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Liability of a Father for Necessaries Furnished to His Minor Child by Third Persons

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LIABILITY OF A FATHER FOR NECESSARIES FURNISHED TO HIS MINOR CHILD BY THIRD PERSONS.

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There are three leading duties which a father owes to his child - maintenance, protection, and education. These duties rest upon a principle of natural law but may be, perhaps more reasonably, referred to the implied obligation which parents assume in entering wedlock and bringing children into the world.

The duty with which we are concerned in this thesis is that of maintenance. This obligation is so well secured that it seldom requires to be enforced by human laws. As Puffendorf observes, the duty of maintenance is laid on the parents not only by nature herself but by their own proper act in bringing children into the world. Maintenance is defined by Schouler to be that support

which one person gives to another for his living. At common law the duty extends only to the necessary support and in general it ceases as soon as the child is of age. The civil law goes farther than the common law and will and will not suffer a parent, at his death, to totally disinherit his child without expressing his reason for so doing and his reason must be good. The English law, by the statutes 43 Elizch 2 and 5 Geo. I ch. 8, requires the father and mother, grandfather and grand mother, of poor impotent persons, to maintain them at their own charges, if sufficient ability, and if a parent runs away, and leaves his children, the church wardens and overseers of the parish shall seize his rents, goods, and chattels and dispose of them towards their relief. No person is bound to provide a maintenance for his issue, unless where the children are impotent and unable to work, either through infancy, disease, or accident and then is only obliged to find them with necessaries, the penalty of refusal being not more than 20 shillings a month. These statutes may be said to be a part of the common law of this country and have been reenacted in the statutes of some of the states - some of which leave out the clause

relating to grand parents.

The question as to whether, in the absence of statute, a father is under a legal obligation to provide for the necessary maintenance of his minor children, is one which has led to great conflict of adjudication in the courts of the different states. Some states hold that t the duty is a legal one irrespective of statutes and the statutes of some states make the duty a legal one. In such states, third parties may always recover for necessaries furnished to an infant if the father fails to ppovide proper maintenance. So long as the father performs his duty faithfully, no one can interfere, but as soon as he fails in his duty, any third person may step in and compel him to perform by furnishing the infant with neces saries and then holding the father liable for them in an action, and they may do this even where the father expressly forbade them to furnish the child with the articles. The law in these states is the same with regard to married women and infants. All the tradesman has to prove is that the articles are necessaries and that the father has failed to provide them. Whether the infant be at home or abroad, if the father fails to furnish him

with proper maintenance, a third person may do so and charge the father in an action.

The term "necessaries" is a relative one; what would be necessaries in one case might not be in another. Necessaries are not merely such things as are absolutely essential to the support of the infant but are such things as are suitable to his station in life and his circumstances at the time. Such things as food, clothing, lodging, and medical attendance are clearly within the rule. While the circumstances of each case will limit the meaning of the term, necessaries, the following suggestion will assist in construction -

(a) The things must be necessary in the particular case for use and not for mere ornament. Jewelry, kid gloves, etc. are not necessaries.

(b) They must be for the substantial good of the infant and not for his mere pleasure. Liquor, cigars, tobacco, bicycles etc. are not necessaries.

(c) They must concern the person and not the estate of the infant. Articles furnished to carry on a business or trade are not necessaries.

(d) They must not be extravagant in quantity or qual-

ity. Things may be of a useful character but the recklessnes with which they are supplied, may take from them the character of necessaries.

(e) They must be necessary to his wants. He must not have been supplied already or the one who supplied them can not recover the price.

If the tradesman proves that the articleshe furnished to the infant were necessaries he may recover. Such is the law in the states where the duty is alegal one.

Some states hold that the moral duty to provide proper support does not constitute a legal duty enforcable by an action. In those states the only doctrine on which a father can be held responsible for necessaries furnished to his child is the doctrine of implied agency. In order to charge a father in an action for necessaries furnished to his infant child, the seller must prove that the father authorized the purchase on credit; he must prove some authority sither expressed or implied. In these states the law governing the liability of a father for necessaries furnished to his infant child is analagous to the law governing the liability of a husband for necessaries furnished to his wife, but it dffers mater-

ially in one respect, viz: a husband may be held liable for necessaries furnished to his wife in certain cases even where he expressly forbade the giving of credit but a father can never be held liable for necessaries furnished to his child unless he expressly or impliedly authorized the purchase on credit. Such consent may be implied from various circumstances such as where the father has authorized similar purchases on credit on former occasions or has not objected to them and has paid the bills, or where the father sees the son wearing clothes which he knows have been purchased on credit and does not object or return them etc. In such cases as these the inference will arise that the father authorized the purchase and he will accordingly be held liable in an action for the price.

A long chain of English authorities uphold this view holding that the parents can not be held liable for necessaries furnished to his child without his consent, either express or implied, and that his consent will be implied only where it would be in case of any other person than a parent.

Bainbridge vs. Pickering 2 W Black 1325 defendant was an infant. Plaintiff sues her for the price of certain feathered caps and other ornamental apparel. The court says: "No man shall take upon him to dictate to a parent what clothing the child shall wear, at what time they shall be purchased or of whom. All this is to be left to the discretion of the father and mother."

Baker vs. Keene 3 Eng. Comm. Law 449. This was an action of assumpsit brought to recover the sum of seventy two pounds for regimentals supplied to the son of defendant. The son was a minor. The defendant had been paying his son's expenses at a military school. The son left school and was gazetted as an ensign. He bought the articles, the price of which is the subject of this action from the plaintiff. The court held that it was a question of fact for the jury whether any authority from the father could be inferred. "A father would not be bound by the contract of the son unless either an actual authority were proved or circumstances appeared from which such authority could be implied."

Fluck vs. Tollemache 11 Eng. Comm. Law 296. This

was an action of assumpsit for clothes supplied to the defendant's son who was a cadet. The son was at school away from home and was only fifteen years old. He ordered the clothes without his father's knowledge. The only thing which connected the defendant with the transaction was a letter written by him to the plaintiff's attorney refusing to pay for the clothes. The court held that the plaintiff could not recover. "An action can only be maintained against a person for necessaries supplied to his son either when he has ordered them and contracted to pay for them or when they have been at first supplied without his knowledge and he has adopted the contract afterwards."

Rolfe vs. Abbott 25 Eng. Comm Law. 400. Assumpsit for a tailor's bill. Defendant's son went with a friend to plaintiff and ordered clothes he being a minor. His friend recommended him as the son of a very respectable gentleman but had no authority from the defendant to do so. It appeared that defendant saw his son wearing the clothes. The court says :"The question in this case is whether these clothes were supplied to the son of the defendant by the assent of the defendant. For to charge

him it is essential that the goods should have been supplied with his assent or by his authority.

The unanimity of these decisions shows that such was the law of Westminster Hall which obviously makes no rpovision for strangers to furnish children with necessaries except when autorized by the parents. Intermeddling strangers have no right to compel a father to support his children. The later English authorities, which I shall now discuss, are even stronger than those I have just cited.

Blackburn vs. Mackey 11 Eng. Comm. Law 295. Action of assumpsit, brought by the plaintiff, a tailor against the defendant, for clothes furnished to the defendant's son when he was under age. The defendant's son was a lawyer's clerk on a small salary and was greatly in need of clothes. The court held that a father is not bound to pay for articles ordered by his son unless the father gives some authority expressed or implied.

Seaborne vs. Maddy 38 Eng. Comm. Law 194. Assumpsit for the board and lodging of the defendant's illegitimate child. The court held that no one is bound to pay another for maintaining his children , either legitimate

or illigetimate, except he has entered into some contract to do so. Every man is to maintain his own children as he himself shall think proper, and it requires a contract to enable another person to do so and charge him for it in an action.

Mortimore vs. Wright Law Jour. 9 Excheq. 58. The defendant's son who was a minor,had lodges with the plaintiff for some time during a part of which he had paid for his board, lodging atc. He afterwards fell ill but continued with the plaintiff who supplied him with necessaries. The father being applied to by the plaintiff for money replied that he could not advanceany. The court held that the plaintiff should be non-suited. In point of law a father who gives no authority and enters into no contract is not liable for goods supplied to his son any more than an uncle, a brother or a stranger would be. If a father does any specific act from which it may be reasonably inferred that he has authorized his son to contract a debt, then he may be liable in respect to the debt so contracted; but the mere moral obligation upon a father to maintain his child affords no inference of a promise to do so. In order to bind a

father for a debt incurred by his son you must prove that he has contracted to be bound in the same manner that you would prove a contract against any other person and it ought not to be left to juries to make the law in each particular case.

Shelton vs. Springett 20 Eng. L. 8 Eq. 281. Assumpsit for meat drink washing lodging and other necessaries provided by the plaintiff for the defendant's son. It appeared that the defendant sent his son, a youth of the age of twenty years to London to look out for a ship, giving him five pounds and telling him to put at a certain hotel. Instead of going there the son went to the plaintiff's coffee-house and stayed fifteen weeks. The father knew nothing of the change. Held that the father is not liable. The law does not authorize a son to bind a father by his contracts. If a father turns his son out in the world the son's only resource in the absence of anything to show a contract on the father's part is to apply to the parish. These cases show conclusively what the law is in England.

In this country there is a great variance of decisions but a careful examination of the cases will show

that the true law is well settled and has only been obscured by some careless decisions. Some learned text writers after a superficial examination of the cases state that a father is liable for necessaries furnished to his child even where he expressly forbade the seller to give his child credit. If this were the law it would cause endless injustice and parents would be ruined by rpofligate sons, the father would be governed by the son instead of the son by the father and the whole fabric of domestic institutions would be overthrown. If trades men were allowed to charge the father in an action for the price of goods furnished to the sn on credit against the afther's express orders, the result would be endless litigation. This would defeat one of the great objects of law i.e. order. In short such a law would be disastrous in all respects. Kent and Blackstone state that this is the law. Kent says "A father is not bound by the contracts or debts of his son even for articles suitable and necessary unless an actual authority be proved or the circumstances be sufficient to imply one. What is necessary for the child is left to the discretion of the parent; there must be a clear omission of duty as to

necessaries before a third person can interfere, and furnish them, and charge the father. If a father drives a child from home by severe usage he is liable for necessaries."

An examination of the cases will show that the cases relied upon by Kent and Blackstone do not support their propositions. Van Valkenburg vs. Watsen is a New York case upon which they both rely. This case was decided upon other grounds, and so is simply dictum. In this case the son lived at home and was well provided for. He went to a store and bought a coat on credit. The court held that, as there was no omission of duty on the father's part, he was not liable. Therefore, this case is not authority for the proposition that, if there is an omission of duty on the father's part he is liable. The opinion of Blackstone and Kent is without the support of any decided case. Lawson on Contracts 129 says "A parent is not under any legal obligation to pay the debts of his child and this extends to necessary food, clothing and shelter," and cites Kelly vs. Davis 6 Am. Rep. 499.

This was an action of assumpsit for goods sold and

delivered to the defendant's minor son. The court held that there is no legal obligation on a parent to maintain his minor son independent of statutory enactment; that a parent can not be charged for necessaries furnished by a stranger to his minor child except upon a promise to pay for them; and that such promise is not to be inferred from mere moral obligations nor from the statutes providing for the reimbursement of towns; but 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.

Many decisions which have held the father liable where there was no authority givenby him, are based on the erroneous statements of Kent and Blackstone. These two writers have done much to obscure the law on this point. The true law is set forth in Gordon vs. Potter 17 Vt. 352.

The defendant's son worked away from home by the month. The plaintiff sold him some cloth for a suit of clothes. It appeared that the father knew of the purchase and gave the son money to have the suit made up and allowed him to wear the clothes about. The court held

that the plaintiff could not recover. This case reviews the English cases and discusses them at length. It settles the law in Vermont that there can be no recovery from a father unless he authorized the purchase on credit Some writers attempt to distinguish this case on the ground that it does not appear that the father did not rpovide suitably for the son, but I do not think that the distinction is warranted by the facts of the case.

Hunt vs. Tompson 3 Seamon 180 is an Illinois case which supports the same doctrine. In this case the son of the defendant while away from home on a visit, bought some clothes. The clothes were necessary as the ones he already had were well worn or out grown. The court held that the plaintiff could not recover the price of the clothes from the father. "An express promise or circumstances from which a promise by the father can be inferre are indispensably necessary to bind a parent for necessaries furnished to his infant child on credit by a third person. This case is supported by later decisions.

French vs. Benton 44 N.H. 30. This case does not decide what is the law in New Hampshire but gives an interesting discussion of the question. The court says

"There is much conflict of authorities but the settled doctrine of the English courts now seems to be that the moral obligation of the parent to supporthis minor child imposes no obligation to pay his debts unless he has given authority to incur them and the contract of the father must be proven in just the same manner as if he were a brother son orstranger."

The early N.Y. cases hold that a clear and palpable omission of duty by the parent would give the child credit and render the parent liable for necessaries. In the latter case of Raymond vs. Loyl 10 Barb. 483 the cases maintaining this doctrine are examined and questioned and the conclusion finally reached that in the absence of statutes there is no legal obligation to maintain a minor child. A father may be compelled by statute to support his minor child but in the absence of statute his liability for necessaries depends entirely upon whether the child was acting as his agent or not.

Where the father has not expressly forbiddenthe purchase on credit he may in some cases be held liable in the doctrine of implied agency but where he has expressly forbidden it, the notice prevents all possibility of im-

plied authority. As the law will not imply a promise where there is an express promise, so the law will not imply a promise of any person against his own expressed declaration; because such declaration is repugnant to any implication of a promise. This proposition is supported by Whiting vs. Sullivan 7 Mass. 107. This was an action of assumpsit for keeping defendant's horse. The defendant bought a horse of the plaintiff after a conversation in which the defendant enumerated the qualities wanted in a horse, and in which the plaintiff declared that his horse possessed these qualities. Being dissatisfied with the horse after he had bought him the defendant sent him to the plaintiff. At the same time he sent a letter to the plaintiff stating that he returned the horse because he had been cheated in the bargain as the horse did not correspond with the plaintiff's representation. The plaintiff kept the horse about a year and then brought this suit against the defendant to recover for the boarding of the horse. The court held that the action could not be maintained unless upon the implied assumpsit of the defendant, for it was claimed by the plaintiff that there was any express promise on the part

of the defendant to pay for keeping the horse; that there could not possibly be any implied assumpsit here because "the law will not imply a promise of any person against his own express declaration; because such declaration is repugnant to any implication of a promise." This case clearly settles the law that a father is not liable for necessaries furnished to his son on credit where he has expressly forbiddenthe the purchase on credit for the law will not imply a promise of him against his expressed declaration.

The liability of a husband to third persons for necessaries furnished to his wife on credit is different from that of a father for necessaries furnished to his son. As Schouler says "If the husband does not provide for the wife's support, he is legally liable for necessaries furnished to her on credit by tradesmen even thoug against his orders."

A husband is legally bound to support his wife; if therefore he wrongfully leaves her without the means of subsistence, she becomes an agent of necessity to supply her own wants upon his credit. The wife is the husband's agent and has an authority to bind him for neces-

saries purchased by her but this agency does not arise from the married relation but from express authority, estoppel, or necessity. When he gives her express authority to purchase necessaries on credit of course he is liable in an action for the price of them, and also if he ratified contracts made by her. Where he has habitually ratified her contracts he can not, as regards those persons whom he has induced to look to him for payment, revoke the authority without notice. The husband being bound to maintian his wife in a manner suitable to his means, if he fail to supply her that maintenance, except under certain circumstances which justify him in withdrawing it, she may be entitled from necessity to pledge his credit, and the husband can not withdraw or revoke this authority even by express notice to the party who supplied her; thus if by his conduct the husband compels his wife to leave his house, she has the power to pledge his credit for the necessary maintenance elsewhere. So, also, if he abandons his wife, she may pledge his credit for necessaries. It is always a good defense for the husband if he can show that he supplied her with necessaries, but unless he can show this, he is liable for necessaries if the person who supplied her with them can

show some express authority, estoppel; or necessity. A father is liable for necessaries furnished to his infant child by third persons only where some authority either express or implied can be shown, and never against his express orders. You must show that the child is the father's agent in the transaction if you wish to hold the father liable in an action. The circumstance of the child's whereabouts is of little importance. You must prove the agency of the infant in all cases whether he is at home or abroad. If the infant is at home it is easier to prove the agency than away from home.