30% of the skins annually taken from the Japanese herd is to be divided equally between the United States, Great Britain and Russia; and

30% of the skins annually taken from any herd which may hereafter resort to the breeding grounds under British jurisdiction in the North Pacific Ocean, is to be divided equally between the United States, Japan, and Russia.

The convention contains other provisions relating to the annual killing of the seals of the several herds on land, the regulation and control of each herd being reserved, however, to the government having jurisdiction over the breeding grounds.

That arrangement has resulted in saving the fur seals from extinction for commercial uses, and has proved of great pecuniary advantage to all the parties concerned, as well as of indirect advantage to the consumers throughout the world by continuing the supply and cheapening the cost of fur seal skins as an article of commerce.

It is clear, however, that any attempt to impose international control over the production and distribution of raw materials will present different problems in each case, which will require special treatment, and that the adoption and operation of any such plan will depend upon the mutual advantages which the interested parties derive from it and upon the mutual consent of the parties concerned.

CHANDLER P. ANDERSON.

THE NON-RECOGNITION AND EXPATRIATION OF NATURALIZED AMERICAN CITIZENS

The second paragraph of the second section of the Act of March 2, 1907 (34 Stat. 1228) in relation to the expatriation of naturalized citizens is as follows:

> 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.

By this enactment the Congress has established a rule governing every department of the government whenever a question of citizenship to which the paragraph is applicable calls for solution. The pure question of citizenship, whether an individual has through the operation of the law ceased to be an American national and become an expatriate, is essentially a judicial one, and when judicially determined binds the executive departments of the government. Nor can those departments in the absence of

such a decision make a conclusive determination of it. They are, however, called upon to heed any given effect to the statute in other ways.

A naturalized citizen residing abroad against whom the presumption has arisen may demand of the Government of the United States official recognition of himself as an American national at a time when no court has passed upon the question whether through the operation of the statute he has ceased to be a citizen. He may, for example, apply to an American consular officer to administer to him the oath of repatriation under the Act of May 9, 1918.[1] Eligibility to take that oath depends upon the American citizenship of the applicant at the time when he contracted the obligation deemed to have produced expatriation. Hence, the Department of State is in such a case obliged to determine whether on the evidence submitted the applicant was a citizen at the time when he took the oath of allegiance to the foreign country. If it finds that at that time the presumption had arisen against him by reason of the length of his residence abroad, it is obliged to determine also whether the presumption was rebutted. If it concludes that there was no rebuttal, it must regard the presumption as controlling, and hold that cessation of citizenship has in fact occurred. Again, when a naturalized citizen who resides abroad and applies for a passport proves to be an individual against whom the presumption has arisen, the Department of State must pass on the question whether the presumption has been rebutted. If the conclusion is in the negative, no document such as a passport, which recognizes the applicant as an American citizen can be issued.

Such opinions or conclusions adverse to the citizenship of the applicant signify more than mere unwillingness to protect an American citizen deemed to have forfeited the right to protection. They challenge the very right of the individual to be recognized as a citizen, and serve to deny him privileges which a citizen as such may normally claim. They amount to an assertion that the record of the applicant is such as would compel a judicial tribunal to take a like stand were the question of expatriation to be determined by it. Nevertheless, such conclusions do not in themselves produce expatriation. A competent court may subsequently pass on the same question and reach a different conclusion on the same set of facts. If it does so, the decision becomes binding upon the government.

Lacking in most cases the guidance of a previous judicial decision on the facts submitted to it, the executive branch of the government is, by reason of the terms of the Act of Congress, constantly burdened with the task of passing on the question whether the presumption of cessation of citizenship

[1] The Act of May 9, 1918 (40 Stat. 542, 545), permitted any person who, while a citizen of the United States, and during the existing war in Europe, had entered the military or naval service of any country at war with a country with which the United States was then at war, who should be deemed to have lost his citizenship "by reason of any oath or obligation taken by him for the purpose of entering such service," to resume his citizenship by taking the oath of allegiance to the United States prescribed by its naturalization law and regulations.

has been rebutted, or, to express it differently, whether the particular individual has ceased to be entitled to recognition as an American citizen. In the endeavor to reach a correct decision the Department of State approaches the question in a judicial spirit, seeking to minimize the danger of denying recognition of citizenship through purely routine or administrative action. The decision is (as it should be) based upon all of the evidence at hand when the question is passed upon. No rule of estoppel is applied because of a previous departmental decision if further evidence has been submitted which demands another. When the applicant for a passport is abroad, his expressed desire to return to the United States is one of the facts which is considered for what it may be worth. Where departmental action is sought after return of the applicant to the United States, the fact of the return is considered with all the other facts in determining whether or not the presumption of cessation of citizenship has been rebutted. It may well be doubted whether the bare fact of return without regard to other circumstances suffices to rebut a presumption that has arisen. "The value of the fact of return as an evidential fact is not to be artificially fixed, but the circumstances are all to be considered to determine whether or not the presumption has been overcome."

The provision of the Act declaring that the presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States is not believed to have been designed to establish an exclusive mode of rebuttal. Thus it is regarded as equitable to an applicant for a passport, and not at variance with the expressed will of the Congress, to permit such an individual, in case he happens to be in the United States, to present evidence by way of rebuttal directly to the Department of State.

The Act of March 2, 1907, has doubtless served a useful purpose. It is believed, however, that it requires amendment. It leaves open to doubt the scope of the enactment and the procedure by which it is to be applied. It places a heavy burden upon an executive department which is constantly obliged to deny recognition of citizenship in cases where there is uncertainty whether the courts will acquiesce and upon a like showing decree expatriation. In the course of amending the existing law inquiry may thus well be made whether a system which causes expatriation to result from an unrebutted presumption of cessation of citizenship is preferable to one whereby expatriation is made the necessary consequence of specified forms of conduct occurring under carefully defined conditions. So long as the final determination of the question of citizenship remains a judicial one, and so long as the executive departments are simultaneously obliged to hold, without judicial aid, whether the individual is or is not to be recognized as having retained his citizenship, it is of utmost importance that the Congress define its views with such clearness that the several branches of the government find little cause for divergent conclusions in applying and interpreting the law.

CHARLES CHENEY HYDE.