

THE ADOPTION OF FRENCH CHILDREN BY AMERICAN CITIZENS

As a result of social conditions created by the war, the number of adoption proceedings by Americans of foreign children abroad has greatly increased in number. This is especially true in France where adoptions by Americans became frequent after World War I. Adoption constitutes a recognized form of aid to unmarried mothers unable to support a child. It is also helpful in the case of children of impoverished families in which one or both parents have been lost. Where the adopting parents are Americans, the judicial procedure provided under the French Civil Code has usually been observed. An effort has recently been made to avoid complication and expense by following the simpler proceedings provided by American State legislation, the documents being verified before an American diplomatic or consular official. This seems to be regarded by the French courts as a circumvention of the French law and the situation thus produced requires some elucidation in the interest of good relations.

In a recent case¹ an American couple domiciled in California executed papers for adoption of the six-months-old female child of a young unmarried French mother in the presence of the vice consul at the American Embassy in Paris. The mother of the child later executed the necessary authority. When the adopting parents and the mother of the child attempted to register the adoption with the registry of the civil status (*l'état civil*), the Public Minister refused registration. The Civil Tribunal of the Seine sustained the refusal on the ground that the nationality of the infant being French, the judicial proceeding required by the French Civil Code was essential. The court recognized that adoption was in the interest of the infant but that the French judicial proceeding was a fundamental requirement for the adoption of any French child in France.

There seems to have been some effort on the part of the adopting parties to have the court recognize extraterritorial privileges for an adoption executed before an American consular officer at the Embassy. This was rejected because of the absence of any treaty provision and because there was no proof of reciprocity under American law by which the adoption of an American child by French subjects before a French diplomatic or consular officer in the United States would have been recognized.

Under the original provisions of the Napoleonic Civil Code, the right to adopt or to be adopted was one of those purely civil rights reserved to French citizens or to those who had been "homologated" to the rights of French citizens. Under a later amendment, a French citizen may now adopt an alien or be adopted by an alien.² The distinguished French jurist, Pillet,³ was of the opinion that the ordinary rules for the strict ap-

¹ *Recueil Dalloz de Doctrine, de Jurisprudence et de Législation*, 1949, Jurisprudence, p. 368. Civil Tribunal of the Seine, Feb. 10, 1948. Annotation by R. Savatier.

² Civil Code, Art. 345, as amended June 19, 1923, and July 29, 1939.

³ A. Pillet, *Traité Pratique de Droit International Privé* (1923), Vol. 1, p. 652.

plication of the national law of the child should not apply to the adoption of the child of an unmarried mother. Instead, the law of the adopting parent should be recognized, thus permitting a French child to occupy a legitimated family status of which he might otherwise be wholly deprived. The adoption of a French child does not effect the loss of French nationality. Why, then, was the adoption refused in the face of the clear advantage which the court recognized and in the absence of any requirement in the code that French law should apply where the adoption is completed under the law of the country of which the adopting parents are domiciled nationals?

Adoption is an institution which does not prevail in all countries of Western civilization. Indeed it was not recognized under the English common law and therefore only exists in the United States by reason of statute law. Under California law, the consent of both the adopting and the natural parent or parents must be duly proved by an instrument which, if made without the United States, may be proved before a consular officer resident in the country where made. A judge's order is necessary showing "that the interests of the child will be promoted by the adoption."⁴ This is not, however, regarded as a judicial proceeding and the parties are not required to appear before the judge to whom the necessary consents are presented. Accordingly, the requirements of California law seem to have been satisfied in the instant case.

The well-known French jurist, Niboyet, recognizes that in cases like the present, there is no question of depriving the child of any of its political rights. He insists, however, that the child has an inherent right not to have a change of its status by adoption except according to French public law.⁵ One wonders what substantial right is preserved through the application of French law in this case. The attribution of a "right" becomes the deprivation of benefit. Niboyet gives us a more realistic clue to the result reached when he points out that French authorities are unable to carry through an adoption except by the extrinsic and judicial forms of French law. In other words, the judicial forms of one sovereign jurisdiction are not integrated with those of another even where all the substantive requirements have been observed. Unfortunately this is a situation too often met with in international civil and commercial relations.

Perhaps the proponents would have had better success in the instant case if they had presented the record of an adoption which fully complied with the underlying requisites of French law, but which was duly completed under the law of California and certified by the usual *certificat de coutume*, as having validity in California.

⁴ California Civil Code, §§ 226-227, 1182-1183.

⁵ J. P. Niboyet, *Traité de Droit International Privé Français*, Vol. V (1948), No. 1529, pp. 493-496.

Adoption is one of the recognized methods of child aid with parental approval under circumstances similar to those of the instant case. If it is to be continued in times of stress along with closer social and economic relations between the friendly nations of the Western World, some integration in the international rules would seem to be desirable.

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