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Constitutional Law--Nationality--Involuntary Expatriation

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art. 548b, §§ 1-12 (Vernon Supp. 1956), quite similar to the statute passed on in the principal case. While the question was not raised as to its constitutionality in relation to regulation by police power, the statute was held to be a valid regulation of the pre-need burial contract business.

In another case, Union Cemetery Ass'n v. Cooper, 414 Ill. 23, 110 N.E.2d 239 (1953), a cemetery association represented that it would give future care, similar to the type of care promised by D in the principal case. The court, in upholding Ill. Rev. Stat. ch. 21, § 64.4 (1957), which required a certain portion of the money received in advance for such care to be placed in trust, said that this did not transcend the police power of the state, and it was a reasonable and practical way of assuring the purchaser that he would get that for which he bargained.

In consideration of the broad powers vested in the legislature to regulate businesses, particularly those clothed with a public interest, and indications by other jurisdictions that trust provisions of future care contracts are constitutional, it appears that legislative regulation of pre-need burial contracts is a valid application of the state's police power. The right of an individual to contract is subject to governmental restraint where such is required for the protection of the public. It appears that legislation providing for such protection in this field is not an arbitrary exercise of authority, but a public need to which individual rights must yield.

M. D. W., Jr.

Constitutional Law—Nationality—involuntary Expatriation.—During World War II, P, a natural born citizen of the United States and member of the United States Army, was tried and convicted of desertion by a general court martial, and was sentenced to dishonorable discharge. Later, having been denied a passport on statutory grounds, he sought a declaratory judgment of citizenship; its denial was affirmed. On certiorari, however, without a majority opinion, the Supreme Court reversed both lower courts. Held, that Congress exceeded its constitutional power in providing for expatriation as a consequence of desertion when there is no attempt to transfer allegiance to a foreign power. Trop v. Dulles, 78 Sup. Ct. 590 (1958).
The Constitution makes no provision for either voluntary or involuntary expatriation, but it does provide that all persons born or naturalized in the United States are citizens. U.S.Const. amend. XIV, § 1. Congress and the courts have long recognized the right of a citizen to expatriate himself. Act of July 27, 1868, ch. 249, 15 Stat. 223; see Shanks v. Dupont, 28 U. S. (3 Pet.) 242, 246 (1830). Mr. Chief Justice Warren, writing the principal opinion in the Trop case and a dissenting opinion in its companion, Perez v. Brownell, 78 Sup. Ct. 568, 586 (1958), maintains that American citizenship can be lost only by voluntary renunciation or voluntary performance of acts showing allegiance to another state. Congress, however, in enacting the legislation under consideration in both the Trop and Perez cases provided for a number of situations whereby citizenship might be lost. Nationality Act, 1940, ch. 876, § 401, 54 Stat. 1168. This statute is essentially the same as its successor. Immigration and Nationality Act, 1952, § 349, 66 Stat. 267, as amended, 8 U.S.C. § 1481, as amended, 8 U.S.C. § 1481 (Supp. V, 1958). Its provisions fall generally into three categories: (1) to create formal procedures for (voluntary) expatriation; (2) to reduce the number of dual nationals (by expatriating those persons who voluntarily give allegiance to another State); and (3) to provide additional punishment for certain crimes against the United States. See Comment, 64 Yale L.J. 1164, 1172 (1955).

There appears to be no constitutional objection to the provisions in the first category, nor to those in the second, except as to definition of voluntariness. See, e.g., Perez v. Brownell, supra; Nishikawa v. Dulles, 78 Sup. Ct. 612 (1958). The third category is illustrated by the Trop case; in this category are the provisions for expatriation of wartime deserters (after conviction and sentence to dishonorable discharge), 8 U.S.C. § 1481 (a) (8) (1952), and those convicted of treason or conspiracy to overthrow the Government by force. 8 U.S.C. § 1481 (a) (9) (1952), as amended, 68 Stat. 1146 (1954), 8 U.S.C. § 1481 (a) (9) (Supp. V, 1958).

The section regarding deserters first appeared during the Civil War; it did not provide for loss of nationality, but for loss of rights of citizenship. Act of March 3, 1865, ch. 79, § 21, 13 Stat. 490. This statute, possibly not as severe as the one now struck down, was upheld as recently as 1920. In re Gnadt, 269 Fed. 189 (E.D. Mo. 1920); United States v. Snow, 27 Fed. Cas. 1255 (No. 16350) (C.C.-E.D. Tenn. 1877); Huber v. Reily, 53 Pa. 112 (1866); see Kurtz v.
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Moffitt, 115 U.S. 487, 501 (1885) (dictum). The later decisions of the Supreme Court, however, have indicated that expatriation can be justified only in regard to foreign relations; as, for example, a concession by the Government (in an expatriation case concerning marriage to an alien) that residence abroad is necessary to effect expatriation. Savorgnan v. United States, 338 U.S. 491, 503 (1950). There was also an implication that an expatriate must have gained a new nationality before losing the old. Mackenzie v. Hare, 239 U.S. 299 (1915).

It would seem to be the better rule that expatriation should be limited to those cases in which a person has acquired, or is in a position to acquire, a new nationality, and has voluntarily renounced American citizenship, or has voluntarily participated in some activity indicating allegiance to a foreign State and continued American citizenship would serve to embarrass the United States in the field of foreign affairs.

R. G. D.

Constitutional Law—State Taxation of Federal Property in Possession of Private Contractor.—P, a subcontractor under a prime contract with the federal government, brought an action against the City and County of Detroit to recover taxes paid pursuant to the general property tax act of Michigan. Mich. Comp. Law § 211.1 et seq. (1948). P had paid the taxes under protest, contending that the tax was in part assessed on federal property, since by the terms of the contract title to work in progress and other materials vested in the federal government upon partial payments of the contract price by the government, and hence such tax infringed the federal government's immunity from state taxation. The district court entered judgment for P and the Court of Appeals for the Sixth Circuit affirmed. 234 F.2d 380 (6th Cir. 1956). Held, (5-4), that the taxes, although styled property taxes, were in effect privilege taxes in that they were levies on a private party for the privilege of possessing and using government property in its own business for private gain and as such in no way infringed the federal government's immunity to state taxation. Detroit v. Murray Corp., 355 U.S. 489 (1958).

It is well established that the property, officers and instrumentalities of the federal government are not proper subjects of state tax-