

obligation to maintain includes clothing; Rolland de Villargues, under the word *Aliments*, says, at No. 41: "L'obligation des aliments comprend tout ce qui est nécessaire à la vie, c'est-à-dire la nourriture, le vêtement, le logement."

There is therefore a clear right of action on the part of a merchant, who provides a minor with necessary clothing, against the minor's father who has profited by the transaction, for the price of the clothing supplied.

But the action only lies if the expenditure, for which the merchant has provided, was one which the father was bound to make, and was therefore a useful expense. Laurent, in volume 20, at No. 329, on this point says: "Si le gérant fait ce que le maître lui-même aurait fait, il a droit à être complètement indemnisé.... On peut dire qu'il enrichit le maître, par cela seul qu'il fait ce que le maître aurait fait s'il avait été sur les lieux, car le maître aurait dû faire la dépense que le gérant a faite; il a donc épargné cette dépense, en ce sens il s'enrichit." Pothier, in his *Treatise du Quasi-Contrat Negotiorum gestorum*, No. 220, explains the nature of the obligation thus: "Pour que celui pour qui..... on a fait une affaire, contracte l'obligation de rembourser des frais de sa gestion celui qui l'a faite, il faut..... que ce fût une affaire indispensable, qu'il n'eût pas manqué de faire lui-même; autrement..... il ne contractera aucune obligation envers celui qui l'a faite, lequel n'aura aucune action contre lui."

In the present case, was the expense one which the defendant was bound to bear? Article 169 of the Civil Code lays down the rule that "maintenance is only granted in proportion to the wants of the party claiming it"; And Aubry & Rau, in section 553, amplify this text thus: "Les aliments ne sont dus qu'aux personnes qui se trouvent dans le besoin, c'est-à-dire à celles qui ne peuvent pourvoir à leur subsistance, ni au moyen de leur revenu, ni à l'aide de leur travail." Laurent, in volume 3, at Nos. 69 & 71 says: "Celui qui réclame les aliments..... doit se trouver dans l'impossibilité de pourvoir lui-même à sa sub-

sistance, en tout ou en partie..... Le travail est aussi un capital. Il est certain que celui qui peut se procurer les choses nécessaires à la vie en travaillant n'est pas dans le besoin."

It has not been shown that the clothes sold to the defendant's son were necessary, but, supposing that they were, it is admitted that the young man was in the receipt of a salary fully sufficient to enable him to provide for his wants; and he could not therefore claim to be provided with the clothes in question by his father. The expense is not one which the defendant is bound to bear, and the outlay made by the plaintiffs, not being beneficial to the defendant, cannot, consequently be recovered by them from him. They may have an action against the minor, who bought and received the clothes, but under the circumstances of the case they have none against the defendant.

In actions of this kind the plaintiff is bound to prove that the clothing supplied was necessary, and that the position of the minor entitled him to claim a maintenance. Laurent, in Volume 3, at No. 72, says: "C'est au demandeur à prouver qu'il est dans le besoin..... C'est au demandeur à faire connaître l'état de sa fortune." And Aubry & Rau, in section 553, lay down the same principle: "C'est, en principe, à celui qui forme l'action alimentaire à établir l'existence du fait qui sert de fondement à sa demande." In this case the plaintiffs have not made any such proof; on the contrary, it is admitted that the minor had sufficient means of his own, produced by his labour in the service of the government.

Action dismissed, with costs.

Arthur McConnell, for plaintiffs.

Rochon & Champagne, for defendants.

HOUSE OF LORDS.

February 28, 1888.

MILLS v. ARMSTRONG; THE BERNINA.*

Negligence—Imputable—Passenger on ship.

An ordinary passenger by a ship or public conveyance is not affected either in a question with contributory wrong-doers or with in-

*58 L. T. Rep. (N.S.) 423. See 10 Leg. News, 68, 173.