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INTERNATIONAL LAW-EXPATRIATION-CITIZENSHIP OF CHILD LOST BY REMOVAL AND EXPATRIATION OF FATHER

INTERNATIONAL LAW—EXPATRIATION—CITIZENSHIP OF CHILD LOST BY REMOVAL AND EXPATRIATION OF FATHER—Petitioner, a native-born American woman, was taken to Canada by her father who became naturalized there while she was still a minor. Petitioner later married a British subject and seeks naturalization here under a statute [1] authorizing this to American women who have lost their citizenship through marriage to an alien. A treaty in force between the United States and Great Britain provided that persons naturalized according to Canadian law should lose American citizenship.[2] The Canadian statute provided that if the father became naturalized, his minor children should, "within Canada," be deemed Canadian subjects.[3] Held, that petitioner had not lost her citizenship by her father's naturalization, the Constitution [4] preventing loss of citizenship without actual consent.[5] On appeal, *held* that the treaty applied, and that petitioner's status had been changed by her father's naturalization. *United States v. Reid*, (C. C. A. 9th, 1934) 73 F. (2d) 153.

The treaty-making power, not expressly bounded by the Constitution,[6] is not subject to the same constitutional limitations as the legislative power.[7] Although the United States Supreme Court has said that Congress may not restrict the effect of birth upon citizenship,[8] it may be doubted whether there is any real

[1] 42 Stat. 1022, c. 411, sec. 4 (1922); U. S. C. tit. 8, sec. 369: "a woman who . . . has lost her United States citizenship by reason of her marriage to an alien eligible for citizenship" may be naturalized if eligible to citizenship and if she has not acquired any other citizenship by affirmative act.

[2] 16 Stat. 775 (May 13, 1870).

[3] 44 Vict., c. 13, sec. 30 (Can. Parl. 1881); 2 Can. Rev. Stat., 1906, c. 77.

[4] Fourteenth Amendment, sec. 1.

[5] In re Reid, (D. C. Ore. 1934) 6 F. Supp. 800.

[6] See note, 34 COL. L. REV. 1366 (1934).

[7] Missouri v. Holland, 252 U. S. 416, 40 Sup. Ct. 382 (1920). In Geofroy v. Riggs, 133 U. S. 258 at 267, 10 Sup. Ct. 295 (1890), it was said that the treaty-making power may not authorize anything that the Constitution expressly forbids.

[8] United States v. Wong Kim Ark, 169 U. S. 649 at 703, 18 Sup. Ct. 456 (1897).

limitation even upon the power of Congress to deal with naturalization.[9] The treaty does not deal expressly with naturalization of minors, although its purpose was to do away with dual nationality.[10] Early cases before the treaty and under similar treaties held that a person cannot lose American citizenship without actual consent,[11] so the intent of the treaty-makers to deal with minors may be questioned.[12] On the other hand, prior statutes in both the United States and Canada provided that naturalization of a father confers citizenship upon his minor children;[13] recent cases have taken the view that under the treaties this causes expatriation.[14] The State Department under the naturalization treaties has consistently regarded minor children of Americans naturalized in foreign countries as aliens.[15] The phrase, "within Canada," in the Canadian statute seems not to be a limitation upon its effect as to the status of minors.[16] Since under this treaty and similar treaties naturalization under the foreign law is necessary before the treaty applies, the courts should inquire carefully as to a person's status in the foreign country in order to avoid loss to him of all citizenship.[17] Although the decision of the District Court seems preferable to that of the Circuit Court of Appeals, upon an actual interpretation of the treaty, the constitutional basis for its decision has little to support it. Since large numbers of people in this country are affected by the result, legislation by Congress enabling them to re-acquire citizenship more easily may be necessary.[18]

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[9] See Mackenzie v. Hare, 239 U. S. 299, 36 Sup. Ct. 106 (1915), upholding a federal statute withdrawing citizenship from American women marrying aliens, predicated upon a voluntary act of expatriation. It is questionable whether any intent to give up citizenship may be construed from such an act.

[10] See United States v. Reid, (C. C. A. 9th, 1934) 73 F. (2d) 153 at 156; 16 Stat. 775 at 776 (1870).

[11] State ex rel. Phillips v. Jackson, 79 Vt. 504, 65 Atl. 657 (1907); Ludlam v. Ludlam, 26 N. Y. (Ct. of Appeals) 356 (1863); Ex parte Chin King, (C. C. Ore. 1888) 35 F. 354. See Case of Steinkauler, 15 Op. Atty. Gen. 15 (1875).

[12] *Cf.* Hazard, "International Problems in Respect to Nationality by Naturalization and of Married Women," PROC. AM. SOC. INT. L., 1926, p. 67 at 73.

[13] 2 Stat. 153 at 155 (1802), U. S. C. tit. 8, sec. 7; 33 Vict., c. 14, § 10 (5) (1870), Can. Stat. 1872, p. xiii.

[14] Ostby v. Salmon, 177 Minn. 289, 225 N. W. 158 (1929); Koppe v. Pfefferle, 188 Minn. 619, 248 N. W. 41 (1933). *Cf.* In re Citizenship of Ingrid Theresa Tobiassen, 36 Op. Atty. Gen. 535 (1932).

[15] Letter from Mr. Hay, Secretary of State, to Mr. Harris, Minister to Austria-Hungary, FOR. REL., 1900, p. 13, cited 3 MOORE, INTERNATIONAL LAW DIGEST 472 (1906); letter from Mr. Sherman, Secretary of State, to Mr. Grip, Swedish Minister, 8 Ms. Notes to Sweden 58 (1897), *idem.*

[16] The same problem does not arise under the present Canadian naturalization statute, 3 Rev. Stat. Canada, 1927, c. 138, p. 2831.

[17] See SECKLER-HUDSON, STATELESSNESS: WITH SPECIAL REFERENCE TO THE UNITED STATES (1934).

[18] See 23 GEORGETOWN L. J. 507 (1935).