However, our Supreme Court in its opinion, in this case, says that:

> "The non-enforceability against infants of contracts entered into by them is a matter of public policy, *the purpose of which is the protection of the infant;* and to hold that an infant can deprive himself of this protection by falsely representing his age would be, as it seems to us, in plain disregard of that policy, and greatly lessen the value of the rule."

The court in the above statement lays stress upon the fact that the purpose of "the policy" is "the protection of the infant". The court's attention is directed to the fact that in the stipulations it appears that the infant in this case had the consent of his father, to the making of this contract. As we under-

stand it, the theory upon which public policy demands that infants be protected, is because they do not have mature judgment of their own. However, when that judgment is supplied by someone who is vested with authority such as parent, guardian or a person in loco parentis, it would seem to us that "public policy" was no longer interested since that protection is no longer needed by the infant.

Surely public policy is equally interested in seeing that justice is done and that fraud should not be permitted to be used as a premium for the purpose of depriving an innocent person of something that belongs to him without giving him a remedy. This is an instance where the court ought not to permit the rule to be broadened and since the rule, where applied, works a forfeiture, it should be strictly applied instead of leaving the door wide open.

It is respectfully submitted that the appellee in this case, is not entitled to the defence of infancy. In this case the theory of estoppel should be applied with rigor.

II.

The stipulations show that the infant, who it will be recalled, was of mature appearance and was almost of age, was engaged in business for himself, operating the automobile in question for hire as a common carrier.

It is respectfully submitted that the appellee coming into this court, admitting the ownership of a machine and that he is in business operating it, that the court cannot shut its eyes to the fact that in order to operate a machine, one must have the power with which to operate it. Therefore, gasoline and supplies furnished towards operating such a machine, comes within the purview of "necessaries"; that shelter for the machine comes within the same category. If the amount due appellant is the result of a contract for "necessaries", it would follow that the contract is binding and the contract being binding, the lien would prevail.

It is submitted that the question of what are "necessaries" has always been a mixed question of law and fact. It has been so because each case stands on its own facts and what are "necessaries" in one case, may not be in another case. In the case at hand the infant, owning the automobile, determines his own atmosphere. Being in business intensifies it and it appeals to us as both reasonable and modern that shelter, gasoline and supplies for an automobile for an infant engaged in hiring out that automobile, are "necessaries".

The Supreme Court in its opinion does not countenance this fact and cites *Houston vs. Cooper*, 3 *N. J. L.* 866, a precedent laid down more than a hundred years ago. That too, was a case where the infant was in business but it appeared that "his father had forbid him". The court held that the evidence that the infant was in business for himself, should not have been admitted and held that the fact that an infant is in business for himself

> "does not cure the incapacity of his infancy. It is the real or supposed incapacity of mind in the infant to make judicious contracts that the law renders invalid his bargains, and the more contracts he makes the more danger of injury or ruin to himself, which the law is intended to guard against."

It is respectfully suggested that the case cited does not dispose of the case at hand. We urge that storage, gasoline, etc., are necessaries to an infant who comes into court saying "I own an automobile" irrespective of whether that infant is in business or not. It is the ownership of the machine which makes it necessary for the infant to have shelter for it and gasoline to use it. *No such question was before the court in Houston vs. Cooper.*

In that case the infant *against the wishes* of his father traded horses, at best a highly dangerous game, and of doubtful benefit to the infant. In the case at hand the transaction was not only admittedly

beneficial to the infant but he had the express consent of his father.

Therefore, the so-called "incapacity of minds in the infants to make judicious contracts" is not present in this case, for he had the counsel, advice and consent of his father and that judiciousness which the law presumes the infant to lack is here supplied.

This view is taken in the case of *Rundel vs. Keller*, 7 *Watts* 237,— where the Supreme Court of Pennsylvania held an infant bound. In that case the infant was engaged in cultivating a farm. He was furnished with a plow. The guardian had knowledge of it and consented and furnished him with a pair of oxen. In a suit against the infant to recover for the plow, the court held that that was "necessaries" and permitted recovery, holding the infant to the contract. That case is cited with approval *in Mohney vs. Evans*, 51 *Penn.* 83.

It is respectfully submitted that the case at hand is parallel and that the infant should be held to his contract for the things furnished him, which were so necessary to his business and to the preservation of the machine, which he admits to own.

III.

The court's attention is directed to the fact that the contract in this case is not executory. It is executed. The infant has received the benefits of the contract and comes into this court, not with an offer of placing the appellant in statu quo; not to return to him his supplies and materials but to prevent him from receiving the benefits expressly granted by the Legislature of this State for the prevention of frauds upon garage keepers. The infant was not brought into court for the purpose of enforcing a contract. The infant is seeking affirmative relief by calling upon the court to aid him.

It is respectfully urged that where an infant seeks affirmative relief by repudiating a contract, the court should not allow him that relief unless he places the person, against whom he seeks that relief, in statu quo. That it should not allow him to

repudiate his contract and at the same time retain its fruits as his own, and so in the case of *Welsh vs. Welsh*, 103 *Mass.* 562, it was held that where the contract, beneficial to the minor, has been executed, he cannot disaffirm without putting the other party in statu quo.

In *Read vs. Judd*, 1 *Gray* (*Mass.*) 455, the same principle was upheld.

In *Locke vs. Smith*, 41 *N.H.* 346, the court held that where the consideration cannot be restored, the infant must place the other party in as good a position as though it had been.

In *Bartholomew vs. Finnemore*, 17 *Barbour* (*N. Y.*) 428, the infant received a horse in exchange for other property. Afterwards he sought to replevy the property and offered to return the horse but the horse had been so misused as to materially lessen its value and the court held that he was not entitled to recover.

It is respectfully urged that in the case at hand the question whether the contract was beneficial to the infant is hardly one of discussion. It was obviously beneficial to him and the principles above propounded are applicable.

Again as has been pointed out above the infant is here seeking affirmative relief, using his infancy as a tool with which to obtain that relief.

It is respectfully submitted that under the circumstances, the court should not lend itself for that object.

In the case of *Badger vs. Phinney*, 15 *Mass.* 359 the court said that *"the privilege of infancy is a shield, not a sword"*. In the case at hand the infant is using his infancy in precisely the reverse manner, not as a shield, for he was not brought into court, but as a sword, since he is the aggressor and attacks with it.

In the case of *Taft vs. Pike,* 14 *Vt.* 405, 39 *Am. Dec.* 228, the court speaking to a similar point says:

> "Though the contracts of a minor, as a general principle are not so far binding upon him as to preclude him from the right of avoiding them, yet this privilege is given him, it is said, as a shield to protect himself against his own contracts; but he should not make use of it as an offensive weapon to injure others. While it protects the infant from injury, through his own imbecility it enables him to do binding acts which are for his own benefit as for the benefit of others, provided he is not thereby prejudiced."

The court is particularly asked to note that the Supreme Court either ignored or failed to consider this feature of the case for no mention of this point is made in the opinion, although it was urged by appellant.

IV.

The Supreme Court in its opinion concludes that no recovery can be had in this case, citing *Hall vs. Acken,* 47 *N. J. L.* 341.

It is respectfully submitted that that case is distinguished from the case at hand in the following respects:

1. In that case the infant did not misrepresent his age; did not induce the other party to enter into the contract as are the facts in the case at hand.

2. In that case the question of conducting a business with the consent of the guardian, was not involved; the question of "necessaries" was not involved.

3. Lastly in that case the infant did not seek affirmative relief; infancy there was used as a shield; infancy here is used as a sword.

It is respectfully submitted that for these reasons, which to us seem manifest and manifold, the judgment in this case, should be reversed.

LOUIS E. STERN,
Atty. for Defendant-Appellant.

ATLANTIC COUNTY CIRCUIT COURT.

ANTHONY LAROSA,
BY HIS NEXT FRIEND,
STEFANO LAROSA,
Plaintiff,

vs.

ARMAND T. NICHOLS,
Defendant,

ACTION AT LAW.

COMPLAINT.

The plaintiff, Anthony La Rosa, of the city of Atlantic City, county of Atlantic, State of New Jersey, by his next friend, Stefano La Rosa, of the same place, says that:

1. He is the owner of a certain four passenger, Mercer automobile, 1913 model, the New Jersey license number of which is 44,281, and that he has been the owner of said automobile since June, 1916.

2. The said automobile was stored by the plaintiff in the Colonial Garage, owned and operated by Armand T. Nichols, the defendant, by virtue of an agreement made between the said parties.

3. On or about the 19th day of January, 1917, the said defendant, by his agent, Leo Costigan, refused to permit the plaintiff to take the said automobile from the said garage, claiming a lien thereon for gasoline sold and storage furnished the plaintiff.

4. The plaintiff is an infant under the age of twenty-one years, to-wit: twenty years of age.

5. On the 16th day of February, 1917, the plaintiff informed the defendant through his agent Leo

Costigan, that he, the plaintiff, was an infant under the age of twenty-one years. The plaintiff thereupon formally repudiated his contract to pay for the gasoline and storage, and demanded possession of the aforesaid automobile.

6. At the same time and to the same person mentioned in paragraph 5, preceding, the plaintiff formally repudiated all other contracts made with the defendant, for any supplies, accessories or repairs to the aforesaid automobile.

7. The defendant, by his agent Leo Costigan, refused to deliver said automobile to plaintiff, although demand was made before the writ in this action was issued.

Wherefore the plaintiff demands possession of the said automobile free from any liens claimed by the defendant.

EWART & SIRACUSA,
Attorneys for Plaintiff.

ATLANTIC COUNTY CIRCUIT COURT.

ANTHONY LAROSA,
BY HIS NEXT FRIEND,
STEFANO LAROSA,
Plaintiff,

vs.

ARMAND T. NICHOLS,
Defendant,

ACTION AT LAW.

ANSWER.

The defendant, Armand T. Nichols, answering plaintiff's complaint says:

1. He admits that the plaintiff is the owner of a certain automobile as described in Paragraph 1, and that the said automobile was stored by the plaintiff in his garage but denies that there was any special agreement.

2. He admits that he refused to let the plaintiff remove the said automobile from the garage by reason of the fact that the plaintiff refused to pay certain charges incurred by the plaintiff for articles necessary for the proper maintenance of the said machine.

3. He denies that the plaintiff is an infant and expressly avers that the plaintiff represented himself to be of full age and appeared to be at least 21 years of age.

4. He denies the statements contained in Paragraphs 5, and 6, of the plaintiff's complaint and admits that he refused to turn over the automobile

to the plaintiff unless the plaintiff paid the amount due.

DEFENSE.

And by way of defense, defendant shows:

FIRST DEFENSE.

That the plaintiff representing himself to be of full and lawful age engaged the defendant to store his automobile in his garage and purchased supplies, to wit, gasoline, oil, grease and certain parts for his said machine, for which the defendant charged standard and reasonable prices. That the plaintiff received the benefits of the defendant's work and labor and materials and is indebted to the defendant in the sum of $74.49 in accordance with the itemized statement hereunto attached and made a part hereof.

SECOND DEFENSE.

Defendant by way of further defense says that the plaintiff at the time and place mentioned in complaint, being the owner and operator of the automobile mentioned in the said complaint, having a State license enabling him to operate the said machine and a City license enabling him to operate the said machine on the streets of Atlantic City as a conveyance commonly known as a jitney, representing himself to the defendant as of lawful age, induced the defendant to store his car for him and to furnish him gasoline and other supplies for which storage and supplies defendant has not been paid, although the prices charged were reasonable and amounted to $74.49 in accordance with the itemized statement hereunto attached.

THIRD DEFENSE.

That the plaintiff being the owner and operator of the said automobile, having a State license ena-

bling him to operate a machine and a City license enabling him to operate the said machine over the streets of Atlantic City for hire as a conveyance commonly known as a jitney, being then and there in need of shelter for the said machine and of gasoline, oil, grease, etc., for the purpose of operating the same, applied to the defendant for the said storage, gasoline, oil, grease, etc., and defendant furnished same to him. All of the said labor done and materials furnished being necessary to the plaintiff in order to operate the said machine and to maintain and preserve the same and that the plaintiff received the benefits therefrom and that the defendant has not been paid the reasonable charges due thereon, to wit, the sum of $74.49 in accordance with the itemized statement hereunto attached and made a part hereof.

That the defendant demands possession of the said automobile.

LOUIS E. STERN,
Attorney for Defendant.

ITEMIZED STATEMENT.

August, 1916.

Storage		$8.00

September.

Storage	$ 8.00		
Gasoline (60 gal.)	14.40		
Oil (6 qts.)	.90		
1 can grease	.20		
1 can polish	.50		
Parts for car	2.15		
			26.15

October.

Storage	$ 8.00		
Gasoline (15 gal.)	3.60		
Oil (6 qts.)	.60		
			12.20

December.

Storage	$ 8.00		
Gasoline (2 gal.)	.48		
Oil (8 qts.)	1.20		
1 can grease	.20		
			9.88

January, 1917.

Storage	$2.16		
Oil (1 qt.)	.10		
			2.26
			$58.49
January storage			8.00
February storage			8.00
Total due			$74.49

ATLANTIC COUNTY CIRCUIT COURT.

ANTHONY LAROSA,
BY HIS NEXT FRIEND,
STEFANO LAROSA,
Plaintiff,

vs.

ARMAND T. NICHOLS,
Defendant.

ACTION AT LAW.

REPLY.

The plaintiff, Anthony La Rosa, by his next friend Stefano La Rosa, replying to defendant's answer says that:

1. He denies that he represented himself to be of full age and admits that he received the materials mentioned in the First Defense.

2. He denies that, at the time and place mentioned in the complaint, he represented himself to be of full agge.

3. He admits the statements set forth in the Third Defense.

EWART & SIRACUSA,
Attorneys for Plaintiff.

ATLANTIC COUNTY CIRCUIT COURT.

ANTHONY LAROSA,
BY HIS NEXT FRIEND,
STEFANO LAROSA,
Plaintiff,
vs.
ARMAND T. NICHOLS,
Defendant,

In Replevin.

STIPULATIONS.

It is hereby agreed and stipulated by and between the respective counsel that the following facts be submitted to the court to govern the decision in the case:

1. This is an action of replevin to recover a Mercer Automobile. The defendant claims the machine as a lien for the payment of the sum of $74.49 for storage, gasoline, polish and parts for the car furnished by him to the plaintiff. The lien is claimed under the "Garage Keepers Lien Act" of 1915, Page 556, Chapter 312.

2. That the amount claimed by the defendant from the plaintiff is due and owing from the plaintiff to the defendant.

3. That the plaintiff at the time of the storing of the car with the defendant and the purchasing of supplies was an infant and still is an infant and will not be of age until October, 1917.

4. That at the time above mentioned the plaintiff had the appearance as being of full age and at that time and prior thereto he represented himself

to the defendant as being of full age and long before that executed an acknowledgment to a chattel mortgage (given to the defendant) on the machine and in the acknowledgment reciting that he was of full age.

5. The plaintiff held a State license to drive an automobile and a City license to operate the car on the streets of Atlantic City for hire or what is commonly known as a "jitney" and that he now operates the same car as a taxi cab for hire.

6. That the plaintiff's father who is acting as "his next friend" in this suit, knew that the plaintiff was engaged in the business of operating the automobile for hire and he knew that the car was being stored in the defendant's garage and that the plaintiff was purchasing gasoline, etc., from the defendant and consented thereto.

7. That the plaintiff lived with his father and contributed money to the father's household although irregularly.

EWART AND SIRACUSA,
Attorneys for Plaintiff.

LOUIS E. STERN,
Attorney for Defendant.

ATLANTIC COUNTY CIRCUIT COURT.

ANTHONY LAROSA,
BY HIS NEXT FRIEND,
STEFANO LAROSA,
Plaintiff,

vs.

ARMAND T. NICHOLS,
Defendant,

FINDING OF COURT.

I find in favor of Plaintiff and against defendant.

HOWARD CARROW,
Judge.

(Endorsed)

This Finding is Ordered to be filed Nunc Pro Tunc.

HOWARD CARROW.

Filed Sept. 10, 1917, at 12 M.

EDWIN A. PARKER, Clerk.

ATLANTIC COUNTY CIRCUIT COURT.

ANTHONY LAROSA,
BY HIS NEXT FRIEND,
STEFANO LAROSA,
Plaintiff,

vs.

ARMAND T. NICHOLS,
Defendant.

IN REPLEVIN

Rule for Entry of Judgment

The above stated cause having been submitted to the Court on stipulated facts and briefs of respective counsel submitted and examined, and it appearing that the plaintiff is entitled to judgment; it is, on motion of Ewart & Siracusa, attorneys of the said plaintiff, ordered that judgment final be entered in the above stated cause in favor of the plaintiff, and against the defendant and that the plaintiff do recover his costs of suit to be taxed.

LET the above order be entered in the minutes of the Court.

HOWARD CARROW,
Judge.

Filed and entered July 21, 1917, at 9 A. M.

EDWIN A. PARKER, Clerk.

ATLANTIC COUNTY CIRCUIT COURT.

ANTHONY LAROSA,
BY HIS NEXT FRIEND,
STEFANO LAROSA,
Plaintiff,
vs.
ARMAND T. NICHOLS,
Defendant,

JUDGMENT.

The above stated cause having been submitted to the court on stipulated facts and briefs of respective counsel submitted and examined and it appearing that the plaintiff is entitled to judgment,

It is ordered that judgment final is hereby entered in favor of the plaintiff, Anthony LaRosa, by his next friend, Stephano LaRosa, and against the defendant, Armand T. Nichols, and that plaintiff recover from the defendant his costs which are taxed at the sum of $53.74.

Entered July 21, 1917.

HOWARD CARROW,
Judge.

ATLANTIC COUNTY CIRCUIT COURT.

ANTHONY LAROSA,
BY HIS NEXT FRIEND,
STEFANO LAROSA,
Plaintiff,
Respondent

vs.

ARMAND T. NICHOLS,
Defendant.
Appellant.

Action at Law.

NOTICE OF APPEAL AND REASONS.

To Ewart and Siracusa, Esqs., Attorneys for Stefano LaRosa:

Take notice that the defendant appeals to the New Jersey Supreme Court from the whole of the judgment entered in this cause and assigns the following grounds:

1. Because the verdict rendered and judgment entered thereon is against the weight of the evidence.

2. Because the verdict rendered and judgment entered thereon is against the law.

3. Because judgment should have been entered for the defendant and not for the plaintiff.

4. Because the verdict rendered and the judgment entered thereon is erroneous for diverse other reasons.

LOUIS E. STERN,
Attorney for Defendant-Appellant.

Filed in both the office of the Clerk of the New Jersey Supreme Court and in the office of the Atlantic County Circuit Court September 14, 1917.

NEW JERSEY SUPREME COURT.

Nov. T., 1917.

ANTHONY LAROSA,

vs.

ARMAND T. NICHOLS.

ERROR TO ATLANTIC CIRCUIT COURT.

Argued before Gummere, Chief Justice, and Justices Parker and Kalisch.

For plaintiff in error, Louis E. Stern.

For defendant in error, Morris Bloom.

The opinion of the Court was delivered by Gummere, C. J.

This is an action in replevin brought to recover possession of an automobile which the plaintiff stored in the defendant's garage. The defendant refused to surrender possession of the machine, claiming that there was due to him from the plaintiff a sum of money for repairs, supplies, &c., as well as for storage, and that he was entitled to a lien upon the machine under Chapter 312 of the Laws of 1915. At the trial the plaintiff admitted that the car had been stored by him in the defendant's garage, and that the supplies had been furnished, and the repairs made, as alleged by the defendant, but he repudiated any obligation to compensate the defendant therefor, upon the ground that he, the plaintiff, was the, and still is, an infant under the age of twenty-one. The

defendant admitted this to be the fact, but asserted that at the time the automobile was left with him for storage the defendant represented himself as being of full age, and the plaintiff conceded that he made such representation.

The case was tried by the Court without a jury by consent of the parties, and resulted in a finding in favor of the plaintiff. From the judgment entered upon this finding the defendant has appealed.

The defendant bases his right to a reversal of the judgment under review upon two grounds: first, that in storing and repairing the plaintiff's automobile, and supplying it with gasoline, the defendant was furnishing him with necessaries, and that, for this reason, infancy was no bar to his right to recover fair compensation, and, therefore, no bar to his right of lien under the statute; Second, that, having represented himself to be over age at the time he entered into the contract with the defendant for the storing, etc., of the automobile, he is estopped by the fraud from setting up infancy for the purpose of avoiding liability under the contract.

The plaintiff at the time of entering into the contract was engaged in operating his automobile in Atlantic City as a common carrier, under a license from the municipality, and the argument is that whatever was furnished to him to enable him successfully to carry on this business came within the description of "necessaries" and that for this reason plaintiff was bound by his contract. We think this contention cannot be supported. As was said by this court more than one hundred years ago, in *Houston vs. Cooper*, 3 *N. J. L.* 866, the fact that an infant undertakes to go into business on his own account "does not cure the incapacity of his infancy. It is the real or supposed incapacity of mind in the infant to make judicious contracts that the law renders invalid his bargains, and the more contracts he makes the more danger of injury or ruin to himself, which the law is intended to guard against." The soundness of this view thus expressed has never since been doubted by our courts, so far as we are aware, and it meets with our approval.

The second ground of attack upon the judgment is also, we think, without legal merit. It may be that a court of equity would refuse relief to the plaintiff under the conditions existing in the present case, but in a court of law he is entitled to stand on his legal right, and to set up infancy as a defense to a contract entered into by him, notwithstanding the fact that he induced the other party to the contract to enter into it by a false representation as to his age. The non-enforceability against infants of contracts entered into by them is a matter of public policy, the purpose of which is the protection of the infant; and to hold that an infant can deprive himself of this protection by falsely representing his age would be, as it seems to us, in plain disregard of that policy, and greatly lessen the value of the rule.

The contract for the storing, &c., of the plaintiff's automobile, having no binding force, and imposing upon the plaintiff no legal liability to pay for the service rendered him, it follows that the defendant had no enforceable lien on the automobile by force of the act of 1915; for the lien given by that statute is predicated upon the legal obligation of the owner of the machine to pay. *Hall vs. Acken*, 47 *N. J. L.* 341.

The judgment under review will be affirmed.

NEW JERSEY SUPREME COURT.

ANTHONY LAROSA,
BY HIS NEXT FRIEND,
STEFANO LAROSA,
Plaintiff,
Appellee,
vs.
ARMAND T. NICHOLS,
Defendant,
Appellant.

ACTION AT LAW.

Notice of Appeal.

To Ewart and Siracusa, Esqs., Attorneys for Plaintiff-Appellee:

TAKE NOTICE that the defendant-appellant appeals from the judgment entered in the above stated cause in the Supreme Court to the Court of Errors and Appeals.

LOUIS E. STERN,
Atty. for Defendant-Appellant.

Filed May 1, 1918.

NEW JERSEY SUPREME COURT.

Anthony La Rose, by his next friend, Stefano La Rose, Plaintiff, Appellee	ON APPEAL from
vs.	ATLANTIC COUNTY
Armand T. Nichols, Defendant, Apellant.	Circuit Court. Rule on Affirmance

This cause having been argued and briefs submitted at the November, 1917, Term of this Court by Ewart & Siracusa, Attorneys for and Morris Bloom of counsel with the Appellee and by Louis E. Stern, of Counsel with the Appellant and the Court having duly considered the same and finding no error in the proceedings and judgment rendered in the Atlantic County Circuit Court;

It is thereupon ordered that the judgment of the Atlantic County Circuit Court, removed by the appeal in this cause, be affirmed with costs, and that the record be remitted to the Atlantic County Circuit Court, there to be proceeded with in accordance with the judgment and the practice of said Court.

Rule entered this 15th day of March, 1918.

On motion of

Ewart & Siracusa,

Attorneys for Appellee.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ANTHONY LAROSA,
BY HIS NEXT FRIEND,
STEFANO LAROSA,
Plaintiff,
Appellee,
vs.
ARMAND T. NICHOLS,
Defendant,
Appellant.

ACTION AT LAW.

Reasons for Appeal.

To Ewart and Siracusa, Esqs., Attorneys for Plaintiff-Appellee:

TAKE NOTICE that the defendant-appellant assigns the following reasons why judgment in the Supreme Court should be set aside and a new trial granted:

1. Because the Supreme Court affirmed the judgment of the Circuit Court of Atlantic County, whereas it should have reversed the same.

2. Because the judgment entered in the Circuit Court and affirmed by the Supreme Court is contrary to law.

3. Because an infant representing himself to be of full age and having the appearance of being of full age and having induced a person to enter into a contract with him, receiving the benefits therefrom cannot repudiate the said contract without placing the other person in statu quo.

4. Because an infant engaged in a business cannot represent himself to be of full age and receive the benefit of a contract necessary for his business and repudiate the same without placing the other person in statu quo.

5. Because an infant having made a contract and the contract having been executed and the infant having received the benefits therefrom and being unable to place the other party in statu quo, cannot secure affirmative relief by pleading his infancy where the infant represented himself to be of full age and induced the other party to enter into the contract with him.

6. Because the judgment is erroneous and unjust for divers other reasons.

LOUIS E. STERN,

Atty. for Defendant-Appellant.

Filed May 1, 1918.