THE NATURALIZATION QUESTION.

Attorney-General Black's Opinion upon Expatriation and Naturalization.

WASHINGTON, Monday, July 18.

Attorney-General BLACK has, in compliance with the request of the President of the United States, rendered an opinion in the case of CHRISTIAN ERNST, a native of Hanover, and who emigrated to this country in 1831, when he was about ten years of age.

This subject was recently made the basis of a communication to our Minister at Berlin, who was instructed to demand the release of Mr. ERNST.

It appears that he was naturalized last February, and in March, after procuring a regular passport, he went back to Hanover on a temporary visit. He had been in the village where he was born about three weeks, when he was arrested, carried to the nearest military station, forced into the Hanoverian army, and here he is at the present time, unable to return home to his family and business, but compelled against his will to perform military service.

The Attorney General says that this is a case which makes it necessary for the Government of the United States to interfere promptly and decisively, or acknowledge that we have no power to protect naturalized citizens when they return to their native country, under any circumstances whatever. What you will do must of course depend upon the law of our own country as controlled and modified by the law of nations, the Constitution of the United States and the acts of Congress.

The natural rights of every free person who owes no debts, and is not guilty of any crime, to leave the country of his birth, and in good faith, and for an honest purpose—the privilege of throwing off his natural allegiance, and substituting another allegiance in its place—the general right, in one word, to expatriation, is incontestible. I know that the common law of England denies it; that the judicial decisions of that country are opposed to it, and that some of our own Courts, misled by British authority, have expressed (though not very decisively) the same opinion. But all this is very far from settling the question.

The Municipal Code of England is not one of the sources from which we derive our knowledge of international law. We take it from natural reason and justice, from writers of known wisdom, and from the practice of civilized nations. All these are opposed to the doctrine of perpetual allegiance. It is too injurious to the general interests of mankind to be tolerated. Justice denies that men should either be confined to their native soil, or driven away from it against their will. A man may be either exiled or imprisoned for an actual offence against the law of his country; but being born in it is not a crime for which either punishment can be justly inflicted. Among writers on public law the preponderance in weight of authority, as well as the majority in number, concur with CICERO, who declares that the right of expatriation is the firmest foundation of human freedom; and with BYNKERSHOEK, who utterly denies that the territory of a State is the prison of her people.

In practice, no nation on earth walks or ever did walk by the rule of the common law. All the countries of Europe have received and adopted and naturalized the citizens of one another. They have all encouraged the immigration of foreigners into their territories, and many of them have aided the emigration of their own people. The German States have conceded the existence of the right by making laws to regulate its exercise. Spain and the Spanish American States have always recognized it. England, by a recent statute (7 and 8 Vic.) has established a permanent system of naturalization in the very teeth of her common-law rule.

France has done the same, and besides that has declared that in the Code Napoleon (Art. 17) that the quality of a Frenchman will be lost by naturalization in a foreign country. There is no Government in Europe or America which practically denies the right. Here in the United States the thought of giving it up cannot be entertained for a moment. Upon that principle this country was populated. We owe to it our existence as a nation. Ever since our independence we have upheld and maintained it by every form of words and acts. We have constantly promised full and complete protection to all persons who should come here and seek it by renouncing their natural allegiance and transferring their fealty to us. We stand pledged to it in the face of the whole world. Upon the faith of that pledge millions of persons have staked their most important interests. If we repudiate it now, or spare one atom of the power which may be necessary to redeem it, we shall be guilty of perfidy so gross that no American can witness it without a feeling of intolerable shame.

Expatriation includes not only emigration out of one's natural country, but naturalization in the country adopted as a future residence. When we prove the right of a man to expatriate himself, we establish the lawful authority of the country in which he settles to naturalize him, if the government pleases. What, then, is naturalization? There is no dispute about the meaning of it. The derivation of the word alone makes it plain. All lexicographers and all jurists define it one way. In its popular etymological and lawful sense it signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject.

There can be no doubt that naturalization does, *pro facto*, place the native and adopted citizen in precisely the same relations with the Government under which they live, except so far as the express and positive law of the country has made a distinction in favor of one or the other. In some countries immigration has been so encouraged by giving to adopted citizens certain immunities and privileges not enjoyed by natives. In most, however, political favors have gone the other way. Here none but a native can be President. In some of our States foreign born citizens are ineligible to the office of Governor, and in one of them they cannot even vote for two years after they are naturalized. But if these restrictions had not been expressly made by positive enactment, they certainly would not have existed.

In regard to the protection of our citizens in their rights at home and abroad, we have no law which divides them into classes, or makes any difference whatever between them. A native and a naturalized American may therefore go forth with equal security over every sea and through every land under heaven, including the country in which the latter was born. Either of them may be taken up under a debt contracted, or a crime committed by himself; but both are absolutely free from all political obligations to every country but their own. They are both of them American citizens, and their exclusive allegiance is due to the Government of the United States. One of them never did owe fealty elsewhere, and the other, at the time of his naturalization, solemnly and rightfully, in pursuance of public law and municipal regulation, threw off, renounced and abjured forever all allegiance to every foreign prince, potentate, State and sovereignty whatever, and especially to that sovereign whose subject he had previously been. If this did not work a solution of every political tie which bound him to his native country, then our naturalization laws are a bitter mockery, and the oath we administer to foreigners is a delusion and a snare.

There have been and are now persons of a very high reputation who hold that a naturalized citizen ought to be protected by the Government of his adopted country everywhere except in the country of his birth; but if he goes there, or is caught within the power of his native sovereign, his act of naturalization may be treated as a mere nullity, and he will immediately cease to have the rights of an American citizen. This cannot be true. It has no foundation to rest upon (and its advocates do not pretend that it has any) except the dogma which denies altogether the right of expatriation without the consent of his native sovereign—and that is untenable, as I think I have already shown.

Neither is this view supported by the practice of the world. I need not say that our naturalization laws are opposed to it in their whole spirit as well as in their express words. The states of Europe are also practically committed against it. No Government would allow one of its own subjects to divide his allegiance between it and another sovereign, for they all know that no man can serve two masters. In Europe, as well as here, the allegiance demanded of a naturalized resident must have been always understood as exclusive. There are not many cases on record, but what few we find are uniform and clear. One ALBERTI, a Frenchman, naturalized here, went back and was arrested for an offence against the military law, which none except a French subject could commit; but he was discharged when his national character as an American citizen was shown.

A Mr. ANTHER, a native of Bavaria, after being naturalized in America, and living here for many years, determined upon returning to his native country and resuming his original political status. The Bavarian Government, so far from ignoring his naturalization, expressed a doubt whether he could be reaccepted there. But the most decisive fact which history records is the course of the British and American Governments during the war of 1812. The Prince Regent proclaimed it as his determination that every native-born subject of the British Crown taken prisoner while serving in the American ranks should be tried and executed as a traitor to his lawful sovereign.

This was undoubtedly right, according to the common law doctrine. The King of England had not given his assent to the expatriation of those people. If the Prince Regent had a right to arrest naturalized Englishmen, Scotchmen, or Irishmen, in Canada, (as the King of Hanover arrested Mr. ERNST in his dominions,) and compel them to fight for him, he certainly had a right to hang them for fighting against him. But Mr. MADISON denied the whole doctrine and all its consequences. He immediately issued a counter proclamation, declaring that if any naturalized citizen of the United States should be put to death on the pretence that he was still a British subject, two English prisoners should suffer in like manner by way of retaliation. The Prince Regent's proclamation was never enforced in a single instance. A principle which our Government successfully resisted under such circumstances will scarcely be assaulted to-day.

The application of these principles to any naturalized citizen who returns to his native country is simple and easy enough. He is liable, like anybody else, to be arrested for a debt or a crime, but he cannot rightfully be punished for the non-performance of a duty which is supposed to grow out of that allegiance which he has abjured and renounced. If he was a deserter from the army, he may be punished when he goes back, because desertion is a crime. On the other hand, if he was not actually in the army at the time of his emigration, but merely liable, like other *members* of the State, to be called upon for his share of military duty which he did not perform, because he left the country before the time for its performance came round, he cannot justly be molested. Any arrest or detention of him on that account ought to be regarded as a grave offence to his adopted country.

What acts are necessary to make him part of the army? what constitutes the crime of military desertion? whether a person drafted, conscribed or notified, but not actually serving, may be called a deserter, the fails to report himself? these are questions which need not be discussed until they arise.

But it may be said that the government of Hanover has a right to make her own laws and execute them in her own way. This is strictly true of all laws which are intended to enforce the obligations and punish the offences of her own people.

But a law which operates on the interests and rights of other states or peoples must be made and executed according to the law of nations. A sovereign who tramples upon the law of the world cannot excuse himself by pointing to a provision in his own municipal code. The municipal code of each country is the offspring of its own sovereign's will, and public law must be paramount to local law in every question where those laws are in conflict. If Hanover would make a legislative decree, forbidding her people to emigrate or expatriate themselves upon pain of death, that would not take away the right of expatriation, and any attempt to execute such a law upon one who has already become an American citizen would and ought to be met by very prompt exclamations.

Hanover probably has some municipal regulation of her own by which the right of expatriation is denied to those of her people who fail to comply with certain conditions. Assuming that such a regulation existed in 1851, and assuming also that it was violated by Mr. ERNST when he came away, the question will then arise whether the unlawfulness of his emigration makes his act of naturalization void, as against the King of Hanover. I answer no—certainly not. He is an American citizen by our law. If he violated the law of Hanover which forbade him to transfer his allegiance to us, then the laws of the two countries are in conflict, and the law of nations steps in to decide the question upon principles and rules of its own.

By the public law of the world we have the undoubted right to naturalize a foreigner, whether his natural sovereign consented to his emigration or not. In my opinion, the Hanoverian Government cannot justify the arrest of Mr. ERNST by showing that he emigrated contrary to the laws of that country, unless it can also be proved that the original right of expatriation depends on the consent of the natural sovereign. This last proposition I am sure no man can establish.

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