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Moheb A.H. Al Sadat, a naturalized American citizen who was also an Egyptian citizen, brought an action in United States District Court to recover damages for injuries allegedly sustained in an automobile accident in Wisconsin. At the time of the accident Sadat was a domiciliary of Pennsylvania. When the action was brought, however, he was residing in Egypt. Sadat invoked the court's jurisdiction based on "diversity of citizenship" since the defendants were either citizens of Wisconsin or Connecticut. The United States District Court for the Eastern District of Wisconsin dismissed the action for lack of subject matter jurisdiction. Because of the plaintiff's connection with Egypt, he was not a "citizen" of Pennsylvania for the purposes of diversity.[1]

On appeal,[2] Sadat based two of his three arguments on the diversity section of the U.S. Code, which states:

> The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States;
>
> (2) citizens of a State and citizens or subjects of a foreign state;
>
> (3) citizens of different States and in which citizens or subjects or a foreign state are additional parties; and
>
> (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.[3]

First, Sadat argued that he was domiciliary of Pennsylvania and could thus be considered a citizen of a state for purposes of diversity jurisdiction. Second, he argued that by virtue of his dual American-Egyptian citizenship he was a citizen of a foreign state and therefore jurisdiction existed for the purposes of alienage jurisdiction, that is, he was a "subject" of a foreign state.[4] Third, he argued that the defendants should have been estopped from questioning the jurisdiction of the court since two years had lapsed from the filing of the action before the defendants asserted the jurisdiction defense. The Court of Appeals summarily disposed of the first and third contentions. It found that Sadat was not a domiciliary of Pennsylvania at the time the action was commenced, find-

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1. Sadat v. Mertes, 434 F. Supp. 1311 (E.D. Wis. 1979).
2. 615 F.2d 1176, 1177 (7th Cir. 1980).
3. 28 U.S.C. § 1332(a) (1976).
4. The power conferred on the federal courts by 28 U.S.C. § 1332(a)(2) is often referred to as alienage jurisdiction.

ing instead that he was an American citizen domiciled abroad and therefore not a citizen of a State for purposes of diversity.[5]

Sadat contended, and the court of appeals admitted, that Egypt had consented to his request for permission to acquire American citizenship but that that consent was conditioned upon his retention of his Egyptian citizenship. The court recognized that the generally accepted test for determining whether a party to a suit is a foreign citizen is whether the country whose citizenship is claimed would recognize the party as one of its citizens. The court stated that "whether a person possessing dual nationality should be considered a citizen or subject of a foreign state within the meaning of 28 U.S.C. § 1332(a)(2) [was] a question of first impression in the courts of appeals."[6] Two other district courts had reached "seemingly different conclusions"[7] in their encounters with the question.

In the case of *Aguirre v. Nagel*,[8] the plaintiff was a native-born American citizen who possessed dual nationality by virtue of her parents' Mexican citizenship. Since both the minor plaintiff and the defendant were citizens of the same state the trial court agreed with the defendant's contention that the court lacked jurisdiction through diversity. The court found that the position of the plaintiff as a citizen of Mexico, despite her American citizenship, placed her squarely within the provisions of subsection (a)(2) of 28 U.S.C. § 1332, that is, "a citizen or subject of a foreign state."

The Court of Appeals in *Sadat* found "[t]he *Aguirre* court's opinion did no more than determine that the cause fell within the literal language of the statute without regard to the policies underlying alienage jurisdiction."[9] The court noted that the decision was criticized by commentators, but the principle focus of those critics dealt with the fact that the *Aguirre* decision violated the rule of complete diversity established in the early Supreme Court case of *Strawbridge v. Curtiss*[10] since both parties were residents (and thus citizens) of the same state. As pointed out by one of the critics cited by the *Sadat* court of appeals, the *Aguirre* decision is also inconsistent with the accepted rule that both citizenships of a corporation (the state in which it is chartered and the state of its principal place of business) must be considered to determine if jurisdiction exists under diversity.[11] If any of the parties opposing the corporation is a citizen of either of the states of which the corporation is a citizen, diversity jurisdiction will not be found. Since Sadat was not a citizen of the same state as any of the defendants, finding jurisdiction under subsection (2) of

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5. 615 F.2d at 1178.

6. *Id.* at 1185.

7. The District Court for the Eastern District of Wisconsin was a third court to consider the question.

8. 270 F. Supp. 535 (E.D. Mich. 1976).

9. 615 F.2d at 1185.

10. 7 U.S. (3 Cranch) 267 (1806).

11. *See, e.g.*, Brocon v. Clorox Co., 56 Cal. App. 3d 306, 128 Cal. Rptr. 385 (1976).

28 U.S.C. § 1332(a) would not have violated the complete diversity requirement established in *Strawbridge*, nor would it have offended the rule with respect to corporations.

A contrary view was offered by the District Court for the Central District of California in *Raphael v. Hertzberg*,[12] in which a recently naturalized British subject asserted dual nationality as the basis for federal jurisdiction. The plaintiff and all of the defendants were residents of California. The court found that the holding in *Aguirre* violated the requirement of complete diversity established in *Strawbridge* and dismissed the plaintiff's claim upon the finding that he did not possess dual citizenship but was only a citizen of the United States since he was required to renounce his allegiance to Britain in order to acquire his American citizenship.

Although the *Raphael* decision was founded upon Raphael's renunciation of his allegiance to Great Britain, the court noted in dicta several policy reasons to reject the plaintiff's claim even if he were found to be a dual national. Besides violating the complete diversity requirement in *Strawbridge*, the court noted that there was "no reason to expect bias from state courts"[13] where both parties are residents of the same state. Moreover, there would be little reason to expect Great Britain to be affronted by a decision affecting one of its subjects if that decision was not made on a national level since the plaintiff had voluntarily subjected himself both to the laws of the United States and of the individual states by choosing to become an American citizen. Finally, the court concluded that opening the federal courts to naturalized citizens based on the concept of dual nationality would render their rights superior to those of native-born American citizens by providing the former with greater access to federal courts than the latter.

The court of appeals in *Sadat* rejected the holding set forth in the *Raphael* decision and adopted the rationale set forth in the dicta. In its analysis, the court first set forth the reasoning behind alienage jurisdiction, citing Hamilton's Federalist Paper No. 80 for the proposition that "the peace of the whole ought not to be left at the disposal of the part."[14] Alienage jurisdiction is designed to insure the maintenance of harmony with foreign states by handling suits involving their citizens at a national rather than local level, as well as to protect against the failure of individual states to give protection to foreigners under treaties. The court continued to state the general test for the determination of foreign citizenship for the purposes of alienage jurisdiction, that is, "whether the country in which citizenship is claimed would so recognize" the claimant as a citizen.[15] By recognizing the "right of each country to determine who

12. 470 F. Supp. 984 (C.D. Cal. 1979).
13. *Id.* at 986.
14. 615 F.2d at 1182.
15. *Id.* at 1183.

. . . its nationals are,"[16] the court seemed to be setting Sadat up for coverage squarely within the literal language of subsection (a)(2). Unlike the *Raphael* court, however, the *Sadat* court of appeals made no finding that the plaintiff's naturalization and renunciation of allegiance to foreign states or sovereignties resulted in the recognition by U.S. courts of only one citizenship—his U.S. citizenship—for purposes of jurisdiction. Thus, although the court noted that the U.S. Government's official policy is to discourage dual nationality, it also noted that U.S. courts and the State Department consistently have recognized its existence.

Having found that Sadat possessed dual citizenship, being a citizen of both the United States and Egypt, the court determined that Sadat was not a citizen or subject of a foreign state within the meaning of 28 U.S.C. § 1332(a)(2). Rather than relying on the literal language of the statute, which it accused the *Aguirre* court of doing, it followed the dicta of *Raphael* and looked to the policies underlying alienage jurisdiction to find that the statute was not meant to cover a foreign citizen who was also a United States citizen.

There is authority for such a liberal interpretation of the statute.[17] In going beyond the literal language of the statute, the court stated that "the paramount purpose of the alienage jurisdiction provision [is] to avoid offense to foreign nations because of the possible appearance of injustice to their citizens."[18] The court cited the *Restatement (Second) of Foreign Relations Law*[19] for the principle that a national is not responsi-

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16. *Id.*

17. As stated in United States v. American Trucking Associations, 310 U.S. 534 (1940):

> There is, of course, no more persuasive evidence of the purposes of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may be on 'superficial examination.' The interpretation of the meaning of the statutes is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion.

Id. at 543-44.

18. 615 F.2d at 1186.

19. RESTATEMENT (SECOND) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 171 (1965).

ble to another nation under international law for conduct which is wrongful to a citizen of the latter state when he is also a citizen of the former state. By analogy, the court held that ordinarily "only the American nationality of the dual citizen should be recognized under 28 U.S.C. § 1332(a)." The court stated:

> This rule recognizes that in the usual case a foreign country cannot complain about the treatment received by one of its citizens by a country which also regards that person as a national. This principle suggests that the risk of 'entanglements with other sovereigns that might ensue from failure to treat the legal controversies of aliens on a national level,' *Blair Holdings Corp. v. Rubinstein*, 133 F. Supp. at 500, is slight when an American citizen is also a citizen of another country and therefore he ordinarily should only be regarded as an American citizen for purposes of 28 U.S.C. § 1332(a).[20]

The court also recognized the exception to the general rule in the concept of "effective or dominant nationality."[21] The court found that Sadat's voluntary nationalization in the United States, as well as his actions subsequent to his naturalization, precluded him from invoking 28 U.S.C. § 1332(a)(2) based on such an exception.

The court's decision leaves open the possibility of an American dual national invoking federal jurisdiction under 28 U.S.C. § 1332(a)(2). By recognizing dual citizenship, the concept of dominant nationality, and recognizing that a person's citizenship is not exclusively determinable by the laws of the forum state, the court fails to preclude U.S. citizens entirely from invoking federal jurisdiction under 28 U.S.C. § 1332(a)(2). For example, if the plaintiff in *Aguirre* had not been a resident of the same state as the defendant and was able to establish that her dominant nationality was Mexican (based on her parents' citizenship and intent to return to Mexico), the *Sadat* court of appeals seems to indicate that it would find jurisdiction to exist. The court also makes clear that the complete diversity requirement for corporations with regard to state citizenship is not always applicable by analogy to cases involving diversity of national citizenship. As the court pointed out under the corporations analogy, an American dual national would thus be able to assert his foreign nationality to avoid federal jurisdiction in an action by a non-national of the United States. As the court stated, "[a]rguably, cases such as this are precisely those in which a federal forum should be afforded the foreign litigant in the interest of preventing international friction."[22]

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20. 615 F.2d at 1187.
21. *Id.*
22. *Id.* at 1186.