

Chapter 109

Rights and Relationships of Parent and Child

109.010

NOTES OF DECISIONS

The statutory method of enforcing the liability of a child for the support of its indigent parent is exclusive. *Belknap v. Whitmire*, (1903) 43 Or 75, 72 P 589; *In re Northcutt*, (1916) 81 Or 646, 148 P 1133, 160 P 801.

Divorce does not terminate the statutory duty of a father to support his minor children. *State v. Langford*, (1918) 90 Or 251, 176 P 197; *Hess v. Hess*, (1925) 115 Or 595, 239 P 124; *Bartlett v. Bartlett*, (1944) 175 Or 215, 152 P2d 402; *Levell v. Levell*, (1948) 183 Or 39, 190 P2d 527.

On appeal in a proceeding to declare a father an incompetent, the court cannot compel him to pay for his child's support pending appeal. *In re Northcutt*, (1916) 81 Or 646, 148 P 1133, 160 P 801.

The duty of support includes whatever is necessary for suitable clothing and maintenance according to the station and situation in life of parent and child. *State v. Langford*, (1918) 90 Or 251, 176 P 197.

The obligation of the parent must be measured with reference to his ability and his financial resources. *Id.*

Stipulated property agreement prior to divorce does not relieve parent from statutory obligation to support child, even though divorce decree makes no provision for support. *Hess v. Hess*, (1925) 115 Or 595, 239 P 124.

Support provisions of a divorce decree control in case of divorce. *Coastal Adjustment Bureau, Inc. v. Wehner*, (1967) 246 Or 115, 423 P2d 967.

FURTHER CITATIONS: *Omlie v. Hunt*, (1957) 211 Or 472, 316 P2d 528.

LAW REVIEW CITATIONS: 4 OLR 233. 47 OLR 94.

109.020

CASE CITATIONS: *Winston v. Winston*, (1967) 246 Or 530, 426 P2d 454.

109.030

NOTES OF DECISIONS

The statutory right of father to appoint a testamentary guardian is inconsistent with and is repealed by this section. *Ingalls v. Campbell*, (1889) 18 Or 461, 24 P 904.

This section does not change rule that welfare of child governs its custody. *Merges v. Merges*, (1919) 94 Or 246, 186 P 36.

The common law rule of a father's superior right is abrogated by this section. *Bryant v. Dukehart*, (1923) 106 Or 359, 210 P 454.

After the death of a divorced wife, the father has a paramount right to the custody of the awarded child. *Ellenburg v. Woodson*, (1929) 131 Or 440, 23 P 27.

FURTHER CITATIONS: *Macdonald v. O'Reilly*, (1904) 45 Or 589, 78 P 753; *State v. Langford*, (1918) 90 Or 251, 176

P 197; *Wells v. Wells-Crawford*, (1927) 120 Or 557, 251 P 263, 907; *Omlie v. Hunt*, (1957) 211 Or 472, 316 P2d 528.

109.041

NOTES OF DECISIONS

The intention of subsection (2) is that both parents, adoptive and natural, would share the responsibilities and enjoy the benefits of that relationship, including the right to inherit from their child. *Hood v. Hatfield*, (1963) 235 Or 38, 383 P2d 1021; *Department of Rev. v. Martin*, (1970) 3 Or App 594, 474 P2d 355, Sup Ct review denied.

FURTHER CITATIONS: *In re Frazier's Estate*, (1947) 180 Or 232, 177 P2d 254, 170 ALR 729; *In re Estate of Lewis*, (1960) 224 Or 216, 355 P2d 751.

ATTY. GEN. OPINIONS: Right of child of deceased worker under Workmen's Compensation Act when child has been adopted by others, 1938-40, p 436.

LAW REVIEW CITATIONS: 43 OLR 88-94, 202.

109.050

NOTES OF DECISIONS

The parent's duty of maintenance extends to adopted as well as natural children. *Wertz v. Wertz*, (1928) 125 Or 53, 263 P 911.

FURTHER CITATIONS: *Hood v. Hatfield*, (1963) 235 Or 38, 383 P2d 1021.

LAW REVIEW CITATIONS: 4 OLR 233; 14 OLR 485; 43 OLR 88.

109.060

CASE CITATIONS: *Mullart v. State Land Bd.*, (1960) 222 Or 463, 353 P2d 531; *Walker v. Walker*, (1970) 2 Or App 322, 468 P2d 655; *Thom v. Bailey*, (1971) 257 Or 572, 481 P2d 355.

109.070

NOTES OF DECISIONS

1. Subsection (1)

This presumption arises only where wife is cohabiting with husband at the time of child's conception. *Burke v. Burke*, (1959) 216 Or 691, 340 P2d 948.

2. Subsection (2)

The presumption was disputed by clear evidence that wife was pregnant at time husband met and married her. *Burke v. Burke*, (1959) 216 Or 691, 340 P2d 948.

3. Subsection (5)

It was intended that illegitimate as well as legitimate children may establish paternity for all purposes, including

inheritance, under "any other provision of law" by which paternity could properly be established or declared by any person for any purpose. *Thom v. Bailey*, (1971) 257 Or 572, 481 P2d 355, aff'g 3 Or App 97, 471 P2d 809.

FURTHER CITATIONS: *State Land Bd. v. United States*, (1960) 222 Or 40, 352 P2d 539; *Moore v. Moore*, (1962) 231 Or 302, 372 P2d 981; *Walker v. Sherriff*, (1970) 2 Or App 322, 468 P2d 655; *Deckard v. Newberg*, (1970) 4 Or App 204, 476 P2d 808, Sup Ct review denied.

109.080

CASE CITATIONS: *Thom v. Bailey*, (1971) 257 Or 572, 481 P2d 355.

109.090

CASE CITATIONS: *Walker v. Sherriff*, (1970) 2 Or App 322, 468 P2d 655; *Thom v. Bailey*, (1971) 257 Or 572, 481 P2d 355.

109.100

NOTES OF DECISIONS

Bankrupt's (mother's) right to reimbursement from father for expenses of supporting child cannot prevail over child's claims against father for support. *Boston v. Gardner*, (1966) 365 F2d 242.

109.125 to 109.230

CASE CITATIONS: *Golden v. Smith*, (1971) 324 F Supp 727; *Thom v. Bailey*, (1971) 257 Or 572, 481 P2d 355.

109.125

NOTES OF DECISIONS

Under former similar statute a filiation proceeding did not place a defendant in jeopardy of life or liberty within contemplation of constitutional prohibition of double jeopardy, Ore. Const. Art. I, §12. *State v. Morrow*, (1938) 158 Or 412, 75 P2d 737, 76 P2d 971.

Under former similar statute a filiation proceeding was a special statutory proceeding, civil in its nature. *State v. Yates*, (1922) 104 Or 667, 209 P 231; *State v. Newman*, (1923) 109 Or 61, 218 P 936; *State v. Haslebacher*, (1928) 125 Or 389, 266 P 900; *State v. Tokstad*, (1932) 139 Or 63, 8 P2d 86.

Under former similar statute, the court's jurisdiction continued after a divorce decree not only to modify the decree so as to require the payment of support money for an omitted child but also to determine the question of paternity. *Moore v. Moore*, (1962) 231 Or 302, 372 P2d 981.

109.155

NOTES OF DECISIONS

1. Under former similar statute.

(1) In general. The fatherhood of the child was the main issue. *State v. Newman*, (1923) 109 Or 61, 218 P 936; *State v. Haslebacher*, (1928) 125 Or 389, 266 P 900.

Proof by a preponderance of the evidence was sufficient to establish the paternity of the child. *State v. Newman*, (1923) 109 Or 61, 213 P 936; *State v. Tokstad*, (1932) 139 Or 63, 8 P2d 86.

A verdict concurred in by nine members of jury was sufficient. *State v. Newman*, (1923) 109 Or 61, 218 P 936; *State v. Tokstad*, (1932) 139 Or 63, 8 P2d 86.

State had no right of appeal. *State v. Yates*, (1922) 104 Or 667, 209 P 231.

Complainant's previous chaste character need not be proved. *State v. Haslebacher*, (1928) 125 Or 389, 266 P 900.

It was not necessary to prove that act was induced under a promise of marriage. *Id.*

(2) Instructions; admissibility of evidence; reversible error. A requested instruction that the mere keeping company cannot be construed as showing improper motive on defendant's part, and that law presumes the conduct was in good faith was properly refused. *State v. Haslebacher*, (1928) 125 Or 389, 266 P 900; *State v. Tokstad*, (1932) 139 Or 63, 8 P2d 86.

Statement by counsel to jury that if defendant were not convicted the state might have to support the child was improper, but did not require reversal where testimony against defendant was overwhelming. *State v. Haslebacher*, (1928) 125 Or 389, 266 P 900.

It was not reversible error to admit letter of defendant without eliminating phrase relating to defendant's drinking whiskey. *Id.*

Testimony as to where the prosecutrix stayed during her confinement was admissible. *State v. Tokstad*, (1932) 139 Or 63, 8 P2d 86.

Testimony that the prosecutrix had named the child after its father was not prejudicial. *Id.*

Testimony as to declaration of a doctor to whom the defendant had taken the prosecutrix for the purpose of an illegal operation was admissible where it appeared that a conspiracy existed between the defendant and the doctor. *Id.*

(3) Corroboration. Alleged admissions and flight after being advised of girl's condition constituted sufficient corroborative evidence. *State v. Mackey*, (1926) 119 Or 641, 250 P 744.

"Corroboration" meant evidence which did not emanate from the mouth of the prosecutrix, but such other and independent evidence as added to, strengthened and confirmed her story. *State v. Tokstad*, (1932) 139 Or 63, 8 P2d 86.

The quantum of proof of corroboration under the former statute was the same as in criminal action under ORS 136.550. *Id.*

Corroborating evidence could be circumstantial. *State v. Haslebacher*, (1928) 125 Or 389, 266 P 900; *State v. Tokstad*, (1932) 139 Or 63, 8 P2d 86.

The sufficiency of corroborative evidence was a question for the jury. *State v. Tokstad*, (1932) 139 Or 63, 8 P2d 86.

Corroborative evidence, however slight, had to tend to identify the defendant as the guilty party. *Id.*

The testimony of the prosecutrix did not need to be corroborated in every particular or upon every material point. *Id.*

ATTY. GEN. OPINIONS: Criminal or civil nature of bastardy proceeding, 1922-24, p 93; procedure for discharge of father from liability by settlement made with state aided institution, 1936-38, p 189; taking shorthand notes by court reporter as within term "reduced to writing," 1952-54, p 43; paternal blood test legislation and its effect on the guarantee of trial by jury, 1952-54, p 233.

109.220

ATTY. GEN. OPINIONS: Procedure for discharge of father from liability by settlement made with state aided institution, 1936-38, p 189; discharging putative father without public proceedings, 1962-64, p 106.

109.230

LAW REVIEW CITATIONS: 11 OLR 162, 175.

109.252

ATTY. GEN. OPINIONS: Paternal blood test legislation and its effect on the guarantee of trial by jury, 1952-54, p 233.

109.254

LAW REVIEW CITATIONS: 42 OLR 198.

109.256

LAW REVIEW CITATIONS: 42 OLR 198.

109.305 to 109.400

LAW REVIEW CITATIONS: 37 OLR 82; 5 WLJ 50-65.

109.305

CASE CITATIONS: *Wilcox v. Alexander*, (1960) 220 Or 509, 349 P2d 862; *In re Estate of Nelson*, (1963) 234 Or 426, 383 P2d 55; *McCleskey v. Ore. State Pub. Welfare Comm.*, (1970) 4 Or App 308, 477 P2d 235, Sup Ct review denied.

LAW REVIEW CITATIONS: 43 OLR 92.

109.307

CASE CITATIONS: *Smith v. Green*, (1971) 4 Or App 533, 480 P2d 437.

109.310**NOTES OF DECISIONS**

This section being in derogation of the common law and parents' natural rights must be strictly construed. *Furgeson v. Jones*, (1888) 17 Or 204, 20 P 842, 11 Am St Rep 808, 3 LRA 620; *Williams v. Capparelli*, (1946) 180 Or 41, 175 P2d 153; *In re Adoption of Laules*, (1959) 216 Or 188, 338 P2d 660.

Failure to serve commission [now the Children's Services Division] does not render proceedings void. *Wilcox v. Bishop*, (1927) 121 Or 224, 252 P 963.

Where institution has custody and control of children by virtue of court order, the approval of the institution is necessary for adoption. *In re Flora's Adoption*, (1935) 152 Or 155, 52 P2d 178.

Although the State Public Welfare Commission [now Children's Services Division] need not file the report, if it does so, the report becomes part of the record before the court. *In re Adoption of Laules*, (1959) 216 Or 188, 338 P2d 660.

The natural parent may be estopped to withdraw consent to an adoption. *Id.*

This section must be interpreted in *pari materia* with other adoption statutes. *McCleskey v. Ore. State Pub. Welfare Comm.*, (1970) 4 Or App 308, 477 P2d 235, Sup Ct review denied.

Allegation and proof of consent is jurisdictional in adoption proceedings. *Id.*

FURTHER CITATIONS: *In re Mayfield*, (1938) 158 Or 409, 76 P2d 984; *Whetmore v. Fratello*, (1955) 204 Or 316, 282 P2d 667; *Cutts v. Cutts*, (1961) 229 Or 33, 366 P2d 179.

ATTY. GEN. OPINIONS: Intervention of state where vacation of decree was sought by adoptive parents, 1936-38, p 315; authority of Child Welfare Commission to seek dismissal of petition which had been filed for a year without action, 1936-38, p 409; right of adoptive parent to attack decree on ground that proceedings were brought in wrong county, 1942-44, p 465.

Need of giving notice to Child Welfare Commission, 1920-22, p 487; giving notice to Child Welfare Commission by ordinary, rather than by registered mail, 1932-34, p 616; service of petitions, 1938-40, p 266.

Procedure for adoption of children in custody of state

institutions, 1922-24, p 664; duties of Child Welfare Commission in adoption proceedings, 1932-34, p 495; eligibility of private institutions for license to care for dependant children, 1932-34, p 513; extent of authority of institutions having custody of children, 1944-46, p 240.

Right of adoptive parents to bonus of deceased veteran, 1920-22, p 465; adoption after girl becomes 18 years old, 1922-24, p 664; tax status of legacy to child, adopted in Iowa by married spouse without written approval of other spouse, 1932-34, p 723; residence qualifications for court to have jurisdiction, 1934-36, p 643; applicability of recording requirements to adoption of child not born in Oregon, 1938-40, p 441; length of time after abandonment before court may grant decree, 1942-44, p 170; granting of decree to one married person, rather than to both husband and wife, 1942-44, p 351.

Jurisdiction of court of domestic relations of Multnomah County to entertain adoption proceedings for a child domiciled and physically present in another state, where only party residing in Oregon is divorced natural father who does not have custody, 1948-50, p 26; jurisdiction of district court in adoption proceedings, 1956-58, p 125; jurisdiction of adoptions in Coos County under 1967 Act, 1966-68, p 507.

LAW REVIEW CITATIONS: 8 OLR 11, 27; 39 OLR 135; 5 WLJ 99.

109.312 to 109.329

CASE CITATIONS: *Wilcox v. Alexander*, (1960) 220 Or 509, 349 P2d 862.

109.312**NOTES OF DECISIONS****1. In general**

Consent to an adoption by parents, guardian or other person in loco parentis is jurisdictional, except when the statute does not require it. *In re Estate of Nelson*, (1963) 234 Or 426, 383 P2d 55.

2. Under former similar statute

Except in certain contingencies specified by statute, consent of parents was required for jurisdiction and in absence thereof adoption decree was invalid. *Furgeson v. Jones*, (1888) 17 Or 204, 20 P 842, 11 Am St Rep 808, 3 LRA 620; *Williams v. Capparelli*, (1946) 180 Or 41, 175 P2d 153.

A natural parent who had consented to adoption could effectively withdraw consent at any time prior to decree of adoption. *Williams v. Capparelli*, (1946) 180 Or 41, 175 P2d 153; modified by *In re Adoption of Laules*, (1959) 216 Or 188, 338 P2d 660.

Consent of mother was revocable where given from hospital bed only a few days after birth of illegitimate child, and where there were no grounds for estoppel, mother being diligent in ascertaining adoptive parents. *Williams v. Capparelli*, (1946) 180 Or 41, 175 P2d 153.

In default of the written consent of the parents, they had to have legal notice of the proceedings and an opportunity to be heard. *Id.*

If the parent not having the custody of the child consented to the adoption he was not entitled to be served with a citation or other notice of the adoption proceedings. *Whetmore v. Fratello*, (1955) 204 Or 316, 282 P2d 667.

A natural parent who had consented to an adoption effectively withdrew his consent prior to the decree of adoption and the court had no jurisdiction to decree the adoption. *Hessner v. Bilyeu*, (1957) 210 Or 652, 313 P2d 448.

ATTY. GEN. OPINIONS: Consent of institution as alternative to parents' consent, 1922-24, p 664; validity of parents'

consent where name of adoptive parents does not appear in such consent, 1928-30, p 477, 1936-38, p 329; propriety of parents' release of child to juvenile court for adoption, 1930-32, p 569; effect of decree without consent of, or notice to parents, 1934-36, p 723; validity of consent of mother where consent was given soon after birth, 1936-38, p 644; withdrawal of consent after relinquishment of child, 1942-44, p 114.

109.314

NOTES OF DECISIONS

1. In general

The mere loss of custody in a divorce does not obviate the necessity of consent to adoption, and without consent there must be some conduct upon the part of the nonconsenting parent which indicates an intent to abandon or forfeit the parental rights. *Simons v. Smith*, (1961) 229 Or 277, 366 P2d 875; *Moody v. Voorhies*, (1970) 2 Or App 491, 469 P2d 642, rev'd on other grounds, 257 Or 105, 475 P2d 579.

Conduct grave enough to justify the forfeiture of parenthood must consist of something more than failure to obtain custody in a divorce suit. *Simons v. Smith*, (1961) 229 Or 277, 366 P2d 875.

Due process of law requires there be some correlation between a parent's conduct as a parent and the state's power to cut off his parental rights. *Simons v. Smith*, (1961) 229 Or 277, 366 P2d 875. **Distinguished in** *State v. Blum*, (1970) 1 Or App 409, 463 P2d 367.

The right to be heard, includes the right to enforce one's objections, so long as the objecting parent has not, through his own conduct, forfeited his parental rights. *Simons v. Smith*, (1961) 229 Or 277, 366 P2d 875.

2. Under former similar statute

The former statute did not give a divorce court the power to modify its decree to give custody of a child to the maternal grandparents after the death of his mother. *Volz v. Abelsen*, (1950) 190 Or 319, 224 P2d 213, 225 P2d 768.

A contract in which the plaintiff, in consideration of his agreeing to the adoption of his child to his former wife and her new husband, would be permitted to visit the child was unenforceable after the adoption took place. *Whetmore v. Fratello*, (1953) 197 Or 396, 252 P2d 1083.

A court having jurisdiction could proceed with adoption without consent of the objecting parent. *Burrell v. Simpson*, (1955) 203 Or 472, 280 P2d 368. **Distinguished in** *Simons v. Smith*, (1961) 229 Or 277, 366 P2d 875.

The best-interest-of-the-child rule cannot be applied to adoptions without the consent required by this section or a judicial determination that the necessity of consent is obviated by a judicial determination that the criteria of ORS 109.322, 109.324 or 419.523 have been met. *Moody v. Voorhies*, (1970) 257 Or 105, 475 P2d 579, rev'g 2 Or App 491, 469 P2d 642.

ATTY. GEN. OPINIONS: Sufficiency of consent of parent with legal custody where other parent objects, 1940-42, p 604.

LAW REVIEW CITATIONS: 43 OLR 193-199.

109.316

NOTES OF DECISIONS

Allegation and proof of consent are jurisdictional in adoption proceedings. *McCleskey v. Ore. State Pub. Welfare Comm.*, (1970) 4 Or App 308, 477 P2d 235, Sup Ct review denied.

FURTHER CITATIONS: *Allen v. Allen*, (1958) 214 Or 664, 330 P2d 151.

LAW REVIEW CITATIONS: 43 OLR 194; 5 WLJ 99.

109.318

ATTY. GEN. OPINIONS: Effect of consent to adopt given by a foreign child-caring agency, 1948-50, p 34.

109.322

CASE CITATIONS: *Moody v. Voorhies*, (1970) 2 Or App 491, 469 P2d 642, rev'd, 257 Or 105, 475 P2d 579; *McCleskey v. Ore. State Pub. Welfare Comm.*, (1970) 4 Or App 308, 477 P2d 235, Sup Ct review denied.

LAW REVIEW CITATIONS: 43 OLR 194.

109.324

NOTES OF DECISIONS

Requirement that nonsupport be without "just and sufficient cause" denotes an equivalent, if not broader, standard than wilful. *Wilcox v. Alexander*, (1960) 220 Or 509, 349 P2d 862; *Smith v. Green*, (1971) 4 Or App 533, 480 P2d 437.

Under former similar statute the wilful desertion of a child by its father authorized adoption over the father's objections. In re *Mayfield*, (1938) 158 Or 409, 76 P2d 984.

While consent to adoption by a parent who deserted his child is not essential, still notice and opportunity to be heard must be accorded such parent. In re *Estate of Nelson*, (1963) 234 Or 426, 383 P2d 55.

Absence during confinement and treatment for mental illness cannot be considered voluntary abandonment. *Moody v. Voorhies*, (1970) 257 Or 105, 475 P2d 579, rev'g 2 Or App 491, 469 P2d 642.

Desertion evinces a settled purpose to forego, abandon, or desert all parental duties and parental rights in the child. *Id.*

The term wilful requires that the desertion be volitional or voluntary. *Id.*

FURTHER CITATIONS: *Omlie v. Hunt*, (1957) 211 Or 472, 316 P2d 528; *McCleskey v. Ore. State Pub. Welfare Comm.*, (1970) 4 Or App 308, 477 P2d 235, Sup Ct review denied.

ATTY. GEN. OPINIONS: Length of time after abandonment before court may grant adoption decree, 1942-44, p 170.

LAW REVIEW CITATIONS: 39 OLR 312; 43 OLR 194, 207, 208.

109.326

NOTES OF DECISIONS

A natural parent who has consented to adoption may effectively withdraw consent at any time prior to decree of adoption. *Williams v. Capparelli*, (1946) 180 Or 41, 175 P2d 153, modified by In re *Adoption of Laules*, (1959) 216 Or 188, 338 P2d 660.

LAW REVIEW CITATIONS: 39 OLR 135; 43 OLR 194.

109.328

LAW REVIEW CITATIONS: 43 OLR 194.

109.330

NOTES OF DECISIONS

An adoption decree is void where the father is a nonresi-

dent, does not consent to the adoption, is given no notice, and does not appear in the proceedings. *Furgeson v. Jones*, (1888) 17 Or 204, 20 P 842, 11 Am St Rep 808, 3 LRA 620; *Damskov v. Meyers*, (1953) 197 Or 520, 254 P2d 227.

This section must be strictly observed. *Damskov v. Myers*, (1953) 197 Or 520, 254 P2d 227.

While consent to adoption by a parent who deserted his child is not essential, still notice and opportunity to be heard must be accorded such parent. In re *Estate of Nelson*, (1963) 234 Or 426, 383 P2d 55.

FURTHER CITATIONS: *Smith v. Green*, (1971) 4 Or App 533, 480 P2d 437.

ATTY. GEN. OPINIONS: Effect of decree without consent of parents, or notice to them, 1934-36, p 723.

LAW REVIEW CITATIONS: 8 OLR 11, 27.

109.350

NOTES OF DECISIONS

A natural parent who has consented to adoption may effectively withdraw consent at any time prior to decree of adoption. *Williams v. Capparelli*, (1946) 180 Or 41, 175 P2d 153; In re *Adoption of Bilyeu*, (1957) 210 Or 266, 310 P2d 305. *Williams v. Capparelli*, supra, modified, In re *Adoption of Laules*, (1959) 216 Or 188, 338 P2d 660.

FURTHER CITATIONS: In re *Buell's Estate*, (1941) 167 Or 295, 117 P2d 832; In re *Frazier's Estate*, (1947) 180 Or 232, 177 P2d 254, 170 ALR 729.

LAW REVIEW CITATIONS: 5 WLJ 93-103.

109.370

NOTES OF DECISIONS

As used in this section "circuit court" means the circuit court of the county in which the county court issuing the decree is located. *Whetmore v. Fratello*, (1955) 204 Or 316, 282 P2d 667. *Distinguished in In re Estate of Nelson*, (1963) 234 Or 426, 383 P2d 55.

109.381

NOTES OF DECISIONS

If the defect in the proceedings is the omission of a requirement that could have validly been dispensed with by the legislature in the first instance, the judgment may be validated by a retroactive law, subject to the restriction that it could not impair the obligation of a contract or a vested right. In re *Estate of Nelson*, (1963) 234 Or 426; 383 P2d 55.

A judgment void on its face is a nullity, and a statute of limitations does not apply to such a judgment, at least, where to do so would interfere with vested rights. *Id.*

A statute purporting to validate a judgment void for want of jurisdiction would be unconstitutional, amounting to a denial of due process of law. *Id.*

FURTHER CITATIONS: *Johnson v. Johnson*, (1928) 124 Or 480, 264 P 842; In re *Adoption of Laules*, (1959) 216 Or 188, 338 P2d 660.

LAW REVIEW CITATIONS: 39 OLR 135; 43 OLR 199-202; 44 OLR 247, 248.

109.510

NOTES OF DECISIONS

The statute of limitations is tolled until a person reaches

21 even though he marries before reaching that age. *Bock v. Collier*, (1944) 175 Or 145, 151 P2d 732; *Highland v. Tollisen*, (1915) 75 Or 578, 147 P 558. *Distinguished in Tavenier v. Weyerhaeuser Co.*, (1962) 309 F2d 87.

Children held to have reached their majority under this Act so as no longer to be entitled to support. *Fitch v. Cornell*, (1870) 1 Sawy 156, Fed Cas No. 4,834.

A son remaining to work with his father under a parol contract is entitled to the reasonable value of his services after majority. *Albee v. Albee*, (1871) 3 Or 321.

The law will not imply an agreement on the part of a father to pay his daughter, who is living with his family, wages for ordinary services such as housekeeping. *Barrett v. Barrett*, (1875) 5 Or 411.

A child is presumed to be under the exercise of the parental influence so long as the dominion of the parents lasts. *Baldock v. Johnson*, (1887) 14 Or 542, 13 P 434.

Where decree requires monthly payments by father for child's support during minority or until further order, the statutory amendment raising age of majority from 18 to 21 necessitates continued payments until child reaches age of 21. *State v. Kiessenbeck*, (1941) 167 Or 25, 114 P2d 147.

FURTHER CITATIONS: *Jackman v. Short*, (1941) 165 Or 626, 109 P2d 860; *Cogswell v. Cogswell*, (1946) 178 Or 417, 167 P2d 324.

ATTY. GEN. OPINIONS: Jurisdiction of Court of Domestic Relations over a delinquent girl over 18 years of age, 1920-22, p 458; right of boy over age of 21 years to establish residence separate from parents, 1926-28, p 376; age at which person may use or be sold tobacco, 1928-30, p 116; age at which girl may marry without parents' consent, 1934-36, p 678; age at which parental duty of support of female child ceases, 1936-38, p 80; age at which jurisdiction of state industrial school over married girl ceases, 1938-40, p 209; custody of married girl in institution for incompetents on her attaining majority, 1944-46, p 445; age requirement for auctioneer's license, 1962-64, p 431; a registered elector under 21 as an official registrar of voters, (1971) Vol 35, p 769.

LAW REVIEW CITATIONS: 15 OLR 276, 286.

109.520

NOTES OF DECISIONS

A female ward, married but who has not reached the age of 18, is deemed of age when making settlement with her guardian. *Richardson's Guardianship*, (1901) 39 Or 246, 64 P 390.

Court of Domestic Relations has jurisdiction over feeble minded girl under 18 even though she is married. In re *Flores*, (1926) 119 Or 550, 249 P 1097.

A female delinquent does not avoid the application of the juvenile delinquency laws by marriage while under 18 years of age. *Ex parte Packer*, (1931) 136 Or 159, 298 P 234.

The statute of limitations is tolled until a person reaches 21 even though he marries before reaching that age. *Tavenier v. Weyerhaeuser Co.*, (1962) 309 F2d 87.

ATTY. GEN. OPINIONS: Effect of marriage of female child on the applicability of compulsory education law, 1944-46, p 279; a registered elector under 21 as an official registrar of voters, (1971) Vol 35, p 769.

LAW REVIEW CITATIONS: 37 OLR 82; 49 OLR 313.