

really believed that the defendant had exceeded the permissible limits of bargaining zeal, or had taken advantage of the beneficiary's ignorance, it might have brought the case within the boundaries of fraud, mistake, or duress, or it might have gone one step further to make use of the fiduciary concept which it set forth. Instead, it took elaborate pains to fit the facts into the rigid mold of the rule in *Pimmel's Case*. The slight additional bulge that extensive use of the fiduciary concept might make in technical contract doctrines would be justified by the resulting clarity, flexibility, and fairness in the law.

LIMITATION ON MINORS' COMMON LAW POWER TO DISAFFIRM CONTRACT

In response to a problem presented by the motion picture industry, the California legislature provided in 1927 that "[a] minor cannot disaffirm a contract otherwise valid to perform or render services as actor, actress, or other dramatic services where such contract has been approved by the superior court of the county where such minor resides or is employed. . . ."¹ In 1941 the section was amended to include within its provisions contracts for the services of professional athletes.² Twenty years after its enactment, the constitutionality and application of the statute were challenged in *Warner Bros. Pictures, Inc. v. Brodel*.³

In 1942, when 17 years of age, Miss Brodel, known professionally as Joan Leslie, entered into a contract with Warner Brothers Studios which was subsequently approved by the Superior Court of Los Angeles under the statute. The contract provided that Miss Brodel should perform as a motion picture actress for one year and that Warner Brothers should have six successive options, exercisable over a six-year period, permitting the employer at the end of each year to extend the time of employment for an additional period of 52 weeks. On February 20, 1946, within a month after reaching her majority, Miss Brodel attempted to disaffirm the contract. In a subsequent suit to enjoin this alleged breach of contract, the California Supreme Court upheld the validity of the contract and the option to extend, and Miss Brodel was enjoined from her attempted disaffirmance.

In defending against the suit for injunction, Miss Brodel contended that the Superior Court had approved only the first year's contract, and, under the statute, lacked jurisdiction to approve any options for its extension. Although the trial court, the District Court of Appeals, and two members of the Supreme Court agreed with this position, the majority decision in the instant case rejected such a construction as contrary to the legislative intent.⁴ The defendant also

¹ Cal. Stat. 1927, c. 876, p. 1917.

² Cal. Civ. Code Ann. (Deering, 1941) § 36.

³ 192 P. 2d 949 (Cal., 1948).

⁴ The California legislature indicated its disapproval of the decision by the District Court of Appeals, *Warner Bros. Pictures v. Brodel*, 179 P. 2d 57 (Cal. App., 1947), by amending

argued that the act applied only to "minors" and thus did not bar the disaffirmance of a contract by one who had reached his majority—though the contract was made when he was a minor; as concluded by the appellate court, "the state did not have power, if it had so attempted, to deny her that right upon her reaching majority."⁵ The latter contention is untenable. Although the power of the state to regulate the affairs of a minor has traditionally been recognized as resting on the doctrine of *parens patriae*, the state's power to regulate the contractual affairs of all persons, infant and adult alike, has also been recognized on other grounds. Hence, any such regulation is valid so long as it does not violate some provision of the federal or the state constitution.⁶

The Constitution of the United States prohibits the states from passing any laws impairing the obligation of contracts.⁷ Commercial pressure for the enforcement of contracts caused insertion of this clause into the Constitution, and the cases arising under this section have reflected this pressure by recognizing uniformly the power of the states to enlarge the area of enforceability.⁸ It is therefore unreasonable to contend that the state is impotent to make enforceable against an adult a contract entered into during his minority. An interpretation of the California statute as limiting the effect of court approval of an infant's contract to his minority, excluding acts of disaffirmance after he reaches majority, is unjustified in the light of the legislative history of a statute which was enacted for the specific purpose of protecting the investments made by moving picture companies in the training and promotion of juvenile actors. Such protection would to a large extent be illusory if juvenile stars could break their contracts freely even though they had been found fair and adequate by the approving court. A person's right to disaffirm contracts entered into during infancy within a reasonable time after attaining majority seems merely an extension, for the convenience of the former infant, of his premajority right. Once the latter has been done away with by court approval under a concededly valid statute, the only logical holding is that the former is entitled to no special protection and should disappear as well.

§ 36 (2) specifically to include options for extensions and other accessory provisions, Cal. Civ. Code (Hillyer-Lake, 1947) § 36 (2). The majority of the Supreme Court considered this amendment as further support for its determination of the original legislative intent. The two dissenting judges, however, felt that subsequent amendments were irrelevant to such a determination.

⁵ Warner Bros. Pictures v. Brodel, 179 P. 2d 57, 70 (Cal. App., 1947).

⁶ The arguments that barring the right of disaffirmance of actors and professional athletes was a denial of equal protection of the laws and a violation of the provision of the California Constitution against special legislation were rejected on the usual ground that the legislature is not required to remedy all evils at once. Warner Bros. Pictures v. Brodel, 192 P. 2d 949, 955 (Cal., 1948).

⁷ U.S. Const. Art. 1, § 10.

⁸ Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934); Ogden v. Saunders, 12 Wheat. (U.S.) 212 (1827); Sturges v. Crowninshield, 4 Wheat. (U.S.) 120 (1819).

Unfortunately, this local reform with respect to a particular situation is minor in comparison with the generally unsatisfactory state of the law of infants' transactions. Both the common-law and statutory provisions have been discussed and analyzed by a number of authors.⁹ The common law protects the minor against his own improvidence, inexperience, and indiscretion by placing his affairs in the hands of a guardian, whose agreements, however, do not bind the ward. Infants over the age of six have the legal capacity to enter into contracts with adults. Although these agreements are binding on the adult, they are voidable, with certain exceptions, by the infant. Under this system, a minor is not only protected against the effects of his own improvidence and inexperience, but is able to speculate at the expense of the adult party.¹⁰ He can do so until he reaches his majority and for a "reasonable" time thereafter, which under prevailing judicial practice may be a period of considerable duration.¹¹ This exceedingly favorable treatment of the infant is an obvious deterrent to adults from entering into any transactions with infants. Anyone who has to transact any business concerning a minor's property is safe only if he deals with the guardian, who is personally liable for any transactions made by him.¹² In cases of emergency not permitting delay for action by the guardian, the infant may bind himself under the "necessaries rule" for the reasonable value of the goods or services he obtains.¹³ One who wishes to engage a minor's personal services ought to deal neither with the minor nor with his guardian, but only with the parent, because only the parent is entitled to his child's services and earnings.¹⁴

Following the example of the civil law¹⁵ a considerable number of states have supplemented the common-law rules by statutory provisions empowering an appropriate court, in proper cases, to declare a minor to be invested with full or partial power to enter into binding transactions.¹⁶ In that way a minor of suffi-

⁹ The common law of infants' contracts is exhaustively discussed in 1 Williston, *Contracts* §§ 222-48 (rev. ed., 1936). American statutory provisions are comprehensively and analytically discussed in 5 Vernier, *American Family Laws* § 273 (1938); Vernier, *American Family Laws* § 273 (Supp., 1948); N.Y. Law Rev. Comm'n Legis. Doc. No. 651 (1938); *Statutory Problems in the Law of Minors' Contracts*, 48 Col. L. Rev. 272 (1948).

¹⁰ *Sternlieb v. Normandie Nat'l Securities Corp.*, 263 N.Y. 245, 188 N.E. 726 (1934); *Liability of the Infant in Contract*, 20 Iowa L. Rev. 785 (1935).

¹¹ It can never, however, exceed the period of the statute of limitations. *Taylor v. Fleming*, 68 Mich. 185, 35 N.W. 902 (1888).

¹² The guardian may reimburse himself out of his ward's estate if the court under whose authority he is acting approves the transaction as reasonable.

¹³ The common-law rule that a minor may make himself liable for goods or services necessary to one in his station in life is codified in § 2 of the Uniform Sales Act, in force in thirty-six American jurisdictions. 1 Williston, *op. cit. supra* note 9, at §§ 240-43.

¹⁴ *The Hattie Low*, 14 Fed. 880 (D.C. N.Y., 1882).

¹⁵ Almost every civil law jurisdiction follows the model of either the French or the German code. Ger. Civ. Code (1900) §§ 104-15, 1821-22, 1643; Fr. Code Civil (Roblot, 1946) Book I tit. 9, 10, Book III tit. 3; 1 Planiol, *Droit Civil* (12th ed., 1939) Part III, c. i, La Tutelle.

¹⁶ Ala. Code Ann. (Mitchie, 1940) tit. 27, §§ 13-20; Ark. Ann. Digest (Pope, Supp., 1944) Conveyances, 2, § 1; Fla. Stat. (1941) §§ 62.23-26; Kan. Gen. Stat. (Corrick, 1935) §§ 38-

cient maturity can be enabled to carry on an independent business. In addition, almost every state has some legislation regulating specific limited types of transactions.¹⁷ Unfortunately, several factors decrease the effectiveness of statutory reforms. Legislation of the civil-law type is not universal. Where it does exist, it is not always resorted to,¹⁸ and various abuses occur. Further, the precarious situation of parties dealing with minors is not generally known among the public. Finally, an occasional minor may misrepresent his age. Thus, it happens that unwary adults find themselves exposed to the operation of the common-law rules. The principal devices developed by the courts in their efforts to adapt the ancient rules to modern conditions have been centered around the restoration of the consideration received by the minor as a condition of disaffirmance. They include the status quo rule, the requirement of restoration of any consideration retained by the minor at the time of disaffirmance, and the requirement of restoration of the equivalent of the benefit received.¹⁹

The need for the peculiar California statute, under which the *Brodell* case was decided, arose out of the fact that a contract relating to personal services of a minor, when made by the parent or guardian, does not give the employer a remedy against the minor himself. Unless the minor has himself been a party, no injunction can be obtained against him when, in breach of a contract existing in favor of one motion picture company, the minor starts to work for a competitor. If, however, the minor has made the contract himself, he can disaffirm it. As a result, a statute was necessary under which the contract would be both enforceable against the minor or ex-minor himself and safe from disaffirmance. The California act fulfils both these purposes neatly.

Would it be desirable to extend its scheme to other areas of infants' contracts? The answer must be no. When an adult has to enter into a transaction concerning the property of a minor, he can be perfectly safe simply by dealing

110; La. Civ. Code Ann. (Dart, 1947) art. 385-88; Miss. Code Ann. (Supp., 1946) §§1264-68; Okla. Stat. Ann. (1941) tit. 10, §§ 91-94; Tenn. Code Ann. (Mitchie, 1938) §§ 103.70-74; Tex. Ann. Rev. Civ. Stat. (Vernon, 1925) art. 5921-23; Wyo. Comp. Stat. Ann. (1945) §§ 7-501, 7-503. In Arkansas the court may remove the incapacity only of non-resident minors over sixteen, if females, or eighteen if males. Mississippi courts may remove the disability of non-resident minors who have an interest in land in their jurisdiction only in regard to the property, but have general emancipating power over resident minors.

¹⁷ This area has been surveyed comprehensively in a recent note, *Statutory Problems in the Law of Minors' Contracts*, 48 Col. L. Rev. 272 (1948).

¹⁸ Samuels, *Special Legislation Removing Disabilities of Infancy*, 15 Tenn. L. Rev. 655 (1939), presents the spectacle of state legislators logrolling special bills of emancipation in utter disregard of existing provisions for judicial emancipation.

¹⁹ There is some conflict among the authorities whether the status quo rule or the rule requiring restoration of such consideration as the minor retains at majority is the prevailing common-law rule. 1 Williston, *op. cit. supra* note 9, at § 238; 3 Page, *Contracts*, § 1617 (2d ed., 1920). The "benefit rule" has been developed by the courts in New Hampshire and Minnesota and seems the most equitable. *Berglund v. American Multigraph Sales Co.*, 135 Minn. 67, 160 N.W. 191 (1916); *Hall v. Butterfield*, 59 N.H. 354 (1879); *Modern Limitations upon the Infant's Power to Disaffirm His Contracts*, 81 U. of Pa. L. Rev. 731 (1933).

with the guardian. If the infant does not have a guardian, an application to have one appointed can be made at any time to the proper court. Where it is desirable to satisfy the intention of an infant to set out for himself in a business in which he will have to make an indefinite number of agreements and transactions, the simple statutory remedy is judicial emancipation upon the pattern mentioned above.²⁰ No necessity exists, within the framework of American law, for interposing a court's discretion for that of a judicially supervised guardian. The only exception²¹ is a contract for a minor's personal services; in this one situation intervention by a court as provided by the California statute is justified because of the lack of any other adequate solution.

WAIVER OF CONSTITUTIONAL GUARANTEE RELATING TO PLACE OF CRIMINAL TRIAL

The defendant was indicted by a South Dakota grand jury for forging a postal money order in that state. After her arrest in Oregon, the accused signed a declaration acknowledging her willingness to file a plea of guilty with the Oregon District Court and to waive her right to trial in South Dakota, as provided by Rule 20 of the Federal Rules of Criminal Procedure.¹ Upon presentation of the guilty plea the Oregon court held that the constitutional provision for place of trial is not a personal right subject to waiver and that "the place of indictment, trial, and sentence in the state and district where the act was committed is part of the jurisdictional structure of each of the federal trial courts." Rule 20 was therefore declared a violation of Article 3, Section 2,² and the Fifth and Sixth Amendments to the Constitution. *United States v. Bink*.³

The right to trial by a jury selected from the vicinage has been secured by the common law since the Magna Charta, but, like other common-law rights, has been subject to change by statute. Acts of Parliament transferring the place of trial from one county to another,⁴ particularly where the crime was a serious

²⁰ Note 16 supra.

²¹ Special problems arise in regard to infants' contracts of employment both because the parent is entitled to the earnings of the child and because the remedy is frequently inadequate unless the minor can be prevented from breaching the contract; cf. Cal. Civ. Code (Hillyer-Lake, 1947) § 34.

¹ "A defendant arrested in a district other than that in which the indictment or information is pending against him may state in writing, after receiving a copy of the indictment or information, that he wishes to plead guilty or nolo contendere, to waive trial in the district in which the indictment or information is pending and to consent to disposition of the case in the district in which he was arrested, subject to the approval of the United States attorney for each district. . . ." Rule 20, 18 U.S.C.A. foll. § 687 (Supp., 1947).

² "The Trial of all Crimes . . . shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed. . . ."

³ 74 F. Supp. 603 (Ore., 1947), noted in 46 Mich. L. Rev. 964 (1948); 96 U. of Pa. L. Rev. 443 (1948); 36 Geo. L. J. 263 (1948).

⁴ 4 Bl. Comm. *303; see also Blume, The Place of Trial in Criminal Cases, 43 Mich. L. Rev. 59, 60-63 (1944).