the putative father, in case the child is alive at the adjudication, to support only from that date. It is very unlikely that it was intended to thus place a premium on the ability of the accused to delay the commencement of the action or the adjudication thereof. Since *support* of the bastard child by the reputed father *until it is eighteen years old* is the essence of the bastardy proceeding, it seems unwise, in the light of what has been discussed above, for the court to impose such limitation upon this obligation.

M. D. D.

Power of Court to Modify Decree for Support Which Incorporates Agreement of Parties

The court incorporated into a divorce decree the principal provisions of a separation agreement, providing for a property settlement and for specified monthly payments by the father for the support of his minor child. Subsequently the father moved the court to alter the decree so as to reduce the amount payable for support, on the ground of changed conditions. *Held,* that the court had no authority to reduce the amount ordered in the decree, as to do so would be to impair the obligation of a contract.[1]

In the absence of such a contract between the spouses, it is generally acknowledged that a court of equity may, upon proper allegations of the changed conditions and circumstances of the parties, modify the decree, either by increasing or decreasing the allowance.[2]

In the holding in the principal case, the Supreme Court of Ohio went against the great weight of authority in America,[3] but was not

[1] Tullis v. Tullis, 138 Ohio St. 187, Ohio Bar (May 5, 1941).

[2] Monahan v. Monahan, 14 Ohio App. 116 (1921); Connolly v. Connolly, 16 Ohio App. 92 (1922); Olney v. Watts, 43 Ohio St. 499, 3 N. E. 354 (1885); Meissner v. Meissner, 11 Ohio C. C. 1, 5 Ohio C. D. 305 (1895); Baker v. Baker, 4 Ohio App. 170, 21 Ohio C. C. (N.S.) 590, 60 W. L. Bull. 25 (1915); Smedley v. State, 95 Ohio St. 141, 115 N. E. 1022 (1916); Sager v. Sager, 5 Ohio App. 489, 26 Ohio C. C. (N.S.) 522, 37 Ohio C. C. 559 (1916). The rule has been recognized in Clough v. Long, 8 Ohio App. 420, 28 Ohio C. A. 423, 40 Ohio C. C. 185, 63 W. L. Bull. 205 (1918); Garver v. Garver, 102 Ohio St. 443, 133 N. E. 551 (1921). *See* annotation in 71 A. L. R. 723, and cases cited therein.

[3] Pryor v. Pryor, 88 Ark. 302, 129 Am. St. Rep. 102, 114 S. W. 700 (1908); Herrick v. Herrick, 319 Ill. 146, 149 N. E. 820 (1925); Maginnis v. Maginnis, 323 Ill. 113, 153 N. E. 654 (1926); Langrall v. Langrall, 145 Md. 340, 125 Atl. 695, 37 A. L. R. 437 (1924); Aldrich v. Aldrich, 166 Mich. 248, 141 N. W. 542 (1911); Kelly v. Kelly, 194 Mich. 94, 160 N. W. 397 (1916); Warren v. Warren, 116 Minn. 458, 133 N. W. 1009 (1912); Connett v. Connett, 81 Neb. 777, 116 N. W. 658 (1908); Wallace v. Wallace, 74 N. H. 256, 67 Atl. 580 (1907); Le Beau v. Le Beau, 80 N. H. 139, 114 Atl. 28 (1921). For other authorities and statement of the general rule see annotations in 58 A. L. R. 639 and 109 A. L. R. 1068.

inconsistent with the previous views taken by the Ohio courts.[4] The decision is open to criticism on two points, both points being recognized by Judge Zimmerman in his dissenting opinion:

(1.) The holding ignores the proposition that the rights arise from the decree itself, as to which the agreement is merely evidence.[5] "Such an agreement becomes merged into the decree and thereby loses its contractural nature at least to the extent that the court has power to modify the decree when changed circumstances so justify."[6] That the provision for support is made part of the court's order by agreement of the parties adds not a whit to the force and effect of the decree,[7] nor divests the court of its right later to alter the decree.[8] This point was mentioned by Judge Zimmerman in the closing lines of his opinion.[9] A decree for alimony does not depend upon the agreement, which is merely helpful to the court in deciding what the parties thought adequate and just, and which may in fact be ignored altogether.[10] This problem might be avoided if the trial court refused to incorporate the agreement but included the terms of the agreement in its decree, without any reference to the contract itself.

(2.) A distinction must be drawn between an order for alimony and one for the support of a minor child or children. The jurisdiction of the court over the persons of minor children of divorced parties is continuing, even with no express reservation in the decree itself.[11] Therefore, an allowance for the support of children may always be modified by the court because of changed conditions.[12] Even though the decree for the support of such children be based on an agreement, the Ohio court does not hesitate to *increase* the amount of support money, ignoring the fact that this is just as much an impairment of contract rights as a decrease would be, on the ground of public policy and to protect the interests of the children.[13] Might it

[4] Law v. Law, 64 O. S. 369, 60 N. E. 560 (1901); Clough v. Long, 8 Ohio App. 420 (1918); Kettenring v. Kettenring, 29 Ohio App. 62, 163 N. E. 43 (1928); Ferger v. Ferger, 46 Ohio App. 558, 189 N. E. 665 (1934), discussed in 2 O. S. L. J. 49; Campbell v. Campbell, 46 Ohio App. 197, 188 N. E. 300 (1933).

[5] *See* Wallace v. Wallace, 74 N. H. 256, 260, 67 Atl. 580 (1907).

[6] Gardner, J., in Worthington v. Worthington, 224 Ala. 237, 238, 139 So. 334 (1932).

[7] Herrick v. Herrick, 319 Ill. 146, 149 N. E. 820 (1925).

[8] Southworth v. Treadwell, 168 Mass. 511, 47 N. E. 93 (1897).

[9] "In passing it may be appropriate to note that we are not here concerned with the rights of the parties under the agreement itself as an independent instrument in another and different kind of action." 138 Ohio St. 187, 202.

[10] Wallace v. Wallace, 74 N. H. 256, 67 Atl. 580 (1907).

[11] Corbett v. Corbett, 123 Ohio St. 76, 174 N. E. 10 (1930).

[12] Connolly v. Connolly, 16 Ohio App. 92 (1922); Corbett v. Corbett, 123 Ohio St. 76, 174 N. E. 10 (1930).

[13] Campbell v. Campbell, 46 Ohio App. 197, 188 N. E. 300 (1933).

not frequently be in accord with sound public policy, as well as to the best interests of the minor children, to reduce the burden of the one liable for the support when it becomes apparent that to deny such reduction would be to work undue hardship on the father? "There is no virtue in killing the goose which laid the golden eggs."[14]

C. M. H.

DESCENT AND DISTRIBUTION

Ohio General Code Section 10512-19—Right of an Adopted Child to Inherit Through Its Adoptive Parent

Lena Post died intestate, survived by two brothers and an adopted son of her deceased sister. Upon a petition by her administrator to determine the heirs of the estate, the Probate Court excluded the adopted child as an heir. On appeal the Court of Appeals of Cuyahoga county reversed the Probate Court and held that the statute of descent and distribution, Ohio General Code, Section 10503-4 (6), when construed in connection with the adoption statute, Ohio General Code, Section 10512-19, permits an adopted child to inherit not only *from* but also *through* its adoptive parent. *White, Adm.*, v. *Meyer*, 66 Ohio App. 549, 33 Ohio L. Abs. 151 (1940).

The principal case is the most authoritative direct holding reported since the adoption statute was amended in 1932.[1] In arriving at its decision the court disposes of a line of Supreme Court cases to the contrary,[2] by pointing out that they were all decided before the 1932 amendment was added to the adoption statute.[3] There are not many reported cases interpreting the effect of this amendment. In reading them one denotes a tendency on the part of the courts to adhere to the rule established by the outmoded Supreme Court de-

[14] Lloyd, J., dissenting, in Campbell v. Campbell, 46 Ohio App. 197. See also dissenting opinion of Zimmerman, J., in 138 Ohio St. 187, 200.

[1] *See* Note (1940) 7 Ohio State L. J. 441, where the previous Ohio cases are discussed.

[2] Albright v. Albright, 116 Ohio St. 668, 157 N. E. 760 (1927); Phillips v. McConica, 59 Ohio St. 1, 51 N. E. 445 (1898); Quigley v. Mitchell, 41 Ohio St. 375 (1884); Upson v. Noble, 35 Ohio St. 655 (1880).

[3] General Code, Section 10512-19, Effective Jan. 1, 1932, replaced former Section 8030, and added the following words: "but shall be capable of inheriting property expressly limited by will or by operation of law to the child or children, heir or heirs at law, or next of kin, of the adopting parent or parents, or to a class including any of the foregoing."