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MORSON, JUN.Co.J. FEBRUARY 17TH, 1902.

FIRST DIVISION COURT, YORK.

McCANN v. SLATER.

Parent and Child—Liability of Parent for Tort of Child Eight Years Old—Master and Servant—Isolated Act — Habitual Mischievousness — Knowledge of Parent — Division Courts Act, sec. 73.

Moon v. Towers, 8 C. B. N. S. 611, referred to.

Action for $60 damages to a plate-glass window in the store No. 208 Dundas Street, Toronto, owned by the plaintiff, and caused by the defendant's son, eight years old, throwing a stone.

W. Howard Shaver, for plaintiff.

A. Fasken, for defendant.

MORSON, JUN.Co.J.:—There is no dispute as to the facts, and it did not appear why the child was on the street at the time or on what business (if any), for had he been on the defendant's business the result might have been different. The law seems to be well settled that, speaking generally, an infant, no matter how young, is liable for its own wrongful acts, and not the parent. It is also well settled law that in order to make one person, whether parent or not, liable for the wrongful act of another, whether child or not, the relationship of master and servant must exist between them, and the servant guilty of the wrongful or negligent act must at the time be acting in the employment of or on the master's business. The plaintiff in this case would therefore have to prove that the defendant's child was his servant. This, of course, would be a manifest absurdity in view of the child's tender years and its relationship to the defendant, and in the absence of any evidence of employment. There might be cases, however, under different circumstances as to age and otherwise, where this relationship of master and servant might be presumed to exist. In File v. Unger, 27 A. R. at p. 471, Mr. Justice Osler