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-

cal, industrial or social well-being of the commonwealth. If a state wishes to shut itself up from the rest of the world, it may, legally speaking, so do, but if foreigners are admitted it is well settled by international law that there can be no discrimination between foreigner and foreigner as such. All foreigners must be treated alike and discrimination against one foreigner in favor of another of a different race leads inevitably to a claim against the state guilty of the unfriendly act.

In the absence of discrimination, foreigners may well stand upon a different footing. They cannot claim political rights, for those rights are incident to citizenship. It may be that the holding of land is subjected to certain conditions or it may be that a particular form of industry is reserved for the native. But the foreigner when admitted is entitled to a protection co-extensive with the temporary allegiance he owes by reason of his residence. He should enjoy personal liberty, his property must be protected, and he should not be discriminated against in courts of justice. The state may prescribe the terms upon which foreigners are admitted, but when the foreigner complies with those terms it would seem that the government cannot proceed against him or eject him without incurring liability. It is perhaps unnecessary to cite authority for the proposition that a nation may prescribe the terms of admission within its borders and that aliens failing to comply with such conditions have no inherent right under international law to enter such territory. Three important adjudged cases may be mentioned and a quotation from a well-known treatise on international law to show the nature and extent of the right.

> It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. (Vattel: lib, 2, §§94, 100; I Phillimore: 3d ed., c. 10, §220). In the United States this power is vested in the national government, to which the constitution has committed the entire control of international relations, in peace as well as in war. It belongs to the political department of the government, and may be exercised either through treaties made by the president and the senate, or through statutes enacted by congress. (Nishimura Ekiu v. United States, 1892, 142 U. S., 651, 659. See also Knox v. Lee, 12 Wall. 457; Fong Yue Ting v. United States, 1893, 149 U. S., 698).

In Turner v. Williams (1904, 194 U. S., 279), the supreme court of the United States held that it was constitutional and declared the power to expel inherent in sovereignty. In the same way Great Britain has held under international law, as well as by statute, that an alien has no legal right, enforcible by action, to enter British territory. (Morgrove v. Chung Teeng Toy, 1891, L. R. App. Cas. 272):

Each sovereign state is free to prescribe the conditions upon which aliens may enter and reside within its territory. The right of nonadmission, as of expulsion, is a direct consequence of territorial sovereignty. A nation may subject the residence of aliens within its territory to exact the determined conditions. May it interdict, completely, immigration? May it close its territory, absolutely, to the alien? China and Japan long observed this policy. Europeans obliged them to conclude treaties opening certain ports and permitting access of aliens to certain provinces. This was, however, the employment of force; not the application of law.

A state has the right to expel from its territory aliens, individually or collectively, unless treaty provisions stand in the way. In ancient times, collective expulsion was much practiced. In modern times it has been resorted to only in cases of war. Some writers have essayed to enumerate the legitimate cause of expulsion. The effort is useless. The reasons may be summed up and condensed in a single word: *the public interest of the state.* Bluntschli wished to deny to states the right of expulsion, but he was obliged to acknowledge that aliens might be expelled by a simple administrative measure. (French law of December 3, 1849, arts. 7 and 8; law of October 19, 1797, art. 7). An arbitrary expulsion may nevertheless give rise to a diplomatic claim. (Bonfils: Manuel de Droit Int. Public, §§441, 442.)

Admitting, therefore, as we needs must, that a foreigner may not enter a sovereign state without permission of the sovereign, and that the alien's residence within that foreign country is conditioned upon obedience to the law which may be established concerning his residence, the question arises: "How may he be removed from this country when his presence becomes dangerous or undesirable?"

While a sovereign state may do a sovereign act, it does not follow that the state is not liable for the consequences of such act. Were this not so, sovereignty would be a complete defense to any claim against a foreign government whether through the channels of diplomacy or before an international court. It follows then that the sovereign act must be done in a particular way, if the state is to escape liability. The correct principle would seem to be that the state expelling the alien should do so only when his presence is against the public good; that proof or evidence of this should be given, otherwise the mere statement would suffice to ruin a man's fortune, without any possibility of redress; that the reason for expulsion should be communicated to the alien resident in order that he might be able to overcome the reason by showing the falsity of the accusation; that the alien be given a reasonable time within which to dispose of his effects, for it cannot be supposed that an enlightened government would seek to ruin him in person or fortune. The alien is expelled because his presence is dangerous or undesirable, to deprive him of the opportunity of disposing of his property would inflict financial loss upon him, and it is difficult to see how his financial ruin would in any way benefit the state. The only justification for

immediate expulsion would seem to be that the presence of the alien has become so undesirable or dangerous that a continuance of the residence although for a limited time would injure the public to such a degree that it could not well be granted. And, finally, the reason should be communicated to the government whereof the expelled alien is a citizen, for an injury to the citizen is an injury to his state, for which reason it is that an insult to the citizen is an insult to the state, and may, unless redressed, possibly lead to redress by force.

Treaties of international law are in accord with this doctrine and supply apt illustration. Decisions of courts of arbitration have given full effect to these principles and have assessed damages against the offending state. Reference is especially made to the Buffalo Case as decided by Mr. Ralston and reported by him in the Venezuelan Arbitrations of 1903. After citing the various authorities, for example, the opinion of Rolin-Jaequemyns in the Revue de droit international, vol. 20, p. 498; Bluntschli's Droit international Codifié, articles 383, 384; Professor von Bar, Journal de droit international privé, vol. 13, p. 6; Woolsey's International Law, §63, p. 85; Hall's International Law, p. 24, the learned umpire summed up his conclusion as follows:

1. A state possesses the general right of expulsion; but,
2. Expulsion should only be resorted to in extreme instances, and must be accomplished in the manner least injurious to the person affected.
3. The country exercising the power must, when occasion demands, state the reason of such expulsion before an international tribunal, and an inefficient reason or none being advanced, accept the consequences.

This case is heartily commended to any who may wish to consider a concrete case in detail.

TRANSIT IN EXTRADITION CASES

Opportunities for the criminal of the present day to escape the consequences of his crime by removal to foreign parts are becoming gratifyingly few. Governments are every year seeing more clearly the wisdom of the conclusion of liberal extradition treaties and of a liberal spirit in their interpretation. Every year new treaties are being made or supplementary treaties entered into covering new crimes, the prevalence of which is a result of the commercial, industrial or political activity of the past two or three decades.

In marked contrast with the present practice is the attitude of the United States government during the first half century of its growth.