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New Jersey Court of Errors and Appeals

Summons

(Filed, April , 1919)

The State of New Jersey to Unexcelled Manufacturing Co., Inc., and Detwiller & Street Fireworks Manufacturing Company:

You Are Hereby Summoned to answer the annexed complaint of Helen Hartman, an infant, who sues by John Hartman, her next friend, in an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of said New Jersey Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, Hon. William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this second day of April, nineteen hundred and nineteen.

ENOCH L. JOHNSON,
Clerk.

Chas. E. S. Simpson,
Attorney.

Complaint

NEW JERSEY SUPREME COURT

HUDSON COUNTY

HELEN HARTMAN, an infant, who sues by next friend, Plaintiff, vs. UNEXCELLED MANUFACTURING CO., INC., and DETWILLER & STREET FIREWORKS MANUFACTURING COMPANY, Defendants.	Action at Law. Complaint.

Plaintiff, who resides in the City of Jersey City, County of Hudson and State of New Jersey, says that:

1. At the time of the accident hereinafter mentioned, to wit, April 4th, 1917, plaintiff was an infant of the age of eighteen years.

2. On April 1st, 1919, John Hartman, plaintiff's father, was appointed the next friend of plaintiff for the purpose of prosecuting this action.

3. Each of the defendants is a body corporate of the State of New York, and at the times hereinafter mentioned carried on business in the City of Jersey City, in the County of Hudson, in the manufacture of fireworks and other high explosives.

4. At the time of the committing of the griev-

ances hereinafter mentioned, the plaintiff, who was an infant as aforesaid, was living with her father (plaintiff's mother being incapacitated at that time), and was hired and employed by her father to the defendant and by the said defendant received into their employ to work in a certain factory or establishment conducted by the said defendants in its business aforesaid, at Jersey City, in the County of Hudson.

5. At the place mentioned in the last preceding paragraph, the said defendants were engaged in the business of manufacturing primers for cartridge shells, and other highly explosive war munitions and filling empty cartridge shells with explosive substances.

6. On April 4th, 1917, and for a long time prior thereto, the aforesaid building or factory in Jersey City used by the defendants in their work aforesaid, was fitted or built with certain window openings on the side thereof, and said window openings were supplied with glass windows which ordinarily were raised and lowered when in proper condition by means of sash cords. That on the day and in the year aforesaid, and for a long time prior thereto, the said defendants, their servants and agents negligently and carelessly permitted said windows to be without sash cords, so that the said windows could not be raised without great force and could not be kept open without some upright object being placed on the sill of said windows for the purpose, all of which the said defendants, their officers and agents, had due and timely notice, and said defendants, their officers and agents, negligently and carelessly suffered

and permitted said windows to be without sash cords so that the said windows could not be readily and properly used, and became and were dangerous and a menace to the persons employed in said factory, including this plaintiff.

7. On the day and in the year aforesaid and while the said factory possessed an accumulation of powder and dust from powder or other highly explosive substances then and there being used and worked upon by the employees in the factory of the said defendants, the said powder or other highly explosive substance suddenly exploded or ignited which produced a flare up of flame and smoke which completely filled the room of said factory in which plaintiff was then working; and said plaintiff thereupon endeavored to escape from said flame and smoke and in doing so, as an only available means of escaping said flames and smoke, the plaintiff sought to open one of said windows to effect an escape from said fire and smoke; that in consequence of said window being without sash cords and in poor condition the plaintiff was unable, without great effort, to open said window and when said window was open plaintiff as unable to hold said window open in her endeavor to pass through said window, and the sash thereof fell upon her, and she was pinned in said window so that she was prevented from making and was unable to effect an escape from said flames and smoke, and as a result thereof plaintiff was overtaken by said flames and burned, and by means thereof she sustained the following injuries: her head and both ears were burned, and her both arms, right hand, shoulders, neck and back

were burned and she has lost the use of her left arm and she was and is greatly and permanently disfigured, and she underwent great suffering and pain, and in the future wlll suffier great pain and she also suffered a permanent shock to her nervous system.

8. She has, since said accident, and in the future will be hindered and prevented from carrying on work and also after she reaches the age of twenty-one years will be obliged to spend a large sum of money in endeavoring to be healed and cured of said injuries, and will, after said time, be hindered and prevented from carrying on said work or employment, and her body is permanently disfigured.

9. Plaintiff entered into the employ of the defendants after the workmen's Compensation Act (P. L. 1911, p. 134), became effective and no notice was given to or by the plaintiff, or by or to the guardian of the plaintiff to the effect that the provisions of Section 2 of said Workmen's Compensation Act were not intended to apply to said contract of hiring of the plaintiff by the defendant.

By reason whereof, plaintiff will claim damages in the sum of Twenty-five Thousand ($25,000) Dollars.

CHAS. E. S. SIMPSON,
Attorney of Plaintiffs.

Notice to Strike Out Complaint

(Filed, May 12, 1919)

NEW JERSEY SUPREME COURT

HELEN HARTMAN, an infant, who sues by John Hartman, her next friend, Plaintiff, vs. UNEXCELLED MANUFACTURING CO., INC., and DETWILLER & STREET FIREWORKS MANUFACTURING COMPANY, Defendants.	Action at Law.

Sir:

TAKE NOTICE, that we shall apply to his Honor, Francis J. Swayze, Justice of the Supreme Court, at the Jersey City Court House, Hudson County, New Jersey, on Saturday, the fourth day of May, 1919, at 10 o'clock in the forenoon, for an order to strike out the complaint by you filed in the above stated cause because:

1. The Commissioner of Labor, the deputy commissioners and the referees appointed under an act entitled: "A supplement to an act entitled 'An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective Schedule for compensation, and regulating procedure for the determination of liability and compensation thereunder'; approved April 4th, 1911, which supplement was approved

February 28th, 1918'' have exclusive original jurisdiction of the claims set forth in the plaintiff's complaint, and by reason thereof this Court is without jursdiction to hear and determine any issues that may be raised on the plaintiff's complaint.

2. Plaintiff's only original remedy is under the Workmen's Compensation Act above referred to.

3. This Court is without jurisdiction to hear and determine any of the matters set forth in the plaintiff's complaint.

4. Plaintiff's complaint discloses no cause or causes of action originally cognizable before this Court.

5. The matters in controversy between plaintiff and defendant have been judicially determined by George J. Jaeger, Esquire, one of the Referees of the Workmen's Compensation Bureau, who had jurisdiction of the matters set forth in plaintiff's complaint and of the defendant and the plaintiff, Helen Hartman.

6. Plaintiff's injuries complained of in her complaint were caused by accident arising out of and in the course of her employment set forth in her complaint; compensation therefor is fixed by ''An Act prescribing the liability of an employer to make compensation for injuries received by an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder,'' approved April 4th, 1911, and the several amendments thereof and supplements thereto; plaintiff's compensation is fixed by Section II of said Act and her remedy is

exclusively in accordance with the provisions thereof and this Court is without original jurisdiction to entertain any action for personal injuries to complainant caused by accident arising out of and in the course of her employment set forth in her complaint.

On the argument of this application, we shall read to the Court the annexed depositions and papers and show the checks paid to the plaintiff for compensation under the Workmen's Compensation Act.

Yours respectfully,
KALISCH & KALISCH,
Attorneys of Defendant.

To:
Charles E. S. Simpson,
Attorney of Plaintiff.

Order to Strike Out Complaint

(Filed, May 12, 1919)

NEW JERSEY SUPREME COURT

HELEN HARTMAN, an infant, who sues by next friend, etc., Plaintiff, vs. UNEXCELLED MANUFACTURING CO., INC., *et al.*, Defendants.	On Motion to Strike out. Order.

A motion having been made on Saturday, May 3d, 1919, to strike out the summons and complaint in the above entitled cause and the Court having considered the argument of counsel and upon good cause shown, it is, therefore on this 7th day of May, 1919,

ORDERED, that the summons and complaint filed in the above entitled cause be struck out with costs to the defendant.

F. J. SWAYZE, J.

Entered May 12, 1919,
On motion of
Kalisch & Kalisch, Attys.
A true copy,
Enoch L. Johnson,
Clerk.

Order Entering Judgment Final

(Filed, May 31, 1919)

NEW JERSEY SUPREME COURT

HELEN HARTMAN, an infant, who sues by next friend, etc., Plaintiff, vs. UNEXCELLED MANUFACTURING CO., and DETWILLER & STREET FIREWORKS MFG. CO., INC., Defendants.	Action at Law.

WHEREAS, on May 7th, 1919, an order was entered by the Court herein striking out the complaint, and whereas such decision is decisive of the whole case, it is on this day of May, 1919,

ORDERED, that judgment final in favor of the defendants and against the plaintiff be and the same is hereby entered with costs to the defendants.

per the Court,

F. J. SWAYZE,
J. S. C.

Entered this 31st day of May, 1919,
On motion of
Kalisch & Kalisch,
Attorneys of Defendants.

Notice of Appeal

(Filed, May 24, 1919)

NEW JERSEY SUPREME COURT

HELEN HARTMAN, an infant, who sues by next friend, Plaintiff, vs. UNEXCELLED MANUFACTURING CO., INC., and DETWILLER & STREET FIREWORKS MANUFACTURING COMPANY,	Action at Law.

To Messers. Kalisch & Kalisch, attorneys of defendants:

TAKE NOTICE, that plaintiff appeals from the judgment of the Supreme Court entered in the above cause, to the Court of Errors and Appeals, in the last resort in all causes, for the following reasons:

1. That the complaint in the above cause sets out a sufficient cause of action and the Supreme Court committed error in ruling that, in effect, the complaint disclosed facts which required the plaintiff to seek relief by virtue of the Workmen's Compensation Act of 1911.

CHAS. E. S. SIMPSON,
Attorney of Plaintiff.

Stipulation

(Filed, June 5th, 1919)

NEW JERSEY SUPREME COURT

HELEN HARTMAN, an infant, who sues by next friend, etc., Plaintiff, vs. UNEXCELLED MANUFACTURING COMPANY, INC., and DETWILLER & STREET FIREWORKS MANUFACTURING COMPANY, Defendants.	Action at Law.

Final judgment having been entered in the above-stated cause on May 31st, 1919, and the Notice of Appeal having been served and filed before that time in this cause, it is hereby stipulated and agreed that the said Notice of Appeal shall apply to and embrace the final judgment entered herein on May 31st, 1919, and be regarded as part of the appeal taken herein.

Dated, June 2nd, 1919.

CHAS. E. S. SIMPSON,
Attorney of Plaintiff-Appellant.
KALISCH & KALISCH,
Attorneys of Defendants-Appellees.

New Jersey Court of Errors and Appeals

HELEN HARTMAN, an infant, who sues by next friend, etc.,
Plaintiff-Appellant,
vs.
UNEXCELLED MANUFACTURING CO., INC., *et al.*,
Defendants-Appellees.

BRIEF FOR PLAINTIFF-APPELLANT

The plaintiff, an infant, seeks to recover damages from the defendants because of injuries received as the result of negligence on the part of the defendants. The injuries were received in an accident while the plaintiff was working for the defendant.

Defendants claim, under the motion to strike out the complaint, that the only relief plaintiff may seek is under the Workmen's Compensation Act. This is the sole question to be considered. The complaint shows that plaintiff at the time of the accident, was an infant, living at home with her father, by whom she had been put to work with the defendants.

The most recent case of *Young vs. Sterling* (102 Atl., 395), is chiefly relied upon by the defendants

for support of its motion. An examination of this case will not warrant the position assumed by the defendants.

At the time of the accident the plaintiff was an infant of about 18 years of age, living with her surviving parent, the father, and placed to work with the defendants by her father. The injuries received were of a very serious character, and are more fully described in the complaint.

The case of *Young vs. Sterling* establishes or re asserts the law as follows:

1. That at common law an infant could not generally make a binding contract until he was 21 years of age;

2. That the Legislature might modify this agreement, and did in effect do so by the Workmen's Compensation Act, so that an infant might enter into an employment contract after attaining the age of 16 years.

3. That notwithstanding such contract, the earnings would continue to be as at the common law, the property of the parent;

4. That the legislative intent was to safe-guard the infant's interest and to protect him against his immature act or judgment.

The four principles make no change with regard to the rights of infants, nor with regard to the status which existed between him and his parents, otherwise than the right to contract with regard to his employment when above the age of 16 years.

Previous to the Workmen's Compensation Act the effect of an infant making a contract of employment was that the employer would be bound by the contract, but the parent of the infant might

disavow it and sue on a *quantum meruit* for the services of the infant. This rule is illustrated by cases gathered together in 27 *Century Digest,* page 1119.

It is equally true that at common law an infant could act as agent of an adult. The effect of the Workmen's Compensation Law was this: That where, therefore, an infant, if he had been appointed agent by his parent, could make a binding contract of employment if his agency included that right, the creation of the agency being an act of the parties, the Workmen's Compensation Act changed this by making the creation of such agency by operation of law instead of the act of the parent whenever an infant sought and secured employment.

Applying then this principle to the case at bar, the plaintiff when she entered the employment of the defendants, and made the contract of employment, it became a contract by her as agent on behalf of the parent, and therefore would be binding upon and prevent the parent from afterwards disavowing it and suing upon a *quantum meruit.*

No change would take place in regard to the results of the labor performed under this contract. That is, the wages or consideration moving from the employer. This would continue to flow to the parent (*Young* case, p. 397).

> "The parent is still entitled to the minor's services and wages until the latter attains the age of 21, unless he is sooner emancipated."

The right of an infant to make a binding contract with regard to employment is not an exclusive right; in fact it is contended that it is no right at all. If the parent desired that his infant son

should work for A and the infant desired to work for B the parent's right of course would prevail.

The effect, therefore, is that the infant is no free agent in respect to selecting his employer or his work; and, therefore, must work at any employment that the parent should place him at or direct him to contract for. The importance of this is to be borne in mind, in view of the statement of the Court in the *Young* case that:

> "The legislative intent is to safe-guard the minor's interest, and to protect him against his immature act or judgment, and this was clearly within legislative authority. It is, in fact, declaratory of the common law doctrine relating to transactions with infants."

It is contended that with regard to the plaintiff the common law situation has not changed. If the Workmen's Compensation Act were not in existence the situation would be this: The plaintiff would have a claim for damages *for the injuries* that she had received. The plaintiff's parent would have an additional claim for medical expenses incurred, or to be incurred, and *for loss of wages and future loss of wages until the infant would attain the age of 21 years.* And it was the custom in accident cases arising out of injuries received by the infant to include two separate counts in the complaint; one for the infant's claim and one for the parent's.

The position that counsel for the plaintiff takes in this case is that with respect to the parent's claim, that this falls within the Workmen's Compensation Act. The infant's contract of employment is made for the parents. The loss occasioned to the parent would be medical expense and

loss of wages, both of which are specifically provided for in the Workmen's Compensation Act; under the Workmen's Compensation Act the money would go to the parent and the infant would receive nothing. Proof respecting the injuries would be merely for the purpose of measuring the extent of *the loss of wages.* The effect in this case would be, that the parent would receive compensation for the *only* loss that he could sustain; and the infant, as the result of the contract of employment that he had made (if brought within the scope of the Workmen's Compensation Act), for a frightfully burned body which changed her from a perfectly beautiful specimen of young womanhood to that of a hideous appearing creature, would receive not a single penny by way of compensation.

It is conceded that under the complaint, if the plaintiff did not make a contract of any kind with the defendants, she would be entitled in the event of receiving injuries to secure damages at the common law for the frightful injuries received. Therefore, what would be standing between her and substantial compensation on the one hand, and nothing on the other hand, would be the contract *she made while an infant.*

Can the Court say that a contract by which an infant would give up all rights to obtain compensation for an injury such as she received, be a contract for her benefit, or for her protection? Would her infancy in such case be a shield or a club? Was it the intention of the legislature that the infant should, as a result of this contract, thus find herself in the position that it is claimed the plaintiff now finds herself? Again I quote from the *Young* case:

> "The Legislative intent is to safe-guard the minor's interest and to protect him against his immature act or judgment."

Can there be any question but that the Legislature never intended that an infant should be allowed to contract away his right to such an extent as to give up something of a substantial nature and receive nothing in return?

The effect of a contract made by the plaintiff (if the defendants' contention prevails), would be that she would deliberately contract with her employer to deprive herself of all right to recover damages from the employer in the event of injuries, receiving nothing in return. At common law the adult might not do that. Over and over again the Courts have held that such a contract between the adult and his employer was a contract against public policy and therefore void. If an adult, in full possession of all his faculties and mature judgment, might not make such a contract, where usually the Courts say that they will not interfere with his contractual rights, how much less then should an infant be bound by this agreement when the infancy is supposed to be a shield and not a club; and where, as was said in the *Young* case, the Legislative intent was to protect and safe-guard him from his immature acts or judgment.

The contention of plaintiff's counsel is that from this accident two distinct claims arose, one a contractual action for the wages and medical expenses which the parent was entitled to receive as the result of a contract by which he surrendered his claim for compensation arising out of the tort, and the other a case for the tort done the infant, which still remains a tort, and which the infant did not and could not contract away.

The position assumed by the plaintiff in the *Young* case it appeared served to confuse the issue by reason of the fact that the plaintiff in the *Young* case was seeking to recover damages as the result of one part of the Workmen's Compensation Act, while at the same time refusing to recognize the other part. It is our contention in this case that the plaintiff cannot take advantage of any part of the Workmen's Compensation Act, and neither can any advantage be taken of her by reason of the Workmen's Compensation Act. She sues and establishes her rights with the law as it stands, wholly aside from the Workmen's Compensation Act. Thus the *Young* case deals with the question of parent and guardian giving notice, etc., also it attempts, as appears from the first part of the opinion in the *Young* case, the plaintiff seeks the benefit of Section 2 of the Workmen's Compensation Act; Section 2, however, only comes into existence where the parties refuse to operate under Section 1.

The act distinctly provides that if the parties do not decide to operate under Section 1, that they shall give notice and then Section 2 shall operate. But the plaintiff, an infant, had no right to give any notice as to what part of the act she would operate under, save as agent for her parent, and then the rights preserved or surrendered *would be those of the parent only.*

There can be no question but that the Courts both in this and other states have gone to extraordinary lengths to uphold the Workmen's Compensation Act. This act both in this state and in other states came into existence only after long years of agitation, growing out of a protest on the part of the workmen that as the result of the condition of the common law they too often were in-

jured and had the door of all compensation closed to them. The act, therefore, came into existence with the view of compensating those who were injured in accidents arising out of their employment. But it is contended in the case at bar that it was never the intention of the Legislature, and therefore the Courts should not, by construction, produce a result which would in effect say that while the spirit of the act was that all should be compensated in accidents, where some could not receive compensation before, that as a result of this act an infant, who should receive the protection of the Court, should receive no compensation, where at common law compensation would or might have been received by him. That this act which had been intended to be of great benefit to workmen, and undoubtedly is, would deliberately create a condition which would deprive an infant as a result of her contract, her right to receive compensation or damages for her injuries, where that right had theretofore existed.

To hold that an infant may not recover for an injury in a common law action leaves an infant's right in this condition: that at 16 years of age he may be injuried so as to be totally incapaciated for the rest of his life; that his employer may thereupon immediately, without any recourse to legal proceedings, commence to pay compensation to the parent, and at 21 years of age the infant will find herself helpless and a burden to private or public charity for injuries received in an employment for which he had no right to select possibly the employment to which he was given against his will, and that for these injuries no matter how negligent the employer might have been, the employer escapes all responsibility. To hold that the Workmen's Compensation Act applies to this in-

fant plaintiff would be to hold that the infant loses all the rights which the common laws gave her. I contend that the Legislature never intended to bring about any such result.

In addition, the allegations of the complaint deal particularly with the disfigurement of the plaintiff. The Workmen's Compensation Act makes no provision for damages for disfigurement, and a person being permanently disfigured in an accident happening in his employment, while an infant, is deprived of the remedy which the common law otherwise would afford.

It is submitted that the complaint alleges a cause of action, and judgment of the Supreme Court striking out the ~~compensation~~ complainant and giving judgment for the defendants should be reversed.

Respectfully submitted,

CHAS. E. S. SIMPSON,
Of Counsel with Plaintiff-Appellant.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

HELEN HARTMAN, an infant, who sues by next friend, etc.,
Plaintiff-Appellant,

vs.

UNEXCELLED MANUFACTURING CO., INC., *et al.*,
Defendants-Respondents.

BRIEF FOR DEFENDANTS-RESPONDENTS.

The plaintiff, an infant, sought to recover damages from the defendants because of injuries received as a result of the alleged negligence on the part of the defendants. For the purpose of this action we may admit that the injuries were received in an accident arising out of and in the course of plaintiff's employment.

The infant was eighteen years of age at the time of the accident and entered the employment of the defendants after the passage of the Workmen's Compensation Act, and no notice was given by or to her parents or guardian that Section 2 of the Compensation Act was not to cover the condition of her employment.

It also appears that the plaintiff was engaged in working for the defendants, the conditions of the employment being such as would be covered by the terms of the Workmen's Compensation Act of 1911, the supplements and amendments thereto. All of which more clearly appears in the complaint filed in this cause (case, pp. 3, 4, 5). The defendant's notice to strike out appears on pp. 6, 7 and 8 of the case, and the order of Justice Swayze, striking out the complaint, appears on p. 9 of the case. The legal situation is identical with the one discussed in *Young* v. *Sterling Leather Works,* 102 Atl. Rep., 395.

POINT I.

The plaintiff was bound by the terms of the Workmen's Compensation Act and for her injuries was entitled to receive only such compensation as the act provided for.

We have examined the entire brief of the appellant, and it merely is an attack upon the decision of this court in the case

of *Young* v. *Sterling Leather Works,* 102 Atl. Rep., 395. This case clearly defines the status of adult and minor employees. The determination of the legal status of the parties depends practically upon Sec. 9 of the Workmen's Compensation Act of 1911, which reads as follows:

> 9. Every contract of hiring made subsequent to the time provided for this act to take effect shall be presumed to have been made with reference to the provisions of Section II of this act, and unless there be as a part of such contract an express statement in writing, prior to any accident, either in the contract itself or by written notice from either party to the other, that the provisions of Section II of this act are not intended to apply, then it shall be presumed that the parties have accepted the provisions of Section II of this act and have agreed to be bound thereby. In the employment of minors, Section II shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor.

If the decision in the Young case means anything, it determines that regardless of the age of an employee he is bound by the terms of the Workmen's Compensation Act unless previous notice in writing is given by or to him, or if an infant, the notice is given by or to his parents or guardian. Of course, this rule does not apply where the infant is engaged, contrary to law. Such a condition of affairs does not exist in the case under discussion.

A very concise statement of the legal situation created upon the employment of a minor, is made by Chief Justice Gummere in determining the motion to strike out, addressed to the complaint in *Hetzel* v. *Wasson Piston Ring Co.,* 89 N. J. L., pp. 201-203. The Court said:

> "It can hardly be doubted that the Legislature, in providing for the engrafting of these statutory provisions on contracts of hiring, had in mind contracts which were valid in law, or, at least, contracts, the making of which was not prohibited by express legislative enactment, etc."

The statutory provision referred to by the Court, referred to the provisions of the Workmen's Compensation Act, and this excerpt distinctly sets forth that in such cases where no legislative enactment prohibited the making of the contract, as in the case of a boy employed contrary to the terms of the Factory Act, both employer and employee, adult or minor as the case

might be, would be bound by the statutory provisions contained in the Workmen's Compensation Act. The case of *Troth* v. *Millville Bottling Works,* 89 N. J. L. (p. 219), and *Brost* v. *Whitall Tatum Co.,* 89 N. J. L. (p. 531), answers any substantial argument raised by the appellant's brief. In the former case, the Court says (referring to the question of notice of disaffirmance of the statutory agreement):

> "Second, it provides a rule of evidence for determining in a given case whether or not the parties to a contract of employment which was entered into prior to the enactment of the statute, have or have not taken advantage of the permission granted thereby and by mutual consent altered the original terms of that contract by substituting the measure of the master's obligation, and the extent of the servant's right of recovery, provided by the original act. The rule of evidence thus provided is that, unless one of the parties to the contract shall in writing notify the other, prior to the happening of an accident to the servant, of his unwillingness to have the contract altered by reading into it the provisions of Section II of the original act, it shall be conclusively presumed, whenever the question of the servant's right to compensation from the master for injuries received shall arise, that the parties to the contract had, prior to the happening of the accident, by mutual agreement so altered it.
>
> Neither in the granting of permission to the parties to a contract of employment to change its provisions in the manner and to the extent indicated, nor in providing a rule of evidence for ascertaining whether or not the provisions of a given contract have been so changed, has the legislature impaired in any degree the obligation either of the master or the servant arising out of the original contract of hiring."

As was argued in the Young case, what right had the infant at common law which could not be taken away by statute; what rights were vested in the infant before the occurrence of this accident which could not be taken away by statutory amendment?

What single case is cited by the appellant which in any way argues against the conclusion reached in the Young case?

If, as is stated in the Troth and Brose cases, paragraph 9, Section II, merely lays down a rule of evidence which must be followed in order to prove a disaffirmance of the statutory contract,

no one can be heard to complain because of his inability to disaffirm the statutory contract when his inability is based upon his own neglect in failing to serve a notice before the occurrence of an accident. We know of no case where an infant has claimed that he was not bound by the statute of frauds, which also is practically a rule of evidence.

The legislature has stepped in and has only refused to permit minors *under* the age of fourteen to make valid contracts of employment in factories; those over fourteen may make valid contracts. At common law, an infant might bind himself as an apprentice, but subsequently by legislative enactment and decisions in this country, such contracts were not binding unless entered into by the infant with the consent of his parents or guardian (8 John N. Y., 378; 12 N. H., 437, and 2 Penn., 977). The Workmen's Compensation Act provides the same kind of contract for infant employees, by the insertion of that part of Section 9 referring to a notice of disaffirmance of the statutory contract in cases of infants or minors.

The contention of the plaintiff's counsel, that the parent is entitled to an action for loss of services and medical expenses upon the occasion of injury to a minor while employed in a factory, is not well taken, because the employer's entire liability runs to the infant. *Bounfigilio* v. *R. Newman Co.,* decided June term, 1919, Court of Errors and Appeals.

No employee (either adult or minor) is bound by the terms of the Compensation Act without his election to be bound. This statement applies with equal force to infant employees. The term "employee" in the title of the act includes minors as well as adults. (*Young* v. *Sterling Leather Works, supra.*) In other words, the act determines how the employee or the employer may exercise an election not to be bound by the terms of the Compensation Act. The appellant attempts to make the contract of the infant a contract as agent for her parent, but, of course, this is contrary to the determination of this court in the Young case, since there it is held the infant makes his own contract of employment.

It is further argued by the appellant that the parents' desire as to the nature and place of the infant's employment is paramount. This is so if the minor's interests are protected, but if the parent acts adversely to the minor's interest, the minor may seek the proper court for protection, even against the act and desires of an unnatural guardian or parent. Therefore, it is

deemed, among other reasons, that the contract of employment is for the minor employee's benefit, for if it is not, he is in a position to either give a notice by his parent or guardian, or in an appropriate proceeding, force his parent or guardian to give such notice. After all, the Compensation Act is a method of insurance, adopted after careful study, because it is superior from an equitable point of view to the former legal relationship of master and servant. A general benefit upon all employees has been conferred by the adoption of this act and the provision of giving notice of disaffirmance is incorporated therein, for the purpose of protecting employees, adults and minors alike, whenever the line of employment is such that it is advisable that the employee work under conditions where negligence is to be the guide of liability against the employer. The infant always has had the protection of a *person sui juris*. The act makes provision for him and this protection is still afforded. Either this statutory contract is binding or it is not, and if it is binding on all employees alike, then whatever the results of the contract may be, it cannot be disaffirmed after the occurrence of an accident.

We do feel that in cases of permanent disability the compensation given is in the nature of damages and, therefore, whatever compensation is paid if a minor employee is permanently disabled should go to such infant employee the same as if a tort action was brought in his behalf. This compensation is paid for the present and future deprivation and use of some part of the injured's body. No doubt, in certain isolated cases, the contract of employment where no notice was given by or to the parent or guardian, may not, at this time, seem as beneficial to the infant as if a notice had been given. It is not to be forgotten, however, that all the time the infant worked under the compensation feature of the act she was protected by such act. If she had had an accident where the negligence of the defendant had played no part, even though she had been guilty of contributory negligence, she would have been entitled to compensation. A general benefit, considering all of the dangers and chances the ordinary employee takes in working in places of danger is conferred on all employees, and, therefore, on minor employees as well.

Our opponent makes a further error in stating that the Compensation Act makes no provision for disfigurement, because any disfigurement reducing the salability of one's labor is compensable. The English courts have for a long time adherred to this rule. A most complete answer to the entire argument of the appellant appears at nearly the end of this Court's opinion in the Young case:

> "The statute having sanctioned the employment of minors and prescribed under what conditions such employment shall be considered to be under Section 2 of the act it follows, as a logical sequence, that it does not lie within the power of the minor to disaffirm such a contract of employment and the obligations springing therefrom. Further more it is to be borne in mind that the act we are considering is one of social insurance, and is a complete institution created by the Legislature in the interest of employer and employee. It seeks to regulate, under certain conditions, contracts of hiring entered into in this state, and to make such contracts binding upon adults and minors alike."

We refer this Court to all cases cited and referred to in the opinion in the Young case, because it seems that these cases and the reasoning following the cases answer any argument which may assail the provisions of the Compensation Act. It necessarily must work a hardship in some cases, and perhaps if the parties knew beforehand what was going to happen in the future some would give a notice of his disaffirmance of the statutory agreement, and some would refuse to work unless under the Compensation Act. But considering the act as a whole, we fail to see how anyone could differ from the reasoning in the Young case, that the act is a protection and a help to both employer and employee and is an act of public policy of the State of New Jersey. Rounsaville v. Central R.R. Co. 94 Atl. Rep. 392

The appellant is again in Error in stating that the Young case was based upon Section 1 of the Employers' Liability Act, since that case was brought upon the theory that the plaintiff was entitled to damages for wrongful injury and was entitled to prosecute the tort action irrespective of paragraph 9, Section II hereinbefore referred to. However, if the infant might disaffirm after the accident, he would be entitled to the benefits of Section I of the act, because all common law rules regarding negligence have been abrogated so far as they conflict with Section I of the act.

Rounsaville v. *Central R. R. Co.*, 94 Atl. Rep., p. 392.

We respectfully urge that the judgment under review should be affirmed.

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