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CITIZENSHIP-INTENT REQUIRED FOR EXPATRIATION

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COMMENTS

CITIZENSHIP—INTENT REQUIRED FOR EXPATRIATION—In recent years, many cases have involved the question whether an American citizen has expatriated himself by his actions. Expatriation in the United

States is now covered by statute, but the courts, in construing these statutes, have faced a recurrent problem as to what intent on the part of the citizen is required to effect expatriation. To interpret the present doctrine, it is necessary to examine the history of expatriation, the statutes, and the various situations in which the question of intent has arisen.

I

Before 1868, American courts generally followed the English common law and held that a citizen had no inherent right to expatriate himself; expatriation required the consent of the sovereign.¹ The executive department, however, generally held otherwise, and recognized a right of voluntary expatriation in the individual.² This doctrine arose almost by necessity to protect naturalized American citizens who returned to their native lands and were met by claims on their allegiance by their former sovereigns.³ The problem became acute with the flood of immigration in the middle of the 19th Century. In 1868, naturalized American citizens, who were former British subjects, were arrested in Ireland by the British government for participation in Fenian agitation, on the basis that they were still British subjects. This caused great public resentment and led to the passage of the Act of 1868.⁴ This is merely a declaration that since expatriation is a natural and inherent right of all people, and since in recognition of this principle the government has freely received emigrants of all nations and given them citizenship, any declaration, instruction, opinion, order, or decision that denies or restricts the right is inconsistent with the fundamental principles of the republic.⁵ In view of the background and statement of purpose of this statute, it was primarily intended to apply to immi-

¹ MOORE, *DIGEST OF INTERNATIONAL LAW* 552 et seq. (1906); BORCHARD, *THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 675 (1915); MOORE, *PRINCIPLES OF AMERICAN DIPLOMACY* 270-4 (1918); 2 HYDE, *INTERNATIONAL LAW* 1146 (1945); FENWICK, *INTERNATIONAL LAW* 258 (1948); Floumoy, "Naturalization and Expatriation," 31 *YALE L.J.* 702, 848 (1922). *Shank v. Dupont*, 3 Pet. (28 U.S.) 242 (1830); *Ainslie v. Martin*, 9 Mass. 454 (1813); *Ex parte Chin King*, (C.C. Ore. 1888) 35 F. 354; *Comitis v. Parkerson*, (C.C. La. 1893) 56 F. 556. Cf. *Juando v. Taylor*, (C.C. N.Y. 1818) 2 Paine 652.

² 3 MOORE, *DIGEST OF INTERNATIONAL LAW* 562 et seq. (1906); 8 *OP. ATTY. GEN.* 139 (1856); 9 *OP. ATTY. GEN.* 356 (1859).

³ BORCHARD, *THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 675-6 (1915); MOORE, *THE PRINCIPLES OF AMERICAN DIPLOMACY* 274-85 (1918); 2 HYDE, *INTERNATIONAL LAW* 1147 (1945); FENWICK, *INTERNATIONAL LAW* 258 (1948); Floumoy, "Naturalization and Expatriation," 31 *YALE L.J.* 702, 848 (1922).

⁴ 3 MOORE, *DIGEST OF INTERNATIONAL LAW* 579-81 (1906); BORCHARD, *THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 676 (1915); MOORE, *PRINCIPLES OF AMERICAN DIPLOMACY* 285-90 (1918); Borchard, 25 *AM. J. INT. L.* 312 (1931).

⁵ 15 *Stat. L.* 223 (1868), 8 *U.S.C.* (1946) §800.

grants naturalized here; but its language is not so limited, and it is construed to apply to American citizens, and to be the consent required to allow them to expatriate themselves.⁶

This statute contained no statement of what acts were sufficient to constitute expatriation. In spite of requests by President Grant for such a declaration,⁷ nothing was done until 1907. In that year, Congress enacted a statute providing that any American woman who marries a foreigner takes the nationality of her husband, and that an American citizen is deemed to have expatriated himself when he has been naturalized in a foreign state, or has taken an oath of allegiance to a foreign state in conformity with its laws.⁸ The statute also established presumptions of expatriation for naturalized citizens resulting from their residence abroad. Except for the provision as to marriage by an American woman to a foreigner, which was repealed in 1922,⁹ this remained the statutory declaration as to what constituted expatriation until the Nationality Act of 1940.¹⁰ This act gives more detailed statements of what constitutes expatriation. These provisions will be examined below.

II

The Act of 1868 declared only a right of expatriation and thus put expatriation on a voluntary basis. Clearly, for expatriation, there had to be an intent to lose citizenship. But both the Act of 1907 and the Nationality Act of 1940 establish acts that constitute expatriation without reference to intent, and the courts have been troubled as to the intent that is required to lose citizenship under these provisions. There are many statements that expatriation is a voluntary renunciation of nationality.¹¹ It has been held that the person must be capable of having an intent and of knowing the consequences of his act. Thus it was

⁶ BORCHARD, *THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 679 (1915); 14 *OP. ATTY. GEN.* 295 (1873); *United States ex rel. Scimeca v. Husband*, (2d. Cir. 1925) 6 F. (2d) 957; *Edwards v. United States*, (8th Cir. 1925) 7 F. (2d) 357.

⁷ 3 MOORE, *DIGEST OF INTERNATIONAL LAW* 712-4 (1906).

⁸ 34 Stat. L. 1228 (1907).

⁹ 42 Stat. L. 1021 (1922).

¹⁰ 54 Stat. L. 1137, §401 (1940), 8 U.S.C. (1946) §801. These provisions have been amended; 58 Stat. L. 4 (1944), 8 U.S.C. (1946) §801(g); 58 Stat. L. 677 (1944), 8 U.S.C. (1946) §801(i); 58 Stat. L. 746 (1944), 8 U.S.C. (1946) §801(j). See Flournoy, "Revision of Nationality Law of the United States," 34 *AM. J. INT. L.* 36 (1940).

¹¹ 3 HACKWORTH, *DIGEST OF INTERNATIONAL LAW* 209-11, 230 (1942); VAN DYNE, *CITIZENSHIP OF THE UNITED STATES* 269 (1904); BORCHARD, *THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 674 (1915). *Perkins v. Elg*, 307 U.S. 325, 59 S.Ct. 884 (1939); *Doreau v. Marshall*, (3d Cir. 1948) 170 F. (2d) 721; *Ex parte Griffin*, (D.C. N.Y. 1916) 237 F. 445; *Banning v. Penrose*, (D.C. Ga. 1919) 255 F. 159; *Haaland v. Attorney General of the United States*, (D.C. Md. 1941) 42 F. Supp. 13.

held that neither a minor¹² nor an insane person¹³ could expatriate himself by his acts. It seems that this requirement as to capacity is still observed, although the Nationality Act of 1940 lowers the age as to minors from 21 to 18.¹⁴

However, an intent to lose citizenship has not always been required. In the case of *Mackenzie v. Hare*,¹⁵ which arose under the Act of 1907, an American woman who married an alien claimed that she had not lost her American citizenship, since she did not so intend. The Court held that under the statute, she lost her citizenship by the marriage. The Court did not decide whether Congress has power to provide for expatriation by other than a voluntary act;¹⁶ the Court rather found that since the marriage was a voluntary act, and was by statute equivalent to expatriation, the expatriation was voluntary.

Perhaps the greatest dispute has arisen when a child who is an American citizen acquires the nationality of another country by the acts of his parents. Here it seems clear that in the ordinary situation the child has no intent to lose citizenship; and even if he does have such an intent, it is not recognized as binding.¹⁷ Earlier rulings had held that there was no expatriation in this situation,¹⁸ but these were followed by several holdings to the contrary, beginning about 1930.¹⁹ Some of

¹² 2 HYDE, *INTERNATIONAL LAW* 1161-3 (1945); *Ex parte Chin King*, (C.C. Ore. 1888) 35 F. 354; *United States ex rel. Baglivo v. Day*, (D.C. N.Y. 1928) 28 F. (2d) 44.

¹³ *McC Campbell v. McC Campbell*, (D.C. Ky. 1936) 13 F. Supp. 847.

¹⁴ Section 403(b) of the Nationality Act of 1940, as amended, provides that no national under the age of eighteen can expatriate himself, except by treason, a written renunciation of citizenship within the United States, or staying outside the United States to avoid military service; 8 U.S.C. (1946) §803(b). The explanatory comments of the Cabinet Committee accompanying the draft code state that "it is believed that a person who has reached the age of eighteen years should be able to appreciate fully the seriousness of any act of expatriation on his part." Message from the President to Congress, transmitting the report of the Secretary of State, Secretary of Labor, and Attorney General proposing a revision of the nationality laws submitted June 1, 1938; found in *Hearings before the House Committee on Immigration and Naturalization, 76th Cong., 1st sess. (1939), Hearing to Revise and Codify the Nationality Laws of the United States*, p. 405 at 493.

¹⁵ 239 U.S. 299, 36 S.Ct. 106 (1915).

¹⁶ "It may be conceded that a change of citizenship cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen. The law in controversy does not have that feature." *Mackenzie v. Hare*, 239 U.S. 299 at 311, 36 S.Ct 106 (1915).

¹⁷ *Ex parte Chin King*, (C.C. Ore. 1888) 35 F. 354; *United States ex rel. Baglivo v. Day*, (D.C. N.Y. 1928) 28 F. (2d) 44.

¹⁸ 15 *OP. ATTY. GEN.* 15 (1875); *Ex parte Chin King*, (C.C. Ore. 1888) 35 F. 354; 3 *MOORE, DIGEST OF INTERNATIONAL LAW* 532-51 (1906).

¹⁹ 3 *HACKWORTH, DIGEST OF INTERNATIONAL LAW* 235-9 (1942); 36 *OP. ATTY. GEN.* 535 (1932); *Ostby v. Salmon*, 177 Minn. 289, 225 N.W. 158 (1929); *Koppe v. Pfefferle*, 188 Minn. 619, 248 N.W. 41 (1933); *United States v. Reid*, (9th Cir. 1934) 73 F. (2d) 153. In two private acts, Congress provided that whereas a minor had involuntarily lost his citizenship when his parents left this country, he was by this act considered legally admitted to the country, and could become a citizen by taking an oath; 50 Stat. L. 1030

these were on the basis of treaties whereby the United States recognized the acquisition of the nationality of the other country by American citizens who acquired such nationality under the laws of that country.²⁰

The Supreme Court faced the problem in *Perkins v. Elg*.²¹ Here petitioner, who sought a declaratory judgment establishing her citizenship, was born in the United States and taken to Sweden by her parents while she was a minor. Her parents were naturalized there, so that she acquired citizenship under Swedish law; the United States by treaty was bound to recognize such citizenship. The Court held that even though the child acquired Swedish nationality, she did not lose her American citizenship, since expatriation is a voluntary renunciation of citizenship.²² The Court recognized that the minor, on becoming of age, has a right of election between the two nationalities. Here it found that petitioner had made an election in favor of her American nationality. The Nationality Act of 1940 substantially enacts the rule of this case,²³ and provides for the method of exercise of the election.²⁴

The question of expatriation frequently arises in connection with military service in a foreign army. The Nationality Act of 1940 provides for loss of citizenship only when the citizen has, or by his service, acquires, the nationality of the other country.²⁵ Expatriation usually occurs when the soldier takes the customary oath of allegiance upon his induction. Then, unless the person is unable to expatriate himself because of being under age,²⁶ such an oath clearly causes expatriation

(1937); 52 Stat. L. 1410 (1938). The Court in the case of *Perkins v. Elg* did not regard these as significant in showing any intent on the part of Congress that citizenship should be lost in such cases; 307 U.S. 325 at 349, 59 S.Ct. 884 (1939).

²⁰ *Ostby v. Salmon*, 177 Minn. 289, 225 N.W. 158 (1929); *Koppe v. Pfefferle*, 188 Minn. 619, 248 N.W. 41 (1933); *United States v. Reid*, (9th Cir. 1934) 73 F. (2d) 153.

²¹ 307 U.S. 325, 59 S.Ct. 884 (1939).

²² "Expatriation is the voluntary renunciation or abandonment of nationality and allegiance. It has no application to the removal from this country of a native citizen during minority. In such a case the voluntary action which is of the essence of the right of expatriation is lacking." *Perkins v. Elg*, 307 U.S. 325 at 334, 59 S.Ct. 884 (1939).

²³ Nationality Act of 1940, §401(a), 8 U.S.C. (1946) §801(a). See 60 HARV. L. REV. 977 (1947).

²⁴ *Ibid.* As to what constitutes an election, see: 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW 369-74 (1942); *Attorney General of the United States v. Ricketts*, (9th Cir. 1947) 165 F. (2d) 193; *Haaland v. Attorney General of the United States*, (D.C. Md. 1941) 42 F. Supp. 13; *Schaufus v. Attorney General of the United States*, (D.C. Md. 1942) 45 F. Supp. 61.

²⁵ Nationality Act of 1940, §401(c), 8 U.S.C. (1946) §801(c).

²⁶ Nationality Act of 1940, §403(b), 8 U.S.C. (1946) §803(b); *United States ex rel. Baglivo v. Day*, (D.C. N.Y. 1928) 28 F. (2d) 44.

when voluntarily taken.²⁷ However, in the case of *Dos Reis ex rel. Camara v. Nicolls*,²⁸ the Court of Appeals for the First Circuit held that petitioner, who was born in the United States and taken to the Azores at the age of 12, did not lose his citizenship when inducted into the Portuguese army over his objections, the only alternative to such service being confinement in a concentration camp. He did not swear allegiance to Portugal at any time. The court reviewed the legislative history of this provision of the Nationality Act of 1940 and concluded that there was no intention to deprive anyone of his citizenship when he was involuntarily inducted into a foreign army.²⁹ The courts have uniformly held, both before and after the Nationality Act of 1940, that to cause expatriation the military service must be voluntary, and that there is no expatriation when the service is under duress. As in the *Dos Reis* case, they have been ready to find such duress.³⁰

An oath of renunciation of citizenship is also established by statute as a way in which to effect expatriation.³¹ Several recent cases have involved oaths renouncing citizenship taken by many Japanese-Americans while being held at relocation centers during the war. After an exhaustive review of the conditions that existed in these relocation centers, the courts have cancelled many of these renunciations on the basis that the renunciations were coerced and not voluntary, because of the sometimes inhuman treatment accorded by the government and the

²⁷ 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW 224-5, 374-6 (1942); *Bauer v. Clark*, (7th Cir. 1947) 161 F. (2d) 397; *Ex parte Griffin*, (D.C. N.Y. 1916) 237 F. 445; *United States ex rel. Rojak v. Marshall*, (D.C. Pa. 1929) 34 F. (2d) 219; *United States ex rel. Wrona v. Karnuth*, (D.C. N.Y. 1936) 14 F. Supp. 770; *United States ex rel. Fracassi v. Karnuth*, (D.C. N.Y. 1937) 19 F. Supp. 581; *United States ex rel. DeCicco v. Longo*, (D.C. Conn. 1942) 46 F. Supp. 170; *Petition of Di Iorio*, (D.C. Mass. 1949) 86 F. Supp. 479.

²⁸ (1st Cir. 1947) 161 F. (2d) 860.

²⁹ The district court, in finding against petitioner, held that the induction was involuntary, and that Congress intended to effect a loss of citizenship even for an involuntary act. The court emphasized the fact that Congress did not use the word expatriation, generally defined as a voluntary act, in these sections of the Nationality Act of 1940. *Dos Reis ex rel. Camara v. Nicolls*, (D.C. Mass. 1946) 68 F. Supp. 773.

³⁰ 40 OP. ATTY. GEN. 553 (1947); *State v. Adams*, 45 Iowa 99 (1876); *Podea v. Acheson*, (2d Cir. 1950) 179 F. (2d) 306; *In re Gogal*, (D.C. Pa. 1947) 75 F. Supp. 268; *Ishikawa v. Acheson*, (D.C. Hawaii 1949) 85 F. Supp. 1; *Yoshira Shibata v. Acheson*, (D.C. Cal. 1949) 86 F. Supp. 1; *Kanno v. Acheson*, (D.C. Cal. 1950) 92 F. Supp. 183. Cf. *Zimmer v. Acheson*, (D.C. Kan. 1950) 91 F. Supp. 313; petitioner here was a German citizen at the time of his induction into the German army. He alleged that he entered the army without making any protest to the American consulate because of threats made by the Gestapo. The court held that the evidence was insufficient to show that petitioner was forced to enter the army, that he voluntarily entered, and thus lost his United States citizenship.

³¹ 58 Stat. L. 677 (1944), 8 U.S.C. (1946) §801(i).

threats of violence made by gangs of disloyal internees who intimidated these prisoners.³²

Perhaps the most common way to lose citizenship is by naturalization in another country by one's own act. This basis of expatriation is recognized by both the Act of 1907 and the Nationality Act of 1940.³³ The courts have also recognized here that the act must be voluntary, and have held that there is no expatriation when the naturalization is under duress; again, they have been willing to find duress rather readily.³⁴ Another well recognized method of expatriation is an oath of allegiance to another country.³⁵ Again, it seems that there must be a voluntary oath, so that there is no expatriation if the act is done under duress.³⁶

The Supreme Court recently considered the problem of intent in the case of *Savorgnan v. United States*,³⁷ which involved both naturalization and an oath of allegiance. Petitioner brought an action for a judgment declaring her to be an American citizen. She was born in the United States. In 1940 she wished to marry an Italian Vice-Consul stationed in this country. He told her that to marry him, she would have to become an Italian citizen in order to secure the necessary royal consent to the marriage. Petitioner applied for Italian citizenship. Savorgnan prepared the application, which was in Italian, for her, since she did not understand Italian. She was then granted Italian citizenship. Subsequently she signed another instrument, also in Italian, that contained an oath renouncing her American citizenship and swearing allegiance to the King of Italy. The two were married. Petitioner went to Italy with her husband when he was forced to return in 1941.

³² *Acheson v. Murakami*, (9th Cir. 1949) 176 F. (2d) 953; *Inouye v. Clark*, (D.C. Cal. 1947) 73 F. Supp. 1000, reversed for insufficiencies in the pleadings, *Clark v. Inouye*, (9th Cir. 1949) 175 F. (2d) 740; *Tadayasu Abo v. Clark*, (D.C. Cal. 1948) 77 F. Supp. 806.

³³ 34 Stat. L. 1228, §2 (1907); Nationality Act of 1940, §401(a), 8 U.S.C. (1946) §801(a). The same rule applied without statute; 3 MOORE, DIGEST OF INTERNATIONAL LAW 711 (1906); BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD 681 (1915).

³⁴ 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW 209-17 (1942); *Doreau v. Marshall*, (3d Cir. 1948) 170 F. (2d) 721; *Schioler v. United States*, (D.C. Ill. 1948) 75 F. Supp. 353, affirmed on other grounds, *Schioler v. Secretary of State of the United States*, (7th Cir. 1949) 175 F. (2d) 402; *Meiji Fujizawa v. Acheson*, (D.C. Cal. 1949) 85 F. Supp. 674. Cf. *Dubonnet v. Marshall*, (D.C. D.C. 1948) 80 F. Supp. 905.

³⁵ 34 Stat. L. 1228, §2 (1907); Nationality Act of 1940, §401(b), 8 U.S.C. (1946) §801(b). This rule also applied without statute; 3 MOORE, DIGEST OF INTERNATIONAL LAW 718-30 (1906); BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD 682 (1915); *Browne v. Dexter*, 66 Cal. 39, 4 P. 913 (1884).

³⁶ 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW 224-6 (1942).

³⁷ 338 U.S. 491, 70 S.Ct. 292 (1950).

After the war, petitioner applied for registration as an American citizen, but this was denied. She returned to America on an Italian diplomatic passport, and after her return, sought to be listed as an American citizen. Her request was again denied. The district court found, as facts, that she had not intended to renounce her American citizenship, that she assumed that the document was only a step in obtaining consent to marry, and that she did not intend to establish a permanent residence in Italy.

The district court, relying entirely on the *Elg* case, found for petitioner, because she did not intend to renounce her American citizenship.³⁸ The court of appeals reversed, finding that petitioner had acted voluntarily.³⁹ The Supreme Court affirmed this decision,⁴⁰ finding that the naturalization was sufficient to constitute expatriation, and recognizing that the oath would have the same result.⁴¹ The Court emphasized that the Act of 1868 shows an American doctrine favoring freedom of expatriation. The Court also relied on the *Mackenzie* case, and a general policy against dual nationality,⁴² but the main basis

³⁸ *Savorgnan v. United States*, (D.C. Wis. 1947) 73 F. Supp. 109.

³⁹ *Savorgnan v. United States*, (7th Cir. 1948) 171 F. (2d) 155.

⁴⁰ Justices Frankfurter and Black dissented on the basis that expatriation depends on facts, and the district court found the facts in favor of petitioner.

⁴¹ The Court refused to decide when the expatriation took place, when the petitioner was naturalized or when she left the country. The government argued that under the Act of 1907 there was no need for petitioner to leave the country to complete her expatriation. Before the Act of 1907 a change of residence was generally required. VAN DYNE, *CITIZENSHIP OF THE UNITED STATES* 273 (1904); BORCHARD, *THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 679 (1915); 2 HYDE, *INTERNATIONAL LAW* 1161 (1945); *Talbot v. Janson*, 3 Dall. (3 U.S.) 133 (1795); *The Santissima Trinidad*, 7 Wheat. (20 U.S.) 283 (1822); *Comitis v. Parkerson*, (C.C. La. 1893) 56 F. 556. Section 403(a) of the Nationality Act of 1940, 8 U.S.C. (1946) §803(a) requires leaving the country, except when the expatriation is by desertion from the military forces, treason, or a written renunciation in the United States. Cf. *Ex parte Tadayasu Abo*, (D.C. Cal. 1947) 76 F. Supp. 664. Since there is no requirement stated in the Act of 1907 the government contended that it was not necessary. The State Department has required departure under the Act of 1907; 3 HACKWORTH, *DIGEST OF INTERNATIONAL LAW* 231-5 (1942). Although the Court refused to pass on the question here, it found expatriation without departure in the *Mackenzie* case.

Petitioner argued that since the Act of 1907 refers to being naturalized in a foreign state, the citizen must be physically present in that country at the time of naturalization. The Court dismissed this argument by saying that the act meant naturalization into the citizenship of the foreign state, and that this intent was made clearer by the Nationality Act of 1940 which refers to obtaining naturalization in a foreign state, and which requires a departure for expatriation.

A somewhat similar case arose when a naturalized American citizen, about to be married in Italy, was required to renounce his American citizenship before the ceremony could be performed. The renunciation was made only to avoid delay in the marriage, and on the assumption that the Italian nationality was not imposed on him. The Department of State held in 1931 that he was entitled to a passport. 3 HACKWORTH, *DIGEST OF INTERNATIONAL LAW* 373 (1942).

⁴² It seems that the Nationality Act of 1940 was intended to end dual nationality; 86 CONG. REC., part 11, pp. 11944, 11948 (1940); 60 HARV. L. REV. 977 (1947). For the

of the decision seemed to be that the language of the Nationality Act of 1940 is objective and that under its terms no subjective intent is necessary.⁴³ The Court holds instead that it is enough for the person voluntarily to do the act stated by the statute to constitute expatriation,⁴⁴ and recognizes that there is no expatriation if there is duress.⁴⁵ The Court did not discuss the *Elg* case.

III

From the *Savorgnan* case, it seems that the test now applied by the Supreme Court is whether there is an intent to do the act that constitutes expatriation. In determining whether there is such an intent, the courts will inquire as to whether the person is capable of forming the intent, and will investigate to see whether the person acted freely in doing the act, or whether the act was coerced or performed under duress. It seems that duress will readily be found. Once it is found that the citizen had an intent to do the act which constitutes expatriation, he is bound by the legal consequences of his act. That he did not intend to effect expatriation by these acts or did not know that expatriation would follow is irrelevant.⁴⁶

arguments against dual nationality, see: *Von Zedtwitz v. Sutherland*, (D.C. Cir. 1928) 26 F. (2d) 525; *Flournoy*, "Dual Nationality and Election," 30 *YALE L.J.* 545, 693 (1921); 23 *AM. J. INT. L.*, Spec. Supp. 38 (1929); 23 *Geo. L.J.* 507 (1935).

⁴³ "There is no suggestion in the statutory language that the effect of the specified overt acts, when voluntarily done, is conditioned upon the undisclosed intent of the person doing them. . . . The legislative history of the Nationality Act of 1940 contains no intimation that subjective intent is material to the issue of expatriation." *Savorgnan v. United States*, 338 U.S. 491 at 499-501, 70 S.Ct. 292 (1950).

⁴⁴ "In §401 of the Act of 1940, Congress has added a number of *per se* acts of expatriation. . . . Lack of intent to abandon American citizenship certainly could not offset any of these. *A fortiori* a mature citizen who accepted naturalization into the full citizenship of a foreign state could not have been intended by Congress to have greater freedom to establish duality of citizenship." *Savorgnan v. United States*, 338 U.S. 491 at 501, 70 S.Ct. 292 (1950).

⁴⁵ *Id.* at 502.

⁴⁶ "The Act (Nationality Act of 1940) does not arbitrarily impose a loss of citizenship. It deals with a condition voluntarily brought about by one's own acts, with notice of the consequences. In that sense there is concurrence by the citizen." *Lapides v. Clark*, (D.C. Cir. 1949) 176 F. (2d) 619 at 621. *United States ex rel. Lapides v. Watkins*, (2d Cir. 1948) 165 F. (2d) 1017 holds the same on the same facts. These cases involve loss of citizenship by a naturalized citizen resulting from residence abroad; Nationality Act of 1940, §404(c), 8 U.S.C. (1946) §804(c).

Section 401(e) of the Nationality Act, 8 U.S.C. (1946) §801(e) provides for loss of citizenship for voting in a political election in a foreign state. Petitioner, born in the United States, voted in an election in 1946 in Japan, after General MacArthur urged all women to vote, and after petitioner had been threatened with having her food rations cut off for not voting. The court held that petitioner did not lose her American citizenship, both because this was not an election in a foreign state and because she acted under duress and coercion. *Etsuko Arikawa v. Acheson*, (D.C. Cal. 1949) 83 F. Supp. 473. *Accord*: *Hatsuye Ouye v. Acheson*, (D.C. Hawaii 1950) 91 F. Supp. 129. Cf. *Cantoni v. Acheson*,

This result seems to reconcile the cases on the subject. There have been statements that the renunciation must be voluntary, but almost all holdings that there was no expatriation, including the *Elg* case, can be explained on the basis that the act claimed to be expatriation was not voluntary. In this respect, the broader statements of the *Elg* case and many other cases (some of which rely on the *Elg* case) that the renunciation must be voluntary are unnecessary for the result and are now repudiated by the *Savorgnan* case.

Although this view is more strict than that previously stated, the courts are still reluctant to find expatriation, since there still must be an intent to do the act, which intent must be clearly shown. It would seem that this reluctance comes from two sources. Historically, doctrines of expatriation developed in this country on the basis that it was a voluntary act by the citizen. The government did not undertake to change this in any way until 1907, and had previously recognized the voluntary basis. The first statement, the Act of 1907, was very general. Even though Congress has now prescribed more fully what constitutes expatriation, the courts continue to speak of voluntary acts, although now in a modified way. In addition, the courts are reluctant to deprive a person of his citizenship when he makes a claim to it. It is recognized that a person may renounce citizenship, but the courts have regarded American citizenship as a high privilege and have been

(D.C. Cal. 1950) 88 F. Supp. 576, where petitioner had served in the Italian army and voted in an Italian election. Petitioner knew that he was born in the United States, but at the time of these acts did not know that he was a citizen. The court held that petitioner had lost his citizenship, since these acts were voluntary. And in *Kazdy-Reich v. Marshall*, (D.C. D.C. 1950) 88 F. Supp. 787, petitioner who lived in Hungary had voted in an election there, for the purpose of defeating the Communists; she was not threatened at any time, but feared the Communists. The court held that petitioner had renounced, although she did not know that this was the effect of her acts at the time.

Statute provides for expatriation by departing from or remaining outside the jurisdiction of the United States during a war or national emergency to evade service in the armed forces. 58 Stat. L. 746 (1944), 8 U.S.C. (1946) §801(j). Petitioner, who had been born here, was taken to Mexico by his parents and remained there during World War II. He had little education, had no newspaper in his home, and heard no radio during the period. The court held that he had not lost his citizenship, since his remaining in Mexico was not wilful and not to avoid service. *Ponce v. McGrath*, (D.C. Cal. 1950) 91 F. Supp. 23.

The present statutes also provide for expatriation by accepting or performing the duties of any office under the government of a foreign state for which only nationals of such state are eligible; by a formal renunciation before a diplomatic officer of the United States or a foreign state; by conviction for desertion from the armed services of the United States in time of war when the conviction results in a dishonorable discharge; by commission of treason against the United States and conviction therefor. Nationality Act of 1940, §401; 58 Stat. L. 4, 677 (1944); 8 U.S.C. (1946) §801.

It seems clear that the courts would apply the same tests to these types of expatriation.

reluctant to take it away.⁴⁷ This reluctance may be partly due to the difficulties of regaining citizenship once it is lost.⁴⁸

The present interpretation, as shown by the *Savorgnan* case, seems to be a fair solution of the problem. It gives a reasonable interpretation to the statutes,⁴⁹ and does not seem to work any injustice, at least in the normal situation. However, it seems that the present view is based on statutory construction and is not an expression of any limitation on the power of Congress. There is no restraint imposed on this power by international law,⁵⁰ and it seems doubtful that any is imposed by the Constitution,⁵¹ at least as long as the provisions are reasonable.⁵²

Willis B. Snell, S. Ed.

⁴⁷ "To decitizenize a freeman is a tremendous blow. It deprives him of his chosen country and home, and sunders his most endearing relations, social and civil." *Burkett v. McCarty*, 10 Bush (73 Ky.) 758 at 760 (1866). See also, *In re Wildberger*, (D.C. Pa. 1914) 214 F. 508; *McCampbell v. McCampbell*, (D.C. Ky. 1936) 13 F. Supp. 847; 23 GEO. L.J. 507 (1935); 7 GEO. WASH. L. REV. 639 (1939).

⁴⁸ 60 HARV. L. REV. 977 (1947).

⁴⁹ This may be a stricter interpretation than was intended. In the Letter of Submittal to the President, the Cabinet Committee delegated to draft the Nationality Code said: "None of the various provisions in the Code concerning loss of American nationality . . . is designed to be punitive or to interfere with freedom of action. They are merely intended to deprive persons of American nationality when such persons, by their own acts, or inaction, show that their real attachment is to the foreign country and not to the United States." Message from the President to Congress, transmitting the report of the Secretary of State, Secretary of Labor, and Attorney General proposing a revision of the nationality laws submitted June 1, 1938; found in Hearings before the House Committee on Immigration and Naturalization, 76th Cong., 1st sess. (1939), Hearing to Revise and Codify the Nationality Laws of the United States, p. 405 at 409.

⁵⁰ FENWICK, *INTERNATIONAL LAW* 257 (1948); Preuss, "International Law and Deprivation of Nationality," 23 GEO. L.J. 250 (1935). For the law of other nations, see: Sandifer, "Comparative Study of Laws Relating to Nationality at Birth and to Loss of Nationality," 29 AM. J. INT. L. 248 (1935); 23 AM. J. INT. L., Spec. Supp. 100 (1929).

⁵¹ "As a government, the United States is invested with all the attributes of sovereignty. As it has the character of nationality it has the powers of nationality, especially those which concern its relations and intercourse with other countries. We should hesitate long before limiting or embarrassing such powers." *Mackenzie v. Hare*, 239 U.S. 299 at 311, 36 S.Ct. 106 (1915). See also: *Perkins v. Elg*, 307 U.S. 325, 59 S.Ct. 884 (1939); *Ex parte (NG) Fung Sing*, (D.C. Wash. 1925) 6 F. (2d) 670; *United States ex rel. Wrona v. Karnuth*, (D.C. N.Y. 1936) 14 F. Supp. 770; *Petition of Peterson*, (D.C. Wash. 1940) 33 F. Supp. 615; 33 MICH. L. REV. 1271 (1935); 60 HARV. L. REV. 977 (1940). Cf. *Burkett v. McCarty*, 10 Bush (73 Ky.) 758 (1866); *United States v. Wong Kim Ark*, 169 U.S. 649, 18 S.Ct. 456 (1898); *Dos Reis ex rel. Camara v. Nicolls*, (1st Cir. 1947) 161 F. (2d) 860.

⁵² "Conceivably the Fourteenth Amendment forbids treaties providing for 'unreasonable' expatriation, but that is not the equivalent of 'involuntary expatriation'. . . ." Orfield, "Expatriation of American Minors," 38 MICH. L. REV. 585 at 592 (1940).