

BAILEY *v.* RUNYAN.

Opinion delivered May 12, 1930.

1. INFANTS—DISAFFIRMANCE OF CONTRACTS—JURISDICTION.—A suit to disaffirm a minor's contract for purchase of an automobile was triable at law, and within the jurisdiction of the circuit court.
2. TRIAL—OBJECTION TO FORUM.—Where plaintiff instituted a suit in equity which was transferred to the circuit court, he will be held to have consented to trial by the circuit court by failing to move for a retransfer.
3. INFANTS—EVIDENCE.—Evidence that the money paid for an automobile came from the estate of an infant's father *held* inadmissible in a suit to disaffirm the infant's contract where defendant claimed that the automobile was sold to the infant's mother, since it is immaterial where she got the money.

Appeal from Howard Chancery Court; *B. E. Isbell*, Judge; affirmed.

HART, C. J. On the 31st day of May, 1929, Rennie Bailey, as guardian for Chester Bailey, a minor, brought this suit in equity against Cue Runyan to disaffirm a contract for the purchase and sale of an automobile, and to recover the sum of \$863 alleged to have been paid by said minor for said automobile. On the 4th day of November, 1929, the defendant moved to transfer the case to the circuit court. The case was duly transferred to the circuit court and was tried there.

According to the evidence for the plaintiff, Chester Bailey is a minor, seventeen years of age, and purchased an automobile from the defendant. He agreed to give the defendant an old car, valued at \$150 and \$648 in money. He delivered the old car to the defendant, and gave him a check on the Bank of Dierks for the sum of \$648. The check was paid on the 4th day of March, 1929. The check was paid with money which the mother of Chester Bailey had placed in the bank.

According to the testimony of the minor, his mother had given him \$975 by putting that amount of money in the bank on the morning he purchased the automobile. The minor testified that the money came from his father's estate, and the court held that this was immaterial. No exceptions were saved to the ruling of the court. The minor was married on the 21st day of July, 1929. His mother had died before the instigation of the present suit. The minor admitted spending the balance of the \$975 which his mother had put in the bank for him.

According to the testimony of Mrs. Sally Young, she was the sister and guardian of the minor, and he had purchased the automobile in question from Mr. Runyan. She testified that, at the time of the death of her father, her mother did not have any money of her own, and that all the money she had after her father's death came from his estate. It was then offered to prove by her that the money her mother advanced to Chester Bailey was money from her father's estate. The wit-

ness admitted that her mother at the time of the purchase of the automobile might have had money which did not come from her father's estate. She saved her exceptions to the refusal of the court to allow her to testify that the money which her mother had advanced to Chester Bailey with which to buy the automobile had come from her father's estate.

According to the evidence for the defendant, he did not sell the automobile to the minor, but sold it to his mother. The minor made application to him to buy an automobile, and Runyan declined to sell him one. He told him that he would have to get his mother to buy it for him. Runyan had previously sold an automobile to the mother of the minor; and, after using it a while, she had traded it for another second-hand automobile. The mother of the minor then delivered the second-hand car to Runyan, and was to be allowed \$150 for it when she purchased a new automobile. Mrs. Bailey purchased the automobile herself from one of the salesmen of Runyan, and told him that she would send her son for it, and that her son would pay him for her.

There was a verdict and judgment for the defendant, and the case is here on appeal.

McConnell & Jackson, for appellant.

Feazel & Steel, for appellee.

HART, C. J. (After stating the facts). It is first sought to reverse the judgment on the ground that the circuit court did not have jurisdiction to try the case. This court has held that an infant's contract for the purchase of an automobile is void and unenforceable, but that relief may be had at law as well as in equity. *Commercial Credit Co. v. Blanks Motor Co.*, 174 Ark. 274, 294 S. W. 999.

In the second place, the plaintiff consented to the circuit court trying the case by not moving to retransfer it to the chancery court. *Gilbert v. Shaver*, 91 Ark. 231, 120 S. W. 833.

The circuit court recognized that the contract of a minor for the purchase of an automobile was void and unenforceable, and so instructed the jury. The right of the defendant to a verdict was predicated upon a finding by the jury that the contract of purchase and sale of the automobile was made by the defendant with the mother of Chester Bailey. The jury was expressly instructed that, if it should find that the contract of sale for the car was made by the defendant with Chester Bailey, it should find for the plaintiff. The evidence in behalf of the defendant warranted the jury in finding that the contract was made by Runyan with the mother of Chester Bailey, and not with him. Hence the evidence was legally sufficient to support the verdict.

It is next insisted that the judgment should be reversed because the court erred in not allowing Mrs. Sallie Young, the sister and guardian of Chester Bailey, to testify that the money with which he paid for the automobile came from their father's estate. The court held that this evidence was immaterial. We think the court was right in its ruling for two reasons. In the first place, according to the testimony of Mrs. Young, her mother had received a part of the money left by their father, and it may be that the money with which she furnished her son to purchase the automobile was her part of the estate. In any event, she was liable to her son for any misappropriation of the funds belonging to her husband's estate by herself. It was not attempted to show that Runyan knew that the money used in paying for the automobile did not belong to Mrs. Bailey. According to his testimony, he made the contract with Mrs. Bailey, and his agent testified that Mrs. Bailey told him when she bought the car from him that she would send her son with the money to pay the balance of the purchase price the next morning. The right of the defendant to a verdict was predicated solely upon a finding by the jury that Runyan had sold the automobile to Mrs. Bailey, and not to her minor son. In this view

of the matter, the court correctly held that it is immaterial where Mrs. Bailey got the money with which she paid for the automobile.

We find no prejudicial error in the record, and the judgment will be affirmed.
