

**Luria Vs. United States**

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**Court :** US Supreme Court

**Decided On :** Oct-20-1913

**Appeal No. :** 231 U.S. 9

**Appellant :** Luria

**Respondent :** United States

**Judgement :**

Luria v. United States - 231 U.S. 9 (1913)

U.S. Supreme Court Luria v. United States, 231 U.S. 9 (1913)

**Luria v. United States**

**No. 27**

**Argued April 23, 1913**

**Decided October 20, 1913**

**231 U.S. 9**

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES*

*FOR THE SOUTHERN DISTRICT OF NEW YORK*

## SYLLABUS

Where a point involving sufficiency of the complaint is not raised and defendant does not challenge the statement of the court that it supposes the point will not be raised, it is too late to raise it in this Court.

This Court concurs in the conclusion reached by the district court that the residence in a foreign country of one whose certificate of naturalization was attacked as fraudulent was intended to be and was of a permanent nature and justified the proceeding on the part of the United States to cancel the certificate under 15 of the Act of June 29, 1906.

Unverified certificates of unofficial parties as to residence of a naturalized person in a foreign country *held* sufficient to overcome the presumption of permanent residence created under 15 of the Act of June 29, 1906.

The provisions of the second paragraph of 15 of the Act of June 29, 1906, dealing with the evidential effect of taking up a permanent residence in a foreign country within five years after securing a certificate of naturalization applies not only to certificates issued under that law, but also to those issued under prior laws.

The words "provisions of this section" used in a statute naturally mean every part of the section, one paragraph as much as another.

A paragraph in a statute which is plain and unambiguous must be accepted as it reads even though inserted as an amendment by one branch of the legislature.

The statutes, as they existed prior to June 29, 1906, conferred the right to naturalization upon such aliens only as contemplated the continuance of a residence already established in the United States.

Citizenship is membership in a political society, and implies the reciprocal obligations as compensation for each other of a duty of allegiance on the part of the member and a duty of protection on the part of the society.

Under the Constitution of the United States, a naturalized citizen stands on an equal footing with the native citizen in all respects save that of eligibility to the Presidency.

That which is contrary to the plain implication of a statute is unlawful,

Page 231 U. S. 10

for what is clearly implied is as much a part of a law as that which is expressed.

The spirit of the naturalization laws of the United States has always been that an applicant, if admitted to citizenship, should be a citizen in fact as well as name and bear the obligations and duties of that status as well as enjoy its rights and privileges.

The provisions of 15 of the Act of June 29, 1906, are not unconstitutional as making any act fraudulent or illegal that was honest and legal when done or as imposing penalties, or doing more than providing for annulling letters of citizenship to which the possessors were never entitled. *Johannessen v. United States*, [225 U. S. 227](#) .

The establishment of a presumption from certain facts prescribes a rule of evidence, and not one of substantive right, and if the inference is reasonable and opportunity is given to controvert the presumption, it is not a denial of due process of law, *Mobile &c.; R. Co. v. Turnipseed*, [219 U. S. 35](#) , even if made applicable to existing causes of action.

The right to have one's controversy determined by existing rules of evidence is not a vested right, and a reasonable change of such rules does not deny due process of law.

The taking up of a permanent residence in a foreign country shortly after naturalization has a bearing upon the purpose for which naturalization is sought, and it is reasonable to make it a presumption that such action indicates an absence of intention to reside permanently in the United States, and the provision of 15 of the Act of June 29, 1906, making such action a presumption, rebuttable by

proof to the contrary, of intention not to reside permanently in the United States is not unconstitutional as a denial of due process of law.

A proceeding under 15 of the Act of June 29, 1906, to cancel a certificate of naturalization on the ground that it was fraudulently issued is not a suit at common law, but a suit in equity similar to a suit to cancel a patent for land or letters patent for an invention, and the defendant is not entitled to a trial by jury under the Seventh Amendment. *United States v. Bell Telephone Co.*, [128 U. S. 315](#) .

184 F. 643 affirmed.

The facts, which involve the construction of 15 of the Act of June 29, 1906, 34 Stat. 596, 601, c. 3592, relating to citizenship and naturalization and the validity of a decree setting aside a certificate of naturalization on the ground that it was fraudulently issued, are stated in the opinion.

Page 231 U. S. 17

MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

This appeal brings under review a decree setting aside and cancelling, under 15 of the Act of June 29, 1906, 34 Stat. 596, 601, c. 3592, as fraudulently and illegally procured, a certificate of citizenship theretofore issued to George A. Luria by the Court of Common Pleas of the City and County of New York. 184 F. 643.

The petition was not carefully prepared, and yet it doubtless was designed to charge that the certificate was fraudulently and illegally procured, in that Luria did not at the time intend to become a permanent citizen of the United States, but only to obtain the indicia of such citizenship in order that he might enjoy its advantages and protection, and yet take up and maintain a permanent residence in a foreign country. There was a prayer that the certificate be set aside and cancelled because "procured illegally." The sufficiency of the petition was not challenged, and the case was heard and determined as if the issue just described were adequately tendered. In the opinion rendered by the district court, it was said, after observing that the petition was subject to criticism: "That point, however, was not

raised, and I suppose the defendant does not mean to raise it." This view of his attitude passed unquestioned then, and it is too late to question it now.

The case was heard upon an agreed statement and some accompanying papers, from all of which it indubitably appeared that Luria was born in Wilna, Russia, in 1865 or 1868, and came to New York in 1888; that he entered a medical college of that city the next year and was graduated therefrom in 1893; that he applied for and procured

Page 231 U. S. 18

the certificate of citizenship in July, 1894; that, in the following month, he sought and obtained a passport from the Department of State, and in November left the United States for the Transvaal, South Africa, arriving in December; that from that time to the date of the hearing, in December, 1910, he resided and practiced his profession in South Africa; that he joined the South African Medical Association and served in the Boer war; that his only return to the United States was for four or five months in 1907, for the temporary purpose of taking a postgraduate course in a medical school in New York, and that, when entering that school, he gave as his address, Johannesburg, South Africa. From the facts so appearing, the district court found and held that within a few months after securing the certificate of citizenship, Luria went to and took up a permanent residence in South Africa, and that this, under 15 of the Act of 1906, constituted *prima facie* evidence of a lack of intention on his part to become a permanent citizen of the United States at the time he applied for the certificate. In the papers accompanying the agreed statement, there were some declarations which, if separately considered, would tend to engender the belief that he had not taken up a permanent residence in South Africa, and was only a temporary sojourner therein; but the district court, upon weighing and considering those declarations in connection with all the facts disclosed, as was necessary, concluded that the declarations could not be taken at their face value, and that the residence in South Africa was intended to be, and was, permanent in character. We concur in that conclusion.

In his answer, Luria interposed the defense that his presence in the Transvaal was solely for the purpose of promoting his health, the implication being that, when he went there, his health was impaired in such a way that a residence in that country was necessary or advisable,

Page 231 U. S. 19

and therefore that taking up such a residence ought not to be accepted as indicating that, when he was naturalized, it was not his intention to become a permanent citizen of the United States. He does not appear to have been present at the hearing, and although there was ample time (ten months after filing his answer) to take his deposition, it was not taken, and there was substantially no attempt to sustain this defense, or to explain his permanent removal to the Transvaal so soon after he procured the certificate of citizenship. True, it appeared that in 1909 he filed at the United States Consulate in Johannesburg, in support of an application for registration as a citizen of the United States, two certificates from medical practitioners, stating, in effect, that his residence in the Transvaal was for purposes of health; but those certificates did not rise to the dignity of proof in the present case. Besides being *ex parte*, they were meager, not under oath, and not accepted by the consular officers as adequate or satisfactory. Thus, we think the district court rightly held that there was no countervailing evidence sufficient to overcome the evidential effect of taking up a permanent residence in the Transvaal so shortly following the naturalization.

Section 15 of the Act of 1906, under which this suit was conducted, is as follows:

"SEC. 15. That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and cancelling the certificate of citizenship *on the ground of fraud, or on the ground that such certificate of citizenship was illegally procured*. In any such proceedings, the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have

sixty days' personal notice in which to make answer to the petition of the United States, and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication, or upon absentees by the laws of the state or the place where such suit is brought."

*" If any alien who shall have secured a certificate of citizenship under the provisions of this Act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship, and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship. "*

"Whenever any certificate of citizenship shall be set aside or cancelled as herein provided, the court in which such judgment or decree is rendered shall make an order cancelling such certificate of citizenship, and shall send a certified copy of such order to the Bureau of Immigration and Naturalization, and in case such certificate was not originally issued by the court making such order, it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate

of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record, and to cancel such original certificate of citizenship upon the records, and to notify the Bureau of Immigration and Naturalization of such cancellation."

*" The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this Act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws. "*

One of the questions arising under this section is whether the second paragraph, dealing with the evidential effect of taking up a permanent residence in a foreign country within five years after securing a certificate of citizenship, is confined to certificates issued under the Act of 1906, or applies also to those issued under prior laws, as was Luria's. If that paragraph were alone examined, the answer undoubtedly would be that only certificates under the Act of 1906 are included. But the last paragraph also must be considered. It expressly declares that "the provisions of this section" shall apply not only to certificates issued under the Act of 1906, but also to all certificates theretofore issued under prior laws. The words "the provisions of this section" naturally mean every part of it, one paragraph as much as another, and that meaning cannot well be rejected without leaving it uncertain as to what those words embrace. Counsel refer to the Congressional Record, which shows that the second paragraph was inserted by way of amendment while the section was being considered in the House of Representatives. But as the section was in its present form when it was finally adopted by that body, as also when it was adopted by the Senate and approved by the President, it would seem that the last paragraph, in view of its plain and unambiguous

Page 231 U. S. 22

language, must be accepted as extending the preceding paragraphs to all certificates, whether issued theretofore under prior laws or thereafter under that

act.

But it is said that it was not essential to naturalization under prior laws, Rev.Stat. 2165-2170, that the applicant should intend thereafter to reside in the United States; that, if he otherwise met the statutory requirements, it was no objection that he intended presently to take up a permanent residence in a foreign country; that the Act of 1906, differing from prior laws, requires the applicant to declare "that it is his intention to reside permanently within the United States;" and therefore that Congress, when enacting the second paragraph of 15, must have intended that it should apply to certificates issued under that act, and not to those issued under prior laws. It is true that 4 of the Act of 1906 exacts from the applicant a declaration of his intention to reside in the United States, and it is also true that the prior laws did not expressly call for such a declaration. But we think it is not true that, under the prior laws, it was immaterial whether the applicant intended to reside in this country or presently to take up a permanent residence in a foreign country. On the contrary, by necessary implication, as we think, the prior laws conferred the right to naturalization upon such aliens only as contemplated the continuance of a residence already established in the United States.

Citizenship is membership in a political society, and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other. Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects save that of eligibility to the Presidency. *Minor v. Happersett*, 21 Wall. 162, 88 U. S. 165 ; *Elk v. Wilkins*, 112 U. S. 94 , 112 U. S. 101 ; *Osborn v. Bank of United States*, 9 Wheat. 738, 22 U. S. 827 . Turning to the naturalization laws preceding the Act of 1906, being

Page 231 U. S. 23

those under which Luria obtained his certificate, we find that they required, first, that the alien, after coming to this country, should declare on oath, before a court or its clerk, that it was *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign

sovereignty; second, that at least two years should elapse between the making of that declaration and his application for admission to citizenship; third, that as a condition to his admission, the court should be satisfied, through the testimony of citizens, that he had resided within the United States five years at least, and that, during that time he had behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; and, fourth, that at the time of his admission, he should declare on oath that he would support the Constitution of the United States, and that he absolutely and entirely renounced and abjured all allegiance and fidelity to every foreign sovereignty. These requirements plainly contemplated that the applicant, if admitted, should be a citizen in fact as well as in name -- that he should assume and bear the obligations and duties of that status as well as enjoy its rights and privileges. In other words, it was contemplated that his admission should be mutually beneficial to the government and himself, the proof in respect of his established residence, moral character, and attachment to the principles of the Constitution being exacted because of what they promised for the future, rather than for what they told of the past.

By the clearest implication, those laws show that it was not intended that naturalization could be secured thereunder by an alien whose purpose was to escape the duties of his native allegiance without taking upon himself those of citizenship here, or by one whose purpose was to reside permanently in a foreign country, and to use his naturalization

Page 231 U. S. 24

as a shield against the imposition of duties there, while by his absence he was avoiding his duties here. Naturalization secured with such a purpose was wanting in one of its most essential elements -- good faith on the part of the applicant. It involved a wrongful use of a beneficent law. True, it was not expressly forbidden; neither was it authorized. But, being contrary to the plain implication of the statute, it was unlawful, for what is clearly implied is as much a part of a law as what is expressed. [United States v. Babbitt](#), 1 Black 55, [66 U. S. 61](#) ; *McHenry v. Alford*, [168 U. S. 651](#) , [168 U. S. 672](#) ; *South Carolina v. United States*, [199 U. S. 437](#)

, [199 U. S. 451](#) .

Perceiving nothing in the prior laws which shows that Congress could not have intended that the last paragraph of 15 of the Act of 1906 should be taken according to the natural meaning and import of its words, we think, as before indicated, that it must be regarded as extending the preceding paragraphs of that section to all certificates of naturalization, whether secured theretofore under prior laws or thereafter under that act.

Several contentions questioning the constitutional validity of 15 are advanced, but all, save the one next to be mentioned, are sufficiently answered by observing that the section makes no discrimination between the rights of naturalized and native citizens, and does not in any wise affect or disturb rights acquired through lawful naturalization, but only provides for the orderly cancellation, after full notice and hearing, of certificates of naturalization which have been procured fraudulently or illegally. It does not make any act fraudulent or illegal that was honest and legal when done, imposes no penalties, and at most provides for the annulment, by appropriate judicial proceedings, of merely colorable letters of citizenship, to which their possessors never were lawfully entitled. *Johannessen v. United States*, [225 U. S. 227](#) . See also *Wallace v. Adams*, [204 U. S. 415](#) .

Page 231 U. S. 25

Objection is specially directed to the provision which declares that taking up a permanent residence in a foreign country within five years after the issuance of the certificate shall be considered *prima facie* evidence of a lack of intention to become a permanent citizen of the United States at the time of the application for citizenship, and that, in the absence of countervailing evidence the same shall be sufficient to warrant the cancellation of the certificate as fraudulent. It will be observed that this provision prescribes a rule of evidence, not of substantive right. It goes no farther than to establish a rebuttable presumption which the possessor of the certificate is free to overcome. If, in truth, it was his intention at the time of his application to reside permanently in the United States, and his subsequent

residence in a foreign country was prompted by considerations which were consistent with that intention, he is at liberty to show it. Not only so, but these are matters of which he possesses full, if not special, knowledge. The controlling rule respecting the power of the legislature in establishing such presumptions is comprehensively stated in *Mobile &c.; Railroad Co. v. Turnipseed*, [219 U. S. 35](#) , [219 U. S. 42](#) -43, as follows:

"Legislation providing that proof of one fact shall constitute *prima facie* evidence of the main fact in issue is but to enact a rule of evidence, and quite within the general power of government. Statutes, national and state, dealing with such methods of proof in both civil and criminal cases, abound, and the decisions upholding them are numerous. . . ."

"That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law, or a denial of the equal protection of the law, it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary

Page 231 U. S. 26

mandate. So also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed."

"If a legislative provision not unreasonable in itself, prescribing a rule of evidence in either criminal or civil cases does not shut out from the party affected a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him."

Of like import are *Fong Yue Ting v. United States*, [149 U. S. 698](#) , [149 U. S. 729](#) ; *Adams v. New York*, [192 U. S. 585](#) , [192 U. S. 599](#) ; *Bailey v. Alabama*, [219 U. S. 218](#) , [219 U. S. 238](#) ; *Lindsley v. Natural Carbonic Gas Co.*, [220 U. S. 61](#) , [220 U. S. 81](#) ; *Reitler v. Harris*, [223 U. S. 437](#) , [223 U. S. 441](#) .

Nor is it a valid objection to such legislation that it is made applicable to existing causes of action, as is the case here, the true rule in that regard being well stated in Cooley's Constitutional Limitations, 7th ed. 524, in these words:

"It must also be evident that a right to have one's controversies determined by existing rules of evidence is not a vested right. These rules pertain to the remedies which the state provides for its citizens, and generally in legal contemplation they neither enter into and constitute a part of any contract nor can be regarded as being of the essence of any right which a party may seek to enforce. Like other rules affecting the remedy, they must therefore at all times be subject to modification and control by the legislature, and the changes which are enacted may lawfully be made applicable to existing causes of action, even in those states in which retrospective laws are forbidden. For the law as changed would only prescribe rules for presenting the evidence in legal controversies in the future, and it could not, therefore, be called retrospective

Page 231 U. S. 27

even though some of the controversies upon which it may act were in progress before."

This Court applied that rule in [\*Webb v. Den\*](#), 17 How. 576, [58 U. S. 578](#) ; *Hopt v. Utah*, [110 U. S. 574](#) , [110 U. S. 590](#) ; *Thompson v. Missouri*, [171 U. S. 380](#) , and *Reitler v. Harris*, [223 U. S. 437](#) , [223 U. S. 441](#) .

That the taking up of a permanent residence in a foreign country shortly following naturalization has a bearing upon the purpose with which the latter was sought, and affords some reason for presuming that there was an absence of intention at the time to reside permanently in the United States, is not debatable. No doubt the reason for the presumption lessens as the period of time between the two events is lengthened. But it is difficult to say at what point the reason so far disappears as to afford no reasonable basis for the presumption. Congress has indicated its opinion that the intervening period may be as much as five years without rendering the presumption baseless. That period seems long, and yet we are not prepared to

pronounce it certainly excessive or unreasonable. But we are of opinion that, as the intervening time approaches five years, the presumption necessarily must weaken to such a degree as to require but slight countervailing evidence to overcome it. On the other hand, when the intervening time is so short as it is shown to have been in the present case, the presumption cannot be regarded as yielding to anything short of a substantial and convincing explanation. So construed, we think the provision is not in excess of the power of Congress.

Lastly, it is urged that the district court erred in not according to the defendant a trial by jury. The claim is predicated upon the Seventh Amendment to the Constitution, which declares that, "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." This, however, was not a suit at common law. The right asserted and the remedy sought were essentially equitable,

Page 231 U. S. 28

not legal, and this, according to the prescribed tests, made it a suit in equity. [\*Parsons v. Bedford\*](#), 3 Pet. 433, [28 U. S. 447](#) ; [\*Irvine v. Marshall\*](#), 20 How. 558, [61 U. S. 565](#) ; [\*Root v. Railway Company\*](#), [105 U. S. 189](#) , [105 U. S. 207](#) . In this respect, it does not differ from a suit to cancel a patent for public land or letters patent for an invention. See [\*United States v. Stone\*](#), 2 Wall. 525; [\*United States v. San Jacinto Tin Co.\*](#), [125 U. S. 273](#) ; [\*United States v. Bell Telephone Co.\*](#), [128 U. S. 315](#) .

Finding no error in the record, the decree is

*Affirmed.*