# A TREATISE

ON THE

# LAW OF CITIZENSHIP

IN THE

# UNITED STATES

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TREATED HISTORICALLY

BY

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OF THE BOSTON BAR

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ALBANY, N. Y.
MATTHEW BENDER, LAW BOOK PUBLISHER
1891

WEED, PARSONS AND COMPANY,
PRINTERS AND ELECTROTYPERS,
ALBANY, N. Y.

TO THE

Honorable Benjamin Franklin Butler,

OF MASSACHUSETTS,

WHO, IN SEPTEMBER, 1890, COMPLETED ONE-HALF A CENTURY OF ACTIVE PRACTICE OF THE LAW IN THE COURTS OF MANY STATES, AND IN THE FEDERAL COURTS OF THE UNITED STATES, THESE PAGES ARE RESPECTFULLY INSCRIBED BY THE

AUTHOR.

# PREFACE.

"The distinction between citizens proper, that is, the constituent members of the political sovereignty, and subjects of that sovereignty who are not, therefore, citizens is recognized in the best authorities of the public law." This distinction is true. The further question of who are and who are not citizens has its difficulties. Accept the definition of citizenship to be the enjoyment of equal rights and privileges at home, and equal protection abroad, and consider the question from this standpoint, from which alone it should be treated, for we have no law in the United States which divides our citizens into classes or makes any difference whatever between them. We then discover the importance that the equal rights of citizens when at home should maintain when abroad, because questions as to citizenship are determined by municipal law in subordination to the law of nations. Therefore, the value of citizenship should not be underestimated.

Every individual should have some central point from which he emanates and to which he returns, where he is clothed with citizenship and the consequent enjoyment of all rights and privileges which citizenship confers.

The modern ways of communication from one country to another, the necessity of temporary and permanent sojourn by foreigners in this country, and by American citizens in foreign countries growing out of trade and commercial relations, require that a citizen of the United States should understand his exact relation to this government, and his relations to foreign governments; and to reach this understanding, the question of citizenship should be discussed with the light of the existing practice, not solely from the standpoint of the municipal statutes of this

country, but more especially from the standpoint of the practice of the international common law to which our own practice has materially contributed.

In the early days of our republic the principle was laid down to welcome all who seek homes in this country, and to deny it to none. The right of emigration and consequent expatriation by means of naturalization was recognized. Aliens born have ever found homes in our republic ; generations have succeeded them and engaged in the development, assisted in the progress, identified themselves with our institutions, and shared in the pride of our greatness.

In the days of the Roman republic it was the proud honor of a Roman citizen to state at home and abroad *civis Romanus sum;* so it should be in this country for an American to maintain, "I am an American citizen."

Therefore, the elements which enter into the inquiry should be considered.

The first inquiry should be the means by which citizenship is acquired; whether by descent or naturalization; in either one of these two ways citizenship is generally conferred except in cases of adoption by marriage.

Municipal rules have value within the territory of their jurisdiction, but have no extra-territorial effect.

To illustrate: In our country there may be a municipal rule, that the children of subjects of that country and the children of aliens born within the territory of that country are by virtue of birth within the territory subjects of that country. The same rule may prevail in a neighboring country. Again, in both these countries there may be municipal rules by which the children of subjects of the respective countries born abroad follow the citizenship of the parents. It is evident that a conflict as to citizenship cannot be avoided in these cases.

For example: Assume England and the United States to have the same rules. A child of a citizen of the United States born in England is an English subject, and the statute of the United States asserts that the children of Americans born abroad are Americans. Yet these rules have governed until quite a recent date in both countries. For example: in 1858 the Earl of

Malmesbury expressed the following opinion in Walewaski's case: "If Walewaski had been born in France, of English parents, and had voluntarily returned to France, he would have been a British subject in England, but he would not have been entitled to British privileges or protection in France as against the country of his actual birth or domicile."

These rules are the outgrowth of municipal statutes, and, as such, involve the question of citizenship, in continuous conflict.

This should be avoided, and the practice of modern days will show the impracticability of the theory of the derivation of citizenship from birth on this or that inanimate piece of ground, whether in the country of one's parents or on foreign soil. Such a theory had its origin in the feudal law, on which the principles of this country were not grounded, and, while it may be argued that it finds place in the English common law, it must not be forgotten that "our ancestors brought with them, and claimed as their birthright its general principles, and adopted that portion of it only which was applicable to their situation."

The conclusion reached in the following discourse will be that citizenship is conferred by descent.

The other means of acquisition of citizenship is by naturalization. Under our practice no rule governs by which an inquiry is possible into the relations of the applicant to his country of origin. It cannot be doubted on the authorities: first, that every subject has obligations to perform to his country; and second, that the obligations should be such that they can be legally discharged. This done and the departure of the citizen from his country of origin to seek a new home elsewhere should be permitted.

Great Britain, since 1870, has recognized the right of free expatriation by her subjects. France gives to her citizens the authorization to be naturalized abroad.

Germany countenances the right of departure when in good faith to found homes in foreign lands after the fulfillment of existing obligations.

The other countries of Europe do not dispute the legal right of their subjects to become naturalized citizens abroad when done

lawfully with a due observance of the qualifications which they have enacted to govern in such cases, with the exception of Russia and Turkey, in which countries an immunity peculiar to those governments is enjoyed, by which the restriction on the exercise of the right is held to be a matter of imperial favor.

The South American republics recognize the right in accordance with the practice existing among civilized governments.

There is, however, involved in this principle of expatriation a very important point — that of acting in good faith. Citizenship is not, and should not be held to be, a matter of convenience, to be taken on and thrown off to meet existing emergencies; nor should it be resorted to as a supposed means by which to evade obligations under which any individual is to either his country of origin or country of adoption. The very element of departure from one country and the acquisition of citizenship in another should be governed by good faith to the respective authorities of the countries with which the individual has to do in the transfer of his allegiance.

It is difficult to find a case where good faith has governed the action of the individual, that the question of citizenship has arisen to cause the citizen inconvenience or trouble.

In the Christ Ernst case the rule is laid down to be — the natural right of every free person who owes no debt and is guilty of no crime, to leave the country of his birth in good faith, and for an honest purpose, is incontestible. It will be found in the practice that the intent is more often controlled by the acts of the citizen than by his professions or loudly expressed oral declarations, in particular with reference to the loss of citizenship acquired by naturalization upon return to the country of origin.

This has grown out of our naturalization treaties made and entered into with several European governments and South American republics in 1868 and 1870. For example: A former citizen of the United States becomes a naturalized citizen of the Republic of Ecuador; he returns to the country of his nativity; he remains two years, and, acting under the naturalization treaty, the government of the United States claims that he has renounced his citizenship in Ecuador by a continued two years' residence in his country of origin; this claim he denies, and produces evidence of his intent to remain a citizen of Ecuador.

In a similar case with Germany no provision is made for the production of evidence of his intent, and the word "may" in the treaty has, in the practice with Germany, been construed to mean "shall." Merely no right is given to defend against the claim of the government.

In a similar case with Great Britain a change depends on the citizen's own volition; if a former British subject has become a naturalized citizen of the United States, he must comply with the naturalization laws of Great Britain to divest himself of his American citizenship.

The rule laid down by Mr. Justice Marshall is clear and explicit: "If an American citizen can expatriate himself he divests himself by the very act of expatriation as well of the obligations as of the rights of a citizen. He becomes *ipso facto* an alien, and citizenship once lost cannot be recovered by residence, but he must go through the formula prescribed by law for the naturalization of an alien."

In the English practice, under the Naturalization Act of 1870, the alien who applies for English citizenship is granted a qualified certificate of naturalization, which answers well the purpose of citizenship in England when at home, but when abroad, in particular in the country of origin, does not carry with it that protection which English citizens enjoy when abroad, who are such by descent or native born, as the term is used in England. This precautionary measure is taken with a view to avoid conflict of authority as between the country of origin and the country of adoption. In cases where the alien departed from his country, leaving obligations unfulfilled, illegally or without authorization, to be naturalized abroad, or whatever the prerequisites may have been, which have not been complied with, the English qualified certificate would seem to be granted, dependent upon these conditions precedent to make the citizenship complete and insure protection from the English government. It may go so far in the practice as to be in effect, when the conditions have been avoided, entirely nugatory to a qualified naturalized alien in England when abroad, and in particular when in the country of origin.

*In re* Bourgeoise, a Frenchman came to reside in England, and

in 1871 obtained the usual qualified certificate of naturalization as a British subject, but did not obtain from the French government the necessary authority to become a naturalized citizen abroad. In 1880, he married an English subject and returned to France to reside and died there. *Held,* that at the time of his death he was a French citizen.

Such a relation to a government must be very unsatisfactory in form and in fact. Regardless of the question of good faith, and when the applicant has acted in every regard in perfect good faith, he receives his naturalization certificate with qualifications.

Citizenship qualifiedly conferred cannot have the effect of making the citizen a constituent member of the body politic, of constituting him a particle of the whole, with equal rights and privileges at home and equal protection when abroad with the members of the body politic, who constitute the whole. It leads to a classification abroad at least if not at home, and is not much removed from the grant in the Middle Ages of trading certificates to aliens.

This classification does not maintain in this country nor in other European countries.

It will further be seen from the practice that the question of citizenship is often left in an unsettled condition by the authorities when brought up for consideration, when the naturalized citizen returns to the country of origin for either temporary or permanent purposes, where the residence is extended over the terminus of time of two years mentioned in the naturalization treaties. In particular is this the case with Germany, where rather than go into the *rationale* of the question a peremptory order issues to leave the country for the reason that the presence of the citizen is inimical to the interests of the country.

This act is within the scope of the regulation of internal affairs, and unless it is carried so far in its application as to place the United States on a footing different from that of comity between nations, or deny to it the rights of a favored nation at peace with Germany, remonstrance would be futile.

There is another point out of which have grown many complications, which is the expression that a citizen can be clothed with a dual nationality: that is, in one country a citizen of that

country, and when in another country a citizen of the other country. For example: when in the United States, a citizen of the United States, and when in Germany a citizen of Germany. This was held in Stenkauler's case by the authorities of the United States.

Stenkauler was born in the United States, of German parents naturalized in the United States, who returned to Germany while the son was a few years old. Under the treaty of naturalization it was held by the German government that the father by two years' continued residence in Germany had renounced his acquired citizenship in the United States, and thereby the citizenship of the son was changed, and he was held for military service. Protection from the United States was denied him, and a dual nationality alleged, to the effect that, upon return of the son to the United States, he could take on his citizenship in this country.

The modern authorities fail to sustain this proposition.

It will be seen that the subject is important, and its importance has increased of late years. Cases have been discussed at length when they have arisen, and been determined, some with more and some with lesser comment.

The purpose of the following pages is to lead up historically to the standpoint by which citizenship in its international sense should be judged. For it is quite clear, as was said, by Mr. Justice Miller, that there is a citizenship of the United States, and a citizenship of a state which are distinct from each other, and with state citizenship this work has nothing to do, only so far as it is embodied in the question of citizenship of the United States.

The writer hopes to have determined this standard, and if his labors have convinced a few of his readers, he will feel his work has not been in vain.

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# THE LAW OF CITIZENSHIP.

## CITIZENSHIP HISTORICALLY CONSIDERED.

Rome, throughout her rise and progress, manifested her uncontrollable thirst for empire. The perseverance of her citizens amid discouraging reverses and ultimate success over her enemies, won for her the pinnacle of greatness. All nations flocked to the "Eternal City" as the center of civilization; she dictated to the then known world; she made for it the laws and extended to all the freedom of rights which had been unknown to these nations in the relations which had governed them as deriving power through an earthly prince, from Odin, or relying upon the mandates of their Druids. They had no writers to record either their origin or their principles of law; therefore, none have come to us. They were known to the Romans as barbarians; in comparison to the Romans they were considered ignorant; they lived under the guidance of their chiefs as wandering tribes, constantly at war with each other; they lived upon the milk and flesh of their cattle and seldom cultivated the ground. These people the Romans conquered, and over their territories to the banks of the Rhine and Danube, through Spain to Africa, and

across to Britannia extended the power of Rome. With them went the principles of the Pandects, a body of laws grafted on experience and well adapted to the people of that day. Famous jurists and orators expounded its principles; they became the foundation principles of the laws of the civilized world.

The earliest dissertations on the question of citizenship are found among the writings of the Romans.

By them from time to time the rights of citizens of Rome have been discussed. Not alone the rights as members of the body politic, but also the rights of aliens to become members of the body politic, and the rights of members of the body politic to dissolve membership and depart to become members of another body politic.

The relation of members to the Roman body politic was based on the principle of jus naturale, of which the definition as laid down by Gajus, was: jus naturale est quod natura omnia animalia docuit. Within this definition was comprised man in his natural state; it was by man that the body politic was organized, and in entering the organization with his fellow men, man followed the exercise of his natural rights, and became an ingredient of the society of which he, with others, became members.

The organization formed or the state created as of man and by man, man was not so incorporated into the body politic that he could not depart; such a restriction was not placed by him on his nature, that he must forever remain a member of the society of which he became a member.

Typhonius wrote, "It is free to every man to choose the state of which he will be a member."

Although in the early days of Rome, they alone could call themselves Roman citizens who were free born and born in Rome, yet very soon thereafter foreigners were admitted to citizenship by authority of the legislative body.

Later, as Rome advanced in her conquest of the neighboring states, to these states the legislative authorities conferred charters by which the citizens of such states were admitted to Roman citizenship and their former citizenship was abolished.

In Rome the inhabitants were either free, peregrines or slaves; they were either citizens or they were not citizens; the slaves were in the power of the citizens, and these citizens had the right to make free or emancipate their slaves, and such as they emancipated became freedmen, but by the act of emancipation in itself, citizenship was not acquired. It was the being born of freedmen which conferred the citizenship after the act of emancipation was extended. Notwithstanding this rule, the legislative authorities could confer citizenship on such slaves as were emancipated by Roman citizens.

There were many inhabitants of Rome who were not citizens. They were known as peregrini, and enjoyed the privileges of Roman citizens with the exception of the suffragium, or right of suffrage. This right was conferred on such peregrini as chose to become citizens by act of the legislature.

Cicero lays down the rule, "that every man ought to be able to retain or renounce his rights of member-

ship of a society," and further adds, "that this is the firmest foundation of liberty."

Under this the Romans received all who came and forced none to remain with them.

### EFFECT OF THE INVASION OF THE BARBARIANS ON ROME

After the downfall of Rome and its consequent loss of power, the principles of jus naturale as had been known throughout the empire, gave way to the principles of feudalism as introduced by the invaders.

They brought with them their own principles of government and disavowed the principles of the inhabitants of the countries which they conquered. The conquest was complete and extended to all portions of the empire. Not alone the conquerors, but also the conquered sought stability of government for the enjoyment of life, happiness and prosperity.

The conquerors came as wandering tribes, governed by a leader to whom all followers owed homage and fealty, and settled with, and in, the homes of a people whom they had reduced to subjection. The same fealty and homage was demanded of the subjected Romans as was demanded of the followers of the invading princes.

### EFFECT OF THE INVASION OF THE BARBARIANS ON OTHER PORTIONS OF EUROPE.

Wheresoever the wandering tribes from the north of Europe established themselves, by conquest or otherwise, they took with them imitatively the same relation of subject to prince. Whether it was to the south, southwest or to the west that they wandered, the same principles and relations were enforced.

### GOVERNMENTS ESTABLISHED.

The invaders having conquered both the people and their lands, organized their governments, as being in a prince who was all powerful over his subjects. The relation as between man and man and his relation to the government was forced and involuntary. The natural rights of man as being in man were disavowed.

### INTERCOURSE BETWEEN THE STATES.

As had been the custom when the empire was extant, for its citizens to trade with citizens in the other portions of the empire, so after the invasion it became equally as necessary, as between the subjects of the different new states which were founded on the ruins of the empire.

Therefore the subjects of one prince must resort to domains of neighboring princes for purposes of trade. The common law which governed was that every subject must owe allegiance to some prince, in order to insure the subject protection when abroad. The allegiance was held to be indissoluble and could not be thrown off at the will of the subject. Yet the protection was not at all times extended by a prince to his subjects when abroad. It became very much a question of greater strength in one than in another; so much so that only the stronger prince could extend protection to his subjects when within the domain of a neighboring prince. With the growth of time, the necessities of trade enforced temporary and permanent sojourns by the subjects of one prince in the country of another prince. This led to a recognition of the right of subjects to depart from the territory of their prince.

This came from force of circumstances growing out of the inability of weaker princes to protect their subjects as against more powerful princes. It could not be done without the consent of the prince. The relation was personal and must be dissolved by permission.

### THE ACT OF DEPARTURE OR PERMISSION.

The act of departure by which a subject threw off his allegiance to his prince and to which the prince gave his assent was ceremonious. The ceremony was different in different countries. In some countries the departure was attended with ceremonies such as implied disgrace; in others the departure was with the good wishes of the prince.

The general rule was as follows: The emigrant was accompanied by a delegate of the prince with his companions and fellow subjects to a cross road, where led a way to each of the four corners of mother earth, and there the delegate announced to the emigrant publicly, that the prince absolved him from the bond of allegiance, and gave to him his liberty, and as evidence of it, proclaimed: "De quattuor viis ubi volueris ambulare liberam habere potestatem." Bluntschli Staatsrecht, vol. 2, p. 504. The emigrant thereupon went upon the way which he had chosen, and commenced his journey to the domain of some other prince.

In some states there were certain preliminaries with which the emigrant complied before he was taken to the cross way. After he had announced his wish to migrate, the public crier called the man and openly stated: "The man who lives here, in this village and thinks he can find occupation elsewhere better than

here, may withdraw to that better place, but first pay to our lord all damage and loss, and no one shall inquire further about him."

In other states, the act of departure was made a matter of court proceedings: the emigrant having expressed his wish to absolve himself of his allegiance to his prince, was brought into court. The court centarius struck his spear three times upon the ground and called, "Hear! hear! hear! Is there a man subject to this high court, who cannot submit to its law, then he shall first pay our prince, then the Christian church, then the common man, and let the fire in his house go out with the setting sun. The common man shall then load his goods on his wagon and bring them to the common square, where will come our gracious prince. And two of our lord's servants shall dismount and lend help to the poor man when starting on his journey by a push to the hind wheels of his wagon."

The relation of subject to prince was personal, and emigration was only possible upon permission given. This was primarily essential to the acquisition of a similar relation to a foreign prince when the emigrant settled in a foreign country.

### DEPARTURE WITHOUT ASSENT OF THE PRINCE.

The act of departure was either with or without the intent to return. No departure was legal unless it was known to the prince. The many personal services which were owed by the subjects to their princes rendered it necessary that the presence or absence of the subject should be matters of record. For this reason, the departure of a subject without the intent to return

was attended with ceremonies, such as to impress the remaining subjects. The departure for purposes of trade was by certificate; these certificates were recognized or not recognized according to the likes or dislikes of the prince in whose territory the subject found himself.

Other than without intent to return or by certificate the departure could not be legally made. Subjects of one prince in the territory of another with intent or without intent to return, and with no certificate from their prince for identification were regarded with suspicion, treated as men with no rights and often reduced to servile work. Upon subsequent return to the territory of their prince, if the departure was in time of peace, the subject was denied all rights; if in time of hostilities, he was regarded as a deserter. It was the universal custom that the subjects of every prince should be able to identify themselves in legal form, when in the territories of other princes. For it was well recognized, that the duties which such subjects owed to their princes were similar, consequently that no man had the right to be abroad unless with the assent of his prince.

### MILITARY SERVICE.

The stringency with which these princes enforced their demands on their subjects, was of necessity relaxed, as intercourse for purposes of trade became more important for the welfare of the principalities. The act of departure was attended with less ceremony, and the going and coming between the inhabitants of the numerous principalities became more general.

The prince, in order to maintain his dignity, enjoined upon his subjects the performance of military duty, and although all were not called upon to do this duty, yet the liability remained that they might be. This remained as the duty which the subjects must not avoid without the sanction of the prince. It was a vestige of former authority in the form of absolutism over the subject. It was an obligation arising from fact of birth as a subject of the prince within the domain of the prince. The rule was general and applicable to all subjects.

### THE CLASSES.

Aside from the grades of nobility as established by the different princes for and among their courtiers, and leaders, either in a military or civic capacity, there remained two general classes for the subject not classed among the nobility.

There was the commercial class and the yeomanry. The necessity of the interchange of goods, wares and merchandise, established the trading class, which was beneath the dignity of the nobility. It came into greater importance with the growth of time, with the increase in population and the demands of the people, which it was imperative should be fulfilled and could only be done by subjects who saw fit to devote themselves to such occupations as would meet these wants. Whatever commodities could be furnished by one principality were wanted in other principalities, and so in return, this necessitating the existence of some class which could interchange these commodities and carry on in detail all that was essential to effect pur-

chase, transportation and sale from one principality to another.

To accomplish this trading, certificates were given for temporary sojourn in foreign countries.

The yeomanry still remained attached to the soil, there to perform their work, subject to such obligations and duties of tenure as the lord of the manor imposed on them as tenants. These duties were manifest and of such a nature that they could not be readily put off. Although in the case of the yeomanry the tie of allegiance was no stronger than it was with the commercial class, yet the departure involved the dissolution of subordinate relations as between landlord and tenant, aside from that fealty which all subjects owed to the prince of the principality. This rendered the departure of the tenant yeoman more cumbersome than was the departure of the trader, because the subordinate duties to the landlord must be legally dissolved, in order that the departure of the yeoman should work no detriment to the interests of the landlord; in many instances the dissolution of these subordinate ties was attendant with extreme inconvenience, which rendered the departure of a yeoman almost impossible.

For example, in case of homage, where the tenant had ungirt himself, and uncovered his head, and, with his lord sitting, had knelt before him, on both knees, and the lord holding his hands, he had said: "I become your man from this day forward, of life and limb, and of earthly worship, and unto you shall be true and faithful and bear to you faith for the tenements that I hold of you saving the faith that I owe under our

sovereign lord." This constituted a most honorable service.

There were other services less honorable. There was escuage, by which the tenant was to do service for a specified time abroad with the lord. There was knight service involving wardship and marriage. There was socage, which was a service not defined other than knight service. There was villenage, which was servile service.

In cases of rent service, the departure was more easy for reason of its being comparatively free from personal duties and allegiance, which was exacted in other services.

### THE RIGHT OF DEPARTURE.

The sanction of the prince was essential to the exercise of the right. That is, the departure in itself was not punishable; it was the departure without his consent which was punishable. The right of departure was recognized as a right in and of man; but at the same time it could not be exercised legally by the subject without the assent of the prince, under whom the subject lived, and to whom he occupied a personal relation.

### THE PRINCIPLE INVOLVED IN THE ACQUISITION OF CITIZENSHIP IN THE MIDDLE AGES.

The acquisition of citizenship in a society, whether by membership as one of many who formed a particular society or by subsequent admission to membership in the society after its formation, carries within it the loss of citizenship. The right was regarded as a personal right. Each and every society had its autono-

mous prescriptions by which the membership in the society was acquired and lost. This was governed by rules which went to the manner of acquisition and loss of the citizenship without denying the right in itself. These rules were different and more or less restrictive, yet withal did not deny the existence of the right as being in man nor did they prevent absolutely the exercise of the right.

One prerequisite was essential, namely: the legal release from the society of which one was a member. Then followed the acquisition of a new membership. It is not in all respects clear what the exact status was of the citizen during the interim between the loss of one citizenship and the acquisition of a new citizenship in another society, beyond the rule which seemed to govern quite generally that each prince was held to the exercise of a supervision over his subjects owing to the personal relation existing between them wheresoever they might be whether rightfully beyond the confines of the principality or not.

This relation was in many respects so exact that until an absolute change in citizenship had been effected it must have continued.

The corelative right to the jus albinagii by which the prince gathered a fine from the estates left by the subjects of other princes on property within his principality, the so-called gabella hereditaria, by which he gathered a fine from the estates left by the subjects of other princes in other principalities and which descended to his subjects in his principality, could not have been forfeited by the prince until the change was absolute so far as it affected the rights of the

subject making the change. This was a general rule, and was the common law which governed in most principalities, and was a right of which the princes were very jealous, as a source of income to them. Subsequent to the release from the relation to his prince the subject would seem to have still continued in relations to his prince, notwithstanding the release until the change of citizenship was perfected. In order to perfect the change, there were further requisites: first, evidence of good moral character; second, evidence that the subject had enjoyed the rights of citizenship under his former prince as contradistinguished from servile labor; and, third, evidence either for reason of property, professional calling, or knowledge of some trade, that he was able to support himself and his family.

In case the subject seeking the change was unable to meet these requirements which were conditions precedent to his acquisition of new citizenship which would seem to imply the stigma of crime or pauperism, he was remanded to his former prince, and the change could not be made.

### THE RULE OF GROTIUS.

Unless there is an express prohibition, or a custom to the contrary, having the force of a convention, the right to emigrate may be fully and freely exercised. This rule, he founds on the natural obligation of preserving oneself which prevails in every agreement, and whoever submits to a government does so solely for his own good.

The rule and the explanation indicate, first, that

government is founded in agreement as between man and man for the good of each; and, second, that the right to leave one government and go to live under another, can be restricted only by convention, to which convention the party who seeks to exercise the right of emigration must be a party; consequently, he must have restricted the exercise of the right by his own act and by convention is bound by it.

This rule thus laid down by Grotius recognized the natural right of man and was in conflict with the philosophy of the times as applied to governments then existing.

In the first place, right became known as a power and no conception of it was recognized except as attached to man; and second, the source of the right was alleged to be in pure reason which was the external, immutable and universal law under this rule.

### THE RULE OF PUFFENDORF.

Puffendorf asserts "that in becoming a member of society, a man does not renounce entirely the care of himself and his affairs; on the contrary, he seeks thereby an efficient protection under which he may live and labor in security and procure for himself the necessities and conveniences of life." He adds further: "When there is no law on the subject it is necessary to judge by custom of the liberty which each one has in this respect. If nothing is established by custom and there is otherwise no mention made of the matter in the agreement by which a man has become a member of the society, there is no reason to presume that each free person, in entering into society, has not tacitly re-

served to himself, the permission to leave it when he wishes, and that he has pretended to oblige himself to reside all his life in a certain country and not rather to regard himself always as a citizen of the world." He adds further, "That members of a society ought to be permitted to retire to any other place, in which they hoped to better their affairs."

Puffendorf carries out the principles as advanced by Grotius. He attributes to man the exercise of reason and in the exercise of that reason, which is universal and co-extensive with man's being, he finds the source of the law.

### THE RULE OF BYNKERSHOEK.

A member of a state has the right to remove from a society and thereby renounce his allegiance to the sovereign of the country from which he departed.

### THE RULE OF BURLAMAQUI.

A man ceases to be a subject of a state when he leaves that state and goes to settle elsewhere. It is a right inherent in every man, that every man should have the right of removing out of the society if he thinks proper.

### THE RULE OF FOELIX.

A man has a right to change his nationality.

The right in itself is not questioned. It is the exercise of the right subject to such rules of departure and acquisition of a new citizenship as may be prescribed in different countries.

THE RULE OF RUTHERFORTH.

The only restraint which a man's right is originally under, is the obligation of governing himself by the laws of nature. Whatever rights those of our own species may have over us, is either to direct our actions to certain purposes or to restrain them within certain bounds. Beyond what the law of nature has prescribed, arise rights from some after acts of our own; from some consent, either express or tacit, by which we have alienated our actions from ourselves to them.

THE RULE OF VATTEL.

If society has not contracted with the citizen for a determined length of time, he may retire, if he may do so without prejudice to the society. Every man on coming of age may determine for himself, if his interest is to remain as a member of the society in which he was born; if he thinks not, he may quit it.

There is no obligation from the social compact upon man, to continue in allegiance to the government under which he was born.

THE RULE OF HEFFTER.

The world is the common fatherland of all human beings. The right of emigration is inalienable. Only self-imposed or unfulfilled obligations can restrict it. This restriction is not a denial of the right in itself; it enjoins the fulfillment of all obligations to the society of which one is a member before he can acquire citizenship in another state and obtain recognition in the state from which he departed.

THE RULE OF BLUNTSCHLI.

Man's being extends beyond his state. A man is no more bound to the land of his birth than he is tied to the soil.

THE RULE OF FRIST.

It is in fact, a principle inherent in human liberty, a principle of natural right that a person may leave the soil on which by chance his birth may have thrown him.

THE RULE OF DE MARTENS.

It belongs to universal or public law to determine how far the state is authorized to restrict or prevent the emigration of the natives of a country. Although the bond which attaches a subject to a state be not indissoluble, every state has a right to be informed beforehand of the design of one of its subjects to expatriate himself and to examine whether by reason of crime, debt, or of his engagements not being yet fulfilled toward the state, it is authorized to retain him longer. These cases excepted, it is no more justified in prohibiting him from emigrating, than it would be in prohibiting foreign sojourners from doing the same.

CITIZENSHIP IN THE UNITED STATES.

In no country more than in the United States has this vital question been agitated, and its importance to the United States is very great when we consider for a moment that the United States is now, and has been, ever since its existence as an independent society, the

harbor and refuge for the members of all communities in the civilized world.

The growth of the United States has not been, as was that of Rome, by conquest of neighboring states, to dictate to them, such laws, as by virtue of superior force it was able to do, and thus, by its influence and power proceed to the subjugation of the then known world. The contrary has been the rule in the United States. There was the country, full of resources, which its citizens, in the inception, were neither sufficiently numerous, nor had they the ability, to develop and to accomplish its growth; it opened its arms to the members of all communities in the civilized world, to come to its shores and to enjoy life, liberty and the pursuit of happiness with them. This brought to the country men of laws, manners and customs, which were neither compatible with those of the country which sought their coming, nor were they compatible with each other. They differed from each other in race, in language, in religion, in customs and in the rules of positive law which had been enacted in the community from which they came, for their guidance in that country. They came to a country, which had already announced to the civilized world, its principles and forms of government. For almost a century this has gone on, and to-day the United States contains within its limits, members and descendants of members, from every civilized community in the world.

For this reason, in treating this subject, reference will be made particularly to the United States, and explanations made as to who are considered to be citizens and

who are not. Comparisons will be drawn between the principles which govern citizenship in the United States, and the principles which govern in other communities, such as relate to the means by which one becomes a member, and his right of departure after he has been admitted to full membership. Necessarily, a conflict of these principles may be expected, and the nature of the conflict will be shown and the reasons therefor, at different epochs since the declaration of independence of the United States; for it is since that date, that the questions involved in the rights and privileges of citizenship have arisen. It is since that date, and particularly so, during the past quarter of a century, that commercial relations have necessitated the departure of citizens of one country to reside permanently or temporarily in other countries, not alone for the good of the country from which they departed, but, also, for the benefit of the country to which they migrated, and last but not least, for such advantage and happiness as man might seek and find for himself and family.

At the present time we find citizens of almost every country living in foreign countries and there enjoying such rights and privileges as the positive laws of the country in which they find themselves accord to them —and, furthermore, we find a constant change of citizenship going on, by which the citizen of one country becomes a member of another. The importance of the question cannot be doubted, and it is with attention to citizenship in the United States, that this inquiry is directed.

IN THE BEGINNING WAS MAN.

Man was a dependent being; he was dependent on his fellow man; alone, by himself he could not exist; he sought protection from his fellow men in time of want and in time of prosperity; he looked to his neighbor in time of trouble; he looked to him for assistance. The one is the guardian of the other's personal rights and rights of property. The one seeks the other for counsel in peace, and defense in danger; his dependency reaches his depravity; his wants oblige society with his fellow man; the relation is mutual.

Man is one of the many creatures of the Almighty, different from other creatures in the properties which he possesses and which nature has given him. With these qualities from his Maker he pursues life, liberty and happiness. To perfect this pursuit, man is given the powers with which to do, not alone the powers, but therewith are further connected certain rights which are a part of his being, which we term his natural rights, rights which are original or innate. By this is meant his nature, and his exercise of those rights is the action of his being or nature. It is the act of man.

In this connection the term "right" is synonymous with "power." It is the use of the power over one's self which is meant, and not over the acts of his neighbor. It is the control of one's own self and the exercise of this control, which is the right nature has given to man. This right to control one's self is recognized by others of the same species for the reason that it is equally pursued by others, and the equality of the power, involving the right, constitutes the equality of

man in a state of nature. These rights exist irrespective of government and involve capacity to take and acquire further rights, which may grow out of the relations into which man enters with his fellow beings, when he organizes or joins society.

### THE SOCIETY WHICH MAN ENTERS.

The society which man enters is an institution of man. It is an organization of human invention. It is constituted of human beings who seek life, liberty and happiness by the individual surrender of such natural rights as are requisite and essential to their common welfare.

The society is a civilized institution.

The society is composed of members; a relation of a governed to a governing power prevails over a tract of land common to mankind within which the government exercises rights of authority.

To such a society the term most applicable is state.

The state or society is ever changing and changeable. Its members change in numbers; some die and some are born during every day of its existence. It changes in form: from kingdom to empire and vice versa; from kingdom to republic and vice versa. Each and every change, whether in numbers or in form, is the act of man.

In the declaration of independence of the thirteen United States of America, it is primarily set forth in the following language:

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among

these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

In article I, section 1, declaration of rights, state of Alabama, we find: "That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness."

Section 3. "That all power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit."

In article II, section 1, declaration of rights of the state of Arkansas, we read: "That all freemen when they form a social compact, are equal, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

Section 2. "That all power is inherent in the people and all free governments are founded on their authority and instituted for their peace, safety and happiness."

In article I, section 1, declaration of rights in the state of California, we read: "All men are by nature, free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness."

Section 2. "All political power is inherent to the people."

In article II, section 1, bill of rights, state of Colorado, we find: "That all political power is vested in, derived from the people; that all government of right originates from the people; is founded upon their will only and is instituted solely for the good of the whole."

Section 3. "That all persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness."

In article I, section 1, declaration of rights, state of Connecticut, we find: "That all men, when they form a social compact, are equal in rights."

Section 2. "That all political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit."

In article I, section 1, declaration of rights, state of Florida, we find: "That all free men when they form a social compact are equal, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

Section 2. "That all political power is inherent in the people, and all free governments are founded on their authority and established for their benefit."

In article VIII, section 1, constitution of the state of Illinois, we find: "That all men are born equally free, and independent and have certain inherent and indefeasible rights, among which are those of enjoying

and defending life and liberty, and of acquiring, possessing and protecting property and reputation and of pursuing their own happiness."

Section 2. "That all power is inherent in the people and all free governments are founded on their authority, and instituted for their peace, safety and happiness."

In article I, section 1, constitution of state of Indiana, we find: "That all men are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the enjoying and defending life and liberty; and of acquiring, possessing and protecting property; and pursuing and obtaining happiness and safety."

Section 2. "That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness."

In article I, section 1, bill of rights, state of Iowa, we find: "All men are by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting life and property, and of pursuing and obtaining safety and happiness."

Section 2. "All political power is inherent in the people."

In article I, section 1, bill of rights, state of Kansas, we find: "All men are by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting life and property, and seeking and obtaining safety and happiness."

Section 2. "All political power is inherent in the people."

In article XII, constitution of state of Kentucky, we find: "That all men when they form a social compact are equal; that all power is inherent in the people."

In title I, article 1, bill of rights, state of Louisiana, we find: "All men are created free and equal, and have certain inalienable rights, among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

In article I, section 1, declaration of rights, state of Maine, we find: "All men are born equally free and independent, have certain natural, free and inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and obtaining safety and happiness."

Section 2. "All power is inherent in the people; all free governments are founded in their authority, and instituted for their benefit."

In declaration of rights, state of Maryland, we find: "That all government of right originates from the people; is founded in compact only; and instituted solely for the good of the whole."

In part I, article 1, declaration of rights, state of Massachusetts, we find: "All men are born free and equal, and have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property;

in fine, that of seeking and obtaining their safety and happiness."

In article I, section 1, constitution of state of Michigan, we find: "All political power is inherent in the people."

Section 2. "Government is instituted for the protection, security, and benefit of the people."

In bill of rights, state of Minnesota, article I, section 5, we find: "The government is instituted for the security, benefit and protection of the people, in whom all political power is inherent."

In declaration of rights, state of Mississippi, article I, section 1, we find: "That all freemen, when they form a social compact, are equal in rights."

Section 2. "That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit."

In the declaration of rights, state of Missouri, we find: "That all political power is vested in and derived from the people."

In bill of rights, state of Nebraska, article I, section 1: "All persons are, by nature, free and independent, and have certain inherent and inalienable rights; among these are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed."

In declaration of rights, state of Nevada, article I, section 1: "All men are by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty;

acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

Section 2. "All political power is inherent in the people."

In bill of rights, state of New Hampshire, part I, article 1: "All men are born equally free and independent; therefore, all government of right, originates from the people, is founded on consent, and instituted for the general good."

Article 2. "All men have certain natural, essential and inherent rights, among which are the enjoying and defending life and liberty; acquiring, possessing and protecting property, and, in a word, of seeking and obtaining happiness."

Article 3. "When men enter into a state of society they surrender up some of their natural rights to that society, in order to insure the protection of others and without such an equivalent, the surrender is void."

In rights and privileges, in the state of New Jersey, article I, section 1: "All men are by nature, free and independent, and have certain natural and inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

Section 2. "All political power is inherent in the people."

In declaration of rights, state of North Carolina: "That all political power is derived from and vested in the people only."

In bill of rights, state of Ohio, article I, section 1: "All men, are by nature, free and independent, and

have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and seeking and obtaining happiness and safety."

Section 2. "All political power is inherent in the people."

Bill of rights, state of Oregon, article I, section 1: "We declare that all men, when they form a social compact, are equal in rights; that all power is inherent in the people; and all free governments are founded on their authority, and instituted for their peace, safety and happiness."

Declaration of rights, state of Pennsylvania: "That all men are born equally free and independent, and have certain natural and inalienable rights, amongst which are the enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety."

In declaration of rights, state of South Carolina, article I, section 1. "All men are born free and equal, endowed by their Creator with certain inalienable rights, among which are the rights of enjoying and defending their rights and liberties; of acquiring, possessing and protecting property, and of seeking and obtaining their safety and their happiness."

In declaration of rights, state of Rhode Island, article I, section 1: "All free governments are instituted for the protection, safety and happiness of the people."

In declaration of rights, state of Tennessee, article I, section 1: "That all power is inherent in the people, and all free governments are founded on their

authority and instituted for their peace, safety and happiness."

In declaration of rights, state of Texas, first: "All men when they enter a social compact have equal rights." Second: "All political power is inherent in the people."

In bill of rights, state of Vermont, chapter I, section 1: "That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, among which are the enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness."

Bill of rights, state of Virginia, section 1: "That all men are by nature equally free and independent, and have certain inherent rights of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely: the enjoyment of life and liberty, with a means of acquiring and possessing property, and of pursuing and obtaining happiness and safety."

Section 2. "That all property is vested in, and consequently derived from the people."

In the constitution, state of West Virginia, section 3: "The powers of government reside in all the citizens of the state and can be rightfully exercised only in accordance with their will and appointment."

In declaration of rights, state of Wisconsin, article I, section 1: "All men are born equally free and independent, and have certain inherent rights. Among these are life, liberty and the pursuit of happiness."

These declarations of the United States, and of the many states which compose the union, were not origi-

nal. Already they had found expression in the writings of public jurists on the natural rights of man, the origin of society and public and private international law. It has been a disputed question, and was, when the United States were organized as an independent community.

Among the Orientals we find the theory: "The state rests on the will of God; the state is the work of God." This was theocracy, in which the Jews believed: "That positive law was of God and not of man." In India and Egypt we find jurists, human beings with divine inspiration, as emanators of equity and the source of justice. The Druids of northern Europe were held in reverence, as the receptacles of law from God, through whom it came to the people. The Greeks first discussed the idea and expressed the origin of positive law to be in man.

Aristotle grounds the state on the nature of man, on man's safety and consequently his well being. A citizen of a Grecian state was a particle of the whole, which whole was the state, and partook of the control of its affairs.

Among the Romans, the state was respublica; the jus naturale of man was fully recognized.

In the middle ages, two sources came into conflict. The Christian church did not hold that government was vested in a worldly prince. Among the Germans a worldly prince was the source of all laws and equity. This was the feudal theory and practice which in varying forms and modifications remained in force for many years, on the continent of Europe and was transplanted to England.

With the downfall of the Roman empire, the pandect of the civilized world lost its authority. The law jus naturale became extinct. On the ruins of the Roman empire rose kingdoms and principalities of a barbarous people. Continental Europe was governed by the laws of barbarians. The laws of these people were feudalistic. The relation of man to the prince was dual; through the land, for reason of birth on the land of his prince; and fealty or allegiance to his sovereign to perform military service.

From citizens the Romans became subjects. Their lands were parcelled among the followers of the king, the leaders of whom became counsellors and administrators of justice, taking to themselves titles of their towns and castles, and thus creating a landed nobility, co-extensive with the system of tenures. To give the nobility gentility of blood, they adopted armorial bearings, and the names of their estates for surnames. The privileges of birth thus became susceptible of proof under the customs of their lands. These innovations marked more distinctly the relation of high born to plebeian who could hold no fief.

The allodialists subscribed to the oath demanded by the feudal lords. The vassals became identified with the soil. In many states he was inseparable from his till; he was a "hoeriger" to the land; a quasi immovable. To what extent this power of the prince over his subjects was exercised, is apparent from recent dates, not a century ago, when the Hessian prince sold his subjects to the English king to contend against the struggle for independence of his colonies in America.

It remained for the French revolution to declare to Europe the liberty and equality of man.

From the agitation, which prevailed at about this date in both Europe and America, was evolved anew the principle, that all men were created equal and in them, of them and by them, society and government was organized for the protection of life, liberty and the pursuit of happiness.

The effect of these declarations, to the world, in America, by the declaration of independence, and in Europe, by the promulgation of the code Napoleon, in their respective relations to citizenship, will be apparent. From this date the theory of the feudalists lost support, and at the present time is discountenanced in the practice of nations.

### THE SOCIETY WHICH MAN ENTERS MUST BE INDEPENDENT AND RECOGNIZED BY OTHER EXISTING SOCIETIES.

The society must enjoy its own autonomy, free from the influence of other states.

The essentials which make up a society must be evident before such recognition can be granted. There must be members or citizens, territory, government and laws.

The recognition of the existience of another state is not primarily obligatory; it is for the existing state alone for itself to decide when it will recognize a newly created state. The recognition cannot be denied, when the independence is complete. France recognized the independence of the United States earlier than did England. England recognized the independence of states of South America earlier than

did Spain. The European powers recognized the kingdom of Italy earlier than did Austria.

So long as strife exists, by which a people seek to attain independence, and thus create a new state, no state is bound to recognize the would-be state struggling for existence.

The struggles in Poland in 1830–1832; the struggles in Hungary in 1848–1849; the struggles in the confederate states of North America in 1861–1865. The recognition may be considered as premature.

England withdrew her ambassador from France in 1778 for reason of her early recognition of the independence of the United States of America. In 1825, before hostilities were concluded, England recognized the South American states as against Spain. In 1827, England, France and Russia stipulated to recognize the independence of Greece.

In 1830 the five powers of Europe recognized the independence of Belgium despite the protest of the king of Holland.

In 1860 England recognized the Italian kingdom even in the Neapolitan province while Franz II of Naples was struggling to maintain himself in Gaeta and notwithstanding the protests of the Pope of Rome.

The newly created state has the right to demand recognition from the family of nations when its existence is established.

The ancient rule that such recognition rested on simple inclination of an existing state to do so or not, does not find support in the recent practice.

Had France failed to recognize the newly created

North German Union after 1866, it would have been cause for hostilities on the part of Prussia.

The recognition may be too premature, as was the case in 1869 when the house of representatives in Washington recognized the independence of Cuba, while hostilities were pending, which act was not countenanced by the senate and president.

### FORMS OF SOCIETY.

Man in his compact with his fellow man, by which society is formed, institutes the form of government, by which and under which he will best enjoy life, liberty and the pursuit of happiness. Whatever the form of government may be, under which he and his fellow men join in compact to live, the presumption is, that the government is the institution of man.

The compact is peculiar to the people by whom it is made. It is not for interference on the part of other states to dictate what the compact shall be or the form of government under which they shall live. The misguided attempt of Napoleon III to establish an empire in Mexico is illustrative, undertaken as it was contrary to the rule that right and politics do direct that it is for every people for itself to determine the constitutional form of its international existence. Secretary Seward declared the growth of America to be republican but recognized at the same time that the United States had neither the right nor the inclination to interfere in the Mexican constitutional question as to whether it should be republican or monarchical. He advocated the republican form of government for the Americans and denied the right to European monarchies to interfere in the question.

This modern principle was announced by King William at the opening of the German parliament in his speech from the throne in 1870 as follows: "Among the governments as among the nations of the world the conviction is firmly established that to every individual political community the independent care of its prosperity, liberty and happiness is alone entrusted and is free from foreign intervention."

The compact may be expressed or implied; in either case, he acquiesces in its form, and is bound to perform the duties and obligations which arise from the laws enacted for the good and welfare of the members of the society.

This is purely a state, and not an international question. It does not concern other states. So far as recognition as member of the family of nations is concerned, it matters not whether a state is monarchical or republican in form.

The recognition still remains notwithstanding changes in its form of government.

England had the same international recognition before, during and after the revolutions from 1649 to 1688.

France has had the same recognition notwithstanding the extreme changes in form of government through which she has passed since 1789.

First, there must be a separation of the people as a whole into independent individuals; but a number of such independent individuals do not make a whole unless united.

Second, there must be an equality as between these independent individuals, that is, the one must be

recognized by the others and vice versa as the equal of the others; the particles must be the equal, the one of the other.

Third, there must be an unanimity between these independent individuals for the reason that the agreement necessitates that there should be as among the contracting parties in order that the agreement be valid.

The idea has been advanced that a majority should not contract as among themselves to bind a minority which was unwilling to subscribe to such an agreement. The act of the majority does not in itself bind the minority in this sense. The agreement is one made by the representatives of all who desire to be members, and where the expression of a majority is determined, it remains for the minority to acquiesce. The minority cannot separate from the majority acting in unison. Individually the right exists to depart from the country and seek citizenship elsewhere.

Treaties between the states continue to exist throughout the changes in the form of government, with the exception of personal treaties as between sovereigns when the sovereign loses his throne — then the obligation ceases.

For example: in the instance of King Louis XIV of France and James II of England. The emperor of Austria with the Bourbon princes of Naples; the Emperor Napoleon III with Maximilian.

Treaties ratified at any period by the existing and recognized government with other states are binding on the subsequent rulers, who, by change may govern again after having been driven from power, or who may be called to govern for the first time.

The restored Stuarts in England could not nullify treaties made by the protector, Cromwell. Nor could the French Bourbons disown the treaties made by Napoleon during his regime.

The conduct of the restored king of Piedmont and elector of Hesse in 1814, in treating the interim of their absence from power as a nullity was regarded as pure aristocratic caprice and folly.

It is essential that the state exists and enjoy recognition as an international being.

The interregnum in Venice of Dictator Manin; of Kossuth in Hungary; of the republican governments in Rome, and in Baden in 1849, were not recognized as binding on those states.

### EQUALITY OF SOCIETIES.

Every society is the equal, the one of the other, regardless of the form of government, extent of territory, or number of members.

"The equality of all states is as much a principle of international law as the equality of all men is an axiom of our independence; therefore, one should not do to a small and weak state, that which one would not do to a large and powerful state, or what we would not suffer if done to ourselves."

The republic of Switzerland is the equal of the empire of Russia in the enjoyment of an international existence and independence, as is the republic of the United States of America with the kingdom of Italy.

While the rule is well established that in the international practice one state is the equal of the other,

yet considerable question has attached to the dignity of the person of the sovereign in monarchical states.

When the Duke Frederick I of Brandenburg assumed the title of king in 1701, grave doubts were entertained as to the justice of his act to the then ruling emperors and kings in Europe. When Peter the Great of Russia assumed the title of emperor, in 1701, other sovereigns were disinclined to recognize him, and it was not done by the German emperor until 1744, by the king of France in 1762, and the king of Poland in 1764. In this century the title of emperor has been assumed by the Austrian king for Austria; by Napoleon for France; by King William of Prussia for Germany; and the title of empress of India by Queen Victoria.

In 1818, when the five great powers conferred at Aix-la-Chapelle, the wish of the duke of Hesse that he be recognized as a titular king was not countenanced.

The assumption by the negro head of Hayti of the title of emperor in recent times did not receive recognition from the sovereigns of Europe.

These matters of title govern the rules of precedence among ruling potentates. In certain practices they govern as to a classification of the respective countries. It must not, however, be considered that the title in itself conditions the rank. The republic of the United States through its president, as also Great Britain through its queen, must rank with the empires of the continent.

England did not lose rank under the rule of Cromwell; the same rank was maintained as under Charles I.

In 1797 the French republic demanded and received

the same recognition as the Bourbon kings had received.

## TREATIES.

Every society has a treaty making power, through which such relations with other societies are established, as will be to the mutual advantage and benefit of the contracting parties. A treaty is the supreme law of a society.

Treaties are made to continue for a period of time, and involve the integrity of the societies contracting, in their entirety; they are the most solemn relations into which societies can enter. As such they establish principles of law which are to govern the relations of the citizens of the contracting states.

"An obligee, under a treaty can be held to fulfill a disadvantageous and detrimental obligation, but under no circumstances can it be attributed that the obligee, by the treaty, purposes to sacrifice its existence and prosperity."

In the year 1806, the Prussian government issued a manifesto in which it concluded, "that the rights of a nation as a nation take precedence of all treaties."

The reason for this is found in the well recognized principle that it is open to every state, to insure to itself its own independence and existence in order to advance the welfare and well-being of its citizens. At that time treaties were imposed on a weaker state by a more powerful neighbor, and at that time the weaker neighbors of Prussia were suffering from the imposition of Napoleon as well as Prussia herself; and the manifesto was issued more as against France, in order to

bring about an unification of policy among the North German states, and thereby abrogate the treaties which Napoleon had forced upon them.

A manifesto of this same tenor in more modern times, when Prussia was in pursuit of acquisition of more power by subjugation and annexation, as of Schleswig-Holstein, and later the kingdom of Hanover, the duchy of Hesse-Cassel and the free city of Frankfort would not have availed in any instance had it been made by any of these states.

This principle as enunciated by Prussia has maintained its position in the practice.

In 1870 Lord Granville laid down the principle to be simply this: that by a treaty one nation bound another and thereby surrendered a portion of its individual liberty to act and to do; but it still remained in the power of the contracting parties to bring within its own peculiar control the stipulating of the treaty and thus remain no longer bounden by it than it should see fit.

This rule would seem to imply that with proper notice a treaty can be abrogated, in cases when it was not made to continue for a determined period of time.

### SOCIETY WITHOUT MEN.

The world is the common fatherland of all beings. Among them, by them, and of them society is formed, to protect them in life, liberty and the pursuit of happiness. Society without members would be a nullity; no people, no society.

An instance of the total annihilation of a society not alone as a society depriving it of its members but also

of its territory and disregarding its form of government, was the partition of the kingdom of Poland between the empires of Russia, Austria and the kingdom of Prussia.

### MAN ENTERS SOCIETY.

The dependence of man teaches him his wants. This is a feeling common to mankind. He seeks relief for the feeling of dependency, and assumes such relations in society as will best serve the promotion of his own welfare. To do this he enters society. He does not renounce to the other members of the society which he enters the entire and complete control of his nature; he permits certain restrictions such as are necessary for the common good.

Of these restrictions the citizens of the society of which he seeks membership are the judges and he assumes such as exist at the time he enters the society as a member and remains subject to them so long as they exist and become subject to others which the citizens, of which he is one, deem necessary should exist for the welfare of the society.

### MAN ENTERS SOCIETY BY POSITIVE LAW.

The men who form society become members thereof by compact or agreement with each other. This compact is the foundation on which society rests. The compact is a positive agreement, and rules of conduct enacted by the governing power for the guidance of the members of the society are positive laws. When a society is once formed, one, not a member of the society, becomes a member, or, if a member, absolves his membership by positive law, based on the law of na-

ture. In case of positive law, it is expressed; in case of custom, it is implied.

### WHAT MAN SURRENDERS TO SOCIETY.

Man, in his natural state, has certain innate rights, which rights are absolutely in him, and of which he cannot entirely and completely divest himself, or be divested, by positive law.

Possessed of these absolute rights, he has further the power to assume relative rights, such rights as grow out of membership of the society through the relations into which he enters, with his fellow members.

The absolute right of man is the power of acting as he sees fit, when in a natural state and when in society, he restricts this absolute right in conformity to the same restriction which others who enter into the compact on which society is based, permit to be imposed on them. Man permits these restrictions on his natural and inherent rights, in order to obtain better protection to life and liberty, in the pursuit of happiness. In return for this protection which is accorded him, he assumes duties correlative to the rights which he acquired.

### WHAT MAN RESERVES TO HIMSELF.

Man reserves to himself the right to withdraw to his natural state, in which man was before he joined society; or to join another existing society. The manner in which the withdrawal shall be made is entirely a matter of positive law of the society from which he seeks to withdraw.

The withdrawal legally completed, according to the positive law of the state from which he withdraws, ab-

solves the member withdrawing from all control of the governing power of the society from which he absolves himself and leaves him free and independent to seek membership elsewhere. Where no positive law exists prescribing the manner of withdrawal, the right still exists in man to withdraw. The right is found implied in the organization of the society.

In the exercise of the right of withdrawal he does not deprive himself of the right to protection from the society from which he withdrew until he has acquired membership in some other existing society.

The right to withdraw and the withdrawal in itself in the exercise of the right does not constitute membership in another state until the party withdrawing has complied with the laws of the state in which he seeks membership and has been admitted to membership in that state.

### MAN'S VOLITION.

Man's act in joining society and his act in withdrawing therefrom, must be peculiarly his own. They must be acts of his own volition. He must join society of his own free will and must withdraw legally of his own free will.

The society of which he is a member cannot force him to withdraw and become an exile in a foreign society, no more for a political wrong, than it can for a criminal wrong, or for reason that the member is a pauper. No society is an asylum to which another society can send its members. A society can receive whomsoever it pleases; but there is no obligation by which it can be compelled to receive those whom it

does not want. Such persons can be returned to the society by which they were sent and the society to which they are returned must receive them.

The exercise of volition presupposes that the person who exercises it has and is of the legal age so to do. This age is not the same in all countries; it is an age determined by the positive law of each society for its own good and benefit.

### THE SOCIETY MUST HAVE LAWS.

The society of the state which man joins must have laws. These laws are termed positive because they are enacted for the special society in which they are to have force. They are the outgrowth of man's nature to meet such emergencies and promote such prosperity, as the general utility of the society demands. They have a particular application to the defined territory of the society.

The term positive is used in contra-distinction to natural, which natural law man restricts by the positive law, to meet such rules of conduct as will best govern the members of society in their relations to each other. These laws of the society, which are termed positive, are the fabric of the government, which is an institution of man.

The natural law is universal, the positive law is territorial.

### THE LAWS ARE ENACTED FOR THE UTILITY OF THE SOCIETY.

However so much the positive law of one society may differ from the positive law of another, the rule is: that, in either case, the laws are enacted for the

common good of the members of the society within which territory the laws are enacted. It is not open to one society to do any act by which to make any change in any existing law which governs in another society. Such laws are purely autonomous and do not concern other societies. This is the general rule which governs among civilized countries. In the interests of humanity argued from the standpoint of religion there are many instances of interference on the part of civilized societies in the affairs of barbarous and irreligious communities. Nor can countries debar themselves from intercourse commercially with other countries. This position was taken by Great Britain and the United States in regard to China and Japan, both of which countries were forced to open their ports for trade with the civilized world and for reason of the rule which follows: "As the laws of each particular state are designed to promote its advantage the consent of all or at least the greater number of states may have produced certain laws between them. And in fact it appears that such laws have been established tending to promote the utility not of any particular state but of the great body of the communities."

### RIGHT AND DUTY IN THE SOCIETY.

The laws of every society prescribe rights and duties which the members must perform, to preserve the integrity of the society. Each member must voluntarily assume the obligations prescribed by the laws of the society, when he seeks membership, in return for the rights which he enjoys. The presumption must be that he is knowing to the duties, to which he sub-

scribes when he enters the society. There can be no hidden obligations or duties from which a member cannot in some manner be absolved. Immutable obligations, which follow man, as it were a part of his being, cannot be enforced, are contrary to man's nature and are obnoxious to modern civilization.

EXERCISE OF RIGHTS AND PERFORMANCE OF DUTIES DEVOLVE EQUALLY ON ALL.

Each and every member of society must enjoy equal rights, equal privileges, and the duties and obligations must be equal, in order to insure the perfect enjoyment of life and liberty and the pursuit of happiness.

Unequal rights and privileges and duties, at home, necessarily involve the same relations abroad. Equality before the law, at home, insures equality of protection to one member of society as to another, when abroad.

The first portion of this rule finds reason in the existence of certain personal treaties as between ruling sovereigns, which regard more the family relations as between ruling families and their immediate ranks of nobility, which do not extend to their subjects. They concern the sovereign family as a family more than the state as a state which would include their subjects. Such treaties are often known as alliances, by which a powerful sovereign agrees to protect a weaker prince and maintain him on his throne. The relation thus created entitles certain classes to special privileges in the respective countries which enter into the alliance. The working of this same rule was more evident in European countries than elsewhere. In those countries in which there was a classification of the people; in which certain civil rights were accorded to one class

and denied to another; while the rule was enforced with stringency at home it did not lose its force abroad; the citizen was supposed to move in the same class when abroad as when at home. This was also the case with the Jews who were accorded no civil rights until quite recent dates. When abroad, it was their own race to which they looked for protection, not to the country from which they came and of which they were quasi-subjects. It was much the same throughout the periods of religious agitations.

### HOW EXISTING OBLIGATIONS ARE INQUIRED INTO.

It is optional with a member of society to exercise his rights and privileges; it is obligatory to perform his duties. The governing power redresses an infraction of the former, and enforces the performance of the latter.

These duties are created by positive law and are determined by the positive law of the society of which one is a member; and the local tribunals of the society can alone adjudicate and inquire into the obligations and duties devolving on the members. When a member has performed these obligations, the local authorities finally determine.

The question is autonomous, and the tribunals of other societies have no jurisdiction to decide and give any effect to their decision, within the confines of the society where the question of duty arises on the relation of a citizen to his government.

### THE DIVISIONS OF GOVERNMENT OF A SOCIETY.

The government of a society falls into three departments, and to each department are assigned powers.

The assignment of these powers is found in the compact by which society is formed. These departments are known as the legislative, the executive and the judiciary.

In the legislative department, rules of conduct and other necessary laws for the government of the members of the society are enacted.

In the executive department, is the power by which the laws enacted by the legislative department are enforced.

In the judiciary department, are interpreted the laws enacted in the legislative department.

## WHAT CONSTITUTES FULL MEMBERSHIP OR CITIZENSHIP IN A SOCIETY.

Full citizenship is the enjoyment of all the rights and privileges which the laws of a society allow to its members when at home, and equal protection when abroad. It consists of:

First. In the privilege accorded to members of participating in the legislative branch of the government, of legislating and being represented in the legislative department.

Second. Subjection to the executive branch.

Third. The right to have rights determined and wrongs redressed in the judiciary department.

Fourth. There being no grades or degrees of citizenship, the privilege to call for protection from his government when abroad equally with other citizens of the state of which he is a member.

"In regard to the protection of our citizens in their rights at home and abroad, we have no law which

divides them into classes or makes any difference whatever between them." 9 Op. Atty-Genl. 356.

### MAN IS EITHER A CITIZEN OR AN ALIEN.

In the society in which man lives, he is either a citizen or he is an alien. The distinction is this: that an alien enjoys the same rights and protection in the community as does the citizen, excepting the privilege of participating in the legislative branch of the government, of legislating and being represented in the legislative department.

There is no intermediate relation to the society.

The rule which governs as to aliens within the United States is found in Carlisle vs. United States, 16 Wallace, 148, "Aliens domiciled in the United States owe a temporary and local allegiance to the government of the United States; they are bound to obey all the laws of the country not immediately relating to citizenship during their residence, and are equally amenable with citizens for any infractions of these laws."

### HOW MAN BECOMES A MEMBER OF SOCIETY.

The rules which govern the acquisition of citizenship are not identical. There is and has been a want of uniformity in the positive laws of states on this subject, and consequently in the practice.

The two sources of the law of government, the one as based on the feudal law and the other as based on the natural law of man, and the recognition by society of certain inalienable rights in man, are in conflict.

### CITIZENSHIP BY BIRTH — THE ENGLISH RULE.

This is the doctrine of England, and has been for centuries. By the common law of England, the rule was established that every person born within the dominion of the crown, no matter whether of English or of foreign parentage, and in the latter case, whether the parents were settled or merely temporarily sojourning in the country, was an English subject.

This doctrine was carried further by the statute 7 Anne, chapter 5, section 3: "The children of all natural born subjects, born out of the allegiance of her majesty, her heirs and successors, shall be deemed, adjudged and taken to be, natural born subjects of this kingdom, to all intents, constructions and purposes whatsoever."

The doctrine was carried still further by statute 4 George II, chapter 21, and 13 George III, chapter 21, by which the children or grandchildren of English subjects born out of the ligiance of his majesty, his heirs and successors, could not throw off their allegiance to the British crown.

### DO THESE RULES BEAR WITHIN THEM A SPIRIT OF CONTRADICTION?

First — for what reason under the rule of the common law, did one become a subject of the crown? The answer is plain; it was for reason of the principle of the feudists, as found in the jus soli; by birth on an inanimate piece of land, was created a relation to that land which was immutable. Not alone was the rule applicable to those children whose parents were held in an immutable relation to the piece of land on which they were born, but also, to the children of parents

who were or who were not held in an immutable relation to a piece of land in some other country than England.

For reason of intentional or accidental birth within the realm of Great Britain, the immutable relation to the soil was established, regardless of the parentage of the parent, whether English or foreign.

This rule was hedged in by another rule: "Nemo exure potest patriam," which was designed to enforce the rule of the feudists, that man was an immovable and belonged to the piece of inanimate land on which he was born, there to remain and abide, subject to his lord, the king.

Second — for what reason did children of English parents when born without the ligiance of the crown become subjects of Great Britain? It could not have been nor can it be, for reason of any immutable relation to the inanimate piece of land on which the child was born. It was not pursuant to the common law rule of England. This rule had no force out of the realm. The explanation is here: The rule as laid down in 7 Anne, chapter 5, section 3, and subsequent statutes, extending the rule to children and grandchildren, was passed at a time in the history in England, when the inflexible nature of the common law rule must be changed. Subjects of England, for commercial and similar purposes must sojourn in foreign countries. Therefore in accordance with that broad principle known to the English law at that period, by which solemn jugglery was permissible, the feudal theory, which was contained in the principle found in jus soli, was relaxed.

Permits to depart from the realm were granted and the theory of a personal relation to the sovereign was created, which was held to be as equally immutable as was the theory of an immutable relation to an inanimate piece of land, which it superseded. This was the first extension of the rule of allegiance to the children of English subjects born out of the realm. Allegiance was not unknown to the English law at this time; it was adjunctive to the theory of jus soli, and was considered as the connecting link through an inanimate piece of land, by which an English subject was bound to his sovereign.

The term used in the statute is "ligiance," meaning the realm, within which allegiance was due to the sovereign; allegiance being immutable within the realm by the statute, it was made equally binding on English subjects without the realm; not alone on them, but also on their children and children's children in foreign states.

WHAT WAS THE EFFECT OF THESE RULES?

A subject of a foreign power born in England became a subject of Great Britain. A subject of England born in a foreign country remained an Englishman, as did his children and his children's children. Suppose in the foreign state to which an English subject migrated, the same rule as was laid down by the English common law prevailed; for example, in Spain; what would be the citizenship of the child born of English parents, sojourning in Spain? Under the Spanish rule it would be a Spaniard, but under the statute of Anne it would remain an English subject. Reverse the proposition. A child of Spanish parents born in England

would be an English subject, providing, however, if a similar statute prevailed in Spain to the statute of Anne, the child would be a Spaniard.

The unreasonableness and impracticability of these rules are self-evident. They were an impediment to social intercourse between countries for the advancement of arts, sciences and commerce; they were restrictions on the natural rights of man; an interference with man's enjoyment of life, liberty and the pursuit of happiness. It was an attempt to make the English law the law of the world.

The enforcement of the rule became impracticable and was abandoned.

### THE LAW AS TREATED BY ENGLAND IN HER RELATIONS TO HER SUBJECTS IN FOREIGN COUNTRIES.

In this connection the rule of the English common law and the statutes hereinbefore referred to must be borne in mind.

With the Argentine Republic: In this country, citizenship by reason of birth was the acknowledged principle. Not alone did this apply to children of citizens, but also to children of aliens born within the country. In this regard, the law was precisely the same as in England.

In 1845, Sir Robert Peel expressed an opinion on the question. It appeared that the general law was this: that the son or grandson of a British subject born abroad was also a British subject. But he could not deny that children born in a foreign state were not also subjects of that state.

Such was the law in this country, for the children

of foreigners born in her majesty's dominion were British subjects. If the children of British residents, born at Buenos Ayres, were born out of that state, the authorities there had no right to make them Buenos Ayres' subjects. If, however, the children of British subjects were born at Buenos Ayres, and continued to reside there, they retained the rights of citizens of that place, but with those rights they also imposed on them, the burdens and duties of citizens, and they were liable to the laws of Buenos Ayres.

The position taken by Mr. Peel, was a perfect recognition of the force of the laws of the Argentine Republic, and the right of that government to enforce military duties, and actual services on children of British subjects born within the country.

This enforcement caused considerable discontent, and such English subjects received this satisfaction from Lord Palmerston: "That a British subject could not divest himself of his allegiance by submitting to any local enactment compelling him to wear any particular uniform or badge in a foreign country, in which he may think proper to reside, and that he does not thereby forfeit his right to be protected by his own government."

Notwithstanding this, British subjects were called upon to serve in the national guard of the country until the year 1858, when the government of Buenos Ayres passed a law permitting its subjects to furnish substitutes for service in the national guard of the country. In so doing, they did not distinguish in favor of those born in the country, whether of citizens or aliens.

Later a treaty was proclaimed between the two countries, to which the right of choice as between English and Argentine Republican citizenship was given to English subjects.

After this treaty, all the questions were decided by reference to the acts of the subject claiming protection, whether he had made a choice or not. If none had been made, and he had failed to optate to become a subject of England, he was held as a subject of the Argentine Republic.

With Austria. In 1833, the Austrian government issued a decree that all foreigners, who at that date had resided uninterruptedly in Venetia and Ionia for ten years, were allowed to free themselves from Austrian citizenship, upon proof that they had no intent of becoming Austrian subjects. The proof was to be furnished within six months. The effect of this was, that many former British subjects were claimed as Austrians.

Lord Palmerston declared, that according to Austrian law, they were liable to be considered as Austrian subjects and consequently were not entitled to exemption from burdens for reason of their claiming English citizenship.

With Belgium. Here the question arose as to the rights of naturalized English subjects in Belgium. It was inquired as regards children of naturalized British subjects born abroad. The answer was that such children follow the citizenship of the father during minority.

But this is, of course, subject to the local law which may deal with children born in the country, whatever

may be the circumstances of their fathers, as natural born subjects of the country in which they were born.

With Brazil. By article VI of the constitution of Brazil, the offspring of all foreigners born in Brazil are Brazilians, with the exception of those born foreigners who may be in Brazil, in the service of their own state. The English government failed to bring about a change in the Brazilian constitution, and the law remained the same as it was in the Argentine Republic, prior to the treaty between that country and England.

The demand of the English government was to the point that children of English subjects, born in Brazil, should follow the citizenship of their parents to the age of twenty-one and then optate to remain Brazilian subjects or become English subjects.

This desire to have recognized the rule that the child follows the citizenship of the parent, and was a citizen of the country of which the parent was a citizen, regardless of place of birth, was in conflict with the English rule. The Brazilian government did not accede to the demand.

With Colombia. Only once the question arose, and that was the case of Montaya, who became a naturalized subject of England. The English authorities held that this fact did not exempt him from the operation of the law of the state of his birth and natural allegiance while he resides in that state.

With Denmark. The case of Rainals demanded much attention. Rainals was born in Denmark, of English parents. The Danish law decides that chil-

dren of foreigners born in Denmark can claim citizenship in Denmark after a continued residence up to the eighteenth year. Rainals took an oath to the Danish crown, and notwithstanding this, he claimed British protection.

Lord John Russell took the position: "It is not denied that Mr. Rainals was born in Denmark, and although he renounced citizenship, this does not relieve him from the obligations of allegiance to the crown of Denmark.

With France. Many questions arose between these countries and were much debated until the year 1857, at which time Lord Clarendon laid down the law of England, as follows: "The children of British subjects, although born abroad, if their fathers or their grandfathers by the father's side were natural born subjects, are, by certain British statutes, to be deemed natural born subjects themselves to all intents and purposes in England. But neither these statutes nor the general principles of English or international law, or of reciprocity or comity, so far as Great Britain is concerned, would justify her in maintaining that such persons are British subjects within the true intent and meaning of a treaty with a foreign nation, in which their case is not specially provided for, or in contending that they are, while residing in such foreign country, exempt from the obligations incident to their status as natural born subjects or citizens of such foreign country of their actual birth and residence. Great Britain may confer on them any privileges as far as her own territories are concerned, but no such privileges can avail as against, or in derogation of their

antecedent natural and legal obligations to the country of their birth."

In 1858 the Earl Malmesbury expressed the following opinion in the Walewski case: "If Walewski had been born in France of English parents and had voluntarily returned to France, he would have been a British subject in England, but he would not have been entitled to British privileges or protection in France as against the country of his actual birth and domicile. But Walewski was born in England and as such is a natural born subject of her majesty."

In 1859 Lord John Russell laid down the rule as to naturalized subjects: "That they are not entitled to British protection upon return to the country of their birth."

With Germany. In 1863 Lord John Russell gave his opinion as to the status of native Germans naturalized in England: "that a foreigner who has become a naturalized British subject cannot claim British protection against the operation of the law of his native country, so as to exempt himself from any penalties which the law of his native country may inflict upon him when he returns to it."

With the Hanse Towns. Lord Palmerston laid down the following instructions for those states:

"I have to authorize you to give way to the liability of British subjects to serve in the civic guard for the protection of the city in which they reside, but you should strenuously resist any pretension to require British born subjects, whether admitted or not to the rights of citizenship, to serve in the contingent; because that contingent is not a force raised and embodied for

the maintenance of order within the city and state, but is a portion of the army of Germany and is organized for the purpose of foreign war. It thus might happen, not only that British subjects might be brought, and even against their will, into conflict with troops of a state in amity or alliance with England, but that they might actually be compelled to take the field against the troops of their own country and sovereign."

The case of Bosdet presents an opinion of the law where it is identical as it was in England. Bosdet was born in England of parents natives of Hamburg, who were domiciled in Hamburg at time the services were demanded of his son. The foreign office decided as follows: "The fact that Alfred Bosdet was born in England, confers on him, according to the law of this country the character of an English subject; and there arises or may arise in these cases a conflict of jurisdiction. But as the law of England also considers the son of a native subject, wherever he is born, as an English citizen, the English government cannot fairly complain of the law of Hamburg, which is in this respect the same, nor can it interfere with the execution of that law within the town of Hamburg. You may accordingly present to the authorities of Hamburg, that Alfred Bosdet has become an English subject, and ask as a matter of comity that his name may be therefore taken off the military list. This cannot be insisted on as a matter of right."

With Guatemala. The same controversy arose as with Buenos Ayres, and the English government was unable to maintain its position until 1859 when it was decreed that children of English subjects born in

Guatemala should follow the parentage of the parent until the age of twenty-one and then optate to become English subjects or remain Guatemalans.

With Italy. The leading case in Italy seems to be the case of John Vertu, born in England of Sardinian parents. The Italian government contended that he was a citizen of Italy. Lord Palmerston expressed the following opinion: "I have now to state that as a general principle, children of alien friends born in the British dominions become, de facto, subjects of Great Britain, although not absolutely, and in all cases to the entire cessation of all bonds, privileges and duties which might attach to them, as children of the state to which their parents might belong, particularly when they themselves return to and abide in their parents' country, and claim to be, and act as subjects thereof. The right to be considered as British subjects, if fully and completely acquired, and not abandoned or forfeited, may be lawfully extended to them in the foreign state of which their parents were subjects; and it is not necessary in order to render his children British subjects, that an alien friend transferring his domicile to Great Britain, should previously have obtained his legal liberation from his duties and obligations to the state to which he had originally belonged."

The leading case with the Neapolitan government, was the case of Benedict and John Steuart. The father was an English born subject, and married a Messinese; the children were born in Naples, and the question arose as to their citizenship. The position taken by the Neapolitan authorities was as follows:

"That the father having been born in England, was an English subject, and unless his sons, on coming of age declared their intention of being naturalized, and had gone through the formalities prescribed by the Neapolitan law for that purpose, they remained British subjects."

With Norway. The leading case was that of Walter Foreman. Foreman was a native born subject of England, and had acquired a domicile in Norway. He was conscripted for military service under the Norwegian code, "foreigners who have acquired a domicile in the country are rendered liable to military duty." He was advised to try the case in the courts. In this, however, he was dissuaded on the grounds of equity, that in the absence of a convention with England, by which he would be exempt, he could not claim exemption on the ground that Norwegians were not subject to any such military service in England.

With Portugal. The government of Portugal claimed as subjects the children of all subjects whether of Portugal or aliens born within the kingdom. This position was denied as being correct in its application to children of British subjects born in Portugal. As a result of the controversy, Lord Aberdeen in 1843, expressed the following opinion: "Although by the statute law of this country (England), all children born out of the ligiance of the king, whose parents or grandparents by the father's side were natural born subjects, are themselves entitled to enjoy British rights and privileges while within British territory, yet the effect of British statute law cannot extend so far as to take away from the government

of the country, in which these persons may have been born, the right to claim them as natural born subjects, at least so long as they remain in that country."

"By the common law of England, all persons born within the king's legiance, whether the children of British subjects or of foreigners, are deemed to be subjects of Great Britain. And if the law of any foreign state, upon this point be the same as the English law, and if such foreign state places persons born within its territory upon the same footing as its own subjects or citizens, the government of that state has the right to exact the service of a subject from such persons, even if they may have been the children of foreigners, at least while such children remain in the country of their birth."

With Prussia. The leading case, is that of Crossthwaite, who was her majesty's consul, and a naturalized subject of Prussia. The question was, whether his sons were liable to military duty. It is not stated where the sons were born. The opinion was, "that the sons of a naturalized Prussian subject owing allegiance to her majesty who are between the ages of seventeen and twenty-five and are resident in Prussia would be compellable to serve in the Prussian army."

With Spain. In 1841 the English government gave notice to its consuls in Spain that it would not protect the children of English subjects born in Spain as against the laws of that country. In 1856 children of English subjects born in Spain made claims on the English government for protection.

Lord Clarendon decided that their claims were inadmissible as against the claim made on them by Spain.

The leading case is that of Joseph Argumiborn; at the term of his birth his father was domiciled in Spain, but as an English subject. The English government held that the son was not entitled to claim British protection against any obligations arising from his Spanish allegiance, although by an English statute he would be entitled to the privileges of a natural born English subject in Great Britain.

With the United States of America. The inflexible rule of the English law was broken by the treaty with the United States in 1783. Prior to the ratification of this treaty the colonists in America were English subjects owing allegiance to the English king. The common law and the statute law were in full force in the colonies. By this treaty, the English king acknowledged the United States to be free, sovereign and independent states, that he treats with them as such and for himself, his heirs and successors relinquishes all claim to the government, proprietary and territorial rights of the same and every part thereof.

There remained for some years posts and places within the territory of the United States occupied by English troops and garrisons. In 1794 a further treaty was entered into, by which these troops and garrisons should be withdrawn and the right of option granted to English traders and settlers, within the territory of the United States to become citizens of the United States or remain English subjects; they should not be compelled to become citizens of the United States but could remain as English subjects; they were obliged to exercise the right of option within one year from the

evacuation by the troops and garrisons as stipulated in the treaty. The declaration to become citizens of the United States must be made to the government of Great Britain, otherwise such traders and settlers were to be considered as citizens of the United States.

Other than these no act was passed by the law-making power of Great Britain, by which citizens of the United States were to be treated as citizens and entitled to protection as such, within the realm of the English king.

### WHAT WAS THE EFFECT OF THIS TREATY BY WHICH THE RIGHT OF OPTION WAS GRANTED?

The English subjects who did not exercise the right of option within the year did not for reason of the terms of the treaty become ipso facto citizens of the United States. Further acts on the part of the subject were essential. His failure to declare his intent to his government to become a citizen of the United States did not confer citizenship. He could do so only by becoming naturalized in accordance with the act of naturalization, of date January 29, 1795.

Until this act had been complied with there is no question that any change in citizenship was perfected.

In case the change was made without the declaration of the intent to make the change to the government of England, then a complete change of citizenship was not effected for reason that it lacked the essential element of consent express or implied of the English king, by which allegiance was absolved.

TO WHOM DID THE TREATY OF 1783 APPLY?

The application of the exception made by England was only to colonists then living, and traders and settlers who optated to renounce their allegiance to the English king, and become citizens of the United States. Neither the common law of England nor the statute law were altered. Both were retained and recognized as the English rule pertaining to English subjects, whether born within or without the realm of England. English subjects who subsequently migrated to the United States could not then throw off their allegiance to the English sovereign. No law, which was in force in the United States, by which they could comply, could release them from their allegiance, and excuse them from service to their king, when again within his realm. The exception to the English law, as made by the treaties of 1783 and 1794 did not have reference to English subjects who were not colonists and as such were recognized as citizens of the United States, nor to the traders and settlers who remained within the territory of the United States, and were given the right of option at the time of the withdrawal of the troops and garrisons as stipulated in the treaty.

THE EFFECT OF THIS RULE AS TO THE UNITED STATES.

The English rule remained unchanged; the right of an English subject to renounce his allegiance was denied; the rule extended to and included the third generation, each of which were English subjects, by the English law.

Suppose that an English subject migrated to the

United States and there became a citizen according to the positive law of the states, what would be his relation to the English sovereign? It would remain unchanged under the English rule, and the English sovereign could demand the services of such a subject who had become a citizen of the United States, if found within the realm of Great Britain.

It is true that one of the causes which led to the war of 1812 between England and the United States was the impressment of English subjects, who had become citizens of the United States, into the service of the English king.

The war ended, and the question remained unsettled. The treaty failed to recognize the right of English subjects to throw off their allegiance and become citizens of the United States.

It may be argued that this right was tacitly implied, for reason that no occasion arose to agitate the question again. Such an argument could not prevail against positive laws legally promulgated in either the courts of the United States or Great Britain. Had the right been recognized it would have been declared by both countries. As no recognition was given to it, it follows that the law remained unchanged. It was not until the year 1870, when the question was taken up, discussed and formally settled. At that time the president of the United States and the queen of the United Kingdom of Great Britain and Ireland, being desirous to regulate the citizenship of citizens of the United States of America who have emigrated, who may migrate, from the United States of America to the British dominions; and of British subjects who have

emigrated or who may emigrate from the British dominions to the United States of America, have resolved to conclude a convention for that purpose; it was concluded as follows:

The President of the United States of America, and her majesty, the Queen of the United Kingdom of Great Britain and Ireland, being desirous to regulate the citizenship of citizens of the United States of America, who have emigrated or who may emigrate from the United States of America to the British dominions, and of the British subjects who have emigrated or who may emigate from the British dominions to the United States of America, have resolved to conclude a convention for that purpose, and have named as their plenipotentiaries, that is to say: The president of the United States of America, John Lothrop Motley, esquire, envoy extraordinary and minister plenipotentiary of the United States of America to her Britannic majesty; and her majesty, the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable George William Frederick, earl of Clarendon, Baron Hyde of Hindon, a peer of the United Kingdom, a member of her Britannic majesty's most honorable privy council, knight of the most noble order of the garter, knight grand cross of the most honorable order of the bath; her Britannic majesty's principal secretary of state for foreign affairs; who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

Citizens of the United States of America, who have become, or shall become, and are naturalized according to law within the British dominions as British subjects, shall, subject to the provisions of article II, be held by the United States to be in all respects and for all purposes British subjects; and shall be treated as such by the United States.

Reciprocally, British subjects who have become, or shall become, and are naturalized according to law within the United States of America, as citizens thereof, shall, subject to the provisions of article II, be held by Great Britain to be in all respects and for all purposes, citizens of the United States, and shall be treated as such by Great Britain.

ARTICLE II.

Such citizens of the United States, as aforesaid, who have become, and are naturalized within the dominion of her Britannic majesty as British subjects, shall be at liberty to renounce their naturalization, and to resume their nationality as citizens of the United States, provided, that such renunciation be publicly declared within two years after the exchange of the ratification of the present convention.

Such British subjects, as aforesaid, who have become and are naturalized as citizens within the United States, shall be at liberty to renounce their naturalization and to resume their British nationality, provided, that such renunciation be publicly declared within two years after the 12th day of May, 1870.

The manner in which this renunciation may be

made and publicly declared, shall be agreed upon by the governments of the respective countries.

ARTICLE III.

If any such citizen of the United States, as aforesaid, naturalized within the dominions of her Britannic majesty, should renew his residence in the United States, the United States government may, on his own application and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a citizen of the United States; and Great Britain shall not, in that case, claim him as a British subject, on account of his former naturalization.

In the same manner, if any British subject as aforesaid, naturalized in the United States, should renew his residence within the dominions of her Britannic majesty, her majesty's government may, on his own application and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a British subject, and the United States shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

THE EFFECT OF THE ACT AND TREATY OF 1870 IN THE UNITED STATES.

The retroactive effect which it was intended the act should have, is conclusive that the rigidity of the English rule of the common law and of the statutes of Anne and the Georges had not been relaxed to that date.

The relation of British subjects who had migrated

to the United States, and there become citizens, had remained unchanged under the English law.

By the law of the United States they were regarded as citizens of the United States; they had abjured allegiance to the English sovereign without right.

Could such citizens enjoy full rights and privileges in the United States and equal protection abroad with other citizens? They could not. There their relation to the English sovereign had not been changed; they owed allegiance, if within three generations of English descent, which was immutable. They were not in the enjoyment of full citizenship. They were not citizens at home and abroad as citizens should be with full recognition as such.

Assume that the son of an English subject, whose father had become a citizen by naturalization, in the United States, had gone to England prior to 1870; what would have been his legal status under the English rule? It is perfectly clear. No doubt, to have impressed him into the sovereign's service, would have caused the rise of unfriendly feelings between the two countries, yet this might not have changed the law, any more than it did in 1812, at which time the question was vividly discussed in both countries.

By the act of 1870, the acts of British subjects who have abjured the realm, under the naturalization laws of the United States, have been legitimatized, and by it they have been admitted and recognized to enjoy full membership both at home and abroad; which rights they did not enjoy prior to 1870.

The rule which governed prior to the passage of this act is found in Warren's case, 12 Op. Atty.-Genls.:

"It is well established English law that a native born subject of Great Britain is not capable of throwing off his allegiance."

Lord Grenville, in his despatch to Secretary King, March 27, 1797, declares, "No British subject can by such form of renunciation as that which is prescribed in the American law of naturalization divest himself of his allegiance to his sovereign. Such a declaration of renunciation by any of the king's subjects, would, instead of operating as a protection to them, be considered an act highly criminal on their part."

In Fitch v. Webber, 6 Hare, 51, the rule is as follows: "Abjuration by a British subject of his allegiance to the crown and his promise of obedience to a foreign state, although it might make him liable for high treason, does not divest him of the character of a British subject, and does not disqualify the children or grandchildren of such British subjects of being British subjects."

## DID THE UNITED STATES ADOPT THE ENGLISH RULE OF CITIZENSHIP BY BIRTH?

In the declaration of independence it is clearly set forth: "That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Substantially the same phraseology is found in the declaration of rights and bills of rights of the various states which compose the United States.

There can be no mistake in the spirit of these declarations.

The declaration of independence contains a series of grievances for which redress had been sought from the English king and which had not been obtained.

The primary purpose was to combat the source of law and government, under which they had lived, and is explained by the words: "Governments are instituted among men, deriving their just powers from the consent of the governed."

They had lived under the rule that the king could do no wrong, and was the source from which emanated all law and justice, flowing in pure streams to all the relations of life into which man enters.

It was under this rule, by which the laws of England were interpreted. With such an interpretation, no redress could be given to the wrongs complained of by the colonists Whatever law was enacted was enacted for their good and was promulgated by a sovereign who could do no wrong.

The sovereign had done no wrong to the colonists in America; there was nothing to be redressed; their petitioners were refused a hearing; their petitions were not heeded.

The English principles were structural in their form of government. As Sir Vernon Harcourt expresses it: "The rule of determining nationality in England was purely of feudal origin." They made up the expressed form of government as it confronted the outside world. They were the bulwarks of what was declared by the English sovereign to be, the rights and privileges of his subjects. They were in

no sense conventional in their nature, as between subject and sovereign. There was no provision of law by which the English subject could convene with his king. Suffrage was not free. A subject did not enjoy the right to represent and be represented suo nomine. Contrast this relation with the conventional form of government as declared in the United States, in which every member entitled to full rights of citizenship partakes; in which every such a member is an acting ingredient, and partakes of the whole, and the difference is manifest.

In support of the adoption by the citizens of the United States of the feudal principles, two arguments have been adduced, both in direct antagonism to the declaration of independence and the constitution.

The first is formed in the theory that the government, as agreed by the colonists for the United States, was a substitute for the English sovereign. Consequently, intentional or accidental birth on an inanimate piece of ground in the United States created an immutable relation through it, to the government, to which was owed an indelible allegiance. This argument proceeds on the same fiction from which the English system is reasoned.

Was this the intent and purpose of the compact entered into by the American colonists in the creation of their government? By no means. It was a government created by men who were equal; who possessed certain inalienable rights; and in the enjoyment of these rights they organized a government of themselves, by themselves and from themselves. Each and every member of the society had the right and

privilege of participating in the legislative branch of the government, and was subject, with aliens, to the executive and judiciary. The reverse was the rule in England.

The second argument is found in opinions of judicial tribunals when invited to consider the question whether or not the theory of immutable allegiance, as known to the English law, was adopted by the United States.

The decisions announced in Inglis vs. The Trustees of the Sailors' Snug Harbor; and Shanks vs. Dupont, in 3 Peters' Reports, are summed up by Chancellor Kent, with his own opinion, as follows: "From this historical review of the principal decisions in the Federal courts, on this interesting subject of American jurisprudence, the better opinion would seem to be, that a citizen cannot renounce his allegiance to the United States without the permission of government to be declared by law; and that, as there is no existing regulation in the case, the rule of the English common law remains unaltered." 2 Kent, 49; other authorities: 3 Story on the Constitution, 3; Lawrence's Wheaton, 995 (Ed. 1863).

It would seem that we should accept this as the result of the leading judicial opinions in the courts. It was in direct conflict with the opinions of the other departments of the government and the naturalization laws of the United States. 2 Kent, 49, note.

The fallacy of the opinions of the courts lies in a mistaken source of government, omitting entirely the fact that certain inalienable rights are in man, which he did not surrender by the compact which he made

with his fellow man, when he organized the society of the United States.

The opinions fall in with the line of argument adduced to support the fiction that the United States was a substitute for the British sovereign.

The opinions rest on the necessity of a positive regulation of law by which allegiance could be absolved.

May it not be inquired why was not a positive regulation of law as much requisite for the adoption of the principles of jus soli and allegiance, as, according to Chancellor Kent, it was requisite, in order that a citizen of the United States might throw off his allegiance? There is no positive regulation in the original compact, constitution or statutes, adopting these principles as known to the English law. "The English common law is not to be taken in all respects to be that of America. Our ancestors brought with them and claimed as their birth right, its general principles and adopted that portion of it only which was applicable to their situation."

Dictum in 8 Peters' Reports, 658: "It is clear there can be no common law of the United States. When, therefore, a common law right is asserted, we must look to the state in which the controversy originated."

Dictum, 1 Blackford, 205: "The common law of England is not in the United States, as a federal government."

There is no rule of law in the United States, by which it is laid down that the form, structure and organization of the government of the United States

is to be interpreted by the principles of the common law of England. That portion of the common law which related to the form of government of England was expressly set at defiance in the declaration of independence.

The principles of the government were founded in pure reason which was the immutable, eternal and universal law of mankind. On this same rule are founded the principles of international law which govern the intercourse between independent societies and involved in the question of intercourse is that of expatriation. "Our knowledge of international law is not taken from the municipal code of England, but from actual reason and justice, and from writers of known wisdom, and they are all opposed to the doctrine of perpetual allegiance." 9 Op. Atty-Genl. 356.

No better exponent of this famous document (the declaration of independence) can be found than the man himself who agitated the question of separation and drafted the declaration. None could know better than did he, the spirit and intent of the convention by which it was adopted. Mr. Thomas Jefferson, in discussing, among other things, the question of allegiance, while admitting the term, impliedly states: "That our citizens are certainly free to divest themselves of that character, by emigration and other acts manifesting their intention and may then become the subjects of another power and be free to do whatever the subjects of that power do."

Certainly this should be sufficient to counteract any force of judicial tribunals, when arguing from false premises.

Herein is concisely combatted the theory that a specific regulation of law was essential to a change of citizenship.

In article 7 of the constitution, by which a uniform law of naturalization is declared essential, in lieu of the laws of the different states then existing, is evidence positive of right to acquire citizenship in the United States and implied evidence, that the same privilege exists to dissolve it, on the principle declared, that all men are created equal, and in recognition of the natural rights of man.

It would be difficult to reason from the American standpoint of affairs, at the time of the adoption of the constitution of the United States, and prior to that date during the agitation of the question of separation, how any other conclusion can be reached. When argued from the English standpoint, as was done by Lord Grenville in 1797, the conclusion is as follows: "No British subject can, by such form of renunciation as that which is prescribed in the American law of naturalization, divest himself of his allegiance to his sovereign. Such a declaration of renunciation made by any of the king's subjects, would, instead of operating as a protection to them, be considered an act entirely criminal on their part." Lord Grenville was, at this time, commenting on a relation with the United States; the same rule would be applicable to other countries.

Substitute, however, in place of British subject, American citizen, and in place of his reference to the United States the same reference to all countries, and the opinion of some of the tribunals of the United

States are substantially in confirmation of Lord Grenville's dictum.

Chief Justice Marshall, in Murray vs. Schooner Charming Betsy, 2 Cranch, decided as follows: "The American citizen who goes into a foreign country, although he owes but a temporary and local allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of his own government; but his situation is completely changed when by his own act he has made himself subject to a foreign power."

Thus it appears that the authorities were in conflict not alone in the highest tribunal of the land, but also in the lower state courts, which a review of their decisions would show.

This rule was laid down at an early date in the state of Massachusetts, as follows: "This claim of the commonwealth to the allegiance of all persons born within its territory may subject some persons, who, adhering to their former sovereign, and residing within his dominions, are recognized by him as his subjects, to great inconvenience, especially in time of war, when the opposing sovereigns claim their allegiance. But the inconvenience cannot alter the law of the land. Their situation is not different in law, whatever may be their equitable claims, from the situation of these citizens of the commonwealth who may be naturalized in the dominion of a foreign prince. The duties of these persons arising from their allegiance to the country of their birth, remain unchanged and unimpaired by their foreign naturalization. For by the common law no subject can expatriate himself." Ainslie vs. Martin, 6 Mass. Rpts.

The contrary was submitted at the same time in Virginia. "It is believed that the right of emigration or expatriation is one of those inherent rights, of which, when men enter into a state of society, they cannot by any campact deprive or divest their posterity. But although municipal laws cannot take away or destroy this right they may regulate the manner and prescribe the evidence of its exercise, and in the absence of the regulations juris positivi, the right must be exercised according to the principles of law." Murray vs. McCarthy, 2 Mumford's Repts.

By what processes of reasoning these two opinions so diametrically opposed were reached is to be explained by this: that in the first, the common law was believed to be the guide to the declaration of independence and the constitution of the United States, while in the second the reason is from the principles as laid down by the founders of the government and based on the natural laws of man.

In the first, it is denied that the government of the United States is conventional as between man and man. In the second, it is admitted that the government has no other existence than in compact entered into, by and between those who organized it. Yet with this diversity of opinion, it was still, in 1836, an open question with our judiciary. Under the rules then prevailing the right to depart was both acknowledged and denied. The first recognized the English common law as the guide to the American form of government, while the second recognized the government to be founded on the natural law of man. The latter is the only and correct view. It is based on the compact in

which the government had its origin. The application of the principles of the English common law was fallacious.

WERE THE PRINCIPLES OF JUS SOLI AND ALLEGIANCE ADOPTED IN THE UNITED STATES PRIOR TO 1836 OTHER THAN IN NAME?

It is proper, first, to inquire if adopted to whom were they applicable? The founders of the government became citizens by recognition under the treaties of 1783 and 1794. At this time citizenship in the United States was not acquired in any other manner. Those born in the colonies were English subjects by birth. The fact of birth in the colonies did not in anywise affect their right to recognition and to option under the treaties of 1783 and 1794. Those who were born in England proper stood equal with those born in the colonies. It was no advantage nor was it a disadvantage to have been born within or without the United States so far as the effect of the treaties was concerned. All who wished to become citizens exercised the right of choice or option and became citizens of the United States, or remained English subjects as they wished.

To these who optated to become citizens were born children; these children were born within and without the limits of the United States. First. As to those who were born within the United States.

There was no positive regulation, by which it was specifically declared in what manner or for what reason they acquired citizenship. There was no positive regulation by which the principles of the declaration of independence and the constitution should be inter-

preted, other than by the spirit which these compacts carried within themselves.

There was no positive regulation that these compacts should be interpreted by the rule of the English common law. Only as much of this law was adopted as was applicable to the situation of the founders of the government, in their civic relations and principles which governed crimes. These compacts carry within themselves a sufficient refutation of the common law rules, so far as they pertain to the structure and form of government in England. Among these primarily were the principles of jus soli and allegiance.

Neither jus soli nor allegiance are mentioned in name in these original compacts so as to convey at all the idea and meaning which was given to them in England. They are taken up in name by the different departments of government — by the publicists and by the judicial tribunals.

In the foregoing they were in dispute as to their acceptation and the reasons are given. The conclusion reached was, that they were not adopted; they were incompatible with the structure of government, as agreed to by the colonists.

The argument must proceed upon the theory which was and became the practice, that those who joined the compact, might on general principles and by the laws of nature, dissolve connection with it. The right was implied if not expressed. Nor was it expressed, in the compact of government, by what means or in what manner the children of those who were citizens should become citizens.

If the structural principles of the English govern-

ment were not adopted; if no positive regulation prevailed in the United States by which the children of citizens of the United States became citizens, it is pertinent to inquire, how was a citizenship acquired by them?

According to the theory of Chancellor Kent a positive regulation was required by which citizenship in the United States could be acquired. No doubt, by this line of reasoning, a positive regulation would be requisite, in the acquisition of citizenship by children of citizens of the United States born within the limits of the United States. Disregarding the structural principles of the government of the United States and the inherent rights of man, he formed a rule among the structural principles of the English government as declared in the feudal relations through the jus soli and allegiance.

According to the opposing theory, which denies the structural principles of the English government and acknowledges none but those of the United States, on matters pertaining to the form of government, the rule must be implied in want of a positive rule expressed.

It has been already adverted to, that the parties to the original compact, by which the government of the United States was formed, were citizens not by birth under the principles either of jus soli or allegiance, but by choice and by the treaties. This was the exercise of a right, primary in men, which had already been exercised in 1776 by the colonists prior to the recognition of the right, in another form, by the treaty of 1783. Under either act, the one of 1776, 1783 or

1795 the effect was the same and was the result of the exercise of a right natural in man.

It has already been mentioned that no positive regulation prevailed, by which children of citizens of the United States born in the United States became citizens; that the structural principles of the English government were not adopted in the United States, either by express words or by implication; that the natural rights of man are recognized in the compact of government as agreed upon for the United States and disavowed by the feudal principles on which is constructed the English government.

Correlative to the rights inherent in man are the duties of man. Primary among these duties growing out of the relation of parent to child, is the one of support which custom and law throughout the civilized world has enjoined on the parent.

Correlative with the duty of the parent to support the child is the claim of the child on the parent for support.

These have been positive rules of society. They are the rules of nature transposed into laws for the regulation of these relations in society. These laws were natural to the founders of the government of the United States. They brought them in positive form from England and nourished them as colonists. They were portions of the common law of England as well as of the natural law of man, and were adopted for the society of the United States.

According to the law of nature, no place is circumscribed within which the parent shall support the child. Wherever the parent goes the child follows.

Nor is the place circumscribed by the declaration of independence or the constitution of the United States. Nor is it by the law of any civilized community. The right of locomotion is not restrained by civilized governments.

Out of this relation of parent to child and child to parent, grow love and affection, aside from duty of support which devolves on the parent toward the child. By the positive law of all societies, a certain age is fixed and determined at which membership is permissible and at which the exercise of full rights of citizenship is allowed.

While the child is under this prescribed age, which varies in different societies, he is of the same citizenship as is the father, by virtue of the father's citizenship.

The relation between parent and child is complex; their rights, the one to the other, are inseparable; they are so considered by the positive law and by custom. Their inseparable nature renders the rule necessary, that the child follows the citizenship of the parent, until he reaches the age at which he may elect to remain of the same citizenship as the parent or abandon the parent's citizenship. This is the rule which naturally and of necessity governed in the United States prior to 1836, and by which those children of citizens of the United States became citizens.

When they arrived at the age prescribed, at which they could enjoy full citizenship, they acquired full citizenship, by taking part in the right of being represented and of representation in the legislative branch of government, expressly or impliedly.

In the United States, this privilege of election is

more marked than in most other countries. When the child fails to elect, the presumption is immediately raised, that he has so done, in want of expression by him to the contrary, by seeking citizenship in some other country. It cannot be denied, however, in this connection that the term "native born" was and is in use; its application was not and is not with the same reason therefore, as is found in the English common law. Its use was and is, purely in imitation as a term, of the same term, in the English law. Strictly interpreted its meaning was and is, partus sequuntur patrem, i. e., the child follows the citizenship of the parent.

The rule was well laid down by Vattel, sections 216–220: "By the law of nature alone children follow the condition of their fathers and enter into all their rights. The place of birth produces no change in this particular; for it is not naturally the place of birth that gives rights but extraction."

Secondly, as to those children born of citizens of the United States, without the limits of the United States.

There was no prohibition on citizens of the United States sojourning in foreign countries. If while abroad children were born to them, such children followed the citizenship of the parent. This rule is the primary, positive regulation on this branch of this subject.

By the act 1802, "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth, citizens thereof, are declared to be citizens of the United States, but the rights of citizenship shall not descend to children whose fathers never resided in the United States."

This rule is similar to the English rule of 7 Anne, chapter 5, section 3. The success in the enforcement of this rule by England has already been referred to, and from that practice the conclusion would be that English children born abroad of English subjects may have the rights of Englishmen when within Great Britain, but when abroad in the country of their birth they failed to receive that protection, which an English subject born of English parents in Great Britain would receive.

It is reasonable to infer that the practice of the United States under this same rule was not any more successful.

For example, what would be the citizenship under the English rule, of a child of citizens of the United States born in England? While that child would be held as an English subject in England under the English law, in the United States, he would be held to be a citizen of the United States. Thus, in both countries he would be subject to duties as a citizen of each, when, respectively, in the one or the other. The rule, as applied in the United States under the act of 1802, was structural as to the form of government in the United States. It was expressive of the governing principles as to citizenship that the child followed the citizenship of the parent. To declare that the child born in the United States, of citizens of the United States, was other than a citizen by descent, and became a citizen because of the citizenship of the parent, would be to contradict the rule which was laid down for children of citizens of the United States born in foreign countries.

To follow the English common law rule would be to contradict the act of 1802, in spirit and intent. The English common law rule was not adopted.

Reverse the rule, and what was the citizenship of the children of aliens born in the United States? There is no positive rule, by which, at this time, they were declared to be citizens of the United States. While it could properly be held that they owed a temporary and local allegiance to the government of the United States, as it was held that their parents did owe it, in Carlisle vs. United States, 16 Wallace, 148; yet upon return to the country of their parents, in which either the rule as found, 7 Anne, chapter 5, section 3; or the rule that children followed the citizenship of the parent until majority prevailed, they would in either case be held to be citizens of the country of their parents' citizenship.

The principle would fall short of the definition of citizenship. One cannot enjoy the citizenship of one country when in that country, and the citizenship of another country when in that country.

The rule, as laid down by the act of 1802, did not carry with it the principle of allegiance as did the rule in 7 Anne, chapter 5, section 3. This principle carried within it a perpetual personal relation to the English sovereign, which by analogy could not have been intended in the relation of a citizen of the United States to his government. Were it so considered, it would argue in favor of the theory that the government of the United States was a substitute for the English sovereign. There was no such relation purposed, nor is any thing contained in the principles of

the government of the United States that such a substitution should be made. If by simple phraseology the term "allegiance" is used in the jurisprudence of the United States, it is not with the import as used in the jurisprudence of Great Britain. For in England this allegiance was indissoluble and perpetual, which rule had not maintained in the United States.

Alexander McLeod defined the position of the United States on allegiance in 1815 to be: "There is no obligation from the social compact upon man to continue in allegiance to the government under which he was born." Again, Mr. Caleb Cushing in 8 Op. Atty-Genls. 139: "The doctrine of absolute and perpetual allegiance is inadmissible in the United States. It was a matter involved in and settled by us by the revolution, which founded the American union."

### WHO WERE CITIZENS OF THE UNITED STATES IN 1836?

The citizens of the United States, at this period, were the children of such former English subjects as had optated to become citizens, and such foreigners as had become legally naturalized. This latter class will be considered when the questions of expatriation and naturalization are discussed. It is the purpose at the present time to discuss only the former class, those who had become citizens under the rule, partus sequuntur patrem.

The first generation descended from the founders of the government and born in the United States were now in full age, enjoying full rights and privileges of citizenship, as the children of parents who were citizens by choice under the treaty of 1783. The second

generation were born, and by virtue of birth of citizens of the United States, were following the citizenship of their parents under the rule of extraction.

When the first generation became of age each person so descended of a citizen of the United States, expressly or impliedly, himself became a citizen of the United States, or emigrated and became a citizen elsewhere.

The terms "expressly" or "impliedly" are here used as demonstrative of the peculiarity which attends a government founded on compact as was the government of the United States. The alternative is open to the child of a citizen of the United States. He either remains or departs; he may remain and depart later in life. This is always a matter of choice with him. Here we have to do with him upon reaching his majority and the same rule applies, regardless of the manner in which the parent became a citizen, provided he acquired his citizenship legally under the statutes of the United States.

Upon reaching majority, if the child desires to exercise full rights of citizenship, he proceeds to partake of the representation privileges, which is done pursuant to prescribed regulations pertaining to suffrage.

Hereby, he becomes, by subscribing to the principles of government, expressly, as proclaimed by its founders, a contracting party to the original compact, by which the government was organized. It is in this manner that the contract is constantly in process of renewal as between the citizens of the United States.

If it does not partake of the representation privileges, by seeking the rights of suffrage in the absence of with-

drawal, he subscribes impliedly to the principles of government and becomes a contracting party, equally as well as if he did so expressly pursuant to the same principle.

As before stated, the first generation was at this time, in the enjoyment of the rights and privileges of citizens, as declared in the principles of government set forth in the original compact on which the government was founded. It had renewed and re-affirmed the principles of the government and by expressed or implied acts demonstrated the necessity of a recognition of the natural rights of man and that government was in man, of man and by man.

The rule is laid down in Shanks vs. Dupont, 3 Peters, 242: "Children born in a country, continuing while under age in family of father partake of his character as a citizen of that country." The governing principle is that the government is founded on contract. During minority a child of a citizen of the United States wheresoever born cannot become a contracting party. He can do this only when he reaches majority. He than elects by implication or expressly to become a citizen of the United States by joining with citizens of the United States in the exercise of rights of citizenship. This he does by virtue of his father's rights as a citizen. Or he may depart and seek allegiance in another state. Upon reaching majority, he does or does not renew the original contract of government as made by the founders of the government. He does or does not become a party thereto.

### THE RIGHT OF OPTION FURTHER RECOGNIZED BY THE UNITED STATES.

By the treaty of 1803 with France, by which the colony of Louisiana was ceded to the United States, it was distinctly understood that the right of option prevailed, to depart or remain as French citizens or to choose to become citizens of the United States.

The same rule was recognized in 1819 in the treaty with Spain, by which East and West Florida were ceded to the United States.

By these cessions these foreign powers surrendered their claims to territory which now forms a great part of the United States. A Christian duty devolved on these countries not to leave their subjects defenseless, and the following was contained in each treaty:

"The inhabitants of the territories ceded shall be incorporated in the union of the United States as soon as may be consistent with the principles of the federal constitution, and admitted to the enjoyment of all the privileges, rights and immunities of citizens of the United States."

### DID CITIZENSHIP BY DESCENT AND NOT BY BIRTH UNDER THE ENGLISH RULE, CONTINUE TO BE THE RULE IN THE UNITED STATES TO 1868?

During the period from 1836 to 1861 the question was less discussed than it had been prior to that date.

The supreme court of the United States refrained from expressing and defining its position on the subject. The courts of several states expressed opinions.

The court of appeals of Kentucky in 1839 upheld the implied right, as existing in the parties contracting,

to withdraw from the United States, that the right was fundamental and could be exercised at the option of its citizens.

This opinion was grounded on the constitution of 1792, "That emigration from the state shall not be prohibited."

This declaration is from the Virginia constitution, in which the right is recognized. The contrary view was held by the supreme court of Pennsylvania, notwithstanding the constitution of that state as adopted in 1776: "That all men have a natural, inherent right to emigrate from one state to another that will receive them."

In other states opinions were expressed, but in nearly every case the reason proceeded either upon the local declaration of rights or the local constitution, and were only of special force in the state, in deciding a local issue.

The publicists of the United States discussed the question from the standpoint of international law as recognized by and between different countries.

Mr. Marcy wrote to Mr. Halseman in 1852: "There is great diversity and much confusion of opinion as to the nature and obligations of allegiance. The sounder and more prevalent doctrine, however, is that a citizen or a subject having faithfully performed the past and present duties, resulting from his relation to his sovereign power, may at any time release himself from the obligation of allegiance, freely quit the land of his birth or adoption, seek through all countries a home, and select anywhere that which offers him the finest prospects of happiness for himself and posterity."

Mr. Cass was of opinion in 1859: "The right of expatriation cannot, at this day, be denied or doubted in the United States. The idea has been repudiated ever since the origin of our government that a man is bound to remain forever in the country of his birth and that he has no right to exercise his free will and consult his own happiness by selecting a new home. The most eminent writers on public law recognize the right of expatriation. This can only be contested by those who, in the nineteenth century, are still devoted to the ancient feudal law with all its oppression. The doctrine of perpetual allegiance is a relic of barbarism which has been gradually disappearing from Christendom during the last century."

Caleb Cushing expressed the view very forcibly that a citizen of the United States may exercise the right of expatriation — the right not being expressed, is implied. He goes further, and adds: "The doctrine of absolute and perpetual allegiance is inadmissible in the United States. It was a matter involved in and settled by, the revolution which founded the American union." 8 Op. Atty-Genl., p. 140.

Jeremiah Black recognizes the right to be a natural right which every free man may exercise and is incontestable. 9 Op. Atty-Genl., p. 356, Santissima Trinidad, 7 Wheat. 283.

This treatment of the question of the right of a citizen to depart from the United States, and the rule as established by the different writers, necessarily involves the correlative relation of acquisition of citizenship. If citizenship was acquired by birth under the English rule, these publicists would not assume the position

which they have done and which they have announced as the foreign policy of the United States.

To repeat what has already been set forth as the rule prior to 1836, it must be affirmed that neither jus soli nor allegiance in the English sense and meaning had any thing whatever to do with the acquisition of citizenship in the United States.

In England these rules went to the form of government. In the United States the government was organized on principles of contract as between men, in direct antagonism to the English form of government

The use of the term "allegiance" has no technical place in the jurisprudence of the United States in its feudal meaning.

Technically it should be said that the citizen has taken an oath to support the constitution and the laws of the United States. This is done by every citizen, either expressly or impliedly. before he enjoys full rights of citizenship.

In taking the oath, no personal relation is entered into with the government of the United States. It is a relation which is created by a citizen with his fellow citizens. By it he affirms and agrees to the continuation of the contract on which his government is founded. It is an expression of truthful intent to abide by and obey the laws which the citizens enact for themselves, from among themselves.

### THE RULE LAID DOWN IN 1868.

"All persons born in the United States and not subject to any foreign power are declared to be citizens of the United States."

For the reasons already given, the common law rule, as known in England, was not adopted by the United States, in its application to citizens.

The right of expatriation as being a natural and inherent right in man, has been advanced by the publicists in the United States ever since the inception of its government. The advocacy of this principle was clearly in contradiction of the common law principle which governed in England. Had the common law principle as recognized in England been adopted in the United States, the right of expatriation on the part of a citizen of the United States could not have been advocated by the publicists. The exercise of such a right, as it was maintained to exist in a citizen of the United States, bore within it a refutation of the adoption of the English common law rule.

If for reason of locality of birth, citizenship was acquired, as it was understood in England, the right of expatriation could not have existed; and the fact that it was held to exist, and was exercised by citizens of the United States, would seem to deny the adoption of the English rule.

It has never been maintained, even by the most ardent advocates of the English rule in the United States, that the rule was adopted in the United States, only in part. These advocates have maintained, if adopted at all, that it was adopted as a whole. If adopted as a whole, in what manner do they reconcile the exercise of the right of expatriation, on the part of citizens of the United States, with the ties of allegiance, by which a child of an Englishman, born of English parents in England, was bound to his sovereign?

If a child born of citizens of the United States, in the United States, bore to the United States the same relation which a child of English parents, born in England, bore to England's sovereign, then how was the right of a citizen of the United States to expatriate himself to be reconciled? This contradiction in the practice, as exercised by citizens of the United States, refuted the application of the rule as known in England, in the United States.

For a publicist in the United States to have upheld the English rule as a whole, would have been to deny the fundamental principles of his government. It must be conceded that the right of expatriation did exist in the United States, and has been exercised by citizens of the United States since the foundation of the government. It must be admitted that the principles involving the right of expatriation were incompatible with the English rule.

It would be difficult to reconcile this incompatibility. The practice admits its existence, which the English practice does not admit. By the English practice it has been shown that while the right to depart and absolve allegiance from the English crown did not exist in law, yet in many cases, where Englishmen were temporarily or permanently residing abroad, they did owe a temporary and local allegiance to the government under which they were living; more than this, in many cases they were called upon and did perform similar duties to the government under which they were living as did the citizens of that government perform when called upon by their government so to do. And the English government did not deny

but that they should perform such services, and in every respect be treated as citizens of that country; yet upon return to England they were held to have lost none of their rights as Englishmen. The fallacy of this practice lies in the theory of a dual citizenship.

This duty to serve the country in which Englishmen sojourned abroad, was no greater than if they had renounced their English citizenship and become citizens of that country. In effect it was the same as if they had expatriated themselves.

It is not found that the United States sanctioned this practice. It allowed its citizens to expatriate themselves and become citizens of another country. It did not recognize the principle of dual citizenship as was done by England.

In order to understand the rule laid down in 1868, kindred legislation should be considered in connection with it. Any ambiguity should be avoided, and while the rule laid down in United States vs. Fisher, 2 Cranch, 258, which holds that in case of ambiguity, every part of the act is to be considered, and the intent is to be gathered from the whole, we are at liberty in order to ascertain the spirit of the legislation to consider other acts which bear upon the same question.

We must at the same time consider the purpose for which the legislation was passed.

It cannot be argued, in this connection, that it was the purpose to pass statutes merely as municipal rules which should have no extra-territorial effect, when the statutes relating to citizenship were passed. It must be presumed that it was the intent to conform to the

laws of nations as practised in the civilized world, in the relations of civilized states the one toward the other.

For this reason the statute of 1802 should be construed in this connection. By this statute it was enacted: "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth, citizens thereof, are declared to be citizens of the United States."

Under the rule laid down in 1802, it is evident that the locality of birth should not govern as to children of citizens of the United States born in foreign countries. And yet it is nowhere denied but that such a child so born in a foreign country could, on reaching majority become a citizen of that country. This the English rule denied and maintained up to the year 1870, the rule: "Once an Englishman always an Englishman." By this practice on the part of the United States the adoption of the English common law rule is again denied.

It must be admitted, however, in this connection, that persons subject to a foreign power born in the United States, had been held by the authorities to be citizens of the United States. Two rules were laid down; the one in 1859 in 9 Op. Atty.-Genls. 373: "A free white person born in this country of foreign parents is a citizen of the United States." The other, laid down in 1862 in 10 Op. Atty.-Genls. 328: "A child born in the United States of alien parents who have never been naturalized is, by the fact of birth, a native born citizen of the United States, and entitled to all the rights and privileges of citizenship."

These rules were applicable to the territory of the United States, and had no ex-territorial effect. It is admitted by the rules that the parents were aliens, and as such were citizens of another country. Suppose that the country of which the alien parents were citizens had the same rule in its jurisprudence as is laid down to be the rule by the United States in the act of 1802. Or, reverse these two rules and admit that these rules governed in the country of which these alien parents were citizens; and apply them to children of citizens of the United States born in that country. Does this not show a contradiction in principle which is untenable in the jurisprudence of the United States?

Not this alone. These rules are for municipal guidance in derogation of the principles of international law. It is not simply the rights and privileges of citizenship in the United States which govern; to it there is to be added a further element in order to constitute perfect citizenship and that is, equal protection abroad. Under these rules the United States have simply decided that the children of aliens born in the United States can enjoy rights and privileges within the United States. The United States could not contend that these rules clothe such children with the rights of protection as citizens of the United States upon return with their alien parents to the country of which they were citizens. Apply these rules to a child born of English parents; would the United States extend to such children, protection as citizens of the United States upon return of those children with their alien English parents to England, where the rule "Once an Englishman always an Englishman" governs and

where the principle of allegiance to the sovereign is held to be indelible and indissoluble?

The fallacy of these rules in their application within the spirit of international law, is demonstrated by the act of 1868. By that act, the United States does not lay claim to the children of aliens, subjects of a foreign power. By this portion of the act, relating to children of aliens subjects of a foreign power, and born in the United States, and by the act of 1802, the principle of citizenship for reason of locality of birth is distinctly denied.

There still remains the other portion of the act: "All persons born in the United States are declared to be citizens of the United States."

With the exception of the fourteenth amendment to the constitution, which was held to be one of a series of provisions having a common purpose, namely: to secure to the negroes all the civil rights that the superior race enjoys, as decided in Strander vs. West Virginia, 100 U. S. 303; and Neal v. Delaware, 103 U. S. 370; there are no other acts than the one of 1802 and the one of 1868, which refer to the acquisition of citizenship, whether for reason of locality of birth or for reason of descent or extraction.

We are, therefore, confined to these acts, which must be construed as a whole. They must be construed with a view to the existing principles of international law on this question. To reach the law of construction, we must refer to the practice of civilized states, because we are dealing with a question which concerns citizenship, the very definition of which necessitates a consideration of the rules which govern citizenship in the international practice.

THE RULE OF INTERPRETATION TO BE APPLIED TO THE STATUTES.

"We take our knowledge of international law not from the municipal code of England, but from natural reason and justice, from writers of known wisdom, and the practice of civilized nations." 2 Op. Atty.-Genls. 356.

There are, therefore, three ways by which to reach the rule of construction which must be applied to the acts of 1802 and 1868, considered as a whole.

First, from natural reason and justice. It is distinctly stated that we do not derive our principles of international law from the municipal code of England. While it is too well known that the English common law rule did obtain for the guidance of England throughout centuries of time, the royal commission appointed by her majesty in 1868 to inquire into the question of allegiance, which commission was composed of prominent international jurists, such as Sir Robert Phillimore, Montague Bernard and Travers Twiss, together with the leading jurists and statesmen of England, which commission did find: "We are of opinion that the rule of the common law is neither reasonable nor convenient. It is at variance with those principles on which the rights and duties of a subject should be deemed to rest; it conflicts with that freedom of action which is now recognized as most conducive to the general good, as well as to individual happiness and prosperity, and it is especially inconsistent with the practice of a state which allows to its subjects absolute freedom of emigration."

This material change in the advocacy of the com-

mon law rule is important in this connection. It proceeds upon natural reason and justice; it is applicable to a consideration of the acts of 1802 and 1868. The happiness and prosperity of the individual inures to the general good of mankind, whether the individual is at home or abroad. Any restriction for reason of locality of birth is an injury to the general good of mankind. Such freedom of action is essential at the present stage of civilization, as will conduce to the good of mankind. Justice demands that a citizen should enjoy the right of expatriation. This was a right reserved by man when he entered society. This was a dictate of natural reason, and, therefore, he should be sustained in the exercise of the right, for the good of himself and of his children, provided he exercises the right consistent with justice and fair dealing to others.

Sir Vernon Harcourt decided: "That the rule of determining nationality in England was of purely feudal origin." In the United States it has never been held that the principle of feudalism was founded in natural reason and justice. On the contrary, the principles set forth in the declaration of independence are in distinct antagonism to the principles of feudalism.

Second, from writers of known wisdom. The publicists have discussed this question from the two different standpoints. The English writers have maintained that the English common law rule, which was conceived in feudalism, should govern. At the various epochs when these writers have discussed the question, England sought morally, if not actually, to govern the civilized world. In each instance, these writers have reasoned from Calvin's case as decided by Lord

Coke. They have labored to make the English common law, or properly speaking the municipal law of England, the international common law of nations. With them these questions were argued and decided in accordance with the decisions of the English tribunals, and from these decisions, they derived their knowledge and promulgated to the world, simply the municipal rules which governed Englishmen in England. In their arguments they confine themselves to the opinions of their own local judges as the source from which the international law of nations should flow. They did not argue from the standpoint that man had within him inherent and inalienable rights which were a part of his nature. To them, reasoning from this standpoint was fallacious. Was it not equally as fallacious to maintain that the municipal law of England alone contained the principles which should govern in the relations between nations? In this connection it might, with all respect, be said, that the so-called English publicists were expounders of the English common law.

The continental writers have, as a rule, maintained the principle of citizenship by descent and not by locality of birth, which latter was the English common law rule.

Vattel directly antagonizes the English rule when he writes: "The true bonds which connect the child with the body politic is not the matter of an inanimate piece of land but the moral relations of his parentage." Again he adds: "The place of birth produces no change in the rule that children follow the condition of their fathers, for it is not naturally the place of birth that gives rights, but extraction."

Foelix did not differ from Vattel; he lays down the practice to be: "That the child is a part of the nation to which his father belongs, if the child is born in lawful wedlock, or to the nation of its mother, if the mother is not married."

Von Bar, a German publicist, explains the general rule to be as follows: "To what nation a person belongs is by the law of all nations closely dependent on descent; it is almost an universal rule that the citizenship of the parent determined it; that of the father, where the children are lawful, and where they are bastards, that of the mother, without regard to the place of their birth. And that must necessarily be recognized as the correct canon, since nationality in its essence is dependent on descent."

Westlake takes the broad position that: "Legitimate children, in whatever region or place they may be born, are regularly members of the state of which their parents form part, at the moment of their birth." This rule does not determine that locality of birth governs, for it carries within itself the principle of natural right of a citizen of one state to change to another. Herein Westlake differs from many other English writers and advocates impliedly, at least, the principle of citizenship by extraction and the right of expatriation, both of which contradict the English common law rule which governed in England prior to the year 1870.

Field, in his International Code, lays down the rule to be that: "A legitimate child wherever born is a member of the nation of which its father at the time of its birth was a member."

Both Heffter and Bluntschli, recent German writers, maintain the same position.

Fiore, a recent Italian writer, subscribes to the general view taken by continental writers and maintains the correctness of the principle.

Furguson, who recently wrote as a Holland publicist, touches the question in a very apt manner; particularly so, for this discussion. For it is not citizenship in a limited sense as defined by a municipal code, with which we are dealing, but with a citizenship as recognized by the principles of international common law. Furguson remarks: "The nationality which constitutes an object of international law is the political nationality or political citizenship which can be lost and acquired through acts of legislation. Political nationality is acquired, first, by birth; that is, from the nationality of the parents, not from the mere accidental place of birth; second, by law, called naturalization."

Third: From the practice of civilized nations.

The rule, locality of birth, governed to a great extent prior to the publication of the code of Napoleon. The influence of this production was great throughout continental Europe. It was the death blow to the feudal principle which governed in the common law, the abolishment of which was speedily effected by codifications of the laws in the different countries, based on the principles enunciated in the French code. The purpose and intent was to abrogate the existing common law and in its place to put in force principles consistent with man's nature. Its object was to eradicate as far as practicable the vestiges

of the feudal system. The fundamental idea was to effect a complete change in the principles of jurisprudence in every respect, in which it could be done without injury to already existing acquired rights. The proclamation was: "The new law abrogating the ancient law being reputed to be more useful and beneficial to the people than the law which it abrogates, it becomes necessary for this reason to give to it the most extended effect."

By the law of France, prior to the revolution, a child born on French soil, though born of foreign parents, was a Frenchman, jure soli; born of French parents abroad, the child was French jure sanguinis. "The framers of the Code Napoleon adopted a sounder principle; excluded the place of birth as the source of nationality itself." Cockburn on Nationality, page 14.

"The sounder principle," adopted by the French code, was the principle that citizenship was acquired by descent or extraction. Code Civile, art. 10.

This rule governed both for children of Frenchmen born in France, and in foreign countries. The principle is carried still further: "The children of a Frenchman, naturalized in a foreign country and who are born in the same country, are aliens." Thus in each case, a child born of French parents in France; a child born of French parents in a foreign country; a child born of a former Frenchman who has become naturalized in a foreign country, the child respectively follows the citizenship of the father.

In the empire of Austria, the claim to the citizenship of the father, at the time of the birth of the child, is recognized as the right of the child.

In Prussia, a child born of a subject of the kingdom, is for reason of birth of a Prussian subject, a citizen of Prussia, whether born within the territory of Prussia or in a foreign country. The law is substantially the same in most of the other German states.

The rule in Sweden and Norway is: the status of persons born of Swedish or Norwegian parents is derived from their parentage.

The same rule prevails in the republic of Switzerland.

In Denmark, Holland and Portugal, the principle recognized is, that the claim to citizenship is by descent. In these countries, however, for the benefit of children of aliens, born within their limits, citizenship is conferred upon them for reason of birth within the country, without their claiming it, provided, they desire, upon attaining their majority, to waive their rights to citizenship by descent. This rule, which is made one of convenience for children of foreigners born within the country, by which they may claim citizenship in the country from fact of locality of birth, thus saving any naturalization, recognizes the law in foreign countries to be, that citizenship is acquired by descent.

The rule which governs in Italy is: that citizenship is acquired by descent. There is a further rule that if an alien has resided in the country for a period of ten years, and has had children born, the children are held to be Italians with the right to elect to remain so or not upon attaining their majority. The ground for this claim is not for reason of birth; it is on the presumption that the ten years' residence of the

parent has made him an Italian subject. In Belgium the same principles govern as are laid down in the Code Napoleon.

In Spain the rule as recognized by the French has been made the Spanish rule.

### THE RESULT OF THE APPLICATION OF THIS RULE OF INTERPRETATION.

An application of these rules of construction as derived from the sources in which are found the principles of international law, to the acts of 1802 and 1868 seems to bring these acts properly within the international law rule as was purposed. The rule is to bring citizenship within the practice of nations in order thereby to insure to citizens of the United States equal protection abroad with all other aliens sojourning in a common country. The intercourse between states, the closer relations in commerce and trade, which necessitate the residence both temporary and permanent of citizens of one state in other states, seems to require that a general rule should govern as to the acquisition of citizenship. The principles of feudalism are accomplished with the necessities of trade and commerce, and the practice in the relations between states which grow out of them. Modern civilization has repudiated every vestige of the feudal law in this regard, with the exception of the rule in the English practice as to which there was a wide diversity of opinion among the commissioners in 1868. By them it has been freed from the unbending rule that allegiance was indelible. A child born of English parents in England is now a citizen by birth with the privilege, when the child

reaches majority, of choosing a citizenship compatible with its belief in its future welfare and prosperity. This relaxation of the common law rule is an approach toward the rule as known to the practice in the common law as recognized between nations.

The rule acquisition of citizenship by descent or extraction is a natural law, one which govern all mankind all the world over. Whereas the rule acquisition of citizenship for reason of locality of birth is merely a municipal law which can have no extra-territorial effect and never has had any as is obvious from the English practice, which in point of fact, recognized the rule of descent or extraction as to its subjects born of English parents in foreign countries, attaching, however, as a rule for municipal protection the indelibility of allegiance to the English sovereign.

PRACTICE UNDER THE RULE CITIZENSHIP BY DESCENT WITH GERMANY.

The case of Ludwig Hansding. He was born in the United States of German parentage; removed to his father's native land while a minor; his father subsequently became a naturalized citizen of the United States. Protection was denied him on the ground that he had never dwelt in the United States as a citizen of the United States. The father, by the act of naturalization, changed the citizenship of the son; but the son not having dwelt within the United States according to section 2172 of the Revised Statutes, Hansding was held to be a subject of Germany. Birth in the United States did not govern. Mr. Frelinghuysen, secretary of state to Mr. Kasson, January 15, 1885.

WITH GERMANY. The case of Richard Greisser. He was born in the United States. His father was at the time a German subject and domiciled in Germany. He left the United States with his mother to join his father in Germany, where during a portion of his minority he resided until the death of his father, at which time, and while still a minor, he went to Switzerland to reside. At the time of his birth, he was subject to a foreign power, following the citizenship of his father, who was a German, and being such under section 1992, Revised Statutes, was held to be a German and protection was denied him. Although under the fourteenth amendment of the constitution all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States, yet following the citizenship of the father, he was held not to be subject to the jurisdiction of the United States and on this further ground the protection was denied him. Mr. Bayard, secretary of state, to Mr. Winchester, November 28, 1885.

The remarkable point in this case is that the applicant did not apparently claim protection as against the country of which his father was a citizen, but on general principles as a resident of Switzerland demanded a passport for protection in foreign countries as a citizen of the United States.

WITH GERMANY. An interesting case is that of one Hans. He was a posthumous child; his father was not naturalized but had acquired a permanent residence during four years' stay prior to his death. Soon after the death of the father, the mother took the son to Germany, where she resided with him continuously.

He applied for protection as a citizen of the United States. The question was whether the act of the mother in returning with her minor son could change the citizenship of the son, he being born in the United States.

By marriage, the father becomes the head of the family; the wife becomes a member of the family and remains such together with the children which may be lawfully born to them. In case the father were a German and the wife an Englishwoman she would follow the citizenship of her husband as would the children. Suppose, however, that the Englishwoman had children by a former husband, an Englishman, and after his death she should marry a German; the marriage with the German would change her citizenship, but not that of her children by her former husband. Her change of citizenship by an act, would not change with it the citizenship of the children for reason that she does not legally become the recognized head of the family; in other words, the death of the husband does not change her relation to the family as that of member to that of head of the family. Bluntschli Voelker Recht, § 366; Von de Bar, § 31; 1 Foelix, pp. 54, 55, 94.

The son was in Germany at the time of his application for protection as against the demands of the German authorities to perform military duty as a subject of Germany.

It was held that, "As he is now in Germany the question is one which, if military service be insisted on, must be presented to the German government for consideration, and their views heard before this depart-

ment can express any final determination in this relation. Mr. Bayard, secretary of state, to Mr. Liebman, July 9, 1886; Lamar vs. Mican, 112 U. S. 452.

With Germany. It was laid down by Mr. Evarts, secretary of state, to Mr. White, June 6, 1879, as a rule, that children born in the United States, of former Germans naturalized in the United States, though taken back to Germany for a few years during minority and having returned to the United States during minority, were citizens upon reaching majority if they elected to become such.

This rule would hold so far as concerns the laws of the United States, provided the father did not change his citizenship by re-acquisition of his former German citizenship. If the father did so during the minority of his children, this act would carry with it a change in the citizenship of his children so far as concerns the German law; the children must then, in order to become citizens of the United States, comply with the statutes of naturalization and take up a permanent residence in the United States.

The condition on this rule is confirmed by Mr. Frelinghuysen, secretary of state, to Mr. O'Neil, August 8, 1882, wherein it is laid down: "A child born in this country to a German subject, is subject, if he put himself in German jurisdiction, to German laws." That is, provided the father, after his naturalization in the United States again becomes a subject of Germany. It follows without saying, that if the father never was naturalized in the United States, and while in the United States, had children born to

him, that the children follow the father's nationality, and upon return to Germany, the children become immediately subject to German law. This is laid down by Mr. Frelinghuysen to Mr. Cramer, June 4, 1883: "A child born in the United States to a foreign father, when taken by his father abroad, acquires the father's domicile and nationality."

With Germany. The case of Steinkauler. He was born in the United States. His father was a naturalized citizen; a native of Germany. Four years after the birth of his son, which was in 1855, he returned with his family, including his son, to Germany, and continued to reside there until 1875, when the German government called upon the son as a German subject to perform military service.

It was held, that "under the treaty as between the United States and the German government, and according to the rule declared in section 1999 of Revised Statutes, the father renounced his naturalization in America, and become a German subject. By virtue of the German laws, his son being a minor, also acquired German nationality. Having at the same time an American nationality by birth, he had thus a double nationality. 15 Op. Atty-Genl. 15.

Under this rule he followed the citizenship of the father. By the treaty which was ratified in 1868, between Germany and the United States, the father was presumed, after a continued residence of two years, to have renounced his American citizenship. This presumption of change in citizenship as to the father carried with it a change in the citizenship of the son. The son was held to perform military ser-

vice as a subject of Germany. The recognition of his claim as a citizen of the United States was denied him. This is borne out of the opinion of the attorney-general, who decided that the son had a double nationality. This double nationality may or may not be convenient. The position is not sustained by the authorities on international law. Either he was or was not a citizen of the United States. If he was a citizen of the United States, he was a citizen of the United States all the world over, in Germany, as well as elsewhere. Nothing short of this can be citizenship in the United States. The dictum that Steinkauler was a citizen of the United States when in the United States, and a subject of Germany when in Germany, is certainly a remarkable phase of American citizenship. This relation is denied in particular by the German authorities.

Bluntschli Voelker Recht, section 373, states: "The rule is, every individual can be bounden as citizen to only one state."

Chief Justice Cockburn: "Under a sound system of international law such a thing as a double nationality should not be suffered to exist."

Phillimore International Law: "An individual can have only one allegiance."

Field International Law: "One cannot be at one and the same time a citizen of two states."

Cicero pro Balbo: "According to our civil law no one can be a citizen of two cities at the same time."

The rule is well laid down by Phillimore International Law, volume I, page 38: "In this connection, that the son as long as he remains a minor follows the

citizenship of the father, whether the citizenship be original or acquired by naturalization."

Again, by Vattel in his Law of Nations, page 102, and Foelix's Droit Internat. Privé.

WITH GERMANY. Case of George Weigand. Born in the United States in 1850. His father was a native of Germany, and was a naturalized citizen of the United States, at the time of his son's birth. In 1871, the father and son visited Germany, and took up their residence in Cologne. In 1881, the son was summoned to do military service. He claimed protection and it was held by the German government after investigation, that Weigand could not be held. For. Rel. of U. S., 1882, p. 187.

WITH GERMANY. Case of Charles William Scheibert. He was born in the United States in 1856. His father had emigrated from Germany to the United States in 1856; became a naturalized citizen in 1864, and in 1869 with all his family returned to Germany, where they remained and were living in the year 1882, when the son Charles William was suddenly impressed into the military service. Protection was denied to him by the government of the United States because it proved upon investigation that the father had applied for naturalization as a German citizen and that the same had been granted to him. It was held that he was a German citizen. For. Rel. of U. S., 1883, p. 344.

WITH GERMANY. The case of John Charles Blesch. He was born in the United States of parents, natives of Germany, but naturalized citizens of the United States, in the year 1851. In 1859 he went to Germany

with his mother, his father having died in the meantime. In 1877, he asked protection as an American citizen from the United States. It was held that by his conduct neither he nor his mother by her conduct contemplated a return to the United States and the protection was, therefore, denied him. The rule laid down in Steinkauler's case was held to be applicable. It is difficult to perceive how it could be. Certainly any change in the citizenship of the mother would not affect the citizenship of the son. His father had died in the United States. The son became a citizen of the United States as the son of a father who was an American citizen at the time of his son's birth. In Steinkauler's case the father returned with the son; the father was a native of Germany and as such, having been naturalized in the United States, came within the provisions of the treaty of 1868. In the case of Blesch, no provision of the treaty is applicable. For. Rel. of U. S., 1877, p. 247.

With Germany. The case of Mrs. C. W. Kroemer. Both she and her husband were natives of Wurtemberg. They were married in the United States and their children were born there. Her husband died in the United States, and she with her minor children resumed her residence in Wurtemberg in 1865. She preserved no domicile in America and paid no taxes. She owned property and paid taxes in Wurtemberg. She applied for a passport for protection for herself and her children, stating that she should, at some time, return to the United States for the benefit of her children. It was held that the passport could not be granted and remarked that the purpose was to prevent

the military authorities putting her sons in the army. For. Rel. of U. S., 1877, p. 247.

The ruling would seem to be correct. The children were born in America of parents aliens and subjects of a foreign power. The father had taken no steps to become a citizen of the United States. They were children of German parents born abroad, and under the German rule followed the citizenship of the father.

WITH GERMANY. Case of David Lemberger. He was born in the United States in 1862. His father was a native of Germany and in 1860 became a naturalized citizen of the United States. In 1870 he returned to Germany and there took up his residence, when in 1884 he was forced into the army to perform military service; but was subsequently released. Very soon thereafter he was given the option by the German government to become a German citizen or submit to expulsion from the country on the ground that he belonged to that class of Germans who use their American citizenship as a means for evasion of military duty. The question was determined on other grounds and he concluded to become a German citizen. For. Rel. of U. S., 1855, pp. 429, 436.

WITH FRANCE. Case of Alfred P. Jacob. Born in the United States of French parents, he was registered in the French consulate as a French subject by his father; subsequently his father became a naturalized citizen of the United States, and when Jacob was seventeen years of age he was given an American passport and then went to France, where he was impressed into the service as a French soldier and served for the term of four years. He was desirous that his name

should not remain on the French rolls after his service and applied to have it withdrawn. The French authorities took the position that Jacob's father having been a Frenchman when he was born, that Jacob followed his nationality until it had been decided by a court of competent jurisdiction in France, that the naturalization of the father in the United States effected a change in the citizenship of his son.

The government of the United States ruled that he was an American citizen, "his status as such dating from his father's naturalization." F. R. of U. S., 1883, p. 145.

With France. The case of Charles Drevet. His father came to the United States as a French citizen in 1852. In 1858, his father declared his intent to become a citizen of the United States. In 1859 he married an American lady. In 1860 he returned to France. In 1869, he returned to the United States and took out his second papers and shortly afterward resumed his residence in France. The son was born and always resided in France. Neither the son nor the father ever expressed any intention of residing in the United States.

He claimed protection, which was denied him. It was held that he was not entitled to recognition as a citizen of the United States. Mr. Bayard, secretary of state, to Mr. McLane, July 4, 1885.

The refusal was undoubtedly based on the clause, "dwelling in the United States," which the son had never done.

With France. The case of Eugene Albert Verdelet. He was born in France. His father had resided

in the United States thirty-five years and in 1853, became a naturalized citizen of the United States. In 1859 he returned to France where the applicant, his son, was born. It was held he was not entitled to protection from the United States, the reasons being that he had always resided in France and failed to express any intention of coming to the United States to reside, although property interests may render it necessary for him to visit the United States at some future time. Mr. Frelinghuysen, secretary of state, to Mr. Morton, November 9, 1883.

In connection with this case another point was considered. Verdelet, when born, was born as the son of a naturalized citizen of the United States, residing in a foreign country, and in this case in the country of his origin.

The Revised Statutes, section 1993, declare children born out of the limits of the United States, whose fathers were or may be at the time of their birth, citizens of the United States, to be citizens of the United States.

This statute is held to mean that the legislation of the United States should not be construed so as to interfere with the allegiance which such children so born owe to the country of their birth, while they continue within its territory. Under this, if the French government should see fit to hold Verdelet as a citizen of France for reason of birth within its territory, it might do so, and the government of the United States could not interfere with such a claim, if made by the French government upon him.

WITH FRANCE. In the case of a child born of

French parents in the United States who with his parents returned to France during his minority, it was held that after majority, having remained in France, he could not claim protection from the United States. Mr. Evarts, secretary of state, to Mr. Noyes, December 31, 1878.

With Austria. The case of Francois Heinrich. Born in the United States of citizens of Anstria, and while temporarily sojourning in the United States. When of the age of two years he was taken by his parents to the empire of Austria and there resided for twenty years, when he made a claim for protection as an American citizen. It was held that he was not entitled to protection as a citizen of the United States, so long as he remained within the jurisdiction of the Austro-Hungarian dominion. F. R. of U. S., 1873, pp. 78, 79.

Under the statute of 1866 he was born of parents subject to a foreign power. It is not claimed that this statute was retroactive in its effect and, therefore, would not be applicable, Heinrich having been born in the United States in the year 1850.

Under the statute of 1802, all persons heretofore born or hereafter born of citizens of the United States, etc., are citizens thereof, he could not be included, because his parents were Austrians.

Under the Austrian rule, a foreign born child of Austrian parents takes the nationality of the latter and is regarded as an Austrian.

The Austrian government claimed him for service in the military as a subject of Austria. This service he was ordered to perform. The protection of the

United States was rightfully denied him. He followed throughout the citizenship of his father, which the father had never seen fit to change.

With Austria. The case of Frederick de Bourry. He was born in the United States of Austrian parents and resided in the United States for five years. He then returned with his mother to Austria, where he was subsequently joined by his father. At the time of making his application for protection he was in the employ of the Austrian government. He was then three years in his majority and his father had always retained his Austrian citizenship. He had taken no steps to elect his citizenship, even if a dual citizenship was claimed, and for this reason, in connection with his conduct in Austria, it was held that he had no intent to become a citizen of the United States and protection was denied him. Mr. Bayard, secretary of state, to Mr. Lee, July 24, 1886.

It has been held that an American citizen may enter the land or naval service of a foreign government, without divesting himself thereby of his rights of citizenship. The Santissima Trinidad, 1 Brockenbrough, 478.

Therefore, by this act, he would not have lost his citizenship in the United States, if he had any.

But he was a child born to an alien in the United States, and lost his citizenship on leaving the United States, and returning to his parent's allegiance. Mr. Blaine, secretary of state to Mr. O'Neil, November 15, 1881.

He followed the citizenship of his father; his father made no change of citizenship by which to affect that

of the son; the father retained his Austrian citizenship, as did the son. It is true that he was born in the United States, but was born of parents subject to a foreign power, namely, subject to Austria, which rule extended to the son, and on this ground the refusal could have been made.

With Austria. Case of Anton Wurgletts and family. Wurgletts emigrated from Hungary in 1851 to the United States. He became a naturalized citizen of the United States in 1856, where he lived sixteen years and had children born there. He returned to Hungary in 1869 and took his children with him. Application was made for protection on the ground that the children desired to return to America, though the father did not appear to intend personally to return to America. It was held that the family had retained its American citizenship and the protection was afforded. F. R. of U. S., 1881, pp. 30, 52.

With Switzerland. The case of Robert Emden. He was born in Switzerland, of parents naturalized in the United States. He himself had never been in the United States. The date of birth was 1862. The date of the father's naturalization in the United States was 1854. Soon thereafter, he returned to his country of origin, and continued to reside there, where his son was born in 1862.

It was held: "Undoubtedly, by the laws of nations, an infant child partakes of his father's nationality and domicile. But there are two difficulties in applying the rule in the present case. In the first place, a parent's nationality, cannot, especially when produced by naturalization, be presumed to be adhered to after

a residence in the country of origin for so long a period as in the present case. In the second place, the rule as to children only applies to minors, since, when the child becomes of age he is required to elect between the country of his residence and the country of his alleged, technical allegiance. This may be inferred from the conduct of the parties.

"Applying these tests to the present case, it can hardly be said that Mr. Robert Emden's claim, to be a citizen of the United States, is as a matter of international law made out.

The protection was denied him. He was held not to be a citizen of the United States, and it was recommended that his proper course was to return to the United States and become naturalized. Mr. Bayard, secretary of state, to Mr. Winchester, September 14, 1885.

With Switzerland. The case of Joseph Speck. He was born in the United States of Swiss parents. While a minor, his father returned with him to Switzerland. It was held that his status according to well understood principles of international and municipal law, followed that of the father, until the boy reached majority. For this reason no protection was extended to him. Mr. F. W. Seward, acting secretary of state, to Mr. Fish, August 20, 1878.

With Italy. The case of John Peter Sharboro. He was born in the United States in 1852 of Italian parents; in 1860 his father became a naturalized citizen of the United States. At the time of his birth his father was a subject of Italy. He was a subject to a foreign power; the son followed the citizenship

of the father. When, however, the father became a citizen by naturalization, the act carried with it a change in the citizenship of the son, and the son thereby became a citizen of the United States. Mr. Fish, secretary of state, to Mr. Marsh, May 19, 1871.

With China. The case of John Frederick Pearson. An American citizen born of American parents in the United States, by name Frederick Pearson, lived many years in China, and did business there. While there he married a Chinese woman, contracting the marriage under a law foreign to China, by whom he had children born, of whom John Frederick Pearson was one, who inquired as to his status in citizenship; the father died in China in 1868. During his youth he was educated for a time in the United States and in England, and subsequently returned to China. The applicant was born in China; lived in China continuously, with the exception of six years' residence abroad for his education. His dress and habits were Chinese, and his inquiry was for the purpose of gaining such advantages as American citizenship would give him, by registering himself as such with the American authorities.

It was not held definitely in what relation he did stand to the government of the United States.

In viewing the subject, the opinion rendered was as follows: "The rule of law undoubtedly is, that in doubtful cases the presumption in favor of legitimacy is to control, and the conclusion, therefore, must be that John Frederick Pearson, whose rights are here investigated, being a legitimate son of Frederick Pearson by a Chinese wife, assumes his father's nationality." Op. of Wharton, F. R. of U. S., 1885, p. 172.

The first question would be, what was the law of the United States at the date of the marriage of Frederick Pearson in China to a Chinese woman; and second, what was it at the date of the birth of John Frederick Pearson.

There was at that date no law of the United States which prohibited the marriage of an American to a Chinese woman, and thus by that act of the American citizen, the citizenship of husband was conferred on his wife. This was the law of marriage with foreigners and the Chinese women were no exception.

Again there was at that date no law of the United States which prohibited Chinese from becoming citizens of the United States. Pearson's father was a citizen of the United States; as such he (John) shared the citizenship of his father.

His mother became an American citizen by the marriage and the son became an American by right of descent from the father.

With the exception of some few years' residence in the United States for education, which cannot be considered as any purpose on his part to reside in the United States, he has always resided in China, and expressed no intent to reside in the United States.

John Frederick Pearson had never dwelt in the United States with bona fide intent to affect his citizenship. He had passed the age of majority and had made no election to retain or renounce his American citizenship. It remained to be inferred and the inference must be with a view to his age at the time of his application, at this time he was thirty-two years old.

"By virtue of the treaty between the United States and China of 1844, all citizens of the United States in China, enjoy complete rights of extra-territoriality and are answerable to no authority but that of the United States." 7 Op. Atty.-Genls. 495.

If by the treaty, such children were to be held by a fiction of law to be born in the United States, the case of Pearson would seem clear at the time of his birth. Another element, however, seems to enter into the discussion; that is, does the law of China sanction the marriage of a Chinese woman to an alien? Should it not, then, by that law, the child would be illegitimate and follow the citizenship of the mother. The marriage was contracted in China, and as such was a matter of record, but not among the records of the Chinese authorities.

The claimant being in China is governed by Chinese law, if that government should maintain that the marriage was illegal. Were he in the United States, the question of the legitimacy of the marriage would be governed by the law of China affecting the capacity of the mother to enter into the marriage contract.

Should, however, the law of China not present such a marriage, then it would seem that the extra-territoriality extended to citizens of the United States there residing, would govern.

It cannot be held that subsequent legislation on the Chinese question should have any retroactive effect, only in this regard that it might prevent his election to become a citizen of the United States, the Chinese being excluded from the acquisition of that right. This legislation was in 1876. When reaching

majority, he failed to exercise the right of election, which was in 1875. Having failed to do so the exercise of the right could be denied him subsequent to the legislation as passed by Congress.

CONCLUSIONS FROM THE PRACTICE OF THE UNITED STATES.

The rule to be deduced from the practice in these cases is, that the child follows the citizenship of the parent. That the citizenship of the child follows that of the parent, and changes whenever the parent sees fit to make a change.

This rule seems from the practice to be subject to conditions precedent, which conditions are purely autonomous and are open to question as to their influence on the practice under the international common law rules.

Under sections 1992 and 1993 of the Revised Statutes of the United States, children born of parents residing in the United States, subjects to foreign powers, do not become citizens. This is in consonance with the international law rule. Should, however, the parent subsequent to the birth of the child become naturalized, then this act of naturalization carries with it a change in the citizenship of the child, as was held in the case of Jacob hereinbefore cited. Should, however, the child depart from the United States prior to the act of naturalization by the parent, then it has been held that the act of naturalization of the parent does not effect a change in the citizenship of the child unless the child has resided within the United States after the act of naturalization of the parent. This was held in the case of Hansding, hereinbefore cited, under section 2172 of the Revised

Statutes of the United States. This rule as laid down in the case of Hansding is an innovation on the practice. Contrary to the general rule that a change by the parent in his citizenship carries with it a change in the citizenship of his child, the United States cannot by a local law declare the child of one of its citizens to be a citizen of nowhere as was done in the case of Hansding. There must be a general concurrence of all states in the practice in order to establish such a rule. If the parent, Hansding's father, had lawfully departed from Germany, and had lawfully become a citizen of the United States, what was at that time the citizenship of the child? Under the German rule, the child follows the citizenship of the parent. Again, in the case of Blesch, hereinbefore cited, the question of dwelling in the United States is overcome, for he had dwelt in the United States. The refusal to protect him declared him to be a citizen of nowhere. The German government did not claim him, nor was it as against that government that the protection was sought. The government of the United States proceeded upon an inference of an intent construed from his acts, that he did not intend to reside in the United States. For this there appears to be no statute which governs.

It is well settled in the practice that every individual must be a member of some society or state. It is well defined in Field's International Code, page 130, that "a person who has ceased to be a member of a nation without having acquired another national character, is, nevertheless, deemed to be a member of the nation to which he last belonged.

"The United States has not the power to declare its members to be citizens of nowhere, and cast them upon other civilized governments for protection. The error of such declarations would be more apparent should the necessity of support arise for reason of such members becoming paupers."

Under this same rule may be brought the discussion in Emden's case hereinbefore cited, which was, that a naturalized citizen of the United States after a prolonged residence in the country of his origin loses his citizenship in the United States. For this there is no statute nor any law by which a distinction can legally be drawn between citizens of the United States. When the citizenship is lawfully acquired no destruction is possible. It is not a question of the manner, provided the acquisition is legal. The citizenship carries with it protection all the world over, and one citizen is entitled to the same protection when abroad as is every other citizen of the United States.

### CITIZENSHIP BY NATURALIZATION IN THE UNITED STATES.

Naturalization signifies the act of adopting a foreigner and clothing him with the rights of a citizen.

Every state exercises the power of determining who shall enjoy the rights of membership of the political society or body politic of which it consists, and those who are invested by the municipal constitution and laws of a country with this quality or character, and none others, are citizens of the society.

This investiture must be in pursuance of the laws of the society by which a change in citizenship can be effected.

Prior to the passage of a general naturalization law by the congress of the United States, the states in their individual capacity took it upon themselves to legislate on this question, and to prescribe the method by which membership in these respective states might be acquired.

When, however, the act of 1802 was passed, these rules as prescribed by the different states were of necessity abrogated, and naturalization was alone possible under the acts of the United States.

### EXPATRIATION.

The alien seeking citizenship by naturalization in the United States comes from a foreign society. Any rules or regulations which may confer the right of expatriation on citizens of the United States do not in any wise affect the rights of such alien to leave his country; it matters not what may or may not be the municipal rules as established in the United States. These rules do not and cannot govern the act of departure of an alien from the country of his origin, nor are they under any circumstances applicable to his case. This right to expatriate himself from the country of his origin, and his right of departure therefrom, is regulated by such rules and regulations as govern in the country of his origin. Upon the rules no tribunal in the United States can definitely pass any judgment which will be of any validity in the country where such rules are prescribed. That these rules are different in different countries is beyond a doubt, and the effect of such rules is a matter of local autonomy in each particular society.

### THE PRESUMPTION.

The presumption upon which the courts of the United States proceed is that the applicant had the right to expatriate himself, and having done so pursuant to his wishes and intent, seeks citizenship by naturalization in the United States. There is no inquiry instituted, nor is any examination prescribed either as to law or fact, as regards the right of the applicant to depart from the country of his origin. It is presumed that he is in full exercise of his rights in this regard, and no court presumes to pass upon the question. The alien simply offers himself for citizenship in compliance with the rules which govern naturalization in the United States.

### THE DECLARATION OF INTENT.

This is strictly an expression on the part of the alien of his intention to renounce his allegiance to the country of his origin, and become a citizen of the United States. It is nothing more and nothing less. It is entered upon the records of the court, and nothing further may be done by the applicant toward naturalization by which citizenship is acquired. As a matter of record, this declaration of intent so made by the applicant may raise a question of good moral character. It is open to any person or persons to answer the declaration of intent by furnishing evidence to show that the applicant is not a fit and proper person to be admitted to citizenship in the United States, and the court sitting in the case may hear the parties, and pass judgment, either allowing or disallowing the declaration of the applicant, and permitting or refusing him the right to proceed and perfect his naturalization.

A case in point is Spencer's case in 5 Sawyer, 195, where evidence of conviction of a crime more than five years prior to his application for naturalization, but after arrival of the applicant at this country, was held to be a bar to naturalization.

### OTHER PREREQUISITES TO CITIZENSHIP.

After the declaration of intention to become a citizen has been filed, the applicant shall remain in the United States for a term of years, and during that time shall sustain a good moral character.

By his acts and doings he shall attach himself to the principles of the constitution of the United States, and show himself to be well disposed to the good order and happiness of the same.

Upon these points he is to furnish two reliable witnesses, who will testify under oath in his behalf, and submit to any examination which may have reference to the applicant during his residence in the United States, from the date of his arrival to the date of the hearing on his application.

The applicant then takes the oath to support the constitution of the United States, and renounce all allegiance and fidelity to every foreign power.

### QUALIFIED NATURALIZATION.

Citizenship is not conferred until all the requirements of the naturalization laws have been complied with.

Qualified naturalization cannot exist. Such a relation would be a stultification of the rights of autonomy in the country in which such a principle was recognized. To make naturalization depend on the laws of another

country, or to await the pleasure of some foreign sovereign would work an injustice to man in his exercise of his right of removal.

Were our courts obliged to await some act or some authorization from a foreign government as a condition precedent before it proceeded to a hearing on a petition of an alien for naturalization, the effect could not be predicted, and the wrong which could thus be done would be a hardship to the applicant. Mr. Frelinghuysen, secretary of state, to Mr. Cramer, October 19, 1882.

Any pre-existing obligations to the country of the applicant's origin cannot be made subjects of inquiry. Should the applicant subsequently return, the government of the country in which he was naturalized will not protect him as against their fulfilment or punishment for default in their performance before his departure.

### EFFECT OF THE NATURALIZATION ON THE MINOR CHILDREN OF THE APPLICANT.

The principle partus sequuntur patrem is here demonstrated. The act of the father carries with it a change of citizenship; this change, by implication, carries with it a change in the citizenship of the minor children, who thereby become citizens of the United States. The children must, however, in order to become citizens upon reaching majority, by virtue of the act of naturalization of the parent, reside within the United States.

Under section 2172 of the Revised Statutes, originally enacted in 1802, a child of a naturalized

citizen of the United States, in order to become himself a citizen of the United States, must dwell therein.

The doctrine of the changing of an infant's nationality with the nationality and domicile of the father rests on the assumption that such is the will of the father, and that the change is in submission to his paternal power. 10 Op. Atty.-Genls. 329.

Children born abroad of aliens who subsequently emigrated to this country with their families and were naturalized here during the minority of their children are citizens of the United States.

A case in point is that of a Spanish subject by birth who was naturalized in the United States in February, 1876, and thereupon his son, aged twenty, who was born in the island of Cuba, applied to the state department for a passport, stating that he had resided in the United States for five years, but that it was his intention to resume his residence in the Spanish dominions, and engage in business there.

It was held that the son, being a minor at the time of his father's naturalization, must be considered a citizen within the meaning of section 2172, Revised Statutes, and as such entitled to a passport, and that the circumstance that he intended to reside in the country of his birth did not make him less entitled than if his destination were elsewhere. 15 Op. Atty.-Genls. 114.

### EXCEPTIONS TO THIS RULE.

The father must have complied with the naturalization laws in order to become a citizen, by which act the citizenship is conferred to his minor children. To

this general rule there is an exception, and probably not more than one. For example. An alien comes to the United States leaving his minor children in the country of his origin. He takes no steps to bring them to the United States during the period of time essential for compliance with the naturalization laws, and after he has been naturalized, he suffers his minor children to remain in the country from which he departed. Under these circumstances, the United States cannot undertake to assume that the citizenship of the father as acquired in the United States by him was conferred on his minor children, who had remained in the country of his origin, and also still continued to remain there. A claim by them for protection for reason of the citizenship of the father would not be accorded, not for reason of the principle that they followed the citizenship of the father, but for reason of section 2172 of the Revised Statutes.

A case in point is that of "a boy of eighteen years, who has never been out of Germany, but whose father is a naturalized citizen of and resident in the United States, is not entitled to obtain the interposition of this government to secure him from military service in Germany, nor to relieve him from being detained in Germany for that purpose." Mr. Evarts, secretary of state, to Mr. Caldwell, March 6, 1880.

Although this exception is special in its application to this case, and for the reasons given protection was properly refused, the boy being then of the age required for performance of a special obligation to the country of his origin, the same could have been avoided had the father taken him to his own place of

residence in the United States when he was of such age as to permit of his departure from the country of his nativity. It does not decide as fully as might be wished the question of citizenship; it only decides that the government of the United States would not interfere to prevent the German government in imposing an obligation which was then existing, and while he still remained within the jurisdiction of the German government.

The case of Robert Emden was this. He was born in Switzerland in 1862, and at the time of his application to the United States government for protection in 1885, he had never lived in the United States.

His father, a Swiss by origin, was naturalized in New York in 1854, but soon afterward returned to Switzerland, where he continued afterward to reside. The protection was denied, and the conclusion reached, that in order to be entitled to protection, he must emigrate to the United States, and be naturalized.

"Undoubtedly by the law of nations an infant child partakes of his father's nationality and domicile. But there are two difficulties in the way of applying this rule to the present case. In the first place, a parent's nationality cannot, especially when produced by naturalization, be presumed to be adhered to after a residence in the country of origin for so long a period as in the present case.

"In the second place, the rule as to children only applies to minors, since when the child becomes of age, he is required to elect between the country of his residence and the country of his alleged technical

allegiance. Of this election, two incidents are to be observed.

"When once made, it is final, and it requires no formal act, but may be inferred from the conduct of the party from whom the election is required." F. R. of U. S., 1885, page 811.

Although this protection may be denied, and the rule as laid down guide the action of the government of the United States, yet it does not follow, because the protection is refused as in Emden's case, that he may not be regarded as a citizen of the United States by Switzerland. The regulation which requires residence in the United States is municipal, and the acquisition of citizenship is by municipal rules prescribed by the different states; notwithstanding this, suppose that Switzerland should hold that Emden was by descent a citizen of the United States, as the son of a citizen of the United States, being born of parents residing abroad, not under the rule as laid down in 1802, but under the international common law rule.

Reverse the rule, and suppose that a citizen of the United States had become a naturalized citizen of Switzerland, and should then return to the United States, and should there reside, and his son should be born in the United States, and always reside there with the father, the United States would hold, under the rule of 1868, that he was a child born of a subject of a foreign power. This would seem to be the rule which should govern.

A son cannot be held to perform the duties incumbent on a father unfulfilled before emigration.

The case was where the son of a naturalized citizen

of the United States, who had emigrated from Spain, was called upon to perform his father's military service. The son was living in Spain, and within the jurisdiction of the government of that country, and the demand was made upon him to perform his father's services.

It was held that: "The son living in Spain, of a naturalized citizen of the United States, cannot, consistently with the laws of nations, be required by that country 'vicariously' to perform his father's military services."

EFFECT OF NATURALIZATION ON THE WIFE OF THE APPLICANT.

An alien migrates to the United States from the country of his origin with a wife born in the same country as is the applicant. He becomes a citizen by naturalization, pursuant to the rules and regulations therefor made and provided. This act confers upon his wife the same citizenship as that acquired by the husband under the laws of the United States.

The same principle governs as in case of the minor children.

The statute, however, does not declare that residence of the wife in the United States is an essential requisite to her acquisition of the rights and privileges of a citizen.

It would seem unnecessary that any particular provision should be made to meet these cases, as they seem to be provided for by implication under section 2172 of the Revised Statutes.

The change is assumed to be made in submission to the husband's paternal power.

DECLARATION OF INTENTION DOES NOT CONFER RIGHTS OF CITIZENSHIP WITHIN THE UNITED STATES.

When the applicant has filed his intention to become a citizen of the United States, by this act he has not made any change from his former allegiance; he has declared what he may do at some future date, provided no objections are entered to prevent his execution of his purpose in the courts at the final hearing on his application. This does not confer any rights; he remains subject to the laws precisely as other residents whether citizens or not within the United States, but cannot partake in the representation, or be represented in the lawmaking branch of the government. He is not entitled to the right of suffrage, which a citizen can exercise, and by the exercise of which he tacitly subscribes to the compact of government under which he lives.

Although, in some of the states, the right of suffrage is conferred on males of foreign birth, who have declared their intentions to become citizens according to the United States naturalization laws, as in Indiana, Wisconsin, Minnesota, Kansas, Missouri, Arkansas, Texas, Oregon, Colorado, Alabama, Florida and Louisiana, this must be viewed as being conferred by a mere municipal state regulation, which in itself is dangerous. Certainly, it cannot be expected that the national government would take any cognizance of this fact, in passing upon the right to protection when abroad of such an alien who would attempt to claim protection because he had declared his intent to become a citizen of the United States, and had exercised the right of suffrage in some fixed locality within the

United States. Not until the alien has been finally admitted to citizenship is he a citizen, and such only are entitled to protection when abroad. It is doubtful if in these states, by which this right of suffrage is conferred upon such aliens as have declared their intent to become citizens, carries with it the right to represent citizens of these states in the legislative branch of the local government.

DECLARATION OF INTENTION TO BECOME A CITIZEN OF THE UNITED STATES DOES NOT CONFER RIGHTS OF CITIZENSHIP WITHOUT THE UNITED STATES.

An alien having simply declared his purpose to become a citizen, and going abroad, does not take with him any right to claim protection. He may go to the country of his origin; going to that country, he simply returns as a subject of the government of that country, for he has never changed his allegiance.

Declaration of intention to become a citizen does not clothe the individual with the nationality of this country so as to enable him to return to his native land without being subject to all the laws thereof.

The rule is not upheld with the same stringency in case the applicant for citizenship in the United States goes to a country other than the one of origin.

A declaration of intention to accept nationality may give the declarant the quasi right to protection by the United States, as against a third sovereign. F. R. of U. S., 1884, p. 552; F. R. of U. S., 1884, p. 560.

Under this rule, each case must be considered with a view to two important points:

Does the applicant for citizenship depart after filing

his declaration with the intent of making his absence of a temporary character; or, does the applicant depart with the intent of making his absence of a permanent character, sine animo revertendi?

In the first instance, the government may remonstrate against any interference on the part of the government of his origin to restrain him from perfecting his naturalization. This can only be a remonstrance, and not a demand as of right, in the sense of a claim upon him as a citizen of the United States as against a claim of the government of the country of his origin, for the performance of existing duties and obligations as a citizen of that country.

As against a third and disinterested government, the claim can be made as of right, for that country can have no claim upon him different from what it has on any sojourner within its territory.

In the case of Koszta. He had declared his intention to become a citizen of the United States, and went temporarily to the territory of a third sovereign. He went to Turkey, the country of his original allegiance being Austria. While in Turkey he was arrested by Austrian officials. He went animo revertendi, and the government of the United States asserted its right as against any interference with him, in the perfection of his intent and purpose to become a citizen of the United States.

In the case of Burnato. He was a Mexican by birth; came to the United States; declared his intent to become a citizen of the United States; took up his residence in the United States, and temporarily returned to Mexico; the Mexican government held him for

military service. The interference of the government of the United States released him.

This should be taken as one of those exceptional cases, which it was possible to enforce as against Mexico, but which has not been as successfully enforced against some other countries.

The rule as laid down by Mr. Frelinghuysen as above quoted, as among the possibilities that such a claim can be successfully presented, but not as a positive certainty.

In the second instance, the case of Walsh was somewhat different. Mr. Walsh came to the United States, declared his intention to become a citizen, and immediately thereafter established himself in business in Mexico; by so doing he disrupted his residence in the United States, and failed to show an intent of maintaining a continuous residence in the United States.

It was held that he left the United States sine animo revertendi, and protection was refused him.

In the case of Abdellah Saab, a native of Turkey, who had declared his intention to become a citizen of the United States, it was held, that so far as his political rights were concerned, he could have no claim on the government in case of return to his native country. Mr. Bayard, secretary of state, to Mr. Williams, October 29, 1885; Mr. Bayard, secretary of state, to Mr. Cain, January 28, 1886.

DECLARATION OF INTENTION TO BECOME AN AMERICAN CITIZEN MAY CONFER RIGHTS TO PROTECTION IN SEMI-CIVILIZED COUNTRIES.

This rule proceeds upon the civilized relations as existing between members of the family of nations as

contra-distinguished from the barbarous or less civilized world. It is more for reason of that general protection which all civilized nations alike furnish to the inhabitants of civilized nations as against barbarians.

"Although a mere declaration of intent does not confer citizenship, yet under peculiar circumstances, in a Mohammedan or semi-barbarous land, it may sustain an appeal to the good offices of a diplomatic representative of the United States in such land." Mr. Cass, secretary of state, to Mr. De Leon, August 18, 1858.

The interference in Martin Koszta's case, proceeded in part upon these grounds. Mr. Marcy, secretary of state, to Mr. Marsh, August 26, 1853.

## FRAUDULENT NATURALIZATION.

The act of naturalization is a matter of record, and is so made by statute. The admission of the applicant to citizenship is a naturalization judgment of the court, and is so recorded. Spratt v. Spratt, 4 Peters, 393.

The record of naturalization is prima facie evidence of the facts which it recites. It is not, however, conclusive.

In the case of Moses Stern, whose certificate of naturalization recited all the facts required under the naturalization laws, it was found upon investigation, as a matter of fact, that he had not resided uninterruptedly for a term of five years within the United States.

Mr. Stern was a native of Germany; had been naturalized in the United States, and returned to

Germany. There he claimed rights, privileges and immunities, as a citizen of the United States. His claim was considered with the above result, and the protection refused. Mr. Fish, secretary of state, to Mr. Wing, April 6, 1871.

It is very often the case that certificates of naturalization bear on their face errors which are fatal; in such cases, it is within the power of the authorities who are to consider the claim to protection made under them to refuse their protection.

The same authorities can pass upon the question whether or not protection shall be accorded where the certificate of naturalization not bearing errors on the face, yet are traversed, and disputed facts arise; they must pass upon the question and ascertain the correctness of the recitals before the protection is extended. There is no other way by which to prevent fraud; for the government ought not to extend protection to those claiming under fraudulent certificates of naturalization. Mr. Fish, secretary of state, to Mr. Moran, February 16, 1877. Mr. Bayard, secretary of state, to Mr. Francis, May 20, 1885.

### THE RIGHT TO PROTECTION WHEN WITHIN THE UNITED STATES, OF CITIZENS OF THE UNITED STATES.

When once admitted to citizenship, whether by descent, by naturalization, or marriage, all citizens are equal in the enjoyment of rights, privileges and immunities when within the limits of the United States.

### THE RIGHT OF EXPATRIATION AS APPERTAINING TO CITIZENS OF THE UNITED STATES.

The act of congress, adopted July 27, 1868, is self-explanatory.

Prior to the passage of this act, the right had been declared as an existing right by the publicists. Mr. Webster, secretary of state, to Mr. Thompson, July 8, 1842, laid down the rule as follows: "The United States have not passed any law restraining their own citizens, native or naturalized, from leaving the country and forming political relations elsewhere.

"Nor do other governments in modern times attempt any such thing. It is true that there are governments which assert the principle of perpetual allegiance; yet, even in cases where this is not rather a matter of theory than of practice, the duties of this supposed continuing allegiance are left to be demanded of the subject himself, when within the reach of the power of his former government, and as exigencies may arise, and are not attempted to be enforced by the imposition of previous restraint preventing men from leaving their country."

"The individual right of expatriation being admitted, the correlative right of the state to determine what acts are to be taken as evidence of such expatriation necessarily follows — it is a necessary and inevitable corollary." Mr. Fish, secretary of state, to Mr. Davis, June 28, 1875.

Although the right of expatriation was at one time denied in this country (Williams' case, Whart. St. Tr., 652), it is now regarded as established in international law. Santissima Trinidad, 7 Wheat. 283; Portier v. LeRoy, 1 Yeates (Penn.), 371; Jansen v. The Vrow Christina Magdelena, Bee Adm. 11, 23; Talbot v. Jansen, 3 Dall. 383.

The United States recognize the right of voluntary

expatriation, subject to such limitations as congress may impose. 8 Op. 139, Cushing, 1856.

A citizen of the United States, native or naturalized, may change his allegiance, provided it be done in time of peace, and for a purpose not directly injurious to the interests of the country. 9 Op. 69, Black, 1857.

The natural right of every free person who owes no debts, and is not guilty of any crime, to leave the country of his birth, in good faith and for an honest purpose, the privilege of throwing off his natural allegiance and substituting another in its place, the general right, in a word, of expatriation, is incontestable. 9 Op. 356, Black, 1859.

The declaration in the act of July 27, 1868, chapter 249, that the right of expatriation is "a natural and inherent right of all people," applies to citizens of the United States as well as to those of other countries. 14 Op. 295, Williams, 1873.

The natural right of every free person, who owes no debt, and is not guilty of any crime, to leave the country of his birth in good faith and for an honest purpose—the privilege of throwing off his natural allegiance and substituting another allegiance in its place—is incontestable. Christian Ernst's case, 9 Op. 356, Black, 1859.

Our knowledge of international law is not taken from the municipal code of England, but from natural reason and justice, from writers of known wisdom, and from the practice of civilized nations; and they are all opposed to the doctrine of perpetual allegiance. Id.

In the United States, ever since our independence, we have upheld and maintained the right of expatri-

ation by every form of words and acts, and upon the faith of the pledge which we have given to it, millions of persons have staked their most important interests. Id.

A native born citizen of the United States, who has been naturalized in a foreign country, and thus becomes a citizen or subject thereof, is to be regarded as an alien; and he cannot re-acquire American nationality, except in conformity to laws of the United States, providing for the admission of aliens to citizenship therein. Reply to President's questions, 14 Op. 295, Williams, 1873.

If a native American can expatriate himself, he divests himself, by the very act of expatriation, as well of the obligations as of the rights of a citizen. He becomes, ipso facto, an alien; his lands are escheatable, and the rights appertaining to citizenship, once lost, cannot be recovered by residence, but he must go through the formula prescribed by law, for the naturalization of an alien born. The Santissima Trinidad, 1 Brockenbrough, 478.

Any citizen of the United States, native or naturalized, may remove from the country and change his allegiance, provided this be done in time of peace, and for a purpose not directly injurious to the interests of this government. Amther's case, 9 Op. 62, Black, 1857.

### THE PRINCIPLE OF EXISTING AND UNFULFILLED OBLIGATIONS.

In the United States by its local law, no impediment is offered to the exercise of the right of expatriation. There seem to be no obligations arising from

fact of birth, nor for reason of citizenship which must be performed before the emigrant from the United States can lawfully depart, the failure to fulfill which obligation would entail upon the emigrant on return to the United States a punishment. There is no prescription by which it is set forth in what manner the departure shall be made. No permission is requisite; no license is granted, and no record of departures and returns is kept by which to ascertain the motive or the intent of the emigrant in leaving the country.

### THE MEANING OF THE TERM "EXPATRIATION."

The act of expatriation includes not only emigration but also, naturalization. Under this rule the act of departure in itself is emigration; if subsequent to the departure the emigrant becomes naturalized in a foreign country he then expatriates himself; thus by expatriation he has lost his citizenship in the United States. By the simple act of emigration the emigrant does not lose his citizenship. 9 Op. Atty-Genls. 356.

### THE RIGHT OF EXPATRIATION AS RECOGNIZED BY TREATIES BETWEEN THE UNITED STATES AND OTHER COUNTRIES.

What are treaties?

By the law of nations a treaty is a mutual pledge of faith between sovereign powers. 1 Vattel, Law of Nations, book 2, chapter 12.

It is a law under the constitution of the United States.

All treaties made, or which shall be made under the authority of the United States, should be the supreme law of the land. 1 Kent's Com. 162.

It is made by the president of the United States, provided two-thirds of the members of the senate present concur.

A treaty of naturalization between the United States and a foreign power does not yield to an act of congress. It supersedes existing statutes on the same subject so far as the existing statutes were applicable to rights as between the citizens of the sovereign powers contracting. Mr. Fish to Mr. Cushing, July 20, 1876, and Feb. 13, 1877. An abrogation of such a treaty places the statute existing prior to the ratification of the treaty again in force as regards the rights of the citizens of the contracting parties.

As between foreign and independent sovereign powers, recognized in the family of nations, the stipulations in the treaties are held to be declarations of the law of the land which govern the subject-matter to which the treaties refer.

The decision in Turner vs. The American Baptist Missionary Union, that a treaty with Indian tribes has the same dignity and effect as a treaty with a foreign power, being a treaty within the constitution, and the supreme law of the land is not in point; no more than is the rule that a statute stands on equal footing with a treaty with a foreign power.

A foreign government takes no cognizance of a municipal statute; it adheres to the treaty which is expressive of the statute, and in most countries is identical.

As between a statute and a treaty with an Indian tribe, one of the wards of the nation, the footing may be the same, but as between a statute and a foreign

independent sovereign power, the footing is different. In the latter case, the principles of international law govern and the abrogation of the treaty is to be by the same power by which it was enacted, and is to be done by notice to the other contracting party in accordance with usage as between sovereign states. The president and two-thirds of the senate present can abrogate that which it has made. Mr. Fish, secretary of state, to Mr. Cushing, February 13, 1877

THE TREATIES ENTERED INTO BETWEEN THE UNITED STATES AND OTHER FOREIGN POWERS ON NATURALIZATION AND EXPATRIATION WERE WITH THE FOLLOWING SOVEREIGN STATES.

The North German union, kingdom of Bavaria, kingdom of Wurtemberg, grand duchy of Baden, duchy of Hesse-Darmstadt, Great Britain, kingdom of Belgium, Austro-Hungarian monarchy, kingdom of Denmark, kingdom of Norway and Sweden, republic of Ecuador.

WHAT CHANGES DID THESE TREATIES MAKE ON EXISTING STATUTES, IN THEIR EFFECT ON EXPATRIATION?

The right was one which was acknowledged and recognized in the compact of government by which the government was founded. So far as the effect of these treaties is concerned on the rights of the citizens of the United States, they worked no change in their status to the government. The right to depart to the particular sovereign states with which the treaties were made, existed prior to the ratification of the treaties. The right existed to depart to sovereign states other than to those with which the treaties were made. The right is a general right and is not

limited in its exercise to any sovereign state to the exclusion of others.

The law is "citizens of the United States possess the right of voluntary expatriation subject to such limitations in the interest of the state as the law of nations or the acts of congress may impose." 8 Op. Atty-Genls. 139.

The rule in Anther's case is as follows: "Any citizen of the United States, native or naturalized, may remove from the country and change his allegiance, provided this be done in time of peace and for a purpose not directly injurious to the interests of this government." 9 Op. Atty-Genls. 62.

The act of July 27, 1868, which was merely declaratory of an existing right and of a right which was exercised, was not changed by the treaties.

### THE RIGHT OF PROTECTION WHEN ABROAD OF NATURALIZED CITIZENS OF THE UNITED STATES.

An alien who emigrates to the United States and becomes a citizen by naturalization is adjudged to be a citizen by a court of record. Judgment is entered to that effect after final hearing. The court proceeds upon the presumption that the applicant makes his application with right, so far as his relations and status to the country of his origin are concerned. These relations are not made matters of inquiry in the court in which the application for citizenship is made; they are questions which the laws of the country of the applicant's origin must determine. By the treaties on naturalization, as ratified by and between the United States and other sovereign countries, certain

rules have been adopted. These rules do not apply to naturalized citizens when abroad in countries other than those of their origin. In those countries no questions can arise of a like nature; they are equally entitled to protection with all other citizens of the United States.

"In regard to the protection of our citizens in their rights at home and abroad we have in the United States no law which divides them into classes or makes any difference whatsoever between them." 9 Op. Atty-Genls. 356.

## THE RULES AS LAID DOWN WITH CERTAIN SOVEREIGN STATES.

### The Rule Which Governs with the North German Union.

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration; saving, always, the limitation established by the laws of his original country.

### The Rule Which Governs with Grand Duchy of Baden.

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration, saving, always, the limitation established by the laws of his original country, or any other remission of liability to punishment. In particular, a former Badener, who, under the first article, is to be held as an American citizen, is liable to trial and

punishment according to the laws of Baden, for non-fulfillment of military duty.

1. If he has emigrated after he, on occasion of the draft from those owing military duty, has been enrolled as a recruit for service in the standing army.

2. If he has emigrated whilst he stood in service under the flag, or had a leave of absence only for a limited time.

3. If, having a leave of absence for an unlimited time, or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.

On the other hand, a former Badener, naturalized in the United States, who, by or after his emigration, has transgressed or shall transgress the legal provisions on military duty by any acts or omissions other than those above enumerated in the clauses numbered one to three, can, on his return to the original, neither be held subsequently to military service nor remain liable to trial and punishment for the non-fulfillment of his military duty. Moreover, the attachment on the property of an emigrant for non-fulfillment of his military duty, except in the cases designated in the clauses numbered one to three, shall be removed so soon as he shall prove his naturalization in the United States according to the first article.

THE RULE WHICH GOVERNS WITH THE KINGDOM OF WURTEMBERG.

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable

by the laws of his original country, and committed before his emigration; saving, always, the limitation established by the laws of his original country, or any other remission of liability to punishment.

THE RULE WHICH GOVERNS WITH THE GRAND DUCHY OF HESSE-DARMSTADT.

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration; saving, always, the limitation established by the laws of his original country.

THE RULE WHICH GOVERNS WITH THE KINGDOM OF BAVARIA.

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration; saving, always, the limitation established by the laws of his original country or any other remission of liability to punishment.

THE RULE WHICH GOVERNS WITH THE KINGDOM OF NORWAY AND SWEDEN.

Article II. A recognized citizen of the one party, on returning to the territory of the other, remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration, but not for the emigration itself; saving, always, the limitation established by the laws of his original country and any other remission of liability to punishment.

THE RULE WHICH GOVERNS WITH THE KINGDOM OF DENMARK.

Article II. If any such citizen of the United

States, as aforesaid, naturalized within the kingdom of Denmark as a Danish subject, should renew his residence in the United States, the United States government may, on his application, and on such conditions as that government may see fit to impose, readmit him to the character and privileges of a citizen of the United States, and the Danish government shall not, in that case, claim him as a Danish subject on account of his former naturalization.

In like manner, if any such Danish subject, as aforesaid, naturalized within the United States as a citizen thereof, should renew his residence within the kingdom of Denmark, his majesty's government may, on his application, and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a Danish subject, and the United States government shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

THE RULE WHICH GOVERNS WITH THE AUSTRO-HUNGARIAN MONARCHY.

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country committed before his emigration; saving, always, the limitation established by the laws of his original country and any other remission of liability to punishment.

In particular, a former citizen of the Austro-Hungarian monarchy, who, under the first article, is to be held as an American citizen, is liable to trial and punishment, according to the laws of Austro-Hungary, for non-fulfillment of military duty.

1. If he has emigrated, after having been drafted at the time of conscription and thus having become enrolled as a recruit for service in the standing army.

2. If he has emigrated whilst he stood in service under the flag, or had a leave of absence only for a limited time.

3. If, having a leave of absence for an unlimited time, or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.

On the other hand, a former citizen of the Austro-Hungarian monarchy naturalized in the United States, who, by or after his emigration has transgressed the legal provisions on military duty by any acts or omissions other than those above enumerated in the clauses numbered one, two and three, can, on his return to his original country, neither be held subsequently to military service nor remain liable to trial and punishment for the non-fulfillment of his military duty.

THE RULE WHICH GOVERNS WITH THE KINGDOM OF BELGIUM.

Article III. Naturalized citizens of either contracting parties, who shall have resided five years in the country which has naturalized them, cannot be held to the obligation of military service in their original country, or to incidental obligation resulting therefrom, in the event of their return to it, except in cases of desertion from organized and embodied military or naval service, or those that may be assimilated thereto by the laws of that country.

THE RULE WHICH GOVERNS WITH THE REPUBLIC OF ECUADOR.

Article II. If a naturalized citizen of either country shall renew his residence in that where he was born, without an intention of returning to that where he was naturalized, he shall be held to have reassumed the obligations of his original citizenship and to have renounced that which he had obtained by naturalization.

The rule which governs with Great Britain is general and has no restrictions.

COMPARISON OF THESE RULES.

The specification made in some of these rules and the omission to specify in other of the rules do not contradict the international common-law rule that when a criminal or an emigrant, who has failed to fulfill existing obligations to his government prior to his departure, returns to the country of his origin, he must perform them regardless of his citizenship. The international common law rule must govern, and is applicable in all cases where there has been a breach of law prior to the departure of the emigrant, to which application of the rule the government of the country, in which the emigrant has become a naturalized citizen, should not object upon explanation of the existing facts in the case.

COMPARISON OF THESE RULES WITH THE RULES WHICH GOVERNED WITH THESE COUNTRIES PRIOR TO THE RATIFICATION OF THE TREATIES.

The general rule was laid down by Attorney-General Black in 1859, as follows: "In regard to the protection of our citizens at home and abroad, we

have in the United States no law which divides them into classes or makes any difference whatever between them." 9 Op. Atty-Genls. 356.

In the early practice prior to the ratification of the treaties of naturalization, two classes of cases arose, the first, punishment for wrongs committed by the emigrant prior to his departure, and second, liability to perform military duty due and unperformed before departure.

Under the first class was the case of Henry D'Oench. He migrated from Prussia, became a naturalized citizen of the United States, returned to the country of his origin, and was there held as a fugitive from justice for reason of condemnation to a punishment for violation of the Prussian law previous to his departure. It was held that the change of national character subsequent to the alleged offense does not release an offender from penalties previously incurred when legally brought within the jurisdiction of the country whose laws have been violated. Mr. Marcy, secretary of state, November 16, 1853.

The same rule was maintained as to Austria. "An Austrian subject who commits an offense against Austrian laws, and then, after becoming a naturalized citizen of the United States returns voluntarily to Austria, cannot rightfully set up his citizenship in the United States as a bar to a prosecution in Austria for such an offense." Mr. Marcy, secretary of state, to Mr. Jackson, April 6, 1855.

In a case with the kingdom of Hanover, the following rule was laid down: "The liability of a citizen of the United States before the courts of Hanover,

cannot depend upon the question whether he is a native or naturalized citizen, but upon the question only whether he has committed any offense against Hanoverian law. Expatriation is no offense, and we cannot permit an unreasonable distinction to be made between different classes of our citizens." Mr. Cass, secretary of state, to Mr. Wright, December 9, 1859.

Under the second, the rule is laid down as to the duty to perform military service as follows: "The Prussian government requires of all its subjects a certain amount of military service. However onerous this may be, it is purely a matter of domestic policy in which no foreign government has a right to interfere," Mr. Everett to Mr. Barnard, January 14, 1853.

It is well known that most of the German states require of their subjects a certain amount of military service. If they emigrate before they perform it, and becoming naturalized abroad, return for any purpose to their native country, they are still liable to perform the service. Mr. Morey, February 17, 1857.

In order to entitle a naturalized citizen's original government to punish him for an offense, this must have been committed whilst he was a subject, and owed allegiance to that government. Mr. Cass, July 8, 1859.

European governments have maintained that the obligation to perform military service devolves on every subject as descendant from his parent, the fulfilment of which duty is in the future, and when the age is reached by the subject for the performance of the duty, the authorities make the demand on the subject. This demand once made holds the subject until he is

released therefrom, which may or may not happen, the power being discretionary in the government, and in individual cases it may or may not exercise the same. The cases are few in which the release is granted, and where property can be found in the country which may belong to the subject, or which may fall to the subject by the laws of inheritance, the same is sequestered and held by the government; or, in cases where none such is found, a fine is imposed by due process of law in favor of the government, which may be abated when the subject is found in the country, and the subject held for military duty or at times released wholly therefrom upon condition of his departing from the country. All of these proceedings are matters of domestic concern with which foreign governments have no rights of interference, and yet they have given rise to much discussion, all of which could have been avoided had the subject followed the rules by which his departure would have been sanctioned, which are to seek from his government upon application in the prescribed form a certificate of emigration.

The effect of the certificate of emigration is to legalize the departure and conditionally release the subject from the performance of military service. The release is not absolute, the practice being that an emigrant who, in good faith, departs from his native country, does so for the purpose of founding a home elsewhere, not to remain away temporarily, or to make use of the certificate solely for the purpose of avoiding military service, and with the belief that having so done and having clothed himself with a citizenship in some