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Notice of Appeal

Filed April 18, 1917.

New Jersey Supreme Court

ESSEX COUNTY.

EDWARD YOUNG, by Marguerite Young, his next friend, *Plaintiff,* vs. STERLING LEATHER WORKS, a corporation, *Defendant.*	*Action at Law. Notice of Appeal and Grounds.*

To Kalisch and Kalisch,

Attorneys for Defendant.

Sirs,—

Take notice that the plaintiff, Edward Young, a minor, by Marguerite Young, his next friend, appeals to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in this cause of action on the following grounds:

1. Because the Trial Court after requesting the jury to return answers to written questions embracing the disputed facts in issue and the amount of damages and receiving such answers from the

jury in favor of the plaintiff directed that a verdict be entered for defendant on the motion of defendant's counsel, whereas said Court should have denied said motion and entered a general verdict for said plaintiff upon said questions to and answers by the jury.

2. Because Section 2 of an Act of the Legislature of the State of New Jersey entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employe in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, commonly known as the "Workmen's Compensation Act," and the amendments thereof and supplements thereto, unconstitutional as far as they purport to apply to a permanent injury to a minor employe such as sustained by said plaintiff, viz., the loss of an arm four to five inches below the shoulder, and should not have been applied by the trial court to defeat this action to recover, as at common law, as extended by section 1 of said Act, damages for said injury.

JOHN V. LADDEY,

Attorney of Appellant.

Petition for Next Friend

Filed July 24, 1915.

SUPREME COURT OF NEW JERSEY.

ESSEX COUNTY.

In the matter of the petition of EDWARD YOUNG for the admission by order of this Court of Marguerite Young as his next friend to prosecute an action herein at law, *Plaintiff,* vs. STERLING LEATHER WORKS, a corporation, *Defendant.*	*Petition*

To the Honorable William S. Gummere, Chief Justice of the Supreme Court.

The petition of Edward Young humbly shows unto your Honor that he is an infant under the age of twenty-one years, to wit, seventeen years of age, and that he is advised that he has a good and just cause at law in this Court against the Sterling Leather Works, a corporation, of the State of New Jersey, by reason of personal injuries which your petitioner sustained as the result of negligent conduct on part of agents of the defendant, and that your petitioner desires to commence an action against the said Sterling Leather Works in this Court for the recovery of damages for such negligence and injuries.

Your petitioner therefore humbly prays your Honor to permit him to institute and prosecute the said action by his mother, Marguerite Young, of the Town of Harrison, County of Hudson and State of New Jersey, as your petitioner's next friend.

EDWARD YOUNG.

I hereby consent and agree that the above named Edward Young be at liberty to institute and prosecute an action in the Supreme Court of New Jersey against the Sterling Leather Works, a corporation, by me as his next friend according to the above petition.

MARGUERITE YOUNG.

Dated, April 22, A. D. 1915.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

John V. Laddey, of full age, being duly sworn upon his oath according to law deposes and says that on the 22d day of April, A. D. nineteen hundred and fifteen, he saw Edward Young and Marguerite Young named respectively in the foregoing petition and consent, sign the same.

JOHN V. LADDEY.

Sworn to and subscribed before
me, this 22d day of April, 1915.

MEYER RASHKES,

A Master in Chancery
of New Jersey.

Order Appointing Next Friend

Filed July 24, 1915.

SUPREME COURT OF NEW JERSEY.

ESSEX COUNTY.

In the matter of the petition of EDWARD YOUNG for the admission by order of this Court of Marguerite Young as his next friend to prosecute an action herein at law, *Plaintiff,* vs. STERLING LEATHER WORKS, a corporation, *Defendant.*	*Order appointing next friend to prosecute action.*

It appearing upon reading the petition of Edward Young that the said Edward Young is advised that he has a good cause of action against the Sterling Leather Works, a corporation, and is an infant under the age of twenty-one years, to wit, 17 years of age.

It is thereupon on this nineteenth day of June, A. D. Nineteen Hundred and Fifteen, ordered that Marguerite Young be admitted to institute and prosecute the said cause of action for the said Edward Young in the aforesaid Court, against the said Sterling Leather Works, a corporation, as the next friend of the said Edward Young.

WM. S. GUMMERE, *C. J.*

On motion of
JOHN V. LADDEY,
Plaintiff's Attorney.

Summons

Filed July 27, 1915.

THE STATE OF NEW JERSEY

To Sterling Leather Works, a corporation:

You are summoned to answer the annexed complaint of Edward Young, by Marguerite Young, his next friend, in an action at law in the Supreme Court.

[SEAL OF THE SUPREME COURT]

And Take Notice, that unless you file your answer to said complaint with the Clerk of the 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, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this 24th day of July, A. D. 1915.

WM. C. GEBHARDT,

Clerk.

J. HANSBURY CALLAGHAN

JOHN V. LADDEY

Attorneys.

Complaint

Filed July 27, 1915.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

EDWARD YOUNG, by Marguerite Young, his next friend, *Plaintiff*, vs. STERLING LEATHER WORKS, a corporation, *Defendant*.	*Action at Law. Complaint.*

Plaintiff, residing at No. 33½ Mulock Place in the Town of Harrison, County of Hudson and State of New Jersey, says that:

1. He prosecutes this action by Marguerite Young, who is admitted by order of this court to prosecute the same as the next friend of the said Edward Young, he being an infant under the age of 21 years.

2. That on or about January 28th, A. D. 1913, plaintiff entered into the employ of the defendant, the Sterling Leather Works, a corporation of the State of New Jersey, doing a fancy leather business with its principal office at No. 329 Frelinghuysen Avenue, in the City of Newark, County of Essex and State of New Jersey, as a laborer.

3. That thereafter on or about July 29th, A. D. 1914, plaintiff sustained personal injuries as a result

of "an accident arising out of and in the course of his employment" by the defendant, of which the actual or lawfully imputed negligence of the defendant was the natural and proximate cause, and to which the plaintiff in no way contributed; said negligence of said defendant occurring while Eugene Schwarzwaelder, a vice-principal of the defendant corporation, and the plaintiff were together working with, on, or about a leather splitting machine and through the plaintiff, an immature and inexperienced boy of sixteen years of age, being directed by the said vice-principal to then clean the said leather splitting machine, notwithstanding that said machine was then in rapid motion and notwithstanding that it was the duty of said vice-principal to know that under the condition said machine could not be cleaned without subjecting the life, limb, and health of plaintiff to extreme peril and extraordinary danger, and as a result of which the plaintiff received injuries to his left hand and arm which necessitated the amputation of said hand and a portion of said arm, and divers other injuries to his body, and became sick, sore, lame and permanently disabled.

Plaintiff demands against defendant $25,000. damages for said injuries.

J. HANSBURY CALLAGHAN,

JOHN V. LADDEY,

Attorneys for Plaintiff.

Notice to Strike Out Summons and Complaint

Filed August 14, 1915.

NEW JERSEY SUPREME COURT OF ESSEX COUNTY.

EDWARD YOUNG, by Marguerite Young, his next friend, *Plaintiff*, vs. STERLING LEATHER WORKS, a corporation, *Defendant*.	*Action at Law. Notice of Motion to Strike Out.*

To John V. Laddey and J. Hansbury Callaghan,

Attorneys of plaintiff.

TAKE NOTICE that we shall apply to Chief Justice William S. Gummere on Saturday, Sept. 25, 1915, at 10 A. M., or as soon thereafter as counsel may be heard, at the Court House in Newark, New Jersey, to strike out the summons and complaint filed in the above-stated cause, for the following reasons:

1. That the above action is an action at law, whereas the circumstances and facts on which this action is based gives rise only to a suit under Section II of the Employers' Liability Act of New Jersey, entitled, "An Act prescribing the liability of an employer to make compensation for injuries re-

ceived 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 4, 1911, and the supplements thereto and amendments thereof.

2. That the complaint filed in the above-stated cause does not allege a cause of action.

KALISCH & KALISCH,

Attorneys of Plaintiff.

Order on Motion to Dismiss Complaint
Filed February 8, 1916.

SUPREME COURT OF NEW JERSEY.
ESSEX COUNTY.

EDWARD YOUNG, by Marguerite Young, his next friend, *Plaintiff*, vs. STERLING LEATHER WORKS, *Defendant.*	*Action at Law. Order on Motion to Dismiss Complaint.*

A motion having been made herein by Kalisch and Kalisch, attorneys for the above-named defendant, to dismiss the complaint filed in this action, and the matter having been heard and considered,

It is, on February 4th, A. D. 1916, ordered that the said motion be and the same hereby is dismissed; costs thereon to await the outcome and to be taxed in favor of plaintiff if he be successful.

It is further ordered that the said defendant file its answer to said complaint within twenty days from the date hereof.

Let this order be entered in the minutes.

WM. S. GUMMERE, *C. J.*

Actually entered ....., A. D., 1916, on motion of

JOHN V. LADDEY,
J. HANSBURY CALLAGHAN,
Plaintiff's Attorneys.

We hereby consent to the form of the above order and to its entry.

KALISCH & KALISCH,
Attorneys for Defendant.

Answer

Filed January 18, 1916.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

EDWARD YOUNG, by next fried,
Plaintiff,

vs.

STERLING LEATHER WORKS, a corporation,
Defendant.

Action at Law
Answer.

Defendant, a corporation of New Jersey answering the Complaint filed in the above action, says that:

1. It admits Paragraphs 1 and 2 of the Complaint.

2. It does not answer as to whether the injuries complained of in paragraph 3 of the complaint were received in an accident arising out of or in the course of plaintiff's employment because such allegation is immaterial, but it denies the balance of paragraph 3 of the complaint.

And as a special defense defendant maintains that the plaintiff was guilty of contributory negligence and assumed the risk of injuries by carelessly, negligently and improperly placing himself near a moving machine, the danger of which action was obvious.

And for a further special defense to the maintenance of the above action, defendant sets up as a

bar to the same, the fact that the plaintiff by next friend has another action pending, in the Common Pleas Court of Essex County, against the above mentioned defendant, for the same injuries as are set forth in the Complaint filed in this cause, which action in the Common Pleas Court of Essex County was brought under the Workmen's Compensation Act of the State of New Jersey, approved April 4th, 1911, and the Supplements thereto and the Amendments thereof.

NOTICE.

The defendant will move at the time of trial to strike out the summons and complaint for the following reasons:

(a) That the above action is an action at law, whereas the circumstances and facts on which this action is based gives rise only to a suit under Section II. of the Employer's Liability Act of New Jersey entitled, "An act prescribing the liability of an employer to make compensation for injuries received by an employe in the course of employment, establishing an accurate schedule for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the supplements thereto and amendments thereof.

(b) That the complaints filed in the above stated cause does not allege a cause of action.

KALISCH & KALISCH,
Attorney for Defendant.

Consent is hereby given to the filing of the within answer as of time.

JOHN V. LADDEY,
Attorney of Plaintiff.

January 17, 1916.

Substitution of Attorney

Filed February 8, 1916.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

EDWARD YOUNG, by next friend, *Plaintiff*, vs. STERLING LEATHER WORKS, a corporation, *Defendant*.	*Action at Law. Substitution of Attorney by Stipulation.*

It is hereby stipulated and agreed by and between John V. Laddey and J. Hansbury Callaghan named as plaintiff's attorneys of record in the above entitled cause that the said J. Hansbury Callaghan shall and he does hereby withdraw as an attorney of record for said plaintiff and that the said John V. Laddey shall continue from henceforth in said action as the sole attorney of record for said plaintiff.

Dated February 4, A. D. 1916.

JOHN V. LADDEY,

J. HANSBURY CALLAGHAN.

Notice Addressed to Answer

Filed February 10, 1916.

NEW JERSEY SUPREME COURT.
ESSEX COUNTY.

EDWARD YOUNG, by next friend, *Plaintiff*, vs. STERLING LEATHER WORKS, a corporation, *Defendant*.	*Action at Law. Notice of Motion addressed to the Answer.*

To Kalisch & Kalisch, attorneys for the above named defendant.

Take notice that on February 14th, A. D. 1916, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, a motion will be made on behalf of the above named plaintiff to his Honor William S. Gummere, Chief Justice, at the Court House, Newark, New Jersey, for an order striking out the fourth paragraph, constituting the second special defense, of the answer on the grounds that it is a plea to the jurisdiction of the court and or a plea in abatement and as such is not only waived by defendant pleading in bar to the merits, but is abolished and not permissible under rule 38 of chapter 231 of the Session Laws of 1912 entitled "A Supplement to an Act entitled 'An act to regulate the practice of courts of law (Revision of 1903)'" or rule 56 of Rules of the Supreme Court as promulgated June Term, 1913.

JOHN V. LADDEY,
Attorney for Plaintiff.

Order Striking Out Portion of Answer

Filed February 24, 1916.

NEW JERSEY SUPREME COURT.
ESSEX COUNTY.

EDWARD YOUNG, by next friend, *Plaintiff*, vs. STERLING LEATHER WORKS, a corporation, *Defendant*.	*Action at Law. Order Striking Out Portion of Answer.*

A motion having been made herein by J. Hansbury Callaghan of counsel with the above named plaintiff, in the presence of Isadore Kalisch, of counsel with the above named defendant, to strike out that portion of the answer filed by the defendant herein which reads as follows:

> "And for a further special defense to the maintenance of the above action defendant sets up as a bar to the same the fact that the plaintiff by next friend has another action pending, in the Common Pleas Court of Essex County, against the above mentioned defendant, for the same injuries as are set forth in the complaint filed in this cause, which action in the Common Pleas Court of Essex County was brought under the Workmen's Compensation Act of the State of New Jersey, approved April 4th, 1914, and the Supplements thereto and the Amendments thereof"

on said motion and the matters raised by them considered, and the Court having considered the same:

It is on February 19th, A. D. 1916, ordered that the said portion of said answer be and the same is hereby stricken out with costs to the plaintiff to be taxed.

Let this order be entered in the minutes.

WM. S. GUMMERE, C. J.

Actually entered February 24th, A. D. 1916.

On motion of

JOHN V. LADDEY,

Plaintiff's Attorney.

Reply

Filed February 25, 1916.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

EDWARD YOUNG, by next friend, *Plaintiff*, vs. STERLING LEATHER WORKS, a corporation, *Defendant*.	*Action at Law.* *Reply.*

Plaintiff denies every allegation in the answer.

JOHN V. LADDEY,

Attorney for Plaintiff.

Postea

Filed April 5, 1917.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

EDWARD YOUNG, by Marguerite Young, his next friend,
Plaintiff,

vs.

STERLING LEATHER WORKS, a corporation,
Defendant.

Postea.

This case was tried before Judge Nelson Y. Dungan with a jury at the Essex Circuit on March 13, 14 and 15, 1917.

Application having been made at the opening of this case to strike out the plaintiff's complaint on the ground that the plaintiff's action should have been under Section II of the Workmen's Compensation Act, and that no cause of action appears in the complaint.

And it appearing that motion was made before trial to strike out said complaint, and that such motion was denied and suggestion then made that the case should be tried and the verdict of the jury should be received upon the questions of fact involved (96 Atl 1016).

Therefore written questions were submitted to the jury to which answers in writing were returned, which questions and answers are as follows:

Postea

Question No. 1: Do you find the defendant, Sterling Leather Works, guilty of negligence? Answer: Yes.

Question No. 2: Was there any wilful negligence on the part of Edward Young, the plaintiff, which contributed to his injury? Answer: No.

Question No. 3: If your answer to Question No. 1 be "Yes" and to Question No. 2 be "No," what damages do you award as compensation to the plaintiff? Answer: Two thousand dollars ($2,000.00).

If your answers to Question No. 1 be "No" or, if your answer to Question No. 2 be "Yes," Question No. 3 should not be answered.

And it appearing by the evidence that the contract of hiring was made after the Workmen's Compensation Act became effective, and there being no evidence that the parent or guardian of the plaintiff, a minor, had given to the defendant, or that the defendant had given to the said parent or guardian, notice that the provisions of Section II of said act were not intended to apply, the Court decides as a matter of law that the said Workmen's Compensation Act is constitutional as to minors, and that the plaintiff's action for the negligence of the defendant is improperly brought, and directs that a general verdict in favor of the defendant be entered.

NELSON Y. DUNGAN,

Circuit Court Judge.

Rule for Judgment.

Filed April 5, 1917.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

STERLING LEATHER WORKS, ADS. EDWARD YOUNG, by Marguerite Young, his next friend,	*Rule for Judgment.* *Action at Law.* *On Postea.*

It is ordered that judgment be and hereby is entered in favor of defendant and against the plaintiff, the costs to be taxed nisi.

Entered April 5, 1917.
On motion of

KALISCH & KALISCH,

Attorneys.

Judgment
Filed April 5, 1917.

NEW JERSEY SUPREME COURT.
ESSEX COUNTY.

EDWARD YOUNG, by Marguerite YOUNG, his next friend, *Plaintiff*, vs. STERLING LEATHER WORKS, a corporation, *Defendant*.	*Action at Law. Judgment.*

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and that the defendant recover of the plaintiff its costs, which are taxed at $.....

Judgment entered April 5, 1917.

WILLIAM S. GUMMERE, *C. J.*

Stipulation in Lieu of Testimony

COURT OF ERRORS AND APPEALS.

EDWARD YOUNG, by Marguerite YOUNG, his next friend, *Plaintiff,* vs. STERLING LEATHER WORKS, a corporation, *Defendant.*	*Action at Law. On Appeal. Stipulation as to Testimony.*

It is stipulated by agreement of the parties, in lieu of the record of the testimony, that the following matters are alone germane to the question in issue, for the reason that this appeal presents the single legal question as to whether the plaintiff is or is not bound by the provisions of Section II. of the Workmen's Compensation Act:

That the contract of employment was made with the defendant by Edward Young, the plaintiff, while at the age of fifteen years, after the Workmen's Compensation Act became effective; that no notice was given to or by the plaintiff or by or to the parent or guardian of the plaintiff to the effect that the provisions of Section II. of the said Act were not intended to apply, and that the plaintiff's only parent, his mother, with whom he lived, knew of his working at the defendant's Leather Manufacturing Plant; that she saw some of his pay envelopes and that she saw him at the said Plant on one or two occasions; that the said Plaintiff was injured at the age of sixteen years in an accident

arising out of and in the course of the said employment by the defendant, which accident was caused by the negligence of the defendant in the absence of wilful negligence on the part of the plaintiff, and which accident consisted of his left hand and arm being caught in a wheel upon which revolved a circular leather splitting knife, as a result of which accident it became necessary to amputate the plaintiff's left hand and his left arm at a point four or five inches below the shoulder.

JOHN V. LADDEY,
Attorney for Plantiff-Appellant.

KALISCH & KALISCH,
Attorneys for Defendant-Appellee.

New Jersey Court of Errors and Appeals

EDWARD YOUNG, by MARGUERITE YOUNG, his next friend,
Plaintiff-Appellant,
vs.
STERLING LEATHER WORKS, a Corporation,
Defendant-Appellee.

Action at Law.
On Appeal from Supreme Court.

BRIEF FOR PLAINTIFF-APPELLANT.

I.

STATEMENT OF THE CASE.

This is an appeal from a decision of the Supreme Court that an action for negligence, instituted therein by a minor plaintiff-employee to recover damages for injuries sustained by him as the result of an accident arising out of and in the course of his employment, which accident was caused by the negligence of the defendant-employer, was improperly brought.

On July 29th, A. D. 1914, Edward Young, the plaintiff, then 16 years of age, who had previously engaged himself in the service of the defendant in the City of Newark, State of New Jersey, met with said accident caused by the negligence of the defendant in the absence of willful negligence on the part of the

plaintiff, whereby plaintiff was injured, as a result of which it became necessary to amputate his left arm at a point 4 or 5 inches below the shoulder.

At the conclusion of the trial in the Supreme Court written questions were submitted by the Trial Judge to the Jury, who answering same in writing, found defendant guilty of negligence, plaintiff to be free from willful negligence and awarded damages to the plaintiff in the sum of $2,000.

Whereupon the Trial Court, finding that the contract of hiring was made after the Workmen's Compensation Act became effective and that there was no evidence that the parent or guardian of the minor plaintiff had given to the defendant or that the defendant had given to the said parent or guardian notice that the provisions of Section II of said Act were not intended to apply, decided as a matter of law that the said Workmen's Compensation Act is constitutional as to minors and that the plaintiff's action for the negligence of the defendant was improperly brought and directed that a general verdict in favor of defendant be entered and accordingly a judgment dismissing the complaint of the plaintiff was entered in the Supreme Court.

II.

SPECIFICATION OF GROUNDS OF APPEAL.

This appeal is taken from said decision and judgment of the Supreme Court on the ground that said decision and judgment are erroneous in point of law, because Paragraph 9 of Section II of said Workmen's Compensation Act is, as to minors, unconstitutional, and that even if, as to minors, it is valid legislation, the agreement, thereby presumed, may be disaffirmed by the minor party thereto.

III.

BRIEF OF THE ARGUMENT.

POINT I.

THE ACT AND THE DECISIONS THEREON, APPROXIMATING THE QUESTION IN ISSUE.

While the Workmen's Compensation Act embodies a wise public policy transferring the burden of industrial accidents from the shoulders of the weak and poor to the industry itself, which is able to insure itself against loss occasioned thereby, and while the act in its broad, general and beneficent terms has been declared constitutional by this Court in

> Sexton *v.* Newark District Telegraph Co., 84 N. J. L. 85, affirmed by this Court, 86 N. J. L. 701,

nevertheless we contend that Paragraph 9 of Section II of said Act does not properly bind a minor employee, and that it has not been held to bind him by any decision of the Supreme Court or of this Court.

In the Sexton case above cited it was contended that the Act was void because of the provision of Paragraph 9 that

> "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,"

as to which the Supreme Court said:

> "We lay out of view the fact that this objection is now raised for the first time. It was not suggested in the pleadings nor at the trial. We think the objection is not entitled to consideration in this case for this reason: The decedent (Sexton) was not a minor; he was 34 years old at the time of his death. *This* prosecutor is therefore not deprived of any constitutional rights by the judgment in favor of *this* defendant even assuming (which we do not admit) that if the decedent had been a minor the judgment would have violated the prosecutor's constitutional rights."

In Hoey *v.* Superior Laundry Co., 85 N. J. L. 119, in the Supreme Court, the minor employee sought compensation under Section II of the Act. The employer resisted payment of the compensation on several grounds, including the ground that a minor's contracts being voidable so much of the Act, Section II, as presumes in the case of a minor that the parties have accepted the provisions of Section II is unconstitutional, as to which Justice Bergen, for the Court, wrote:

> "There is no basis in law for the contention thus set up, for the only person who could take advantage of the lack of power to make such a contract would be the infant * * * ." " 'Infancy is a personal privilege of which no one can take advantage but the infant himself, and therefore although the contract of the infant be voidable, it shall bind the person of full age.' It is

therefore unnecessary to inquire how far the infant could bind himself by such a contract as the case discloses. It is very clear that the other party is bound."

In the case at bar, on a motion to strike out the complaint on the ground that the plaintiff's only remedy was under the act,

Young *v.* Sterling Leather Works, 96 Atl. Rep. 1016,

the question was considered to be one of doubt.

In Hetzel *v.* Wasson Piston Ring Co., 98 Atl. 306,

the minor plaintiff succeeded in sustaining an action for recovery of damages as on the negligence of his employer, after the Act became effective, because it was found on the facts that he was 13 years of age and that his employer had violated Chapter 64 of the Laws of 1904, page 152, forbidding employment of minors under the age of 14 years, and therefore there was no legal contract of employment to which the Act could be applied.

In Troth *v.* Millville Bottle Works, 98 Atl. Rep. 435,

the employer appealed to this Court from an award of compensation against him under the Act, which had been affirmed by the Supreme Court. One question raised by it on the appeal was that it had given notice to the minor plaintiff and his parent of its refusal to accept the provisions of the Act. This Court concurred in the conclusion of the Supreme Court that such notice had not been given. This case has no bearing whatever on the case at bar because, as was decided in Hoey

v. Superior Laundry Co. *ante*, the point of infancy, now made on behalf of the appellant, could only be raised by the minor himself.

In Brost *v.* Whitall Tatum Co., 99 Atl. 315,

a minor employee sued his employer at common law to recover damages for the latter's negligence and had been non-suited at the trial, which non-suit, affirmed by the Supreme Court, was based on the theory that the minor plaintiff was bound by the Act. This Court found that he was not bound by Section II because the employer had brought home a notice that it did not intend to be bound by Section II of the Act. This case has no bearing on the case at bar, and the language of Chancellor Walker in writing the opinion,

> "The contract of hiring was made after the Workmen's Compensation Act went into effect, and therefore compensation would be recoverable under it unless there was, as part of the contract, an express statement in writing prior to the accident, either in the contract itself or by written notice from either party to the other that the provisions of Section II of the Act were not intended to apply. The plaintiff being a minor, the notice would have to be given by or to his parent or guardian, father in this case (P. L. 1911, pp. 136-137), and the case on this phase turns upon the question of notice"

is of course to be read in the light of the facts with reference to which it was written and in relation to the legal contentions then urged upon and in the mind of the Court. It is of course not dispositive of a question now raised in this case, i. e., that the Act does not

bind a minor that was not there presented.

In all of the foregoing cases the minor employee was successful without urging the contention now presented on this appeal, and accordingly those cases do not foreclose that contention.

Our objections to the Act are therefore confined to this specific point, that the Act does not bind the minor employee plaintiff-appellant, and do not embody a request for an adverse ruling on the Act in its general provisions.

This contention is merely aimed at the defect in the provisions of the Act as to minors; it does not attack the Act as a whole, and the defect can be easily remedied by an Act of the Legislature.

POINT II.

A MINOR EMPLOYEE IS DENIED BY THE ACT THE ALTERNATIVE THAT IS EXTENDED TO AN ADULT EMPLOYEE, AND SUCH DENIAL IS A DENIAL TO A MINOR OF THE EQUAL PROTECTION OF THE LAWS, AND IS THEREFORE UNCONSTITUTIONAL.

The Act contains the following language in Paragraph 9, Section II:

> "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."

We contend that it is clear from this language that the Act denies to a minor even that measure of protection that it extends to an adult. The adult may elect as to whether he will work under the provisions of Section I or Section II of the Act. If the words of the Act are given effect the minor is bound by Section II through no election or other act or fault of his own if his parent or guardian, who are exclusively entitled to give notice that the provisions of Section II shall not apply, designedly and without regard to the minor's interest fail to give that notice or are ignorant, indifferent or venal. The parent or guardian is financially interested only during the minority of the minor. The Act places no obligation upon the parent or guardian, nor is the stewardship thrust upon them by it subject to any supervision, accounting or liability. The guardian who in other affairs is permitted by law to bind an infant is only permitted to do so upon a determination by the Court, before or after the act which binds the infant, that that act is for the infant's benefit. Furthermore, a guardian properly constituted is usually under bond and is always liable for improper administration of his trust. On the other hand, the parent or guardian referred to in the Workmen's Compensation Act is subject to no review if it is held that the minor is bound by failure to give notice and he is not liable to the minor. What principle waives aside the life-long injury which the minor must personally bear when deprived of a limb, as was the minor plaintiff in this case? It is a matter of public policy that his right to elect his redress be at least as broad as the right in that regard conferred upon the adult.

The 14th Amendment of the Constitution of the United States provides that

"No State shall * * * deny to any person

> within its jurisdiction the equal protection of the laws * * * ."

And the Constitution of New Jersey, Article IV, Section VII, Paragraph 4, provides that

> "No general law shall embrace any provision of a private, special or local character * * * ."

Article I, Paragraph 1 of the Constitution of New Jersey provides:

> "All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property and of pursuing and obtaining safety and happiness."

The Workmen's Compensation Act, Section II, Paragraph 9, violates, as to minors, both of these constitutional provisions. Equal protection of the laws in the case of a minor because of his immaturity and inexperience requires that greater safeguards be provided to insure the preservation of his rights than are provided for the preservation of the rights of an adult, not in order that he shall have greater protection than the adult but in order that his rights and the rights of an adult may be maintained on the same plane. The adult may elect under Section II, Paragraph 9, of the Act; the minor may not.

"The right to labor with equal opportunity to pursue redress for injury is one of the privileges or immunities of citizenship; is one of the first and highest of all civil rights, and any restrictions that discriminate against persons or classes are inadmissable."

Cooley Principles of Constitutional Law, p. 255.

Paragraph 9, Section II, of the Act, embodies a special provision which is as to minors an unreasonable, improper and unjustifiable distinction and discrimination between persons of the same class, i. e., employees; it makes exceptions as to persons falling within the operation of the law.

8 Cyc. 1051.

It is class legislation because it does not operate alike (i. e., with a personal right to elect) upon all who labor where like conditions exist.

8 Cyc. 1053.

POINT III.

SUCH DENIAL IS A DENIAL OF A PROPERTY RIGHT AND A RIGHT OF LIBERTY, AND IS UNCONSTITUTIONAL.

The 14th Amendment of the Constitution of the United States further provides that

> "* * * nor shall any State deprive any person of life, liberty or property without due process of law * * *."

On this theory the New York Act was declared unconstitutional in its main feature in the case of

> Ives *v.* South Buffalo Railway Co., 201 N. Y. 271; 94 N. E. Rep. 431.

Liberty has been defined as

> "The right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling and to pursue any lawful trade or avocation."
>
> Matter of Jacobs, 98 N. Y. 106; 50 Am. Rep. 636.

The right of property has been defined as

> "The right to acquire, possess and enjoy it in any way consistent with the equal rights of others and the just exactions and demands of the State."
>
> Bertholf *v.* O'Reilly, 75 N. Y. 515; 30 Am. Rep. 323.
>
> "If any question of fact or liability be conclusively presumed against him this is not due process of law."
>
> Ziegler *v.* S. & N. Alabama Railway Co., 58 Ala. 594.

A minor deprived of the right to use his faculties as above required is deprived of the right to acquire as other men normally and physically equipped can acquire and to possess and enjoy property as stated above, and when the duty of accepting, not damages awarded by a jury upon a hearing of the facts, but compensation is presumed to have been accepted by him without giving him a personal right to elect, he is deprived by the State of his liberty and property without due process of law.

POINT IV.

SUCH DENIAL CANNOT BE JUSTIFIED AS AN EXERCISE OF POLICE POWER ON A MATTER OF PUBLIC POLICY.

As to minors it cannot be properly maintained that the provisions of Paragraph 9, Section II of the Act, are a proper exercise of police power on a matter of public policy.

> "To justify the State in interposing its authority in behalf of the public it must appear, first,

that the interests of the public generally, as distinguished from those of a particular class, require such interference, and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals."

Lawton *v.* Steele, 152 U. S. 137.

"In order to sustain legislation under the police power, the Courts must be able to see that its operation tends in some degree to prevent some offense or evil or to preserve public health, morals, safety and welfare. If it discloses no such purpose but is clearly calculated to invade the liberty and property of private citizens, it is plainly the duty of the Court to declare it invalid."

Per Justice Werner in Ives *vs.* South Buffalo Railway Co., *ante.*

POINT V.

THE TITLE OF THE WORKMEN'S COMPENSATION ACT IS VIOLATIVE OF ARTICLE IV, SECTION VII, PARAGRAPH 4, OF THE CONSTITUTION OF NEW JERSEY.

The Constitution of New Jersey, Article IV, Section VII, Paragraph 4, provides that

"To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other every law shall embrace but one object, and that shall be expressed in the title."

The title of the Workmen's Compensation Act is as follows:

> "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 of compensation and regulating the procedure for the determination of liability and compensation thereunder."

This title does not comply with the foregoing mandate of the State Constitution. We contend that it is plain, that this title conveys to the mind of no one that the Act in question so far from prescribing the liability of an employer to make compensation for injuries received by an employee, in the case of a minor seeks to bind him without any election on his part, accordingly as a parent or guardian over whom he has no control for any reason, good or bad, acts or fails to act in his behalf. The object of depriving a minor personally of any participation in the election of which section of the Workmen's Compensation Act he is to work under, is most assuredly not the object which the Act designs to fulfill and is not expressed in the title.

That in the case of a minor the provision that the notice, to escape the operation of Section II, be given by or to the parent or guardian of the minor, is exclusive, is strikingly apparent when it is considered just what the status of affairs would be were a minor personally to give notice to his employer that Section II was not to apply and thereafter, being injured, would sue his employer at common law for damages. Would not the employer in that event have a complete defense in his contention that he could safely disregard the notice given by the minor personally as without effect and null and void, and that the minor was subject to Section II because he, the employer, had been given no notice by the parent or guardian of the minor as the statute provides?

POINT VI.

IF THE WORKMEN'S COMPENSATION ACT VALIDLY IMPOSES BY NON-ACTION A CONTRACT UPON THE MINOR TO ACCEPT COMPENSATION UNDER SECTION II HE MAY DISAFFIRM IT.

Assuming, without conceding, that even as to minors the Act is valid as far as it goes, we find that Section II contemplates an agreement between employer and employee to give and accept compensation as set forth therein for injuries in lieu of damages under Section I, which agreement may be an express one, or is by the terms of the act an implied one, unless notice is given that Section II is not intended to apply. Having found and stated these provisions of the Act, we contend that there is nothing about this agreement, whether it be express, or by a statutory presumption implied, that relieves it from being disaffirmed by the minor party thereto.

Woolston *v.* King, 3 N. J. Law 1049.

Patterson *v.* Lippincott, 47 N. J. Law 457.

This argument is not only sound in principle, but is supported by authority.

Stephens *v.* Dudbridge Iron Works, Ltd.,
K. B. Div. L. R. (1904), Vol. 2, 225.

Under the English Workmen's Compensation Act of 1897 in question in the foregoing Stephens case, the workman was given the option to either claim compensation under the act or to take proceedings independently of the act. A minor employee accepted compensation under the Act and later sued at common law for damages.

The argument on behalf of the employer was that the minor had been given the same option as had been given to the adult workman, and that thus there was in fact a statutory permission to the minor to exercise an option which would be binding upon him. The trial Judge found, as is the fact in the case at bar, that it was clearly not to the interest of the infant that he proceed under the Act, as the compensation that could be recovered would be much less than the damages which he could recover in an action for negligence. The Appellate Court held that the option given to the minor did not take the case out of the ordinary law governing minors and that whenever such a contract comes before a Court of law the question whether it is for the benefit of a minor has to be considered and the contract will not be enforced unless the Court is of the opinion that it was for the benefit of the minor and that the English Workmen's Compensation Act by including a minor in the word "workman" did not in any respect alter the law applicable to contracts made by minors, and that the Legislature did not intend to inflict a disability on a minor and prevent his setting aside a contract not made for his benefit.

In a case, as in the one at bar, where negligence of the employer is asserted and in fact has been established at the trial and the minor has lost an arm, we submit that it cannot be said that his agreement to accept compensation, which under the Workmen's Compensation Act would aggregate about $1,050 only, is for his benefit, and it not being for his benefit, it can be disaffirmed and he has disaffirmed it.

It is therefore respectfully urged upon this Court that the decision of the Supreme Court in this case is erroneous; that it should have entered judgment in

favor of the plaintiff according to the answers of the Jury upon the written questions submitted to the Jury, and that accordingly it should be reversed.

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New Jersey Court of Errors and Appeals

EDWARD YOUNG, by Marguerite Young, his next friend, *Plaintiff-Appellant,*	*Action at Law.*
vs.	*On Appeal from the Supreme Court.*
STERLING LEATHER WORKS, a Corporation, *Defendant-Respondent.*	

Brief of Defendant-Respondent.

This is an appeal from the Supreme Court, wherein judgment was entered in favor of the defendant-respondent. The plaintiff-appellant sued by a next friend, to recover damages sustained by him as the result of alleged negligence on the part of his employer. It will appear by the stipulation (Case, pp. 23 and 24) that no notice was given to or by the plaintiff or by or to his parent or guardian (*i. e.* his mother) to the effect that the provisions of Section II of the Workmen's Compensation Act were not intended to imply to his contract of hiring. And it further appears that his mother, his only parent, with whom he lived, knew of his working for the defendant-respondent; that she saw some of his pay envelopes and that she saw him at the said plant of the defendant-respondent on one or two occasions. That at the time of the accident the injured boy was sixteen years of age.

The Trial Court refused to grant the motion for a non-suit and a direction of a verdict, made by the respondent at the trial of the issue, and followed the decision of Chief Justice Gummere,

with regard to the motion to strike out the complaint, as will be seen by the quotation from his decision, appearing in 96 Atl. Rep., page 1017.

> "So I think you had better try this case out, and, if the plaintiff gets a judgment, and his complaint is afterward held not to show cause of action, that will be an end of it once and for all."

It was after the submission of the facts to the jury that the Trial Court entered judgment for the respondent.

The purpose of the appeal is to show that a minor employee is not bound by Section II of the Workmen's Compensation Act, and it is our contention that such an argument can find no basis in the law of this State. On page 4 of appellant's brief he cites *Hoey* v. *Superior Laundry Co.*, 85 N. J. L., page 119, but from an examination of the case it appears that it has no bearing on the questions in issue in this case. The Court therein said:

> "It is therefore unnecessary to inquire how far the infant could bind himself by such a contract as this case discloses."

Counsel cites the decision on the motion made in the case at bar in the Supreme Court. It might be advisable to suggest that the decision on the motion was delivered immediately after the argument, and as a matter of fact by the examination of the same it will appear that Chief Justice Gummere did not pass on the actual merits of the argument, but merely suggested that the question was rather too important to be disposed of on motion.

We cannot see the purpose of the citation of *Hetzel* v. *Wasson Piston Ring Co.* by the appellant on page 5 of his brief, because in that case

there was no contract of hiring. It is well, however, to quote from the opinion of Chief Justice Gummere in that case, as by inference he states that if it were not for the illegal part of the hiring of the infant Section 9 of the Workmen's Compensation Act would be effective. Section 9 reads as follows:

> "Employ~~ers~~ment subject to this Act: 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.*"

The excerpt from Justice Gummere's (89 N. J. L., page 201-203) opinion, to which we refer, is as follows:

> "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, &c."

The Court in this statement gives evidence of its adoption of the propriety of the legislation which was binding upon an infant, as well as an

adult workman, and as has been heretofore stated, only determined the question involved, adversely to the employer, because the original contract of hiring was not a valid one.

Appellant's counsel further refers to the case of *Troth* v. *Millville Bottling Works,* 89 N. J. L., page 219, and it is this case, together with *Brost* v. *Whitall Tatum Co.,* 89 N. J. L., page 531, that practically answer any substantial arguments raised in appellant's brief. In the former case the Court says:

> "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 11 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 obligations either of the master or the servant arising out of the original contract of hiring."

That case involved an injury to an infant employee and therefore, the Court's statement that the notice provision in the statute has not impaired in any degree the obligations either of the master or of the servant, is a strong argument against the appellant's contention that the infant's rights have been impaired by Paragraph 9, Section II of the Workmen's Compensation Act. What rights did the infant have 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 enactment? It is impossible to find in any part of the appellant's brief a single right which the constitution of the United States or the State of New Jersey guarantees to him of which he has been deprived. On the other hand it appears that all his rights have been actually safe-guarded, for it does not permit the infant himself to give or to receive a notice under Paragraph 9, Section II. The section merely lays down a rule of evidence which must be followed in order to prove a disaffirmance of the statutory contract. The infant has always had the protection of a person *sui juris* to act for for him and this protection is still afforded. The rule of evidence referred to in the Troth case means that an employee, be he an infant or adult, cannot prove a disaffirmance of the statutory contract unless he gives notice in the manner prescribed by the Act, which in the case of a

minor must be given by his parent or guardian. The right to give notice therefore, which is still present, is limited only by this rule of evidence. Who could successfully urge that an infant would not be bound by the statute of frauds, which also is a rule of evidence? It must not be forgotten that the Workmen's Compensation Act is the result of long agitation for social legislation, industrial insurance and for the betterment of the conditions surrounding labor. The agitation moreover, was for the establishment of a system whereby the industry shall bear the burden theretofore, to a great extent, resting upon the shoulders of a large class of individuals called "workmen." It cannot be said that infants or minors do not belong to this generic class. The system of social and industrial insurance is unknown and unheard of in the common law and it needs but a casual examination of our law reports to estimate the great percentage of actions based upon negligence of the master, which resulted disastrously to the injured workman. Why all this public and political clamor for a change of system to the one now prevailing, if all, including labor unions, were not of the opinion that such a protection as is afforded by the Workmen's Compensation Act did not ameliorate the workman's condition.

Justice Swayze in *Rounsaville* v. *Central R. R. Co.*, 94 Atl. Rep., page 392, has clearly stated that the Compensation Act is one of public policy of this State. It cannot be gainsaid that our legislature was cognizant of the fact that a large percentage of laboring men was composed of individuals whom we designate as infants, and therefore, they passed acts attempting to better their condition. Among such acts we find the "Factory Act," P. S. 1904, Chap. 64, which is

certainly indicative of their intention to protect those who were unable to protect themselves. Suddenly, in 1911, after many demands for a reform in our system had been made, the Workmen's Compensation Act, a general act covering the entire subject matter with relation to the rights and duties of employer and employee, was passed, and thereupon repealed all inconsistent legislation. This was an innovation and with it, it was not necessary to afford the infant any greater right than an adult workman had. It was the height reached after many years of agitation and created a perfect system for the protection of workmen, and for that reason it was not important or necessary that any additional favor be conferred upon any class of individuals who were within the terms "workmen." The common law disabilities of the infant disappear with common law relationships. There can be no doubt that where the legislature passes a general law covering an entire subject matter, that it thereby repeals all inconsistent legislation and all inconsistent rules of the common law. *Eldridge* v. *Philadelphia & Reading R. R. Co.*, 83 N. J. L., p. 463. In order, however, to be sure that persons *non-sui juris* should not be taken advantage of, the last part of paragraph 9 of Section II of the Act was inserted, and in this way it created a condition of affairs where it would not be possible for an infant employee to work under Section II of the Act where it was not to his interest. Realizing perhaps that the infant would not be a good judge of whether it was to his interest to work under Section I or Section II, it provided that his parent or guardian should be the arbiter on that score. We think the legislature wisely provided in this regard, because the person *sui juris* realizing the conditions under which the infant labored, might give

the necessary notice, if it were to the advantage of the infant that the same be given, and if a notice were given by the factory when it was not to the interest of the infant to work under Section I, such parent or guardian could cause a discontinuance of the infant's services immediately upon the receipt of such notice from the factory. The natural protector or guardian was his parent, and here there was no change from the common law. What, therefore, could be more logical or equitable than the provision of which the appellant now complains. The appellant raises the question that the guardian or parent might not be acting for the interest of the infant and in this there is no change from the common law, but he loses sight of the fact that the law affords a remedy against such a contingency, for even previous to the Workmen's Compensation Act there has been a tribunal established in which an infant, even though a parent be living, upon an application of someone else, if the infant be under fourteen years of age, or by himself if he be over fourteen years of age, might have a guardian of his person appointed. This, of course, would be so, only if his parent or guardian was not properly protecting the interest of the infant. Appellant argues that the Compensation Act is a class legislation, because it does not operate alike (with a personal right to elect) upon all who labor where like conditions exist. He loses sight of the fact, however, that rules of evidence and procedure may apply to one class and not to others. *Jordon* v. *People,* 19 Colo., 417; 36 Par. 218; *in re Dolph,* 17 Colo., 35; 28 Par. 470, *Com. of Worcester,* 3 Pick. (Mass.) 462. We have heretofore adverted to the fact that this court has held that the notice provision in the act is a rule of evidence. Counsel further cites

from Justice Werner's opinion in *Ives* v. *So. Buffalo R. R. Co.*, 94 N. E. Rep. 431, as follows:

> "In order to sustain legislation under the police power, the courts must be able to see that its operation tends in some degree to prevent some offense or evil or to preserve public health, morals, safety or welfare. If it discloses no such purpose but is clearly calculated to invite the labor and property of private citizens, it is plainly the duty of the Court to declare it invalid."

The act in reference to which this opinion was written, was the original Compensation Act of New York State, but by an examination of this case, it will appear that the act was declared unconstitutional, because there was no election permitted the employer or employee by its provisions. As far as the reasoning is concerned in this excerpt, we see no objection to the propriety of the same. Our act has given the infant a right which he never had before, namely, that of his ability to recover compensation for injuries where the claim is not based upon any negligence on the part of the employer. The mere fact that the Compensation Act, certainly one of public policy, works a hardship in a single case, is not indicative of its unfairness to the general class. We have not reached the point where our legislation is so perfect that its enactments work without a single hardship to anyone.

It has been held in this State that when a contract has been made for the benefit of an infant it shall bind him. (*Bordentown* v. *Wallace*, 15 N. J. L., page 13.) And since the legislation is one of public policy, the presumption is that it is for the infant's benefit. How many notices by the employees are given or have been given to the effect that they desired to work under Section

I of the Act. If he does not give such a notice, does this not show that he realizes that the purpose of the fixed schedule of payments is for his benefit? It has never been suggested that the inability of an infant to contract cannot be altered or abrogated by the legislature, since it is merely a common law rule of conduct. 223 U. S., page 1, on page 50, *Munn* v. *Illinois,* 94 U. S., 113. In fact, this power has been exercised without objection by the legislature of our own State. See for illustration, "An Act concerning savings banks." P. L. 1906, p. 348, Sec. 26; pp. 355-356; "An Act concerning Building and Loan Associations." P. L., 1903, pp. 457, 459, Sec. 5. The principle here involved is exactly akin to that involved in the common law disability of coverture, from which disability the legislature has from time to time relieved a married woman by conferring upon her powers which under the rule of the common law she did not possess. At common law an infant may bind himself as an apprentice, but subsequently by legislative enactment and decisions in this country, such contract is not binding unless entered into by him with the consent of the parent or guardian. 8 Jons. N. Y., 328; 12 N. H., 437; 2 Penn., 977. Does not the Compensation Act provide the same kind of contract for infant employees, by the insertion of that part of Section 9 with reference to a notice of disaffirmance of the statutory contract in cases of infants or minors. It has even been held in this country that if the infant be a pauper he may be bound by the proper authorities without his consent. (32 Me., 299; 30 N. H., 104.)

THE ACT MEETS THE CONSTITUTIONAL REQUIREMENTS WITH REGARD TO ITS TITLE. The appellant's argument that this is not a fact is best met by reference to a late

case in this State. (*Quigley* v. *Lehigh Valley R. R. Co.*, 80 N. J. L., page 486 at 491, wherein Chief Justice Gummere says:

> "The theory of the demurrant (in this case the appellant) therefore, if sound, would require that all the provisions contained in these statutes which regulate the procedure in such accidents, must be set out at length."

In other words, it is not necessary to make the title of a statute a digest of its contents. The appellant here again has lost sight of the fact that in the Troth case the question of notice has been declared to be a rule of evidence and certainly he does not attempt to argue that the rules of evidence must also be inserted in the title of the Act. Point 6 of the appellant's brief covers the possibility of the infant to disaffirm his contract. The Compensation Act has not impaired this right, if one there be, but has regulated the manner in which such a disaffirmance may be proven. It has also given adult employees and employers equal rights of disaffirmance. And lastly, the appellant has cited an English case, *Stephens* v. *Dudbridge Iron Works, Ltd.*, K. B., Div. (1904) Vol. 2, 225, as authority for his contention that the infant, regardless of the presumption under the Act, that, in the employment of minors Section II is presumed to apply to such employment, still in the absence of a notice by or to such minor's guardian or parents, still may prosecute an action at law against his employer. Even assuming that this case so holds, before we can consider it of any value, it is necessary to compare the English Act with our own Act. The Court said in the case referred to, that under a provision of their Act, an option is given to a workman either to claim compensation under the Act or to take proceedings independently of the Act.

The same case further refers to the definition of "workman" in the English Act.

> "It includes every person, &c., whether his agreement is that of service or apprenticeship."

These are the only two provisions which refer to those who are included within the terms of our Act. In the first place there is not a single provision in the English Act with regard to the protection of the minor. The word "apprentice" does not mean a minor, but may in certain senses mean one. The minor may be of a class who has been bound to learn from an employer a trade or business and to serve during the time of his apprenticeship, or it may be an adult who has so bound himself. It is well to note, however, that there is no mandatory provision in the English Act which provides *that an infant shall be bound by the compensation feature of the legislation.* If there had been such a provision, it seems almost absurd to argue that the English court would hold that the infant was not bound by such a provision and that the Court would have refused to apply such provision. Their decision was based upon the common law disability of the infant, namely, that he would not be bound unless the contract be for his benefit. There is no indication in that decision that the English Act with regard to its compensation feature has been declared to be one of public policy or for the benefit of a general class; namely employees. There is no provision in that Act for a next friend or guardian or the protection that the infant obtains from his parent by reason of the manner in which legal notice may be given. In their act the workman *himself* makes an election *after the accident.* It would be necessary to produce some authority other

than this English Act and the decision thereon, to support appellant's contention, because as we have hereinbefore described, the contents of their act is very different from ours. The appellant in this case is asking the Court to cast aside a legislative enactment and in the English case there was nothing in their Act which would militate in any way against the affirmance of the common law rule of the infant's inability to contract. And this Court has incidently determined in the case of *Brost* v. *Whitall Tatum Co.*, 89 N. J. L., 531, that a minor employee whose parent acquiesces in his employment under Section I of the Act, the employer having given the statutory notice of its disaffirmance of Section II, is bound by such notice. In the last mentioned case the acquiescence of the parent, accepted for the infant a new contract, namely, that instead of the agreement between the parties that the contract of employment was governed by Section II of the Act, it was governed by Section I. The case at bar merely is the converse of that situation. Therefore, if in the Brost case the infant could not disaffirm the new contract of employment created by the notice from the employer, with what greater right in the case at bar could the infant disaffirm the original contract of hiring. In this case Chancellor Walker says:

> "There was no holding to the effect that if the parent or guardian of the minor saw the posted notice or the notice on the pay envelope that it would not amount to a legal notice, only that such notice was not in and of itself sufficient."

This quotation had a reference to a notice which was posted up, as testified to in the Troth case, in the factory, which, the infant employee and not his parent or guardian, saw. He

impliedly says that if a notice were brought to the attention of the infant's parent or guardian that Section II was not to apply to the infant's employment, that the infant would be bound, and this is logical, because it follows Paragraph 9 of the Compensation Act.

In fine, it would not be best for employers of labor to continue in the employment of minors if their risk with regard to the latter were two-fold, whereas there was only a single liability with regard to adult employees. The legislature was aware of this and so made its enactments such that the employer had the same degree of liability to both minors and adult employees. If it were held otherwise it would be casting upon industry a greater burden than it should bear.

We respectfully urge that the judgment under review be in all respects affirmed.

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