

The publication of the proceedings of the first meeting has been delayed by the prolonged absence of the managing editor, but they are in press and will be distributed to the members of the Society before the second annual meeting. It is not too much to say that they are valuable in themselves and in not a few instances are contributions to the subjects under discussion. It is hoped that the proceedings of the second annual meeting will be equally valuable.

EXPATRIATION AND PROTECTION OF NATURALIZED AMERICANS ABROAD
AND IN TURKISH DOMINIONS

The act of March 2, 1907 (see Supplement, I:258), dealing with "The Expatriation of Citizens and their Protection Abroad, 1907," provided, in section 2:

That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however,* That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe: *And provided also,* That no American citizen shall be allowed to expatriate himself when this country is at war.

The intent of this section is clear, namely, to free the Government from the onerous duty of protecting indefinitely naturalized citizens who take up their abode permanently in foreign parts. The duty of state and citizen is mutual — the state protects the citizen, and the citizen protects the state. Should the citizen withdraw himself from the state of his adoption it becomes difficult or impossible for him to render to the state those services for which the state in return guarantees and protects him at home and abroad. He ceases to contribute to the state; he becomes a drain upon the state, and looks to it only or chiefly when in trouble in foreign parts he needs the aid of the government from which he has withdrawn himself and his property.

The statute does not and can not mean that a naturalized citizen shall not leave this country. It does and must mean that on leaving this country he should have the *animus revertendi*. When he has renounced

the intent to return it is only fair to permit the state to renounce the duty to protect. If the naturalized citizen expatriates himself by naturalization in a foreign state or when he takes an oath of allegiance to a foreign state he determines expressly his relationship to the country he has left, but he may by a less public and unequivocal renunciation of allegiance forfeit his claim to American citizenship.

The experience of the past half century teaches that hordes of foreigners come to this country to become naturalized with the intent to return to the country of their origin in order to enjoy in the home country the protection of American citizenship. The naturalization of such persons in no wise adds to the strength or greatness of this country, and their presence in the country of their origin is undesirable and irritating.

The so-called "Bancroft treaties" of 1868 provided that:

If a German naturalized in America renews his residence in North Germany without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally: if an American naturalized in North Germany renews his residence in the United States, without the intent to return to North Germany he shall be held to have renounced his naturalization in North Germany. The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country. (Treaties in Force, p. 593.)

In such a case the citizenship is forfeited by the residence without an opportunity to show the ultimate intent to return. This provision enables the home country to protect itself from the fraud committed upon it by naturalization in a foreign country for the express purpose of enjoying upon return immunities and exemptions from the duties incident to citizenship. A fraud is likewise perpetrated upon the United States, and there is no reason why this Government should protect a renegade.

It may often happen that a foreigner comes to this country, is naturalized, and after naturalization takes up a permanent residence in a state other than the country of his origin. In such a case the naturalized citizen not only renounces allegiance to the home country, but he withdraws himself from the United States; he ceases to contribute to it and it would seem that in so doing he commits a fraud upon the country of his naturalization. He might have emigrated in the first place to the land of his permanent abode, but in such case he would have had the protection of the home country; not the protection of the country

in which he was naturalized. He thus chooses protection, not citizenship, and there seems no reason why such a one should be carried indefinitely upon the rolls of American citizenship.

Residence abroad forfeits citizenship, and the forfeiture is the act of the naturalized citizen, not an act of administration. He is made a citizen in a judicial proceeding; he is not deprived of his citizenship by an act of administration. It is his own act, and the statute allows administrative tribunals to safeguard and protect his citizenship, provided he overcomes the presumption of continued residence by satisfactory evidence to a diplomatic or consular officer of the United States that his residence abroad is not meant to be permanent or of such a nature as to forfeit American citizenship.

When a naturalized citizen of the United States has resided for two years in the country of his origin, or for five years in any other country, this fact creates a presumption that he has ceased to be an American citizen, but the presumption may be overcome by his presenting to a diplomatic or consular officer proof establishing the followings facts:

(a) That his residence abroad is solely as a representative of American trade and commerce, and that he intends eventually to return to the United States permanently to reside; or,

(b) That his residence abroad is in good faith for reasons of health or for education, and that he intends eventually to return to the United States to reside; or,

(c) That some unforeseen and controlling exigency beyond his power to foresee has prevented his carrying out a bona fide intention to return to the United States within the time limited by law, and that it is his intention to return and reside in the United States immediately upon the removal of the preventing cause.

The evidence required to overcome the presumption must be of the specific facts and circumstances which bring the alleged citizen under one of the foregoing heads, and mere assertions, even under oath, that any of the enumerated reasons exist will not be accepted as sufficient. (Circular of the Department of State, April 19, 1907.)

The residence of the naturalized citizen in foreign parts is bound to give rise to complications and seeming hardship, but the solution is infinitely more complicated by naturalization in the United States of subjects of countries in which the United States claims and exercises extraterritorial rights, for a citizen of the United States in taking up his residence in an extraterritorial country is regarded, at least for certain purposes, as residing within the United States and being subject to the jurisdiction of the United States to the exclusion wholly or in part of

the local laws. The case may thus present itself, and indeed frequently does, of a subject coming to the United States from a country in which we exercise extraterritorial rights and privileges, becoming naturalized, and thereupon returning to the country of his origin. He knows little or no English. He has not acquired American habits of thought. He returns to the land of his origin, mixes with his former friends and associates, but by virtue of his naturalization claims exemption as an American citizen from local rules and regulations. His children, born after his return, he considers American citizens, and the United States may be called upon to protect generations who have never been in the United States, who perform no duties to it, and merely seek its protection in time of trouble.

Extraterritoriality, however, is a right which the United States may claim and exercise. It is, however, for the United States to determine when it will exercise this sovereign right, and it is a question not of international law but of constitutional law of the United States under what circumstances and how far the right recognized will be claimed and exercised. As far as the United States is concerned it is not a question of international law but of internal or constitutional law. The United States, therefore, may decline to extend to naturalized citizens in extraterritorial regions indefinite protection, or indeed the status of citizen. By extending section 2 of the act of March 2, 1907, to extraterritorial regions, the Secretary of State has placed naturalized citizens of the United States upon an equal footing, and granted to them the same rights and no greater. The text of the circular follows:

DEPARTMENT OF STATE,

Washington, December 11, 1907.

To the Diplomatic and Consular Officers of the United States in Turkish Dominions.

GENTLEMEN: Section 2 of the act of March 2, 1907, and paragraph 144 of the Diplomatic Instructions and Consular Regulations as amended by the Executive order of April 6, 1907, relative to expatriation and the protection of Americans abroad, are applicable to American citizens who reside in Turkish dominions.

Therefore, a naturalized American citizen formerly a Turkish subject who returns to Turkish dominions and there resides for a period of two years will be presumed to have ceased to be an American citizen, and a naturalized American citizen not formerly a Turkish subject who resides in Turkish dominions for five years will be presumed to have ceased to be an American citizen.

The presumption may be overcome in either case by his presenting to a diplomatic or consular officer of the United States proof establishing the following facts:

(a) That his residence in Turkey is solely as a representative of American trade and commerce and that he intends eventually to return to the United States to reside; or

(b) That some unforeseen and controlling exigency beyond his power to foresee has prevented his carrying out a bona fide intention to return to the United States within the time limited by law, and that it is his intention to return and reside permanently in the United States immediately upon the removal of the preventing cause; or

(c) That he resides in a distinctively American community recognized as such by the Turkish Government; or

(d) That he resides in Turkish dominions as the regularly appointed missionary of a recognized American church organization.

The evidence required to overcome the presumption of expatriation must be of the specific facts and circumstances which bring the alleged citizen under one of the foregoing heads, and mere assertions, even under oath, of any of the enumerated reasons existing will not be accepted as sufficient.

Whenever evidence shall be produced to overcome the presumption of expatriation as indicated in this instruction the depositions and other proofs must be made in duplicate, one copy thereof being sent forthwith to this Department, and if the proofs have been presented to a consular officer he shall notify the embassy at Constantinople of the name of the person and of the facts concerning his residence abroad.

This instruction, in so far as it relates to the presumption of expatriation from residence in Turkey, supersedes the corresponding parts of the Department's circular instruction of April 19, 1907, entitled "Expatriation."

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ELIHU ROOT.

The situation of naturalized missionaries in China will undoubtedly call for regulation and the extension of section 2 of the act of March 2, 1907, with necessary modifications, for Chinese subjects may not become citizens of the United States, which guarantee protection without permitting a fraudulent use of American citizenship.

THE REMISSION OF A PORTION OF THE CHINESE INDEMNITY

The joint resolution introduced in the Senate on January 9, 1908, is as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized to consent to a modification of the bond for twenty-four million four hundred and forty thousand seven hundred and seventy-eight dollars and eighty-one cents, dated