

—if it were left to the court or jury to determine which contracts are beneficial and which are not¹. With respect to the presumption which is supposed to be entertained for the protection of infants, it undoubtedly constitutes a good reason for treating all contracts as voidable, which, as a matter of fact, are not beneficial. But it is not at all apparent why it should be deemed to be an element of any greater significance than this. Nor is it easy to see why the interests of infants should be more seriously endangered by the operation of a doctrine which should affirm the obligatory quality of every contract which a jury should find to be beneficial, than they are at present by the operation of the statutes which enable them, by complying with certain forms, to bind themselves absolutely to the performance of contracts of apprenticeship.

Furthermore, even if we set aside these general objections to a theory which gives infants an indefeasible right to repudiate beneficial contracts, it is difficult to concede that there is not an essential inconsistency in a conception of their rights, which attaches a controlling importance to the express terms of the contract, and virtually excludes all evidence as to the real considerations which may have induced the infant to hire himself out. On principle it would seem that the courts should at least have admitted into the class of obligatory contracts all those which are shewn to have been, as a matter of fact, made for the purpose of procuring necessities, and which are in other respects not inequitable or unreasonable. Granting that, in any case where the contract is not on its face one for necessities, it may be proper to start with the presumption that the infant was incapable of forming a sound judgment as to the expediency of making the contract, it does not by any means follow that this presump-

¹Stone, J. in *Clark v. Goddard* (1863) 30 Ala. 164 (note 4, *supra*). The learned judge remarked that this question could not well be determined by an unvarying rule based upon a classification of certain trades as being either beneficial or prejudicial. The quality would vary according to the capacity and circumstances of the infant. "No one could know or tell, until the decision should be pronounced at the end of a litigation, whether the particular trade or employment would be beneficial or otherwise. A rule of such uncertain operation would lead to most ruinous results."