

I adhere to the decision in *Re Davis*, 18 O.L.R. 384: "Parents cannot enter into an agreement legally binding to deprive themselves of the custody and control of their children; and, if they elect to do so, can at any moment resume their control over them."

*Humphrys v. Polak*, [1901] 2 K.B. 385, 390, is also in point. . . . See also *Lord St. John v. Lady St. John*, 11 Ves. 531; *Hope v. Hope*, 8 DeG. M. & G. 731; *In re O'Hara*, [1900] 2 I.R. 232, 241: "English law does not recognise the power of binding by abdicating either parental right or parental duty:" per *Fitzgibbon*, L.J.

*Roberts v. Hall*, *supra*, has been cited as against this doctrine; but all that that case actually decides is, that, even though one party to a contract could not be compelled to carry out his part, if he does in fact carry out his part, the other party is bound to carry out his. We need not consider whether this would be held to be law, since the case in the Supreme Court of *Chisholm v. Chisholm*, 40 S.C.R. 115. That case seems to me to be against the respondents. . . .

The document not being a bar, there is no need to have it set aside. It is not, perhaps, wholly without significance that there is no provision in it that the grandchild shall be the "heir" of her grandparents.

The document, although it is not a bar to these proceedings, is not wholly to be disregarded in the consideration of the second branch of the case.

Upon an application to the Court for the custody of a child, it is not altogether, or even primarily, the parental rights of the father which the Court, acting for the King as *parens patriæ*, takes into consideration, but the advantage—I use the larger word—of the child. The law gives the custody and control of his children to the father, not for his gratification, but on account of his duties. . . .

A long acquiescence in another having the custody and control of the child may indicate disregard of parental duty—and, what is equally important, may permit a child to become accustomed to an environment from which he should not be torn. Nothing of the kind appears here. Even assuming that the father wholly understood the document when he signed it, there was a prompt repudiation—and there was no becoming habituated to a novel situation subsequent to and authorised by the agreement.

In my opinion, then, the agreement is of small significance, if any.