rule which serves to differentiate his voidable from his void contracts, but by the more specific rule which defines the extent of his power to appoint an agent. The decision referred to proceeds upon the theory, adopted by many American courts[2], that an infant is incapable of making a valid appointment of an agent, this theory being considered to involve the corollary that his appointment of a servant must be treated as void, in such a sense that he can not be held liable for injuries caused by the negligence of the appointee[3].

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[2] Mechem, Ag. S. 51.

[3] *Burns* v. *Smith* (1902) 29 Ind. App. 181, 64 N.E. 94. The court refused to infer any higher degree of liability from the fact that the infant was married. The conclusion arrived at was fortified by a quotation from the following passages from a standard treatise: "As the doctrine *respondeat superior* rests upon the relation of master and servant, which depends upon contract, actual or implied, it is obvious it can have no application in the case of an infant employer, and he therefore is not responsible for torts of negligence by those in his service." Cooley, Torts, 2d ed. p. 128. It should be observed, however, that the only authority cited in support of this statement is a decision by one of the lower courts of New York. *Robbins* v. *Mount* (1867) 4 Rob. 553, 33 How. Pr. 34. Moreover the ratiocination of the learned author seems to be open to the objection, that it assumes all contracts of employment made by infants to be void in themselves,—a doctrine which is manifestly untenable as regards contracts for the hire of services which answers to the description of necessaries, and which, if analogy is to be regarded, cannot,—at least under the English rule—be affirmed of contracts which are beneficial in their nature. Moreover, even as respects the validity of appointments of agents by infants, it is impossible to state the rule in the unqualified form which is required to sustain the decision in the Indiana case which we are considering. It is unquestionable law, that an infant may appoint an agent to do an act which is clearly to his advantage. Story, Agency, § 6; Evans, Pr. & Ag. p. 13; Mechem, Agency, §54. On the whole, therefore, it is submitted that this case and the authorities upon which it is based have left the rights and liabilities of an infant master in many important respects an open question which is sorely in need of further judicial discussion.