Case and Comment

CAPACITY OF INFANTS—LIABILITY CONTRACTUAL OR DELICTUAL—MOTOR VEHICLE SALE.

The recent decision in *Bellefleur v. Noble's Limited*[1] illustrates the necessity for change in the existing law regarding the legal capacity of infants.

Bellefleur, the defendant (appellant), was an infant twenty years of age. In June, 1960, he falsely represented to the plaintiff (respondent), Noble's Limited, that he was twenty-one years of age, and entered into a contract to purchase a new Volkswagon. He paid $330.00 in cash and signed a conditional sales agreement for the balance of $1,915.85. After obtaining possession of the automobile he drove from Moncton to Cape Bald. While returning after midnight he lost control and completely wrecked the automobile. The defendant advised the plaintiff of the accident and the latter towed the wreck to its premises. The defendant refused to pay any instalments, repudiated the contract and set up the defence of infancy. The plaintiff brought his action in tort claiming that the defendant was negligent in his operation of the vehicle.

The trial judge held the defendant liable supporting his decision mainly on the equitable doctrine of restitution. He found that although the conditional sales agreement was voidable by the defendant, his right to repudiate the contract was conditional on making restitution so as to restore the plaintiff, as nearly as possible, to its former position. The judge held that the negligent driving of the defendant was a wrongful act not contemplated by the contract, and that the plaintiff's action, as framed in negligence, was maintainable.

On appeal this decision was reversed in a judgment rendered by Ritchie, J., citing *R. Leslie Ltd. v. Sheill,*[2] holding that an infant cannot, through a change in the form of action from one *ex contractu* to one *ex delicto,* be made liable for the breach of a voidable contract. *Jennings v. Rundall*[3] was also considered, where an infant who had hired a mare and injured her by excessive and improper riding was held not liable in tort for negligence. The act con-

1 (1964), 49 M.P.R. 279.

2 [1914] 3 K.B. 607 at 611; [1914-15] All E.R. 511.

3 (1799), 8 Term. R. 335, 101 E.R. 1419.

templated in the contract was riding the mare, and the fact that the infant's riding became excessive did not render him liable in tort. Finally, in *Dickson Bros. Garage v. Woo Wai Jing*[4] an infant hired an automobile and while using it for the purpose permitted in the contract wrecked it by negligent driving. The plaintiff sued in tort and in contract. In this judgment, *Jennings v. Rundall*[5] was applied to support the conclusion that since the act of the infant was not outside the purview of the contract, the infant could not be held liable in tort for his negligence.

The court in the instant case followed these decisions and held that since the plaintiff must have contemplated that the defendant would drive the car, and since there was no stipulation as to how he should drive it, the defendant had merely acted within the area contemplated by the contract.

The decision of the Court of Appeal was unquestionably a correct pronouncement of the current law. Since the tort could not be removed outside the bounds of the contract the action failed. Nevertheless, the result was clearly unjust and this injustice is seen to flow from the present state of the law respecting infants' contracts. The law is set out in Halsbury:

> An infant, being regarded as of immature intelligence and discretion, is under a general incapacity to exercise the rights of citizenship or perform civil duties; or to hold public or private offices or perform the duties incidental to them. For the same reason he is not, as a rule, permitted by law to do anything prejudicial to his own interests. In accordance with this principle his capacity to bind himself by contract is limited to certain particular cases in which it is clearly for his benefit that he should be permitted to do so; other contracts by him being either voidable or, if manifestly prejudicial to his interests, absolutely void. The same principle regulates an infant's capacity to acquire and dispose of property, and his incapacity in reference to legal proceedings instituted on his behalf or against him.[6]

The *Noble* case clearly indicates that an infant can create a fraudulent situation and complacently hide behind the protection of the courts. During the twentieth century, and more particularly since the end of World War II, infants have acquired practically unlimited opportunities to contract because of the general acceptance and use of conditional sale agreements, increased spending power and increased freedom from parental influence and control.

---

4 (1958), 11 D.L.R. (2d) 477.

5 *Supra*, note 3.

6 Halsbury's *Laws of England*, 2nd ed., vol. 17, p. 586.
Note: The third edition does not contain any statement as clear and concise as the second edition.

As a result, the commercial world is being duped more and more by infants who are abusing their status to the point where one must consider whether the law is correct.

In view of these changed social conditions, it is submitted that the legal age of capacity should be lowered from twenty-one to eighteen. Although this change would necessarily have to be implemented by the legislature, such a step is by no means unprecedented. There are three New Brunswick Statutes that have dealt with this problem.

In the *Co-Operative Associations Act*[7] we see an exception to the general rule; a person between sixteen and twenty-one years of age will be bound by his acts as a member of a co-operative association whether or not such acts are prejudicial to his interests.

The second statute is the *Insurance Act*[8] whereby an infant at sixteen can contract for life insurance which will be enforced as though he were twenty-one. Further, beneficiaries who are at least eighteen years of age can discharge an insurance company for money received as a beneficiary and such payor is assured the discharge will be binding on the infant.

The third statute which has lowered the age of capacity is the *Mining Act*.[9] By this Act a youth of eighteen may obtain a

7 R.S.N.B., 1952, c. 40:
S. 18. Except where an Association is composed of corporate members, or except under the provisions of section 51, every member must be a person of the full age of twenty-one years provided, however, that an Association may, by supplementary by-law, reduce the age for membership to not less than sixteen years.
S. 19. A person under the age of twenty-one years, who under a supplementary by-law may become a member, shall have power to execute all instruments and give all acquittances required of a member under the provisions of this Act or any regulation or by-law made hereunder.

8 R.S.N.B., 1952, c. 41, as amended 1960:
S. 154. Except in respect of his rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of twenty-one years
(a) to make an enforceable contract; and
(b) in respect of a contract.
S. 155. A beneficiary who has attained the age of eighteen years has the capacity of a person of the age of twenty-one years to receive insurance money payable to him and to give a discharge therefor.

9 R.S.N.B., 1952, c. 45, as amended 1961-62:
S. 32. (1) Any natural person over eighteen years of age may, on payment of the prescribed fee, obtain a prospecting license, Form A.
S. 32. (10) A licensee under the age of twenty-one years shall in respect of all mining claims or mining rights and all matters and transactions relating thereto have the same rights and be subject to the same obligations and liabilities as if he were of full age.

prospecting licence, thereby subjecting himself to the same obligations and liabilities as if he were of full age.

These statutory provisions make it clear that persons under the age of twenty-one who are enjoying the benefits allowed them by these statutes will be liable for their actions. There are, in addition, several areas of statute law affecting infants' rights which are of a permissive nature. The *Trustees Act*[10] states that an infant may act as a trustee. The *Wills Act*[11] declares that a married person, a member of the armed forces on active service, or a mariner or seaman while at sea can make and revoke a will even though in each case the person is under the legal age of twenty-one. Further, the *County Courts Act*[12] and the *County Magistrates Act*[13] allow a person under twenty-one years of age to sue for wages due to him in the same manner, and subject to the same liability for costs, as if he were of full age.

While it is clear that the legislature has made a start in changing the status of infants in some areas, it is submitted that this policy should be extended to other areas of the law. Under present conditions, as seen in the *Noble* case, a person twenty years of age who purports to be twenty-one can deceive a vendor, since infants nineteen to twenty-one often exhibit an air of maturity. However, if a seventeen-year-old purports to be eighteen, a vendor will be much more cautious before allowing him to take possession of an expensive item on credit. A person of that age will often portray an immature air which will immediately caution a vendor. In addition, persons seventeen years of age and under are normally under the influence of their parents or guardians thus allowing fewer instances where problems might arise.

Because of sociological changes and the need of the law to maintain the respect of citizens, it is submitted that the legislature should consider the above recommendations, particularly in the light of the decision in *Bellefleur v. Noble's Limited.*

C. Gordon Simmons*

INDIANS — FEDERAL AND PROVINCIAL STATUTES — TREATY RIGHTS — HUNTING AND FISHING.

With the intent to save migratory birds "from indiscriminate slaughter" and to assure their preservation, Great Britain, on behalf of Canada, entered into a Convention with the United States, in

10 R.S.N.B., 1952, c. 239, s. 27.
11 R.S.N.B., 1952, c. 15, ss. 5 and 8, as amended 1959.
12 R.S.N.B., 1952, c. 45, s. 19.
13 R.S.N.B., 1952, c. 46, s. 33(3).
* C. Gordon Simmons, II Law, U.N.B.