Constitutional Law: Discrimination Between Naturalized Citizens

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to recover damages for the injury which he suffered. Therefore the contract by which the decedent agreed to exempt the defendant from liability has no effect whatever on their right of action.7

In looking at decisions based upon the different statutes, it seems apparent that none of them completely remedy the two wrongs involved. They are concerned with either the rights of the decedent, or the rights of his beneficiaries, but not both. The legislature of Wisconsin, with several others, has gone a step further by enacting statutes which not only allow the decedent's action to survive, but also compensate for the resulting wrongs inflicted upon those who depended on him for support and companionship. While such statutes ordinarily limit the amount of recovery that can be had, such limitation is a reasonable one and does afford substantial relief.9

The policy evident in Wisconsin and states having similar statutes is to provide complete relief for all injuries resulting from the wrongful act which caused death.10 There is no particular reason why other jurisdictions should limit the amount of damages to the amount which the decedent might have recovered;11 or determine the rights of beneficiaries of the statutes solely on the basis of the rights of the decedent, as was done in the instant case. Perhaps the courts have lost sight of the legislative intent upon which the enactments were founded. If so, it is incumbent upon such legislatures to reiterate and clarify their intent by appropriate amendments and further enactments.

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Constitutional Law — Discrimination Between Natural and Naturalized Citizens — Plaintiff became a naturalized citizen in 1928. He went to Palestine in 1934 and remained there until 1947, when he returned to the United States. When he presented his certificate of citizenship to the Immigration authorities at New York they excluded him on the ground that he had expatriated himself under Section 804, 8 U.S.C.A. and was an alien without a quota immigration visa. That section provided: "A person who has become a national by naturalization shall lose

9 Supra, note 3 and note 4.
10 Brown v. Chicago & N. W. Ry. Co. (supra, note 7); Koehler v. Waukesha Milk Co., 190 Wis. 52, 208 N.W. 901 (1926). These cases, in distinguishing between the two types of Wis. statutes, note that they give rise to two causes of action: one, a survival of decedent's cause of action, and the other, a new cause of action in favor of the deceased's beneficiaries. Thus, the injuries to both the decedent and the beneficiaries are compensated for.
11 25 C.J.S. 1238.
his nationality by: . . . (c) Residing continuously for five years in any other foreign state . . . ." The plaintiff claimed that the law arbitrarily discriminated against naturalized citizens, and that no distinction could be drawn between them and native born. *Held:* Since the legislation was needed to lessen friction with foreign governments growing out of disputes as to the nationality of our naturalized citizens residing for prolonged periods in foreign lands, and since the act dealt only with a condition voluntarily brought about by one's own acts, with notice of the consequences, it was not unconstitutional. *Lapides v. Clark,* 176 F. (2d) 619 (C.C.A., D.C. 1949).

The history of the section involved reveals that the State Department, even before any legislation like the present, long made it a practice to deny protection to American Nationals living abroad beyond a certain length of time due to the difficulty the encountered trying to protect them. This difficulty arose in part because of the adherence by many nations to the rule of international law that a person cannot expatriate himself without the consent of the sovereign and hence when a naturalized citizen of this country went abroad, two nations laid claim to his allegiance, the United States and his fatherland. The problem naturally became more acute if the naturalized citizen returned to the land of his birth and was there requested to perform the duties of a citizen, such as submitting to the military-service laws. Congress, in 1907, enacted into law a rebuttable presumption of expatriation on the part of our naturalized citizens who remained abroad beyond a prescribed length of time, and when the Nationality Act of 1940 was passed this presumption was made a conclusive one in the form it exists today. The change from a rebuttable to a conclusive presumption of expatriation is due to the desire of Congress to deny the continued privilege of citizenship to those who intend only to obtain its rights but who lack a bona fide intention to assume its duties and come here to be naturalized merely for their own protection, intending to go abroad again clothed with the protection of the flag of the United States.

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2 To account for this additional difficulty, shorter lengths of time are needed before the automatic presumption of expatriation applies when the naturalized citizen resides in the land of his birth; see 8 U.S.C.A. 804, subsections (a) and (b).
3 Act of March 2, 1907, 34 Stat. 1338, 8 U.S.C.A. 17; This act however, was held to be merely declaratory of the there-to-fore existing practice, Camardo v. Tillinghast, 29 F. (2d) 527 (C.C.A. 1st 1928).
4 86 Cong. Rec. 11948 (1940).
Though the rule is oft repeated that "under our constitution a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency",\(^5\) yet it may be noted that Congress is not limited as are the states in this matter since the Fifth Amendment contains no equal protection clause but only restrains such discriminatory legislation as amounts to denial of due process;\(^6\) which requires only that the law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have real substantial relation to the object.\(^7\) Then too, the powers of the Federal Government conferred upon it by reason of its being a sovereign state are not strictly confined to those enumerated in the Constitution\(^8\) and, as pointed out in Mackenzie v. Hare,\(^9\) the courts "should hesitate long before limiting or embarrassing such powers", especially those regarding its relations and intercourse with other nations. The Court in the Mackenzie case upheld legislation\(^10\) automatically expatriating a woman who married a foreigner, on the ground that the identity of husband and wife was not an accidental or arbitrary distinction but was necessary to prevent embarrassments and, it may be, controversies with other countries. It would seem then that since the legislation in question follows the pattern of that involved in the Mackenzie case and attempts to regulate residence abroad with a view towards prevention of international disputes, the constitutionality of it is not to be determined with reference alone to the standard due process requirements.

However the Supreme Court has defined expatriation as "the voluntary renunciation or abandonment of allegiance"\(^11\) and though this section makes no exceptions for conditions beyond the control of the individual,\(^12\) such exceptions may very well be read into it by the courts. Thus in Dos Reis ex rel. Camara v. Nicolls,\(^13\) the Court refused to hold as expatriated one who was born in the United States, taken to a Portuguese island by his parents, and there inducted into the

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\(^{5}\) Laura v. United States, 231 U.S. 9, 22, 34 S.Ct. 10, 58 L.Ed. 101 (1913).
\(^{6}\) Hirabayshi v. United States, 320 U.S. 81, 63 S.Ct. 320, 87 L.Ed. 1774 (1943).
\(^{9}\) 239 U.S. 299, 311, 36 S.Ct. 106, 60 L.Ed. 207 (1916).
\(^{10}\) 34 Stat. 1228, Chap. 2534, Comp. Stat. 1916, Sec. 3960.
\(^{12}\) This had been one of the contentions of the plaintiff in the instant case but the Court dismissed it since the plaintiff gave no excuse or his own failure to return, and its possible unconstitutional application to others in different circumstances could not be considered.
\(^{13}\) 161 F. (2d) 860 (C.C.A. 1st 1947).
Portuguese army against his will, in spite of the language of the statute\(^{14}\) that said a national of the United States "shall lose his nationality by: . . . (c) Entering or serving in, the armed forces of a foreign state, . . .," The same result has been reached regarding an oath of allegiance taken to a foreign state,\(^{15}\) making a formal renunciation of nationality before a diplomatic officer of the United States,\(^{16}\) holding public office in a foreign state,\(^{17}\) and voting in a political election in a foreign state,\(^{18}\) where the above named acts constituted automatic expatriation under 8 U.S.C.A. 801, subsections (b) through (f), but where the acts in those individual cases were not the voluntary acts of the respective parties. The exceptions to the application of the section that are allowed relieve to a great extent what would otherwise amount to a sharp discrimination between the citizenship derived from two different sources. Thus the automatic expatriation of the section under discussion does not apply where the residence aboard is for education, ill-health, purposes of employment where the naturalized citizen is representing a business or charitable organization, and where he has first resided in the United States for twenty-five years or until he has attained the age of sixty-five years.\(^{19}\) And then too, he can reside abroad for any reason up to five years before the presumption takes effect.\(^{20}\)

This case gives certain effect to the express language of Congress set forth in the section of the Nationality Act under discussion. The legislation appears to be fair, both as to supporting a policy to avoid foreign entanglements and as to preventing fraudulent use of the precious right of American citizenship by those who do not desire it; and serves notice to the people of the world that they need only apply for naturalization if they honestly desire to contribute to the future of this country as well as to enjoy its present benefits.

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\(^{14}\) Nationality Act of 1940, Sec. 401, 8 U.S.C.A. 801.
\(^{15}\) In Re Gogal, 75 F. Supp. 268 (W.D. Pa. 1948).
\(^{16}\) Uichi Inouye et al. v. Clark et al., 73 F. Supp. 1000 (S.D. Cal. 1947).
\(^{19}\) Nationality Act of 1940, Sec. 406 (c)-(d), 8 U.S.C.A. 806 (c)-(d).
\(^{20}\) The time is shorter if he has returned to the land of his former citizenship; supra note 2.