

## Sec. 8—Powers of Congress

## Cl. 4—Naturalization and Bankruptcies

to validate an acquisition of land prior to naturalization as to which the alien was under a disability.<sup>1241</sup>

**Expatriation: Loss of Citizenship**

The history of the right of expatriation, voluntarily on the part of the citizen or involuntarily under duress of statute, is shadowy in United States constitutional law. Justice Story, in the course of an opinion,<sup>1242</sup> and Chancellor Kent, in his writings,<sup>1243</sup> accepted the ancient English doctrine of perpetual and unchangeable allegiance to the government of one's birth, a citizen being precluded from renouncing his allegiance without permission of that government. The pre-Civil War record on the issue is so vague because there was wide disagreement on the basis of national citizenship in the first place, with some contending that national citizenship was derivative from state citizenship, which would place the power of providing for expatriation in the state legislatures, and with others contending for the primacy of national citizenship, which would place the power in Congress.<sup>1244</sup> The citizenship basis was settled by the first sentence of § 1 of the Fourteenth Amendment, but expatriation continued to be a muddled topic. An 1868 statute specifically recognized "the right of expatriation" by individuals, but it was directed to affirming the right of foreign nationals to expatriate themselves and to become naturalized United States citizens.<sup>1245</sup> An 1865 law provided for the forfeiture of the "rights of citizenship" of draft-dodgers and deserters, but whether the statute meant to deprive such persons of citizenship or of their civil rights is unclear.<sup>1246</sup> Beginning in 1940, however, Congress did enact laws designed to strip

<sup>1241</sup> *Gouverneur v. Robertson*, 24 U.S. (11 Wheat.) 332 (1826); *Osterman v. Baldwin*, 73 U.S. (6 Wall.) 116 (1867); *Manuel v. Wulff*, 152 U.S. 505 (1894).

<sup>1242</sup> *Shanks v. DuPont*, 28 U.S. (3 Pet.) 242, 246 (1830).

<sup>1243</sup> 2 J. KENT, COMMENTARIES 49–50 (1827).

<sup>1244</sup> J. TENBROEK, *ANTI-SLAVERY ORIGINS OF THE FOURTEENTH AMENDMENT* 71–94 (1951); see generally J. ROCHE, *THE EARLY DEVELOPMENT OF UNITED STATES CITIZENSHIP* (1949).

<sup>1245</sup> Act of July 27, 1868, 15 Stat. 223. While the Act's preamble rhetorically proclaims the "natural and inherent right of all people" to expatriate themselves, its title is "An Act concerning the Rights of American Citizens in foreign States" and its operative parts are concerned with that subject. It has long been taken, however, as a general proclamation of United States recognition of the right of United States citizens to expatriate themselves. *Mackenzie v. Hare*, 239 U.S. 299, 309 (1915); *Mandoli v. Acheson*, 344 U.S. 133, 135–36 (1952). Cf. *Savorgnan v. United States*, 338 U.S. 491, 498 n.11 (1950).

<sup>1246</sup> The Enrollment Act of March 3, 1865, § 21, 13 Stat. 487, 490. The language of the section appears more consistent with a deprivation of civil rights than of citizenship. Note also that § 14 of the Wade-Davis Bill, pocket-vetoed by President Lincoln, specifically provided that any person holding office in the Confederate Government "is hereby declared not to be a citizen of the United States." 6 J. RICHARDSON, *MESSAGES AND PAPERS OF THE PRESIDENTS* 223 (1899).