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New Jersey,[31] to the effect that the Fourth and Fifth Amendments to the constitution of the United States have no application to the trial of cases in state courts, and the due process clause of the Fourteenth Amendment affords no protection against self-incrimination.[32]

In conclusion it is seen that most of the courts that have dealt with the matter have admitted into evidence the results of chemical tests where the tests were administered voluntarily, but have become concerned where the tests were taken under compulsion, or not on a purely voluntary basis.

To be sure, the relationship of alcohol to automobile accidents and the role which it plays in the growing death toll on the highways of the nation, renders it a problem of the first magnitude. The questions involved in the use of compulsion to administer chemical tests moreover involve many social as well as constitutional factors and must, for their complete determination, abide the limitations placed by public policy and the natural reluctance on the part of the courts to admit evidence procured by force to sustain future criminal prosecution.

With heavier penalites being imposed on persons convicted of driving while under the influence of intoxicating liquors,[33] as in Illinois, it is exceedingly doubtful whether it be a wise policy to permit police officers to force a chemical test upon an unwilling motorist. The opportunities for abuse of the power and the temptation to attempt to bribe the arresting officers before they carry out the test would be strong indeed.

PARENT AND CHILD—PARENT HELD LIABLE FOR UNAUTHORIZED MEDICAL SERVICES RENDERED CHILD

A physician brought action against the parents of a minor child, to recover a reasonable fee for professional services rendered to the child without express authorization by the parents. The Supreme Court of New Jersey reversing the lower courts, held that where a physician, to whom the child was sent by physician's co-suitor, did not act officiously and intended to make a charge for services, the child's parents,

[31] 211 U.S. 78 (1908).

[32] Palko v. Connecticut, 302 U.S. 319 (1937).

[33] Ill. Rev. Stat. (1951) c. 95½, § 144, as amended, 1953, June 24, Laws 1953, H.B. No. 475, § 1. The amendment provides as follows: "(a) It is unlawful and punishable as provided in subdivision (b) of this section for any person who . . . is under the influence of intoxicating liquor or narcotic drug to drive any vehicle within this state. (b) Every person who is convicted of a violation of this section shall be punished by imprisonment for not less than two days nor more than 1 year, or by fine of not less than $100 dollars nor more than $1000 or by both such fine and imprisonment."

who had refused to provide the child with immediate medical aid necessary to prevent permanent injury, were under a legal obligation to pay for the medical services rendered. *Greenspan* v. *Slate*, 97 A. 2d 390 (N.J., 1953).

The question whether the father is under a legal obligation to provide for the necessary maintenance of his minor children has led to a considerable conflict of opinion and adjudication in the courts of different states. At common law neither the child nor any third party who ventured to supply the child with necessaries had any cause of action against the parents to enforce the duty of support, which Blackstone termed "a principle of natural law,"[1] unless based on the principle of agency, expressed or implied in fact.[2] While it is true, beyond any question, that the common law imposed upon parents the duty of protecting, educating, and maintaining their children, it is also true that the common law never afforded any means of enforcing this obligation.[3]

In England and a number of states in this country which follow the common law rule it is maintained that the moral duty in such cases to provide proper support does not constitute a legal duty, enforceable by action. Because it is considered a moral duty, courts have held, as in *Kelley v. Davis*,[4] that a parent cannot be charged for necessaries furnished by a stranger for his minor child, except upon a promise to pay for them and such promise is not to be implied from a mere moral obligation. These cases hold that the omission of duty from which a jury may find a promise by implication of law must be a legal duty, capable of enforcement by process of law.

Thus, under this rule, the only basis for holding a father liable for necessaries furnished to his child by others is that the child has an express or implied authority from the father to make such contracts.[5]

The common law rule has been modified to allow a third person to recover in cases where the authority of an infant to bind the father for necessaries may be inferred from slight evidence. In *Hollingsworth v. Swedenborg*[6] the court was of the opinion that, unless there existed an express contract, or one implied in fact, a father could not be sued

[1] 1 Bl. Comm. 447.

[2] Mortimore v. Wright, 6 M. & W. 482 (Exch. Div., 1840).

[3] Wellesley v. Duke of Beaufort, 2 Russ. 23 (1826).

[4] 49 N.H. 187 (1870).

[5] Armstrong Clothing Co. v. Boggs, 90 Neb. 499, 133 N.W. 1122 (1912); Ramsey v. Ramsey, 121 Ind. 215, 23 N.E. 69 (1889); Johnson v. Smallwood, 88 Ill. 73 (1878); Freeman v. Robinson, 38 N.J. L. 383 (1876); Kelley v. Davis, 49 N.H. 187 (1870); Swain v. Tyler, 26 Vt. 9 (1853); Gordon v. Potter, 17 Vt. 348 (1845); Mortimore v. Wright, 6 M. & W. 482 (1840).

[6] 49 Ind. 378 (1875).

for the price of necessaries provided for his infant son, yet very slight circumstances would justify a jury in finding a contract on his part. Such an inference is drawn where a child purchases necessaries without the father's consent or knowledge and the father subsequently learns of these purchases and either remains silent or makes some objection without returning the goods.[7] It appears that the variation was devised in an effort to achieve a measure of justice with respect to the maintenance of a child in comparison with that available to a neglected wife. The law imposes an obligation on a husband for the benefit of the deserted wife without regard to whether or not there was any agency in fact, but no such obligation exists in similar circumstances involving the minor children.[8] This modification has been criticized in the instant case as ineffective because it does not reach the cases "where no express promise exists or where there is no slight evidence from which to infer a promise."[9]

In other states the view is taken that the father is under a legal obligation, irrespective of such relation of agency.[10] If, therefore, he does not provide necessaries for the child's support, according to his means, the child may procure them from tradesmen or others upon the father's credit.[11] The principle upon which these courts proceed is that, since a parent is under a natural obligation to supply his minor children with necessaries, if he neglects that duty, a third person supplying such necessaries is deemed to have conferred a benefit upon the delinquent parent for which the law raises an implied promise on his part to pay. This rule, however, is subject to similar qualifications as is the law of husband and wife, and if the father himself duly supplies necessaries, a tradesman, who, in ignorance thereof, supplies like articles, cannot recover.[12]

Equity has long exercised a salutary jurisdiction over cases of this kind. In Equity, the parent's obligation to support a child is much more than a principle of natural law; it is an obligation enforced where-

[7] Johnson v. Smallwood, 88 Ill. 73 (1878); Freeman v. Robinson, 38 N. J. L. 383 (S.Ct., 1876).

[8] Clothier v. Sigle, 73 N.J. L. 419, 63 Atl. 865 (S.Ct., 1906).

[9] Greenspan v. Slate, 97 A. 2d 390, 392 (Mass., 1953).

[10] Finn v. Adams, 138 Mich. 258, 101 N.W. 533 (1904); Manning v. Wells, 85 Hun. (N.Y.) 27, 32 N.Y.S. 601 (1895); Porter v. Powell, 79 Ia. 151, 44 N.W. 295 (1890); Pretzinger v. Pretzinger, 45 Ohio St. 452, 15 N.E. 471 (1887); Gilley v. Gilley, 79 Me. 292, 9 Atl. 623 (1887); Brow v. Brightman, 136 Mass. 187 (1883); cf. Sassaman v. Wells, 178 Mich. 167, 144 N.W. 478 (1913); De Brauwere v. De Brauwere, 203 N.Y. 460, 96 N.E. 722 (1911).

[11] Cases cited note 12 supra.

[12] Johnson v. Smallwood, 88 Ill. 73 (1878).

ever equity has jurisdiction on equitable principles in the light of the individual case.[13] In the case of *Alling v. Alling*[14] the court held that although it has no jurisdiction to compel a parent to support an infant child,[15] the court will consider and determine the parent's duty toward the child and his or her ability to perform that duty. However, the court can make this determination only if the child has independent property of his own and the question arises as to how much the parent should be allowed from the fortune to support the child.

The instant case, in reversing the lower courts, held that it was not bound by the decision in *Freeman v. Robinson*[16] or any subsequent case adhering to the view of that case because the question was never decided by a New Jersey court of last resort. The court in the *Freeman* case held that where the parent had given no authority to the child and had entered into no contract, he would be no more liable for necessaries than a mere stranger would be. The court preferred the earlier New Jersey decision in *Tomkins v. Tomkins*[17] which followed *Van Valkinburg v. Watson*,[18] a New York case enunciating the prevailing American view. The court in the *Tomkins* case held that a parent was bound to provide his infant children with necessaries and if he failed to do so, a stranger could supply them and recover therefore. However, such third persons must take notice of what is necessary for the infant, according to his situation in life. Where the infant lives with his parents, and is provided for by them, a person furnishing necessaries cannot charge the parent.[19]

> When the infant is *sub potestate parentis*, there must be a clear and palpable omission of duty, in that respect, on the part of the parent, in order to authorize any other person to act for, and charge the expense to the parent.[20]

Just how strongly the instant court felt about the inequities of the common law rule was apparent throughout the opinion but is best exemplified in the following quotation:

[13] Funk's Guardian v. Funk, 130 Ky. 354, 113 S.W. 419 (1908); In re Carter, 120 Ia. 215, 94 N.W. 488 (1903); McKnight's Executors v. Walsh, 24 N.J. Eq. 498 (1873); Ex Parte Kane, 2 Barb. Ch. 375 (1847).

[14] 52 N.J. Eq. 92, 96 (1893).

[15] In re Ryder, 11 Paige (N.Y.) 185 (1844); Hodgens v. Hodgens, 4 Cl. & F. 323 (1837).

[16] 38 N.J. L. 383 (S.Ct., 1876).

[17] 11 N.J. Eq. 512 (1858).

[18] 13 Johns. (N.Y.) 480 (S.Ct., 1816).

[19] Simpson v. Robertson, 1 Esp. 17 (1793); Ford v. Fothergill, 1 Esp. 211 (1793).

[20] Van Valkinburg v. Watson, 13 Johns. (N.Y.) 480, 482 (S.Ct., 1816).

It shocks one's sensibilities to think that the common law would permit a wealthy parent to do no more than respond to the minimum demands of the Poor Law [a statute providing for a maximum fine of 20s a month for any parent neglecting his children], while he himself is living in affluence.[21]

The principles governing the application of the rule followed by the New Jersey Supreme Court are set forth in three sections of the Restatement of the Law of Restitution.[22]

A person who has performed the duty of another by supplying a third person with necessaries, although acting without the other's knowledge or consent, is entitled to restitution from the other therefore if (a) he acted unofficiously and with intent to charge therefor, and (b) the things or services supplied were immediately necessary to prevent serious bodily harm to or suffering by such person.[23]

In Illinois, either an express promise, or circumstances from which a promise by the father can be inferred, are necessary, in all cases, to bind the parent for necessaries furnished his infant child by a third person.[24] The courts have held firmly to this view since *Hunt v. Thompson*[25] and there is no indication in any of the subsequent decisions that a change it contemplated. In the *Hunt* case, the court held:

. . . as a general rule, the obligation of a parent to provide for his offspring is left to the natural and inextinguishable affection which Providence has implanted in the breast of every parent. This natural obligation, however, is not only a sufficient consideration for an express promise by a father to pay for necessaries furnished his child, but when taken in connection with various circumstances, has been held to be sufficient to raise an implied promise to that effect.[26]

The common law has been superseded by the more enlightened, humanitarian view as expressed in the instant case. It seems that the only reason for its continuance in the minority of jurisdictions is the fear of the modern rule's effect in operation. However, long experience with the modern view in many jurisdictions has proven these fears to be altogether groundless.

21 Greenspan v. Slate, 97 A. 2d 392, 398 (Mass., 1953).

22 §§ 112, 113, 114 (1937).

23 Rest., Restitution § 114 (1937).

24 Johnson v. Smallwood, 88 Ill. 73 (1878); Murphy v. Ottenheimer, 84 Ill. 39 (1876); McMillen v. Lee, 78 Ill. 443 (1875); Hunt v. Thompson, 3 Scram. (Ill.) 179 (1840).

25 3 Scram. (Ill.) 179 (1840).

26 Ibid. at 180.