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each one with the intelligence and ambition to seek the education he desires and ultimately the profession of his choice.⁶

THE RESUMPTION OF CITIZENSHIP LOST BY MARRIAGE TO ALIENS

KAZUYOSHI AKITA *

Increased restrictions upon aliens and the possibility of another war have created a strong desire among many former citizens of the United States to regain their lost citizenship. Among this group are those women who lost their citizenship by reason of their marriage to aliens. It is with the problems of these women in their effort to regain their lost citizenship that this article will deal.

The American courts have followed three different and conflicting common law views as to the effect upon citizenship of American women who married aliens prior to 1907. The first of these three rules is that an American woman did not lose her citizenship solely because of a marriage to an alien, but that withdrawing from the United States, or going to and remaining in the foreign country of which the husband was a citizen might operate as a renunciation of the American citizenship of the wife.¹ The second view is that the marriage to the alien was sufficient to cause the loss of the wife's American citizenship, even though residence and domicile was continued in the United States.² The third position is that the wife did not lose her citizenship either through the marriage to the alien or by residence and domicile abroad.³ The majority of the courts have followed the first rule, but the second view has been favored by a number of the courts. The third position has had little following.

THE EXPATRIATION ACT OF MARCH 2, 1907

Congress, however, in enacting the Expatriation Act⁴ of March 2, 1907, which was the first statute dealing with this matter, took the second view. The Statute expressly provided that

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G. M. M.

* Written while a student, University of Denver College of Law.

¹ *Shanks v. Dupont*, 3 Pet. 242 (U.S.), 7 L. Ed. 666 (1830); *Comitis v. Parkerson*, 56 F. 556 (1893); *Wallenburg v. Missouri Pac. Ry. Co.*, 159 F. 217 (1908); *In Re Fitzroy*, 4 F. 2d 541 (1925); *In Re Wright*, 19 F. Supp. 224 (1937).

² *Pequignot v. City of Detroit*, 16 F. 211 (1883); *In Re Page*, 12 F. 2d 135 (1926); *Petition of Drysdale*, 20 F. 2d 957 (1927); *In Re Krausmann*, 28 F. 2d 1004 (1928).

³ *Petition of Zogbaum*, 32 F. 2d 911, 913 (1929).

⁴ 34 Stat. 1228 (3), 8 U.S.C. 17 (1940).

all women who married aliens took the nationality of their husbands and thereby lost their American citizenship. Provisions, however, were made for the resumption of citizenship at the termination of the marriage.⁵

The Supreme Court of the United States declared the Act to be valid in *McKenzie v. Hare*.⁶ The term "all women" was held to include all women who married aliens, and there were to be no exceptions.⁷ In two recent cases, *Guest v. Perkins*⁸ and *Watkins v. Morgenthau*,⁹ the term "termination" was very liberally construed. In both of these cases, the marriages were deemed to be terminated when the wives separated from their husbands and returned to the United States to live. A divorce, it seems, was not necessary. In the *Watkins* case, the court also held that the portion of the Act of March 2, 1907, which provided for the resumption of citizenship was retroactive, thus allowing women who had lost their citizenship prior to 1907 to regain their citizenship under its provisions.

THE CABLE ACT OF SEPTEMBER 22, 1922

The Expatriation Act of March 2, 1907, continued in existence until September 22, 1922, when it was repealed and replaced by the Cable Act.¹⁰ The Cable Act specifically provided that American women no longer lost their citizenship by marrying aliens who were eligible for citizenship unless they made a formal renunciation of their citizenship before a court having naturalization jurisdiction. However, those who married aliens ineligible to citizenship still lost their citizenship. The Act further provided that women who married aliens eligible to citizenship would be presumed to have expatriated themselves by living continuously for two years in the country of which their husbands were subjects or citizens, or by living continuously for five years outside the United States.¹¹ Women who had lost their citizenship by marriage to aliens and whose marriages had terminated could no longer resume their citizenship under the simple procedure of the Act of March 2, 1907. All of these women now had to be naturalized, and termination of their marriages was not required. This privilege, however, was accorded only to those women who had married aliens who were eligible to become citizens and not to those who had married aliens who were ineligible to become citizens. No certificate of arrival in the United States was required if they had

⁵ 34 Stat. 1228, sec. 3, 8 U.S.C. 9 (1907) . . . At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or if residing in the United States at the termination of the marital relation, by continuing to reside therein.

⁶ *McKenzie v. Hare*, 239 U.S. 299, 36 S.Ct. 106 (1915).

⁷ *In Re Wittus*, 47 F. 2d 652 (1931).

⁸ *Guest v. Perkins*, 17 F. Supp. 177 (D.C. 1936).

⁹ *Watkins v. Morgenthau*, 56 F. Supp. 529 (Pa. 1944).

¹⁰ 42 Stat. 1021 (1922); 8 U.S.C. sec. 9, 8 U.S.C. sec. 717 (1940).

¹¹ 34 Stat. 1228, 8 U.S.C. 16, 17 (1907).

not resided outside the United States during the continuance of their marriages. The Act was not to be retroactive,¹² and it did not restore citizenship lost by marriage to eligible aliens prior to September 22, 1922.

For the first time, aliens were divided into two classes. Those who were eligible to citizenship and those who were not. The term "ineligible alien" was defined as follows in *Gorman v. Forty-Second St. M. & N. Ry. Co.*:¹³

In our view Congress made reference to natives of foreign countries whose nations, as a class, are incapable of naturalization.

Naturalization at this time was limited to free white persons, Africans, and persons of African descent.

Pursuant to a statute of 1930, women who had lost their citizenship prior to September 22, 1922, by marriage to aliens eligible to citizenship were excused from compliance with some of the requirements of the naturalization laws when applying for naturalization.¹⁴

ACT OF MARCH 3, 1931

By the Act of March 3, 1931,¹⁵ Congress amended section 3 and repealed section 5 of the Cable Act. Section 3 was amended to read as follows:

A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after this section, as amended, takes effect; unless, she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens.

The portion dealing with marriages to ineligible aliens was deleted. Thus, it was now possible for American women to marry any and all aliens without losing their citizenship. The Act also provided that women who had lost their citizenship by residence abroad after marrying aliens, and those who had lost their citizenship

¹² *In Re Lynch*, 32 F. 2d 762 (1929).

¹³ *Gorman v. Forty-Second St. M. & N. Ry. Co.*, 303 N.Y.S. 632, 208 App Div. 214 (1924).

¹⁴ 46 Stat. 854 sec. 4(a), 8 U.S.C. (1930). . . . be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

(1) No declaration of intention and no certificate of arrival shall be required, and no period of residence within the United States or within the county where the petition is filed shall be required;

(2) The petition need not set forth that it is the intention of the petitioner to reside permanently within the United States;

(3) The petition may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner;

(4) If there is attached to the petition, at the time of filing, a certificate from a naturalization examiner stating that the petitioner has appeared before him for examination, the petition may be heard at any time after filing.

(b) After her naturalization such woman shall have the same citizenship status as if her marriage, or the loss of citizenship by her husband, as the case may be had taken place after this section, as amended takes effect.

¹⁵ 46 Stat. 1511-12; 8 U.S.C. 369a (1930).

by marrying ineligible aliens could regain their citizenship by naturalization.

However, the privilege did not extend to those women whose citizenship had originated solely by reason of marriage to citizens of the United States or by reason of their husbands acquiring United States citizenship.

By the Act of June 25, 1936,¹⁶ native-born women who had lost their citizenship solely by marriage to aliens prior to September 22, 1922, and whose marriage had terminated could resume their citizenship by taking an oath of allegiance. The oath could be taken before a court having naturalization jurisdiction at any place in the United States or at any place under the jurisdiction of the United States. If outside the jurisdiction of the United States, the oath could be taken before a secretary of embassy or legation, or before a consular officer.

In 1940 Congress amended the Act of June 25, 1936.¹⁷ Under the amendment, not only women whose marriages had been terminated, but also those whose marriages had not been terminated but who had lived continuously in the United States since their marriages, were allowed to resume their citizenship by taking the oath of allegiance.

The courts are not in agreement as to whether the oath is necessary before citizenship can be resumed. However, the better view seems to be that it is.¹⁸

NATIONALITY ACT OF 1940

Today, the Nationality Act of 1940¹⁹ is the law on this subject. It repealed and replaced all of the laws on this subject in effect prior to October, 1940. Section 727 (a) provides for the resumption of citizenship by naturalization. Naturalization, however, under this section is limited to persons who had lost their citizenship by marriage to aliens prior to September 22, 1922; persons who had lost their citizenship by the spouses' loss of citizenship; and persons who had lost their citizenship by marriage to aliens ineligible to citizenship on or after September 22, 1922. These persons must have been citizens of the United States, and they must not have acquired any other nationality by any affirmative act. They are excused from compliance with some of the requirements of the naturalization laws the same as under the Act of July 3, 1930.²⁰

¹⁶ 49 Stat. 1917; 8 U.S.C. 9a (1936).

¹⁷ 54 Stat. 715; 8 U.S.C. 9a (1940).

¹⁸ *Petition of Dattilio*, 66 F. Supp. 912 (Pa. 1946); *In Re De Santis*, 56 F. Supp. 101 (Pa. 1939); *In Re Charles Portner*, 56 F. Supp. 103 (Pa. 1944); *Shelley v. U.S.*, 74 App. D. C. 181, 120 F. 2d. 734 (1941); *Contra. In Re Watson's Repatriation*, 42 F. Supp. 163 (Ill. 1941); *Petition of Davies*, 53 F. Sup. 426 (Pa. 1944).

¹⁹ 54 Stat. 1146; 8 U.S.C. 717 (1940).

²⁰ 54 Stat. 1146; 8 U.S.C. 717(a) (1940) . . . With the following exceptions:
(1) No declaration of intention and no certificate of arrival shall be re-

Section 717 (b) provides for the resumption of citizenship by the taking of the oath of allegiance as prescribed for by section 735, subsection (b), Title 8 of the United States Code. This privilege is limited to women who were citizens of the United States by birth and who had lost (or who were believed to have lost) their citizenship solely by reason of their marriage to aliens prior to September 22, 1922. The marriages must have been terminated and no other nationality may have been acquired by any affirmative act. In the United States, the oath could be taken before a judge or clerk of a naturalization court, or if abroad before a diplomatic or consular officer of the United States. However, it is no longer possible for women whose marriages had not been terminated but who had continuously resided in the United States since their marriages to resume their citizenship by taking the oath of allegiance. They must now be naturalized under section 717 (a) of the Act.

SUMMARY

The courts today are not in accord as to the citizenship status of those American women who married aliens prior to 1907. As to those women who married aliens from 1907 to 1922 it is clear that they lost their citizenship by their marriages; the same can be said for those women who between 1922 and 1931 married aliens ineligible to become citizens. Those whose marriages took place after 1931 no longer lost their citizenship by their marriages, and it made no difference whether they married aliens who were eligible or ineligible to become citizens. Thus, today, American women are free to marry any and all aliens without losing their citizenship.

Under sections 717 (a) and (b) of the Nationality Act of 1940, it is possible for these women who lost their citizenship to regain it either by naturalization or by taking an oath. The way is open also for those women who married prior to 1907 and who are uncertain of their citizenship status. Increased restrictions upon aliens²¹ and the danger of some of them being classed as enemy aliens in the event of another war should be incentive enough to make them want to regain their lost citizenship.

quired, and no period of residence within the United States or within the state where the petition is filed shall be required.

(2) The petition need not set forth that it is the intention of the petitioner to reside permanently within the United States. t

(3) The petition may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner.

(4) The petition may be heard at any time after filing if there is attached to the petition at the time of filing a certificate from a naturalization examiner stating that the petitioner has appeared before such examiner for examination.

Such person shall have, from and after the naturalization, the same citizenship status as that which existed immediately prior to its loss.

²¹ Registration of Aliens in the United States. 54 Stat. 673, 674, 675; 8 U.S.C. Secs. 453, 454, 456, 457, as amended Sept. 23, 1950, C 1024, Title 1 Sec. 24 (a), Oct. 13, 1941, C 432, 55 Stat. 736; Sept. 23, 1950, C 1024, Title 1, Sec. 24 (b).