NATURALIZATION

AND

NATIONALITY IN CANADA;

EXPATRIATION AND REPATRIATION

OF BRITISH SUBJECTS;

ALIENS, THEIR DISABILITIES AND THEIR PRIVILEGES IN CANADA.

THE NATURALIZATION ACT, CANADA, 1881,
WITH NOTES, FORMS AND TABLE OF FEES

TO BE TAKEN BY

COMMISSIONERS, JUSTICES OF THE PEACE, NOTARIES PUBLIC, STIPENDIARY AND POLICE MAGISTRATES, CLERKS OF COURTS, REGISTRARS AND OTHER OFFICIALS,

WITH

APPENDIX CONTAINING TREATY, ETC., ALSO, NATURALIZATION LAWS OF UNITED STATES, WITH FORMS, ETC.

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"There is no right or function which we exercise as free citizens in which we do not desire you to participate, and with this civil freedom we equally gladly offer you absolute religious liberty. The forms of worship which you have brought with you, you will be able to practice in the most unrestricted manner, and we confidently trust that those blessings which have waited upon your virtuous exertions in your Russian homes will continue to attend you here; for we hear that you are a sober-minded and God-fearing community, and as such you are doubly welcome amongst us. In the name then of Canada and her people, in the name of Queen Victoria and her Empire, I again stretch out to you the hand of brotherhood and good fellowship, for you are as welcome to our affection as you are to our lands, our liberties and our freedom. Beneath the flag whose folds now wave above us, you will find protection, peace, civil and religious liberty, constitutional freedom and equal laws."—*Speech of His Excellency Earl Dufferin to Immigrants of Foreign Nationality settled in Manitoba, August*, 1877.

"There is no reason ultimately to doubt that the population attracted to you (the people of British Columbia) as soon as you have a line through the mountains, will be the population which we most desire to have—a people like that of the old Imperial Islands—drawn from the strongest races of Northern Europe, one that with English, American, Irish, German, French and Scandinavian blood shall be a worthy son of the old mother of nations." —*Speech of His Excellency the Marquis of Lorne, at Victoria, B. C.*, 1882.

Table of Cases.

CORRIGENDA.

PAGE				
6.	note (*h*) *for*	" note "	*read*	" vote. "
42.	line 27, "	" 8 "	"	" 9."
76.	note "	" in Appendix "	"	" p. 94."
77.	" "	"	"	" p. 111."
78.	" "	"	"	" p. 111."

84. line 21, the pronouns "its" and "it" as relating to the word "oaths" in the first line of the section occur in the original statute; But see C. S. C. c. 5, sec. 6, by which words importing the singular number are to include more things of the same kind than one.

101. line 19, *for* " 1878 " *read* " 1870."

PREFACE.

The decennial census, 1881, showed the population of foreign nationalities resident in the Dominion of Canada to be 124,369, which has since been increased by many thousands, and new accessions are constantly arriving. They come from the United States, from Norway and Sweden, Denmark, Holland, Germany, France, Russia, Italy, China, and other parts of the world; and, unlike those who come from the British Islands, and other British possessions, who are our fellow-subjects, they are the subjects or citizens of foreign powers, and not entitled to the privileges of British subjects in this country unless they become such by naturalization. Upon becoming settled, especially those with families, they learn the advantages of being placed upon the same footing as native-born subjects, and large numbers in various parts of the Dominion annually become naturalized. And it is more than probable that under the new law, which admits of denaturalization, larger numbers will seek naturalization than previously, as the scruples which some have had against abjuring their country or sovereign have been met by provisions of the new law. This law embodies the principle "*that it should be free to every one to expatriate and denationalize himself, and to transfer his allegiance to another country.*" (p. 56.)

To persons contemplating naturalization or desirous of obtaining the benefit of other provisions of the Act, as well as to those who, in the discharge of professional or official duties, may be called upon to advise or aid them in the formalities of the law, it was thought a book containing

in convenient form, the necessary information, forms and directions collected from various sources, together with the Act itself accompanied by such observations as would tend to elucidate the same, would be a work of practical utility. And in the small work now respectfully offered, the author trusts he has in same useful measure accomplished the object in view.

The law of the United States, and forms in use there, have been added, chiefly for the benefit of persons in Canada who may contemplate becoming citizens of that country, the government of which is in accord with that of Great Britain upon the leading principles of the Act as will be seen by reference to the treaty and convention in the Appendix.

The author acknowledges his obligations to the various eminent authorities cited in the following pages.

A. H.

Toronto, *July, 1884.*

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NATURALIZATION OF ALIENS.

INTRODUCTION.

AMONG the enumerated classes of subjects, which in the distribution of legislative powers by the British North America Act, (sec. 91), were assigned to the authority of the Dominion Parliament, we find as class 25, "NATURALIZATION AND ALIENS."

"THE NATURALIZATION ACT, CANADA, 1881," is the same in principle as the Imperial Act, entitled "The Naturalization Act, 1870," which having been amended by two subsequent Acts, is now to be cited as "*The Naturalization Acts*, 1870 *and* 1872;" the leading principle of the English Act being the recognition of the right of expatriation, or in other words, the abrogation of the old legal rule—that no one can disclaim the country of his nativity, or abjure the bond of allegiance. Not only are the two statutes the same in principle, but those sections of the Canadian Act, relating to the new features of the law are copied from the Imperial Act with such changes only as were necessary to adapt it to the Dominion of Canada.

As to that part of the Act (which, however, does not necessarily belong to a naturalization law) conferring on aliens the same capacities with regard to real estate which are enjoyed by British subjects, Canadian legislation has been in advance of the English, the latter having been first introduced by the Act referred to of 1870, while in Canada a similar law has existed since 1849, (12 Vict. cap. 197). (*a*).

(*a*) *Murray* v. *Heron*, 7 Gr. 177.

Public attention had frequently been more or less forcibly directed to the inconvenience arising out of double nationality, and the practical difficulties attending the doctrine of indelible allegiance, but never with greater urgency than during the American civil war, shortly after which the agitation resulted in the subject being taken up in both the U. S. Congress and the Parliament of Great Britain. A Royal Commission was appointed in England to inquire and report on the Laws of Naturalization and Allegiance, which in due time presented an elaborate report covering the whole field, together with an Appendix, in which was collected a mass of information as to the laws of different nations and all other matters pertinent to the inquiry, with recommendations looking to a practical solution of the question, which report became the foundation of the Bill afterwards introduced into Parliament. The light thus thrown on the subject was increased when Sir Alex. Cockburn, Lord Chief Justice of England, gave to the public a treatise, published between the date of the report and the introduction of the Bill into Parliament, in which he specially dealt with the matter of the Report and Appendix, and also gave his own opinion and suggestions as to the requisite legislation—a treatise the great value of which was acknowledged by Lord Chancellor Hatherly in speaking on the measure in the House of Lords. When, in addition to this, we refer to the speeches made by the high authority just mentioned, and by other eminent jurists and statesmen, upon the Bill during its progress through Parliament, we have a volume of light by which to read our Canadian statute which, in the absence of judicial decisions expressly construing a statute, is seldom to be obtained.

In the following pages, therefore, will be found quotations, from the speeches referred to, as well as from other authorities bearing on the subject; which have been made under the impression that when English legislation is extended to

this country through our own Legislatures, not only for the utility of the law itself, but partly, it may be, in pursuance of a policy to establish uniformity of law throughout the Empire, we are, in a sense, justified in drawing from the original source of those laws such aid towards their interpretation as may be obtainble from that source.

As to the Act itself, providing a simple and inexpensive method of naturalization applicable to the whole Dominion and opening wide the door of British citizenship to persons of foreign birth who come to settle in Canada, without, at the same time, requiring them to abjure the country of their nativity,—leaving them free to throw off the acquired, and resume their original nationality, at their option,—such a law is exceedingly opportune at a time when emigration has set in, and is continuing in a constant stream from all other nations to the British half of North America.

The Act, though assented to on the 21st March, 1881, did not come into force until 4th July, 1883, by Proclamation of the Governor-General, in pursuance of sec. 2 of the Act.

Proceedings were taken under it in Manitoba before that date on the erroneous impression that it was already in force. These proceedings were legalized by the Act of 46 Vict. cap. 31, (Can.) enacting that, all proceedings in a number of cases in Manitoba taken under the "Naturalization Act, Canada, 1881," under a misapprehension that said Act was then in force, upon which certificates of naturalization had been issued, and all certificates issued upon such proceedings were legalized, and made as valid and effectual as though the said Act had been in force.

The controversy arising out of the naturalization by one state of the subjects or citizens of another when the latter refused to relinquish its hold on their allegiance and out of

the frequent claims for protection made to governments by such persons extended over many years, but the question was at last thoroughly investigated, more especially as it related to Great Britain and the United States in 1868-70, developing much learning and research. On the part of the United States it was urged through their executive and ambassadors that the right of expatriation is the natural and inherent right of all people, and that there should be no distinction as regards the right to protection between naturalized and native born citizens; while on the part of the British government the original contract between sovereign and people was referred to, and it was insisted that the act of a foreign government in naturalizing a person was not sufficient without the consent of his own government to sever the relations between a man and his sovereign, or to divest him of his nationality of origin. To the American objections to the old rule of the English common law as to indelible allegiance it was pointed out that the same rule was law in the United States, and so recognized by the Supreme Court (*b*). Among other arguments the law of the Romans (*c*) was cited by Mr. Bancroft, United States Minister at London, as showing that the right of the individual to change his country was recognized by that law. To this Lord Palmerston rejoined that it did not appear that the passage quoted sanctioned expatriation in the sense of a voluntary abjuration of natural allegiance without the assent of the sovereign power. In the convention which was eventually entered into the right of expatriation was recognized, and the consent of the respective governments necessary to validate or perfect the act of the subject or citizen in severing his allegiance and changing his nationality was incorporated in legislative enactment, as will be seen in the subsequent pages.

(*b*) See Art. Expatriation, 3 Can. Law Times, p. 511.
(*c*) *Cic. Orat. pro Balbo.*

EXPLANATION OF TECHNICAL TERMS USED IN OR IN REFERENCE TO THE NATURALIZATION ACT AND OBSERVATIONS ON SAME.

ALIEN.—One born in a strange country, under the obedience of a strange prince or country. (Co. Litt. 128 *b*. Bracton 427 *b*.) One born out of the allegiance of the Queen—; in the United States, one born out of the jurisdiction of the United States and who has not been naturalized under their constitution and laws (*a*).

In the United States an alien, even after being naturalized, is ineligible to the office of President or Vice-president of the United States, and in some states to that of Governor. He cannot be a Member of Congress until after the expiration of seven years from naturalization. An alien can exercise no political rights whatever; he cannot vote at any political election, fill any office, or serve as a juror (*b*). He cannot in general acquire title to real estate by descent; and if he purchase land he may be divested of the fee, upon inquest of office found; but until this is done he may sell, convey or devise the lands and pass a good title. The disability of aliens in respect to holding lands are removed by statute in many of the states (*c*).

A person born in the United States before the Revolution, and remaining there was regarded here as an alien, and not entitled to maintain ejectment in this Province; nor could a person who voluntarily left the province in 1812, and came under the operation of 54 Geo. III. cap. 9 (*d*).

(*a*) 2 Kent. Com. 50.

(*b*) *Bouvier's* Law Dic. Cit. 6 Johns. 332.

(*c*) *Ibid.*

(*d*) *Doe dem Patterson* v. *De Witt*, 5 O. S. 494; *Wallace*. v. *Adamson*, 10 C. P. 338; *Wallace* v. *Hewitt*, 20 Q. B. 87; *Montgomery* v. *Graham*, 31 Q. B. 57.

The question—who are aliens, as well as the question what are their rights as such, must be governed by the same law (*e*).

An objection of alienage against the vote of a person at a provincial election on the ground that he had been born in the United States, although he resided nearly all his life in Canada was overruled, it being shown that his father and grandfather were U. E. Loyalists (*f*).

Taking the oath of allegiance, without obtaining a naturalization certificate did not entitle to vote (*g*).

There is a presumption in favor of the continuance of original status of alienage (*h*).

Aliens are variously considered by the new law, as—

1. Aliens by birth, or foreigners.

2. Aliens by expatriation; referred to in the Act as "Statutory aliens." Secs. 5, 9, 10.

3. Widows who have become aliens in consequence of marriage. Sec. 27.

4. Children of statutory aliens. Sec. 28.

5. Those who, after having obtained naturalization as British subjects, divest themselves of their *status* so acquired, by declaration of alienage under the Act. Sec. 5.

6. Those who are British subjects by birth, born either within or without Her Majesty's Dominions, but held to be subjects of a foreign state by the laws thereof. Sec. 7.

(*e*) *Corse* v. *Corse*, 4 L. C. R. 310 S. C. (1854); notwithstanding *Donegani* v. *Donegani*, S. R. 605 P. C. (1835).

(*f*) *Stormont* Hodgin's Election Cases, 42.

(*g*) *Brockville*, *Ib.* 129.

(*h*) *Ib. Shenck's* note, *Lincoln* (2) 506.

7. British subjects who became aliens by naturalization in a foreign state before the Act, and who by a declaration of British nationality, under sec. 9, sub-sec. 1, remain British subjects within Canada, but who when within the limits of the foreign state are not within Canada to be deemed British subjects.

ALLEGIANCE is the tie or ligamen which binds the subject to the king in return for that protection which the king affords the subject (Bl. Comm. 369, 370, 457); the "true and faithful obedience of the subject due to his sovereign."

It is of four kinds: (1). Natural allegiance, that which is due from all men born within the king's dominions, also defined as that which arises by nature and birth, said to be the primary allegiance. (2). Acquired allegiance, *i.e.*, by naturalization or letters of denization. (3). Local allegiance, that which is due from every alien only so long as he continues within the dominions of the English Crown. (4). Legal allegiance is that arising from taking the oath of allegiance when required by municipal laws, *e.g.* by persons on assuming office under the Crown (*i*).

Allegiance, as judicially defined in the United States, is the obligation of fidelity and obedience which the individual owes to the government under which he lives, or to his sovereign, in return for the protection he receives. It may be an absolute and permanent obligation, or it may be qualified and temporary (*j*).

BRITISH SUBJECTS.—By the common law of England every person born within the dominions of the Crown, no matter whether of English or foreign parents, and in the latter case, whether the parents were settled, or merely

(*i*) Calvin's Case, 7 Rep. 1.
(*j*) *Carlisle* v. *United States*, 16 Wall. 147.

temporarily sojourning in the country, was an English subject, save only the children of foreign ambassadors (who were excepted because their fathers carried their own nationality with them), or a child born to a foreigner during the hostile occupation of any part of the territories of England. No effect appears to have been given to descent as a source of nationality (*k*).

The common law was modified and extended by certain statutes, viz.: 25 Edw. III., stat. 2; 7 Anne, cap. 5; 4 Geo. II., cap. 21, and 13 Geo. III., cap. 21, so that up to the time of the passage of the English Naturalization Act all persons born within the dominions of the Crown, with the limited exceptions above mentioned, whether of British or foreign parents, and all persons being the children or grand-children of British parents, though born within the dominions of a foreign State, were considered to all intents and purposes British subjects, owing allegiance to and being entitled to protection from the sovereign of the British Empire (*l*).

But the *status* of natural born British subjects, which by the Acts 7 Anne, c. 5; 4 Geo. II., c. 21, and 13 Geo. III., c. 21, is conferred on children and grand-children born abroad of natural-born British subjects, is a merely personal *status*, and is not by these Acts made transmissible to the descendants of the persons to whom that *status* is thereby given, and there is no foundation for the notion that by the common law of England the posterity of a natural-born British subject, though born abroad, must be treated as British subjects forever (*m*).

It was held in Nova Scotia that the children and grand-children of natural-born British subjects, though born in a

(*k*) *Cockburn* on Nationality, p. 7, 11.
(*l*) Cockb. p. 11, and Wheaton, 205.
(*m*) *DeGeer* v. *Stone*, L. R. 22, C. D. 243.

foreign country, were not aliens, and therefore capable of transmitting real estate in that province by descent and otherwise (*n*).

British subjects are variously considered by the new law as—

1. British subjects by birth.

2. By naturalization. Sec. 17.

3. By "declaration of British nationality," made within two years after coming into force of the Act by persons naturalized in foreign state before the Act, but desirous of remaining British subjects. Sec. 9, sub-sec. 1.

4. By special certificate, where nationality as a British subject is doubtful. Sec. 18.

5. By certificate under the Act obtained by persons who were naturalized previously to the Act. Sec. 19.

6. By resumption of British nationality; *i.e.*, where a "statutory alien" obtains a "certificate of re-admission to British nationality." Sec. 20.

7. By naturalization, where the foreign state of which he was a subject, having by a convention, or by its laws, recognized the right of expatriation, by such convention or laws, requires a residence or service in Canada of more than three years as a condition precedent to its subjects divesting themselves of their status as such subjects, and an oath has been taken and certificate granted, showing residence or service for such period. Sec. 24.

8. By naturalization, where an alien, who, whether under this Act or otherwise, has become entitled to the privileges

(*n*) *Salter* v. *Hughes*, Oldright's Rep. 409.

of British birth in Canada, and desiring to divest himself of his status as subject of foreign state, takes the oath of residence or service for the period of time required by such convention or laws of foreign state. Sec. 25.

9. By re-admission within Canada of a widow, who being a natural born British subject, is deemed to be a statutory alien in consequence of her marriage. Sec. 27.

10. Children of parents naturalized within Canada, becoming resident during infancy.

11. Children of parents who have been re-admitted to British nationalty.

INDIANS in Canada are not entitled to all the privileges of British subjects unless they are enfranchised under 43 Vict., cap. 25 (Can.), or some of the previous statutes of which that is a consolidation. By section 2, sub-sec. 5, the term *Enfranchised Indian* means any Indian, his wife, or minor unmarried children, who has received letters patent granting him in fee simple any portion of the reserve which may have been allotted to him, his wife, and minor children by the band to which he belongs, or any unmarried Indian who may have received letters patent for any allotment of the reserve. Sections 99-101 specify the mode of obtaining such letters patent. Before the issue of the letters patent, the Indian must declare to the Superintendent-General of Indian Affairs the name or surname by which he or she wishes to be enfranchised and thereafter known; and on his or her receiving such letters patent in such name or surname, *he or she shall be held to be also enfranchised*, and be known by such name, and if a married man, his wife and minor unmarried children also are held to be enfranchised, and from the date of such letters patent *any Act or law making any distinction between the legal rights, privileges,*

disabilities and liabilities of Indians and those of Her Majesty's other subjects shall cease to apply to such Indian or to the wife or minor unmarried children of such Indian so declared to be enfranchised. "Any Indian admitted to the degree of Doctor of Medicine, or to any other degree by any University of Learning, or who may be admitted in any part of the Dominion to practise law either as an advocate or as a barrister, or counsellor, or solicitor, or attorney, or to be a notary public, or who may enter Holy Orders, or who may be licensed by any denomination of christians as a minister of the gospel, may, upon petition to the Superintendent-General, *ipso facto*, become enfranchised under the Act," and the superintendent may give him a suitable allotment of land from the lands belonging to the band of which he is a member. Sec. 99, sub-sec. 1.

Enfranchised Indians are entitled to vote under the "Election Act of Ontario." R. S. O., cap. 10, sec. 7, Sub-sec. '*Fourthly.*'

Citizen, as defined by Mr. Bouvier, is one who, under the constitution and laws of the United States, has a right to vote for representatives in Congress and other public officers, and who is qualified to fill offices in the gift of the people. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. (XIV. Amendment, United States Constitution). One of the sovereign people, a constituent member of the sovereignty synonymous with the people. (*Ib. Cit.* 19 How 404). A member of the civil state entitled to all its privileges. (*Ib. Cit.* Cooley. Const. Law, 77, and 92 U. S. 542, 21 *Wall* 162.

By Rev. Stats. U. S. 1873-4, Tit. XXV. Citizenship, Sec. 1992.—All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are

declared to be citizens of the United States. By sec. 1193 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.

British statesmen and writers now use the term "citizen" as the equivalent of the term "subject" (*o*), from which it may be inferred they understand that there are no substantial rights or liberties incident to citizenship in a republic, that are not attached to the character of subjects under a monarchy with free representative institutions and responsible government.

NATURALIZATION takes place when a person becomes the subject or citizen of a state to which he was before an alien. It is also defined as the act of adopting a foreigner and clothing him with all the privileges of a native born citizen. A person however cannot divest himself of his obligations to the state of which he was formerly a subject without the consent of that state; hence it was necessary before the Act, providing for expatriation, could go into force, that a convention should be entered into, containing the consent of the independent Sovereign States that their subjects or citizens might so transfer their allegiance. (See Convention between Great Britain and the United States, Appendix, *post*).

The practice in England of applying to Parliament for Acts of Naturalization had been before the Act of 1870, superseded by 7 & 8 Vict. cap. 66 (*p*): and in Canada by 12 Vict. cap. 197.

(*o*) See Debate on the Naturalization Bill, *Hansard*, 1870.
(*p*) *Cockb.* 30

Colonial Naturalization.—The Act 10 & 11 Vict. cap. 83 (Imp.) appears to recognize the power of colonial legislatures to grant naturalization operative only within the limits of the respective colonies. And in 1863, a circular was issued from the Foreign Office by Lord John Russell, to the effect that the rights conferred by colonial naturalization must be taken to be limited to the precincts of the colony. It appears, however, that in 1865, the opinion of the law officers of the Crown was taken on this subject, and that, according to their view, a foreigner duly naturalized in a British colony is entitled as a subject of the Queen in that colony, to the protection of the British Government in every other state but that in which he was born, and to which he owes a natural allegiance. And this says Sir A. Cockburn would seem to be the sounder view (*q*).

Naturalization has sometimes been used for fraudulent purposes (*r*). The case of Mr. D. is referred to who had obtained naturalization in the United States merely to evade the law of Germany his native land. He returned registering himself in the book of the police as an American citizen, thereby escaping all burdens of a subject of his native country as well as those of a citizen of the United States. Questions have frequently arisen where persons in times of war or insurrection have claimed the protection of the country in which they have been naturalized as against the country to which they originally owed allegiance, that country not recognizing the right of throwing off such allegiance.

Denization takes place in England where the crown in exercise of prerogative right grants to a person who is an alien born, letters patent called letters of denization to make

(*q*) *Cockb.* 38. See further as to Colonial Naturalization, note to Preamble of the Canadian Act. *Post.*

(*r*) *Wharton's* Conflict of Laws, 27 n. See also *Hall's* Int. Law, p. 200.

him an English subject: formerly there were several differences between denizens and naturalized subjects, principally with reference to the inheritance of land; but since the passing of the Naturalization Act these differences have become unimportant, and now that naturalization can be easily obtained, letters of denization are seldom granted.

Expatriation.—In the light of the new naturalization laws English and United States authorities give the following definition:

Expatriation takes place when a person loses his nationality, and renounces his allegiance to his native country, by becoming the subject of a foreign State. Expatriation by a subject has been made possible in the United Kingdom by the Naturalization Acts, 1870 and 1872 (*s*), and in the United States by the Act of Congress of July 27, 1868 (*t*), and in Canada by the Act of 1881 (*u*).

To be legal, the expatriation must be for a purpose which is not unlawful, nor in fraud of the duties of the emigrant in the country of his origin (*v*).

Repatriation takes place when a person who has been expatriated regains his nationality.

Under section 20 of the Naturalization Act, a natural born British subject who has become a statutory alien (that is, expatriated himself) under the Act may repatriate himself in the same way as an ordinary alien may obtain a certificate of naturalization.

(*s*) *Udney* v. *Udney*, L. R. 1 Sc. & D. App. 441.
(*t*) Vide App.
(*u*) Vide post.
(*v*) Morse, 167

FORMER STATUTES RELATING TO ALIENS AND NATURALIZATION IN CANADA.

54 Geo. III., cap. 9, 1814.—An Act to declare certain persons therein described aliens, and to vest their estates in His Majesty.

9 Geo. IV., cap. 41, U. C., 1828.—Collective Naturalization. —An Act to confer upon certain inhabitants of this province the civil and political rights of natural born British subjects.

3 and 4 W. IV., cap. 60, U. C.—Private Act for naturalization of Erb and others.

4 and 5 Vict., cap. 7, 1841, Canada.—Collective naturalization.—An act to secure to and confer upon certain inhabitants of this Province the civil and political rights of natural born British subjects.

12 Vict., cap. 197, 1849.—An Act to repeal a certain Act therein mentioned, and to make better provision for the naturalization of aliens; and 12 Vict., cap. 1; Con. Stat. Can., cap. 8.

31 Vict., cap. 66, 1868, Canada.—An Act respecting aliens and naturalization.

The Act last mentioned re-enacting, but extending to the whole confederation of provinces then recently formed, nearly all the provisions of the previous statutes, was expressed to be for the purpose of making "one uniform provision" for the whole Dominion of Canada with respect to naturalization.

The preamble was that the laws in force in the Provinces of Ontario and Quebec, in Nova Scotia, and in New Brunswick, providing for the naturalization of aliens, were various, and local and limited in their effects, and that it

was expedient that one uniform provision should be made for Canada with respect to naturalization of aliens, saving always the rights, titles, and claims of all persons according to the laws of each province, at the time of the passing of the Act, and that it was also expedient to provide that the benefits theretofore obtained by any person by naturalization in any part of Canada should thenceforth extend to and be available for such person in every other part of Canada. It then provided that persons already naturalized were to be entitled to privileges equal to those conferred on persons thereafter to be naturalized under the Act (Sec. 1), in effect extending the privileges of British birth acquired by any prior provincial naturalization to the whole Dominion.

Also that alien born women married to British subjects were to be deemed British subjects. Sec. 2.

The common naturalization of aliens was then provided for, conditions precedent being specified, and formalities being prescribed.

31 Vict., cap. 22 (1871).—An Act to amend the Act 31 Vict., cap. 66, respecting aliens and Naturalization.

Date	Imperial Statutes repealed by the Imperial Act of 1870, some of which applied to Canada.
	TITLE.
7 Jas. I. C. 2	An Act that all such as are to be naturalized or restored in blood shall first receive the Sacrament of the Lord's Supper, and the oath of allegiance, and the oath of supremacy.

An Act to enable His Majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens. 11 Will. III., c. 6, (*a*.)

An Act for naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's Colonies in America. 13 Geo. II. c. 7.

An Act to extend the provisions of an Act made in the thirteenth year of His present "Majesty's reign, intituled "An Act for naturalizing such foreign Protestants and others "therein mentioned, as are settled or shall settle "in any of His Majesty's Colonies in America," to other foreign Protestants who conscientiously scruple the taking of an oath. 20 Geo. II. c. 44.

An Act to explain two Acts of Parliament, one of the thirteenth year of the reign of His late "Majesty, "for naturalizing such foreign Protestants and others, as are settled or shall "settle in any of His Majesty's Colonies in "America," and the other of the second year of "the reign of His present Majesty, "for naturalizing such foreign Protestants as have served "or shall serve as officers or soldiers in His "Majesty's Royal American regiment or as engineers in America." 13 Geo. III. c. 25.

An Act to prevent certain inconveniences that may happen by bills of naturalization. 14 Geo. III. c. 84.

NOTE.—(*a*.) 11 and 12 Will. III, (Ruff.)

16 Geo. III. c. 52. An Act to declare His Majesty's natural-born subjects inheritable to the estate of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens.

6 Geo. IV. c. 67. An Act to alter and amend an Act passed in the seventh year of the reign of His Majesty King James the First, intituled "An Act that "all such as are to be naturalized or restored "in blood shall first receive the Sacrament of "the Lord's Supper and the oath of allegiance "and the oath of supremacy."

7 and 8 Vict., c. 66. An Act to amend the laws relating to aliens.

10 and 11 Vict., c. 83. An Act for the naturalization of aliens.

Acts partially Repealed by Imperial Act of 1870.

So far as it makes perpetual the Act of 2 Anne c. 14. 4 Geo. I., c. f.—Act of Irish Parliament.—An Act for reviving, continuing and amending several statutes made in this Kingdom heretofore temporary.

The whole of sect. 47. 6 Geo. IV. c. 50.—An Act for consolidating and amending the laws relative to jurors and juries.

The whole of sect. 37. 3 and 4 Will. IV., c. 91.—An Act consolidating and amending the laws relating to juries and jurors in Ireland.

The Old Rule of Perpetual Allegiance in the United Kingdom, Canada, and the United States, considered.

The provisions of the Naturalization Act relating to expatriation have a most important bearing upon the legal condition or political *status* of Canadians as British subjects, and in conjunction with conventions entered into by the Crown with foreign states, upon our national character when abroad. The Act in effect abrogates the old rule of law, *nemo potest exuere patriam*, and concedes the right of expatriation, which was spoken of by Lord Stanley upon the debate on the bill in the Imperial Parliament as the leading principle of the bill. Before taking final leave of this time-honoured maxim which in early days did good service, but which has become in modern times of as little use as the plated armour and helmet of a knight of the fifteenth century would be on a battle field of the present day, it will be of no little advantage to consider that rule as it prevailed in England, in the United States and in Canada prior to the time of its abrogation. And it must always be borne in mind that a clear distinction is to be drawn between the proposition that allegiance is due from the subject to the Crown, or from the citizen to the sovereign power of the State, and the proposition that allegiance is indefeasible. The Act does not impair the allegiance due from the subject to the Crown, nor affect it in any degree, except in the case of those who put off their national character in the manner prescribed by the Act.

The doctrine of indelible allegiance, as connected with the national character of British subjects, had prevailed from the foundation of government, not only in England, but also in Canada and the United States.

(*a*). To refer shortly to the nature of allegiance as understood in England, it may be mentioned that although

the duty existed independently of the taking of an oath of allegiance, by virtue of what Sir Matthew Hale describes as "intrinsic allegiance" (*w*), yet such oaths were in use from the earliest times. As early as the time of King Arthur, and afterwards in the time of King Edgar, every man of the age of twelve years or upwards might have been sworn to the King in the tourn or in the leet (*x*).

An oath of allegiance was prescribed by 1 Eliz. cap. 1, to be taken by certain public persons there referred to ; and numerous statutes provided for taking such oaths.

Buckingham is made to say to the Duke of York :—

> " * * * why thou,—being a subject as I am,—
> Against thine oath and true allegiance sworn,
> Should'st raise so great a power," etc. (*y*).

The oath prescribed by the B. N. A. Act, 5th schedule, is, that "I will be faithful and bear true allegiance to Her Majesty Queen Victoria." An oath of allegiance is also prescribed by the Ontario Statute respecting public officers, R. S. O. cap. 15., more extended in form than that just mentioned.

It was said in *Calvin's* case (*z*) that it is of the essence of high treason that it is *contra ligeantem*, and the statutes relating to that crime, passed at various periods of our history, such as 25 Edw. III., cap. 2; 3 & 4 Wm. IV., cap. 4 (C. S. U. C., cap. 97), and 2 Vict., cap. 27 (L. C.), show how the breach of the duty of allegiance is regarded by the law.

So the formal language of an indictment for high treason implies allegiance as a sacred duty as follows :—" The

(*w*) *Hale*, P. C., vol. i, 67 ; and sec. 2 Inst. 121.

(*x*) *Hale*, P. C. vol. i. p. 6 ; Com. Dig. vol. i, p. 554, citing Co. Lit. 68*b*, 172*b*.

(*y*) Henry VI. Pt. ii. Act v. Sc. i.

(*z*) 7 Rep. 1.

jurors, etc., present that J. S., being a subject of our lady the Queen, not regarding the duty of his allegiance * * * and wholly withdrawing the allegiance, fidelity, and obedience, which every true and faithful subject of our said lady the Queen should and of right ought to bear towards," etc. (*a*).

And in the case of a peer of the realm, articles of impeachment for high treason recited that J. S., "being a subject of His Majesty, and having withdrawn that due obedience, fidelity and allegiance which as a loyal subject he owed, and of right ought to bear to his only true, lawful, and undoubted sovereign of this kingdom," etc. (*b*).

In *Calvin's Case* (*c*), adjudged in 1609 by the Court of Exchequer, a much quoted authority, the fundamental principles governing the question are laid down. "Ligeance" is there defined as "the true and faithful obedience of the subject due to his sovereign. This ligeance and obedience is an incident inseparable to every subject" (p. 8); and it is said to be "a quality of the mind and soul, not confined within any place" (pp. 12, 16); that it is due by the law of nature (p. 22); and that "the ligeance of the subject is of as great an extent and latitude as the royal power and protection of the king, *et è converso*" (p. 13); that the maxim was, *protectio trahit subjectionem et subjectio protectionem*; and that "power and protection draweth ligeance, and it followeth that seeing the king's power, command, and protection extendeth out of England, that ligeance cannot be local or confined within the bounds thereof" (p, 16); and it was held to be due at all times and in all countries (*d*).

(*a*) *Arch.* Crim. Pleadings (17th ed.) 20.
(*b*) *Lord Lovat's Case* (1746), Howell's State Trials, vol. xviii. p. 546.
(*c*) 7 Rep. 1, and xviii. State Trials.
(*d*) *Broom's* Com., vol. i. p. 445.

Sir M. Foster says, "Natural allegiance, namely, that which is due from all men born within the king's dominions, and which arises by nature and birth, is founded in the relation every man standeth in to the Crown, considered as the head of that society whereof he is born a member, and on the peculiar privileges he deriveth from that relation, which are with great propriety called his birthright (*e*). It is a reciprocal bond, by which the subject is held to obedience and the king to protection (*f*).

This allegiance was by the common law of England, held to be indefeasible (*g*) or perpetual, a doctrine which has given rise to much controversy, and which has been urgently assailed, especially by American statesmen, although at the same time, and until 1868, it continued to be law in the United States, as will presently be shown. Sir M. Foster, in his work on Crown Law already referred to, speaking of the privileges derived by the subject from the relation above mentioned, at p. 183, says, "This birthright, nothing but his own demerit can deprive him of; it is indefeasible and perpetual; and consequently the duty of allegiance which arises out of it, and is inseparably connected with it, is, in consideration of law, likewise inalienable and perpetual;" and he refers to a then modern case "in which this doctrine was treated by the Court as a point never yet disputed." This was the case of *Æneas Macdonald* (*h*), who was tried for high treason in the King's Bench, for having borne arms in the rebellion of 1745. It appeared that the prisoner had been brought up from early infancy in France, and that he held a commission from the French king. His counsel, in addressing the jury, spoke of the doctrine of natural allegiance as a slavish principle,

(*e*) *Foster's* Crown Law, 183 (1762).
(*f*) Com. Dig. vol. i. p. 553 cit. *Calvin's Case; Chitty* on Prerog. 10.
(*g*) 1 Inst. 129*a*; *Cockb.* pp. 63, 128.
(*h*) *Foster's* Cr. Cas. p. 59. and State Trials, vol. xviii. p. 858.

derogating from the principles of the revolution. But the Court interposed and said it never was doubted that a subject born, taking a commission from a foreign prince and committing high treason, may be punished as a subject for such treason, notwithstanding his foreign commission, and that it was not in the power of any private person to shake off his allegiance, or transfer it to a foreign prince; nor was it in the power of a foreign prince, by naturalizing or employing subjects of Great Britain to dissolve the bond of allegiance between them and the Crown. Lord Chief Justice Lee told the jury that the only fact to be tried was whether he was a subject of Great Britian, as in that case he must be found guilty. He was found guilty and received sentence of death as in cases of high treason; but received a pardon on condition of banishment (*i*).

"Nothing," said Vice-Chancellor Shadwell, in a case before him in 1847, "I apprehend can be more certain, than that a natural born subject cannot throw off his allegiance by any such acts," referring to naturalization in the United States (*j*).

And as recently as 1867 the doctrine was re-affirmed by Chief Baron Piggott and Mr. Justice Keogh at Dublin, on trying a charge of treason felony. A jury *de medietate linguæ*, consisting half of subjects and half of foreigners, was applied for, on the ground that the prisoner, though born in Ireland, was a citizen of the United States, having been naturalized there; but the application was refused, the Court ruling that according to the law of England, a law which had been administered without variation or doubt from the earliest times, he who once was under the allegiance of the English sovereign remained so forever (*k*).

(*i*) *Cockb.* 64, note *n*.
(*j*) *Fitch* v. *Weber*, 6 Hare, 63.
(*k*) *Cockb.* 50.

When the Crown has asserted, as of right, its claim to the subject's allegiance, such claim has been based on the Royal Prerogative. Thus, in 1806, Sir John Nicholl, King's Advocate, advised the government that His Majesty by his royal prerogative had a right to require the services of all seafaring subjects against the enemy, and to seize them by force wherever they should be found. "This right," he said, "had from time immemorial been asserted in practice and acquiesced in by foreign nations" (*l*).

And, in 1807, in exercise of a right—of which Sir R. Phillimore says, "Every State has the right of recalling (*jus avocandi*) its citizens from foreign countries, especially for the purpose of performing military services to their own country" (*m*)—the King's proclamation was issued, recalling the seafaring subjects referred to, and expressly denying that letters of naturalization or certificates of citizenship given them by foreign governments could in any manner divest natural born subjects of the allegiance owing to their lawful sovereign (*n*) And so, as stated by Sir R. Phillimore, the law of England "affixed until quite recently on all who were born of parents who were not enemies within its territory an indelible allegiance" (*o*).

The law of England, observed the late Lord Chief Justice of England, Sir Alex. Cockburn, asserts "as an inflexible rule, that no British subject can put off his country, or the natural allegiance which he owes to the sovereign, even with the assent of the sovereign; in short, that natural allegiance cannot be got rid of by anything less than an Act of the Legislature, of which it is believed no instance has occurred" (*p*).

(*l*) *Cockb.* 72.
(*m*) *Phill.* Int. Law, 2nd ed., vol. ii., p. 377.
(*n*) *Cockb.* 73.
(*o*) *Phill.* Int. Law, 2nd ed., vol. i. 377.
(*p*) *Cockb.* 63, 177, citing *Calvin's Case.*

(*b*). Having shown that the doctrine of indelible allegiance was the invariable law of England from the earliest times to the recent date already mentioned, it will now be shown that it became part of the law of this country at the time of its conquest and cession in 1763, and has since continued to be part of our law until the 4th July, 1883.

Upon the principle laid down in *Calvin's Case*, and referred to in other authorities mentioned, that allegiance is a reciprocal bond by which the subject is held to obedience and the king to protection, it would apparently be sufficient to show that the sovereignty of the British Crown became in fact established in this country upon the conclusion of the Treaty of Paris, 10th July, 1763, and the issue of the proclamation of the King of England which followed it in October of that year (*q*), introducing the law of England, and the appointment of a Governor,—and to argue that these latter being acts of sovereignty, the relationship of subject and sovereign, governed and governor, was then established between the inhabitants of this country and the King of England, and that from that relationship sprang at once the duty of allegiance on the part of the people of this country to the British Crown, an allegiance too of that nature alone which was known to the common law of England, and known to the Crown's prerogative—namely—an indelible allegiance.

Uninhabited countries discovered and planted by British subjects, and countries acquired by conquest and cession, are differently regarded with reference to the laws to be introduced (*r*). But those considerations would not

(*q*) *Ann. Reg.* 1763, 208.

(*r*) *Calvin's Case*, supra; *Clarke's* Col. Law, p. 4 *et seq.*; *Leith's* Black. 2nd ed. p. 33; and see *Campbell* v. *Hall*, Cowp. 204; *The Mayor of Lyons* v. *The East India Co.*, 1 Moore, P. C. 175.

necessarily enter into the question of allegiance, which depends, as we have seen, upon the relation of sovereign and subject; and in whichever manner the territory may have been acquired, as soon as it becomes part of the dominions of the Crown, the inhabitants come at once under the sovereignty of the Queen, for sovereignty is one of the essential attributes of the Crown (*s*).

"Those fundamental rights and principles on which the Kings's authority rests," says Mr. Chitty, "and which are necessary to maintain it, extend even to such of His Majesty's dominions in which the English laws do not, as such, prevail. The rights of the sovereign, which are merely local to England, and do not fundamentally sustain the existence of the Crown, or form pillars on which it is supported, are not, it seems, *prima facie* extensible to the Colonies or other British dominions which possess a local jurisprudence distinct from that prevalent in and peculiar to England. * * * * * Sovereignty is one of those essential attributes of the Crown which are inherent in and constitute His Majesty's political capacity, and prevail in every part of the territories subject to the English Crown, by whatever peculiar internal laws they may be governed (*t*).

The Imperial Act 14 Geo. III. (1774), cap. 83—entitled "An Act for making more effectual provisions for the government of the Province of Quebec in North America," while granting to the inhabitants their own law and customs of Canada as the rule of decision in all matters of controversy relating to property and civil rights, clearly shows that the relationship of sovereign and subject was then established. This Act received an additional entitling or caption at the hands of the learned revisers under whose supervision the Statutes of Canada, 1859, were

(*s*) *Chitty* on Prerog. p. 25.
(*t*) *Ibid.* .p 25.

consolidated, which is as follows:—"*Imperial enactment concerning the boundaries and constitutions of Canada and the political rights of His Majesty's Canadian subjects;*" *and* without enquiring under what circumstances the entitling of a statute may be looked at, with a view to its interpretation, it may be observed that this additional caption indicates to some extent the light in which the Act had come to be regarded by the learned revisers and by the Parliament of Canada; it is a constitutional Act, and relates to the "political rights of Her Majesty's Canadian subjects." The placing of the inhabitants of this country under this constitutional law, and defining their political rights, were acts of sovereignty. In the 5th section the inhabitants are expressly referred to as "His Majesty's subjects," and the same section grants privileges to the persons there mentioned "subject to the King's supremacy;" and by the 7th section an oath of allegiance is prescribed as a substitute for the oath prescribed by 1 Eliz., cap. 1, in which the deponents say that they "will be faithful and bear true allegiance to His Majesty King George, etc. The 8th section grants His Majesty's Canadian subjects (with exceptions there mentioned, immaterial to this argument) certain privileges as to holding and enjoying property, with their existing customs and usages relative thereto, and all other civil rights, but in "such large, ample and beneficial a manner * * * as may *consist with their allegiance to His Majesty, and subject to the Crown and Parliament of Great Britain.*" By the 9th section a further act of sovereignty is exercised in prescribing the criminal law to be enforced as the law of the Province; and the 17th section reserves to the British Crown the right to constitute Courts and appoint Judges —a further act of sovereignty, and one in harmony with the maxim of English law—that the King is the fountain of justice.

The appointment of the first Governor has been alluded to as one of the first acts of sovereignty exercised by the King of England over this country. In addition to that, it is to be remarked that the Governor represents the Queen in her political character, and in certain matters the Crown prerogatives (*u*). "They, the governors, are invested," says Mr. Chitty, "with royal authority, and exercise certain kingly functions, such as calling, proroguing, and dissolving parliament (*v*). Upon the entry, therefore, of a Governor so appointed into the sphere or province of his duties, the relation between the subject and the Crown, which draws to it allegiance, is at once established and confirmed.

It has been said that, as an incident to the tie of allegiance, the peculiar prerogative rights of the Crown may be exercised upon the subject. As to their being exercised in colonies, the learned author just quoted observes, "The Royal prerogative in the colonies, unless where it is abridged by grants, etc., made to the inhabitants, is that power over the subjects, considered either separately or collectively, which by the Common law of England, abstracted from Acts of Parliament and grants of liberties from the Crown to the subject, the King could rightfully exercise in England" (*w*).

The question whether the French, Acadian and Canadian inhabitants of this country at the time of the Conquest who might remain in the country should become subjects of the Crown of England was raised upon the discussion of the terms of capitulation between the Marquis de Vaudreuil and Major-General Amherst (Article 41), the former requesting that it should be one of the terms that such

(*u*) *Le Noir* v. *Ritchie*, 3 S. C. R. 575.

(*v*) *Chitty* on Prerog. p. 34; *Campbell* v. *Hall*, Cowp. 204, 208 (1763); *Clarke's* Col. Law, 4.

(*w*) *Chitty* Prerog. p. 33, citing *Chalmer*, Col. Op. 232-3.

persons should not be forced to take arms against His Most Christian Majesty of France or his allies, directly or indirectly, on any occasion whatsoever, and that the British Government should only require an exact neutrality of them. To this General Amherst would not assent, but wrote against it :—" They become subjects of the King," a position which he was justified in taking, as would appear from an authoritative declaration of the law in the cases next mentioned.

The rules or propositions laid down by the Court of King's Bench, (Mansfield, C.J.), in the case of *Campbell v. Hall* (*x*) may be referred to. After the Conquest of the Island of Grenada, the plaintiff being a planter and exporter of sugar, certain duties were collected of him by the defendant as collector for the King, and the plaintiff sued to recover back these moneys as having been paid without consideration, and on the ground that the previous law of the island when under French rule remained unaltered. The defendant set up a proclamation of the King of 20 July, 1764, laying the impost. Certain state papers were referred to, *inter alia*, the articles of capitulation, the Treaty of Peace of 10 February, 1763, and the proclamation under the great seal, 7 October, 1763, by which government was constituted and express power given to governors, with advice of the King's Council, to call assemblies to make laws for the government of the inhabitants. It was said that the King had a right to a legislative authority, including the levying of taxes, over a conquered country until he divested himself of it; and it was held that the proclamation laying the impost being after the introduction of English law and a constitution, was void, and that the law imposing the duty could only be made by the assembly of the island or by an Act of the Parliament of Great Britain.

(*x*) *Cowper's* Rep. 204.

In delivering the judgment of the Court, Lord Mansfield laid down the propositions mentioned, as being quite clear, and which are here given in their integrity on account of their great authority in such matters, although at the risk of a slight digression as to certain parts of them, viz. :—

1. A country conquered by the British arms becomes a dominion of the King in right of the Crown, and necessarily subject to the Legislature and Parliament.

2. The conquered inhabitants once received under the King's protection became subjects, and are to be universally considered in that light, and not as enemies or aliens.

3. The articles of capitulation upon which the country is surrendered, and the articles of peace by which it is ceded, are sacred and inviolable according to their true intent and meaning.

4. The law of the legislative government of every dominion equally affects all persons and all property within the limits thereof, and is the rule of decision for all questions which arise there. Whoever purchases, lives, or dies there, puts himself under the law of the place.

5. That the laws of a conquered country continue in force until they are altered by the conqueror; the absurd exception as to pagans, mentioned in Calvin's case, shows the universality and antiquity of the maxim. For the distinction could not exist before the Christian era, and in all probability arose from the mad enthusiasm of the crusades. In the present case the capitulation expressly provides and agrees that they shall continue to be governed by their own laws until His Majesty's further pleasure be known.

6th and last. That if the King (and when I say king, I always mean the king without the concurrence of parliament) has a power to alter the old, and introduce new

laws in a conquered country, this legislation being subordinate—that is, subordinate to his own authority in parliament, he cannot make any new change contrary to fundamental principles; he cannot exempt an inhabitant from that particular dominion as, for instance, from the laws of trade, or from the power of parliament, or give him privileges exclusive of his other subjects, and so in many other instances which might be put.

Lord Brougham observed in the case of *The Mayor of Lyons* v. *The East India Co.* (*y*) that it cannot be said that the inhabitants of a conquered or ceded country continue aliens unless and until the conqueror or purchaser grants them naturalization (*z*).

But we are not without decisions of the highest authority in our own Courts bearing upon the subject. In the Court of Queen's Bench for Upper Canada, in 1845, in a case (*a*) in which the principal question before the Court was whether 9 Geo. II. cap. 36 (the Statute of Mortmain), was in force in Upper Canada, Sir J. B. Robinson, C.J., took occasion to trace the history of the introduction of the laws which governed the colony; referring to it as "a conquered or ceded country," and as "the conquered Province of Canada, ceded by the French Government by the Treaty of Paris," and "in which, therefore, after the cession, it was in the power of the Crown, independently of the legislature, to have introduced either the laws of England or any other." And again the learned Chief Justice speaks of the proclamation of October, 1763, as "introducing the law of England in general terms into countries ceded by the treaty of Paris,"—observing that it "assured to the inhabitants the enjoyment of the benefit of the laws of England" (p. 85).

(*y*) 1 Moo. P. C. 286.

(*z*) It was said in the case of *Donegani* v. *Donegani*, in the Privy Council, that "when the King of England became King of Canada, the natives of Canada became his subjects." Knapp P. C. C. 85.

(*a*) *Doe d. Anderson* v. *Todd*, 2 U. C. R. 82.

It is evident, therefore, whether we view it as part of the common law of England, or as a prerogative right of the Crown, that the doctrine of indelible allegiance became part of the law of this country at the time that the sovereignty of the British Crown was established over it.

This doctrine, however, was expressly affirmed by the same eminent authority just cited, as part of the law of this Province. In the case of *Doe d. Hay* v. *Hunt* (*b*), Robinson, C.J., delivered the judgment of the Court, and referring to the plaintiff's ancestor, observes that he "was born a British subject, being the child of British subjects born within the dominion of the British Crown, Detroit being beyond all question British territory in 1769, the time of his birth. He had not in our opinion lost his *status* of a British subject in 1813, when H. Hay died, nor indeed up to the time of his death, though he may have entitled himself to be regarded in the United States as an American citizen, and may have enjoyed all the rights of American citizenship. His claiming such rights, however openly and unequivocally. his enjoying them rightfully according to the laws of the United States, or usurping them wrongfully, if he was suffered to do so, would not deprive him of his legal character of a British subject, nor would he lose that character by disclaiming to be a British subject, or even abjuring allegiance to the Crown. I mean, that upon general principles of law it is true that he could not by any such conduct divest himself of his allegiance, and had no choice to exercise."

The learned Judge here affirmed the doctrine in the clearest and fullest manner possible, contemplating the case of a man who "had entitled himself to be regarded in the United States as an American citizen," *i. e.*, by naturalization, in-

(*b*) 11 U. C. R. 381.

cluding as it does there, the "abjuring of allegiance to the Crown." The principle is pushed to its utmost limit, and its inflexibility shown in the strongest light. This enunciation of the rule by so eminent an authority is especially worthy of note, because it was this view of the doctrine and its operation in the particular direction mentioned, which afterwards, when it had grown to be of vast importance, engaged much of the attention of the British Parliament and of many eminent jurists and statesmen who took an active interest in the measure which has since become law.

In a later case (*c*), in 1866, Chief Justice Draper refers to the rule as then prevailing in this Province, citing the case already referred to of *Æneas Macdonald* (*d*), as laying it down that, "it was not in the power of any private subject to shake off his allegiance and to transfer it to a foreign prince."

The learned Chief Justice also cited Sir W. Blackstone to the effect that natural allegiance "could not be forfeited, cancelled, or altered by any change of time, place, or circumstances."

And in the case of *Regina* v. *Lynch*, (*e*), on motion for a new trial, Hagarty, J., upheld the direction of Wilson, J., to the jury, at the trial in which the learned Judge had reiterated the rule, instructing the jury that the rule of law was, "once a British subject always one." Although that does not appear to have been material to the case, or indeed to the case which preceded it of *Regina* v. *McMahon*, the prisoner not having been placed upon trial for treason, but under a Provincial Statute for felony, yet, the question having been brought under the notice of the Court by counsel for the

(*c*) *Reg.* v. *McMahon*, 26 U. C. R. 195.
(*d*) Foster, p. 59 (1745).
(*e*) 26 U. C. R. 208.

prisoner, the learned Judges recognized the rules stated as then being the law of this Province.

(*e*) The same rule was recognized by the Courts of the United States before the recent change in their law.

In 1817, Mr. Justice Washington, an Associate Justice of the Supreme Court, expressed himself as follows:—"I must be more enlightened upon the subject of allegiance than I have yet been before I can admit that a citizen of the United States can throw off his allegiance to his country without some law authorizing him to do so." And further on, in the same case, he speaks of "the perpetual allegiance" due by a man to the country in which he was born (*f*).

In the earliest years of the Republic attention was directed to the subject. In 1795, one of the Judges of the Supreme Court of the United States said, "A statute of the United States relative to expatriation is much wanted, especially as the common law of England is by the constitution of some of the States expressly recognized and adopted" (*g*).

It is worthy of remark that as early as 1792 the example of passing an expatriation law was set by the State of Virginia, which expressly authorized expatriation as follows:—"Whenever any citizen of this Commonwealth shall" (*prescribing formalities*) "declare that he relinquishes the character of a citizen and shall depart out of this Commonwealth * * * he shall be considered as having exercised his right of expatriation and shall thenceforth be deemed no citizen" (*h*).

Upon this it may be remarked, however, that in so far as such a law as that last mentioned purported to affect citizen-

(*f*) *The United States* v. *Gillies*, Dall. 310.
(*g*) *Talbot* v. *Jansen*, 3 Dall. 154.
(*h*) Dall. p. 136 n.

ship of the United States it would have been considered *ultra vires* of a State Legislature, and that such a power belonged only to the Federal jurisdiction, which, however, did not follow that example until the year 1868, when the question was dealt with by Congress.

In the case of *The Santissima Trinidad*, in 1821 (*i*), the abstract question of the alleged natural right to dissolve the connexion between an individual and his country seems to have been brought under the notice of Chief Justice Marshall, but that distinguished Judge deemed it unnecessary to the decision of the case before him. And in the same case, on appeal to the Supreme Court, Mr. Justice Story merely referred to the question, giving no opinion upon it at that time (p. 347). But in a later case (1830) that eminent jurist, in delivering the opinion of the Supreme Court of the United States, said, "the general doctrine is that no person can by any act of their own, without the consent of the Government, put off their allegiance and become aliens" (*j*).

In 1856, Mr. Attorney-General Caleb Cushing, summing up a review of the cases relating to expatriation, said, "It is a significant fact at all events that on many occasions where the question presented itself, not one of the Judges of the Supreme Court has affirmed, while others have emphatically denied the unlimited right of expatriation from the United States" (*k*).

Chancellor Kent said, "from an historical review of the principal decisions in the Federal Courts, the better opinion would seem to be, that a citizen cannot renounce his allegiance to the United States, without the permission of

(*i*) Brackenbrough, 478.
(*j*) *Shanks* v. *Dupont*, 3 Pet. 242.
(*k*) Op. Att'y-Gen. vol. viii. p. 157.

Government, to be declared by law; and that, as there is no existing regulation on the case, the rule of the English common law remains unaltered" (*l*).

Another distinguished American lawyer, the late Attorney-General Black (formerly one of the Justices of the Supreme Court of the State of Pennsylvania), said, in 1859, in an official opinion, "the executive government have always claimed an unlimited right of expatriation for the subjects of all other countries, but when, within the last few years, the question presented itself in the Supreme Court, not one of the Judges affirmed, while several denied the right for its own citizens" (*m*).

And it would seem that the Executive gave practical effect to such denial in the case of *Elijah Clarke*, mentioned in a note to Sir F. Baker's edition of General Halleck's book "as a native of the United States who was hanged by the Americans as a traitor in 1812, though he set up the defence that he was an alien, having been domiciled in Canada" (*n*).

(*f*) After the conclusion of the Treaty of Ghent and general pacification of Europe, those British subjects who had been taken prisoners in the impressment from American ships in the war of 1812, and sent to England to be tried as traitors, were liberated; and it does not appear that the British Government has practically enforced the legal rule of indelible allegiance since that time, or indeed laid claim to the allegiance of any one who has practically expatriated himself (*o*).

(*l*) *Kent's* Comm. 12th ed. vol. ii. p. 49.

(*m*) Op. Att'y-Gen. vol. ix. p. 356; and see *Halleck's* Int. Law, edition by Sir S. Baker, p. 195.

(*n*) *Halleck's* Int. Law, p. 359, citing *Bracken. Miscell.* 409.

(*o*) *Cockb.* 30.

The learned Chief Justice Draper, in the case of *Reg.* v. *McMahon* (*p*), already referred to, takes notice of the relaxation of the rule as follows:—"It might have been objected that the more liberal views of modern times seem to recognize a right in every freeman to elect, not merely his place of domicile, but his sovereign, or government, and with his person transfer his allegiance also, and that the Court should not fetter such right with the antiquated doctrine of allegiance by birth being indestructible by the act of the subject."

The Royal Commission were unanimous as to the expediency of establishing the new principle of modern times, allowing a man to change his nationality, Earl Clarendon, the chairman, stating, in the House, that the main object of the commission had been to consider whether, as regards British subjects, they should still retain their nationality, although they may have acquired naturalization in another country. It was perfectly true, he said, that the old common law doctrine had fallen into desuetude, and long since ceased to be put in practice; but it stood greatly in the way of any legislation with regard to naturalization; and the commisioners were unanimously of opinion that it ought to be abolished. They say, he continued, quoting from the Report, that, "The allegiance of a natural born British subject is regarded by the common law as indelible. We are of opinion that this doctrine 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

(*p*) 26 U. C. R. 195.

emigration. It is inexpedient that British law should maintain in theory or should by foreign nations be supposed to maintain in practice, any obligations which it cannot enforce, and ought not to enforce if it could; and it is unfit that a country should remain subject to claims for protection on the part of persons who, so far as in them lies, have severed their connection with it" (*q*).

Lord Stanley speaking of the steps which had been taken by the previous government of which he had been a member, said, "We thought moreover that the change which we proposed, and which the bill is the means of carrying out, was not so much a concession to any American claim or demand as a step taken in our own interest, with a view of relieving ourselves from duties which we had no means of discharging, and of abandoning nominal rights which it was not in our power to make use of. The fact was that from 1796 to the present time this question has been an almost constant subject of dispute and controversy between England and the United States" (*r*).

Lord Chief Justice Cockburn, in 1868, in the treatise already referred to, reviewing and summing up the results of the labours of Her Majesty's Commissioners as set forth in their report and appendix, and referring to the naturalization by one State of the subjects of another when the latter refuses to relinquish its hold on their allegiance, remarked that this was for more than half a century a cause of discord between Great Britain and the United States, and led to controversies as to which Her Majesty's Commissioners say, "Commencing from the first establishment of the American Union, they continued with unabated vigor until the present day (1868), when the great increase

(*q*) Parl. Deb. 1870.
(*r*) *Ibid.*

in the number of persons settled in the United States had raised them to a position of the utmost importance " (*s*).

As to the numbers referred to it is stated in Mr. Wheaton's Treatise (*t*), that it was estimated in 1868 that upwards of six millions had emigrated to the United States since 1790, and that they and their descendants numbered more than twenty millions; and upon this it is remarked by that learned author that " the position of the government was therefore most anomalous, if that number of its subjects owed allegiance to foreign states." It may be mentioned that from that time up to the present the numbers have constantly increased. The census of 1880 and other statistical reports show that the United States have been receiving from European countries an average immigration of half a million per annum. By that census it appears that there were over six and a half millions of persons of foreign birth then settled in the United States; and of these vast hosts, about two and three quarter millions were born in the United Kingdom, and 717,157 in Canada.

During the American civil war, 1861-1865, when conscription Acts were passed by Congress, difficult questions frequently arose by reason of persons residing there claiming exemption from military service on the ground that they were British subjects, and invoking the protection of the British Government.

As to this, Earl Carnarvon remarked that " experience of the late civil war in the United States had shown that under the present law persons who had acquired a double nationality would desire to obtain the advantages of both, while accepting the burdens of neither " (*u*).

(*s*) Wheaton's Int. Law, 2nd ed. p. 206.
(*t*) *Cockb.* 69, 70.
(*u*) Parl. Deb. 1870.

The inconvenience of the rule was further exemplified when the protection of the United States Government was demanded by Europeans who had emigrated to the United States and become naturalized according to the laws in force there, and then returned to their native country and became amenable for acts committed against its laws. Other causes of controversy are referred to more fully in Sir F. Baker's edition of Gen. Halleck's Work on International Law, and Boyd's edition of Wheaton, and in Cockburn on Nationality.

Lord Chancellor Hatherley, in introducing the Imperial Bill in the House of Lords, was careful to point out the distinction between Naturalization and Nationality, saying as to the latter, "it could only be dealt with by treaty, when we had brought ourselves so completely *en rapport* with other nations that we could agree upon some common system of legislation. All that Great Britain could do meanwhile was to take a step in the right direction—in the direction proposed by the Bill—and thus induce other nations to act similarly" (*r*).

The controversy, so far as Great Britain and the United States were concerned, was settled in the most amicable manner. A Protocol, dated 9th October, 1868, was signed by the Minister of Foreign Affairs, Earl Derby, and Mr. Reverdy Johnson, the American Minister in London, the effect of which was to pledge the Government of the country to bring before Parliament the question of naturalization, and on behalf of the Crown, and subject to the sanction of Parliament, to accept as a basis of legislation the principle that citizens of the United States naturalized in England, and British subjects naturalized in the United States, should be reciprocally free, on certain conditions, from their

(*r*) Parl. Deb. 1870.

native allegiance" (*w*). Upon the Bill being passed,—*i. e.*, the Naturalization Act, 1870,—a treaty was signed, viz., the "Treaty of Naturalization between the British Government and the United States, of May 13, 1870," embodying the principle above referred to, establishing reciprocal relations upon the subject in question between the two nations. This was followed by a supplemental treaty, signed 23rd February, 1871 (*x*).

The question of expatriation occupied the attention of the United States Congress in 1868. Sir Alex. Cockburn (pp. 104, 105) observes that during the debate several members (Messrs. Wilson, Woodward and Pile), who took part in it, challenged attention to the fact that while the promoters of the measure were aiming their attacks against Great Britain on account of its law relating to allegiance, the American law remained unaltered; Mr. Woodward proposing to insert a clause providing for the expatriation of Americans becoming domiciled abroad, on the ground that when they (the American people) were asking foreign governments to make provisions in their behalf for expatriation of their citizens, it was quite indispensable that they should begin by providing for the expatriation of their own citizens.

On the 27th July of that year, an Act of Congress was passed with a preamble containing the following declaration:— "Whereas the right of expatriation is a natural and inherent right of all people indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign States, owing allegiance to the Governments

(*w*) Parl. Deb. 1870.
(*x*) *See* Treaties in Appendix.

thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disallowed: therefore any declaration, instruction, opinion, order or decision of any officer of the United States which denies, restricts, impairs or questions the rights of expatriation is declared inconsistent with the fundamental principles of the Republic:"—as to which declaration Sir R. Phillimore observes that it "cannot, of course, be considered as one of international law, because one State has thought proper to incorporate it into its own law" (*y*).

It, however, defines very clearly the views of Congress on the subject. And an official opinion has been given by Hon. G. H. Williams, Attorney-General of the United States, upon this declaration, to the effect that it comprehends citizens of the United States as well as those of other countries; and where a citizen of the United States emigrates to a foreign country, and there, in the mode provided by its laws, formally renounces his American citizenship, with a view to become a citizen or subject of such country, this should be regarded by the United States' Government as an act of expatriation (*z*).

As between Great Britain, with her dominions, and the United States, however, expatriation is governed by the treaties above mentioned, taken in conjunction with provisions in the Naturalization Act.

Section 8 of the Canadian Act (sec. 6, Imp. Act), authorises expatriation. A British subject may, whenever he thinks proper, by complying with this Act, cease to be a British subject, and the fact will be recognized by his own government.

(*y*) *Phill.* Int. Law, 2nd. ed. vol. iv. p. 30.
(*z*) Opin. Att'y-Gen. vol. xiv. p. 295 (1873).

And to prevent persons being taken by surprise by the change in the law the right is given to any who have been naturalized abroad previous to the passing of the Act, and who, according to the previous law, were then still British subjects, to choose within two years whether they would remain foreign subjects or reclaim their citizenship in this country (sec. 9, s-s. 1, and *see Convention, App*).

The Act contains provisions for other special cases, made in pursuance of the same principle, viz., in secs. 5 and 7; also a provision for "Repatriation" (secs. 20, 23), whereby a British subject, who has become an alien by virtue of the Act, called a "Statutory Alien," may resume his original character, and obtain a certificate of re-admission to British Nationality through as many alternations of nationality as the person may desire. Upon the debate already referred to, Earl Carnarvon "doubted whether, if the citizenship of a great country like that was really a precious possession, a man should be able to take it on and put it off as if it were an old garment *toties quoties* according as suited his convenience; and suggested that a man should not be at liberty to return to his original nationality more than once" (*a*). This suggestion, however, was not adopted; the "Statutory Alien" being entitled under the provision just mentioned to apply upon the same terms and subject to the same conditions as required in the case of an alien by birth.

In making this provision, however, as in the provision of sec. 9, s-ss. 1 and 2, above referred to, regard is had to international law, and the rights of foreign governments over acquired subjects are respected by the qualification that "within the limits of the foreign state of which the person became a subject he shall not be deemed to be a British

(*a*) Parl. Deb. 1870.

subject within Canada, unless he has ceased to be a subject of that foreign State according to the laws thereof, or in pursuance of a treaty or convention to that effect. The claims of international law are also respected in making the provision for conferring the quality of a British subject upon an alien, the qualification being added that "he shall not when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect (sec. 17), evidently because the British Government will not assume responsibility for the conduct of any acquired subjects within their country of origin unless they have been expatriated with the consent of the government of that country. But as between the United States and Great Britain provision has been made for the re-admission of citizens as subjects, as well as for their expatriation, in the treaties set forth in the Appendix.

In speaking of the national character of persons, whether native or acquired, and their right to government protection, it should not be overlooked that no distinction is to be made between subjects or citizens and aliens as to their amenability to the laws of the country in which they may be. Every nation possesses an exclusive sovereignty and jurisdiction within its own territory, and its laws affect and bind all persons who are resident within it, whether natural-born subjects or aliens (*b*). By the comity of nations, an alien is entitled to the protection of the country in which he may be; and in return for this protection owes obedience to the law, and temporary allegiance to the Sovereign or State; so as to be liable, like the natural-born subject, to the penalties which attach to the violation of the law; and

(*b*) *Story* on Conflict of Laws, 8th ed., 21; Kent, 12th ed., vol. ii., 64.

this to the extent of being punishable for treason for any attempt against the State, even though his own country should be at war with it, if he has been permitted to reside during time of war. In the United States, as well as in Great Britain, aliens are liable to trial for treasonable offences committed within the jurisdiction of the country (*c*).

In the case of some of the prisoners tried by court martial in Montreal, of which Major-General Clitherow was president, in 1838, for offences committed in furtherance of the rebellion in the Province of Lower Canada, it was urged by the Judge-Advocate that the cases fell clearly within the jurisdiction of the Court, whether the persons charged were subjects of the British Crown or citizens of a foreign State, and it appears to have been so held (*Mott's Case*, Montreal State Trials. Pub. Mont., 1839, Vol. II. 500).

(*c*) *Cockb.* 82, 139.

44 VICT., CAP. 13.

An Act respecting Naturalization and Aliens.

[*Assented to 21st March, 1881.**]

Preamble.

HER MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:— †

INTERPRETATION CLAUSE.

Interpretation.

1. In this Act, if not inconsistent with the context or subject-matter thereof,—

Disability.

"Disability" means the status of being an infant, lunatic, idiot, or married woman:

* In force 4th July, 1883. See sec. 2, and note.

† By the Imperial Act it is provided that:—"All laws, statutes and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges of naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes or ordinances in that possession. 'British possession' shall mean any colony, plantation, island, territory or settlement within Her Majesty's dominions, and not within the United Kingdom, and all territories and places under one legislature are deemed to be one British possession for the purposes of this Act." (*The Naturalization Act*, 1870. *(Imp.) sec.* 16.)

"Officer in the Diplomatic Service of Her Majesty" means any Ambassador, Minister or Chargé d'Affaires, or Secretary of Legation, or any person appointed by such Ambassador, Chargé d'Affaires, or Secretary of Legation to execute any duties imposed by *The Naturalization Act*, 1870, (Imperial) on an officer in the Diplomatic Service of Her Majesty: Officer in diplomatic service of H.M.

"Officer in the Consular Service of Her Majesty" means and includes Consul-General, Consul, Vice-Consul and Consular Agent, and any person for the time being discharging the duties of Consul-General, Consul, Vice-Consul or Consular Agent: Officer in consular service of H.M.

"Oath" includes affirmation in the case of a person allowed by law to affirm in judicial cases: Oath.

"County" includes a union of counties and a judicial district or other judicial division: County.

"Alien" includes a statutory alien: * Alien.

"Subject" includes a citizen when the foreign country referred to is a republic. Subject.

* *I. e.*, one who has become an alien in pursuance of the Act.

When this Act shall be in force.

2. This Act shall not come into force until on, from and after a day to be appointed in that behalf by proclamation of the Governor published in the *Canada Gazette*.*

Short title.

3. This Act may be cited for all purposes as "*The Naturalization Act, Canada*, 1881."

STATUS OF ALIENS IN CANADA.

Aliens may hold and transmit property of any kind.

4. Real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject: Provided,—(*a*)

(*a*). Upon the corresponding provision of the English Act, Lord Chancellor Hatherley observed that some reasons may have existed formerly from jealousy of foreigners acquiring undue influence at times, when we had monarchs with foreign possessions, or who were of foreign origin, and who might be disposed to parcel out among their favorites large tracts of land, * * * these reasons no longer

* See Proclamation *Canada Gazette* of July, 1883, declaring Act in force on, from and after 4th July, 1883.

existed, and the sooner they got rid of this invidious distinction the better.*

And the object of the provisoes, as the Solicitor-General in the Commons, in reply to objections, said, was to preserve the distinction between the rights which an alien would acquire under this clause, and those further rights which he would acquire by naturalization. If the provisoes were not inserted, the very fact of empowering aliens to hold real property might be taken as a qualification for municipal and other offices and franchises, and then there would be no need of a Naturalization Act.†

The question of suspending the operation of the Act with regard to enjoyment of property by aliens subjects of any State at war with Her Majesty during the continuance of such hostilities was left to the discretion of the Secretary of State.‡

While, prior to 1849, the law of England introduced by the Act of 1792, which incapacitated aliens from holding or transmitting real estate, prevailed in Upper Canada, in Lower Canada an alien could hold real estate, but at his death it would go to the Crown (*The Mayor of Lyons* v. *The East India Co.* 1 Moo. P. C. 267, 284); and when the fact of alienage was established according to English law, the civil consequences of it were determinable by the local law (*Donegani* v. *D.*, 3 Knapp P. C. 84). A collective naturalization of certain classes of aliens in Lower Canada was effected by 1 W. 4 c. 53 (L. C.), conferring upon them the capacities of British subjects with regard to real estate. But the Act of the Parliament of Canada of 1849 (12 Vic. cap. 197, sec. 12; C. S. C. cap. 8); together with the Act of 1865 (29 Vic. cap. 16), set the whole question at rest,

* Hansard (Imp.) 1870.
† *Ibid.*
‡ *Ibid.*

placing aliens on the same footing as to taking, holding, and disposing of real estate as British subjects in both Upper and Lower Canada. (See *Corse* v. *C.*, 4 L. C. Rep. 310, 318).

The local law of Ontario is the same as that of the Dominion in this respect (R. S. O. cap. 97).

The Naturalization Act (Imp.), sec. 2, corresponding with the above provision of the Act of Canada, has been held not retrospective, and that the Court of Chancery will enforce in favour of the Crown a trust of land for an alien created prior to the Act: (*Sharp* v. *St. Sauveur*, L. R. 7 Chy. App. 343). The Ontario Act, however, is expressly made retrospective to 1849.

Not to vote on it.

1. That this section shall not qualify an alien for any office, or for any municipal, parliamentary, or other franchise (*b*);

(*b*) Aliens cannot be elected members of Parliament. (*May's Parl. Prac.* 9th ed., p. 31; *Lex Parliamentaria*, 182; and see Form of Writ for general election; *Todd's Parl. Law*, App. xv; and *Whitelock*, vol. i, p. 2).

Aliens are disqualified from voting at elections. (See cases collected in *Hodgins' Voters' List*, 100).

It is not sufficient in case of a contested election, to swear that certain voters are aliens without giving particular evidence to show that they are aliens, and how, as by having been born in a certain place named out of the allegiance of the British Crown. (*Regina* v. *Beckwith*, 1 Pr. R. 278, 284).

Imp. Stat. 7 Geo. IV, (1826) c. 68, enabled persons naturalized in Upper Canada to be summoned to the Legislative Council of the Province and to vote at elections.

The place of a senator becomes vacant upon his becoming a subject or citizen of a foreign power. (*B. N. A. Act*, sec. 31, sub-sec. 2).

As to the disabilities of aliens in the United States, see *ante* p. 5; and *Cooley* on Constitutional Limitations, 5th ed. 38, 752; and *ante* p. 5.

To have only rights expressly given.

2. That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him;

Act not to affect dispositions made before its passing.

3. That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the coming into force of this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this Act:

As to owning ships.

4. That this section shall not qualify an alien to be the owner of a British ship (*c*).

(*c*). If any unqualified person acquires as owner any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, such interest shall be forfeited to Her Majesty (*Merchant's Shipping Act*, sec. 103, sub-sec. 3), unless such interest be acquired by death of an owner, or marriage with a female owner. (*Ibid.*, sec. 62-64).

In the debate on the English bill Lord Chancellor Hatherley, in reply to Lord Westbury as to proposal to allow aliens to become owners of British ships said, that his own opinion was that a provision to allow aliens to be registered as owners of British ships was one of all others most likely to lead us into conflict with other countries. It was not at all probable that any other country would recognize for instance, a vessel owned by a Frenchman, resident in England, as a British vessel. Difficulties would be constantly arising.

It was held in the Supreme Court, Nova Scotia, that an alien being disqualified from taking a bill of sale or transfer of a British vessel under 17 & 18 Vic., cap. 104, the agreement sued on (viz., for purchase of shares in such a vessel by an alien) could not be enforced. (*Cullen v. McFarlane et al. Geldert* and *Oxley's* N. S. Decision, S. C. 468).

An alien is not entitled to own or register a ship or vessel of the United States. (*Parson's* on Shipping, vol. i. pp. 28-9).

Declaration of alienage in cases within convention with a foreign state.

5. Where Her Majesty has entered into a convention with any foreign State to the effect that the subjects of that State who have been naturalized as British subjects may divest themselves of their status as British subjects, and where Her Majesty, by Order in Council, passed under the third section of *The Naturalization Act*, 1870, (Imperial) has declared that such convention has been entered into by Her Majesty,—then, from and after the date of such Order in

Council, any person being originally a subject of the State referred to in such Order, who has been naturalized as a British subject within Canada may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall, within Canada, be regarded as an alien, and as a subject of the State to which he originally belonged as aforesaid (*d*).

Effect of such declaration.

(*d*). It was thought desirable that a certain time after the passage of the Act should be allowed persons who had become naturalized to choose between their nationality of origin and the acquired nationality, and to enable them to become denaturalized if they should so elect. And this involving an international question, it was the subject of treaty.* (See convention or treaty between Great Britain and the United States. App.)

The British Order in Council, so far as the United States were concerned, required by the Imperial Act, section 3, from which this section of the Canadian Act is taken, was passed 17th August, 1870.† After reciting that section of the Act it proceeds:—"And whereas, on about the 13th day of May last past, a convention between Her Majesty and the President of the United States of America was duly signed at London, the ratifications whereof were duly exchanged at London, the 10th day of August, instant, whereby the subjects or citizens of the United States of

* Hansard (Imp.) 1870.

† *Hertslets*, vol. xiii, p. 967.

America, who have been naturalized as British subjects, are at liberty to renounce their naturalization and divest themselves of their status as such British subjects, provided that such renunciation be publicly declared within two years after the exchange of the ratifications of the said convention. Now, therefore, Her Majesty, by and with the advice of Her Privy Council, doth hereby declare that Her Majesty has entered into a convention with the said United States of America, to the effect that the subjects or citizens of those states who have been naturalized as British subjects may divest themselves of their status as such subjects.

Signed,—Arthur Helps."

See also sec. 9, sub-sec. 1.

Before whom such declaration may be made.

6. A declaration of alienage may be made as follows:—If the declarant be in the United Kingdom, in the presence of any Justice of the Peace; if elsewhere in Her Majesty's dominions, in the presence of any judge of any court of civil or criminal jurisdiction, or of any Justice of the Peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose: If out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

Declaration of alienage by persons being H. M.'s subjects, by birth, but also subjects of a foreign state by the law thereof.

7. Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became, under the law of any foreign State, a subject of such State, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall within Canada cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall within Canada cease to be a British subject (*e*).

(*e*). This section is in pursuance of the policy of the bill to do away with twofold nationality. Lord Penzance said it was not an infrequent case that the child of a foreign parent was born within British dominions, and from the moment of his birth he became, without any will of his own, a subject of two different countries; there were impressed on him a double allegiance and a double nationality. The converse of this case is provided for by the latter part of the section, viz., persons born out of Her Majesty's dominions who, by reason of parentage, were British subjects.* (See Form of Declaration, *post*).

* Hansard (Imp.) 1870. See further, speeches of Mr. Vernon Harcourt and Sir Roundell Palmer, *Ib.*

Juries *de medietate* abolished.

8. From and after the coming into force of this Act, an alien shall not be entitled to be tried by a jury *de medietate linguæ*, but shall be triable in the same manner as if he were a natural-born subject.

EXPATRIATION (*f*).

Alienage in Canada of British subject naturalized in a foreign State.

9. Any British subject who has, at any time before, or may at any time after the coming into force of this Act, when in any foreign State and not under any disability, voluntarily (*g*) become naturalized in such State, shall, from and after the time of his so having become naturalized in such foreign State, be deemed within Canada to have ceased to be a British subject, and be regarded as an alien: Provided,

(*f*). This section corresponds with sec. 6 of the Imperial Act as to the capacity of a British subject to renounce allegiance to Her Majesty, the words "within Canada" being inserted.

It should be free to every one to expatriate and denationalize himself, and to transfer his allegiance to another country. (*Lord Ch. J. Cockburn* on Nationality, p. 214). The leading principle of the bill was the abrogation of the old legal rule, *nemo potest exuere patriam*, an old rule of law which, however expedient and useful it may have been in other times, and in a different state of society, has become obsolete and is inapplicable in the case of a country which,

like England at the present day, encourages emigration on a very large scale. (See speeches of Lord Chancellor Hatherley and the Earl of Derby, Hansard, Imp. 1870, and *ante* 19).

(*g*). Lord Chancellor Hatherley explained that the word "voluntarily" was necessary, as follows: In several of the Southern States of America men were naturalized against their will by Acts of the Legislature, and it would be grossly unfair to refuse to receive back as citizens persons who had been compelled to cast off their allegiance to this country if they came asking us to be reinstated in their privileges. And in Prussia no person could hold a consular or diplomatic position in a fortified town unless he were naturalized. A practical result of this had occurred. An Englishman who had acted as consul in Prussia, and who had necessarily been naturalized, was afraid to let his sons visit him in Prussia because they would be liable to the conscription as subjects.

Proviso How such subject may remain a British subject in Canada.

1. That where any British subject has before the coming into force of this Act voluntarily become naturalized in a foreign State and yet is desirous of remaining a British subject within Canada, he may, at any time within two years (*h*) after the coming into force of this Act, make a declaration that he is desirous of remaining a British subject, and upon such declaration (hereinafter referred to as a declaration of British nationality) being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continu-

Declaration and its effect.

Except when he is within such foreign State.

ally a British subject within Canada, with this qualification, that he shall not, when within the limits of the foreign State in which he has been naturalized, be deemed within Canada to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect (*i*).

(*h*). This period, as explained by the Lord Chancellor, was given for the benefit of those who had been naturalized abroad previous to the passing of the measure, and who, according to the existing law, were still British subjects, to choose whether they would remain foreign subjects or return and reclaim their citizenship in England. That was a point upon which he thought there could be no real difference of opinion, for up to this time, when a man asked for naturalization abroad he knew that he would remain a British subject, and it would be unjust by *ex post facto* legislation to deprive him of that privilege. The international measure could only be made perfect by agreement with all foreign states, but a great step was made by pointing out to other states the principle deemed most expedient for adoption—namely, that as soon as a man was naturalized in one country he ceased, *ipso facto*, to belong to another. (See conventions or treaties between Great Britain and the United States in Appendix).

(*i*) The commissioners on the English Naturalization Bill recommended that when a person had fairly and voluntarily caused himself to be naturalized in one country he should cease, *ipso facto*, to be subject to the country which he had quitted, and become the subject of the country he had

adopted. They further recommended that inasmuch as it would be well to make these regulations retrospective, and clear the whole question at once, it might be advisable to allow a period of time within which any person who, at the passing of the Act, has been so naturalized in any foreign country might, if he thought fit, give up such naturalization and return to the country of which he was originally a citizen. Sec. 5, *ante*, provides for the case of an alien who had become naturalized in Canada; this provides for the case of a British subject who has been naturalized abroad, divesting himself of his acquired nationality within a given time. (See Form of Declaration, *post*).

Where and before whom such declaration may be made.

2. A declaration of British nationality may be made, and the oath of allegiance be taken as follows:—If the declarant be in the United Kingdom in the presence of a Justice of the Peace; if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, or of any Justice of the Peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose; if out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

NATURALIZATION AND RESUMPTION OF BRITISH NATIONALITY.

Alien having resided in Canada, or been in the service of a Canadian Government, not less than three years within the time to be limited by the Governor in Council, may take oaths and apply for certificate as a British subject.

10. An alien who, within such limited time (*j*) before taking the oaths or affirmations of residence and allegiance and procuring the same to be filed of record as hereinafter prescribed, as may be allowed by order or regulation of the Governor in Council * has resided in Canada for a term of not less than three years, or has been in the service of the Government of Canada, or of the Government of any of the Provinces of Canada, or of two or more of such governments, for a term of not less than three years, and intends, when naturalized, either to reside in Canada, or to serve under the Government of Canada or the government of one of the Provinces of Canada, or two or more of such governments, may take and subscribe the oaths of residence and allegiance or of service and allegiance in form A in the schedule hereto or to the like effect, and apply for a certificate in the form B in said schedule. †

(*j*). The order or regulation of the Governor in Council allows five years immediately preceding the taking of the oaths, as the limited period here referred to (*Vide post*):

* *Vide* Regulations, *post*.

† *Vide in re C. C. Webster*. Appendix.

that is, during such period of five years, the applicant must have resided or served the period mentioned in this section. The new law differs in this respect from the Act of 1868. For practice in England under regulations made for carrying the Act of 1870 (Imp.) into effect. (See Appendix).

Where and before whom such oaths may be taken.

11. Every such oath shall be taken and subscribed by such alien, and may be administered to him by any of the following persons, viz. :—A judge of a court of record in Canada, a commissioner authorized to administer oaths in any court of record in Canada, a commissioner authorized by the Governor General to take oaths under this Act, a Justice of the Peace of the County or district where the alien resides, a Notary Public, a Stipendiary Magistrate, a Police Magistrate.

Evidence of residence or service required.

12. The alien shall adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as the person before whom he takes the oaths aforesaid may require ; and such person, on being satisfied with such evidence, and that the alien is of good character, shall grant to such alien a certificate in the form B in the schedule hereto or to the like effect (*k*).

(*k*). In a case before the Supreme Court of New Brunswick upon section 4, sub-sec. 3, of the Act of 1868, it was held that the certificate there provided for, similar to that

prescribed by this section, should be signed by the person who administered the oaths of residence and allegiance. (*Re Dezeter, An Alien*, 1 Can. Law Times, 115).

Presentation of certificate

13. Such certificate shall be presented,—

In Ontario.

In Ontario, to the Court of General Sessions of the Peace of the county within the jurisdiction of which the alien resides, or to the Court of Assize or *Nisi Prius* during its sitting in such county;

In Quebec.

In Quebec, to the Circuit Court in and for the circuit within the jurisdiction of which the alien resides;

In Nova Scotia.

In Nova Scotia, to the Supreme Court or to the Circuit Court during its sittings in the county within the jurisdiction of which the alien resides, or to the County Court of such county.

In New Brunswick.

In New Brunswick, to the Supreme Court or the Court of Assize or *Nisi Prius* during its sitting in the county within the jurisdiction of which the alien resides, or to the County Court of such county.

In British Columbia.

In British Columbia, to the Supreme Court during its sittings in the electoral district within the jurisdiction of which the alien resides, or to the Court of Assize

or *Nisi Prius* during its sittings in such electoral district, or to the County Court of such electoral district;

In Manitoba, to the Court of Queen's Bench during its sittings in the county within the jurisdiction of which the alien resides, or to the Court of Assize or *Nisi Prius* during its sittings in such county, or to the County Court of such county; In Manitoba.

In Prince Edward Island, to the Supreme Court during its sittings in the county within which the alien resides, or to the Court of Assize or *Nisi Prius* during its sittings in such county, or to the County Court of such county,— In Prince Edward Island.

In open court, on the first day of some general sitting of such court; and thereupon such court shall cause the same to be openly read in court; (*l*) and, if during such sitting the facts mentioned in such certificate are not controverted, or any other valid objection made to the naturalization of such alien, such court, on the last day of such sitting, shall direct that To be in open Court. To be filed of record if not invalidated.

(*l*) The certificate required by the Act, 31 Vict., cap. 66, sec. 5, must have been read on the first day of term in open court. (*Exp. Dow*, 2 P. & B. (*New Brunswick Rep.*) 302; see also case of *C. C. Webster*, in Appendix).

such certificate be filed of record in the court. *

In the North-West Territories, &c,

14. In the North-West Territories and in the District of Keewatin, such certificate shall be presented to such authorities or persons as may be provided by order or regulation of the Governor-General in Council, † and thereupon such authority or person shall take such proceedings with respect to such certificate, and shall cause the same to be filed of record in such way as may be provided by such order or regulation.

Certificate of naturalization from a Court.

15. The alien shall, after the filing of such certificate, be entitled, under the seal of the Court if such certificate has been presented to a Court, to a certificate of naturalization in the form C in the schedule hereto annexed or to the like effect; and if the certificate has been presented to an authority or person, as provided by order or regulation of the Governor General in Council, the alien shall be entitled to receive from such authority or person a certificate of naturalization authenticated as may be provided by such order or regulation. ‡

From an authority duly empowered by the Governor in Council

* *See* decision of Judge Ardagh, Co. Simcoe, Ont., *In re C. C. Webster*, a contested case, in Appendix.

† *Vide* Regulations, *post*.

‡ *Ibid*.

16. The certificate granted to an alien who applies for naturalization on account of service under the Government, as provided by the tenth section hereof, shall be filed of record in the office of Her Majesty's Secretary of State for Canada; and thereupon the Governor General in Council may authorize the issue of a certificate of naturalization to such alien in the form D in the schedule hereto or to the like effect.

If certificate of naturalization be on account of service.

17. An alien to whom a certificate of naturalization is granted shall, within Canada, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, to which a natural born British subject is entitled or subject * within Canada, with this qualification (*m*), that he shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.†

Rights of alien so naturalized.

Exception when he is within the State of which he was a subject.

(*m*) The qualification of the effect of naturalization, and the exception to it which follows, with the similar qualifica-

* See *ante*, p. 49, as to object of provisoes in sec. 4.

† See Convention between United States and Great Britain in Appendix.

tion and exception in section 9, sub-section 1, and in section 23, are inserted in deference to the rights of foreign governments under the rules of international law before referred to.*

Again, the language of the Lord Chancellor may be cited with advantage. Upon this provision, referring to Lord Westbury's proposed amendment that the bill should require a foreigner to obtain the consent of his own country before he could be naturalized in England, he said, "There were countries even in the present day which declined altogether to allow their subjects to accept foreign naturalization and to become subjects of a foreign state. All those states which adopted the Code Napoleon were in the position—that after the naturalization of their subjects in a foreign country, their natural status in the country from which those persons proceeded was lost. But there were other countries, such as Prussia, and other states in Germany where a different law prevailed, they refused to permit any such rejection of this allegiance by their subjects. The question, therefore, came to this, whether we were prepared to refuse every foreigner who could not obtain previous leave from the country of his origin the right of naturalization in England. What would that principle involve? Heretofore we had opened our gates wide to all the persecuted in all parts of the globe, and there had been times in which it would have been impossible for those who sought refuge on our shores from what they conceived to be the persecution of their own governments to obtain the consent of those governments to their settling here. Such consent might have been refused for example by Russia in regard to the Poles, and other Powers of Europe might have taken the same course. * * * He apprehended that neither

* *Vide ante*, pp. 40, 58. These qualifying words are inserted in passports issued to British subjects as shown in the form in Appendix.

House of Parliament would be ready to part with that great distinction, the hospitality this country extended to all, coming from every land, who were in trouble or distress. But if we opened to them our hospitality should we say that they were to be incapable of becoming our fellow-subjects if they desired it? For we could not expect them always to obtain the consent of the countries from which they came. Could we tell them we would have nothing to do with them beyond affording them shelter for a time, that they could not remain and settle among us as citizens? "What under such a rule would have become of all the Huguenot families who came over here on the revocation of the edict of Nantes, and who had produced some of the ablest men in this country from that time—men some of whom might be mentioned as sitting in that House with honour? It was not likely that those refugees would have obtained leave from the government of Louis XIV. to become naturalized in England. He trusted, therefore, that their lordships would not shut the door against the possibility of foreigners being naturalized in this country unless they could procure the consent of the state from which they come. That subject had been well weighed by the government who had acted on the well-considered report of the commissioners. From that report it would be found that the countries from which the greater number of foreigners proceeded who would be naturalized here were countries where the cessation of a subject's original status was not permitted. When the matter came to be considered it would be a serious thing to deny such persons naturalization when they desired permanently to settle in this country" (*Hansard*, Imp. 1870).

Certificate of naturalization where nationality is doubtful.

18. A special certificate of naturalization may, in manner aforesaid, be granted to any person with respect to whose

nationality as a British subject a doubt exists, and such certificate may specify that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be deemed a British subject; and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject. Such special certificate may be in the form E in the schedule hereto annexed or to the like effect.

Effect thereof

As to aliens naturalized before this Act.

19. An alien who has been naturalized previously to the coming into force of this Act may apply for a certificate of naturalization under this Act, and such certificate may be granted to such naturalized alien upon the same terms and subject to the same conditions upon which such certificate might have been granted if such alien had not been previously naturalized.

And as to British subject by birth who has become an alien.

20. A natural born British subject who has become an alien in pursuance of this Act or of any Act or law in that behalf, and is, in this Act, referred to as a "statutory alien," may, upon the same terms and subject to the same conditions as are required in the case of an alien applying for a certificate of naturalization,

apply to the proper Court or authority or person in that behalf for a certificate, hereinafter referred to as a "certificate of re-admission to British nationality," re-admitting him to the status of a British subject within Canada.* Such certificate may be in the form F in the schedule hereto annexed or to the like effect.

Certificate of re-admission within Canada.

21. A copy of the certificate of naturalization may be registered in the Land Registry Office of any county or district or registration division within Canada, and a copy of such registry certified by the registrar or other proper person in that behalf, shall be sufficient evidence of the naturalization of the person mentioned therein, in all courts and places whatsoever.

Registration of certificate in Land Registry office.

22. The clerk of the court by which the certificate of naturalization is issued shall, for all services and filings in connection with such certificate, be entitled to receive from such person the sum of twenty-five cents, and no more; and no further or other fee shall be payable for or in respect of such certificate. The registrar shall, for recording a certificate

Fees on issue of certificate by a Court.

* See *ante*, p. 14, "*Repatriation.*" And see sec. 23 as to rights of such persons.

And to Registrar for recording it.

of naturalization be entitled to receive from the person producing the same for registry, the sum of fifty cents, and a further sum of twenty-five cents for every search and certified copy of the same, and no more.

Rights of statutory alien re-admitted within Canada.

23. A statutory alien to whom a certificate of re-admission to British nationality within Canada has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject within Canada,—with this qualification,* that within the limits of the foreign State of which he became a subject he shall not be deemed to be a British subject within Canada, unless he has ceased to be a subject of that foreign State according to the laws thereof, or in pursuance of a treaty or convention to that effect.†

Provision in case of certain convention by H. M. with a foreign State.

24. Where any foreign State has, before or after the coming in force of this Act, entered into a convention with Her Majesty to the effect that the subjects of that State who have been naturalized as British subjects may divest themselves of their status as subjects of such foreign

* See note to sec. 17.

† See Treaty between Great Britain and United States in Appendix.

State, and where such convention or the laws of such foreign State require a residence in Canada of more than three years or a service under the Government of Canada or of any of the Provinces of Canada, or of two or more of such Provinces, of more than three years, as a condition precedent to such subjects divesting themselves of their status as such foreign subjects—an alien being a subject of such foreign State, who desires to divest himself of his status as such subject, may, if at the time of taking the oath of residence or service he has resided or served the length of time required by such convention or by the laws of the foreign State, instead of taking the oath shewing three years residence or service, take an oath shewing residence or service for the length of time required by such convention or by the laws of the foreign State; and the certificate to be granted to the alien under the twelfth section hereof shall state the period of residence or service sworn to. The certificate of naturalization shall likewise state the period of residence or service sworn to, and the statement in such certificate of naturalization shall be sufficient evidence of such residence or service in all courts and places whatsoever.

How alien subject of such State may obtain certificate of naturalization.

What the certificate shall show and its effect.

As to aliens in such case of convention who have become entitled to privileges of British birth in Canada.

25. An alien who, either before or after the coming into force of this Act, has, whether under this Act or otherwise, become entitled to the privileges of British birth in Canada, and who is a subject of a foreign State with which a convention to the effect above mentioned has been entered into by Her Majesty, and who desires to divest himself of his status as such subject, and who has resided or served the length of time required by such convention or by the laws of the foreign State, may take the oath of residence or service shewing residence or service for the length of time required by such convention or by the laws of the foreign State, and apply for a certificate (or a second certificate, as the case may be) of naturalization under this Act.

NATIONAL STATUS OF MARRIED WOMEN AND INFANT CHILDREN.

Married woman.

26. A married woman shall, within Canada, be deemed to be a subject of the State of which her husband is for the time being a subject (*n*).

(*n*) This section and the following sections 27 to 31 inclusive correspond to section 10 Imp. Act of 1870, and its sub-sections, and sec. 3 of Imp. Act of 1872, upon which there was some discussion in the Imperial Parliament.

Mr. Alderman Lawrence objected that * * * "A married woman might have married a British subject, yet by a former clause in the Bill combined in the present one, if the husband made himself an alien, the wife although residing with her children in this country, and judicially separated from her husband who lived abroad, would be made a foreign subject against her will, * * * through his changing his nationality. Sir ROUNDELL PALMER, said those questions were very carefully considered in the commission, and it was proposed that they should be settled in accordance with the universal principles of private International Law. It was quite settled as a matter of International Law generally that the status of the wife and that of the minor children followed the status of the husband and father. The Bill proceeded on that principle, and no harm could result from that, because it was only political status that was in question; the Bill abolished all distinctions which at present existed between aliens and others as to the enjoyment of property. The Bill not only preserved the rights of children who did not go abroad, but enabled those children who left this country, and wives who became widows, or were divorced, to return to the condition of British subjects, if they thought fit. MR. JESSEL said that the object of the Bill was to amend our naturalization law, so as to make it conform more nearly to the International Law; and therefore it was necessary to adopt the general rule that the wife should follow the nationality of her husband. He believed that the objection to the clause was a mere theoretical one; except, sentimentally, the legal status of the wife would not be altered by the act of her husband. If hardship should follow from the provision in a case where there had been a judicial separation, the remedy would be to alter the law in respect of judicial separations, so as to make a woman judicially separated *a feme sole*. (*Hansard*, Imp. 1870).

Widow being a British subject by birth who has become an alien by marriage.

27. A widow being a natural born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may, as such, at any time during widowhood, obtain a certificate of re-admission to British nationality, within Canada, in manner provided by this Act.

Children of British subjects who have become aliens.

28. Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother who during infancy has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall, within Canada, be deemed to be a subject of the State of which the father or mother has become a subject, and not a British subject.*

Children of parents who have been re-admitted to British nationality.

29. Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality within Canada, every child of such father or mother who during infancy has become resident within Canada with such father or mother, shall be deemed to have resumed the position of a British subject within Canada, to all intents.

* *Vide ante*, p. 73.

30. Where the father, or the mother being a widow, has obtained a certificate of naturalization within Canada, every child of such father or mother who during infancy has become resident with such father or mother within Canada shall, within Canada, be deemed to be a naturalized British subject (*o*). Where the parents have obtained certificates of naturalization.

(*o*) According to continental law the nationality of natural children depends on the mother, except, indeed, where, as can be done under that law as distinguished from that of England, the father, by subsequent marriage, or by formal recognition, legitimizes the offspring. And whenever the parents are unknown, they are presumed to have belonged to the country in which the child is found; so that the child of unknown parents always takes the nationality of the country in which he is first found. (*Cockb.* 25; *Story* Confl. Law, 546).

A bequest of personalty in an English will to the children of a foreigner must be construed to mean his legitimate children, and by international law as recognized in this country (*i. e.* England), those children are legitimate whose legitimacy is established by the laws of the father's domicile. (*Re Andros, Andros* v. *Andros*, L. R. 24, Ch. D. 637 (1882). See further as to status of children born out of lawful wedlock, *Phillimore* Int. Law, 2nd ed. vol. iv, cap. 24).

31. Nothing in this Act contained shall deprive any married woman of any estate or interest in real or personal property to which she may have become Act not to affect acquired rights of married women.

entitled previously to the coming into force of this Act, or affect such estate or interest to her prejudice.

Regulations by Governor-in-Council as to—

32. The Governor-General in Council may by regulation provide for the following matters:—*(p)*

(*p*). Some of the matters specified in this section appear to have been provided for in the Act itself with Schedule of Forms, and not wholly left to regulation by Order in Council; *e. gr.*: those matters specified in sub-sections 2, 3, 7 and 8. For other matters see Regulations in Appendix.

Declaration.

1. The form and registration of declarations of British nationality;*

Registration.

2. The form and registration of certificates of naturalization in Canada;

Re-admission.

3. The form and registration of certicates of re-admission to the British nationality within Canada;

Alienage.

4. The form and registration of declarations of alienage;†

Transmission of evidence for purposes of this Act.

5. The transmission to Canada for the purpose of registration or safe keeping, or of being produced as evidence of any declarations or certificates made in pursuance of this Act, out of Canada, or of any

* To be registered in the office of the Secretary of State of Canada. See Regulations in Appendix.

† *Ibid.*

copies of such declarations or certificates, also of copies of entries contained in any register kept out of Canada in pursuance of or for the purpose of carrying into effect the provisions of this Act ;

Fees on registration.

6. With the consent of the Treasury Board, the imposition and application of fees in respect of any registration authorized to be made by this Act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this Act ; *

Oaths.

7. The persons by whom the oaths may be administered under this Act ;

Subscription of oaths.

8. Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested ;

Registration.

9. The registration of such oaths ;

Copies.

10. The persons by whom certified copies of such oaths may be given ;

Transmission of oaths, &c., taken out of Canada.

11. The transmission to Canada for the purpose of registration or safe keeping, or of being produced as evidence, of any oaths taken in pursuance of this Act out

* See Table of Fees in Appendix.

of Canada, or of any copies of such oaths, also of copies of entries of such oaths contained in any register kept out of Canada in pursuance of this Act;

Proof.

12. The proof, in any legal proceeding, of such oaths;

Fees.

13. With the consent of the Treasury Board, the imposition and application of fees in respect of the administration or registration of any such oath.*

Repealing or altering regulations.

The Governor-General in Council, by a further regulation, may repeal, alter or add to any regulation previously made by him in pursuance of this section. Any

Presumption as to regulations.

regulation made by the Governor-General in Council in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act.

Proof of declarations.

33. Any declaration authorized to be made under this Act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by the Clerk or acting clerk of the Queen's Privy Council for Canada, or by any person

* See Table of Fees in Appendix.

authorized by regulations of the Governor-General in Council to give certified copies of such declaration; and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned.

Proof of certificates.

34. A certificate of naturalization, or of re-admission to British nationality, may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by the Clerk or acting clerk of the Queen's Privy Council for Canada, or by any person authorized by regulations of the Governor-General in Council to give certified copies of such certificate; and the statement of the period of residence or service in a certificate of naturalization shall be sufficient evidence of such residence or service in all courts and places whatsoever.

Proof of entries of registration.

35. Entries in any register authorized to be made in pursuance of this Act may be proved by such copies and certified in such manner as may be directed by regulation of the Governor-in-Council, by the Clerk or acting clerk of the Queen's Privy Council for Canada, or by the Secretary

of State ; and the copies of such entries shall be evidence of any matters by this Act or by any regulation of the Governor in Council authorized to be inserted in the register.

Application of a certain Act of this session.

36. Any Act passed during the present session touching documentary evidence, shall apply to any regulation made by the Governor-General in Council, in pursuance of or for the purpose of carrying into effect any of the provisions of this Act.*

MISCELLANEOUS.

As to acts done before naturalization.

37. Where any British subject has, in pursuance of this Act, become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

As to aliens naturalized in any part of Canada before this Act.

38. Each and every person who, being by birth an alien, had, on or before the coming into force of this Act, become entitled to the privileges of British birth, within any part of Canada, by virtue of any general or special Act of Naturalization in force in such part of Canada, shall

* See the Act to amend the law respecting documentary evidence in certain cases, 44 Vict. cap. 28. (Can.)

hereafter be entitled to all the privileges by this Act conferred on persons naturalized under this Act.

Act not to affect Act of U. C., 54 Geo. 3, c. 9.

39. Nothing in this Act contained shall repeal or in any manner affect the Act of the Legislature of Upper Canada, passed in the fifty-fourth year of the reign of His late Majesty King George the Third, intituled "*An Act to declare certain persons therein described Aliens, and to vest their estates in His Majesty*," or any proceedings had under the said Act.

Nor certain Acts of Province of Canada.

40. Nor shall anything in this Act contained repeal or in any manner affect the Act of the legislature of the late Province of Canada, passed in the session held in the fourth and fifth years of Her Majesty's reign, chapter seven, intituled "*An Act to secure to and confer upon certain inhabitants of this Province, the civil and political rights of Natural born British Subjects*," or the first, second or third section of the Act of the said legislature passed in the twelfth year of Her Majesty's reign chapter one hundred and ninety-seven, intituled "*An Act to repeal a certain Act therein mentioned and to make better provision for the Naturalization of Aliens*,"—or impair or affect the naturalization of any

4, 5 V., c. 7.

12 V., c. 197.

Or the rights of those naturalized under them.

person naturalized under the said Acts, or either of them, or any rights acquired by such person or by any other party by virtue of such naturalization, all which shall remain valid and be possessed and enjoyed by such person or party respectively.

As to persons entitled to be naturalized before January, 1868, under the law of any Province of Canada.

41. Every person who, being by birth an alien, did, prior to the first day of January, 1868, take the oaths of residence and allegiance required by the naturalization laws then in force in that one of the Provinces now forming the Dominion of Canada, in which he then resided, shall, within Canada, be admitted to all the rights and privileges of a natural born British subject conferred upon naturalized persons by this Act; and the certificate of the Judge, Magistrate, or other person before whom such oaths were taken and subscribed, shall be evidence of his having taken them; or he may take and subscribe the oath in form G in the schedule hereto before some judge, justice, or person authorized to administer the oaths of residence and allegiance under this Act, in the county or district in which he resides.*

Aliens who had their settled abode in certain Provinces, on

42. All aliens who had their settled place of abode in either of the late Provinces of Upper Canada or Lower Canada

* This section is in effect a re-enactment of sec. 1 of 34 Vict. cap. 22.

or Canada, or in Nova Scotia or New Brunswick, on or before the first day of July, A.D. 1867*, or in Rupert's Land or the North-West Territories on or before the fifteenth day of July, A.D. 1870,† or in British Columbia, on or before the 20th day of July, A.D. 1871‡, or in Prince Edward Island, on or before the first day of July, A.D. 1873,§ and who are still residents in Canada, shall be deemed, adjudged, and taken to be, and to have been entitled to all the privileges of British birth within Canada as if they had been natural born subjects of Her Majesty, subject to the following provision, that is to say:—That no such person (being a male) shall be entitled to the benefit of this Act, unless nor until he shall take the oaths of allegiance and residence‖ in the form prescribed by this Act, before some Justice of the Peace or other person authorized to administer oaths under this Act.

certain named days, to be British subjects on taking oaths of allegiance, and residence.

43. The oaths taken under the last preceding section shall be filed of record,—if the person making them resides in the

Where the oaths required by s. 42 shall be filed of record

* Date of Union of Provinces named in Proclamations, *Canada Gazette* 1867, pp. 1835, 1839.

† Date of admission to Dominion, see Stats. Can. 1872, p. lxv.

‡ Date of admission, see Stats. Can. 1872, p. lxxxiv.

§ Date of admission, see Stats. Can. 1873, p. ix.

‖ See Forms, pp. 87, 93.

Province of Ontario, with the Clerk of the Peace of the county in which he resides,—if he resides in the Province of Quebec, with the Clerk of the Circuit Court of the circuit within which he resides,—if he resides in Nova Scotia, with the Clerk of the Supreme Court,—and if he resides in New Brunswick, with the Clerk of the Supreme Court,—if he resides in British Columbia or Prince Edward Island, with the Clerk of the Supreme Court,—if he resides in Manitoba with the Clerk of the Court of Queen's Bench, or with the Clerk of the County Court of the county in which he tesides,—if he resides in the North-West Territories or in the District of Keewatin, with such person or authority as may be provided by order or regulation of the Governor General in Council;* and upon its being so filed, the person making it shall be entitled to the benefit of this Act and of the privileges of British birth within Canada, and shall also, upon payment of a fee of twenty-five cents, be entitled to a certificate from the person with whom the oaths have been filed, in the form H of the schedule hereto or to the like effect; and the production of such certificate shall be *prima facie* evidence of his naturalization under this Act,

Effect of filing: fee for certificate, and its effect.

* *Vide ante*, p. 64, and Regulations in Appendix.

and that he is entitled to and enjoys all the rights and privileges of a British subject.

Commissioners for administering oaths.

44. The Governor in Council may appoint, from time to time, Commissioners to take and administer oaths under this Act.

PENALTY FOR FALSE SWEARING.

Punishment for false swearing or affirming.

45. Any person wilfully swearing falsely, or making any false affirmation under this Act, shall be deemed guilty of wilful and corrupt perjury, and shall, on conviction, in addition to any other punishment authorized by law, forfeit all the privileges or advantages which he or she would otherwise, by making such oath or affirmation, have been entitled to under this Act; but the rights of others in respect to estates derived from or held under him or her, shall not thereby be prejudiced, excepting always such others as shall have been cognizant of the perjury at the time the title by which they claim to hold under him or her was created.

Proviso; Saving rights of others.

Future naturalization only under this Act.

46. After the coming into force of this Act, no alien shall be naturalized within Canada, except under the provisions of this Act.

SCHEDULE OF FORMS.

A. (*See Section* 10).

THE NATURALIZATION ACT, CANADA, 1881.

Oath of Residence.

I, A. B., do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm) that, in the period of years preceding this date I have resided three (*or* five, *as the case may be*) years in the Dominion of Canada with intent to settle therein, without having been, during such three years (*or* five years, *as the case may be*), a stated resident in any foreign country. So help me God.

Sworn before me at
on the
day of *

A. B.

THE NATURALIZATION ACT OF CANADA, 1881.

Oath of Service.

I, A. B., do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm), that, in the period of years preceding this date, I have been in the service of the Government of Canada (*or*, of the Government of the Province of , in Canada, *or as the case may be*) for

* Signature of official who administers the oath. Every such oath shall be taken and subscribed by such alien, and may be administered to him by any of the following persons, viz.:—A judge of a court of record in Canada, a commissioner authorized to administer oaths in any court of record in Canada, a commissioner authorized by the Governor-General to take oaths under this Act, a Justice of the Peace of the County or district where the alien resides, a Notary Public, a Stipendiary Magistrate, a Police Magistrate. *Vide ante*, p. 61.

the term of three years, and I intend, when naturalized, to reside in Canada (*or* to serve under the government of *as the case may be*).

Sworn before me at
on the
day of * A. B.

THE NATURALIZATION ACT, CANADA, 1881.

Oath of Allegiance.

I, A. B., do sincerely promise and swear (*or*, being a person allowed by law to affirm in judicial cases, affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland and of the Dominion of Canada, dependent on and belonging to the said Kingdom, and that I will defend her to the utmost of my power against all traitorous conspiracies or attempts whatever which shall be made against Her Person, Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to Her Majesty, Her Heirs or Successors, all treasons or traitorous conspiracies and attempts which I shall know to be against Her or any of them; and all this I do swear (*or* affirm) without any equivocation, mental evasion or secret reservation. So help me God.

Sworn before me at
this
day of † A. B.

* See preceding note, p. 86.

† See note to Form A.

B (*See Section* 12).

THE NATURALIZATION ACT, CANADA, 1881.

Certificate under Section 12.

I, C. D. (*name and description of the person before whom the oaths have been taken—See Section* 11), do certify that A. B., an alien, on the day of , subscribed and took before me the oaths (*or* affirmations) of residence and allegiance (*or* service and allegiance, *as the case may be*), authorized by the tenth section of *The Naturalization Act, Canada*, 1881, and therein swore (*or* affirmed) to a residence in Canada (*or* service, &c.), of years, that I have reason to believe and do believe that the said A. B., within the period of years preceding the said day, has been a resident within Canada for (three *or* five, *as the case may be*) years (*or* has been in the service of the Government of Canada for three years; *or, as the case may be*), that the said A. B. is a person of good character, and that there exists, to my knowledge, no reason why the said A. B. should not be granted all the rights and capacities of a natural born British subject.

Dated at , the day of

C.D.

If the above Certificate be applied for by a person, with respect to whose nationality a doubt exists, and who desires a special Certificate of Naturalization under Section eighteen, add the following;—

"I further certify that the said A. B. has doubts as to his nationality as a British subject, and desires a special certificate of naturalization under section eighteen of said Act."

If the above certificate be applied for by a person previously a natural born British subject, but who became an alien by naturalization, an appropriate statement to that effect should be inserted in the certificate.

C. (*See Section* 15).

THE NATURALIZATION ACT, CANADA, 1881.

Certificate of Naturalization.

Dominion of Canada,
Province of }

In the (*name of Court*) :

Whereas, A. B., of, &c. (*describing him as formerly of such a place, in such a foreign country, and now of such a place in Canada, and adding his occupation or addition*), has complied with the several requirements of *The Naturalization Act, Canada,* 1881, and has duly resided in Canada for the period of (three *or* five, *as the case may be*) years. And whereas the certificate granted to the said A. B. under the twelfth section of the said Act has been duly read in open Court, and thereupon, by order of the said Court, has been filed of record in the same pursuant to the said Act (¶). This is therefore to certify to all whom it may concern that under and by virtue of the said Act, A. B. has become naturalized as a British subject (§), and is, within Canada, entitled to all political and other rights, powers and privileges, and is subject to all obligations to which a natural born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign State of which he was a subject (*or* citizen) previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject (*or* citizen) of that State in pursuance of the laws thereof or in pursuance of a treaty or convention to that effect.

Given under the seal of the said Court, this
day of , one thousand eight hundred and

E. F.

Judge, Clerk (*or other proper officer of the Court.*)

*This form may be altered so as to apply to the North-West Territories or District of Keewatin.**

* See Regulations, *post.* p. 94.

D (*See Section* 16.)

THE NATURALIZATION ACT, CANADA, 1881.

Certificate of Naturalization to a person after service under Government.

Whereas A. B., of (*describing him, and adding his occupation or addition*) has complied with the several requirements of *The Naturalization Act, Canada*, 1881, and has been in the service of the Government of Canada, (*or, as the case may be*) for a term of not less than three years, and intends, when naturalized, to reside in Canada (*or* to serve under the Government of , *as the case may be*); and whereas the certificate granted to the said A. B., under the twelfth section of the said Act, has been duly filed of record in the office of Her Majesty's Secretary of State for Canada pursuant to the said Act; and whereas the Governor General in Council has duly authorized the issue of this certificate of naturalization; This is therefore to certify to all whom it may concern that under and by virtue of the said Act the said A. B. has become naturalized as a British subject and is, within Canada, entitled to all political and other rights, powers and privileges, and is subject to all obligations to which a natural born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign State of which he was a subject (*or* citizen) previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject (*or* citizen) of that State in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under my hand, this day of

Secretary of State of Canada.

E (*See Section* 18.)

Special Certificate of Naturalization to a person with respect to whose nationality a doubt exists.

THE NATURALIZATION ACT, CANADA, 1881.

Follow form C down to the sign ¶.—*then add:*

And whereas the said A. B. alleges that he is a person with respect to whose nationality as a British subject a doubt exists, and this certificate is issued for the purpose of quieting such doubts, and the application of the said A. B. therefor, and the issuing thereof shall not be deemed to be any admission that the said A. B. was not heretofore a British subject—(*then continue the rest of form C to the end.*)

Form D *to be altered in a similar way when necessary.*

F. (*See Section* 20.)

Certificate of re-admission to British Nationality.

THE NATURALIZATION ACT, CANADA, 1881.

Formal part as in form C.

Whereas A. B., of (*describing him as in form* C), who alleges that he was a natural born British subject and that he became an alien by being naturalized as a subject (*or* citizen) of has complied with the several requirements of *The Naturalization Act, Canada*, 1881, and has duly resided in Canada for the period of three (*or* five, *as the case may be*) years; and whereas the certificate granted

to the said A. B., under the twelfth section of the said Act, has been duly read in open Court, and thereupon by order of the said Court has been filed of record in the same pursuant to the said Act: This is therefore to certify to all whom it may concern that under and by virtue of the said Act the said A. B., from the date of this certificate, but not in respect of any previous transaction, is re-admitted to the status of a British subject—(*then follow form* C *from the sign* § *to the end.*)

Form D *to be altered in a similar way when necessary.*

Where the applicant is a widow the form must be modified accordingly and recite that she became an alien by marriage with her late husband, L. M., a subject (or *citizen*) *of*

G (*See section* 43). *

THE NATURALIZATION ACT, CANADA, 1881.

I, A. B., of , do swear (*or* affirm) that on or about the day of , one thousand eight hundred and , at , in the (*County, &c.,*) of , in the Province of , I did take and subscribe before (*a Judge Magistrate or other person, naming him*) the oaths (*or* affirmations) of residence and allegiance required by the laws respecting the naturalization of aliens then in force in the said Province. So help me God.

A. B.

Sworn before me at on
the day of 18 †

* The reference here to section 43 appears to be an error; this form being prescribed by section 41. See p. 82, *ante.*

† Signature of official before whom sworn. See p. 86, *ante, note.*

G 1. (*See Section* 44).*

THE NATURALIZATION ACT, CANADA, 1881.

I, A. B., of , do swear (*or* affirm) that I had a settled place of abode in (Upper Canada, Lower Canada, Nova Scotia, *or* New Brunswick, *as the case may be*) on the first day of July, A.D. 1867, (*or* in Rupert's land or the North-West Territories, on the fifteenth day of July, A.D. 1870) (*or* in British Columbia, on the twentieth day of July, A.D. 1871) (*or* in Prince Edward Island, on the first day of July, A.D. 1873), and I resided therein with intent to settle therein; and I have continuously since resided in the Dominion of Canada. So help me God.

A. B.

Sworn before me at on
the day of 18

H. (*See Section* 45). †

THE NATURALIZATION ACT, CANADA, 1881.

I hereby certify that A. B., of , has filed with me as (Clerk of the Peace, , *or as the case may be*) the oath (*or* affirmation) of which the following is a copy:—

(*Copy of Oath or Affirmation*).

This certificate is issued pursuant to the forty-fifth ‡ section of *The Naturalization Act, Canada*, 1881, and is to certify to all to whom it may concern that

(*Follow Form C.*)

* See sec. 42, pp. 82-3, *ante*.

† *Quære*, sec. 43.

‡ This Form is prescribed by sec. 43, not sec. 45. See p. 84, *ante*.

REGULATIONS* MADE UNDER THE AUTHORITY OF THE NATURALIZATION ACT, CANADA, 1881.†

1. The time within which an alien's three years' residence or service must be had before taking the oaths or affirmations of residence and allegiance, and procuring the same to be filed of record as provided in the tenth section of the said Act is limited to five years, immediately preceding the taking of such oaths or affirmations.

2. In the North-west Territories and in the District of Keewatin, the certificate mentioned in the twelfth section of the said Act shall be presented to one of the Stipendiary Magistrates of the North-west Territories, who shall take such measures to satisfy himself that the facts stated in the certificate are true, as shall in each case appear to him to be necessary; and when satisfied that the facts stated in the certificate are true, he shall grant to the alien a certificate of naturalization, authenticated under his hand and seal:‡

Each Stipendiary Magistrate shall keep a record of the certificates presented to and filed with him; also a record of all certificates of naturalization granted by him, of which he is hereby authorized at any time to give a certified copy.

3. The forms of declarations of alienage made in pursuance of the said Act shall be respectively as follows:—

I.

THE NATURALIZATION ACT, CANADA, 1881.

Declaration of Alienage by a Naturalized British Subject.

I, *A. B.*, of , having been naturalized as a British subject on the of , 18 , do hereby, under the provisions of the Order of the Governor General in Council

* Published in *Canada Gazette*, January 5, 1884.

† See sec. 32, *ante* p. 76.

‡ *Vide ante*, p. 89.

of the , and of the treaty between Great Britain and *C. D.*, renounce my naturalization as a British subject, and declare that it is my desire to resume my nationality as a subject (*or citizen*) of *C. D.*

(Signed), *A. B.*

Made and subscribed this day of 18 , before me,

(Signed), *E. F.*
Justice of the Peace
(*or other official title*).*

* A declaration of alienage may be made as follows:—If the declarant be in the United Kingdom, in the presence of any Justice of the Peace; if elsewhere in Her Majesty's dominions, in the presence of any Judge of any court of civil or criminal jurisdiction, or of any Justice of the Peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose: If out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty. (*Vide*, sec. 6, p. 54, *ante*).

"Any other officer for the time being authorized by law, in the place, in which the declarant is, to administer an oath for any judicial or other legal purpose." This would appear to include the persons named in sec. 11, p. 61, *ante*. It evidently includes Commissioners for taking Affidavits in the High Court of Justice, Ontario, (*See* the Act respecting Commissioners for taking Affidavits and Affirmations, R. S. O. cap. 63; The Ontario Judicature Act, 1881, sec. 73, and 45 Vict. cap. 11, sec. 1 [Ont.]) and Commissioners similarly authorized in the other Provinces. Notaries Public, in addition to their ancient authorities in connection with commercial documents, are by various statutes authorized to administer oaths for judicial and other legal purposes. Upon section 22 of the Chancery Procedure Act, 1852 (Imp.), providing that the Court shall take judicial notice of the seal and signature of (*inter alia*) a Notary Public in Her Majesty's colonies, attesting certain pleadings, affidavits * * * and all other documents to be used in Court, the Court admitted a deed executed in Canada, and signed by and attested by the seal of a Notary Public, notwithstanding no evidence was produced to prove that the person so acting was a Notary Public. (*Brooke* v. *B.*, L. R., 17 Ch. D. 833 (1881); *Smith* v. *Davis*, L. T. 1868-9. 376). In the United States of America, in all cases in which oaths or acknowledgments may be taken before any Justice of the Peace of any state or territory, or in the District of Columbia, they may also be taken and made before a Notary Public or any of the Commissioners of the Circuit Courts, and when certified under the hand and official seal of such Notary or Commissioner shall have the same force and effect as if taken or made by or before such Justice of the Peace (R. S. U. S., 1878, sec. 1777; sec. 845 as to Commissioners). Under State Laws Justices of the Peace, and Notaries have power to administer oaths for Judicial and other legal purposes. (*e. gr.* Gen. Stats. Mass. 1860, 610; Gen. Stats. Conn. 1866, 607; New York Code, *Throop's*, 2nd ed., 354; and other State Laws). And by Act of Congress of Aug. 15, 1875, Notaries are authorized to take depositions, acknowledgments, and affidavits to be used in the United States Courts in the same manner and with the same effect as Commissioners of the United States Circuit Court (Supp. R. S., 1874, 1881, 251).

J.

THE NATURALIZATION ACT, CANADA, 1881.

Declaration of Alienage by a Person born within British Dominions, but also a subject or Citizen of a Foreign State by the law thereof.

I, *A.B.*, of , being held by the common law of Great Britain to be a natural-born subject of Her Britannic Majesty by reason of my having been born within Her Majesty's dominions, and being also held by the law of *C.D.* to have been at my birth, and to be still, a subject (*or citizen*) of *C.D.*, hereby renounce my nationality as a British subject, and declare that it is my desire to be considered and treated as a subject (*or citizen*) of *C.D.*

(Signed), *A. B.*

Made and subscribed this day of 18 , before me,

(Signed), *E. F.*
Justice of the Peace
(*or other official title*).*

K.

THE NATURALIZATION ACT, CANADA, 1881.

Declaration of Alienage by a Person who is by origin a British Subject.

I, *A.B.*, of , having been born out of Her Britannic Majesty's Dominions of a father being a British subject, do hereby renounce my nationality as a British subject.

(Signed), *A.B.*

Made and subscribed this day of 18 , before me,

(Signed), *G.H.*
Justice of the Peace
(*or other official title*).*

* See note p. 95.

L.

The Naturalization Act, Canada, 1881.

Declaration of British Nationality.

I, *A.B.*, of , being a natural born subject of Her Britannic Majesty, and having voluntarily become naturalized as a subject (*or citizen*) of *C.D.*, on the of , 18 , do hereby renounce such naturalization, and declare that it is my desire to be considered and treated as a British subject.

(Signed), *A.B.*

Made and subscribed this day of 18 , before me,

(Signed), *E.F.*,
Justice of the Peace
(*or other official title*).*

Note.—The Act under which this declaration is made provides that the declarant "shall not within the limits of the Foreign State in which he was naturalized be deemed within Canada to be a British subject, unless he has ceased to be a subject of the State in pursuance of the laws thereof or in pursuance of a treaty to that effect."

4. Every declaration, whether of alienage or British nationality, made in pursuance of the said Act, shall be deposited and registered in the office of the Secretary of State of Canada:

The Secretary of State of Canada, the Under Secretary of State, or the Deputy Registrar General of Canada may give certified copies of any such declaration for the purposes mentioned in the said Act.

* Any of the officials mentioned in sec. 9. sub-sec. 2, p. 59 *ante*, being the same as those mentioned in note p. 95.

5. With the consent of the Treasury Board, the following provision is made in regard to the imposition and application of fees :—*

Matter in which fee may be taken.	Amount of fee.	How to be applied.
	$ cts.	
For taking a declaration, whether of alienage or British nationality	0 40	To the Justice or other official taking declaration.
For administering the oath of allegiance	0 40	To the Justice, Commissioner, Notary, Stipendiary or other Magistrate administering the oath.
For registration of declaration, with or without the oath of allegiance	1 00	Consolidated Revenue of Canada.
For certified copy of declaration, with or without oath..	1 00	Consolidated Revenue of Canada.

Consented to by the Treasury Board.

PRIVY COUNCIL,
OTTAWA, 19th December, 1883.

The foregoing Regulations made under the authority of the Naturalization Act, Canada, 1881, have been approved by His Excellency the Governor General in Council this 19th day of December, 1883.

JOHN J. McGEE,
Clerk, Privy Council.†

OTHER FEES NAMED IN STATUTE.‡

To Clerk of Court on certificate of naturalization.	$0 25
To Registrar land registry office for recording - -	0 50
" for search and certified copy - - -	0 25
For certificate under section 43, - - - - - - -	0 25

* *Vide ante*, p. 78.

† *Canada Gazette*, January 5, 1884.

‡ See secs. 22, 43.

APPENDIX.

In re C. C. Webster. (1)

In the Court of General Sessions of the Peace, County Simcoe, before Ardagh, Deputy Judge, Chairman, Dec., 1870, the granting of certificates of Naturalization to C. C. Webster, and others, under the Dominion Act, 31 Vict. cap. 66 (1868), was opposed on the following grounds:—

1. That the time of residence was not stated in the affidavit of residence.

2. That the certificates of the Justice of the Peace, read on the first day of Court, did not show that the requisite oaths of allegiance had been taken by the applicants.

3. That initial letters only were used in the headings of the affidavits, and not the full names of the applicants.

Ardagh, D.J., referring to section 3 of the Act, pointed out that there was no provision for filing of record the affidavits of residence and allegiance; the only thing required to be filed of record being the certificate of residence; and that by section 5 this certificate should be presented to Court on the first day of some general sitting thereof, and read in open Court, and on the other provisions of the section the learned Judge observed that the mere lodging of such certificate is not to be considered as a filing thereof, the filing taking place only upon the order of the Court on the last day of its sitting, proceeds, "The only certificate spoken of is one of residence alone (except, indeed, that

(1) 7 U. C. L. J. (1871) 39.

mentioned in sec. 6, * * *) and this appears from section 4, sub-section 3." He was of opinion that the certificate referred to in section 5 is the certificate of residence only, * * * "The only thing before the Court and the only thing they are bound to take notice of is this certificate of residence. Behind this we cannot go, nor have we authority to enquire whether the evidence upon which it was granted was sufficient. We must presume that the Justice who granted it saw that the Act was complied with."

Referring to section 5, the learned Judge proceeds * * * "We must enquire if the facts mentioned in such certificate, read on the first day of the Court, are controverted or not. It is not attempted to be shown by the contestant that the alien has not taken and subscribed the oath of residence, but merely that he has made an affidavit which does not conform to the Act. This we think is not such a controverting of the fact of residence as to form a bar to the granting the certificate mentioned in section 6, in the face, too, of the certificates of the Justice saying the oath of residence has been made, and further that a residence of seven years has actually been proved before him." The three objections were over-ruled, and the certificates read were ordered to be filed of record under the provisions of the Act. But referring to section 6—the learned Judge says that "the form (*i. e.* of the certificate to be granted by the Court) recites the reading of a certificate that the alien has complied with the requirements of the Act, that is, amongst other things that he has taken the oaths of residence and allegiance. In no place, however, do we see any provision for such a certificate; * * the only certificate to be read is that mentioned in section 5, and that says nothing whatever about the oath of allegiance. In consequence of this and inasmuch as the third section enacts, that the oaths of residence and allegiance required

by section 4 shall be filed of record before the alien shall be entitled to a certificate of naturalization (but without saying when the same are to be made, or when or where they they are to be filed), the Clerk of the Peace is hereby directed not to file the certificate read before the Court, nor to issue the certificates mentioned in section 6, until the said oaths are duly filed of record with him."

Obiter dictum.—"It is against public policy that such certificates should be refused, except upon good and sufficient grounds."

In the United States it has been held upon their law that the act of the Court admitting a citizen is a judgment of that Court, and that the Supreme Court cannot look behind it and enquire on what testimony it was pronounced. (*Spratt* v. *Spratt*, 4 Pet. Rep. 393; *Campbell* v. *Gordon*, 6 Cr. 14).

TREATY OF NATURALIZATION BETWEEN THE BRITISH GOVERNMENT AND THE UNITED STATES. *Signed May 13, 1870. Ratifications Exchanged August 10th, 1878* (2).

ARTICLE 1.—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.

Reciprocally, citizens of the United States of America who have become, or shall become, and are naturalized

(2) 13 *Hertslets' Treaties*, 960; and Treaties, etc.. Washington Govt. Print. Office, 1870-71, p. 405.

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.

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

Such citizens of the United States as aforesaid who have become and are naturalized within the dominions 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 ratifications of the present convention.

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 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 condition as that government may think fit to impose, re-admit 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.

In the same manner 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, re-admit 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.

ARTICLE IV.—*As to exchange of ratifications.*

(Signed), JOHN LOTHROP MOTLEY.
CLARENDON.

CONVENTION (*a*) BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA SUPPLEMENTARY TO THE CONVENTION OF MAY 13, 1870, RESPECTING NATURALIRATION. *Signed at Washington, 23rd February, 1871. Ratifications exchanged at Washington, 4th May, 1871.*

Whereas, by the second article of the convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America for regulating the citizenship of subjects and citizens of the contracting parties who have emigrated or may emigrate from the dominions of the one to those of the other party, signed at London on the 13th May, 1870, it was stipulated that the manner in which the renunciation by such subjects and citizens of their naturalization, and the resumption of their native allegiance, may be made and publicly declared, should be agreed upon by the governments of the respective countries: Her Majesty the Queen of the United Kingdom

(*a*) See Stat. Can. 1872, lvii; 13 *Hertslets' Treaties*, 968; and Treaties etc. Washington, etc. p. 411.

of Great Britain and Ireland and the President of the United States of America, for the purpose of effecting such agreement, have resolved to conclude a supplemental convention, and have named as their plenipotentiaries, that is to say, Her Majesty the Queen, &c., Sir Edward Thornton, Knight, &c., Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America, and the President of the United States of America, Hamilton Fish, Secretary of State; who have agreed as follows:

ARTICLE I.—Any person being originally a citizen of the United States who had, previously to May 13, 1870, been naturalized as a British subject, may at any time before August 10, 1872, and any British subject who, at the date first aforesaid, had been naturalized as a citizen within the United States, may at any time before May 12, 1872, publicly declare his renunciation of such naturalization by subscribing an instrument in writing substantially in the form hereunto appended, and designated as Annex A.

Such renunciation by an original citizen of the United States of British nationality shall, within the territories and jurisdiction of the United States, be made in duplicate, in the presence of any Court authorized by law for the time being to admit aliens to naturalization, or before the clerk or prothonotary of any such Court; if the declarant be beyond the territories of the United States, it shall be made in duplicate before any diplomatic or consular officer of the United States. One of such duplicates shall remain of record in the custody of the Court or officer in whose presence it was made; the other shall be, without delay, transmitted to the department of State.

Such renunciation, if declared by an original British subject, of his acquired nationality as a citizen of the United States, shall, if the declarant be in the United Kingdom of

Great Britain and Ireland, be made in duplicate in the presence of a Justice of the Peace; if elsewhere in Her Britannic Majesty's dominions in triplicate in the presence of any Judge of civil or criminal Jurisdiction, of any Justice of the Peace or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose;* if out of Her Majesty's dominions, in triplicate, in the presence of any officer in the diplomatic or consular service of Her Majesty.

ARTICLE II.—The contracting parties hereby engage to communicate each to the other, from time to time, lists of the persons, who, within their respective dominions and territories, or before their diplomatic and consular officers have declared their renunciation of naturalization, with the dates and places of making such declarations, and such information as to the abode of the declarants, and the times and places of their naturalization, as they may have furnished.

ARTICLE III.—The present convention shall be ratified by Her Britannic Majesty and by the President of the United States by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at Washington as soon as may be convenient.

In witness whereof, the respective plenipotentiaries have signed the same and have affixed thereto their respective seals.

Done at Washington, the 23rd day of February, in the year A.D., 1871.

[L.S.]	(Signed),	EDW'D THORNTON.
[L S.]	(Signed),	HAMILTON FISH.

* See note, p. 95 *ante*.

ANNEX A.

I, A. B., of (*insert abode*) being originally a citizen of the United States of America, (*or a British Subject*), and having become naturalized within the dominions of Her Britannic Majesty as a British subject (*or, as a citizen within the United States of America*) do hereby renounce my naturalization as a British subject (*or, citizen of the United States*), and declare that it is my desire to resume my nationality as a citizen of the United States, (*or, British Subject.*)

(Signed), A. B.

Made and subscribed before me (insert country or other sub-division, and state, province, colony, legation or consulate) this day of 18 .

(Signed) E. F.

(*Official before whom sworn as required by Art. 1, above.*)

LAW OF UNITED STATES OF AMERICA ON CITIZENSHIP AND NATURALIZATION.

Citizens of the United States according to existing laws and the most recent American writers (*a*) are :—

1. Persons who are born in or naturalized in the United States.

2. The children of native and naturalized citizens.

3. Persons born on an American vessel.

4. Persons made such by treaty.

(*a*) Morse, p. 298.

5. Children born abroad, whose fathers were at the time of their birth citizens, and had at some time resided in the United States.

6. Citizens made such by collective naturalization by Acts of Congress.

As, by emancipation.

Indians taxed as citizens.

And all persons born in the district of country formerly the Territory of Oregon are citizens as if born elsewhere in the United States.

A collective naturalization takes place when a country or province becomes incorporated in another country by conquest, cession, or free gift (*b*).

There is a State citizenship as distinguished from United States citizenship (*c*).

The constitution of the United States Art. IV, section 2 provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states."

Expatriation, (United States.)

Section 1999 Rev. Stats, "Whereas the right of expatriation is a natural and inherent right of all people indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign States owing allegiance to the government thereof; and whereas

(*b*) *Morse* on Citizenship, 129.
(*c*) *Ib.* 302.

it is necessary to the maintenance of public peace that that claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs or questions the right of expatriation is declared inconsistent with the fundamental principles of the republic."

Section 2000.—All naturalized citizens of the United States, while in foreign countries, are entitled to, and shall receive from this government the same protection of persons and property which is accorded to native born citizens.

Section 2001.—Provides that the release of citizens imprisoned by foreign governments is to be demanded by the President.

Naturalization in the United States of America.

Revised Statutes U. S. 1873-4, p. 380, title xxx., sec. 2,165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:—

(1). He shall declare on oath, before a Circuit or District Court of the United States, or a District or Supreme Court of the Territories, or a Court (*d*) of record of any of the States, having common law jurisdiction, and a seal and clerk, two years at least prior to his admission, that it is *bona fide*, his intention to become a citizen of the United States, and to renounce for ever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty, of which the alien may be at the time a citizen or subject (*e*).

(*d*) The declarations may, by Statute of 1876, be taken before the Clerk of any of the Courts named.

(*e*) *Campbell* v. *Gordon*, 6 Cranch. 176; *Stark* v. *Chesapeake*, Ins. Co., 7 Cranch. 420; *Chirack* v. *Chirack*, 2 Wheaton, 259; *Osborn* v. *U. S. Bank*, 9 *ib.* 827; *Spratt* v. *Spratt*, 4 Peters, 393.

(2). He shall at the time of his application to be admitted, declare, on oath, before some one of the Courts above specified, that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, and particularly by name, to the prince, potentate, state, or sovereignty, of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the Court.

(3). It shall be made to appear to the satisfaction of the Court, admitting such alien, that he has resided within the United States five years at least, and within the State or Territory where such Court is at the time held, one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

(4). In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the Kingdom or State from which he came, he shall in addition to the above requisites make an express renunciation of his title or order of nobility in the Court to which his application is made, and his renunciation shall be recorded in Court.

Section 2,166.—Any alien of the age of 21 years and upwards, who has enlisted, or may enlist, in the armies of the United States, either regular or volunteer forces, and has been, or may be hereafter, honourably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove

more than one years residence within the United States previous to his application to become such citizen; and the Court admitting such alien shall in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such persons having been honourably discharged from the service of the United States.

Section 2167.—Any alien being under the age of 21 years, who has resided in the United States three years next preceding his arrival at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of 21 years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States without having made the declaration required in the first condition of section 2165, but such alien shall make the declaration required therein at the time of his admission, and shall further declare on oath, and prove to the satisfaction of the court that, for two years next preceding, it has been his *bona fide* intention to become a citizen of the United States, and he shall in all respects comply with the laws in regard to naturalization.

Section 2168.—When any alien who has complied with the first condition in section 2165 dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such upon taking the oaths prescribed by law.

Section 2169.—The provisions of this title shall apply to aliens of African nativity, and to persons of African descent.

Section 2170.—No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided in the United States.

Section 2171.—No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be admitted to become a citizen of the United States.

Section 2172.—The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of 21 years at the time of the naturalization of their parents shall, if dwelling in the United States, be considered as citizens thereof, and the children of persons who now are, or have been, citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof (*f*).

Section 2174.—Foreign seamen who have served for three years on board a United States merchant vessel may be naturalized.

Since the passage of the foregoing Act of Congress of July 27, 1868, the United States have entered into treaty stipulations with nearly all the nations of Europe by which the contracting powers mutually concede to subjects and citizens the right of expatriation on conditions and subject to qualifications (*g*).

(*f*) *Campbell* v. *Gordon*, 6 Cranch, 176.
(*g*) *Morse* on Citizenship (Boston, 1882), p. 220.

FORMS.

1.

DECLARATION OF INTENTION.

State * *Court*, *County*. I, A. B., do declare on oath (*or* affirm), that it is bona fide my intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to all and any foreign prince, potentate, state and sovereignty, whatever; and particularly to (*name of sovereign or power of which he was formally a subject*).

A. B.

Sworn (*or* affirmed) in open court this before me,
C. D., *Clerk*.

2.

CLERK'S CERTIFICATE TO COPY DECLARATION.

State † *Court, Clerk's Office*, *County*, ss. I, C. D., Clerk of the above named court, do hereby certify that the same is a court of record having common law jurisdiction, and having a Clerk and seal, and I do also certify that the foregoing is a true copy of a declaration and of the whole of such declaration of intention of A. B. to become a citizen of the United States, now remaining of record in my office.

In testimony whereof, I have hereto subscribed my name and affixed the seal of said court the day of 18

C. D. [L. S.]
Clerk.

* As to Court, see p. 108 *ante*.
† *Ibid*.

3

CERTIFICATE OR PROOF OF DECLARATION.

State *Court*, *County*, ss. Be it remembered that A. B. appeared in the Court, on the day of in the year of our Lord 18 (the said court being a Court of Record, having common law jurisdiction, and a clerk and seal), and declared on oath in open court that it was bona fide his intention to become a citizen of the United States and to renounce forever, all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever; and particularly to (*name of sovereign or power of which he was formally a subject*).

In testimony whereof, I have hereunto subscribed my name and the seal of the said court is hereunto affixed, this day of in the year of our Lord, 18

C. D., [L. S.]
Clerk.

4.

OATH OR AFFIRMATION AT THE TIME OF ADMISSION.

State *Court*, *County*, ss. I, A. B., do solemnly swear (*or* affirm) that I will support the Constitution of the United States, and that I do absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty, whatever; and particularly of of whom I was formerly subject.

A. B.

Sworn, &c.

5.

PROOF OF RESIDENCE AND GOOD BEHAVIOR.

State *Court*, *County*, ss. E. F., of said county, being sworn (*or* affirmed), says that he is a citizen of the United States, and is, and for five years last past has been, well acquainted with A. B., now present; that said A. B. has resided within the United States for five years at least, last past, and for one year last past within the State of ¶ and that during that time the said A. B. has behaved as a man of a good moral character attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

E. F.

Sworn, &c.

6.

OATH OF A PERSON AT THE TIME OF ADMISSION WHOSE RESIDENCE BEGAN DURING MINORITY.

Same as No. 4, adding:

And I do also declare on oath (*or* affirmation), that it is bona fide my intention, and has been for the last three years, to become a citizen of the United States.

A. B.

Sworn, &c.

7.

PROOF OF RESIDENCE AND GOOD BEHAVIOR FOR SUCH PERSON.

Same as No. 5, inserting after ¶:

And that said A. B. resided within the United States at least three years next previous to his becoming twenty-one years of age.

8.

AFFIDAVIT OF RESIDENT ALIEN TO HOLD REAL ESTATE.

State *County of* ss. A. B., being duly sworn (*or* affirmed), says that he is a resident of, and intends always to reside in the United States, and to become a citizen thereof as soon as he can be naturalized, and that he has taken such incipient measures as the laws of the United States require to enable him to obtain naturalization.

A. B.

Sworn, &c.

9.

CERTIFICATE OF CITIZENSHIP.

State *Court, County of* ss.
Be it remembered, that on the day in the year of our Lord 18 A. B. late of in the kingdom of at present of the city of State of appeared in the Court of the State of (the said court being a Court

of Record, having common law jursidiction, and a clerk and seal), and applied to the said court to be admitted to become a citizen of the United States of America, pursuant to the directions of the Acts of Congress of the United States of America in relation to naturalization: And the said A. B. having thereupon produced to the court such evidence, made such declaration and renunciation, and taken such oaths as are by the said acts required: Thereupon it was ordered by the said court that the said A. B. be admitted, and he was accordingly admitted by the said court a citizen of the United States of America.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this day of 18 in the year of the Independence of the United States.

By the court,

C. D., [L. S.]
Clerk.

IN GREAT BRITAIN.

Naturalization of Aliens in the United Kingdom under the Imperial Acts, 1870 and 1872.*

The forms to be used under these Acts are not given in a schedule to the Acts, as in the case of the Canadian Act, but are prescribed by Regulations and Instructions issued in pursuance of the Act by Her Majesty's Principal Secretary of State.† Although the Canadian forms are for the most part taken from these, the course of procedure differs very much. There, the application for a certificate of naturalization is made to one of Her Majesty's Principal Secretaries of State; and a memorial to that official setting forth the facts of the case is the foundation of the proceeding. The requirements as to evidence are more ample and perhaps more stringent than in Canada. If a reason were sought for this, it would most probably be found in the widely different circumstances of the two countries in regard to population and area of territory requiring settlement. It may be of use in certain cases arising under the Canadian Act to refer to the procedure under the Imperial Acts, which is regulated by instructions and forms prescribed by Her Majesty's Principal Secretary of State. The instructions for common naturalization are as follows:

(A) *Instructions for Aliens applying for Certificates of Naturalization.*

1. Any alien desirous to obtain a certificate of naturalization must present to one of Her Majesty's Principal Secretaries of State a memorial, praying for the grant of such certificate.

* See Statutes of Canada, 1872, pp. ix., xlix., lix.

† 13 *Hertslets*, 1292.

2. The memorial must state—

(1). Of what foreign state the applicant is a subject.

(2). His name, address, age, profession, trade, or other occupation.

(3). Whether he is married, and has any children under age residing with him, and if so, to state their names and ages.

(4). That during the period of eight years preceding the application, the applicant has for five years resided within the United Kingdom (the place or places of such residence being specified), or that during the same period of eight years he has for five years been in the service of the Crown (the post in which he served being specified).

(5). That he intends to reside in the United Kingdom or to serve under the Crown.

3. The applicant must verify the statements in his memorial by a statutory declaration, made before a magistrate or other person authorized to receive such declarations in pursuance of the Act passed in the 5th and 6th years of His late Majesty King William IV., chapter 62.*

4. The statements in the memorial must be further verified, and the respectability and loyalty of the applicant vouched for by a declaration made in like manner by four householders who are natural-born British subjects, and neither of them the agent or solicitor of the memorialist. The declaration may be made by such declarants jointly or by each separately; but each of the declarants must in his declaration state, as to himself, the fact that he is a householder and a natural-born British subject, the place

* *As to extra-judicial oaths.*

of his residence, and the period during which he has personally known the applicant.

5. (*Names the fee to be paid.*)

6. After obtaining the grant of a certificate the grantee must take and subscribe the oath of allegiance, a blank form whereof will be annexed to the certificate.

7. The oath of allegiance may be taken and subscribed:

In England or Ireland:—

In the presence of any Justice of the Peace, or any Commissioner authorized to administer oaths in Chancery.

In Scotland:—

In the presence of any Sheriff, Sheriff-substitute, or Justice of the Peace.

8. (*As to fee for the administration of the oath.*)

9. After taking and subscribing the oath of allegiance, the grantee of the certificate shall cause the oath to be registered at the Home Office.

10. After registration the certificate and oath of allegiance will be re-delivered to the grantee of the certificate.

Home Office, August, 1870.

For other Instructions and Forms in use in the United Kingdom, see 13 Hertslets, 1292.

PASSPORTS.

A naturalized British subject, applying for a passport to facilitate his travelling in foreign countries will receive one with the qualification mentioned in the statute, inserted as follows:—" This passport is granted with the qualification that the bearer shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect.*

Applications in England for Foreign Office Passports are made in writing to Her Majesty's Secretary of State for Foreign Affairs with the word "Passport" written upon the cover.

They are granted to those who are either known to the Secretary of State or recommended to him by some person who is known to him, or upon the application of any banking firm established in London or in any other part of the United Kingdom.

Foreign Office Passports must be countersigned at the Mission in London, or at some Consulate in the United Kingdom of the Government of the country which the bearer of the passport intends to visit. †

It is requisite that the bearer of every passport granted by the Foreign Office should sign his passport before sending it to be *visèd* at any Foreign Mission or Consulate in England: without such signature either the *visa* may be refused, or the validity of the passport questioned abroad.‡

* Joel's Consuls' Manual, 361, and p. 65 *ante*.

† 10 *Hertslets*, 283.

‡ *Ibid.*

In Canada,—The application for a passport is to the Secretary of State, Ottawa. The form issued in the ordinary case of a British subject by birth, is as follows:—*

L.S.

By His Excellency
(titles)

.....
Governor General of Canada, and Vice-Admiral of the same.

DESCRIPTION OF HOLDER.
Height.....
Colour of Eyes.....
Colour of Hair.....
Complexion.....
Nose.....
General Appearance.....
Age.....
Signature of the Holder
.....

To all to whom these Presents shall come,—Greeting:

These are to certify that

the holder hereof, whose Description is given in the margin, is a ..... British Subject; and that these presents are granted to enable him to travel in foreign parts.

Given at Ottawa, this
day of
in the year of Our Lord one thousand eight hundred and eighty , and of Her Majesty's Reign the forty .

Attested by

Justice of the Peace.

By command,

Under Secretary of State.

If the applicant be a British subject by naturalization, the qualification before mentioned will be inserted so as to make it conform to the certificate granted upon naturalization. (See pp. 89, 120, *ante*).

* In the United States the application is made to the Secretary of State, and the form is similar to the foregoing.—See *Hill's* Manual of Forms. Pub. Chicago, 1883.

ADDENDA.

Page 48-50, *add* to note (*a*) :—A will made according to the forms of English law by an alien who, though her domicile of origin was English, was domiciled abroad at the time of making her will and of her death, is not entitled to probate in England. In determining what is the valid will of an alien, the general principles of law prior to the passing of the Naturalization Act, 1870, (Imp.), are still applicable: *Bloxam* v. *Faure*, L. R. 8 P. D. 101. An alien infant, never having been resident or domiciled in England, although interested in a fund in Court, will not necessarily be treated as a ward of Chancery; the jurisdiction of that Court being founded, not so much upon the fact that the Court has property of the infant to administer, as upon the parental relation in which the Court stands towards an infant British subject arising out of the title of a British subject to the protection of the Crown as *parens patriæ: Brown* v. *Collins*, L. R. 25 Ch. D. 56, and see *Hope* v. *Hope*, 4 D. M. & G. 328.

Page 95 note, line 27, *add* to cases in ( ), *Cooke Wilby*, L. R. 25 Ch. D. 769.

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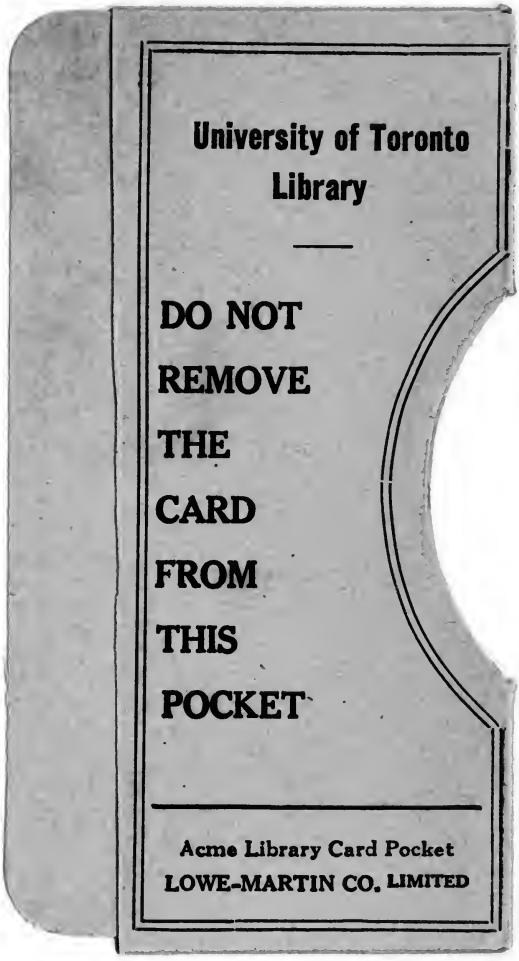
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