3. —where the infant contracts in his own behalf with a stranger.— An infant who has been emancipated by his parent acquires, as a necessary result of the emancipation, the right to enter into contracts of service on his own behalf[1]. But the authorities also shew that an unemancipated infant is entitled to make such contracts without the actual concurrence of his parent[2]. Any contract which

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[1] It has been held by an American court that, by marrying with the consent of his father, an infant is emancipated only to the extent of being enabled to make contracts for his own services, and to apply his wages to the support of his family;—that otherwise the marriage does not enlarge his power to contract, nor deprive him of the privilege of avoiding all his contracts, except those for necessaries. *Burns* v. *Smith* (1902) 29 Ind. App. 181, 64 N.E. 94. The exception to the power of avoidance must be extended, so far as regards jurisdictions in which the English doctrine is controlling, to contracts which are beneficial to the infant. See § 41, *post.*

[2] *R.* v. *Chillesford* (1825) 4 B. & C. 95; *Nashville R. Co.* v. *Elliott* (1860) 1 Coldw. (Tenn.) 611; *Houston R. Co.* v. *Miller* (1879) 51 Tex. 270.

In one case it was laid down by Yates and Willes, JJ. that the pauper in question, being an infant, could not hire himself out for a year, so as to acquire a settlement. *R.* v. *All Saints* (1770) Burr. Sett. Cas. 656. But this ruling is contrary to that made in *R.* v. *Chillesford, supra.*

In a Scotch case the judges were all of the opinion that, if a contract of apprenticeship entered into by a minor was not shewn to be prejudicial to him, it was not avoided by the fact that his father had not given his consent to its execution. *Stevenson* v. *Adair* (1872) 10 Sc. Sess. Cas. 3d series, 919. The same doctrine was taken for granted in the earlier case of *Campbell* v. *Baird* (1827) 5 Sc. Sess. Cas. 1st series, 335.

In one Quebec case, we find it laid down that an infant has the right to hire himself out as a servant. *Colleret* v. *Martin* (Quebec, 1886) 9 L.N. (Rec. Ct.) 212. But in another it was stated, *arguendo*, that the binding of an infant is not valid without the consent of his parent. *Ex parte Peletier* (1880) 3 L.N. (S.C.) 331. Possibly the former ruling may be reconciled with the latter on the footing, that the parent's consent is presumed to have been given in all cases where it is not shewn to have been expressly withheld.

The enlistment of an infant in the army or navy is binding on him at common law, the parental authority being suspended, though not annihilated. *R.* v. *Rotherfield Greys* (1823) 1 B. & C. 345, followed in *Com.* v. *Gamble* (1824) 11 S. & R. 93; *United States* v. *Bainbridge* (1816) 1 Mason, 71; *United States* v. *Blakeney* (1847) 3 Gratt. 405 (declaring that the infant would not be released either on his own application or on that of his father or on that of his master, or on that of all three combined); *Com.* v. *Murray* (1812) 4 Binn. 487 (enlistment in navy held binding, on account of its beneficial and necessary character under the circumstances).

The Military and Naval Discipline of Victoria, 1870, No. 389, § 2, provides that the Governor of the Colony may engage the services of any person to serve in the military and naval forces of the Colony on certain specified terms. Held, that an infant is a "person" within this section, and may enter into an engagement to serve, without his father's consent. *Re Hayes* (1873) 4 Austr. J.R. 34 (application by parent for infant's discharge,—not entertained).