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It seems that the Model Code is impatient with the fine distinctions which define common law forgery from other offenses. The proposed statute leaves little room for doubt as to what constitutes forgery. However, as it now stands, the majority of courts which determine forgery under the common law definition would probably treat unauthorized use of credit cards and other credit devices as a misrepresentation of authority or false pretenses rather than a true common law forgery.

Robert William Burk, Jr.

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**Damages—Detinue—Liability Under Redelivery Bond for Depreciation of Chattel**

P, chattel mortgage holder, brought this action against Ds, sureties on redelivery bond, seeking damages for depreciation of an automobile detained under the bond. From a judgment awarding the damages plus costs, Ds appealed. **Held, affirmed.** While the sureties on the redelivery bond were not liable for deficiency remaining after the property was surrendered to the chattel mortgage holder and sold at auction, they were liable for depreciation in the value of the automobile while it remained in possession of the purchaser in the original action pending determination thereof. Such depreciation had to be recovered in a subsequent action rather than in the original action. *Commercial Credit Corp. v. McAdams*, 129 S.E.2d 429 (S.C. 1963).

The principal case presents the interesting questions of whether depreciation is a proper element of damages in a detinue action and, if so, whether it may be recovered in the original claim and delivery action, or rather, in a subsequent proceeding upon the bond. The problem largely stems from the many and varied interpretations given to redelivery bond statutes throughout the several jurisdictions.

The general rule is that in an action of replevin, where the plaintiff has finally secured possession of the property, the plaintiff may recover damages for detention and any costs incident thereto. These damages are usually measured by interest and depreciation in value. *Armstrong & Latta v. City of Philadelphia*, 249 Pa. 39, 94 Atl. 455 (1915). Following this same concept, where a return in specie of the property is ordered, damages will be given not only
for the depreciation in value of the property during the wrongful detention, but also for the loss of its use during that period. McCormick, Damages § 125 (1935). These damages are to be distinguished from those incurred from injury to the property after the detinue action but prior to the tender of the property in satisfaction of the judgment. The latter question is not in issue in this case.

In the instant case, the South Carolina court held that such depreciation as occurred, of necessity, had to be recovered in a subsequent action rather than the original action because the depreciation, if any, could not be ascertained or proved until the plaintiff in the original action regained possession of the property. Liability was accordingly placed upon the surety under a provision of the statute which makes a surety on a redelivery bond liable for damages suffered as a result of the depreciation in the value of the property pending the determination of the action. South Carolina Code § 10-2510 (1962).

The rule throughout the country concerning the proper time of recovery is not uniform. In Massachusetts, for example, the depreciation in the value of property detained under a replevin bond is not damages arising from the detention to be recovered in the replevin action. Instead it is damages arising from the failure to restore the property in the same good order and condition as when taken, as required by the replevin bond. Tucker v. Tremont Trust Co., 242 Mass. 25, 135 N.E. 62 (1922). The Tucker case would appear to be in accord with the holding in the principal case. But in California, deterioration of property sought to be recovered in an action of claim and delivery is a proper element of damages for the detention of such property. A finding of such deterioration is equivalent to a finding of damages in the same amount. Anglo-California Trust Co. v. Collins, 192 Cal. 315, 219 P. 982 (1928).

West Virginia, by statute, has provided a clear and adequate remedy for determining all of the rights of the parties in a detinue action. W. Va. Code, ch. 55, art. 6, §§ 4 and 6 (Michie 1961). Section four provides that the defendant may regain possession of the property in the detinue action by executing a bond with good security and upon condition that he will pay all costs and damages which may be awarded against him. Section six relates to verdict and judgment. It specifically provides that if the prevailing party be the plaintiff, he shall recover the damages assessed by the jury.
for the detention of such property. This section further requires the jury to ascertain and assess such damages as the plaintiff has sustained by reason of the detention of the property by the defendant. It would appear that this last provision would logically preclude a second action for depreciation.

The West Virginia court has recognized the importance of the problem in question in Graham v. Bright, 91 W. Va. 233, 112 S. E. 499 (1922), and Dils & Sons Co. v. Waugh, 99 W. Va. 665, 129 S.E. 703 (1925). In the Graham case, the plaintiff executed a bond and secured possession of the property. The jury rendered a verdict for the defendant entitling him to recover possession, or, if possession could not be had, then he should receive the value of the property as found by the verdict. Damages and costs of the suit were also awarded. On appeal, the West Virginia Supreme Court held that the jury must find damages for the deprivations of use or for the actual injury to the property during the pendency of the suit. In the absence of such a finding, no recovery could be had in an action on the bond against the plaintiff and his surety. The court reasoned that the bond was given for the purpose of paying all costs and damages which might be awarded in the detinue action and to have the property forthcoming to meet the judgment. When the obligors under the bond have surrendered the property in accordance with the judgment and have paid the costs assessed against the losing party in the detinue suit and also any damages which may have been awarded in the suit, the judgment is satisfied. No subsequent recovery can be had upon the bond, unless, perhaps, after the judgment in the detinue suit injury was done to the property before it was tendered in satisfaction of the judgment. The Graham case appears to place West Virginia in a position contrary to that of the principal case.

The West Virginia court has never specifically held that depreciation is a proper element of damages in a detinue action. But, by dictum in Dils & Sons Co. v. Waugh, supra, the court held that when the plaintiff recovers possession of the property sued for, he is entitled to damages for the unlawful detention thereof by the defendant. The court further stated that usually in replevin or detinue the plaintiff is entitled to damages for the depreciation in the value of the property and for reasonable compensation for being deprived of the use thereof while the property remains in the possession of the defendant. This case would seem to place West Virginia in line with the majority of jurisdictions on this issue.
From the foregoing authorities it would appear that West Virginia would permit recovery for depreciation as an element of damages but that such depreciation must be recovered in the original action rather than in a subsequent proceeding upon the bond.

George Charles Hughes III

Evidence—Infant's Pleadings as a Judicial Admission

P, an infant, by his next friend, brought an action against his mother for injuries sustained when he fell out of and under an automobile being backed out of a driveway by her. The complaint charged the mother with wilful and wanton negligence and was later amended to include the automobile manufacturer and automobile dealer as defendants, charging them with negligence as manufacturer and seller of an automobile with a defective door, alleging that the door came open and caused P to fall from the vehicle. D—manufacturer and D—seller contended that P had made a judicial admission as to their non-liability by charging his mother with wilful and wanton negligence. The trial court entered a judgment on the verdict for all defendants. Held, reversed. An infant cannot be bound by the admissions of others. The pleadings made on behalf of an infant cannot be regarded as judicial admissions against him and the infant is not bound thereby. Anderson v. Anderson, 187 N.E.2d 746 (Ill. App. 1963).

It appears to be the undisputed rule that admissions made by guardians ad litem are not binding upon their infant wards. This rule applies to admissions made by guardians ad litem or next friend whether as parties complainant or as parties defendant. The reason for the rule is the protection of persons of tender years who are unable to look out for their own interests. The rule requires the opponent of the infant to prove all of his claims by his own evidence. White v. Joyce, 158 U.S. 128 (1894); Kingsbury v. Buckner, 134 U.S. 650 (1889); Annot., 14 A.L.R. 87 (1921).

The West Virginia authority on this point is in accord. It was held in Childers v. Milam, 68 W. Va. 503, 70 S.E. 118 (1911), that the admissions in the answers of adult defendants cannot bind infant defendants in the cause. A decree against the rights of infants standing only on the admissions must be reversed.