

BRETHOUR ET AL. V. WESTBROOK—NOTES OF CANADIAN CASES.

[Com. Pleas.]

REPORTS.**ONTARIO.****IN THE FIRST DIVISION COURT OF THE
COUNTY OF BRANT.**

Reported for the LAW JOURNAL by W. D. Jones, Barrister-at-Law.

BRETHOUR ET AL. V. WESTBROOK.*Action against infant—What are necessities—Goods necessary to infant—Proof of necessity on plaintiff.*

The plaintiff sold to the defendant, an infant, a suit of clothing and other goods. The defendant pleaded infancy. It was shown that the suit of clothing was such as the defendant might reasonably require, but that at the time of the purchase he was well provided with clothing.

Held, that before the plaintiff can recover he must show not only that the goods sold fall under the general head of necessities, but are necessary to the defendant, and that the onus of proving such necessity is on the plaintiff.

[Jones, Co. J.—Brantford, September 19, 1887.]

James Harley, for plaintiff.*L. F. Heyd*, for defendant.

JONES, Co. J.—Two questions arise in the present case: 1. Were the goods which were supplied to the defendant by the plaintiff of such a character and quality as a person in the defendant's circumstances would reasonably require? and 2. Were they necessary for or required by the defendant when ordered by him?

In the position which the defendant occupied at that time, having charge of a hotel in the city as one of the proprietors, I think the suit of clothing furnished to him by the plaintiffs was of a character and quality such as he would reasonably require. On the other question I am of the opinion that the weight of evidence goes to show that this suit of clothes was not needed by the defendant, for the reason that he was already very amply supplied with suitable clothing. While the law does not hold an infant liable for his ordinary contracts, yet an exception is made in favour of what is known in law as necessities, and this exception is made, not for the protection of the tradesman, but for the benefit of the infant, that he may not suffer for the want of necessary clothing or other supplies that he may need. If the defendant here were already supplied with needful clothing it cannot be said that this suit was necessary. The evidence showed

that this was the last of several suits that the defendant had ordered that season. And the test as to whether the articles furnished are in law necessities is this: Were the goods supplied so necessary that the infant must obtain them on credit rather than go without them. The authorities do not fully settle the question whether the person who supplies the goods should make enquiries to ascertain if the infant is already sufficiently supplied (see *Smith on Contracts*, 7th Ed. 297, and *Ryder v. Wombwell*, L. R. 4 Exch. 42).

I think, however, that the better opinion is, that this duty is imposed on the person who supplies the goods, otherwise he supplies them at his own risk.

I give judgment for the plaintiff for \$5.55, the value of the other articles of the plaintiff's account which are not disputed, with ordinary costs of suit, except witness fees.

NOTES OF CANADIAN CASES.PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.**COMMON PLEAS DIVISION.****AYERS V. CORPORATION OF WINDSOR.***Municipal corporation—Lowering grade of street
—Negligence—Absence of by-law.*

In an action to recover damages for injury sustained by the plaintiff by lowering the grade of the street in front of her store, claiming that there was negligence, and also that the work was done without a by-law.

Held, that in the evidence negligence was proved; but that as the work was done without a by-law, therefore the action was maintainable.

Dougall, for the plaintiff.*M. Hugh*, for the defendant.