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Restoration of Consideration in Infants' Disaffirmance of Purchase of Personal Property

R.T. Harrigan

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was of his own making and he cannot be heard to complain. Another reason given was that the defendant failed to show the actual value of the property in question at the time the agreement was made.

The Court held the measure of damage to be the difference between the actual value of all that the plaintiff received and all that he gave. In other words it was the difference between the actual value and the price paid. This case does not set forth the represented value as the measure of damage. The only reason why the represented value was used in the trial court is because the defendant asked for it even though detrimental to him. In laying down the true measure of damage the court cites the case of *Browning v. Rodman, supra.*[27]

The latest case on this subject[28] holds that in the case of fraudulent representations in the sale of stock the measure of damage is the difference between the price paid and the actual value of the stock. In case the stock had no value, the amount would be determined by what the plaintiff had paid for the stock.

In summing up we find the following propositions to be true as to the measure of damage:—

1. Breach of Warranty—The difference between the price paid and the value of the goods had the representations been true.

2. Fraudulent Representations—The difference between the price paid and the actual value.

Are we to infer that the courts are placing a premium on fraud when they allow greater damages for breach of warranty than for fraudulent representations?

Joseph Maimon

RESTORATION OF CONSIDERATION IN INFANTS' DISAFFIRMANCE OF PURCHASE OF PERSONAL PROPERTY—Installment selling has become one of the common features of our every day life. Automobiles, pianos, victrolas, household furniture, practically all ordinary commodities can now be bought on the time-payment plan. Often these sales are made to minors and these

[27]See Note 23.

[28]Hoagland v. Mulford, (1930) 148 A. 864; cites with approval—Curtis v. Buzard, supra; Browning v. Rodman, supra; Long v. McAllister, supra.

transactions give rise to perplexing legal problems.

Economists of the old order may rant and rave at the modern practice of anticipating future income by buying on installments, but no one can deny that it is a widely accepted practice and the legal problems arising from it are coming before the Courts.

We are not concerned herein with infants' contracts for necessaries for that situation appears to be adequately covered by Section 2, of the Pa. Sales Act,[1] and by the same or corresponding sections in the Uniform Sales Acts of the various states.

One of the problems, and one which gives rise to widely divergent views, arises when such a sale has been made to an infant, and later the infant decides to disaffirm the contract. The question arises as to the necessity for the return of the chattel, and whether or not the dealer may deduct the loss in value from the purchase price which the infant demands be returned to him.

The majority rule is that the infant upon disaffirmance must return the consideration (chattel), if he has it, and the dealer cannot deduct for use of, or depreciation in, the value of the property.[2]

The minority, or so-called New York rule, requires the infant upon disaffirmance, to account for the depreciation in the value of the property.[3] The United States Supreme Court has aligned itself with the minority, for in *Myers v. Hurley Motor Co.*,[4] the seller was allowed to recoup for the use and depreciation of the property. There the minor had misrepresented his age but the Court refused to make this fact a limitation upon the application of the doctrine. However, in the *Myers* case the seller's recovery was limited to an abatement of the infant's claim. This is not true under the New York and California decisions.

An early case in Pennsylvania[5] involving elements of this problem held that restoration or tender back of the consideration received by the infant was not a condition

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[1]1915, P. L. 543.

[2]Arkansas Reo Motor Car Co. v. Goodlet, 163 Ark. 35, 258 S. W. 975; Houser v. Marmon Chicago Co., 208 Ill. App. 171; Story & Clark Piano Co. v. Dany, 68 Ind. App. 150; Gillis v. Goodwin, 180 Mass. 140 and Reynolds v. Garber Buick Co., 183 Mich. 157.

[3]Rice v. Butler, 160 N. Y. 578; Murdock v. Fisher Finance Corp., 251 Pac. (Cal.) 319.

[4]273 U. S. 18.

[5]Shaw v. Boyd, 5 S. & R. 309.

precedent to recovery by an infant suing to disaffirm the contract. In a later case[6] the Court held that the infant plaintiff seeking to avoid his executed contract had to return nothing. Two reasons were given for this holding:

(1) that it was a mere gambling contract and void *ab initio,* and

(2) that since the infant had really received nothing under the contract there was no necessity for returning anything.

But the dictum of Justice Gordon, "This rule (that where an infant has executed a contract, and has enjoyed the benefit of it, and afterwards on coming of age seeks to avoid it, he must restore the consideration) may, and certainly does apply in certain cases, but as a general rule it is unsound. Its application was refused in *Shaw v. Boyd, 5 S. & R. 309*".

From this dictum we gather the impression that the rule in *Shaw v. Boyd, supra,* is still unchanged and was the law in Pennsylvania at that time. A few years later the Court held that where an infant has misrepresented his age to the seller, the seller may replevy the goods in the hands of the infant, or in the hands of a buyer from the infant, unless he is a purchaser for value without notice of the misrepresentation of age.[7] This was decided upon the theory that the fraud of the infant made the contract voidable by the seller. This decision does not overrule *Shaw v. Boyd, supra. Spangler v. Haupt*[8] indicates that while *Neff v. Landis, supra,* is the rule where there has been a fraudulent misstatement of age and the minor still has the goods, yet that decision does not overturn the general rule of *Shaw v. Boyd, supra.* In the *Spangler* case the infant had purchased goods and later sold them to bona fide purchasers. A few months later, on reaching his majority, he disaffirmed the contract of purchase. The Court imposed no duty upon him to place the adult party in statu quo, and held, also, that the seller could not maintain an action for deceit to recover the price.[9]

A late case in the Superior Court,[10] wherein the infant elected to disaffirm the contract and sued for the value of his old car, which had been accepted in part payment for

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[6]Ruchisky v. DeHaven, 97 Pa. 202.

[7]Neff v. Landis, 110 Pa. 204.

[8]53 Pa. Super. Ct. 545.

[9]This case was followed in Kay v. Haupt, 63 Pa. Super. Ct. 16.

[10]Musser v. Schock, 95 Pa. Super. Ct. 406.

a new one, held that the infant, in disaffirming in this state, does all that is required by returning to his seller, or by tendering to him, the object purchased in whatever condition it may be at the time of its return or tender; it need not be in the condition in which it was received from the seller. To permit a defendant to assert an infant's obligation to restore the property in its original condition, would, to that extent, be permitting the defendant to enforce his contract with the infant, which is the very thing the policy of the law was intended to prevent. This case necessarily implies that had the infant lost or destroyed the subject matter of the sale, he would be under no duty to return it, or place the adult party in statu quo before disaffirming and suing to recover the purchase price.

To summarize the rule in Penna.: *Shaw v. Boyd, supra,* held that restoration, or tender of the consideration, was not a condition precedent to recovery by an infant suing to disaffirm the contract. This rule has not been changed by any later decision of the Supreme Court and therefor appears to be the law in Pennsylvania today.

Neff v. Landis, supra, held that when the infant has misrepresented his age and still retains the goods, they may be replevied from him on the theory of recission on the ground of fraud.

Musser v. Schock, supra, impliedly qualifies the rule in *Shaw v. Boyd, supra,* to the extent that the infant must return, or tender, the subject matter, the consideration, in whatever condition it may be, if he has it, at the time he disaffirms. This qualification is in line with the general rule and the weight of authority as stated in 31 C. J. 1073, Sec. 168—"Restoration or offer to restore does not become a condition precedent where no duty is imposed on the infant to return the consideration after disaffirmance of the contract as where the consideration has been lost, squandered, or wasted".

R. T. Harrigan