

says that in the case of a minor child living at home and old enough to perform work, this relationship might be presumed, but does not expressly so decide. Even if I could find it did exist, which I cannot, it would still have to be shewn that at the time of doing the damage, the child was on the defendant's business, as to which there was no evidence, and I would, therefore, have to find it was not. As to this relationship of parent and child I might appropriately quote the following from the judgment of Mr. Justice Willes in *Moon v. Towers*, 8 C. B. N. S. 615:—"I am not aware of any such relationship between a father and a son, though the son be living with his father as a member of his family, as will make the acts of the son more binding upon the father than the acts of anybody else. I apprehend that when it is established that a father is not liable upon contracts made by his son within age, except they be for necessities, it would be going against the whole tenor of the law to hold him to be liable for his son's trespasses. The tendency of juries, where persons under age have incurred debts or committed wrongs, to make their relatives pay, should, in my opinion, be checked by the Courts."

The defendant in the present case is clearly then not liable, but the child alone is, notwithstanding the fact that it is only eight years old. In an American case, *Hutchinson v. Engel*, 17 Wis. 231, an infant of seven years old was held liable in trespass for breaking down shrubbery and flowers in a neighbour's garden. If the plaintiff had been able to shew that the defendant's child, of such tender years, had been in the habit of breaking glass or doing other damage, to the knowledge of its parent, who did not choose then to take ordinary care to see that it did not exercise its damaging propensities to the detriment of others, either by not allowing it out unattended or by keeping it in altogether,* I think I should have in such case held him liable, on the broad principle of equity and good conscience referred to in sec. 73 of the Division Courts Act, and so often invoked by me where administering strict law would work a hardship. In the absence of this knowledge, I do not think the law imposes any duty on a parent to see that his child of tender years is attended, when on the streets, in order to prevent it doing damage, but I think that when the parent knows of its mischievous or destructive habits he should be held responsible for all the damage it does, unless he takes reasonable steps to avoid it. For the reasons, then, that I have stated, I must give judgment for the defendant, but without costs.

* See interesting article in 35 L. J. 238, entitled "Children's Mischief."