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# Withdrawal of Consent

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# NOTES AND COMMENTS

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## ADOPTION

### WITHDRAWAL OF CONSENT

In March, 1943, an unmarried girl, 17 years of age, knowing that she was about to become a mother signed an agreement and consent to the child's adoption. One day after the birth of her child, she signed an acknowledgment of the consent. The child was born on May 5, 1943. Four days later, on May 9, 1943, the child was given to the adoptive parents. On May 10, 1943, the adoptive parents filed a petition for adoption. On July 3, 1943, petition was filed by the next friend of the natural mother asking the court to pass an order withdrawing the consent to the adoption. The district court held that the natural mother, as a matter of law, has the right to withdraw her consent without cause, before the final order of adoption. Upon appeal, the circuit court of appeals reversed and remanded the order, holding that "the natural mother, as a matter of law, does not have the right to withdraw her consent without cause." *In re Adoption of a Minor*, 144 F. (2d) 644. (1944).

Adoption was not recognized at common law; but certain rights and duties accompanying the parent-child relationship<sup>1</sup> were enforced by the courts even in view of agreements to the contrary.<sup>2</sup> Later statutes recognized the legal status of adoption. Thus, statutes alone determine when the relation of parent and child ceases and in what respects it shall do so.<sup>3</sup> Statutes relating to adoption<sup>4</sup> have been uniformly held to be constitutional except when the statutes interfere with vested rights of the parents.<sup>5</sup> Courts in determining adoption cases have said that the interests of parent and child are controlling. Under diverse statutes, an adoption based upon a consent that has been withdrawn has been held void,<sup>6</sup> that a parent's consent may be withdrawn at any time before final order of adoption<sup>7</sup>, even though the consent was in writing<sup>8</sup>, and accompanied by transfer of the child<sup>9</sup>. Courts have protected parental rights even when the natural parent has abandoned the child.<sup>10</sup> However, where the interests of the child would require

1. Madden, *Domestic Relations* (1931) §§ 120-142.
2. Madden, *Domestic Relations* (1931) § 106.
3. *State ex rel Van Cleve v. Froter*,—Wash.—, 150 F. (2d) 391 (1943); *In re Ziegler*, 82 Misc. 346 (Surr. Ct. 1913), 143 N.Y.S. 562 (1913); *aff'd* 161 App. Div. 589 (Surr. Ct. 1914), 146 N.Y.S. 881 (1914).
4. 4 Vernier, *American Family Laws* (1936) 254-64.
5. *In re Frost's Will*, 182 N.Y.S. 559 (1920); *aff'd* 192 App. Div. 206 (1st ep't 1920); *In re Hoods Estate*, 206 Wis. 227, 239 N.W. 488 (1931); *Sewall v. Roberts*, 115 Mass. 262 (1874).
6. *In re Nelms*, 153 Wash. 242, 279 Pac. 743 (1929).
7. *In re Andrews*, 189 Minn. 85, 284 N.W. 657 (1933); *In re Sunada*, 31 Hawaii 328 (1930).
8. *State v. Berdsley*, 149 Minn. 35, 183 N.W. 956 (1921).
9. *Hebhardt v. Anderson*, 7 Pa. D.&C. 139 (1926).
10. *Andrew's Adoption*, 14 Pa. D.&C. 343 (1930).

it<sup>11</sup>, statutes have deprived parents, without the parents' consent, of a child under certain circumstances<sup>12</sup>. Hence, in the past, emphasis has been placed upon the individual interests of the parents and the interests of the child.

The circuit court of appeals found that the District of Columbia Code<sup>13</sup> adopted a new and different public policy toward adoption, i.e., a change in emphasis from the parental interests to the social interests involved<sup>14</sup>—weight being given to the interests of the child in both cases. Thus, "The individual interests of parents which used to be the thing chiefly regarded has come to be almost the last thing regarded as compared with the interest of society and of the child."<sup>15</sup>

## CONSTITUTIONAL LAW

### The Original Package Doctrine

A manufacturer contracted to purchase raw materials from foreign and Filipino suppliers through the latter's American agents. The merchandise was identified with and appropriated to the purchase contract from the moment of shipment.<sup>1</sup> The merchandise was consigned to brokers and bankers, part on order, part on straight bills of lading, with instructions to notify the manufacturer;<sup>2</sup> it was cleared through customs in the consignee's name and then reconsigned to the manufacturer. While stored in original packages in a warehouse at the purchaser's factory pending use in the manufacturing process,

11. *James v. Williams*, 169 Tenn. 41, 82 S.W. (2d) 541 (1935); *In re Clough*, 28 Ariz. 204, 236 Pac. 700 (1925).
12. *Abandonment. Adoption of McGill*, 49 Pa. D.&C. 374 (1943); *Petition of Elkendahl*, 321 Ill. App. 457, 53 N.E. (2d) 302 (1943); *Purinton v. Jamrock*, 195 Mass. 187, 80 N.E. 802 (1907). *Drunk-ness. Stearns v. Allen*, 183 Mass. 404, 67 N.E. 349 (1903).
13. D.C. Code, (1940) tit. 16, c.II, §§16-201 to 16-207.
14. In its reasoning as to the legislative policy the court stated, "\*\*\*It goes without saying that such people (illegitimate) are more apt to become a burden upon organized society than cooperating members of it.' Mangold, "Children Born out of Wedlock" (1921) 131." p. 651 n. "The number of children who are housed in asylums or boarded out at the expense of the public is evidence enough of the problem and of the need.' Information supplied by the Board of Public Welfare of the District of Columbia." p. 650. "It was with all these considerations in mind that congress repealed the old statute and enacted a new one for the District of Columbia\*\*\*." 6. 650.
15. Pound, "The Spirit of the Common Law" (1921) 189.
  1. Ground given in distinguishing *Waring v. City of Mobile*, 8 Wall. 122 (U.S. 1868) (consignee held to be the importer). See principal case at 876 n. 4.
  2. 46 Stat. 721 (1930), 19 U.S.C.A. § 1483 (1) (1934) provides that merchandise imported into the United States "shall be held to be the property of the person to whom the same is consigned." The court did "not deem this provision to be significant." Principal case, at 876 n. 3. ". . . the Constitution gives Congress authority . . . to lay down its own test for determining when the immunity ends." *Id.* at 878. The Board of Tax Appeals considered the provision. *Hooven & Allison Co. v. Evatt*, 26 Ohio O. 25 (1943).