Now, it is a principle of the law that an "infant" cannot make a contract binding on himself.

It has perhaps suggested itself to the astute reader, that if the infant happened to be short of funds, and in want of a dinner, lodging, or any other such little necessary under the present economy of nature, this principle might be decidedly inconvenient to him; for if the infant, having undertaken to pay for his entertainment, can immediately turn round and say: "Oh! I'm an infant, and my contracts are not binding," we all of us know that the average hotel-keeper is too keenly alive to his own interest to give the infant the entertainment asked for. To prevent such a manifest injustice, the principle I have just mentioned is qualified in the case of necessaries. Thus, in Co. Litt. 172, we find, "An infant may bind himselfe to pay for his necessarie meat, drinke, apparell, necessarie physicke, and such other necessaries; and likewise for his good teaching, or instruction whereby he may profit himselfe afterwards."

It is obvious that in every case, in which this principle is involved, the question at once arises, what are "necessaries?" From the passage quoted above, we see that the expression "necessaries" includes food, lodging, clothing, medical attendance, and education. It will be admitted, I suppose, that these five things are necessary at some or all periods of life; but it becomes a question of some nicety to determine, in any individual instance, what particular quality or quantity is "necessary." If my young gentlemen friend of the first year, with, we will suppose, an annual income of five hundred dollars, takes a suite of rooms on the first floor of the Rossin House, and gives his other young gentlemen friends champagne breakfasts, and whisky-punch suppers, or indulges in any other extravagent eccentricities for as long as his credit will last, all these things, although they may perhaps be "food" and "lodging," can hardly be called "necessaries." Accordingly, when the polite proprietor of that admirable hotel, hands him his bill, the "infant" can poke him familiarly in the ribs, and tell him to sing for it. *Cantabit vacuus coram latrone—"infans."* Of course, if the infant be wise he will make for the door as fast as possible; for I believe Mr. Irish wears very heavy boots.

However, it must not be supposed that "necessary" means merely the plainest sort of food, lodging, etc., etc.: "The word 'necessaries' is a flexible, not an absolute term" [*Breed* v. *Judd*, 1 Gray (Mass.), 458], and varies according to the social position, prospects, age, circumstances, etc., of the infants. One man's "necessary" may be another's luxury. As an old case of the time of Charles II. (*Rainsford* v. *Fenwick*, 1 Carter 215) points out: "The law distinguisheth of persons, between a Gentleman's son, & a Nobleman's son, as (to) necessaries." As an interesting example of the style of the old reports, I quote this case in full below. *

As far as regards clothing, the rule appears to be that articles of mere "ornament" are not generally "necessaries." Therefore, ye Residence men, who indulge in gorgeous jewellery, and shine resplendent at conversaziones and evening parties in white dress waistcoats with jewelled buttons, read, mark, learn and inwardly digest the following cases:—

In *Ryder* v. *Wombwell* (L. R. 4, Ex. 32), the plaintiff was a jeweller, who sought to recover a bill for jewellery supplied to an aristocratic, and therefore extravagant, youth, apparently possessed of unlimited cheek and credit. His income during infancy was about £500 per annum, and his favorite amusement appears to have been riding races for his friends, one of whom was the Marquis of Hastings. To the Marquis, no doubt in appreciation of his kindness in letting him lose races for him, he presented a goblet, described in the jeweller's bill as follows:—A silver gilt, antique chased goblet with an engraved inscription, £15 15s. Another item is:—A pair of crystal, ruby and diamond solitaires, £25. The jury, probably composed of the jeweller's friend, held that both these articles were "necessary" to a young man in his position. But the Court *in banc* over-ruled the verdict as to the goblet, and finally the Exchequer Court decided on appeal that neither article was a "necessary"—a judgment with which, I think, we may all agree. However, before any of my "infant" readers, on the strength of the decision in *Ryder* v. *Wombwell*, rush down town to buy up all the jewellery they can get on credit, let them consider the decision in *Peters* v. *Fleming* (6 M. & W. 42), which should be of interest to all undergraduates, as it gives judicial sanction to Mr. Verdant Green's opinion that every undergraduate ought to have a watch. In that case it was decided that a *watch-chain* was a necessary for a student at College, on the following unassailable line of argument: "It is not unreasonable that an undergraduate at College should have a watch; and consequently, to enable him to pull out his watch, a watch-chain." The Court, however, do not appear to have considered the fact that a piece of tape is a very good practical substitute.

There is another case which ought to interest all the students, as it seems to relegate to the dim region of "luxuries" some things which, in my college days at least, were considered essentials. *Lefils* v. *Sugg* (15 Ark. 137) is an authority for the statement that, in Arkansas at least, "kid gloves, cologne, fiddle-strings, walking canes, silk cravats, etc.," are not "necessaries" for any student. There is a ring of sound practical out-West common sense about the judgment (*e. g.*: "It is not to be presumed that the bulk of the articles..... were such as the boys needed, or their father would have ordered for them"), that suggests to one's mind the picture of the "Jedge" in his shirt-sleeves, with a slouch hat over his eyes, his feet on the table, and the stump of a cigar in the corner of his mouth at an angle of 45°.

I have been told that a case lately decided in one of our Division Courts establishes that a dress-suit may be a "necessary" to an infant.

Even in the good old days of Queen Elizabeth, when *man*kind used to dress in velvets and satins, there appears to have been a limit to the extent of the gorgeousness of apparel considered necessary. Thus, in *Makarell* v. *Bachelor* (2 Croke 583), 39 and 40 Eliz., the plaintiff sued on several contracts—"all for apparell—some for fustian, some for velvet and sattin suits laced with gold lace, amounting to £44, whereof he was satisfied £4," and although the defendant was a gentleman of the Chamber to the Earl of Essex, the Court held "that such suits of sattin cannot be necessary for an infant, although he be a Gentleman." To give an example of the extravagance in dress in the time of James I: A young gentleman orders a tradesman to buy "24 yards of lace, 11 yards of velvet, and 3 yards of broadcloth to make for him a cloak." Having received the cloak, he seems to have forgotten all about the unfortunate tailor, who accordingly sues in *assumpsit*, "and alledgeth, *in facto*, that he bought the said wares, and laid out for them twenty-one pounds, and that he made the said cloak, and deserved for the making thereof six shillings; wherefore, for the non-payment, he brought the action." A second item was "twenty-seven pounds for a doublet and a pair of hose of velvet." Owing to a technical objection to the frame of the declaration, the unhappy plaintiff was non-suited. *Ive* v. *Chester* (3 Croke, 560). We see from these cases, and many others of a similar nature, how uniform has been the practice from the darkest ages to the present time of owing one's tailor more than one can ever hope to pay.

Next, as regards food. Those "infant" students who have run up large bills with the confectioners and caterers in town for suppers and entertainments to their friends, will be glad to learn that "undergraduate treats" are not considered "necessaries" by the Courts. In *Brooker* v. *Scott* (11 M. & W. 67) young Scott was an undergraduate of Trinity College, Cambridge, of a convivial nature, and fond of entertaining his friends. His heart, however, seems to have been larger than his purse; for at the end of two years he found himself indebted to his confectioner in the sum of £7 0*s.* 7*d.* Among the items charged in the bill, we find the following: "Feb. 17, soda water and acidulated drops, 1*s.* 6*d.*" Can any Residence man who has spent the night at a prolonged *sederunt* suggest the object for which these were purchased? On March 22nd, we are informed, that Mr. Scott purchased 4*d.* worth of lozenges; but this seems to have been unwarrantable extravagance on Mr. Scott's part, for the Court disallowed the entire bill, on the ground that such items were not "necessaries" to an undergraduate. (*Vide* also *Wharton* v. *McKenzie*, 5 Q.B., 606).

Bryant v. *Richardson* (L. R., 3 Ex) will interest smokers, and is clear authority for the proposition that cigars are not among the necessaries of life.

There do not appear to be many of the undergraduates who indulge to any great extent in a taste for horses. The law, however, seems to be that under certain circumstances these, with their necessary harness,

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* NOTE:—

TERM TRINITATIS,
Trin. 22, Car. 2, B.C.

RAINSFORD *versus* FENWICK.

Action upon the case: A *quantum meruit* for divers Wares and Merchandises, such as Cloaths, Laces, for himself and his Servant: And also *indebitatus assumpsit*, and mentions the wares in particular. The Defendant pleads *infra aetatem*. The Plaintiff replyes and confesseth the minority, and says at that he was Son and Heir apparent of Sir R. F., and was, by consent of his father, in treaty of a marriage with the Earl of —— Daughter, and these things were for wedding Cloaths. The Defendant demurs to this.

Sise Serjeant: I conceive judgment ought to be given for the Plaintiff.

Such contracts as are made for Infants' advantage as Leases for years, and such as are for Necessaries, the Law holds good. * * * * * * * *

Further, the Law distinguisheth of persons between a Gentleman's son and a Nobleman's as (to) necessaries: And in point of Time and Education, as at School, Oxford, and Inns of Court. And he is not lookt upon in the same condition when a School-boy as when of riper years. Rolls Abr., I part, tit. Enfants 729. Delavall and Clare's case. Croke Jac., p. 560, Ive and Chester. It was in one case averred that he was in Degree, and in treaty of Marriage with an Earl's Daughter; and these things considered, the Time, and the Treaty, and the averment to be for Necessaries; and that he did accordingly marry her, & *distinguenda sunt tempora*. * * *

Objects. Some of these things were for servants.

Brome Serjeant contra:

1. It appears not how many Servants he had.
2. It appears not that these Servants he had were necessary for his attendance.
3. It appears not what was for himself, and what for his Servants.

* * * *

Vaughan, Chief Justice. The case of the Earl of Essex, his Valet de Chambre. The Valet de Chambre might have been as good a man as a Knight's Son. And so the books be against you. Balls and Serenadoes at night must not be accounted Necessaries. North and Tompson case in Colle's Entries, 125. A Nobleman's Case.

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The Judges appear to have been divided in opinion. Tirrell for plaintiff, and Vaughan, Wild and Archer for defendant.