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THE NATURALIZATION ACTS
OF 1870.

BY T. MICHELL, Esq^r.

SECRETARY TO HER BRITANNIC MAJESTY'S EMBASSY,
AND CONSUL, AT ST-PETERSBURG.

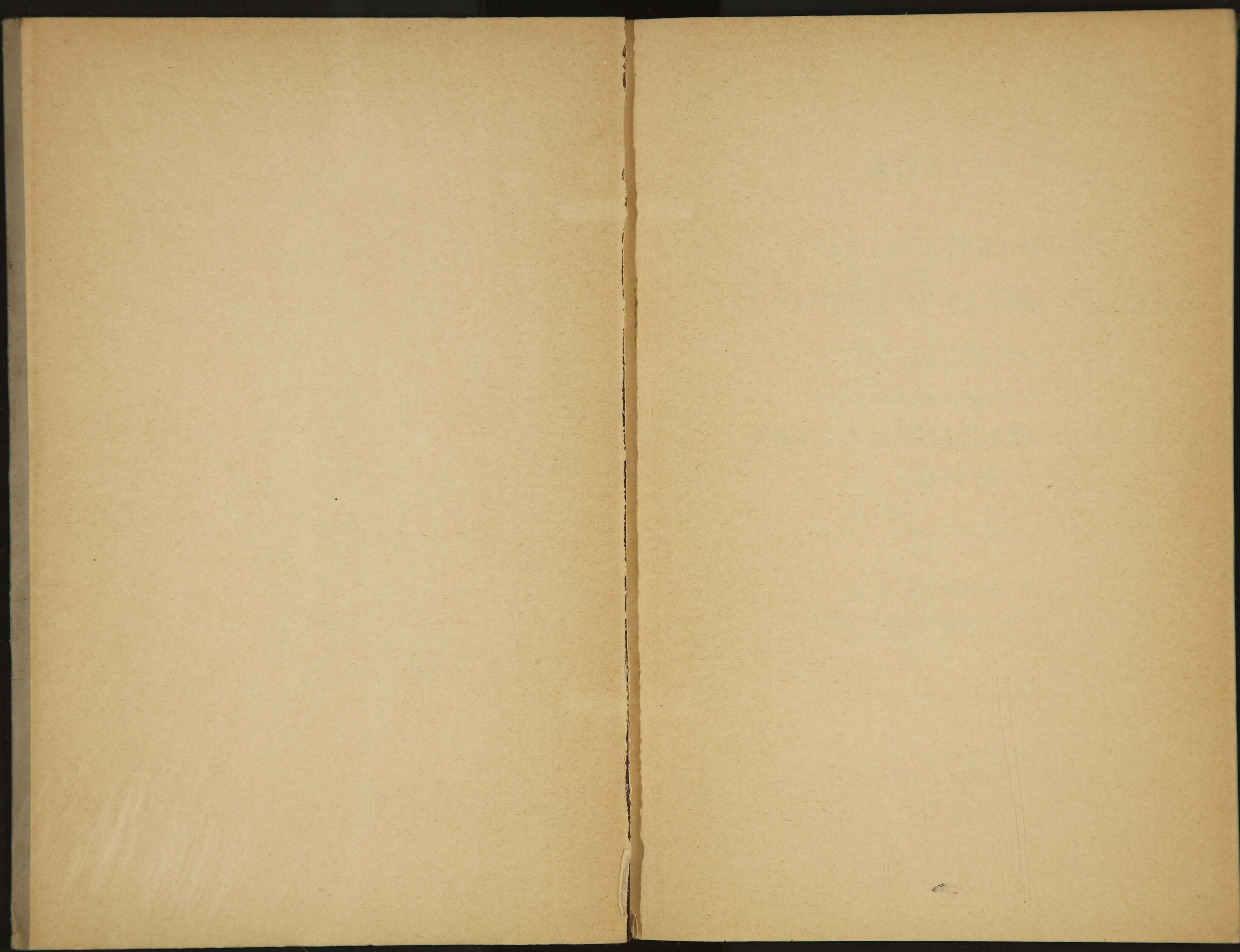
ST-PETERSBURG.

L. WATKINS, 10, ADMIRALTY PLACE.

MOSCOW: W. GAUTIER.

1871.





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I. INTRODUCTION.

Two Acts of Parliament, passed respectively on the 12th May 1870 and 10th August 1870, and known as the "Naturalization Acts, 1870" (*) affect four classes of persons resident in the Empire of Russia, viz:

1) British residents who have taken an oath of allegiance to His Majesty the Emperor of Russia, and who desire to remain subjects of His Imperial Majesty.

2) British residents who have taken an oath of allegiance to His Majesty the Emperor of Russia and who desire to retain their British Nationality.

3) Persons born in Russia of British parents and desiring to renounce their allegiance to Her Britannic Majesty; and

4) Subjects of Russia, who, by reason of their birth within the dominions of Her Britannic Majesty, are held to be natural-born subjects of Great Britain.

Before determining whether or not he shall resume his allegiance to Her Britannic Majesty under the new Naturalization Acts, a British subject naturalized in Russia will probably desire to take into consideration

(*) „The Naturalization Acts, 1870“ (33 Vict., cap. 14; 33 and 34 Vict., cap. 102.)

the present state of the law of Russia in respect to aliens, the Treaty rights and privileges of British subjects in Russia, the nature and extent of the British official protection to which a British subject is entitled, and the national status of married women and infant children in great Britain. It may, therefore, be useful to define, under these several heads, the rights and privileges, as well as the disabilities, of British residents in the Empire of Russia, before entering upon an analysis of the laws by which their legal position will in future be regulated.

2. LAW OF RUSSIA

IN RESPECT TO ALIENS.

Aliens residing in Russia enjoy the protection of the laws of the Empire (*), to which they are at the same time entirely subject, on an equality with the natural-born or naturalized subjects of His Imperial Majesty.

Legal
Position of
aliens.

Since the emancipation of the serfs they are no longer restricted from the acquisition of land. They can purchase, hold, and sell real (**) and personal property of every description on the same footing as

Their
Capacity.

(*) The laws that define the legal position of aliens in Russia are contained in the 5th Section of the IXth Vol. of the Code of the Empire, in consulting which, however, it is always necessary to refer to the latest supplements. There are, moreover, special Codes for the Kingdom of Poland (the *Code Napoleon*), the Grand Duchy of Finland, and the Baltic Provinces.

It is an indispensable rule of law, that ignorance of the law of a foreign country cannot be acknowledged to be any foundation to release a party from the obligations of a contract made there, nor generally from the operation of the civil and criminal law of such foreign country.

(**) Excepting in the Grand Duchy of Finland, where aliens, as well as Russians not of the noble class, are by law incapacitated from holding real property; but special permission for that purpose is invariably granted on application to the Senate of Finland, which sits at Helsingfors. There is a prohibition, likewise, to the purchase and tenure of land in the old Polish Provinces by Roman Catholics, whether alien or native; and the local laws of the Baltic Provinces contain a variety of restrictions respecting the tenure

natural-born subjects of the Emperor, and in the quality of landowners they are eligible for election, in Russia Proper, as members of the Provincial and District Assemblies (*Zemstvo*), in which they can also exercise the right of voting.

An alien may hold a Commission in the Russian army or navy and take the several ranks in those services (*), and having attained the rank of Lieutenant General, General, or Field Marshal, or the corresponding naval ranks, may be made a Senator or a Member of the Council of the Empire.

The status of a Personal Honorary Citizen may likewise be obtained by an alien, without taking an oath of allegiance. It is granted, in such cases, by special ukaz, on the recommendation of one of H. I. M.'s Ministers; but in order to become an Hereditary, Honorary Citizen, an alien must have enjoyed the privileges of Personal Honorary Citizenship for ten years, and must also become naturalized in Russia (**).

of certain descriptions of real property by persons not of the noble order or citizen class.

(*) By an Act of Parliament passed on the 3rd July, 1819, intituled "The Foreign Enlistment Act" and still in force, all natural-born British subjects are strictly prohibited from serving or enlisting as officers, soldiers or seamen, in the land and sea forces of a foreign country, except with the Royal leave or licence, under the Sign Manual. Any person offending under that Act will be held guilty of a misdemeanor, and, upon being convicted, will be punishable by fine and imprisonment, or either of them. Offences punishable under the Foreign Enlistment Act, and committed out of the United Kingdom, may be prosecuted and tried, upon any information or indictment, in the Court of Queen's Bench, and the venue in such case would be laid at Westminster, in the County of Middlesex.

(**) §§ 580 and 584, Vol. IX of Code.

In Russia Proper, aliens, when in prison, may claim the privilege of being confined apart from the native lower classes, under § 99 of the Statute relating to Imprisonment. (Vol. XIV of Code.)

Civil
Disabilities
of
Aliens in
Russia.

The only civil disabilities under which aliens in Russia labour are the following, viz.

1) They cannot acquire the rights of hereditary nobility in the Empire, except by special Ukaz.

2) They cannot hold the office of Judge, Magistrate, Justice of the Peace, Advocate, Solicitor, Notary, Broker, or Usher of a court of law; nor can they serve as Jurors.

3) They are not admitted into the Civil Service of Russia.

Exceptions are, however, made to the latter rule in favour of professional and scientific men, such as Physicians, Surgeons, Apothecaries, Architects, Engineers, Professors and Teachers of the Arts and Sciences, who are severally permitted to acquire in the service of the State the ranks attached to their respective occupations or appointments; but the ranks and decorations (*) which

Exceptions

(*) Subjects of Her Majesty are prohibited, by the Queen's Regulations respecting Foreign Orders and Medals, from accepting a Foreign Order from the Sovereign of any foreign country, or wearing the Insignia thereof, without having previously obtained Her Majesty's permission to that effect, signified by a Warrant under Her Sign Manual. Her Majesty has been further pleased to order that:—"Such permission shall not be granted to any subject of Her Majesty, unless the Foreign Order shall have been conferred in consequence of active and distinguished Service before the Enemy, either at Sea or in the Field; or, unless he shall have been actually and entirely employed beyond Her Majesty's dominions, in the Service of the Foreign Sovereign by whom the Order is conferred."

aliens may acquire in those several capacities do not confer on them the rights and privileges enjoyed by natural-born subjects in respect to hereditary nobility and to which, as aliens, they cannot, as far as it has been shown above, be admitted.

The sons of aliens, when educated in a Russian school which has given them the right of entering the Civil Service may be admitted into that Service without being required to become Russian subjects (*).

The same privilege is granted to aliens who, by obtaining a degree at any Russian University (all of which are open to aliens), shall have acquired a corresponding rank or *Chin* (**). But aliens who may thus rise in the service of the State to the rank that bestows the privileges of hereditary nobility, cannot be confirmed in those privileges unless they take an oath of allegiance to the Emperor (***).

There are, moreover, a few restrictions, under the laws of Russia Proper, in the case of Jews, whether foreign or native, in regard to residence in towns, to trade, and the establishment of works and manufactories(****); but as these exceptions to the general tolerance are not strictly enforced, and especially as they are not likely to apply to any Jew of British origin, it is not necessary to specify them more in detail here (*****).

(*) § 1549, Vol. IX of Code.

(**) §§ 4 and 5, Vol. III of Code.

(***) § 35, Vol. IX of Code.

(****) § 1516, Vol. IX of Code.

(*****) Under § 1523, Vol. IX of Code, alien Jews, distinguished by their position in society or their extensive business transactions, are permitted to establish banking houses and manufactories, and to hold real property.

Under the new Statutes of Civil Procedure (*) in Russia Proper, an alien who is not in the Imperial Service or who does not hold real property in Russia, may be called upon, at the instance of a defendant in a civil suit, to deposit at the court the amount of the costs and damages to which he may be ultimately condemned.

The Polish Code limits the Civil Rights of aliens in some particulars. Thus, they cannot be appointed trustees or members of a family council of guardians over Polish subjects, except only over their own children and other direct descendants; they cannot attest the execution of documents as witnesses; and they are not exempted from personal arrest in civil suits, unless they hold real property of sufficient amount or can give satisfactory bail, even in cases in which, under similar circumstances, Polish subjects could not be arrested. The Code also enacts that should the subjects of the Kingdom be limited in their Civil Rights in any foreign country, the subjects of such foreign country will be limited to the same extent in their Civil Rights in Poland (**).

In the Baltic Provinces aliens are likewise incapacitated from acting as trustees (***) .

(*) § 571, 577, 578.

(**) § 11, Civil Statutes of the Kingdom of Poland. Under these enactments, a British subject might have been prohibited from acquiring real property in the Kingdom of Poland, since, in Great Britain aliens have hitherto only been permitted to hold leases of such property for 21 years. The Naturalization Act of May 12th, 1870, has, however, removed that disability from aliens.

(***) § 318, Code of the Local Laws of the Baltic Provinces.

Religious
Disabilities.

While the law of Russia enacts that all subjects of the Empire and aliens not belonging to the Russo-Greek Church shall enjoy throughout the Empire, in the Kingdom of Poland, and in the Grand Duchy of Finland, a free exercise of their faith and divine worship, it inflicts a serious disability in the case of aliens who marry women of the Russo-Greek religion; for unless a dispensation to the contrary be obtained from His Majesty the Emperor, the children of such a mixed marriage must be brought up in the creed of the mother. The dispensation must be applied for, prior to marriage, through the British Ambassador or any other British official channel; and unless it be obtained, a Priest of the Russo-Greek Church will not marry the parties without demanding from the bridegroom a bond in writing to the effect that he will cause the issue of the marriage to be brought up in the faith of the bride. It is somewhat difficult to obtain a dispensation from the fulfilment of such an engagement, after it has been taken.

Aliens intending to marry Russian women are no longer required to solicit the permission of His Imperial Majesty to such an union; and the law by which, before marrying an alien, Russian women were required to sell any real property of which they might be possessed, has likewise been repealed.

A Priest of the Russo-Greek Church can perform the ceremony of marriage in which one of the parties belongs to that Church; but he cannot marry persons who are both of another creed (*). Members of alien

(*) If the Priest be very punctilious he will demand, before performing the ceremony of marriage, the production of a certificate

Churches may be buried in Russian consecrated cemeteries, and Russo-Greek priests may perform the Lesser Burial Service (*Litia*) over them.

to the effect that the foreign bridegroom or bride has punctually conformed to the rites of the Church to which he or she belongs.

British subjects can be married at a British Consulate under the "Act for facilitating the marriage of British Subjects resident in foreign countries", 12 and 13 Vict., cap. 68.

3. THE TREATY RIGHTS

AND

PRIVILEGES OF BRITISH SUBJECTS IN RUSSIA (*).

General
position.

The position of British subjects in Russia does not differ from that of other aliens, except in the character of the relations of such subjects towards the official representatives of their own country and in respect to the legal status of Anglican places of Worship(**). All other aliens are more or less strictly subordinate to their respective Embassies, Legations, or Consulates, where they are carefully registered, and which, in virtue of Treaties, may demand their extradition or obtain the co-operation of the Russian Government in compelling them

(*) The Treaty of Commerce and Navigation, at present in force between Great Britain and Russia, was signed at St.-Petersburg on the 31st December 1858 (12th January 1859).

(**) The Anglican Churches at St.-Petersburg, Cronstadt, Moscow, Riga, and Archangel, are considered by the Russian Government to be subordinate to Her Britannic Majesty's Embassy at St.-Petersburg, and as such to be exempt from the jurisdiction of the Consistorial Court, to which all other foreign Church Establishments in Russia are subject. No Anglican Chapels can, however, be built or established without the permission of the Imperial Government, which at the same time co-operates with the Government of Her Britannic Majesty in preventing Clergymen who have not been licensed by the Bishop of London from officiating in any Anglican Chapel in Russia. The "British-American Chapel" at St.-Petersburg enjoys a special privilege and is not considered a Chapel of the Embassy.

to fulfil their obligation of doing military or other service in their own country.

The registration of British subjects abroad is not compulsory upon them, but, since the passing of the Naturalization Acts of 1870, British subjects residing for any length of time in Russia would do well to cause themselves to be registered at one of Her Britannic Majesty's Consulates and obtain Certificates of Nationality (*), in order to prevent or settle any doubt that might, on their return to Great Britain, be raised as to their national status.

Registration
of British
Subjects.

There is no Extradition Treaty between Great Britain and Russia, and British Consular officers can only demand from the Russian authorities such assistance as can by law be given to them for the recovery of deserters from ships of war or merchant vessels (**).

No Extradition Treaty.

Practically, however, the Russian Government would, at the request of Her Britannic Majesty's Ambassador, surrender any British subject who had committed a crime in the United Kingdom and fled to Russia.

Under the Treaty of Commerce and Navigation between Great Britain and Russia, British subjects have liberty freely and securely to come, with their ships and cargoes, to all places, ports, and rivers in the dominions and possessions of Russia, and, throughout the whole extent of those dominions and possessions, they enjoy the same rights, privileges, liberties,

Liberties
under
the Treaty.

(*) The fee for a Certificate of Nationality, payable (at St.-Petersburg) to H. B. M. Treasury, is 4^s/6^d.

(**) Art. XVII, Treaty of Commerce and Navigation between Great Britain and Russia.

favours, immunities, and exemptions in matters of commerce and navigation, which are or may be enjoyed by native subjects generally (*).

Liberties
subject to
regulations
in force.

“It is understood, however,” continues the Treaty, “that the preceding stipulations in no wise affect the laws, decrees, and special regulations regarding commerce, industry, and police, in vigour in each of the two countries, and generally applicable to all foreigners.” This reservation made the former part of the 1st article of the Treaty practically unavailable to British subjects in Russia, since, at the time the Treaty was made, the laws, decrees, and special regulations of Russia imposed many serious disabilities on aliens; but the Imperial Government has subsequently placed aliens on a perfect equality with natives in respect to commerce, trade, industry, and the tenure of land.

As regards their persons and actions, British subjects in Russia, as well as Russian subjects in Great Britain, enjoy the following rights under the Treaty of 1859 (**), conditional on the observance of the laws of the country, viz.

British
subjects may
freely travel
and reside in
Russia.

1. “Full liberty, with their families, to enter, travel or reside in any part of the dominions and possessions of the other Contracting Party.”

The exercise of this right in Russia is subject to the observance of police regulations in the matter of passports, without which no alien can enter or leave the Empire. By the necessity of causing their passports to be *visé* by a Russian Consular officer, aliens are

(*) Art. I. Treaty of Commerce.

(**) Art. XI. *idem*.

practically compelled to solicit the permission of the Imperial Government to enter upon the enjoyment of the right above stated.

They are likewise liable to be summarily ejected from the Empire by an order from the IIIrd Section of H. I. M.'s Chancery (Secret Police), for their "bad conduct" or "doubtful character", or on account of "other causes for which their residence within the Empire cannot be suffered." (*)

"2. They shall be permitted, in the towns and ports, to hire or possess the houses, warehouses, shops, and premises, which may be necessary for them." May possess houses, etc.

This right now forms part of the fundamental law of the Empire, and it has been extended, by the process of internal legislation, as already shown, to real and personal property of every kind.

"3. They may carry on their commerce, either in person or by any agents whom they may think fit to employ."

In carrying on their commerce, or in any other occupations in Russia, aliens are, of course, subject to the laws, rules, and regulations that are in force within the Empire. Thus, no agent of a firm or public company can trade or open an office in Russia without taking out a license and paying certain dues. May carry on commerce personally or by agents.

In like manner, a foreign medical man cannot practise in Russia without first obtaining a Russian Diploma, in conformity with the rules contained in the XIIIth Vol. of the Code.

(*) § 504. Vol. II of Code.

No alien can undertake the duties of a tutor, teacher, or governess, in a private family or in a school, without having first obtained a Certificate of Competency from the proper Authorities; nor can an alien open a school without permission, under penalty, in both cases, of a pecuniary fine and of expulsion from the Empire, should the offence be continued (*).

Taxes, etc., on British Subjects not to be greater than those on natives. “4. They shall not be subject, in respect of their persons or property, or in respect of passports, licenses for residence or establishment, nor in respect of their commerce or industry, to any taxes, whether general or local, nor to imposts or obligations of any kind whatever, other or greater than those which are or may be imposed upon native subjects.”

Aliens are nevertheless compelled, under the police regulations of the Empire, to pay a tax upon their passports, different and in some cases higher, than the tax imposed upon passports issued to native subjects of a similar class. Thus, all aliens above the social status of an artizan, pay, at St.-Petersburg, 7 r. 15 c. annually for a Ticket of Residence (**); mechanics and artizans pay 2 r. 86 c.; nurses and ladies' maids are charged 1. r. 43 c., and labourers 60 copecks.

Favoured nation clause. The “favoured nation clause” of the Treaty (Art. X) secures to British subjects “any privilege, favour, or immunity whatever, in regard to commerce and

(*) §§ 1049—1052. Statute of Punishments. The law is not strictly enforced in respect to English tutors and governesses.

(**) Aliens are permitted to reside six months within the Empire with the National Passport which they bring with them, and with which they can also leave Russia within the same period, provided the *visa* of the Russian police authorities shall have been duly affixed.

navigation, which His Imperial Majesty has actually granted or may hereafter grant, to the subjects or citizens of any other State.”

This stipulation does not, however, confer upon British subjects the rights which are secured to other aliens under Copyright, or other special Treaties, Conventions, or Declarations, to which Great Britain is not a party.

22433 In the case of British subjects dying intestate in Russia, their heirs and representatives may succeed to and take possession of their property, “either in person or by agents acting on their behalf, in the same manner and in the same legal forms as subjects of the country” (*). That is to say, that claims to intestate property must be established before the proper courts of law in Russia and the property itself divided, not in accordance with the law of England respecting succession, but according to that of Russia (**); whereas

Intestate
Property.

(*) Art. XIII of the Treaty.

(**) In Russia Proper, the succession of a deceased Russian or foreign subject, if there be no will, or a will that is not in legal form (i.e. if written on half a sheet of paper and not attested by 3 witnesses, or, when written on several sheets, not signed on each), is considered vacant, and all property, both moveable and immoveable, belonging to the same, is administered by a competent Russian Court, until the legal heirs, acknowledged by the latter as such, are put in possession of the estate. In order to obtain such an acknowledgment it is requisite to produce: — 1. A certificate of death, duly authenticated; 2. A proof of the relationship of the claimant to the deceased, certified by two or more witnesses; the heirs acting personally, or being represented by an attorney holding a regular full-power. On the death of a British subject in Russia without leaving a will, it is customary, on the part of the Russian authorities, in the absence of any relatives of the deceased, to request the attendance of a British Consular officer (wherever such

under the Treaty between France and Russia, signed on the 2nd (14th) June 1857, the Consular officers of France may claim all French property left in Russia *ab intestato*, and administer the law of France in respect to it, since no French subject can lose his domicile by living abroad, unless he takes service or an oath of

an officer resides) at the drawing up of an inventory of the personal effects and monies of the deceased. The Consul in such a case affixes his seal to the property, which, as a rule, and as a matter of courtesy, is placed in his charge, pending the establishment of the claims of the next of kin. A British Consul has no right to interfere in the administration of British intestate property unless called upon to do so by the next of kin, or unless the latter be entirely absent or unknown. British intestate property in Russia lapses to the Russian Crown if it be not claimed during a period of ten years after the date of the last advertisement in the public papers inviting the next of kin to come forward and establish their claims. The advertisement is made by the Magistrate in whose district the property of the deceased is situated.

The Russian Courts require that all documents executed in a foreign country shall be certified by a Russian Ambassador, Minister, or Consul, to be legal according to the law of the country in which they have been drawn up. Signatures must likewise be legalized by a Russian Diplomatic or Consular Officer. Powers of Attorney should always contain a "delegation clause."

An exception as to the operation of the law of Russia in respect to intestate property, is admitted in the case of Russian Government stock, to which the heirs of a deceased intestate alien are permitted to succeed according to the laws that regulate succession in the country to which such deceased alien belonged.

The law of Poland (§ 726 of the Code) enacts that "aliens shall succeed to property within the Kingdom,—whether left by an alien or a Pole,—in such cases and in such order as a Pole shall be permitted to succeed to property left by a relative in the country of which the alien is a native, in conformity with § 11 respecting the enjoyment and loss of Civil Rights."

The laws of the Baltic Provinces contain no special provisions respecting the succession of aliens.

allegiance in a foreign State without the consent of his Sovereign (*).

Notwithstanding, therefore, the stipulations of the “favoured nation clause” which, after all, refers only to matters of commerce and navigation, British Consular officers cannot claim the rights which some of their foreign colleagues enjoy under reciprocal concessions, and, in the above case, under the peculiar definition of domicile which Great Britain does not accept.

The Courts of England have decided that a person who removes to a foreign country, settles himself there and engages in the trade of the country, furnishes by these acts such evidence of an intention permanently to reside there, as to stamp him with the character of the State where he so resides. If it sufficiently appears that the intention of removing was to make a permanent settlement, or for an indefinite time, the right of domicile is acquired by residence even of a few days (**).

By an Act of Parliament, however, passed in 1861 (***), no British subject dying in a foreign country is to be deemed to have acquired a domicile unless resident there for one year immediately preceding his or her death, and for all purposes of

(*) The Consuls of the North Germanic Confederation are likewise in the enjoyment of special privileges in respect to the administration of intestate property, in virtue of a Declaration exchanged between Russia and Prussia on the 27th December 1856 (6th January 1857).

(**) Wheaton's International Law, § 328.

(***) “Act to amend the Law in relation to the Wills and Domicile of British Subjects dying whilst resident abroad, and of foreign Subjects dying whilst resident within Her Majesty's Dominions, 6th August, 1861.”

testate or intestate succession he retains the domicile possessed at the time of going to reside in such foreign country. But as no Convention to that effect has yet been made between Great Britain and Russia, the new legal definition of domicile, and the consequences that issue from it, are not at present applicable to the case of a British subject residing within the Empire of Russia.

Exemption of
aliens from
Russian mili-
tary service.

Aliens enjoy in Russia, both by law and in virtue of treaties, the important privilege of exemption from military service (*); and since the liability to such service will soon be made general in Russia, British residents who have become naturalized in Russia, (i. e., taken an oath of allegiance to His Majesty the Emperor), should take into consideration that after the 12th May 1872, as will hereafter be shown, they will, in all probability, not be able to claim exemption from military service, either for themselves or their children, unless they shall have previously returned to their allegiance to Her Britannic Majesty and renounced their Russian naturalization.

Exemption
from
contributions,
requisitions,
etc.

British subjects are further exempted under the Treaty of 1859 (Art. XIV) from "all contributions, whether pecuniary or in kind, imposed as a compensation for personal service; and, finally, from forced loans and military exactions or requisitions", excepting, however,

(*) The XIVth Art. of the Treaty of Commerce and Navigation between Great Britain and Russia stipulates that "the subjects of either of the two High Contracting Parties in the dominions and possessions of the other shall be exempted from all compulsory military service whatever, whether in the army, navy, or national guard or militia."

such military exactions and requisitions as all subjects of Russia may be required to furnish as landed proprietors or as farmers.

Another privilege, to which British merchants in Russia attach much importance, is an exemption “from all judicial (*) and municipal charges and functions whatever” (**), excepting such as may be “consequent upon the possession of real property, or of a lease.” The exemption extends to service in a Commercial Court as an Assessor, or on a Town Council, as a member thereof, unless the election of a British subject to the latter office be based on a property qualification, under the terms of the Treaty.

Exemption
from
municipal
and other
charges, etc.

In the event of war between Great Britain and Russia, the subjects of Her Britannic Majesty would, in accordance with established usage, be placed under the protection of the representative of some friendly and neutral Power. During the Crimean War, the British residents in Russia were under the protection of the Danish Envoy. They were not expelled from the Empire, nor in any way molested; no legal incapacities and disabilities were imposed upon them by the state of war; and they were free to leave the country (***), although not to return. Those who lived in fortified towns or near any coast that was liable to be attacked, were made to remove inland. It is

Event of
War.

(*) Aliens are now prohibited by law from holding any office connected with the administration of justice in Russia, excepting the office of Assessor in a Commercial Court.

(**) Art. XIV of the Treaty.

(***) There were a few cases in which British subjects were not permitted to leave Russia; namely, certain engineers and mechanics

clear that, in remaining in Russia, a British subject takes the chance of the country, in which he so chooses to reside (*), and if injury is done to his property

who were in the employ of the Imperial Government and who refused to serve during the continuance of the war. They were ordered to retire to Moscow. On the other hand, the Imperial Minister of Finance assured the British Merchants of St.-Petersburg, before the declaration of war, that he was "charged to declare to them, in the name of the Emperor, that, even in the event of war the English merchants had nothing to fear, either for their persons or their property, and that they might reckon upon the protection which they had hitherto enjoyed. No obstacle would be raised to the sailing of British vessels with cargoes from Russia, provided Russian vessels were not detained in England." Even those British residents who had become subjects of Russia for the purposes of trade were permitted to quit the Empire on the observance of the usual formalities. But the Russian Government refused to permit a steamer to enter a Russian port for the purpose of taking away such of Her Majesty's subjects as were disposed to return to their own country. The Exequaturs of all British Consuls and Vice Consuls in Russia were withdrawn by the Imperial Government on the declaration of war, and such as were exclusively in the service of the Queen were compelled to leave Russia, while those of the mercantile class, whether engaged in commerce or any branch of industry, were permitted to remain "under the protection of the law, provided they acted in conformity with its provisions."

In regard to merchant shipping it is always the practice, on the declaration of war, to grant a certain delay to enable merchant vessels to load their cargoes and depart from ports and places in an enemy's country. War was declared against Russia on the 28th March 1854, and Russian merchant vessels were allowed 6 weeks (or until the 10th May), to clear out of British harbours, while those which had sailed from a port in the Baltic or White sea prior to the 15th May 1854, were likewise exempted from capture. British vessels that had wintered in Russian harbours were permitted to depart, but in the case of those which had wintered at Cronstadt and Reval, their crews were sent home overland by the Russian Government and replaced by Russian seamen.

(*) Wheaton p. 145.

by acts of war committed against Russia, he cannot claim remuneration, either from Great Britain or Russia.

It is a principle of international law that the property of a person may acquire a hostile character, independently of his national character, derived from personal residence. Thus, the property of a house of trade established in the enemy's country is considered liable to capture and condemnation as a prize. If a person enters into a house of trade in the enemy's country, or continues that connection during the war, he cannot protect himself by mere residence in a neutral country (*).

(*) § 334, Wheaton, who continues. - "This rule does not apply to cases arising at the commencement of a war, in reference to persons who, during peace, had habitually carried on trade in the enemy's country though not resident there, and are therefore entitled to time to withdraw from that commerce.

On the 16th Feb. 1854, the Earl of Clarendon caused Messieurs Mitchell & C^o of Riga to be informed that "the produce of Russia exported there—from by and on account of a British merchant domiciled and trading there, although purchased before the war, and exported to England, would not be respected by Her Majesty's cruizers, unless in pursuance of a license or of some special instructions from Her Majesty to the officers of her navy.

"By the law and practice of nations, a belligerent has a right to consider as enemies all persons who reside in a hostile country or who maintain commercial establishments therein; whether such persons be by birth neutrals, allies, enemies, or fellow subjects, the property of such persons, exported from such country, is therefore *res hostium*, and, as such, lawful prize of war. Such property will be condemned as prize, although its owner may be a native-born subject of the captor's country, and although it may be *in transitu* to that country; and its being laden on board a neutral ship will not protect the property." (Mr Addington to Mr Consul Lousada, Feb. 16. 1854)

The latter principle is, however, no longer maintained by Great Britain, which was a party to the Declaration of Paris of 1856, to the

No commercial intercourse can be lawfully carried on between the subjects of States at war with each other, except by the special permission of their respective governments (*).

High
Treason.

It is difficult to define all the cases in which the acts of a British Subject who continued to serve the Russian Government during a war with Great Britain would be considered treasonable by the law of England (**). On the 7th February, 1854, Her Britannic Majesty's Minister at the Court of St. Petersburg was instructed to give notice to all British subjects in the service of Russia that they should at once withdraw from it and that, if made prisoners while in arms against their lawful sovereign, they would be guilty of the crime of high treason and would be dealt with accordingly. All Englishmen taken on board vessels engaged in actual hostilities against the naval or other forces of their country, would likewise be deemed guilty of the crime of high treason.

effect that, "the neutral flag covers enemy's goods, with the exception of contraband of war."

At the same time, the Lords of the Committee of Privy Council for Trade have laid down that every indirect attempt to carry on trade with an enemy's country is illegal, but that in the case of articles originally produced in Russia, and purchased from neutrals at a neutral port, and in the ordinary course of trade with such neutral port by British merchants, the fact of their having been originally produced in Russia would be immaterial, and would not render the trade illegal. (Sir J. Emmerson Tennant to Mess^{rs} Martin, Levin and Adler. March 14th and 16th, 1854).

(*) § 341, Wheaton.

(**) Acts of treason committed by the subjects of the British Crown, out of the realm, may be tried in the Queen's Bench, under 26 Henry VIII., c. 13. Treason must be proved by some overt act.

The supply or manufacture of arms, gunpowder, cartridges, and other warlike stores, to or for the Queen's enemies; the building or fitting out of vessels of war or transport; the making of machinery for military or naval purposes; and, indeed, the supplying or making (*) of any article or material whatsoever for the Government of a country at war with Great Britain, would bring a British subject under the Statute of Treasons (**), for "adherence to the Queen's enemies" (***).

By an Act of Parliament passed on the 2nd August, 1854, "any person within Her Majesty's Dominions, ^{Dealing in securities} issued during war.

(*) Service in any capacity, (whether in that of manager, clerk, draughtsman, foreman, mechanic, or artizan) under a master engaged in supplying or making war materials for the Queen's enemies, is equally treasonable at law; and poverty, or even the alternative of ruin and starvation, cannot be pleaded in justification of such service.

(**) 57 Geo. III, cap. 6.

(***) The following proclamation was made by the Queen on the 8th Feb. 1855.

"Whereas information has been received that certain acts of a highly treasonable nature have been, or are about to be, done or attempted by certain British subjects adhering to the Queen's enemies, either within Her Majesty's dominions, or in parts beyond the seas; such as building, or aiding and assisting in building, or equipping, ships of war, providing stores, or tackling, arms and ammunition, for such ships, or manufacturing or fitting, or aiding, or assisting in manufacturing or fitting, steam machinery, either for such ships or for other warlike purposes; or by entering into contracts, engagements, or agreements for some of the aforesaid purposes, or otherwise adhering to, aiding, assisting, or abetting the Queen's enemies in parts beyond the seas, in levying or carrying on war against Her Majesty: now, Her Majesty, by this Her Royal Proclamation, doth warn all such persons engaging in any such treasonable designs or attempts as aforesaid, or otherwise adhering to, assisting, aiding, or abetting the Queen's enemies, that they will be liable to be apprehended and dealt with as

or any British subject in any foreign country “who should wilfully or knowingly take, acquire, become possessed of, or interested in any stocks, funds, scrip, bonds, debentures, or securities for money which since the 29th day of March 1854, have or hath been, or which during the continuance of hostilities as aforesaid, shall be created, entered into, or secured by and in the name of the Government of Russia, or any person or persons on its behalf, every person so taking, acquiring, becoming possessed of or interested in any such stocks, funds, scrip, bonds or debentures as aforesaid, shall be guilty of a misdemeanour, and in Scotland of an offence punishable with fine and imprisonment” (*).

Negotiating
an enemy's
loan.

The same Act warns British subjects that none of its provisions will have the effect of reducing to a misdemeanour any such offence which, if the Act had not been passed, would amount to the crime of high treason, and that they must not be deemed in any manner to alter or affect the law relating to high treason. The higher offence to which the Act thus alludes is probably the issuing or negotiating of a loan for the Government of a country at war with Great Britain; for the law officers of the Crown were of opinion, in June, 1854, that “a British subject contributing to a loan raised on behalf of a sovereign at war with Great

traitors, and will be proceeded against with the utmost rigour of the law.”

The offences committed during the war with Russia in violation of this proclamation were pardoned by Her Majesty under the Vth art. of the General Treaty of Peace signed at Paris on the 30th March, 1856.

(*) 17 and 18 Vict. cap. 123.

Britain would be guilty of high treason, as adhering to the Queen's enemies" (*).

Bills of Exchange drawn by the subject of one belligerent upon the subject of the other belligerent, are illegal and void. All contracts with the enemy are likewise null and void under the English law, and even the insurance of an enemy's property is illegal (**).

Bills of Exchange drawn upon subjects of a hostile country.

By the law of England, if the Crown send a writ to any subject when abroad, commanding his return and the subject disobey, it is a high contempt of the Royal prerogative, for which the offender's lands may be seized till he return; and then he is liable to fine and imprisonment (***).

Disobedience of summons to return.

Writs of summons against British subjects (****) out of the jurisdiction of a Court in Great Britain (Court of Queen's Bench, Divorce Court, etc.) are issued on the application of a plaintiff, and, in default of the defendant not appearing, the plaintiff may, by leave of the Court or a judge, proceed to judgment and execution.

Writs of summons in civil suits.

Writs issued by the Court of Queen's Bench must

(*) Circular from the British Chargé d'affaires and Consul General at the Hanse Towns, June 30th, 1854.

(**) Dr Phillimore. "Commentaries upon International Law." Vol. III, p. 109.

(***) Dr Phillimore. Vol. III. p. 113.

(****) Aliens out of the jurisdiction of British Courts of law may in like manner be summoned to appear before them on the application of a plaintiff domiciled in Great Britain. Such writs are not unfrequently issued in the case of debts and other obligations contracted by aliens in the United Kingdom, and any property of which an alien might be possessed in the United Kingdom is liable under such circumstances to be attached.

be served within six calendar months from the date thereof, or, if renewed, from the date of such renewal, including the date of such renewal and not afterwards.

Service
of writs not
obligatory on
Consuls.

It is not obligatory on Her Majesty's Consuls to undertake the service of such writs or to accept a commission from any British Court of law for the examination of witnesses.

4. BRITISH OFFICIAL PROTECTION

AND ASSISTANCE

TO HER MAJESTY'S SUBJECTS IN RUSSIA.

The British traveller or resident abroad is sometimes apt to imagine that peculiar material privileges attach to his character as a subject of Great Britain and to exclaim, when interfered with by the judicial or executive officers of other States, "*Civis Romanus sum!*" Nothing can be more dangerous to the British resident than the assumption that he can be rescued from the effects of his misconduct or that he can be successfully protected against regular, foreign processes of law by the Ambassador or Consul of his country. It is true, that as long as in States like Russia the judicial power was merged in that of the executive, aliens had some right to invoke the assistance of the representatives of their own country, and the diplomatist or the Consul might with propriety have exercised his influence with the principal Officers of State in favour of his own countrymen, whenever their interests were in question. Now, however, since the procedure and

No protection
against
regular
processes of
law.

principles of justice in Russia have been assimilated to those of other European countries, since a magistracy has been established, trial by Jury introduced, and since the police authorities are strictly subordinate to the judicial institutions and answerable to them for any abuse of their power, the general principles of the Law of Nations on which a government or its accredited agents are justified or called upon to interfere with the execution of the laws of another country on one of its subjects in that country, are clearly applicable to Russia and should be strictly observed.

Principles
on which
protection
can be
given.

Those principles cannot be better summed up than in the language of Mr Canning, who, as Principal Secretary of State, delivered the following opinion in the House of Commons (*) on the case of Mr Bowring, who, after suffering imprisonment for some time, on suspicion, in France, was dismissed without trial.

“It is one of the most important principles of the Law of Nations, that a stranger visiting a foreign country virtually binds himself in a temporary and qualified allegiance to its laws, and submits to their observance, however unwise such laws may appear to be to him, however harsh and oppressive they really are, and however they may be at variance with his own notions of political liberty or to the impressions of a happier experience.

“Such an individual has no right to complain of the operation of the laws of a foreign State upon himself, if they are executed impartially and in the same manner

(*) February 27th, 1823.

in which they would have operated upon natural-born subjects. This is all he can expect, and this is all for which his own Government or its accredited agents could or ought to interfere.

“In cases where a government or its accredited agents are called upon by the subjects of their own country to interfere, the first step to be taken is, to ascertain, by examining the circumstances of the case, if the laws of the country in which the person complaining resides, or may happen to be, have been impartially administered, and to find out if the proceedings against the complainant have been regular. If this enquiry proves that the proceedings are regular, and that the laws have been impartially administered, then no interference on the part of his own government or its agents is warranted. If, however, it is found that the laws have not been fairly exercised, the deviation should be redressed by national interference, but which should only begin when individual justice is delayed or denied.

“The main point to be ascertained is, has the individual complaining been dealt with according to the laws of established justice, and the acknowledged laws of the country; if it appears that the course of law has been scrupulously observed and carried into effect not otherwise than it would have been against a natural born subject, and that nothing more could be complained of than a subject would have who was in a similar predicament, then no interference is justifiable.

“The fundamental principle is this: an Englishman going into a foreign country accepts the authority of its legislation, abdicates for a time the benefits of British

jurisprudence, and subjects himself to all the consequent inconveniences. Doubts have been started by some, of the application of this principle in cases where a British subject has been arrested on suspicion or accusation and not brought to trial. Supposing, for instance, a Russian or French subject goes to England ignorant of its laws, its customs, and its language, gets involved in some foolish squabble or scrape, and is committed to prison in the month of September after the Assizes, and being without bail, lies there till March, and is then discharged without prosecution. Surely, such would not be a case for national interference; but should an individual so circumstanced procure the interposition of his Government, would not the English Secretary of State for Foreign Affairs tell him — that as a stranger he came into this country, subjecting himself to all the inconveniences of its municipal laws, and must bear the consequences.

“In short, when an Englishman goes to France or to Spain, to Russia or to Prussia, his own Government cannot be expected to protect him from the operation of the laws of the countries in which he may be; nor when he goes to such places as Constantinople, Aleppo, or Algiers and other despotic States, where law is scarcely heard of, is he to expect that British laws and institutions are to be transplanted thither for his peculiar protection, or to distinguish him from the other subjects, among whom for the time being he has enrolled himself.”

It may very properly be objected to the latter part of Mr Canning's opinion that a departure has since, in

several cases, been made from the general principles thus laid down, by treaties or “capitulations” with Turkey, China, Japan and other countries; but even in these cases the right of consular, extra-territorial jurisdiction is gradually being abandoned for the more logical principle established by Mr Secretary Canning.

At any rate, British Consular Officers are instructed (*) Instructions to Consuls as to assistance.
“to give their best advice and assistance, when called upon, to Her Majesty’s trading subjects, quieting their differences, promoting peace, harmony, and good will amongst them, and conciliating as much as possible the subjects of the two countries upon all points of difference which may fall under their cognizance. In the event of any attempts being made to injure British subjects, either in their persons or property, the Consular Officer will uphold their rightful interests, and the privileges secured to them by Treaty, by due representation in the proper official quarter.” At the same time, the Consular Officers are enjoined to conduct themselves with mildness and moderation in all their transactions with the public authorities, and not on any account to urge claims on behalf of Her Majesty’s subjects to which they are not justly and fairly entitled. If redress cannot be obtained from the local administration, or if the matter of complaint be not within their jurisdiction, the Consular Officer will apply to Her Majesty’s Minister in the country wherein he resides in order that a

(*) § 10. General Instructions for Her Majesty’s Consular Officers
London, 1868.

representation may be made to the higher authorities, or that other steps may be taken in the case.

How far
instructions
can be
carried out
in Russia.

In Russia, these instructions can only with propriety and success be carried out in cases where British subjects are hurt in their persons or property by officers of the executive branch of the administration, such as the Police, the Gendarmerie, the Customs, Inland Revenue, etc. In suits, complaints, or summonses before judicial tribunals of any character or degree, the interposition of the Consul would no more be tolerated in Russia than it would be, in similar circumstances, in Great Britain. The Imperial Government itself has, since the reform of the Law Courts in 1864, abdicated its right of controlling the course of justice, and the Emperor can now only mitigate or annul a sentence for crime and in certain well defined cases give ear to a petition for a trial, before the Senate, of any disputed or ill established point of law.

In cases where redress is only obtainable before the tribunals of the country, it is the duty of a Consul, when requested, to recommend to his countrymen a solicitor or an advocate in whom confidence may be placed.

Diplomatic or Consular Agents may however, bring to the notice of the Minister of Justice any excessive, and apparently arbitrary or unjust, delay in the proceedings of Magistrates, Judges, or Courts of Law, in suits between aliens and natural-born subjects. But such delay must be clearly proved to be inordinate, before the Minister or Consul can be expected to use his good offices. It is scarcely necessary to observe that

an Englishman who has adopted Russian nationality has no claim to British official protection in Russia.

Nor can naturalized British subjects claim in the country of their birth any privileges as such, unless, by the laws of the country of their birth, they have been denationalized. As the Russian law does not permit a natural-born subject of the Empire to transfer his allegiance to any other State (*), a Russian, holding a certificate of British naturalization, is not entitled to any British official protection in Russia.

Naturalized
British
Subjects
of Russian
origin.

Holders of Certificates of British naturalization, who can prove to Consular officers that they are entitled to British Consular protection abroad, are treated in every respect as British-born subjects, but with the above reservation. Such certificates, if granted subsequently to the year 1850, do not entitle the holders to any privileges out of Her Majesty's dominions, unless they are provided with a passport from the Secretary of State for Foreign Affairs, or from the Governor of any British Colony in which they may have been naturalized, giving them, for the term therein specified, power to travel abroad (**).

There is no general system of State relief (workhouses, etc.) in Russia. Aliens in distress are

Distressed
British
Subjects.

(*) Exceptions may be made by Imperial Ukaz. A Russian loses his nationality by voluntary expatriation, or by residence abroad for a period unauthorized by law. As he would, in such a case, be considered an outlaw, it is not probable that any Russian subject, naturalized in Great Britain, would deliberately place himself in the position of requiring British official protection within the Empire.

(**) § 11. General Instructions for Her Majesty's Consular officers, 1868.

therefore dependent upon private charity, or upon such assistance as the official representatives of their country may be authorized to give them. At St.-Petersburg, there is a British Poor's Fund in connection with the Church establishment, but it is principally devoted to the bestowal of pensions on persons who can recommend themselves to the managers of the fund for the time being. As no accounts are published of the administration of this fund, it is impossible to say how far distressed British subjects can rely upon it for relief. An application to the English Chaplain at St.-Petersburg or Moscow will, as a rule, in really deserving or extreme cases, set in motion the exercise of a private charity for which the British residents in the capitals may justly take much credit.

Distressed
British
Subjects may
apply to
Ambassador
or Consuls.

In cases where relief of this character may not be available, or be insufficient, distressed British subjects have a right to apply for assistance to the Ambassador or nearest Consular officer. Under the Foreign Office instructions (*), the Ambassador or Minister, on having the case of a distressed British subject brought under his notice, is bound to cause a rigid enquiry to be made into the circumstance, and if it should appear that a moderate amount of pecuniary assistance, in the shape of a gratuity, may place the individual in a position to earn his livelihood, he is authorized to contribute for that purpose. If, however, there be no reasonable ground for anticipating such a result, the Ambassador or

(*) Circulars of 1st April 1870 and 16th September 1870, and General Instructions to Her Majesty's Consular officers, 1868.

Minister may take steps for sending the individual back to England in the most economical manner, and taking every care that the relief thus extended is confined within the narrowest limits consistent with the object in view; and that the public be not charged with expenses of such a description, except in cases of urgency, and where the individual relieved would not have any other source of relief. On the particulars of a case being reported to the Foreign Office, the British Government will, if possible, make the relations in England contribute towards the expense. Distressed British subjects, sent to England under these instructions, will not be entrusted with the necessary funds. Steps will be taken, as far as practicable, to pay beforehand for their journey to the nearest Consular port, whence they will be assisted on by the Consul.

While the assistance thus authorized to be given by the Ambassador, as well as by Her Majesty's Consular officers, is to be limited to cases of real and urgent distress, brought about by circumstances over which the applicants had no control, it is not to be considered available for persons who leave Great Britain, either in speculative search of employment, or under engagements for work abroad. Restrictions
as to relief.

No payment will be made by Consular Officers on account of British Colonial subjects, unless under authority from the Governor of the Colony to which such persons belong. The only exceptions to this rule are, the Colonies of Malta, Mauritius, and Ceylon (*), Relief
of British
Colonial
Subjects.

(*) Foreign Office Circular, Feb. 26, 1869.

where the several local Governments have accepted the responsibility of repaying any expenses which may be incurred on behalf of distressed natives of those Colonies. In the case of Malta, the local Government authorizes Her Majesty's Consuls to afford relief at the rate of ten pence a day each, and to defray the return passage home of all really distressed Maltese who may present themselves for relief. In the Colony of Mauritius, an Ordinance has been passed, in which it is enacted, that whenever a British Consul shall have paid the expense of sending back to the Mauritius any distressed native of that Colony or its Dependencies, or any person naturalized as a British subject in that Colony, the expense will be repaid out of the "Poor relief Fund;" but the Government desire Her Majesty's Consuls to communicate with them, whenever practicable, before availing themselves of these powers. With respect to Ceylon, it has been decided that Her Majesty's Consuls may assist natives of that Colony in any case, and on the same terms, as natives of the United Kingdom.

Distressed
British
Seamen.

Distressed British Seamen are relieved under the Mercantile Marine Act and Board of Trade Instructions.

5. THE NATIONAL STATUS

OF

MARRIED WOMEN, INFANT CHILDREN, AND
ILLEGITIMATE OFFSPRING.

The Naturalization Act of the 12th of May, 1870, Enactments. contains the following enactments with respect to the national status of women and children, and which are here compared with the law of Russia on the same subject, viz:

1. A married woman will be deemed to be a subject of the State of which her husband is, for the time being, a subject (*). Under the Russian law (**), likewise, a married woman follows the nationality of her husband. If an alien, she cannot become a Russian subject apart from her husband.

Married
women.

2. A widow, being a natural born British subject, who has become an alien by, or in consequence of, her marriage, will be deemed to be a statutory alien, and may, as such, at any time during widowhood, obtain a certificate of re-admission to British nationality, in

Widows.

(*) Sec. 10, Naturalization Act. 1870.

(**) Law of 10/22 February, 1864, relative to aliens in Russia. It will be found under §§1538-1556 of the IXth Vol. of the Russian Code (supplement of 1868).

the manner provided by the Naturalization Act (*). There is a conflict in this case between the law of Great Britain and that of Russia; the latter requiring widows and divorced wives to retain the nationality of their late husbands (**). On the other hand, the law of Russia (***) enacts that a Russian subject marrying an alien husband, whose nationality she therefore adopts, may, on the death of her husband, or in case of her divorce from him, return to her former allegiance (****).

The partial and unreciprocal character of the Russian legislation on this head presents a strong ground for appeal and official representation in favour of any British-born widow of a Russian subject who may desire to return to her original allegiance under the Naturalization Act.

Children
of
British
subjects
naturalized
abroad.

3. Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of the Naturalization Act, every child of such father or mother, who during infancy has become resident in the country where the father or mother is naturalized and has, according to the laws of such country, become naturalized

(*) Sec. 10, Naturalization Act. 1870.

(**) § 1554. Vol. IX of Code.

(***) § 1552 of the IXth Vol. of the Code.

(****) In such a case, the children will, on their desire, be admitted to Russian allegiance, within a year after they shall have attained their majority. The law of the 14th Dec. 1859, (§ 1514), which permitted an alien woman married to a Russian subject to return to her original nationality on becoming a widow was repealed by the law of ¹⁰/₂₂ Feb., 1864.

therein, will be deemed to be a subject of the State of which the father or mother has become a subject, and not a British subject.

In this case, also, the laws of Great Britain and Russia are somewhat at variance. The Russian law enacts that allegiance to Russia, when sworn to, is merely personal (*) and does not affect children, whether of age or minors, born previously to the taking of the oath of allegiance by the parents. It is only children born after the adoption of Russian nationality by parents of alien origin that are acknowledged to be Russian subjects.

It may thus happen that the children of such British subjects as have become naturalized in Russia under the Acts of 1870 and the laws of Russia, may be eligible neither for Russian nor British allegiance. In such cases, should the children, when of age, desire to establish their British nationality, one of Her Majesty's Principal Secretaries of State will, probably, on application, grant a special certificate of naturalization under Section 7 of the Act of the 12th May 1870 (**).

(*) § 1543, Vol. IX of the Code.

(**) One of Her Britannic Majesty's Secretaries of State can grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he can specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate will not be deemed to be any admission that the person to whom it was granted was not previously a British subject. (Section 7 of Act of 12th May, 1870.)

Infant
children of
Parents
re-admitted
to British
nationality.

4. Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother who during infancy has become resident in the British dominions with such father or mother, will be deemed to have resumed the position of a British subject to all intents.

The Russian law presents no obstacle to the operation of the law of England on this head, provided the allegiance to Russia shall have been legally renounced by the parents.

Infant
children of
naturalized
British
Subjects.

5. Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom, will be deemed to be a naturalized British subject.

The law of Russia will recognize the application of this principle, provided the father, or the mother being a widow, shall have legally renounced allegiance to Russia.

Illegitimate
children
of British
mothers.

The illegitimate children of British mothers, when born abroad, are excluded from the benefits of British allegiance. No statute exists that can be construed in their favour (*).

The law of Russia, on the other hand, would not admit to the benefits of Russian allegiance, the illegitimate infant children of a British mother, should they be born within the Empire.

(*) Westlake's Private International Law, p. 19.

Aliens are permitted to adopt foundlings by the law of Russia, on condition of bringing them up in the doctrines of the Russo-Greek Church; but children, whether of alien parentage or foundlings, when adopted by British subjects, cannot be made British subjects by such adoption, except by the process of naturalization in the United Kingdom. Foundlings.

6. THE RENUNCIATION

OF

ALLEGIANCE TO HER MAJESTY BY BRITISH RESIDENTS
NATURALIZED IN RUSSIA, AND THE LEGAL POSITION
OF ALIENS IN THE UNITED KINGDOM.

Previous
state of the
Law.

Prior to the passing of the Naturalization Acts of 1870, no British subject could legally (as far as the law of Great Britain was concerned) divest himself of his British nationality. All persons, therefore, born within the dominions of Her Majesty (*), or born out of Her Majesty's dominions of British parents, have hitherto been considered entitled to the privileges of subjects of Great Britain and bound by their allegiance to Her Britannic Majesty, notwithstanding their naturalization in a foreign country (**).

(*) All persons born within the United Kingdom *ipso facto* are entitled to all the civil privileges conferred by the British character, but our law holds that they cannot divest themselves of that character by any act of theirs. (J. Westlake. A Treatise on Private International Law, § 12.)

(**) By clause 7 Anne, c. 5, s. 3, it was enacted that the children of all natural-born subjects, born out of the Queen's allegiance, should be taken to be natural born subjects to all intents, constructions and purposes; and the Statute 4. Geo. II., cap 21., sec. I, clearly establishes that the children, born out of the allegiance, of fathers who at the time of the birth of such children were natural

The Acts, however, of May and August 1870 (*),
release from their allegiance to Her Britannic Majesty
all British subjects that have already voluntarily

British
subjects
naturalized
abroad now
released from

born subjects, are by 7 Anne, natural-born subjects to all intents,
constructions and purposes. (Westlake's Private International Law).

British
allegiance.

The state of the law has hitherto been this, that "A., an Englishman, emigrates to France or America, is naturalized there, and his posterity continue to reside there. They will, of course, be French or American; but unless the British Government consents to their expatriation, the same posterity must be treated as British, at least to the second generation, and perhaps for ever" (Westlake).

(*) Sec. 6. Act. of 12th May 1870. This section refers only to a British subject who has *voluntarily* become naturalized in a foreign State while under no disability, i. e., not while a minor, a lunatic, an idiot, or a married woman. The case of a person *involuntarily* naturalized by his parents in a foreign State is apparently provided for in Section 4, the context of which implies that any person born abroad of a father being a British subject will continue to be regarded as a British subject while a minor, and ever after should he desire it, notwithstanding that his father had, after his birth, become naturalized in a foreign country and had ceased to be a British subject under the Naturalization Acts of 1870. Children born after the 12th May 1872, of British parents who have not returned to their allegiance to the Queen, will, of course, not be deemed British subjects.

The use of the word "voluntarily" may, however, give rise to doubts as to whether the children of a British subject who had *voluntarily* become a Russian subject and caused his children, while minors, also to be deemed subjects of Russia, can be required under the Act to declare, before the 12th May 1872, their desire to yield allegiance to the Queen, since they had not *voluntarily* become Russian subjects. There are cases in which two generations of British subjects may be said to have *involuntarily* followed the *voluntary* naturalization of the original settler in Russia. But it may be argued, on the other hand, that the continued foreign naturalization of the last two generations was likewise *voluntary*, as a return to British allegiance had always been open to them under the law of Russia as well as under that of Great Britain, which had never recognized the transfer of their allegiance. It is, therefore, safer to interpret the 6th Section of the Act as meaning to embrace all cases of naturalization in a foreign country.

become naturalized or that may in future become voluntarily naturalized in Russia and elsewhere; and persons thus released acquire hereafter, in Great Britain, the character of “statutory aliens”.

Capacity
of aliens in
U. Kingdom

Under the 2nd Section of the Act of the 12th May, 1870, aliens in the United Kingdom may take, acquire, hold, and dispose of real and personal property of every description in the same manner in all respects, as natural-born British subjects; and a title to real and personal property of every description, may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject; but it does not confer any right on an alien to hold real property situate out of the United Kingdom, nor does it qualify him for any office, or for any municipal, parliamentary(*), or other franchise. An alien is further not entitled to any right or privilege as a British subject, except to such rights and privileges in respect of property as are above stated.

Limitations.

Act not
retrospective.

This section of the Act does not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of the Act, or in pursuance of any devolution by law on the death of any person dying before the passing of the Naturalization Acts of 1870 (**).

(*) Members of Parliament and Privy Councillors must be British subjects.

(**) Sec. 2. Naturalization Act, 12th May, 1870.

Since the passing of the Acts in question an alien is no longer entitled to be tried by a mixed jury (*de medietate linguæ*) but is triable in the same manner as if he were a natural-born subject (*). Not entitled to mixed jury.

The Acts do not qualify him to become the owner of a British ship, and where any British subject has become an alien in pursuance of the "Naturalization Acts, 1870" he will not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien (**). Cannot own a British vessel.
Liability under original allegiance.

A natural-born British subject who shall have become a statutory alien under the Act of the 12th May 1870, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Britannic Majesty's Principal Secretaries of State for a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The Secretary of State has the same discretion as to the giving or withholding of the certificate, as in the case of a certificate of naturalization, and an oath of allegiance will in like manner be required previously to the issuing of the certificate (***). Re-admission of a statutory alien to British nationality.

Secretary of State may give or withhold certificates of naturalization and re-admission.

A statutory alien to whom a certificate of re-admission to British nationality has been granted, will, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position Re-admitted alien resumes position of British Subject.

(*) Sec. 5. Act of 12th May, 1870.

(**) Sec. 14 and 15, *idem*.

(***) Sec. 8., *idem*.

as a British subject (*); with the same qualification, as in the case of aliens naturalized in Great Britain, viz, that within the limits of the foreign State of which he became or was a subject, he will not be deemed to be a British subject, unless he shall have ceased to be a subject of that foreign State according to the laws thereof or in pursuance of a treaty to that effect (**).

Governors
of Colonies
may grant
certificates
of
re-admission.

The jurisdiction conferred by the “Naturalization Act, 1870” on the Secretary of State in the United Kingdom in respect of the grant of a certificate of re-admission to British nationality, in the case of any statutory alien being in any British possession, may be exercised by the Governor of such possession (**).

Conditions
of natural-
ization in G.
Britain.

Before an alien can be naturalized in Great Britain, or before a statutory alien can be allowed to resume his British nationality, he must have resided in the United Kingdom, or in some British possession, for a term of not less than five years, or have been in the service of the Crown for at least a similar period (***).

In order to obtain a certificate of naturalization (****)

(*) Including, as in the case of an alien naturalized in Great-Britain, all political and other rights, powers and privileges, subject at the same time to all obligations to which a natural-born British subject is entitled or subject in the United Kingdom.

(**) Sec. 8. Act of 12th May, 1870.

(***) The Colonies have the power to legislate with respect to naturalization, subject, as in the case of other laws, statutes or ordinances, to the approval of Her Majesty.

(****) Sec. 7 and 8. Act of 12th May, 1870.

(*****) An alien who has been naturalized previously to the passing of the Act of 1870 may apply for a certificate of naturalization, which will be granted on the same terms and conditions as in the case of an alien who had not been previously naturalized in the United Kingdom. Sec. 7. Act of 12th May, 1870.

or a certificate of re-admission to British nationality, the applicant must declare his intention, when naturalized or re-admitted to British nationality, either to reside in the United Kingdom or some British possession, or to serve under the Crown.

The applicant must adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as the Secretary of State may require.

The Secretary of State, if satisfied with the evidence adduced, will take the case of the applicant under consideration, and may, with or without assigning any reason, give or withhold a certificate, as he thinks most conducive to the public good, and no appeal lies from his decision (*).

Neither a certificate of naturalization, nor a certificate of re-admission to British nationality, can be issued or take effect, until the applicant for either shall have taken an oath of allegiance.

An alien to whom a certificate of naturalization has been granted, will, in the United Kingdom, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in the United Kingdom; with this qualification, that he will not, when within the limits of the foreign State of which he was previously a subject, be deemed to be a British subject unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect (**).

(*) Sec. 7. Act of 12th May, 1870.

(**) Sec. 7. Act of 12th May, 1870.

7. THE RESUMPTION

OF

BRITISH NATIONALITY BY BRITISH RESIDENTS
NATURALIZED IN RUSSIA.

Conditions
on which
British
nationality
may be
resumed.

The Naturalization Act of the 12th May, 1870, permits any British subject who may have become naturalized in Russia, or elsewhere, to retain his British nationality, provided he shall, within a period of two years from the passing of the Act (i. e., before the 12th May 1872, new style), make a declaration (*), in the presence of a justice of the peace, if the declarant be in the United Kingdom (**), or, if abroad, before a British Diplomatic (***) or Consular officer (****), to the effect, that

(*) Forms of the Declaration under the "Naturalization Act 1870," have been supplied to Her Britannic Majesty's Diplomatic and Consular officers, and will be found in the Appendix.

(**) If elsewhere in Her Majesty's dominions, the declarant must appear before a judge of any Court of civil or criminal jurisdiction, or before a justice of the peace, or any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose.

(***) Viz: any British Ambassador, Minister or Chargé d'affaires, or Secretary of Legation, or any person appointed by such Ambassador, Minister, Chargé d'affaires, or Secretary of Legation, to execute any duties imposed by the Act on an officer in the Diplomatic service of Her Majesty.

(****) Any British Consul General, Consul, Vice Consul, and Consular Agent, and any person for the time being discharging the duties of Consul General, Consul, Vice Consul or Consular Agent.

he is desirous of remaining a British subject. Any British subject naturalized in Russia, who shall have failed to make such a Declaration, and to take on oath of allegiance to Her Britannic Majesty, within the period above stated, will, after the 12th May 1872, cease to be regarded as a British subject.

It is important to observe that the declarant in such a case will not be considered to be a British subject, nor entitled to any protection or privilege as such, within the dominions of His Imperial Majesty unless he shall have divested himself of his Russian nationality.

The law of Russia (*) permits an alien, who has,

State of
Russian laws
under this
head.

(*) §§ 1554—1556 of the IXth Vol. of the Code, which treated of the renunciation of Russian allegiance by aliens, were repealed by the law of 10/22 Feb. 1864 and replaced by paragraphs which refer only to naturalization in Russia. There is therefore no provision in the Code for the renunciation of allegiance, the rules respecting which must be sought in the IInd Section of the law of 1864 (as published at the time by the Minister of the Interior) under the head of the following “transitional measures” viz:

1. “Aliens who shall have already adopted Russian nationality may return at any time to their previous allegiance on payment of all claims against them (Government, public, private).”

2. “Aliens who throw of their Russian allegiance may either quit the country or remain in Russia, enjoying the same rights as other aliens; but they must provide themselves with national passports, if residing in European Russia and belonging to a country in Europe, within a year, and within two years if residing in Siberia or having to obtain national passports from a country not in Europe.”

3. Exceptions to the above rules are made in the case of deserters and in that of Asiatics.

4. Annuls enactments compelling Russian women married to foreigners to sell their real property in Russia, and abrogates, in respect to countries which shall adopt a reciprocity in such matters, the law by which merchants who desire to quit their Russian nationality are required to pay 3 years’ dues, etc., in advance.

become naturalized in the Empire, to resume his original nationality, on the observance of certain forms.

A British subject, naturalized in Russia, and wishing to renounce his Russian allegiance, must, if resident at St.-Petersburg, apply by petition to the Minister of the Interior, or, if resident in the interior of the country, to the Governor of the Province in which he resides, for permission to divest himself of the character of a Russian subject.

Case of a
British
resident who
has returned
to G. Britain
without
taking oath
of allegiance
to the Queen.

Although no special mention is made in the "Naturalization Acts, 1870" of the case of a British subject, who, after having, voluntarily become naturalized in a foreign State (as for instance in Russia), shall have returned to his domicile in the United Kingdom, or in any British possession, it is nevertheless clear, from the text of the 6th section of the Act of the 12th May, 1870, that, whether he may have legally divested himself or not of his foreign nationality, such a person will be deemed to have ceased to be a British subject, unless he shall have taken an oath of allegiance to Her Britannic Majesty, and made a declaration of British nationality, before the 12th May, 1872.

As no such dues are payable in Great Britain, British residents in Russia can claim the exemption.

The laws respecting the admission of aliens to Russian allegiance under the amended §§ 1538—1556 of the IXth Vol. of the Code are applicable to the Kingdom of Poland; but the law of 21st January 1859 (§ 1544), under which aliens were permitted to acquire the rights of citizenship in the Grand Duchy of Finland on the same conditions as Russian subjects, was expunged from the Code in 1864. Those conditions, however, specified in a supplement to § 195 of Vol. IX, distinctly place aliens on the same footing as Russian subjects.

8. THE RENUNCIATION

OF

BRITISH NATIONALITY BY PERSONS BORN IN
RUSSIA OF BRITISH PARENTS.

Any person born in Russia of a father being a British subject, and desiring to renounce his allegiance to Her Britannic Majesty, may, if of age, and not under any disability (*), make a declaration of alienage, in the presence of any of Her Britannic Majesty's Diplomatic, or Consular Officers, and from and after the making of such a Declaration, such person will cease to be a British subject (**).

Nationality
may be
renounced.

In order, however, for such a person to become a Russian subject, the law of Russia requires him to have been domiciled five years within the Empire.

Aliens in the Russian service, and Ecclesiastics of foreign persuasions in the service of Russia, are admitted to Russian allegiance without the observance of a period of domicile; and in other special cases, the period of five years requisite to constitute a domicile may be shortened on application to the Imperial Government.

(*) Disability under the "Naturalization Acts, 1870," means the status of being an infant, lunatic, idiot, or a married woman.

(**) Sec. 4. Act of 12th May, 1870.

Facilities in this respect are granted to aliens already resident in Russia, and distinguished in art, trade, commerce, or any other pursuit.

Children of aliens born or educated in Russia may take on oath of allegiance to the Emperor within a year after they shall have attained their majority (*).

(*) § 1549, Vol. IX of Code.

9. RUSSIAN SUBJECTS

BORN

IN THE UNITED KINGDOM.

Any subject of His Imperial Majesty, born within Her Britannic Majesty's dominions, and therefore held by the common law of England to be a natural-born subject of Her Britannic Majesty, may, if of full age, and not under disability, make a declaration of alienage and thereby cease to be considered a subject of Her Britannic Majesty.

May cease
to be
British
subjects.

On the other hand, any person born of alien parents in the United Kingdom, in any British possession, or on board a vessel carrying the British flag (*), will continue to be entitled to the privileges of a natural-born British subject until he makes a declaration of alienage under the Act of 1870. But in the case of a person born in the United Kingdom of Russian parents, who had subsequently returned to their domicile in the Empire together with their children, the Russian Government would probably not be disposed to permit

(*) The case of a child of alien parents born on board a British vessel is not specified in the Naturalization Acts of 1870, but the latter do not contain any provision which would render the old law on this subject non-existent.

the character and rights of a British subject to be enjoyed by such a person while resident in Russia. The conflict of the laws of Great Britain and Russia on this point compel British Consular officers in Russia to regard such subjects of Her Majesty in the same light as Russian subjects naturalized in Great Britain; that is to say, as persons who are not entitled to British official protection until they have legally severed their connection with a country that claims their allegiance under a conflicting law.

10. APPENDICES.

APPENDIX I

TEXT OF THE 17 AND 18 CLAUSE
OF THE ALIEN ACT OF 1798

Section 4. Any person who by reason of his having
been born within the dominions of Her Majesty is a
natural-born subject, but who was at the time of his
birth domiciled in the United States shall be deemed
to be a natural-born subject, and shall be entitled to
the same rights and privileges as if he had been born
within the dominions of Her Majesty, and shall be
entitled to such protection of His Majesty's Government
as if he were a British subject. And persons who have
been born within the dominions of a foreign power a British
subject may be at all times and not under any disability,
and shall be deemed to be a British subject, and shall
be entitled to the same rights and privileges as if he had
been born within the dominions of Her Majesty.

Section 5.

Section 5. Any British subject who has at any time
before the day of the passing of this Act been in any
foreign state and not under any disability shall be deemed
to be a British subject, and shall be entitled to the same
rights and privileges as if he had been born within the
dominions of Her Majesty.

APPENDIX I.

TEXT OF THE 4th AND 6th SECTIONS OF THE NATURALIZATION ACT OF 12th MAY, 1870.

Section 4. Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became under the law of any foreign state a subject of such state, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall cease to be a British subject.

How British-born subject may cease to be such.

Expatriation.

Section 6. Any British subject who has at any time before, or may at any time after the passing of this Act, when in any foreign state and not under any disability voluntarily become naturalized in such state, shall from and after the time of his so having become natural-

Capacity of British subject to renounce allegiance to Her Majesty.

ized in such foreign state, be deemed to have ceased to be a British subject and be regarded as an alien; Provided, —

(1.) That where any British subject has before the passing of this Act voluntarily become naturalized in a foreign state and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this Act, make a declaration that he is desirous of remaining a British subject, and upon such declaration herein-after referred to as a declaration of British nationality being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect :

(2.) A declaration of British nationality may be made, and the oath of allegiance be taken as follows; that is to say, — if the declarant be in the United Kingdom in the presence of a justice of the peace; if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

APPENDIX II.

FORMS OF THE DECLARATIONS AND OATH OF ALLEGIANCE UNDER THE "NATURALIZATION ACTS, 1870".

1. Declaration of Alienage by a Person born within British Dominions.

I, *A. B.*, of....., being held by the
common law of Great Britain to be a natural-born
subject of Her Britannic Majesty by reason of my
having been born within Her Majesty's dominions, and
being also held by the law of *C. D.* to have been at my
birth, and to be still, a subject [*or citizen*] of *C. D.*,
hereby renounce my nationality as a British subject,
and declare that it is my desire to be considered and
treated as a subject [*or citizen*] of *C. D.*

Insert
address.

(Signed) *A. B.*

Made and subscribed this day of.....
18....., before me,

(Signed) *E. F.*,

Justice of the Peace
[*or other official title*].

2. Declaration of Alienage by a Person who is by origin a British Subject.

Insert
address.

I, *A. B.* of....., having been born out of Her Britannic Majesty's dominions of a father being a British subject, do hereby renounce my nationality as a British subject.

(Signed)

A. B.

Made and subscribed this..... day of.....
18....., before me,

(Signed)

G. H.,

Justice of the Peace
[*or other official title*]

3. Declaration of British Nationality.

Insert
address.

I, *A. B.*, of....., being a natural born subject of Her Britannic Majesty, and having voluntarily become naturalized as a subject [*or citizen*] of *C. D.*, on the..... of....., 18....., do hereby renounce such naturalization, and declare that it is my desire to be considered and treated as a British subject.

(Signed)

A. B.

Made and subscribed this..... day of.....
18....., before me,

(Signed)

E. F.,

Justice of the Peace
[*or other official title*].

4. The Oath of Allegiance.

I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me GOD.

do swear that I will be
faithful and bear true allegiance to Her Majesty Queen
Victoria, her heirs and successors, according to law. So
help me GOD.

Witness my hand and seal at the City of London
this 10th day of June 1863.

ALFRED, Prince of Wales

By Appointment,
His Highness's Secretary

ALFRED, Prince of Wales

By Appointment,
His Highness's Secretary

Witness my hand and seal at the City of London
this 10th day of June 1863.

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