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CONSTRUCTION OF CHILD LABOR STATUTES.

In the recent case of *Louisville H. & St. L. R. R. Co. v. Lyons et al.*, 159 S. W., 971 (Kentucky), it was held: that the defense of contributory negligence is not available to the defendant, an employer, in an action to recover damages for personal injuries sustained by a child of fifteen years, who was engaged in an employment prohibited by statute.

This decision, in view of the fact that such statutes are of comparatively recent origin, and the adjudications bearing directly on the point in issue few, is extremely interesting. It is well known that these laws are the outcome of a great public demand for legislation against child labor. Let us examine the law as laid down for their construction.

It has been established as a rule by numerous decisions that the fact that a defendant is engaged in the violation of a statute will not preclude him from asserting the defense of contributory negligence against one who has not exercised the care required by the circumstances.[1]

[1] *Browne v. Siegel, Cooper Co.*, 191 Ill.. 226; *Gartin v. Meredith*, 153 Ind., 16; *Nugent v. Vanderveer*, 38 Hun. N. Y., 487; *Noyes v. Morristown*, 1 Vt., 353; *Lopes v. Sahuque*, 114 La. Ann., 1004.

This is a general rule of the law of negligence, the English cases are in accord,[2] and it holds true though the violation of the statute be negligence *per se*.[3]

Then, again, it has been decided that the law of contributory negligence applies to an infant in the same manner as to an adult, having due regard to his age and other matters,[4] unless the child be so young as to be incapable of exercising judgment or discretion.[5] So it has been held that the court could not as a matter of law declare that a child of nine was freed from the duty to exercise care.[6]

Under this last general rule the courts have decided that after the age of seven the child *may* be chargeable with contributory negligence,[7] and that when the age of fourteen is reached the infant is presumptively so chargeable.[8]

These propositions would seem to dispose of the contention of the case under discussion, and, indeed, the weight of authority is decidedly adverse to it.[9]

Recently, however, the courts of three of our largest states have manifested a strong dissent from this view. The leading case is probably that of *Marino v. Lehmarier,* where the Court of Appeals of New York, by five to two, Judges O'Brien and Gray dissenting, held that such statutes in effect declared that children

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[2] *Caswell v. Worth,* 5 El. & Bl. 949.

[3] *Platte & Denver C. & M. Co. v. Dowell et al.,* 17 Colo., 376; *Nickey v. Steuder,* 164 Ind., 189; *Willey v. Mulledy,* 78 N. Y., 310; *Queen v. Dayton Coal & Iron Co.,* 95 Tenn., 458.

[4] *Honesberger v. Second Ave. R. R.,* 2 Abb. Dec. N. Y., 378; *Reed v. Madison,* 83 Wis., 171; *Schmidt v. Cook,* 20 N. Y. Supp., 889; *R. R. Co. v. Gladmon,* 15 Wall., 401; *Lynch v. Smith,* 104 Mass., 52.

[5] *Pratt v. Brawley,* 83 Ala., 371; *Ihl v. 42d St. Ferry R. R. Co.,* 47 N. Y., 317; *Ludden v. Columbus & Midland R. R. Co.,* 9 Ohio St. S. & C. Pl. Dec., 793; *Government St. R. R. Co. v. Hanlon,* 53 Ala., 70.

[6] *Ridenhour v. Kansas City R. R. Co.,* 102 Mo., 270.

[7] *Pierce v. Connors,* 20 Colo., 178; *Pekin v. McMahon,* 154 Ill., 141; *Rohloff v. Fair Haven R. R. Co.,* 76 Conn., 689.

[8] *Central R. R. Co. v. Phillips,* 91 Ga., 526; *Frauenthal v. Laclede Gas Light Co.,* 67 Mo. App., 1; *Murphy v. Perlstein,* 73 N. Y. App. Div., 256.

[9] *Bergholt v. Auto Body Co.,* 149 Mich., 14; *Tremont v. Suffolk Mills Co.,* 209 Mass., 489; *Borck v. Michigan Bolt & Nut Works,* 111 Mich., 129; *Smith v. Natl. Coal & Iron Co.,* 135 Ky., 671; *Iron & Wire Co. v. Green,* 108 Tenn., 165; *Darsam v. Kohlman,* 123 La., 164; *Rolin v. Tobacco Co.,* 141 N. C., 300; *Roberts v .Taylor,* 31 Ont., 10; *Evans v. American Iron & Tube Co.,* 42 Fed., 519.

prohibited to work were to be considered so young that negligence might not be imputed to them.[10] This is certainly reading law into the statute.

Pennsylvania has also in very recent cases expressly reiterated the holding that in such actions by children the defense of contributory negligence is not available.[11]

Illinois has pushed this idea even further. There, in a case where a child wrongfully employed under the statute, engaged, not in his work assigned, but of his own volition in other work which he had been expressly forbidden to do, the defense of contributory negligence to a suit by the child for injuries thus received, was disallowed.[12] The court remarked that the defendant, having unlawfully employed the child, was bound at his peril to see that he did not engage in such work. This same court, as are also the New York and Pennsylvania tribunals, is of the opinion that to allow the plea of contributory negligence in such cases would be to defeat the purpose of the statute.[13]

What is the purpose of the statute? To prevent child labor. How is it accomplished? To our minds, in two ways; firstly by affixing a penalty for its violation, and, secondly, by preventing the employer from taking advantage of any supposed contractual rights he might be thought to acquire in dealing with the class with which he is prohibited to deal. When the employer is sued for injuries two defenses ordinarily are available, the doctrine of assumption of risk and contributory negligence. There is a sharp distinction to be noted between the two, the one arising from the contract of employment by implication, if you please, and the other out of the customary relations of man to man.[14]

Now it is conceded that under such statutes as we are discussing the defense of assumption of risk by the employee is taken away,[15] for the employer, as is said by Judge Taft, "cannot con-

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[10] *Marino v. Lehmarier,* 173 N. Y., 530.

[11] *Lenahan v. Pittston Coal Co.,* 218 Pa. St., 311; *Sullivan v. Hanover Cordage Co.,* 222 Pa. St., 40; *Stehle v. Jaeger Automatic Machine Co.,* 220 Pa. St., 617.

[12] *Strafford v. Republic Iron Co.,* 238 Ill., 371.

[13] *American Car Co. v. Armentrant,* 214 Ill., 509.

[14] *R. R. Co. v. Baker,* 33 C. C. A., 468.

[15] *Thomas v. Quatermaine,* 18 Q. B., 685; *Counter v. Couch,* 8 Allen Mass., 436; *Schlemmer v. Buffalo, Rochester & Pittsburg R. R. Co.,* 220 U. S., 590.

tract himself out of the statute."[16] But these statutes are penal and inhibitory and as such are to be strictly construed.[17]

Therefore, the weight of authority in so construing them, and, rightly, we think, holds with the Massachusetts court in the very recent and fully considered case of *Tremont v. Suffolk Mills Co.*, when it says, "that such statutes leave undisturbed any principles which they do not expressly abrogate and beyond this the ordinary rules of negligence must apply,"[18] citing numreous cases.[19] This practically amounts to saying that statutes imposing restrictions on the freedom of contract can have no bearing on the torts of one who happens to have endeavored to evade the statute. In this form it seems even more evident to us that the legislature could have had no intention, which is after all the cardinal point of inquiry,[20] and whatever be the rule of construction, to so affect the liability of the employer.

These statutes do not, on their face, purport to change the usual rules of liability between master and servant;[21] indeed, it has been expressly held that they do not affect the rule of contributory negligence, though they do the assumption of risk doctrine.[22]

On logical grounds, if a recovery is to be successfully sought, there must be a causal connection between the act and the injury.[23] This there is not, if there be contributory negligence, for then, in the eye of the law, the plaintiff causes the injury and not the defendant.

Why, then, in the case of such laws regarding children, any more than in the case of other inhibitory laws, read into the statute that which the legislature did not intend? The legislature

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[16] *Narramore v. C. C. C. & St. L. R. R. Co.*, 96 Fed., 298.

[17] *Betties v. Taylor*, 8 Port., 564; *Morin v. Newbury*, 79 Conn., 338; *Schulte v. Menke*, 111 Ill. App., 212; *People v. Briggs*, 193 N. Y., 457.

[18] *Tremont v. Suffolk Mills Co., supra.*

[19] *Taylor v. Carew Mfg. Co.*, 143 Mass., 470; *Schlemmer v. Buffalo, etc., R. R. Co., supra; Bourne v. Whitman*, 209 Mass., 155; *Erdman v. Deer River Lumber Co.*, 104 C. C. A., 482; *Denver & Rio Grande R. R. Co. v. Norgate*, 72 C. C. A., 365.

[20] *Ranson v. State*, 19 Conn., 292; *Sickles v. Sharp*, 13 Johns. N. Y., 497.

[21] *Burlington & Quincy R. R. Co. v. U. S.*, 220 U. S., 559; *Commonwealth v. Boston & Lowell R. R. Co.*, 134 Mass., 211.

[22] *Choctaw & Oklahoma R. R. Co. v. McDade*, 191 U. S., 64; *Grand v. R. R. Co.*, 83 Mich., 564.

[23] *Nickey v. Steuder, supra.*

[24] *Krause v. Morgan*, 53 Ohio St., 26.

has not expressed itself as dissatisfied with the safeguards thrown around the liability of children. If they had been so dissatisfied, they would doubtless have said so. The child is protected without such interpolations. He is freed from the burden of any contractual defense, he stands on the same ground as to other defenses as the courts and law makers have always thought is just and right that he should stand. Nothing has been done that intimates a change of their opinion.

To hold otherwise would be to cast an unjust burden on the employer. He, indeed, under the minority view, may be the subject of deceit at the hands of the child and yet liable to him. Thus the child would be allowed to act wantonly and recklessly, in defiance of justice. Surely it is better to leave unchanged those rules which, with due regard for the circumstances, are easy of application and well understood, than to needlessly overturn them by a forced statutory construction in the face of what seems right and equitable.