

being non sui juris, and having a keeper, in law, to whose discretion in the care of his person he is confided, his acts, as regards third persons, must be held, in law, the acts of the infant; his negligence, the negligence of the infant."

Under the rule both in New York and Massachusetts great difficulty has arisen in defining the age at which a child becomes subject to the rule of imputed negligence, and also in defining the age at which it will be deemed negligence on the part of a parent to suffer the child to go abroad unattended or attended only by a very young person. It seems to be a mixed question of law and fact, and as a consequence great diversity of opinion exists as to the limit.

In *Robinson v. Cone*, 22 Vermont, p. 213, the Court held a directly opposite view in these words: "We are satisfied that, although a child or idiot or lunatic may to some extent have escaped into the highway, through the fault or negligence of his keeper, and so be improperly there, yet if he is hurt by the negligence of the defendant, he is not precluded from his redress. If one know that such a person is on the highway, or on a railway, he is bound to a proportionate degree of watchfulness, and what would be but ordinary neglect in regard to one whom the defendant supposed a person of full age and capacity, would be gross neglect as to a child, or one known to be incapable of escaping danger."

In some of the States of the Union a distinction is drawn between a case, brought by the parent to recover damages for the technical loss of service of the child, and an action brought by the child to recover damages, in its own behalf, for injuries sustained by the negligence of defendant. The distinction between the two cases is illustrated in two Ohio decisions. A child brought an action in its own behalf for injuries sustained, and the Court held, that the father's contributory negligence was no defence. The father brought another action for the same injuries to recover for loss of service, and the same Court held his contributory negligence to be a complete answer. See *Bellefontaine Ry. Co. v. Snyder, Jr.*, 18 Ohio 399 and *Bellefontaine Ry. Co. v. Snyder, Sr.*, 18 Ohio 670.