

*SARGEANT & a. vs. FRENCH, in Error.*

Where a judgment is rendered on default, in an action against two persons, founded upon a contract, and one of them is an infant; upon error, for that cause, the judgment must be reversed as to both.

**ERROR**, to reverse a judgment rendered on default, in an action of assumpsit, in which French was original plaintiff, and Joseph W. Sargeant and John R. Sargeant, the plaintiffs in error, were original defendants.

The error assigned was, that John R. Sargeant, at the time of the rendition of the judgment, was an infant, under the age of twenty-one years. This fact was traversed, and the issue joined was submitted to a jury, who found for the plaintiffs in error.

*Perley*, for the plaintiffs in error.

*Kent & Hutchins*, for the defendant.

**PARKER, C. J.** The judgment, having been rendered against the infant, on default, is erroneous. 1 *Mass. R.* 479, *Knapp vs. Crosby*; 1 *Dallas* 166, *Sliver vs. Shelback*; *Dyer* 104, *a*, *Anderson vs. Warde*; *Cro. Jac.* 466, *Holford vs. Platt*; *Cro. Car.* 307, *Newport vs. Mildmay*. Being entire, it must be reversed as to both. 6 *N. H. Rep.* 543, *Whitmore vs. Delano*, and *auth. cited*.

In some instances, upon the reversal of a judgment, this court can proceed to enter the judgment which ought to have been rendered in the original action. In others, further proceedings must be had. 5 *N. H. Rep.* 477, *Favor vs. Philbrick*; 7 *N. H. Rep.* 589, *Ford vs. Wright*; 4 *N. H. Rep.* 86, *Hillsborough vs. Deering*; *Ditto* 106, *Holman vs. Kingsbury*. But there is no motion upon that subject before the court.

*Judgment reversed.*