

finger against a hydrant. A man named Cook was standing on the east or further side of the road to see how far the different competitors would throw the ball, and he swore that he warned the boys more than once to keep away or they would get hurt. But he did not drive the boys away or otherwise prevent their touching the ball.

It was plain upon the evidence, notwithstanding the warning which Cook said he gave, that the boys were permitted, if not encouraged, to stop and bring back the ball to the players. The plaintiff denied having heard any warning from Cook, and said that the other men asked the boys to stop the ball. The plaintiff is a bright boy of ten. He is of sufficient age and discretion to be capable of some care of his own safety, but, having regard to the degree of capacity of which he is possessed, to the natural curiosity and officiousness of a boy, and to the surrounding circumstances, I find him not guilty of contributory negligence. I find the defendant guilty of negligence causing the accident. It was negligent and improper of him to indulge in such a pastime on the public street, and to encourage or allow a small boy, who was lawfully thereon, to meddle with the ball.

I refer to *Smith v. Hayes*, 29 O. R. 292; *McShane v. Toronto, Hamilton, and Buffalo R. W. Co.*, 31 O. R. 186; *Ricketts v. Village of Markdale*, 31 O. R. 628; *American and English Encyc. of Law*, 2nd ed., vol. 7, p. 409; *Merritt v. Hepenstal*, 25 S. C. R. 150; *Jewson v. Gatti*, 2 Times L. R. 441; *Powers v. Harlow*, 53 Mich. 507, 51 Am. R. 154; and article on the "Allurements of Infants," 31 Am. Law Review, p. 891.

Judgment for plaintiff for \$175 and County Court costs, without any set-off of costs by defendant. Money to be paid into Court or to the official guardian, to be paid out to, or for the benefit of, the infant plaintiff by or under the discretion of the official guardian.

MEREDITH, C.J.

OCTOBER 24TH, 1902.

CHAMBERS.

### HARRIS v. HARRIS.

*Pleading—Statement of Claim—Action for Declaratory Judgment—Statement of Reasons for Seeking Relief—Embarrassment.*

An appeal by plaintiff from the order of the Master in Chambers (ante 684) striking out paragraphs 6, 7, 8, and 10 of the statement of claim.

The plaintiff alleged a lawful marriage and asked a declaration of validity of it, on the ground that in an action in the High Court, to which she was not a party, it had been determined that the marriage was not lawful. The Master