

Teacher in Public Schools, Must be Citizen. Citizenship of Female, Lost by Marriage to Alien. Certificate to Teach, Cannot be Granted to Alien.

The school laws of this state provide that no certificate to teach in the public schools of Montana shall be granted to any person who is not a citizen of the United States, or who has not declared his intention to become a citizen... Held: That where a woman who, being a citizen of the United States, and having taught school in this state for two years, marries an alien, she loses her citizenship, and forfeits her right to teach in the public schools of this state.

April 26, 1916.

Hon. James M. Blackford,
County Attorney,
Libby, Montana.

Dear Sir:

I am in receipt of your letter of recent date, setting forth the following, and requesting my opinion thereon:

"Section 800, Subdivision 1, 1913 Session Laws, page 242, provides: 'No certificate to teach in the public schools of Montana shall be granted to any person, who is not a citizen of the United States, or who has not declared his intention to become a citizen.'

Question: Does a woman who is a citizen of the United States, and has taught school in this State for two years last past, lose her citizenship by her marriage to a foreigner residing in the State of Montana, and does such marriage disqualify her to teach in the State of Montana, the husband not having even declared his intention to become a citizen of the United States."

The question here presented was until a few years ago the subject of much diversity of opinion by the courts. It has, however, always been consistently held that the status of persons as citizens or aliens depends entirely upon the Constitution of the United States and the Acts of Congress passed pursuant thereto. In other words, the State is without power or authority to confer or take away federal citizenship. Yet it may, by virtue of its sovereignty, and within its own limits, confer citizenship; but persons so admitted do not become citizens of the United States where, according to the Federal laws, they are disqualified, even though permitted to vote and to hold office under the state laws.

See cases cited in note, 7 Cyc, 137.

It is also a recognized doctrine that expatriation is now recognized as a natural and inherent right of the individual.

7 Cyc. 144.

Under our school laws persons who are not citizens of the United States may not teach in our public schools. We muse, therefore resort to the federal laws and the decisions of the courts construing them to ascertain whether a female citizen of the United States voluntarily expatriates herself and becomes an alien by the act of marriage to a foreigner:

The Act of Congress of March 2, 1907, C. 2534, 34 Stat. 1228, so provides: The Supreme Court of California had this law under consideration in a recent case, wherein a native born woman of California married an unnaturalized Englishman. She with her husband thereafter continued to reside in California. Being of the required age she applied to be registered as a voter in pursuance of the equal suffrage laws of that state. The Court in denying her right to vote, said:

"This act now controls the subject referred to, including that involved in this case. Section 3 thereof is practically decisive of the case before us, and it is as follows: 'That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relations 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 relations, by continuing to reside therein.'

There is no escape from the conclusion that, under the provisions of this section, the plaintiff in this case, when she married Gordon Mackenzie, a British subject, thereupon took the nationality of her husband and ceased to be a citizen

of the United States. Just as an alien woman who marries a citizen becomes a citizen herself, whether she wishes it or not, as the cases we have cited declare, so a female citizen who marries an alien becomes herself an alien, whether she intends that result as the consequence of her marriage or not. She must bow to the will of the nation, as expressed by the act of Congress. Owing to the possibility of international complications, the rule has generally prevailed, from considerations of policy, that the wife should not have a citizenship, nor an allegiance different from that of her husband. The section aforesaid was intended to put this general doctrine into statutory form. When, after Congress by this act had declared that her marriage to an alien would accomplish her expatriation, and she thereafter married an alien, she is conclusively presumed to have intended thereby to renounce her citizenship of the United States and become a subject of Great Britain."

Mackenzie v. Hare, 134 Pac. 713.

The doctrine here announced must be held to apply in this state to the case you cite, for we cannot escape the conclusion that in view of the federal statute referred to, when taken in connection with our school laws, disqualifies the person you refer to from longer teaching in our public schools.

Yours very truly,

J. B. POINDEXTER,

Attorney General.