considers the lower court as lacking in power to appoint a receiver because another court had assumed jurisdiction by appointing a receiver and the assets of the action were in custodia legis. The appointment was considered void and the writ of prohibition issued. In the more recent case of *State ex rel. Hyde v. Westhues, Circuit Judge, 316 Mo. 457, 290 S.W. 443 (1927)* the court reaffirmed the general proposition that a writ of prohibition issues only where an inferior court proceeds without jurisdiction or in excess of jurisdiction, and expressly found the act of the lower court to be void before they issued the writ. The injunction restraining the prosecution of the contempt proceedings has been shown not to be void and consequently the writ of prohibition should not have been granted the petitioner here.

Further reason for denying the writ of prohibition might be found in that the petitioner had an adequate remedy at law. It has been held that such a writ will be denied when this is the case. *Mastin v. Sloan, 41 Mo. 44, 11 S.W. 558 (1889); State ex rel. Burns v. Shain, Circuit Judge, 297 Mo. 369, 248 S.W. 591 (1923).* That the petitioner's rights might well have been protected by an appeal is shown by the proceedings in the case of *Peterson v. Chicago, B. & Q. Ry. Co., supra.*

One sympathizes with the result of the Missouri case, but in considering the extraordinary nature of the writ of prohibition it would seem advisable to let the petitioner seek his remedy by appeal.

*John P. Barnes, Jr.*

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**Equity—Specific Performance—Contract to Support Infant—[New York].**—Defendant agreed with the infant plaintiff's mother that if she would bring the plaintiff to New York from his uncle's home in Holland, and would permit the defendant to direct the plaintiff's education and religious training, the defendant having the benefits of the infant's companionship, then he, the defendant, would support the plaintiff for life. The plaintiff and his mother performed as far as possible, but after two years the defendant refused to perform further. The mother, as guardian, sued for specific performance. The Special Term's order denying the defendant's motion to dismiss the complaint was affirmed in the Appellate Division, with one judge dissenting on the ground of lack of mutuality, 236 App. Div. 14, 257 N.Y.S. 738 (1932); and reaffirmed in the Court of Appeals. *Weinberger v. Van Hessen, 260 N.Y. 294, 183 N.E. 429 (1932).*

The highest court concluded that the plaintiff, in suing, assumed the duty of full performance, citing *Epstein v. Gluckin, 233 N.Y. 490, 135 N.E. 861 (1922);* and that a decree conditioned upon the plaintiff's continued performance would protect the defendant. However, not only would the infancy of the plaintiff preclude the enforcement of the contract as against him, but the performance required would not be enforced in any event, on account of the delicate personal relationships involved; and it may be doubted whether that performance which the plaintiff might be disposed to render, short of full performance, would be so substantially equivalent, in its proportion to the whole performance contemplated, to the performance required of the defendant during that time, that a conditional decree would in fact be just to the defendant. See notes on the principal case in 17 Minn. L. Rev. 453 (1933), and 46 Harv. L. Rev. 724 (1933); and see also 17 Iowa L. Rev. 388 (1932). Compare the cases of contracts to devise in consideration of personal care. *Poe v. Kemp, 206 Ala. 228, 89 So. 716 (1921);* contra, *Davis v. Davis, 13 N.J.Eq. 246 (1861),* and see dictum in *Teske v. Ditibener, 65*
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In the present case, in order to obtain the money for his support, the child would have to submit to such directions with respect to his education as the now unwilling defendant might feel morally obligated to give, which might not be the best arrangement for the child. But only by so binding the plaintiff could the court secure to him the needed support; and perhaps the better solution was reached, in placing the power to terminate the relation, if it should become intolerable, in the plaintiff, who probably stood to lose the most by the termination.

**FRED M. MERRIFIELD**

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**Equity Practice—Necessary and Indispensable Parties—Objection of Nonjoinder Raised for First Time by Appellate Court—[Illinois].—** Only rarely has an appellate court, on its own motion, raised the objection of the absence of a necessary party to an equity suit. However, this was done recently by the Illinois Supreme Court. A testator devised land to one of his sons, James, for life and at his (James') death to the heirs of his body. If no heirs of James' body survived him, then the land was to go to the testator's heirs. After the birth of James' only son, James and the testator's heirs conveyed the land to *R* for the purpose of destroying the son's interest. A grantee of *R* mortgaged the land to *X*. The son died, and James' divorced wife brought this bill to construe the will, joining as defendants the grantors and grantee in the deed to *R* and subsequent grantees, but failing to join *X*, the mortgagee. A demurrer to the bill was sustained on its merits. No party litigant ever raised the question of the nonjoinder of the mortgagee. *Held*, the mortgagee was a necessary party and the decree for defendants (favorable to the absentee) should be reversed solely because of his absence. *Hauser v. Power*, 183 N.E. 580 (Ill. 1933).

Courts have been very loath to reverse a decree on this ground when no objection was made in the lower court, often stating that an objection made for the first time on appeal is not favored and will not be sustained when the decree is in favor of the absentee's interests, even when the decree is for the complainant, unless the absent par-