Voluntary Adoption by Those in Military Service

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hibits the deprivation of liberty without due process of law. In prohib-
hibiting that deprivation the Constitution does not recognize an abso-
lute and uncontrollable liberty. Liberty in each of its phases has its
history and connotation. But the liberty safeguarded is liberty in a
social organization which requires the protection of law against the
evils which menace the health, safety, morals and welfare of the
people. Liberty under the Constitution is thus necessarily subject
to the restraints of due process, and regulation which is reasonable
in relation to its subject and is adopted in the interests of the com-
munity is due process. This essential limitation of liberty in general
governs freedom of contract in particular.\(^\text{16}\)

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**VOLUNTARY ADOPTION BY THOSE IN MILITARY SERVICE.**—The
legislature of the State of New York has demonstrated a definite
policy of aiding those away from home on active duty in the armed
forces, by enacting laws facilitating procedure relative to their legal
status.\(^1\) In keeping with this general policy, the legislature has
recently amended the Domestic Relations Law dealing with voluntary
adoptions, facilitating thereby adoptions by those persons on active
duty in the armed forces of the United States.\(^2\)

Although the concept of adoption is rooted essentially in the
concept of charity, it was known as a legal status only to some of the
continental systems of law, and primarily in the French and Spanish
law, but it was unknown to the English common law.\(^3\) As a result,
therefore, the whole modern concept in our law is purely one of
statutory regulation.\(^4\) Since it is a legislative creature, the legisla-
ture retains the power to create, destroy, and to limit the privilege of
adoption.\(^5\) Having the power to regulate the privilege, the legisla-
ture has been reluctant, in the past, to treat adopted children in the
same manner as natural children. In the first general enactment of
the subject of adoption into New York law,\(^6\) the adopted child was
permitted to assume all the relationships of a natural child, but the
law expressly excluded the right of inheritance.\(^7\) In 1887, however,
this disability was removed so as also to confer rights of inheritance. Despite the apparent lack of surface distinctions, there are still certain limitations in the law itself, impeding the complete right of equal inheritance. Where, for example, real or personal property is to pass to remaindermen upon a termination of a life interest in the foster parent, upon the condition that he die without heirs, "the foster child is not deemed the child of the foster parent so as to defeat the rights of the remaindermen." And where the passing of property, real or personal, is to go to remaindermen upon condition that the foster child die without brothers or sisters surviving, "no other foster child or natural child of the foster parents is deemed a brother or sister so as to defeat the rights of remaindermen." The courts, too, still persist in finding basis for distinctions. It was held in *In re Leask*¹¹ that a devise to *A* for life, and upon his death, the payment of the principal which was to be made to "his child or children" did not include adopted children. In so holding, the court interpreted the facts of the case to fit adequately into the statutory intent of preserving the rights of remaindermen,¹² as opposed to complete equality of inheritability. Generally speaking, however, the adopted child inherits from foster parents by virtue of the statute,¹³ but not through them as natural children.¹⁴

The current law defines "voluntary adoption" to mean any adoption other than that of a minor who has been placed for adoption by an authorized agency.¹⁵ "Voluntary adoption," therefore, is to be distinguished as characterizing voluntary acts of private individuals who have manifested a desire to adopt independently of the mechanics of legally instituted agencies. Since such agreement is in its essence the culmination of a voluntary act that naturally leads the parties into the assumption of obligations of a completely new legal relationship and status, the law seeks always to maintain strict control over the circumstances at all stages of the adoption proceedings, in order that it supervise closely the manner of giving consents essential to initiate the status, and in this way to protect the adopted child from becoming a mere chattel. To this end, the law requires that the consent of "the foster parents or parent, the foster child, and all persons whose consent is required by Section 111" of the Domestic Relations Law¹⁷ to appear for examination before a judge or surro-

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¹ L. 1887, c. 703.
² N. Y. Dom. Rel. Law § 115, par. 4.
³ Id., par. 8.
⁵ See notes 9 and 10 supra.
⁸ N. Y. Dom. Rel. Law § 109, par. 5.
⁹ Id. §§ 111, 112.
¹⁰ N. Y. Dom. Rel. Law § 111 lists the following persons whose consent is required, "... 1. Of the foster child if over fourteen years of age; 2. Of the parents or surviving parent of a child born in wedlock; 3. Of the mother
The procedure which necessitates the giving of consents is strictly followed, and the natural rights of the natural parents are always minutely watched, and afforded the fullest protection of the law. Where, on the other hand, a parent is deemed to have abandoned his or her child, consent is thereby rendered unnecessary, or if the foster child is over eighteen years of age, the court in its discretion may dispense with consents of persons listed as necessary by statute. All persons required by statute to execute their consents must appear for examination before the judge or surrogate of the county where the foster parents reside, or if the foster parents are not residents of the state, then they must appear before the judge or surrogate in the county where the foster child resides. So strictly is this requirement interpreted, that in Murphy v. Brooks an order confirming an adoption was set aside for failure to recite the appearance of the adoptive father before the county judge, where the actual fact was that he did not appear, but that his acknowledgment was taken by the captain of a ship on which he was employed. The court held the acknowledgment to be void since it was not properly authenticated in strict compliance with federal law for authentication of documents. The statute further provides that the petition must be verified, the agreement and consents executed and acknowledged, of a child born out of wedlock; 4. Of any person or authorized agency having lawful possession of the foster child.

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18 Caruso v. Caruso, 175 Misc. 200, 23 N. Y. S. (2d) 239 (1940).
19 "Abandonment" was construed in respect to adoption as the conduct on the part of the parent that clearly evinces a definite purpose to cast off all parental duties and obligations toward the child in In re Cohen's Adoption, 155 Misc. 202, 279 N. Y. Supp. 427 (1935).
20 In In re Cohen's Adoption, cited supra note 19, the court indicated further, that if no abandonment could be found, the natural right of the parent would prevail, and the state was powerless to interfere with the parent's natural right over the child.
21 N. Y. Dom. Rel. Law § 111, par. 4.
22 Ibid.
23 Id. § 112, par. 1.
25 N. Y. Dom. Rel. Law § 112, par. 2 provides that foster parents or parent, and the foster child if over eighteen years of age must present to the judge or surrogate, 1. a petition stating, (a) names and places of residences of petitioners; (b) whether they are married or unmarried; (c) if married, whether they are living together as man and wife; (d) the name, date, and place of birth of the foster child; (e) the religious faith of the petitioners; (f) the religious faith of the foster child and his parents; (g) the facts, if necessary, that render the consents of either or both the parents of the foster child unnecessary; (h) the manner in which the foster parents obtained the foster child; (i) the period of time the foster child has resided with foster parents; (j) approximate income of the petitioners; (k) the proposed name, if any, of the foster child; (l) that no previous application has been made before any judge or surrogate for the same relief, or if made, its disposition; (m) whether the foster child has been previously adopted; all of which statements shall be taken prima facie as true. 2. An agreement on the part of the foster parents to adopt and treat the foster child as their own lawful child.
the proof given and the affidavits sworn to by the respective persons before such judge or surrogate.\textsuperscript{26}

It is readily evident, therefore, that a foster parent on active duty in the armed forces of the United States could not be present at the time so required pursuant to statute.\textsuperscript{27} Hence, to facilitate adoptions among the members of the armed forces, the legislature has amended the requirement for personal appearance in respect to such members of the armed forces.\textsuperscript{28} As the amended statute now provides, it is possible where the foster parent, who is on active duty, is married to the natural parent of the child, for the county judge or surrogate to dispense with the appearance of the foster parent, when the natural parent and spouse is actually present before such judge or surrogate, in person, for the required examinations.\textsuperscript{29} Where this is the method followed, and the verification, agreement and consent of the parent in the armed forces is necessary, it is deemed sufficient if such verification, agreement and consent be duly acknowledged, or proved and certified in form sufficient to entitle a conveyance to be recorded in this state.\textsuperscript{30} Upon the receipt of such papers duly acknowledged, the judge or surrogate may grant the order of adoption without the personal appearance of such foster parent, parent, or person.\textsuperscript{31} The amended act, as adopted, was made retroactive in effect, applying to all proceedings for adoption instituted since December 1, 1941.\textsuperscript{32}

It is submitted that the amendment will be beneficial in effect, since by its scope, it seeks to strengthen the status of marriage by removing a possible latent cause for disunity, and to aid further in stabilizing the family unit, as well as eventually to insure the adequate rearing of the children so adopted.

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NEW YORK COMMERCIAL RENT CONTROL ACTS.—Not the least of the social and economic problems created by the war have been those which have confronted the tenants of real property who have found it necessary to execute or renew a lease under the abnormal conditions brought on by our involvement. It is but pointing out the obvious to say that building construction very nearly ceased in New York City even before we became engaged in the war, while the demand for living quarters and commercial space increased sharply as a result of the increased activity and the concentration of workers

\textsuperscript{26} N. Y. Dom. Rel. Law § 112, par. 5.
\textsuperscript{27} Ibid.
\textsuperscript{28} Id. pars. 1 and 5 as amended by L. 1945, c. 98.
\textsuperscript{29} Id. par. 5.
\textsuperscript{30} Ibid.; see also N. Y. Real Prop. Law § 291 for method of recording conveyances.
\textsuperscript{31} See note 30 supra.
\textsuperscript{32} L. 1945, c. 98, § 2.