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served appeared on the day calendar for trial, and several adjournments had been had at defendant's request. In denying defendant's application, Special Term characterized his actions as dilatory tactics and a waiver of the right of arbitration.[104]

Conclusion

The impartial prohibitions of a time limitation often preclude redress for a just claim through arbitration. When the legislature enacts a statute of limitations, thereby sacrificing individual justice to the needs of the majority, it must carefully weigh its decision in order that the time set is reasonable. Since contractual limitations have a similar effect upon bona fide claims, the courts should see to it that reasonable necessity and not caprice justifies their enforcement. In view of the confusion confronting the bench and the bar with respect to these contractual limitations, it would appear that an amendment to Section 1448 of the Civil Practice Act should be made. This amendment would state in substance that no agreement or contract shall be valid which limits the period within which notice of claim must be given, or a claim filed, to a period of less than 90 days. It is submitted that such a period is just and reasonable in every situation that might arise, yet would prevent such a limitation from being a mere cloak for denial of a remedy.

Some Problems of Dual Nationality

Introduction

Citizenship is regulated by municipal, rather than international law.[1] Each nation forms its own rules as to the manner in which its citizenship may be acquired and in which it may be terminated. In determining a person's nationality at birth, some nations adhere to the doctrine of *jus soli, i.e.,* citizenship is determined by birth within the country. In others the status depends upon *jus sanguinis, i.e.,* nationality is inherited from the parents regardless of place of birth.

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[104] *Accord,* Burton v. Klaw, 129 N. Y. L. J. 329, col. 6 (Sup. Ct. Jan. 29, 1953); Matter of De Costa, 123 N. Y. L. J. 123, col. 5 (Sup. Ct. Jan. 11, 1950).

[1] *See* Perkins v. Elg, 307 U. S. 325, 329 (1939); Tomasicchio v. Acheson, 98 F. Supp. 166, 169 (D. D. C. 1951); see Note, 25 Minn. L. Rev. 348 (1941).

A third group, which includes the United States, confers citizenship under both theories.[2] The most common method of acquiring a particular nationality after birth is, of course, through the procedure of naturalization. Ordinarily, one who takes advantage of such a procedure renounces all former allegiances. However, not all nations recognize such renunciation.[3] As a consequence of this lack of uniformity among the various nationality laws, there exists the possibility of a person's being simultaneously claimed as a citizen by more than one sovereign. Such a person is said to possess dual nationality, a status long recognized by the law.[4]

For the sake of convenience in treatment, dual nationals may be classified into two general groups: first, those who acquire such status at birth, and secondly, those who acquire it subsequently thereto. In the first category, with regard to United States citizens, would be found a child born in this country of alien parents. Under our law, he would be a citizen of this country and would ordinarily inherit, as well, the nationality of his parents' native land. Similarly, the allegiance of one born abroad of American parents would be claimed not only by the United States, but also, if it operated under *jus soli,* by the country of his birth. On the other hand, one born in this country of United States citizens, who later became naturalized in a foreign country, would have acquired only a single nationality at birth, but another upon his parents' naturalization, and thus would come within the second classification. As a final example, a citizen of a foreign nation which does not recognize the right of expatriation will, upon naturalization in this country, possess both nationalities. These illustrations are of course not intended as exhaustive, but merely demonstrate some of the more common sources of dual allegiance.

The concept of dual citizenship presupposes that a person may possess, at the same time, certain rights of nationality in more than one country and, conversely, be burdened with responsibilities to both.[5] Inevitably such a situation has led to friction and difficulty. It is the purpose of this article to discuss some of the more important problems resulting from such a seemingly anomalous status and the attempts made to resolve them both by the courts and by Congress.

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[2] *See* Tomasicchio v. Acheson, *supra* note 1 at 168; see Note, 25 MINN. L. REV. 348 (1941).

[3] *See* Gualco v. Acheson, 106 F. Supp. 760, 761 (N. D. Cal. 1952); see Orfield, *The Legal Effects of Dual Nationality,* 17 GEO. WASH. L. REV. 427 (1949).

[4] *See* Kawakita v. United States, 343 U. S. 717, 723 (1952); Savorgnan v. United States, 338 U. S. 491, 500 (1950).

[5] *See* Kawakita v. United States, *supra* note 4 at 723; see Orfield, *supra* note 3.

Expatriation—In General

Expatriation contemplates a complete severance between the individual and the nation of which he is a citizen. The early common-law position was that such a severance could be accomplished only with the consent of the sovereign.[6] To some extent this view persisted in the United States [7] until the year 1868 when Congress declared expatriation to be a ". . . natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness . . . ," and that any promulgation which restricted this right in any manner would be ". . . inconsistent with the fundamental principles of this government." [8] Although this pronouncement had for its primary purpose the protection of those immigrating to this country from abroad,[9] it had the effect as well of recognizing the right of American citizens to voluntarily renounce their allegiance. The question of ascertaining just what was necessary to evidence the intent of expatriation was left to the Department of State. In 1907, however, Congress passed the Nationality Act of that year [10] in which it listed certain acts the performance of which resulted in loss of nationality.[11] The Act was amended in 1940 and a more comprehensive enumeration was accomplished by retaining some of the provisions of the old law, while substantially enlarging the grounds for loss of citizenship.[12] Some further modifications were attached in 1952.[13]

The problems to be dealt with herein deal largely with the interpretation accorded the Nationality Acts and the apparent conflict between the traditional view that expatriation is voluntary,[14] and divestiture of citizenship under the statutory enumerations. While, as indicated above, attention will primarily be given to the area of the dual national, it is to be noted that not all the difficulties are exclusively confined to that field.

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[6] *See* Mandoli v. Acheson, 344 U. S. 133, 135 (1952); Savorgnan v. United States, *supra* note 4 at 498.

[7] *See* Shanks v. Dupont, 3 Pet. 242, 246 (U. S. 1830).

[8] 15 STAT. 223-224 (1868).

[9] See *Developments in the Law—Immigration and Nationality,* 66 HARV. L. REV. 643, 732 (1953).

[10] See 34 STAT. 1228 (1907).

[11] The overt acts enumerated therein were: naturalization in a foreign state, oath of allegiance to a foreign state, and marriage of an American woman to a foreigner.

[12] 54 STAT. 1168 (1940), 8 U. S. C. § 801 *et seq.* (1946).

[13] 66 STAT. 267, 8 U. S. C. A. § 1481 (Supp. 1952). Actually, the 1940 Act was repealed and re-enacted with the modification.

[14] See note 8 *supra; Ex parte* Griffin, 237 Fed. 445 (N. D. N. Y. 1916).

Right of Election

The earliest cases presenting the problem of right of election in connection with dual nationality were those involving a minor child born here whose parents became naturalized in a foreign country, or, if they were naturalized Americans, who resumed their former allegiance to the country of their origin. Prior to 1939, there was a measure of uncertainty concerning the effect of such action upon the status of the minor. A very early opinion recognized a right of election in favor of the child permitting him to choose between the two nationalities upon attaining majority.[15] The Nationality Act of 1907, however, included naturalization abroad as a ground for loss of citizenship,[16] and this principle was interpreted as applying to minors who acquired foreign citizenship derivatively through their parents' naturalization.[17] Thus it was held that the resumption of Norwegian allegiance by a father previously naturalized in the United States terminated the American citizenship of his American-born daughter because it conferred Norwegian nationality upon her.[18] This result was given sanction in the federal courts in a case differing factually only to the extent that it involved foreign naturalization of a native-born parent rather than resumption of original nationality.[19] As in the previous case, the minor was held to have been deprived of American citizenship through the act of the parent.

When the issue eventually reached the Supreme Court in *Perkins v. Elg*,[20] the minor's right of election was reinstated in the law. Miss Elg was born in the United States of naturalized parents of Swedish origin. At the age of four years, she was taken to Sweden by her mother; there her father resumed his allegiance to that nation. By virtue of his action, Swedish citizenship was also conferred on Miss Elg.[21] Upon reaching her majority, she applied for an American passport and returned to this country, where, some five years later, deportation proceedings were instituted against her on the ground that she had previously become expatriated. The Court held that she had not lost her citizenship by what amounted to derivative naturalization in Sweden[22] and that she had elected, by returning here at majority, to retain her American nationality which she acquired at birth.

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[15] Steinkauler's Case, 15 OPS. ATT'Y GEN. 15 (1875).
[16] 34 STAT. 1228 (1907).
[17] The principle was similarly interpreted when found in treaties.
[18] Citizenship of Ingrid Tobiassen, 36 OPS. ATT'Y GEN. 535 (1932).
[19] United States v. Reid, 73 F. 2d 153 (9th Cir. 1934).
[20] 307 U. S. 325 (1939).
[21] Under a Swedish-American treaty of 1869, the resumption of residence in Sweden repatriated the father and also, the court assumed, his minor child. *Id.* at 336-337.
[22] It was pointed out that an infant is incapable of a binding choice and hence such naturalization could not be considered voluntary. *Id.* at 334.

The rule in the *Elg* case was included in the Nationality Act of 1940. Under Section 401(a),[23] a person who is a citizen of this country becomes expatriated upon his naturalization in a foreign country or upon the naturalization of a parent having legal custody over him; *provided,* however, that the nationality of the child shall not be lost *until* he fails to make an election by acquiring permanent residence here prior to his twenty-third birthday. Thus did Congress go further in prescribing a definite mode in which the election is to be evidenced and a time limitation within which it must be exercised. This limitation was extended by two years in 1952.[24]

Since any citizen of the United States has a right to renounce his allegiance should he so choose,[25] it follows that one who acquired an additional nationality at birth has an equal right to elect either one at majority or even, presumably, to renounce both (subject to any foreign laws). In that sense, a dual national who became such at birth has always had a right of election. Whether or not he has a *duty* of election such as that imposed upon derivative dual nationals is a question which has caused considerable confusion. Such a person does not come within Section 401(a) of the 1940 Act because he did not acquire his dual status derivatively through his parents' naturalization; on the contrary, he has always possessed it. There is, however, another section of the statute, Section 407,[26] which does apply to some dual nationals of that class, *viz.,* those in the custody of naturalized American parents who have resumed their native citizenship. Thus, one born of alien parents in the United States, acquiring, as we have seen, two nationalities, but whose parents later become naturalized Americans and *then* resume their native nationality, will come within this section. Under its provisions, the minor is obliged to make an election in the same manner as the minor under Section 401(a).

The Act omitted, on the other hand, to make any provision regarding one born here of alien parents who never became naturalized. Must he too make an election at majority to avoid forfeiture of his American citizenship? This question was answered in the negative in *Tomasicchio v. Acheson*[27] where the court distinguished certain State Department opinions, seemingly to the opposite effect, by pointing out that they were there considering the question of election of dual nationals with regard only to the extension of protection to such a citizen while he resides abroad. There is a vast difference, said the court, between ". . . loss of citizenship and deprivation of the privilege of protection. . . ." [28] Subsequently, however, the federal

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[23] 54 STAT. 1168 (1940), 8 U. S. C. § 801(a) (1946).
[24] 66 STAT. 267, 8 U. S. C. A. § 1481(a) (Supp. 1952).
[25] 15 STAT. 223-224 (1868).
[26] 54 STAT. 1170 (1940), 8 U. S. C. § 807 (1946).
[27] 98 F. Supp. 166 (D. D. C. 1951).
[28] *Id.* at 172.

court of appeals, in *Mandoli v. Acheson,*[29] decided that such a conclusion was erroneous. Relying on the doctrine of *Perkins v. Elg,* it was held that a person born in the United States of alien Italian parents forfeited his citizenship upon failure to elect when he reached twenty-one. This case was followed in *Mazza v. Acheson.*[30] The distinction between these cases and *Perkins v. Elg* is obvious, however. While in the latter case the defendant attained dual nationality derivatively through her parents' resumption of original nationality (which legally amounted to renaturalization), the petitioners in the former obtained it at birth. Miss Elg could reasonably have been said to come within Section 2 of the 1907 Act,[31] but Mandoli and Mazza were never naturalized even derivatively, and so they fall within no statutory provision regulating expatriation. Accordingly, the Supreme Court reversed the holding in the *Mandoli* case[32] on statutory grounds while asserting, in addition, that even in the *Elg* case the result of failure to elect was not affirmatively decided because, Miss Elg having actually elected, the question was not squarely presented.

When the Nationality Act was amended in 1952, a section was added to cover the foregoing situation. A dual national from birth ". . . who has voluntarily sought or claimed benefits of the nationality of any foreign state . . ." will, under this provision, lose his American citizenship by having a continuous residence for three years in the foreign state of which he is a national any time after attaining the age of twenty-two.[33] This provision is undoubtedly an attempt to reduce the instances of dual nationality by requiring election in all cases. It is less apparent, however, why Congress prescribed more liberal conditions for making such election here than were imposed in the case of derivative dual citizens. In order to avoid forfeiture of American citizenship, the latter are required to return to this country and establish here a permanent residence, while a dual national from birth needs only to avoid a three-year continuous residence in the particular foreign country of which he is a national. It was the opinion of at least one court that the distinction in the 1940 Act, in failing to require any election by dual nationals from birth, was arbitrary and that it left the statute open to attack on constitu-

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[29] 193 F. 2d 920 (D. C. Cir. 1952).

[30] 104 F. Supp. 157 (N. D. Cal. 1952). The decision here was based upon statutory grounds while in the *Mandoli* case reliance was placed on the Supreme Court's decision in *Perkins v. Elg.*

[31] Which section provided for forfeiture of citizenship upon naturalization in a foreign country.

[32] Mandoli v. Acheson, 344 U. S. 133 (1952).

[33] 66 STAT. 269, 8 U. S. C. A. § 1482 (Supp. 1952). Two major exceptions are included to the effect that loss of citizenship may be avoided (1) by taking an oath of allegiance to the United States before the expiration of the three-year period, and (2) if the residence is for one of several enumerated reasons.

tional grounds.[34] While the 1952 provision reduces this inequality, there nevertheless remains a distinction and if it could be considered arbitrary to distinguish through omission to provide for one class in 1940, it is no less arbitrary to expressly distinguish, although the distinction lies only in the method of election, in the 1952 amendment. As was said in *Gualco v. Acheson,* "[s]tatutes that arbitrarily discriminate are dangerous and unfair. Particularly is this so when so valuable and important [a] right as that of American citizenship is at stake." [35]

Divestiture under the Nationality Act

Included among the methods of forfeiting American citizenship in the 1940 Act were: entering or serving in the armed forces of a foreign state; [36] taking an oath of allegiance to a foreign state; [37] and voting in a political election of a foreign state.[38] There were, of course, other means provided, but during the period of war and post-war upheaval which followed the passage of the Act, the three mentioned were those with which the courts were most frequently confronted. Since these methods were stated in an absolute and unqualified manner, it became the task of the judiciary to reconcile them with the traditional concept of expatriation as a voluntary right existing for the benefit of the individual.

The most commonly employed "escape" from the rigidity of the statute as it stood was a construction which required, in addition to the act itself, the intent of expatriation. In order to attribute this intent to one who performed the proscribed act, such performance must have been voluntary.[39] However, if the petitioner were free to choose at the time of performance, mere ignorance of the consequences would not avail him.[40] The courts have therefore refused to apply the provisions of the statute if there could be found some factor negating the idea of voluntary action. Duress became the common defense in this type of proceeding.

The inherent difficulty in such a theory involved, of course, the determination of what constituted duress. As to this the courts were frequently in disagreement. Mere expediency, it was said, is not

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[34] *See* Gualco v. Acheson, 106 F. Supp. 760, 769 (N. D. Cal. 1952).

[35] *Ibid.*

[36] 54 STAT. 1168 (1940), 8 U. S. C. § 801(c) (1946). This section applied only to those who had or who acquired by such service the nationality of the foreign state. In 1952, this limitation was omitted, thus applying to other than dual nationals. 66 STAT. 267, 8 U. S. C. A. § 1481(a) (Supp. 1952).

[37] 54 STAT. 1168 (1940), 8 U. S. C. § 801(b) (1946).

[38] *Id.* at 1169, 8 U. S. C. § 801(e).

[39] See Podea v. Acheson, 179 F. 2d 306 (2d Cir. 1950); Doreau v. Marshall, 170 F. 2d 721 (3d Cir. 1948).

[40] See Savorgnan v. United States, 338 U. S. 491 (1950); Federici v. Miller, 99 F. Supp. 962 (W. D. Pa. 1951).

duress;[41] nevertheless, it has been held that fear of displeasing the authorities and fear of social ostracism were together sufficient to avoid the effect of voting in the Japanese elections of 1946.[42] Induction into foreign military service is generally regarded as service under compulsion;[43] but one judge ruled that where petitioner did not resist induction his action was voluntary.[44] This result was based on the congressional design, implicit in the statute, to discourage dual nationality. In another case, it was reasoned that even if the fact of induction did overcome the effect of the statute, the circumstance that petitioner was promoted in the Italian army showed that he had "served" loyally within the meaning of the section and was thereby expatriated.[45] Although courts generally frowned upon the practice of putting on or removing American citizenship for convenience as one might a cloak, duress has been established despite the feeling of the judge that petitioner ". . . stood upon his rights as either a citizen of the United States or a subject of Japan alternatively as best suited his personal purpose, pleasure, comfort and convenience. . . ." [46] Obviously, such variation among the judiciary caused much injustice. A person's citizenship came to depend less upon any settled rules of construction than upon the attitude of the particular court which happened to be reviewing his petition. The standard of judgment, as was charged against the early Equity courts, varied with the size of the "Chancellor's foot."

In this area was a further inequity. Persons who voted in occupied Germany or Japan under the mistaken notion that they were cooperating with the United States were conclusively presumed to have forfeited their citizenship if they acted voluntarily.[47] When the defense of duress was unavailable to them, some decisions afforded relief by holding that nations under American military occupation were not "foreign states" within the meaning of the statute,[48] or that elections therein were not "political." [49] In the main, however, such a construction was felt to do violence to the common-sense meaning

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[41] ". . . [T]he forsaking of American citizenship, even in a difficult situation, as a matter of expediency, with attempted excuse of such conduct later when crass material considerations suggest that course, is not duress." Doreau v. Marshall, *supra* note 39 at 724. See also McGrath v. Abo, 186 F. 2d 766, 771 (7th Cir. 1951).

[42] Nakashima v. Acheson, 98 F. Supp. 11 (S. D. Cal. 1951); *cf.* Kai v. Acheson, 94 F. Supp. 383 (S. D. Cal. 1950).

[43] Ishikawa v. Acheson, 85 F. Supp. 1 (D. Hawaii 1949); see Mandoli v. Acheson, 344 U. S. 133, 135 (1952).

[44] Kondo v. Acheson, 98 F. Supp. 884 (S. D. Cal. 1951); Hamamoto v. Acheson, 98 F. Supp. 904 (S. D. Cal. 1951).

[45] Perri v. Acheson, 105 F. Supp. 434 (D. N. J. 1952).

[46] Ishikawa v. Acheson, *supra* note 43.

[47] *See* Nakashima v. Acheson, 98 F. Supp. 11, 12 (S. D. Cal. 1951).

[48] Furusho v. Acheson, 94 F. Supp. 1021 (D. Hawaii 1951); Yamamoto v. Acheson, 93 F. Supp. 346 (D. Ariz. 1950).

[49] Furusho v. Acheson, *supra* note 48.

of those words.[50] The petitioners were reluctantly denied citizenship because, as one judge pointed out, they ". . . are beyond the help of the courts. Only Congress can rescue them from their plight." [51]

A radical departure from the general pattern of decisions is found in *Okimura v. Acheson*.[52] As in many of the cases, the petitioner was from birth a national of both the United States and Japan. During the war he was inducted into the Japanese army and later voted in the elections there. His application for an American passport was denied on the ground that he had lost his citizenship under Sections 401(a) and (e) of the Act. The district court in Hawaii, rather than attempt to take petitioner outside the operation of the statute, held instead that the sections involved were unconstitutional. Judge McLaughlin reasoned that since the test of citizenship by birth is a constitutional one, Congress has no power to interfere with it in any manner. Refusing to admit that the right of expatriation could be made a "liability" through congressional legislation, the court asserted that the only way a native American can be deprived of his birthright is by foreign naturalization proceedings. Upon appeal, the Supreme Court remanded the case for specific findings concerning petitioner's service in the Japanese army, his voting and the inferences to be drawn therefrom.[53] By so doing, the Court avoided the issue of constitutionality and permitted a result in harmony with the weight of authority since there certainly existed factors sufficient to warrant a conclusion based on coercion. The merits, however, of Judge McLaughlin's strict constitutional interpretation remain undetermined and one can but speculate as to the result should the Supreme Court be squarely confronted with the issue in a future case.

Treason

Of necessity, one who owes allegiance to more than a single nation is placed in a peculiarly precarious position should those countries become antagonistic toward one another. He has obligations toward both which, in the event of war, would be in direct conflict, performance on one side constituting a breach on the other. As a general rule, the primary allegiance of a dual national is to the nation in which he resides. However, that does not mean he owes

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[50] See Acheson v. Wohlmuth, 196 F. 2d 866 (D. C. Cir. 1952); Acheson v. Kuniyuki, 189 F. 2d 741 (9th Cir. 1951); Kuwahara v. Acheson, 96 F. Supp. 38 (S. D. Cal. 1951); Uyeno v. Acheson, 96 F. Supp. 510 (W. D. Wash. 1951).

[51] Nakashima v. Acheson, *supra* note 47 at 12.

[52] 99 F. Supp. 587 (D. Hawaii 1951). Also decided on the same grounds was Murata v. Acheson, 99 F. Supp. 591 (D. Hawaii 1951).

[53] Acheson v. Okimura, 342 U. S. 899 (1952). The *Murata* case was similarly disposed of in Acheson v. Murata, 342 U. S. 900 (1952).

no loyalty whatsoever to the other country which also claims him as a citizen.[54] It is true, with regard to American citizens, that performance of the deeds set forth in the Nationality Act has the effect of immediate expatriation, with the result that the actor would no longer be a dual citizen. On the other hand, activity which the statute does not encompass may nevertheless give "aid and comfort" to the enemy and, since expatriation would not flow therefrom, form the basis for a charge of treason. In fact, with war as we know it today, the very circumstance that one must earn a living in an enemy nation might very well aid them in the struggle.[55]

It would appear, therefore, that the only course available to one in such a situation is to make an open and unequivocal election between the two belligerents. This was the suggestion of the Supreme Court in *Kawakita v. United States*.[56] The defendant pleaded loss of citizenship under the Nationality Act of 1940 but the actions relied upon were found insufficient to support such a claim.[57] Since Kawakita was a citizen of the United States at the time of the activity for which he was tried, the jury's verdict of guilt was upheld. Of course such a person would not be convicted of treason if his performance was the result of force or coercion.[58] This element lacking, however, he can not turn his status into one of ". . . fair-weather citizenship, retaining it for possible contingent benefits but meanwhile playing the part of the traitor." [59]

Conclusion

The deleterious effects produced by the status of dual nationality both upon the individual and upon the nations involved in his disputes are such that, in the interests of justice and international harmony, the possibilities of such a status arising should be reduced to a minimum. Ideally, this should be the collective goal of all the nations of the world but, for a variety of reasons, there has existed on the part of many a reluctance to surrender claims to allegiance even when based upon little or no foundation.[60] The Congress of the United States has attempted to alleviate the problem with regard to its own citizenry through legislative enactments, some of which were

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[54] *See* Kawakita v. United States, 343 U. S. 717, 735 (1952).

[55] *Id.* at 734.

[56] See note 53 *supra*.

[57] The particular overt acts included: registering in the Koseki, a family census register; serving as an interpreter for a munitions corporation; paying respects to the Emperor of Japan; and expressions of hostility toward the United States.

[58] *See* Kawakita v. United States, *supra* note 54 at 736.

[59] *Ibid.*

[60] See Orfield, *The Legal Effects of Dual Nationality*, 17 GEO. WASH. L. REV. 427, 442 (1949).

discussed above. Although the goal of such legislation is admirable, the path has not been entirely free from obstacles. Nevertheless, until such time as an international cooperative effort is undertaken to relieve the current situation, there would appear to be no other course. The injustice produced in certain instances could largely be remedied by means of a more uniform judicial application. A single, reasonable standard for determining whether or not actions falling within the statute were voluntarily performed, and a common sense adaptation of the election provisions to meet the circumstances of the particular case,[61] would together constitute a safeguard for the incalculable privilege of American citizenship while in no way impairing the effectiveness of the Act. The right of expatriation should remain just that and should not, even for the most praiseworthy end, be transformed into a penalty.

THE DANGEROUS IMPLICATIONS OF THE STEIN CASE

> "American criminal procedure has its defects, though its essentials have behind them the vindication of long history. But all systems of law, however wise, are administered through men and therefore may occasionally disclose the frailties of men. Perfection may not be demanded of law, but the capacity to counteract inevitable, though rare, frailties is the mark of a civilized legal mechanism."
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> Mr. Justice Frankfurter
> in Rosenberg v. United States,
> 73 Sup. Ct. 1152, 1171 (1953).

On June 15, 1953, the Supreme Court of the United States handed down its opinion in the case of *Stein v. New York*,[1] popularly known as the "Reader's Digest Murder Case." Often the opinions of a court are noteworthy for their dicta rather than the

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[61] For example, in Gualco v. Acheson, 106 F. Supp. 760 (N. D. Cal. 1952), petitioner, a dual national, living in Italy, was inducted and served in the Italian army. He was captured by the Germans and released in ill health after which he remained in Italy until long past his majority. The court, nonetheless, held that since his residence since that time was in part involuntary, due to sickness, he had a *reasonable* time within which to exercise his right of election rather than the strict statutory period. He first attempted to return here 31 months after his release by the Germans and was held not to have lost his American citizenship.

[1] 73 Sup. Ct. 1077 (1953).