

laws to the highest state of efficiency. It would be of great advantage if, for instance, foreign governments would grant to our consuls the privilege of examining prospective immigrants, prior to their embarkation, with sufficient thoroughness to prevent the departure of such of them as appear under our laws to be liable to exclusion. Since this purpose, as well as any more active assistance on the part of a foreign country, can best be accomplished by international agreement, authority has been given to the president to call in his discretion an international conference with the view to the conclusion of a general convention on the subject of immigration into the United States, or, in the alternative, the president may send commissioners to foreign countries to make special agreements with them to the end that they may recognize and aid the United States in the enforcement of its immigration laws.

It is to be noted that one of the concluding paragraphs provides that nothing in this act shall be construed to apply to accredited officials of foreign governments nor to their suites, families, or guests.

The committee on immigration of the house of representatives, in their report on the bill, make the pertinent comment that

it is exceedingly probable that international law already exempts officials of foreign governments from our immigration laws.

In other words, the provision is intended to be merely declaratory of the great principle of the law of nations which exempts from the local jurisdiction the diplomatic representatives of a foreign state and their official household. The exemption has been extended by the present law to their guests as well, as it was realized that such an exemption would not be abused. Every instance of the recognition by this government of the doctrines of the common law of nations in our system of positive law should be regarded as significant. Especially does it encourage the aims and objects toward which the Interparliamentary Union is striving, and of the great movements which make for the peace of the world. It makes it possible to hope that, in the evolution of international relations, there may spring forth a code of positive law, made and sanctioned and obeyed by the enlightened powers of the earth, which will become the uniform and supreme law by which the dealings of state with state will be judged.

THE NEW CITIZENSHIP LAW

The congress which passed the naturalization act (printed in Supplement, January number, pp. 31-47) has had the good fortune to round out its labors with an act on citizenship, by means of which the law of

the United States regarding these two subjects is in a more satisfactory position than in any other period of the country's history. Notwithstanding the fact that our country has been peopled and developed by persons directly or indirectly of foreign origin, and notwithstanding the fact that it has been the policy of our government to claim consistently and persistently the right of these immigrants to renounce allegiance to their parent government by becoming citizens of the United States, and notwithstanding the further fact that congress in 1868 solemnly declared the right of citizens to expatriate themselves, it is indeed remarkable that no statute prescribed the manner in which expatriation should be performed so that the citizen might free himself from an irksome allegiance. The explanation is perhaps to be found in the fact that we have been too busy putting the houses of others in order to attend properly to our own, or, in other words, our attention has been called to the rights of foreigners to expatriate themselves in favor of the United States while there are comparatively few instances of American citizens seeking to renounce American citizenship. The necessity of legislation was apparent to all thoughtful people. To take an example from the many that might be selected. For instance Grant said in his annual message of December 5, 1876:

The United States has insisted upon the right of expatriation, and has obtained, after a long struggle, an admission of the principles contended for by acquiescence therein on the part of many foreign powers and by the conclusion of treaties on that subject. It is, however, but justice to the government to which such naturalized citizens have formerly owed allegiance, as well as to the United States, that certain fixed and definite rules should be adopted governing such cases and providing how expatriation may be accomplished.

While emigrants in large numbers become citizens of the United States, it is also true that persons, both native born and naturalized, once citizens of the United States, either by formal acts or as the effect of a series of facts and circumstances, abandon their citizenship and cease to be entitled to the protection of the United States, but continue on convenient occasions to assert a claim to protection in the absence of provisions on these questions. * * * The delicate and complicating questions continually occurring with reference to naturalization, expatriation, and the status of such persons, as I have above referred to, induce me to earnestly direct your attention again to these subjects.

The recent congress has remedied these evils by a statute approved March 2, 1907, the second section of which reads as follows:

Sec. 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.

It is a noticeable fact that American young women of beautiful parts and ample fortunes have insisted on conferring themselves and their

purses upon impecunious foreigners. The union ordinarily ends by mutual separation or by the action of the divorce court. The young woman has experience, the foreigner has the purse. What is the status of this woman? As long as the married relation remains she is a foreigner. Should the husband die she is released from her bondage and with it the citizenship acquired. Any doubt previously existing as to the status of such a person is set at rest by §3 of the act which provides:

Sec. 3. That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.

The status of a foreign woman who acquired American citizenship by marriage has been the source of no little difference of opinion. It is admitted that during coverture she is an American citizen and as such entitled to all the rights and privileges of citizenship. Upon the dissolution of marriage by death or divorce one view would hold the widow to be a foreigner, another would permit her to retain her American citizenship. The statute in §4 has likewise settled the status of the foreign woman.

Sec. 4. That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation.

The citizen owes allegiance to the government, the government likewise owes protection. When the citizen remains at home there can be no conflict for the duty and protection are at his door. Should he go abroad he passes from the domain of the United States into a foreign jurisdiction and it is familiar knowledge that residence in a foreign country demands of the resident a temporary allegiance not inconsistent with the paramount tie to the home country, and in return for this temporary allegiance the foreigner receives a protection conditioned upon residence. We have, however, two classes of citizens, the natural and the made. The first class gives us comparatively little trouble, because no country other than the country of birth has ever had a claim upon their service. With a naturalized citizen it is different. He frequently visits the land of his origin after having amassed a competency. Not infrequently he decides to reside permanently in this country. It may be

that he left the country with military service unperformed. It may be a family has grown up or is growing up and the parent is as unwilling to have his children serve in the army as he was in his un-American days. The country of his origin finds his presence embarrassing because it shows to the native the way to escape a duty, and the way to enjoy life when a competency has been amassed in foreign parts. It is to the evil example of the young that the family of the emigrant should be exempt from military duty. A conflict arises sooner or later. Indeed this conflict has at times threatened to endanger the pleasant relations which should exist between members of the family of nations.

To prevent this kind of a conflict from arising the statute declares that a two years' residence in the foreign state from which he came or five year's residence in any foreign state shall raise a presumption that a naturalized citizen has renounced his American citizenship, or to quote the words of the statute:

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.

There is an intermediate stage between the declaration of an intention to become a citizen and the acquisition of citizenship. The declaration of intention is unscientific and irksome. Congress has, however, refused to abolish it. The result is that the applicant for citizenship must reside five years in the United States and that at least for two of these years he must occupy the embarrassing position of one who has declared his intention to renounce foreign allegiance without having acquired citizenship of the state of his choice. He performs the duties incumbent upon a resident of our country. He receives the protection due to residence and in addition thereto he is endowed with many of the rights and privileges of citizenship. Should he wish to leave the United States for a short period or should it be necessary for him to spend a few months in foreign parts his situation is trying and embarrassing. He cannot well apply to the country of his origin for a passport because he has declared his intention of renouncing all allegiance to that country. He cannot apply to the United States for a passport of citizenship for he is not a citizen. If a passport be required to enter the country which he intends to visit he must choose, perforce, between the

old and the new love. To remove the applicant from his predicament, the last congress had the courage of its convictions, for it authorized the secretary of state to issue passports to declarants which should be valid for a period not to exceed six months in a foreign country other than the land of the applicant's birth.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That the secretary of state shall be authorized, in his discretion, to issue passports to persons not citizens of the United States as follows: Where any person has made a declaration of intention to become such a citizen as provided by law and has resided in the United States for three years, a passport may be issued him entitling him to the protection of the government in any foreign country: Provided, That such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of this government in the country of which he was a citizen prior to making such declaration of intention.

Congress could not well do less if the declaration of intention be retained. It could not do more because it could not protect the declarant in the land of his origin, without assuming a concurrent jurisdiction. The proper solution of the question would be it would seem, to abolish the declaration of intention. A foreigner would need to remain five years continuously in the United States, but there would be this advantage, namely, that he remains a citizen of the land of his origin until he has acquired a citizenship in the United States. There would be no period of time in which he would be an international derelict.

THE QUESTION OF EXPULSION

Every now and then newspapers inform the public that an American citizen has been expelled from some foreign country in which he had taken up his residence, that the expulsion was without cause, that no reason was given for the expulsion other than that the resident was an undesirable person, and that no time was given the expelled person to collect and to dispose of his effects. The statements in the paper are undoubtedly accurate, for cases of expulsion do occur, but the acts are usually exaggerated and the law is not always clearly understood or properly interpreted.

If it be admitted that all members of the family of nations are sovereign and equal—Chief Justice Marshall declared that “Russia and Geneva have equal rights” (The *Antelope*, 1825; 10 Wheaton 66, 122)—it necessarily follows that a nation has a right to choose who shall be its citizens and it likewise follows that a nation shall decide and must decide for itself whether or not the presence of foreigners conduces to the politi-