OFFICE OF PRESIDENT.

Is a Citizen Born Abroad Eligible to It?

Arguments on Either Side of the Question. What is the Constitutional Meaning of the Word "Natural"?—Opinions of the Hon. William M. Evarts, A. P. Morse, Kent, Story and Others.

To the Editor of the Brooklyn Eagle:

*Would the child of an American Minis*ter to the Court of St. James, London, born in London during the service of said Minister, be a citizen of the United States in the sense of being eligible to the Presidency? Cox.

Answer—Substantially the same question was answered in the EAGLE a few weeks ago, when we took occasion to present the views and points on the same subject which have been frequently set forth in the columns of the *Journal of Commerce.* We answered the question in the negative. Now, the query comes again. The difficulty which seems to

present itself to those who attempt to study out the Constitutional provision for the Presidency—both learned and unlearned in the law, is: What is meant by a natural born citizen? The Constitution of the United States is history as well as law on the subject:

No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to *the age of thirty-five years*, and been fourteen years a resident within the United States.

At the beginning of the government of the United States it is clear that a person not born on the soil, a person not a natural born citizen, could be President of the United States, provided he was 35 years of age, and had resided in the country for fourteen years. Commentators have been very shy of giving this phrase, "natural born citizen," a definition. So we find it passed by as if every person knew what it meant. The question sent to the EAGLE by "Cox" is just this: "What does a natural born citizen mean?" The State Department at Washington calls this a "hypothetical case;" hence it may be inferred that the Secretary of State has not arrived at any conclusion or adopted any standard of belief regarding what constitutes a "natural born citizen."

We tried to find in Morse, on Citizenship, some light on the question, with the following outcome:

A natural born citizen is one not made by law or otherwise, but born. The Constitution does not make the citizens; it only recognizes such of them as are natural, home born, and provides for the naturalization of such of them as are alien, foreign born, making the latter, as far as nature will allow, like the former. The expression "natural born citizen," *recognizes and reaffirms the universal principle* common to all nations, and is as old as political society—that the people born in a country do constitute the nation, and, as individuals, are natural members of the body politic.—Page 125, section 90.

We also wrote to the author of the work quoted from, Alexander Porter Morse, Esq., Washington, and received a very courteous and prompt reply, as follows:

Undoubtedly he would; [be eligible to the Presidency] provided the father was (as I infer the question in the shape in which it is put assumes), 1, a citizen of the United States, and 2, is not within the exception of the Act of February 10, 1855 (10 Stat. at Large, 604), which is "that the right of [American] citizenship shall not descend to persons whose fathers never resided in the United States." The true rule may be thus expressed: "The child of an American citizen is an American citizen [by birth]." The place of birth is immaterial. Of the *former tests of citizenship*, the *place of* birth and the nationality of the father. The United States has given in her adhesion to the latter, as have several Continental States. National character as incident to birth in a particular locality, was the creature of feudal times and of military vassalage, and was described as the *jus soli;* national character as the result of parentage

was the rule adopted by freer peoples and more enlightened communities, and was designated *jus sanguinis*. The child in the question above suggested is an American citizen by birth as a result of parentage; and the child of any other American father, although in private station, born in London or elsewhere in a foreign country, would be equally a citizen of the United States by birth, and, so far as citizenship is concerned, would be eligible to the Presidency, unless he came within the exceptions mentioned. This is the modern, contemporary American doctrine on the subject. There is to-day no serious claim of "a double nationality." Reciprocally the courts of last resort in the United States have held that the children of aliens born in the United States are aliens by birth; and they can only become citizens of the United States by complying with provisions of the law of the land. In the Slaughter House Cases (16 Wallace, p. 36), the Supreme Court declared that the qualification, subject to the jurisdiction in section 1, Fourteenth Amendment, was intended to exclude "children of ministers, consuls, and citizens of other countries born in the United States." As to these the accident of place of birth exercises no influence. They are born citizens of the country of the parents. In the case stated by you it is not, in my opinion, necessary to invoke the principle of international law or the rule of the comity of States, by virtue of which the residence of a foreign minister is treated or regarded as "constructively," and for all practical purposes, the territory of the State the minister represents.

Mr. Morse has also favored us with the copy of *an article which he addressed to the Boston Pilot* on this subject May 1, 1884, in which he takes the *affirmative. In the body of this article Mr. Morse* says: "In the United States the children of American citizens born abroad are themselves citizens of the United States (Act of Congress, February 10, 1855). They are constituted such by virtue of their parentage, and if so, are they not natural born citizens?"

A note containing the question at the head of this article was addressed to United States Senator William M. Evarts, in answer to which that gentleman replied as follows:

WASHINGTON, D. C., February 18, 1888.

My own opinion is that a child born under the circumstances stated by you would be eligible to the Presidency of the United States.

I am yours very truly, WM. M. EVARTS.

The *New York Herald* last Sunday made the assertion broadly that "A child born abroad of American parents is in law a native born American citizen and, if a male, eligible to the Presidency." This decision is based upon a course of reasoning rather than in accordance with law, for, preceding the assertion, is this statement: "There may be those who first see the light in this country who are not citizens—children of foreign ministers, for example. Born at Washington, they are citizens of England or Germany or whatever country their father represents. Parentage as well as place of birth is to

be considered in determining the citizenship of children born either within or without the United States." This reasoning would be successful if the laws of other nations governed in the United States, but they do not, and that is just the point where we discover that we must find the solution of our problem not in any treatise or commentary upon international law or upon the laws of other nations, but must look to some of our own authorities for light. It will not hurt us therefore to look where Daniel Webster looked. Every time the question has come to the EAGLE we have decided that the son of an American citizen, whether official or not, born abroad, is not eligible to the Presidency. In the EAGLE of November 27, 1887, the same ground was taken and we cited the statement made in the *Journal of Commerce of May 28, 1883.* In the same paper of October 17, 1886, we find that the editor cited as an authority one of Daniel Webster's favorites, Paschal, the highest authority in the interpretation of the United States' Constitution, who defines "a natural born citizen" as one "not made by law or otherwiset but born." "The Constitution does not make the citizens, it is, in fact, made by them. It only intends and recognizes such of them as are natural home born and provides by law" for the naturalization of such as are foreign born. It should be observed here, says Mr. David M. Stone, that "every writer of any note who has undertaken

to discuss the subject has divided *all who are* entitled to be called citizens into two classes—those who are homeborn and those who *are made citizens* by law." Bates on Citizenship, 10 op., 383, limits the "natural" members of the body politic to "the people born in the country," and he repeats this, *confining* the meaning to "every person born in the country." Kent says "nativity furnishes the rule." Story, on the Constitution, says: "Considering the ages of all such [i. e., those who are alien born and citizens when the Constitution was adopted], no persons of foreign birth can now ever be President of the United States under this Constitution." The learning and the respectability of such authorities will not be challenged by lawyers at least. In what follows, the reader will have no difficulty in coming to the conclusion that, outside of the laws of other nations, and considerations of international comity, the Constitution of the United States has settled the question of who is eligible to the Presidency, and that the Statutes at Large have taken cognizance of the accident of birth abroad of the child of any *American citizen and made him a citizen* of the United States, and that if the statute failed to do so the aforesaid child would not be a citizen. This is admitted by those who affirm that a child so born is

eligible to the Presidency, for they cite the law and give us the date of its enactment. Of course any law of this sort would be superfluous, if the right by birth and parentage was paramount by the terms of the Constitution. We quote the following from the *Journal of Commerce*:

It may be asked by those who have not examined the subject if the children born abroad of American citizens are not themselves citizens by right of birth, and therefore within the meaning of "natural born?" We answer most positively that they are not citizens by right of birth, but are made citizens by the law. The existing law was passed April 14, 1802, and is entitled "An Act to establish a uniform rule of naturalization," and this provided that "the children of persons duly naturalized under any of the laws of the United States, being under the age of 21 years, shall, if dwelling in the United States, be considered as citizens; 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 of the United States." If the latter are natural born citizens, then alien children who are under age when their parents are naturalized, are also natural born citizens. Both are made citizens because their parents are citizens, but they are made by law in virtue of their birth, and are not natural born. If anything further was necessary to confirm this view, it may be found in the fact that a child born in Europe of an American citizen who has never resided here is excluded by the very section which confers the title already quoted. All other children born abroad of American parents are citizens of the United States by virtue of the Naturalization law. It may not be out of place to add that one of

law. It may not be out of place to add that an attempt was made in Congress to give to the Constitution the meaning insisted upon by some of our *contemporaries*, or else the *language* was used by inadvertence. In the act of March 26, 1790, it was provided that "the children of citizens of the United States that may be born beyond the sea, or out of the limits of the United States, shall be considered as natural born citizens;" but this was coupled with the provision that "the right of citizenship shall not descend to persons whose fathers have *never been resident in the United States*," showing that the phrase "considered as natural born citizens" meant merely "to be treated as such because *of this law*." Great *exception* was taken to the language as misleading, and on January 25, 1795, this was repealed in express terms and a new act adopted, which read, "Shall be considered as citizens of the United States," thus making the proviso *forbidding the privilege to the children of citizens* who had not resided here consistent with it. For if a child of an American citizen born abroad is without any legislation a natural born citizen, then no provision of statute could deprive him of that birthright as long as he was innocent of crime.

Enough has been brought forward to safely guide the reflective reader. We may regret that Mr. Evarts did not suggest some points or references, but he has, doubtless, been over the ground

to his own satisfaction. The *Herald* assumes to be oracular without affording any grounds for its faith. We adhere to our former answers to the question —that the child of an American citizen, born abroad, without regard to the station of his father, is not eligible to the Presidency of the United States, because he is not "a natural born citizen," but merely a citizen made so by the law. We close by stating that *Paschal, and all other high authorities*, are clear that only a citizen born in the allegiance of the United States, i. e., either on its soil, or on the high seas under its flag, is a natural born citizen.

FOREIGN QUESTIONS

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