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Comment on Treason Trial of One Possessing Dual Nationality

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COMMENT ON TREASON TRIAL OF ONE POSSESSING DUAL NATIONALITY

In a recent case, before the United States Supreme Court the following facts appeared: Petitioner was born in the United States of Japanese parents. He lived in the United States until he was 18 years of age and then went to Japan to study. War broke out between the United States and Japan while Petitioner was still in school there, and he remained to finish his course of study. Upon reaching his majority, he registered in the *Koseki,* a family census register, and had his name removed from the list of enemy aliens in the police records. He changed his address from California to Japan and procured a position as an interpreter in a Japanese war plant, which plant was under the supervision of the army, and was manned partly by american prisoners of war. Petitioner was convicted of treason in the United States District Court and his conviction was affirmed. The conviction of treason was based on evidence of unnecessary cruelty to the american prisoners to get more work from them which was the giving of aid and comfort to the enemy. The Petitioner contended, that at the time of the alleged treasonous acts, he felt no allegiance to the United States and had thrown his lot with Japanese war effort. The Supreme Court of the United States affirmed the conviction on the grounds that even if Petitioner was possessed of dual nationality, he still owed such allegiance to the United States as would make his acts constitute treason.[1]

The Constitution of the United States define the crime of treason in the following terms: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort".[2] This provision applies only to those persons owing allegiance to the United States at the time the alleged treasonous acts took place,[3] for treason is a breach of allegiance and can be committed only by him who owes allegiance either perpetual or temporary.[4] Aliens may be guilty of treason against the United States, for while they are domiciled within our borders they are equally amenable with citizens for any infraction of our laws.[5] These are the persons who are meant when the courts speak of temporary allegiance.

1. Kawakita v. U. S., ... U. S. ....., 96 L. Ed. 799 (1952).
2. CONST. OF U. S., Art. 3, § 3.
3. U. S. v. Wiltberger, 18 U. S. 76, 52 L. Ed. 37 (1820).
4. Young v. U. S., 97 U. S. 39, 24 L. Ed. 922 (1877).
5. Carlisle v. U. S., 83 U. S. 147, 21 L. Ed. 423 (1872).

"Expatriation" is the voluntary renunciation of nationality and allegiance[6] and has been upheld by the courts of this country from a very early date. The founders of this government had the question of expatriation in mind, for Thomas Jefferson said, "Our citizens are certainly free to divest themselves of that character by emigration, and other acts manifesting their intention, and may then become subjects of another power, and free to do whatever the subjects of that power may do.[7] Chief Justice Marshall, speaking for the Supreme Court of the United States said that even if one is a citizen of this country by birth, he has the right to expatriate himself and become a citizen of any other country which he may prefer, if it is done with a *bona fide* and honest intention, at the proper time, and in a public manner".[8] While we are inviting all the people of the earth to become citizens of the United States, it surely does not become us to adhere to a contrary doctrine.[9] This statement was made in 1804 but it is as true today as then, for we still stand ready to accept immigrants from all parts of the world with the exception of the Far East. Congress, by an act adopted July 27, 1868, declared, "The right of expatriation is a natural and inherent right of all people, indispensible to the enjoyment of life, liberty, and the pursuit of happiness," and provides, that "any declaration, instruction, opinion, order, or decision of any officer of this government which devises, restricts, impairs, or questions this right is hereby inconsistent with the fundamental principles of the government".[10]

The trend of american thought seems to have always been to favor the free and unlimited rights of a citizen of the United States to expatriate himself. This view is summed up by Mr. Fish, Secretary of State under President Grant, in a letter to Mr. Washburn, Minister to France, in 1873. He said, of protection which the United States would give its citizens abroad; "There are other cases in which voluntary expatriation is to be inferred, not from an open act of manciation, but from other circumstances, that a purpose of a change of allegiance may be reasonably assumed".[11]

Both the crime of treason and the act of expatriation requires an intent on the part of the one acting. The courts of the United States

6. Savorgnan v. U. S., 73 F. Supp. 109, 111 (D. C. Wis. 1947).
7. 4 JEFF. WORKS, 37 (1793).
8. Murray v. Schooner Charming Betsy, 2 CRANCH 64, 120, 2 L. Ed. 208 (1804).
9. *Id.*
10. II WHARTON, INT. LAW DIGEST, § 171, p. 309; 8 U. S. C. § 800 (1907).
11. III MOORE, INT. LAW DIGEST, 712; I U. S. FOREIGN REL., 1873 at 256, 258 (Dept. of State .....).

have said that expatriation is a matter of intent on the part of person concerned, which must be shown by some express act;[12] and that not only must allegiance be owing at the time of the act, but it requires an intent to commit treason, which intent, if lacking, keeps the acts from constituting treason.[13] The word "intent" referred to an act denotes a state of mind with which the act is done.[14] In other words, "intent" is a mental attitude made known by acts.[15] Treason, as defined by the United States Supreme Court, embraces the existence of both a state of mind and the commission of overt acts. Both must be present. It is conceivable that one under the domination of folly or of factional feeling or directed by a preverted view of what he is doing, or even a wrong-headed conscience, may do what would otherwise be traitorous acts, and yet not expose himself to that charge because the acts, although carrying all the consequence of traitorous acts, even done without traitorous purpose or intent.[16]

The act of expatriation to be effective, should be *bona fide* and manifested by at least the act of his removal to another country,[17] but a citizen of the United States cannot throw off his allegiance to his native country as a cover for fraud, nor as a justification for the commission of a crime against the country, or for a violation of its laws, when this appears to be the intention of the act.[18] But, once one has *bona fide* expatriated himself, he no longer owes allegiance to the United States,[19] and therefore may not be guilty of treason.

In the United States, from a very early date, we have adhered to the principle that one is free to expatriate himself by his own voluntary acts. It is an historical fact that one of the major causes of the War of 1812 was the fact that the British were impressing seamen from the United States vessels because she claimed that such seamen were English nationals. England claimed this right because she maintained the doctrine of perpetual allegiance and considered a renunciation of citizenship by English subjects as criminal.[20]

It is true that a native-born citizen cannot, during his minority,

12. Schaufus v. Atty. Gen. of U. S., 45 F. Supp. 61, 66 (D. C. Ind. 1946); Perkins v Elg, 307 U. S. 325, 83 L. Ed. 1320 (1939).
13. Cramer v. U. S., 325 U. S. 1, 89 L. Ed. 1441 (1944).
14. Shotwell v. Nicollet Nat. Bank, 43 Minn. 389, 45 N. W. 842, 844 (1890).
15. People v. Haxer, 144 Mich. 515, 108 N. W. 90, 91 (1906).
16. U. S. v. Werner, 247 F. 708 (D. C. Pa. 1918).
17. Talbot v. Janson, 3 U. S. 133, 1 L. Ed. 540 (1795).
18. The Santissima Trinidad, 20 U. S. 283, 5 L. Ed. 454 (1822).
19. U. S. ex rel Baglivo v. Day, 28 F. 44 (D. C. N. Y. 1928).
20. III MOORE, INT. LAW DIGEST, § 431, p. 552.

renounce allegiance to the United States,[21] but a child of an alien who is taken back to the country of the parent during minority must, upon attaining his majority, elect which nationality he will retain.[22] To retain his United States citizenship, the person, as soon as he reaches his majority, should do some act consistent with such intention.[23] Of course, one cannot return to the United States from a country at war with them, but the fact that actions are taken consistent only with a renunciation of citizenship and a retention of the citizenship of the parents seems to indicate overwhelmingly that an election is made to adhere to the other allegiance.

Not only must one have attained his majority before he may expatriate himself, but congress, in 1907, passed an act which provides that no citizen of the United States may expatriate himself during a time of war.[24] The petitioner in this case was a minor when he returned to Japan and therefore, under the law, could not renounce his allegiance at that time. When he attained his majority, Japan was at war with the United States and he could not expatriate himself. As has been set out, the method of expatriation of a minor, born in the United States to alien parents and later taken back to the country of his parent's nationality, is by an election whether or not to retain his United States citizenship. It seems to this writer to be a hardship, not contemplated by congress, placed on one holding a dual allegiance and wishing to retain one in preference to the other. It is natural for one, who has elected to retain the nationality of a country at war with the other country of his dual allegiance, to do his utmost to further the ends of the chosen power. It would seem to indicate even more strongly that the election had been made.

The court in the case at hand remarked that the Petitioner was using the claim of expatriation as a means of escaping the hangman's noose; but in the light of the facts reported, it logically appears more probable that the true story was the one advanced by Petitioner in the trial, and that the statement of events and intention related previously for the purpose of getting a United States passport and a reinstatement of citizenship was fabricated. We can very easily conclude that the motive for his acts between 1943 and 1945 was to help the war effort of the country to which he believed he owed his complete allegiance, while the other was one concocted to cover true intention of expatriation.

21. U. S. ex rel Baglivo, *supra*, note 19.
22. Perkins v. Elg, 307 U. S. 325, 83 L. Ed. 1320 (1939).
23. *Id.*
24. In re Grant, 289 F. 814 (D. C. Cal. 1923).

The crime of treason and the act of expatriation both require an intent on the part of the one acting. The intent for either act should be gathered from those self-same acts. In this case, because of the feeling by the jury against the acts of Petitioner, they appear to have taken a series of acts which have but one inference, that the Petitioner's allegiance to the United States had been renounced, and use them to substantiate the crime of treason. The court looked upon the fact of registering in the *Koseki* and having his name removed from the files of the police as an enemy alien as only publishing a preexisting status; but these acts, with the ones which followed, seems to imply conclusively that Petitioner had thrown his lot with Japan, and therefore no longer considered himself a citizen of the United States.

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