the plaintiff contributing to the injury, there cannot be a recovery ; and although the child, by reason of his tender age, was incapable of using that ordinary care which is required of a discreet and prudent person, the want of such care on the part of such parents and guardians of such child furnishes the same answer to an action by the child as would its omission on the part of the plaintiff in an action by an adult.

For an injury to a child of the most tender age an action may be brought in the name of the child. But this doctrine of imputability is denied by many common law courts and in a Vermont case, Robinson v. Cone, 22 Vt. 213, it was *held*, that where plaintiff is *non sui juris* all that is required of him, is, that he exercise care and prudence equal to his capacity, and that where a child of tender years is on the street, defendant must use the utmost circumspection and is bound to use a proportionate degree of watchfulness.

In England the rule of "imputability" in cases of injuries to children, dates from Waite v. North Eastern Railway Company, El. Bl. & El. 719 (affirmed in the Court of Exchequer chamber El. Bl. & El. 728) since which time there has been little or no adjudication directly upon the subject in that country.

In a recent case in Illinois (Chic. City Ry. Co. v. Wilcox, 27 N. E. Rep. 899 [1891] 33 Cent. L. J. 142, it was *held*: — that where a child of tender years is injured by the negligence of another, the negligence of his parents, even though present at the time of the accident, cannot be imputed to him so as to support the defence of contributory negligence to his suit for damages.

Where a child six years old, being about to cross a street on which there are two cable tracks, waits until a train on the track nearest him has passed, and then, going behind such train, is struck by another train, coming from an opposite direction, his failure to see and avoid the train which struck him, and which was probably hidden from his view by the other train, does not constitute contributory negligence.

In a very recent case in Massachusetts (Slattery v. O'Connell Mass. 26 N. E. Rep. 430, 153 Mass. 94), there was an action for the negligent killing of a child less than five years of age; and it appeared that the child's mother, who had just been confined, had kept him in bed with her until about 11 a.m. on the day of the accident, when he was partially dressed by a neighbour who came in from time to time to look after the mother and him, and was allowed to play about the room, but, in order to keep him from going out, he was not given his shoes and stockings; that the mother fell asleep, and the child went into the street, and was killed by defendant's cart. The father was a labouring man, unable to employ attendance for his wife, and absent at his work at the time. The court *held*, that the question whether the parents exercised due care in the custody of the child was for the jury.