

Sec. 8—Powers of Congress

Cl. 4—Naturalization and Bankruptcies

of their citizenship persons who committed treason,¹²⁴⁷ deserted the armed forces in wartime,¹²⁴⁸ left the country to evade the draft,¹²⁴⁹ or attempted to overthrow the government by force or violence.¹²⁵⁰ In 1907, Congress provided that female citizens who married foreign citizens were to have their citizenship held “in abeyance” while they remained wedded but to be entitled to reclaim it when the marriage was dissolved.¹²⁵¹

About the simplest form of expatriation, the renunciation of citizenship by a person, there is no constitutional difficulty. “Expatriation is the voluntary renunciation or abandonment of nationality and allegiance.”¹²⁵² But while the Court has hitherto insisted on the voluntary character of the renunciation, it has sustained the power of Congress to prescribe conditions and circumstances the voluntary entering into of which constitutes renunciation; the person need not intend to renounce so long as he intended to do what he did in fact do.¹²⁵³

The Court first encountered the constitutional issue of forced expatriation in the rather anomalous form of the statute,¹²⁵⁴ which placed in limbo the citizenship of any American female who married a foreigner. Sustaining the statute, the Court relied on the congressional foreign relations power exercised in order to prevent the development of situations that might entangle the United States in embarrassing or hostile relationships with a foreign country. Noting too the fictional merging of identity of husband and wife, the Court thought it well within congressional power to attach certain consequences to these actions, despite the woman’s contrary intent and understanding at the time she entered the relationship.¹²⁵⁵

Beginning in 1958, the Court had a running encounter with the provisions of the 1952 Immigration and Nationality Act, which prescribed expatriation for a lengthy series of actions.¹²⁵⁶ In 1958, a

¹²⁴⁷ Nationality Act of 1940, 54 Stat. 1169.

¹²⁴⁸ *Id.*

¹²⁴⁹ 58 Stat. 746 (1944).

¹²⁵⁰ 68 Stat. 1146 (1954).

¹²⁵¹ 34 Stat. 1228 (1907), repealed by 42 Stat. 1021 (1922).

¹²⁵² *Perkins v. Elg*, 307 U.S. 325, 334 (1939).

¹²⁵³ *Mackenzie v. Hare*, 239 U.S. 299, 309, 311–12 (1915); *Savorgnan v. United States*, 338 U.S. 491, 506 (1950).

¹²⁵⁴ 34 Stat. 1228 (1907).

¹²⁵⁵ *Mackenzie v. Hare*, 239 U.S. 299 (1915).

¹²⁵⁶ *See generally* 8 U.S.C. §§ 1481–1489. Among the acts for which loss of citizenship is prescribed are (1) obtaining naturalization in a foreign state, (2) taking an oath of allegiance to a foreign state, (3) serving in the armed forces of a foreign state without authorization and with consequent acquisition of foreign nationality, (4) assuming public office under the government of a foreign state for which only nationals of that state are eligible, (5) voting in an election in a foreign state, (6) formally renouncing citizenship before a United States foreign service officer abroad,