

The Ontario Weekly Notes

Vol. I

TORONTO, JANUARY 5, 1910.

No. 15.

HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

DECEMBER 20TH, 1909.

JEWELL v. BROAD.

*Infant—Contract—Fraudulent Representation as to Age—Benefit
Obtained dehors the Contract—Equitable Relief—Estoppel.*

Appeal by the plaintiff from the judgment of MULOCK, C.J. Ex.D., 19 O. L. R. 1, dismissing an action brought by the mother of an illegitimate child against the father, to recover moneys which the defendant, by an agreement in writing, covenanted to pay to the plaintiff for the child's maintenance.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and SUTHERLAND, JJ.

M. Houston, for the plaintiff.

O. L. Lewis, K.C., for the defendant.

FALCONBRIDGE, C.J., said that, in his opinion, the trial Judge had correctly distinguished the cases where it had been said that the infant was liable in equity for falsely representing himself to be of full age. . . . If he had obtained property on such a representation, he might be ordered to re-deliver it: Clarke v. Cobley, 2 Cox Eq. 173. But this obligation is not an obligation to perform the contract . . .

[Reference to Pollock on Contracts, 5th ed., p. 74; Lempriere v. Lange, 12 Ch. D. 675.]

Appeal dismissed with costs.

BRITTON and SUTHERLAND, JJ., agreed in the result.