for the specific purpose of obtaining necessaries fails to disclose any intention on the part of the judges to diverge from the main current of the English authorities. In fact it is clear that they supposed themselves to be simply following those authorities. That this was a misapprehension is sufficiently demonstrated by the English cases reviewed in § 4, *ante*.

It is also sufficiently evident that this misapprehension would not have arisen if the attention of the court had been properly directed to some of the earlier authorities which are there noticed. The consequence of its defective knowledge in this instance was, that it was led to invoke an argument based upon a principle which, as a means of determining the proper effect of precedents is never entirely satisfactory, and which has not infrequently led to the propounding of doctrines which upon subsequent consideration have been admitted to e erroneous or to require qualification—the argument, that is to say that, as "there was no case" in which it had been held that an executory contract by an infant, except for necessaries, is binding, merely beneficial contracts of employment must necessarily be regarded as standing outside the obligatory class.

It is manifest, therefore, that any courts in the United States which have not yet committed themselves in the question, and which regard the English authorities as being controlling with respect to a matter of this kind, would be fully warranted in adopting the English doctrine. When the various courts to which this description is applicable have occasion to choose between the two opposing doctrines, it will be for them to consider whether the mere fact that one of them has obtained a foothold in a limited number of the American States is a sufficient reason for rejecting the construction put upon a common law principle in the country from which the common law is derived. Th · will also be called upon to form an opinion as to the weight of the independent arguments by which it has been attempted to justify the exclusion of merely beneficial contracts from the obligatory class. The present writer ventures to express the opinion that those arguments are far from being satisfactory. It is asserted that a contract for the infant's services only,