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**BRITISH NATIONALITY
LAW AND PRACTICE**

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BRITISH NATIONALITY LAW AND PRACTICE

BY

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TO
MY FRIEND AND TEACHER
ARNOLD DUNCAN McNAIR

FOREWORD

by W. E. BECKETT

THE complete absence up to now from our legal literature of any adequate treatment of British nationality law is an extraordinary fact which may admit of more than one explanation. There can be no doubt, however, that the lack of a book on this subject has been a serious inconvenience to lawyers, whether they have been private practitioners, teachers, or officials. I can sincerely commend Mr. Mervyn Jones's book to all lawyers as filling the gap most satisfactorily. No legal treatise on a topic of this kind will be satisfactory unless the opinions which are given by the writer on the meaning and effect of various provisions are based on a study of the practical cases which have arisen. Ordinarily, these practical cases can be studied in Law Reports, but in the field of British nationality law very few cases have ever gone to the Courts at all, whereas a very large number of problems have confronted two Departments of State, the Home Office and the Foreign Office, and have been dealt with administratively. Mr. Mervyn Jones has been able to see the papers of these two departments where cases of interpretation have arisen. Not being an official, he has been entirely free to form his own judgment upon them, and, in fully exercising this freedom, he has shown his own qualities as a scholar and as a lawyer.

His book is made all the more valuable because British nationality law is placed within its proper framework of international law, and an explanation is also given of the unusual position which arises because the United Kingdom is only one member of the British Commonwealth.

Finally, we have here at last a fairly full treatment of British protected persons, a large class, perhaps one hundred million in number, about whom virtually nothing is at present to be found in any legal work, although they are, together with British subjects, nationals of His Majesty in that sphere where, after all, nationality is principally important, namely, the international sphere.

PREFACE

THE subject of nationality has hitherto attracted little attention from legal writers in this country, in spite of its increasing importance in the modern world. It is a curious fact that, although the fundamental legislation regarding British nationality was passed over thirty years ago, there has not yet appeared a book showing the background of that legislation, explaining the principles on which it is based, and providing a detailed commentary on the statutory rules. Piggott's *Nationality* appeared several years before the Act of 1914 was passed, and no revised edition of it has since been brought out; *Nationality within the British Commonwealth of Nations* (1930), by Mr. Van Pittius, is the only work which attempts to treat systematically the modern law, and that mainly with a view to examining the meaning of the 'common status'.

There appeared, in these circumstances, to be a need for a book which would survey the whole subject afresh, taking into account, however, not only the internal (English) position, but also the wider implications of British nationality, both within the Commonwealth and, more generally, in international law and practice.

My scheme of exposition has been to consider, first, nationality in its international setting, the legal meaning and origin of the conception, as it is found in modern international law, and the legal consequences which flow from nationality (such as diplomatic protection) in the international field. In Part II of the book I have dealt generally with the history of allegiance in English law, endeavouring to bring out the distinction, already briefly sketched in Part I, between allegiance and nationality. Allegiance is a different legal idea from nationality, and some erroneous thinking has resulted from a tendency to confuse the two ideas. Not only this; but a very marked tendency may be observed in almost every English writer since Dicey to obliterate the true meaning of allegiance by equating it with the *jus soli*. I have tried to restate the correct view of allegiance, as found in the common law, particularly in *Calvin's Case*, and, in this manner, to fit into a rational scheme the various types of persons from whom allegiance is due. Much original research remains to be done into the history of allegiance, particularly with a view to tracing the two strands of *jus soli* and *jus sanguinis* in our law; but I believe I have shown here that the tendency, which I

have mentioned above, to assume that the *jus soli* is the true common law rule, requires far more serious and critical examination than it has hitherto received.¹ In the second Chapter of Part II I have dealt with the history of naturalization, endeavouring to explain the difference in principle between naturalization in the days of Coke and naturalization as it exists to-day. The remaining chapters of Part II contain an historical account of nationality legislation from 1870 onwards.

Part III consists of a detailed commentary on the nationality legislation now in force in the United Kingdom. It is here that I must particularly acknowledge the valuable help I have received from experts whom I mention later. The interpretation of this legislation is scarcely touched by case-law, and, in forming an opinion on the subject, the practice followed by Government departments concerned with nationality is a valuable guide. I have been fortunate in obtaining access to information regarding this practice, and believe that the book will, for that reason, be found more useful by those for whom it is intended.

In dealing, in Part IV, with the present state of British nationality law within the British Commonwealth it has been my aim, on the whole, to present a picture of the gradual development of a general nationality law culminating in the legislation of 1914. Since 1922 the 'common' status envisaged by the Act of 1914 has passed into a second phase, in which 'Dominion citizenship' and 'Dominion nationality' exist side by side with the common status. The citizenship law adopted by Eire in 1935,² and more recent legislation in Canada,³ New Zealand,⁴ and Australia,⁵ suggest that a third phase may be on the way. As, therefore, the whole Commonwealth position appears somewhat fluid, it will be understood that I have aimed, in Part IV, rather at an historical essay than a detailed analysis of Dominion legislation. Although it may be felt that Part IV is lacking in sufficient detail, I have felt justified in limiting

¹ A thesis recently published by Mlle Vanel has investigated this question in French law, and it appears from her work that a tendency among French writers to make a similar assumption regarding the rules of nationality prevailing in France before the Revolution is entirely wrong. See *Histoire de la nationalité française d'origine* (Paris 1945), with a preface by Professor Niboyet. A similar historical study of our own law would be valuable.

² Below, p. 255.

³ Canadian Citizenship Act 1946.

⁴ British Nationality and Status of Aliens (in New Zealand) Amendment Act 1946.

⁵ Acts No. 9 and 28 of 1946.

myself to describing broad tendencies instead of propounding theoretical solutions of problems which may be purely transitory.

It must be mentioned here, however, that agreement has now been reached on a matter which has been in the realm of political controversy for many years, namely, the nationality of married women. A statement was made in the House of Commons on 1 August, 1946, by the Home Secretary, announcing the principles agreed between the United Kingdom and the Dominions which should regulate the question in future. At the time of writing legislation has not been introduced in the United Kingdom, where the position is governed by the provisions of the Act of 1933.¹

Part V is devoted to the subject of British protected persons and the protection of British corporations. Here I have dealt in greater detail with the link between nationality and diplomatic protection already sketched in outline in Part I.

I have been greatly assisted by the advice and criticism of several experts and friends. I owe a special debt to Mr. W. E. Beckett, C.M.G., Legal Adviser to the Foreign Office, who has not only made arrangements which allowed me to obtain access to material otherwise inaccessible, but, although immersed in heavy pressure of work, made time to read the manuscript through its various stages to its final completion. It is no mere form of words to say that, but for his encouragement and experienced guidance, this book could never have been attempted, much less completed. Sir Humphrey Bell, K.B.E., and Professor Seaborne Davies have read in manuscript certain portions of the book, and I am deeply indebted to both of

¹ The Home Secretary's statement was as follows: 'I am glad to be able to inform the House that agreement has now been reached between the United Kingdom Government and the Governments of Canada, Australia, New Zealand, and South Africa, as to the principles on which legislation governing the nationality of married women should be based. The principles accepted by the five Governments are that the law should provide in effect that a British woman on marriage to a foreigner, whether she does or does not acquire his nationality under the law of his country, shall not lose her British nationality unless she takes some active step to renounce it; and that a foreign woman on marriage to a British subject shall not automatically acquire British nationality, but shall have the right to apply for it, subject to the exercise by the Minister concerned of a discretion as to the grant or refusal of the application. It is contemplated that a conference of experts should be convened later this year to examine various questions affecting nationality law in the several countries of the Commonwealth. This conference will afford an opportunity of considering the detailed provisions required for effecting the changes now agreed upon in the law relating to the nationality of married women.' *Hansard, Commons* (Fifth Series), Vol. 426, Col. 1214. At the time of writing this conference had not yet been held.

them for the careful and judicious criticism with which they have put me right on many points. Mr. H. K. Grey, of the Foreign Office Library, has been most helpful in drawing my attention to sources of which I would otherwise have remained unaware, and from the earliest stages of my researches he has given me the benefit of his wisdom and experience.

Although I have been fortunate in obtaining valuable assistance from persons holding official positions, I must make it clear that the contents of this book carry no sort of official authority, and any opinions expressed in it are my own personal opinions, sanctioned only by such authority as may appear from the force of argument, or, where the matter is covered by judicial decision, by the authority of that decision. If, from time to time, I appear to express views in agreement with those adopted in administrative practice, it is because I have made those views my own; and, indeed, I may be found, on occasion, expressing doubts on matters where more than one view seems to me permissible.

My acknowledgements are due to the Law Officers for sanction to reproduce extracts from, and make references to, certain Opinions given by their predecessors, and to H.M. Stationery Office for permission to reproduce material in which there is Crown copyright. I desire also to record my appreciation of the admirable work done, and of the valuable assistance rendered to me, by my typist, Miss Eve Battersby, and by my friend and former pupil, Mr. Lionel Seemungal, B.A., LL.B., who has assumed the tedious, but indispensably important, task of compiling an Index and Table of Cases.

J. M. J.

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ABBREVIATIONS

Annual Digest. *Annual Digest and Reports of Public International Law Cases, 1919–1942.* Edited by H. Lauterpacht and others.

B.N.A. This abbreviation is used constantly in this book and signifies the British Nationality and Status of Aliens Acts 1914–1933. Where it is desired to refer to the Act of 1914 as originally enacted the abbreviation B.N.A. 1914 is used; similarly, where a reference is made to the amending Act of 1943, which has not been consolidated with the earlier legislation, and must, therefore, be distinguished by some special citation, the abbreviation B.N.A. 1943 is used. Where B.N.A. alone appears the reference is to the Acts of 1914–1933 as printed in the consolidated version (see, further, p. 121 below).

B.T.S. British Treaty Series.

B.Y.I.L. *British Yearbook of International Law.*

F.O. Documents, indexed under F.O. in the Public Record Office.

J.C.L. *Journal of the Society of Comparative Legislation and International Law.*

S.P. British and Foreign State Papers.

PART I

THEORIES AND PRINCIPLES OF INTERNATIONAL LAW REGARDING NATIONALITY

BEFORE dealing in detail with British nationality law it will be useful to clear the ground by considering, in general, nationality and the State as conceptions of international law. International law, as a body of rules governing the relations of independent states, has substantially developed in the course of the last three centuries—the Peace of Westphalia, 1648, being commonly taken as a convenient date in history from which this development may be traced. One of the characteristic features of the State is that it effects a unification of the sources of the law and authority which, if we go back beyond the seventeenth century, are seen to be dissipated into various separate and more or less autonomous, or self-contained, systems. The law of the Church, the law merchant, the law of the Fief or manorial law, and the Roman law, each have their field in which they are supreme. So far as English law is concerned, its history is the blending or amalgamation of these systems into the common law administered by courts sitting under royal authority. A similar, if more gradual, process takes place on the continent of Europe producing, in the fullness of time, the modern independent, or sovereign, State. As these states cannot be sovereign in relation to each other, but only in relation to the territory or persons subject to their laws, a system of rules, which we know as international law, develops to regulate relations between states. One of the main purposes of international law is to define the limits of the jurisdiction of states, and this jurisdiction is of two kinds, (a) territorial and (b) personal. Territorial jurisdiction exists over the whole area which forms part of a state. Personal jurisdiction is that which applies to individuals as nationals of the State, and this extends over those individuals even when they are outside the confines of a state's territory. Nationality becomes important in this connexion, for personal jurisdiction is based upon it. If there were not different states in the world there would be no need of nationality; if there were only one state its jurisdiction would extend to everyone. The persons in respect of whom personal

jurisdiction may be exercised may be viewed from three aspects, namely:

1. The State has a right to protect them abroad.
2. They are persons with respect to whose conduct abroad the State has the right to legislate.
3. They are persons whom the State is under a duty to receive back on its territory if a foreign state desires to deport them.

These persons are nationals of the State, and nationality is therefore the criterion by which international law can determine the limits of a state's personal jurisdiction.

In view of the connexion between nationality and protection (as seen in (1) above) nationality is important for the purpose of defining in treaties the persons or classes of persons entitled to enjoy the benefit of stipulations in them. As a state is usually only concerned with the interests of its own nationals, it commonly stipulates, in treaties, for benefits restricted to such nationals. Broadly speaking, there are two exceptions to this practice:

1. The State may desire to limit the application of the treaty to certain nationals or classes of nationals.
2. A treaty may contain stipulations for the benefit of persons or classes of persons who are not nationals of the Contracting Parties (e.g. residents within the State).

Another result of the connexion between nationality and protection is that nationality becomes important in relation to the presentation of claims on behalf of individuals by one government against another, and especially before international tribunals. It is a rule of international law that a state may not, in the absence of treaty stipulations making an exception to the rule, present claims on behalf of persons who are not its nationals. Further, if the claim is brought before an international tribunal the State may be put to proof on the question whether, at the time the alleged wrong was done, the claimant possessed the nationality of the State.

Nationality, then, is the legal tie which binds individuals to the State and entitles them to its protection in international relations, and also renders them subject to the personal jurisdiction of the State. Its legal meaning must be clearly distinguished from the political sense in which it is frequently used, and which, as we shall shortly see, was its original meaning. Thus, the expression 'British nationality' has a legal meaning, but 'Scottish nationality' has no legal meaning, but only a political one.

Nationality, both as a legal and political idea, is of modern origin; even the word 'nationality' does not appear in recognized English and French usage until the early nineteenth century. It is, in fact, the result of a political theory, born with the French Revolution, that persons having a common language and culture form a unity—a *Nation*—which ought to be recognized as entitled to self-government and independence, and ought to be the basis of statehood. The word and idea of nationality spread throughout Europe, and eventually to the rest of the world. It was gradually incorporated into the literature of international law, where it acquired the specific legal meaning stated above.

The difference between nationality and allegiance is largely, but not entirely, a terminological one. Allegiance is much the older conception; and, as we have seen, also signified a legal tie originally between king and subject. But allegiance could, and still can according to English law, be owed by persons who are not 'subjects' in a permanent sense, e.g. resident aliens,¹ inhabitants of mandated territory who are not necessarily British subjects, though they may be, and usually are, British protected persons.² Whereas, therefore, to be a subject implies, necessarily, allegiance, to owe allegiance does not necessarily imply that he who owes it is a subject. Again, allegiance cannot, in the nature of things, be due from corporations, for they are artificial persons and cannot, for example, be guilty of treason. Nor, incidentally, can a corporation be a subject at common law, or under the British Nationality and Status of Aliens Acts. But, as we shall see, a corporation can be a British national. Although, therefore, the word 'allegiance' is used to signify a legal tie between the individual and the State (or Crown or King in earlier usage), this tie has acquired a special technical meaning which may vary in different municipal systems of law and, in any case, renders it unsuitable for international purposes. The expression 'nationality', on the other hand, is sufficiently wide to comprehend any sort of legal tie, however it may be defined in different systems and whatever form the tie may take.

The expression 'nationality' is useful for another reason, namely, that the terminology of municipal systems of law describing the legal tie is diverse. In England the expression 'subject' still continues to be used, but 'subjection' is not a convenient word to

¹ Below, p. 56.

² *Rex v. Christian, Annual Digest* (1923-4), Case no. 12.

describe the relationship of a subject to the Crown.¹ In France and the United States the expression 'subject' was discarded after the revolutions of the eighteenth century because of its associations with monarchy, and the expression 'citizen' came to be used. 'Nationality' was a useful expression to cover these different modes of referring to the status of persons bound by the legal tie. For the purposes of international law it is immaterial whether a person is described as a citizen or as a subject; the important point is the *external* mark which shows the State to which he belongs, and this is nationality.

Some of the results of the new ideas of nationality which came into existence during the nineteenth century have already been indicated, but it may be convenient to enumerate them briefly here:

1. The old conception of allegiance, as a personal bond between sovereign (in his natural capacity) and subject, was superseded by a conception of nationality as a legal tie between individual and State (or King in his politic capacity).
2. Allegiance ceased to be regarded as indelible. Individuals could shake off their allegiance by following a procedure prescribed by law, and the State could deprive an individual of his nationality (although in English law the latter statement only applies, normally, to naturalized subjects).
3. Allegiance, being a personal bond, was essentially a conception limited in its application to individuals. Nationality, on the other hand, as understood in modern times, may be possessed by juridical persons. Even ships and aircraft are sometimes ascribed a nationality for certain purposes; but it is not necessary to pursue this here.²
4. The possibility of choosing a new nationality by applying for naturalization by executive grant was incorporated generally into municipal law.

The distinctions drawn by municipal law between various forms of nationality are not material in international law; but some account of the terminology used, and of the distinctions drawn, is useful in order to understand the provisions of international agreements in

¹ See Salmond, *Law Quarterly Review*, xviii, p. 49; and on the idea of allegiance to the 'Crown' see Pollock and Maitland, *History of English Law*, i, p. 525, and Pollock, *History of Jurisprudence and Ethics*, p. 176.

² See an interesting article by Jenks entitled 'Nationality, The Flag, and Registration as Criteria for Demarcating the Scope of Maritime Conventions' in *J.C.L.* (3rd series), xix, p. 245.

which the words 'nationals', *protégés*, *ressortissants*, and the like, are used.

The word 'nationals' is used in modern treaties as equivalent to *ressortissants*, and this English and French usage is now fairly established. The English word 'nationals' comprehends, according to the classification of English municipal practice:

1. British subjects, as defined by the law in force in any part of His Majesty's dominions.
2. British protected persons, as defined later in this book.¹
3. Corporations incorporated under the law in force in any part of His Majesty's dominions.

The French *ressortissants* comprehends all those who look to the State for protection, and are identified with it for the purpose of its external relations. It includes:

- (a) *Citoyens français*, who are entitled to full civil and political rights.
- (b) *Sujets français*, meaning natives of certain colonial territories who do not possess full civil rights in metropolitan France.
- (c) *Protégés*, including all persons who normally receive French protection.²

The law of the United States has now adopted the generic term 'nationals'. Section 101 of the Nationality Act, 1940, provides:

'For the purposes of this Act—(a) The term "national" means a person owing permanent allegiance to a State, (b) the term "national of the United States" means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

'It does not include an alien.'³

The laws of Italy⁴ and Germany⁵, before the Second World War

¹ Below, p. 291.

² But not, probably, *protégé spécial*: see *Annual Digest* (1927–8), Cases nos. 205 and 206.

³ See Hyde, *International Law* (2nd revised ed., 1945), ii, p. 1065. Previous to this Act it had been the practice of the United States to treat certain persons who were not citizens of the United States as nevertheless its nationals in international law. See Borchard, *Diplomatic Protection of Citizens Abroad* (1915), p. 20; Hackworth, *Digest of International Law*, iii (1942), p. 1.

⁴ See *Valeriani v. Amuna Bekri Sichera*, decided in 1935 by the Italian Court of Cassation: *Annual Digest* (1935–7), Case no. 120.

⁵ The former German Nationality Code of 1935 distinguished between *Bürger* and *Staatsangehörige*. Although the reason for introducing this distinction was the policy of the Nazi régime, the legal effect of the distinction was similar to that produced in the municipal laws of the other countries mentioned in the text.

(1939-45) adopted similar distinctions between different categories of nationals, some possessing lesser political and civil rights than others.

From the above the advantage of a comprehensive expression such as 'nationals' (*ressortissants*) to denote all those bound by a special legal tie with the State will be apparent. The use of the word *ressortissants*,¹ as covering all those who are, in various ways, subjects or dependants in relation to the State, has been recognized by the French Court of Cassation.² No similar recognition of the corresponding use of the words 'nationals' and 'nationality' has yet been given by the English courts, though this usage is well established in British diplomatic practice. The reason for this may be that these expressions are not indigenous to the common law, which speaks, as we shall see, only of 'subjects', 'naturalized subjects', and 'denizens'. The title of the fundamental legislation defining British subjects is the British Nationality and Status of Aliens Acts, but the word 'nationality' is not defined therein, and 'British subjects' are, as shown below, only one type of British national. British corporations are not British subjects,³ nor are British protected persons;⁴ yet in

¹ It may be mentioned that the word *ressortissants* has even been used in relation to ships: see Article 12 of the Convention of 1924 on the Unification of Certain Rules relating to the Limitation of the Liability of Seagoing Vessels (Hudson, *International Legislation*, i, p. 1339). See also *ibid.*, p. 1848. However, this usage is exceptional.

² *De Bourbon v. Auroux* reported in *Annual Digest* (1923-4), Case no. 119. See Audinet in *Clunet* (1923), p. 789: 'Au sens étroit il désigne les nationaux d'un État; au sens large tous ceux qui relèvent de sa souveraineté.' But it is in the wider sense that the word *ressortissants* is now generally used. For an example of the wider sense see *Kahane (successor) v. Parisi and the Austrian State: Annual Digest* (1929-30), Case no. 131. Compare arbitral decisions in *ibid.* (1923-4), Cases nos. 9 and 10.

³ The expression 'British subject' may, however, be defined in some treaties and Orders in Council, for the purposes of such documents, as including corporations incorporated under the law of a British possession, but this is not its normal meaning. The more normal and, it is believed, correct, practice is illustrated by Article 2 of the Treaty of Peace Order, 1919 (S.R. & O. 1919, No. 1517), which provides that the word 'nationals' in relation to a state is to be deemed to include: (a) the subjects or citizens of that State, and (b) companies incorporated under the law of that State. See also Section 2 (c) of the Legal Proceedings against Enemies Act, 1915.

⁴ See *Rez v. Ketter*, [1940] 1 K.B. 787, discussed below, p. 296. For drafting purposes, and for special reasons, the expression 'British subjects' has been used in certain Orders in Council so as to include a British protected person: e.g. in the Orders in Council relative to Persia (1913), China (1925), and Ethiopia (1934): S.R. & O. references are as follows: (Persia) S.R. & O. (1913), No. 1114; (China) S.R. & O. (1925), No. 603; (Ethiopia) S.R. & O. (1934), No. 360. So, too, Section

international law and practice both British corporations and British protected persons are British nationals. The inconvenience of defining the expression 'British subject' so as to include British corporations and British protected persons is manifest, although this device has to be used occasionally.¹ The more convenient, and the most usual, course in British diplomatic practice is to group all three categories (subjects, corporations, and British protected persons) under the general heading 'nationals'. In multipartite treaties concluded since 1919 the expressions 'nationals' and '*ressortissants*' will be found to be interchangeable, e.g. in the Peace Treaties of 1919. Of recent years this practice has been adopted by the United Kingdom for its bipartite treaties, at first for Civil Procedure Conventions, then extradition treaties, and, since about 1938, for commercial treaties. Its use in a recent 'political' treaty concluded by the United Kingdom is illustrated by the Treaty concerning the abolition of extritoriality in China.² Article 1 (ii) of this Treaty provides:

'In the present Treaty, the term "nationals of the one (or of the other) High Contracting Party" shall in relation to His Majesty the King mean all British subjects and all British protected persons belonging to the territories to which the present Treaty applies; and in relation to the Republic of China, all nationals of the Republic of China.'

The practice of using the word 'nationals' in this broad sense is now so well established in British diplomatic practice that the word may, as a general rule, be taken to have the broad connotation already stated.³ This generalization is subject to two qualifications: (1) that the words 'nationality' and 'nationals' may, in certain documents, have a more limited meaning according to the context,⁴ and this, as we shall shortly explain, may arise particularly in connexion with corporations; (2) although 'nationals' is equivalent to the French *ressortissants*, the French word *nationaux* does not, in

17 of the Allied Powers (Maritime Courts) Act, 1941, includes in the definition of a British subject a British protected person. On the other hand, Section 5 (1) of the Treachery Act, 1940, provides that an 'enemy alien' means 'a person who possesses the nationality of a State at war with His Majesty, not being either a British subject or a person certified by the Secretary of State to be a British protected person'.

¹ See the preceding footnote.

² B.T.S. No. 2, 1943.

³ See Ralston, *Supplement to the Law and Procedure of International Tribunals* (1936), p. 61.

⁴ A good example of this will be found in a decision of a German court in 1931 reported in *Annual Digest* (1931-2), Case no. 147.

normal French usage, include *protégés*, but only those whose status as French citizens (*citoyens*) or subjects (*sujets*) is defined by French citizenship law. So, although the English word 'nationals' is equivalent to *ressortissants*, the latter expression is wider in its connotation than *nationaux*. The words and context in treaties in which these expressions are used must, therefore, be carefully studied in order to establish their meaning in each case, and the English and French versions must be compared. In treaties which apply to small Powers having one type of nationality the expressions *ressortissants* and *nationaux* may be interchangeable in so far as the treaty applies to nationals of those Powers. In the case of other Powers (especially composite states like Great Britain and France) the municipal law of nationality may comprise several categories, and the treaty may specify that these categories are included. For example, Article 25 of the Rules concerning Judicial Organization in Egypt¹ contains the following provisions in English and French:

Foreign nationals (citizens, subjects and protected persons) belonging to religions or confessions or practising rites, for which there exist Egyptian courts dealing with matters of personal status, shall continue, under the same conditions as in the past, to have their cases heard by the said courts in matters relating thereto.

Les ressortissants étrangers (citoyens, sujets et protégés) appartenant à des religions, confessions ou rites, pour lesquels il existe des tribunaux égyptiens de statut personnel, continueront, dans les mêmes conditions que dans le passé, à être jugés, en cette matière, par les dits tribunaux.

The same article provides that, for the purpose of determining the competence of the Mixed Tribunals, the word 'foreigner' shall be taken to mean nationals (*ressortissants*) of the High Contracting Parties to the Montreux Convention Concerning the Abolition of the Capitulations in Egypt, together with nationals of any other state that may be specified by decree (of the Egyptian Government).

So far we have merely mentioned the fact that corporations may, for certain purposes, possess a nationality. Corporations are artificial persons, but they are legal persons distinct from the shareholders. The property and rights of a corporation belong to it as a legal person

¹ Annexed to the Convention Concerning the Abolition of Capitulations in Egypt, signed at Montreux on May 8, 1937; Hudson, *International Legislation*, v, p. 697. In the case of this annex the French text alone is authentic (Article 14 of the Convention).

and not to its members, and, in virtue of its legal personality, a corporation may perform acts producing legal results. A corporation is, therefore, an entity which the State may be called upon to protect in international relations, and a diplomatic claim may be presented in respect of an injury to its interests. Again, there are treaties which contain stipulations for the benefit of the 'Companies' of the Contracting Parties, and, for this purpose also, it is necessary to attribute a nationality to corporations. As we have already seen, this nationality is generally *assumed* to be that of the State under whose laws the corporation was governed, but it is usual to *define* the companies of the Contracting Parties expressly in these terms.¹ It will be seen, therefore, that some, or most, of the important consequences of nationality in the case of individuals apply just as much to corporations. Some of these consequences cannot, of their very nature, be applicable. Thus, a corporation cannot be deported or extradited. Where, therefore, the expression 'nationals' is used in a treaty the terms of the treaty must be scrutinized in order to ascertain whether it applies to corporations who are nationals; if that result is intended it is usual to insert a provision to that effect; in the absence of such a provision the overriding principle of interpretation must be applied that the guide is the intention of the parties. The intention may be collected from the treaty that it applies to nationals who are corporations as well as to those who are individuals, but in the absence of an express stipulation to that effect this cannot always be assumed.²

The general rule of international law is that a juridical person is a national of the State under whose laws it is incorporated: the *raison d'être* of such a rule is obvious, for a state which has, by its laws, permitted a corporation to be formed ought to be responsible for its protection, and entitled to make representations and claims on its behalf. Moreover, it is generally accepted that the country under whose law a company is incorporated, and the country in whose territory its seat is situated, ought to be the same. In so far as there may be any difference it is the law of incorporation which is the

¹ See, for example, Article 1 (iii) of the Treaty concerning the abolition of extritoriality in China (B.T.S. (1943), No. 2) which provides: 'The expression "companies of the one (or of the other) High Contracting Party" shall for the purposes of the present Treaty be interpreted as meaning limited liability and other companies partnerships and associations constituted under the law of the territories of that High Contracting Party to which the present Treaty applies.'

² See Hackworth, *Digest of International Law*, iii (1942), pp. 429-34.

predominating factor.¹ There are two cases in which the application of this test of nationality may create difficulties in the matter of diplomatic protection. These are:

1. Cases where there is no British interest in a company which is nominally British by reason of the law of its incorporation.
2. Cases where there are substantial British interests in a company which is nominally foreign, and not British, by reason of the law of its incorporation.

In the first case there is no theoretical difficulty, because the British Government is perfectly entitled to protect a nominally British company. In practice, however, protection is a matter of discretion, and may be withheld if no substantial British interest is involved. This question is examined more fully below.² In the second case it may be that action is taken against the company which injuriously affects the interests of British shareholders, but the company is not British. Indeed it may be that the company is incorporated in the country whose government inflicts the damage, and the rule of law applicable in that event is that there is no right to intervene between a government and its nationals. *Prima facie*, in such cases, the British shareholders cannot invoke the assistance of their government; for the wrong in law is done to the company and not directly to them. It has been suggested³ that the general principle should be applied that where the operation of the strict

¹ See, for various competing theories on the subject of the nationality of corporations and for a general discussion of the question, Beckett, *Transactions of the Grotius Society* (1931), pp. 188-94. The views of the English courts and of international tribunals tend to support the test of nationality stated in the text. See *Bohemian Union Bank v. Administrator of Austrian Property*, [1927] 2 Ch. 175; and see also *Société de Transports Fluviaux en Orient v. Société Impériale Ottomane du Chemin de Fer de Baghdad*, a decision of the Germano-Belgian Mixed Arbitral Tribunal in 1929, reported in *Annual Digest* (1929-30), Case no. 151. See also a decision to the same effect by the Germano-Mexican Claims Commission in 1930 reported in *ibid.* (1931-2), Case no. 135, where the presiding Commissioner said: 'Just as a natural person is tied to the State by nationality acquired through birth or naturalization, a tie from which rights and duties are derived, so a company is tied to the State in whose territory it is created and acquires rights and obligations.'

The conception of nationality of corporations has been recognized, indirectly, by the Court of International Justice: *German Interests in Upper Silesia* (1928), Publications of the Court, Series A, No. 7, pp. 70, 74-5; *Case of Peter Pázmány University* (1933), *ibid.*, Series AB, No. 61, p. 232.

As to the effect of cession or transfer of territory on the nationality of corporations see *Assicurazioni Generali v. Selim Cotran*, [1932] A.C. 268.

² Below, p. 300.

³ Beckett, *op. cit.*, p. 192.

rule works injustice to the interest of individuals there should be a right of intervention:

‘Thus when a company incorporated in Ruritania, more than 50 per cent. of whose capital is owned by shareholders of Atlantean, or at any rate non-Ruritanian nationality, is injured by the acts of the authorities of Ruritania, and fails, after exhausting all municipal remedies open to it, to obtain redress, then the government of Atlantis should be allowed to intervene to protect the interests of its shareholders by diplomatic action.’¹

It will be seen that this view is in accordance with the practice followed by the British Government. The question is, however, discussed in greater detail below (p. 300).

There is another class of persons, besides British subjects and British companies, which numbers many millions and must be included as British nationals. We have already briefly mentioned them, and they will be discussed in greater detail below.² Here it will suffice to say that this class, called British protected persons, owe their claim to be regarded as nationals to the *de facto* and permanent protection of the Crown, coupled with, in the majority of cases, a connexion with territory which is under British protection, and from the point of view of internal law not actually part of the King’s dominions, though in international law subject to British ‘sovereignty’.

Summarizing the results of the preceding discussion in relation to British nationality, we may say that British nationals comprehend the following classes:

1. British subjects according to the law in force in any part of His Majesty’s dominions.
2. Corporations incorporated under the law of any part of His Majesty’s dominions.
3. British protected persons.

The first class will be discussed in detail in the next three parts of this book. We shall later discuss the last two classes. A brief account must now be given of the theory of nationality in international law, in so far as it bears on the questions discussed in this book.

This book does not purport to deal in detail with the subject of nationality in international law,³ but some account of the broad

¹ Ibid., p. 193.

² See Part V.

³ The theoretical aspect of nationality has been the subject of a very large body of literature, of which exhaustive bibliographies will be found in Lapradelle and Niboyet, *Répertoire de droit international*, ix (1931), p. 239; Oppenheim, *International*

principles which are involved in the municipal legislation about it, and in the application of that legislation on the international plane, is necessary for our purposes. There are, at present, no general rules which restrict or regulate the right of a state to decide which individuals a state may or may not claim as its nationals. This statement is, however, subject to two qualifications:

- (a) The freedom of action which a state possesses in this matter may be limited by treaty, and some treaties do, in fact, so limit it.
- (b) There are certain very broad, though perhaps ill-defined principles of international law which limit a state's right to frame its nationality law as it will. The Hague Codification Conference, 1930, as we shall see, attempted to state some of these principles in a general treaty, and succeeded in embodying some of them in special agreements.

We can illustrate the first of these two points by reference to the Advisory Opinion of the Permanent Court of International Justice in 1923 in the matter of the *Tunis-Morocco Nationality Decrees*.¹ A dispute arose between Great Britain and France regarding certain decrees which had been issued under the authority of France and the local rulers in Tunis and Morocco. These decrees imposed French and Tunisian nationality in the case of Tunis, and French and Moroccan nationality in the case of Morocco, on persons born in these territories, both of which were under French protection. The British Government objected to these decrees on the ground that they were incompatible with the international obligations of France. The dispute was brought before the Council of the League of Nations under Article 15 of the Covenant, and one of the objections raised by France to allowing the Council to adjudicate upon the dispute was the provision in Article 15 that the Council should refrain from making recommendations regarding the settlement of the dispute if the matter was found to be 'solely within the domestic jurisdiction' of one of the parties. It was decided to refer this question to the Permanent Court. Great Britain relied, before the Court, upon the following two arguments (among others):

1. There was a most-favoured-nation clause in an Arrangement between Great Britain and France in 1897 which entitled Great Britain to benefit by Article 13 of the Franco-Italian

Law (5th ed., 1937), i, p. 510; and Hyde, *International Law* (2nd revised ed., 1945), ii, p. 1065.

¹ Publications of the Court, Series B, No. 4.

Convention of 1890. This latter Convention expressly contemplated the preservation of their nationality by Italian subjects in Tunis. France denied that Great Britain was entitled to the benefit of this Convention.

2. Great Britain acquired extritorial privileges for persons claimed as British subjects in Tunis and Morocco, under treaties concluded by her with the local rulers in 1856 and 1875. France maintained that these treaties had lapsed, and, moreover, contended that, by the Anglo-French Arrangement of 1897, Great Britain had agreed to accept a new basis for her relations with France so far as Tunis was concerned.

It will be seen that the only question submitted for decision by the Court was whether or not the dispute between the two countries arose out of a matter 'solely within the domestic jurisdiction' of one of them, within the meaning of Article 15 of the Covenant of the League of Nations. On this point the Court decided that although jurisdiction to enact a nationality law was, in principle, unlimited, it was impossible to consider the merits of the dispute between the parties without going into the question of the interpretation of the treaties mentioned above. The Court said:

'The question whether a certain matter is or is not solely within the jurisdiction of a State is essentially a relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain. For the purpose of the present opinion it is enough to observe that it may well happen that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States. In such a case, jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law.'

As already explained above, the Court's jurisdiction was limited to considering whether or not the dispute before it was about a matter 'solely within the domestic jurisdiction' of France. It was not requested to proceed with the consideration of the French legislation with a view to determining whether or not it infringed the treaty rights of Great Britain, and the dispute was eventually settled by agreement.¹ However, from the passage quoted above, it is clear

¹ See Hudson, *World Court Reports*, i, p. 143. As to Tunis, the two Governments agreed that a British national who was the child, born in Tunis, of a British national,

that treaties may, and do, restrict the right—in principle, the unfettered right—of a state to legislate regarding nationality. Other examples of restrictions created by treaty are: Articles 30–6 of the Treaty of Lausanne, 1923, which prescribed the principles to be adopted regarding nationality in the territories detached from Turkey;¹ treaties concluded by the Succession States in Central and Eastern Europe² after the First World War (1914–18), which required these states to recognize certain classes of persons as their nationals; and several special agreements between particular States.³ In addition, there are certain treaties signed at The Hague Codification Conference, 1930, which are dealt with later in this chapter.⁴

Turning to the second qualification on the freedom of action of states to legislate regarding nationality we find, in practice, that nationality legislation, so far, has been based on six main principles or a combination of them, namely:

1. *Jus soli*.
2. *Jus sanguinis*.
3. Marriage.
4. Annexation.
5. Voluntary naturalization.
6. Option in special circumstances.

Nationality by birth may be based either on the *jus soli* or the *jus sanguinis*, or both. The general tendency of international agree-

who was himself born there, should be entitled to decline French nationality; but this right was not to extend to succeeding generations. In Morocco no special steps were taken, as the question was not of sufficient practical importance, and, in any case, the French Government agreed that extraterritorial rights continued to exist there. These rights were abolished in 1937. See Article 14 of the Treaty of that year. B.T.S. (1938), No. 8.

¹ Below, p. 279.

² Obligations of this kind were imposed on Germany, Poland, Austria, Yugoslavia, Bulgaria, and Hungary by the relevant articles of the Treaties of Versailles, Neuilly, St. Germain, Paris, and Trianon: see Flournoy and Hudson, *Collection of Nationality Laws* (1929), pp. 646–9. For a case in which these provisions were interpreted by the Permanent Court of International Justice see Advisory Opinion No. 7, reprinted in Hudson, *World Court Reports*, i, p. 237. See also several arbitrations reported in *Annual Digest* (1923–4), pp. 219–37.

³ Thus the United States concluded a number of treaties, mostly between 1868 and 1872, embodying the so-called 'right' of expatriation, i.e. the principle that when a national leaves his country of origin and becomes naturalized in a foreign state, his native country should recognize that naturalization, and no longer claim him as a national. See below, p. 86, regarding the Anglo-American Treaty of 1870 on this subject. See also Flournoy and Hudson, *A Collection of Nationality Laws* (1929), pp. 660–73, 698, for other agreements of this type. For special agreements, adopting other particular rules regarding the acquisition and loss of nationality, see *ibid.*, pp. 673–710.

⁴ Below, p. 22.

ment is to remove marriage from the list of titles, leaving a married woman free to choose her own nationality. Annexation, as we shall see, is a method by which the annexing state acquires new subjects, but it is usual to confer a right of option upon those who do not desire to belong to the new state. Another kind of option is where a person born on a state's territory does not *ipso facto* become a citizen, but has the right to do so on attaining his majority. This is not treated as 'naturalization' in English practice in interpreting Section 13 B.N.A. (below, p. 197).

Naturalization means the admission of an alien to the nationality of the State, as the result of some voluntary act on his part and at the complete discretion of the State. It is a sort of adoption (Bacon calls a naturalized subject *civis adoptivus*). The general principle underlying naturalization is the voluntary choice by an individual of a particular nationality. There is evidence from the practice of states that to *impose* naturalization upon individuals against their will either collectively or individually (unless it be a special case like that of annexation)¹ is a departure from the accepted principles of international law. It has been the practice of some states in the past to 'naturalize' aliens who acquire land in their territory, irrespective of the wishes of the alien concerned. Mexico and certain South American states passed laws of this kind. European states protested against such laws, and some international tribunals have held them to be incompatible with international law.² A law was enacted by Brazil in 1889 making all persons resident in the country on November 15, 1889, Brazilian subjects unless they lodged an objection within six months. This was held to be contrary to international law, and treated as invalid, by some French courts.³ Article 4 of the Statute on Citizenship of the Union of the U.S.S.R. of April 22, 1931,⁴ provided:

'Foreign citizens admitted to citizenship of the U.S.S.R., enjoy no rights, and have no duties, derived from allegiance to a foreign State.'

Although Article 4 is a reflection of the doctrine of expatriation it

¹ Certain acts may be treated by some states as equivalent to naturalization, e.g. appointment as a government official.

² See *In re Rau* reported in *Annual Digest* (1931-2), Case no. 124, and references to other decisions cited there. See also Moore, *A Digest of International Law* (1906), iii, pp. 302-10; Hall, *International Law* (8th ed., 1924), p. 267; Hyde, *International Law* (2nd revised ed., 1945), ii, p. 1088. For the views of the courts of South American states see *Annual Digest* (1929-30), Case no. 141; *ibid.* (1931-2), Case no. 128.

³ *Revue de droit international privé*, xi and xii (1916), p. 67.

⁴ For the text of the Statute see Taracouzio, *The Soviet Union and International Law* (1935), Appendix IX.

purports to do something beyond the legislative power of a state, i.e. to determine the rights and duties of aliens under their own law.

These limitations of principle apply also to nationality acquired at birth. It would, for example, be contrary to long-established custom for a state to push the *jus soli* to such lengths as to claim as its nationals the children of foreign ambassadors or royalty born on its soil.

In considering the effect which the nationality law of one state has within the territory of another the 'master-nationality' rule is generally regarded as the guide. This rule is that when a person is a national of two states—A and B—the nationality of A prevails when he is in A's territory and the nationality of B prevails when he is in B's territory. The practical result of this is that B has no right, as against A, to claim him as a national, or intervene on his behalf, while he is in A's territory. If he goes into the territory of a third state he may be treated as a national of either A or B, and, for all practical purposes, it does not often matter which, except in cases where the courts of the third state have to adjudicate upon matters involving his personal status, and nationality, according to the law of that state, determines the law applicable to him. In such cases it is necessary to choose an effective nationality, i.e. one of the two nationalities is selected as effective for the purposes of the third state.¹ Various tests have been adopted from time to time, but the British practice is illustrated by Article 21 (2) of the Aliens Order, 1920,² which reads as follows:

'Where an alien is recognized as a national by the law of more than one foreign State or where for any reason it is uncertain what nationality (if any) is to be ascribed to an alien, that alien may at the discretion of the Secretary of State either be treated as the national of the State with which he appears to be most closely connected for the time being in interest or sympathy or as being of uncertain nationality or of no nationality.'

The proviso to this Article adopts the rule that the nationality

¹ The doctrine of effective nationality has been adopted in certain arbitrations where it was material for the tribunal to decide which of the two nationalities an individual should be deemed to possess for the purposes of a dispute. See the *Canevaro Case* (1912): Scott, *Hague Court Reports* (1916), p. 284. This was decided by the Permanent Court of Arbitration. See, to the same effect, *Barthez de Montfort v. Hauptverwaltung*, decided in 1926 by the French-German Mixed Arbitral Tribunal, reported in *Annual Digest* (1925-6), Case no. 206. Observations casting doubt on the validity of the principle were made in the *Salem Case*, an arbitration between the United States and Egypt: *ibid.*, (1931-2), Case no. 98.

² S.R. & O. (1920) No. 448 as amended by No. 2262.

acquired at birth must be deemed to persist unless the individual has become, by naturalization or otherwise, the national of another state, and that state has continued to recognize him as a national and as entitled to protection.

The rule adopted in Article 5 of the Convention concerning Certain Questions relating to the Conflict of Nationality Laws, 1930 (which has been ratified by all members of the British Commonwealth of Nations), is that if a person has more than one nationality he shall within a third state be treated as if he had only one, and the third state shall recognize exclusively either the nationality of the state in which he is habitually and principally resident or the nationality of the state with which he appears in fact to be most closely related. The purpose of Article 6 of the Convention is to enable an individual who, through no voluntary act of his own, possesses double nationality to renounce one nationality with the permission of the State of that nationality, and such permission must not be refused if the person has his habitual residence abroad.

The second type of case in which it may happen that a state has to decide what effect should be given to the nationality legislation of another state is the following: the nationality legislation in question may either be based on a legal claim not recognized by another state, or it may emanate from a government or state which is not recognized by another state. Thus State A may pass legislation providing that all persons resident on the island of Atlantis shall be X nationals. But State Y may not recognize that State X has jurisdiction or sovereignty over the island of Atlantis. In such a case State Y is not bound to recognize the legislation. So, too, if the government or state of X is not recognized by State Y the nationality legislation of the former need not be recognized.

There is a third type of case which presents greater difficulty, and which normally arises out of territorial changes and transfers. Persons who are nationals of State X may be resident outside the territory of X, but may be made nationals of Y either (a) by agreement between X and Y, or (b) by unilateral act of Y on annexing the territory, or part of the territory, of X. These two types of case must be discussed separately. In case (a) *prima facie* the position is that there is an agreement between two sovereigns regulating, as a rule, a transfer of territory. The old sovereign has transferred his personal jurisdiction over his nationals to another party, and, on the face of it, no other state is concerned (assuming that the arrangement does not violate

the treaty rights of other states). Doubts have, however, arisen whether, when territory is transferred, persons who are resident outside the territory should have a new nationality thrust upon them without their consent.¹ Is there any principle of international law of such a nature as to justify these doubts? Case (b) is slightly different, although the same principle is involved, for, assuming the annexation to be recognized, on what ground may other states (including that whose nationals are affected) refuse to recognize changes of nationality resulting from it? The problem is really the same, fundamentally, in both cases: is there a rule of international law that a state cannot impose its nationality on persons outside its territory without their consent? We shall see that there is an international usage that such a rule should be respected in cases of annexation, and that such persons should not be claimed as nationals by the annexing state.²

It is believed that this usage is not yet a rule of international law,³ but whether it is a usage or a rule of law, a further question arises: Does this usage or rule apply in case (a) cited above? In case (a) a state has relinquished personal jurisdiction over its nationals in favour of another state. It is generally agreed that the official acts of a government regarding persons or things within its territory ought not to be questioned in the courts of another state, and the English courts have accepted this doctrine.⁴ It is possible that the English courts would apply the same principle to acts of personal jurisdiction exercised by a state in relation to its nationals abroad, and it might be argued that the transfer of that jurisdiction to another state falls under the same category. The English courts will not entertain an action for the enforcement of a penal, revenue, or political law of a foreign state, but that is no reason for holding that, according to the rules of English private international law, a foreign government cannot, by appropriate measures, legislate with regard to the duties of its subjects even when they are within the United Kingdom.⁵ It

¹ See the *Schwarzkopf* case discussed below, p. 19.

² See below, p. 43. If there is a rule of general application it would, for instance, prohibit the unlimited extension of the *jus sanguinis* by legislation. In fact, British nationality can be acquired on that ground only by registration; so there is no question in such a case about nationality being thrust on persons living abroad without their consent. ³ See, however, the *Schwarzkopf* case discussed below, p. 19.

⁴ *Luther v. Sagor*, [1921] 1 K.B. 456; *Princess Paley Olga v. Weisz*, [1929] 1 K.B. 718.

⁵ This appears to be justified by the observations of the Divisional Court in the case of *In re Amand*, [1941] 2 K.B. 239: see also [1942] 2 K.B. 447; [1942] 2 K.B. 27,

is true that in some cases the English courts may refuse to recognize a foreign nationality on grounds of public policy, but apart from war-time conditions, there is no reported case in which they have done so. The facts in *The King v. The Home Secretary, ex parte L. and others*, [1945] 1 K.B. 7, are described below,¹ and can be distinguished on grounds of public policy in war-time. It is believed that, in time of peace, the rule laid down in *Stoeck v. Public Trustee*, [1921] 2 Ch. 67, and in *In re Chamberlain's Settlement*, [1921] 2 Ch. 533 (discussed below, p. 201), would prevail; i.e. the question whether a person possesses, or does not possess, a given foreign nationality must be determined in accordance with the law of the nationality involved.

A decision given in the United States in 1943, by the Circuit Court of Appeals, Second Circuit, appears to depart from the rule which, as stated above, the English courts regard as fundamental. This decision² was given on facts somewhat similar to those before the court in *The King v. The Home Secretary, ex parte L. and others*, but the conclusions reached were different.

Schwarzkopf was arrested in the United States as an alleged German enemy alien, and, in order to test the legality of his detention, he sued out a writ of habeas corpus. He was siezed under the Aliens Act 1798 as a 'native, citizen, denizen or subject' of Germany. He was born in 1886 in Prague, Bohemia, then a part of Austria-Hungary. By the Treaty of St. Germain in 1919 he became a Czechoslovakian. In 1925 he became naturalized as a citizen of Germany. In 1927 he moved to Austria, and in 1933 he became a naturalized Austrian, his German citizenship being thereby automatically terminated. In 1936 he arrived in the United States for the purpose of permanent residence as a quota immigrant under the Czechoslovakian quota. When Hitler's forces invaded Austria in March 1938 he was then resident in the United States. In June 1938 he declared his intention of becoming a United States citizen. His application for final naturalization was made in September 1941, and was pending at the time of his arrest (war having by that time broken out between Germany and the United States). Under a law of July 10, 1935, the

and [1943] A.C. 147. These last three reports touch upon other aspects of the case but do not affect the general principle stated in the text. By way of exception, and in the special circumstances prevailing at the time, the court decided that it was at liberty to go into the question of the validity of the decrees of the Dutch Sovereign (then in exile in the United Kingdom).

¹ Below, p. 187.

² *United States of America, ex Rel. Schwarzkopf* (1943), 137 Fed. 2nd.

Police President of Berlin cancelled his German citizenship, and on October 7, 1937, the German Consul at Innsbruck notified him of the cancellation and took up his German passport. A German Executive Order of November 25, 1941, deprived persons in Schwarzkopf's position of their German citizenship. The question to be decided on these facts was whether he was still a German citizen.

On behalf of the United States Government it was argued that he was still a German citizen. The Anschluss of March 1938¹ making all Austrian citizens German citizens² must, it was argued, be recognized by the courts of the United States. The German law of 1938 did not specify which Austrian citizens became German citizens by virtue of the annexation, but simply provided that Austrian citizenship was abolished, and that German citizenship was substituted for it. It was further argued that the United States Government recognized the principle of international law under which, upon an annexation of territory, only those nationals of the annexed territory acquire the nationality of the annexing state, who either remain resident in the annexed territory or voluntarily accept the new nationality, but that this principle does not apply where, as a result of the annexation, the state has ceased to exist altogether. It was contended, on behalf of the United States Government, that this principle only applies where the former state continues to exist, albeit with reduced territory, so that there is an option, allowing those persons residing abroad who do not accept the nationality of the annexing state to retain their former nationality, and so, in most cases, to avoid statelessness. As regards the German decree of 1941 depriving German Jews resident abroad of their German citizenship, the United States Government did not recognize its validity, as it was based on racial discrimination, and, as such, it was contrary to the public policy of the United States.

On behalf of Schwarzkopf it was argued that the German decrees could not be recognized by the courts of the United States, because the Government of that country had not recognized the annexation of Austria by Germany.

The Court held that it was unnecessary for it to decide whether the United States had recognized the annexation of Austria, the question of recognition being wholly irrelevant to the issue. Nor was it contrary to the public policy of the United States to recognize that

¹ Law of March 13, 1938: *R.G.B.*, 1938, i. 237.

² Law of July 6, 1938: *ibid.*, ii. 1034.

Jews resident abroad were deprived of their German citizenship by the decree of 1941. The Court based its decision on another ground, namely that the German decree of July 6, 1938, making all Austrians German citizens, could not be recognized as applying to persons other than those who remained resident in Austria, or who voluntarily accepted German nationality, because of the rule of international law stated above in the arguments of the United States Government.

It is questionable whether international law is as settled upon the point at issue in this case as the Circuit Court declared it to be;¹ but even assuming it to be settled in the sense decided by the Court, it does not follow that nationality imposed in breach of such a rule could be ignored by the courts of another state. Nationality is, in principle, regulated by municipal law, and, although legislation may be enacted which violates international law, such a breach is a matter between governments. It is believed that the English courts would not refuse to recognize the nationality created by a foreign law merely because it was in violation of an alleged rule of international law. What they may do is to hold (and they have held) that, on grounds of public policy, a foreign nationality law cannot be so applied by the English courts as to affect the right of His Majesty's Government to treat particular persons or classes of persons as enemy aliens.

A fourth type of case, which has been common in recent years, is where a state deprives large numbers of its nationals of their nationality for political reasons, thereby making them stateless. Legislative or executive action has been taken on these lines by Soviet Russia, Nazi Germany, and other states.² Persons placed in this position may be thrown on the territory of another state, and the latter may be unable to deport them, because their state of origin does not recognize them as its nationals, and consequently refuses to receive them back on its territory. International law, apart from special treaty stipulations, does not, as we have seen, control the discretion of states in matters of nationality, and other states cannot refuse to recognize that, according to a state's law, particular individuals have lost their nationality under that law. This, as we shall see, is at any rate the doctrine of the English courts.³ However,

¹ See below, p. 43.

² See a well-documented note on recent trends in denaturalization: *Columbia Law Review* (1944), p. 736. See also an article on 'Denationalization' in 6 *Modern Law Review*, p. 57.

³ *Stoeck v. Public Trustee*, [1921] 2 Ch. 67; *In re Chamberlain's Settlement*, [1921] 2 Ch. 533. See below, p. 201.

this does not mean that other states are bound to acquiesce in the refusal of the state which has 'denationalized' some of its nationals, to receive such nationals back on to its territory, if those other states wish to deport them. It has been argued that a state cannot, merely by depriving nationals *en masse* of their nationality, release itself from the obligation to receive them back on its territory,¹ for, although the tie of nationality is created and dissolved by municipal law, other states need not recognize all the effects of the dissolution of the tie. The obligation to receive back is created by international law, and a state cannot, merely by action under its municipal law, release itself from this obligation.² A special Protocol was signed at The Hague in 1930, with a view to regulating this type of case (below, p. 25), but it is not yet in force.

The Hague Codification Conference, 1930

The agreements signed at this Conference require special notice, for all but one of them are now in force between a number of states. The Conference was convened with the object (*inter alia*) of drafting a general Convention which would regulate by an international agreement the conflict of laws regarding nationality, and thus avoid the main evils resulting from the application to an individual of several systems of law. Thus, a man may be born in a country where the *jus soli* prevails, but may be the child of an alien under whose law nationality is transmitted by descent (*jus sanguinis*). This is a common source of dual nationality which is mitigated, but not entirely avoided, by the provisions in the law of many states enabling such persons to make a declaration of alienage, e.g. Section 14 B.N.A. Statelessness is the condition of a person with no nationality at all, and frequently arises from political action depriving him of his nationality of origin.³

A Convention was adopted at The Hague in 1930, entitled a 'Convention concerning certain Questions relating to the Conflict of Nationality Laws'. This Convention came into force in 1937.⁴

¹ Fischer Williams in *B.Y.I.L.* (1927), p. 46.

² We exclude here, of course, cases where nationality is lost on some recognized ground, e.g. revocation of certificate of naturalization, naturalization in a foreign state, &c.

³ The Conference was also concerned with the codification of two other branches of international law—Territorial Waters and Responsibility of States. The Acts of the Conference were published in *Series of League of Nations Publications*, V. Legal, 1930, v. 14.

⁴ The following states have ratified this Convention: Australia, Belgium, Brazil,

The preamble to the Convention declares that the High Contracting Parties are 'convinced that it is in the general interest of the international community to secure that all its members should recognize that every person should have a nationality, and should have one nationality only'. In fact the most important problem contemplated by the preamble is statelessness; the problem of multiple nationality has ceased to be a real problem as most governments are now resigned to it. The text of the Convention¹ is divided into six chapters. Chapter I sets out certain general principles; Article 1 recognizes that it is for each state to determine under its law who are its nationals. This law is to be recognized by other states 'in so far as it is consistent with international conventions, international customs, and the principles of law generally recognized with regard to nationality'. The remaining Articles of this Chapter will be found in the Appendix below, in which the Convention is reproduced. It will be seen that they expressly declare that, subject to the provisions of the Convention, a person having two or more nationalities may be regarded as its national by each of the states whose nationality he possesses. A state may not, however, afford diplomatic protection to one of its nationals against a state whose nationality he also possesses. Article 5 recognizes the doctrine of effective nationality, which we have briefly stated above, and lays down a test for it, which has also been described. Chapter II deals with expatriation permits, and does not require detailed notice here. Chapter III deals with the nationality of married women, and, as the British Nationality and Status of Aliens Act, 1933, was passed to give effect to it, some explanation must be given here of the principles which it lays down. Until the Act of 1933 was passed the law of the United Kingdom had adopted the rule that the nationality of a married woman followed that of her husband, although the common law had been different (below, p. 72). Chapter III of the 1930 Convention consists of four Articles which aim at avoiding, on the one hand, the automatic loss of her nationality by a woman who marries a foreigner, and, on the other hand, gives effect to her loss of nationality, if, on marriage, she does acquire her husband's nationality under the law of that nationality. The naturalization of her husband during the marriage does not affect the wife's nationality

China, Canada, India, Great Britain, Morocco, Netherlands, Norway, Poland, Sweden: *League of Nations Official Journal, Special Supplement* (1944), No. 193.

¹ See Appendix IX.

except with her consent. Chapter IV of the Convention deals with the nationality of children. Article 12 states in treaty form the long-established custom of the law of nations, and the rule of the English common law, that the children of ambassadors are not, by reason only of birth on the territory of the state to which their father is accredited, deemed to be nationals of that state. Article 13 states the principle that naturalization of the parents shall confer on such of the children as are minors the nationality of the state by whom the naturalization is granted. Article 14 deals with the national status of foundlings and children whose parents are unknown. Articles 15 and 16 deal respectively with the position of children who, being born of unknown parents, do not automatically acquire the nationality of the state on whose territory they are born, and, if illegitimate, children whose nationality may be affected by changes in their civil status. Chapter V provides that if, by adoption, a person loses the nationality of the state to which he belongs, the loss shall be conditional upon the acquisition, by the person adopted, of the nationality of the person adopting him. Chapter VI contains general and final provisions, of which Article 18 is the most interesting. This provides:

‘The High Contracting Parties agree to apply the principles and rules contained in the preceding articles in their relations with each other, as from the date of the entry into force of the present Convention.

‘The inclusion of the above-mentioned principles and rules in the Convention shall in no way be deemed to prejudice the question whether they do or do not already form part of international law.

‘It is understood that, in so far as any point is not covered by any of the provisions of the preceding articles, the existing principles and rules of international law shall remain in force.’

From this provision it appears that states do, in practice, consider that nationality legislation is circumscribed by certain general principles of international law, and the Convention is not conclusive as to the extent of such principles.

In addition to the Convention, three Protocols were drawn up which were ratified by Great Britain, and the texts of these agreements are given in the Appendix (below, p. 387). These Protocols deal respectively with:

1. Military obligations in certain cases of double nationality.
2. A certain case of statelessness.
3. A special Protocol concerning statelessness.

The Protocol regarding military obligations in certain cases of double nationality,¹ and the Protocol concerning a certain case of statelessness,² are in force, having received the requisite number of ratifications (ten). The special Protocol is not yet in force.³

The Protocol relating to Military Obligations in Certain Cases of Double Nationality provides that, if a person of two or more nationalities possesses the effective nationality of one of them, in the meaning described in Article 5 of the Convention (above, p. 17), he shall be exempt from all military obligations in the other country or countries subject to the possible loss of nationality in those countries. The Protocol also provides that if a person possessing two or more nationalities is entitled, under the law of any of the states, to renounce its nationality on coming of age, he shall be exempt during his minority from military service in the state in question. Finally the Protocol lays it down that if under the law of a state a person has lost its nationality, and has acquired another nationality, he shall be exempted from military obligations in the state whose nationality he has lost.

The Protocol relating to a Certain Case of Statelessness provides that, in a state whose nationality is not conferred by the mere fact of birth in its territory, a person born there of a mother possessing the nationality of that state, and of a father without nationality, or of unknown nationality, should have the nationality of that state.

The Special Protocol concerning Statelessness provides for the case of persons rendered stateless as a result of being deprived of their nationality after they entered a foreign country. It is laid down that the state of origin is bound to admit such persons, at the request of the state in whose territory he is, if he is permanently indigent, or if he has been sentenced to not less than one month's imprisonment. Statelessness greatly increased after the First World War (1914-18), as a result of the action of various governments depriving individuals of their nationality for political reasons, although loss of nationality, by reason of disloyalty or bad character, accepting honours, or

¹ The following are the states which have ratified the Protocol: United States, Belgium, Brazil, Great Britain, Australia, South Africa, India, Columbia, Cuba, Netherlands, Salvador, Sweden.

² The following are the states which have ratified the Protocol: Brazil, Great Britain, Australia, South Africa, India, Chile, China, Poland, Salvador, Netherlands.

³ The following states have ratified this Protocol, but as it is not yet in force they are not bound by it: Australia, Belgium, Great Britain, South Africa, India, China, Salvador.

protection, from a foreign government, and on other particular grounds, had existed before then. In English law, as we shall see (below, p. 164), a natural-born British subject cannot be deprived of his nationality merely by executive decree, and a naturalized British subject can lose it by having his certificate revoked on special clearly defined grounds.

In addition to The Hague agreements of 1930, various Conventions were signed before the Second World War (1939–45), which had for their object the improvement of the position of stateless persons. The Council of the League of Nations, in 1935, appointed a High Commissioner for Refugees (Jewish and others) coming from Germany, and, in 1938, the Council set up an organization, with headquarters in London, directed by a 'High Commissioner for Refugees under the protection of the League of Nations'. It is not necessary for the purposes of this book to enter into the details of these arrangements, which are designed to deal with an entirely abnormal situation.¹

¹ See, for an account of these arrangements, a paper by Loewenfeld, 'Status of Stateless Persons', in *The Transactions of the Grotius Society* (1942), p. 59.

PART II

BRITISH NATIONALITY UNDER THE COMMON LAW AND BY STATUTE

AN HISTORICAL INTRODUCTION TO THE MODERN LAW OF BRITISH NATIONALITY

INTRODUCTORY NOTE

It may be thought that the space devoted in this part of this book to *Calvin's Case*, and to the exposition of the common law, is disproportionate to its importance. The following reasons make such an inquiry necessary:

1. Although modern nationality law is, so far as individuals are concerned, very largely covered by statute, some parts of it are not, and these parts cannot be understood without knowing the common-law background. Some aspects of British nationality, e.g. how people become British subjects by annexation, require an examination of common-law authorities.
2. The doctrine of allegiance is still fundamental in English law, and this doctrine is pure common law. The word 'ligeance' or 'allegiance' is used in all our nationality legislation, and, in particular, occurs in part of the modern statutory definition of a natural-born British subject in Section 1 (1) (a) of the British Nationality and Status of Aliens Act 1914. This provision has frequently been misunderstood as a result of an inaccurate knowledge of the common-law doctrine of allegiance, and it is hopeless to attempt an interpretation of it without knowing in some detail what the common law is.¹
3. The nationality of many persons now living, whether born before or after 1914, depends ultimately on rules of the common law.

¹ Dicey, *Conflict of Laws* (5th ed. 1932), p. 899, points out how little attention is given, in considering points of nationality law, to the effect of common-law doctrine on the *form* in which statutory rules have been stated.

I

THE CONCEPTION OF A 'BRITISH SUBJECT' AT COMMON LAW

THE words 'nationality' and 'British nationality' have by now so far passed into common usage that it is frequently forgotten how modern and recent in origin they are. The conception of 'nationality' as a relation between the individual and the State dates from the French Revolution, when monarchy and the person of the monarch ceased to be the pivot and centre of constitutional law. In this modern sense the common-law writers of the sixteenth and seventeenth centuries did not speak of nationality, though the word 'naturalization', meaning the admission of an alien to the status of a natural-born subject, was used.¹ The status of a 'subject of the King of England' was that from which our modern idea of British nationality springs. The 'Crown of Great Britain', to which British subjects owe allegiance, came into existence in 1707 when the two distinct titles of King of England and King of Scotland were merged into one. The pure milk of the common-law doctrine of allegiance to the Crown is to be found a century earlier in *Calvin's Case* (1608), 7 Co. Rep., otherwise known as the *Case of the Postnati*, meaning persons born after the accession of James VI of Scotland as James I of England, which took place on March 26, 1603.²

After the accession of James I to the English throne (he being

¹ The word 'naturalization' appears to have been used as early as the sixteenth century in this sense: *The Oxford English Dictionary*. But it must be emphasized that, until the passing of the Naturalization Act 1844, it was only possible to be naturalized in England by special Act of Parliament, and the idea that naturalization is a regular mode of acquiring British nationality begins in the nineteenth century. In reading the old authorities this must be borne in mind: in these authorities the word 'nationalization' is sometimes used meaning 'naturalization'. The words 'nationals' and 'nationality' are of modern origin. The latter began to be used in English early in the nineteenth century: *Shorter Oxford Dictionary* (1936). According to Cogordan the word *nationalité* appeared in 1835 for the first time in the *Dictionnaire de l'Académie Française*: see *La nationalité au point de vue des rapports internationaux* (1879), p. 2.

² A full report in vol. ii of Cobbett's *State Trials* contains (1) Sergeant Moore's accounts of the 'Debates in Parliament arising from the Personal Union of England and Scotland, (2) Lord Bacon's argument for Calvin, (3) Coke's report of the decision, (4) Lord Ellesmere's speech in the Court of Exchequer Chamber—at that time the final Court of Appeal in matters of common law and equity, subject only to the very rarely exercised jurisdiction of the House of Lords, which did not then sit regularly as a judicial body.

also James VI of Scotland) there was a joint session of certain commissioners of Scotland and England to determine questions arising from the union in one person of the two Crowns. The Commissioners proposed that 'the common law of both nations should be declared to be, that all born in either nation sithence His Majesty was king of both, were mutually naturalized in both'. The English Commons 'could not assent to declare the law as was proposed, and, thereupon, after long debate amongst themselves, they appointed committees to confer with the Lords Committees'. At this joint conference there were several speeches, but the main trend of the discussion was against the conclusion that the *Postnati* were subjects. The civilians who took part in the debate were unable to point to any useful precedent, but relied on the maxim 'cum duo jura concurrunt in una persona aequum est ac si essent in diversis'. Thus the union of the two Crowns did not affect the separate allegiances, and the subjects of the King of Scotland whenever born—either before or after the union—were aliens to the subjects of the King of England. Certain 'Professors of the common law' made the interesting point that 'the person of the king, possessing both kingdoms, possesseth the people and the laws of them distinct, as are the kingdoms themselves. Therefore the subjection of every people is distinguished to the several kingdoms, and one not subject to the other, nor naturalized within the other. And this is proved by the statute of 14 Edward III, whereby it is declared that, notwithstanding the King of England were King of France, yet the people of England were not subject to him as King of France, but only as King of England.' They argued further that: 'No man can be born a subject of two allegiances, nor by birth natural of two distinct kingdoms, therefore Scots born in Scotland cannot be naturalized in England.'¹

¹ If it had been 1900 instead of 1600 we should have said the question was whether it was a 'Personal Union' or not, and that these people were saying it was a Personal Union. But this conception was not known then, therefore they argued on the nature of allegiance, and the decision in fact resulted in the union being treated as though it were *not* a Personal Union: but on the point of its *being* a Personal Union see below, p. 60. The Personal Union came to an end with the Act of 1707 (6 Anne, c. ii), which united the two 'distinct kingdoms' into one Kingdom of Great Britain. Between 1603 and 1707 Scotsmen had the rights of Englishmen in the Colonies as well as in England. Chalmers, *Political Annals of the United Colonies* (1780), p. 259. A case decided in 1669 casts some further light on the Personal Union during these intervening years. It was pointed out that Ireland was 'a dominion of the Crown of England', and not of both Scotland and England, which were distinct kingdoms. Ireland being subordinate to England the laws of England could bind and have effect there. But England and Scotland could only be united by a 'Reciprocal Act

This line of reasoning was not accepted by the judges who were present at the discussion. They said that allegiance and laws were not 'of equiparation', i.e. that allegiance existed before laws came into existence, and this allegiance followed the natural person of the King not his 'body politic'.

The fundamental issues in the controversy were: what is the relation between king and subject? How does this relation arise? Does the fact that the relationship arises in respect of persons born in different territories belonging to the same king give those persons a common status? The issues thus raised were highly political, and there seems little doubt that James desired that they should be resolved in favour of a conclusion that the '*Postnati*' were subjects of the King of England, as well as of the King of Scotland. In view of the difference of opinion in Parliament an action was commenced in the Court of King's Bench by Robert Calvin, against Smith and others, for the possession of certain lands, of which Calvin alleged that the defendants had disseised him. A suit was commenced in Chancery at the same time, and the two cases were adjourned for a final decision into the Court of Exchequer Chamber. Calvin was an infant, having been born in Scotland on November 3, 1606, i.e. since the accession of James I of England. The actions were brought in his name by his guardians. The defendants pleaded that the plaintiff was an alien, and that the action was not maintainable. It was admitted that Calvin was born in the kingdom of Scotland since the accession of James I, and was a *Postnatus*. The defendants pleaded accordingly that he was born 'out of the ligeance of our said King of his Kingdom of England, and, at the time of the birth of the said Robert Calvin, and long before and continually afterward, the aforesaid Kingdom of Scotland by the proper rights and laws of the same Kingdom of Scotland, and not by the rights, laws, or statutes of this Kingdom of England was and yet is ruled and governed'. It was decided, by the Lord Chancellor and twelve judges, that Calvin was not an alien, but that the allegiance of those born in Scotland before the accession of James I (*Antenati*) was not affected by the union of the two Crowns, and that they remained subjects of the King of Scotland only, and were aliens in England. Bacon, who was Calvin's counsel, laid emphasis on the 'allegiance of subjects to hereditary monarchs, which is corroborated and confirmed by law,

of Parliament' (and so they were in 1707). The case is *Craw v. Ramsay* (1669), Vaughan 274, discussed further below, p. 104.

but is the work of the law of nature' (or the pure theory of law). This reliance upon the law of nature is apparent in all the argument, and in the approach by the judges to the question. Bacon says again: 'I shall hardly consent that the King shall be esteemed or called only our rightful or our lawful sovereign, but our natural liege sovereign, as Acts of Parliament speak, for, as the Common Law is more worthy than the Statute law, so the law of nature is more worthy than both.' In his argument Bacon distinguishes four types of persons known to the law of England: (1) alien enemy, (2) alien friend, (3) denizen, (4) natural-born subject. As regards these he says: 'There be but two conditions by birth, either alien or natural born, *nam tertium penitus ignoramus*. It is manifest, then, that if the *Postnati* of Scotland be not natural-born, they are alien born, and in no better degree than Flemings, Italians, Spanish, German, and others which are all at this time alien friends.' He argued that subjection was to the king not to the law. The arguments against his view were:

1. That the law of England is of force only in England, and, as 'naturalization' is an operation of that law, (it not being in force in Scotland) birth in Scotland could not make a subject. Bacon replied that this was not true, because, if a subject conspires the death of a King in foreign parts, he is guilty of treason.
2. That allegiance is to the kingdom not to the King. To this Bacon replied that kingdom is a mere 'trope of speech' for the King.
3. That, according to civil law, '*cum duo jura in una persona concurrent aequum est ac si essent in diversis*': Bacon replied that this maxim only applied to the body politic, and could have no relevance to allegiance, which was due to the natural person of the King, 'Although his body politic of King of England and his body politic of King of Scotland be distinct, yet, nevertheless, his natural person, which is one, hath an operation upon both, and createth a privity between them.'

The grounds of the decision are explained by Coke in his report of the case. There is one fundamental rule underlying it, which is expressed by Lord Ellesmere in his speech in the Exchequer Chamber: it may be expressed in the maxim 'One King, one obedience'.¹ The allegiance to the King is one and undivided and his sovereignty

¹ See p. 59, below, where it will be seen that, while the Crowns of the United Kingdom and of Hanover were united, Hanoverians were British subjects. Presumably, in the time of William III, Dutchmen were British subjects.

cannot be divided. This doctrine of allegiance is developed by Coke, proceeding largely from a theoretical, or natural law, conception of kingship. Few precedents are cited either by Bacon or by Coke, and, where they are cited, it is by way of illustration rather than as 'authorities'. Coke's exposition proceeds on the footing that the *de facto* situation of a subject carries certain reasonable and proper results, which have the force of law. Generally speaking a subject is under the protection of (*ergo* under the obligation of obedience to) the King. There is, as yet, no idea that the King or Parliament may *ex gratia* extend his protection to whom he wills. Protection is regarded as coextensive with territorial sovereignty or jurisdiction, and, therefore, the status of subject arises from physical presence in the territory over which sovereignty is exercised. This is pure natural law doctrine, and, indeed, the whole decision in *Calvin's Case* must be fairly rested on this basis. 'Ligeance', as a 'general conception of law', is defined by Coke in the following terms: 'ligeance is a true and faithful obedience of the subject to his sovereign. This ligeance is an incident inseparable to every subject, for, as soon as he is born, he oweth, by birth-right, ligeance and obedience to his sovereign.' The definition, however, contains an undefined term—'subject'. What is a subject? Perhaps this can be best explained by pursuing in greater detail Coke's doctrine of allegiance. He says again of allegiance: 'It is the mutual bond and obligation between the King and his subjects, whereby subjects are called his liege subjects, because they are bound to obey and serve him, and he is called their liege lord because he should maintain and defend them.' Coke accordingly refers to allegiance as a *duplex et reciprocum ligamen*. There are thus two elements involved, (a) protection by the King, (b) obedience by the subject. Who then is a subject? Coke replies: 'They that are born under the obedience, power, faith, ligealty or ligeance of the King are natural subjects and not aliens.' He lays down three tests or 'incidents' of a subject, i.e. a 'natural' subject. 'There be regularly (unless it be in special cases) three incidents to a subject born':

1. His parents must be under the actual obedience of the King.
2. The place of birth must be within the King's dominions.
3. 'The time of his birth is chiefly to be considered, for he cannot be a subject born of one kingdom, that was born under the ligeance of a king of another kingdom, albeit afterwards one kingdom descend to the king of the other.'

As to 'actual obedience', Coke says 'it is termed actual obedience, because though the King of England hath absolute right to other kingdoms or dominions as France, Aquitain, Normandy etc., yet, seeing that the King is not in actual possession thereof, no one born there, since the Crown of England was out of actual possession thereof, are subjects to the King of England'. As to the place Coke says: 'Ligeance or obedience, without any place within the King's dominions, *may* make a subject born, but any place within the King's dominions without obedience can never produce a natural-born subject, i.e. King's ambassadors abroad, having children, these are natural-born subjects at common law, yet born out of His Majesty's dominions.' Allegiance is not necessarily confined to the realm of England. 'Power and protection draweth ligeance; seeing that the King's power, command, and protection extendeth out of England, that ligeance cannot be local or confined within the bounds thereof.' This leads to the final link in Coke's chain of reasoning. 'Seeing that ligeance is a quality of the mind, and not confined within any place, it followeth that the plea (of the defendants) doth confine the ligeance of the plaintiff to the Kingdom of Scotland *infra ligeantiam regis regni Scotiae et extra ligeantiam regis regni sui Angliae*, whereby the defendants do make one local ligeance for the natural-born subjects of England, and another local ligeance for the natural-born subjects of Scotland, is utterly insufficient, and against the nature and quality of natural ligeance, as often it hath been said.' In consequence Coke concludes the plea to be bad. It was not material that the King of England exercised dominion over another kingdom in virtue of a separate title: the material fact was that he did have that dominion, and allegiance was a 'reciprocal' result. Coke's doctrine is avowedly based on natural law, i.e. on the proper relation of king and subject according to reason. 'Our ligeance is to our natural liege sovereign descended of the blood royal of the Kings of this realm.' 'Ligeance or faith of the subject is due unto the King by the law of nature, and the law of nature is part of the law of England.' This faith or loyalty he derives, not from any precedent (there was none governing the point), but from the principle and reason of the thing, i.e. the natural law. Obedience, he says, is the natural and proper consequence of protection. This obedience is owed to the person actually exercising that protection, and not to an artificial or politic body. From this it follows that 'if obedience and ligeance of the subject to his sovereign be due by the law of nature, if

that law be parcel of the laws of England, as of all other nations' (which Coke asserts to be so), 'and that *postnati*, and we of England, are united by birthright in obedience and ligeance (which is the true cause of natural subjection), by the law of nature, it followeth that Calvin, being born under one ligeance to one King cannot be an alien born'. Coke defines an alien: 'An alien is a subject that is born out of the ligeance of the King, and under the ligeance of another.'

This does not exhaust Coke's exposition of the doctrine of allegiance. Hitherto we have been concerned with subjects born, or 'natural subjects'. This, however, is not the only type of subject known to common law. Coke distinguishes four types of allegiance:

1. *Ligeantia naturalis*.
2. *Ligeantia acquisita*.
3. *Ligeantia localis*.
4. Legal obedience.

The first, which has already been described, arises by 'Nature or birthright', the second by acquisition; the third may arise because 'when an alien that is in amity cometh to England he is within the King's protection; therefore, so long as he is here, he oweth unto the King a local obedience or ligeance'. The fourth is so-called 'because the municipal laws of this realm have prescribed the order and form of it, and this is to be done upon oath at the Tourn of the Leet'.

We can now examine in detail the common-law doctrine regarding the four types of allegiance described by Coke, adding such general account of later developments and modifications of that doctrine as may be necessary to understand the modern law of British nationality.

1. *Natural-born subjects*

These are persons born within the allegiance of His Majesty. Birth within the allegiance means:

- (a) birth within His Majesty's dominions,¹ subject to certain exceptions, or
- (b) birth outside His Majesty's dominions in such circumstances as to involve allegiance to His Majesty.

(a) This is the normal or, as Coke says, the 'regular' type of natural-born subject, even at the present day. Allegiance and territorial jurisdiction are not, however, exactly coextensive. A

¹ It is convenient at this point to emphasize that, wherever the word 'dominions' is used in the text, it means all British territory, and not merely the 'British Dominions'. British territory includes all territory part of the Crown's dominions, as opposed to possessions held under protectorate or mandate (or trusteeship).

person may be born within His Majesty's dominions and yet not owe the allegiance of a natural-born British subject. Persons falling into this category (the 'exceptions' mentioned above) are: children of foreign ambassadors accredited to His Majesty,¹ such children being born in British territory, and the children of members of a foreign invading army.²

(b) Conversely a person may be born outside His Majesty's dominions, and yet not be an alien in the United Kingdom, but a natural-born British subject, because he was born within the allegiance of His Majesty.³ Persons in this category are: children of His Majesty's ambassadors, born in the foreign state to which the ambassador is accredited,⁴ the heir to the Crown, wherever born, and the children of the sovereign, born during the royalty of their parents, wherever born⁵, children born outside His Majesty's dominions of male members of British forces on foreign soil,⁶ children of whatever parentage born on board a British ship on the high seas,⁷ and the children of British

¹ This is not expressly stated by Coke, but it follows logically as the converse of his proposition that the children born abroad of His Majesty's ambassadors are born within the allegiance, and it has always been taken to the common law. As to the former proposition see below, n. 4.

² See below, p. 127, and also p. 131 for the position of children of members of foreign friendly or Allied armed forces, which is not clear at common law, and is not covered expressly by statute.

³ Coke writes elsewhere, 'as Littleton saith, which is the surest, out of the ligeance of the King' (speaking of aliens). 'Note', says Coke, 'here Littleton saith not out of the realme, but out of the ligeance, for he may be born out of the realme of England, yet within the ligeance.' Co. Litt. Sect. 198. An averment in the old pleadings, that a person was 'not born within the kingdom', was held not to mean that he was born out of the King's allegiance, *Regina v. Busheir* (1708), 11 Mod. 167.

It was held worth reporting in 1562 that a bastard born in Tournay, after the conquest of it by Henry VIII, and during the time it was in the possession of the Crown, was a subject because born in a place *pro tempore* part of the realm of England: 2 Dyer 224 b.

⁴ *Calvin's Case*, 7 Co. Rep. 17 A.

⁵ This was the common law as declared by Statute I of 25 Edward III (see below, p. 66), and it has never been deemed necessary to make fresh statutory provision for it. This part of the Statute of Edward III is still law, not having been repealed by any of the modern Acts regarding British nationality.

⁶ The formulation of the rule expressed in the text may not be supportable at common law, the position in that respect being controversial. But such persons are, if legitimate, covered by Section 1 (1) (b) (iv) of the B.N.A. 1914. The common law is discussed below, p. 141.

⁷ *Marshall v. Murgatroyd* (1870), L.R. 6 Q.B. 31. In that case a bastard child born in an English ship on the high seas was held to be a natural-born subject at common law. The position of a child born on a British ship in foreign territorial waters is perhaps not so clear at common law, but it is settled by statute in favour of the British nationality of the child: Section 1 (1) (c) of the Act of 1914. See below, p. 146.

subjects born in countries where His Majesty exercises, by treaty, capitulation, grant, usage or sufferance, extraterritorial jurisdiction.¹ The last-mentioned class of persons was unknown to Coke, but it is arguable that the common-law doctrine of allegiance applies to them. Prisoners of war (British or enemy) and internees are not specially dealt with by common law or by statute, and their position will be discussed later.²

The position of children of natural-born British subjects born abroad is, apart from the above exceptions, at common law that of aliens; but this rule, as we shall see,³ was modified by statute in the reign of Edward III in the case of children born abroad whose parents at the time of their birth, owed allegiance to the King, and, as the effect of this statute was obscure, further legislation was passed in the eighteenth century in order to clarify the position. At the present day, by virtue of still more legislation, it is possible to transmit British nationality from one generation to another, all born abroad, provided that certain rules of procedure are observed.⁴

Anyone is an alien who is born out of the allegiance of the King, and allegiance, not birth within British territory, is the test.⁵ Accordingly, the view that, at common law, the test of nationality is territorial (i.e. depends entirely on birth within His Majesty's dominions) is not correct. However, it is so nearly true that we may say it was the general rule at common law, subject to the addition of the exceptions to category (a), together with those persons in category (b), above. This 'general rule' has been encroached upon so much by Statute that it has ceased to be a satisfactory statement of the law, which can only be properly understood by looking at the legislation on the subject. The theory of the matter may be stated as follows: A natural-born subject is a person born within His Majesty's

¹ This is the formulation adopted in the proviso to Section 1 (1) of the Act of 1914. The common law is not clear. See below, p. 147.

² See below, p. 130.

³ See below, p. 66.

⁴ The position of children born abroad to British subjects was never definitely settled at common law. See below, p. 66. There is a case mentioned in the marginal note of 2 Dyer 224 b, described as *Joseph Colt's Case*, 2 Jac. (no report extant), where a child was born in Flanders, 'his father and mother *enceinte* inhabiting in Calais when it was taken by the French fled into Flanders, and there the woman was delivered of the said Joseph; adjudged that he shall be a denizen because the parents were born at Calais and he himself was begotten there, although born in Flanders'. This is a very odd case, and no deduction can be drawn from it regarding the general rule.

⁵ A person may be born under the allegiance of another State, but this does not necessarily mean that he is a national of it. He may be stateless, but in the eyes of English law a stateless person is an alien (see Section 27 (1) B.N.A.).

allegiance. To be born within His Majesty's allegiance is to be born under his protection. This statement of doctrine (though very elliptical) is the one which explains and comprehends the position adopted in practice by His Majesty's Government in relation to persons born, the children of British subjects, in countries where His Majesty exercises jurisdiction under the Foreign Jurisdiction Act. This position was based originally, not on statute, but on common-law doctrine, and it is important therefore to see what the doctrine implies. Before the British Nationality and Status of Aliens Act, 1914, some writers questioned whether the children of British parents born in a country in which the capitulatory régime was in force, or in any other place where His Majesty exercised jurisdiction under the Foreign Jurisdiction Act, 1890 (such as, for example, a British Protectorate), could be regarded as born within His Majesty's allegiance, so as to give such children the status of natural-born subjects at common law. Dicey was among those who denied that such persons had British nationality.¹ But his view was contrary to that adopted in the administrative practice of government departments concerned with nationality questions. With the object of disposing of such doubts the proviso to Section 1 (1) of the Act of 1914 was inserted. This provides as follows:

'Provided that the child of a British subject, whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects.'

The intention was to declare in this proviso that all children born in the circumstances therein described are natural-born subjects at common law. The language chosen to produce this result was not clear, and gave rise to a discussion as to its interpretation which will be set out in another chapter. For the present it is sufficient to say that the status under the common law of persons born out of the King's dominions to British fathers, in countries where His Majesty has jurisdiction over British subjects, has never been clearly settled

¹ See Dicey, *Conflict of Laws* (5th ed. 1932), Note 8. Dicey apparently denied that such persons had British nationality, not only under the common law, but even under the proviso to Section 1 (1) of the Act of 1914, which was intended to make it clear that they possessed it. His argument was, briefly, that at common law no person born outside His Majesty's dominions was a British subject unless he could prove that his case fell within some special statutory provision. He took the view that the proviso to Section 1 (1) did not confer such status.

by our courts.¹ Various early statutes which are referred to hereafter,² confer British nationality on the children of British subjects born outside His Majesty's dominions under certain conditions. Apart from the very earliest dealing with children born to the King abroad, these statutes did not deal with the special case of persons born in foreign countries where His Majesty possesses jurisdiction over British subjects, or with the special case of the children of British ambassadors (these last-mentioned having always been regarded as covered by the common-law rule of allegiance), but only with the children of ordinary natural-born British subjects, or the children of persons endowed by statute with the privileges of natural-born British subjects.³ It was not until 1914 that an Act of Parliament attempted to deal with these special cases. In reading the account of these early statutes which follows in this chapter it must be remembered that, side by side with them, there existed a common-law doctrine of allegiance which was not abolished by them. It is certain, however, that many persons would have had great difficulty in establishing their claim to be British subjects if these Acts had not been passed. The Act of 1914 entirely altered this situation. The common-law doctrine of allegiance, in so far as it bears on these special cases, has been superseded by the provisions of the Act in the following respects:

- (a) persons in the service of the Crown;⁴
- (b) persons born in foreign countries in which His Majesty exercises jurisdiction over British subjects.⁵

The common-law doctrine may, however, still be relevant in interpreting the statutory provisions which make use of the expression 'allegiance'.

¹ Even Dicey admits in Note 7 of his *Conflict of Laws* (5th ed. 1932) that 'it is nowhere laid down that a person born out of the King's dominions is not, in general, a British subject'. But it is laid down in *De Geer v. Stone* (1882), 22 Ch.D. 243, that a child born abroad of a natural-born British subject does not *ipso facto* acquire the capacity of transmitting British nationality to his descendants for ever. See below, p. 69.

² See below, p. 69.

³ The form of words used here can only be fully understood by reading the account at p. 136 below of the statutes in question. Not until January 1, 1915, was it possible for a *naturalized* British subject to transmit by *descent only* British nationality to his children. See below, p. 138.

⁴ See Section 1 (1) (b) (iv) B.N.A. It will be noted that the expression 'in the service of the Crown' is of wide scope covering not only ambassadors (definitely covered by the common-law doctrine) and soldiers (as to which see below, p. 141), but many other persons as well. See generally below, p. 140.

⁵ See Section 1 (1) B.N.A. (first proviso), below, p. 145.

2. *Subjects by acquisition*

These are persons who are made subjects by letters patent, Act of Parliament, or by the annexation by the Crown of new territory.

A subject by letters patent is a denizen. The power to create such subjects belongs to the prerogative of the Crown. A denizen has, by common law, some, but not all, of the privileges of a British subject. His exact status has never been decided by our courts; and it is now unlikely that his obscurity will be disturbed.¹ It appears that no conditions need be satisfied for the grant of denization. The status of denizen takes effect as from the date of the grant, and not earlier. So, the sons of a denizen born before denization could not inherit real property (this was of importance in the days—now long past—when the right of inheritance was limited to subjects). The transmission of this status of being a denizen to his descendants depends on the terms of the grant, which may be in the form of a limitation such as to 'X and his heirs' to 'X and his heirs male', or in some similar form. However, this point would only affect the descendants born abroad, because, if they were born in the King's dominions they would become natural-born British subjects. Denization became practically obsolete when naturalization in its modern sense—not in Coke's sense—was introduced, and became a regular institution of English law. It has, however, never been abolished: in fact it is expressly preserved by Section 25 of the British Nationality and Status of Aliens Act, 1914.²

It is also possible for a special Act of Parliament to be passed, conferring on an alien all or some of the rights of a British subject. This was the usual method of naturalization, before the procedure provided by the Acts of 1844 and 1870, and by later legislation, made naturalization an executive matter. A special Act of naturalization is not now necessary, unless it is desired to grant to alien rights greater than those conferred by ordinary naturalization,³ or to

¹ No denizens have, apparently, been created since 1872: Fraser, *Control of Aliens in the British Commonwealth of Nations* (1940), p. 55.

² The law on this subject, which is rather recondite learning, is discussed in detail in Piggott, *Nationality* (1907), i, chap. VI, Holdsworth, *History of English Law*, ix, p. 77.

³ There is, in fact, now no substantial difference between the position of a naturalized British subject and that of a natural-born British subject, see Section 3 B.N.A. (Part II below, p. 163), except that the former may, in certain circumstances, be deprived of his nationality by executive action, whereas the latter (subject to one exception under Section 7A B.N.A.: see below, p. 171) may not. Some distinctions are however, made by Departmental Regulations for the purpose of admission to the Foreign Service and to the Civil Service.

circumvent the conditions laid down by legislation for naturalization.¹

The third method of acquiring the status of a subject which is enumerated by Coke, is conquest. According to the established rule of international law conquest in itself does not transfer sovereignty over occupied territory. It is necessary that military occupation should be followed by annexation before sovereignty can pass. When, however, sovereignty has become vested in the annexing state, questions regarding nationality arise. Conquest, is not, nowadays, a normal method of acquiring territory, but territory may also be acquired by cession or some similar international transaction. A treaty may be drawn up containing rules regarding nationality in the territory transferred. From the point of view of English law, however, it is the act of *annexation* by the Crown which counts, although, if the treaty is embodied in an Act of Parliament, the courts will apply such rules as may be laid down therein.

Annexation means the formal incorporation of territory into the King's dominions. Territory may be acquired and administered by the Crown without being annexed, and in that event the persons connected with the territory do not, by reason only of the acquisition of such territory by the Crown, become British subjects. Such territory may be governed under the Foreign Jurisdiction Act, 1890, or may be under protectorate or mandate or trusteeship, and persons connected with it may be British protected persons, but not, by reason only of such connexion, British subjects.²

It may be important to decide, for the purposes of the British Nationality and Status of Aliens Act, who is a 'British subject by annexation',³ and the answer to this question will not be found in the Acts but in common-law doctrine.

The law on the subject of the effect of annexation on nationality has been stated, it is believed correctly, by Dicey as follows: 'On the acquisition of territory by the Crown, whether by annexation or cession, all persons, nationals of the annexed or cessionary State, resident in the territory annexed or ceded, become British subjects,

¹ See the special Act passed in 1867 to naturalize one Bischoffsheim (Private Act No. ii of that year: not printed). Further Acts of this kind were passed in later years, e.g. 1877 and 1880. See below, p. 75.

² See below, Part V, p. 291.

³ See Section 1 (1) (b) (iii), and Section 27 (1) B.N.A. below, p. 222.

unless other provision is made in the instrument of annexation or cession, or is enacted by the Crown.¹

No English court has considered in detail the exact effect of annexation so far as British nationality is concerned, but the above statement by Dicey represents a reasonable inference from *obiter dicta*, and from cases where the courts have dealt with the converse situation, i.e. loss of territory by the Crown. A number of cases arising from the latter situation were decided after the American War of Independence, and these cases were recently considered in *Murray v. Parkes*, [1942] 2 K.B. 123. It is certain that annexation, as a matter of English law, affects the nationality of persons *resident* in the annexed territory as opposed to those *domiciled*. It is also clear that at common law, and apart from specific legislation, the Crown would not purport to claim, or be deemed entitled to claim, as British subjects by annexation, persons resident in the annexed territory who were, at the time of annexation, not nationals of the annexed territories. These rules are agreeable to the decisions of the English courts on the closely related subject of the results of the secession of British territory, although there is no case precisely covering the question of annexation. Further, as will be shown below, the practice followed by the British Government after the annexation of the South African Republics, and the advice given to it by the Law Officers of the Crown, support strongly the view stated by Dicey.

Broadly speaking, the opinion of other writers who have considered the matter is the same as Dicey's, but it is disputed by some whether the acquisition of British nationality by annexation is automatic, or whether some overt act is not required by the inhabitants signifying their acceptance of British nationality. The necessity of such an overt act is expressed by speaking of the 'right of election'.² It seems from the account given below of the views of

¹ Dicey, *Conflict of Laws* (5th ed. 1932), Rule 26. The juxtaposition of the words 'annexation or cession' is misleading. As already explained in the text it is annexation and not the mode of acquisition, such as cession, which is material in the present context.

² It seems necessary to distinguish, although this is not always done, between election by the nationals of third Powers resident within the annexed territory, and election by nationals of the state whose territory is annexed. Strictly speaking, if the state is completely absorbed, there can be no question of election as a practical possibility, but only of repudiating the new nationality. The better opinion seems to be that, under English law, the latter have no 'right' of election, and that no overt acts by them are required to make them subjects of the annexing state. But as to the former, the onus of claiming that they are nationals of a third Power is on them, and they are presumed, if resident in the annexed territory, to become

the British Government regarding the effect of annexation in the South African Republics, that any such right, if it existed, was a concession by the conqueror in favour of persons who did not wish automatically to become British subjects, and, although it was, in fact, extended to former nationals of the Republics, the primary purpose of the concession was to enable persons who were not such nationals to assert their nationality.

The general rule laid down above applies to all territory annexed by the Crown, whether the territory is annexed after conquest or after cession to the Crown by a foreign Power.¹ The international origin of the acquisition is immaterial; it is the annexation by the Crown which produces results under municipal law. Where, however, territory is acquired by cession there may, and usually will, be a treaty stating the rules to be applied in order to determine whether persons connected with the territory become British subjects. That connexion is usually defined by reference to residence in the territory transferred, and there may be other rules allowing persons who *prima facie* acquired British nationality, under the cession followed by annexation, to shake off that nationality by emigrating within a fixed period of time. On the other hand, there may be no rules laid down by treaty, Order in Council, or Act of Parliament. In the case of the annexation of the Orange Free State and the South African Republic, Proclamations were issued on May 24, 1900, and September 1, 1900, incorporating these territories into His Majesty's dominions. The Law Officers advised on May 17, 1900, in the absence of any rule laid down by legislation, that the inhabitants of these territories became British subjects upon annexation. They added, however:

'It has, however, been usual in recent times to allow those who do not desire to become subjects of the conqueror to leave the conquered territory within a reasonable time, and, we think this course would properly be followed in the present case.'

British subjects. This presumption may be rebutted by them, and if it is so rebutted, they may be described as having 'made their election'.

¹ The cession may take the form of a lease, which, in fact, results in an annexation for a limited period. Thus, Hong Kong acquired new territory, under a lease for 99 years from the Chinese Government, in 1898. The treaty, which was signed on June 9, 1898, provided that it should come into force on July 1, 1898, though ratifications were not exchanged until August 6, 1898 (S.P., vol. 90, 17). The British Government was advised by the Law Officers of the Crown, that 'persons inhabiting the new territory who were before the cession Chinese subjects are to be regarded as British subjects for all purposes as from 16th April, 1899'. The latter was the date of the actual taking over (annexation) of the territory.

This, it will be observed, was not put forward as a rule of law, and there is nothing to support the view that such a practice is in any way obligatory. Similarly, the following suggestion, in the same Opinion, was nothing more than a recommendation:

‘The transfer of nationality ought not to be imposed on inhabitants who are not within the State, unless they return to it afterwards.’

On February 2, 1900, the Law Officers advised:

‘After conquest and the Proclamation of the Queen’s sovereignty the burghers or citizens of these two territories as well as any foreigners resident in them who do not claim to be nationals of some civilized foreign power, and their children, will become British subjects. This is one of the effects of acquisition of territory by conquest.’

No distinction was drawn, in the practice followed regarding the South African territories, so far as the effect of annexation or nationality was concerned, between a natural-born and a naturalized citizen of the annexed States. Both classes became, *ipso facto*, British subjects, provided that they were resident within the annexed territories at the time of annexation. In certain cases, however (chiefly Germans who had become naturalized in the South African Republics, but who had also retained their German nationality), naturalized citizens desired not to become British. These, together with all the other persons of German origin, and other persons generally who desired not to become British, were allowed to show their election by making a declaration that they desired to retain their German or other nationality of origin, and by transferring their domicile outside the annexed territories. A citizen of the late Republics who was outside the annexed territories at the time of annexation did not *ipso facto* become British, though he was domiciled there. Such a person, if he voluntarily claimed British nationality was treated as British; for otherwise he would often be stateless (unless, e.g., he possessed a second nationality in addition to that of the late Republics). In adopting these principles, especially that of election, the British Government was influenced by pressure from the German authorities, and by the practice adopted by those authorities, in relation to persons in residence in Alsace-Lorraine, under the Treaty of Frankfurt, 1871. There was, however, no *right* of election, permission to elect being granted under international usage, and not as a matter of law.¹

¹ The view that there is no legal right to elect is also stated in Hall, *International Law* (8th ed. 1924), p. 687, and McNair, *Legal Effects of War* (1944), p. 390. The

A Foreign Office Circular of January 9, 1901, addressed to His Majesty's Representatives abroad, regarding the effect of annexation on the national status of citizens of the former Boer Republics, summarizes the view adopted at that time as follows:

'His Majesty's Government are advised that the effect of these annexations is to confer the status of British subject upon such persons as were either (a) natural-born or (b) naturalized citizens of either of the Republics, and who were actually within the limits of the territories annexed at the time of the publication of the Proclamations.

'His Majesty's Government do not, however, claim to impose the status of British subject on persons belonging to either of the above-mentioned categories who were not within the limits of these territories at the time of annexation, unless they subsequently returned thereto, or voluntarily claimed the status of British subject by virtue of the annexation.

'In the case of persons who have become naturalized citizens of either of the late Republics, and who lay claim to British nationality on the ground above-mentioned, it will be necessary, before granting them British protection in their country of origin to require them to adduce satisfactory evidence that they have divested themselves of their nationality of origin in accordance with the laws of that country. In the absence of such evidence a person so situated is not entitled to British protection when within its limits.'

In later years, after the annexation of the South African Republics, the question arose of the nationality of children of burghers of the former Republics, such burghers having become British subjects by annexation. There was no doubt that, if such children were with their fathers at the date of annexation, they became British subjects.¹ What, however, was the position of infant children who were not so resident, and not then 'inhabitants' of the annexed territories? The British Government was advised that, if the children became, or were, burghers of the Republics they became British subjects by annexation.

Still later the question arose of the status of burghers of the South African Republics who, having left South Africa on the annexation

latter refers to change of nationality effected by annexation, and to various modifications of the rule created by treaty (such as plebiscite, option to emigrate) and adds: 'The growth of the principle of self-determination tends to favour the adoption of one or more of these palliatives. It must, however, be emphasised that the law does not enjoin them, and they do not apply unless the high contracting parties choose to adopt them.' See also Dicey, *Conflict of Laws* (5th ed. 1932), p. 160, n.t.

¹ This is the view stated by Dicey, *Conflict of Laws* (5th ed. 1932), Rule 35. It is also that expressed in the Opinion quoted at p. 43 above.

of those territories, and having never returned to claim British nationality, desired to be recognized as British subjects. Although in strict law such persons had the opportunity of signifying their election, and had, by withdrawing, exercised it, and the lapse of time had confirmed their election to abandon British nationality, it was decided that any ex-burgher of the former Boer Republics, being resident in a foreign country, and demonstrably loyal in his sentiments towards the British Empire, should be recognized on demand as a British subject, provided always that, since the annexation of the South African Republics, he had taken no steps to acquire a foreign nationality.¹ The condition was also made that the sanction of His Majesty's Government should be obtained before such persons were recognized as British subjects. In the case of persons who had been naturalized burghers of the Republics, it would have to be shown before their claim to British nationality could be recognized, that they had lost their nationality of origin.

The legal position under the common law is, it is submitted, as follows:

1. Annexation has the effect, *ipso facto* and without any special act of allegiance on the part of former nationals of the state whose territory has been annexed, of turning those nationals into British subjects, provided that they were resident in the territory at the time of annexation. If they desire to be rid of their British nationality they must follow the procedure (if any) prescribed by the annexing state.
2. There is a presumption that all residents become British subjects on annexation. But in the case of nationals of third Powers it is customary to allow them an opportunity of declining British nationality and, in order to make their repudiation effective, they must do all they can to sever their connexion with the new state of affairs by withdrawing from the annexed territory. If they remain they will, in the absence of any provision to the contrary, be presumed to adhere to the new régime and be treated as subjects.

Certain writers contend that there is a general right of election in all cases of severance, whether it is a case of cession of territory by the Crown, secession of territory from the Crown, or annexation by the Crown, and they extend this right to all persons affected by the

¹ Such persons became the subject of legislation in the Union of South Africa in 1932 (see below, p. 266).

severance.¹ It is believed that this is a dangerous and inaccurate generalization, whether the subject is considered according to international law or common law.

The practice of states shows that the right to opt in favour of a nationality other than that of the annexing state, or to emigrate within a particular period, is created specially by treaty. In the absence of international agreement, a state is free to impose its nationality upon persons, whoever they may be, who are actually within the annexed territory, and no state, broadly speaking, would claim more than this. In practice states may claim less by providing by treaty for the right of election, but they are not bound to do so.² As to the common law there is no decision of the English courts recognizing a right of election in cases of annexation, but there are decisions of the South African courts, mostly of the Colonies (as they then were, before the Union of South Africa was formed), which appear to assert the necessity of some act of submission to the annexing state as a condition of acquiring its nationality.³ These cases do not distinguish, as it is believed we should distinguish, between cases where the Crown acquires, and cases where it loses, territory.

The later South African decisions of *Marburger v. Minister of Finance*,⁴ *Lowenstein v. Custodian of Enemy Property*,⁵ and *Treasury*

¹ Piggott, *Nationality* (1907), i, p. 88; Van Pittius, *Nationality within the British Commonwealth of Nations* (1930), p. 33.

² See an Opinion dated November 12, 1866, by the Law Officers of the Crown, arising out of the renunciation of the British Protectorate over the Ionian Islands in favour of Greece: 'We think it would be a reasonable and just concession on the part of the Greek Government to allow British subjects, naturalized during the Protectorate of Great Britain, to have the option of renouncing their Ionian and resuming British nationality, providing this option be exercised without delay and put on formal record as soon as possible. But, inasmuch as no stipulation to this effect was made in the Treaty by which Great Britain renounced the Protectorate, we do not think that Her Majesty's Government can properly demand, as a matter of right, that such an option can be conceded to them.' Option in favour of a nationality other than that of the annexing state is a 'principle of custom' but not a 'crystallized rule of international law'. Coleman Philippon, *Termination of War and Treaties of Peace* (1916), p. 38. See *ibid.*, pp. 11, 35-8, 291-301. To the same effect, see Keith, *Theory of State Succession* (1907), pp. 42-8; Dicey, *Conflict of Laws* (5th ed. 1932), p. 160; McNair, *Legal Effects of War* (1944), p. 390; Hall, *International Law* (8th ed. 1924), p. 687; Oppenheim, *International Law* (5th ed. 1937), i, p. 452. A detailed analysis of treaty stipulations regarding option will be found in Fauchille, *Traité de droit international public*, i (Part I) (1926), pp. 856-79.

³ These cases are cited and discussed by Van Pittius, *Nationality within the British Commonwealth of Nations* (1930), p. 73, and by Graupner in an article in the *Law Quarterly Review* (1945), p. 177.

⁴ [1918] C.P.D. 183.

⁵ [1921] T.P.D. 606.

v. *Wolff*,¹ do not appear to support an unlimited right of election. In the case of *Marburger v. Minister of Finance* the question to be decided was whether Marburger was an enemy alien for the purposes of internal legislation sequestrating enemy property. He went to South Africa in 1892 from Germany, where he was born, and carried on business in the Cape Colony until 1896. He then went to the Transvaal, and, in 1900, he was called up for service in the forces of that state. There was no evidence that he was domiciled in the Transvaal or a burgher of that state, and the court held there was no evidence that he became a British subject. At the time of the annexation of the Transvaal, he was simply a German national. In so far, therefore, as the case touches upon the question of the effect of annexation, it is only in connexion with the position of nationals of third states, not being nationals of the state whose territory is annexed. According to the views expressed by the court the mere fact of annexation does not make such persons subjects of the annexing state. The case is no authority for the doctrine that there must be an act of submission even by nationals of the state whose territory is annexed, and such a doctrine seems in any case impracticable.

The 'right of election' has been approved by the English courts in cases where territory belonging to the Crown has seceded and formed a new independent state, which is recognized by Great Britain.² It is believed, however, that a distinction must be drawn between cases where territory has been lost and cases where territory is acquired by the Crown. The English courts have been reluctant to infer, from the mere fact that a person was resident in the territory at the time of secession, that he *ipso facto* ceased to be a British subject. Whether he becomes a subject of the new state depends on the law of that state, and not upon English law, but the two questions (British nationality and nationality of the new state) are frequently confused. The courts have held that, in order to bring about the loss of British nationality in such cases, there must be some evidence of election in favour of the new state, and for the exercise of this election they allow a reasonable time. The courts will not presume, in cases of secession, even though the secession has been recognized,

¹ [1919] T.P.D. 25, [1919] A.D. 331.

² *Murray v. Parkes*, [1942] 2 K.B. 123. The principle of election was discussed during the proceedings of the Commission appointed under the Jay Treaty after the American War of Independence, but the Commission failed, for political reasons, to reach agreement regarding its application. Moore, *International Adjudications*, iii, pp. 242-3, 299-301, 307.

that British subjects have severed the tie of allegiance merely by being in the seceding territory at the time of the secession. It does not necessarily follow that the same rule should be applied to territory acquired by the Crown by annexation, so as to require that the inhabitants are presumed to retain their original nationality, or at least not to acquire British nationality, unless there is evidence that they have elected in favour of it. It seems reasonable that there should be a stronger presumption against losing subjects by cession or secession to a foreign Power, than against acquiring British nationality by reason of residence within territory annexed by the Crown. Indeed, there is no reason why there should be any presumption of the latter sort at all; as shown above, British practice favours the opinion that the presumption is the other way, i.e. all persons resident in the territory annexed at the time of annexation, are presumed, unless they prove that they are nationals of a third Power other than that whose territory is annexed, to be British subjects.

Section 29 of the British Nationality in the Union and Naturalization and Status of Aliens Act, 1926 (an Act of the Union of South Africa), provides:

'Any person of European descent born in the South African Republic between the 18th June, 1894, and the 1st September, 1900, whose father was not a burgher of that Republic by birth or naturalization, or whose father was not a British subject shall within the meaning of this Act be regarded as a British subject by birth unless—

- (a) he has in the interim assumed some other nationality: or (b) within six months of the commencement of this Act he makes a declaration of alienage.¹

This is a legislative recognition of the principle that persons not nationals of the Republic did not become British subjects by annexation if they asserted their desire to elect against British nationality.

Another more recent case of annexation was that of Cyprus in 1917, but in this case specific rules were laid down regarding the acquisition of British nationality. The island was annexed by an Order in Council made on November 5, 1914, under which Cyprus became part of His Majesty's dominions.²

¹ Flournoy and Hudson, *A Collection of Nationality Laws* (1929), p. 126.

² S.R. & O. (1914), No. 1629. Later Orders in Council regarding nationality in Cyprus are S.R. & O. (1917), No. 1374, S.R. & O. (1927), No. 1250, S.R. & O. (1929), No. 1239, and S.R. & O. (1943), i, p. 1036. Under the 1917 Order the children of any persons who acquired British nationality under Article I (iii) of the Order of

A Proclamation relative to the British nationality of Ottoman subjects born there and resident in Cyprus was issued on the same day. This was revoked by a further Proclamation of March 3, 1915, which declared:

‘Under and by virtue of the said Order in Council the following provisions have effect:

- (1) All Ottoman subjects resident in Cyprus on November 5, 1914 have become British subjects.
- (2) Any Ottoman subject resident in Cyprus on November 5, 1914 desiring to retain Ottoman nationality¹ may, by notice under his hand, addressed to the High Commissioner, elect to do so, within one month of the coming into operation of this Proclamation, and any such person electing so to do must leave Cyprus within two months after the date of his election, and take up his residence elsewhere, failing which he will be treated as a British subject.’

It will be noted that this Proclamation took the common law test (residence) as a guide, and specified the date of annexation as the operative date. In addition, it conferred a ‘right of election’, which modern opinion tends to favour, but which is not positively enshrined in international law or common law. The exercise of the right was conditional upon leaving the annexed territory within a given period of time. The phrase ‘resident’ gave rise to difficulties of interpretation, and on November 27, 1917, a fresh Order in Council was made—the Cyprus (Annexation) Amendment Order in Council, 1917,² and after reciting the Proclamation of March 3, 1915, it proceeded as follows:

‘And, whereas doubts have arisen as to the effect of the said Orders in Council of November 5, 1914, upon the nationality of Ottoman

1914, who had not attained the age of majority at the date on which a certificate of nationality pursuant to the 1914 Order was granted to the father, was deemed to have acquired British nationality as from the date on which the certificate of nationality was granted. The 1927 Order made provision for the acquisition of British nationality by former Ottoman nationals resident in Egypt, who opted for British nationality under the Egyptian Nationality Law of May 26, 1926. Such Ottoman nationals were required, if they desired to acquire British nationality, to return to Cyprus and apply for a certificate of nationality, stating that they intended to reside in Cyprus. The 1929 Order took into account certain amendments in the Egyptian Nationality Law. The 1943 Order provided that the children of persons who were British subjects under the 1927 and 1929 Orders, and who were not of the age of majority at the date when their father's certificate was granted, should be deemed to be included in the certificate.

¹ Obviously this was intended to mean ‘decline British nationality’ since the retention of Ottoman nationality would be a matter of Ottoman law.

² S.R. & O. (1917), No. 1374.

subjects who were in Cyprus on the date thereof, and as to the proper interpretation of the provisions of the said Proclamation regarding the grant of British nationality to Ottoman subjects resident in Cyprus at that date,'

it was then ordered as follows:

'The following persons shall be deemed to have become British subjects, under and by virtue of the Cyprus (Annexation) Order in Council 1914, and the Proclamation of the High Commissioners of March 3, 1915, (1) (a) Any Ottoman subject who was ordinarily resident, and actually present, in Cyprus on November 5, 1914.'

A case arose on the construction of these Orders, which will serve as an example of the application of the test of residence in practice. An action was brought by the plaintiff—Cimitian, against Gout,¹ His Majesty's Vice-Consul (who was at all material times Acting Consul at Cairo), claiming a declaration that the plaintiff, his wife, and children were entitled to the renewal of their registration in the register of British subjects kept in the office of the Consulate at Cairo. The plaintiff was born in the Ottoman dominions of Ottoman parentage. He lived and carried on business in Cairo from 1893 to 1913. He fell ill, and in December 1913 he went for three or four months for a change to Nicosia, Cyprus, and stayed there eventually for twenty-three months with his family. He rented a house monthly in Nicosia. During his absence from Egypt his business there was discontinued. The plaintiff and his family were in Cyprus when the Order in Council of 1914 was made, and also when the Proclamation of March 3, 1915, was made. They continued to reside in Cyprus after the issue of that Proclamation, until the month of October 1915, without having given any notice as mentioned in Article 2 of that Proclamation. Cimitian then returned to Cairo, and, later in the year, his wife and family returned to Cairo, and he and they were duly registered as British subjects in the Consulate there. The registration was renewed on various dates thereafter, the latest being January 10, 1918. He had by now resumed his business in Egypt. In January 1919 Cimitian applied for renewal of his registration, which was refused, whereupon he commenced proceedings. In the Supreme Court of Egypt the judge found as a fact that he was 'resident' in Cyprus on November 5, 1914, within the meaning of the Proclamation of March 3, 1915, but not 'ordinarily' resident within the meaning of the Order in Council of November 27, 1917.

¹ *Gout v. Cimitian*, [1922] 1 A.C. 105.

He held, however, that the plaintiff became a British subject under the first Order in Council and Proclamation. Gout appealed to the Judicial Committee of the Privy Council. The Judicial Committee said:

'It has been argued before us that upon the facts as stated the plaintiff was not "resident" in Cyprus on November 5, 1914, within the meaning of the Proclamation of March 3, 1915, and also was not "ordinarily resident" within the meaning of the Order in Council of May, 1917. Their Lordships are of opinion that, if there is any difference between "resident" and "ordinarily resident", the case must be decided in accordance with the terms of the Order in Council of 1917, which was meant to correct any doubts as to the meaning of the previous Proclamations, and that that Order in Council must be given effect to so far as it corrects or changes the previous Proclamations. The appellants contended that in construing the Order we ought to apply the same considerations as in determining the case of domicile, but their Lordships are of opinion that the words "ordinarily resident" cannot be interpreted by such considerations, and must be given their usual and ordinary meaning. The plaintiff was, no doubt, present in Cyprus on November 5, 1914, as required by the Order in Council; he had been there with his family for several months, and, although he went there originally because he was ill, and wanted the change of air, he had stayed on and brought his family with him after he had recovered, and continued to live there for nearly a year after the annexation, carrying on business there, and took no steps under the Proclamation or Order in Council to retain his Ottoman nationality. Under these circumstances their Lordships are of opinion that the plaintiff was "ordinarily resident" and "actually present" in Cyprus on November 5, 1914, and has consequently made out his case that he is a British subject' (p. 110).¹

Kenya, formerly the East African Protectorate, was annexed in 1920, and Southern Rhodesia, which was a Protectorate, governed by a Company under Crown Charter, was annexed in 1923.² In these two cases a considerable period of time elapsed between the date of taking possession of the territory and its formal annexation. The effect of annexation in Southern Rhodesia was that persons born or

¹ Further Orders in Council were made in 1927, 1929, and 1943. See above, p. 48.

² Kenya (Annexation) Order in Council, S.R. & O. (1920), ii, p. 1611; Southern Rhodesia (Annexation) Order in Council, S.R. & O. (1923), pp. 1077, 1078, amended S.R. & O. (1927), p. 1912, and S.R. & O. (1930), p. 1989. See, further, as to Southern Rhodesia, below, p. 272.

permanently settled there on September 9, 1923 (the date of annexation), were deemed to be British subjects if they would otherwise be stateless. Some persons who were born in Southern Rhodesia before the date of annexation had become locally naturalized under an Order in Council of 1899. These persons together with their children, if they were resident in Southern Rhodesia at the date of annexation, became British subjects by annexation. Persons locally naturalized who were not born there became British subjects only if they did not, at the time of annexation, possess the nationality of any particular foreign state. In the case of persons who were not locally naturalized, but who were born in Southern Rhodesia or permanently settled there, and who were ordinarily resident there at the date of annexation, the rule applied was that they were British subjects by annexation, provided that they did not on September 12, 1923, possess the nationality of any particular foreign state.

These were not cases of outright annexation as the territory had been for many years a possession of the Crown, though not part of the King's dominions. Up to the date of annexation persons connected with the territory were treated as British protected persons. The effect of annexation was, in most cases, to turn them into British subjects.¹

It will be seen, therefore, that the common-law principles, though clearly settled so far as they go, are not, in practice, adequate to provide answers to the difficult questions which may arise when we come to consider the effect of annexation on nationality. It must suffice to call attention to two main points:

- (a) Questions of nationality arising from annexation will generally be dealt with by treaty, or at least a British Order in Council or Act of Parliament. It is only in the absence of such provisions that it is necessary to fall back on common-law rules.
- (b) Residence and domicile must be carefully distinguished. Domicile is a person's permanent home, and it is a doctrine of English law that he can only have one domicile.²

He may, indeed, have several residences, and may, in fact, reside in different countries at different periods of the year. Residence is a question of fact; domicile is a question partly of fact and partly of law. The majority of the inhabitants of a country are domiciled

¹ Similarly, Sarawak subjects who, up to July 15, 1946, were British protected persons, became British subjects under the Sarawak Cession Order in Council, 1946.

² Cheshire, *Private International Law* (2nd ed. 1938), p. 165.

there; but there are some persons domiciled there who are not inhabitants, i.e. their home may be there but they spend most of their life in another country. Some again may be resident, but not domiciled, there.

The above principles apply, broadly speaking, where the Crown annexes territory in any circumstances, whether as a result of conquest, cession, or any other form of international transaction. Although it is not immediately germane to the topic we are discussing, that is, how British nationality is acquired, it is useful here to say something about secession and cession of British territory because the subject is generally discussed in connexion with annexation and cession. What happens in secession and cession is that territory is lost to the Crown, and, so far as British nationality is concerned, it is a question of how it is lost, not how it is acquired. As we shall see,¹ the loss of British nationality is a subject dealt with by statute, but the question of loss of nationality by secession is not so dealt with, and it is still a matter of pure common law. The doctrine laid down in cases which arose after the American War of Independence, and recently reaffirmed in *Murray v. Parkes*, [1942] 2 K.B. 124, is that, if a seceding possession of the Crown is recognized as an independent sovereign state, all British subjects who are resident inhabitants of the new state cease to be British subjects and become aliens, unless they leave that state within a certain undefined but reasonable period. It is a question of fact what is a reasonable period, and the withdrawal is taken as evidence that the inhabitants in question do not wish to belong to the new state.² Whether in fact they do become citizens of the new state must necessarily depend on the laws of that new state, but English law will take account of their election, and the question whether they have retained or lost British nationality is a matter of inference from their conduct. But, before any of these questions can arise, there must be some recognition by Great Britain of the new state. This being the position, there is really no difference, in principle, between secession and cession, as the former, when recognized, is merely a type of international transaction by which the Crown parts with territory.

In the recent case of *Murray v. Parkes*, [1942] 2 K.B. 124, the importance of recognition was emphasized. In that case the appellant

¹ Below, p. 195.

² *Doe d. Thomas v. Acklam* (1824), 2 B. & C. 778; *Doe d. Auchmuty v. Mulcaster* (1826), 5 B. & C. 771.

was born in 1908 in that part of Ireland known as Eire, but had resided in England since 1934. He claimed that he was not liable to be called up for service in the armed forces of the Crown under the National Service (Armed Forces) Act, 1939, on the ground that he was not a British subject. He maintained that under the Statute of Westminster, 1931, a Dominion had the right to secede, and that the Irish Free State had seceded by the Constitution of Ireland, 1937. He maintained that, as a result, he had ceased to be a British subject and was a citizen of Eire. The court held that he was a natural-born British subject by virtue of Section 1 (i) of B.N.A., having been born in the King's dominions. He had not been deprived of that status by Irish legislation. The court held also that there had been no secession by the Irish Free State, and, if there had been, it would require recognition to produce the results alleged to have followed in English law.

It is believed that in the case of a genuine secession, as in the normal case of cession, there would always be a treaty containing rules permitting British subjects to opt in favour of retaining their nationality, and this treaty, as has been the modern practice in cases of cession,¹ would be embodied in an Act of Parliament. It is clear that the position of individuals in seceding or ceded territory could not be allowed to remain in the uncertain condition which is involved by the common-law doctrine of election.

It was, after the American War of Independence, disputed among English lawyers, whether the secession of the American Colonies resulted in the dissolution of the tie of allegiance which bound the inhabitants to the Crown. It was argued by some that this tie was indissoluble (as indeed was normally the case) and the King could not, under the prerogative alone, by making a treaty or otherwise, release his subjects. The argument was based on a dictum in *Calvin's Case* that, where there is a severance of possessions under the same head, the subjects would be *ad fidem utriusque Regis*: in other words, there would be a double allegiance, on the one hand to the new state, and, on the other, to the former sovereign.² This view is certainly not law to-day.

¹ McNair, *The Law of Treaties* (1938), p. 26.

² For the passage in Coke see below, p. 60. See the interesting arguments and precedents collected in Chalmers, *Opinions of Eminent Lawyers* (1814), i, p. 367. Chalmers dissented from the doctrine of double allegiance saying: 'a natural subject may become alien by such a matter *ex post facto*, and thus doth Sir Edward Coke fail in his argument' (*ibid.*, p. 414). He also denies that the King has no power to release his subjects by a solemn treaty with the new state (*ibid.*, p. 412).

Of recent years it has been customary to incorporate a treaty of cession of territory by the Crown in an Act of Parliament.¹ The treaty frequently contains provisions regulating the nationality of the inhabitants of the ceded territory. The Anglo-German Agreement Act, 1890, carried into effect the cession of Heligoland and Article XII (21) of the Agreement contained the following Clause:

‘The German Government will allow to all persons natives of the territory thus ceded the right of option for British nationality by means of a declaration to be made by themselves, and in the case of children under age by their parents or guardians, which must be sent in before 1st January, 1892.’

It was clearly assumed under this agreement that all inhabitants of the ceded area became, by the fact of cession, German nationals, subject to this special provision allowing them to opt, if they so desired, for British nationality. Apart from such a special provision there is no right of election in international law. It is perhaps arguable that in cases of cession there should be no such right under the common law, as the Crown parts voluntarily with the territory and must be presumed to have relinquished sovereignty over the inhabitants.² It seems, however, fairly clear that any relinquishment by the Crown of territory produces the same result so far as nationality is concerned, and that the same rule applies in cases of cession as in cases of secession.

The cession of a strip of territory in East Africa by Great Britain to Italy in 1924, was the subject of legislation by the Anglo-Italian (East African Territories) Act, 1925. The territory ceded was not, in this case, part of the dominions of the Crown but was British protected territory. Article 6 of the Agreement provided:

‘British subjects, other than those persons who have become British subjects by the annexation of the Colony of Kenya, ordinarily resident at the date of the coming into force of the present Convention in the territory transferred under Article I, shall, unless within six months of the coming into force of the present Convention they opt for Italian nationality, retain their British nationality without being called upon to withdraw from the said territory or to part with their

¹ McNair, *The Law of Treaties* (1938), p. 26.

² Although there are South African decisions stressing the right of election in cases of *annexation* it is interesting to note that, in one decision, this right is recognized to be conditional, in cases of *cession* by the Crown, upon special stipulation. See *Re Ramage* (1902), 23 Natal Law Rep. (N.S.) 45, cited by Graupner, *Law Quarterly Review* (1945), p. 177.

property. In the event of their not opting for Italian nationality and of their desiring to withdraw from the transferred territory, they shall be at liberty to do so within 12 months from the coming into force of the present Convention.

'British-protected persons and British subjects who have become such by the annexation of the Colony of Kenya, ordinarily resident in the transferred territory, will acquire Italian nationality and cease to be British-protected persons and British subjects respectively: provided, however, that such persons, not being Somalis, or belonging to the native races of the area transferred, shall have the right to retain their existing nationality on condition that they withdraw from the transferred territory within 12 months from the coming into force of the present Convention.'¹

On the other hand Article 2 of the Agreement between His Majesty and the Sultan of Perak, by which part of Perak was retroceded to the Sultan, provides:

'Nothing in this agreement shall operate to affect the nationality of any persons domiciled or ordinarily resident in the territory of the Dindings at the date of the entry into force of this agreement.'

This agreement was approved by Parliament by the Dindings Agreement (Approval) Act, 1934.

3. *Local subjects*

These are persons owing temporary obedience and enjoying temporary protection so long as they remain within the King's dominions.² They are not British subjects at all, but aliens. All aliens who come to the King's dominions are (with certain exceptions such as foreign invaders) bound to obey the law, and are subject to the jurisdiction of the King's Courts and of his Majesty's Government. Such resident aliens owe a temporary allegiance and may be indicted for high treason in respect of acts incompatible with that allegiance. The allegiance continues to be due even though the Crown's protection is, owing to enemy occupation of British territory, for a time incapable of being fully exercised.³ So long as resident aliens are in the King's dominions they receive the ordinary protection of the courts, and enjoy the benefit of the laws, subject to

¹ The text of the agreement is printed in S.P., vol. 119, 433.

² Coke distinguishes between subjects of the King who, though they are in open war or rebellion against him, are not enemies but traitors, and enemies who are out of the allegiance of the King, *Co. Institutes*, iii, cap. i. Aliens who are within the realm owe a local obedience, and are 'homes' within the Treason Act, 1351, that is to say, they are persons who can be guilty of treason (*ibid.*).

³ *De Jager v. Attorney-General of Natal*, [1907] A.C. 326.

special restrictions applying to aliens.¹ Their position has been described by saying that whereas British subjects owe *permanent* allegiance to the Crown, wherever they may be, and so long as they remain British subjects, aliens owe *temporary* allegiance, at least so long as they are on British territory.² This temporary allegiance may however, be kept alive, as was recently decided in *Joyce v. Director of Public Prosecutions*, [1946] 1 All E.R. 186, even after the alien has departed out of British territory. Its basis is not residence, but protection, residence being merely one of the modes by which protection is brought into existence. William Joyce was convicted of high treason as a person owing allegiance to the King, although, at the time the acts of treason were committed, he was outside the King's dominions. He was born in the United States in 1906, the son of a naturalized American citizen who had previously been a British subject by birth. He thereby became himself a natural-born American citizen. At about three years of age he was brought to Ireland where he stayed until 1921, when he came to England. He stayed in England until 1939. He was brought up and educated in the King's dominions and he settled there. On July 4, 1933, he applied for a British passport describing himself as a British subject by birth in Galway, Ireland. He applied and obtained a renewal of the passport in 1938, and, again, after a period of one year on August 24, 1939. He left the country, and went to Germany, where he remained, after the outbreak of war, and was employed on broadcasting propaganda for the German Government. On these facts the House of Lords held that he was rightly convicted for treason, as a person owing allegiance to the King. It was argued that Joyce's allegiance ceased when his residence ceased; and that, during his absence from the realm, however brief, an alien ordinarily resident within the realm could not commit treason. It was held that this was not the law. The Lord Chancellor said: 'By his own act he has maintained the bond which, while he was in the realm, bound him to his Sovereign' (p. 191). 'By the holding of a passport he asserts and maintains the relation in which he formerly stood, claiming the continued protection of the Crown and pledging the continuance of his fidelity' (p. 192).

¹ *Johnstone v. Pedlar*, [1921] 2 A.C. 262.

² Dicey, *Conflict of Laws* (5th ed. 1932), Rule 20 (i). Coke evidently thought the allegiance ceased when the alien left the realm: 'Dicitur temporanea et localis, quia non durat, nisi quousque infra regnum moratur.' Co. Litt. Sect. 198. But this is not law to-day. See the case of *Joyce* below.

This case shows that although, normally, a resident alien owes allegiance only so long as he remains resident within the King's dominions, his residence does not cease merely by reason of absence (e.g. for a short holiday), and his allegiance may be kept alive by acts which show that he looks to the Crown for protection.

However, the position of resident aliens, or of aliens who owe allegiance, is not properly germane to the subject of this work, and it is not necessary to pursue their position any further. They have been mentioned here as part of Coke's theory of allegiance, his notion being that even temporary allegiance creates a sort of 'local subjection'. This notion of a 'local subject' must not, however, be confused with a more modern use of the term which would have been entirely unfamiliar to Coke. In its modern connotation the expression 'local subject' is used in English law with reference to persons who, under the naturalization laws of British colonies and British Dominions, but not under the laws of the United Kingdom, have become British subjects within the limits of the colony or Dominion. These colonial and Dominion laws are, for reasons which will be explained later,¹ local in their application, and their construction and effect is a somewhat technical matter. Legislation of this nature did not exist in the time of Coke.

4. *Legal subjects*

By these Coke meant all subjects, whether natural-born, or subjects by acquisition, or 'local subjects', who had taken an oath of allegiance in the manner required by the law. The law on this subject belongs to feudal times, and is now quite obsolete. The relation created by the oath was in addition to the existing allegiance, and, in fact, the oath was no more than a solemn affirmation of that allegiance. Under the feudal law every male of the age of twelve years and upwards was obliged to swear an oath of fealty to the King and his heirs, 'to bear faith and loyalty of life and limb, of body and chattels, and of earthly honour'. The oath was taken by all men (not by women) whether they held lands or not, whether natural-born subjects, denizens, or aliens. The oath was taken in the court appropriate to the feudal status of the person swearing it.²

¹ See below, Part IV, and, for the implications of this modern idea of 'local subjects' in international law, see below, Part V.

² The only lucid and satisfactory account of this subject is to be found in Hale, *Pleas of the Crown* (2nd ed. 1778), i, pp. 61-76, who described these oaths as 'attesting and witnessing allegiance and instituted for the further security thereof'. He

The first two classes of subjects (for, as to the last two, one of them is really a class of resident aliens, and the other is obsolete) are still, broadly speaking, the two main types of British subjects. Natural-born subjects are still the main class of British subjects, though the definition of a natural-born British subject has been extended by statute, by the adoption of the *ius sanguinis* principle, that is to say, the principle that nationality may be acquired by descent from a British ancestor, as opposed to the *ius soli* (by right of birth within the allegiance on British territory). This extension, which began with the legislation of the eighteenth century, covers many classes of persons who would not fall within Coke's conception of a natural-born subject. Birth within the allegiance is now only one of two ways of becoming a natural-born British subject, for birth outside the allegiance may, in certain circumstances, create that status. As for subjects by acquisition, a new mode of acquisition (naturalization) has been created, which is simpler, and much more common, than naturalization by Act of Parliament—the only form of naturalization known in Coke's day. This has been effected by Acts passed in 1844, 1870, and 1914. For the rest, it is still theoretically possible to acquire British nationality by denization and Act of Parliament, and it is possible to acquire it by annexation, as explained above.¹ As for 'local subjects', the common-law idea of temporary allegiance owed by resident aliens still holds good.

It will be seen from the above that Coke's general ideas are part of modern law, but that certain radical changes and additions have been made. Furthermore, the idea of allegiance as explained by Coke has undergone some modification. He conceives of allegiance in terms of personal rights and obligations of a reciprocal nature. Allegiance is, for him, obedience and loyalty to the sovereign, carrying with it a claim to protection. The modern conception is best illustrated by the case of *In re the Stepney Election Petition, Isaacson Petitioner, Durant Respondent* (1886), 17 Q.B.D. 54. This was a parliamentary election petition, in which it was objected that certain persons had voted in the election, who were born in the Kingdom of Hanover before the accession of Her Majesty Queen Victoria, and not naturalized as British subjects, and also other persons, who were born in the Kingdom of Prussia, since the date of the accession of Her Majesty, of parents born in Hanover before that

also gives a classification of types of allegiance which need not, however, be pursued here.

¹ Above, p. 40.

date. The question to be decided was whether these persons were aliens. It was held that they were all aliens. The court said:

'They were born subjects of a king, who was at once King of Hanover and King of Great Britain and Ireland. At the death of William IV his two crowns, according to the different laws of succession which obtained in the two countries, went to different successions: to his niece in these islands, to his brother in Hanover. The Hanoverian, by birth, who had needed no naturalization in the lifetime of William IV,¹ needed it when the Hanoverian heir and successor of that monarch was no longer sovereign of these islands. He owed allegiance to William IV and his heirs and successors according to law, and, as a Hanoverian, he owed it, on the death of William IV to the Duke of Cumberland, who was, according to Hanoverian law, the heir and successor of his brother, and ascended the throne as King Ernest in due course. He became an alien, because the sovereign to whom his allegiance had been due was a foreign sovereign; and the person to whom his allegiance had been due was dead leaving an heir. The Crowns had by accident been united in one person, but, when the union of the Crowns came to an end, the union of allegiance ceased too: and the allegiance which had been due to the King of Hanover, who was also King of the United Kingdom, was never at any time due to the Queen of the United Kingdom, who was not, and could not be by law, Queen of Hanover' (pp. 59-60).

Certain dicta were quoted from *Calvin's Case* which supported the doctrine that, in the event of severance of Crowns, the allegiance to one sovereign remains, e.g. the following passage (7 Co. Rep. at 271 b): 'It was resolved that all those born under one natural obedience, while the realms were united under one sovereign, should remain subjects, and no aliens: for that naturalization,² due and vested by birthright, cannot, by any separation of the Crowns, afterwards be taken away, nor he that was by judgment of law, a natural subject at the time of his birth³ become an alien by such a matter *ex post facto*. And in that case, upon such accident, our *post natus* may be

¹ The Union of the Crowns of the United Kingdom and Hanover from 1717 to 1837 was a Personal Union. It was only the following of *Calvin's Case* which could have led the court to take this view because ordinarily a Personal Union would not produce this result.

² In this context 'naturalization' means nationality.

³ It was impossible for the lawyer of the seventeenth century to conceive of a right once vested being taken away or of the *loss* of nationality. The legal idea here is that of the indissolubility of allegiance, and though, as shown below (p. 81), that idea has been modified, it still has traces in modern law. But it was not, in fact, modified in English law until the Report of the Royal Commission of 1868 suggested it was an anachronism, and its recommendations led to the adoption of expatriation as part of English law in the Naturalization Act, 1870 (see below, p. 88).

ad fidem utriusque Regis as Bracton saith.' The Divisional Court, rejecting these dicta, pointed out the inconvenience which would result if they were correct: 'This, as will be seen, leaves to which Kingdom, in case of the supposed severance, the allegiance would be due, wholly uncertain; and it would seem that, if there were three or four separate kingdoms, there would, or might be, three or four separate allegiances.' It is worth digressing to comment on these two statements, the first by Coke in 1603, and the second by the Divisional Court in 1886. Coke was stating the doctrine that natural allegiance, once acquired, is indelible, and cannot be lost in spite of the possibility, which he regards as remote, of severance of the two Crowns. His quotation from Bracton refers to a passage in *De legibus et consuetudinibus Angliæ* (written in the late thirteenth century), f. 427b, where Bracton is discussing 'exceptions' or preliminary objections in pleading. It is worth reproducing in full, both for its intrinsic interest, and for the manner in which it illustrates the possibility of double allegiance in feudal law:

'There is likewise another exception, to which the tenant is entitled against the person of the claimant, on account of the defect of his nation ("propter defectum nationis"),¹ which is dilatory and does not prompt the action, as if he be the alien by birth who is of fealty to the King of England, no answer shall be made to such a person at least until the lands be common, nor even if the King has allowed him to plead, because as an Englishman is not heard, if he implead anyone concerning lands and tenements in France, so ought not a native of France and a born alien who is of fealty to the King of France to be heard, if he impleads anyone in England. But still there are some Frenchmen in France, who are of fealty to both ("ad fidem utriusque") and have always been so before Normandy was lost and afterwards, and who implead both here and there for the reason that they are of fealty to both ("ad fidem utriusque"), such as William the Earl Marshall resident in England, and M. de Feynes resident in France and several others, and so however, that, if it should happen that war should arise between the kings, each of them should personally remain with whom he had made allegiance, and let him do due service to him with whom he does not personally array himself.'²

¹ 'This exception *propter defectum nationis* should rather be *propter defectum subjectionis* or as Littleton saith (which is the surest) out of the ligeance of the King.' Co. Litt., Sect. 198.

² As translated in the Rolls Series edited by Travers Twiss, vi, p. 375. For a completely revised edition of the Latin text only, see Woodbine's edition, iv (1942), p. 328. See also some interesting comments on Bracton's doctrine on this point in Hale, *Pleas of the Crown* (2nd ed. 1778), i, pp. 68-70.

Bracton was writing at a time when the King of England was still trying to assert against the King of France his title to Normandy, and there was no developed body of law of nationality or alienage at that time. An alien was one who had sided with the King's enemies, and his lands were forfeited for treason. Bracton's doctrine was that any proceedings brought by an alien should stop, at least until the lands (England and Normandy) were once more held in common, i.e. once more subject to the King of England. He had not accepted severance as a fact, but in the meantime aliens could not sue, although it was possible for a man to owe double allegiance.¹ Normandy was, in fact, never recovered, and was finally relinquished in 1259.

Coke, therefore, in quoting Bracton, was citing such authority as he could find to deal with a situation which was hypothetical, and which was not before the court. He was merely trying to emphasize the indelibility of allegiance by saying that even if there was a separation of the two Crowns the allegiance due at birth would not be destroyed.² But, as we have seen, Bracton's dictum related to two separate Crowns which had never been united (France and England), and two separate lords and allegiances. The judges in *Isaacson v. Durant* held that, since Coke's day, allegiance had ceased to be personal—'an allegiance which lay at the very root of the feudal system'—and had been changed, 'not only by 12 Car. II, c. 24, but by the Act of Settlement and by 1 Geo. I, Statute 2, c. 4'.

An attempt was made to argue that the precedents decided after the secession of the United States of America governed the case, and that there was a right of election in cases of severance, allowing subjects to decide whether to adhere to the British Crown or to the

¹ The law on the subject in Bracton's day is very clearly explained in Pollock and Maitland, *History of English Law*, i, pp. 443-6. These writers point out that 'feudalism is opposed to tribalism or even nationalism; one becomes a lord's subject by doing homage to him, and, this done, the nationality of one's ancestors and the place of one's birth are insignificant'. Allegiance is the medieval conception, nationality is the modern one, and the two ideas do not blend readily. Double allegiance is personal allegiance to two lords at the same time; dual nationality is two separate legal ties possessed by one person with two separate states.

² Coke dismissed the possibility of such a separation of the Crowns of Scotland and England as 'less than the dream of a shadow, or a shadow of a dream' (Cobbett's *State Trials*, ii, col. 656). Lord Ellesmere, in his speech in *Calvin's Case*, referred to such a possibility as a *potentia remota* (ibid., col. 696).

This statement of Bracton's was relied on by some writers after the secession of the American colonies to support the view that residents of those colonies, though they had become American citizens by staying there after the United States was formed, continued to be British subjects. See above, p. 54.

seceding or severed state. The court rejected the doctrine of election, and held the precedents in question¹ to be irrelevant, on the ground that all they decided was that natural allegiance was indelible, and could only be destroyed by a relinquishment of the claim by the Crown to such allegiance. Cases where British subjects had ceased to be such, and had become American citizens, were explained by the court on the ground that the King had relinquished any claim to allegiance over his American citizens, and such British subjects as remained in the United States could only be regarded as American citizens. But, if this reasoning is correct, it is difficult to see why it did not equally apply to the facts in *Isaacson v. Durant*, i.e. the Crown, by ceasing to hold Hanover, relinquished its claim to the allegiance of Hanoverians, except such as adhered to the King of Great Britain.

However, the court speaking of the severance of the two Crowns said; 'The case must have arisen, when William III was at once King of this country and Stadholder of Holland. Yet of any claim by Dutchmen resident in this country after the death of King William to be anything but aliens there is no trace to be found in any of the books.'² The court pointed out that the statutes 4 Geo. II, c. 21 and 13 Geo. III, c. 21 speak of the 'Crown', and not the sovereign, adding: 'and to our minds clearly recognise that to the King, in his politic, and not his personal, capacity is the allegiance of his subjects due' (pp. 65-6).

It is certain that this conception of allegiance has passed into our modern law. The position resulting from this decision is not, however, so revolutionary as might appear at first sight. The courts accepted the rule in *Calvin's Case* to the extent that the union of two Crowns, in the same person, carries with it a common allegiance by

¹ *Doe d. Thomas v. Acklam* (1824), 2 B. & C. 779; *Doe d. Auchmuty v. Mulcaster* (1826), 5 B. & C. 771.

² But the court's decision implied that, up to William III's death, Dutchmen were British subjects, accepting *Calvin's Case* to that extent. On the death of William the succession to the Crown of England and to the Stadholder of Holland separated, for Queen Anne did not succeed to the latter title. It appears that, after the severance, Hanoverians were, in certain countries, treated as British protected persons. Thus, Palmerston, writing on March 24, 1851, to the British Consul at Buenos Aires regarding Hanoverian subjects says: 'If there is a Hanoverian minister or Consul at Buenos Aires he should, of course, take charge of Hanoverian interests. But, if there is no such officer, then Hanoverian subjects may still continue to remain under British protection, but it does not appear to me to be necessary that fresh certificates of nationality should be granted to such Hanoverians'. F.O. 83/215.

the subjects of the two Crowns. The court rejected the dicta in *Calvin's Case* which suggested that, on the severance of the two Crowns, allegiance to the successor of the English Crown continued, so far as those who were natural-born subjects before the severance were concerned. They held that, when that severance took place, the Hanoverians ceased to be subjects in England, and became aliens. It was argued that there was a right of election in such circumstances, allowing the subjects of the last holder of the two Crowns to decide whether they wished to continue as English subjects. The court rejected this doctrine, holding it to be entirely foreign to our system of law.¹

The result of *Isaacson v. Durant* can hardly be regarded as theoretically satisfactory. The main argument for refusing to follow *Calvin's Case* all the way, appears to have been an arbitrary one; namely that if the persons concerned continued to be subjects of the Crown of the United Kingdom after the severance they would have several allegiances. But this argument was based on the idea that a person could not have two nationalities, a view which cannot be sustained. The rule in *Calvin's Case* that, after severance, the *postnati* would be *ad fidem utriusque regis*, simply meant that they would have double nationality until that situation was in some way terminated, as it might be, for instance, by legislation. The consequences of the decision in *Isaacson v. Durant* do not appear to have been carefully thought out. If, immediately on the severance, the persons who had

¹ Allegiance, as previously explained, was conceived of as indissoluble, the basis of that conception being that the allegiance, owed by a subject to his king, was an extension of the relation of lord and vassal, and could be dissolved only by death, or the consent of the parties, or by an act of rebellion, i.e. an act altogether extra-legal, and therefore beyond the contemplation of the rules of law. Thus, Blackstone wrote in his *Commentaries* (3rd ed. 1768): 'It is a principle of universal law that the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former: for this natural allegiance was intrinsic, and primitive, and antecedent to the other; and cannot be divested without the concurrent act of that prince to whom it was first due' (i, p. 370). However, by 1886, when *Isaacson v. Durant* was decided, this theory of allegiance had outlived the social system which produced it. The basis for rejecting the doctrine of election had thus largely disappeared, and the court was rejecting it apparently because it could not see where it would lead to. To be quite accurate, even by 1886, something like election had been adopted, for Section 6 of the Naturalization Act, 1870, allowed a British subject, by becoming naturalized in a foreign state, to shake off his British nationality. That Act also permits a declaration of alienage in certain circumstances, and made it quite clear that the doctrine of election was no longer 'foreign to our laws'. For the history of the doctrine of expatriation see below, p. 86.

been subjects became aliens, what happened to the rights which they previously possessed as British subjects, e.g. the right to own a ship (to use an example of a right which at the present day is still reserved to British subjects)?

The result of the decision in *Isaacson v. Durant* is to put such persons in the same position as that of persons who lose British nationality when territory belonging to the Crown passes out of its dominion (of which, indeed, the facts in *Isaacson v. Durant* merely illustrate a special case). It is contended by one writer¹ that the persons born during the union never acquired the rights of British subjects even while the union was still in force. He asserts that the rights conferred upon the Hanoverians, for example, were those of 'non-aliens'. But the common law recognizes no such status, and every person is either a British subject or an alien.²

It now becomes desirable to sketch the development of the common-law conception of allegiance, and the effect upon it of statutory modifications, up to the passing of the British Nationality and Status of Aliens Act, 1914. As already explained, it was the common law (subject to exceptions) that 'all persons born on English soil, no matter what their parentage, owed allegiance to, and were therefore subjects of, the King'.³ What, however, was the position of

¹ Piggott, *Nationality* (1907), i, p. 82.

² This point cannot be pursued at length. Briefly, Piggott says that there is a middle state between subjects and aliens, in which the Hanoverians found themselves. He writes: 'They cannot be aliens, for they have rights which no aliens ever had: and they are not fellow subjects, for the bond between them will break, when the union comes to an end, a thing impossible for those who are in the ordinary meaning of the term subjects of the same King' (ibid.). But this middle state is a pure invention by Piggott, for which he can cite no authority whatever, and it flatly contradicts Coke's distinction between British subjects and aliens which has never been doubted in any decided case, and is unquestionably the law of England to-day. It is submitted, therefore, that the Hanoverians were British subjects as long as the union existed. On the authority of *Isaacson v. Durant* it must now be regarded as the rule that they ceased to be British subjects on the severance of the two Crowns. But this rule is not manifestly superior to that laid down in *Calvin's Case*, which it supersedes, and, in fact, it is logically and practically more difficult to defend. The reason given by Piggott why the persons born in Hanover during the Union could not be British subjects (that it is impossible for the bond between fellow subjects to break) falls to the ground for this is precisely what happens in cases of secession, cession, and conquest.

The truth is that a purely common law, or a theoretical, solution of the situation on severance, raises difficulties, whichever rule is adopted, and that legislation would be essential if practical problems on a large scale arose from the severance of two Crowns united in one person.

³ Holdsworth, *History of English Law*, ix, p. 75.

persons born abroad of English parents? This question was debated in Parliament in 1343 in connexion with the particular case of the King's children and it declared that birth abroad could not affect them or touch succession to the throne.¹ In 1351 the general question was discussed and it became necessary to settle it by statute.² The Statute states (1) 'the law of the Crown of England is and always hath been that the children of the kings of England in whatsoever parts they be born . . . be able and ought to bear inheritance after the death of their ancestors', (2) 'all children inheritors, which from henceforth shall be born without the ligeance of the king, whose fathers and mothers, at the time of their birth, be, and shall be, at the faith and ligeance of the King of England, shall have, and shall enjoy, the same benefits and advantages . . . as other inheritors aforesaid in time to come; so always that the mothers of such children do pass the sea by the licence and wills of their husbands'. Thus there was declared by statute the rule that the child of English parents born abroad is a subject of His Majesty.³ An Act of 1368 (42 Edward III, c. 10) declared that persons born not only in England but in any territory belonging to the King were subjects.⁴ About this time too

¹ Parliament Roll, 17 Edward III (1343); text in *De Geer v. Stone* (1882), 22 Ch.D. 245.

² 25 Edward III, Stat. 1.

³ It is true the Act does not say this in general terms, but the Act was so interpreted by the courts, probably because, at common law, an alien could not inherit land, and the right to inherit was regarded as implying the status of a subject. Cockburn took the view that children born abroad of British parents outside His Majesty's dominions were not, except in special cases, British subjects at common law, and that the Act of 25 Edward III was not declaratory, but enacted new law. *Nationality* (1869), pp. 8-9. This view was judicially approved in *Rex v. Superintendent of Albany Street Station*, [1915] 3 K.B. 716. See below, p. 72. It will be seen hereafter (p. 72) that the effect of this provision (2) was not clear. Did it extend to more than one generation born abroad, i.e. could the status of a subject be transmitted indefinitely by descent, so that a child born abroad, in the conditions laid down by the Act, could transmit his status as a subject of the King to his children, though they, too, were born abroad?

⁴ This Act was not overlooked in *Calvin's Case*, and was cited by Bacon in his speech to the Exchequer Chamber (Cobbett's *State Trials*, ii, col. 600-1, where he remarks 'What could be more plain?', i.e. in support of his case), and also by Coke (*ibid.*, col. 647). Prima facie this Act would conclude the point raised in *Calvin's Case*, i.e. persons born in Scotland, being a dominion of the English King, would obviously be English. However, the treatment of statutes in this manner was not known at the time *Calvin's Case* was decided. Having regard to the actual decision in *Calvin's Case* the Act was not necessary, but that case was not decided until nearly three hundred years later. Even dependent territories, according to Coke, came within the orbit of the principle: 'whosoever is born within the fee of the King of England, though it be in another kingdom, is a natural-born subject, and capable

the limits of the royal power to create denizens were settled. The Crown could not grant to an alien the rights of a natural-born subject, for that might involve the alteration of the rights of other persons which only an Act of Parliament could effect. The King could, however, by making him a denizen, grant him the right to hold and acquire land, and to sue all manner of actions. The grant could be limited, like a franchise, for life, or to a man and his heirs. But, although a denizen could hold and acquire land, he could not inherit: and a child of his, born before denization, could not inherit from him. As we have seen Coke classified such persons as subjects, but it is not clear whether it would not be as well to regard them as aliens, to whom special privileges had been granted. Certainly it was part of common-law doctrine that the status of a subject could not be dissolved at the will of the King or his subject.¹ *Nemo potest exuere patriam*.² A subject could not, therefore, at common law repudiate his allegiance or make a 'declaration of alienage', such as that contemplated, in certain circumstances, by Section 14 of the British Nationality and Status of Aliens Act, 1914. Nor could he, by becoming naturalized in a foreign state (where this was possible), or entering the service of a foreign ruler, shake off his allegiance to the English Crown. The common law in such cases would not deny the validity of his foreign 'nationality', but would hold him still to be a subject of His Majesty. There is nothing in the common law inconsistent with dual nationality, and Coke seems to have contemplated such a status as possible.³ In the *Proceedings against Aeneas Macdonald* (1747), 18 St. Tr. 858, the defendant was indicted for high treason in connexion with the Jacobite rising. The defence and inheritable of lands in England, and therefore those that were born in Wales before 12 Edward I whilst it was only holden of England, are capable and inheritable of lands in England' (*ibid.*, col. 646).

¹ See p. 64, n. 1.

² The case of secession or cession of British territory is an apparent exception to this maxim, for the inhabitants of such territory cease to be British. This loss of nationality is, however, involuntary, not voluntary repudiation, such as the maxim contemplates. Nevertheless, the indissolubility of natural allegiance was relied on by some English lawyers when the American colonies seceded from Great Britain, in order to prove that the inhabitants were still British subjects. See Chalmers, *Opinions of Eminent Lawyers* (1814), ii, p. 367. This argument was put forward in *Doe d. Thomas v. Acklam* (1824), 2 B. & C. 778, and rejected by the court in that case. The theory that the inhabitants have any 'right', perpetual and indefeasible, to cling to their old allegiance is clearly refuted by this case.

³ But only as a theoretical possibility, repeating a dictum of Bracton: as a political possibility he dismissed it because it could only arise (so he thought) by a severance of England and Scotland. See above, p. 60.

alleged that he was born in France, and no subject of His Majesty, but on this question of fact there was no supporting evidence:

'But, apprehending that the weight of the evidence might be against them, as indeed it was, with regard to the place of the prisoner's birth, they endeavoured to captivate the jury and bystanders, by representing the great hardship of a prosecution of this kind, against a person, who, admitting him to be a native of Great Britain, had received his education from early infancy in France; and had spent his riper years in a profitable employment in that kingdom where his hopes centred. And speaking of the doctrine of natural allegiance, they represented it as a slavish principle, not likely to prevail in these times, especially as it seemed to derogate from the principles of the Revolution.'

The court, however, was not 'captivated' by this reasoning and said:

'It never was doubted that a subject born, taking a commission from a foreign prince, and committing high treason, may be punished as subject for that treason, notwithstanding his foreign commission. It was so ruled in Dr. Storey's case. And that case was never yet denied to be law. It is not in the power of any private subject to shake off his allegiance, and to transfer it to a foreign prince. Nor is it in the power of any foreign prince, by naturalizing or employing a subject of Great Britain, to dissolve the bond of allegiance between that subject and the Crown.'

It has now, however, become possible by statute to 'shake off that allegiance' by becoming naturalized in a foreign state.¹

Generally speaking there is little interference by statute with these common-law principles until the nineteenth century. Occasional statutes are passed which clarify the law or modify it in minor details, but the broad principles laid down in *Calvin's Case* are not interfered with. The terms of the Statute of 1351 have been quoted.² Although it apparently granted to the children born abroad of parents who were English subjects the right of inheriting only, it was construed very liberally to confer all the *privileges* of a subject

¹ But Section 6 of the 1870 Act (Section 13 of the 1914 Act) which enables this to be done, does not permit it to have the effect of producing loss of British nationality in war-time. *Rex v. Lynch*, [1903] 1 K.B. 444. In the latter case, too, the defence fell back on the reactionary nature of the doctrine that allegiance was indissoluble as a defence, and the court dismissed the argument as they had done in 1747. Thus the indissolubility of 'natural allegiance' may be regarded as a firmly entrenched principle of the common law.

² Above, p. 66.

without in fact saying that they *were* natural-born British subjects. This judicial construction was confirmed in 1708 by a statute providing that the children of natural-born subjects born abroad should be deemed¹ to be natural-born subjects 'to all intents, construction, and purposes whatsoever' (7 Anne, c. 5). Again, the words of the Statute of 1351 seemed to require that both parents of children born abroad must be English in order to acquire the status of subjects; but in the seventeenth century it was held that it would suffice if the father was a natural-born subject, though the mother were an alien. This was supported by the argument that, the woman being *sub potestate viri*, both man and wife must be deemed to owe allegiance to the King. *Rex v. Eaton* (1627), Lit. 23; *Bacon v. Bacon* (1640), Cro. Car. 601.²

The law on this point was finally settled in 1730, by a statute which declared that the children born abroad whose *fathers* were natural-born subjects at common law, should be deemed to be natural-born subjects (4 Geo. II, c. 21).³ In 1772 it was enacted that the children of children who were natural-born subjects by virtue of the Act of 1730 should be deemed to be natural-born subjects (13 Geo. III, c. 21). These two Acts conferred British nationality on the first and second generation born abroad (assuming the grandfather to be a natural-born subject), but no further. The status thus acquired by these persons by statute was personal, and not transmissible to their descendants. This point was clearly raised, and decided, in *De Geer v. Stone* (1882), 22 Ch.D. 243. This was a suit in Chancery to carry into effect the trusts of the will of Jan Louis MacKay and to administer his real and personal estate. The main questions for decision were whether the testator was an alien, and whether his real estate belonged to the Crown at the time of his death in 1840 (when escheat produced this result in the case of aliens). The testator was born at Utrecht, in Holland, in May 1776. In 1807 he purchased some real estate in England, and made other purchases

¹ This did not mean that they *were* natural-born British subjects but merely that they had that *status* which was personal to themselves. See *De Geer v. Stone* (1882), 22 Ch.D. 243, discussed below.

² The child of a British mother, born abroad by an alien father was held not to be a British subject. *Doe on the demise of Count Durore v. Jones* (1791), 4 T. R. 300.

³ This had been the object of the Act of 7 Anne, c. 5, but doubts arose regarding its proper interpretation, and 4 Geo. II, c. 21 was passed to make the position clear. Both of these Acts, as well as 13 Geo. III, c. 21, extending them, were repealed by the B.N.A. 1914 (Third Schedule). For a note suggesting an explanation why the Act of 1730 was necessary, see *Law Quarterly Review* (1928), pp. 152-3.

up to 1828. From 1812 he resided in England, and he was domiciled there at the time of his death, though he actually died at Tournay. Certain inquiries were referred to the Chief Clerk in Chancery who embodied his findings in a certificate. He found that the great-grandfather (X) of the testator was born in Great Britain, and married abroad on active service with his regiment, and had a son (Y), the grandfather of the testator and (Y) was born in Holland in 1696. Of his marriage there was a son (A), also born in Holland in 1744, who died in 1782. *His* son (the testator) was born in Utrecht in 1776. It was argued first, that the testator's grandfather (Y) was a natural-born British subject, because, at the date of his birth in Holland in 1696, his father (X) was in the military service of the Crown; secondly (under the Act of 1730), the testator's father (A), and (under the Act of 1773) the testator himself, had the status of natural-born British subjects. This argument was based on the proposition that Y, the child born abroad to a person (in this case a soldier) in the service of His Majesty, was a natural-born subject at common law. It was held that this was not so. Y might be a natural-born subject under the Statutes of Anne and George II and III, and so might A under the Act of George III, but neither of them was a natural-born subject at common law, and the testator was the third generation born abroad. The argument that the testator was a British subject at common law was founded on the Parliament Roll of 17 Edward III in 1343. This states that, 'doubts having arisen as to whether children who should be born beyond the sea could inherit after the decease of their ancestors in England, the prelates and nobles of the realm replied: that there was no doubt that the children of the King in whatsoever part they might be born, whether within the sea or beyond, would bear inheritance of their ancestors, but as to the children of others there was doubt; but those born in the service of the King wherever born were capable of inheriting'.¹ We have seen that the Statute of 1351 carried the first part of this statement (regarding the status of the King's children) into effect. In *De Geer v. Stone* the court treated the statement as a mere declaration, not having the force of law, and consequently the last sentence of it was held to be inoperative. As the Statute of 1351 made no specific exception for children born abroad in the service of the Crown, the law, in the opinion of the court, must be taken to be

¹ The text of this statement, in the original and with a translation, is given in the Report of *De Geer v. Stone*, at p. 245.

that no exception existed, i.e. that such children were not British subjects. It was true that the Act of 1351 had the effect of granting the status of a natural-born British subject to the child of a natural-born British subject born abroad, but the effect of that Act was no greater, so far as the *transmission* of British nationality to descendants was concerned, than the Acts of Anne and George II and III.¹ British nationality could not be *inherited* from a person whose title to be a British subject was based on those statutes. Briefly the effect of them was that the children of natural-born British subjects, if those children were born abroad, had the *status* of natural-born British subjects and nothing more. They were 'deemed and adjudged' to be natural-born British subjects; but they were not, in fact, natural-born British subjects.² Accordingly, as the testator's grandfather (Y) was not a natural-born British subject at common law, he could only be a natural-born British subject by *statute*; with this result, that the transmission of British nationality by him to his posterity, all of whom were born abroad out of His Majesty's dominions and allegiance, must be considered strictly according to the terms of the statutes. Under these statutes the process of tracing descent began, not with the testator's grandfather (Y), but with his great-grandfather (X), he being the last person in the line who was, by common law, a natural-born British subject. The child of X, and his grandchild, were natural-born British subjects by force of statute, but the child of X's grandchild was an alien. In short X was a natural-born subject at common law, Y and A were natural-born subjects by statute; but there the process of transmission stopped, for the testator was an alien.

It was also argued in *De Geer v. Stone* that, even at common law, the status of a natural-born subject, once acquired, could be transmitted by descent *ad infinitum* wherever the issue was born, and that the statutes of Anne and George II and III were merely declaratory of this principle. We have seen that the court rejected the proposition that British nationality became inheritable from persons whose title to be British subjects was based on the statutes. The argument based on common law was deemed equally untenable, on the ground

¹ The reader may be puzzled to appreciate the relevance of these eighteenth-century Acts to the case of Y, born in 1696: the answer is that they were all retrospective.

² It was this somewhat fine distinction that made the Act of 1772 necessary, in order that the children born abroad of persons 'deemed to be' natural-born British subjects under the Act of 1730 should become entitled to the same privilege.

that the statutes would not have been drawn so as to limit the benefits of British nationality to the first and second generations born abroad, if the argument had been correct. The alleged principle of common law was quite different from that which the statutes actually laid down.¹ It was held, further, that there was no foundation for the doctrine that, under the common law, the posterity of a natural-born British subject, though born abroad, were British subjects for ever, and that, on the contrary, the eighteenth-century legislation *extended* the law only so far as to allow the status of a natural-born subject to the first and second generation born abroad, but no further.²

One further peculiarity of the common law remains to be noticed, which has become of importance in modern times—the national status of married women. The common law accorded no effect to marriage, so far as national status was concerned.³ An alien woman who married a British subject did not acquire British nationality, although, by virtue of her marriage, she might have lost her foreign nationality. She remained an alien.⁴ On the other hand, a British woman who married an alien did not, at common law, lose her British nationality, although she might thereby acquire the nationality of her husband. Section 16 of the Naturalization Act, 1844, amended the law by providing that 'Any woman married, or who shall be married to a natural-born subject or person naturalized shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural-born subject.' The position of British

¹ The view that the Acts of Anne, George II and III were not declaratory of the common law was also judicially approved in *Rex v. Superintendent of the Albany Street Station*, [1915] 3 K.B. 716.

² It seems also to result from this case that persons born abroad of fathers in the service of the Crown are not natural-born British subjects at common law in spite of the declaration of 1343. But, even so, it leaves untouched the position of children born abroad of ambassadors, and of soldiers in enemy territory. See, however, Piggott, *Nationality* (1907), i, p. 43; but he seems to overlook the most important fact in the case, i.e. that the testator's grandfather was born in 1696, and it was admitted that his great-grandfather was then in the service of the Crown. The whole case turned on this. If the common law was as stated by Piggott, *De Geer v. Stone* was wrongly decided, for the testator would, in that event, have been, not an alien, but a British subject (under the Act of 1772).

³ This was disputed by Baty, in an article in the *Law Quarterly Review* (1936), p. 247; but his is a minority view.

⁴ It seems to have been thought, in *Bacon v. Bacon* (1640), Cro. Car. 601, that a married woman, though an alien, being *sub potestate viri*, owed allegiance to His Majesty if her husband was a subject. But this *obiter* opinion was never adopted by the common law in any decided case.

women who married aliens remained, however, unaffected until the Naturalization Act, 1870. The Naturalization Commission, 1868, made no recommendation regarding the status of married women, but Lord Chief Justice Cockburn, in his book published shortly after the Commission's report, argued that the national status of a wife should follow that of her husband in all cases.¹ This no doubt influenced the introduction of the provision in Section 10 (i) of the Naturalization Act, 1870: 'A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject.' This remained the law until the British Nationality and Status of Aliens Act, 1914.

¹ Cockburn, *Nationality* (1869), p. 216.

II

NATURALIZATION

It will be seen, from the argument of the preceding chapter, that a natural-born subject was the highest kind or type of subject known to the common law. Next in the scale came a naturalized subject, and after him the denizen. In addition certain categories of statutory natural-born subjects were created by eighteenth-century legislation.¹ A naturalized subject, until the passing of the Aliens Act, 1844, meant an alien who, by a special Act of Parliament, passed for his benefit or for the benefit of a particular class of aliens to which he belonged, had been admitted to the status of a natural-born subject. It was the common law that an alien could not acquire the full status of a natural-born subject, save in virtue of an Act of Parliament. This 'naturalized' status was higher, and carried better privileges than those of a denizen who was (as we have seen) created by Letters Patent under the prerogative. Again quoting Coke:

'There is another kind [of subject] and that is an alien naturalized, and that must be by Act of Parliament. And this alien, naturalized to all intents and purposes is as a natural-born subject, and differeth much from Denization by letters patent, for, if he had issue in England before his denization, that issue is not inheritable to his father, but if his father be naturalized by Parliament such issue shall inherit.'²

The Court of King's Bench, later in the seventeenth century, reaffirmed this view of the law saying:

'The law of England is that no alien can be naturalized but by an Act of Parliament with the assent of the whole nation.'³

¹ See above, p. 69.

² Co. Litt., Sect. 198. 'One cannot be naturalized even with limitation for life or in tail or upon condition: for that is against the Absoluteness, Purity and indelibility of natural allegiance' (ibid.). Coke means that, by definition, a naturalized subject meant one, as nearly as possible, adopted as a natural-born subject. A denizen was less than this.

³ *Craw v. Ramsey* (1669), Vaughan 284. This case turned on the interpretation of a general Act of the Irish Parliament naturalizing the Scots *antenati* (i.e. persons born in Scotland before James I became King of England and of Scotland), who were, according to the ruling in *Calvin's Case* (above, p. 30), aliens. On the use of the word 'naturalization' see above, p. 28, n. 1, and, below, comment on Section 13 B.N.A., p. 196.

According to the law and practice which prevailed in England from the seventeenth century until the passing of the Aliens Act, 1844, Acts of Parliament could be passed naturalizing either (1) particular individuals, or (2) particular, and more or less closely defined, classes of individuals upon whom it was desired, for political or economic reasons, to confer the rights and privileges of natural-born subjects. The legal disabilities of aliens during this period were so substantial that these rights and privileges were valuable; and, in order to encourage aliens to develop certain trades, or pursue certain callings advantageous to our national economy, Acts were passed naturalizing certain specified classes of aliens.¹ Apart, however, from these special Acts of Parliament there was no method of becoming naturalized. There was no general law under which aliens could apply to a government department for naturalization such as we have to-day. The first such law was the Aliens Act, 1844. For the most part, a general law of this kind was not only foreign to the ideas prevailing up to the end of the eighteenth century, but was also unnecessary. In the early nineteenth century conditions began to change. Immigration began on a large scale to this country, and the immigrants desired to settle in the country of their choice and acquire the status of British subjects. The United States had been faced earlier with the problems, and passed a general law of naturalization in 1790, when an Act of Congress made it possible for aliens to be naturalized by executive order.

The procedure for naturalizing an individual until 1844 was to

¹ The following are examples of this legislation:

15 Charles II, c. 15, which enabled all aliens setting up certain specified trades (linen, spinning, net weaving, &c.) to enjoy all privileges whatsoever as the natural-born subjects of the realm. (Repealed by the Statute Law Revision Act, 1863.)

13 George II, c. 3, naturalizing *ipso facto* all foreign seamen serving for two years during war on board English men-of-war or merchant ships. (Repealed by the Statute Law Revision Act, 1867.)

13 George II, c. 7, naturalizing all foreigners who had resided seven years in any of His Majesty's colonies in America, without having been absent longer than two months at any time (subject to taking the oaths and other formalities). (Repealed by the Naturalization Act, 1870.)

20 George II, c. 44, and 2 George III, c. 25, extending the benefits of 13 George II, c. 7, to Moravian Brethren, and to all foreign Protestants conscientiously scrupulous of taking an oath. (Repealed by the Naturalization Act, 1870, and the Statute Law Revision Act, 1867, respectively.)

22 George II, c. 45, and 28 George II, c. 20, naturalizing foreign Protestants upon serving three years upon certain vessels and employed in the whale fishery. (Both repealed by the Statute Law Revision Act, 1867.)

promote a private Bill for that purpose. In the practice which developed regarding these Bills are to be found some of the germs of modern law. An Act of 1773¹ declared that no Bill of Naturalization should be received, which did not contain a proviso that the person so naturalized should not be entitled to claim, within any foreign country, the immunities and indulgences in trade enjoyed by natural-born subjects, unless he had resided in the British dominions for seven years subsequent to the first day of the session of Parliament in which his Bill was passed, 'and shall not have been absent out of the same', i.e. the British dominions, 'for a longer space than two months at any one time during the said seven years'. The object of this law was to prevent aliens becoming naturalized merely in order to obtain commercial advantages, by reason of British nationality, and not with any intention of residing on British territory. Here we see the genesis of the modern law that naturalization should not be granted unless the applicant has resided in the British dominions for a fixed period of time, and intends to continue his residence there.² Again, an order of the House of Lords in 1807 (where Bills of Naturalization were generally introduced) required a certificate from the Home Secretary regarding the applicant's conduct. This may be regarded as the origin of the modern rule that the applicant should be of good character.³ The Bill of Naturalization, subject to the observance of these conditions,⁴ then passed as a matter of course on the applicant's taking the usual oaths of allegiance and supremacy, if Protestant, and, if Roman Catholic, the oaths settled by the Act for the removal of Catholic Disabilities. Before the last-mentioned Act was passed it was not customary for Roman Catholics to be naturalized.⁵

A Committee was appointed in 1843 to consider the law relating to aliens. They reported that both denization and individual naturalization by Act of Parliament were costly and cumbersome. The result of their recommendations was that an Act was passed, considerably modifying the law relating to aliens and affording greater facilities for naturalization. This (the Aliens Act, 1844) may be described as the starting-point of the modern law of British

¹ 14 Geo. III, c. 84.

² Section 2 B.N.A. See below, p. 158.

³ Section 2 (1) (b) B.N.A.

⁴ A further condition was imposed by the Statute of 1 Geo. I, c. 4, as to which see below, p. 77.

⁵ Appendix to the Report of the Naturalization Commission, 1869, p. 7.

naturalization. The passing of this Act rendered unnecessary the practice of granting letters of denization or special Acts of Parliament save in exceptional circumstances. The Act enabled an alien to present a memorial to the Secretary of State stating the grounds on which he wished to be naturalized. The Secretary of State was required to inquire into the circumstances of the case, and, if he thought fit, he could issue a certificate of naturalization. Naturalization thus became a matter of administrative discretion; and, in principle, this has been the law of England ever since the Act of 1844 was passed. It was a condition of the grant (as it is to-day) that the applicant should take an oath of allegiance in a form prescribed by the Act.

During the period of which we are speaking—from the end of the seventeenth century up to 1844—certain restrictions were imposed on the status of naturalization which somewhat modified the old common-law idea that naturalization involved, in effect, admission to the rights and privileges of a natural-born British subject. These were created by Section 3 of the Act of Settlement (1700), the relevant portion of which reads as follows:

‘No person born out of the Kingdoms of England, Scotland, or Ireland or of the dominions thereto belonging (although he be naturalized or made a denizen) except such as are born of English parents shall be capable to be of the Privy Council, or a member of either House of Parliament or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown to himself or to any other or others in trust for him.’

The object of this provision, which was part of the general scheme of the Act intended to secure the Protestant succession to the throne by the House of Hanover, was to prevent alien influences being predominant in the government and legislature of the country—a result which might otherwise have ensued when the Hanoverian George I came over to England with his foreign Court. The danger was considered to be sufficiently serious to warrant a further Act being passed in 1714 (shortly after George I came to the throne) in order to guarantee the observance of the provision contained in the Act of Settlement. This Act provided that it was not the intention of the Act of Settlement that persons already in enjoyment of the privileges specified in Section 3, quoted above, should be incapacitated or deprived of them; but, for the future, no Bill of Naturalization

should be received unless it contained a special clause repeating the prohibition laid down in the Act of Settlement. This Act of 1714 could not, of course, bind future Parliaments: but it created an additional safeguard for the observance of the principle involved. It was foreseen that private Acts of Parliament could be passed exempting naturalized persons from the prohibition, and such Acts, being later in time, would prevail over the Act of Settlement, so far as the particular person naturalized was concerned. In order to render more difficult this mode of circumventing the general law (which, if carried out in the case of each naturalized person, could have defeated that law altogether) the Act of 1714 required that the private Bill, when presented, should repeat the general prohibition. On the whole the plan was successful, but sometimes the obstacle was overcome when a person of some importance was to be naturalized.¹ A public Act was first passed to enable a private Bill to be brought in without the disabling clause, and then a private Bill was brought in accordingly. The Prince Consort (Albert), who was naturalized by an Act of Parliament in 1840, was an outstanding example of this naturalization procedure.² Once the House of Hanover ceased to occupy the throne, however (on the accession of Queen Victoria), the mischief aimed at largely ceased to be important. Furthermore, as the normal method of obtaining naturalization came to be by administrative grant, the policy of insisting on the disabling clause in Naturalization Bills was deemed inexpedient. Accordingly Section 2 of the Aliens Act 1844 repealed the provision in the Act of 1714 which required the disqualifying clause to be inserted into private Bills of Naturalization. Sections 3, 4, and 5 removed some of the more serious legal disabilities attached to alienage by the common law. Section 6 provided that, on obtaining a certificate of naturalization and taking the oath of allegiance, 'every alien now residing in, or who shall hereafter come to reside in, any part of Great Britain or Ireland, with intent to settle therein, shall enjoy all the rights and capacities which a natural-born subject of the United Kingdom can enjoy or transmit, except that such aliens shall not be capable of becoming Her Majesty's Privy Coun-

¹ See also the legislation naturalizing foreign Protestants in the American colonies: 13 Geo. II, c. 7 (1740), 20 Geo. II, c. 44 (1747), 12 Geo. III, c. 25 (1772), 13 Geo. III, c. 25 (1773).

² 3 & 4 Vict., c. 1 and 2. See also the Acts passed in 1734 on the occasion of the marriage of the Prince of Orange to the eldest daughter of George I: 7 Geo. I, c. 3 and 4.

cillor, nor a member of either House of Parliament, nor of enjoying such other rights and capacities, if any, as shall be specially excepted in, and by, the certificates to be granted in the manner hereafter mentioned'.

Thus, although the Aliens Act, 1844, abolished the necessity of inserting the disqualifications of the Act of Settlement into private Acts of Naturalization, two of these disqualifications were attached by Section 6 to each grant of naturalization; but the remaining two could be specially removed by the grant. Later, private Acts of Naturalization were passed without the disqualifying clause.¹ Before 1844 aliens were naturalized *by* Acts of Parliament, normally subject to the disqualifications imposed by the Act of Settlement. After 1844 aliens could be naturalized, either, *under* an Act of Parliament, which retained two of the disqualifications; or, *by* an Act of Parliament which could confer upon them the maximum rights of a natural-born subject.

The only other important alteration in the law effected by the Act of 1844 was the provision (in Section 16) that 'any woman married, or who shall be married, to a natural-born subject or person naturalized, shall be deemed and taken to be herself naturalized, and shall have all the rights and privileges of a natural-born subject'. As we have seen,² this was the first departure from the common-law rule that marriage did not alter a woman's nationality.

We have quoted above the words of Section 6 of the Act, which enabled the Secretary of State specially to except certain 'rights and capacities'. It was the practice, when issuing certificates of naturalization under the Act, to insert a condition in the grant that the grantee 'should continue to reside permanently within the United Kingdom, and that, if at any time thereafter he should voluntarily be absent for a period of six months without licence in writing under the hand of one of His Majesty's Principal Secretaries of State, he should be deemed to have ceased to reside permanently in the United Kingdom: and then, in such case, the certificate and all the rights and capacities thereby provided shall cease and determine'.³ The effect of this condition was that a naturalized British subject who left the United Kingdom and settled perma-

¹ In 1866, 1867, 1868, 1877, 1880, and 1890, according to May, *Law and Usage of Parliament* (13th ed. 1924), p. 830. A private Bill was introduced as late as 1911, according to Phillimore L.J. in *Rez v. Speyer*, [1916] 2 K.B. at p. 871.

² Above, p. 72.

³ Piggott, *Nationality* (1907), i, p. 108.

nently abroad lost his British nationality. The naturalization thus granted was limited in its practical effect to the period of the naturalized subject's residence in the United Kingdom, being forfeited if the naturalized person remained for so much as six months out of the United Kingdom. The exact scope of the rights conferred by naturalization under the Aliens Act, 1844, was thus rather ambiguous. Another weakness of the Act was that it did not deal with the question of expatriation, i.e. the case of British subjects, whether natural-born or naturalized, who became naturalized abroad. The number of such persons who emigrated and settled in other countries increased. No doubt in the case of aliens who, having become naturalized in the United Kingdom, departed to another country and became naturalized there, the administrative condition mentioned above would operate to determine their British nationality. However, in the case of natural-born British subjects, there was no means by which, having become naturalized in a foreign country they could shake off their British nationality. Many British immigrants to the United States of America, who became naturalized there, desired to be rid of their British nationality; and, similarly, American immigrants to the United Kingdom, who became naturalized here, desired to attach themselves only to the country of their adoption, and to be rid of their United States citizenship. Apart from the convenience of individuals, these cases of dual nationality were an embarrassing source of friction between the Governments of the United Kingdom and of the United States of America. A Convention was concluded in 1870 regulating this question; and the Naturalization Act, 1870, was in no small measure due to a desire to implement this Convention.¹ Nevertheless, it was also considered desirable to review the whole state of the English law of naturalization and nationality; and, in 1868, a Royal Commission was appointed to inquire into the matter. The Naturalization Act, 1870, which resulted from its deliberations, shows marks of hurried and inadequately considered legislation; and both the Commission and the Government of the day worked under the stress of the negotiations which were taking place with the United States.²

¹ The Convention is dealt with more fully in Chapter III below.

² This is the only reasonable explanation of an Act which merited Piggott's stricture: 'The Act of 1870 was by common consent the worst drafted piece of legislation that had ever found its way on to the Statute Book.' *Nineteenth Century* (October 1915). This article gives a good critical account of naturalization policy between 1870 and 1914.

The terms of reference of the Naturalization Commission were to consider:

- (a) 'The legal position of natural-born subjects, who may depart from and reside beyond the realm in Foreign Countries, and to report how, and in what manner, having regard to the laws and practices of other states, it may be expedient to alter and amend the laws relating to such natural-born subjects, heirs, wives, descendants and relatives.
- (b) 'The legal position of persons, being aliens, entering into or residing within the realm, and becoming naturalized as subjects of the Crown, and to report how far and in what manner it may be expedient, having regard to the laws and practices of this country, of Foreign states and otherwise, to alter or amend the laws relating to such persons, or persons claiming rights or privileges through or under them.'

In connexion with the first category of persons the Commission's recommendations involved a radical modification of the common-law doctrine of allegiance. As we have shown in the preceding chapter,¹ it was of the essence of that doctrine that allegiance was 'indelible'. Not even by leaving England and settling in a foreign country, assuming, perhaps, by naturalization there, a foreign nationality, could a natural-born British subject rid himself of the nationality with which he was born. A naturalized British subject, under the practice adopted under the Aliens Act, 1844, could, and would, lose his British nationality by the mere fact of residing out of the United Kingdom for six months, but the law attached no consequences to a foreign naturalization in itself. The position of such British subjects—especially natural-born subjects—was anomalous, for they retained a purely nominal British nationality, whilst their associations, interests, and future lay in the country of their adoption.

The Commission considered that the common-law doctrine of the 'indelibility' of allegiance was 'neither reasonable nor convenient', on the ground that it conflicted with the 'freedom of action which is now recognised as the most conducive to the general good as well as to individual happiness and prosperity', and was 'especially inconsistent with the practice of a state which allows its subjects absolute freedom of emigration'. The Commission laid down as a principle of policy the following: 'it is inexpedient that British law should

¹ Above, p. 68.

maintain in theory, or should by foreign nations be supposed to maintain in practice, any obligations which it cannot enforce, or ought not to enforce if it could,¹ and it is unfit that a country should remain subject to claims for protection on the part of persons who, so far as in them lies, have severed their connection with it.' The Commission's recommendations regarding the first of their terms of reference were as follows:

1. Any British subject who, *being resident*² in a foreign country, shall be naturalized therein, and shall undertake, according to the laws, the duty of allegiance to the foreign state, as a subject or citizen thereof, should upon such naturalization, cease to be a British subject.
2. The principle of this rule should be applied to a woman who, being a British subject, shall become, by marriage with an alien, the subject or citizen of a foreign state.
3. The wife of a British subject who shall become naturalized abroad, and his children, if under the age of twenty-one years at the date of his naturalization, should likewise cease to be British subjects from that date; but this rule should not include a wife or child who has not emigrated to the country of naturalization, nor should it operate unless, according to the local law, the naturalization of the father has naturalized also the wife or child.
4. Naturalization in a foreign country, though operating from the time of its completion as an extinguishment of the original citizenship, should not carry with it discharge of responsibility for acts done before the new allegiance was acquired.

These recommendations are clearly directed to the subject of voluntary *loss* of British nationality, or expatriation, a conception entirely novel to English law, with its doctrine that allegiance was 'indelible'. Underlying them is a new attitude (not to say a theory), which speaks rather of allegiance to country, State, or 'Crown', in its aspect as the 'body politic', as opposed to the medieval notion of allegiance to a person.³ In this new attitude is to be discerned the influence of the large-scale emigration of the nineteenth century

¹ The Commission had in mind the kind of situation which arose in the case of *Aeneas Macdonald* discussed above, p. 67.

² Italics mine. Both the Act of 1870 and Section 13 B.N.A. use the words 'when in', and the failure to adopt the Commission's words has been a source of considerable difficulty.

³ See *Isaacson v. Durant*, discussed above, p. 59.

to foreign countries, and the desire on the part of most modern civilized States to absorb foreign elements into the native population.¹

We have seen that the children of natural-born subjects born out of His Majesty's dominions, and the children of such children also born abroad, acquired the status of natural-born subjects under the Acts of 7 Anne, c. 5, 4 Geo. II, c. 21, and 13 Geo. III, c. 21.² The Commission did not think it satisfactory that British nationality should be transmitted to the second generation born out of His Majesty's dominions. They recommended that these statutes should be repealed, and that the privilege of being deemed a natural-born subject in such cases should be restricted to the first generation. In making this proposal they were clearly influenced by the idea that British nationality should normally be acquired either by birth in British territory, or by the naturalization of persons who intended to reside in the British dominions. However, the statutes in question were not repealed by the Act of 1870, and the Commission's proposal did not become law until 1914 when, subject to certain modifications, it was in principle adopted—only to be abandoned in 1922.³

Another recommendation which failed to pass into law was that provision should be made for enabling children, born within the dominions of the Crown of alien fathers, to be registered as aliens.

¹ The example of the United States of America, which absorbed millions of immigrants during the nineteenth century, may be cited in this connexion. In the opinion of Mr. Caleb Cushing, the Attorney General of the United States, of October 31, 1856, on the 'Right of Expatriation', American doctrine is exhaustively discussed. He observes: 'To justify the supposition of unlimited right of emigration, it is common to appeal to the provisions of the constitution of the United States, and of its laws regulating the naturalization of foreigners. These provisions do indeed show that the encouragement of foreign immigration is a feature of the public policy of the United States.' Article I, Section 8 of the Constitution of the United States (1787) provides, 'The Congress shall have power . . . to establish a uniform rule of naturalization.' The first Act of Congress enabling aliens to be naturalized was passed in 1790. The Act of 1802, however, became the basis of modern American law on the subject, and this expressly required an alien seeking naturalization in the United States to renounce all allegiance to any foreign state for ever. On the other hand there was, until 1868, no express provision in United States law which enabled an American citizen to renounce his citizenship. An Act of Congress of that year declared that 'the right of expatriation is a natural and inherent right of all people'. See Moore, 14 *Harvard Law Review* (1900), p. 179. Writers on the law of nations, and the general trend of opinion of the time, tended to support the 'right of expatriation' in some form or other. It was natural that the Commission should recommend the adoption of a rule regarding loss of nationality which should be agreeable to the state of opinion of the age.

² Above, p. 69.

³ Below, p. 116. Section 4 of the Act of 1870 allowed persons born abroad of fathers who were natural-born subjects to make a declaration of alienage. Below, p. 92.

Any child so registered would henceforth be regarded as an alien. If the father, being an alien when the child was born, became, during the child's minority, naturalized as a British subject, the child, though registered as an alien, was to follow the national status of his father. This proposed exception to the rule that persons born in his Majesty's dominions were natural-born British subjects was not, like the common-law exceptions,¹ a deduction from the theory of allegiance, but was based on the idea that the child of an alien, in many cases, though born in British territory, acquired his father's nationality under the *ius sanguinis*. The Commissioners were again applying their guiding principle—that double nationality was to be avoided so far as British legislation could achieve that result.² However, a modified version of their recommendation that the national status of infant children of aliens should follow that of their parents became law.³

As regards the second of their terms of reference—the law and practice of British naturalization—the Commission pointed out that the practice of issuing conditional certificates, forfeited by six months residence abroad, was objectionable, and they recommended that it be discontinued. They were in favour of retaining the absolute discretion of the Secretary of State to grant or refuse naturalization. They proposed, however, that compliance with certain conditions should be required by law before the applications for naturalization could be considered by the Secretary of State. These conditions were either a certain length of residence in the United Kingdom or service under the British Crown.

¹ Above, p. 38.

² The idea of preventing children of alien parents born in the King's dominions from acquiring British nationality by birth was revived in later discussions. Below, p. 117.

³ Section 10 (5) Act of 1870. See below, p. 101.

III

NATURALIZATION ACT, 1870. ANGLO-AMERICAN CONVENTION, 1870. PROVISIONS OF NATURALIZATION ACT, 1870

THE Naturalization Act, 1870, was repealed in its entirety by the British Nationality and Status of Aliens Act, 1914. Apart, however, from its historical importance it is necessary to know something about it for the following reasons:

1. Without such knowledge the Act of 1914 and the practice regarding naturalization cannot be properly understood.
2. There are still persons whose claim to British nationality turns on the interpretation of the Act of 1870.
3. Section 19 (3) of the British Nationality and Status of Aliens Act, 1914, provides that 'any regulations made by the Secretary of State under any Act hereby repealed shall continue in force and be deemed to have been made under this Act'.

The Naturalization Act, 1870, was based very largely on the recommendations of the Naturalization Commission, 1868, which have been described in the preceding chapter. Its provisions were, however, in many respects influenced, and even dictated, by a desire to give effect to the Convention, signed on May 13, 1870, between the United States of America and Great Britain. This Convention was concluded with the object of settling a dispute between the two nations which had been going on since the establishment of American Independence. This dispute concerned the right of search, which Great Britain claimed on the high seas in respect of American vessels, in order to enforce impressment upon natural-born British subjects who might be found on board such vessels. Considerable numbers of British merchant seamen enlisted in the American Navy, or joined the crews of American vessels, in order to avoid serving in the British Navy, whose discipline at that time was extremely severe. In many cases these persons had become naturalized American subjects. The British practice of stopping American vessels on the high seas, and removing British-born seamen for service in the British Navy, was resented by the Government of the United States. The dispute, in effect, turned upon the right of visit and search on the high seas; but the root of the trouble was the British insistence on

the common-law doctrine of indelible allegiance, i.e. that a British subject by birth could not shake off his allegiance by being naturalized in a foreign state. The friction caused between the United States and Great Britain by the British practice led to the war of 1812 between the two countries. Peace was restored, but the question of principle was not settled. Various attempts were made to reach agreement, all of which broke down until the negotiations of 1869 which led to a Convention on the subject.¹

The main purpose of this Convention was to avoid conflicts with the United States, arising from the fact that, under English law, a person might be a natural-born British subject, and at the same time be regarded, and claimed, as a naturalized citizen of the United States. The Naturalization Act, 1870, was also partly designed to deal with this kind of difficulty, and the Convention must be read with that Act. The Convention declares in the preamble that its object is to 'regulate the citizenship of British subjects who have emigrated to or who may emigrate' to the United States, and, conversely, the citizenship of citizens of the United States, who have emigrated to or may emigrate to the British dominions. This Convention is still in force, and it is therefore necessary to consider its provisions. Before doing so, however, it is convenient to relate the circumstances in which this Convention was negotiated.

During the years 1867-8 the disturbances in Ireland roused strong sympathy for the Irish in the United States of America, where many Irish emigrants had settled, and there occurred incidents, demonstrations, and expeditions, on the Canadian border, in which American citizens took part. Some of these American citizens were British subjects by birth who had become naturalized in the United States, but such naturalization did not cause them to lose their British nationality, because, by the common law, native allegiance could not be shaken off. In the result some persons, originally British, but American citizens by naturalization, were arrested on charges of treason and sedition, and convicted in Canada. Such incidents exacerbated relations between Great Britain and the United States and the latter proposed that the situation could be eased by a treaty permitting the subjects and citizens of the two countries to get rid of their native allegiance when they became naturalized in Great Britain and the United States respectively. The British Government

¹ S.P., vol. 60, p. 36. Similar Conventions were concluded by the United States with other powers, e.g. that with Austria-Hungary (*ibid.*, p. 169).

at first opposed this suggestion, which could not be carried out without legislation. Eventually, however, it was decided to appoint a Commission to inquire into the state of British naturalization laws, with results which have been described above in Chapter II. The United States had already signed with the North German Confederation a Protocol dated February 22, 1868, which provided for reciprocal recognition of the 'right of expatriation'. The political situation arising from the Irish question forced the British Government to acquiesce in the abandonment of the common-law doctrine of 'indefeasible allegiance', and on June 16, 1868, the British Government informed the Government of the United States that they 'were prepared in principle to entertain the question of a Naturalization Treaty, and no longer held to the doctrine of indefeasible allegiance'.¹ The United States had, in the meantime, concluded treaties with Mexico and Bavaria on lines similar to that of the treaty with the North German Confederation. On October 9, 1868, a Protocol was signed by Great Britain and the United States stating the principles to be embodied in a Naturalization Treaty. The Protocol was not to be effective until legislation had been passed to bring the English municipal law into line with its provisions. The Naturalization Convention was signed, in pursuance of this Protocol on May 13, 1870.² Article I of the Convention contains a mutual recognition of existing naturalizations, and future naturalizations, in both countries. British subjects, who before or after the Convention had become or became naturalized, according to law within the United States, were to be held by Great Britain to be in all respects, and for all purposes, citizens of the United States, 'and shall be treated as such by Great Britain'. An identical provision *mutatis mutandis* was inserted regarding citizens of the United States who, before or after the Convention, had become or became naturalized according to law within the British dominions. These reciprocal provisions disposed,

¹ Lord Stanley to Mr. Thornton, F.O. 5/1356.

² The papers relating to this Convention and the Protocol of 1868 will be found in the Record Office under the reference F.O. 5/1356. These papers make it clear that the complications arising from the Irish question, and the disturbances on the Canadian border, played an important part in causing Great Britain to abandon the doctrine of indefeasible allegiance. Lord Clarendon (then Foreign Secretary) in a dispatch to the British Minister in Washington, on the day the Convention was signed, referred to it as 'a treaty which will not only remove a possible occasion of controversy between Great Britain and the United States, but serve to establish an international policy of voluntary allegiance which they [the British Government] believe will be of universal benefit'. F.O. 5/1356.

at least in principle, of a dispute which had troubled Anglo-American relations for the better part of a century.

Section 6 of the Naturalization Act, 1870, brings English law into line with the idea underlying the provisions in Article I of the Convention.¹ This section lays down the following general rule:

‘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 naturalized in such foreign state, be deemed to have ceased to be a British subject and to be regarded as an alien.’

There was a proviso to this rule regarding persons who had, before the passing of the Act, become naturalized in a foreign state. They might, if they were desirous of remaining British subjects, at any time within two years after the passing of the Act, make a declaration, in a prescribed form, stating that they wished to do so, and, upon making such a declaration, and 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’.

British subjects who made a declaration under the first part of this proviso would, if they had been nationals of the United States, cease to be such, by virtue of Article II of the Convention which provides as follows:

‘Such British subjects as aforesaid, who have become and are, naturalized within the United States, may renounce their naturalization, and resume their British nationality within two years after 12th May, 1870.’

The Article contains a similar provision regarding citizens of the United States who, before 1870, had become, and were still, naturalized within the British dominions, enabling them to renounce their British nationality, and resume their nationality as citizens of the United States, ‘within two years after the exchange of the ratifications of the Convention’. A supplementary Convention of 1871, and the Naturalization Act, 1872, laid down the manner in which these

¹ i.e. by permitting expatriation, see above, p. 82.

declarations were to be made. These provisions rested, so far as English law was concerned, on Section 3 of the Naturalization Act, 1870, the first part of which reads as follows:

‘Where Her Majesty has entered into a Convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for Her Majesty, by Order in Council, to declare that such Convention had been entered into by Her Majesty; and from and after the date of such Order in Council, any person being originally a subject or citizen of the state referred to in such Order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the Convention, make a declaration of alienage, and from and after the date of his making such a declaration, such person shall be regarded as an alien, and as a subject of the state to which he originally belonged as aforesaid.’

The section then goes on to provide that the ‘declaration of alienage’ may be made in the United Kingdom in the presence of any justice of the peace, and elsewhere in the manner provided by the section.

The effect of these two sections of the Act of 1870 (Sections 6 and 3), together with Section 4—which will shortly be mentioned—was to introduce an entirely new¹ principle into English law: that it was possible for a man to divest himself of his allegiance; and it will be noticed that this was so, as regards ‘British subjects’, whether the allegiance was acquired at birth or by British naturalization, or indeed in any other way in which a man could become a British subject.² Thus a naturalized British subject who, before or after the Act of 1870, became naturalized in a foreign state, in the conditions laid down in Section 6, was deemed to have ceased to be a British subject, subject to the proviso that persons so naturalized before 1870 were entitled to make a declaration retaining their British nationality. The expression ‘voluntarily’, which occurs in Section 6, and also in the corresponding provision of the 1914 Act,

¹ See above, p. 82.

² The Act did not define ‘British subjects’, and the expression must, therefore, be construed as including British subjects of whatsoever kind. Where the expression occurs in the Convention, in the absence of a contrary intention, it must be similarly construed. It was decided by the Circuit Court of Appeals, Ninth Circuit, in 1934, that a person, who acquired United States citizenship at birth, and subsequently became in Canada whilst still a minor a naturalized British subject ‘within Canada’ (local subject) with her father, lost her citizenship under Article I of the Convention: *In re Reid*, *Annual Digest* (1933–4), Case no. 112.

requires a brief explanation¹. It was inserted advisedly. It had been found that, in certain foreign countries, individuals had been naturalized *en masse* or against their will, e.g. in several of the South American states. The British Government was not prepared to regard naturalization abroad as an act causing the loss of British nationality unless it was done 'voluntarily'.²

As regards Section 3 of the Act, its immediate purpose was to ensure that the obligations of Great Britain under the Convention with the United States should be effectively implemented so that no case of double nationality might arise from past or future naturalizations in either country. It was contemplated, at the time, that similar Conventions would be concluded by Great Britain with other Powers, but this hope did not materialize. A corresponding provision was inserted in Section 15 of the 1914 Act, but this, too, has proved a dead letter.³

Before passing on to the remaining provisions of the Act of 1870 a word must be said about the third and last article of the Convention. This provides:

'If any such British subject as aforesaid, naturalized in the United States, should renew his residence within the British dominions, he may be re-admitted to the character and privileges of a British subject on his own application, and on such conditions as the British Government may impose, and the United States shall not claim him as a citizen on account of his former naturalization.'

The Article goes on to make a similar provision for the recognition by Great Britain of the readmission to United States citizenship of American subjects who have become naturalized in the British dominions, and have resumed residence in the United States. The first part of the Article does not rest on Section 3 of the Act, because that section deals with the case of naturalized aliens who divest themselves of British nationality. The case of readmission to British nationality is dealt with by Section 8 of the Act, although the pro-

¹ The meaning of this expression will be discussed in detail below, in connexion with Section 13 B.N.A. 1914.

² For the discussions on this point, which took place during the passage of the 1870 Act through the House of Commons, see Hansard, *Commons*, Third Series, vol. 199, col. 1132; and, on Section 6 generally (*ibid.*, vol. 200, col. 2020). For comment on 'voluntarily' see below, p. 196, where its meaning in Section 13 of the Act of 1914 is discussed.

³ See comment on Section 15 of the B.N.A., 1914, below, p. 206. For an account of the various attempts to reduce cases of multiple nationality by international agreement see Part I above, p. 22.

cedure laid down there is cumbersome, and is not expressly devised to meet the requirements of Article III.

The Naturalization Convention of 1870 raises a number of points which have never been authoritatively settled. Its general intention, as declared in the preamble, was to deal with the status of persons who had emigrated, or who might emigrate in the future, to the country of one or other of the High Contracting Parties. The actual wording of the Articles of the Convention is, however, quite general and not specifically confined to emigrants. Should the general intention be permitted to abridge or limit the wide language of the Articles? Again, Article I of the Convention speaks of persons who are naturalized, or who may become naturalized, according to the law of the United States, or the law of the United Kingdom, as the case may be. Cases may arise in which the action of the person concerned may amount to naturalization according to the law of the United States, but would not be so regarded under the law of the United Kingdom, or, alternatively, the action would not be allowed to have the effect of producing loss of British nationality.

Examples:

(1) A British-born woman marries, after 1922, a United States citizen and retains her British nationality, because she did not, by reason of her marriage, acquire the nationality of her husband. It is necessary for her, under United States law, to apply separately for naturalization, and she does so. According to English law her action does not cause her to lose British nationality under Section 13 B.N.A., because, being a married woman, she is under disability. She becomes a dual national.

(2) Between 1907 and May 1934 a minor child who became naturalized with its parents acquired United States citizenship, under Section 5 of the Citizenship Act, 1907, as from the date of the commencement of its residence in the United States, though itself born outside the United States. Under the British nationality law the child would not lose its British nationality, because it was not, on its parent ceasing to be a British subject, that according to the law of the United States, it became naturalized there, but on its taking up residence there. (See Section 12 B.N.A.)

In the above examples the naturalization has taken place according to the law of the United States; but effect cannot be given to the literal provisions of the Convention, because of the manner in which the rules of English law are drafted.¹ It is arguable that the Convention ought to be interpreted in the light both of the law of

¹ See Hyde, *International Law* (2nd revised edition 1945), ii, p. 1135.

the United States and the law of the United Kingdom, and that it should be read as relating only to British subjects not under disability. However, it is also arguable that these examples are merely cases of inconsistency between the Convention and English law.

Sections 1 and 2 of the Naturalization Act, 1870 (which deal, respectively, with the short title of the Act, and with the capacity of aliens as to property), do not concern us. Section 3 has been already dealt with. Section 4 is important and must be quoted in full:

‘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,¹ and from and after the making of such a 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.’

This section is designed to fulfil one of the main purposes of the Act,² i.e. to avoid conflicts with foreign Powers arising from double nationality. It falls into two branches:

1. The person born within Her Majesty’s dominions who was at the same time, i.e. by virtue of his parentage, a subject of a foreign Power. Such a person, on attaining full age, and not being under any disability (i.e. an infant, lunatic, idiot, or married woman—Section 17 of the Act), could renounce British nationality by a declaration of alienage, and thereupon cease to be a British subject.
2. The person born out of Her Majesty’s dominions of a *father being a British subject* (i.e. the child is a person deemed to be a natural-born British subject by force of statute—the Acts of Edward III, Anne, George II and III whose effect has been described above).³ Such a person could also, being of full age and not under any disability, renounce his British nationality in the same manner, and with the same result, as the first type of person above mentioned.

¹ This refers to the latter part of Section 3, which prescribes the mode in which a declaration of alienage is to be made.

² Hansard, *Commons*, Third Series, vol. 199, cols. 1118, 1604; *ibid.*, vol. 200, cols. 1, 1734, 2020; *ibid.*, vol. 201, col. 390.

³ See above, p. 69.

The principle underlying this section is that it is unjust to the individual concerned, and inconvenient to the British authorities, that a person who had, for all practical purposes, severed his connexion with the Mother Country (or possibly never had any such connexion)¹ should continue to be treated as subject to the obligations, and entitled to the protection, of a British subject.² It is not necessary to discuss the section in detail here, as it is re-enacted with modifications in Section 14 of B.N.A., 1914, which will be discussed below. Section 5 abolishes special juries for aliens and does not concern us. Section 6 is dealt with above.

Passing to Section 7, we come to the beginning of modern naturalization law. This section laid down the conditions which must be satisfied before the Secretary of State could grant naturalization, and was, in this respect, much more restrictive than the Act of 1844, although the practice under that Act had been somewhat more strict than its text would suggest.³ The conditions laid down by Section 7 were:

1. residence in the United Kingdom for a term of not less than five years or,
2. having been in the service of the Crown for not less than five years,

coupled, in either case, either with the intention, when naturalized, of residing in the United Kingdom, or of serving under the Crown. If these conditions were satisfied an application might be made for a certificate of naturalization. The principle of requiring these conditions to exist, before the application can be made, is retained in Section 2 (2) of the Act of 1914. Sub-section 2 of Section 7 laid it down that the Secretary of State was empowered to 'give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision'.

¹ The first class of person mentioned in Section 4 may have become a British subject by mere accident of birth, e.g. during a temporary sojourn by his parents in the United Kingdom. As regards the second class it is easy to think of cases where the first generation born abroad by a British father are entirely non-British in sympathy.

² See Hansard, *Commons*, Third Series, vol. 199, col. 1123.

³ In 1856 the Secretary of State was advised that it would be lawful to insert in certificates of naturalization granted under the Act of 1844 a clause, to the effect that such certificates were granted on condition that the grantees should continue to reside permanently in the United Kingdom, and that the certificates should be determinable if the grantee should cease so to reside. See Report of the Inter-departmental Committee of 1901, Cmd. 723 (below, p. 101).

Sub-section 3 provides as follows, regarding the effect of naturalization:

‘An alien to whom a certificate of naturalization is granted shall 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 subject is entitled, or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to his obtaining his certificate of naturalization, 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.’

The effect of this sub-section has never been settled in the English courts. Does it mean that a naturalized British subject under the Act of 1870 has no rights as a British subject outside the United Kingdom? The wording of the sub-section is unsatisfactory, but the Law Officers of the Crown advised in 1874 that a certificate of naturalization granted under either the Act of 1844 or the Act of 1870 conferred upon an alien no rights or privileges in a British colony. The following Circular Despatch issued by the Colonial Office on September 10, 1874, is reproduced in full as showing the view adopted by the British Government:

‘In consequence of an application made to this Office by a gentleman, naturalized in 1873 in this country, to be allowed the rights and privileges of a British subject in Gibraltar, the opinion of the Law Officers of the Crown has been taken as to whether certificates of naturalization granted in the United Kingdom extend to the Colonies.

‘The Act 7 and 8 Vict. (1844) C. 66. Section 6, provided that upon obtaining the certificate, and taking the oath therein mentioned, every alien then residing in, or who should thereafter come to reside in, any part of Great Britain or Ireland, should enjoy all the rights of a British subject. The Act 10 and 11 Vict. C. 83. Section 3 expressly enacted that the above Act of 1844 should not extend to the Colonies. The Act 33 Vict. (1870), C. 14. Section 7, enacted that an alien, to whom a certificate of naturalization should be granted, should, in the United Kingdom, be entitled to all political and other rights etc. of a British subject.

‘Her Majesty’s Government are advised that the operation of the above enactments is clearly confined to the United Kingdom, and that a certificate of naturalization granted under either of the Acts of 1844 or 1870, confers upon an alien no rights or privileges in a British Colony.

‘As the subject is one of general interest, and with a view to removing any doubts which may exist in the Colony under your Government upon the point, I have thought it desirable that the state of the law should be made known in a circular despatch to all the Colonies.’¹

This view of the limited operation of naturalization under the Acts of 1844 and 1870 was consistent with the doctrine laid down in *Craw v. Ramsey* (1669) which is discussed below.² Its continuance was one of the defects of British nationality law which the legislation of 1914 removed. It was stated, however, by Mr. Churchill, in 1911, at the Imperial Conference, that the rest of the British Empire ‘do, as a matter of courtesy, or even as a matter of right under local statutes, accept as current all naturalization certificates issued in this country’ (i.e. the United Kingdom).³ Lord Harcourt, when introducing the British Nationality and Status of Aliens Bill in 1914, stated that a certificate of naturalization granted under the Act of 1870 was universally valid, but this statement was not supported by any body of legal opinion.⁴ The matter is not likely to be of much practical importance in the future, but on the assumption that it might arise in an exceptional case, the following views are submitted:

1. The sub-section must be read as a whole, having regard to the underlying idea of the Act, i.e. to avoid conflicts with foreign Powers arising from double nationality.
2. Thus viewed, the antithesis which the sub-section seeks to bring out is between the position of a naturalized person under the law of the United Kingdom, and his position under the law of the foreign state of which he was a subject prior to naturalization under the 1870 Act.
3. The conflict of laws which might result if the naturalized British subject enters the limits of that foreign state is to be avoided during the period of his sojourn in that state.
4. The principal consequence of this is that he would not receive the protection of His Majesty’s Government in that state.⁵
5. He would receive such protection in every part of the world other than that state.
6. His character as a British subject in the colonies, and generally parts of the Empire other than the United Kingdom, would depend on local legislation in that part of the Empire.

¹ Piggott, *Nationality* (1907), i, p. 129.

² See below, p. 104.

³ Proceedings of Imperial Conference, 1911, Cmd. 5741 of 1911.

⁴ Hansard, *Commons*, Fifth Series, vol. 62, col. 1198.

⁵ Query whether he could avail himself validly of the Foreign Marriage Act, 1892 ?

From this it will be seen that there are two aspects of the matter:

1. The civil and political rights accorded by naturalization. These were limited under the Act to the United Kingdom.
2. The protection given to British subjects abroad. This does not rest merely on the fact of being recognized as a British subject by English law, but on the prerogative of the Crown. Such protection was granted, in fact, to persons naturalized under Section 7 of the Naturalization Act, 1870, wherever they might be, except within the limits of the foreign state of which they were subjects before naturalization, unless they had ceased to be subjects of that foreign state.¹

It must also be noted that, under Sub-section 4 of Section 7, power is given to the Secretary of State to grant a 'special certificate of naturalization' to any person with respect to whose nationality as a British subject a doubt exists.² Sub-section 5 of Section 7 provides that an alien who has been naturalized previously to the passing of the Act may apply for a fresh certificate under the Act of 1870, under which he would enjoy better rights than, e.g., under the Act of 1844.³

It must also be observed that there is a peculiar omission in Section 7 as regards aliens making applications for naturalization. Whereas, in Section 6 (which deals with expatriation), the words 'not being under a disability' are inserted before 'voluntarily became naturalized', these words are omitted in Section 7. However, it has generally been regarded as the better opinion that Section 7 must be read as though these words had been inserted.⁴

Section 8 provides for the readmission to British nationality of a natural-born British subject 'who has become an alien in pursuance

¹ Compare the practice as regards the protection of persons naturalized under local colonial laws, below, p. 103 (as to the effect of Section 16 of the Act of 1870). The rule that a person who is at the same time a British subject and a national of another state ought not to be protected by His Majesty's Government whilst within the limits of that state, is a branch of the 'master nationality' doctrine. See above, p. 16.

² 'A special certificate may be granted under Section 7 of the Act of 1870 without compliance with the conditions as to residence and intention required for ordinary certificates under the earlier part of the same section. When the Statute says the Secretary of State may grant a special certificate in manner aforesaid, these words relate to the manner of grant only and not to the qualifications of the persons who may ask him for the grant' (Law Officers' Opinions: March 16, 1895). Section 7 (4) was regarded as 'one of the dark passages of the Act' by Piggott whose explanation of it is more involved. Piggott, *Nationality* (1907), i, p. 189.

³ See above, p. 79.

⁴ Dicey pointed this out in his 1896 edition of *Conflict of Laws*, p. 182. The question has never been decided by the courts.

of this Act, and is, in this Act, referred to as a "statutory alien". Stopping here for a moment, it is useful to summarize the cases in which a natural-born British subject may become an alien 'in pursuance of this Act'. These cases are:

1. Expatriation under Section 6 of the Act (above, p. 88).
2. Declaration of alienage under Section 4 (above, p. 94).
3. Marriage (in the case of women) under Section 10 (1).

Although the words 'and is in this Act referred to as a statutory alien' occur in Section 8 these words must be taken by way of description, and not by way of definition. Of the three cases listed above only one—the third—is specially *described* as a case of statutory alienage in the Act (by Section 10 (2)). Section 8 goes on to say that a 'statutory alien' (being an alien in one of three cases set out above) '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 for a certificate of re-admission to British nationality'. The drafting here, again, is bad, because an alien applies for a certificate of naturalization under Section 7, and not 'a certificate of nationality'. However, the Secretary of State was given the same discretion, regarding the grant of certificates of re-admission to British nationality, as he possessed in the case of the giving and withholding of a certificate of naturalization, and the certificate of readmission was, therefore, practically a naturalization. The legal effect of the certificate of readmission is stated by the section to be as follows:

'A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign state of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.'

Section 8, therefore, gave a natural-born British subject, who became an alien in pursuance of the Act, the right to recover his former British nationality; but the procedure for doing so was equivalent to that prescribed for an alien applying for naturalization. Further, the special qualification laid down by Section 7 was reproduced: the certificate of readmission, like a certificate of naturalization, did not entitle the grantee to be treated as a British subject

within the limits of the foreign state of which he had become a subject, unless he had ceased to be a subject of that state, either according to the laws thereof, or in pursuance of a treaty to that effect. These somewhat clumsy provisions were not reproduced in the Act of 1914. It is still possible for a person to cease to be a British subject in any of the three ways enumerated above, but, in that event, it is necessary for that person to apply for a certificate of naturalization and not a certificate of readmission to British nationality.¹

Section 9 prescribes the form of the oath of allegiance and does not call for special comment.

Section 10, which is of great importance, deals with the national status of married woman and infant children. It provides that 'the following enactments shall be made with respect to the national status of women and children'. These enactments will be briefly discussed in order:

1. 'A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject.'

It has already been pointed out that, at common law, marriage has no effect on a woman's British nationality. This was amended by Section 16 of the Aliens Act, 1844, which provided 'that any woman married, or who shall be married, to a natural-born subject or person naturalized, shall be deemed, and taken to be, herself naturalized and have all the rights and privileges of a natural-born subject'. This was repealed in 1870. The provisions of Section 10 (1) of that Act were intended to deal, not only with the position of an alien woman who married a British subject (dealt with by the Act of 1844), but also with that of a British woman who married an alien. A British woman marrying an alien before 1870 remained a British subject—a situation criticized by Cockburn,² and considered by the Government of the day to be inconvenient. The formula adopted in Section 10 (1), which has been quoted above, was unfortunate, and was based on a faulty conception of the legislative power of Parliament. On the face of it an attempt was made to lay down a rule of international application, based on a theoretical conception of what, in the ideal legislation of all countries, *ought* to be the national status of married women. Such a rule (although the legislation of most countries accepts it in general) could only be laid down by an inter-

¹ See comment on Sections 2 (5), 10 (4), 12, and 14 of B.N.A. below, pp. 161, 185, 189, 202.

² *Nationality* (1869), p. 216.

national convention; for a British Act of Parliament cannot make international law. The British Legislature cannot say that a British woman who marries a French subject shall become French, as that is a matter of French law; though it can say she has ceased to be a British subject, and that is, in fact, what Parliament must be taken to have meant. The bad draftsmanship of this provision was remedied in 1914 and again improved in 1933,¹ which made further changes of substance as well. The general principle, which the provision aimed at incorporating into our law, has, however, been followed in later legislation, i.e. that the wife's national status should, so far as possible, follow that of her husband. The complications which arise in this connexion in modern law will be discussed later. It must be noted, for the present, that the intention of Section 10 (1) and (2) was to deal generally with the status of married women, and that it was not successful in this respect, especially as regards the position of a British woman who married an alien. But as the provisions of Section 10 (2) of B.N.A. 1914 (as amended in 1933) are retrospective, the provisions of the Act of 1870 in the last-mentioned particulars are of no practical importance.²

Passing to Sub-section 2 of Section 10 of the Act of 1870 we read:

‘A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall 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 manner provided by this Act.’

This provision refers to a widow who, at the time of her marriage, was a natural-born British subject, and who became an alien under Section 10 (1). In her case, so long as she remained a widow she could, under Section 8, apply for readmission to the status of a natural-born British subject. She could not do so during her marriage as she was under a disability. An attempt to secure some general provisions in the Act of 1870, regarding the status of divorced or separated women, was unsuccessful,³ but there is now special provision for such cases.⁴ Section 10 (3) provides:

‘Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such a father or mother who during infancy has

¹ See below, p. 184.

² See generally p. 178 below.

³ Hansard, *Commons*, Third Series, vol. 200, col. 1740.

⁴ See comment on Section 2 (5), 10 (4), and 11 of B.N.A.

become resident in the country where the father or mother is *naturalized*,¹ and has, according to the laws of such country, become *naturalized*¹ therein, shall be deemed to be a subject of the state of which the father or the mother has become a subject, and not a British subject.'

It must be noticed that, although this sub-section purports to deal with all cases of statutory alienage at its commencement, and there are three such cases of alienage, it uses language appropriate to only one of these three cases (expatriation). The child of a parent who is a statutory alien may have been born in the country where the parent is naturalized, and yet the sub-section does not apply, because the words 'became naturalized' do not cover such a case.

The cases to be considered under this sub-section are:

1. The father, being a British subject, becomes an alien in pursuance of the Act. This could happen under Section 6, if the father became voluntarily naturalized in a foreign state, and also under Section 3 and 4, where the father made a declaration of alienage, but, as we have seen, only Section 6 can have any application under the sub-section now under discussion. Every child of a father, who, being a British subject, becomes naturalized in a foreign state and becomes an alien in pursuance of Section 6, also becomes an alien, provided that (1) he has become resident in the country where the father is naturalized, (2) during infancy, and (3) has according to the laws of such country become naturalized therein. The words 'during infancy' mean whilst the child is under the age of majority, according to the laws of his domicile, however that age may be defined. 'has become resident' is an expression which has not been interpreted by the courts, and its meaning necessarily turns, in each case, upon the facts.

'In the country where the father has become naturalized' means validly naturalized under the foreign law. 'And has according to the laws of such country become naturalized therein' means that, according to the foreign law, the child has become naturalized (whether by reason of his father's act or by operation of law).²

2. The mother being a British subject and a widow. This presumably contemplates the case of a widow in a foreign country with infant children, who, whilst still a widow, becomes naturalized there.

¹ *Italics mine.*

² For further discussion of the words 'becomes naturalized' see comment on Section 12 below, p. 189.

If the three conditions set out above are satisfied the national status of the children follows that of the mother. The sub-section does not appear to contemplate the case of a widow, being a British subject, who, by re-marriage, becomes an alien, because, as we have seen, the only case of statutory alienage dealt with by the sub-section is expatriation.¹

Sub-section 4 reads:

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

The intention here is clear: it is that the national status of infant children shall follow that of their parents. Under this sub-section, however, it is necessary for two conditions to apply: The child must (a) during infancy (b) become resident in the British dominions *with such father and mother*. If these conditions exist a certificate of re-admission under Section 8 granted to the father, or to the mother if she is a widow, has the effect of making the infant children British subjects.

Sub-section 5 reads:

‘Where the father or the mother, being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such a father or mother who during infancy has become a resident with such a father or mother in any part of the United Kingdom (or with such father while in the service of the Crown out of the United Kingdom),² shall be deemed to be a naturalized British subject.’

The intention here appears to be that infant children of naturalized persons, living with their parents in the United Kingdom, shall become naturalized British subjects, if their father or widowed mother is naturalized. It has recently been held that this sub-section does not apply to children who were not infants at the date of the naturalization of the parents.³ In other words, children of naturalized persons under the Act of 1870 who, during infancy, became resident

¹ Section 12 (1) of the 1914 Act contains an express proviso on this point: see below, p. 189.

² The material in brackets was inserted by Section 1 (1) of the Naturalization Act, 1895, and the Act of 1870 was to be read as though the amending words had been originally inserted in that Act.

³ *In re Carlton*, [1945], 61 T.L.R. 332; and, *scilicet*, the same reasoning could apply to Sub-section (4).

with the naturalized parents, but who were of full age at the time the parents were naturalized, are not covered by this sub-section, and do not, by virtue of it, acquire naturalized status. As to children born, whether before or after naturalization, provided they were infants at the date of naturalization, if they became resident as the sub-section required they, too, were deemed to be naturalized. If they did not become so resident they were aliens.¹ It has been decided that the children born *abroad* of a father naturalized under the Act of 1870, whether he was so naturalized at the time of their birth or not, were not British subjects by birth, either under the Acts of Anne or George II and III or at common law.² This was also the law regarding the children of persons naturalized under the Act of 1844.³ The Act of 1914, as will be seen, amended the law in this respect.⁴ If, however, a child born abroad to a father naturalized under the Act of 1870, whether born before or after naturalization, became, during infancy, and after his father's naturalization, resident with him in the United Kingdom, he was deemed by virtue of Section 10 (5), to be a naturalized British subject. It has been held that a child born abroad to a father naturalized under the Act of 1870 does not acquire British nationality by residing, during infancy, with his *mother* in the United Kingdom, his father being dead, and the *mother* herself not being naturalized (having become a British subject by reason only of her marriage to a British subject).⁵

It was not uncommon, when issuing certificates of naturalization under the Act of 1870, to include, or mention, on the certificate any infant children of the applicant, but this, in itself, had no effect on the child's nationality. Section 5 (1) of the Act of 1914 alters the law in this respect.⁶ Under that Act there is no condition of residence

¹ In an opinion of July 27, 1887, the Law Officers advised that the language of Section 10 (5) of the Act of 1870 was wide enough to cover children born before or after naturalization.

² *Rez v. Superintendent of Albany Street Station*, (*ex parte Carlebach*), [1915] 3 K.B. 716.

³ 'By the terms of the certificate of naturalization a naturalized alien does not carry with him into foreign countries the rights and capacities of a natural-born British subject (except the benefit of a British passport), and, consequently, the child of such naturalized alien born in a foreign country could not answer the description of a child of a natural-born British subject. Such a child therefore is in our opinion an alien, and not a natural-born British subject' (Opinion of the Law Officers of the Crown: August 13, 1860).

⁴ So far as children of a naturalized subject who was a British subject at the time of their birth are concerned: Section 1 (1) (b) (ii). See below, p. .

⁵ *Jaffé v. Keel*, [1916] 2 K.B. 476.

⁶ See below, p. 165.

regarding infant children, and the mere fact of including their names on a certificate of naturalization, granted to the alien parent, turns them into British subjects, if they are not already British subjects.

Sub-section (5) of Section 10 of the Act of 1870 was amended by Section 1 (2) of the Naturalization Act, 1895 which added the words 'or with such father while in the service of the Crown out of the United Kingdom'. Section 1 (1) of that Act provides:

'The residence of a child of a naturalized British subject with his father while in the service of the Crown out of the United Kingdom, shall have, and be deemed always to have had, the same effect, for the purpose of Sub-section (5) of Section 10 of the Naturalization Act, 1870, as residence with such father in the United Kingdom.'

These provisions were retrospective to the Act of 1870, which is to be read as if they had been enacted by that Act. The words inserted filled a gap in the law. One of the conditions for naturalization laid down by the Act of 1870 was serving the Crown abroad, and the object of the amendment was to ensure that the children of such persons should be recognized as naturalized British subjects, provided the condition as to residence with the parent was fulfilled.

Sections 11 and 12 embody provisions regarding regulations, as to the forms and registration of declarations of alienage, &c., and as to evidence under the Act. Regulations made under Section 11 by the Secretary of State were given the same force as if they had been enacted in the Act. Section 13 preserved the power of the Crown to grant letters of denization, and this provision is repeated in Section 25 of the Act of 1914. Section 14 provides that nothing in the Act shall qualify an alien to be the owner of a British ship, and Section 17 (proviso 3) of the 1914 Act repeats this provision. Section 15 provides:

'Where any British subject has, in pursuance of this Act, become an alien, he shall not thereby be discharged from any liability in respect of any acts done before that date of his so becoming an alien.'

(There is a similar provision in Section 16 of the Act of 1914, the drafting of which is somewhat different.¹)

Section 16 reads as follows:

'All laws, statutes, and ordinances, which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed

¹ See below, p. 207.

by such persons within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.'

This section touches upon one of the most difficult subjects of British nationality law: 'local' naturalization in the colonies. Something must be said at this stage about the state of the law before 1870 on this subject. At common law the power of the colonial legislatures to deal with naturalization was doubtful, although, in practice, several colonial laws were passed dealing with naturalization. The question was raised in the case of *Craw v. Ramsey* (1669),¹ though the facts do not turn on the position of a 'colony', but on the position of Scotland, at that time bound to the United Kingdom by the ties of a Personal Union. The issue raised in the case was whether a naturalization effected by the 'General Act of Naturalizing the Scottish Antenati in the Kingdom of Ireland',² had the result of naturalizing the persons affected in England. This was an Act of the Irish Parliament. It was held that it did not have that result. The court said:

'A subject born in any dominion belonging to the Crown of England is inheritable in England, as well as native Englishmen. So the natural-born subjects of Ireland, Guernsey, Jersey, Berwick, and all the English plantations inherit, but the specific reason of their inheriting in England is not because they are born in Dominions belonging to the Crown of England, for, if so, none could inherit who wanted that, and then the *postnati* of Scotland should not inherit, for Scotland is not a dominion belonging to the Crown of England, but to the King of England. It remains then, according to the resolution and reasons of *Calvin's Case*, that the specific and adequate cause why the King's subjects of other of his dominions do inherit in England is because they are born his natural subjects as the English are, he being actually King of England at the time of their birth, when their subjection begins, so are born liege men to the same King.'³

This sufficiently explains the position of persons who, being born either in the dominions mentioned, or in the colonies, are natural-

¹ Vaughan 274.

² The *Antenati* were persons born in the Kingdom of Scotland before the Union of the Crowns of Scotland and England. See above, p. 30.

³ Ibid. 279. See above, p. 94, regarding the effect of the United Kingdom certificate of naturalization in the colonies before 1914.

born subjects at common law of the King of England. The court added the following words:

‘Naturalization is but a fiction of law, and can have effect but upon those consenting to that fiction, therefore it hath the like effect as a man’s birth hath, where the law-makers have power, but not in other places where they have not. Naturalizing in Ireland gives the same effect in Ireland, as being born there, so in Scotland as being born there, but not in England, which consents not to the fiction of Ireland or Scotland, nor to any but her own.’¹

This is nothing else but the doctrine of the territoriality of laws, i.e. that legislation is effective only within the territory over which the legislator has authority. The court laid down as a proposition of law that Ireland was subordinate to England, and was not in the same position as Scotland, which was a distinct Kingdom. The court said:

‘Another objection subtle enough is that if naturalizing in Ireland, which makes a man as born there, shall not make him likewise as born (that is no alien) in England, that then naturalizing in England should not make a man no alien in Ireland (especially without naming Ireland), and the same may be said that one denized in England should not be so in Ireland. The inference is not right in form nor true. The answer is the people of England now do, and always did, consist of native persons, naturalized persons, and denized persons, and no people of what consistence soever they be, can be aliens to that they have conquered by arms, or otherwise subjected to themselves (for it is a contradiction to be a stranger to that which is a man’s own, and against common reason and public practice). Therefore neither natives nor persons naturalized or denized of England or their successors can ever be aliens in Ireland, which they conquered and subjected.’²

The common-law doctrine was not disturbed, so far as the effect of naturalization laws in the colonies were concerned. In fact the subject was not dealt with by the British Parliament until 1847, when the Aliens Act was passed declaring that all Acts and laws of colonial legislation imparting the privileges of naturalization were valid, in so far as they imparted to ‘persons the privileges, or any of the privileges, of naturalization, to be by such person or persons exercised and enjoyed within the respective limits of such colonies or Possessions’.

¹ Ibid. 280.

² Ibid. 291.

The Act declared that all such acts and laws 'shall, within such limits, have, and be taken and reputed to have had, from the time of the enactment thereof, respecting all such and the same, force and effect as doth by law belong to any other law, statute or ordinance made or enacted by any such legislatures'. The enactment related to the past, and confirmed past legislation. Section 2 of the Act provided that, as regards future naturalization laws made by the colonies, they were to be subject to the Crown's power of disallowing colonial legislation. Section 3 provided that the Aliens Act, 1844, did not apply to the colonies. The general purport of Section 1 of the Act of 1847 is repeated to a large extent verbally in Section 16 of the Act of 1870, which repeals the Aliens Act, 1847, in its entirety.

Thus, both at common law and by statute, the power of the colonies and overseas possessions of the Crown to naturalize aliens was limited as to the rights it could confer. It could only create the status of a 'local subject'; within the limits of the colony the naturalized person was a British subject: outside these limits he was not a British subject, and, in particular, he was an alien in the United Kingdom. A detailed account of colonial legislation on nationality will be given later.¹ Here we must point out that the Act of 1870 made no change in the law, so far as the powers of the colonies were concerned. As, however, the Dominions increased in independence, this position became impossible to maintain, and there were demands for alteration of the law so as to allow the Dominions and colonies to grant naturalization, with the same rights and privileges as those which flowed from naturalization in the United Kingdom.² Even after 1870, and before the amending legislation of 1914, it was the practice of the United Kingdom Government to treat locally naturalized subjects as British protected persons everywhere, except in the country of which they were formerly subjects.³ All His Majesty's consular and diplomatic officers abroad were instructed that they should, 'as a matter of courtesy', grant their 'good offices and assurance' to such persons, with the following proviso: 'Care should especially be exercised to avoid any appearance of claiming to protect such persons against the laws of their country of origin.'⁴

¹ Below, p. 268.

² See below, p. 113.

³ This practice was approved by an opinion of the Law Officers of the Crown in 1888 who advised that the colonies had no power to grant certificates of naturalization effective outside the limits of the colony.

⁴ See the Circular Despatch of the Foreign Office of September 12, 1902, reproduced in Piggott, *Nationality* (1907), i, p. 254.

Section 17 contained a definition of terms used in the Act. The definition of 'disability' is to be noted. It means the status of being an infant, lunatic, idiot, or married woman. It must also be observed that the section contains no definition of a British subject, a defect remedied in the Act of 1914.¹

Section 18 repeals a number of Acts, some of them imposing religious tests as a condition of naturalization, e.g. an Act of James I, c. 2 (1607), which provides that 'no person of what quality, condition, or place soever, being of the age of 18 years or above, shall be naturalized, unless he have received the Sacrament of the Lord's Supper within one month before any bill exhibited for that purpose; and also shall take the oath of supremacy, and the oath of allegiance, in the Parliament House before his bill² be twice read'. Another important enactment repealed inferentially³ by the Act of 1870 was the provision in the Act of Settlement that persons naturalized should not be capable of being Privy Councillors, or Ministers of either House of Parliament, or enjoy any office of trust, either civil or military, or have any grant of lands, &c., from the Crown.

¹ Section 27.

² As explained above (p. 75) there was no naturalization in England, before the Aliens Act, 1844, except by special Act of Parliament.

³ This was not settled until the case of *Rex v. Speyer*, [1916] 2 K.B. 858 was decided. Section 3 (2) B.N.A. repeals this provision of the Act of Settlement explicitly.

IV

DISCUSSIONS LEADING UP TO THE BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

APART from an amendment effected by the Naturalization Act, 1895,¹ there was no interference with the law of nationality, after the Naturalization Act, 1870, until the passing of British Nationality and Status of Aliens Act, 1914. A great reform of the law was effected by the Act of 1914, but one of the major considerations leading to the enactment was the fact that the Act of 1870 was limited in its application to the United Kingdom. The increase of immigration, to the Dominions and the colonies, of aliens naturalized in the United Kingdom, and the desire to have a uniform law of naturalization for the whole Empire, led to proposals for a scheme which would make possible a status of a naturalized British subject recognized everywhere in His Majesty's dominions.² A Departmental Committee set up by the Home Office reported in 1901 in favour of certain amendments of the law.³ The Committee recommended:

1. That the existing statute law, relating to the acquisition and loss of British nationality, should be consolidated, and that most of the legislation, from the time of Edward III onwards relative to this subject, should be repealed. It was their view, like that of the 1868 Commission, that the rule that nationality should be determined primarily by the place of birth was a reasonable and convenient one.
2. They accordingly suggested that this last-mentioned rule should be the basis of any future law of nationality, and that no person born out of the dominions of the Crown should be a British subject, unless his father had been born within the dominions of the Crown, and was also, at the time of the birth of that person, a British subject (para. 10 of the Report). This meant that the acquisition of British nationality by birth abroad of a British father should be limited to the first generation born abroad.

¹ See above, p. 103.

² As to the position resulting from the Aliens Act, 1847, and the Act of 1870, see above, pp. 94, 103.

³ Cmd. 723 of 1901.

3. Legislation should be introduced which would enable British colonies and possessions overseas to grant a certificate of Imperial naturalization, i.e. a status of a naturalized British subject which would be recognized throughout the Empire. On the other hand, colonial and Dominion Acts providing for naturalization 'within the colony' should be retained.
4. The conditions as to residence, &c., prior to naturalization should be amended, and it should be made clear that a certificate could be revoked if obtained by fraud. No power to revoke a certificate of naturalization was conferred by the Act of 1870.¹
5. The law regarding the position of persons under a disability should be clarified. Much of the law under Section 10 of the Act of 1870 (which dealt with this subject) was obscure.
6. The remaining distinctions between natural-born subjects and naturalized British subjects should be abolished.
7. Amending legislation should have for its object the reduction of cases of double nationality to a minimum.
8. The status of persons born on British ships and on foreign ships should be clarified.
9. In the case of private Acts of Naturalization the Standing Orders of the Houses of Parliament should provide for embodying in private Acts the main enactments of general law.

These recommendations have been set out at length, as they became the basis of the 1914 Act, and explain the background of that Act. The end in view was to provide a comprehensive code of nationality law based on clearly defined principles. This law would apply so that British nationality would have a fixed meaning everywhere in the Empire, and would be equally obtainable in all parts of the Empire. Such an undertaking was not possible without consulting the colonial and dominion governments. The Report of the Committee was therefore circulated by the Secretary for the Colonies to the governments of the various parts of the Empire, and their view on the subject were invited. As a result a resolution was passed at the Colonial Conference of 1907 in the following terms:

'That with a view to attaining uniformity so far as practicable, an enquiry should be held, to consider further the question of naturaliza-

¹ Even if the certificate had been obtained by fraud, as conditional certificates were not possible under the Act of 1870, fraud did not vitiate the certificate. See Report of the Inter-Departmental Committee, below, p. 110.

tion, and, in particular, to consider how far, and under what conditions naturalization in one part of His Majesty's dominions should be effective in other parts of these dominions. A Subsidiary Conference to be held if necessary.¹

There were difficulties in the way of such uniformity. In England an Interdepartmental Committee² was appointed, with a view to dealing with the criticisms made at the Imperial Conference of 1907 of the Draft Bill submitted to the Conference. Chief among these difficulties was the fact that certain Dominions—Australia, New Zealand, and South Africa—maintained, as part of their public policy, the exclusion of Asiatics or 'Non-Europeans', from the full rights of citizenship. These Dominions feared that the power to grant an Imperial certificate in any part of the Empire might commit them to granting such rights to persons whom they desired to exclude under this policy either, (a) from entering the country or, (b) from enjoying certain political and civil rights within the country. The 1908 Committee reported in favour of inserting in the proposed Nationality Bill *conditions* for the grant of naturalization, which would go far towards safeguarding this policy. They suggested that two of the conditions insisted upon in the administrative practice of the Home Office, in granting certificates of naturalization, which had so far prevailed, should be inserted in the Bill. These were (a) that the applicant should be of good character, (b) that he should possess an adequate knowledge of the English language.

They further recommended that where an applicant had, during the qualifying period of residence in the Empire, which was proposed as a condition of the grant, resided in different parts of His Majesty's dominions, he must show that he had resided for not less than twelve months of this period in that part of His Majesty's dominions in which he sought to be naturalized. The purpose of this provision was to ensure proper inquiry into the applicant's circumstances. In the absence of such a provision inquiry into the character and antecedents of the applicant would be a matter of great difficulty.

Another proposal at the 1907 Conference was that the Secretary of State's discretion to revoke a certificate of naturalization should be unqualified and absolute. The Committee rejected this proposal on the ground that naturalization altered the status not only of

¹ Minutes of proceedings of the Colonial Conference, 1907, Cmd. 3523 of 1907.

² Paper No. 8 (Cmd. 5746), 1911, xvii, no. 1.

the person naturalized, but of his wife and children, and naturalization, moreover, involved the loss of his former nationality. For this reason they recommended that the power to revoke should be limited to cases where naturalization had been obtained by fraud and/or false representations.

A Draft Bill, incorporating these efforts to meet the views of the Dominions, was prepared, and laid before the Imperial Conference of 1911.¹ At this Conference a resolution was adopted on the basis of five points put forward by Mr. Winston Churchill, then Secretary for the Colonies. These were as follows:

- ‘(1) Imperial nationality should be world wide and uniform, each Dominion being free to grant local nationality in such terms as its legislature should think fit.
- ‘(2) The Mother Country finds it necessary to maintain five years as the qualifying period.² This is a safeguard to the Dominions as well as to her, but five years anywhere in the Empire should be as good as five years in the United Kingdom.
- ‘(3) The grant of Imperial nationality is in every case discretionary, and this discretion should be exercised by those responsible in the area in which the applicant has spent the last 12 months.
- ‘(4) The Imperial Act should be so framed as to enable each self-governing Dominion to adopt it.
- ‘(5) Nothing now proposed would affect the validity and effectiveness of local laws regulating immigration or the like, or *differentiating between classes of British subjects*.’³

Agreement on these lines was not reached without difficulty. There was considerable difference of opinion between the different parts of the Empire, regarding the practice to be followed in the matter of naturalization. A completely uniform law of naturalization was not practicable. In the result it was decided to maintain two types of naturalization—a ‘local’ naturalization effective only within the confines of the Colony or Dominion, such as already existed under local legislation, and an Imperial naturalization, for which the only essential condition was five years’ residence in any part of the Empire.⁴

¹ Proceedings of Imperial Conference, 1911, Cmd. 5741 of 1911.

² i.e. for naturalization.

³ Italics mine. See further, on this, below, p. 220.

⁴ The question whether naturalization in the United Kingdom under the Act of 1870 was effective elsewhere in the Empire was left open. It was stated by Mr. Churchill, at the Imperial Conference of 1911, that the Dominions at that time ‘do as a matter of courtesy or even as a matter of right under local statutes, accept as

The advantage of the new Imperial certificate as proposed in 1901 and approved in later discussion, was that the person who acquired the status of a British subject under it, was a British subject in any part of the Empire and indeed of the world. Such a status possessed manifest political advantages. This proposal certainly involved a radical alteration of the law as it had hitherto prevailed between the colonies.¹ The effect of the fifth point in the resolution was to permit the colonies to limit or modify the rights within the colony of particular classes of British subjects.

Before the members of the Imperial Conference left London a new Draft Bill was prepared and submitted to them. The final stage was not reached until the end of 1913, when the United Kingdom and the Dominions reached unanimous agreement on the legislation which became known as the British Nationality and Status of Aliens Act, 1914. A general account of this Act and of the legislation amending it will be given in the next chapter.

current all naturalization certificates issued in this country, though we are unable at present (except as a matter of courtesy) to recognize them' (i.e. local certificates of naturalization). Lord Harcourt, when introducing the 1914 Bill, said that a certificate issued under the 1870 Act in the United Kingdom was universally valid. Hansard, *Commons*, Fifth Series, vol. 62, col. 1198. This, however, was contrary to the view taken by respectable legal opinion.

¹ Mr. Churchill in 1911 described the intercolonial position as 'unsettled'.

V

BRITISH NATIONALITY AND STATUS OF ALIENS ACTS, 1914-43—GENERAL SURVEY

THE statute which is the basis of the modern law of British nationality and naturalization was introduced by Viscount Harcourt, then Secretary for the Colonies, into the House of Commons on April 6, 1914, and it received the Royal Assent on August 7, 1914.¹ The Minister described the Bill as 'a final and welcome solution of a problem which, for thirteen years, has caused difficulty and discussion, and which seemed insoluble'.² He pointed out that its main object was to place the self-governing Dominions and the United Kingdom in the same position, so far as the grant of naturalization was concerned, i.e. to enable them to grant a certificate of naturalization which would be recognized as creating the status of a British subject, not only within the Dominion (as had hitherto been the case³), but in all parts of the Empire. The law of naturalization was, therefore, amended so that, henceforth, an applicant would be required to state his intention to reside in the British Empire,⁴ and not only in the United Kingdom. It was important, however, that naturalization should not be made too easy. The British Government was particularly concerned with the possibility that the United Kingdom, with its new social legislation, Old-Age Pensions, and National Health Insurance, would attract large numbers of undesirable aliens, who might profit by this legislation, but who would not prove a useful addition to the population. The Government had, therefore, insisted, throughout the discussion which had taken place, upon a minimum of five years' residence in the British Empire.

Another radical change effected by the Bill, though it did not figure in the debate, was the cutting down of the *ius sanguinis*.⁵

¹ Hansard, *Commons*, Fifth Series, vol. 65, col. 2190.

² *Ibid.*, vol. 62, col. 1197; *ibid.*, vol. 63, col. 19 (Report Stage); *ibid.*, vol. 65, col. 1462 (Third Reading, 29th July 1914).

³ 'An alien naturalized in Australia became an alien again the moment he crossed into New Zealand.' *Ibid.*, vol. 62, col. 1198.

⁴ The form of words adopted in Section 2 of the Act is that he intends to reside 'within His Majesty's dominions'.

⁵ Above, p. 108; below, p. 138.

The Bill was not violently contested. The only material opposition was on the subject of the nationality of married women. It was contended that there was no reason why the national status of a married woman should follow that of her husband as the Bill provided. The Minister did not accept the criticism, but made two concessions, during the passage of the Bill, to meet cases where the application of the rule that the nationality of a wife follows that of her husband might involve hardship. These were as follows:

- (a) A widow of an alien, who had lost her British nationality by marriage to that alien, was enabled to recover her nationality on his death.¹
- (b) If a British subject decides to become an alien his wife is not compelled to follow him, but allowed the option for the retention of her British nationality by a declaration in the prescribed form.²

Subject to minor amendments the Bill became law, and came into operation on January 1, 1915.

The Act is divided into three parts. Part I consists of one section, defining natural-born British subjects. Part II relates to the naturalization of aliens. Part III contains general provisions on the national status of married women and infant children, the loss of British nationality, and provisions relating to procedure and evidence. These will be examined in detail in the succeeding chapters of this book. For the present, the material point to notice is the application of the Act. Parts I and III were intended to apply to all territories which form part of the British Empire.³ Their application is, however, subject to the provisions of Section 26 of the Act. The effect of this section is to preserve the power of colonial or Dominion governments and legislatures to legislate on the subject of nationality, and to safeguard the validity of laws passed by them relative to the treatment of different classes of British subjects. The section must now be read in the light of the Statute of Westminster, 1931, which enables Acts of the Imperial Parliament to be

¹ Section 2 (5) B.N.A. See comment below, p. 161. This provision was contained in the Act of 1914 as originally enacted.

² Section 10 (4) B.N.A. (printed as amended up to November 17, 1933). This provision was, however, contained in the Act of 1914 as originally enacted, and it is not one of the later amendments.

³ In fact the Dominions re-enacted these Parts in most cases, and did not act on the view that they applied without further legislation in the Dominions. See below p. 244.

repealed or amended by the Dominions, in so far as they are part of the law of the Dominion. The extent to which Parts I and III are part of their law will be considered later. As regards Part II of the Act, Section 9 provides that it shall not have effect within the Dominions specified in the First Schedule to the Act, unless the Legislature of the Dominion adopts that Part of the Act.¹

In 1918 an Act was passed to amend the 1914 Act.² The main purpose of the amending Act was to introduce wider powers of revoking certificates of naturalization, and provide machinery for that purpose. The power of revocation under the 1914 Act was limited to cases where naturalization had been obtained by fraud. As a result of the war a new attitude and policy developed towards naturalization. Disloyalty to the Crown, and conviction for a criminal offence, were not grounds on which the Secretary of State could revoke a certificate of naturalization. Nevertheless, the experience of the war had made it clear that power to revoke on these grounds was required. So, too, it might happen that although an alien had declared his intention, when naturalized, of residing in the British Empire, he had failed to implement this intention. A person so naturalized might, immediately after naturalization, leave the country, settle in foreign parts outside England, and have no further connexion with British soil. Yet the Secretary of State lacked the power to revoke his certificate in such circumstances. Finally, it might emerge, after the certificate had been granted, that the naturalized person was not of good character, as had been supposed at the time of the grant. In all these cases power was sought, and obtained, under the 1918 Act, to revoke the certificate of naturalization. The provisions of the Act on these points were qualified, however, by the general proviso that the power to revoke was only to be exercised where it appeared that the continuance of the certificate was not conducive to the public good.

As first introduced into the House of Commons, the 1918 Act was confined in its scope to amending the law relating to revocation of certificates of naturalization. An attempt was made to widen the scope of the Bill, and to deal with such matters as the right of aliens to hold land, the status of married women, &c. These attempts did

¹ The following Dominions have adopted (or, rather, re-enacted), Part II of the Act: Canada (1914), Newfoundland (1916), Australia (1920 and 1936), New Zealand (1929 and 1935), South Africa (1926). See below, p. 244.

² Hansard, *Commons*, Fifth Series, vol. 108, col. 1078 (Committee Stage); *ibid.*, col. 1343 (Report Stage), *ibid.*, col. 622 (Second Reading).

not succeed, but the result of the debates was to cause a further amendment of the law relating to the status of married women. This was a provision that, where an alien is a subject of a state at war with His Majesty, it shall be lawful for his wife, if she was at birth a British subject, to make a declaration that she desires to resume British nationality, and 'thereupon the Secretary of State, if he is satisfied that it is desirable that she be permitted to do so, may grant her a certificate of naturalization'.¹

An important innovation was introduced by Section 7A as enacted by the 1918 Act. This gave power to the Secretary of State, when revoking a certificate of naturalization, to direct, by order, that the wife and minor children (or any of them) of the person whose certificate is revoked shall cease to be British subjects. There is nothing remarkable about this provision, where the wife was herself an alien who became naturalized, or, being an alien, acquired British nationality solely by reason of her marriage to a naturalized British subject. The innovation lay in the fact that the section, by referring to 'British subjects' without qualification, makes it possible for the first time, to deprive a natural-born British subject of his nationality. The section qualifies the power in the case of a wife who was a British subject at birth by providing that it shall not be exercised, unless the Secretary of State is satisfied that, if the wife had held a certificate of naturalization in her own right, the certificate could properly have been revoked under the Act.²

The 1918 Act provides for an inquiry presided over by a person who holds or has held judicial office. This inquiry is to deal with cases where it is proposed to revoke a certificate of naturalization. The Secretary of State may refer the case for inquiry, or the person affected may, in certain circumstances, claim an inquiry, in which case the inquiry must be held.

A further amendment of the 1914 Act was passed by Parliament in 1922. This touched upon a vital principle of nationality law: the transmission of British nationality by descent in the case of children of British parents born abroad. The 1914 Act, as explained above, limited the transmission of British nationality by descent to the first generation born abroad. This was a restrictive amendment of

¹ Section 2 (5) British Nationality and Status of Aliens Act, 1918. This became Section 10 (6) of the Act of 1914 as amended.

² There is no such limitation imposed on the discretion of the Secretary of State with regard to the children.

the law which had hitherto prevailed, and was mainly due to the major principle of policy which has inspired British legislation on nationality since the Commission of 1868: namely, the desire to avoid dual nationality so far as that can be achieved by municipal legislation. The war of 1914–18 created a different situation in this respect. During that war a large number of persons of British origin returned to the Mother Country from foreign countries to join the colours. In consequence a considerable feeling grew up that the nationality law should be modified as so to extend the application of the *ius sanguinis*, i.e. nationality by descent, as opposed to birth within His Majesty's dominions. It was even urged, in some quarters, that the *ius soli* should be correspondingly restricted, i.e. that persons of foreign origin born on British soil should not acquire British nationality, except in special circumstances. This last-mentioned proposal did not commend itself to the Government. Pressure was, however, brought to bear by the British Chambers of Commerce, in South America and in other parts of the world, in favour of the removal of the restriction on the transmission of nationality by descent contained in the 1914 Act.

The question thus raised was a difficult one. The Act of 1914 had followed, on the whole, a single principle—that of the place of birth—as determining British nationality. An amendment of the law would involve departing from this principle to a considerable extent. Again it might be felt that if a British subject goes abroad, and takes up permanent residence there, in a foreign country, and derives sustenance from it, and practically becomes a member of it, he can hardly complain if his children, who are born there, and are even to a greater degree members of the community where the family is established, are regarded as aliens in English law. In spite of these considerations there was a strong desire to meet the wishes of British communities abroad, even at the risk of creating some cases of dual nationality.

The question of amending the Act of 1914 was one in which the Dominions had to be consulted. The Home Office prepared a memorandum on the subject, which was considered by a special committee under the Chairmanship of the Secretary to the Colonies. It reported in favour of an amendment, and the Imperial Conference in 1921 approved the terms of its report¹ which were as follows:

‘The Committee having considered the memorandum prepared in the Home Office regarding the nationality of the children born abroad

¹ Summary of Proceedings, Cmd. 1474 of 1921.

of British parents, commends the principles of the proposals contained therein to the favourable consideration of the Governments of the Dominions and India.'

The proposals in question were to the effect that every child born abroad of a British father should be a British subject if two main conditions were satisfied. These conditions were calculated to show continued connexion and sympathy with the British Empire. Where they were fulfilled British nationality could be transmitted by descent from one generation to another indefinitely. The conditions were: (1) that the birth was registered at a British Consulate within one year of its occurrence, and (2) the child on attaining twenty-one must assert his British nationality by a formal act. An Act was passed on these lines in 1922.¹

During the course of all the legislation on the subject of British nationality which was passed after 1914, attempts were made to obtain special provisions for the national status of married women. The common-law rule had been that marriage has no effect on a woman's national status. This was altered in 1844 and 1870, and modified in 1914. But the general principle of the 1914 Act was preserved in all later legislation—that a woman by marriage to an alien loses her British nationality. It was not foreseen that, in many cases, a woman by marrying an alien did not acquire his nationality. In that event, by the operation of Section 10 of the 1914 Act, she lost her British nationality, and became stateless. It was desirable to remedy this situation, and The Hague Conference of 1930 on the Codification of International Law agreed on a Convention on the subject. The British Government introduced a Bill in 1933, which became law and carried into effect the 1930 Convention.²

The national status of married women became a thorny subject as the movement for the equality of women with men gathered strength. On the one hand there were protagonists of the principle that the husband is the head of the family, and that nationality legislation must have regard to the family as a unit, and not to the individual. Therefore, it being desirable that the unity of husband and wife in the family be preserved, the wife's status should in principle follow that of her husband. Subject to the very far-reaching qualifications introduced in 1933 coupled with those of

¹ Hansard, *Commons*, Fifth Series, vol. 156, col. 521.

² *Ibid.*, vol. 281, cols. 353, 822, 825. See, as to the provisions of the Convention, above, p. 22.

1918, this may be said to be the theory of English legislation on the subject. A contrary view has been urged from time to time: that there is no reason why husband and wife should have the same nationality, and a woman, whether married or not, should have the same right to choose her nationality as a man. A Bill was introduced, with this object, in 1922, but did not proceed beyond the Second Reading, when it was referred to a Select Committee appointed in that year.¹ The Committee failed to arrive at a conclusion.

The Imperial Conference of 1923 decided that no case had been made out for any general change in the law; and the Government of the United Kingdom decided that any legislation would have to be confined to certain hard cases.² Two Bills have been introduced since then, one in 1932,³ and one in 1938⁴ (by Lord Alness), with the object of restoring the common-law position as it was before 1870. Neither of these two Bills succeeded in proceeding beyond the Second Reading, and they failed to become law.

The Imperial Conference of 1937 failed to reach agreement on the national status of married women. The Act of 1933 does not apply to the Dominions, nor (owing to the passing of the Statute of Westminster, 1931) is it *ipso facto* part of their law. In fact their legislation does not in all cases follow the 1933 Act. The law of Eire provides that marriage shall not affect the national status of a woman.⁵ New Zealand, Australia, and South Africa have passed legislation on the same lines as the United Kingdom Act of 1933.⁶ British India and Canada⁷ have not passed any legislation on this subject.

The most recent amendment of the law is the British Nationality and Status of Aliens Act, 1943. This carries out a number of miscellaneous amendments, most of them too technical to be noticed here.⁸

¹ *Ibid.*, vol. 152, cols. 548, 1150. The Select Committee's Report was ordered to be printed in 1923, and contains much valuable material on this subject. H. of C. Pap. (1923), No. 115.

² Prime Minister's reply, March 3, 1924: Hansard, *Commons*, Fifth Series, vol. 170, col. 973. For the Report of the Imperial Conference relative to married women see Cmd. 1988 of 1924.

³ Hansard, *Commons*, Fifth Series, vol. 268, col. 447.
⁴ *Ibid.*, vol. 110, col. 1127. This Bill was withdrawn for lack of government support; the opinion of the Government being that no general change was possible without Dominion concurrence.

⁵ Section 15, Irish Citizenship Act, 1935.

⁶ Below, p. 245. Subject, however, in the case of New Zealand and Australia, of special legislation allowing British women who marry aliens to make a declaration retaining, *within Australia and New Zealand*, their British nationality.

⁷ See, however, the Canadian Citizenship Act, 1946.

⁸ See below, Part III.

The most important amendment in principle is the removal of some of the restrictions imposed on the acquisition of British nationality by descent under the Act of 1922. Under the 1943 Act a child born abroad, whose father was, at the time of the birth, a British subject,¹ will become a natural-born British subject under the Act subject to the following conditions: (*a*) if he is born after, or within one year before the commencement of the Act, his birth must be registered at a British Consulate within one year after it occurs, (*b*) in *any* case whether he is born before or after the commencement of the Act (April 22, 1943) if his birth is at *any* time registered with the permission of the Secretary of State. Under the 1922 Act the Secretary of State could not authorize registration in any case later than two years from the date of the child's birth, and there was no power to extend the period of two years.

¹ This includes a naturalized British subject. See Section 27 (1) of the 1914 Act.

PART III

MODERN BRITISH NATIONALITY LAW AND PRACTICE

INTRODUCTORY NOTE

IN the preceding chapters we have been concerned chiefly with the historical background of British nationality, the development of common-law ideas, and the way in which those ideas have been affected by statute. In this Part of the book we shall confine ourselves to the detailed study of the legislation of the United Kingdom on nationality, and to the interpretation of that legislation in the light of the decisions of the courts and administrative practice. It will be noticed we have added 'administrative practice'. There are a large number of points arising on nationality legislation which are not settled by the courts, and, although it will be understood that administrative practice does not decide these points authoritatively, and is not in itself a source of law, nevertheless, on many such points it is a valuable guide to the better legal opinion about them.

The scheme of exposition adopted in this Part of the book follows the main cross-headings of the British Nationality and Status of Aliens Act, 1914, and it is hoped that this will provide a convenient mode of reference to the subject-matter. Amendments of this Act (referred to as the 'Principal Act') will be indicated as follows: Amendments by the Act of 1918 will be enclosed in angular brackets < >; those of 1922 in curly brackets { }; those effected in 1933 in half-brackets ⁝ ⁞. Amendments effected by the Act of 1943 will be discussed separately under the relevant subject heading in the appropriate chapter. Matter which has been repealed by the Act of 1943 is shown by square brackets [].

It is convenient to mention at this point that the Acts of 1914, 1918, 1922, and 1933 are authorized, by Section 2 (1) of the British Nationality and Status of Aliens Act, 1933, to be cited together as the British Nationality and Status of Aliens Acts, 1914-33. Section 2 (2) of that Act, read with Section 3 (3) of the British Nationality and Status of Aliens Act, 1922, authorizes and directs the printing of the Principal Act together with the amendments carried out by the Acts of 1918, 1922, and 1933, whether by way of substitution,

addition, or omission. The copy so printed is the version used here, and no copy of the Act printed after 1933 is printed otherwise than in this manner. Any copy so printed is headed 'Printed in accordance with Section 2 (2) of 23 and 24 Geo. V, c. 49 as amended up to November 17, 1933, by the British Nationality and Status of Aliens Acts, 1918 to 1933'. This is the copy which should be used and it proves itself in the courts. There is no provision in the Act of 1943 authorizing that Act to be incorporated in a similar manner with the earlier legislation, and accordingly it is discussed as a separate measure.

The British Nationality and Status of Aliens Acts, 1914-33, will be referred to under the abbreviation B.N.A. with the understanding that this means the 1914 Act as printed with amendments as stated above.

I

NATURAL-BORN SUBJECTS

Section 1

‘(1) The following persons shall be deemed to be natural-born British subjects, namely:—

(a) Any person born within His Majesty’s dominions and allegiance.’

This section of the Principal Act as amended defines those persons who are British subjects by birth. We have seen¹ that the common law recognized as natural-born subjects all those who were born within the ligeance of His Majesty. The section is more explicit because it adopts as the primary test for category (a) birth ‘within His Majesty’s dominions’. This, however, is qualified by the addition of the words ‘and allegiance’, so that the two conditions must exist if a person is to derive his title to British nationality from Section 1 (1) (a) of the Act. We have also seen² that a person may be born within the dominions, and yet not within the allegiance, and the classes of these persons, so far as the common law is concerned, have been enumerated. It is now necessary to examine in detail the law appertaining to this aspect of our subject.

First it will be noted that the section uses the words ‘any person’. This includes, under Section 1 of the Interpretation Act, 1889, any individual, male or female. It does not include a corporation as the expression ‘born’ is inapplicable to corporations, and the Acts deal only with the nationality of human beings. It does include illegitimate children because the word used is ‘person’ not ‘child’: the latter expression if it had been used would not include an illegitimate child.

‘Shall be deemed to be’ implies that, for all purposes (civil rights, construction of statutes referring to ‘natural-born British subjects’, &c.), the persons enumerated in the classes which follow are to be regarded, in law, as natural-born British subjects, as opposed to naturalized British subjects or denizens, or simply ‘British subjects’ as defined in Section 27 (1) (where it will be seen that ‘British subject’ means not only a natural-born British subject, but also a naturalized British subject, and a person who has become a subject of His Majesty by reason of any annexation of territory).

¹ Above, p. 35.

² Ibid.

This definition is law, not only in the United Kingdom of Great Britain and Northern Ireland, but throughout the British Colonies and Dominions (except, as regards the latter, in so far as the Dominions have altered or repealed it).

‘Within His Majesty’s dominions.’ Nowhere in the Act is there any definition of ‘His Majesty’s dominions’. The expression must be distinguished from ‘His Majesty’s Dominions.’ It means all territory which is directly governed in the name of His Majesty, and not a protected state or mandated territory, or a territory administered under the Foreign Jurisdiction Act, 1890. Besides the territory included within boundaries with other states the dominions of the Crown include ‘national waters’, which are rivers, bays, gulfs, and estuaries at least six miles across,¹ and according to common law, certain parts of the coastal waters of the United Kingdom called ‘King’s Chambers’ irrespective of their width. Elsewhere in His Majesty’s dominions there are certain bays (such as Conception Bay) which, although more than ten miles across, are regarded by prescriptive usage, as part of His Majesty’s dominions (so-called ‘historic bays’). In addition, and beginning from the line at which these waters stop, the King’s dominions include adjacent territorial waters up to a distance of three miles from the coast. It is not, however, necessary to consider, in exact detail, how far the dominions of the Crown extend towards the sea, because it is now settled that a statement made on behalf of the Crown as to the territorial limits of its dominions is conclusively binding on the courts.²

Any person born within the King’s dominions so defined, even though his mother is in those dominions for a temporary purpose, and not a permanent resident, is a natural-born British subject. Prima facie this rule would apply to births on board foreign merchant vessels passing through British territorial waters, but the obvious inconvenience and impracticability of such a rule is expressly avoided by Section 1 (2) of the Act (as to which see below, p. 150).

The position of persons born in aircraft passing over British territory has not been dealt with specifically by statute, the question being in the past so unlikely to arise in practice as to make such

¹ And this could arguably be extended to ten miles. See Hurst, *B.Y.I.L.* (1922), p. 42.

² *The Fagernes*, [1927] P. 311. As to ‘historic bays’ see *Direct U.S. Cable Co. v. Anglo-American Telegraph Co.* (1877), 2 App. Cas. 394; and as to territorial waters see Territorial Waters Jurisdiction Act, 1878.

provision unnecessary. With the development of aerial traffic now likely to take place the possibility of such an occurrence as a birth on board an aircraft cannot be excluded. What is the nationality of a person so born? The air-space above British territory is, according to international law,¹ subject to complete and exclusive British sovereignty. It forms part of the dominions of the Crown. *Prima facie* such a person is also born within the allegiance of the Crown unless he can be brought within any of the recognized exceptions set out below. However, convenience points to the test of nationality being made dependent on the registration of the aircraft by analogy to the case of ships (below, p. 146).

Every person born, or actually within the dominions of the Crown, is within the allegiance, provided two conditions are satisfied: (a) the protection of His Majesty extends to him, *and* (b) he is under a duty of obedience to His Majesty. Both these conditions are assumed to exist unless the contrary can be proved. In the following cases allegiance does not exist:

(i) Foreign Sovereigns and Heads of States, foreign ambassadors and their families, though under the protection of His Majesty, do not satisfy the second condition; so they do not owe obedience to him, being under the law of nations exempt from any such duty. Consequently the legitimate children of foreign ambassadors² are not born within the allegiance, though born in British territory. This rule is not based on the physical immunity of the embassy premises, or on the fiction that they are part of the territory of the sending state. It is immaterial whether the ambassador's children are born in the embassy building or in some other place in British territory: the rule is the same, wherever the child is born in the King's dominions. The illegitimate child of a foreign ambassador is not recognized as his child at common law, i.e. such a child is *filius nullius* and cannot come within the rule. He is a British subject, if born within His Majesty's dominions, because there is nothing to exclude the duty of obedience.

The variety of persons now employed on the staff of an ambassador has greatly extended the scope of diplomatic privileges, and the practice, at the present day, is to recognize that the rule regarding the nationality of children of ambassadors applies to anyone who

¹ Article 1, Air Navigation Convention, 1920.

² What is said hereafter about ambassadors applies to Sovereigns and Heads of States as well.

is entitled to diplomatic immunities, i.e. who is recognized as such by the Foreign Office, and included in the Diplomatic List. The Diplomatic Privileges (Extension) Act, 1941, may have extended the scope of the rule to other persons. The rule does not apply to the children of foreign Consuls born on British soil. Children of the official staff of such Consuls, and of the Consuls themselves, may, however, make a declaration of alienage under Section 14 of the Act.¹

Example

X is the child of A, an assistant archivist in the French Embassy in London, born in London during A's service there. X is not a British subject, if A, at the time of X's birth, is included in the Diplomatic List. In fact, assistant archivists are so included.

(ii) The children² of members of a foreign invading army, or of enemy aliens who enter the occupied area during the occupation, are not born within the allegiance, if they are born in the occupied area. They are not born under the King's protection nor under any duty of obedience to him. In the words of Coke: 'If enemies should come into the realm, and possess town or port, and have issue there, that issue is no subject to the King of England, though he be born upon his soil, and under his meridian, for that he was not born under the ligeance of a subject, nor under the protection of the King.'³

Coke says nothing specifically about:

- (a) the illegitimate children of fathers or (having regard to the conditions of modern warfare) mothers who are members of the invading army;
- (b) the children, legitimate and illegitimate, of persons, whether British subjects or not, residing in that part of His Majesty's dominions before the invasion occurred, the children being born during the enemy occupation;
- (c) the children, legitimate and illegitimate, of enemy aliens, born outside the part occupied by the enemy, but within His Majesty's dominions.

We must begin by considering the application of the words 'dominions and allegiance' to an area occupied by the enemy. Such an area does not cease to form part of the King's dominions merely

¹ Below, p. 202.

² The question whether this should be limited to legitimate children is dealt with below, p. 128.

³ 7 Co. Rep. 6 (b); *ibid.* 18b.

by reason of enemy occupation, for sovereignty over the area remains vested in the King. Certain rights are granted under the laws of war to an enemy occupant, but not the rights of sovereignty, these being transferred only by cession or annexation, to or by, the occupying state at the conclusion of hostilities. Therefore, if the enemy occupation is temporary (the case under discussion), all persons resident in the area occupied before the enemy invasion began owe allegiance to the Crown. In *De Jager v. Attorney-General of Natal*¹ the Judicial Committee of the Privy Council approved this doctrine in the following words:

‘The protection of a State does not cease merely because the State forces, for strategical or other reasons, are temporarily withdrawn, so that the enemy for the time being exercises the rights of an army in occupation. On the contrary, when such territory reverts to the control of its rightful sovereign, wrongs done during the foreign occupation are recognizable by the ordinary courts. The protection of the sovereign has not ceased. It is continuous, though the actual redress of what has been done amiss may be necessarily postponed, until the enemy forces have been expelled. Their Lordships consider that the duty of a resident alien is so to act that the Crown shall not be harmed by reason of its having admitted him as a resident.’²

This conception of the continuous allegiance of the Crown extending over the areas occupied by the enemy is agreeable to international law.³ Such allegiance cannot be attributed to an invading army, whose hostile intentions, together with the existence of a state of war under which they are recognized as belligerents by the Crown, make allegiance in either of its two aspects (protection by the Crown: obedience by the subjects) incompatible with it. The invading army is under the protection of, and owes obedience to, an enemy foreign Power, and it is not within the allegiance of His Majesty. The protection of the enemy must be deemed to extend not only to the armed forces, but to their administrative, official, and industrial workers, or to any person whatsoever brought with them during the invasion or subsequently entering the occupied area, by permission of the enemy, for the purpose of giving succour and support to the enemy.

¹ [1907] A.C. 326.

² The court held that a resident alien in the British colony of Natal (actually of enemy nationality) who took up arms after the temporary withdrawal of British forces from part of that colony and rendered assistance to the Boer forces against the British Crown was guilty of high treason.

³ Hall, *International Law* (8th ed. 1924), pp. 557–8.

The allegiance thus set up must necessarily be deemed to extend to all legitimate children of these persons, who are actually born in the occupied area. In other words, the expression 'issue' used by Coke is clearly intended to cover, in this instance, all lawful issue of the enemy born in the occupied area. It cannot be consistent with principle that the King's protection should extend to the offspring of an invader. The question is not whether under the law of the invader such offspring are nationals of the enemy, that being irrelevant to the point, but under whose allegiance they are born. We have seen that the doctrine of Coke laid down as one of the conditions of a subject that 'his parents must be under the actual obedience of the King'.¹ He adds: 'Any place within the King's dominions without obedience can never produce a natural subject.' He speaks of ligeance as a 'quality of the mind' and the whole tenor of his doctrine indicates plainly that, in order to be born within the allegiance, it is not in every case sufficient to be born within the King's dominions. This is common-law doctrine, it is true, but the conception of allegiance is a common-law conception. So far as common-law doctrine goes, a child born to an enemy invader, if legitimate, cannot be born within the allegiance: the very circumstances of his birth exclude it.

A broad distinction can, therefore, be made between (1) enemy invaders and those forming part of the invading population, and (2) residents in the occupied area before the invasion began, whether British subjects or not. Class (2) fall under the King's allegiance; their children are born within that allegiance and are natural-born British subjects. Class (1) fall outside the allegiance of the King, and under that of the enemy; the national status of their children must follow that of their parents, for in this instance the allegiance within which the child is born is that of the parents.

Going back to all three categories set out above,² it is submitted that the word 'issue' in Coke's rule means legitimate offspring, and that the position of the three categories is as follows:

(a) If born of a mother who was resident in the area occupied by the enemy before the invasion, such children are natural-born British subjects. If born of a mother who was a member of the armed

¹ In normal peace-time conditions Coke would be assuming that the wife was with her husband. When a child was born within the dominions, obviously the mother would be under the actual obedience of the King. But the point cannot be defined too closely, and the general intention could hardly be more than to indicate that cases might arise where actual obedience was incompatible with allegiance to a foreign Power.

² p. 126.

forces of the enemy, or who entered the area in order to give them assistance, or to minister to their needs, their position is doubtful. English law does not take any notice of the allegiance of the mother, but only that of the father, and, in this case, according to English law, the child has no 'father', and consequently there is nothing to displace the natural allegiance to the Crown which is presumed to exist whenever a child is born within the King's dominions. According to this view, which seems to the writer to be correct, the child would be a natural-born British subject. If, however, the allegiance of the mother of an illegitimate child ought, in such cases, to be taken into account, the child is an alien.¹

(b) Such children, whether legitimate or not, are natural-born British subjects, being born within His Majesty's dominions and allegiance. It is submitted that this is so, even if the child's father has treasonably joined the enemy forces, for the allegiance due to the King cannot be shaken off in time of war (*Rex v. Lynch*: above, p. 68). Aliens, whether friendly or neutral, who were resident in the occupied area before the invasion began, retain the duty of allegiance in spite of the invasion, and, by joining the enemy forces, commit treason. The children of such resident aliens are also natural-born British subjects.² Aliens, however, who enter the occupied area after the invasion has begun, with the licence and under the protection of the enemy, do not, presumably, owe allegiance to His Majesty.

(c) Here we come to a completely different class. We have so far been discussing the effect of allegiance in occupied territory according to Coke's rule. Persons born outside the occupied area are not contemplated by his rule, and we must now discuss the question of their nationality. Such persons may be legitimate or illegitimate, born in His Majesty's dominions, in territory not occupied by the enemy, but the offspring of enemy aliens. Such enemy aliens may be divided into the following classes:

(a) Members of the armed forces of the enemy engaged in fighting

¹ See Dicey, *Conflict of Laws* (5th ed. 1932), Rule 22, Exception 2, in which he puts the position as follows: 'Any person who (his father being an alien enemy) is born in a part of the British dominions which, at the time of such person's birth, is in hostile occupation, is an alien.' Here 'father' means, it is believed, father of a legitimate child. See McNair, *Legal Effects of War* (1944), pp. 333-4, especially the note 2 at p. 333.

² See the observations of Fuller C.J. in *United States v. Wong Kim Ark*, [1898] 169 U.S. 649, who pointed out that 'enemy occupation in no wise affects the nationality of children of subjects or citizens in the occupied area'.

His Majesty's forces, their wives being in England, and their children being born there (or in any other British territory not occupied by the enemy). If they were resident aliens, and returned to their native land before hostilities began, or were there when hostilities began, it is probable that, by leaving their wives and families, and possibly their effects, in England, they retained a temporary allegiance, because they had not done all they might have done to shake off that allegiance. Such a view may lead to the conclusion that some of them took up arms treasonably against His Majesty,¹ but whether this be so or not, the allegiance is sufficient to prevent a child of such an alien, born in His Majesty's dominions, from being withdrawn from the allegiance of His Majesty. It is submitted that such children are natural-born British subjects, under Section 1 (ii) (a). The allegiance of the 'father' of an illegitimate child cannot be relevant in this connexion, and the children of enemy aliens of the class under consideration are also natural-born British subjects.

- (b) Enemy prisoners of war. Here again the question is whether the children of such enemy aliens, though born within the King's dominions, are born within the allegiance. Assuming the child to be legitimate the case is analogous to that of the invading enemy or the ambassador in time of peace. The enemy prisoner of war is a member of the armed forces of a foreign power, and owes no allegiance to the Crown: indeed, he owes an allegiance hostile to His Majesty. The better opinion seems to be that any child of his, though born in the King's dominions, is an alien.²
- (c) Interned enemy aliens. The temporary allegiance of such aliens has never ceased, and their children, if born within the King's dominions, are, it is submitted, natural-born British subjects under Section 1 (1) (a).³

¹ Whether this conclusion is reached or not depends on the facts of the particular case under consideration. See *Joyce v. Director of Public Prosecutions*, [1946] All E.R. 186.

² See McNair, *Legal Effects of War* (1944), p. 17, who is 'inclined' to take this view. The case is, as he says, highly improbable in practice, though it is possible that a German, who returned to fight for his country, leaving a wife enceinte in England, might have a child born after he was brought here as a prisoner of war.

³ McNair, *ibid.*, p. 16, is of this opinion, and appears to dissent, so far as internees are concerned, from the contrary view expressed in Dicey, *Conflict of Laws* (5th ed. 1932), Rule 22, Exception 3, which states: 'Any person born in the British dominions

Examples

X is born in Jersey during the German occupation (1940–5). He is the son:

- (a) of a German officer whose wife is in Jersey at the time the child is delivered;
- (b) of a German officer by a woman member of the occupying force out of wedlock;
- (c) of a German official by his wife accompanying him on a visit to Jersey during the occupation;
- (d) of a Swedish business man by his wife, similarly on a visit by arrangement with the German authorities;
- (e) of an English resident living in Jersey before the invasion;
- (f) of an English visitor caught in the island when the invasion began.

In cases (a) and (c) X is an alien and (*semble*) in (b) and (d). In cases (e) and (f) he is a natural-born British subject.

Let us take a second series of examples:

A is the son:

- (a) born in London in 1940 of the wife of a German refugee who has been interned;
- (b) born in Jersey under enemy occupation of a German civilian interned in England;
- (c) born in Oxford of the wife of a German prisoner of war;
- (d) born in an internment camp of a German single woman;
- (e) born in a prisoner-of-war camp of a German female prisoner of war.

In cases (a), (b), and probably (d), A is a natural-born British subject. In case (e) A is probably not a British subject, assuming the allegiance of his mother to be relevant in such a case, but the position is doubtful. In case (c) A is, for the reasons given above (p. 130), an alien.

The position of children of members of alien but allied or friendly armed forces temporarily on British territory by invitation of, or by agreement with, the British Government is uncertain. It may be argued that as, in practice, such forces enjoy extraterritoriality, and are here on a mission incompatible with allegiance to the local sovereign (as in the case of an ambassador or an invader), therefore their children are not born within the allegiance, and are aliens. If the view is right that, at common law, the children of British soldiers born abroad are natural-born British subjects, it may be argued that the same principles apply to the converse case, i.e. that the while his father is an alien enemy, is imprisoned as a prisoner of war, or interned as a matter of precaution in any part of the British dominions or in an allied country is (*semble*) an alien.' This is described as a deduction from the principles laid down in Rule 22, Exception 2 (quoted above, p. 129, n. 1), but that exception deals only with hostile occupation.

presumption is against any allegiance being due from foreign armed forces, though friendly. It is not certain, however, that this view of the common law is correct, and it was, in fact, rejected in *De Geer v. Stone*.¹ If, again, the narrower view put forward below (p. 142) regarding the effect of *Craw v. Ramsey* is correct, it would argue in favour of a similar limitation on the extent to which a friendly foreign armed force is exempt from the local allegiance. The case of the invader is easier to explain, for there is no effective competing allegiance in the area occupied, at least for the time being, though the allegiance owed by the inhabitants does not cease in contemplation of English law. But where there is a friendly foreign armed force the local sovereign is not displaced at all, and a measure of temporary allegiance is not apparently incompatible with allegiance to a foreign Power.² It would be an extension of the common law, so far as the decided cases go, to apply the rules relating to ambassadors and invaders to foreign armed forces, so as to prevent their children being regarded as born within the allegiance. Pending a decision by the courts it is difficult to do more than indicate the two possible views which may be held on the matter, and both these views are deductions from general principle, and not rules for which a judicial decision can be cited by way of authority.

General comment. It is important to note that the word 'and' in Section 1 (1) (a) is cumulative, and not alternative. The two conditions must be satisfied before a person can fall within it so as to be a natural-born subject. He must be:

- (a) born within the dominions of His Majesty *and*
- (b) born within the allegiance of His Majesty.

We have seen that (b) normally follows from (a), but not always.

Section 1 (1) (b):

{ (b) Any person born out of His Majesty's dominions whose father was, at the time of that person's birth, a British subject, and who fulfils any of the following conditions, that is to say, if either—

- (i) his father was born within His Majesty's allegiance:

or

- (ii) his father was a person to whom a certificate of naturalization had been granted; }

or

¹ 22 Ch.D. 243.

² McNair, *Legal Effects of War* (1946), p. 356, who makes the point that the exercise of sovereignty over members of the armed forces by the commander on British soil is by implied permission of the local sovereign.

- (iii) his father had become a British subject by reason of any annexation of territory;
or
- (iv) his father was at the time of that person's birth in the service of the Crown;
[or
- {(v) his birth was registered at a British consulate within one year or in special circumstances, with the consent of the Secretary of State, two years after its occurrence, or, in the case of a person born on or after the first day of January, nineteen hundred and fifteen, who would have been a British subject if born before that date, within twelve months after the first day of August, nineteen hundred and twenty-two;] and . . . '¹}

We will first consider these words generally together with sub-head (i), and later proceed to deal with the succeeding sub-heads separately.

This part of the section is to be read with the understanding that persons born out of His Majesty's dominions are only British subjects if they fall within the categories specified in Section 1 (1) (b). If they do not fall within these categories they are not British subjects. There is one overriding condition which applies to all five headings enumerated in the sub-section: that the 'father' was at the time of that person's birth a British subject. It must be observed, however, that the material in square brackets was repealed in 1943, only to be re-enacted in a form which enables British nationality to be transmitted by registration from generation to generation indefinitely. Such transmission was possible under the repealed sub-head, but the Act of 1943 removes the restrictions as to time which the sub-head contained.

It was held in *Abraham v. Attorney-General*² that the meaning of the term 'father' in this section, and, indeed, as applied in the legislation about British nationality generally, is limited to a father of a person who is legitimate at the date of his birth. A person may, under the Legitimacy Act, 1926, be legitimized by the subsequent marriage of his parents as a result of the provision in Section 1 (1) of that Act that 'Where the parents of an illegitimate person marry, or have married, one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate child was, or is at the date of the marriage, domiciled in England or Wales, render that person, if living, legitimate from the commencement

¹ See below, p. 146.

² [1934] P. 17. See also *Shedden v. Patrick* (1854), 1 Magg. H.L. 535, cited in that case.

of this Act or from the date of the marriage, whichever last happens'. This provision does not have the effect of conferring British nationality upon a child so legitimated, the reason being that the material date, for the purposes of nationality, is that of the child's birth. It is not necessarily the case that legitimacy means being born in lawful wedlock. This is what it means in English internal law which recognizes no other source of *legitimacy*, whilst allowing, as we have seen, *legitimation* in certain circumstances. But it may be that the question of legitimacy falls to be decided by a foreign system of law. In other words, in considering whether a person is legitimate, we have to apply the rules of private international law. Legitimacy is a matter of status which, according to those rules, falls to be determined according to the law obtaining in the child's domicile of origin, which, according to the decisions of the English courts, is that of his father at the date of his birth.¹ It may be that, under a foreign system of law, a person is legitimate, though born in a bigamous marriage (which is *ex hypothesi* null and void, if such a marriage falls to be considered by English internal law and, as a result, the person concerned would be illegitimate).² Alternatively the issue of a void marriage may, under a foreign system of law, be legitimate if one of the parties marries in good faith, not knowing the marriage to be a nullity.³ Neither of these propositions is true in the English internal law of marriage, but the law of the father's domicile may contain such rules and, if that is so, they must be applied to determine the question of legitimacy. Again, a polygamous marriage is not recognized by English internal law, but, under the law of the father's domicile, such a marriage may be a perfectly valid marriage. In that event the children of the 'father' in such a marriage are legitimate, at any rate for the purposes of Section 1 of B.N.A. 1914.⁴

The rules of private international law to be applied are as follows:⁵

- (1) If the domicile of origin of a child is foreign, his legitimacy is determined solely by the law of his father's domicile, no matter

¹ Cheshire, *Private International Law* (2nd ed. 1938), p. 376.

² e.g. the case of *Moore v. Saxton*, quoted in Cheshire, *ibid.*, p. 379.

³ e.g. under French law: Amos and Walton, *Introduction to French Law* (1935), pp. 64-5.

⁴ See, for a full discussion of the effect of polygamous marriages, Beckett, *Law Quarterly Review* (1928), p. 348. See also *Baindail v. Baindail*, [1946] 62 T.L.R. 263.

⁵ These rules, slightly adapted, are taken from Cheshire, *Private International Law* (2nd ed. 1938), pp. 379, 380.

whether the determining factor, according to that law, is birth in lawful wedlock or not.

- (2) If the domicile of origin is English, his legitimacy depends upon birth in lawful wedlock, for, apart from legitimation (which must be carefully distinguished), that is the only test of legitimacy in English law.

The position of a child legitimated under a foreign system of law, by a foreign judgment or by a subsequent marriage, is the same as his position would be if he were legitimated under the rules of English law. It is *legitimacy*, i.e. his status at birth, and, not *legitimation*, which is important for the purposes of Section 1 (1) (b). Recognition of paternity under some foreign system of law may be analogous to legitimation, but care must be taken to ascertain whether it is so. It may be, under the foreign law, no more than a formal acknowledgement of the child's legitimacy, and, in that event, it may constitute *proof* of that legitimacy, the child being treated as legitimate from birth. Adoption, whether under English law or not, does not affect the issue whether the child was legitimate at birth, whatever effect adoption may have on his status later. Adoption, even by a British adopter, cannot, therefore, confer British nationality.

So far we have said nothing about the *validity* of a marriage recognized for the purposes of private international law, as this is subordinate to the main question: has the person a 'father' in the legal sense recognized by the relevant system of foreign law? Where, however, it is clear that a child was born of persons who purported to be married then the validity of the marriage becomes relevant, and that depends on the application of the appropriate rules of private international law. These rules are set out in leading text-books on the subject and will not be reproduced here.¹

A 'British subject' means² a natural-born British subject, a naturalized British subject, and a person who has become a British subject as a result of any annexation of territory (Section 27 (1)). The expression does not apply to British subjects who are only locally naturalized under colonial statutes.³

¹ Dicey, *Conflict of Laws* (5th ed. 1932), p. 732; Cheshire, *Private International Law* (2nd ed. 1938), p. 313; Wolff, *Private International Law* (1945), p. 317.

² The word 'means' and not 'includes' has been used in Section 27. The definition is exhaustive for the purposes of the Act. (But note that a woman can become a British subject by marriage, and see as to the lacuna in Section 27 regarding this below, p. 222.)

³ See below, p. 268.

It will be noted that under the 1914 Act as printed above, the transmission of British nationality by descent alone was limited to the first generation born abroad. At common law persons born outside His Majesty's dominions (apart from certain exceptions mentioned above)¹ were not British subjects. The settlement of British communities abroad during the period of commercial expansion, bound by ties of sentiment to their mother country, made it politically undesirable² to maintain this rule, and, under eighteenth-century legislation described above, the child, and possibly the grandchild, of a natural-born British subject were deemed natural-born British subjects. The 1914 Act drew the line at the first generation, thus curtailing the operation of the *ius sanguinis*, hitherto in force under the Act of 1772, which extended the privilege of being a British subject to a second generation born abroad. The curtailment was in accordance with the government policy at the time, of basing the acquisition of British nationality, so far as possible, on the *ius soli*.³ It was thought that the existence abroad of a large class of persons, divided by two generations from the mother country, who were nevertheless claimed as British subjects, might be the cause of friction between the British Government and the local authorities, supposing those authorities should claim persons born on their territory as their nationals, and assert, in respect of them, the right to conscript them for the armed forces, and require of them the other duties normally attaching to their subjects. For this reason, under the 1914 Act the acquisition of nationality solely by descent from a British subject was limited to the first generation born abroad. The position may be summarized as follows:

(1) Under the Act of 4 Geo. II, c. 21, children born out of His Majesty's allegiance before January 1, 1915, of a father who was a natural-born British subject *at the time of the birth of such children*, are deemed to be, for all purposes in law, natural-born British subjects.⁴

¹ Above, p. 35.

² The recital in the preamble to 13 Geo. III, c. 21, makes this clear. This reads as follows: 'Whereas divers natural-born subjects of Great Britain, who profess and exercise the Protestant religion, through various lawful causes, especially for the better carrying on of commerce, have been and are, obliged to reside in several trading cities and other foreign places, where they have contracted marriages, and brought up families; and whereas it is equally just and expedient that the kingdom should not be deprived of such subjects, nor lose the benefit of the wealth that they have acquired, and therefore not only the children of such natural-born subjects, but their children also, should continue under the allegiance of His Majesty.'

³ Above, p. 108.

⁴ Above, p. 69.

(2) Under the Act of 13 Geo. III, c. 21, any child born before January 1, 1915, out of His Majesty's allegiance, whose father was entitled, under the Act of 4 Geo. II, c. 21, to be regarded as a natural-born British subject, was also deemed to be a natural-born British subject, without registration or other formality.

(3) The rights of persons falling into categories (1) or (2) above, which are conferred upon them by the statutes of 4 Geo. II, c. 21, and 13 Geo. III, c. 21, are not abrogated by later legislation, notwithstanding the fact that those Acts are repealed by the 1914 Act.

(4) Children, born out of His Majesty's dominions after January 1, 1915, are natural-born British subjects, if their father was born within His Majesty's allegiance (i.e. was a natural-born British subject), *and he was still, at the birth of the child, a British subject*. This results from Section 1 (1) (b) (i). The national status of such children is not conditional in any way upon the registration of their births at a local British Consulate. Registration was, indeed, a separate *and entirely new mode* of acquiring British nationality, introduced by Section 1 (1) (b) (ii) (discussed below), and not a condition applying to all cases of births abroad of children whose father was, at the time of his child's birth, a British subject. Nevertheless, even in cases where a sufficient title to the status of a British subject can be shown under Section 1 (1) (b) (i), registration of the birth of a child fulfilling the requirements of that sub-head is desirable for purposes of reference and record. Facilities for registration of births of such persons are, accordingly, provided at British Consulates abroad. The words 'person born . . . whose father was', in Section 1 (1) (b), do not include illegitimate children,¹ and the births of such children may not be registered at a British Consulate.

(5) A posthumous child, born out of His Majesty's dominions, of a father who was, at the time of his death, a British subject, had no claim, under Section 1 (1) (b), to British nationality because at the time of his birth his father (being dead) was not a British subject. The law on this point was altered by Section 3 of the British Nationality and Status of Aliens Act, 1943. This provides, with retrospective effect, that the posthumous child of a British father is placed in exactly the same position, as regards the acquisition of British nationality at birth, as he would have been if his father had survived and remained a British subject until after his birth (see below, p. 157).

(6) It must be noted that, although the transmission of British

¹ Above, p. 133.

nationality by descent to persons born out of His Majesty's allegiance, as defined by the Acts of Geo. II and III, was curtailed by the Act of 1914, in one respect, i.e. the line was drawn at the first, and not the second, generation, in another respect, it was *extended* even by the Act of 1914; and further extended by the Acts of 1918, 1922, and 1943. How was it extended? British nationality *iure sanguinis* could only be acquired under the eighteenth-century legislation via a person who was (a) a natural-born British subject, or (b) the child of a father who, though himself born out of the allegiance, was the son of a natural-born British subject, and, in effect, therefore, of British associations. Under the Act of 1914 we can take as our starting-point for the purpose of tracing British nationality by descent a wider class of persons than this; i.e. every sort of 'British subject' as defined in the Act. In addition to a natural-born British subject (the case of Section 1 (1) (b) (i)) there are three other classes of persons, who are not themselves natural-born British subjects, or necessarily the children of natural-born British subjects. These three classes are enumerated in the sub-heads (ii), (iii), and (iv), which follow:

- (i) Naturalized British subjects.
- (ii) Persons who have become British subjects by reason of any annexation of territory.
- (iii) Persons who are in the service of the Crown (and are also British subjects, however they became such).

In addition, registration has become (provided the father is a British subject) a new method of acquiring British nationality by birth under sub-head (v). All these sub-heads will be discussed separately. They are mentioned here for the sake of clarity, and in order to show the nature of the change in the law effected in 1914, and by the later legislation. Sub-head (v) has been repealed, but registration of birth, as a means of acquiring British nationality, has reappeared in a new and extended version in the Act of 1943.

(7) It will be noted that one result of this section is that the children of a person who is not himself a *natural-born* British subject, but a naturalized British subject, may, nevertheless, themselves be natural-born British subjects.

Section 1 (1) (b)

'(ii) his father was a person to whom a certificate of naturalization had been granted.'

As pointed out above (p. 102), before the passing of the Act of 1914 the child born abroad of a naturalized British subject did not acquire British nationality under the Naturalization Acts of 1844 and 1870. *Rex v. Superintendent of Albany Street Station*, [1915] 3 K.B. 716. Such a child might, however, acquire British nationality under Section 10(5) of the Act of 1870, if he became resident during infancy with his father, or with his mother, being a widow, in any part of the United Kingdom, provided that he was an infant at the time his father became naturalized, or at the time his mother, being a widow, became naturalized. *Jaffé v. Keel*, [1916] 2 K.B. 476; *In re Carlton*, [1945] 61 T.L.R. 332.

The position of persons, born out of His Majesty's dominions *before* January 1, 1915, being the children of persons who were naturalized under the Acts of 1844 and 1870, is not improved by the Act of 1914, because Section 1 (3) of that Act provides that 'Nothing in this Section shall, except as otherwise expressly provided, affect the status of any person born before the commencement of this Act'. Section 1 (1) (b) (ii), therefore, applies only to persons born on or after January 1, 1915. If, however, a person who was born abroad *after* January 1, 1915, had a father who was naturalized under the Acts of 1844 or 1870, he enjoys the benefit of this provision for the following reason. Section 27 (1) of the Act defines a certificate of naturalization as meaning a 'certificate of naturalization granted under this Act or any Act repealed by this or any other Act'. Among the Acts repealed are the Naturalization Act, 1870, which, in turn, repealed the Act of 1844. Accordingly the position of a child born after January 1, 1915, of a father naturalized under the Acts of 1844 and 1870, is the same as that of a child born after January 1, 1915, whose father is naturalized under the Act of 1914.

In no case will a child born *before* naturalization was granted become a British subject under Section 1 (1) (b), because it is essential that his father should be a British subject *at the time of his birth* before the sub-head can apply.¹

Section 1 (1) (b)

⟨'(iii) his father had become a British subject by reason of any annexation of territory.⟩

¹ A child born *before* the date of the father's naturalization can, however, be included on the alien's certificate of naturalization under Section 5 (1) of the Act, provided that the child is a minor at the time of the alien's naturalization; and the child, thereupon, if not already a British subject (as he may be, e.g. by birth in England), becomes a British subject. (See below, p. 156.)

This sub-head was inserted by Section 2 (1) of the British Nationality and Status of Aliens Act, 1918. Its purpose was to enable a person; who had become a British subject by annexation of territory, to transmit British nationality to his children born abroad. It is to be read (like all other amendments effected by the Act of 1918) as though it had been inserted into the Principal Act at the time it was enacted, i.e. it is retrospective to January 1, 1915.

It was probably not the common law that the child born abroad, of a person who became a British subject by annexation, was also a British subject, and, seeing that a British subject by annexation was a case of *ligeantia acquisita*,¹ the children of such a British subject were not deemed natural-born British subjects under the eighteenth-century legislation regarding the transmission of British nationality to children born abroad.² It was, however, the administrative practice to regard a child born before January 1, 1915, of a father who acquired British nationality by reason of any annexation of territory, as a British subject, and this practice is now the law.

There is nothing in the Act which defines the conditions in which a person becomes a British subject by reason of annexation of territory, and, in order to ascertain these conditions, it is necessary to refer to the common law and any relevant Orders in Council or legislation dealing with the matter. The law on this subject has been fully explained above, and will not be reproduced here.³

It is worth noticing, at this point, that mandated areas, protectorates, protected states, and the native Indian states are not territories which have been annexed by the Crown. The nationality of the inhabitants of such areas is that of British protected persons, and is dealt with in Part V of this book.⁴

Section 1 (1) (b)

‘(iv) his father was at the time of that person’s birth in the service of the Crown.’

This was one of the two amendments to the definition of a natural-born British subject born out of His Majesty’s dominions, which was enacted by Section 2 (1) of the Act of 1918, the other amendment being the inclusion of persons whose fathers were British subjects by reason of any annexation of territory (above, p. 139). Both of these amendments were retrospective to January 1, 1915.

¹ Above, p. 34.

² Above, p. 41.

³ Above, p. 69.

⁴ Below, p. 288.

Sub-head (iv) was the result of a desire to recognize the services rendered to the British Empire during the First World War (1914–18) by those whose children were not born within His Majesty's dominions, and who did not enjoy the benefit of sub-heads (i), (ii), and (iii). It will be noted that, even in relation to sub-head (iv), the father has to be a British subject 'at the time of that person's birth'. What sort of natural-born British subject can he be who is not covered by sub-heads (i), (ii), or (iii)? We shall see that the answer is: after January 1, 1915, any person born abroad whose father, although a natural-born British subject, was such by reason only of being the first generation born abroad descended from a British subject. The father of such a person could not transmit British nationality to his children born abroad. We have seen that before January 1, 1915, persons who were the third generation descended from a natural-born British subject and born out of the King's dominion would be aliens, although the second generation would be British subjects by virtue of eighteenth-century legislation. After January 1, 1915, even the second generation born abroad would be aliens. But during the First World War many British families in South America and other foreign countries flocked to the colours, and crossed the seas to fight in the British armed forces. Those who did so were necessarily born before January 1, 1915, and were by virtue of the eighteenth-century statutes, being of the second generation born abroad, themselves British subjects, but any children born to them out of the King's dominions would be aliens, and the same would be true of the children, born after January 1, 1915, of the first generation born abroad. These persons were themselves British subjects and had been in the service of the Crown. The sentiments prevailing at the time caused, therefore, a new provision to be inserted by the Act of 1918 making their children British subjects.

It was undoubtedly the administrative practice in the United Kingdom, even apart from statute, to treat persons born abroad to British fathers in the military service of the Crown as British subjects, and this practice goes back far beyond the Act of 1918 or 1914. It is not beyond doubt that this practice embodied the common law, and, as we have seen (above, p. 69), the court in *De Geer v. Stone* rejected the view that the child born abroad of a British soldier in the service of the Crown was at common law a British subject. The reasoning of the court in that case is not, however, satisfactory and the case may have been wrongly decided. It may be argued

that the nature of the father's service excludes any allegiance other than that of the Crown, and that a child born to him, during his service, would be born within the allegiance of His Majesty, and so, at common law, a natural-born British subject. The case is analogous to that of an ambassador of His Majesty, whose children born abroad are undoubtedly natural-born British subjects at common law. In support of this view there might be invoked the first proviso to Section 1 of the Act, which was an attempt to state the common law as it stood in 1914. That proviso relates to places where His Majesty exercises jurisdiction over British subjects, and it is certain that His Majesty exercises exclusive jurisdiction over his armies abroad, and it may, therefore, be argued that the children of members of such forces are British subjects at common law.

The other pieces of evidence are the Parliament Roll of 1343, which declared that persons born abroad in the service of the King were able to inherit lands in England, and, therefore, subjects, and the case of *Craw v. Ramsey* (1669), Vaughan 281. We have already discussed the declaration of 1343, which was brushed aside in *De Geer v. Stone*.¹ The following words in *Craw v. Ramsey* tend in the same direction as the declaration of 1343:

‘If the King of England enters with his army hostilely the territories of another prince, and any be born there, within the places possessed by the King's forces, and consequently within his protection, such person is a subject born to the King of England, if from parents subjects and not hostile.’

It will be seen that the situation contemplated in this passage is the converse of that referred to in Coke's proposition that the issue born on British soil of an invading army are aliens,² and that it deals only with occupation or invasion, and not with the question at large. Children may be born abroad to fathers on ordinary military service in peace-time, as, for example, in a foreign country where the father is stationed by agreement with its government or where His Majesty's forces have intervened, but without causing a state of war between that country and Great Britain. The position at common law of children born of fathers on active service in an allied country is not covered by any reported case.³

So far as persons born after January 1, 1915 are concerned, sub-head (iv) disposes of doubts, but the status of persons born before

¹ Above, p. 70.

² Above, p. 126.

³ See McNair, *Legal Effects of War* (1944), p. 335.

that date is still governed by the common law. However, the scope of sub-head (v) (especially as re-enacted in 1943) is extremely wide, and could be invoked to regularize the position of a person born abroad before January 1, 1915, if his position was doubtful at common law.

Section 1 (1) (b)

‘(v) his birth was registered at a British consulate within one year or in special circumstances, with the consent of the Secretary of State, two years after its occurrence, or, in the case of a person born on or after the first day of January, nineteen hundred and fifteen, who would have been a British subject if born before that date, within twelve months after the first day of August, nineteen hundred and twenty-two.’

This was inserted by Section 1 of the British Nationality and Status of Aliens Act of 1922. In accordance with Section 3 (2) of that Act it is retrospective to January 1, 1915, i.e. it has effect as if it were enacted in the Act of 1914. It is repealed (only to be re-enacted in an extended form) by the British Nationality and Status of Aliens Act, 1943. However, it is important to know something about the background of the principle that registration is a source of title to British nationality.

During the First World War (1914–18) a large number of persons returned to the mother country from foreign countries to join the colours. In consequence, a considerable feeling grew up that the nationality law should be modified, so as to extend the possibility of acquiring nationality by descent. Representations were made by the British Chambers of Commerce in South America, and in other parts of the world, in favour of the removal of the restrictions on the transmission of nationality by descent, originally enacted in the Act of 1914 (see comment above, pp. 116–17).¹ It was suggested that children of British origin abroad should not lose their claim to British nationality, even if several consecutive generations had been born abroad, provided that they were able to prove that they were of British origin, and that they had registered at the British Consulate at the age of 21. As against this it was argued that if a British subject

¹ It was suggested in some quarters that the *ius soli* should be correspondingly restricted, e.g. that persons of foreign origin born on British soil should not acquire British nationality, unless the father had already acquired the status of a British subject by naturalization at the time of the child's birth (above, p. 117). This proposal did not commend itself to His Majesty's Government.

goes abroad, and takes up permanent residence there in a foreign country, and derives sustenance from it, and practically becomes a member of it, he can hardly complain if his children who are born there, and are even to a greater degree members of the local community where the family is established, are regarded as liable to the obligations imposed on other persons born within that territory. The general principle behind the first argument prevailed. As a result the Act of 1922 was passed, and Section 1 (1) (b) (v) became part of the Principal Act. Its effect was as follows: It enabled a person born out of His Majesty's dominions to become a natural-born British subject, if his father was at the time of his birth a British subject, and if:

- (1) His birth, occurring after August 4, 1922, was registered at a British Consulate within one year of his birth, or
- (2) His birth, occurring after August 4, 1922, was registered at a British Consulate, in special circumstances with the consent of the Secretary of State, within two years of his birth, or
- (3) His birth, if it occurred after January 1, 1915, but before August 4, 1922, and he would, if born before that date (under eighteenth-century legislation), have been a British subject, was registered within twelve months after August 1, 1922.

In all three cases the person whose title to British nationality was based on this sub-head had to be *born after* January 1, 1915, because, although the sub-head is to be read as though it had been enacted in 1914,¹ no part of the sub-head is retrospective beyond January 1, 1915 (Section 1 (3) of the Principal Act). By 1922 the restriction of the transmission of nationality by descent to the first generation, which had been effected by the Act of 1914, was regretted. Not only was it thought desirable to make such transmission possible beyond the first generation; but it was also decided that, subject to the observance of certain rules, British nationality should be transmissible by descent, from one generation to another, though born abroad, indefinitely. The Act of 1922, therefore, was not merely restoring the position as it had been before January 1, 1915; it greatly extended the scope of the *ius sanguinis* as a general principle in English law. Nevertheless, it was felt reasonable that persons who really valued British nationality should, if born out of His Majesty's dominions, take some step, or someone on their behalf should take some step, in order to claim the privilege. This step was registration

¹ Section 3 (3) of the Act of 1922.

of the birth of the person who claimed the privilege, and that person, if he desired to retain his British nationality on attaining 21, had to make a positive declaration to that effect (see below, p. 149). This requirement of registration, within one or two years, as the case might be, of the date of birth, could only apply to classes (1) and (2) enumerated above (p. 144). In the case of persons born between January 1, 1915, and August 4, 1922 (Class (3) above), it was decided that there should be registration of their births within twelve months of August 1, 1922, and no provision for extending this period in special circumstances was made. Also the only births affected by this provision (Class (3)) were those of persons 'who would have been' British subjects if born before January 1, 1915. A person born between January 1, 1915, and August 4, 1922, 'would have been' a British subject, if born abroad before January 1, 1915, only under the eighteenth-century legislation, i.e. up to the second generation born abroad.

The policy behind the Act of 1943 is to sweep away these irksome restrictions, and to make it easier to transmit British nationality by descent indefinitely, provided that the requirements of that Act as to registration are observed. The Act of 1922, indeed, made such transmission possible, but, under its terms, registration had to be effected within one year of the birth, &c. Further, persons born *before* January 1, 1915, could not acquire British nationality by registration of their births at a British Consulate, and were not British subjects beyond the second generation under the eighteenth-century legislation. Persons born between December 31, 1914, and August 4, 1922 (the date of the enactment of sub-head (v)) could only acquire British nationality by registration, if they were of the first or second generation born abroad, and were registered within twelve months of August 1, 1922.

His Majesty's Government became involved in a Second World War, in which many people fought who had not registered within the limits prescribed by the Act of 1922, although they had been entitled to do so. It was decided to extend considerably the scope of the principles adopted in 1922. By the 1943 Act the existing restrictions and limitations were swept away. Section 1 (1) of that Act repeals Section 1 (1) (b) (v) of the Principal Act and Section 1 (2) (a) provides for registration as of right within one year of the birth. Section 1 (2) (b) enables the Secretary of State to sanction registration after this period without any limitation of time. Consequently

the registration may be authorized under Section 1 (2) (b) whatever the age of the person concerned. Further, as Section 1 of the 1943 Act is retrospective, persons born *before January 1, 1915*, can now be registered with the permission of the Secretary of State.

Section 1

‘(1) (c) Any person born on board a British ship whether in foreign territorial waters or not:’

It has been held that, at common law, a person born on board a British ship on the high seas, whatever his parentage, and although illegitimate, is a natural-born British subject.¹ The position at common law of a person born aboard a British merchant ship in foreign territorial waters (no doubt a person born in a British warship—an unlikely occurrence—would be a natural-born British subject at common law), has never been settled in a decided case, but the second branch of this provision settles it for the future. As regards persons born before January 1, 1915, the same rule would probably be held to apply at common law.

‘A British ship’ is not defined in the Act. It must clearly be regarded as covering all British and Dominion naval vessels and public vessels. As regards merchant vessels the provisions of the Merchant Shipping Acts, 1894 and 1921, though not binding in this connexion, as they are not imported by reference into the Act, afford a general guide. Section 742 of the Act of 1894 defines a ship as follows:

‘Ship includes every description of vessel used in navigation not propelled by oars.’

Section 1 of the Merchant Shipping Act, 1894, provides, in effect, that a ship cannot be deemed British, unless wholly owned by a natural-born British subject, a denizen, or a body corporate, incorporated under the law of His Majesty’s dominions, and having its principal place of business in those dominions. Section 2 provides that a ship is not to be recognized as British unless she is registered in a British port of registry. Registration is a statutory requirement, and is the means by which the nationality of the ship is *proved*. In all the cases likely to arise under the sub-section we are discussing (Section 1 (1) (c)) a ship may be presumed to be British if she is flying, or entitled to fly, the British flag. For all practical purposes

¹ *Marshall v. Murgatroyd* (1870), 6 Q.B. 31.

we need go no further, for a ship which flies the British flag, without being entitled to do so, renders herself liable to forfeiture under Section 69 of the Merchant Shipping Act, 1894.

A ship clearly includes a yacht, motor-boat, and similar small craft. It does not include, according to the statutory definition we have quoted, a rowing boat or raft, and, as such craft are, in the ordinary parlance, not properly called ships this branch of the definition may also be accepted for the purposes of Section 1 (1) (c).¹

It will be noticed that the provision extends to births occurring aboard a British ship in foreign territorial waters. This disposes of the doubt that might otherwise arise from the fact that the ship may be subject to local jurisdiction. It does not become necessary to assert the fiction of ships being 'floating parts of the State's territory'; for the Statute settles the matter by express provision.

Example.

1. X is the illegitimate child of Y, a Portugese woman, born on the high seas on a British ship. X is a natural-born British subject.

2. X is the son born in wedlock of an Italian mother, and a Greek father, on a British ship lying in port at Alexandria. X is a natural-born British subject.

Section 27 (1) provides that 'territorial waters' includes any port, harbour, or dock.

['Provided that the child of a British subject, whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects' .]

This first proviso to Section 1 (1), which was repealed by the British Nationality and Status of Aliens Act, 1943, was intended to make it clear that the child of a British father born in a British protectorate or protected state, or in a country where, at the time of his birth, His Majesty exercised jurisdiction over British subjects, was a natural-born British subject. The form of words used did not successfully achieve this end,² and it has now been replaced by Section 2 (1) of the Act of 1943 which provides:

'Any person born, whether before or after the commencement of this Act, in a place where by treaty, capitulation, grant, usage,

¹ Subject to the modification, as regards lighters and barges, introduced by Section 1 of the Merchant Shipping Act, 1921.

² Above, p. 37.

sufferance, or other lawful means, His Majesty was at the time of that person's birth exercising jurisdiction over British subjects, shall, if at the time of his birth his father was a British subject, be deemed to be, and in the case of a person born before the commencement of the Act, always to have been, a natural-born British subject.'

The effect of this provision is that the child of a British father born in a British protectorate, or protected state or mandated territory, or in a country where, at the time of his birth, His Majesty exercised jurisdiction over British subjects (China, Egypt, &c.), is placed exactly in the same position, from the point of view of his British nationality, and his capacity to transmit British nationality to his children, as if he had been born on British soil (and had therefore, *ipso facto*, been born within His Majesty's allegiance). In administrative practice prior to the passing of the Act of 1943 the interpretation of the proviso to the 1914 Act which favoured the rule laid down in 1943, was in fact adopted, until the courts should decide (which they never had an opportunity of doing) the correct view. Whatever the correct interpretation of the proviso to the 1914 Act may have been, the Act of 1943 renders it unnecessary to inquire; for Section 2 (1) of that Act is retrospective. It must also be stated, at this point, that Section 2 (2) of the Act of 1943 provides:

'For the purposes of sub-paragraph (i) of (b) of sub-section 1 of section one of the Principal Act any such person as aforesaid shall be deemed to have been born within His Majesty's allegiance.'

'Any such person as aforesaid' means any such person as is born in a place specified in Section 2 (1). The effect of Section 2 (2) is to bring any such person under the general sub-head (i) of paragraph (b) of Section 1 (1) of the Act of 1914 (i.e. 'his father was born within His Majesty's allegiance').

The effect of the repealed proviso, and of the new provision in the Act of 1943, will become clearer if the position is expressed in the following manner: The places in which 'by treaty, capitulation', &c., His Majesty exercises jurisdiction over British subjects fall into three groups:

1. Places where His Majesty administers the whole territory, and, therefore, has jurisdiction over *everybody*, whether British subjects or not. These are British protectorates or mandated territories.
2. Places in which His Majesty by agreement or usage, has exercised jurisdiction over British subjects. Such places (where

extritorial or capitulatory rights existed in favour of His Majesty), have been gradually decreasing in number, Spanish Morocco being practically the only place in the world to-day where His Majesty possesses such jurisdiction.¹ Other examples of places where such jurisdiction formerly existed, are Turkey, China, and Egypt.

3. The Indian native states or British protected states. Here His Majesty may exercise jurisdiction, either over British subjects only, or over British subjects and over persons who are not nationals of the protected state (as in the Gulf states, where the Sheik retains jurisdiction over his own nationals).

A list of 'places', set out according to the above classification will be found in the Appendix (p. 419).

Examples.

1. X is born in the United Kingdom. His son Y is born in 1916 in a British protectorate. Y, probably under the repealed proviso (and certainly under the Act of 1943), is a British subject, born within the allegiance, and, therefore, Y's son, born anywhere, is a British subject.

2. X is born in the United Kingdom. His son Y is born in France, and his grandson Z is born in a British protectorate in 1916. Z is a British subject.

{['Provided also that any person whose British nationality is conditional upon registration at a British consulate shall cease to be a British subject unless within one year after he attains the age of twenty-one, or within such extended period as may be authorised in special cases by regulations made under this Act—

- (i) he asserts his British nationality by a declaration of retention of British nationality, registered in such manner as may be prescribed by regulations made under this Act; and
- (ii) if he is a subject or citizen of a foreign country under the law of which he can, at the time of asserting his British nationality, divest himself of the nationality of that foreign country by making a declaration of alienage or otherwise, he divests himself of such nationality accordingly.']}

This second proviso to Section 1 (1) was inserted by Section 2 of the B.N.A. 1922, and was repealed by B.N.A. 1943. It is, however, re-enacted by Section 6 of the Act of 1943, with the important difference that sub-head (ii) of the proviso is not re-enacted.

¹ See Appendix 11.

The intention underlying the repealed proviso (and also of the more sweeping provisions of the Act of 1943) is that British nationality should not be transmitted automatically from generation to generation, in the case of British families resident abroad, but should only so extend, if the families are genuinely loyal, and desire the status of British subjects. The fact that the parents (or possibly, under the Act of 1943, the person concerned) apply for registration is evidence of this desire. A further guarantee of genuine British loyalties was contained in sub-head (i), which required the person concerned to make a declaration of retention when he attained the age of 21. Sub-head (ii) was an additional guarantee (now dropped), but its primary object was to avoid double nationality, and, possibly as a result, double allegiance. Sub-head (ii) of the proviso was not re-enacted in 1943, because it was no longer felt desirable to insist on British communities abroad, e.g. in the Argentine, repudiating the alien nationality (if any) which they possessed, as a condition of retaining British nationality under this proviso as re-enacted. In some countries the repudiation of the alien nationality would involve the loss of trading rights and other useful privileges, and it was felt desirable to retain British communities abroad as British subjects, even at the expense of dual nationality.

Section 1

‘(2) A person born on board a foreign ship shall not be deemed to be a British subject by reason only that the ship was in British territorial waters at the time of his birth.’

The converse case of a person born on board a British ship in foreign territorial waters has been considered under Section 1 (1) (c), and we have seen that the law of the flag is applied to that case. Section 1 (2) appears, consistently with this principle, to assume that the law of the flag will, or should, operate in relation to persons born on board a foreign ship in British territorial waters, and territorial waters includes, under Section 27 (1), any ‘port, harbour, or dock’.

The proper construction of the sub-section is not free from doubt. If the position is examined, however, as it would be if the sub-section had not been passed (i.e. in the light of the mischief it was intended to remedy) the reason underlying it may become clearer. Laying aside the sub-section, the position is that territorial waters are deemed, in virtue of the Territorial Waters Jurisdiction Act, 1878,

to form part of 'Her Majesty's dominions', and the expression 'territorial waters' means 'such part of the sea adjacent to the coast of the United Kingdom or the coast of some other part of Her Majesty's dominions as is deemed by international law to be within the territorial sovereignty of Her Majesty'. Accordingly, under the strict theory of the common law a person born in British territorial waters on board a foreign ship (not being a foreign man-of-war or public vessel which would exclude the rule) would be born within His Majesty's dominions and allegiance, and would be a British subject.¹ The sub-section has, it is submitted, the effect of excluding this common-law rule, which would involve, in practice, doubts and difficulties regarding the title of any particular individual to British nationality. Many foreign ships pass through British territorial waters without dropping anchor, and it would be difficult to establish, in particular cases of births occurring on board such vessels, whether, at the time of birth, the vessel was in territorial waters or not. Even those which stay in a British 'port, harbour or dock' do not generally stay long. For this reason, the statute provides that birth within British territorial waters is in itself not a ground of entitlement to British nationality. This interpretation has the result of excluding the operation of Section 1 (1) (a) in so far as that would apply to territorial waters apart from Section 1 (2). Are there any circumstances, therefore, in which birth on a foreign ship (i.e. any ship that is not a British ship), in British territorial waters, causes the person so born to be a British subject?

It is submitted that the effect and intention of the sub-section is that such a person must be deemed to have been born out of His Majesty's dominions, since the presumption that he is born within His Majesty's dominions (for that is the reason why he would be a British subject) has been displaced by the sub-section. In short, he is in the same position as he would be, if born on the high seas, or anywhere else out of His Majesty's dominions. This renders any inquiry as to the place of his birth unnecessary. If he is born on board a foreign ship even in a British port, dock, or harbour he is deemed to have been born out of His Majesty's dominions and his entitlement to British nationality (if any) will depend on Section 1 (1) (b) of the Act, i.e. he will be a natural-born British subject if his

¹ As the sub-section is not retrospective it is submitted that this is the rule which applies to persons born on foreign ships in British territorial waters before January 1, 1915.

father was at the time of his birth a British subject, and either one or more of the other sub-heads (i), (ii), (iii), (iv), or (v) are satisfied.¹

Section 1

‘(3) Nothing in this Section shall, except as otherwise provided, affect the status of any person born before the commencement of this Act.’

This safeguards the position of persons born before January 1, 1915, except in so far as Section 1 of the Act affects it. The only retrospective provision (before January 1, 1915), is in the first proviso to the section, and that was intended to enure for the benefit, not to the disadvantage, of persons born before January 1, 1915. That proviso, as we have seen, is now replaced by Section 2 of the Act of 1943.

Section 1

‘(4) The certificate of a Secretary of State that a person was at any date in the service of the Crown shall, for the purposes of this section, be conclusive.’

This provision was inserted by Section 2 (1) of B.N.A. 1918, and was, in any event, desirable in view of the new provisions inserted in sub-head (iv) of Section 1 (1) (b) by the Act of that year. The question whether a person was in the service of the Crown is taken out of the area of legal controversy if the certificate of the Secretary of State is granted. It had been the administrative practice before 1914 when questions arose as to whether a particular individual was in the service of the Crown to obtain evidence by inquiring of the appropriate government department.

The sub-section provides a general discretion. However, as a matter of administrative practice, it is clear that, for a certificate to be granted, the service must be of an official nature and the persons concerned must have been engaged on work of an important or responsible kind.

The cases which present difficulty under this sub-section are those

¹ See, however, the view expressed by Dicey, *Conflict of Laws* (5th ed. 1932), p. 150. He rejects the view that Section 1 (1) (b) can apply on the ground that the results would be anomalous, but it does not seem that they would be more anomalous than in any other case where a child is born abroad. He suggests that the child of any *British subject* born in a foreign ship in British territorial waters is born within the dominions and allegiance, and is, therefore, a natural-born British subject under Section 1 (1) (a). It seems to the writer, however, that the effect of Section 1 (2) is to take these cases out of Section 1 (1) (a) and put them into Section 1 (1) (b).

of servants of native rulers under British protection. Here the service of the Crown is indirect, and the answer must depend on the particular facts of the case.

Presumably, if the Secretary of State omits or declines to give a certificate, the question whether a person is in the service of the Crown may become a matter for the courts, but if he grants a certificate it is conclusive.

Examples.

1. X is the child of an assistant archivist in the British Embassy at Belgrade during A's service there. X is a natural-born British subject. Whether X is also a Yugoslav national depends on Yugoslav law.

2. X was born in 1905 at the British Embassy in Constantinople. His father A was employed at the Embassy as a domestic servant. A was an Italian but he was granted a certificate of naturalization as a British subject before X was born. X is not by reason of birth in the Embassy deemed to be born in British territory, nor was his father in the service of the Crown. Nor, as X was born before January 1, 1915, was he a British subject in virtue of his father's naturalization.

British Nationality and Status of Aliens Act, 1943

Section 1

'(1) Sub-paragraph (v) of paragraph (b) of sub-section (1) of section one of the British Nationality and Status of Aliens Act 1914 (herein-after referred to as "the principal Act"), shall cease to have effect.

'(2) A person born outside His Majesty's dominions whose father was at the time of the birth a British subject shall be deemed to be and always to have been a natural-born British subject—

- (a) in the case of a person born after or within one year before the commencement of this Act, if his birth is registered at a consulate of His Majesty within one year after its occurrence;
- (b) in the case of any person, whether born before or after the commencement of this Act, if his birth is at any time registered at such a consulate with the permission of the Secretary of State or the Secretary of State directs that although registered without his permission it shall be deemed to have been registered with his permission.'

Sub-section (1) repeals Section 1 (1) (b) (v) of the Act of 1914 (as to the effect of which see above, p. 143). The whole section has the significant marginal note 'British nationality by registration', and it is necessary to know the history of the old provision, which was inserted in 1922, in order to appreciate the force of the new provision.

The principle of the 1922 amendment, extended by the Act of 1943, is that of a 'controlled *ius sanguinis*': that is to say, instead of allowing British nationality to be transmitted automatically from generation to generation, in the case of British families resident abroad, British nationality is only extended, in such a manner, if the families are genuinely loyal and desire the status of British subjects. The fact that the parents (or, as it may be, under Section 1 of the Act of 1943 the person himself) apply for registration is evidence of this desire. Under the provision repealed, a person born abroad could only acquire British nationality by registration, if it was effected either within one year, or, in special circumstances with the permission of the Secretary of State within two years, after its occurrence. The person concerned, being a child, could not register. Persons born before January 1, 1915, could not acquire British nationality by the registration of their births at a consulate at all, and persons born between December 31, 1914, and August 4, 1922 (the date of the enactment of Section 1 (1) (b) (v) of the Act of 1914), could only acquire it if they were of the second generation born abroad, and were registered within twelve months of August 1, 1922. It also followed, from the wording of Section 1 (1) (b) (v) of the Act of 1914, that a person could not acquire British nationality by registering himself (because he would be too young to be able to do so) though he is the person most concerned.

Sub-section (2) of Section 1 of the Act of 1943 introduces new law. Although registrations under the repealed provisions of the Act of 1914 (as amended in 1922) are not affected, provision is made for dealing with the past as well as the future. The section is retrospective, and covers the birth of any person born 'outside His Majesty's dominions'¹ whose father was, at the time of the birth, a British subject. For the future, any person so born, after or within one year before the commencement of the Act (April 22, 1943), becomes a natural-born British subject, if his birth is registered 'at a consulate of His Majesty' within one year after its occurrence. The expression 'consulate of His Majesty' is defined in Section 10 (1) of the Act and 'means the office of a consular officer of His Majesty where a register of births is kept, or, in the case of any territory where there is no such office and there is a resident or administrator appointed by a Government of His Majesty, or any other representative of His

¹ The formula in the Act of 1914 is 'out of His Majesty's dominions' but the meaning is the same. See comment on this above, pp. 124, 133.

Majesty, the office of such resident, administrator or representative'. This is wide enough to include Dominion consulates, and the definition of British consulate contained in Section 27 (1) of the Act of 1914 is repealed.¹

Sub-paragraph (b) grants a wide discretion to the Secretary of State. It enables the registration of a birth to be effected, though the person concerned may be above the age of 21, may be married and may have children. The effect may be to *confer* upon him British nationality, a thing which he did not possess before, but which, by virtue of the registration, he will be *deemed to have possessed always*, i.e. from birth. It is unlikely that the power will often be used in such a case, but it raises interesting problems. What is the effect of it on his wife's nationality and that of his children? Under Section 10 (1) of the Act of 1914 'the wife of a British subject shall be deemed to be a British subject', and 'British subject' means (by Section 27 (1)), *inter alia*, 'a natural-born British subject'. This question will be discussed in considering Section 10 (below, p. 209).

It is possible for the births of persons born before January 1, 1915, or of persons (being the third generation born abroad) born between December 31, 1914, and August 4, 1922, to be registered under the sub-section. It is possible even to register the birth of a person who is now dead, though some strong reason would have to be shown before the Secretary of State would take such a course.

Under the sub-section the Secretary of State has power to direct that a registration, made without his consent, shall be deemed to have been made with his consent. This enables the registration of persons who were erroneously or invalidly registered in the past to be validated, provided the father was a British subject at the time of birth of the person concerned.²

Section 2

'(1) Any person born, whether before or after the commencement of this Act, in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty was at the time of that person's birth exercising jurisdiction over British subjects, shall, if at the time of his birth his father was a British subject, be deemed to be,

¹ For comment on this see below, p. 222.

² It may be open to doubt whether this includes a father who acquired British nationality retrospectively under Sections 2 and 3 of the 1943 Act, for the sub-section says 'was a British subject at the time of birth' and not 'was or is deemed always to have been'.

and, in the case of a person born before the commencement of this Act, always to have been, a natural-born British subject.'

This provision is inserted instead of the old proviso to Section 1 (1) of the Act of 1914 which is now repealed (see above, p. 147). The intention is to place the child of a British subject born in a British protectorate, or protected state, or mandated territory, or in a country where, at the time of birth, His Majesty exercised extritorial jurisdiction over British subjects, in exactly the same position, from the point of view of his nationality, and his capacity to transmit British nationality, as if he had been born on British soil. As shown above, the old proviso was inserted with the same purpose, but raised doubts owing to a drafting error. In anticipation, however, of an amendment of the law with retrospective effect which Section 2 makes, persons who fall within the proviso have been, in general, treated as British subjects.

Section 2

'(2) For the purposes of sub-paragraph (i) of paragraph (b) of subsection (1) of section 1 of the principal Act any such persons as aforesaid shall be deemed to have been born within His Majesty's allegiance.'

This provision makes it clear that a person can acquire, by descent alone, and without registration, British nationality under Section 1 (1) (b) (i) of the principal Act, though not only he, but also his father, is born in a place where His Majesty exercises extritorial jurisdiction. The necessity for this provision is explained in the comment on the proviso to Section 1 (1) of the principal Act (see above, p. 147).

Section 3

'Any person born after the death of his father, whether before or after the commencement of this Act, shall if his father died a British subject, be deemed to be, and in the case of a person born before the commencement of this Act, always to have been, a natural-born British subject in any case in which he would have been a natural-born British subject if his father had survived and remained a British subject until after the birth.'

The effect of this section is that posthumous children of persons whose fathers were, when they died, British subjects are in the same position, so far as their British nationality is concerned, as they would be if the father had survived and remained a British subject

until after the birth. The gap in the 1914 Act on this point has already been commented on (see above, p. 137). The point is of importance in connexion with persons born out of His Majesty's dominions, because their title to British nationality normally rests on the fact that their fathers were British subjects 'at the time of their birth' (Section 1 (1) (b) of the principal Act above, p. 133). It was the administrative practice, even before the Act of 1943, to apply the rule, now laid down by Section 3 of that Act, to a posthumous child born out of His Majesty's dominions. The reason for this practice was that under the proviso to Section 1 (1) a person deemed to be born within the allegiance, and therein defined, was held to be a British subject, and he *could* be a British subject, although he was posthumous, because his title to British nationality did not depend on the fact that his father was a British subject at the time of his birth, but merely on the *place* of his own birth. In order to avoid drawing an invidious distinction between this latter class and all other posthumous children born abroad, it was the practice to regard all such children as British subjects. Section 3 of the Act embodies this practice, and gives it a general application.

II

NATURALIZATION OF ALIENS

(Sections 2-9 B.N.A. Sections 4-5 of the British Nationality and Status of Aliens Act, 1943)

Section 2

'(1) The Secretary of State may grant a certificate of naturalization to an alien who makes an application for the purpose, and satisfies the Secretary of State—

- (a) that he has either resided in His Majesty's dominions for a period of not less than five years in the manner required by this section, or been in the service of the Crown for not less than five years within the last eight years before the application; and
- (b) that he is of good character and has an adequate knowledge of the English language; and
- (c) that he intends if his application is granted either to reside in His Majesty's dominions or to enter or continue in the service of the Crown.'

For the historical background of these provisions see above, pp. 110-12. For the manner in which the qualifying period of five years' residence is to be calculated see Sub-section (2). The issue of a certificate of naturalization is a matter of discretion, and it may be granted or withheld as the public good may require; no reason need be given for the decision, and no appeal lies against it. See Sub-section (3). The Secretary of State for the Home Department takes the decision and, although he is assisted by an Advisory Committee whom he may consult, he is not obliged to consult that Committee, which is set up under administrative practice and has no legal powers, nor is he bound to follow its recommendations.

It is the practice of the Home Office when granting a certificate to ensure, so far as possible, that the applicant will not possess dual nationality, and it is therefore usual to require the applicant to obtain release from his alien nationality if possible. Regulations were made in 1943, under Section 19 of B.N.A., prescribing the form of certificates, &c., and these are printed in the Appendix below, p. 321.

'Service of the Crown.' What constitutes service of the Crown for this purpose? As we have seen, this was a qualification for

naturalization under the Act of 1870. Section 2 (1) of B.N.A. provides that the applicant must 'satisfy' the Secretary of State that he has been in the service of the Crown, and the question is, therefore, one to be decided by the Secretary of State in his absolute discretion. In practice the same considerations in general are relevant to determine what is service of the Crown as are applied for the purposes of Section 1 (4). See comment thereon above, p. 152.

Where an applicant for naturalization has resided in His Majesty's dominions for a period of less than five years, but has spent a further period in the service of the Crown, the last mentioned period may be treated, if the Secretary of State thinks fit, as 'equivalent to a period of residence in the United Kingdom', and, if the two periods added together amount to five years, the applicant may thus qualify for naturalization. See Sub-section 6, and comment thereon, below, p. 163.

In the case of a person who applies for naturalization during the 'war period' (commencing on September 3, 1939, and ending on such date as His Majesty may by Order in Council appoint) and who appears to the Secretary of State to have been, during that period a French national, and who has served as a member of the British armed forces, a special exception is created by Section 4 of B.N.A. 1943. Such a person may be granted a certificate of naturalization notwithstanding that the requirements as to residence, &c., laid down by Section 2 (1) of B.N.A. are not complied with. This provision does not apply to members of the *Free French Fighting Forces*, and is the result of a specific promise made by Mr. Winston Churchill in the House of Commons.¹ See below, p. 176.

Another exception to the requirements of Sub-section (1) is created by Sub-section (5), in the case of a woman, who was a British subject previously to her marriage to an alien, and whose husband has died, or whose marriage has been dissolved. (See below, p. 161.) The Secretary of State may, under that sub-section, 'in any other special case, if he thinks fit', grant a certificate of naturalization, although the four years' residence, or five years' service, has not been 'within the last eight years before the application'.

For the effect of a certificate of naturalization granted in a British Dominion or possession see p. 174, and Section 5 of B.N.A. 1943, with comment thereon, p. 176 below.

As to the applicant's 'good character' the practice of the Home

¹ Hansard, *Commons*, 5th Series, vol. 362, col. 1045.

Office requires evidence of this in the form of four testimonials from British subjects, who are householders of standing in the United Kingdom. Where a certificate is granted in a British possession the requirement as to knowledge of the English language may be dispensed with, if the applicant has an adequate knowledge of any language recognized in that possession as on equality with the English language. See Section 8, and comment thereon, below, p. 174.

A minor cannot be granted a certificate of naturalization under this section. See p. 167 below, Section 5 (3), and comment thereon. Nor can a married woman be naturalized during the continuance of her marriage, except under Section 10 (6). See comment thereon below, p. 187.

‘(2) The residence required by this section is residence in the United Kingdom for not less than one year immediately preceding the application, and previous residence, either in the United Kingdom or in some other part of His Majesty’s dominions, for a period of four years within the last eight years before the application.’

The requirement of one year’s residence in the United Kingdom *immediately preceding* the application cannot be waived, however long a period of residence in the United Kingdom there may have been at an earlier date. In the case of an application for naturalization under this section, in a Dominion or any other ‘British Possession’, Sub-section (2) must be construed as referring to one year’s residence in that Dominion or possession. See Section 8 (1), and comment thereon, below, p. 174. (For the reason underlying this provision see above, p. 110.) Similarly, in such a case the words ‘previous residence either in the United Kingdom’ are to be read as ‘previous residence in that Possession’.

Residence during minority is, under the practice prevailing in the United Kingdom, taken into account as part of the qualifying period, in the case of an applicant who has attained 21. What amounts to residence is a question of fact; physical presence in the United Kingdom for a substantial part of the period is essential. But absences abroad, on holiday, or for a temporary purpose (e.g. business reasons), do not break continuity of residence.

‘(3) The grant of a certificate of naturalization to any such alien shall be in the absolute discretion of the Secretary of State, and he may, with or without assigning any reason, give or withhold the certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision.’

This provision requires no special comment. Its purpose is to make it clear that the grant of naturalization is an executive matter, and is not subject to any judicial or other control.

‘(4) A certificate of naturalization shall not take effect until the applicant has taken the oath of allegiance.’

This repeats the provision in Section 7 (2) of the Act of 1870 to the same effect, and the form of the oath, as set out in Section 9 of that Act, is identical with that contained in the Second Schedule of the Act of 1914. The form of the oath is as follows:

‘I, A.B., swear by Almighty God that I will be faithful and bear true allegiance to His Majesty, King George the Sixth, his heirs and successors, according to law.’

The oath does not create the bond of allegiance but witnesses or ‘attests’ it. See above, p. 58. It emphasizes, however, the fact that British nationality carries obligations as well as privileges; and hence the provision that naturalization is not effective until the applicant has given solemn and formal proof of his acceptance of these obligations. An affirmation may be substituted for an oath, in the case of persons for the time being allowed by law to affirm or declare instead of swearing. An affirmation of allegiance may be made by such persons. See Section 3 of the Interpretation Act, 1889.

‘(5) In the case of a woman who was a British subject previously to her marriage to an alien, and whose husband has died or whose marriage has been dissolved, the requirements of this section as to residence shall not apply and the Secretary of State may in any other special case, if he thinks fit, grant a certificate of naturalization although the four years’ residence or five years’ service has not been within the last eight years before the application.’

This sub-section is not confined to the case of a woman who was a British subject by birth, but extends to all types of British subjects as defined in Section 27 (1) of the Act. It contemplates the case of a woman who, being a British subject at the time of her marriage, ceases to be as a result of her marriage to an alien, and whose marriage comes to an end by death or divorce. Such a woman may have been obliged for domestic reasons to go and live abroad with her husband. It was thought desirable to enable her to recover British nationality on favourable terms. The status of married women is dealt with by Section 10, and that of widows, and of women whose marriages are dissolved, by Section 11 of the Act. (See below, p. 188.)

As will be seen from the comment on these sections it does not necessarily happen that a woman ceases to be a British subject as a result of her marriage to an alien, the law having been amended in 1933, so as to prevent this being the consequence of *every* marriage of a British woman to an alien. However, Section 2 (5) was not amended in 1933, and stands as enacted in 1914. On the strict wording of the sub-section it is possible that a woman who was a British subject at the time of her marriage, and continues in spite of her marriage to an alien to be a British subject, may later cease to be a British subject, and yet be eligible under this sub-section to acquire naturalization on the more favourable terms for which it provides. However, even in such a case, naturalization is still a matter of discretion.¹

'Dissolution of the marriage' includes any legal process by which the marriage is brought to an end, being a process recognized by English law. Thus it covers not only a decree absolute pronounced by an English court, but also a final decree of divorce by a foreign court recognized as competent under the English rules of private international law. It would not, of course, include a decree nisi or similar decree which was not final. It also covers decrees dissolving a marriage on grounds of nullity, where the marriage is voidable at the option of one of the parties, and most foreign decrees of nullity are of this nature. A declaration that the marriage was *ab initio* void is not a decree dissolving it.

The second branch of the sub-section relates to 'any other special case', where the applicant has not completed four years' residence or five years' service within the last eight years before the application. It will be necessary, however, even in such a case, to satisfy the requirements of Section 2 (1) (b). Generally speaking it is contrary to the practice of the Home Office since 1916 to entertain an application, under this sub-section, for the grant of a certificate of naturalization to a person who has not resided in the United Kingdom, and does not intend to return to the United Kingdom and/or reside else-

¹ The suggestion to the contrary (i.e. that a woman falling under Sub-section (5) is entitled to a certificate as of right) is made in Van Pittius, *Nationality within the British Commonwealth of Nations* (1930), p. 65, but, it is submitted, without any foundation. All that the sub-section does is to dispense with the necessity of satisfying the Secretary of State as to residence. The words of Sub-section (3), specifically reserving 'absolute discretion' to the Secretary of State, relate to the grant of a certificate to 'any such alien', i.e. any alien who makes an application for a grant under Section 2. A woman invoking Sub-section (5) still has to satisfy the Secretary of State that she is of 'good character', &c. (Section 2 (1) (b)).

where in His Majesty's dominions. Nor will it suffice for this purpose that the applicant comes to reside in the United Kingdom, if the intention is to go and reside elsewhere in His Majesty's dominions. The practice is to require *some* residence, though not the full four years normally required under Section 2 (1) (a).

Certificates of naturalization have occasionally been granted in the past to minors under this sub-section, but this practice was discontinued: Section 5 (3) forbids any such grants 'except as otherwise provided by this Act', and Section 2 (5) contains no such provision.

(' (6) For the purposes of this section a period spent in the service of the Crown may, if the Secretary of State thinks fit, be treated as equivalent to a period of residence in the United Kingdom.')

This sub-section was inserted by Section 2 (2) of the amending Act of 1918, and its purpose was to allow aliens who had served with His Majesty's forces during the Great War (1914-18), or otherwise rendered services to the Crown, to count that period, though spent abroad, as if it had been spent in residence in the United Kingdom. It was felt that many aliens would have completed the qualifying period of residence had it not been for the interruption caused by the war. The sub-section enabled such aliens to obtain naturalization earlier than would otherwise have been the case. 'Service of the Crown' includes service under any government of His Majesty, e.g. service of a Dominion government; but, in such a case, the application would normally be dealt with by the government of that Dominion.

Section 3

'(1) A person to whom a certificate of naturalization is granted by a Secretary of State shall, subject to the provisions of this Act, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, duties, and liabilities, to which a natural-born British subject is entitled or subject, and, as from the date of his naturalization, have to all intents and purposes the status of a natural-born British subject.

'(2) Section 3 of the Act of Settlement (which disqualifies naturalized aliens from holding certain offices) shall have effect as if the words "naturalized or" were omitted therefrom.'

Owing to the draftsmanship of the Act of 1870 a naturalized British subject was not placed, in all respects, in the same position as a natural-born British subject. See above, p. 94. But the effect

of Section 3 (1) is to achieve the equality of the status of these two types of British subject, 'subject to the provisions of this Act', i.e. subject to the power of revocation of a certificate of naturalization contained in Section 7. The only important difference between a naturalized British subject and a natural-born British subject is that the former may, but (apart from one exception: see p. 172 below) the latter may not, be deprived of his British nationality.

Section 3 of the Act of Settlement (1701) reads as follows:

'After the said limitation shall take effect as aforesaid no person born out of the Kingdoms of England, Scotland and Ireland or the dominions thereto belonging (although he be naturalized or made a denizen except such as are born of English parents) shall be capable to be of the Privy Council or a member of either House of Parliament or to enjoy any office or place of trust either civil or military or to have any grant of lands tenements or hereditaments from the Crown to himself or to any other or others in trust for him.'

The application of this provision to naturalized British subjects was, in fact, revoked inferentially by Section 7 (3) of the Act of 1870. *Rex v. Speyer*, [1916] 2 K.B. 858. However, Section 3 (2) of the Act of 1914 makes the position clear, and enables a naturalized alien to be a Privy Councillor, and to enjoy all the other rights withheld by Section 3 of the Act of Settlement. The restrictions laid down in the Act of Settlement still apply to denizens.

Section 4

'The Secretary of State may, in his absolute discretion, in such cases as he thinks fit, grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in the certificate that the grant thereof is made for the purpose of quieting doubts as to the right of the person to be a British subject, and the grant of such a special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.'

A 'doubt certificate' under this section must be for the purpose of quieting doubts in a case where there is good reason to believe that a person is a British subject, but some element of proof is lacking. A doubt, for this purpose, must be a doubt of fact or, at any rate, a doubt arising from a mixed question of law and fact. A certificate may, therefore, be given where the applicant's British nationality is in doubt either because:

- (a) certain facts are unascertainable which, if proved, would solve the doubt in favour of the applicant's claim to be British, or
- (b) the claim depends on a mixed question of law and fact which has not been solved, and which cannot be solved with any certainty. Under this heading there ought to be a *prima-facie* case in favour of the applicant's British nationality.

Examples.

1. There is doubt regarding the place of X's birth. Evidence is produced suggesting that he was born in a British colony, but this cannot be proved.

2. There is doubt regarding X's legitimacy but, if he were legitimate, he could establish his title to British nationality.

3. X is the child of a British subject who, during X's minority becomes naturalized in a foreign country. It is not clear whether, under the foreign law, X acquires the foreign nationality. There is doubt regarding the question whether X has ceased to be a British subject under Section 12 (1).

Section 5

'(1) Where an alien obtains a certificate of naturalization the Secretary of State may, if he thinks fit, on the application of that alien, include in the certificate the name of any child of the alien born before the date of the certificate and being a minor, and that child shall thereupon, if not already a British subject, become a British subject; but any such child may, within one year after attaining his majority, make a declaration of alienage, and shall thereupon cease to be a British subject.'

According to the law in force, when this provision was enacted in 1914, the children of naturalized British subjects were in the following position:

- (a) Such children, if born abroad, whether born before or after the father's naturalization, did not become British subjects at birth, and did not become British subjects at all unless they became, during infancy, resident with their parents in the United Kingdom (above, p. 102).
- (b) The mention of a child's name on his father's certificate of naturalization did not, in itself, produce any effect on the nationality of the child, unless the child became during infancy, resident with its parents in the United Kingdom; and, under Section 10 (5) of the Act of 1870, it was the fact of such residence that counted.

The Act of 1914 altered the law on these two points, for, (1) as regards children born *after* naturalization, though born abroad, Section 1 (1) (b) (ii) of the Act makes them natural-born British subjects (above, p. 139), (2) as regards children born *before* naturalization, though born abroad Section 5 (1) makes them British subjects, if being minors they are included in the father's certificate, whether they become resident in the United Kingdom or not. The position of the child whose name is included on his father's certificate of naturalization under Section 5 (1) is that of a naturalized British subject: see Section 27 (2) of the Act, and comment thereon, below, p. 223. Such a child may cease to be a British subject, under Section 5 (1), if he makes a declaration of alienage within one year of attaining 21; and this period of one year cannot be extended: it is worth noting, however, that the child may also cease, even during minority, to be a British subject (a) by marriage, (b) under Section 12 (1).

It is a matter within the discretion of the Secretary of State whether he will include the names of minor children on the father's certificate. As a matter of practice it is not considered to be the intention of Section 5 (1) that the child of an alien shall be included in the applicant's certificate, if the child is not in the custody of that applicant; e.g. the child of a divorced parent will not be included in the certificate of a parent who has not the custody of the child. (This point also may arise on Section 12 (1): see below, p. 189.) Although, normally, it will be the father's certificate that is involved, because a married woman, being under disability, cannot be naturalized, the case may arise of a widow applying for a certificate. The language of Section 5 (1) which speaks generally of the 'alien' is wide enough to cover such a case.

The word 'minor', which is not defined in the Act, is to be construed according to the whole of English law, including the rules of private international law. According to the latter, the question whether a person is a 'minor' or not is determined by the law of his domicile. Thus, according to the law of British India, a person ceases to be a minor at the age of 18. Consequently, if an alien is naturalized under the Act of 1914 in British India, a child of that alien, who is domiciled there, ought not to be included in the certificate if he has attained the age of 18. Such a child would also cease to be under disability for other purposes: e.g. Section 5 (2), Section 12 (1).

It may be noted that the revocation of an alien's certificate does not necessarily affect the British nationality of his children, but only

if the Secretary of State so directs. See Section 7A, and comment thereon, below, p. 171.

Section 5

‘(2) The Secretary of State may, in his absolute discretion in any special case in which he thinks fit, grant a certificate of naturalization to any minor, *whether or not*¹ the conditions required by this Act have been complied with.’

The Home Office will not, in general, exercise the power conferred by this sub-section, unless there is some direct connexion of residence between the minor and this country. Accordingly it is not possible, in general, to naturalize under this sub-section a minor normally resident abroad, even though he may be a British protected person. The general rule of practice is that the requirements of Section 2 of the Act should be satisfied, as providing a standard for the type of case in which naturalization of a minor is possible under Section 5 (2). The sub-section is intended to provide for exceptional cases in which, assuming this standard to be reached, there are special grounds for departing from the principle laid down in Section 5 (3) that minors are not suitable subjects for naturalization. However, in very rare cases, minors have been naturalized even though there is no connexion of residence, in order to avoid grave hardships.

The power granted by Section 5 (2) is limited to the grant of a certificate of naturalization, and does not confer any authority to dispense with the oath of allegiance. Accordingly, parents may not take the oath for a child too young to understand the nature of an oath, so as to enable him to be naturalized under this sub-section.

‘(3) Except as provided by this *Act*² a certificate of naturalization shall not be granted to any person under disability.’

The expression ‘disability’ means the status of being a married woman, a minor, lunatic, or idiot. See Section 27 (1), p. 222 below. The exception in favour of married women is contained in Section 10 (6), in favour of minors in Section 5 (2).

In deciding whether a person is a married woman, a minor, lunatic, or idiot the whole of English law, including the rules of private international law, must be applied.

Section 6

‘An alien who has been naturalized before the passing of this Act may apply to the Secretary of State for a certificate of naturalization

¹ Drafting amendment. (B.N.A. 1918.) ² Drafting amendment. (B.N.A. 1918.)

under this Act, and the Secretary of State may grant him a certificate on such terms and conditions as he may think fit.'

Before the Act of 1914 aliens could be naturalized, either under (1) the Naturalization Act, 1870, or (2) in the Colonies and British Dominions, under local naturalization statutes. We have seen that the effect of both types of naturalization was limited (see pp. 94, 104 above). It would be to the advantage of certain individuals, who had been naturalized before the Act of 1914, to enlarge their rights by obtaining a fresh certificate under that Act. The section provides, however, that a fresh grant may be subject to terms and conditions attached to it by the Secretary of State. Any certificate of naturalization issued under Section 6 must, therefore, be carefully scrutinized in order to ascertain the exact scope of its operation. The certificate may abridge the rights granted by Section 3 (1) of the Act to naturalized persons; for that section contains the proviso that those rights are conceded 'subject to the provisions of the Act'.

Section 6 has not, in practice, been used for the purpose of granting in the United Kingdom an 'Imperial' certificate of naturalization to a person locally naturalized in a colony or Dominion. The proper authority to deal with an application of this nature is the government of the Dominion concerned; or, in the case of a colony the government of the colony may, by virtue of Section 8 of the Act, put forward for the approval of the Secretary of State an application for an 'Imperial' certificate by a person to whom a local certificate of naturalization in the colony had been granted, which was still in force. Such applications, if made in respect of colonial certificates, would normally be dealt with by the Colonial Office.

Section 7

'(1) Where the Secretary of State is satisfied that a certificate of naturalization granted by him has been obtained by false representation or fraud, or by concealment of material circumstances, or that the person to whom the certificate is granted has shown himself by act or speech to be disaffected or disloyal to His Majesty, the Secretary of State shall by order revoke the certificate.'

Although this sub-section was re-enacted by Section 1 of the amending Act of 1918, it was the only ground of revocation provided for by the Act of 1914. It will be noted that once the Secretary of State is satisfied that the conditions specified exist, he has no discretion in the matter: it is his duty to revoke

the certificate, as the sub-section uses the word 'shall'. Revocation is a serious step, and may have the result of rendering a person stateless, with the result that it may be impossible to deport him.

⟨(2) Without prejudice to the foregoing provisions, the Secretary of State shall by order revoke a certificate of naturalization granted by him in any case in which he is satisfied that the person to whom the certificate was granted either—

- (a) has during any war in which His Majesty is engaged unlawfully traded or communicated with the enemy or with the subject of an enemy state, or been engaged in or associated with any business which is to his knowledge carried on in such manner as to assist the enemy in such war; or
- (b) has within five years of the date of the grant of the certificate been sentenced by any court in His Majesty's dominions to imprisonment for a term of not less than twelve months, or to a term of penal servitude, or to a fine of not less than one hundred pounds; or
- (c) was not of good character at the date of the grant of the certificate; or
- (d) has since the date of the grant of the certificate been for a period of not less than seven years ordinarily resident out of His Majesty's dominions otherwise than as a representative of a British subject, firm, or company carrying on business, or an institution established, in His Majesty's dominions, or in the service of the Crown, and has not maintained substantial connection with His Majesty's dominions; or
- (e) remains according to the law of a State at war with His Majesty a subject of that State;

and that (in any case) the continuance of the certificate is not conducive to the public good.⟩

This sub-section is mandatory, i.e. where the Secretary of State is satisfied that any of the conditions specified exist it is his duty to revoke the certificate, provided that he is satisfied, in any case, that the continuance of the certificate is not conducive to the public good. This last-mentioned proviso (which leaves a wide discretion to the Secretary of State) applies to each of the heads (a) to (e), and indicates the guiding principle to be followed in deciding whether the certificate should be revoked.

⟨(3) The Secretary of State may, if he thinks fit, before making an order under this section refer the case for such inquiry as is hereinafter

specified, and in any case to which sub-section (1) or paragraph (a), (c) or (e) of sub-section (2) of this section applies, the Secretary of State shall, by notice given to or sent to the last-known address of the holder of the certificate, give him an opportunity of claiming that the case be referred for such inquiry, and if the holder so claims in accordance with the notice the Secretary of State shall refer the case for inquiry accordingly.’>

This sub-section provides that the Secretary of State has the power to refer cases under Sub-section (1) and (2) to an inquiry, but he is not obliged to do so, unless the holder of the certificate, who has received notice that it is proposed to consider revocation of his certificate, claims an inquiry. This right to *claim* an inquiry is limited to cases where it is proposed to revoke the certificate under Sub-section (1) or Sub-section 2 (a), 2 (c), or 2 (e).

‘(4) An inquiry under this section shall be held by a committee constituted for the purpose by the Secretary of State, presided over by a person (appointed by the Secretary of State with the approval of the Lord Chancellor) who holds or has held high judicial office, and shall be conducted in such a manner as the Secretary of State may direct:

‘Provided that any such inquiry may, if the Secretary of State thinks fit, instead of being held as aforesaid be held by the High Court, and the practice and procedure on any inquiry so held shall be regulated by rules of court.

‘A committee appointed under this section shall have all such powers, rights and privileges as are vested in the High Court or in any judge thereof on the occasion of any action, in respect of the following matters:—

(a) the enforcing the attendance of witnesses and examining them on oath, affirmation, or otherwise, and the issue of a commission or a request to examine witnesses abroad; and

(b) the compelling the production of documents; and

(c) the punishing persons guilty of contempt;

and a summons signed by one or more members of the committee may be substituted for and shall be equivalent to any formal process capable of being issued in any action for enforcing the attendance of witnesses and compelling the production of documents.’>

This sub-section, which deals with the mode of inquiry, does not call for any special comment.

‘(5) Where a person to whom a certificate of naturalization has been granted in some part of His Majesty’s dominions is resident in

the United Kingdom, the certificate may be revoked in accordance with this section by the Secretary of State, with the concurrence of the Government of that part of His Majesty's dominions in which the certificate was granted.)

⟨‘(6) Where the Secretary of State revokes a certificate of naturalization the revocation shall have effect from such date as the Secretary of State may direct, and thereupon the certificate shall be given up and cancelled and any person refusing or neglecting to give up his certificate shall be liable on any summary conviction to a fine not exceeding one hundred pounds.’⟩

Sub-section (5) refers to a ‘certificate of naturalization’, which is defined by Section 27 (1) to mean ‘a certificate of naturalization granted under this Act or under any Act repealed by this or any other Act’. A certificate may have been granted by a colonial or Dominion government either (possibly) under the Naturalization Act, 1870, or under Part II of the Act of 1914. In that event the Home Office would not revoke the certificate of a naturalized British subject resident in the United Kingdom without consulting the colonial or Dominion government. Sub-section (5) requires not merely consultation but the *concurrence* of the government concerned.

Section 7A

⟨‘(1) Where a certificate of naturalization is revoked the Secretary of State may by order direct that the wife and minor children (or any of them) of the person whose certificate is revoked shall cease to be British subjects, and any such person shall thereupon become an alien; but except where the Secretary of State directs as aforesaid, the nationality of the wife and minor children of the person whose certificate is revoked shall not be affected by the revocation, and they shall remain British subjects:

‘Provided that—

- (a) it shall be lawful for the wife of any such person within six months after the date of the order of revocation to make a declaration of alienage, and thereupon she and any minor children of her husband and herself shall cease to be British subjects and shall become aliens; and
- (b) the Secretary of State shall not make any such order as aforesaid in the case of a wife who was at birth a British subject, unless he is satisfied that if she had held a certificate of naturalization in her own right the certificate could properly have been revoked under this Act, and the provisions of this Act as to referring cases for inquiry shall apply to the making of any such order as they apply to the revocation of a certificate.⟩

⟨‘(2) The provisions of this section shall, as respects persons affected thereby, have effect in substitution for any other provisions of this Act as to the effect upon the wife and children of any person where the person ceases to be a British subject, and such other provisions shall accordingly not apply in any such case.⟩

⟨‘(3) Where a certificate of naturalization is revoked the former holder thereof shall be regarded as an alien and as a subject of the state to which he belonged at the time the certificate was granted.⟩

This section was inserted by Section 1 of the amending Act of 1918. It safeguards the British nationality of the wife and minor children of a person whose certificate is revoked, unless an order is made to the contrary. The section does not limit the power of making the order to cases where the minor children have been included in the father's certificate, nor does it speak of the wife as a ‘naturalized’ subject. The order may direct that ‘the wife and minor children (or any of them) shall cease to be British subjects’. The definition of ‘British subjects’ in Section 27 (1) includes natural-born British subjects. It is clear, therefore, that, under this section, the Secretary of State can deprive the wife and minor children of a naturalized British subject of their British nationality, although they may be natural-born British subjects, not naturalized. It is not likely that the legislature intended this power to be used to deprive minor children of their British nationality, unless they were naturalized with the father, especially as proviso (b) limits the power, in the case of a wife who is a natural-born British subject, but not in the case of the children. Moreover, Section 5 (1), which deals with the naturalization of minors under the father's certificate of naturalization, includes the child ‘if not already a British subject’, and from this it is clear that the status of a child as a natural-born British subject is not to be affected by the father's naturalization, and there is no reason why it should be affected by the revocation of his certificate of naturalization.

The word ‘and’ between wife and minor children is to be read as ‘and/or’; accordingly the order may discriminate between the wife and the minor children or any one of them.

Proviso (a) enables the wife of a person whose certificate is revoked to renounce her British nationality, both for herself and her children. But this proviso can only apply where the Secretary of State has made no direction regarding the wife and children. The expression ‘declaration of alienage’ is not used here with reference to Section

14, but just as statelessness may result from a declaration made under Section 14 (2), so the result of a declaration of alienage made under the above proviso may be to cause the wife and minor children to become stateless.

Proviso (b) limits the power to make an order in the case of a *wife* who is a natural-born British subject. In such a case the Secretary of State must, before making the order, be satisfied that, if the wife had held a certificate of naturalization in her own right,¹ it could properly have been revoked. But no such limitation is imposed regarding the deprivation of British nationality regarding the children.

Sub-section (2) refers to 'any other provision of this Act as to the effect upon the wife and children of any person where the person ceases to be a British subject'. The provisions in question are Section 10 (3) and 10 (4), which deal with the status of a married woman whose husband 'ceases to be a British subject', and Section 12 (1) which deals with the status of infant children whose father or mother 'ceases to be a British subject'. These provisions do not apply to the case of a wife and minor children of a person whose certificate of naturalization is revoked, their position being exclusively dealt with by Section 7A.

Sub-section (3) provides that the revocation of a certificate puts the former holder in the position of an alien, i.e. a person who is not a British subject. This does not necessarily mean that he recovers the nationality which he possessed when he became naturalized, for that depends, not on English law, but on the law of the state of which he was formerly a subject. The last part of the sub-section may, therefore, appear to purport to do something which the British Parliament has no power to do, i.e. attribute to a man a nationality other than British. However, it does not go quite as far as that, for it merely provides that he 'shall be regarded' as 'a subject of the state to which he belonged at the time the certificate was granted'. The practical result of this provision is entirely negative if the law of that state holds him to be no longer a subject, e.g. he cannot be deported to that state. However, for internal purposes it is more

¹ If the wife, in fact, possessed a certificate in her own right, e.g. under Section 10 (6), it could, no doubt, be revoked under Section 7. But if she possessed a certificate granted *before* her marriage, the revocation of such a certificate would be nugatory, because her nationality after her marriage is determined by Section 10. Apart from Section 10 (6) she could not be granted a certificate during the continuance of her marriage because a married woman is under disability.

convenient to regard him as a subject of that state than to regard him as completely stateless.

Section 8

‘(1) The Government of any British Possession shall have the same power to grant a certificate of naturalization as the Secretary of State has under this Act, and the provisions of this Act as to the grant and revocation of such a certificate shall apply accordingly, with the substitution of the Government of the Possession for the Secretary of State, and the Possession for the United Kingdom (and of a High Court or superior court of the Possession for the High Court, and with the omission of any reference to the approval of the Lord Chancellor,) and also, in a Possession where any language is recognized as on an equality with the English language, with the substitution of the English language or that language for the English language.

‘Provided that, in any British Possession other than British India (British Burma) and a Dominion specified in the First Schedule to this Act, the powers of the Government of the Possession under this section shall be exercised by the Governor or a person acting under his authority, but shall be subject in each case to the approval of the Secretary of State, and any certificate proposed to be granted (and any proposal to revoke any certificate) shall be submitted to him for his approval.

‘(2) Any certificate of naturalization granted under this section shall have the same effect as a certificate of naturalization granted by the Secretary of State under this Act.’

This section gives the same powers to the colonies and Dominions as the Secretary of State in the United Kingdom in the matter of naturalization, subject, in the case of the colonies to the approval of the Secretary of State (Colonial Office). Furthermore, the certificate granted in the colonies or Dominions has ‘Imperial’ force, i.e. it has the same effect as a certificate issued in the United Kingdom. In these respects the Act of 1914 extended and amended the law. See above, p. 113. In the case of the Dominions these powers are not exercisable unless the Dominion formally adopts Part II of the Act under Section 9. The Irish Free State was not in existence in 1914 and was not therefore included as a Dominion. It acquired the power to adopt Part II of Section 3 of the Irish Constitution Act, 1922 (Session 2), but never exercised it.

The words ‘British Burma’ were added after the words ‘British India’ by the Government of India Adaptation of Acts of Parliament Order, 1937 (No. 230).

This section was enacted at a time when the Dominions and colonies had only power to grant local certificates of naturalization, and the intention was that these certificates would fall into disuse and be replaced by an 'Imperial' certificate under the Act. It has not succeeded in achieving this result, for local certificates continued to be granted even after 1914, and some parts of the British Commonwealth (India and New Zealand) have even introduced legislation since 1914 providing for local naturalization. See below, pp. 271, 275.

Imperial certificates of naturalization may be granted in British India under Part II B.N.A. The procedure governing applications for such certificates is prescribed by the British Nationality and Status of Aliens Regulations (India) 1945. S.R. & O. (1945), No. 916. See Appendix, p. 368. In addition, however, there is a comprehensive enactment providing for local naturalization in British India. See below, p. 275.

As to British Burma, see the Naturalization (Burma) Regulations, 1938. S.R. & O. (1938), No. 172. Before the separation of Burma and India, the Regulations of 1936 (S.R. & O. No. 1418) applied to both countries, but these were revoked in relation to Burma in 1938, and in relation to India in 1945.

Section 9

'(1) This part of this Act shall not, nor shall any certificate of naturalization granted thereunder, have effect within any of the Dominions specified in the First Schedule to this Act, unless the Legislature of that Dominion adopts this Part of the Act.

'(2) Where the Legislature of any such Dominions has adopted this Part of this Act, the Government of the Dominion shall have the like powers to make regulations with respect to certificates of naturalization and to oaths of allegiance as are conferred by this Act on the Secretary of State.

'(3) The Legislature of any such Dominion which adopts this Part of this Act may provide how and by what Department of the Government the powers conferred by this Part of this Act on the Government of a British Possession are to be exercised.

'(4) The Legislature of any such Dominion may at any time rescind the adoption of this Part of this Act, provided that no such rescission shall prejudicially affect any legal rights existing at the time of such rescission.'

The following Dominions have 'adopted' Part II of the Act:

Canada (1914), Newfoundland (1915), Australia (1920), South Africa (1926), and New Zealand (1929). These Dominions are all listed in the First Schedule to the Act. The legislation of these Dominions and the position there and in the Irish Free State is discussed below in Part IV. Apart from Newfoundland, every Dominion in fact re-enacted, instead of adopting, Part II, and in some cases re-enacted Part I as well (below, p. 244).

British Nationality and Status of Aliens Act, 1943

(Naturalization of Aliens)

Section 4

‘If at any time during the present war period an application for a certificate of naturalization is made to the Secretary of State by any person appearing to him to be or to have been at any time during that period a French national, then if the Secretary of State is satisfied that the applicant (a) is, or has at any time during that period been, a member of His Majesty’s forces; and (b) is a proper person to be naturalized as a British subject, the Secretary of State may grant to the applicant a certificate of naturalization under Section 2 of the principal Act notwithstanding that the requirements of sub-section (1) of that section are not complied with.’

This section applies only to His Majesty’s Government in the United Kingdom, on whom it confers powers to naturalize certain aliens, although the conditions laid down in Section 2 of the Act of 1914 have not been complied with. Persons naturalized under Section 4 of the Act of 1943 do not become British subjects under the law of the Dominions, unless they are so recognized by that law.

The aliens affected are those who have been at any time during the war period French nationals serving in His Majesty’s forces, i.e. during the period beginning September 3, 1939, and ending with such date as His Majesty may by Order in Council appoint (Section 10 (1) of the Act of 1943). If the Secretary of State is satisfied that applicants falling under this definition are proper persons to be naturalized, he may naturalize them, even though they do not satisfy the conditions laid down by Section 2 of the Act of 1914.

Section 5

‘A certificate of naturalization granted in accordance with any law in any Dominion, being a law providing for the naturalization of persons in consideration of service rendered at any time during the

present war period in connection with the prosecution of the war, shall have the same effect as a certificate of naturalization granted by the Secretary of State under Part II of the said Act and shall be deemed for the purposes of that Act to be a certificate of naturalization granted thereunder.'

This section anticipates the passage of legislation in the Dominions naturalizing aliens on the ground of war service although the conditions laid down by Section 2 of the Act of 1914 are not satisfied. In order that the persons so naturalized shall be recognized as British subjects in the United Kingdom the above section was inserted into the Act of 1943. The section is an attempt to keep up the 'common status', which, since 1922, has become somewhat theoretical (see Introduction). In principle there should be mutual recognition by all members of the British Commonwealth of naturalization under the laws of member-states, and the section is an attempt to carry out this principle.

III

NATIONAL STATUS OF MARRIED WOMEN AND INFANT CHILDREN

(Sections 10–12 B.N.A.)

Section 10

“(1) Subject to the provisions of this section, the wife of a British subject shall be deemed to be a British subject, and the wife of an alien shall be deemed to be an alien.”¹

As we have seen (above, p. 72) by the common law the nationality of a woman was not affected by her marriage. If a British woman married an alien she remained British; if an alien woman married a British subject she remained, for the purposes of English law, an alien. By the Naturalization Act, 1844, an alien woman who married a natural-born or naturalized British subject was deemed to be herself naturalized. By the Naturalization Act, 1870, a British woman, for the first time in the history of English law, lost her British nationality on marrying an alien (above, p. 98). Section 10 (1) of the Act of 1914 combined these two rules by adopting the policy that a married woman should, in general, take the nationality of her husband. This policy cannot be followed in every case, either because the alien husband is stateless, or because, under the law of his nationality, his wife does not, by reason only of the marriage, acquire his nationality. If the general rule laid down in Section 10 (1) had been allowed to stand, without further modification, a British woman would in many cases lose her British nationality but would not acquire any other nationality instead. Accordingly, Section 1 (1) of B.N.A. 1933 substituted new rules for those formerly in force under the 1914 Act which are set out in the succeeding sub-sections. The 1933 Act is not, however, part of the law of the British Dominions, although New Zealand, Australia, and South Africa have passed similar legislation.¹

It is convenient to consider the effect of Section 10 (1) and Section 10 (2) together, and comment on these two sub-sections will be found under Section 10 (2).

“(2) Where a woman has (whether before or after the commencement of this Act) married an alien, and was at the time of her

¹ Below, p. 245.

marriage a British subject, she shall not, by reason only of her marriage, be deemed to have ceased to be a British subject unless, by reason of her marriage, she acquired the nationality of her husband.¹

This provision is retrospective, and the above sub-section, together with Sub-sections (3), (4), and (5), was introduced as an amendment of Section 10 as originally enacted in 1914 and amended in 1918. The substance of Section 10, as enacted in 1914 and amended in 1918, is contained in Section 10 (1) and Section 10 (6) of the Act as it now stands.

Sub-sections (2) to (5) inclusive were passed in order to give effect to the principles laid down in Articles 8, 9, and 10 of The Hague Convention of 1930 on certain questions relating to the Conflict of Nationality Laws. This Convention came into force in 1937, and Great Britain and all the Dominions are parties to it (see above, p. 22). Those principles, briefly, are as follows:

- (1) If by her law a woman loses her nationality on marriage with a foreigner this result shall be conditional on her acquiring the nationality of her husband (Article 8). Compare Sub-section (2) above.
- (2) If by her law the wife loses her nationality in consequence of the change of nationality by her husband during marriage this result shall be conditional on her acquiring the new nationality of her husband (Article 9). Compare Sub-section (3) below.
- (3) Naturalization of the husband during marriage shall not involve a change of nationality of the wife except with her consent (Article 10). Compare Sub-section (5) below.

The first point to be noticed, in construing both Sub-section (1) and Sub-section (2), is that the words 'wife' and 'marriage' presuppose a valid marriage, and in construing them the whole of English law, including the English rules of private international law, must be applied. The proper course is to determine whether, according to these rules, the woman is a 'wife', and, if she is, she falls under the ambit of the general rule laid down in Section 10 (1). The validity of a marriage is determined, under the English rules of private international law, by the law of the husband's domicile. Having done this the next step is to take into account the qualifying words in Section 10 (1), namely, 'subject to the provisions of this Act'. Section 10 (2) then comes into play, and the relevant criterion here is not the law of the husband's domicile, but the law of his nationality. In Section 10 (2) the most important words are 'by reason only

of her marriage'. A woman, being a British subject, who marries an alien, may become his 'wife' under the English rules of private international law, and nevertheless retain her British nationality under Section 10 (2), either because the law of her husband's nationality does not give wives that nationality on marriage or because it does not consider that she is a wife.

A polygamous marriage, if it is valid by the law of the husband's domicile, is recognized as a valid marriage in the English courts. A marriage contracted by a British subject within the prohibited degrees is in a different category. According to the view acted upon by the Home Office the law of the domicile is subject, in this case, to the overriding claims of English public policy which discountenances such marriages. Such a marriage does not make the woman a 'wife' in the English courts, and Section 10 (1) cannot apply to her case. If the marriage has been declared void by a court recognized as competent in the matter under the English rules of private international law, the woman was clearly never the wife of a British subject or an alien, as the case may be, and consequently neither acquired nor lost British nationality under Section 10 (1) and (2). This can only apply in the cases where a decree of nullity renders the marriage void *ab initio*, and not where the marriage is merely voidable at the option of one of the parties, or is dissolved by a decree of divorce (see below, p. 189). Most decrees of nullity, including those of foreign courts, are, in fact, cases where there is a voidable marriage. Such a marriage, until annulled, is a valid marriage, so that an alien woman who marries a British subject acquires British nationality 'by reason of the marriage'. The decree in fact dissolves the marriage and Section 11 (see below, p. 188) governs the case. Before considering the other branches of Sub-section (2) it is convenient to give some examples of the operation of these rules.

Examples

1. W., a British woman, marries M., a Greek, who is domiciled neither in England nor in Greece, by a civil ceremony in England, which creates a marriage valid in English law and in the law of M.'s domicile. But it is invalid in Greek law, which requires the marriage to be solemnized in accordance with the appropriate religious ceremony. Hence W. does not acquire a fresh nationality 'by reason of her marriage', and she does not, therefore, cease to be a British subject.

2. A Polish Jew, resident in England since 1910 was naturalized as a British subject in 1935. In 1937 he went to Warsaw and married his

niece. Such a marriage was valid in Jewish law, but invalid in English law on the ground of consanguinity. Assuming the matrimonial domicile to be in England, the marriage is void under English law, and the niece, not being a 'wife', does not acquire British nationality 'by reason of her marriage'.

3. A British subject born in Malta married his niece in Morocco, having obtained a papal dispensation. The marriage was according to the rites of the Roman Catholic Church. The parties were domiciled in Malta, and the marriage was valid in Malta. The marriage is valid in English law, and the niece, if she was an alien before the marriage, becomes a British subject 'by reason of her marriage'.

The position of a woman (being a British subject) who, on marrying an alien, has the right under the nationality law of her husband to opt against assuming his nationality, or is required to take some formal and voluntary step in order to acquire it, depends on the terms of the foreign law, which is sometimes verbose and difficult to construe. By the French law of 1927¹ a married woman could acquire French nationality on her express application made previously to the celebration of the marriage. If she did this it was thought that her French nationality was acquired 'by reason only of her marriage'. By the French law as it was in 1938² a married woman who made a declaration that she wished to acquire her husband's (French) nationality could not do so until six months after the date of the marriage, and, even when this period had elapsed, not until certain other conditions were fulfilled. Under this provision her

¹ The following different legal situations resulted from changes in the French law, read with the provisions of Section 10:

- (a) If the marriage of a British woman to a French citizen took place before November 17, 1933, the woman *ipso facto* became an alien under the amended rule laid down in Section 10 as enacted in 1914. The retrospective effect of Sections 10 (1) and (2) cause these cases to fall into Class (b) below, and *prima facie* all such women regained British nationality having been regarded as aliens for a time.
- (b) If the same marriage took place between November 17, 1933, and November 12, 1938, the woman remained a British subject unless she applied *before* her marriage for French nationality. This resulted from the combined operation of Sections 10 (1) and (2) and the French law of 1927 quoted above.
- (c) If the same marriage took place after November 12, 1938, the woman remained British whether or not she applied for French nationality. This resulted from the amendment made in the French law of 1938, quoted above.

A woman who became an alien by marriage cannot recover British nationality during her marriage except (1) in the event of her husband's naturalization as a British subject under Section 10 (5), (2) in time of war her husband being an enemy alien, under Section 10 (6).

² There is now a new French Nationality Law of 1945.

French nationality was not acquired 'by reason only of her marriage'. By the Irak law of 1941 a foreign woman marrying an Iraki acquires Iraki nationality as from the date on which the Minister of the Interior approves her application. In this case she does not acquire Iraki nationality 'by reason only of her marriage', and her action merely results in her having dual nationality, assuming that she was a British subject before her marriage.

The result of acquiring a foreign nationality, before or after marriage, depends on the facts in each case, and on the provisions of the foreign law.

What is the position of a woman who has dual nationality, British and foreign, and who marries a man of that foreign nationality? The prevailing view, which has been established in administrative practice for some time, is that Sections 10 (1) and (2) do not operate to deprive her of her British nationality, because she does not acquire the foreign nationality 'by reason only of her marriage' being already in possession of it. This result was probably not intended, and is somewhat absurd, but it seems to follow from the defective wording of the section. Indeed, the purpose of the 1933 legislation was to give effect to The Hague Convention of April 12, 1930 (see above, p. 22), which declares that 'every person should have a nationality and should have one nationality only'. Sections 10 (1) and (2) appear successfully to avoid statelessness resulting from marriage but not, in all cases, double nationality.

What is a 'nationality' for the purposes of Section 10 (2)? The term is nowhere defined in the Act, although an attempt is made in Part I of this book to state what a nationality means in international law. It is not necessary, for the purposes of Sections 10 (1) and (2), that there should be a written nationality law. The principle to be kept in mind is that a woman 'by reason only of her marriage' does not cease to be a British subject, unless 'by reason [only] of her marriage' she *acquires* the nationality of her husband. The second '[only]' is not in the text of Sub-section (2), but the sub-section is to be read as though it occurred a second time. Many persons are nationals of states which do not possess a written nationality law, e.g. the Indian native states, Morocco, &c. A second question may, however, arise, namely, whether the woman *acquires* a nationality different from that which she possesses already. This point is important when a British subject marries a man who is, for instance, a Palestinian citizen or any other British protected person (see below,

p. 291). Such a man is not a British subject, *qua* Palestinian citizen or British protected person, but an alien in the United Kingdom. Although he is not a British subject, he is a British national (*ressortissant*) for the purposes of international law and protection. A British woman who marries such a person does not *acquire*, from the international point of view, any different nationality from that which she possessed at the time of her marriage. Palestinian citizenship, and the nationality of British protected persons, are not 'foreign' nationalities within the meaning of the sub-section. Palestine, although not within His Majesty's dominions, is not within any other state's dominions, and is not a state. (As to the nature of Palestinian citizenship see Part IV, Chapter IV.)

As its terms indicate, Section 10 (2) is retrospective, and benefits British women, married to aliens before, as well as after, the Act, and, in effect, means that those women who married before the Act regained British nationality after having been regarded as aliens for a time. They might even have been stateless by reason of Section 10 (1) as it stood before being amended in 1933, for to be an alien means *not* to be a British subject (an alien may well be stateless).

It should be noticed that a British woman who is married, or was married before the Act, to a stateless person does not lose her British nationality, although such a person is an alien under the Act, for, as her husband has no nationality, she cannot acquire it, and Section 10 (2) cannot apply.

Examples

1. A is a British woman who marries B, who is either (i) a stateless person, or (ii) a national of a state by the law of which A does not, by reason of her marriage, acquire her husband's nationality. Subsequently B becomes the national of another state, by the law of which a married woman is *ipso facto* deemed to acquire her husband's nationality. A does not cease to be a British subject under Section 10 (1), because it is not 'by reason only of her marriage' that she acquires her husband's new nationality, and, therefore, Section 10 (2) does not operate to deprive her of British nationality.

2. A is a British woman who marries B, an alien, and by reason of her marriage acquires B's nationality. She ceases to be a British subject. Subsequently B becomes stateless and A also, but A cannot recover her British nationality, although, if her husband becomes a naturalized British subject, A will become a British subject also under Section 10 (1).

3. A and B, a married couple, are both British subjects. A, the

husband, becomes naturalized in a foreign state, and his wife thereby acquires his new nationality. By Section 10 (4) she may retain her husband's nationality, and she makes a declaration of retention. If A now acquires a new nationality and, as a result, B also acquires that other nationality, Section 10 (4) now has no application, and B ceases to be a British subject. The reason for this is that A has already ceased to be a British subject, and there is nothing on which Section 10 (4) can operate. Section 10 (1) comes into play, and B ceases to be a British subject.

4. A is an alien who is locally naturalized in British Guiana. He comes to settle in England where he is told that he has the status of an alien. He marries B, a natural-born British subject. The nationality contemplated in Section 10 (2) is a nationality distinct from British nationality, and to say that the local status of a British subject in a British possession is a nationality distinct from British nationality is not maintainable. In fact it is a species of British nationality (see below, p. 288). Accordingly, B does not cease to be a British subject.

‘(3) Where a man has, during the continuance of his marriage, ceased (whether before or after the commencement of this Act) to be a British subject, his wife shall not, by reason only of that fact, be deemed to have ceased to be a British subject unless, by reason of the acquisition by her husband of a new nationality, she also acquired that nationality.’¹

This provision aims at ensuring that, when the husband ceases to be a British subject, the wife shall not also lose her British nationality if the result is to make her stateless. This result might ensue, before the law was altered in 1933, because of the unmitigated operation of Section 10 (1): the wife of an alien, being deemed an alien, the British wife of a British subject, who became an alien during the marriage, also became an alien. Yet she might not, as a result of her husband's change of nationality, acquire any fresh nationality, so that, assuming she possessed no nationality other than British, she became stateless. Such a situation was contemplated by Article 9 of The Hague Convention of 1930, and by the above sub-section, which is an attempt to translate into English law the principle underlying that Article. What is not contemplated by the sub-section is the case of a wife, who is a dual national, and who either possesses already the new nationality which her husband has acquired, or does not *ipso facto* acquire it by reason of her husband's acquisition of it. Owing to the wording of the sub-section the wife, in either case, does not cease to be a British subject, although such a result would be in accordance with the principle underlying Section

10 as a whole, namely, that every person should possess one nationality and only one nationality.

Accordingly, the mere fact that her husband loses his British nationality does not cause the wife to do so likewise, whether she was married before or after November 17, 1933, unless the husband's loss of his British nationality is due to the acquisition of a new nationality which she (the wife) also acquires *by reason of that fact*. The husband may choose to acquire a new nationality, by becoming naturalized in a foreign state, and by so doing he will cease to be a British subject (if he is one) under Section 13. A married woman cannot adopt such a course, because she is under a 'disability'. (See comment on Section 13 below, p. 195.) The husband may also cease to be a British subject by making a declaration of alienage under Section 14 (1), but this is not a case in which he acquires a new nationality, for the declaration presupposes that he has already 'at birth or during his minority' acquired the nationality for which he opts. Section 10 (3), therefore, has no effect on the wife's nationality in this instance. There is no provision in the Act that specifically deals with the position of the wife of a man who makes a declaration of alienage. Apart from Section 10 (3) it might be argued that, under Section 10 (1), she would be deemed to be an alien. However, the last branch of Section 10 (3), as already stated, prevents the wife from ceasing, *merely by virtue* of her husband's declaration of alienage, to be a British subject.

Example

A man and woman, both British subjects, natural-born, were married in England. Later both were naturalized in the United States. Section 10 (3) has no application, because the wife did not acquire United States citizenship, 'by reason of the acquisition by her husband of a new nationality', but acquired that citizenship in her own right. Hence she does not lose British nationality under Section 10 (3); and she does not lose British nationality under Section 13 as a result of her own naturalization because she is 'under disability'.¹

'(4) Where a man ceases, during the continuance of his marriage, to be a British subject and, by reason of his acquisition of a new nationality, his wife also acquires that nationality, she may, whether her marriage is still continuing or not, at any time within the period of twelve months from the date on which she so acquired that nationa-

¹ This illustration is based on the law as it stood before the United States Nationality Act, 1940.

lity, or at such later time as the Secretary of State may in special circumstances allow, make a declaration that she desires to retain British nationality, and thereupon she shall be deemed to have remained a British subject.’¹

This sub-section carries the principle of Sub-section (3) even further, and allows a married woman, even if she acquired the foreign nationality chosen by her husband after the marriage ‘by reason of his acquisition of a new nationality’ (see above, p. 185), to elect in favour of retaining her British nationality. She is allowed to do this whether the marriage has come to an end by divorce or otherwise, or whether it is still subsisting. Where the marriage has come to an end the word ‘she’ must be construed as meaning the person who was the man’s wife at the time he ceased to be a British subject, and who, by reason of his acquisition of a new nationality, also acquired that nationality.

The words ‘such later time’ mean a reasonable time after the expiry of the twelve months allowed by the sub-section, having regard to all the circumstances. If a declaration of retention is made by a wife many years after her husband’s naturalization in a foreign country, as time increases, the circumstances must be more and more special for the Secretary of State to allow a declaration of retention to be registered.

‘(5) Where, after the end of the year nineteen hundred and thirty-three, a certificate of naturalization is granted to an alien, his wife, if not already a British subject, shall not be deemed to be a British subject, unless, within the period of twelve months from the date of the certificate, or within such longer period as the Secretary of State may in special circumstances allow, she makes a declaration that she desires to acquire British nationality.’¹

This sub-section allows the wife of an alien, who is herself an alien, to refrain from acquiring British nationality, if she so wishes, notwithstanding the fact that her husband has become a naturalized British subject. The provision only applies to naturalization on and after January 1, 1934. She has the option, however, of acquiring British nationality if she indicates her desire within the period of twelve months from the date when the certificate is issued to her husband. It is noteworthy that the wife of an alien does not *ipso facto* acquire British nationality *merely* because her husband becomes a naturalized British subject. It is also to be noticed that, whereas an alien can effectively make his infant children subjects by including

their names in his British naturalization certificate, under Section 5 (1), he cannot produce this result in the case of his wife by that method: the woman herself must make the declaration. The sub-section does not say *how* she acquires British nationality, but the position is that merely by making the declaration she does acquire it. For the form of the declaration see para. 11 of the Naturalization Regulations, 1943 (Appendix 4, p. 330).

‘(6) Where an alien is a subject of a state at war with His Majesty, it shall be lawful for his wife, if she was at birth a British subject, to make a declaration that she desires to resume British nationality, and thereupon the Secretary of State, if he is satisfied that it is desirable that she be permitted to do so, may grant her a certificate of naturalization.’)

This provision, which is an exception to the rule laid down in Section 5 (3), was first enacted by Section 2 (5) of the Act of 1918 and re-enacted in 1933. Its purpose is to enable a married woman, who was a natural-born British subject, but became an alien by marriage in virtue of Section 10 (1), to avoid being regarded as an enemy in her own country, which would naturally follow if her husband is an enemy alien. In such a case, the woman can make a declaration and apply for naturalization. For the form of the certificate granted see para. 5 (1) of the Naturalization Regulations 1943, below, p. 325.

The position where an alien was formerly a subject of a state at war with His Majesty, but who has become stateless under the law of that state (as, for instance, German Jews who lost German nationality under the German Nationality Laws of 1941 and 1942) appears to depend on whether they lost their nationality before or after the outbreak of war. If they had already become stateless before the outbreak of war they cannot be ‘subjects of a State at war with His Majesty’, and consequently their wives cannot avail themselves of this sub-section, and their wives remain aliens. If, however, they become stateless under a law passed by the enemy state the English courts would probably not recognize such a law but would continue to regard the alien as the subject of an enemy state. The recent case of *Rex v. The Home Secretary, ex parte L. and others*, [1945] 1 K.B. 7, has a bearing on this point. It was held, in that case, that a German Jew could not avoid being treated as an enemy alien, and liable to internment, merely by reason of the German Nationality Law, 1941, depriving German Jews of German nationality in certain circumstances. The case must be understood in the light of the principles

expounded below (p. 203) arising from the decisions of the English courts on the effect of declarations of alienage made in time of war. The courts do not refuse to admit that under foreign law a person may lose his nationality, but that person cannot cease to be an enemy alien merely by reason of a law passed by the enemy. It is believed that this principle would be applied in construing Section 10 (6).

Section 11

‘A woman who, having been a British subject, has by, or in consequence of, her marriage, become an alien, shall not, by reason only of the death of her husband, or the dissolution of her marriage, cease to be an alien, and a woman who, having been an alien, has by, or in consequence of, her marriage become a British subject, shall not, by reason only of the death of her husband or the dissolution of her marriage, cease to be a British subject.’

A woman ‘having been a British subject’ may have become an alien ‘by’ her marriage in accordance with Section 10 (1) and (2). She may become an alien ‘in consequence of her marriage’: (a) in accordance with Section 10 (3), where her husband becomes an alien, and she acquires the foreign nationality by reason of this fact, or (b) after her marriage to the alien, by special application under the law of her husband’s nationality, which grants her that nationality automatically.¹ It will be noted that, whereas Section 10 (2) uses the words ‘by reason only of her marriage’, Section 11 uses ‘by, or in consequence of, her marriage’; and this latter formulation avoids many of the difficulties raised by the former.

A woman who has lost her British nationality as a result of Section 10 (3) can recover her British nationality because she became an alien ‘in consequence of her marriage’. A widow or divorcee who was a British subject before her marriage, but became an alien by, or in consequence of, her marriage, can either avail herself of Section 10 (4) or become naturalized under Section 2 (her ‘disability’ having been removed).

A woman who is an alien and marries a British subject becomes a British subject ‘by’ her marriage under Section 10 (1).

‘*The dissolution of her marriage.*’ These words must be interpreted

¹ If, however, the application is in the nature of an application for separate naturalization, as she is under disability she does not become an alien (see Section 13).

in the light of what the decree does, and not what it is called. The principle to be applied is: does the decree put an end to a union which was valid until the decree was made, or does it declare that there never was a valid marriage at all? Thus a decree of nullity may mean that the marriage is void or voidable; most decrees, English and foreign, are of the latter type (see above, p. 180). In the case, for example, of an English decree of nullity, on the ground of impotence, there is a dissolution of the marriage within the meaning of Section 11, notwithstanding the form of words which is always used in the decree. In the case of a voidable marriage, the marriage, until annulled, is a valid marriage; so that an alien woman marrying a British subject acquires British nationality by so doing, although later the marriage may be annulled on grounds of impotence. The decree in fact dissolves the marriage, and Section 11 covers such cases just as it covers cases where marriages are dissolved by death or divorce. Where, however, there is a void marriage no consequences at all flow from it so far as British nationality is concerned.

Section 12

‘(1) Where a person being a British subject ceases to be a British subject, whether by declaration of alienage or otherwise, every child of that person, being a minor, shall thereupon cease to be a British subject, unless such child, on that person ceasing to be a British subject, does not become by the law of any other country naturalized in that country.

‘Provided that, where a widow who is a British subject marries an alien, any child of hers by her former husband shall not, by reason only of her marriage, cease to be a British subject, whether he is residing outside His Majesty’s dominions or not.

‘(2) Any child who has so ceased to be a British subject may, within one year after attaining his majority, make a declaration that he wishes to resume British nationality, and shall thereupon again become a British subject.’

The general intention of Section 12 (1) is that where a person ceases to be a British subject his minor children should also lose British nationality unless the result would be to leave them stateless. Unfortunately, owing to the wording of the section, it does not achieve this result. Section 12 (1) begins by using the words ‘whether by declaration of alienage or otherwise’, but concludes by using the word ‘naturalized’ in relation to the child. But, where the child is born in the country of his second nationality of British parents, and

his father becomes naturalized there, the child does not also necessarily 'become naturalized' there. For instance, according to the law of the United States a child born of British parents in that country is a natural-born American citizen. He does not 'become naturalized' on his father becoming naturalized in the United States, because he already possesses American citizenship by birth. Section 12 (1) does not cause such a child to lose the British nationality which he also acquired at birth under Section 1 (1) (b) of the Act, and he remains a dual national.

Section 10 (3) of the Naturalization Act, 1870 (above, p. 100), contained a similar provision, the object of which was to prevent a child being of dual nationality when he became naturalized with his father in a foreign state. But, as the examples given in the preceding paragraph show, neither the 1870 nor the 1914 section prevents, in every case, a child remaining a dual national, in spite of the father's foreign naturalization.

It will be noted that the words of the section are 'a person being a British subject', and 'every child of such person'. The language of the section includes, therefore, not only a father, as one might naturally assume, but also a mother. But a mother being a married woman (the word 'child' relates only to children born in wedlock), cannot, by any action of her own, cease to be a British subject *during the continuance of her marriage*, because she is 'under disability', and she can only cease to be a British subject (if she is one) by the action of her husband in the manner provided by the rules laid down in Section 10. Consequently, so long as the father of a child, being a minor, is still living, and the marriage is still subsisting, it is only by the *father* ceasing to be a British subject that the child can lose his British nationality (if he possesses it). If, however, the father is dead, and the mother, being a widow, ceases to be 'under a disability', she can, by her own action, divest herself of British nationality, e.g. by becoming naturalized in a foreign state under Section 13. In such circumstances the section can operate by virtue of the mother's loss of British nationality, although it does not specifically say so (unlike Section 10 (3) of the Act of 1870 which deals with the case of the 'mother being a widow': see above, p. 100). Whether it does so operate depends on whether the minor children, under the law of the foreign state, become naturalized with the mother. It is also possible that a widow may, under Section 14, divest herself of her British nationality by a declaration of alienage, and thereby affect

the national status of her infant children. Thus A, a woman, marries B, both being natural-born British subjects. A also acquired a foreign nationality at birth which she retains in spite of her marriage. B dies and A makes a declaration of alienage. Section 12 (1) might operate in such a case to cause the minor children to cease to be British subjects, unless they did not, by reason of their mother's action, become naturalized under the law of a foreign state. However, in most cases a British woman would have acquired any foreign nationality she possessed by marriage, and, having ceased by marriage to be a British subject, could not make a declaration of alienage.

The effect of the proviso to Section 12 (1) is negative only. It excludes the possibility of the widow causing her child by her late husband to lose British nationality, by reason only of her second marriage to an alien (a result which might otherwise occur, by the combined operation of Sections 10 and 12 (1) in the absence of such a proviso). The proviso does not deal with the position where a widow acquires a foreign nationality otherwise than by reason of her marriage, e.g. naturalization in a foreign state, and in such a case it is submitted that she can affect the British nationality of her minor children under Section 12 (1), unless they do not become naturalized with her.

The provisions of Section 12 (1) must be read subject to those of Section 7A where that section applies. See Section 7A (2) above, p. 173.

The prevailing view is that during the lifetime of the father it is only *his* loss of British nationality which may deprive his minor children of their British nationality under Section 12 (1), and no action of the mother (even if she has the custody of the children after the dissolution of the marriage) can affect their British nationality. Where, therefore, the parents are divorced, the father may take his minor children to a foreign country, and become naturalized there, and, as a result of his action, his minor children may also become naturalized there. In such a case Section 12 (1) operates to deprive them of British nationality, and, as the section stands, this would appear to be so whether the father has lawful custody of the children or not. If, however, the mother, being divorced, loses her British nationality under Section 13, by becoming naturalized in a foreign state, and, in addition, succeeds in getting her minor children naturalized under the law of a foreign state, it seems that Section

12 (1) does not deprive the children of their British nationality. It is arguable, however, that in the case of divorced parents the position of the minor children is governed by the action of that parent who has lawful custody or guardianship of the children.

Example

A is a woman divorced from her husband B. The decree of divorce would be recognized by the English courts. B was born in the United Kingdom and was a natural-born British subject, until he became naturalized in Germany, and, by so doing, ceased to be a British subject. The marriage was dissolved before B was naturalized, and A therefore remained a British subject. According to German law, unless there is specific mention to the contrary on the naturalization certificate, the naturalization includes those children of the naturalized person who are subject to the parental authority. Under the decree of divorce, custody of the children was given to the mother A. Assuming German law to be as stated above, the children did not acquire German citizenship, and they did not therefore cease to be British subjects. If, however, the law had provided that the children became naturalized with their father, does Section 12 apply, seeing that the father, at the time of naturalization, had no right to custody of the children?

It is arguable that the word 'alien' in Section 5 (1) and the word 'person' in Section 12 (1) should, where both parents are living, be interpreted as referring to that parent who has custody of the children. However, as stated above, the contrary view has been held administratively, namely, that the action of the father alone is decisive for the purposes of Section 12 (1). It is clear that the legislature did not contemplate the situation resulting under Section 12 (1) from divorce, and it is arguable that, if they had, they might have said (in 1914) that the father's action should, in any case, be decisive so far as nationality is concerned. On the other hand, if the legislature were contemplating such a situation at the present day, it is reasonable to suppose that they would make provision for it, on the principle of allowing that parent who has lawful custody to affect the nationality of the children but not the other parent.

The word 'minor' in Section 12 (1) means, in the case of a child domiciled in the United Kingdom, under the age of 21, but in the case of a child domiciled elsewhere it must, under the English rules of private international law, be interpreted according to the law of the child's domicile.

Section 12 (2) enables a child who has lost his British nationality

under Section 12 (1) to recover it by a simple declaration, within one year after attaining his 'majority', and the latter expression, like the expression 'minor', must be construed according to the law of the child's domicile. The form of the declaration is prescribed by para. 12 of the Naturalization Regulations, 1943 (see below, p. 331).

In certain cases falling under Section 10 (3) of the Naturalization Act, 1870 (which deals with the case of a child becoming naturalized with his father in a foreign state), a child might have lost his British nationality before the coming into force of the 1914 Act. The word 'ceases' in Section 12 (2) does not apply to such cases, and is not equivalent to 'has ceased', and a child, in such circumstances, was not enabled to make a declaration resuming British nationality.

Examples

1. C was a natural-born British subject, the child of a British father. His parents were divorced in 1922, and C was left with his mother who, before her marriage, was a French citizen. In 1926 the mother resumed French nationality, the father being still living and C being a minor. If the father was still a British subject in 1926 C did not lose British nationality, even though he became French by reason of his mother's action.

2. K is the minor daughter of Q. Both are British subjects. K is legally adopted, according to the law of the United States, by Mr. and Mrs. X, who are American citizens. Q becomes naturalized in the United States. K will not lose her British nationality unless she acquires United States citizenship simultaneously with her father Q.

3. X is the infant son born in Hungary of British parents. On the death of his father X's mother married an Italian subject. Later, the husband and wife both became naturalized French citizens. The mother, on her second marriage, ceased to be a British subject. But X is saved by the proviso to Section 12 (1) from the loss of his British nationality, even though he may have become an Italian under Italian law. If the mother, having ceased to be a British subject by marriage to the Italian, again changes her nationality, Section 12 (1) does not operate to affect the child's nationality, the reason being that X is no longer the child of 'a person being a British subject'.

4. A is born in France, the son of British parents, and his parents are subsequently divorced. After the dissolution of the marriage his father dies, and his mother resumes French nationality, which she possessed before her marriage. If, as a result of his mother's action, A becomes naturalized under French law, he loses his British nationality. If,

however, at some date subsequent to such resumption, A becomes a naturalized French citizen, Section 12 (1) has no application, and, if he is still a minor, Section 13 does not operate to deprive him of British nationality.

5. X was born in England and became naturalized in Germany in 1910 when his son Y was a minor. Y resided with X in Germany from 1910 to 1914. At the age of 21 Y asked to be allowed to resume his British nationality under Section 12 (2). Y lost British nationality under Section 10 (3) of the Naturalization Act, 1870, and could not recover it under Section 12 (2) for the reason stated in the text (above, p. 193).

6. Z was born in England in 1906, illegitimate. Her parents married in 1916 in England. In 1917 Z's father became naturalized in the United States, and the mother also became a United States citizen in accordance with the law in force at that time. Z did not lose her British nationality, whether or not she became a United States citizen by reason of her parents' naturalization. Section 12 (1) does not apply so as to affect the British nationality of an illegitimate minor child of a British woman who ceases to be British. Assume that the same facts occurred after the Legitimacy Act, 1926, making the date of Z's birth 1927, the date of the marriage 1937, and that the state of United States law was the same, regarding the effect of her father's naturalization on her mother's status, as it was in 1917. Assuming, further, that Z was legitimated under the Act of 1926, she became legitimated from the date of the marriage, and would be the child of 'a person being a British subject'. In that case Section 12 (1) would cause Z to lose British nationality.

7. X was a British subject by birth in England. His father was a Pole who became naturalized in the United States, and thereby X (a minor) also became a United States citizen. Section 12 (1) has no application because X is not the child of 'a person being a British subject'.

IV

LOSS OF BRITISH NATIONALITY

(Sections 13–16 Act of 1914. Sections 6–7 Act of 1943)

Section 13

‘A British subject who, when in any foreign state and not under disability, by obtaining a certificate of naturalization or by any other voluntary and formal act, becomes naturalized therein, shall thenceforth be deemed to have ceased to be a British subject.’

There is a similar provision in Section 6 of the Naturalization Act, 1870 (above, p. 88). The principle underlying both sections is the same, namely, the reduction to a minimum, so far as British legislation can achieve it, of cases of dual nationality.

This section calls for a somewhat detailed analysis, step by step. It will be noted that the words ‘British subject’ here (as everywhere else in the Act where they occur) mean British subjects as defined by the Act. They do not apply to British subjects locally naturalized in India or the Dominions and colonies; and such subjects may become naturalized in a foreign state without producing any result under Section 13. The following points require special attention:

(1) ‘*in a foreign state*’. The language means that the British subject must be physically present in the foreign state at the time the formal act takes place. He need not be resident or domiciled there as the section has not prescribed these requirements. The section does not, however, apply to persons who, being in one foreign state, become naturalized according to the laws of another (although the United Kingdom naturalizes people resident abroad in exceptional cases). ‘A foreign state’ includes any independent sovereign state or a state capable of conferring a distinct nationality. But states which are under the protection of His Majesty are not foreign states for this purpose, nor is a mandated territory such as Palestine. A British subject who becomes naturalized in a British protectorate, a British protected state, a native Indian state, or a mandated area does not cease to be a British subject. Although it was thought at one time that countries in which His Majesty possessed extraterritorial rights and jurisdiction over British subjects were not ‘foreign states’ within the meaning of this section this view was abandoned, in administrative

practice, some years ago, and it would now be held under that practice that such countries are 'foreign states' treaty rights notwithstanding.

(2) '*by any other voluntary and formal act*'. It is irrelevant, for the purposes of Section 13, whether the person concerned actually renounces his British nationality or not. All that is required is that he should make some voluntary and formal act by which he becomes naturalized in a foreign state. If, for instance, the name of a child of full age is put on a foreign certificate of naturalization by his parents abroad, without his consent, Section 13 does not operate to deprive him of his British nationality, because it is not a voluntary act on his part. The acceptance of a foreign passport does not necessarily imply a voluntary act of naturalization: there must be the intention to acquire a foreign nationality coupled with the act of becoming naturalized according to the foreign law. The reason or motive underlying the act of acquiring a foreign nationality is not material, but the intention to acquire it must be present.

(3) '*becomes naturalized therein*'. The word 'therein' means 'in the foreign State', so that if naturalization as a citizen of that state is not acquired, but only a local citizenship of a member state of a federal state, and not the citizenship of the federal state itself, the section does not operate. The nationality acquired must be one which is recognized for international purposes.¹ '*Naturalized*'. If, as a result of what happens, the British subject acquires the status of a naturalized person under the law of a foreign state, as opposed to that of a natural-born subject, the section applies. The legal characteristics of naturalization have been already defined. There is a clear and practical distinction between the acquisition of nationality at birth and acquisition after birth. Naturalization is a status acquired by grant and on application, and, broadly speaking, apart from acquisition by annexation or by marriage, any acquisition after birth is in the nature of naturalization. Cases may, and do, arise in which a person claims his nationality as a matter of right, instead of applying for it under the discretion of the state to admit him to its nationality. In such cases there is a voluntary and formal act, but

¹ See, however, *In re Trufort* (1887), 36 Ch.D. 600, decided on the corresponding Section 6 of the Naturalization Act, 1870, where it was held, on the facts, that cantonal citizenship in Switzerland created *ipso facto* Swiss nationality. It has been held, in a case arising in Fiji, that a 'foreign state' means a civilized state and that Samoa was not, at the time of the decision, a foreign state in this sense. *Hunt v. R.* (No. 2) (1882), Udal 59. See also *Hunt v. Gordon*, 2 N.Z.L.R. 160.

does it amount to becoming 'naturalized'? Thus, a person may be born with a latent right to a foreign nationality which he asserts by a declaration on attaining his majority, and loses if he fails to do so. This is not a true case of naturalization, and would probably be held not to be effective so as to cause that person to lose his British nationality when he claims his foreign nationality.

Examples

1. A woman, being a natural-born United States citizen, who married a British subject before September 22, 1922, lost United States citizenship. By the Act of June 25, 1936, such a woman whose marriage has terminated is deemed to be a United States citizen to the same extent as though her marriage had taken place on or after September 22, 1922, but she cannot have the rights of a United States citizen until she has taken the oath of allegiance to the United States. Here the position is that, under the law of the United States, the woman is deemed to be a citizen of that country, and the taking of the oath is a step necessary to exercise the rights incidental to a national status which the woman already possesses. Although taking the oath is 'a voluntary and formal act' it does not amount to naturalization, because she does not *acquire* any new nationality by taking the oath.¹

2. A, the child of a British father, was born in Portuguese territory. A had, by birth, both British and Portuguese nationality. A's Portuguese nationality was renounced by A's father while A was a minor, but A, on attaining majority, reclaimed Portuguese nationality (Article 18 (2) of Portuguese Law of 1867). In this case the position depends on whether there is the acquisition of a nationality or the assertion of a *right* to be a national. Probably the latter construction would now be applied in practice, and Section 13 would be held not to have the effect of causing A to lose his British nationality.

3. B was the son of Portuguese parents, but a British subject by birth in Trinidad. While living in Madeira and being of full age he declared his wish to be a Portuguese subject. Article 18 (3) of the Portuguese Law of 1867 provides, in effect, that the following are Portuguese citizens—the sons of a Portuguese father—who shall declare either in person, if they are of age, or through their parents or guardians if they are minors, that it is their wish to be Portuguese citizens.² This again appears to be a case of latent Portuguese nationality which B could claim as of right, and a declaration made by B under this provision would

¹ The opposite view is arguable, namely, that on the termination of her marriage the woman ceased to be under disability and acquired a nationality which, at any rate, she did not possess during her marriage.

² For the text see Flournoy and Hudson, *A Collection of Nationality Laws* (1929), p. 490.

appear not to have any effect under Section 13. (B could, if this view was correct, make a declaration of alienage under Section 14, if he so desired.)

The *motives* which induce a person to become naturalized in a foreign state are immaterial. He may become naturalized for personal reasons (e.g. it may be a condition of his employment in a foreign country that he should become a national). But Section 13 still operates to deprive him of British nationality, for his act is a voluntary one, although it may be performed with reluctance or dislike. According to the laws of some countries certain acts *ipso facto* have the effect of naturalizing an alien, e.g. marrying a national or even the mere fact of residence or acquiring property in the country. The act itself is voluntary, but it does not cause Section 13 to operate. The words 'voluntary or formal act' mean an act performed with a view to naturalization and equivalent to it. But where the volition is directed only to the particular act involved—acquisition of land, marriage, &c.—and not to becoming naturalized the section does not operate. Each case of this kind must, however, be considered carefully on the facts. It will be clear that naturalization of persons *en masse* against their will, or even without their knowledge, produces no result under Section 13, this being the type of naturalization which the words 'voluntary and formal' are intended to exclude. Where, too, the naturalization is carried out under duress Section 13 cannot operate.

Example

Z, a British subject, is in a neutral country about to be occupied by a country at war with Great Britain, and, in order to avoid being treated as an internee, with the possibility of bad treatment, he becomes naturalized in the neutral state. The case is a doubtful one, but the duress cannot be regarded as sufficiently direct to deprive X's act of its voluntary and formal character.

If the purported naturalization in a foreign state is, in fact, invalid under foreign law it produces no result under Section 13. Thus, the United States Supreme Court decided, in the case of *United States v. Bhagat Singh Thind*, [1923] 261 U.S. 204, that a high-caste Hindu was not a 'white person', and not eligible for citizenship under the naturalization laws of the United States. The naturalization of such persons in that country became void *ab initio*.¹ Accordingly an

¹ See, generally, Willoughby, *United States Constitutional Law* (1929), i, p. 362.

Indian so naturalized would have gone through a void process, and Section 13 could not operate so as to cause him to cease to be a British subject. So long as the legal validity of naturalization abroad is in doubt the British authorities would not treat it administratively as effective under Section 13. A naturalization effected under a foreign government not recognized by His Majesty would be regarded as ineffective, but naturalization obtained under a government recognized *de facto* would be treated for this purpose as equally valid with that obtained under a government recognized *de jure*.

Where a person is naturalized in a foreign state by error, his application never having been completed, Section 13 does not apply, because the process is irregular. It is arguable that the naturalization stands until it is cancelled, and that the applicant's British nationality is lost under Section 13, but would revive if the decree of naturalization was cancelled. This view would probably not be accepted by the English courts, the question being whether the naturalization had been affected by a voluntary and formal act. It is also possible that persons who are ignorant of their British nationality may become naturalized in a foreign state. Probably the right view is that the mere performance of a voluntary and formal act is sufficient to satisfy the requirements of Section 13. It is not an essential element that there should be any intention of renouncing British nationality, but only of voluntarily acquiring a foreign nationality.

The expression 'not under disability' implies that only a person *sui juris* can divest himself or herself of British nationality. The categories of persons under a disability for this purpose are defined, not by reference to the law of the foreign state where the purported naturalization takes place, but by Section 27 (1) of the Act. Accordingly married women, minors, lunatics, and idiots cannot cease to be British subjects by virtue of Section 13. However, it may still be necessary to answer the question whether a woman is married, and whether a person is, in law, a minor, a lunatic, or an idiot. These questions are, it is true, determined by English law, but it is English law, including the rules of private international law, regarding the law governing the validity of a marriage, and the existence of a status of minority, &c. These rules must be taken into account in interpreting Section 13.

A woman whose marriage has been dissolved is no longer 'under disability', and, if she was an alien before her marriage, it may be

that under the relevant foreign law she can recover the nationality she formerly possessed. (This case has been discussed above, p. 193.) The dissolution must be one which is recognized by the English courts (see for the doctrine on this point above, p. 189).

Where territory is ceded by Great Britain to a foreign state it is possible that, under foreign law, British subjects resident outside the territory at the date of the cession may be deemed foreign nationals, or allowed to opt for the foreign nationality. This is part of the topic of loss of British nationality and a result of cession, and is dealt with by the common law, and not by the Act (above, p. 53).

NOTE

Naturalization in a foreign enemy state

The effect of naturalization in a foreign state with whom His Majesty, at the time of such naturalization, is at war, was considered in *Rex v. Lynch*, [1903] 1 K.B. 444. In that case Lynch, a British subject, was tried for high treason, one of the acts alleged being a declaration made by the prisoner, during the continuance of the war between the South African Republic and Great Britain, by which Lynch declared that he was willing to take up arms for the Republic, and stated that he desired to become a burgher or citizen of that Republic. He also took an oath of allegiance to the Republic, and subsequently took part in fighting with the Boer forces against Great Britain. As a result of his statements he was naturalized by the Government of the South African Republic. It was argued that Section 6 of the Naturalization Act, 1870 (which corresponds to Section 13 of the Act of 1914: see above, p. 88), protected him, and that by becoming so naturalized he had ceased to be a British subject, and owed no further allegiance to the Crown. It was held that Section 6 must be read subject to the rule that naturalization in an enemy state is an act of treason, and the prisoner could not profit by his treasonable action, but was triable, not only in respect of the acts which preceded his naturalization, and without which naturalization could not have taken place, but also for overt acts of treason, such as fighting in the enemy forces, committed after naturalization.

The principle underlying the decision in *Rex v. Lynch* is that a man must not be allowed to profit by his own wrong: *ex delicto non oritur jus*. The point at issue was not whether Lynch acquired the nationality of the South African Republic but whether, whatever the result of his acts in that regard, he had ceased to be a British

subject. In the case of *In re Chamberlain's Settlement*, [1921] 2 Ch. 533, the effect of naturalization in a foreign enemy state fell to be considered from another point of view. In this case a summons was taken out by the trustees of a settlement to have it determined whether the life interest of one Houston Stewart Chamberlain (a beneficiary) was forfeited by virtue of the charge imposed on the property of German nationals in the United Kingdom on January 10, 1920, by virtue of the Treaty of Peace Order, 1919, and how the income accrued since August 4, 1914, ought to be disposed of. Chamberlain was born in England of English parents, but he had resided in Germany since 1906, and had been twice married there to German wives. During the war, on August 8, 1916, he obtained a certificate of naturalization as a German. It was admitted at the hearing that in a German court, applying German law, Chamberlain would be recognized as a German citizen. It was argued on the authority of *Rex v. Lynch* and the later case of *Ex parte Freyberger*, [1917] 2 K.B. 129, that a British subject could not divest himself in time of war of his nationality, and that Chamberlain's purported naturalization was wholly void. It was held that although his action was treasonable, it did not follow that if it produced results under German law, those results could not be recognized in an English court. The question to be decided was whether he had become a German national within the Treaty of Peace Order, and that could only be answered by reference to German law. It was immaterial whether he was also a British subject or not: the fact (if it was proved) that he was a dual national did not affect his position under the Treaty of Peace Order.

The result of these two cases appears to be as follows:

- (1) A British subject becoming naturalized in a foreign state at war with His Majesty does not cease to be his subject (Section 13).
- (2) Where there is no question of treason, or of public policy, but only of the acquisition of a foreign nationality, and not of the loss of British nationality under Section 13, the English courts will not refuse to consider the question in the light of the foreign law, which is, *prima facie*, the law applicable, although it may be the law of an enemy state.

A very similar question arises in connexion with declarations of alienage under Section 14. Are such declarations valid in time of war, either in favour of an enemy state or of an allied or neutral state? This question is discussed in the comment on Section 14 below.

Section 14

‘(1) Any person who by reason of his having been born within His Majesty’s dominions and allegiance or on board a British ship is a natural-born British subject, but who at his birth or during his minority became under the law of any foreign state a subject also of that state, and is still such a subject, may, if of full age and not under disability, make a declaration of alienage, and on making the declaration shall cease to be a British subject.

‘(2) Any person who though born out of His Majesty’s dominions is a natural-born British subject may, if of full age and not under disability, make a declaration of alienage and on making the declaration shall cease to be a British subject.’

(See also comment on Section 7 of the Act of 1943 below, p. 211).

It will be noticed that declarations of alienage can only be made by *natural-born British subjects* falling under three categories: (1) Section 1 (1) (a), (2) Section 1 (1) (c), and (3) Section 1 (1) (b). There is a curious difference between Sub-section (1) and (2). In the latter a British subject can repudiate his nationality, although he does not possess any other nationality, and the result may be to make him stateless. The object of Sub-section (1), however, is to enable persons who become dual nationals, at birth or during minority, to elect in favour of a foreign nationality on attaining their majority. Many such persons are British subjects purely by accident, and may never have had any substantial connexion with British territory. As regards persons born ‘within His Majesty’s dominions and allegiance’, they may have emigrated with their parents when very young, and settled in a foreign country. Persons born in a British ship may have had no further, or other, connexion with the United Kingdom or British territory than that. In order to enable such persons to elect for the foreign nationality with which they are generally more closely connected this section enables them to make a declaration of alienage.

In order that Section 14 (1) should apply it is necessary that the foreign nationality should have been acquired at birth or during minority (e.g. as a result of the naturalization of his parents in a foreign state) but these requirements need not be present under Sub-section (2). If, therefore, the person in question has lost his foreign nationality, he cannot make a declaration of alienage. A person who acquires a foreign nationality by naturalization in a foreign state, not being under disability, ceases to be a British subject under Section 13, and it is neither necessary nor possible for

him to make a declaration of alienage. There is nothing in the section which requires a declaration of alienage to be made within His Majesty's dominions, and it may validly be made abroad, the form of such a declaration being prescribed by para. 8 of the Naturalization Regulations, 1943 (below, p. 328).

In the case of a person born out of His Majesty's dominions it is not necessary, as already pointed out above, that he should still possess a foreign nationality, in order to be capable of making a declaration of alienage. He need only be a natural-born British subject, and may not possess any other nationality, although it is unlikely that this will be the case.

As we have seen (comment on Section 11) a woman who has become a British subject by reason of her marriage cannot make a declaration of alienage unless her marriage has been dissolved, or her husband has died. Again, a naturalized British subject (but see Section 15 below), or a British subject by reason of annexation of territory, cannot make a declaration of alienage. The reason why they cannot make such a declaration is that the section applies only to natural-born British subjects. An alien who becomes naturalized in the United Kingdom is required, by administrative practice, if at all possible, to renounce his foreign nationality, though there is nothing in our law which requires him to do so. English law does not proceed on the simple footing that persons should be allowed to assume, and shed, their British nationality at will. But, in cases where dual nationality has arisen, independently of the action or wishes of the person concerned, provision is made for a declaration of alienage, with a view to avoiding hardship, and for enabling that person to simplify his legal status.

Section 14 is amended in certain important respects by Section 7 of the Act of 1943 (see below, p. 211).

It was held in *Ex parte Freyberger*, [1917] 2 K.B. 129, that a natural-born British subject, who is also a subject of an enemy state, cannot in time of war make a declaration of alienage under Section 14, and cease to be a British subject. The principle followed in this case was the same as that applied in *Rex v. Lynch* in connexion with Section 13 of the Act (above, p. 200). 'A British subject', said Swinfen Eady L.J., 'although having double nationality, cannot during a state of war divest himself of his allegiance to the British Crown in order to become solely the subject of an enemy state.' *Ex parte Freyberger* (p. 139).

The facts in *Ex parte Freyberger* were as follows: (F) was a natural-born British subject who was also an Austrian subject. On February 20, 1916, (F) was enlisted into the British Army. Shortly afterwards he made a declaration of alienage under Section 14, and claimed to be released from military service as an alien, but was refused. The Home Secretary declined to register the declaration of alienage. (F) then applied for a writ of habeas corpus. Austria was, at that time, an enemy of Great Britain. It was held (1) that (F) could not, in time of war, make a declaration of alienage so as to escape his duty as a British subject to perform his military service although there is nothing in the words of the section to stop him, (2) that, in the alternative, even assuming that the declaration of alienage was valid, he was still a British subject at the date of his enlistment, and had been properly called up under the Military Service Acts, which did not cease to apply to him by reason of anything which resulted in his becoming an alien after enlistment.

Unlike the case of *Rex v. Lynch*, the facts in *Ex parte Freyberger* did not involve any treason. All that Freyberger had done was to file a declaration of alienage (which was, in fact, not accepted by the Home Secretary for registration). However, the same general principle is common to both cases: it is against public policy that British subjects should escape, in time of war, from the obligation of military service flowing from their allegiance to the Crown. Some stress was laid, in *Ex parte Freyberger*, on the fact that the other nationality was that of an enemy state, but, a little later, in *Gschwind v. Huntingdon*, this fact was shown to be unimportant.

In *Gschwind v. Huntingdon*, [1918] 2 K.B. 420, the declaration of alienage was made in favour of a neutral state. A Swiss subject, who was also a natural-born British subject, came within the operation of the Military Service Acts, and was served with a notice calling him up for service in the British Army. He failed to comply with this notice, and was convicted of an offence. A case was stated by the stipendiary magistrate before whom he had been convicted for the opinion of the High Court. It appeared that before being called up Gschwind (the Swiss subject concerned) had made a declaration of alienage which was registered by the Home Office. It was contended on his behalf that he was a Swiss subject and outside the scope of the Military Service Acts. It was held that, as he was within the scope of these Acts, at the time they came into force (which was the material date), nothing done by him later could

take him outside their scope. The fact that his declaration had been registered by the Home Office was immaterial. Of the two alternative grounds for decision adopted in *Ex parte Freyberger* only the second was relied on by the court in *Gschwind v. Huntingdon*. It is, therefore, doubtful whether that case can be cited as an authority for the view that a declaration of alienage cannot validly be made in war-time in favour of a neutral state. Nevertheless, for the reasons given below, this view is believed to be correct.¹

The question whether an individual has acquired or lost the nationality of a foreign state is a question of the law of that state. The question whether he has acquired or lost British nationality falls to be determined according to English law. For instance, in *Rex v. Lynch* (above, p. 200), where a British subject became a naturalized citizen of the Transvaal Republic, it was never suggested that Lynch had not acquired Transvaal nationality, but only that he could by so acquiring it, bring about the loss, under Section 6 of the Naturalization Act, 1870, of his British nationality. Although it was not possible for the English courts to deny that Lynch had acquired enemy nationality, the legal consequences in the United Kingdom flowing from that fact were within British legal control, and, in particular, of the English common-law doctrine of public policy. This doctrine can be invoked, especially in time of war, to prevent consequences which are injurious to British national interests. Thus, although according to the plain wording of Section 6 of the Act of 1870, naturalization of a British subject in a foreign state automatically terminates his British nationality, the court held, in *Rex v. Lynch*, that he did not lose his British nationality by his action in applying for, and obtaining, foreign naturalization under the law of an enemy Power. Some stress, indeed, was laid on the fact that Lynch had committed treason, by acquiring Transvaal nationality

¹ See also *Vecht v. Taylor*, [1917] 116 L.T. 446, and *Dawson v. Meuli*, [1918] 118 L.T. 357. These were also cases of individuals who made declarations of alienage opting for the nationality of neutral states, in the former case Dutch, and in the latter, Swiss. In both cases the declaration was made after the Military Service Acts had become applicable to the declarants, and it was held that they could not, merely by making the declaration, avoid liability for military service. In *Vecht v. Taylor* the court deliberately left open the question whether such a declaration could validly be made, but drew attention to the fact that the decision of the Court of Appeal in *Ex parte Freyberger* was a clear indication of how the question should be decided. On the other hand, in *Dawson v. Meuli* the court went out of its way to point out that, even if the declaration of alienage was assumed to be valid, the result would have been the same.

in the circumstances, but it was also emphasized that it was contrary to public policy that a British subject should be able, in time of war, to throw off his allegiance to the King and fight for the King's enemies. As we have seen, the same principle of public policy was one of the grounds adopted in *Ex parte Freyberger* for the decision that a declaration of alienage in favour of an enemy state could not be made by a British subject who also possessed the nationality of that state. This broad principle of public policy would seem applicable even to declarations of alienage in favour of neutral, and perhaps Allied, states, because it is against the national interest that His Majesty should lose British subjects in war-time in favour of any foreign Power. Although a much narrower ground was adopted by the court in *Gschwind v. Huntingdon*, it is believed that the decision could be extended to cover the broader principle just stated.¹

Section 15

'Where His Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state to whom certificates of naturalization have been granted may divest themselves of their status as such subjects, it shall be lawful for His Majesty, by Order in Council, to declare that the convention has been entered into by His Majesty; and from and after the date of the Order any person having been originally a subject or citizen of the State therein referred to, who has been naturalized as a British subject, may, within the limit of time provided in the convention, make a declaration of alienage, and on his making the declaration he shall be regarded as an alien and as a subject of the State to which he originally belonged as aforesaid.'

No conventions have been made under this section which corresponds to a similar provision in Section 3 of the Naturalization Act, 1870. Under that section a Convention was made in 1870 with the United States which is still in force (above, p. 87). The idea was to ensure reciprocity between the United Kingdom and other countries as to the effect of naturalization in the following respects:

- (1) A British subject desires to become naturalized in a foreign state and to lose his British nationality. Section 13 of the Act covers this case.

¹ See, also, for the application of the doctrine of public policy to nationality legislation of the enemy, purporting to deprive enemy aliens of their nationality, turning them into stateless persons or neutrals, *Rex v. Home Secretary, Ex parte L. and others*, [1945] 1 K.B. 7 (cited above, p. 187).

- (2) A British subject having become so naturalized desires to resume his British nationality and to lose the foreign nationality. He can do the latter if a Convention is made with the foreign state making provision for it, as loss of the foreign nationality acquired by naturalization is a matter of foreign law. He can only resume British nationality by becoming naturalized as a British subject.
- (3) An alien who has become naturalized as a British subject desires to cease to be a British subject, and to recover his original allegiance. Apart from a Convention made under Section 15, the alien must become naturalized under the law of the foreign state unless he can recover his original nationality by simple declaration or acquire it by naturalization. He cannot lose British nationality, apart from Section 15, except by being naturalized in the foreign state. Section 14 does not assist him because that applies only to natural-born British subjects.

The section is inspired by a desire to avoid dual nationality, a desire which, as indicated elsewhere in this book (Part I), has been only partially fulfilled by international agreement.

Section 16

‘Where any British subject ceases to be a British subject, he shall not thereby be discharged from any obligation, duty or liability in respect of any act done before he ceased to be a British subject.’

This provision applies to all categories of British subjects as defined in Section 27 (1) of the Act. It safeguards the operation of the ordinary criminal law in relation to crimes which are committed before loss of British nationality, and keeps alive any civil obligations which might otherwise be affected by the change.

British Nationality and Status of Aliens Act 1943

(Loss of British Nationality)

Section 6

‘(1) Subject to the provisions of this section, a person whose British nationality depends upon the fact that his birth was registered at a consulate of His Majesty shall, if his birth was so registered before he attained the age of twenty-one years, cease to be a British subject at the expiration of one year after he attains that age unless within that period he asserts his British nationality by a declaration of retention

of British nationality registered in accordance with regulations made under the Principal Act:

‘Provided that if such a declaration is made by any person after the expiration of that period with the permission of the Secretary of State, that person shall be deemed not to have ceased to be a British subject.’

See comment on Section 1 (1) (b) (v) and the second proviso to Section 1 (1), now repealed (above, pp. 143, 149), and replaced by the simpler provisions of Section 6 of the Act of 1943. These provisions retain, in principle, the method adopted in the repealed proviso to Section 1 (1), enabling British nationality to be transmitted to successive British families born abroad; but, as we have seen, they remove the restrictions formerly attached to that method. The most important change is that the necessity of getting rid of the foreign nationality is dispensed with.

‘A person whose British nationality depends upon the fact that his birth was registered at a consulate of His Majesty.’ Such a person derives his entitlement to British nationality from Section 1 (2) of the Act of 1943 (above, p. 154) or, in the case of births registered before that Act, from Section 1 (1) (b) (v) of the Act of 1914.

‘If his birth was so registered before he attained the age of twenty-one years.’ Under Section 1 (1) (b) (v) of the Act of 1914 the birth had to be registered within one year of its occurrence, or, in special circumstances, within two years (above, p. 143). Registration within one year is still the normal rule under Section 1 (1) (a) of the Act of 1943. However, under Section 1 (2) (b) of the Act of 1943, the birth may be registered at any time, whether it occurred before or after the commencement of the Act of 1943, with the permission of the Secretary of State. The case contemplated in Section 6 (1) is the normal case of a child whose birth is registered by its parents within one year, or, by leave, at any time before he attains 21. Such a child will automatically cease to be a British subject at the age of 22, unless he asserts his British nationality by making a declaration of retention registered in the prescribed manner. The form of such a declaration is paragraph 9 (2) of the Naturalization Regulations, 1943 (below, p. 329). The declaration, wherever made, unless it is a Dominion declaration, is to be registered in London at the Home Office; and ‘shall, if made in a British Possession other than British India, or British Burma, also be registered at such place in the Possession as the Governor shall direct’ (Para. 19 (1) *ibid.*). Registration

of a Dominion declaration in London is possible but not obligatory (Para. 19 (2) *ibid.*). The declaration of retention can be made whether the birth was registered under the (now repealed) proviso of the Act of 1914, or under the Act of 1943.

The proviso to Section 6 (1) allows a *locus poenitentiae*: even after the person concerned has passed that age of 21, he can still make a declaration of retention with leave of the Secretary of State. In that event he is 'deemed not to have ceased to be a British subject'. This provision may cause difficulties of interpretation. Suppose X is born in Mexico, the child of a British subject, and his birth is registered, under the Act of 1943, before he is 21. He allows a year to pass after attaining the age of 21 without making a declaration of retention, and ceases under Section 6 (1) to be a British subject. At the age of 24 he marries a Mexican woman, and at the same time permission is granted to him to register a declaration of retention. At the time of his marriage he was an alien. Under Section 10 (1) B.N.A. the wife of an alien is deemed to be an alien. Under Section 6 (1) he is deemed never to have ceased to be a British subject. Does his wife also acquire, under this retrospective provision, British nationality under Section 10 (1) of the Act of 1914? It is arguable that Section 6 (1) deals only with the status of the person making the declaration of retention, and that it does not affect the operation of Section 10 (1). However, it is more reasonable to take Section 6 (1) as it stands, and under Section 10 (1) the wife would be a British subject.

In the case of a person whose birth is registered by special permission under Section 1 (2) (b) after he had attained the age of 21, there is no need to make any declaration of retention. He is deemed *ipso facto* to be '*and always to have been*' a British subject.

The position of persons whose births were registered improperly, or outside the time provided by Section 1 (1) (b) (v) B.N.A., is that they may either re-register and validate the registration under Section 1 (2) (b), or apply to the Secretary of State to have the registration treated as though it had been validly made, also under Section 1 (2) (b). Such persons must, however, also make a declaration of retention under the proviso to Section 6 (1), in order to keep alive their British nationality.

'(2) If any such person as aforesaid has at any time during the present war period been a member of His Majesty's forces, that person shall not cease by virtue of the foregoing sub-section to be a British

subject, or, if he has, by virtue of that sub-section or of any enactment repealed by this Act, previously ceased to be a British subject, shall be deemed never to have so ceased.'

The effect of this sub-section is to exempt any person who has served in His Majesty's forces during 'the present war period' from the necessity of making a declaration of retention, either at the appropriate time or at all. The result is that the following persons become British subjects, by registration under Section 1 (2) of the Act of 1943 and without more:

- (1) Persons who failed to make any declaration of retention under the Act of 1914 or 1943, although they could have done so, and who, after the time for doing so had expired, served in His Majesty's forces during 'the present war period'.
- (2) Persons who attained the age of 21 while serving in His Majesty's forces, and who omitted to make a declaration of retention either under the Act of 1914 or 1943, during the appropriate time or at all.
- (3) Persons who (although, before the Act of 1943 came into force they had already ceased to be British subjects, because of failure to comply with any of the other conditions prescribed by the second proviso to Section 1 (1) of the Act of 1914, e.g. failure to make a declaration of alienage) served in His Majesty's forces during 'the present war period'.

Sub-section (2) does not, however, apply to any person whose birth is registered after he attained the age of 21, as such a person is not required to make any declaration of retention. The purpose of the whole Act is to require proofs of loyalty of persons claiming British nationality under it, and service in His Majesty's forces, or registration, is equivalent to such proof.

The 'present war period' does not end with the cessation of hostilities, but with such date as His Majesty may by Order in Council appoint (see Section 10 (1) B.N.A. 1943: below, p. 227).

'A member of His Majesty's forces' is not defined in the Act, but means a member of the armed forces of the Crown.

'Shall not cease *by virtue of the foregoing sub-section.*' A person who is a British subject by registration may, of course, cease to be a British subject in other ways, e.g. by foreign naturalization under Section 13 B.N.A., or by declaration of alienage under Section 14. Such cases will be rare, especially in war-time (see Section 7 B.N.A. 1943, below), but they may occur. Where they do occur there is

nothing in Sub-section (2) which saves such a person's British nationality. All that Sub-section (2) does is to prevent loss of British nationality occurring in a particular manner, in the particular circumstances it describes. If there is a loss of nationality in some other manner that takes effect; and the case is outside the operation of the sub-section.

'Or of any enactment repealed by this Act.' As already stated, this relates to the second proviso to Section 1 (1) B.N.A. which is the only relevant enactment repealed, i.e. the only enactment repealed under which a person can cease to be a British subject (this proviso required a person whose title to British nationality was based on registration to assert his claim on attaining his majority by a declaration of retention, &c., see above, p. 149). 'Previously.' This refers to 'any time during the present war period'. It covers the case of a person who, before his war service, ceased to be a British subject. 'Shall be deemed never to have so ceased.' The same difficulty arises here as in respect of similar words in Section 6 (1) (above, p. 209). In its natural sense it suggests that the British nationality acquired by registration is to be regarded as having continued without interruption. It is not a case of revival of nationality but the 'constructive' continuance of nationality.

'(3) If any such person as is mentioned in sub-section (1) of this section satisfies the Secretary of State that he was not a member of His Majesty's forces during the present war period by reason only of his having been otherwise engaged on work of national importance or of his having been prevented from becoming a member of those forces by causes outside his control, the Secretary of State may direct that the last foregoing sub-section shall apply to him as if he had been a member of those forces.'

This sub-section extends the benefit of Sub-section (2), if the Secretary of State thinks fit in any particular case, to persons who satisfy him that the only reason why they did not serve in the forces was that they were engaged on work of national importance, or otherwise prevented from doing so by causes outside their control. Presumably, for instance, conscientious objectors would fall outside the sub-section. The words 'by reason only' must be noted.

Section 7

'A declaration of alienage made after the commencement of this Act under any provision of the principal Act shall be of no effect

until it has been registered in accordance with regulations made under the principal Act, and, in the case of a declaration made during any war in which His Majesty may be engaged, unless it is so registered with the permission of the Secretary of State.'

This amends Section 14 of the Act of 1914 in two respects:

- (1) Declarations of alienage made after the commencement of the Act of 1943 are not valid until they have been registered at the Home Office.
- (2) In war-time the Secretary of State may at his discretion refuse the registration of a declaration of alienage.

There was a provision in Section 19 (1) (b) of the Act of 1914 enabling the Secretary of State to make regulations as to the 'form and registration of declarations of alienage'; and such regulations were made, but it was not clear that a declaration was not valid until registered. The view taken before the 1943 Act was that a person making a declaration of alienage ceased to be a British subject on making the declaration; the date of registration was not the relevant date. See also *Gschwind v. Huntingdon*, [1918] 2 K.B. 420 (discussed above, p. 204). As we have seen, the position under Section 14 of the Principal Act was that (i) a declaration of alienage was invalid if made by a person who possessed the nationality of an enemy Power as well as British nationality, and (ii) the law was uncertain as to the effect of a declaration of alienage opting for the nationality of a neutral or allied state. In practice, however, the last-mentioned class of declarations of alienage were accepted and treated as valid. Section 7 of the Act of 1943 is based on the policy that it is undesirable that, in time of war, a British subject should have an unfettered right to discard the obligations of his allegiance by making a declaration of alienage, so that, whether the declaration is made in favour of an enemy, neutral, or allied state, the declaration is completely ineffective unless it is registered with the Home Office. It may legitimately be inferred that it was the intention of the legislature in enacting Section 7: (a) not to question declarations of alienage made in favour of neutral and allied states during the war before the passing of the Act of 1943, (b) to make the validity of declarations made in future conditional upon registration in any event. Whether registration, without more, *ipso facto* validates all declarations of alienage is not clear. It may be argued that the decision in *Ex parte Freyberger*, and the considerations of public policy in favour of extending the principle of that decision to

declarations of alienage in favour of neutral or even allied states, are still unaffected, notwithstanding the words of Section 7, and that registration does not make a declaration valid which would otherwise be invalid according to the policy of the law. It is not, however, certain that declarations of alienage made in favour of neutral or allied states would have been invalid on grounds of policy before the Act of 1943. Broadly speaking statutes are not to be construed, in the absence of clear language to that effect, as altering the existing policy of the law. There are grounds, therefore, for saying that a declaration made in favour of an enemy state, in the improbable event of such a declaration being registered by the Home Office, would be invalid notwithstanding registration, and if the principle of *Ex parte Freyberger* applies to declarations in favour of neutral and allied states, presumably the same reasoning might apply to such declarations.

On the other hand, it may be argued that the object of the section is to enable the Home Office to consider declarations of alienage made in war-time in light of all relevant considerations of policy, and that the executive, not the courts, is the proper judge of public policy. If, therefore, a declaration of alienage is, or has been, before the passing of the Act of 1943, accepted for registration, that is conclusive, and the declaration cannot be held invalid on grounds such as those set out above. There is some difficulty, however, in holding that Section 7 validates registrations made before the Act was passed, if they were not valid independently of registration, because the language of the section refers to declarations made 'after the commencement of this Act', and this appears also to govern the words 'in the case of a declaration made during any war in which His Majesty may be engaged', and the words 'so registered'.

'Under any provision of the Principal Act.' See the second proviso to Section 1 (1) (repealed), Section 5 (1), Section 12 (1), and Section 14 of the Act of 1914.

As to the persons before whom declarations may be made see para. 18 of the Naturalization Regulations. Para. 19 of the Regulations deals with the registration, and provides, *inter alia*, that every declaration of alienage, other than a Dominion declaration, shall be registered in London at the Home Office (see below, p. 333).

V

PROCEDURE AND EVIDENCE

(Sections 19–24 Act of 1914)

Section 19

‘(1) The Secretary of State may make regulations generally for carrying into effect the objects of this Act and in particular with respect to the following matters:—

- (a) The form and registration of certificates of naturalization granted by the Secretary of State:
- (b) The form and registration of declarations of alienage and declarations of resumption or retention ‘or acquisition’ of British nationality:
- (c) The registration by officers in the diplomatic or consular service of His Majesty of the births and deaths of British subjects born or dying out of His Majesty’s dominions:
- (d) The time within which the oath of allegiance is to be taken after the grant of a certificate of naturalization:
- (e) The persons by whom the oath of allegiance may be administered, and the persons before whom declarations of alienage and declarations of resumption of British nationality may be made:
- (f) Whether or not oaths of allegiance are to be subscribed as well as taken, and the form in which the taking and subscription are to be attested:
- (g) The registration of oaths of allegiance:
- (h) The persons by whom certified copies of oaths of allegiance may be given; and the proof in any legal proceeding of any such oaths:
- (i) The transmission to the United Kingdom, for the purpose of registration or safe keeping or of being produced as evidence, of any declarations, certificates or oaths, made, granted or taken out of the United Kingdom in pursuance of this Act or of any Act hereby repealed, or of any copies thereof, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of this Act or any Act hereby repealed:
- (j) With the consent of the Treasury, the imposition and application of fees in respect of any registration authorised to be made by this Act or any Act hereby repealed, and in respect of the making of any declaration or the grant of any certificate authorised to be made or granted by this Act or any Act hereby repealed, and in respect of the administration or registration of any oath: Provided

that in the case of a woman who was a British subject previously to her marriage to an alien, and whose husband has died or whose marriage has been dissolved, the fee for the grant of a certificate shall not exceed five shillings.'

Additional powers of making regulations are conferred by Section 8 of the Act of 1943 (below, p. 225), and these powers are used in the 1943 Regulations mentioned below.

Regulations have been made, and are now in force, dealing with all the matters specified in Section 19 (1), except as to Section 19 (1) (i). No provision under Section 19 (1) (i) is necessary, because in the case of declarations, certificates, or oaths made out of the United Kingdom (other than in British India, British Burma, or a British Dominion) the declaration, certificate, or oath is required to be registered both in London and in the British possession where it is made, granted, or taken out. See Regulations 16 (2) and 19 (1) of the Naturalization Regulations, 1943, S.R. & O. No. 830 (these Regulations are made by the Home Office). The Naturalization Regulations, 1943, deal with the matters specified in sub-heads (a) to (j) of the sub-section except sub-head (c) and (i). As regards sub-head (c) see the Registration of Births and Deaths (Consular Officers) Regulations, 1943, S.R. & O. No. 765 (these are made by the Foreign Office).

Regulations as to the form of certificates and declarations and kindred matters specified under the various sub-heads of the sub-section were made in 1914, 1931, and 1933, and were amended in 1936 (S.R. & O. No. 198) and 1940 (S.R. & O. No. 260). All these regulations have now been revoked (without prejudice to anything done thereunder) and superseded by the Naturalization Regulations, 1943. These Regulations deal *inter alia* with the forms: of a certificate in the United Kingdom, a special certificate in case of doubt (Section 4 B.N.A.), a certificate of naturalization of a minor (Section 5 (2) B.N.A.), a certificate of naturalization in the case of a person previously naturalized (Section 6 B.N.A.), a certificate granted to a woman who was at birth a British subject and is married to a subject of a state at war with His Majesty (Section 10 B.N.A.), and a certificate of naturalization in the case of French nationals serving in His Majesty's forces (Section 4 of the Act of 1943). The same forms apply *mutatis mutandis* in the case of certificates of naturalization granted in a British possession other than British India, British Burma, and a British Dominion; forms are prescribed for declarations of alienage

and declarations of retention, acquisition, and resumption of British nationality (Regulations 8 to 12 inclusive).

Similar regulations have been made in relation to British India. The Nationality and Status of Aliens Regulations (India), S.R. & O. (1936) No. 1418 which were amended by further regulations in 1940 (S.R. & O. No. 956) have been revoked by those made in 1945 (S.R. & O. No. 916). The 1945 regulations revoked and superseded those made in 1934 (S.R. & O. No. 722) and 1936 (S.R. & O. No. 1418) and prescribed *inter alia* the form of a certificate of naturalization granted in British India. In relation to British Burma see the Naturalization (Burma) Regulations, S.R. & O. (1938) No. 172.

The position as regards declarations, certificates, or oaths made, granted, or taken out in the British Dominions specified in the First Schedule B.N.A. is governed by the relevant Dominion law. But, for the purposes of the British Nationality and Status of Aliens Acts, 1914 to 1943, a declaration made, registration effected, or permission, consent, or direction given under certain Dominion statutes produces results under the law of the United Kingdom (see Regulation 20 of the Schedule of the Naturalization Regulations, 1943).

As regards Section 19 (1) (c), the Regulations now in force are the Registration of Birth and Deaths (Consular Officers) Regulations, 1943 (S.R. & O. No. 765). These revoke and supersede earlier regulations of 1930 (S.R. & O. No. 740) and 1932 (S.R. & O. No. 568). All regulations previous to 1930 on this subject are revoked by Regulation 18 of the 1930 Regulations.

‘(2) Any regulation made by the Secretary of State in pursuance of this Act shall be of the same force as if it had been enacted therein, but shall not, so far as respects the imposition of fees, be in force in any British Possession, and shall not, so far as respects any other matter, be in force in any British Possession in which any Act or ordinance, or, in the case of a Dominion specified in the First Schedule to this Act, any regulation made by the Government of the Dominion under Part II of this Act, to the contrary of, or inconsistent with, any such regulations may for the time being be in force.’

This sub-section gives regulations made under Section 19 the force of an Act of Parliament, but the regulations as to the fees are not to have any force in a British possession. The expression ‘British Possession’ is not defined in the Act but it is defined by Section 18 (2) of the Interpretation Act, 1889, to mean ‘any part of Her Majesty’s dominions exclusive of the United Kingdom and,

where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one possession'. See also Section 26 (3) as to the scope of the phrase 'British Possession'.

In case of conflict between regulations made by the Secretary of State and Acts or Ordinances of a British possession or, in the case of Dominions specified in the First Schedule, *regulations* made by Dominion governments, the latter prevails over the former to the extent of the conflict.

'(3) Any regulations made by the Secretary of State under any Act hereby repealed shall continue in force and be deemed to have been made under this Act.'

This refers to regulations made under the Naturalization Act, 1870, all of which are now revoked. But see the Order in Council of 1904 which enables U.S. citizens who had become British subjects to divest themselves of such status by declaration within two years of August 10, 1870 (S.R. & O. Rev. 1904, I. Alien, p. 1).

Section 20

'Any declaration made under this Act or under any Act hereby repealed may be proved in any legal proceeding by the production of the original declaration or of any copy thereof certified to be a true copy by the Secretary of State, or by any person authorised by him in that behalf, and the production of the declaration or copy shall be evidence of the person therein named as declarant having made the declaration at the date therein mentioned.'

This relates to declarations of alienage, retention, &c., and gives equal evidentiary force both to the original and to the copy, thus modifying the ordinary common-law rule of evidence that a copy is not admissible in evidence unless it is proved that the original has been destroyed or cannot be found.

By Section 10 (2) of the Act of 1943 reference in Section 20 to 'This Act' includes reference to the Act of 1943.

Section 21

'A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate or any copy thereof certified to be a true copy by the Secretary of State, or by any person authorised by him in that behalf.'

See comment on Section 20. The same reason applies to explain Section 21.

Section 22

‘Entries in any register made in pursuance of this Act or under any Act hereby repealed may be proved by such copies and certified in such manner as may be directed by the Secretary of State, and the copies of any such entries shall be evidence of any matters, by this Act or by any Act hereby repealed or by any regulation of the Secretary of State, authorised to be inserted in the register.’

This relates to the registration of births and of declaration of alienage. It is reproduced by Section 2 of the Evidence (Foreign Dominions and Colonial Documents) Act, 1933. No direction has been issued under this section by the Secretary of State.

Section 10 (2) of the Act of 1943 extends the phrase ‘this Act’ in the above section so as to include reference to the Act of 1943.

Section 23

‘If any person for any of the purposes of this Act knowingly makes any false representation or any statement false in a material particular, he shall, in the United Kingdom, be liable on summary conviction in respect of each offence to imprisonment with or without hard labour for any term not exceeding three months.’

By Section 10 (2) of the Act of 1943 the words ‘this Act’ in Section 23 include a reference to the Act of 1943.

Section 24

‘The oath of allegiance shall be in the form set out in the Second Schedule to this Act.’

The oath of allegiance must be taken within one calendar month after the date of the certificate of naturalization to which it relates, or within such extended time as may be allowed. See Regulation 13 of the Naturalization Regulations, 1943. The oath must be subscribed as well as taken (Regulation 15), and may be administered in England and Northern Ireland by any Justice of the Peace or Commissioner for Oaths (Regulation 14).

VI

SUPPLEMENTAL AND GENERAL PROVISIONS

(Sections 25–8 Act of 1914; Sections 8–11 Act of 1943)

Section 25

‘Nothing in this Act shall affect the grant of letters of denization by His Majesty.’

This repeats the words of Section 13 of the Naturalization Act, 1870. The rights conferred on a denizen depend on the terms of the letters patent creating that status. Denizens are subjects at common law, but not natural-born subjects or persons possessing all the rights of natural-born subjects. They are not even included in the definition of ‘British subject’ in Section 27 (1) of the Act.

No statute defines the rights of denizens, or confers any special rights on them. The Act of Settlement expressly disqualifies them from being Privy Councillors or members of either House of Parliament, ‘or to enjoy any office or place of trust either civil or military or to have any grant of lands tenements or hereditaments from the Crown to himself or to any other or others in trust for him’. This disqualification was expressly removed in the case of naturalized aliens by Section 3 (2) of the Act of 1914 (and inferentially by Section 7 (3) of the Act of 1870: above, p. 164), but still remains the law for denizens. A denizen still cannot own a British ship, unless he has taken the oath of allegiance to the King, and is, during the time he is owner of the ship, either resident in His Majesty’s dominions or partner in a firm actually carrying on business in His Majesty’s dominions (Section 1 (c) proviso (ii) of the Merchant Shipping Act, 1894).

The main advantage to be derived from becoming a denizen was that, at a time when naturalization was a process requiring an Act of Parliament, it was possible to avoid the main disability attached to alienage, i.e. incapacity to hold or inherit land. (The common law on this point is set out above, p. 39.) Now an alien is able to acquire, hold, and dispose of real and personal property in the same manner in all respects as a natural-born British subject (Section 17 B.N.A.). The only apparent advantage of ‘denization’ is that it can be acquired without complying with any conditions prescribed by law

for naturalization, but the rights attaching to the status are less than those acquired by naturalization.

A petition for letter of denization had to state why it is not possible to comply with the conditions prescribed for the grant of a certificate of naturalization. It must also be noted that, under Section 2 (5), it is possible in a 'special case' to be naturalized without complying with the precise terms of Section 2 (1) (above, p. 161).

Denization is, however, now obsolete as a method of acquiring British nationality, the last case of a grant being in 1872.

Section 26

'(1) Nothing in this Act shall take away or abridge any power vested in, or exercisable by, the Legislature or Government of any British Possession, or affect the operation of any law at present in force which has been passed in the exercise of such a power, or prevent any Legislature or Government from treating differently different classes of British Subjects.

'(2) All laws, statutes and ordinances made by the legislature of a British Possession for imparting to any person any of the privileges of naturalization to be enjoyed by him within the limits of that Possession, shall, within those limits, have the authority of law.'

Sub-section (1) does three things:

(a) Preserves the legislative power of British possessions, i.e. colonies and Dominions, where Legislatures exist, so that such Legislatures are not prevented by anything in the Act from legislating on the matters with which it deals. In the case of the Dominions scheduled in the Statute of Westminster, 1931, this power now includes power to repeal the Act of 1914, in so far as it is part of the law of the Dominion. In the case of any other British possession the power to legislate is not affected by Section 26 (1), but cannot be exercised so as to repeal or contradict anything in the Act. If it is so exercised any legislation resulting will be void to the extent of repugnancy (Colonial Laws Validity Act, 1865, Section 3). Likewise any powers conferred on the government of any British possession already 'vested in and exercisable by' such a government when the Act of 1914 came into force (January 1, 1915) are preserved.

(b) Preserves any local naturalization legislation actually in force on January 1, 1915, in any British possession.

(c) Permits the Legislature or government of any British possession to provide for different treatment to different classes of British subjects. This recognizes and sanctions the policy of certain British

possessions of withdrawing certain rights (political, civil, &c.) from particular classes of British subjects or naturalized aliens. No such differentiation exists in the law of the United Kingdom, which treats all British subjects alike.

The full implications of this sub-section are examined in Chapter I of Part IV below. For the present we must be content to note the most important result, i.e. that, although the same principles apply, throughout the British Empire and Commonwealth, as to the acquisition and loss of British nationality *under the Act of 1914*, these principles do not prevent local citizenship arising in different parts of the Empire and Commonwealth, independently of the status of being a British subject. Furthermore they do not prevent the limitation by local laws of certain rights to defined classes of British subjects.

Sub-section (a) preserves, along with the 'Imperial' nationality of the Act, the laws of British possessions, whether past or future, providing for 'local naturalization'. As to the meaning of this see above, p. 104, and as to the local naturalization statutes now in force see below, p. 268.

'(3) Where any parts of His Majesty's Dominions are under both a central and a local legislature, the expression "British Possession" shall, for the purposes of this section, include both all parts under the central legislature and each part under a local legislature: Provided that nothing in this provision shall be construed as validating any law, statute or ordinance with respect to naturalization made by any such local legislature in any case where the central legislature possesses exclusive legislative authority with respect to naturalization.'

For the definition of 'British Possession' see Section 18 (2) of the Interpretation Act, 1889. Section 26 of B.N.A. applies to local naturalization statutes passed by member states or provinces of federal British possessions, e.g. Provinces of the Dominion of Canada, States of the Commonwealth of Australia, &c.

The proviso to the sub-section safeguards the constitutional position in any federal British possession, so that local laws which are invalid under the Constitution remain invalid notwithstanding Section 26.

Section 27

'(1) In this Act unless the context otherwise requires,—

'The expression "British subject" means a person who is a natural-born British subject, or a person to whom a certificate of naturalization

has been granted, (or a person who has become a subject of His Majesty by reason of annexation of territory:)

‘The expression “alien” means a person who is not a British subject:

‘The expression “certificate of naturalization” means a certificate of naturalization granted under this Act or under any Act repealed by this or any other Act:

‘The expression “disability” means the status of being a married woman, or a minor, lunatic or idiot:

‘The expression “territorial waters” includes any port, harbour, or dock:

{[‘The expression “British Consulate” means the office of any British consular officer where a register of Births is kept, and includes, in the case of any territory where there is no British Consulate and there is a British resident or other representative of His Majesty, the office of such resident or representative.’]}

The definition of a ‘British subject’ does not include the case of a woman who acquires British nationality by marriage. It might be argued, therefore, that references in the Act to British subjects do not include a woman who is a British subject only by marriage. However, such a view is not supportable, as it is clearly the intention that, in the absence of an express stipulation to the contrary, women who have become British subjects by marriage are covered by references to British subjects, in spite of the fact that they are not included in the definition section.

The disability of being a married woman has been the centre of most of the controversy regarding nationality questions during the last twenty years, and the agitation for its removal has gathered strength as time goes on.

The words in square brackets are repealed by Section 11 (2) of the Act of 1943, and as the only provision in which the expression ‘British Consulate’ occurs in the Act of 1914 has been replaced by Section 1 of the Act of 1943, the definition is also replaced by a definition of the corresponding words (‘a Consulate of His Majesty’) now used in the new Act. The definition is as follows (Section 10 (1) of the Act of 1943):

“‘Consulate of His Majesty” means the office of a consular officer of His Majesty where a register of births is kept, or, in the case of any territory where there is no such office and there is a resident or administrator appointed by a Government of His Majesty, the office of such resident, administrator or representative.’

At the time the Act of 1914 was passed all Consulates of His

Majesty were British Consulates, maintained and staffed by the Government of the United Kingdom. To-day the Dominions have in some countries Consulates maintained and staffed by the governments of the Dominions. Hence the new provision (see below, p. 227).

‘(2) Where in pursuance of this Act the name of a child is included in a certificate of naturalization granted to his parent, or where, in pursuance of any Act repealed by this Act, any child has been deemed to be a naturalized British subject by reason of residence with his parent, such child shall, for the purposes of this Act, be deemed to be a person to whom a certificate of naturalization has been granted.’

This sub-section was inserted by Section 2 (6) B.N.A. 1918. It fills a lacuna in the Principal Act by making clear the status of a child included in his father's certificate under Section 5 (1) B.N.A., or deemed to be naturalized under Section 10 (3) of the Act of 1870. Such persons are, for the purposes of the Act, treated as though certificates had been granted to them. The following results ensue;

- (a) The children of such persons, though the children are born abroad, become British subjects if their parents are British subjects at the time of their birth.
- (b) Under Section 3 they themselves acquire the civil and political rights of a natural-born British subject.

Section 28

‘(1) The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

‘(2) This Act may be cited as the British Nationality and Status of Aliens Act, 1914.

‘(3) This Act shall come into operation on the first day of January, nineteen hundred and fifteen.’

For a short note on the enactments repealed see below after the third Schedule (p. 225). As to the citation of the Act with later Acts see above, p. 122. The whole of the Act, as printed with amendments, is operative from January 1, 1915, i.e. in some parts the amending legislation, though passed after 1914, is retrospective to January 1, 1915, e.g. Section 10 (2). Where the amendments are not retrospective to that date the amending legislation says so, e.g. Section 10 (5). Some amendments, however, are retrospective over an indefinite period.

SCHEDULES

FIRST SCHEDULE

Sections 8, 9, 19

List of Dominions

The Dominion of Canada.

The Commonwealth of Australia (including for the purposes of this Act the territory of Papua and Norfolk Island).

The Dominion of New Zealand.

The Union of South Africa.

Newfoundland.

SECOND SCHEDULE

Oath of Allegiance

Section 24

'I, A.B., swear by Almighty God, that I will be faithful and bear true allegiance to His Majesty, King George the Fifth, his Heirs and Successors according to law.'

THIRD SCHEDULE

Enactments Repealed

Section 28

<i>Session and Chapter</i>	<i>Title or short title</i>	<i>Extent of repeal</i>
25 Edw. III, Stat. 1	Statute for those who are born in parts beyond the seas. ¹	From 'and in the right of other children' to the end of the statute.
42 Edw. III, c. 10	A Statute made at Westminster on the first day of May in the forty-second year of Edward III. ²	The whole chapter.
12 & 13 Will. III, c. 2	The Act of Settlement. ³	In Section 3 the words 'naturalized or'.
7 Anne, c. 5	The Foreign Protestants (Naturalization) Act, 1708. ⁴	The whole Act.
4 Geo. II, c. 21	The British Nationality Act, 1730. ⁵	The whole Act.
13 Geo. III, c. 21	The British Nationality Act, 1772. ⁶	The whole Act.
33 & 34 Vict., c. 14	The Naturalization Act, 1870. ⁷	The whole Act.
58 & 59 Vict., c. 43	The Naturalization Act, 1895. ⁸	The whole Act.

Note on the Third Schedule

The Statute of 25 Edw. 3, Stat. 1, was passed to settle doubts regarding the right of inheritance to land in England of children born abroad of parents who were within the King's allegiance. For the terms of the

¹ Above, p. 66.² Above, p. 66.³ Above, p. 164.⁴ Above, p. 69.⁵ Above, p. 69.⁶ Above, p. 69.⁷ Above, p. 85.⁸ Above, p. 103.

Statute see above, p. 66. The material part unrepealed (and still in force) is as follows:

‘the law of the Crown of England is, and always hath been such, that the children of the Kings of England, in whatsoever parts they be born, in England or elsewhere, be able and ought to bear inheritance after the death of their ancestors: which law our said Lord the King, the said prelates, earls, barons and other great men, and all the commons assembled in this Parliament, do approve and affirm for ever’.

The Statute 42 Edw. III, c. 10 (1368), is as follows:

‘Upon the Petition put in the Parliament by the Commons desiring that infants born beyond the sea within the Seigniories of Calice and elsewhere within the lands and Seigniories that pertain to our Lord the King beyond the Sea be as able and inheritable of their heritage in England as other Infants born within the realm of England: It is accorded that the common law and the Statute upon the same part another time be holden. St. 25 Edw. 3.’

This is merely a confirming Statute.

The effect of the repeal of the words ‘naturalized or’ in the Act of Settlement is explained above, p. 164. The Statutes 7 Anne 5, 4 Geo. II, c. 21, 13 Geo. III, c. 21, are discussed above, p. 69. They were repealed in view of the new rule adopted in 1914 in respect of children born abroad of British subjects. For the Naturalization Act, 1870, which the Act of 1914 superseded, see p. 85, above; and for the Naturalization Act, 1895, see p. 103, above.

The British Nationality and Status of Aliens Act 1943

Sections 8–11

Section 8

‘Regulations may be made under section nineteen of the principal Act:—

- (a) For any purpose for which it appears to the Secretary of State to be expedient to make such regulations in consequence of the provisions of this Act:
- (b) for enabling the births and deaths of British subjects born or dying in any country in which His Majesty has for the time being no diplomatic or consular representatives to be registered by persons serving in the diplomatic, consular or other foreign service of any Power which, by arrangement with His Majesty, has undertaken to represent His interests in that country or by a person authorised in that behalf by the Secretary of State.¹

¹ This means, in fact, the Foreign Office. See Regulation 13 of the Registration of Births and Deaths (Consular Officers) Regulations, 1943, below, p. 226.

- (c) for securing that any declaration made, registration effected, or permission, consent, or direction given, whether before or after the commencement of this Act, in accordance with any provision of any law in force in any Dominion, may, for the purposes of this Act and the principal Act have the like effect as a declaration, registration, permission, consent or direction, made, effected, or given, in accordance with any corresponding provision of those Acts respectively or of the regulations made thereunder.'

See Section 19 and comment thereon above, p. 214. The above section enables regulations to be made dovetailing the provisions of B.N.A. and those of the Act of 1943. Section 8 (b) must be read with Section 9, the combined effect of these provisions being to enable the births and deaths of British subjects abroad to be registered at the Consulate of a Protecting Power in those countries where, during war-time or any other period, there are no diplomatic or consular representatives of His Majesty. Where births are registered in war-time at a Consulate of a Protecting Power, who has charge of His Majesty's interests in the country where the Consulate is, the registration has the same effect, for nationality purposes, as registration at a 'Consulate of His Majesty' (above, p. 153, and below, p. 227). Regulation 13 of the Registration of Births and Deaths (Consular Officers) Regulations, 1943, authorizes registration in the Foreign Office of such births, a course which was convenient during the war of 1939-45, where the parents had been repatriated to the United Kingdom. Copies of registrations are kept at Somerset House (cf. the Irish system of registration below, p. 258).

The object of Section 8 (c) is to provide that, where something is done or permitted by a Dominion authority, acting under the provisions of a British Nationality Statute of the Dominions, corresponding to a provision in the British Nationality and Status of Aliens Acts of the United Kingdom, which require that act to be done by or with the permission of the Secretary of State, the act or permission of the Dominion authority will have the same effect *in the United Kingdom*¹ as if it had been done by or with the permission of the Secretary of State.

Section 9

'If during any war in which His Majesty may be engaged the birth of any person is registered in accordance with regulations made under the principal Act by a person serving in the diplomatic, consular or

¹ *Italics mine.*

other foreign service of a foreign Power, or by a person authorised in that behalf by the Secretary of State, the birth of that person shall be deemed for the purposes of section one of this Act to have been registered at a consulate of His Majesty.'

See comment on Section 8 above.

Section 10

'(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"Consulate of His Majesty" means the office of a consular officer of His Majesty where a register of births is kept, or, in the case of any territory where there is no such office and there is a resident or administrator appointed by a Government of His Majesty, or any other representative of His Majesty, the office of such resident, administrator or representative:

"Dominion" means a Dominion specified in the First Schedule to the principal Act:

"The present war period" means the period beginning with the third day of September nineteen hundred and thirty-nine, and ending with such date as His Majesty may by Order in Council appoint.

'(2) Sub-section (1) of section eight of the principal Act (which extends to British Possessions the provisions of that Act as to the grant and revocation of certificates of naturalization, subject to the modifications therein mentioned), and sections twenty, twenty-two, and twenty-three, and sub-section (1) of section twenty-six of that Act (which relate to proof of documents and other supplemental matters) shall have effect as if the references therein to that Act included references to this Act.'

The expression 'Consulate of His Majesty' (which takes the place of 'British Consulate' in Section 27 (1) of the Act of 1914) was adopted because there are now consulates of Dominions in foreign countries, which was not the case when the Act of 1914 was passed.

The words 'in the case of any territory where there is no such office' both in Section 27 (repealed portion) and in Section 10 (1) of the Act of 1943, refer to territories which are not part of the King's dominions, but are territories in which His Majesty exercises jurisdiction over British subjects, e.g. protectorates, mandated areas, and protected states. There was, under Section 19 (1) B.N.A., power to make regulations regarding registers of births, &c., in such places, but no such regulations were ever made. In practice local registers of births were used, and, in places where there was a British Resident

(e.g. before 1939 in Malaya), registers were kept by Residents for the benefit of persons wishing to register births under the Act of 1914. The office of a Resident is equivalent to a 'Consulate' for the purposes of Section 27, and, under instructions from the Colonial Office, the Residents followed the Foreign Office regulations applicable to registers kept by consulates.

The effect of Section 10, (2) may be seen in the comment on the sections of B.N.A. to which it refers.

Section 11

'(1) This Act may be cited as the British Nationality and Status of Aliens Act, 1943, and this Act and the British Nationality and Status of Aliens Acts, 1914 to 1933, may be cited together as the British Nationality and Status of Aliens Acts, 1914 to 1943.

'(2) The provisions of the principal Act set out in the first column of the Schedule to this Act are hereby repealed to the extent specified in the second column of that Schedule.'

As to citation see above, p. 122. As to the enactments repealed see comment (above, pp. 143, 149, 222) on the provisions specified in the Schedule.

SCHEDULE

Provisions of British Nationality and Status of Aliens Act, 1914,
repealed.

<i>Section</i>	<i>Extent of Repeal</i>
Section one	In sub-section (1) the words from 'or (V) his birth' to 'nineteen hundred and twenty-two', and the words from 'Provided that' to the end of the sub-section.
Section twenty-seven	In sub-section (1) the words from 'the expression "British consulate"' to the end of the sub-section.

VII

MISCELLANEOUS LEGISLATION BEARING ON BRITISH NATIONALITY

THE British Nationality and Status of Aliens Acts, 1914–43, provide, in effect, a code of British nationality law, the earlier piecemeal legislation, and most of the common law, having been repealed or replaced by these Acts. As we have seen, the following matters are still governed by the common law:

- (1) The effect on British nationality of the loss of British territory by cession, secession, or otherwise.¹
- (2) The effect on British nationality of annexation.²
- (3) The common law is relevant in interpreting the Acts, e.g. the meaning of 'allegiance'.³

Apart from these points, however, it is not necessary to go outside the Acts to ascertain the law. There is one curious survival of earlier legislation still on the statute-book—the Liberated Africans (Sierra Leone) Act, 1853.⁴ The only material part of this is the preamble, and Section 1, which read as follows:

'Whereas doubts have been entertained whether Africans who have been liberated, or taken and received under the protection of the Crown, under the provisions of the Acts for the Abolition and Suppression of the Slave Trade, and are Domiciled in the Colony of Sierra Leone and its Dependencies, are British subjects, and doubts have been also entertained as to the authority of the local legislature of that Colony in legislating in relation to the rights and obligations of such Africans: Be it enacted by the Queen's Most Excellent Majesty . . . as follows:

1. All liberated Africans domiciled or resident, or who hereafter may be domiciled or resident, in the Colony of Sierra Leone or its Dependencies, shall be deemed to be and to have been for all purposes as from the date of their being brought into or of their arrival in the said Colony natural-born subjects of Her Majesty.'

This provision is interesting, as in most cases the liberated slaves had no connexion by birth with British territory, and were not the descendants of British subjects, but were nevertheless given the

¹ Above, p. 53.

² Above, p. 40.

³ Above, p. 34.

⁴ 16 & 17 Vict., c. 86.

status of natural-born subjects if 'domiciled or resident' in the colony.

Another enactment, which is of importance in establishing a claim to British nationality, is Section 188 of the Supreme Court of Judicature (Consolidation) Act, 1925, which provides as follows:

'(1) Any person who is a natural-born subject of His Majesty, or whose right to be deemed a natural-born subject of His Majesty depends wholly or in part on his legitimacy or the validity of any marriage, may, if he is domiciled in England or Northern Ireland or claims any real or personal estate situate in England, apply by petition to the Court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage.

'(2) Any person who is domiciled or claims as aforesaid, may apply to the Court for a decree declaring his right to be deemed a natural-born subject of His Majesty.

'(3) Application under sub-sections (1) and (2) of this section may be included in the same petition and on any such application the Court shall make such decree as the Court thinks just, and the decree shall be binding on His Majesty and all other persons whatsoever:

Provided that the decree of the Court shall not prejudice any person:

- (i) if it is subsequently proved to have been obtained by fraud or collusion; or
- (ii) unless that person has been cited or made a party to the proceedings or is the heir-at-law, next of kin, or other real or personal representatives of, or derives title under or through, a person so cited or made a party.'

The remaining sub-sections (4)–(7) deal with matters of procedure. For the full text see Appendix below, p. 425. With this there must be read Section 2 of the Legitimacy Act, 1926,¹ which provides as follows:

'2 (1) A person claiming that he or his parents or any remoter ancestor became or has become a legitimated person, may, whether domiciled in England or elsewhere and whether a natural-born subject or not, present a petition *under Section 188 of the Supreme Court of*

¹ There is an error of drafting in this section which as enacted refers to the Legitimacy Declaration Act, 1858. This Act was repealed by the Sixth Schedule of the Supreme Court of Judicature (Consolidation) Act, 1925. This was a 'manifest slip on the part of the draftsman' who should have referred to Section 188 of the last-mentioned Act: *re A.B.*, [1927] 96 L.J. 155.

Judicature (Consolidation) Act 1925,¹ and that Act, subject to such necessary modifications as may be prescribed by rules of court, shall apply accordingly.

‘(2) A petition under the said Act shall be presented by any such person as aforesaid to the county court instead of the High Court, and the county court on such petition being presented shall have all such jurisdiction as by the said Act is conferred on the High Court:

‘Provided that, where a petition is presented to the county court, the county court if it considers that the case is one which owing to the value of the property involved or otherwise ought to be dealt with by the High Court, may, and if so ordered by the High Court, shall transfer the matter to the High Court, and on such transfer the proceeding shall be continued in the High Court as if it had been originally commenced therein.’

As a result of this provision Section 188 of the Judicature Act is enlarged, and a person can petition, even if domiciled elsewhere than in England or Northern Ireland, and whether a natural-born subject or not. Section 8 of the Legitimacy Act, 1926, gives effect to the law of the domicile of the father of an illegitimate child, if, by the law of that domicile, at the time of a subsequent marriage between the father and mother of the child, the marriage legitimates the child. According to English law, as laid down by Section 8 of that Act, the law of the domicile in such a case will be effective to legitimate the child, even though, under the legitimacy rules of English law, the child could not have been legitimate.²

¹ These are the words which should have been inserted by the draftsman but, owing to a slip, were not so inserted.

² See *Collins v. Attorney-General*, [1931] 145 L.T. 551. On the evidence required to support a declaration of legitimacy see *S. otherwise U. v. Attorney-General*, [1931] 48 T.L.R. 66.

PART IV

BRITISH NATIONALITY IN THE BRITISH DOMINIONS, COLONIES, AND OTHER BRITISH TERRITORIES

I

APPLICATION OF THE NATIONALITY LEGISLATION OF THE UNITED KINGDOM IN THE BRITISH DOMINIONS AND COLONIES—GENERAL PRINCIPLES —THE CONCEPTION OF 'DOMINION NATIONALITY' AND ITS EFFECTS

THE conception of a natural-born British subject is, as we have seen, indigenous to the common law of England. The common law was carried, including the prerogative, to the King's dominions, plantations, and colonies beyond the seas, though not, without legislation, to those territories which did not become part of the King's dominions. Until 1914 no attempt was made to state the rules regarding the acquisition of British nationality in a comprehensive statutory form, but the British Nationality and Status of Aliens Acts, 1914-43, now provide a code of rules prescribing the conditions in which the status of a British subject, as defined therein, arises, how a person may cease to be a British subject, &c. So far as the British colonies are concerned it may be said, at once, that this legislation is part of their law. The position in the Dominions requires some explanation.

In accordance with the practice which had prevailed for some years, regarding United Kingdom legislation affecting the Dominions, the Act of 1914 was passed after close consultation with the self-governing Dominions. It was regarded by them, and by the Government of the United Kingdom, as creating a common status, and as providing a general law of nationality for the entire British Empire and Commonwealth of Nations. The basis of this common status is the common allegiance to His Majesty King George VI, King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India. During the First World War (1914-18) the British Dominions acquired a prestige and political status which greatly advanced their international standing, and at the Peace Conference of Paris in 1919 they were represented by Dominion delegations. At the Imperial Conference of 1923 the subject of

nationality was discussed, and it was recommended that the law should be amended so as to allow 'Imperial' naturalization to be granted on the basis of residence in the 'B' and 'C' Mandates, and also on the basis of residence in British protectorates; for, as these territories were not part of the King's dominions, residence in them did not count for the purpose of naturalization under the Act of 1914. In fact the law was not amended to this effect, but provision has been made for local naturalization in some of these territories, and in one of them—Palestine—a special citizenship law has been enacted. Moreover, persons connected with these territories may be British protected persons (below, p. 286). The status of married women was also discussed, and it was proposed, and agreed, in principle, that 'power should be taken to readmit a woman to British nationality in cases where the married state, though subsisting in law, has to all practical purposes come to an end'—the cases in contemplation being those of a separated or deserted wife. This proposal has not passed into the laws of the British Commonwealth.

In 1926 the Imperial Conference passed a resolution regarding the status of the British Dominions which marked an important point in their evolution as independent states in international law. This was as follows:

'They are autonomous communities, within the British Empire, equal in status, in no way subordinate one to another in any respect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.'¹

Various amendments of the law were again recommended at the 1926 Conference, but have not been followed by general legislation. On the question of the nationality of married women there were divergences of opinion, and the Conference failed to reach agreement.

The uniformity of the rules of British nationality law throughout the British Empire was, in theory, based on the power of the British Parliament to legislate even for the Dominions (as they did in Parts I and III of the Act of 1914), but this theory no longer corresponded to the facts, and had ceased to be acted upon long before the Act of 1914 was passed. None of the Dominions had acted on the view that Parts I and III of the Act of 1914 were *ipso facto*, and without special enactment, part of their law. They all (except New Zealand) followed the course, not of adopting Part II as provided by the Act,

¹ Cmd. 2768 of 1926.

but of re-enacting the whole of the Act, in some cases with minor differences. The maintenance of the common status rested, therefore, on parallel action in the legislatures of the United Kingdom and the Dominions, and had to be kept alive by agreement on policy.

Accordingly the statement approved by the Imperial Conference of 1930 regarding the common status describes it as resting on 'reciprocal action'. This statement, to which the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland assented, sets out the position resulting from the British Nationality Acts, 1914–22 (that being the legislation then in force):

'Under the new position, if any change is made in the requirements established by the existing legislation, reciprocal action will be necessary to attain this recognition (i.e. the recognition of the common status), the importance of which is manifest in view of the desirability of facilitating freedom of intercourse, and the mutual granting of privileges among the different parts of the Commonwealth. It is, of course, plain that no member of the Commonwealth could or would contemplate seeking to confer on any person a status operative throughout the Commonwealth save in pursuance of legislation based upon common agreement, and it is fully recognised that this common status is in no way inconsistent with the recognition *within and without*¹ the Commonwealth of the *distinct nationality*¹ possessed by nationals of the individual states of the British Commonwealth.'²

This statement was approved by a resolution of the Imperial Conference of 1930. In addition that Conference passed other Resolutions about nationality which are important in the history of the subject, and, accordingly, they are set out in full. The Resolutions are as follows:

'(1) That, if any changes are desired in the existing requirements for the common status, provision should be made for the maintenance of the common status, and the changes should only be introduced (in accordance with present practice) after consultation and agreement among the several members of the Commonwealth.

'(2) That it is for each member of the Commonwealth to define for itself its own nationals but that so far as possible those nationals should be persons possessing the common status, though it is recog-

¹ *Italics mine.*

² Report of the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation (Cmd. 3479 of 1930), paras. 77 and 78.

nised that local conditions, or other special circumstances, may from time to time necessitate divergences from this general principle.

‘(3) That the possession of the common status, in virtue of the law for the time being in force in any part of the Commonwealth, should carry with it the recognition of that status by the laws of every other part of the Commonwealth.’

As a result also of the declarations of the Imperial Conference of 1930 the Statute of Westminster, 1931, was passed by the British Parliament, and, under it, that body renounced any claim to legislate for the Dominions without their consent. Before that Act was passed the legislative authority of the Dominion Parliaments was, in many respects, subject to that of the Parliament of the United Kingdom, and particularly in one important respect which concerns the subject of this chapter. This was the rule laid down in the Colonial Laws Validity Act, 1865, that Acts of Colonial Legislatures which were repugnant to Acts of the Imperial Parliament (of the United Kingdom) were void to the extent of such repugnancy. Although for many years, and especially after the First World War (1914–18), the Dominions had ceased to be regarded in political practice, nomenclature, or ordinary parlance, as ‘Colonies’, and, under the constitutional practice of many years, the British Parliament had ceased to legislate for them as a sovereign body and without their consent, the law did not correspond with this situation of fact. The Colonial Laws Validity Act, 1865, continued to apply to the Dominions, with the result that it was legally impossible for their legislatures to repeal or amend Acts of the British Parliament, in so far as these Acts were part of the law of the Dominions. We have already seen that the British Nationality and Status of Aliens Acts, 1914–22, were (apart from Part II of the Act of 1914 which especially provided for Dominion legislative action as a condition of its application within the Dominions)¹ part of the law of every part of the British Empire and Commonwealth of Nations, including, according to the English view, the Irish Free State. The Statute of Westminster, 1931, provided:

- (1) The Colonial Laws Validity Act, 1865, ceases to apply to the Dominions.

¹ Every Dominion scheduled in the Act of 1914 incorporated Part II into the law in some form. See below, p. 244, in greater detail. The Irish Free State, which did not come into existence until 1922, was not scheduled in the Act of 1914 and did not adopt Part II, although it could have done so under Section 3 of the Irish Free State Constitution Act, 1922 (Session 2).

- (2) A legal distinction is formally drawn (for the first time) between a Colony and a Dominion. This distinction is made by Section 2 of the Statute which reads as follows: 'In this Act, and in every Act passed after the commencement of this Act, the expression "Dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and the Irish Free State or any one of them, and the expression "Colony" shall, notwithstanding anything in the Interpretation Act, 1889,¹ not include a Dominion or any Province or State forming part of a Dominion.'
- (3) The Dominions and also the Province of Canada have power to repeal or amend Acts of the Imperial Parliament *in so far as they form part of the law of the Dominion*.
- (4) No law of either a Dominion or of a Province of Canada is void on the ground of repugnancy to an Act of the Imperial Parliament or to the law of England.
- (5) The Dominions have full power to make laws having extraterritorial operation.²
- (6) No Act of Parliament of the United Kingdom passed after the commencement of the Statute of Westminster extends to a Dominion as part of the law of that Dominion unless it is expressly declared that that Dominion has requested and consented to the enactment thereof.
- (7) The Statute itself became law throughout His Majesty's Dominions, without further legislation by Dominion Parliaments, except in Australia, New Zealand, and Newfoundland, where a special Act adopting the operative sections was required. (No such Act has been passed in New Zealand and Newfoundland. Australia adopted the Statute by the Statute of Westminster Adoption Act, 1942.)

The implications of this Statute are clear. The preservation of the doctrine of the common status of British subjects as laid down in the British Nationality and Status of Aliens Acts, 1914-22, or as elaborated in 1933 and 1943, or in later legislation of the United Kingdom, no longer depends on anything in those Acts, but on agree-

¹ See Section 18 of the Interpretation Act, 1889, which defines a 'Colony'.

² This point brings up almost as a necessity the question of separate nationality laws for the United Kingdom and the Dominions, because jurisdiction over nationals abroad cannot be enforced unless the national comes within the territory.

ment between the United Kingdom and the British Dominions. This agreement or understanding, in turn, does not rest on any law, municipal or international, and it is not framed in any legally binding document couched in the language of legal obligation, for the resolutions of the Imperial Conference quoted above do not have the *force of law*, although they may contain certain statements *about* the law. It is non-legal or political understanding. Therefore, in view of the legislative independence of the Dominions created by the Statute of Westminster, 1931, it became possible for those Dominions to adopt, if they so desired, nationality laws which were not based on the common status, although it was part of the understanding that such laws would respect the common status. As shown by the official statements made at the Imperial Conferences of 1930, it was intended that, in practice, the nationality laws of all parts of the British Commonwealth would, so to speak, march together. 'Dominion nationality' would be a smaller group of subjects contained within the larger class of British subjects, and legislation regarding British nationality in this wider class would be the same throughout the Commonwealth. This position became, in fact, difficult to maintain in an association of independent communities, each possessing Parliaments of their own, with the widest legislative powers, and some of them with pronounced views on certain nationality questions, such as, for example, the question of the nationality of married women. It was after 1933, mainly owing to differences of opinion regarding the nationality of married women, that the system began to show signs of breaking down. Australia and New Zealand, who had not hitherto adopted any special laws providing for Dominion citizenship, entered the field by enacting that certain persons should, 'within' Australia and New Zealand, have the rights of British subjects.¹ The laws of Canada and South Africa had defined Dominion nationals long before, but had continued to accept the common status.² In 1935 the Irish Free State passed legislation, under the powers conferred by the Statute of Westminster, formally repealing the British Nationality and Status of Aliens Acts, in so far as they were part of the law of the Irish Free State, and creating a distinct Eire nationality.³ This action was not imitated in any other Dominion, but its repercussions were seen at the next Imperial Conference which met in 1937.⁴ Here General Hertzog (South Africa) proposed that the British Nationality and Status of Aliens Act, 1914, should

¹ Below, p. 246. ² Below, p. 245. ³ Below, p. 255. ⁴ Cmd. 5482 of 1937.

be amended so as to confine the meaning of 'British subject' to 'subject of Great Britain'. This proposal was based on the argument that several reasons pointed to the desirability of each member state of the British Commonwealth having its own nationality law. The result of the establishment in each member state of an independent legislative body (subject in some cases to a Constitution) was that such states became units for international purposes, with their own policy and laws regarding immigration, deportation, diplomatic protection, &c., and became independent parties to commercial and other treaties. It was contended by General Hertzog that convenience pointed to the desirability that each of these units should define its own members, as some (Canada, South Africa, and the Irish Free State) had already defined them, for the purposes of their own law and of international agreements, in order to distinguish between those persons who had a direct tie with the member state and those who either had no such tie, or none sufficiently close to enable them to be treated as its 'nationals'.

The result of this proposal, if adopted, would be a 'United Kingdom' nationality, a 'Canadian' nationality, &c.—all belonging to the several states which are members of the British Commonwealth. The Government of the United Kingdom opposed General Hertzog's proposal on the ground that it would be the end of the doctrine of common allegiance on which the British Empire was founded. At the same time that Government agreed that, provided the common status was preserved, there was no reason why there should not exist, side by side with it, a Dominion nationality law. It was recognized by the Conference that for certain purposes (immigration, deportation, &c.), the deciding factor in the case of the Dominions was not whether the person seeking admission, or being deported to or from the Dominions, was a British subject but 'whether or not, being a British subject, he is regarded, by virtue of birth or residence, or otherwise, as a *member of the community* in the territory concerned'.¹

A 'member of the community' was defined as:

'a person whom that member of the Commonwealth has, either by legislative definition of its nationals or citizens, or otherwise, decided to regard as "belonging" to it, for the purposes of civil and political rights, immigration, deportation, diplomatic representation, or in the exercise of extra-territorial jurisdiction.'²

¹ Summary of Proceedings, p. 25.

² Ibid.

The practice of defining this connexion was recognized by the 1937 Conference and left to each Dominion, with the understanding, however, that it was desirable that such Dominion nationality laws should possess the features of uniformity.

Somatters stood at the outbreak of the Second World War (1939-45), and it now becomes necessary to define in greater detail the state of the doctrine of 'common status' under the laws of different parts of the British Empire, and the relation of that status to Dominion nationality laws. As we have seen,¹ a Dominion is fully within its legal rights under the Statute of Westminster, 1931, in repealing the British Nationality and Status of Aliens Acts in so far as they are part of the law of that Dominion, for, in so doing, it is acting in the exercise of a sovereign power of legislation. Hitherto, only the Irish Free State has proceeded to repeal these Acts, thus removing the 'common status' from the *corpus* of its law. Instead it has adopted an Irish citizenship law of its own. British subjects, as defined in the British Nationality and Status of Aliens Acts, and nationals of the Dominions, as defined in their respective nationality laws, or any other persons who are not Irish citizens, are regarded, under the law of the Irish Free State, as aliens.

The law of the Irish Free State no longer incorporates the legislation or the common law of the United Kingdom regarding British nationality. Section 33 (1) of the Irish Nationality and Citizenship Act, 1935, provides as follows:

'The British Nationality and Status of Aliens Acts, 1914, and the British Nationality and Status of Aliens Act, 1918, if and so far as they respectively are or ever were in force in Saorstát Éireann, shall cease to have effect.'²

Section 33 (2) abrogates the common law relating to British nationality 'if and so far as it is or ever was either wholly or in part in force in Saorstát Éireann'. The Act defines the conditions on which Irish citizenship may be acquired either at birth or by naturalization. Section 33 (3) provides as follows:

'The facts or events by reason of which a person is at any time a natural-born citizen of Saorstát Éireann shall not of themselves operate to confer on such persons any other citizenship or nationality.'

The intention of this sub-section appears to be to prevent a person

¹ Above, p. 236.

² There is no reference to the Act of 1922 which must, however, be regarded as repealed by necessary implication.

who is an Irish citizen from being regarded at the same time as a British subject. As such it will, no doubt, be operative in the Irish courts. In the English courts, as we shall see, the view is taken that birth in the Irish Free State confers British nationality. Section 34 endeavours to put the matter beyond all doubt and to make it clear that Irish citizenship is a nationality not only for the purposes of public, but also presumably for the purpose of private, international law. It provides:

‘Every person who is a citizen of Saorstát Éireann by virtue of Article 3 of the Constitution and every person who is or becomes a citizen of Saorstát Éireann by or under this Act shall be such citizen for all purposes municipal and international.’

Section 2 of the Aliens Act, 1935, completes this legislation by providing, in effect, that a person who, though a British subject (or any other sort of national), is not an Irish citizen, shall be an alien, for it provides that ‘the word “alien” means a person who is not a citizen of Saorstát Éireann’.

This legislation is not consistent with the understandings arrived at by the Imperial Conference of 1937,¹ but it is not a breach of any rule of international law, and was within the competence of the Irish Free State under the Statute of Westminster, 1931. Nor is it right to say that the Irish Free State has ‘seceded’ from the King’s Dominions, or ceased to be a member of the British Commonwealth of Nations. It has been held by the English High Court, in *Murray v. Parkes*, [1942] 2 K.B. 123, that no recognition of the Irish Free State as an independent sovereign State has been granted by the Government of the United Kingdom, and nothing has happened from which such recognition may be inferred. This was a test case selected from a number of appeals from decisions of courts of summary jurisdiction, for the purpose of obtaining an authoritative decision on the liability of persons who were citizens of Éire, and were in Great Britain, to be called up for military service.

Murray was born in 1908 in Co. Roscommon, Ireland. He was at birth a British subject, because he was born within the dominions and allegiance of His Majesty, of which Ireland, without doubt, formed a part in 1908, and, according to the view of the Government and courts of the United Kingdom, it is still so to-day. In 1922

¹ Which contemplated the preservation under the law of each member of the British Commonwealth of the ‘common status’ of a British subject (see above, p. 238).

Southern Ireland (including Co. Roscommon) became the Irish Free State by reason of the Irish Free State Constitution Act, 1922, and the Irish Free State Agreement Act, 1922 (both Acts of the Parliament of the United Kingdom), and was given the position of a Dominion within the British Commonwealth of Nations. Murray, having been born within the Irish Free State, and being ordinarily resident and domiciled there before December 1922, when the Constitution of the Irish Free State (scheduled to the Irish Free State Constitution Act) was established, became an Irish citizen under that Constitution. There was nothing in the two Acts of 1922 referred to above which caused Murray, although an Irish citizen, to cease to be a British subject. In 1934 Murray came to England and had resided there ever since that date. He retained, however, the intention of returning to Eire, and had not lost his domicile of origin. In May 1941 Murray was served with a notice, under the National Service (Armed Forces) Act, 1939, requiring him to submit to medical examination. Section 1 of that Act empowered His Majesty to direct by Proclamation that every male person between the age of 18 and 41, who at the date of the Proclamation was a British subject and in Great Britain, should be liable to be called up for service in the armed forces. Under Section 11, however, no person who was, under any Act in force in any part of His Majesty's dominions outside Great Britain, a national or citizen of that part (or was born or domiciled in any such part of His Majesty's dominions or in a British protectorate, mandated territory, or territory under His Majesty's protection or suzerainty) was liable for service, unless he had resided in the United Kingdom for two years or more, and even then he was not liable, if his residence was for the purpose of education, or the circumstances showed that he was resident there for a temporary purpose only.

Murray failed to comply with the notice, and was prosecuted, convicted, and fined. He appealed on the ground that he was not liable to be called up because (1) he was not a British subject in 1941, and had ceased to be so since 1937 or 1938, (2) (alternatively) if he was a British subject he was a citizen of Eire, and was in England for temporary purposes only, and, therefore, could not be called up by reason of Section 11 (above). The second alternative ground of appeal was rejected on the facts. The first ground was based on the following arguments:

(1) Eire had become separated from the British Commonwealth of

Nations by reason of legislation passed by the Irish Free State Legislature in 1937. Under this legislation a new Constitution was set up for that country, henceforth called Eire, a constitution in which the King occupied no place; the legislature of the Irish Free State had power, by reason of the Statute of Westminster, 1931, to pass statutes which were valid, notwithstanding that they conflicted with statutes of the Parliament of the United Kingdom.

- (2) This separation of Eire had been recognized by the United Kingdom, because the United Kingdom Government had entered into agreements with Eire which were scheduled to the Eire (Confirmation of Agreements) Act, 1938.
- (3) Eire was no longer part of the dominions of His Majesty, within the meaning of the common law, or of the B.N.A., but was recognized by the United Kingdom as a separate and independent state.
- (4) Accordingly those British subjects who were Irish citizens and domiciled in Eire ceased to be British subjects.

The court dismissed the appeal on the ground that, even assuming that there had been a complete separation of Eire from the British Commonwealth of Nations, the appellant would still not have ceased to be a British subject, because, at all material dates (since 1934) he had been *resident* in England, and, according to the doctrine of the English courts, only persons resident in seceding or ceded territory at the date of the separation lose British nationality.¹ It was not domicile but residence that was the test for this purpose.

Although this was a sufficient ground for dismissing the appeal the court expressed an opinion on the other arguments set out above. As to (1) the court found nothing, either in the Statute of Westminster, 1931, or in the pronouncements of the Governments of Eire or the United Kingdom, to suggest that Eire had a right to secede, or had purported to secede, from the British Commonwealth of Nations. As to (2) and (3), even if Eire had seceded, express recognition by the Government of the United Kingdom would be necessary to show that Eire had become a foreign state.² The Irish Free State had not ceased to be part of the King's dominions, notwithstanding the

¹ See above, p. 53.

² It would be in accordance with the decision of the Court of Appeal in *The Fagernes*, [1927] P. 311, for the English courts, in case of doubt, to seek the guidance of the Executive on the question whether the Irish Free State was still part of the King's dominions,

Constitution of 1937. It was, therefore, the duty of the court to apply the British Nationality and Status of Aliens Acts in order to determine whether, according to the law of the United Kingdom, a person was or was not a British subject.

The facts of this case concerned a person born before the Constitution of 1937, but it is probable that the English courts would apply the same rule to the case of persons born after the Irish Citizenship Act, 1935, and the Constitution of 1937, so long as the Irish Free State is regarded by the Government of the United Kingdom as part of the King's dominions. The Lord Chief Justice said in *Murray v. Parkes*: 'The Irish Free State Constitution 1922 did no more than confer upon the appellant a national character as an Irish citizen within the wider British nationality.' Citizens of Eire were not treated as aliens in the United Kingdom before or after 1937, and, according to the law and official opinion of the latter, Irish citizenship is a species of British nationality.¹ The official view of the Irish Free State may be gathered from the following statement made by Mr. De Valera, Prime Minister of the Irish Free State, speaking on the effect of *Murray v. Parkes*:

'As far as we are concerned the present Irish Constitution, the Irish Nationality and Citizenship Act 1935, and the other Irish laws related thereto determine the national status of all persons born in Ireland or Irish parentage. They define Irish citizenship in exact legal terms for all purposes, and for all parts of the world where our citizens reside, and conform fully to the principles laid down for the determination of nationality and citizenship in international conventions as well as to international custom and usage. No law of any other country can affect the status conferred by these laws, and if any purports to do so I can only say that such a law is quite inconsistent with the present international position of Ireland and with the international character of the relations now existing between Ireland and other

¹ The following Parliamentary Question and Answer given on April 26, 1939, are of interest:

Sir Ronald Ross asked the Secretary of State for Dominion Affairs whether the Government of Eire recognizes its citizens as being British citizens, or claims that they belong to some distinguishable category; and, if the latter, whether the citizens of Eire are entitled to all the rights and privileges of British citizenship.

The Secretary of State for Dominion Affairs (Sir Thomas Inskip): As regards the first part of the question, I would refer my hon. friend to the terms of the Irish Nationality and Citizenship Act of 1935. As regards the latter part, the view of His Majesty's Government in United Kingdom, which has been explained on previous occasions, is that citizenship of Eire does not deprive any person of his status as a British subject under United Kingdom law.

States, including those States which are members of the British Commonwealth. In so far as the British Nationality and Status of Aliens Act 1914 purports still to apply, or is applied by British courts, to Irish citizens to-day, it runs directly counter to all the recognized international principles governing such matters. A law which purports still to provide that every man who is born in Ireland becomes automatically, and precisely by reason of that fact, a citizen of another State is contrary to all reason and commonsense.¹

There is, accordingly, a difference of opinion between the Governments of the Irish Free State and of the United Kingdom, regarding the exact effect of Irish citizenship. The existence of independent states, with separate nationality laws, but bound together by a common tie, is a sort of union not without precedent in international law, and there is no reason why persons should not be dual nationals—Irish citizens and British subjects. This book is not, however, concerned with the constitutional issue, but only with the rules of nationality law. The law of the Irish Free State regarding Irish citizenship is described below (p. 255).

*The 'common status' in British Dominions other than the
Irish Free State*

Parts I and III of the Act of 1914, as well as the amending Acts of 1918 and 1922, became in law (probably) part of the law of every Dominion, without further legislation by the Dominion, because at the time these Acts were passed the Parliament of the United Kingdom retained the power to legislate for the Dominions, and, if there is doubt regarding the intention of that Parliament as to the application to the Dominions of the Acts of 1918 and 1922, there can be little doubt that it was its intention that Parts I and III of the Act of 1914 should apply to them. In fact, however, the Dominions did not act upon this view, but passed legislation, not only to re-enact Part II of the Act of 1914 (which expressly provided that it should only apply in the Dominions if and when it was so adopted), but also to re-enact Parts I and III.² We have seen that the Irish Free State has repealed the British Nationality and Status of Aliens Acts in so far as they are part of its law.

¹ *Irish Times*, April 2, 1942; *Irish Law Times* (1942), vol. 76, p. 122.

² The texts of the various Dominion Statutes are given in Flournoy and Hudson, *A Collection of Nationality Laws* (1929), pp. 93 et seqq.

In view of the provision in the Statute of Westminster, 1931, that an Act of the Parliament of the United Kingdom does not apply in the Dominions, unless the Act recites that it applies to them by their request and with their consent, the British Nationality and Status of Aliens Acts, 1933 and 1943, are not *ipso facto* part of the law of the Dominions. However, Canada passed legislation in 1931 adopting a rule regarding the nationality of married women similar to that contained in the 1933 Act of the United Kingdom.¹ Australia passed similar legislation in 1938, giving effect to Articles 9 and 10 of the Convention of 1930. New Zealand in 1935 incorporated the text of the United Kingdom Act of 1933 into her law. Both the law of New Zealand and that of Australia, however, differ from the law of the United Kingdom in that the former provide that a woman who has lost her British nationality by marrying an alien has the right, while she remains in New Zealand or Australia, to the same privileges as if she had remained a British subject. The Irish Free State does not follow the law of the United Kingdom on the subject of the nationality of the married woman,² and Newfoundland and South Africa have not passed any legislation on the subject.

Dominion nationality legislation and its effect on the common status

The reasons for passing legislation in the Dominions defining Dominion nationals have been explained (above, p. 238), and we have seen that, apart from the Irish Free State, where the common status has been abolished, the Dominion nationality legislation accepts and incorporates British nationality law, whilst including special legislation defining persons connected with the Dominion as nationals.

Canada passed the Canadian Nationals Act, 1921, in order to define Canadian nationals for the purpose of putting forward candidates for election as judges of the Permanent Court of International Justice, but this Act was without prejudice to the common status. South Africa took similar action by the Union Nationality and Flags Act, 1927, but, in addition, and as a special measure, passed the Naturalization and Amnesty Act, 1932, conferring British nationality upon certain individuals whose status was doubtful.³

New Zealand, Australia, and Newfoundland have no special nationality laws, although all three have incorporated British

¹ Kennedy, *Constitution of Canada* (1938), p. 485.

² See below, p. 258.

³ Below, p. 266.

nationality legislation into their law. In addition, New Zealand and Australia have legislated regarding the nationality of married women, and have provided that, in the case of such women who became aliens by reason of their marriage and acquired the nationality of their husbands, they may make a declaration that they wish to retain, while in Australia or New Zealand, the rights of a British subject. On making the declaration they *become within Australia or New Zealand* entitled to all political and other rights, powers, privileges, duties, and liabilities to which a natural-born British subject is entitled or subject.

In Australia an interesting case was decided in 1936, by the High Court of Australia, in which the conception of 'Australian nationality' was considered.¹ The case was a prosecution charging an offence against the Air Navigation Regulations. These regulations were made by the Governor-General of Australia, under the Air Navigation Act, 1920, which was passed in order to give effect to the Air Navigation Convention, 1919. This Convention was ratified by His Majesty the King on behalf of the British Empire, and in virtue of this ratification the Commonwealth became a party to the Convention. Article 25 of the Convention was as follows:

'Each Contracting State undertakes to adopt measures to ensure that every aircraft flying above the limits of its territory, and that every aircraft wherever it may be, carrying its nationality mark, shall comply with the regulations in Annex D. Each of the Contracting States undertakes to ensure the prosecution and punishment of all persons contravening these regulations.'

One of the Regulations made by the Governor-General provided:

'Unless the Minister otherwise directs, a certificate of registration shall not be granted in respect of any aircraft unless it is owned wholly either (a) by British subjects or persons under His Majesty's protection. . . .'

It was argued that the regulations had to be for the purpose of carrying out or giving effect to the Convention, and that the Regulation quoted above was not consistent with the Convention, and, in particular with Article 7 which reads as follows:

'No aircraft shall be entered on the register of one of the Contracting States unless it belongs wholly to nationals of such States.'

It was objected that the regulation was inconsistent with this Article because any British subject or person under His Majesty's protection

¹ *The King v. Burgess, ex parte Henry*, [1936] 55 C.L.R. 608.

might be registered as owner of any aircraft, and that Article 7 required the possible ownership of a registered aircraft to be limited to Australian nationals. The High Court held that there was, as yet, no established category of Australian nationals corresponding to the categories of Dominion nationals established by statute in Canada, South Africa, and the Irish Free State. After discussing the various definitions of 'nationality' as a conception of international law the court said:

'The position therefore is that it is for Australian law to determine what persons shall be regarded as Australian nationals for the purposes of the Convention. The general rule as to nationality in Australia is the same as that in Great Britain. Any person who is a British subject in Great Britain would be regarded as a British subject in Australia. Within the class of British subjects recognized as such in Australia there are in Australia no distinctions. The Canadian-born British subject in Australia, so far as nationality is concerned, is upon precisely the same footing as the Australian-born or English-born British subject.'

The Commonwealth Parliament had power, if it chose, to accept as Australian nationals in Australia all persons who were either under His Majesty's protection and/or British subjects who were associated with Australia by birth, residence, or domicile. But Parliament had not passed any such legislation; and the regulations had purported to create a class of persons, some of whom were not Australian nationals, and it was, therefore, invalid because it was not a regulation for carrying out or giving effect to the Convention.

The conception of a 'Dominion national' or a 'Dominion citizen' has been recognized as a fact by certain Acts passed by the Parliament of the United Kingdom during the Second World War (1939-45). Section 17 (2) (a) of the Military Training Act, 1939 (which imposed the obligation to register, and be called up for military training, on every male British subject ordinarily resident in Great Britain, who was, at the relevant date, between the age of 20 and 21 years), provides:

'any person residing in Great Britain who is, under the provisions of any Act in force in any part of His Majesty's dominions outside Great Britain, a national or citizen of that part within the meaning of that Act, or who is a person born or domiciled in any such part of His Majesty's dominions or in a British Protectorate, a mandated territory, or any other country or territory, being a country or territory

under His Majesty's protection or sovereignty, shall be deemed to be ordinarily resident in that part, protectorate, country, or territory, as the case may be, if he has been resident in Great Britain for less than two years, or is residing there only for the purpose of attending a course of education, or the circumstances of his residence in Great Britain are otherwise such as to show that he is residing there for a temporary purpose only.'

Under Section 17 (2) (b) a person residing in Great Britain is deemed to be 'ordinarily resident' unless he falls under Section 17 (2) (a), or otherwise proves he is not 'ordinarily resident'.

It will be seen that Section 17 (2) (a) refers for the definition of a 'national' or 'citizen' to the Acts of the Dominion in question. The British Act does not, however, create any United Kingdom nationality or citizenship, the basis of its application being the status of a British subject. Section 11 (1) (a) of the National Service (Armed Forces) Act, 1939, contains a provision in identical language, exempting from liability to be called up persons not ordinarily resident in Great Britain who are 'nationals' or 'citizens' according to Dominion law. These provisions did not affect the definition of a British subject as a common status. The Government of the United Kingdom retained, and exercised, the right to call up, as British subjects, Dominion nationals who had been resident within its jurisdiction for two years or more. In fact Section 3 (1) of the National Service (Armed Forces) Act, 1942, provided that arrangements might be made on behalf of His Majesty with Dominion governments, or the Governments of India or Burma, excluding Dominion nationals or citizens from exemption under Section 11 (1) of the Act. The purpose of the Act of 1942 was to organize in a convenient manner the calling-up of all British subjects, and to ensure that all of them, including Dominion nationals, were called up into the appropriate forces belonging to members of the British Commonwealth of Nations.¹

The position under international agreements of: (a) British subjects; (b) Dominion nationals; (c) Dominion citizens

It is the view of His Majesty's Government in the United Kingdom that a reference in a treaty or agreement to which His Majesty is a

¹ See also the National Service (Foreign Countries) Act, 1942. The proviso to Section 1 (1) of this Act has in mind the provision in the Statute of Westminster regarding power to legislate extr territorially. In the countries in question Dominion governments had jurisdiction over their own nationals.

party to 'subjects of His Majesty' or 'British subjects', without further definition, means British subjects or subjects of His Majesty, wherever domiciled. It holds this view even in respect to treaties which specially exclude application to the Dominions, or which provide (as most treaties made in the name of His Majesty do provide) for separate accession on behalf of the Dominions. In the debate on the ratification of the Peace Settlement of 1919, in the Parliament of the Australian Commonwealth, Mr. Bruce pointed out that 'any Australian national who has a claim has the right to apply to the Commission in the same way as the nationals of France, Italy, and Japan'. These provisions were, however, contained in a Treaty (Versailles, 1919) to which the British Empire as a whole was a party. Later the Government of the United Kingdom adopted the practice of concluding treaties for His Majesty, 'in respect of the United Kingdom'; and so the foreign government, in fact, only acquired rights for its nationals *in the United Kingdom*. Yet, in virtue of the doctrine of common status, references in the treaty to rights for '*British subjects*' were claimed by the Government of the United Kingdom for *all* British subjects, *wherever they might be*.

When the United States-Canada Halibut Fisheries Treaty of 1923 was before the Senate of the United States an amendment was proposed, to the effect that ratification by the United States was subject to the observance by 'nationals or inhabitants' of parts of the British Empire, other than Canada, of the provisions of the treaty. The amendment was withdrawn, but it was a sign of the feeling of foreign states. Another illustration of the same difficulty was the decision of the Supreme Court of the United States in 1921 in the case of *Sullivan v. Kidd*.¹ In that case a British subject residing in Canada claimed, as devisee, a share in the proceeds of Kansas land. Reliance was placed upon a treaty of March 2, 1899, between Great Britain and the United States, governing the inheritance of real property within the territories of each of the Contracting Parties, by citizens or subjects of the other, and providing for the sale of such property, and withdrawal of the proceeds. This treaty provided that its stipulations should not be applicable to any of the colonies or foreign possessions of His Britannic Majesty, unless notice to that effect had been given on behalf of any such colony or possession. Citizens or subjects of each of the Contracting Parties were assured most-favoured-nation treatment 'in all that concerns the right of

¹ 254 U.S. 433.

disposing of every kind of property'. As to the Dominion of Canada no notice of adhesion had been given. The Government of the United Kingdom had interpreted the treaty as giving to British subjects, *wherever resident*, the right to inherit property in the United States (which was the question at issue in the case). The United States Government, on the other hand, had interpreted the treaty as requiring notice as to Canada in order to bring within its operation either property in Canada or British subjects residing therein. The lower court held the treaty to be applicable, but, on appeal to the Supreme Court, this judgment was reversed on the ground that reciprocity was the basis of Conventions containing the most-favoured-nation clause.

Although the Government of the United Kingdom has never receded from the position that the expression 'British subjects' covers all subjects of His Majesty, wherever they may be, whether born, domiciled, or resident, in the King's dominions, and whether Dominion nationals or not, the drafting of treaties has gradually taken the difficulty explained above into account. Broadly speaking, many treaties contain the stipulation that their provisions are not to be invoked in respect of nationals of parts of the King's dominions to which the treaty does not apply, or to which it has not been extended. Provision is made in some treaties for separate accession on behalf of the colonies or Dominions where that result is desired. For some years before 1938 the word 'nationals' had come to be inserted in Civil Procedure Conventions concluded by the Government of the United Kingdom, a little later it was used in extradition treaties, and finally, since about 1938, in commercial treaties.¹ This expression covers British subjects and British protected persons (above, p. 6).

Since the Imperial Conference of 1926, treaties, other than agreements between governments, are made by His Majesty 'on behalf of' the part of the British Empire concerned. It is thus made clear whether a Dominion is, or is not, a Contracting Party.

Since the end of the First World War (1914-18), it has been com-

¹ See, for its use in a political treaty, the Agreement concerning the Abolition of Exterritoriality in China 1943, B.T.S. (1943), No. 2. See also the Convention between the United Kingdom and Switzerland of 1937 concerning legal proceedings, which provides 'nationals shall be deemed, in relation to His Majesty King of Great Britain, Ireland and the British Dominions beyond the seas, Emperor of India, to mean all subjects of His Majesty, wherever domiciled, and all persons under his protection'. *League of Nations Treaty Series*, vol. 194, p. 225.

mon for the Dominions (except Newfoundland) to conclude international agreements in the inter-governmental form, and, in fact, the majority of Dominion agreements have for many years been made in this form. In such agreements the Dominions are able to contract in respect of their nationals or citizens.¹ The peculiar structure of the British Empire thus enables the United Kingdom and the Dominions either to co-operate, and conclude as a unit agreements with foreign Powers, or to conclude such agreements individually.² In either case the agreement itself must be looked at, and the form of words used scrutinized, in order to determine the extent of its application, and the classes of British nationals to which it applies.

¹ The Canada-France Treaty of 1922 refers to 'nationals' (*ressortissants*) of the parties: *League of Nations Treaty Series*, vol. 21, p. 48.

² See, on the whole question of the form of international agreements in the British Empire, McNair, *The Law of Treaties* (1938), chapter vi, and Stewart, *Treaty Relations of the British Commonwealth of Nations* (1939), chapter ix.

II

DOMINION NATIONALITY LAWS

(a) *Irish Free State*; (b) *Canada*; (c) *South Africa*

WE have seen that the original conception of *British* nationality is still preserved as a common status throughout the British Commonwealth except under the law of the Irish Free State. This conception grew out of the common-law doctrine of allegiance to the King, and this doctrine is the basis of the statutory definition of a British subject, owing an allegiance acquired at birth or by naturalization, and attested, in the latter case, by an oath of allegiance to His Majesty the King. No person can be a British subject without owing this allegiance. The rules regarding the acquisition and loss of the status of a British subject are contained in the British Nationality and Status of Aliens Act, 1914-22, as amended, in the case of the United Kingdom, by the Acts of 1933 and 1943, and in the case of a British Dominion, subject to any legislation passed by them under the powers conferred upon them by the Statute of Westminster or otherwise.

This common status was, until 1921, the only nationality known in the British Commonwealth of Nations. Since the passing in that year of the Canadian Nationals Act, 1921, other ideas of nationality have developed but, except in the case of the Irish Free State, these ideas are consistent with the preservation in each Dominion of the common status, and, in fact, could be regarded as particular subdivisions of it. The extent of the change may, however, be illustrated by two cases decided in 1903 and 1913 respectively. The first case is *In re Johnson, Roberts v. Attorney-General*, [1903] 1 Ch. 821. In this case a woman who was a British subject born in Malta left Malta in 1832 and died in 1894, domiciled at Freiburg in Baden. She made a will, but left some movables undisposed of. It was proved that the law of Baden paid no attention to domicile, but distributed the movables of a foreigner dying in Baden, who had not been naturalized, according to the law of the country of which he was a subject. Farwell J. held that the testatrix's movables must be distributed according to the law of Malta, not the municipal law of England, and that the movables, therefore, went to her next-of-kin. He came to this conclusion on the following grounds:

- (1) The rule of English private international law was that the rights of parties claiming, in an English court, movables of an intestate depend on the law of his domicile at the time of his death.
- (2) The testatrix was domiciled in Baden. But the law of Baden was that succession to her movables was regulated by the law of the country of which she was a subject at the time of her death.
- (3) The court was not at liberty to refer the case back to the law of Baden, but its duty was to accept the reference and apply its own law.
- (4) The testatrix was a British subject, but there was no uniform law of the British Empire which could be taken as her personal law. Nor was there any separate nationality law applicable to her.
- (5) Distribution 'according to the law of the testatrix's nationality' meant according to English law, but according to that law, as applicable to the testatrix, and not as applicable to Englishmen generally without regard to their domicile of origin.
- (6) The testatrix had been found to be a subject of the British Crown, and to have had her domicile of origin in Malta, and her movables were, therefore, to be distributed amongst the persons who would be entitled thereto according to Maltese law.

There is a passage from Farwell J.'s judgment which illustrates, in a striking manner, the change to which we have referred. It is as follows:

'How is the foreign court to ascertain what law of what part of the British Empire is to apply?

'Foreign States are in diplomatic relation with this country as representing the whole Empire. They know nothing officially of Scotland or Canada or the Colonies, still less, perhaps, of the Channel Islands or the Isle of Man. It would surely be a task of difficulty and delicacy for them to discriminate and determine judicially that Canada for instance or the Cape is a distinct nationality. Indeed, in some circumstances, and in some states of public feeling, such a determination might come perilously near to an unfriendly act. Further, unless a novel and hitherto unheard of definition of nationality is adopted, whereby every country within the Empire that has a distinct set of laws is treated as a separate nationality (an impossible course

in my opinion) the foreign court has no data to guide it in determining what is a nationality.'¹

In 1913 Atkin J. held, in *Gavin Gibson & Co. Ltd. v. Gibson*, [1913] 3 K.B. 379, that a person could be a subject of the King but not a 'subject' of the Colony of Victoria. This was an action brought in the English High Court on a judgment obtained against the defendant in the Colony of Victoria, but at the time the writ was issued in Victoria he was away from that country, and had been away from that country for about sixteen years, apart from brief occasional visits. The judgment was recovered against him in his absence. The plaintiff argued that the defendant was a 'subject of the Colony' and, in virtue of the principle of private international law² that a foreign judgment will be recognized by the English courts, if it is obtained against a subject of the foreign country in question, the judgment should be recognized by the court. Atkin J. accepted the principle, but held it could have no application to the facts before him because the defendant was not a subject of Victoria, but of the King. He said:

'I have to consider whether the defendant in this case was a subject of the country in which the judgment was obtained. In the ordinary use of the words it appears to me that he was not. Being born within the British dominions he became a British subject, and, in respect of nationality, his position was the same as that of any of his fellow subjects born in any other part of that wide and varied territory. Nationality as we recognize it is based on the tie of allegiance, a personal duty owed to a sovereign. There is one King of the British dominions, one uniform tie of allegiance binding all persons alike born within the dominions.'

The meaning of nationality in the theory of international law is examined elsewhere.³ For the present it must suffice to point out that the conception of nationality stated in these two judgments must now be qualified in the light of the existence of nationality laws in certain Dominions. In the Irish Free State the doctrine of common allegiance is totally rejected, and a separate Irish citizenship

¹ [1903] 1 Ch. 834. The application of the test of nationality especially in relation to a composite state is the subject of a considerable body of foreign literature and case-law, which properly belongs to the sphere of private international law, and cannot be discussed here. See, for references to such literature, Rabel, *The Conflict of Laws, a Comparative Study* (1945), i, pp. 124-39.

² Whether this principle is correct or not may be doubtful but it was accepted by Atkin J. as valid. See Cheshire, *Private International Law* (2nd ed. 1938), p. 602.

³ See above, Part I.

has been created on the basis of nationality legislation similar to that of any state outside the British Commonwealth. At the same time the Irish Free State claims to be 'associated' with other members of the British Commonwealth of Nations and retains the King's name for certain formal purposes. In countries where there is no Irish legation or consulate the Irish Free State makes use of the diplomatic and consular services of the United Kingdom.

We shall now examine the several Dominion nationality laws in greater detail.

(a) Irish Free State

The Irish Nationality and Citizenship Act, 1935, provides a complete code of Irish nationality. It contains rules regarding the acquisition of Irish nationality, either by birth or naturalization, and completely replaces, within the Irish Free State, the British Nationality and Status of Aliens Acts, 1914-22, in so far as they are part of the law of the State. It should be noted that the Irish Free State, as recognized by the Government of the United Kingdom, exercises jurisdiction over Southern Ireland only, and not over Northern Ireland, which is, in the view of that Government, part of the United Kingdom. The Irish Free State, however, claims, under the Constitution of 1937, that the whole 'island of Ireland, its islands and the territorial seas' is part of the national territory of Eire, 'or in the English language, Ireland'.

The Government of the United Kingdom issued a statement, on the day on which the Constitution of 1937 came into force, containing the following passage:

'His Majesty's Government in the United Kingdom take note of Articles 2, 3 and 4 of the new Constitution. They cannot recognise that the adoption of the name Eire or Ireland, or any other provisions of these Articles, involves any right to territory or jurisdiction over territory forming part of the United Kingdom of Great Britain and Northern Ireland, or affects in any way the position of Northern Ireland as an integral part of the United Kingdom of Great Britain and Northern Ireland. They therefore regard the use of the name Eire or Ireland, in this connexion, as relating only to the area which has hitherto been known as the Irish Free State.'¹

In view of this statement the term 'Irish Free State' is used in the following account of Irish citizenship in the sense in which

¹ *The Times*, December 30, 1937.

'Eire' is recognized by the Government of the United Kingdom. It is more convenient to do so because, as will be seen, the Irish nationality law purports to apply to Northern Ireland in certain cases.

The Constitution of the Irish Free State (1922) came into force on December 6, 1922. Article 3 of this Constitution declared that every person domiciled in the Irish Free State at the time the Constitution came into force,

- (1) who was born in Ireland (not only the Free State), or
- (2) either of whose parents was born in Ireland, or
- (3) who had been ordinarily resident for not less than seven years in the Irish Free State,

would, *within the limits of the Free State's jurisdiction*, enjoy the privileges, and be subject to the obligations, of citizenship. Any such person, being the citizen of another state, could elect not to accept Irish citizenship. These three general rules were intended only to deal with the actual situation at the time the Constitution came into force. The conditions governing the future acquisition and termination of Irish citizenship were to be determined by law. No action was taken to fulfil this provision until the Act of 1935, which, as we have seen, took advantage of the wide power of legislation conferred by the Statute of Westminster, 1931. The Act of 1935¹ may be summarized as follows:

1. *Irish Citizenship by birth.*

This is acquired by birth:

- (a) anywhere in the Irish Free State on or after December 6, 1922;
- (b) on a ship registered in the Free State provided the birth took place on or after the date of the passing of the Act;
- (c) outside the Free State on or after December 6, 1922, if the father was, 'on the day of such person's birth', an Irish citizen. This is subject, in the case of such a person being born after the passing of the Act, to the proviso that acquisition of Irish citizenship is conditional, in certain cases, on registration of the birth (see below, p. 259);
- (d) before December 6, 1922, the person being born in Ireland ('Eire', the whole island as used in the Irish Free State sense above, p. 255), or being born of parents, at least one of whom was born in Ireland, *provided that person* became permanently

¹ See also the Irish Nationality and Citizenship (Amendment) Act, 1937, which, however, does not affect the law as stated above.

resident in the Irish Free State, or, if living abroad, is not a naturalized citizen of another country (subject if he is living abroad to registration: see below, p. 259).

A provision in the Act makes a foundling 'who was, or is first found, as a deserted infant' in the Irish Free State a natural-born citizen, as such a foundling is deemed, by a presumption of law, to have been born in the Irish Free State.¹ There is no such special provision in the law of the United Kingdom, and such a person found in the United Kingdom would not be a British subject merely by reason of any presumption of law.

Special provision is made regarding the registration of births occurring outside the Irish Free State (a) in Northern Ireland, (b) elsewhere. Such births may be registered at a consulate or legation of the Irish Free State, and the acquisition of Irish citizenship by birth in certain circumstances depends on such registration (below, p. 259).

A person whose father was, 'on the day of such person's birth', 'envoy extraordinary and minister plenipotentiary, or other head of a foreign diplomatic mission established' in the Irish Free State, does not acquire Irish citizenship by the mere fact of birth in the Irish Free State. There is no special provision of this kind in the law of the United Kingdom (see above, p. 125), although the same result is achieved under the doctrine of allegiance. A person whose father was, 'on the day of such person's birth', 'secretary of legation or other member of the diplomatic staff, or is otherwise entitled to diplomatic immunities, and, in any case, possesses the nationality of the country by which he is accredited', comes under the same rule.

A person whose father was, 'on the day of such person's birth', a consul general or consul or vice-consul, or other official of another country charged with an official mission in the Irish Free State, and possesses the nationality of the country by which he was or is appointed, may, if he acquires the nationality of that country at birth, make a declaration of alienage on attaining 21, or his father may do so on his behalf before he attains 21.

2. Irish citizenship by naturalization.

When the British Nationality and Status of Aliens Acts, 1914-22, were passed the territory that is now part of the Irish Free State was

¹ See Article 14 of The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws: Appendix, p. 390.

part of the United Kingdom, and certificates of naturalization were granted to aliens resident in that territory by the Home Secretary in London. As the Free State Constitution of 1922 provided only that the conditions governing the future acquisition and termination of citizenship should be determined by law, no certificates of naturalization could be issued in the Free State until appropriate legislation was enacted. From 1922 to 1933 no such certificates were in fact issued, and, in view of the repeal of the British Acts of 1914-22, they cannot now be issued in the Irish Free State.

The Irish Nationality and Citizenship Act, 1935, makes possible naturalization, not as a British subject, but as an Irish citizen. The rules for the grant of such naturalization are similar, in principle, to those prevailing under Part II of the B.N.A. 1914.

3. *Loss of Irish citizenship.*

- (a) Naturalization in a foreign state: every citizen who, after attaining the age of 21, becomes a citizen of another country ceases to be a citizen of the Irish Free State.

The words 'citizen of another country' are different from the formulation adopted in Section 13 B.N.A. (where the words 'naturalization in any foreign State' are used: see above, p. 195). They might be construed as covering the case of a person who becomes a naturalized 'British subject', or even a naturalized South African or Canadian national.

- (b) Provision is made for declarations of alienage: (i) by any natural-born Irish citizen, within one year of attaining the age of 21 years, who is, at the time of his birth, or becomes, before he has attained the age of 21, a citizen of another country.

(ii) In the case of a child of a foreign consular agent born in the Irish Free State, by the child's father, whilst the child is under the age of 21, or by the child himself after attaining that age.

- (c) *Marriage.* Unlike the B.N.A., the Irish Act gives no effect to marriage, so far as the acquisition or loss of citizenship is concerned.

4. *Registration of Irish citizens.*

An elaborate system is set up for the maintenance by the Ministry of External Affairs of several registers of Irish citizens born or living outside the Irish Free State. There are five such registers:

- (1) *Foreign births entry book.* This is a register of the children of Irish citizens born outside Ireland. It is kept by consulates and legations of the Irish Free State.
- (2) *Northern Ireland births register.* This is a register kept in Dublin by the Ministry of External Affairs of births of persons born in Northern Ireland whose father is, 'on the day of such person's birth', an Irish citizen.
- (3) *Register of nationals.* This is a register of Irish citizens living outside the Irish Free State, whether temporarily or permanently resident in countries where a register of nationals is kept.
- (4) *Foreign births register.* This is a register kept in Dublin by the Ministry of External Affairs. It is a register compiled from copies of entries made by consulates and legations in their foreign births entry books.
- (5) *General register of nationals.* This is a register kept in Dublin by the Ministry of External Affairs. It contains the names of every person who is permanently resident outside the Irish Free State, and whose right to be deemed an Irish citizen is conditional upon registration.

Acquisition of citizenship by registration. The acquisition of Irish citizenship is conditional on registration in the following cases:

- (a) A person born outside the Irish Free State, on or after the date of the passing of the Act, whose father is, on the day of such person's birth, either: (i) a natural-born citizen born outside the Irish Free State, or (ii) a naturalized citizen, and (in both cases) the father is *not*, on the day of that person's birth, employed in the service of the Irish Government. Such a person is not a natural-born citizen, unless, within one year, or (where the Minister because of special circumstances so permits) within two years after the date of that person's birth, the fact of his birth is registered either in the Northern Ireland births register or the foreign births register. He must also make a declaration of retention, within one year of attaining the age of 21, and, if he is a citizen of a foreign country, he must divest himself, in accordance with the law of that country, of his citizenship thereof. Failing compliance with these requirements within the appropriate period citizenship will be lost.
- (b) A person born before December 6, 1922, either in Ireland or of parents at least one of whom is born in Ireland. Such a person,

if permanently resident outside the Irish Free State, and not a naturalized citizen of another country, must be registered within one year, or (in special circumstances if the Minister so permits) within two years after the passing of the Act, in the general register of nationals.

5. *Certificate of nationality.*

Unlike English law the Irish Act provides for the issue of certificates of nationality, being evidence of the Irish citizenship of persons other than naturalized citizens.

6. *International Conventions.*

The Act provides for reciprocal treatment for countries who, by treaty or otherwise, grant Irish citizens the same privileges and rights as their own citizens. It is uncertain how far the Irish Free State relies, on behalf of its citizens, on British commercial or other treaties conferring rights on British subjects, as Irish law does not recognize that Irish citizenship is a type of British nationality, but regards it as the nationality of an independent state quite distinct from British nationality. It appears, however, that the Irish Free State has in practice, like the other British Dominions, accepted the obligations, and claimed the benefits, of treaties such as commercial treaties whose provisions applied territorially to the whole Empire, and from which all British subjects benefited in foreign countries. In reply to a question in the Dail in 1933 Mr. De Valera stated:

‘The present position of the Irish Free State, with regard to treaties and conventions concluded between the late United Kingdom and other countries, is based upon the general international practice in the matter when a new State is established. When a new State comes into existence, which formerly formed part of an older State, its acceptance or otherwise of the treaty relationships of the older State is a matter for the new State to determine by express declaration or by conduct (in the case of each individual treaty) as considerations of policy may require. The practice here has been to accept the position created by the commercial and administrative treaties and Conventions of the late United Kingdom, until such time as the individual treaties and Conventions themselves are terminated and amended. Occasion has then been taken, where desirable, to conclude separate engagements with the States concerned.’

7. *Regulations.*

Power is given by Section 28 of the Act to make regulations, and this power has been used.¹

8. *Aliens Act, 1935.*

With the Irish Nationality and Citizenship Act, 1935, must be read the Aliens Act, 1935, which defines an alien as a person who is not an Irish citizen. A British subject, therefore, may, within the Irish Free State and under its law, if he is not an Irish citizen, be an alien under the law of the Irish Free State. Most Irish natural-born citizens will, however, by virtue of birth in the King's dominions, be British subjects under the law of the United Kingdom.

The Executive Council is empowered, by Section 10 of this Act, to exempt from the application of the Act citizens, subjects, or nationals, of any country, in respect of which the Executive Council are satisfied that, having regard to all the circumstances, and, in particular, the laws of such country in relation to immigrants, it is proper that the exemption mentioned in such orders should be granted. Under this power the Executive Council made an Order, almost immediately after the Act came into force, exempting the citizens of all the Commonwealth countries from the provisions of the Aliens Act.²

The Executive Council is also empowered to make Orders for determining 'the nationality to be ascribed to aliens whose nationa-

¹ The following regulations have been made in Eire:

General Register of Nationals Regulations, 1935 (S.R. & O. No. 151, of 1935).

General Register of Nationals (Amendment) Regulations, 1938 (S.R. & O. No. 84, of 1938).

Register of Nationals Regulations, 1935 (S.R. & O. No. 150, of 1935).

Register of Nationals (Amendment) Regulations, 1938 (S.R. & O. No. 85, of 1938).

Foreign Births Register Regulations, 1935 (S.R. & O. No. 149, of 1935).

Foreign Births Register (Amendment) Regulations, 1938 (S.R. & O. No. 86, of 1938).

Foreign Births Entry Book Regulations, 1935 (S.R. & O. No. 147, of 1935).

Foreign Births Entry Book (Amendment) Regulations, 1938 (S.R. & O. No. 87, of 1938).

Northern Ireland Births Register Regulations, 1935 (S.R. & O. No. 148, of 1935).

Northern Ireland Births Register (Amendment) Regulations, 1938 (S.R. & O. No. 88, of 1938).

Irish Nationality and Citizenship Regulations, 1939 (S.R. & O. No. 16, of 1939).

² *The British Empire* (issued under the auspices of the Royal Institute of International Affairs, 2nd ed. 1938), p. 320.

lity is unknown or uncertain', thus enabling the Irish Government to deal with the position of stateless persons.¹

The Aliens Restriction Act, 1914, and the Aliens (Amendment) Act, 1919, of the United Kingdom are repealed in the Irish Free State.

(b) *Canada*

The law of Canada has, as we have seen, incorporated the effect of the British Nationality and Status of Aliens Acts, 1914–33.² But, in addition to the status of a British subject, Canadian legislation recognizes three categories of persons having a connexion with Canada:

- (i) 'Canadian nationals.'
- (ii) 'Canadian citizens.'
- (iii) 'Canadians.'

(i) '*Canadian nationals*.'

These are defined by the Canadian Nationals Act, 1921,³ as follows:

- (1) Any British subject who is a Canadian citizen within the meaning of the Immigration Acts, 1910–19 (and this includes a person born in Canada).
- (2) The wife of a Canadian citizen.
- (3) Any person born out of Canada, after the passing of the Act whose father was, at the time of that person's birth, a Canadian national; or, in the case of a person born before the passing of the Act, any person whose father possessed, at the time of that person's birth, all the qualifications of a Canadian national as defined by the Act.

It will be seen that not all British subjects are Canadian nationals, but only those who are Canadian citizens. The wife of a Canadian citizen is, however, a Canadian national, although she is not a British subject, whereas the husband, although a Canadian citizen, cannot himself be a national unless he is a British subject.

Loss of Canadian nationality. Canadian nationality can be lost,

- (1) By a British subject who possesses Canadian citizenship or domicile losing both citizenship and domicile.

¹ This provision has a parallel in the British Aliens Order, 1920, Article 21. It is the inevitable result of the operation of the municipal laws or policy of various states on the subject of nationality. See above, p. 16.

² See above, p. 244.

³ Now repealed by the Canadian Citizenship Act, 1946. See Introduction, p. 8.

- (2) In the case of the wife of a Canadian citizen, by divorce.
- (3) In the case of a naturalized British subject by becoming an alien or by losing his Canadian domicile.
- (4) In two special cases, if of full age and not under disability, by a declaration expressly renouncing his Canadian nationality.

These cases are:

- (a) Any person who, by reason of his having been born in Canada, is a Canadian national, but who, at his birth or during his minority, became, 'under the law of Great Britain' or any self-governing Dominion of the British Empire, a national also of that Kingdom, or Dominion, and is still such a national.'
- (b) Any person who, though born out of Canada, is a Canadian national.

The use of the expression 'a national of Great Britain' is not explained in the Act, and is not defined in later legislation. No doubt it could be defined, for the purposes either of Canadian law or of the law of the United Kingdom, but no such definition exists, and the expression was no doubt used in the hope that Great Britain would define her nationals. We have referred (above, p. 237) to abortive efforts, made at the Imperial Conference, 1937, to secure separate nationality laws for members of the British Commonwealth of Nations. In the absence of definition the conception of a 'national of Great Britain' is unworkable.

(ii) '*Canadian citizens.*'

These were defined by the Immigration Acts, 1910-19, as follows:

- (1) A person in Canada who has not become an alien (i.e. has not ceased to be a British subject).
- (2) A British subject who has not lost Canadian domicile.¹
- (3) A person naturalized under the laws of Canada who has not subsequently become an alien or lost his Canadian domicile.

Domicile is defined, by Section 25 of the Act of 1919, as 'the place in which a person has his home, or in which he resides, or to which he returns as his place of permanent abode, and does not mean the place where he resides for a more special and temporary purpose'. Domicile is acquired after five years by people who are legitimate

¹ This obviously makes deportation of British subjects who have lost Canadian domicile to Canada practically impossible, and such persons, being British subjects, have often to be received back into the United Kingdom.

immigrants. It is lost if a person resides voluntarily and permanently outside Canada.

Loss of Canadian citizenship.

- (1) A British subject by naturalization in Canada is presumed to lose his Canadian citizenship and domicile if he resides out of Canada for one year.
- (2) Any British subject born out of Canada who has acquired a Canadian domicile is presumed to lose both citizenship and domicile by residing out of Canada for one year.

These presumptions may be rebutted if the person obtains a certificate of intention to retain Canadian domicile from a British Consular Officer. In the case of a naturalized British subject his certificate of naturalization has to be endorsed to that effect once every year of absence.

It must also be noted, in connexion with class (2) and the acquisition of Canadian domicile, that

- (a) a woman who has not been landed in Canada shall not be held to have acquired Canadian citizenship by virtue of her husband being a Canadian citizen;
- (b) a child who has not been landed in Canada shall not be held to have acquired Canadian citizenship though its father or mother is a Canadian citizen.

These provisions rebut the presumption which would normally follow, in the case of a wife or child, that they had the same domicile as the husband or parent as the case may be.

(iii) '*Canadians*.'

These are persons so defined ('a British subject resident in Canada') for the purposes of the Canadian Fisheries Act (see 19 & 20 Geo. V (Canada), c. 42): Section 44 of the Fisheries Act, 1914, refers to 'Canadian fishermen'; whereas Section 9 of the Northern Pacific Halibut Fisheries Protection Act, 1923, speaks of 'any national or inhabitant of Canada'. The expression 'national' is, of course, defined by the Canadian Nationals Act, 1921 (above, p. 262), and the use of the expression 'Canadian', for the purposes of these Acts, does not interfere with British or Canadian nationality laws.

A naturalized British subject who has lost Canadian citizenship may be deported.¹

¹ *Rex v. Smith*, [1939] 3 D.L.R. 189.

(c) South Africa

The Union Nationality and Flags Act, 1927, defines those who are nationals of the Union of South Africa. Union nationals are British subjects who enjoy Union citizenship in accordance with that Act. The following are Union nationals:

- (1) A person born in any part of South Africa included in the Union, who is not an alien or a prohibited immigrant under any law relating to immigration. An alien is defined as any person who is not a British subject.
- (2) A British subject whose entry into any part of South Africa included in the Union was in accordance with any law governing, at the time of such entry, the immigration of persons into that part of South Africa, and who has, for a period of at least two years thereafter, been continuously domiciled in the Union, so long as he retains that domicile.
- (3) A person domiciled in the Union, and not being a prohibited immigrant under any law relating to immigration, who became a naturalized British subject, under any laws of any part of South Africa included in the Union,¹ and who has, for a period of at least three years after entry into that part of South Africa, been continuously domiciled in the Union, so long as he retains such domicile and does not become an alien.
- (4) A person born outside any part of South Africa included in the Union whose father was a Union national at the time of such person's birth, or would have been a Union national, if the Act of 1927 had at the time of such person's birth been in force, and was not in the service of an enemy state: Provided that nothing in this paragraph contained shall apply to any person who, if he enters into and is found in, the Union, would, in the terms of any law relating to immigration, be a prohibited immigrant.²
- (5) The wife of a Union national shall be deemed to be a Union national, and the wife of a person who is not a Union national shall not be deemed to be a Union national. But the wife of a person who is a Union national may make a declaration of retention if her husband ceases to be a Union national.

¹ See the South West Africa Naturalization Act, and other local laws in South Africa, below, p. 273.

² Broadly speaking, Indians are not allowed to enter either the Union or the Provinces of South Africa.

The conception of 'Union nationality' fits into the framework of British nationality law, and there is no separate naturalization as a Union national, though either local naturalization or Imperial naturalization (in either case as a British subject) may produce Union nationality.

Loss of Union Nationality. Union nationality is lost:

- (1) By naturalization in a foreign state because, in such a case, the person so naturalized ceases to be a British subject, and cannot be a Union national.
- (2) By naturalized British subjects divesting themselves of their status, because, in such a case, the declaration of alienage made under Section 14 of B.N.A. causes persons making it to lose British nationality, and they cannot remain Union nationals.
- (3) Declaration of alienage. The Act makes special provision, by Section 5, for a person who, by reason of birth within the territory of the Union, is a Union national, but who also, at birth or during minority, became, under the law of the United Kingdom, or of any of the Possessions of the British Empire, or of any self-governing Dominion, a 'national' also of that Kingdom, Possession, or Dominion. Such a person, if of full age, and not mentally disordered or defective, and not domiciled within the Union, may make a declaration renouncing his status as a Union national. The law of Canada (as we have seen above, p. 263) contains a similar provision, but, as the United Kingdom did not define its 'nationals', these provisions became unworkable.
- (4) By the minister revoking a certificate of naturalization. The grounds of revocation are substantially the same as those contained in Part II of B.N.A. which was adopted by the British Nationality in the Union and Naturalization and Status of Aliens Act, 1926.

The Naturalization and Amnesty Act, 1932, was passed in order to confer British and Union nationality upon certain burghers of the late South African Republic and the Republic of the Orange Free State, many of whom had left South Africa after the Boer War, and later returned. This Act provides that any person who was, immediately prior to the date on which the two republics ceased to exist, a national of either of the republics, and who, after that date did not become a national in any other state, shall be deemed to

have become a British subject if he returned to and became a resident in the Union prior to the commencement of the Union Nationality and Flags Act, 1927. If he became resident in the Union after the commencement of that Act he is deemed to have become a Union national. This Act also removes disqualifications imposed upon persons by reason of criminal proceedings and convictions in connexion with the Witwatersrand industrial disturbances in 1922.

It had been overlooked that many persons who had left South Africa as stated elsewhere¹ had returned, and were holding high public office, but were not British subjects or Union nationals, and this Act was passed to rectify their position.

Australia and New Zealand have not passed any special legislation defining Dominion nationality, but, as shown elsewhere, they have passed legislation making certain persons British subjects 'within' these Dominions.²

¹ Above, p. 45.

² Above, p. 246.

III

DOMINION AND COLONIAL LOCAL NATURALIZATION LAWS

(*'Local Subjects'*)

At common law the power of colonial legislatures to deal with naturalization was never settled. In practice, however, statutes were passed in the colonies, from the seventeenth century onwards, providing for naturalization. These statutes were either special Acts naturalizing particular individuals (as was the practice in the United Kingdom),¹ or general Acts enabling naturalization to be granted at the discretion of the colonial administration. In some colonies only naturalization of the former type was available. The Aliens Act, 1847, recognized the validity of colonial legislation regarding naturalization, in so far as it applied to the area over which the colony extended. Past colonial statutes were confirmed in this sense, and future colonial statutes were declared to be subject to the same controlling principles. The Aliens Act, 1844, which provided a general law of naturalization in the United Kingdom, did not apply to the colonies. The general purport of the Aliens Act, 1847, was, as we have seen, reproduced in Section 16 of the Naturalization Act, 1870.² The result of this legislation was that a person naturalized under colonial law was a British subject within the limits of the colony; outside those limits he was, even in the United Kingdom, an alien, although as a matter of courtesy he was given the good offices and protection of His Majesty's diplomatic and consular representatives in foreign countries. Persons who are locally naturalized under colonial laws are now regarded as British protected persons (below, p. 291).

The B.N.A. 1914 did not alter the law regarding the effect of colonial legislation existing at that date, but, in addition, empowered the colonial governments to grant 'Imperial' certificates of naturalization under Part II B.N.A. Section 26 (2) of the Act of 1914 preserves, however, the old colonial legislation regarding naturalization, in so far as it was, or still is, in force in the colonies, and permits similar legislation on the same lines for the future, that is to say, legislation which provides for local naturalization only. This chapter

¹ Above, p. 76.

² Above, p. 103.

is concerned with the purely colonial and Dominion legislation regarding naturalization, and the subject will be discussed under the following headings:

- (a) Dominion laws.
- (b) Colonial laws.
- (c) The law of British India.

(a) *Dominion laws.*

Before receiving their respective Constitutions those countries which are now Dominions were either colonies or consisted of several colonies. Many of these colonies had naturalization statutes. The Irish Free State, which came into existence in 1922, has never possessed a naturalization statute enabling persons to be naturalized as British subjects. Between 1914 and 1922 Ireland was part of the United Kingdom; and naturalization would have been possible in Ireland under Part II of the Act of 1914, though in fact the situation prevailing in Ireland during the above period was too unsettled to permit of any use being made of the Act. The situation regarding naturalization in Ireland before 1914 was the same as that in the United Kingdom generally. The following is an account of the laws of other Dominions:

1. *Canada.* Before the formation of the Dominion of Canada various local laws in Canada made provision for naturalization. By Section 91 of the British North America Act, 1867, the Parliament of the Dominion was given exclusive authority to legislate regarding naturalization, and the powers that the provincial legislatures possessed, after the passing of that Act, did not include the power to legislate regarding naturalization. The Canadian Naturalization Act, 1886, was the first piece of Dominion legislation on the subject, and Section 56 of that Act provided that 'no alien shall be naturalized within Canada except under the provisions of this Act'. Aliens, who had resided in Canada for not less than three years before taking the oaths of residence and allegiance, could become naturalized British subjects 'within Canada', the form of the certificate being similar to that granted under the (United Kingdom) Naturalization Act, 1870.¹ Sections 37-41 of the Act of 1886 confirmed the naturalization of persons who had been naturalized under the laws for the time being in force in parts of Canada or Provinces of Canada, before the Act was passed, but the effect of such naturalization was to be

¹ Above, p. 94.

the same as that of naturalization granted under the general provisions of the Act of 1886.

The Act of 1886 was followed by a consolidating Act of 1906, but all this legislation was repealed by the Canadian Naturalization Act, 1914, which, as explained above,¹ is a re-enactment of B.N.A. There is now no provision in the law of Canada for local naturalization, the only form of naturalization being under Part II B.N.A.

2. *Union of South Africa.* The law of the Cape of Good Hope (1883) provided for local naturalization, and Section 138 of the South African Act, 1909, provided that all persons who had been naturalized in any of the colonies should be deemed to be naturalized throughout the Union. The Naturalization Act, 1910, made it possible to apply to the Union Government for local naturalization. But this Act and all earlier legislation on the subject of local naturalization was repealed by the British Nationality in the Union and Status of Aliens Act, 1926, which was a re-enactment, in effect, of the United Kingdom Act of 1914.

3. *Australia.* The New South Wales Denization Act, 1828, empowered the Governor to grant letters of denization with similar effect to letters granted in England. The New South Wales Denization Act, 1898, provided for naturalization as well as denization, but naturalization was expressly limited in its effect to New South Wales. This, and all similar legislation in force in the Commonwealth, was repealed by the Nationality Acts, 1920-5, which incorporated Part II B.N.A.

4. *Newfoundland.* An Act of 1892 provided for local naturalization. This has been repealed, and there is now no provision for naturalization other than that under Part II B.N.A. as adopted by Newfoundland.

5. *New Zealand.* Various early Acts providing for local naturalization beginning with the Aliens Act, 1866, were repealed by the British Nationality and Status of Aliens (New Zealand) Act, 1923. This Act was repealed in 1928. Although the New Zealand Act of 1928 (which became law in 1929) adopts Part II B.N.A., it expressly reserves local naturalization in Western Samoa and the Cook Islands. Part II B.N.A. provides, as a condition precedent to the grant of a certificate of naturalization, that the applicant must have an adequate knowledge of the English language or of a language recognized as on an equality with the English language (Section 8 (1): see above,

¹ Above, p. 244.

p. 174). This condition was, in relation to Samoans, impracticable, and was, in their case, dispensed with by the Act of 1923 which purported to adopt Part II B.N.A. As, however, it was not possible for the New Zealand legislature to modify Part II but only to adopt it, Section 7 of the Act of 1928 provides for local naturalization for inhabitants of Western Samoa and the Cook Islands who are unable to satisfy the requirements laid down for Imperial naturalization.

(b) *Colonial laws.*

It has been, since 1920, a general principle of colonial policy that, in view of the provision made by Part II of the Act of 1914 for Imperial certificates of naturalization, the practice of local naturalization should cease. For the sake of completeness the following account is given of colonial legislation now still in force. Any colony omitted from the following list does not possess a local naturalization law.

West Indies.

(i) *Jamaica.* An Act of 1683 (35 Charles II, c. 3), which was passed for the purpose of encouraging the settlement of foreigners in Jamaica, provided that they might be 'to all intents and purposes fully and completely naturalized'. This law was repealed by the Repeal (for the purpose of Revised Edition) Act, 1926, and naturalization is now granted only under the Imperial Act, though certificates of local naturalization existing at the time of the Act of 1926 are not affected. The Local Naturalization (Revocation) Law, 1919 (C 391 Laws of Jamaica, Revised Edition), enables certificates of local naturalization granted under the law of 1683 to be revoked, and speaks of the status of a person so naturalized as 'the local status of a British subject within the Colony'. The Loss of British Nationality and Status Law, 1928, provides that the naturalized status of persons so naturalized shall cease if they become naturalized in a foreign state.

(ii) *Bahamas.* A law of 1848 provided that, on obtaining a certificate of naturalization, and taking the oath of allegiance, 'every alien now residing, or who shall hereafter come to reside in any part of the Colony shall enjoy within the Colony all the rights and capacities which a natural-born subject of Great Britain can enjoy or transmit within the Colony'.

(iii) *Barbados.* This colony has no general law of local naturalization, but Acts of the colonial legislature have been specially passed

from time to time naturalizing individuals, e.g. in 1893 and 1907: these Acts purport to be pursuant to the Naturalization Act, 1870: see Section 16 of this Act above, p. 103. These Acts conferred 'within this Island the rights and capacities which a natural-born subject of the United Kingdom can enjoy or transmit within the same'.

(iv) *Trinidad and Tobago*. The Local Naturalization Ordinances, 1868 and 1928, provide for local naturalization. (Revised Ordinances (1940), cap. 21, no. 2.) The Deportation (British Subjects) Ordinance, 1936, enables undesirable British subjects 'who do not belong to the Colony' to be deported.

Leeward Islands. The Naturalization Act, 1880, provided for local naturalization, but this was repealed in 1928, without prejudice to existing certificates granted under it. This legislation was passed by the General Legislative Council having jurisdiction over the islands.

Windward Islands. There is no general provision for local naturalization in these islands, but Grenada has made special provision for it in the Naturalization of Aliens Act, 1872.

South Pacific.

Fiji. An Ordinance Relating to Aliens (1875) provides for local naturalization: the certificate grants to the holder 'the rights and capacities of a natural-born British subject in and for the Colony of Fiji'.

Africa.

(i) *Gambia* (Colony). The naturalization Ordinance (1894) provides for naturalization within the colony, and for the revocation of the grant when obtained by fraud. An alien is defined as a person who is not a natural-born British subject or a person to whom a certificate of naturalization has been granted.

(ii) *Sierra Leone* (Colony). There is no local naturalization, and naturalizations are granted under the powers conferred by Part II B.N.A.

(iii) *Northern Rhodesia*. Provision was made for local naturalization by the Naturalization Order in Council, 1914.

(iv) *Southern Rhodesia*. Provision was made for local naturalization by the Naturalization Order in Council, 1899, now reproduced in the Southern Rhodesia Naturalization Acts, 1924 and 1928.

(v) *Nigeria* (Colony). An Ordinance which was in force in Southern Nigeria provided for local naturalization, but this has now

been revoked by the Ordinance of 1916 (*Laws of Nigeria*, revised ed. (1923), cap. 155) which makes similar provision for the Colony as a whole, and provides that naturalization granted under the law of Southern Nigeria shall be deemed to have made under the Ordinance of 1916.

(vi) *Gold Coast*. No provision.

(vii) *South West Africa*. This is mandated territory which, before the First World War (1914–18), was a German colony. The mandate is held by the Union of South Africa. An Act was passed by the Union in 1924 in order to confer British nationality on subjects of the former enemy Powers (i.e. those who were enemies of the British Empire in the war of 1914–18) who were domiciled in South West Africa. The Naturalization Act, 1910, was applied to the Territory, and, for the purposes of the Act of 1924, South West Africa was deemed to form part of the Union. The Act of 1924 provided:

- (1) Every adult European, being a subject of the late enemy Powers, who was, either on January 1, 1924, or, at any time thereafter before the commencement of the Act domiciled in the Territory, was deemed, at the expiry of six months from such commencement, to have become a British subject naturalized under the Act of 1910, i.e. a locally naturalized British subject. He had the option of repudiating British nationality by signing a declaration, within the six months, that he did not wish to be naturalized.
 - (2) Lists were to be compiled at the end of the six months of the persons naturalized in this manner. The list, when officially published, was conclusive evidence that the persons whose names appeared thereon were British subjects naturalized as above stated.
 - (3) The Administration of the Territory, if satisfied that an error had been made in including or excluding any person's name, had power to make the necessary alteration. A further Act of 1928 extended and amended this law with special reference to persons who, on September 15, 1924, were under 21 years of age and were domiciled in South-West Africa.¹
- (viii) *Kenya*. There is now no special provision for local naturalization. The United Kingdom Act of 1914 is the basis of naturalization.

¹ Flournoy and Hudson, *A Collection of Nationality Laws* (1929), p. 158.

Far East.

Hong Kong. Under an Ordinance of 1902 provision was made for local naturalization. The certificate was to contain the condition that the grantee should continue to reside permanently in Hong Kong, and that the certificate should be determinable if the grantee should cease so to reside. The grantee became entitled, while in Hong Kong, to all political and other rights to which a natural-born British subject was entitled in Hong Kong. No grants have been made under this law since the passing of the British Nationality and Status of Aliens Act 1914.

Straits Settlements. See the Naturalization Law of 1867 (Laws of the Straits Settlements (1936), cap. 86).

Central America.

(i) *British Honduras.* The Naturalization Ordinance (1883) provides for local naturalization. (Consolidated Laws of British Honduras (1924), cap. 114.)

(ii) *British Guiana.* See the Naturalization Ordinance (1891) as amended (Laws of British Guiana Revised Edition (1930), v, cap. 213).

East Indies.

Ceylon. See the Naturalization Law of 1890 (Legislative Enactments of Ceylon, Revised Edition (1938), cap. 243).

Mauritius. See the Naturalization of Aliens Ordinance 1872 which is made pursuant to Section 16 of the Naturalization Act, 1870.

(c) Law of British India.¹

British India has not adopted Part II of the Act of 1914 and had no power to do so. The Act in its entirety applies, without further special enactment, to British India. An Act of the Indian Legislative Council providing for local naturalization was passed in 1852, and later legislation was passed on the subject. All this legislation was repealed by the Indian Naturalization Act, 1926 (Act No. 7), February 26, 1926, of the Supreme Council of India. This comprehensive piece of legislation was passed at a time when 'local naturalization' was thought to be a dying institution elsewhere in the British

¹ British India consists of all parts of India under the direct control of the Viceroy: Section 18 (5) of the Interpretation Act, 1889. Inhabitants of the Indian native states (which are outside British India) are British protected persons (below, p. 292).

Empire. The reason for this enactment has been explained as follows:

‘The necessity of continuing the issue of local naturalization certificates under the Act has for some time been under the consideration of the Government of India. The objection to their discontinuance is that the British Act provides, as one of the conditions precedent to the grant of a certificate of naturalization, the possession of an adequate knowledge of English or, alternatively, of any language which is recognised as on an equality with the English language. There is no single vernacular in India which can for the purpose of the British Act be regarded as on an equality with English. This constitutes a strong argument for the retention of the Indian Act, so as to provide for the requirements of persons resident in India who do not possess the language qualification prescribed by the British Act, but who possess an adequate knowledge of the principal vernacular of the province.’

The Act applies to the whole of British India, including British Baluchistan and Southern Pangoras, and enables the Local Government¹ to grant a certificate of naturalization to any person who makes application in that behalf and satisfies the Local Government:

- (a) that he is not a minor;²
- (b) that he is neither a British subject, nor a subject of any state in Europe or America, or of any state of which an Indian British subject is prevented by or under any law from becoming a subject by naturalization;
- (c) that he has, during a period of not less than five years immediately preceding the date of the application, either resided in British India or been in the service of the Crown under the Government;
- (d) that he is of good character;
- (e) that he has an adequate knowledge of the language which has been declared by the Local Government by notification in the local official gazette to be the principal vernacular of the province; and
- (f) that he intends, if the application is granted, to reside in

¹ This means in the case of a Governor's Province, the Governor's Council or the Governor acting with Ministers (as the case may require), and, in the case of a Province other than a Governor's Province, a Lieutenant-Governor in Council, Lieutenant-Governor or Chief Commissioner: Section 134 (4) of the Government of India Act, 1920.

² For definition see below, p. 277.

India or to enter or continue in the service of the Crown under the Government.

‘Provided that nothing in clause (c) or clause (f) shall apply in the case of a woman who was a British subject previously to her marriage to a person not a British subject, and whose husband has died, or whose marriage has been dissolved.’

Nothing in the above provision prevents the grant of a certificate of naturalization to any person to whom a certificate of naturalization has been granted under the Indian Naturalization Act, 1852.

The Local Government, if it is satisfied that the applicant is qualified for the grant, ‘and is otherwise a fit person for the grant of such certificate’, may grant the applicant a certificate of naturalization conferring upon him all the rights, privileges, and capacities of a British subject under the Act, ‘except such rights, privileges, or capacities, if any, as may specifically be withheld by the certificate’. The certificate may, on the request of the applicant, include the name of any minor child of the applicant, not being by birth a British subject, who was born before the date of the certificate, and is for the time being resident in British India, and under the control of the applicant. The rights of the child under the grant may be subject to limitations in the same manner as the rights of the parent. Upon the applicant’s taking and subscribing to the oath of allegiance the certificate has the following effect:

‘such person, the wife of any such person, and any child of any such person, who has been included in the certificate under sub-section 2 of Section 5, shall, *when the British India*,¹ be deemed to be a British subject, and be entitled to the rights, privileges, and capacities of a British subject born in British India, except such rights, privileges, and capacities as may have been withheld from them respectively by the certificate, and shall, within British India, be subject to all the obligations, duties, and liabilities of a British subject’.

Section 7 (2) of the Act provides:

‘When the person to whom a certificate of naturalization has been granted has taken and subscribed to the oath prescribed by Section 6 any wife thereafter married by, and any child thereafter born to, such person shall, if she or he is not a British subject, and if such a person aforesaid at the date of the marriage or birth, as the case may be, retains any rights, privileges, or capacities of a British subject under this Act, be entitled to the same rights, privileges, and capacities

¹ *Italics mine.*

and be subject to the same obligations, duties, and liabilities to which such person aforesaid was at that date entitled or subject.'

Provision is made for the revocation of certificates of naturalization on lines similar to the provisions contained in Part II B.N.A. A declaration of alienage may be made, (a) within one year of his attaining majority by any child who has acquired any of the rights, &c., of naturalization under Sections 5 (2) or 7 (2) of the Act. (The effect of Section 5 (2) is to grant naturalization to a minor child who has been included by his father on the latter's certificate of naturalization: for Section 7 (2) see above), (b) within six months from the date of the revocation of the certificate under Section 8 of the Act (or the death of her husband or dissolution of her marriage with the holder of a certificate), by the wife of a person whose certificate has been revoked, or who has died, or whose marriage has been dissolved. After the declaration of alienage has been made the person making it ceases to be a British subject.

The definition section of this Act is very important. Section 2 provides:

- '(a) "British subject" means a British subject as defined in Section 27 of the British Nationality and Status of Aliens Act 1914,
- '(b) "Certificate of naturalization" means a certificate of naturalization granted under this Act; and
- '(c) "minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act or who has not attained the age of eighteen years.'

IV

PALESTINIAN CITIZENSHIP

PALESTINE, which, before the Great War 1914–18, was part of the Turkish Empire, was detached from that Empire by the Treaty of Lausanne, 1923. By that treaty Turkey renounced all rights and title whatsoever over Palestine, but the future of that territory was left to be decided 'by the parties concerned'. In fact Great Britain accepted, with the approval of the Council of the League of Nations, a Mandate for Palestine. The territory of Palestine did not become an independent state, nor, on the other hand, was it annexed by Great Britain. Accordingly inhabitants of the territory did not acquire, by virtue only of its transfer to Great Britain under Mandate, British nationality, as they would have done, under both international and English law, if there had been an annexation. Nor, again, was there any cession of Palestine to Great Britain, for Turkey merely relinquished her own sovereignty over the territory, allowing the final disposition of it to be regulated by international agreement. It was plain, however, that the nationality of the inhabitants could not be left in this vague condition, and the Treaty of Lausanne lays down some general principles to be followed in any rules of nationality which might be applied to the former Turkish territories. Furthermore, the policy to be followed in relation to these territories had already been decided at the Peace Conference at Paris in 1919. They were to be guided, through the Mandate system, towards independent statehood. Although the recognition of new independent states might not be possible in the first instance, Article 22 (4) of the Covenant of the League of Nations laid down this policy in general terms as follows:

'Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they can stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.'

These communities—Jewish and Arab—were not recognized as states, and no recognition of statehood was immediately granted to them. They were recognized as independent nations, i.e. as

possessing an identifiable culture, racial continuity, &c., but not as being independent in the sense of being new states in international law. The situation in Asia Minor (where all these communities were situated) altered between 1919 and 1923, when the Treaty of Lausanne was signed, and had altered still more when that treaty came into force on August 6, 1924. One of these communities had succeeded in organizing the rudiments of statehood, and was very soon afterwards recognized as an independent state, i.e. Irak. In Palestine, however, conditions remained (and remain to-day) such that statehood was not achieved. Having regard to the varying degrees of political organization prevailing in the different communities of Asia Minor, the Treaty of Lausanne did not specify in detail what nationality should be attributed to the inhabitants of the abandoned Turkish territories. Article 30 is confined to the following very general terms:

‘Turkish subjects habitually resident in territory which, in accordance with the present Treaty, is detached from Turkey will become *ipso facto*, in the conditions laid down by the local law, nationals of the State to which such territory is transferred.’

In some cases the ‘State to which such territory is transferred’ might be eventually a new state, and would, in due course, provide a nationality law. This happened fairly soon in the case of Irak, which was recognized by Great Britain and other states as an independent state, and passed a nationality law in 1924. In other cases—Transjordan, Palestine, Syria, and Lebanon—the Nationality Law emanated, not from a new state, but from a mandatory Power. The precise form which the nationality law should take was not laid down by the Treaty of Lausanne, but, as already indicated (above, p. 14), certain general rules were prescribed which form, as it were, a public international law restriction on the nationality laws to be enacted.¹ The details were to be filled in by local law, whether that law was enacted by a self-governing state, or by a mandatory Power assuming the power of such a state. Article 7 of the Mandate for Palestine (which was approved by the Council of the League of Nations in 1922) provides:

‘The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.’

¹ See Articles 30–6 of the Treaty of Lausanne.

The 'nationality law' creating Palestinian citizenship took the form of a British Order in Council, 'The Palestinian Citizenship Orders 1925 to 1941', which are made 'by virtue of the powers in this behalf by the Foreign Jurisdiction Act 1890 or otherwise in His Majesty vested'. The citizenship thus created is not a full nationality in the international sense, but it is a species of nationality within the British Commonwealth of Nations. It emanates from English law and, in a sense, it is a sort of British nationality from the international point of view. The state to which the territory of Palestine has been transferred, as contemplated by Article 30 of the Treaty of Lausanne, is Great Britain; and Palestinian citizens are, within the meaning of that treaty, British nationals. But they are not British subjects under the British nationality legislation of the United Kingdom. At the same time, although there is no Palestinian state, Palestinian citizenship is a species of distinct nationality, though a very unusual one, deriving its legal validity from the law of the Administration of Palestine. The mandatory Power (Great Britain) is internationally responsible for Palestine and for the protection of Palestinian citizens in the international field.

It may be said, therefore, that Palestinian citizenship is a kind of truncated, or imperfect, nationality; that is to say, it lacks the basis of statehood in its own right. The state tie is created by the mandatory Power which supplies international representation and protection. Viewed in this light Palestinian citizenship carries with it British nationality, but not the status of a British subject.

Palestinian citizenship is regulated by the Palestinian Citizenship Orders, 1925-41. These are British Orders in Council, and have been consolidated into one document which is divided into four parts. Part I deals with the status of Turkish subjects resident in Palestine at the time the Mandate came into existence. Part II deals with persons becoming Palestinian citizens by birth. Part III provides for the grant of certificates of naturalization as Palestinian citizens. Part IV deals with the status of married women and infants.

We will now examine in detail the rules on the subject following the scheme of arrangement adopted in the consolidated Orders in Council.

Part I

Turkish subjects habitually resident¹ in the territory of Palestine on August 1, 1925, became Palestinian citizens. Any such persons over 18 years of age could repudiate Palestinian citizenship:

- (a) by making a declaration within two years from August 6, 1924, opting for Turkish nationality, provided that he obtained a government certificate stating that he had transferred his place of residence from Palestine;
- (b) where the person concerned differed in race from the majority of the population of Palestine, by opting with the consent of the State, for the nationality of one of the states in which the majority of the population was of the same race as the optant.

These rules followed the practice adopted in some cases of annexation and treaties of cession, granting a right of option to the inhabitants of territory annexed or ceded.

Turkish subjects who were habitually resident in the territory of Palestine on August 6, 1924, but ceased to be so habitually resident before August 1, 1925, became Palestinians unless before July 23, 1931, they voluntarily acquired another nationality. Any such person had the right to apply, within four years of July 23, 1931, to be allowed to exercise one of the two options (a) and (b) set out above. The High Commissioner for Palestine was empowered to concede these options to the applicant, and to extend the period allowed for exercising them. These provisions became necessary because it had been overlooked that the Mandate came into force on August 6, 1924, and the Orders in Council did not contain originally a provision dealing with the cases in question. An amending Order in Council in 1931 introduced these provisions.

Turkish subjects over 13 years of age born in Palestine and who possessed Turkish nationality at birth, and still possessed it on August 1, 1925, but who were habitually resident abroad, could acquire Palestinian citizenship by option at the discretion of the Government of Palestine. The right of option, which could not be exercised if the person concerned possessed another nationality in addition to Turkish nationality, had to be exercised within a certain period of time.

¹ On the meaning of this expression see above, p. 51. See, in connexion with this Order, a decision of the High Court of Palestine in *Antone Francis Kattanah v. The Chief Immigration Officer* (1927), reported in the *Law Reports of Palestine* (1920-3), p. 215.

Part II

Article 3 of the Order provides:

‘Subject to the provisions of Part I of this Order the following persons shall be deemed to be Palestinian citizens:—

- (a) Any person born in lawful matrimony within Palestine whose father at the time of such person’s birth was a Palestinian citizen.
- (b) Any person born in lawful matrimony out of Palestine whose father was a Palestinian at the time of that person’s birth, and was either born within Palestine, or had obtained a certificate of naturalization, or who had acquired Palestinian citizenship under Article 1, or Article 5 of this Order.
- (c) Any person born, whether in or out of lawful matrimony, within Palestine, who does not, by his birth or subsequent legitimation, acquire the nationality of any other state or whose nationality is unknown.’

These provisions follow in principle the rules laid down in Section 1 B.N.A. for the acquisition of the status of a natural-born British subject. Birth on Palestinian territory creates citizenship *ipso facto*, in the case of a person born in lawful matrimony, whose father was, at the time of the birth, a Palestinian citizen. Persons born out of matrimony in Palestine acquire Palestinian citizenship only if they do not acquire the nationality of another state, either at birth, or subsequently by legitimation, or if their nationality is unknown. In these cases the Order aims at avoiding double nationality. The effect of subsequent legitimation appears to be that Palestinian citizenship, if acquired at birth by an illegitimate child, comes to an end if the child, by subsequent legitimation, obtains a foreign nationality.

The Order differs from the British Nationality Law in restricting the transmission of Palestinian citizenship by descent abroad to the first generation born abroad. There is no provision for acquiring citizenship by registration and transmitting it to generations born abroad as under British law (above, p. 143). The rule regarding acquisition of Palestinian citizenship by birth abroad is that:

- (1) the person must be born in lawful matrimony, and
- (2) his father must be a Palestinian citizen, either
 - (a) born in Palestine, or
 - (b) a naturalized citizen, or
 - (c) a citizen who acquired his citizenship under Part I above or by option.

Provision is made for the issue of certificates of Palestinian citizen-

ship to persons born within Palestine who acquired, on birth, or subsequently acquired, Turkish nationality, and still possess it at the time of a declaration made by them stating their claim to become Palestinian citizens. These certificates must be distinguished from certificates of naturalization (which are dealt with by Part II of the Order). The grant of a certificate of citizenship is subject to the approval of the High Commissioner.

Part III

The Order provides that a certificate of naturalization may be granted to applicants who satisfy the High Commissioner:

- (a) that they have resided in Palestine for a period of not less than two years out of the three years immediately preceding the date of the application;
- (b) that they are of good character and have an adequate knowledge of either the English, the Arabic, or the Hebrew language;
- (c) that they intend, if the application is granted, to reside in Palestine.

The rules regarding naturalization follow closely those laid down for the naturalization of aliens by the B.N.A. Minor children may be included on the certificate of a parent, and, in special cases, may be naturalized themselves. The certificate may be revoked, and the effect of revocation is similar to that of the effect of the revocation of a certificate issued under the British Acts.

Part IV

Article 6 of the Order provides that the status of a wife will, generally speaking, be governed by that of her husband and that of a child who has not attained the age of majority by that of its father. The age of majority is defined as '18 years calculated according to the Gregorian Calendar'.

Part IV of the Order defines the status of married women and minors in greater detail. In general, the wife of a Palestinian citizen is deemed to be a Palestinian citizen, and the wife of an alien (defined as a person who is not a Palestinian citizen) is deemed to be an alien. Where, however, an alien woman marries after July 25, 1939, a Palestinian citizen, she is not, by reason of such marriage, deemed to be a Palestinian citizen, but she may be naturalized¹ whether the

¹ For an unsuccessful attempt to *compel* a government official to grant a certificate in such circumstances see *Schutz v Commissioner for Immigration and Statistics*, reported in *Law Reports of Palestine*, vol. 9 (1942), p. 308.

conditions prescribed by Part III of the Order (regarding naturalization) have been complied with or not. Where a woman marries an alien, and was at the time of her marriage a Palestinian citizen, she is not, by reason only of her marriage, deemed to have lost Palestinian citizenship, unless and until she possesses the nationality of her husband. If a man, during the continuance of his marriage, ceases to be a Palestinian citizen, his wife is not, by reason only of that fact, deemed to have ceased to be a Palestinian citizen, unless and until she possesses some other nationality possessed by her husband. When, however, he acquires a new nationality, and his wife also acquires it solely by reason of that fact, she may, whether the marriage is continuing or not, at any time within twelve months from the date on which she acquired that nationality, or at any such later date as the High Commissioner may in special circumstances allow, make a declaration that she desires to retain Palestinian citizenship, and thereupon she shall be deemed to have remained a Palestinian citizen.

On and after July 25, 1939, a certificate of naturalization granted to an alien does not make his wife a Palestinian citizen, but she may, with the approval of the High Commissioner, be included by name in the certificate granted to her husband, and shall thereupon become a Palestinian citizen.

A special provision, which does not correspond to any rule in British nationality legislation,¹ is made for the case of the wife of an alien who was a Palestinian citizen previously to her marriage, and is living apart from her husband in such circumstances that the separation may, in the opinion of the High Commissioner, be presumed to be permanent. The High Commissioner may, in such cases, if he thinks fit, grant the wife a certificate of naturalization as if her marriage had been dissolved.

The Order provides that a woman who, having been a Palestinian citizen, has, by or in consequence of her marriage, become an alien, is not by reason only of the death of her husband or the dissolution of her marriage deemed to cease to be an alien. Likewise, a woman who, having been an alien, has, by or in consequence of her marriage, become a Palestinian citizen, does not, by reason only of the death of her husband, or the dissolution of her marriage, cease to be a Palestinian citizen.

¹ See, however, a suggestion made at the Imperial Conference of 1923 that the British nationality law should be amended to this effect, above, p. 233.

The status of minor children is determined by similar rules to those contained in Section 12 B.N.A. (Article 14 of the Order). Palestinian citizenship may (like British nationality under Section 13 B.N.A.) be lost by a voluntary naturalization in any foreign state (Article 15). A declaration of alienage may be made by a person, who is of double nationality at birth, in favour of the other state of which he became a national at birth (Article 16).

General Comments

(1) Palestinian citizenship is a species of imperfect nationality which requires full statehood to make it normal and complete.

(2) Palestine is not an independent state and, accordingly, Palestinian citizens are protected internationally by the mandatory Power—Great Britain.

(3) Palestinian citizens are British protected persons, and, in a broad sense, they are, by virtue of the tie with the mandatory Power, British nationals (*Ressortissants*).

(4) This does not make them British subjects¹ because the status of a British subject can only arise under the law of His Majesty's dominions. Palestine is not part of His Majesty's dominions, but is governed under the Foreign Jurisdiction Act, 1890, subject to the international obligations of Great Britain, as expressed, for instance, in the Mandate.

¹ They have been held not to be British subjects both by the English High Court (*Rex v. Ketter*, [1940] 1 K.B. 74), and the High Court of Palestine (*Attorney-General of Palestine v. Goraschwili*, *Annual Digest* (1925-6), p. 47).

V

OTHER BRITISH TERRITORIES

IN the preceding chapters an account has been given of British nationality according to the laws of the United Kingdom and British colonies, and of the various types of nationality in the British Dominions and in Palestine, which either because they give rise to British protection, or, by reason of their existence in the British Commonwealth of Nations, are of interest to students of British nationality. In this chapter a very general account will be given of the position in all those territories not yet dealt with above. These territories are here described as 'British territories' for convenience, though this description is not correct in English law, but internationally they are under the protection of British or Dominion governments. They are as follows:

(a) *Mandated territories other than Palestine.*

Transjordan. This was formerly under British Mandate, but is now independent.¹ A nationality law was promulgated in 1928 creating a Transjordan nationality. The law is on similar lines to the law on Palestinian Citizenship.

British Cameroons. This is a British Mandate. No nationality law has been passed, but the inhabitants are British protected persons, and their status, and that of persons connected with the territory, is defined by the British Protected Persons Order, 1934.²

British Togoland. This has been dealt with in the same way as the British Cameroons.

Tanganyika Territory. This is also under British Mandate (Class B), and has been scheduled in the British Protected Persons Order, 1934.³ This territory has no separate nationality law.

South West Africa. Special legislation in this territory on the subject of British nationality has been described above.⁴ It is a C Mandate held by the Union of South Africa.

Western Samoa. This is a C Mandate held by New Zealand.

¹ *Legislation of Transjordan (1918-30)*, p. 372. A treaty of alliance was signed between Great Britain and Transjordan on April 30, 1946, terminating the Mandate (B.T.S. (1946), no. 2), but this territory is mentioned here for the sake of completeness.

³ *Ibid.*

² See below, p. 296.

⁴ Above, p. 273.

Legislation on the subject of local naturalization in Samoa has been described above.¹

Nauru. This is a C Mandate, held jointly by Great Britain, New Zealand, and Australia, in the name of His Britannic Majesty. There is no special nationality legislation in force in this island and, although it is not scheduled in the British Protected Persons Order, 1934, the inhabitants are British protected persons.

New Guinea. This is the name given by the Australian New Guinea Act, 1921, to a portion of the great Pacific island of New Guinea south of the Equator, which is held on C Mandate by Australia. Section 3 of the Australian Nationality Act, 1922, enabled that Act to be extended to New Guinea by proclamation by the Governor General.

(b) British protectorates.

These territories are not part of His Majesty's dominions and are governed under the Foreign Jurisdiction Act, 1890. Persons connected with these territories are British protected persons as described below.²

(c) British protected states.

Persons connected with these states may be British protected persons as described below.³

(d) Indian native states.

The relation of these states to the British Crown is peculiar, and persons connected with them are British protected persons in the conditions described below.⁴

¹ Above, p. 271.

³ Below, p. 293.

² Below, p. 294.

⁴ Below, p. 292.

PART V

BRITISH NATIONALITY AND PROTECTION IN INTERNATIONAL LAW

(a) British Subjects and British protected persons; (b) British Corporations

It is the practice of His Majesty's Government in the United Kingdom to protect, as against foreign Powers, the following classes of persons:

(a) Persons who, under the law in force in any part of His Majesty's dominions,¹ are British subjects. But for many years the governments of the British Dominions¹ have protected persons regarded by them as citizens or nationals, these persons being, normally, also British subjects. In countries where a dominion government has a diplomatic or consular representative, the Government of the United Kingdom, through its representative, acting as agent for the dominion government, undertakes the protection of the latter's citizens or nationals.

(b) Persons, generally described as British protected persons, who are, for the most part, nationals or 'belong to' a foreign state or territory, such state or territory being under British protection, or even sovereignty, from the standpoint of international law, although, according to English constitutional law, it is not 'part of the King's dominions'. The special legal tie which exists between His Majesty and such states or territories may be defined by bilateral treaties, usage, sufferance, or some general international agreement, defining, in relation to the particular territory, the nature of His Majesty's jurisdiction according to international law. Persons who are nationals or 'belong to' such states or territories, and, exceptionally, a few others, who are treated by analogy as falling under the same category, enjoy the diplomatic protection of His Majesty's Representatives abroad.

(c) Corporations owing their existence to the law in force in the United Kingdom and colonies. It is the practice of dominion governments to protect corporations formed under dominion law.

All these persons are regarded in international law as British

¹ We have pointed out (above, p. 34) the distinction between 'dominions' and 'Dominions'. Here the distinction is especially important.

nationals, for, as we have seen,¹ nationality has acquired a distinct technical meaning in international law, and this meaning covers a wider field than that covered by the B.N.A. 1914-43. These Acts do not contain a complete code of British nationality law, but deal only with the status of a British subject.² Common legal parlance frequently uses the expression 'British nationality' as equivalent to the status of a British subject under the above-mentioned Acts; but although, for internal purposes, this is practically true (because in the United Kingdom a British protected person is an alien), the usage is incorrect in speaking of the Crown's nationals in international law. From the latter point of view a British subject is a type, or species, of British national, and a British protected person is another species. The distinctions of municipal law between various types of nationality do not affect the general conception of nationality as accepted in international law and usage. International law bases its ideas of nationality on the element in common between these types, i.e. the special legal tie with the State. Where, therefore, English law speaks of 'subjects', 'denizens', and 'naturalized subjects', and the British Order in Council of 1934 speaks of British protected persons, international law comprehends all these under the title 'nationals'. All these nationals qualify, *prima facie*, for protection, but such protection is a matter of discretion, not of right. This discretion is, in practice, exercised according to certain broad principles of administrative policy. We must now examine, in detail, the position of the three types of 'nationals' set out at the beginning of this part of the book. The first two classes may be considered together.

(a) *British subjects and British protected persons*

The normal test of whether these are entitled to protection is whether they are in possession of a British passport, or would be granted such a passport. Passports are issued by the Passports Offices in London, Liverpool, and Glasgow, and may also be issued by British Consuls abroad. In addition, there are corresponding arrangements in the Dominions. The passport will usually state whether or not the holder is a British subject, and it is *prima-facie* evidence of the holder's national status. At one time, when passports were rare, they were regarded as, in some sense, a certificate of

¹ Above, Part I.

² For what it is worth it may be noted that Section 4 B.N.A. uses the expression 'his nationality as a British subject'.

respectability. Nowadays, however, they have become indispensable for all British subjects wishing to travel abroad, and they are obtainable by any person who is *prima facie* qualified to receive one. Broadly speaking the only exceptions are that passports will not be granted if there is reason to believe that the applicant is a fugitive from justice; or that minor children are being taken out of the country, under cover of a British passport, out of the father's custody and without his consent. Although a passport is *prima-facie* evidence that the bearer is a British subject, it is not conclusive on this point, for it may have been granted under mistake or obtained by fraud. In such cases it may be cancelled or withdrawn. It may, of course, be refused in any particular case, if there is reason to believe that the passport is being obtained in order to be used for some improper purpose. However, even in cases where a passport is withdrawn on some reasonable ground, a passport of limited duration will be granted to the holder if he shows that he needs it for a particular journey.

A passport is more than a simple statement of the holder's national status. It is, in effect, a request to all His Majesty's Representatives abroad to lend the bearer all assistance and protection of which he may stand in need. Accordingly, whether the passport is applied for in the United Kingdom or abroad, it is equivalent to a request for protection, if the need should arise, and the passport is a general promise that such protection in suitable circumstances will be afforded. No person has a *right* to a passport or to protection, and the Secretary of State, through his officials and His Majesty's Representatives abroad, is entitled to use his discretion in this regard; for his authority in such matters is not based on any statute, but upon the prerogative of the Crown.

Where an applicant is of dual nationality there was formerly a practice that a passport should not be issued by a British Consul in the country of his second allegiance, but this practice is now obsolete. If the applicant is in the United Kingdom, a passport will not be refused on the ground of the applicant's dual nationality, though it may be desirable, in certain circumstances, that application for a passport should also be made to the authorities of the country of his second allegiance, especially if, for example, that country objects to his entering the country on a British passport. If a British passport is issued to a dual national it does not generally bear a special endorsement, but the applicant is warned that if, by the laws of any foreign

state, he is deemed to be a subject or citizen of that state, he will not be protected within that state.

The ways in which a person may become a British subject have been discussed in the earlier parts of this book. It is now necessary to describe in detail the status of the second type of British national mentioned above—British protected person. Broadly speaking these persons are comparable to ‘protégés’, as that expression is somewhat vaguely used in text-books on international law.¹ It is, however, possible to define the position of British protected persons in the law and practice of the United Kingdom fairly closely. The position of these nationals is not regulated by any statute but by the prerogative. They fall under two main heads, (1) those who derive their status as British protected persons from their connexion with a protectorate, protected state, Indian native state, or mandated territory, and (2) certain other individuals who have been granted the status of a British protected person, by a decision of the Secretary of State for Foreign Affairs, for particular reasons. Of these two classes the first is important, and includes about one hundred million people. The second class is insignificant, since it comprises only a few thousand people who are diminishing in numbers. They can be described briefly as follows:

(a) In the past, the Dominions, India, and several British colonies used to grant what was called a ‘local naturalization’, that is to say, a naturalization which gave the person naturalized the status of a British subject within the territory concerned, but did not purport to grant it elsewhere.² This practice is dying out, but, as we have seen,³ it has not entirely ceased; and there are still a number of persons who hold local certificates of naturalization. When these people travel abroad they cannot be given passports as British subjects, because they are not British subjects abroad. They are, however, usually given passports as British protected persons.

(b) It has happened in the past that certain people, or their fathers, have been, by error, recognized as British subjects, and granted passports and British protection on the faith of that status. It is then found that their acceptance as British subjects was based

¹ See, however, *Pablo Najera Case*, *Annual Digest* (1927–8), Case no. 206.

² The adoption by British Dominions of Part II of B.N.A. 1914, and the application of Section 8 of that Act to the colonies, enabled the Dominions and colonies to grant ‘Imperial’ certificates of naturalization. But the old powers of granting local naturalization are saved by Section 26 of the Act.

³ Above, p. 269.

on error, but to withdraw all British protection from them abroad would create hardship, perhaps leaving them completely stateless. They are therefore treated as British protected persons.

(c) In most countries extritorial protection has now virtually ceased to exist, the United Kingdom having gradually renounced its extritorial rights in various parts of the world or, in some cases, having simply allowed them to lapse.¹ There was a practice, in those countries where the system existed, of granting protection to various individuals, although they were not British subjects, on grounds such as that they were servants in a consulate, or held a certain position as representatives of a British commercial firm. These persons became British protected persons. It is a ground for that status which has practically ceased to exist, and this class will disappear altogether when those individuals now living who have acquired it are dead.²

We must now consider the position of the first class of protected persons set out above, which is by far the more important, i.e. those who derive their status as British protected persons from their connexion with a British protectorate, protected state, mandated territory, or Indian native state.³ These may be divided into the following categories:

(a) The Indian native states.⁴ British protected persons who derive their status from connexion with these states are the most numerous category. In order to qualify as a British protected person under this heading a person must be considered to be a subject of the ruler of that state. In many cases the native states have passed

¹ See Appendix 11.

² Compare this class, and class (b), with *protégés spéciaux*: see *Annual Digest* (1927-8), Case nos. 205, 206, and 253.

³ These states are under the 'suzerainty' of the Crown, and their position is, in certain respects, different from that of other states protected by Great Britain. The position of subjects of the Indian Princes and states as protected persons is specially recognized by Section 15 of the Foreign Jurisdiction Act, 1890. See, as to the position of the Indian native states, an article by Somervell, in *B.Y.I.L.* (1930), p. 55.

⁴ 'The Tribunal is satisfied that, according to principles recognized in modern international law, a member of a protected nation, while he is not by reason of the protection of the dominant State, a citizen of the latter for the purposes of our municipal laws, is, nevertheless, speaking generally, in regard to Foreign Powers and their citizens, in a position analogous to that of a citizen of the protecting State. Such rights as he may enjoy, beyond those which he has in relation to the other members of the community to which he belongs, are secured to him by virtue of the extritorial status of the Protecting State'—the *Anglo-Austrian mixed Arbitral Tribunal in National Bank of Egypt v. Austro-Hungarian Bank*, *Annual Digest* (1923-4), Case no. 10.

legislation which lays down the rules for determining who their subjects are. In other cases, particularly in the smaller states, there is, in fact, no legislation. In that event the question is decided administratively by applying the same sort of rules as would probably be enacted if the ruler had legislated.

(b) The next class of British protected persons are those whose status is derived from their connexion with a British protected state. British protected states include the British protected states along the shores of the Persian Gulf, such states as Zanzibar in Africa and (until recently) Sarawak and North Borneo in the Pacific, and the Malay States, federated and unfederated.¹

Here, as in the case of the Indian states, the criterion is whether the person concerned must be considered a subject of the ruler of the state. In many cases this is defined by local legislation or customary law. In other cases it has to be decided administratively, because there is no law at present defining it, by applying principles similar to those which would be embodied in legislation if there was any.

¹ The following are examples of British protected states, but as the constitutional position is very fluid at the present time, the list is more fully considered in Appendix below, p. 424. No attempt is made here to distinguish between those possessing nationality laws of their own and those which do not possess such laws, and some of them ceased to be protected states during the year 1946.

1. *Federated Malay States*

Negri Sembilan
Pahang
Perak
Selangor

2. *Unfederated Malay States*

Brunei
Johore
Kedah
Kelantan
Perlis
Trengganu

3. North Borneo

4. Tonga

5. Sarawak

The Secretary of State for the Colonies is responsible for relations with these territories.

Territories for relations with which the Secretary of State for India is responsible.

(A) *Indian states.* A complete list of Indian states will be found in the Appendix.

(B) *Other territories.*

Bahrein
Koweit

The Trucial Sheikdoms.

Territories for relations with which the Secretary of State for Foreign Affairs is responsible.

Anglo-Egyptian Sudan. (Protection is only afforded to persons holding Sudanese passports.)

(c) The British Protectorates.¹ These are territories, mainly in Africa, where there is no native ruler. Consequently, the rules defining who can claim the status of a British protected person, by virtue of their connexion with these protectorates, have to be laid down by the British Crown. These rules are laid down by the British Protected Persons Order in Council, 1934.² This Order does not purport to define all British protected persons, but only sets out the rules for determining how the right is claimed on the basis of connexion with these territories which are scheduled in the Order. The Order recites that 'whereas by treaty, grant, usage, sufferance and other lawful means, His Majesty has power and jurisdiction within the territories mentioned in the schedule to the Order', and 'whereas certain persons who are regarded as belonging to those territories are afforded His Majesty's protection, and are known as British protected persons: and whereas it is expedient to define in relation to those territories the persons who are so regarded as belonging thereto'. The 'territory' means any territory scheduled in the Order.³

Article 2 of the Order reads as follows:

'The following persons shall be regarded as belonging to the territory:—

'(a) Any person born (whether before or after the entry into force of this Order) within the territory who is not, at the time of his birth,

¹ It is worth mentioning, in passing, that between 1878 and 1914 Cyprus was occupied and administered by Great Britain, and Cypriots travelled abroad as British protected persons. It was held, in a case decided by the Anglo-Turkish Mixed Arbitral Tribunal in 1929, that, although the relationship between Cyprus and Great Britain was not so defined in the treaty of 1878, it was a protectorate: *Annual Digest* (1929–30), Case no. 11.

² S.R. & O. 1934, No. 499.

³ Following is the list of scheduled territories:

British Protectorates

Bethuanaland Protectorate.	Northern Territories of the Gold Coast.
British Solomon Islands Protectorate.	Nyasaland Protectorate.
*Gambia Protectorate.	*Sierra Leone Protectorate.
*Kenya Protectorate.	*Somaliland Protectorate.
*Nigeria Protectorate.	Swaziland.
Northern Rhodesia.	Uganda Protectorate.

*Not to be confused with the *Colonies* of the same names.

Mandated Areas

Cameroons under British Mandate.
Togoland under British Mandate.
Tanganyika Territory.

Zanzibar and Aden protectorates are not scheduled in the Order, but persons belonging to these territories are British protected persons on analogous principles.

a British subject, and who does not, at the time of his birth, possess under the law of some other State the nationality of such State;

‘(b) Any person born (whether before or after the entry into force of this Order) out of the territory who is not, at the time of his birth, a British subject and does not possess under the law of some other State the nationality of such State and whose father was, at the time of that person’s birth, a person who under this Order is regarded as belonging to the territory and was himself born within the territory; provided that any person born after the death of his father (whether before or after the entry into force of this Order) shall be regarded as belonging to the territory if he would, if born before his father’s death, have been so regarded.’

It will be observed that the relevant date, under both paragraphs (a) and (b), for the purpose of determining the status of the person in question is that of the person’s birth. It is possible, however, that a British protected person to whom the Order applies may subsequently acquire the nationality of some other state, and, in that case, Article 4 of the Order provides he shall cease to be a British protected person.¹ The Order only applies to the territories scheduled therein, and no state that has a native ruler and a local nationality law (or power to enact such law) is scheduled therein. Where a local law exists, or could exist, that law is applicable to determine who is a British protected person by reason of connexion with that particular state. Such connexion is, in the case of persons to whom the Order applies, defined in strict terms of reference to birth within the territory or, in the case of that person’s wife, residence with her husband in the territory with the permission of the government, provided

¹ Persons born in British colonies, as opposed to British protectorates, and whether of native race or otherwise, are British subjects under the British Nationality Acts on the same footing as persons born in the United Kingdom or elsewhere in His Majesty’s dominions. Such persons may lose their nationality in the circumstances laid down in Section 13 of B.N.A. 1914. If a British protected person belongs to a British protected state, which has its own nationality law (and to which the provisions of Article 4 of the 1934 Order do not apply), the question whether or not he loses his status as a British protected person, by becoming naturalized in another state, depends on the nationality law of the territory to which he belongs. If, however, a person belongs to a territory which has no nationality law of its own, and is also not scheduled in the 1934 Order (e.g. the Malay States, and the native states of India) His Majesty’s Government would not, in practice, continue to claim as a British protected person anyone who had, while in a foreign state outside the territory to which he normally belongs, become duly naturalized therein. Naturalization conferred upon a person who was not, at that time, in the foreign state which has naturalized him would not, in principle (following the analogy of Section 13 of B.N.A. 1914), be recognized as altering his status as a British protected person.

that she is not a British subject, and does not possess the nationality of any other state.

(d) Finally, there are the mandated territories, which fall into two classes, (i) Palestine and Transjordan, and (ii) the rest. Palestine is in a similar position to those states where there is a ruler, because the rules for determining who is a citizen of Palestine are laid down in Palestinian legislation.¹ In the case of other mandated territories this is not so and they have, therefore, been dealt with in the British Protected Persons Order in Council in the same manner as the protectorates.

From the point of view of international law the United Kingdom, the colonies, the protectorates, protected states, and mandated territories are all territory for which the Government of the United Kingdom is internationally responsible. From the point of view of English municipal law, however, the protectorates, mandated territories, protected states, and Indian native states are regarded as foreign territory, many of which are governed by the Crown under the Foreign Jurisdiction Act. This distinction of municipal law has tended to obscure the position under international law.² Similarly British protected persons are regarded as aliens in the United Kingdom, while no British subject is so regarded. Here, again, the domestic distinction under municipal law tends to obscure the much more important fact that both classes are British nationals enjoying abroad the protection of the Crown under international law.³

One of the most important species of evidence, almost indispensable at the present day, as to whether an individual is or is not a

¹ See above, Part III, Chapter IV. Transjordan has had a separate Nationality Law since 1928, and was, until recently, in the same position as Palestine for the present purpose (above, p. 286); but she is now an independent sovereign state, and drops out of the picture so far as British nationality law is concerned.

² This is well illustrated by the recent case of *Rex v. Ketter*, [1940] 1 K.B. 787. The Palestinian in that case was rightly held not to be a British subject. The court failed, however, to point out that he was, nevertheless, a British national. If this distinction had been appreciated there would have been a short and simple answer to the argument on behalf of Ketter based on the Treaty of Lausanne: he was a British national; but he was not a British subject.

³ See *Rex v. Ketter*, *ibid.* See also the earlier case of *Rex v. Campbell*, [1921] 2 K.B. 473 (which was not, however, cited in *Rex v. Ketter*), concerning the position of an Egyptian who was a protected person by virtue of the British Protectorate then existing in Egypt. It is interesting to compare this case with a decision of the Anglo-Austrian Mixed Arbitral Tribunal in the *National Bank of Egypt v. Austro-Hungarian Bank: Annual Digest* (1923-4), Case no. 10. There it was held that an Egyptian was not a British subject, but was a British protected person, and was a British national. The comparison clearly brings out the point made above.

British national, is the possession or otherwise of a British passport. Both classes—British subjects and British protected persons—are granted British passports, and on their passports they are described as British subjects or British protected persons according to the class in which they fall. In many cases a passport will give further information as to how they derive their title to it. For instance, the passport of a Palestinian citizen will show that he is a Palestinian citizen, and the passport of the subject of an Indian ruler will very probably show that he is a native of this or that Indian state. Similarly, a British subject from South Africa is very likely to have a passport which will show, in addition to the fact that he is a British subject, the fact that he is a national of the Union of South Africa.¹

It may often happen that a person may be, at one and the same time, both a British subject and a British protected person. For instance, a certain number of British subjects also possess Palestinian citizenship. There are a large number of people from India who are, at one and the same time, British subjects by virtue of their connexion with British India, and British protected persons by virtue of their connexion with some Indian state. It is a sort of domestic double nationality. The fact, however, that it is not an ordinary case of double nationality is shown in many ways, but *inter alia* in the following. If A becomes a French citizen by naturalization he will lose his status as a British subject. If, however, he were to acquire Palestinian citizenship he would not be considered to lose his British nationality, the ground being that Palestinian citizenship is not really a foreign nationality. Similarly, a woman who, being a British subject, marries a man who is a British protected person, does not cease to be a British subject.

All British protected persons are, in foreign territory, treated as British nationals, and are entitled to the same protection as British subjects. Their position under British municipal law differs from that of British subjects in the following respects:

1. A British protected person may not land in the United Kingdom

¹ The recent decision of the House of Lords in *Joyce v. Director of Public Prosecutions*, [1946] 1 All E.R. 186 (discussed above, p. 57), does not appear to affect the rules set out above. It seems only to decide that the possession of a passport may, in certain circumstances, keep alive an allegiance and protection that might otherwise have ceased or been shaken off. A passport may, of course, be erroneously granted to a person not entitled to it, e.g. a resident alien, but this does not *ipso facto* make him a British protected person.

without special permission. He is an alien for the purposes of the Aliens Order, 1920.¹

2. In British territory he has not the political rights of a British subject, e.g. he cannot vote at parliamentary elections.
3. As the Foreign Marriage Act, 1892, applies only to British subjects, British protected persons do not enjoy the benefit of that Act.
4. On the marriage of a British protected person his wife does not acquire the status of a British subject unless he himself is also a British subject, and her position in that event depends on the B.N.A. 1914-43. Whether by marriage she acquires the status of a British protected person depends on what category her husband belongs to. Similarly the status of the children will depend on the class into which they fall. The wives and children of persons who have been accorded British protection for special reasons may apply separately to the Foreign Office for protection.

It remains to point out that British protected persons are persons who are habitually in receipt of protection or are entitled to such protection. Many such persons never travel, and do not, therefore, ordinarily require protection. Their position, however, must be distinguished from that of nationals of another state who for a temporary purpose, in a particular country, or for reasons of convenience, are afforded the diplomatic assistance, and, if need be, the protection, of His Majesty's Government: e.g. it may be, where a foreign Power is at war with a particular state, that, in accordance with international courtesy, Great Britain, being neutral, undertakes the protection of the interests and nationals of the foreign Power. This *ad hoc* protection does not make that Power's nationals British protected persons in the technical sense discussed in this book. Similarly a state may be too poor, or its interests in a foreign country may be too slight, to justify the maintenance of a full diplomatic establishment or mission. In that event it may be that Great Britain

¹ This disability was substantially removed in relation to British protected persons by the Aliens Order, 1943 (S.R. & O. No. 1378), which provides that the restrictions, &c., imposed by the Order of 1920 shall not apply to British protected persons. The Order of 1943 also provides that the Secretary of State may direct, either generally or in relation to any particular alien or class of aliens, that this exemption shall not apply to them. A Direction was issued on September 24, 1943, continuing in force certain parts of the Aliens Order, 1920, so far as Palestinian citizens are concerned. See S.R. & O. 1943, i, pp. 30, 36.

undertakes the protection of the interests or nationals of that state. This would not make such nationals British protected persons, as these include only such persons as habitually receive British protection, or would, in case of need, be entitled to receive it on the principles set out above, and not by reason only of their status as British subjects. If they are, in fact, British subjects, there is no reason why they should not be British protected persons as well, but in such a contingency they would be treated as British subjects in all respects.

(b) *British Corporations*¹

Every company incorporated under the law in force in any part of His Majesty's dominions is nominally British, and the Government of the United Kingdom claims, as against foreign Powers, the right to protect it, although it does not now intervene on behalf of purely dominion corporations, except at the request of the dominion government and as its agent. In practice, however, protection may be withheld where that is deemed the appropriate course, the reason most frequently being that the company is not substantially British. No fixed rules exist for the purpose of determining when a company is or is not substantially British, and practice on the subject may vary in relation to different countries. In Persia, for instance, there was at one time a general rule that a company was treated as British if half its capital was British-owned, but not otherwise. This rule proved unworkable in practice, and was abandoned, each case being considered on its merits. In China the question assumed a different aspect. There Chinese nationals frequently formed companies in Shanghai,² where the extritorial jurisdiction existed, in order to escape Chinese jurisdiction, as the British registration of the company resulted in their having the benefit of the extritorial treaty system.

Stringent legislation, in the form of successive 'China Orders in Council', was consequently enacted in order to ensure that, so far as possible, British companies operating in China should be really British in composition and direction. But, in spite of this legislation, the right to refuse protection was still freely exercised, having regard

¹ It must be borne in mind that a firm is not an entity in English law, and that intervention and protection can only extend to individual British interests in a firm, not to the firm itself. See, on the question of protection of corporations generally, Beckett, *Transactions of the Grotius Society* (1931), p. 188.

² These must be distinguished from companies formed in Hong Kong under the ordinary laws of the colony.

to the special conditions prevailing in China. The same special problem arose in Egypt, Morocco, and Ethiopia, and, indeed, in all countries where capitulatory rights have existed. However, of recent years these rights have been abrogated in different parts of the world, and there are few places where they are enjoyed by British nationals at the present time.¹

As it is possible for foreign elements to incorporate as a British company under the law of any part of His Majesty's dominions, some administrative principles are required in order to prevent protection being given to interests which are not substantially British. Companies which are nominally British cannot be debarred from benefits stipulated for British companies in commercial treaties, or from registration as British companies where provision is made in that respect. Actual protection, however, is a matter of discretion.

In the event of any application being made by a company for protection, the first requirement is proof of registration as a British company. Companies whose seat of control is in the United Kingdom, and who therefore pay United Kingdom income tax, or whose seat of control is situated in a British possession, and who are therefore liable to colonial taxation, generally receive protection. Those whose seat of control is not situated in the British Empire will usually receive protection, if (a) a majority of the directors are British subjects resident within the foreign country where the seat of control is situated, or (b) if the directors of alien nationality do not exceed a small proportion of the whole, and the British directors exceed in number those of any other country. The British directors must, however, be bona-fide directors, taking an active part in the affairs of the company, and protection will not generally be afforded where there is good reason to think that registration of the company took place merely in order to escape local burdens. A branch of a British company abroad is, of course, not a legal entity in contemplation of English law.

As a rule the Government of the United Kingdom would not take the initiative in making representations on behalf of British interests in a foreign country. On the other hand, it is not uncommon for support to be given in the practice of states on behalf of companies in which nationals of those states have substantial interests. Such intervention may be confined to supporting other governments, especially a government with a *locus standi* in the matter. It may,

¹ See Appendix.

however, be pressed beyond this point according to the circumstances. Where a company, in which there are substantial British interests, is oppressed by the government of the country under whose law it was formed (and of which, therefore, it is nominally a national) the Government of the United Kingdom would, in a suitable case, make direct representations. It was for many years the practice to regard intervention in the type of case we have been considering as lacking in any solid basis of legal right, and to confine such intervention to semi-official representations. However, this distinction is becoming a somewhat academic one, and it is even arguable that, in some types of case, intervention could be justified on legal grounds even before an arbitral tribunal.¹

It is also interesting to observe that in the Draft Peace Treaties prepared by the Council of Foreign Ministers for consideration by the Peace Conference of Twenty-one Nations meeting in Paris on July 29, 1945, there is a provision enabling United Nations nationals who have interests in non-United Nations companies to present a claim for compensation in respect of war damage suffered in the countries of the ex-enemy Powers by the *companies*, to the extent that the interests of United Nations nationals have suffered loss. This provision, which appears as a 'U.K. proposal' in the Draft Peace Treaty with Finland² and as a 'U.S. proposal' in the Draft Peace Treaties with Hungary,³ Italy,⁴ Roumania,⁵ and Bulgaria,⁶ is as follows:

'In cases where a corporation or association of any nationality other than that of one of the United Nations has suffered a loss of its property in Italy as a result of the war, compensation in lire shall be paid by the Italian Government to United Nations nationals who have directly, or indirectly through intermediate corporations or associations of any nationality other than that of one of the United Nations, an ownership interest in the corporation or association which has suffered the loss. This compensation shall be that fractional part of the amount which would be required to enable the corporation or association to make good the loss or damage suffered, which the interest of the United Nations nationals constitutes of the totality of ownership interests in the corporation. Such compensation, however,

¹ See above, p. 11, and also Hyde, *International Law* (2nd revised ed., 1945), II, p. 904.

² Article 24, para. 4: Cmd. 6397 of 1946.

³ Article 23, para. 4: Cmd. 6894 of 1946.

⁴ Article 68, para. 4: Cmd. 6893 of 1946.

⁵ Article 24, para. 4: Cmd. 6896 of 1946.

⁶ Article 22, para. 4: Cmd. 6895 of 1946.

shall not be required in case the Italian Government shall provide to the corporation or the association itself such full compensation or restoration as would be due under this Article if it were a corporation or association of one of the United Nations. In cases where the corporation or association receives from the Italian Government partial compensation for the damage or loss sustained the United Nations nationals shall be paid by the Italian Government compensation in lire in an amount equal to the respective proportionate shares of the loss or damage for which the corporation or association does not itself receive compensation from the Italian Government. For the purposes of this paragraph the extent of interest of a United Nations national shall be determined as of June 10, 1940, or the outbreak of war between the United Nation concerned and Italy, as may be the more favourable to the United Nations national.'

This branch of the law is, therefore, in a fluid state, and it is impossible to lay down fixed rules on the subject.

No legal obligation rests on British Consuls in foreign countries to register British companies, except where special provision is made to that effect by statute or Order in Council, e.g. as was formerly the case in China. Where no special provisions exist, as a matter of convenience, and in order to enable those companies to claim any privileges to which they may be entitled under commercial treaties, it has been the practice to transmit their names to the local authorities. But this does not imply protection any more than registration does where that exists. Indeed, if there is a large foreign holding in a nominally British company abroad, the certificate of registration may be endorsed with a statement that it does not carry with it any right to protection, or, where no certificate is issued, registration may be accompanied by a warning to that effect. Protection cannot in any case be promised in advance, for the discretion of the Secretary of State may not be fettered.

APPENDIX 1

NATURALIZATION ACT, 1870

An Act to amend the Law relating to the legal condition of Aliens and British Subjects. [12th May 1870.]

WHEREAS it is expedient to amend the law relating to the legal condition of aliens and British subjects:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as 'The Naturalization Act, 1870'.

Short title.

Status of Aliens in the United Kingdom

2. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; 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: Provided,—

Capacity of an alien as to property.

- (1) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office or for any municipal, parliamentary, or other franchise:
- (2) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him:
- (3) That this section shall 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 this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this Act.

3. Where Her Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for Her Majesty, by Order in Council, to declare that

Power of naturalized aliens to divest themselves of their status in certain cases.

such convention has been entered into by Her Majesty; and from and after the date of such Order in Council, any person being originally a subject or citizen of the state referred to in such Order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien, and as a subject of the state to which he originally belonged as aforesaid.

A declaration of alienage may be made as follows; that is to say,—If the declarant be in the United Kingdom in the presence of any 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.

How British-born subject may cease to be such. 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.

Allen not entitled to jury de medietate lingue. 5. From and after the passing of this Act, an alien shall not be entitled to be tried by a jury de medietate lingue, but shall be triable in the same manner as if he were a natural-born subject.

Expatriation

Capacity of British subject to renounce allegiance to Her Majesty. 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 naturalized 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 hereinafter 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.

Naturalization and resumption of British Nationality

7. An alien who, within such limited time before making the application herein-after mentioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's Principal Secretaries of State for a certificate of naturalization.

Certificate
of natura-
lization.

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

Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into 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 shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall 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 shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, 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.

The said Secretary of State may in manner aforesaid grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may 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 shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and it shall be lawful for the said Secretary of State to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

Certificate
of re-admission
to
British
nationality.

8. A natural-born British subject who has become an alien in pursuance of this Act, and is in this Act referred to as a statutory alien, 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 Majesty's Principal Secretaries of State for a certificate herein-after referred to as a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The said Secretary of State shall have 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

shall in like manner be required previously to the issuing of the certificate.

A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign state of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this Act conferred 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; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

9. The oath in this Act referred to as the oath of allegiance shall be in the form following; that is to say,

Form of
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.’

National status of married women and infant children

10. The following enactments shall be made with respect to the national status of women and children:

National
status of
married
women and
infant
children.

- (1) A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject:
- (2) A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall 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 manner provided by this Act:
- (3) Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this 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 therein, shall be deemed to be a subject of

the state of which the father or mother has become a subject, and not a British subject:

- (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, shall be deemed to have resumed the position of a British subject to all intents:
- (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, shall be deemed to be a naturalized British subject.

Supplemental Provisions

Regulations as to registration. 11. One of Her Majesty's Principal Secretaries of State may by regulation provide for the following matters:—

- (1) The form and registration of declarations of British nationality:
- (2) The form and registration of certificates of naturalization in the United Kingdom:
- (3) The form and registration of certificates of re-admission to British nationality:
- (4) The form and registration of declarations of alienage:
- (5) The registration by officers in the diplomatic or consular service of Her Majesty of the births and deaths of British subjects who may be born or die out of Her Majesty's dominions, and of the marriages of persons married at any of Her Majesty's embassies or legations:
- (6) The transmission to the United Kingdom for the purpose of registration or safe keeping, or of being produced as evidence of any declarations or certificates made in pursuance of this Act out of the United Kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of or for the purpose of carrying into effect the provisions of this Act:
- (7) With the consent of the Treasury the imposition and application of fees in respect of any registration authorized to be made by this Act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this Act.

The said Secretary of State, by a further regulation, may repeal, alter, or add to any regulation previously made by him in pursuance of this section.

Any regulation made by the said Secretary of State in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act, but shall not so far as respects the imposition of fees be in force in any British possession, and shall not, so far as respects any other matter, be in force in any British possession in which any Act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

12. The following regulations shall be made with respect to evidence under this Act:—

Regulations
as to
evidence.

- (1) Any declaration authorized to be made under this Act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned:
- (2) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate:
- (3) A certificate of readmission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate:
- (4) Entries in any register authorized to be made in pursuance of this Act shall be proved by such copies and certified in such manner as may be directed by one of Her Majesty's Principal Secretaries of State, and the copies of such entries shall be evidence of any matters by this

Act or by any regulation of the said Secretary of State authorized to be inserted in the register:

- (5) The Documentary Evidence Act, 1868, shall apply to any regulation made by a Secretary of State, in pursuance of or for the purpose of carrying into effect any of the provisions of this Act.

Miscellaneous

Saving of letters of denization. 13. Nothing in this Act contained shall affect the grant of letters of denization by Her Majesty.

Saving as to British ships. 14. Nothing in this Act contained shall qualify an alien to be the owner of a British ship.

Saving of allegiance prior to expatriation. 15. Where any British subject has in pursuance of this Act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

Power of colonies to legislate with respect to naturalization. 16. All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.

Definition of terms. 17. In this Act, if not inconsistent with the context or subject-matter thereof,—

‘Disability’ shall mean the status of being an infant, lunatic, idiot, or married woman:

‘British possession’ shall mean any colony, plantation, island, territory, or settlement within Her Majesty’s dominions, and not within the United Kingdom, and all territories and places under one legislature are deemed to be one British possession for the purposes of this Act:

‘The Governor of any British possession’ shall include any person exercising the chief authority in such possession:

‘Officer in the Diplomatic Service of Her Majesty’ shall mean any 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 this Act on an officer in the Diplomatic Service of Her Majesty:

‘Officer in the Consular Service of Her Majesty’ shall mean and include Consul-General, Consul, Vice-Consul, and Consular Agent, and any person for the time being discharging the duties of Consul-General, Consul, Vice-Consul, and Consular Agent.

Repeal of Acts mentioned in Schedule

18. The several Acts set forth in the first and second part of the schedule annexed hereto shall be wholly repealed, and the Acts set forth in the third part of the said schedule shall be repealed to the extent therein mentioned; provided that the repeal enacted in this Act shall not affect—

- (1) Any right acquired or thing done before the passing of this Act:
- (2) Any liability accruing before the passing of this Act:
- (3) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the passing of this Act:
- (4) The institution of any investigation or legal proceeding or any other remedy for ascertaining or enforcing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULE

NOTE.—Reference is made to the repeal of the ‘whole Act’ where portions have been repealed before, in order to preclude henceforth the necessity of looking back to previous Acts.

This Schedule, so far as respects Acts prior to the reign of George the Second, other than Acts of the Irish Parliament, refers to the edition prepared under the direction of the Record Commission, intitled ‘The Statutes of the Realm; printed by Command of His Majesty King George the Third, in pursuance of an Address of the House of Commons of Great Britain. From original Records and authentic Manuscripts.’

PART I

ACTS WHOLLY REPEALED, OTHER THAN ACTS OF THE IRISH PARLIAMENT

<i>Date</i>	<i>Title</i>
7 Jas. 1. c. 2.	An Act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord’s Supper, and the oath of allegiance, and the oath of supremacy.

<i>Date</i>	<i>Title</i>
11 Wil. 3. c. 6. ¹	An Act to enable His Majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens.
13 Geo. 2. c. 7.	An Act for naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America.
20 Geo. 2. c. 44.	An Act to extend the provisions of an Act made in the thirteenth year of His present Majesty's reign, intituled 'An Act for naturalizing foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America, to other foreign Protestants who conscientiously scruple the taking of an oath.'
13 Geo. 3. c. 25.	An Act to explain two Acts of Parliament, one of the thirteenth year of the reign of His late Majesty, 'for naturalizing such foreign Protestants and others, as are settled or shall settle in any of His Majesty's colonies in America', and the other of the second year of the reign of His present Majesty, 'for naturalizing such foreign Protestants as have served or shall serve as officers or soldiers in His Majesty's Royal American regiment, or as engineers in America.'
14 Geo. 3. c. 84.	An Act to prevent certain inconveniences that may happen by bills of naturalization.
16 Geo. 3. c. 52.	An Act to declare His Majesty's natural-born subjects inheritable to the estates of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens.
6 Geo. 4. c. 67.	An Act to alter and amend an Act passed in the seventh year of the reign of His Majesty King James the First, intituled 'An Act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper and the oath of allegiance and the oath of supremacy.'
7 & 8 Vict. c. 66.	An Act to amend the laws relating to aliens.
10 & 11 Vict. c. 83.	An Act for the naturalization of aliens.

¹ 11 & 12 Wm. 3. (Ruff.).

PART II

ACTS OF THE IRISH PARLIAMENT WHOLLY REPEALED

<i>Date</i>	<i>Title</i>
14 & 15 Chas. 2. c. 13.	An Act for encouraging Protestant strangers and other to inhabit and plant in the kingdom of Ireland.
2 Anne, c. 14.	An Act for naturalizing of all Protestant strangers in this kingdom.
19 & 20 Geo. 3. c. 29.	An Act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom.
23 & 24 Geo. 3. c. 38.	An Act for extending the provisions of an Act passed in this kingdom in the nineteenth and twentieth years of His Majesty's reign, intituled 'An Act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom.'
36 Geo. 3. c. 48.	An Act to explain and amend an Act, intituled 'An Act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others who shall settle in this kingdom.'

PART III

ACTS PARTIALLY REPEALED

	<i>Extent of repeal</i>
4 Geo. 1. c. 9. (Act of Irish Parliament.)	An Act for reviving, continuing, and amending several statutes made in this kingdom heretofore temporary. So far as it makes perpetual the Act of 2 Anne, c. 14.
6. Geo. 4. c. 50.	An Act for consolidating and amending the laws relative to Jurors and Juries. The whole of sect. 47.
3 & 4 Will. 4. c. 91.	An Act consolidating and amending the laws relating to Jurors and Juries in Ireland. The whole of sect. 37.

APPENDIX 2

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1943

An Act to amend the law relating to the nationality of children born abroad of British fathers; to make special provision for the naturalization of persons rendering service in connection with the present war; to restrict the making of declarations of alienage in time of war; and to extend the power to make regulations under section nineteen of the British Nationality and Status of Aliens Act 1914. [22nd April 1943.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

British Nationality of Certain Persons born abroad

British
nationality
by registra-
tion. 4 & 5
Geo. V. c.
17.

1. (1) Sub-paragraph (v) of paragraph (b) of subsection (1) of section one of the British Nationality and Status of Aliens Act, 1914 (hereinafter referred to as 'the principal Act'), shall cease to have effect.

(2) A person born outside His Majesty's dominions whose father was at the time of the birth a British subject shall be deemed to be and always to have been a natural-born British subject—

(a) in the case of a person born after or within one year before the commencement of this Act, if his birth is registered at a consulate of His Majesty within one year after its occurrence;

(b) in the case of any person, whether born before or after the commencement of this Act, if his birth is at any time registered at such a consulate with the permission of the Secretary of State or the Secretary of State directs that although registered without his permission it shall be deemed to have been registered with his permission.

British
nationality
of persons
born in
foreign
countries
where His

2. (1) Any person born, whether before or after the commencement of this Act, in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty was at the time of that person's birth exercising jurisdiction over

British subjects, shall, if at the time of his birth his father was a British subject, be deemed to be and, in the case of a person born before the commencement of this Act, always to have been, a natural-born British subject. Majesty exercises jurisdiction.

(2) For the purposes of sub-paragraph (i) of paragraph (b) of subsection (1) of section one of the principal Act, any such person as aforesaid shall be deemed to have been born within His Majesty's allegiance.

3. Any person born after the death of his father, whether before or after the commencement of this Act, shall, if his father died a British subject, be deemed to be and, in the case of a person born before the commencement of this Act, always to have been, a natural-born British subject in any case in which he would have been a natural-born British subject if his father had survived and remained a British subject until after the birth. British nationality of posthumous children.

Naturalization of Aliens

4. If at any time during the present war period an application for a certificate of naturalization is made to the Secretary of State by any person appearing to him to be or to have been at any time during that period a French national, then if the Secretary of State is satisfied that the applicant— Special power to grant certificates of naturalization to French nationals serving in His Majesty's forces.

(a) is, or has at any time during that period been, a member of His Majesty's forces; and

(b) is a proper person to be naturalized as a British subject, the Secretary of State may grant to the applicant a certificate of naturalization under section two of the principal Act notwithstanding that the requirements of subsection (1) of that section are not complied with.

5. A certificate of naturalization granted in accordance with any law in force in any Dominion, being a law providing for the naturalization of persons in consideration of service rendered at any time during the present war period in connection with the prosecution of the war, shall have the same effect as a certificate of naturalization granted by the Secretary of State under Part II of the said Act and shall be deemed for the purposes of that Act to be a certificate of naturalization granted thereunder. Special certificates of imperial naturalization granted in Dominions.

Loss of British Nationality

6. (1) Subject to the provisions of this section, a person whose British nationality depends upon the fact that his birth was registered at a consulate of His Majesty shall, if his birth was so registered before he attained the age of twenty-one Requirements as to assertion of nationality by persons having British

nationality by registration. years, cease to be a British subject at the expiration of one year after he attains that age unless within that period he asserts his British nationality by a declaration of retention of British nationality registered in accordance with regulations made under the principal Act:

Provided that if such a declaration is made by any person after the expiration of that period with the permission of the Secretary of State, that person shall be deemed not to have ceased to be a British subject.

(2) If any such person as aforesaid has at any time during the present war period been a member of His Majesty's forces, that person shall not cease by virtue of the foregoing subsection to be a British subject or, if he has, by virtue of that subsection or of any enactment repealed by this Act, previously ceased to be a British subject, shall be deemed never to have so ceased.

(3) If any such person as is mentioned in subsection (1) of this section satisfies the Secretary of State that he was not a member of His Majesty's forces during the present war period by reason only of his having been otherwise engaged on work of national importance or of his having been prevented from becoming a member of those forces by causes outside his control, the Secretary of State may direct that the last foregoing subsection shall apply to him as if he had been a member of those forces.

Provisions as to declarations of alienage. 7. A declaration of alienage made after the commencement of this Act under any provision of the principal Act shall be of no effect until it has been registered in accordance with regulations made under the principal Act, and, in the case of a declaration made during any war in which His Majesty may be engaged, unless it is so registered with the permission of the Secretary of State.

Miscellaneous and General

Amendments of section nineteen of principal Act. 8. Regulations may be made under section nineteen of the principal Act—

(a) for any purpose for which it appears to the Secretary of State to be expedient to make such regulations in consequence of the provisions of this Act:

(b) for enabling the births and deaths of British subjects born or dying in any country in which His Majesty has for the time being no diplomatic or consular representatives to be registered by persons serving in the diplomatic, consular or other foreign service of any Power which,

by arrangement with His Majesty, has undertaken to represent His interests in that country or by a person authorised in that behalf by the Secretary of State:

- (c) for securing that any declaration made, registration effected, or permission, consent, or direction given, whether before or after the commencement of this Act, in accordance with any provision of any law in force in any Dominion, may, for the purposes of this Act and the principal Act have the like effect as a declaration, registration, permission, consent, or direction, made, effected, or given, in accordance with any corresponding provision of those Acts respectively or of the regulations made thereunder.

9. If during any war in which His Majesty may be engaged the birth of any person is registered in accordance with regulations made under the principal Act by a person serving in the diplomatic, consular or other foreign service of a foreign Power, or by a person authorised in that behalf by the Secretary of State, the birth of that person shall be deemed for the purposes of section one of this Act to have been registered at a consulate of His Majesty.

Special provisions as to registration of births in time of war.

10. (1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

Interpretation and construction.

‘Consulate of His Majesty’ means the office of a consular officer of His Majesty where a register of births is kept, or, in the case of any territory where there is no such office and there is a resident or administrator appointed by a Government of His Majesty, or any other representative of His Majesty, the office of such resident, administrator or representative:

‘Dominion’ means a Dominion specified in the First Schedule to the principal Act:

‘The present war period’ means the period beginning with the third day of September, nineteen hundred and thirty-nine, and ending with such date as His Majesty may by Order in Council appoint.

(2) Subsection (1) of section eight of the principal Act (which extends to British Possessions the provisions of that Act as to the grant and revocation of certificates of naturalization, subject to the modifications therein mentioned), and sections twenty, twenty-two, and twenty-three, and subsection (1) of section twenty-six of that Act (which relate to proof of documents and other supplemental matters) shall have effect as if

the references therein to that Act included references to this Act.

Short title,
citation and
repeals.

11. (1) This Act may be cited as the British Nationality and Status of Aliens Act, 1943, and this Act and the British Nationality and Status of Aliens Acts, 1914 to 1933, may be cited together as the British Nationality and Status of Aliens Acts, 1914 to 1943.

(2) The provisions of the principal Act set out in the first column of the Schedule to this Act are hereby repealed to the extent specified in the second column of that Schedule.

SCHEDULE

PROVISIONS OF BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914, REPEALED

<i>Section</i>	<i>Extent of Repeal</i>
Section one . . .	In subsection (1) the words from 'or (v) his birth' to 'nineteen hundred and twenty-two', and the words from 'Provided that' to the end of the subsection.
Section twenty-seven .	In subsection (1) the words from 'The expression "British consulate"' to the end of the subsection.

APPENDIX 3

THE BRITISH PROTECTED PERSONS ORDER, 1934

(S.R. & O. (1934), No. 499)

At the Court at Buckingham Palace, the 14th day of May, 1934

PRESENT,

The King's Most Excellent Majesty.

Lord President.

Sir Philip Sassoon.

Secretary Sir Philip Cunliffe-Lister.

Sir Robert Clive.

Mr. Ormsby-Gore.

WHEREAS by treaty, grant, usage, sufferance, and other lawful means, His Majesty has power and jurisdiction within the territories mentioned in the Schedule to this Order:

And whereas certain persons who are regarded as belonging to those territories are afforded His Majesty's protection, and are known as British protected persons:

And whereas it is expedient to define in relation to those territories the persons who are so regarded as belonging thereto:

Now, therefore, His Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act, 1890,¹ or otherwise, in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. In this Order, unless the context otherwise requires, the expression 'the territory' means any territory mentioned in the Schedule to this Order.

2. The following persons shall be regarded as belonging to the territory:—

- (a) any person born (whether before or after the entry into force of this Order) within the territory who is not, at the time of his birth, a British subject, and who does not, at the time of his birth, possess under the law of some other State the nationality of such State;
- (b) any person born (whether before or after the entry into force of this Order) out of the territory who is not, at the time of his birth, a British subject and does not possess under the law of some other State the nationality of such State and whose father was, at the time of that person's birth, a person who under this Order is regarded as belonging to the territory and was himself born within the territory;

Provided that any person born after the death of his father (whether before or after the entry into force of this Order) shall be regarded as

belonging to the territory if he would, if born before his father's death, have been so regarded.

3. The wife of a person who under this Order is regarded as belonging to the territory shall be regarded as belonging to the territory if she has, with the permission of the Government, become resident with her husband in the territory, and is not a British subject and does not possess the nationality of any other State.

4. A person who under this Order is regarded as belonging to the territory and who

- (a) becomes a British subject; or
- (b) not being a married woman, minor, lunatic, or idiot, by some voluntary and formal act, acquires the nationality of a State in which he is resident; or
- (c) being the wife or minor child of a person who ceases to be regarded as belonging to the territory under paragraph (b) of this Article, acquires the nationality of some other State; or
- (d) being the wife of a national of some other State, acquires the nationality of her husband,

shall thereupon cease to be regarded as belonging to the territory.

5. This Order may be cited as the British Protected Persons Order, 1934.

M. P. A. Hankey.

SCHEDULE

Bechuanaland Protectorate.

British Solomon Islands Protectorate.

Gambia Protectorate.

Kenya Protectorate.

Nigeria Protectorate.

Northern Rhodesia.

Northern Territories of the Gold Coast.

Nyasaland Protectorate.

Sierra Leone Protectorate.

Somaliland Protectorate.

Swaziland.

Uganda Protectorate.

Tanganyika Territory.

Cameroons under British
Mandate.

Togoland under British
Mandate.

APPENDIX 4

THE NATURALIZATION REGULATIONS, 1943

DATED JUNE 5, 1943, MADE BY THE SECRETARY OF STATE
UNDER SECTION 19 OF THE BRITISH NATIONALITY AND STATUS
OF ALIENS ACT, 1914 (4 & 5 GEO. 5. C. 17)

(S.R. & O. (1943), No. 830)

1. A certificate of naturalization granted in the United Kingdom shall, save as otherwise hereinafter prescribed, be in one of the following forms:—

Form of
certificate
of natural-
ization in
the United
Kingdom.

(A) *Where the names of children are not included*

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Certificate of Naturalization

Whereas *A.B.* has applied to one of His Majesty's Principal Secretaries of State for a certificate of naturalization, alleging with respect to himself [herself] the particulars set out below, and has satisfied him that the conditions laid down in the above-mentioned Act for the grant of a certificate of naturalization are fulfilled in his [her] case:

Now, therefore, in pursuance of the powers conferred on him by the said Act, the Secretary of State grants to the said *A.B.* this certificate of naturalization, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf he [she] shall, subject to the provisions of the said Act, be entitled to all political and other rights powers and privileges, and be subject to all obligations duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this
day of

(Signed) *E.F.*,
Under Secretary of State.

Particulars relating to Applicant

Full name
Address
Trade or Occupation
Place and date of birth
Nationality
Single, married, etc.
Name of wife or husband
Names and nationality of parents

(B) *Where the names of children are included*

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Certificate of Naturalization

Whereas *A.B.* has applied to one of His Majesty's Principal Secretaries of State for a certificate of naturalization, alleging with respect to himself [herself] the particulars set out below, and has satisfied him that the conditions laid down in the above-mentioned Act for the grant of a certificate of naturalization are fulfilled in his [her] case:

And whereas the said *A.B.* has also applied for the inclusion in accordance with subsection (1) of section five of the said Act of the names of certain of his [her] children born before the date of this certificate and being minors, and the Secretary of State is satisfied that the name [names] of his [her] child [children], as hereinafter set out, may properly be included:

Now, therefore, in pursuance of the powers conferred on him by the said Act, the Secretary of State grants to the said *A.B.* this certificate of naturalization, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf he [she] shall, subject to the provisions of the said Act, be entitled to all political and other rights powers and privileges, and be subject to all obligations duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

And the Secretary of State further declares that this certificate extends to the following minor child [children] of the said *A.B.*:—

[*Here insert name and date of birth of any child to be included.*]

In witness whereof I have hereto subscribed my name this day of

(Signed) *E.F.*,
Under Secretary of State.

Particulars relating to Applicant

Full name
Address
Trade or Occupation
Place and date of birth
Nationality
Married, etc.
Name of wife or husband
Names and nationality of parents

2. (1) A special certificate of naturalization granted in the United Kingdom under section four of the British Nationality and Status of Aliens Act, 1914 (hereinafter referred to as 'the principal Act') to a person with respect to whose nationality as a British subject a doubt exists, shall be in the following form:—

Form of
special
certificate
in case of
doubt.

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Special Certificate of Naturalization granted to a person with respect to whose nationality as a British Subject a doubt exists

Whereas *A.B.*, with respect to whose nationality as a British subject a doubt exists, has applied to one of His Majesty's Principal Secretaries of State for such a special certificate of naturalization as is provided for by section four of the above-mentioned Act, alleging with respect to himself [herself] the particulars set out below:

And whereas the Secretary of State is satisfied that such a certificate may properly be granted:

Now, therefore, in pursuance of the powers conferred on him by the said Act, and for the purpose of quieting doubts as to the right of the said *A.B.* to be a British subject, the Secretary of State grants to the said *A.B.* this special certificate of naturalization, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf he [she] shall, subject to the provisions of the said Act, be entitled to all political and other rights powers and privileges, and be subject to all obligations duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this day of

(Signed) *E.F.*,
Under Secretary of State.

Particulars relating to Applicant

Full name
Address
Trade or Occupation
Place and date of birth.....
Single, married, etc.
Name of wife or husband
Names and nationality of parents

(2) Where the names of children are to be included, paragraphs corresponding to the second and fourth paragraphs of Form (B) prescribed by Regulation 1 shall be inserted in the certificate.

Form of certificate of naturalization for minors. 3. A certificate of naturalization granted in the United Kingdom to a minor under subsection (2) of section five of the principal Act shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Certificate of Naturalization granted to a Minor

Whereas an application has been made to one of His Majesty's Principal Secretaries of State for the grant of a certificate of naturalization to *A.B.*, a minor, alleging with respect to the said *A.B.* the particulars set out below:

And whereas the Secretary of State is satisfied that such a certificate may properly be granted:

Now, therefore, in pursuance of the powers conferred on him by the said Act, the Secretary of State grants to the said *A.B.* this certificate of naturalization, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf he [she] shall, subject to the provisions of the said Act, be entitled to all political and other rights powers and privileges, and be subject to all obligations duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this
day of

(Signed) *E.F.*,
Under Secretary of State.

Particulars relating to Applicant

Full name ..
Address ..
Trade or Occupation ..
Place and date of birth ..
Nationality ..
Names and nationality of parents ..

Form of certificate in the case of persons previously naturalized. 4. (1) A certificate of naturalization granted in the United Kingdom under section six of the principal Act to a person who was naturalized before the passing of that Act, shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Certificate of Naturalization granted to a Person who was naturalized before the passing of the above-mentioned Act.

Whereas *A.B.*, who was naturalized before the passing of the above-mentioned Act, has applied to one of His Majesty's Principal Secretaries of State for a certificate of naturalization under the said Act, alleging with respect to himself [herself] the particulars set out below:

And whereas the Secretary of State is satisfied that such a certificate may properly be granted:

Now, therefore, in pursuance of the powers conferred on him by the said Act, the Secretary of State grants to the said *A.B.* this certificate of naturalization, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf he [she] shall, subject to the provisions of the said Act, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this day of

(Signed) *E.F.*,
Under Secretary of State.

Particulars relating to Applicant

Full name
Address
Trade or Occupation
Place and date of birth
Single, married, etc.
Name of wife or husband
Names and nationality of parents
Date of previous naturalization

(2) Where the names of children are to be included, paragraphs corresponding to the second and fourth paragraphs of Form (B) prescribed by Regulation 1 shall be inserted in the certificate.

5. (1) A certificate of naturalization granted in the United Kingdom under section ten of the principal Act to a woman, who was at birth a British subject and is the wife of a subject of a State at war with His Majesty, shall be in the following form:—

Form of certificate of naturalization in the case of a woman married to a subject of

a State at
war with
His
Majesty.

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Certificate of Naturalization granted to a woman who was at birth a British subject and is married to a subject of a State at war with His Majesty.

Whereas *A.B.*, who was at birth a British subject and is the wife of an alien who is a subject of a State at war with His Majesty, has made a declaration that she desires to resume British nationality and has applied to one of His Majesty's Principal Secretaries of State for a certificate of naturalization alleging with respect to herself the particulars set out below:

And whereas the Secretary of State is satisfied that it is desirable that the said *A.B.* be permitted to resume British nationality and that such a certificate may properly be granted:

Now, therefore, in pursuance of the powers conferred on him by the said Act, the Secretary of State grants to the said *A.B.* this certificate of naturalization, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf she shall, subject to the provisions of the said Act, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this
day of

(Signed) *E.F.*,
Under Secretary of State.

Particulars relating to Applicant

Full name

Address

Trade or Occupation

Place and date of birth

Nationality

Name of husband

Names and nationality of parents

(2) Where the names of children are to be included, paragraphs corresponding to the second and fourth paragraphs of Form (B) prescribed by Regulation 1 shall be inserted in the certificate.

Form of
certificate
of natu-
raliza-
tion in
the case of

6. (1) A certificate of naturalization granted in the United Kingdom under section two of the principal Act, and in accordance with section four of the British Nationality and Status

of Aliens Act, 1943, (hereinafter referred to as 'the Act of 1943) shall be in the following form:—

French
nationals
serving in
His
Majesty's
Forces.

BRITISH NATIONALITY AND STATUS OF ALIENS ACTS,
1914 TO 1943

Certificate of Naturalization

Whereas during the period specified in section four of the British Nationality and Status of Aliens Act, 1943, *A.B.* has applied to one of His Majesty's Principal Secretaries of State for a certificate of naturalization, alleging with respect to himself [herself] the particulars set out below:

And whereas it appears to the Secretary of State that the said *A.B.* is, or has during that period been, a French national:

And whereas the Secretary of State is satisfied that the said *A.B.* is (*or has during that period been*) a member of His Majesty's Forces, and is a proper person to be naturalized as a British subject:

Now, therefore, in pursuance of the powers conferred upon him by the said Acts, the Secretary of State grants to the said *A.B.* this certificate of naturalization, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf he [she] shall, subject to the provisions of the said Acts, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this
day of

(Signed) *E.F.*,
Under Secretary of State.

Particulars relating to Applicant

Full name
Rank
Unit
Service
Place and date of birth
Single, married, etc.
(if the applicant is no longer a member of His Majesty's Forces)
Address
Trade or Occupation

(2) Where the names of children are to be included, paragraphs corresponding to the second and fourth paragraphs of Form (B) prescribed by Regulation 1 shall be inserted in the certificate.

Certificate of naturalization in British Possession other than India, Burma, and Dominions. 7. (1) A certificate of naturalization granted in a British Possession, other than British India, British Burma, or a Dominion shall be similar to a certificate granted in the United Kingdom, except that it shall be signed by the Governor of the Possession, or a person acting under his authority.

(2) Where any certificate of naturalization proposed to be so granted in a British Possession, having been submitted to the Secretary of State for his approval, is approved by him, his approval shall be signified by appending to the certificate a note to the following effect:—

This certificate has been submitted to the Secretary of State for his approval and approved by him.

(Signed) *E.F.*,

Under Secretary of State.

Form of declaration of alienage. 8. A declaration of alienage shall be in one of the following forms according to the circumstances:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914 *Declaration of Alienage*

I, *A.B.*, of

being the son [daughter] of *C.B.*, to whom a certificate of naturalization has been granted, in which certificate of naturalization, in accordance with subsection (1) of section five of the above-mentioned Act, my name was included, and having attained my majority within one year before the present date,

or, being a person who, by reason of my having been born within His Majesty's dominions and allegiance [on board a British ship], am a natural-born British subject, but who at my birth [during my minority] became under the law of a subject also of that State, and am still such a subject, and of full age and not under disability,

or, being a natural-born British subject, who was born out of His Majesty's dominions and being of full age and not under disability,

or, having been originally a subject or citizen of being a State with which His Majesty has by Order in Council declared that he has entered into such a convention as is

mentioned in section fifteen of the above-mentioned Act, and having been naturalized as a British subject, or, being the wife of *C.B.*, a person whose certificate of naturalization has been revoked within six months before the present date, [and being also the mother of the following minor children of the marriage of the said *C.B.* and myself, namely, _____], do hereby renounce my nationality as a British subject.

(Signed) *A.B.*

Made and subscribed this _____ day of _____ before me,

(Signed) *X.Y.*,

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

9. (1) A declaration of retention of British nationality under section ten of the principal Act by the wife of a man ceasing during the continuance of his marriage to be a British subject, shall be in the following form:—

Form of
declaration
of retention
of British
nationality.

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Declaration of Retention of British Nationality

I, *A.B.*, of _____, being the wife of *C.B.*, who, during the continuance of my marriage to him, namely, on or about the _____ day of _____ nineteen hundred and _____, has ceased to be a British subject, hereby declare that I desire to retain British nationality.

(Signed) *A.B.*

Made and subscribed this _____ day of _____ before me,

(Signed) *X.Y.*,

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

(2) A declaration of retention of British nationality under section six of the Act of 1943, by a person whose British nationality depends upon the fact that his birth was registered at a Consulate of His Majesty shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACTS, 1914 TO 1943

Declaration of Retention of British Nationality

I, *A.B.*, of _____, having acquired British nationality by reason of the facts that my father was a British subject at the time of my birth and that my birth was duly registered in accordance with the provisions of the above-mentioned Acts,

for the purpose of asserting my British nationality hereby declare that I wish to retain British nationality.

(Signed) *A.B.*

Made and subscribed this day of before me,

(Signed) *X.Y.*,

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

Form and
registration
of a direc-
tion by the
Secretary of
State under
section 6 (3)
of the Act
of 1943.

10. (1) A direction by the Secretary of State under subsection (3) of section six of the Act of 1943 shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1943

Whereas *A.B.*, of , has satisfied the Secretary of State that he was not a member of His Majesty's forces during the period specified in subsection (3) of section six of the above-mentioned Act by reason only of his having been otherwise engaged on work of national importance [*or of his having been prevented from becoming a member of those forces by causes outside his control*]:

Now, in pursuance of the powers conferred upon him by the said subsection, the Secretary of State hereby directs that subsection (2) of the said section shall apply to the said *A.B.* as if he had been a member of those forces.

In witness whereof I have hereto subscribed my name this day of

(Signed) *E.F.*,

Under Secretary of State.

(2) A direction made in accordance with this regulation shall be registered in London at the Home Office.

Form of
declaration
of acqui-
sition of
British
nationality.

11. A declaration of acquisition of British nationality under section ten of the principal Act by the wife of a man to whom a certificate of naturalization has been granted, shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Declaration of Acquisition of British Nationality

I, *A.B.*, of , being the wife of *C.B.*, to whom a certificate of naturalization (No.) was granted on or about , hereby declare that I desire to acquire British nationality.

(Signed) *A.B.*

Made and subscribed this day of before me,
 (Signed) X.Y.,
*[Justice of the Peace, Commissioner, or
 other official title].*

12. A declaration of resumption of British nationality under section twelve of the principal Act, by a person who has ceased to be a British subject upon his parent ceasing during the minority of that person to be a British subject, shall be in the following form:—

Form of
 declaration
 of resump-
 tion of
 British
 nationality.

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Declaration of Resumption of British Nationality

I, A.B., of , having ceased to be a British sub-
 ject during my minority, by reason of my father [mother]
 having ceased to be a British subject, and having attained my
 majority within one year before the present date, hereby
 declare that I wish to resume British nationality.

(Signed) A.B.

Made and subscribed this day of before me,
 (Signed) X.Y.,
*[Justice of the Peace, Commissioner, or
 other official title].*

13. The oath of allegiance shall be taken within one calendar month after the date of the certificate of naturalization to which it relates, or within such extended time as the Secretary of State or, in the case of a certificate granted in a British Possession, the Governor of the Possession, may direct, and if the oath is not so taken the certificate shall not take effect.

Time within
 which oath
 of allegiance
 to be taken.

14. (1) The following persons may administer the oath of allegiance:—

Persons
 before
 whom the
 oath of
 allegiance
 may be
 taken.

In England or Northern Ireland—

Any justice of the peace or any commissioner authorised to administer oaths in the Supreme Court.

In Scotland—

Any sheriff, sheriff-substitute, or justice of the peace.

In a British Possession—

Any judge of any court of civil or criminal jurisdiction, any justice of the peace, or any officer for the time being authorised by law, in the place in which the deponent is, to administer an oath for any judicial or other legal purpose.

In any British Protectorate or British protected State or territory in respect of which a Mandate on behalf of the League of Nations has been accepted by His Majesty—Any officer for the time being authorised by law in that territory to administer an oath for any judicial or other legal purpose.

Elsewhere—

Any consular officer of His Majesty.

(2) Where a certificate of naturalization is granted to a person who is serving in His Majesty's naval, military or air forces, the oath of allegiance may be administered by any officer holding a commission in any of those forces.

Oath of
allegiance.

15. (1) The oath of allegiance shall be subscribed as well as taken, and the form in which the oath of allegiance is subscribed and attested shall be as follows:—

I, *A.B.*, swear by Almighty God that I will be faithful and bear true allegiance to His Majesty, King George the Sixth, His Heirs and Successors, according to law.

(Signed) *A.B.*

Sworn and subscribed this day of before me,

(Signed) *X.Y.*,

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

(2) The oath of allegiance sworn subscribed and attested as herein directed shall in every case be endorsed on the certificate of naturalization to which it relates.

Registra-
tion of cer-
tificates of
naturaliza-
tion and
oaths of
allegiance.

16. (1) Every certificate of naturalization granted in the United Kingdom and every oath of allegiance relating to any such certificate shall be registered in London at the Home Office.

(2) Every certificate of naturalization granted in a British Possession, other than British India, British Burma, or a Dominion, and every oath of allegiance relating to any such certificate, shall be registered both in London at the Home Office and in the Possession at such place as the Governor of the Possession may direct.

Proof of
oath of
allegiance.

17. The oath of allegiance may be proved in any legal proceedings by the production of the original certificate or any copy thereof certified to be a true copy by the Secretary of State or by any person authorised by him in that behalf or, where the oath has been administered in a British Possession, by the Governor of the Possession.

18. The persons before whom declarations of alienage and declarations of retention, acquisition or resumption of British nationality may be made, shall be the same as the persons by whom the oath of allegiance may be administered in accordance with paragraph (1) of Regulation 14, and, in any country in which His Majesty has for the time being no diplomatic or consular representatives, any persons serving in the diplomatic, consular or other foreign service of any Power which, by arrangement with His Majesty, has undertaken to represent His interests in that country or any persons authorized in that behalf by the Secretary of State.

Persons before whom declarations may be made.

19. (1) Subject to the provisions of this Regulation, every declaration of alienage and every declaration of retention, acquisition or resumption of British nationality, other than a Dominion declaration, shall, wherever made, be registered in London at the Home Office and shall, if made in a British Possession other than British India, or British Burma, also be registered at such place in the Possession as the Governor may direct.

Registration of Declarations, &c.

(2) A Dominion declaration may be so registered without payment of fee at the request of the person making the declaration or any other person.

(3) For the purposes of this Regulation 'Dominion declaration' means a declaration made in a Dominion, or made before a diplomatic or consular officer of His Majesty appointed on the advice of the Government of a Dominion.

20. (1) For the purposes of the British Nationality and Status of Aliens Acts, 1914 to 1943, a declaration made, registration effected, or permission, consent or direction given, whether before or after the commencement of the Act of 1943, in accordance with the provisions of any of the laws mentioned in the first, second, third, fourth or fifth column of the Schedule to these Regulations for a purpose referred to in the sixth column of the said Schedule, shall have the like effect as a declaration, registration, permission, consent or direction made, effected or given for the like purpose in accordance with the provisions mentioned in the seventh column of the said Schedule.

Regulation for the purposes of section 8 (c) of the Act of 1943.

6 & 7 Geo. 6. c. 14.

(2) Where a declaration is made, registration effected, or permission, consent or direction given, whether before or after the commencement of the Act of 1943, in accordance with a provision, not mentioned in the said Schedule, of a law for the time being in force in a Dominion, and corresponding to a provision of the British Nationality and Status of Aliens Acts,

1914 to 1943, or of Regulations made thereunder, the said declaration, registration, permission, consent or direction shall, for the purposes of the British Nationality and Status of Aliens Acts, 1914 to 1943, have the like effect as a declaration, registration, permission, consent or direction made, effected or given in accordance with the corresponding provision of those Acts or of Regulations made thereunder.

Fees. 21. (1) Subject to the provisions of these Regulations, the following fees, to which the consent of the Treasury has been obtained, may be taken and shall be applied in the manner hereinafter shown; but this regulation shall not be in force in any British Possession.

TABLE OF FEES

<i>The matter in which the Fee may be taken</i>	<i>The amount of the Fee</i>	<i>To whom payment of the Fee is to be made</i>
	£ s. d.	
The grant of a certificate of naturalization to a woman who was a British subject previously to her marriage to an alien and the registration of the certificate and the oath of allegiance in respect thereof.	0 5 0	Into the Exchequer in accordance with Treasury directions.
The grant of a certificate of naturalization in other cases, and the registration of the certificate and the oath of allegiance in respect thereof.	10 0 0	The same.
Taking a declaration of alienage or of retention, acquisition or resumption of British nationality.	0 2 6	In England or Northern Ireland if the declaration is taken or the oath administered by a justice of the peace, to the clerk to the justices, and if by a Commissioner, to the Commissioner.
Administering the oath of allegiance.		In Scotland if the declaration is taken or oath administered by a sheriff or sheriff-substitute, to the sheriff clerk, or to any of his deputes; if by a justice of the peace, to the clerk of the peace or to any of his deputes.

<i>The matter in which the Fee may be taken</i>	<i>The Amount of the Fee</i>	<i>To whom payment of the Fee is to be made</i>
	£ s. d.	
The registration of a declaration of alienage or of retention, acquisition or resumption of British nationality.	0 10 0	Into the Exchequer in accordance with Treasury directions.
Certified copy of any declaration or certificate with or without oath.	0 10 0	The same.

Of the fee of £10 payable in respect of the grant of a certificate of naturalization, £1 shall be payable on the submission of the application for a certificate, and shall in no circumstances be returned; the remaining £9 shall be payable on the receipt of the decision to grant a certificate.

(2) No fee shall be payable upon the grant of a certificate of naturalization in accordance with section four of the Act of 1943 and no fee shall be payable upon the administering of the oath of allegiance in accordance with paragraph (2) of Regulation 14 by an officer holding a commission in His Majesty's naval, military or air forces.

22. In these Regulations 'Dominion' means a Dominion specified in the First Schedule to the principal Act. Interpretation.

23. The Naturalization Regulations made on the 25th February, 1936,¹ and the 30th January, 1940,² are hereby revoked but without prejudice to anything done thereunder. Revocation.

24. These Regulations may be cited as the Naturalization Regulations, 1943. Short title.

Herbert Morrison,
One of His Majesty's Principal
Secretaries of State.

Whitehall,
5th June, 1943.

¹ S.R. & O. 1936 (No. 198) I, p. 168.

² S.R. & O. 1940 (No. 260) I, p. 84.

THE SCHEDULE

1	2	3	4	5	6	7
DOMINION AND PROVISION OF DOMINION LAW						
THE DOMINION OF CANADA	THE COMMONWEALTH OF AUSTRALIA	THE DOMINION OF NEW ZEALAND	THE UNION OF SOUTH AFRICA	NEWFOUNDLAND	PURPOSE OF DECLARATION, REGISTRATION, PERMISSION, CONSENT OR DIRECTION	PROVISION OF BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914 ¹ OR 1943 ² OR OF REGULATIONS THEREUNDER
THE NATURALIZATION ACT, 1914 (Revised Statutes of Canada, 1977, Chapter 138) as amended by 21 & 22 Geo. V, Chapter 39.	THE NATIONALITY ACT, 1920-1930, as amended by the NATIONALITY ACT, 1936 (No. 62 of 1936).	THE BRITISH NATIONALITY AND STATUS OF ALIENS (IN NEW ZEALAND) ACT, 1928 (No. 58 of 1928).	THE BRITISH NATIONALITY IN THE UNION AND NATURALIZATION AND STATUS OF ALIENS ACT, 1926 (No. 18 of 1926).	CHAPTER 78 OF THE CONSOLIDATED STATUTES OF NEWFOUNDLAND (THIRD SERIES).		THE BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914.
Section 3 (1) (b) (v).	..	..	..	..	Consent to registration of birth at a British Consulate more than one year after its occurrence.	Section 1 (1) (b) (v).
Section 3 (5) and regulations therein mentioned.	The second proviso to Section 6 (1) and regulations made for the purpose thereof.	..	The second proviso to Section 1 (1) and regulations therein mentioned.	..	Permission to take steps necessary for retention of British nationality after the expiration of one year after attaining the age of twenty-one years.	The second proviso to Section 1 (1) and regulations therein mentioned.
Section 3 (5) (i) and regulations made under Section 28 (1) (b).	Paragraph (i) of the second proviso to Section 6 (1) and regulations made under Section 36.	Section 6, the Schedule, and regulations made under Section 14 (b).	Paragraph (i) of the second proviso to Section 1 (1) and regulations made under Section 28 (c).	..	Registration of declaration of retention of British nationality.	Paragraph (i) of the second proviso to Section 1 (1) and regulations made under Section 19 (1) (b).
Section 13 (4).	Section 18 (4).	Section 2 (2) and the Schedule.	..	..	Consent to extension of time for making declaration of retention of British nationality.	Section 10 (4).
Section 13 (5).	Section 18 (5).	Section 2 (2) and the Schedule.	..	..	Consent to extension of time for making declaration of acquisition of British nationality.	Section 10 (5).

THE BRITISH NATIONALITY AND STATUS OF ALIENS (IN NEW ZEALAND) ACT, 1928 (No. 58 of 1928), as amended by the BRITISH NATIONALITY AND STATUS OF ALIENS (IN NEW ZEALAND) AMENDMENT ACT, 1934-35 (No. 38 of 1934-35).					
Regulations made under Section 28 (1) (b) and Section 28 (1) (d).	Regulations made under Section 36.	Regulations made under Section 14 (b) and Section 14 (d).	Regulations made under Section 28 (c) and Section 28 (d).	Regulations made under Section 19 (1) (b) and Section 19 (1) (d).	Declarations of alienage and of resumption, retention and acquisition of British nationality.
Section 3 (1) (b) (v).	..	..	..	..	Permission, so far as by law required, to register birth at a consulate.
Section 3 (5) and regulations therein mentioned.	The second proviso to Section 6 (1) and regulations made for the purpose thereof.	..	The second proviso to Section 1 (1) and regulations therein mentioned.	..	Declaration of retention of British nationality after the expiration of one year after attaining the age of twenty-one years.
Regulations made under Section 28 (1) (b).	Regulations made under Section 36.	Regulations made under Section 14 (b).	Regulations made under Section 28 (c).	Regulations made under Section 19 (1) (b).	Registration of declaration of alienage.
Regulations made under Section 19 (1) (b) and Section 19 (1) (e) prescribing the form of declarations and persons before whom declarations may be made. THE BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1943. Section 1 (2) (b). Section 6 (1). Section 7 and regulations made under Section 19 (1) (b) of the British Nationality and Status of Aliens Act, 1914.					

1 4 & 5 Geo. 5. c. 17.

1 6 & 7 Geo. 6. c. 14.

APPENDIX 5

IRISH NATIONALITY AND CITIZENSHIP [NO. 13] ACT, 1935¹

An Act to provide for and regulate for all purposes, municipal and international, the acquisition by birth or otherwise of citizenship of Saorstát Eireann, and the forfeiture or loss of such citizenship, and to provide for divers matters connected with the matters aforesaid. [10th April, 1935.]

BE it enacted by the Oireachtas of Saorstát Eireann as follows:

Definitions. 1. In this Act—

the expression ‘the Minister’ means the Minister for Justice; the word ‘legation’ includes the office of a High Commissioner; the word ‘citizen’ when used in relation to Saorstát Eireann includes (save where precluded by the context) a person who is a citizen of Saorstát Eireann by virtue of Article 3 of the Constitution and when used in relation to a country other than Saorstát Eireann includes a subject or national of such country, and the word ‘citizenship’ shall be construed accordingly; the word ‘prescribed’ means prescribed by regulations made by the Minister under this Act.

Natural-born citizens. 2. (1) The following persons shall be natural-born citizens of Saorstát Eireann, that is to say:—

- (a) every person who was born in Saorstát Eireann on or after the 6th day of December, 1922, and before the date of the passing of this Act, and
- (b) every person who is born in Saorstát Eireann on or after the date of the passing of this Act, and
- (c) every person who was born on or after the 6th day of December 1922, and before the date of the passing of this Act in a ship registered in Saorstát Eireann, and
- (d) every person who is born on or after the date of the passing of this Act in a ship registered in Saorstát Eireann, and
- (e) every person who was born outside Saorstát Eireann on or after the 6th day of December, 1922, and before the date of the passing of this Act and whose father was, on

¹ The version of this Act in the Irish language, prepared officially (Standing Order No. 15), is printed on the opposite pages of the English text. The latter alone is reproduced here.

the day of such person's birth, a citizen of Saorstát Eireann, and

- (f) subject to the subsequent provisions of this section, every person who is born outside Saorstát Eireann on or after the date of the passing of this Act and whose father was, on the day of such person's birth, a citizen of Saorstát Eireann.

(2) Where—

- (a) a person is born outside Saorstát Eireann on or after the date of the passing of this Act, and
- (b) such person's father is, on the day of such person's birth, a natural-born citizen of Saorstát Eireann born outside Saorstát Eireann, or a naturalised citizen of Saorstát Eireann, and
- (c) such person's father is, on the day of such person's birth, not employed in the service of the Government of Saorstát Eireann,

such person shall not be a natural-born citizen of Saorstát Eireann unless within one year or, where the Minister because of special circumstances so permits, within two years after the day of such person's birth the fact of such person's birth is registered—

- (d) if such person is born in Northern Ireland, in the Northern Ireland births register, or (in any other case),
- (e) if such person is born in a country in which there is, on the day of his birth, a Saorstát Eireann legation or consulate, in the foreign births entry book kept at such legation or consulate or in the foreign births register, or
- (f) if such person is born in a country in which there is, on the day of his birth, neither a Saorstát Eireann legation nor a Saorstát Eireann consulate, in the foreign births register.

(3) Every natural-born citizen of Saorstát Eireann whose right to such citizenship is conditional on the entry in the Northern Ireland births register or in the foreign births register or in a foreign births entry book of the fact of his birth shall cease to be a citizen of Saorstát Eireann at the expiration of one year or such longer period as the Minister (before or after the expiration of such year) shall, in any particular case because of special circumstances, permit after the day on which such person attains the age of twenty-one years, unless such person, after attaining that age and before the expiration of the said year or longer period aforesaid, makes in the prescribed form

and registers with the Minister in the prescribed manner a declaration of retention of his citizenship of Saorstát Eireann and also, if he is a citizen of a foreign country, divests himself, in accordance with the laws of that country, of his citizenship thereof.

(4) Every person who is not a citizen of Saorstát Eireann by virtue of Article 3 of the Constitution but was born before the 6th day of December, 1922, either in Ireland or of parents of whom at least one was born in Ireland shall—

- (a) if such person is at the passing of this Act or becomes thereafter permanently resident in Saorstát Eireann, be deemed to be a natural-born citizen of Saorstát Eireann, or
- (b) if such person at the passing of this Act is permanently resident outside Saorstát Eireann and is not a naturalised citizen of any other country, be deemed, upon being registered in accordance with the next following sub-section of this section, to be a natural-born citizen of Saorstát Eireann.

(5) No person whose right to be deemed to be a natural-born citizen of Saorstát Eireann under the next preceding sub-section of this section is made by that sub-section conditional on registration in accordance with this sub-section shall be deemed to be a natural-born citizen of Saorstát Eireann unless, within one year or, where the Minister (before or after the expiration of such year) because of special circumstances so permits, within two years after the passing of this Act, the name of such person is registered—

- (a) if such person is, at the passing of this Act, permanently resident in a country in which there is a Saorstát Eireann legation or consulate, in the register of nationals kept at such legation or consulate or in the general register of nationals, or
- (b) if such person is, at the passing of this Act, permanently resident in a country in which there is neither a Saorstát Eireann legation nor a Saorstát Eireann consulate, in the general register of nationals.

(6) Every person born before the 6th day of December, 1922, who is, at the passing of this Act, employed outside Saorstát Eireann in the civil service of the Government of Saorstát Eireann as an established officer but is not a citizen of Saorstát Eireann by virtue of Article 3 of the Constitution shall be deemed to be a natural-born citizen of Saorstát Eireann.

(7) Notwithstanding anything contained in the foregoing provisions of this section—

- (a) a person who was or is born in Saorstát Eireann on or after the 6th day of December, 1922, (whether before or after the passing of this Act) shall not be a natural-born citizen of Saorstát Eireann if such person's father was or is, on the day of such person's birth, envoy extraordinary and minister plenipotentiary or other the head of a foreign diplomatic mission established in Saorstát Eireann or is the secretary of legation, or other member of the diplomatic staff of such mission whose appointment as such has been officially notified to the Minister for External Affairs or is otherwise entitled to diplomatic immunities and in any case possesses the nationality of the country by which such mission is accredited, and
- (b) a person who was or is born in Saorstát Eireann on or after the 6th day of December, 1922, (whether before or after the passing of this Act) and whose father, on the day of the birth of such person, was or is a consul-general, consul, vice-consul, or other official of another country charged with an official mission in Saorstát Eireann and possessed or possesses the nationality of the country by which he was or is appointed,

shall, if such person at his birth acquired or acquires by the laws of the said country by which his father was or is so appointed the nationality of such country, cease to be a citizen of Saorstát Eireann if and when a declaration of alienage is made and lodged with the Minister in the prescribed form and manner by such person's father on behalf of such person before such person has attained the age of twenty-one years or by such person after he has attained that age.

3. (1) Any person who is not a citizen of Saorstát Eireann may apply to the Minister in the prescribed form and manner for a certificate of naturalisation.

Application
for certifi-
cate of
naturalisa-
tion.

(2) Every person who applies under this section for a certificate of naturalisation shall furnish to the Minister, in his form of application or otherwise, all such information as the Minister shall, in such form or otherwise, require for the due consideration of such application, and shall, if and when required by the Minister so to do, verify all or any of such information by the statutory declaration of some person (whether the applicant or another person) having knowledge of the facts.

(3) If any person fails to furnish any information or any

verification which he is required by the Minister under this section to furnish, the Minister may, on the ground of such failure and without prejudice to any other power of refusal conferred by this Act, refuse the application in relation to which such information or verification was so required.

(4) If any person, for the purposes of or in relation to an application under this section, gives or makes to the Minister any statement or information which is to his knowledge false or misleading in any material respect, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds or, at the discretion of the court, to imprisonment for any term not exceeding six months or to both such fine and such imprisonment.

Issue of
certificate
of natural-
isation.

4. (1) Whenever an application is duly made to the Minister for a certificate of naturalisation, the Minister may, at his absolute discretion but subject to the limitations imposed by this section, either—

- (a) grant such application and issue to the applicant a certificate of naturalisation accordingly, or
- (b) refuse such application.

(2) A certificate of naturalisation shall not be issued to a person of unsound mind, nor (save as is expressly authorised by this Act) to a person who has not attained the age of twenty-one years.

(3) The Minister shall not issue to any person a certificate of naturalisation unless or until he is satisfied—

- (a) that such person is of good character, and
- (b) that, save as is otherwise provided by this Act, such person resided continuously in Saorstát Éireann for the period of one year expiring on the date of his application for such certificate and also resided, during the eight years next preceding the said period of one year, in Saorstát Éireann for a continuous period of four years or for a number of discontinuous periods amounting in the aggregate to four years, and
- (c) that such person *bona fide* intends, if and when such certificate is issued to him, to have his usual or principal place of residence in Saorstát Éireann, and
- (d) that such person has made, in the prescribed form and manner, a declaration of acceptance of citizenship of Saorstát Éireann.

(4) Where the applicant for a certificate of naturalisation is

the spouse of a person who is under this Act deemed (in virtue of permanent residence in Saorstát Eireann) to be a natural-born citizen of Saorstát Eireann, the Minister may, if he so thinks proper, dispense in the case of such applicant with compliance by such applicant with so much of this section as relates to residence in Saorstát Eireann prior to the application for a certificate of naturalisation.

(5) Where the applicant for a certificate of naturalization satisfies the Minister—

- (a) that she is a widow, and
- (b) that her husband, immediately before his death, was not a citizen of Saorstát Eireann, and
- (c) that she was, immediately before her marriage, a citizen of Saorstát Eireann, and
- (d) that she relinquished under this Act her citizenship of Saorstát Eireann on account of her marriage to a person who was not a citizen of Saorstát Eireann, and
- (e) that she was at the date of the death of her husband and is at the date of such application ordinarily resident outside Saorstát Eireann,

the Minister may, if he so thinks proper, dispense in the case of such applicant with compliance by her with so much of this section as relates to residence or to intended residence in Saorstát Eireann.

(6) The Minister may, if he so thinks fit in the case of any particular applicant for a certificate of naturalisation, deem any particular period of service by such applicant outside Saorstát Eireann in the employment of the Government of Saorstát Eireann to be residence in Saorstát Eireann for the purposes of this section. .

5. (1) The Executive Council may, if and whenever they so think proper, cause a certificate of naturalisation to be issued under this Act to any person or to a child or grandchild of any person who, in the opinion of the Executive Council, has done signal honour or rendered distinguished service to the Irish Nation.

Issue of
certificate
of natural-
isation in
special
cases.

(2) The Executive Council may authorise the Minister to dispense, in relation to the issue of a certificate of naturalisation under this section, with compliance by the person to whom such certificate is issued with all or such one or more as the Executive Council shall think proper of the conditions which are by virtue of this Act conditions precedent to the grant of a certificate of naturalisation.

Issue of
certificate
of natural-
isation to
remove
doubts.

6. (1) Where a person applies under this Act to the Minister for a certificate of naturalisation and states in such application that he claims to be a citizen of Saorstát Eireann, and that some doubt has arisen as to whether he is or is not entitled to such citizenship, and that he makes such application solely for the purpose of removing such doubt, the Minister may, if he thinks proper so to do having regard to all the circumstances of the case, issue to such person a certificate of naturalisation containing an express statement that it is issued solely to remove doubts.

(2) The issue to any person of a certificate of naturalisation under this section shall not be evidence or an admission that such person was not a citizen of Saorstát Eireann prior to the issue of such certificate and shall not prejudice or affect any claim by such person to have been a citizen of Saorstát Eireann at any time prior to such issue.

Issue of
certificate
of natural-
isation to
a minor.

7. (1) The Minister may at any time, if in his absolute discretion he thinks proper so to do on account of the Irish descent or Irish associations of a person who has not attained the age of twenty-one years and having regard to the other circumstances of the case, issue to such person a certificate of naturalisation notwithstanding that such person has not attained the said age, and whether such person does or does not comply with the conditions which are by virtue of this Act conditions precedent to the grant to him of a certificate of naturalisation.

(2) A certificate of naturalisation shall be issued under this section only on the application, in the prescribed form and manner, of a parent or guardian of the person to whom such certificate is intended to relate.

(3) A person to whom a certificate of naturalisation has been issued under this section may, within one year after attaining the age of twenty-one years, make and lodge with the Minister in the prescribed form and manner a declaration of alienage, and thereupon such person shall cease to be a citizen of Saorstát Eireann.

Form and
operation of
certificate
of natural-
isation.

8. (1) Every certificate of naturalisation issued under this Act shall be in the prescribed form and sealed with the official seal of the Minister and shall be expressed and shall, as from the issue thereof and so long as it remains unrevoked, operate to confer on the person named therein the same status as a natural-born citizen of Saorstát Eireann.

(2) There shall be charged and paid on the issue of every

certificate of naturalisation under this Act such fee as may be prescribed.

(3) The Minister may, on application being made to him in the prescribed form and manner, issue, on payment of the prescribed fee, a copy, certified in the prescribed manner to be a correct copy, of any certificate of naturalisation issued under this Act.

(4) A person to whom a certificate of naturalisation is issued under this Act shall, as from the issue of such certificate and so long as such certificate remains unrevoked, be entitled to and have (subject to the provisions of this Act) all the political and other rights, powers, and privileges of a natural-born citizen of Saorstát Eireann and be subject to all the obligations, duties, and liabilities of such natural-born citizen, but, in the case of a certificate of naturalisation issued to a person who has not attained the age of twenty-one years, without prejudice while he is under that age to the limitations arising from the fact of his not having attained the said age.

(5) As soon as may be after the issue, under this Act, of a certificate of naturalisation, the Minister shall publish in the *Iris Oifigiúil* notice of the fact of the issue of such certificate and of the name of the person to whom it was issued and such other (if any) particulars thereof as the Minister shall think proper.

9. (1) Every certificate of naturalisation issued under this Act shall state the name of every child of the person to whom it relates who, at the date of the issue of such certificate, is under the age of twenty-one years and is not a citizen of Saorstát Eireann.

Statement
of children's
names in
certificate
of natural-
isation.

(2) The statement in a certificate of naturalisation in pursuance of this section of the name of a child of the person to whom such certificate relates shall operate to confer on such child the status of a natural-born citizen of Saorstát Eireann, but any such child may, within one year after attaining the age of twenty-one years, make and lodge with the Minister in the prescribed manner a declaration of alienage in the prescribed form, and thereupon such child shall cease to be a citizen of Saorstát Eireann.

10. (1) The Minister may at any time, on his own motion and at his absolute discretion, by order revoke any certificate of naturalisation issued under this Act.

Revocation
of certifi-
cate of
naturalisa-
tion.

(2) The Minister shall revoke a certificate of naturalisation whenever he is satisfied—

- (a) that the issue of such certificate was procured by fraud, or by misrepresentation (whether fraudulent or innocent), or by concealment of material facts or circumstances, or
 - (b) that within five years after the issue of such certificate the person to whom such certificate relates was sentenced by any court (including a court in a country in which, by convention or by law, citizens of Saorstát Eireann enjoy or are entitled to enjoy the same status as citizens of such country) to a fine of not less than one hundred pounds or to imprisonment for a term of not less than twelve months or to penal servitude for any term, or
 - (c) that such person was not of good character at the date of the issue of such certificate, or
 - (d) that (except in the case of a person who has not attained the age of twenty-one years and the case of a person to whom the Executive Council have caused a certificate of naturalisation to be issued) such person has, for a continuous period of not less than seven years subsequent to the issue of such certificate, been ordinarily resident outside Saorstát Eireann (otherwise than in the course of employment in the service of the Government of Saorstát Eireann or as agent for or representative of a person resident or carrying on business in Saorstát Eireann) without maintaining substantial connection with Saorstát Eireann, or
 - (e) that such person is, under the law of a country which is at war with Saorstát Eireann, a citizen of such country.
- (3) As soon as may be after the revocation of a certificate of naturalisation, the Minister shall publish in the *Iris Oifigiúil* notice of the revocation of such certificate.
- (4) Whenever a certificate of naturalisation is revoked, the person to whom such certificate related shall deliver such certificate to the Minister within three months after such revocation, and if he fails so to do he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding five pounds and a further fine not exceeding one pound for every day during which such failure is continued.
- (5) It shall be a good defence to a charge of having committed an offence under this section to prove that the certificate in relation to which such offence is alleged to have been committed has been destroyed.

11. Whenever the Minister revokes a certificate of naturalisation, then, if the person to whom such certificate related is, at the time of such revocation, married and his wife or her husband (as the case may be) was immediately before such revocation a citizen of Saorstát Éireann, the following provisions shall have effect, that is to say:—

Citizenship of spouse of person whose certificate is revoked.

- (a) such revocation shall not of itself prejudice or affect such citizenship of such wife or husband ;
- (b) if such wife or husband (as the case may be) was, immediately before such revocation, a citizen of Saorstát Éireann by virtue of a certificate of naturalisation issued to her or him, the Minister may, by the order effecting such revocation or by a subsequent order made within one year after such revocation, revoke the certificate of naturalisation so issued to such wife or husband ;
- (c) such wife or husband may (unless her or his certificate of naturalisation has been revoked under the foregoing provisions of this section) make and lodge with the Minister in the prescribed form and manner within one year after such revocation a declaration of alienage, and thereupon such wife or husband (as the case may be) shall cease to be a citizen of Saorstát Éireann.

12. Whenever the Minister revokes a certificate of naturalisation then, if the person to whom such certificate related had, at the time of such revocation, a child under the age of twenty-one years who was, immediately before such revocation, a citizen of Saorstát Éireann, the following provisions shall have effect, that is to say:—

Citizenship of child of person whose certificate is revoked.

- (a) such revocation shall not of itself prejudice or affect such citizenship of such child ;
- (b) the Minister may, by the order effecting such revocation or by a subsequent order made within one year after such revocation, terminate the citizenship of such child and thereupon such child shall cease to be a citizen of Saorstát Éireann.

13. Every foundling who was or is first found as a deserted infant in Saorstát Éireann shall, until the contrary is proved, be deemed to have been born in Saorstát Éireann.

Citizenship of foundlings.

14. Where a woman satisfies the Minister—

- (a) that she is a widow, and
- (b) that her husband, immediately before his death, was not a citizen of Saorstát Éireann, and

Resumption of citizenship by a widow.

- (c) that she was, immediately before her marriage, a citizen of Saorstát Éireann, and
- (d) that she relinquished under this Act her citizenship of Saorstát Éireann on account of her marriage to a person who was not a citizen of Saorstát Éireann, and
- (e) that she is ordinarily resident in Saorstát Éireann.

such woman shall be entitled to make and lodge with the Minister in the prescribed form and manner a declaration that she intends to continue to be ordinarily resident in Saorstát Éireann and desires to resume her citizenship of Saorstát Éireann, and upon so making and lodging such declaration such woman shall be deemed to have resumed her citizenship of Saorstát Éireann.

Non-effect
of marriage
on citizen-
ship.

15. (1) The marriage, after the 6th day of December, 1922, and before the date of the passing of this Act, of a citizen of Saorstát Éireann to a person who was not a citizen of Saorstát Éireann shall not of itself operate or be deemed ever to have operated to deprive the party to such marriage who was previous thereto a citizen of Saorstát Éireann of his said citizenship or to confer citizenship of Saorstát Éireann on the party to the said marriage who was not a citizen of Saorstát Éireann previous thereto.

(2) The marriage, on or after the date of the passing of this Act, of a citizen of Saorstát Éireann to a person who is not a citizen of Saorstát Éireann shall not of itself operate to deprive the party to such marriage who is previous thereto a citizen of Saorstát Éireann of his said citizenship or to confer citizenship of Saorstát Éireann on the party to the said marriage who is not a citizen of Saorstát Éireann previous thereto.

Citizenship
of citizen
married to
an alien.

16. (1) Where either—

- (a) one of the parties to a marriage solemnised (whether in or outside Ireland) before the 6th day of December, 1922, became a citizen of Saorstát Éireann by virtue of Article 3 of the Constitution and the other of such parties did not become a citizen of Saorstát Éireann by virtue of the said Article, or
- (b) one of the parties to a marriage solemnised (whether in or outside Saorstát Éireann) on or after the 6th day of December, 1922, and before the date of the passing of this Act was, immediately before such marriage, a citizen of Saorstát Éireann by virtue of Article 3 of the Constitution and the other of the said parties was not, immediately before such marriage, a citizen of Saorstát Éireann by virtue of the said Article,

and in either such case the parties to such marriage have for at least two years before the passing of this Act or, where such marriage was solemnised within those two years, continuously since such solemnisation been ordinarily resident outside Saorstát Éireann and intend to continue ordinarily resident outside Saorstát Éireann, the party to such marriage who (as the case may be) became a citizen of Saorstát Éireann by virtue of Article 3 of the Constitution or was, immediately before such marriage, a citizen of Saorstát Éireann by virtue of the said Article shall, at the time appointed by the next following sub-section of this section cease to be a citizen of Saorstát Éireann unless he or she shall before the expiration of two years after the passing of this Act make and lodge with the Minister in the prescribed form and manner a declaration of election to retain Saorstát Éireann citizenship as his or her post-nuptial citizenship.

(2) The time at which any particular person shall cease to be a citizen of Saorstát Éireann by virtue of the next preceding sub-section of this section shall be whichever of the following times is applicable to his or her case, that is to say:—

- (a) if such person has, before the passing of this Act, acquired the nationality of his or her spouse—the expiration of two years after the passing of this Act, or
- (b) if such person, within two years after the passing of this Act, acquires the nationality of his or her spouse—the expiration of such period, or
- (c) if such person has not, before the expiration of two years from the passing of this Act, acquired the nationality of his or her spouse—the date on which he or she acquires such nationality.

(3) Where one of the parties to a marriage solemnised (whether in or outside Saorstát Éireann) on or after the date of the passing of this Act is, immediately before such marriage, a citizen of Saorstát Éireann and the other of such parties is, immediately before such marriage, not a citizen of Saorstát Éireann, and such parties intend permanently to have their ordinary residence outside Saorstát Éireann after such marriage, the said party who is, immediately before such marriage, a citizen of Saorstát Éireann shall at the time appointed by the next following sub-section of this section cease to be a citizen of Saorstát Éireann unless he or she shall before the expiration of one year after such marriage make and lodge with the Minister in the prescribed form and manner a declaration of

election to retain Saorstát Eireann citizenship as his or her post-nuptial citizenship.

(4) The time at which any particular person shall cease to be a citizen of Saorstát Eireann by virtue of the next preceding sub-section of this section shall be whichever of the following times is applicable to his or her case, that is to say:—

- (a) if such person shall, on or within one year after his or her marriage, acquire the nationality of his or her spouse—the expiration of such year, or
- (b) if such person has not, before the expiration of one year after his or her marriage, acquired the nationality of his or her spouse—the date on which he or she acquires such nationality.

17. Where—

Certificate
of naturalisation
of alien here-
tofore mar-
ried to a
citizen.

(a) either—

- (i) one of the parties to a marriage solemnised (whether in or outside Ireland) before the 6th day of December, 1922, became a citizen of Saorstát Eireann by virtue of Article 3 of the Constitution and the other of such parties did not become a citizen of Saorstát Eireann by virtue of the said Article, or
 - (ii) one of the parties to a marriage solemnised (whether in or outside Saorstát Eireann) on or after the 6th day of December, 1922, and before the date of the passing of this Act was, immediately before such marriage, a citizen of Saorstát Eireann by virtue of Article 3 of the Constitution and the other of such parties was not, immediately before such marriage, a citizen of Saorstát Eireann by virtue of the said Article, and
- (b) the party to such marriage who (as the case may be) did not become a citizen of Saorstát Eireann by virtue of Article 3 of the Constitution or was not, immediately before such marriage, a citizen of Saorstát Eireann by virtue of the said Article duly applies under this Act for a certificate of naturalisation and lodges with the Minister with the application for such certificate a declaration in the prescribed form electing to take citizenship of Saorstát Eireann as his or her post-nuptial citizenship, and proves in the prescribed form and manner to the satisfaction of the Minister that he or she has ceased or will, upon the acquisition of citizenship of Saorstát Eireann, cease to be a citizen of any other country, and

- (c) the Minister is satisfied that the said parties are at the date of the said application ordinarily resident in Saorstát Eireann and have been so ordinarily resident continuously since the passing of this Act and for at least two years before such passing or, where such marriage was solemnised within those two years, for the period between such solemnisation and such passing,

the Minister shall, in respect of the said party so applying for a certificate of naturalisation, dispense with compliance with the provisions of this Act in relation to residence in Saorstát Eireann before the application as a condition precedent to the issue of a certificate of naturalisation.

18. Where—

- (a) one of the parties to a marriage solemnised (whether in or outside Saorstát Eireann) on or after the date of the passing of this Act is, immediately before such marriage, a citizen of Saorstát Eireann and the other of such parties is, immediately before such marriage, not a citizen of Saorstát Eireann, and
- (b) such parties intend permanently to have their ordinary residence in Saorstát Eireann, and
- (c) the party to such marriage who, immediately before such marriage, was not a citizen of Saorstát Eireann duly applies under this Act for a certificate of naturalisation and lodges with the Minister with the application for such certificate a declaration in the prescribed form electing to take citizenship of Saorstát Eireann as his or her post-nuptial citizenship, and proves in the prescribed form and manner to the satisfaction of the Minister that he or she has ceased or will, upon the acquisition of citizenship of Saorstát Eireann, cease to be a citizen of any other country,

Certificate
of naturalisation of
alien here
after married to a
citizen.

the provisions of this Act in relation to residence in Saorstát Eireann before the application as a condition precedent to the issue of a certificate of naturalisation shall, in respect of the said party so applying for such certificate, be subject to the following modifications, that is to say, if the said party is a man the said condition in relation to residence shall be that such party shall have been ordinarily resident in Saorstát Eireann for a period of two years ending on the date of such application, and if such party is a woman the Minister shall dispense with compliance by such party with the said condition in relation to residence.

Death or
change of
citizenship
of one of
married
couple.

19. (1) The death of a person shall not effect any change in or loss of the citizenship of the surviving wife or husband of such person.

(2) The acquisition of citizenship of Saorstát Éireann by a person shall not of itself confer citizenship of Saorstát Éireann on the wife or husband of such person, and the loss of citizenship of Saorstát Éireann by a person shall not deprive the wife or husband of such person of such citizenship.

(3) The acquisition by a person of citizenship of a country other than Saorstát Éireann shall not of itself deprive the wife or husband of such person of citizenship of Saorstát Éireann.

Citizenship
of child on
change of
citizenship
of parent.

20. Where a person who is a citizen of Saorstát Éireann ceases to be a citizen of Saorstát Éireann, such cesser shall not deprive any child of such person who is, at the date of such cesser, under the age of twenty-one years of citizenship of Saorstát Éireann.

Loss of
citizenship
on acqui-
sition of
citizenship
of another
country.

21. (1) Save as is otherwise provided by this Act, every citizen of Saorstát Éireann who, after he has attained the age of twenty-one years, becomes a citizen of another country shall thereupon cease to be a citizen of Saorstát Éireann.

(2) Every natural-born citizen of Saorstát Éireann who is at birth or becomes before he attains the age of twenty-one years a citizen of another country and within one year after attaining the age of twenty-one years makes and lodges with the Minister in the prescribed form and manner a declaration of alienage shall, as from the lodgment of such declaration, cease to be a citizen of Saorstát Éireann, but without prejudice to any previous loss of such citizenship.

Preserva-
tion of
obligations,
etc. on ceas-
er of
citizenship.

22. Whenever a person ceases to be a citizen of Saorstát Éireann, such cesser shall not, by itself and without more, operate to discharge any obligation, duty, or liability undertaken, imposed, or incurred before such cesser.

Mutual
citizenship
rights
between
Saorstát
Éireann
and other
countries.

23. (1) Whenever a convention made, whether before or after the passing of this Act, between Saorstát Éireann and any other country or between the Government of Saorstát Éireann and the Government of any other country provides for the enjoyment in such other country (either absolutely or subject to compliance with conditions) by citizens of Saorstát Éireann of all or any of the rights and privileges of citizens of such other country and for the enjoyment in Saorstát Éireann (either absolutely or subject to such compliance as aforesaid) by citizens of such other country of all or any of the rights and

privileges of citizens of Saorstát Éireann, then and in every such case citizens of such other country shall, so long as such convention continues in force, enjoy in Saorstát Éireann, in accordance with and subject to the terms of such convention, such of the rights and privileges of citizens of Saorstát Éireann as are secured to them in that behalf by such convention.

(2) Whenever the Executive Council is satisfied that, by virtue of the law for the time being in force in any country, citizens of Saorstát Éireann enjoy in such country (either absolutely or subject to compliance with conditions) all or any of the rights and privileges of citizens of such country, the Executive Council may by order declare that citizens of such country shall enjoy in Saorstát Éireann such rights and privileges similar to those so conferred by such law on citizens of Saorstát Éireann in such country as shall be specified in such order, but subject to compliance with such (if any) conditions (similar to the conditions (if any) imposed by such law) as shall be specified in such order.

(3) So long as an order made by the Executive Council under the next preceding sub-section of this section remains in force, citizens of the country to which such order relates shall enjoy in Saorstát Éireann in accordance with such order the rights and privileges specified in that behalf in such order but subject to compliance with the conditions (if any) specified in such order.

(4) The Executive Council may at any time by order amend or revoke any order previously made by them under this section.

(5) Nothing in this section or any order made under this section shall operate—

- (a) to confer on any person any right or privilege which is conferred, by any Act of the Oireachtas (whether passed before or after this Act) on any class or group of persons, whether defined as citizens or as nationals of Saorstát Éireann or in any other manner whatsoever of which such person is, at the relevant time, not a member, or
- (b) to confer any right or privilege on any woman who is the wife of a citizen of Saorstát Éireann and did not, on account of her marriage to such citizen, become a citizen of Saorstát Éireann and was not, immediately before such marriage, a citizen of Saorstát Éireann or of any of the other countries to which this section relates, or
- (c) to entitle any person to become or be the owner of a ship or of a share in a ship registered in Saorstát Éireann

and having the status of a ship registered under the Merchant Shipping Act, 1894, unless such person is a citizen of a country between which and Saorstát Eireann or between the Government of which and the Government of Saorstát Eireann a convention exists and is in force by virtue of which citizens of such country are entitled to own any such ship or a share in any such ship as aforesaid.

(6) Every order made by the Executive Council under this section shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution is passed by either House of the Oireachtas within the next subsequent twenty-one days on which such House has sat after the order is laid before it annulling such order, such order shall be annulled accordingly, but without prejudice to the validity of anything previously done under such order.

The foreign
births entry
book.

24. (1) The Minister for External Affairs shall cause to be kept in every legation and every consulate a book to be called and known and in this Act referred to as the foreign births entry book.

(2) The birth in any country outside Saorstát Eireann of a child whose father is, on the day of such birth, a citizen of Saorstát Eireann shall be registrable, in accordance with regulations made under this section, in the foreign births entry book kept in the legation (if any) or any consulate (if any) in such country.

(3) From time to time, but not less than once in every year, there shall be transmitted, in accordance with regulations made under this section, from every legation and every consulate to the Minister for External Affairs a copy of every entry (if any) made in the foreign births entry book kept in such legation or consulate of which a copy was not previously so transmitted to the said Minister.

(4) Every document which purports to be a copy of an entry in a foreign births entry book and to be duly authenticated in accordance with regulations made under this section shall be admitted in evidence in every court of justice without proof of the seal or signature by which such document purports to be so authenticated or of the authority of the person by whom such seal was affixed or such signature was made and, until the contrary is proved, shall be deemed to be a true copy of such entry and be accepted as good and sufficient proof of the fact and terms of such entry.

(5) The Minister for External Affairs may by order make regulations in respect of all or any of the following matters that is to say:—

- (a) the form of the foreign births entry book and the officer by whom and the manner generally in which such book is to be kept;
- (b) the persons by whom and the manner in which births may be registered in a foreign births entry book;
- (c) the particulars to be entered in the foreign births entry book in respect of every birth registered therein;
- (d) the inspection of foreign births entry books by members of the public;
- (e) the furnishing to members of the public of copies of entries in foreign births entry books and the authentication of such copies;
- (f) the transmission in pursuance of this section of copies of entries in the foreign births entry book to the Minister for External Affairs;
- (g) with the consent of the Minister for Finance, the fees (if any) to be charged for the registration of births in a foreign births entry book, for the inspection of entries in such book, and for copies of entries in such book.

25. (1) The Minister for External Affairs shall cause to be Registers of births.
kept:—

- (a) a register to be called and known and in this Act referred to as the Northern Ireland births register, and
 - (b) a register to be called and known and in this Act referred to as the foreign births register.
- (2) The birth in Northern Ireland of a child whose father is, on the day of such birth, a citizen of Saorstát Eireann shall be registrable, in accordance with regulations made under this section, in the Northern Ireland births register.
- (3) The birth outside Ireland of a child whose father is, on the day of such birth, a citizen of Saorstát Eireann shall be registrable, in accordance with regulations made under this section, in the foreign births register.

(4) The Minister for External Affairs shall cause to be registered in the foreign births register every birth which is entered in a foreign births entry book and a copy of the entry of which in such book is transmitted to the said Minister in pursuance of this Act.

(5) Every document which purports to be a copy of an entry in either of the registers kept in pursuance of this section and

to be duly authenticated in accordance with regulations made in respect of such register under this section shall be admitted in evidence in every court of justice without proof of the seal or signature by which such document purports to be so authenticated or of the authority of the person by whom such seal was affixed or such signature was made and, until the contrary is proved, shall be deemed to be a true copy of such entry and be accepted as good and sufficient proof of the fact and terms of such entry.

(6) The Minister for External Affairs may by order make regulations relating to all or any of the following matters in respect of each of the registers kept in pursuance of this section, that is to say:—

- (a) the form of such register and the officer by whom and the place and manner generally in which such register is to be kept;
- (b) the persons by whom and the manner in which births may be registered in such register;
- (c) the particulars to be entered in such register in respect of every birth registered therein;
- (d) the inspection of such register by members of the public;
- (e) the furnishing to members of the public of copies of entries in such register and the authentication of such copies;
- (f) in the case of the foreign births register, the entry in such register of births copies of the entry of which in the foreign births entry book are transmitted to the Minister for External Affairs under this Act;
- (g) with the consent of the Minister for Finance, the fees (if any) to be charged for the registration of births in such register, for the inspection of entries in such register, and for copies of entries therein.

The register of nationals. 26. (1) The Minister for External Affairs shall cause to be kept in every legation and every consulate a register to be called and known and in this Act referred to as the register of nationals.

(2) The name—

- (a) of every person who is a citizen of Saorstát Eireann and is residing either temporarily or permanently in a country in which a register of nationals is kept, and
- (b) of every person permanently resident in a country in which a register of nationals is kept whose right to be deemed a natural-born citizen of Saorstát Eireann is

under this Act conditional upon registration in the register of nationals or in the general register of nationals, shall be registrable, in accordance with regulations made under this section, in the register of nationals kept in the legation (if any) or any consulate (if any) in the country in which he is so resident.

(3) From time to time, but not less than once in every year, there shall be transmitted, in accordance with regulations made under this section, from every legation and every consulate to the Minister for External Affairs a copy of every entry (if any) made in the register of nationals kept in such legation or consulate of which a copy was not previously so transmitted to the said Minister.

(4) Every document which purports to be a copy of an entry in a register of nationals and to be duly authenticated in accordance with regulations made under this section shall be admitted in evidence in every court of justice without proof of the seal or signature by which such document purports to be so authenticated or of the authority of the person by whom such seal was affixed or such signature was made and, until the contrary is proved, shall be deemed to be a true copy of such entry and be accepted as good and sufficient proof of the fact and terms of such entry.

(5) The Minister for External Affairs may by order make regulations in respect of all or any of the following matters, that is to say:—

- (a) the form of the register of nationals and the officer by whom and the manner generally in which such register is to be kept;
- (b) the persons by whom and the manner in which names may be registered in a register of nationals;
- (c) the particulars to be entered in the register of nationals in respect of every name registered therein;
- (d) the inspection of registers of nationals by members of the public;
- (e) the furnishing to members of the public of copies of entries in registers of nationals and the authentication of such copies;
- (f) the transmission in pursuance of this section of copies of entries in the register of nationals to the Minister for External Affairs;
- (g) with the consent of the Minister for Finance, the fees (if any) to be charged for the registration of names in a

register of nationals, for the inspection of entries in such register, and for copies of entries in such register.

(6) As soon as may be after the entry in a register of nationals of the name of any person whose right to natural-born citizenship of Saorstát Eireann is under this Act conditional upon registration in such register or in the general register of nationals, the Minister for External Affairs shall publish in the *Iris Oifigiúil* notice of the fact of such entry and the name of the person to whom such entry relates and such other particulars (if any) as the said Minister may think proper.

The general
register of
nationals.

27. (1) The Minister for External Affairs shall cause to be kept a register to be called and known and in this Act referred to as the general register of nationals.

(2) The name of every person who is permanently resident outside Saorstát Eireann and whose right to be deemed a natural-born citizen of Saorstát Eireann is under this Act conditional upon registration in the general register of nationals or in either that register or a register of nationals shall be registrable, in accordance with regulations made under this section, in the general register of nationals.

(3) The Minister for External Affairs shall cause to be registered in the general register of nationals every name which is entered in a register of nationals and a copy of the entry of which in such register is transmitted to the said Minister in pursuance of this Act.

(4) Every document which purports to be a copy of an entry in the general register of nationals and to be duly authenticated in accordance with regulations made under this section shall be admitted in evidence in every court of justice without proof of the seal or signature by which such document purports to be so authenticated or of the authority of the person by whom such seal was affixed or such signature was made and, until the contrary is proved, shall be deemed to be a true copy of such entry and be accepted as good and sufficient proof of the fact and terms of such entry.

(5) The Minister for External Affairs may by order make regulations in respect of all or any of the following matters, that is to say:—

- (a) the form of the general register of nationals and the officer by whom and the place and manner generally in which the general register of nationals is to be kept;
- (b) the persons by whom and the manner in which names may be registered in the general register of nationals;

- (c) the particulars to be entered in the general register of nationals in respect of every name registered therein;
- (d) the inspection of the general register of nationals by members of the public;
- (e) the furnishing to members of the public of copies of entries in the general register of nationals and the authentication of such copies;
- (f) the entry in the general register of nationals of names, copies of the entry of which in a register of nationals are transmitted to the Minister for External Affairs in pursuance of this Act;
- (g) with the consent of the Minister for Finance, the fees (if any) to be charged for the registration of names in the general register of nationals, for the inspection of entries in such register, and for copies of entries in such register.

(6) As soon as may be after the entry in the general register of nationals of the name of any person whose right to be deemed a natural-born citizen of Saorstát Eireann is under this Act conditional upon registration in the general register of nationals or in either that register or a register of nationals, the Minister for External Affairs shall, in every case where the name of such person has not been entered in a register of nationals, publish in the *Iris Oifigiúil* notice of the fact of such entry in the general register of nationals and the name of the person to whom such entry relates and such other particulars (if any) as the said Minister may think proper.

28. (1) The Minister may by order make regulations in relation to any matter or thing referred to in this Act as prescribed or to be prescribed, but no such regulation shall be made in relation to the amount or collection of fees without the consent of the Minister for Finance. Regulations.

(2) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling such regulation is passed by either such House within the next subsequent twenty-one days on which that House has sat after such regulation is so laid before it, such regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

29. The Minister for External Affairs, or any diplomatic or consular officer authorised in that behalf by the Minister for External Affairs may, upon the application of any person who is a citizen (other than a naturalised citizen) of Saorstát Eireann Certificates of nationality.

and upon payment by such person of the prescribed fee, issue to such person a certificate in writing stating that such person is, at the date of such certificate, a citizen of Saorstát Eireann.

Expenses. 30. All expenses incurred by the Minister or by the Minister for External Affairs in carrying this Act into effect shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Fees payable on declaration. 31. Whenever any person is by this Act required or empowered to make a declaration for the purposes of this Act, regulations made under this Act may require that such person shall pay, on the making of such declaration, such fee as may be prescribed.

Collection and disposal of fees. 32. (1) All fees payable under this Act shall be collected and taken in such manner as the Minister for Finance shall, from time to time, direct and shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the said Minister.

(2) The Public Offices Fees Act, 1879, shall not apply in respect of any fees payable under this Act.

Repeals. 33. (1) The British Nationality and Status of Aliens Act, 1914, and the British Nationality and Status of Aliens Act, 1918, if and so far as they respectively are or ever were in force in Saorstát Eireann, are hereby repealed.

(2) The common law relating to British nationality, if and so far as it is or ever was, either wholly or in part, in force in Saorstát Eireann, shall cease to have effect.

(3) The facts or events by reason of which a person is at any time a natural-born citizen of Saorstát Eireann shall not of themselves operate to confer on such person any other citizenship or nationality.

Scope of citizenship law. 34. Every person who is a citizen of Saorstát Eireann by virtue of Article 3 of the Constitution and every person who is or becomes a citizen of Saorstát Eireann by or under this Act shall be such citizen for all purposes, municipal and international.

Short title. 35. This Act may be cited as the Irish Nationality and Citizenship Act, 1935.

APPENDIX 6

INDIAN NATURALIZATION ACT, 1926¹

Act of the Indian Legislature to consolidate and amend the Law relating to the Naturalisation in British India of Aliens resident therein.

No. 7.

Assented to February 26, 1926.

WHEREAS it is expedient to consolidate and amend the law relating to the naturalisation in British India of aliens resident therein ;

It is hereby enacted as follows:—

1. (1) This Act may be called 'The Indian Naturalisation Act, 1926'.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force² on such date as the Governor-General in Council may, by notification in the 'Gazette of India', appoint.

2. In this Act, unless there is anything repugnant in the subject or context—

(a) 'British subject' means a British subject as defined in section 27 of 'The British Nationality and Status of Aliens Act, 1914' ;

(b) 'certificate of naturalisation' means a certificate of naturalisation granted under this Act ; and

(c) 'minor' means any person subject to 'The Indian Majority Act, 1875', who has not attained his majority within the meaning of that Act, or any other person who has not attained the age of 18 years.

3. (1) The local Government may grant a certificate of naturalisation to any person who makes an application in this behalf and satisfies the local Government—

(a) that he is not a minor.

(b) ~~that~~ he is neither a British subject nor a subject of any State in Europe or America or of any State of which an Indian British subject is prevented by or under any law from becoming a subject by naturalisation ;

(c) that he has, during a period of not less than 5 years immediately preceding the date of the application, either resided in British India or been in the service of the Crown under the Government ;

(d) that he is of good character ;

¹ *S.P.*, vol. 123 (Part I), p. 249.

² Came into force, July 1, 1926.

- (e) that he has an adequate knowledge of a language which has been declared by the local Government, by notification in the local official gazette, to be a principal vernacular of the province; and
- (f) that he intends, if the application is granted to reside in British India or to enter or continue in the service of the Crown under the Government:

Provided that nothing in clause (e) or clause (f) shall apply in the case of a woman who was a British subject previously to her marriage to a person not a British subject and whose husband has died or whose marriage has been dissolved.

(2) Nothing in this section shall be deemed to prevent the grant of a certificate of naturalisation to any person to whom a certificate of naturalisation has been issued under 'The Indian Naturalisation Act, 1852'.¹

4. (1) Every application for a certificate of naturalisation shall be in writing and shall state, to the best of the knowledge and belief of the applicant—

- (a) his age;
- (b) his place of birth;
- (c) his place of residence;
- (d) his profession, trade, or occupation;
- (e) full particulars regarding his qualifications in respect of the matters referred to in clauses (a) to (f) of sub-section (1) of section 3;
- (f) whether he has at any time previously applied for the grant of a certificate of naturalisation under 'The British Nationality and Status of Aliens Act, 1914', or 'The Indian Naturalisation Act, 1852', or this Act;
- (g) whether any such application has been rejected;
- (h) whether any such certificate has been granted to him; and
- (i) whether any such certificate granted to him has been revoked.

(2) Every such application shall be signed by the applicant and shall be accompanied by an affidavit sworn by him verifying that the statements contained therein are true to the best of his knowledge and belief.

(3) The local Government shall satisfy itself as to the truth of the statements contained in the application, and for this purpose may cause to be made such further inquiry, if any, and may require such further evidence, if any, either by affidavit or otherwise, as it thinks necessary.

5. (1) If the local Government is satisfied that the applicant is qualified under section 3 for the grant of a certificate of naturalisation and is otherwise a fit person for the grant of such certificate, it may grant a certificate reciting the qualifications of the applicant for such grant and

¹ *S.P.*, vol. 65, p. 1300.

conferring upon him all the rights, privileges and capacities of naturalisation under this Act, except such rights, privileges or capacities, if any, as may specifically be withheld by the certificate.

(2) Any such certificate may, if the applicant so requests, include the name of any minor child of the applicant, not being by birth a British subject, who was born before the date of the certificate and is for the time being resident in British India and under the control of the applicant; and shall grant to any child so included all the rights, privileges and capacities of naturalisation under this Act, except such rights, privileges or capacities, if any, as may specifically be withheld by the certificate.

(3) The grant of a certificate of naturalisation shall be in the absolute discretion of the local Government, and no appeal shall lie from any refusal to grant any such certificate or to include in any such grant any particular right, privilege or capacity.

6. Every person to whom a certificate of naturalisation has been granted shall, within 30 days from the date of the grant thereof, take and subscribe the following oath, namely:—

‘I, A.B., of

do hereby swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, his heirs and successors’:

Provided that the local Government may extend the time allowed under this section in any case in which it is satisfied that failure to take and subscribe the oath within that time was due to sufficient cause.

7. (1) No certificate of naturalisation shall have effect until the person to whom it is granted has taken and subscribed the oath prescribed by section 6, but upon the taking and subscribing of such oath such person, the wife of any such person, and any child of any such person who has been included in the certificate under sub-section (2) of section 5, shall, when in British India, be deemed to be British subjects and be entitled to all the rights, privileges and capacities of a British subject born within British India, except such rights, privileges or capacities if any, as may have been withheld from them respectively by the certificate, and shall within British India be subject to all the obligations, duties and liabilities of a British subject.

(2) When the person to whom a certificate of naturalisation has been granted has taken and subscribed the oath prescribed by section 6, any wife thereafter married by, and any child thereafter born to, such person shall, if she or he is not a British subject and if such person aforesaid at the date of the marriage or birth, as the case may be, retains any rights, privileges or capacities of a British subject under this Act, be entitled to the same rights, privileges and capacities, and be subject to the same

obligations, duties and liabilities to which such person aforesaid was at that date entitled and subject.

8. (1) Where the local Government of the province in which a person to whom a certificate of naturalisation has been granted under this Act, or 'The Indian Naturalisation Act, 1852', resides, or, in the case of any such person who is not for the time being resident in British India, the local Government by which such a certificate was granted to such person, is satisfied that the certificate was obtained by false representation or fraud or by concealment of material circumstances, or that the person to whom the certificate has been granted has shown himself by act or speech to be disaffected or disloyal to His Majesty, the local Government shall, by order in writing, revoke the certificate.

(2) Without prejudice to the foregoing provisions, such local Government shall, by order in writing, revoke such a certificate of naturalisation as aforesaid in any case in which it is satisfied that the person to whom the certificate was granted—

- (a) has, during any war in which His Majesty is engaged, unlawfully traded or communicated with the enemy, or with a subject of an enemy State, or been engaged in, or associated with, any business which is to his knowledge carried on in such a manner as to assist the enemy in such war; or
- (b) has, within 5 years of the date of the grant of the certificate, been sentenced by any court in His Majesty's dominions to transportation or to penal servitude, or to imprisonment for a term of not less than 12 months, or to pay a fine of not less than 1,000 rupees; or
- (c) was not of good character at the date of the grant of the certificate; or
- (d) has since the date of the grant of the certificate been, for a period of not less than 7 years, ordinarily resident out of His Majesty's dominions otherwise than as a representative of a British subject, firm or company carrying on business, or of an institution established, in His Majesty's dominions, or in the service of the Crown, and has not maintained substantial connexion with His Majesty's dominions; or
- (e) remains, according to the law of a State at war with His Majesty, a subject of that State;

and that the continuance of the certificate is not conducive to the public good.

(3) Nothing in this section shall be deemed to authorise the revocation by one local Government of a certificate granted by another local Government without the concurrence of that other local Government, or, if that local Government refuses to concur, of the Governor-General in Council.

(4) The Local Government may, if it thinks fit, before making an order under this section, refer the case for such inquiry as is hereinafter specified, and, in any case to which sub-section (1) or clause (a), clause (c) or clause (e) of sub-section (2) applies, the local Government shall, by notice given to, or sent by post to the last known address of, the holder of the certificate, give him an opportunity of claiming that the case be referred for such inquiry, and, if the holder so claims in accordance with the notice, the local Government shall refer the case for inquiry accordingly.

(5) An inquiry under this section shall be held by such person or persons and in such manner as the local Government may direct in each case.

(6) Where a certificate is revoked under this section, the revocation shall have effect from such date as may be directed by the local Government and thereupon the certificate shall be given up and cancelled; and any person who, without reasonable cause the burden of proving which shall lie upon him, fails to give up his certificate within 1 month from the aforesaid date, shall be punishable with a fine which may extend to 1,000 rupees.

(7) For the purposes of this section, any person who has acquired any of the rights, privileges or capacities of naturalisation under sub-section (2) of section 5 or sub-section (2) of section 7 by reason of the grant to his parent of a certificate of naturalisation, may, after he has attained majority, be deemed to be a person to whom a certificate of naturalisation has been granted.

9. (1) Where a certificate is revoked under section 8, the former holder thereof shall cease to be deemed to be a British subject.

(2) On such revocation, the local Government may, by order in writing, direct that the wife and minor children (or any of them) of the person whose certificate is revoked shall cease to be deemed to be British subjects; but where no such direction is made, the status of the wife and minor children of the person whose certificate is revoked shall not be affected by the revocation;

Provided that, in the case of a wife who was at birth a British subject, no such order as aforesaid shall be made, unless the local Government is satisfied that, if she had held a certificate of naturalisation in her own right, the certificate could properly have been revoked under section 8, and the provisions of that section as to referring cases for inquiry shall apply to the making of any such order as they apply to the revocation of a certificate.

10. (1) A declaration of alienage in such manner as may be prescribed by rules made under this Act may be made—

(a) within 1 year of his attaining majority, by any child who has

acquired any of the rights, privileges or capacities of naturalisation under sub-section (2) of section 5, or sub-section (2) of section 7 ; or

- (b) within 6 months from the date of the revocation of a certificate under section 8, or of the death of, or of the dissolution of her marriage with, the holder of any such certificate as is therein referred to, by the wife of the person whose certificate has been revoked, or who has died, or whose marriage to her has been dissolved, as the case may be.

(2) Where a declaration of alienage has been made in the manner aforesaid, the person making the same, and the wife of any such person, and any children of any such person who are minors and are not by birth British subjects, shall cease to be deemed to be British subjects.

11. Every person making an inquiry under the orders of a local Government under sub-section (3) of section 4, and every person appointed to hold an inquiry under sub-section (5) of section 8, shall be deemed to be a public servant within the meaning of the Indian Penal Code, and shall for the purposes of such inquiry have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters:—

- (i) enforcing the attendance of any person and examining him on oath ;
- (ii) compelling the production of documents and material objects ; and
- (iii) issuing commissions for the examination of witnesses ; and every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

12. (1) All oaths and affidavits for the purposes of this Act shall be sworn before a magistrate or such other person as may be appointed in this behalf by the local Government.

(2) The magistrate or other person by whom an oath of allegiance is administered under section 6 shall grant to the person making the same a certificate in writing of his having taken and subscribed such oath and of the date of his taking and subscribing the same, and shall forward to the local Government the oath so taken and subscribed, together with a copy of such certificate.

13. (1) The local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official gazette, make rules to give effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

- (a) the form or forms in which certificates of naturalisation shall be granted, and the manner in which they shall be recorded ;

- (b) the manner in which declarations of alienage shall be made and recorded;
- (c) the recording of oaths of allegiance; and
- (d) the fees which may be imposed for the issue of any certificate, whether of naturalisation or otherwise, granted under this Act.

14. Nothing contained in this Act shall be deemed to entitle to any of the rights, privileges or capacities of a British subject the child of any person who is himself so entitled by reason only of the inclusion of his name in a certificate of naturalisation under sub-section (2) of section 5 or of the grant of a certificate of naturalisation to his parent.

15. The enactments mentioned in the schedule are hereby repealed to the extent specified in the fourth column thereof.

SCHEDULE

Enactments repealed (see Section 15)

1852. No. XXX—

The Indian Naturalisation Act, 1852: So much as has not been repealed.

1897. No. XIV—

The Indian Short Titles Act, 1897: So much of the Schedule as relates to 'The Indian Naturalisation Act, 1852'.

1914. No. X—

The Repealing and Amending Act, 1914: So much of the second Schedule as relates to 'The Indian Naturalisation Act, 1852'.

1919. No. XVI—

The Indian Naturalisation (Amendment) Act, 1919: The whole.

APPENDIX 7

THE BRITISH NATIONALITY AND STATUS OF ALIENS REGULATIONS (INDIA), 1945

DATED JULY 10, 1945

(S.R. & O. (1945), No. 916)

IN the exercise of the powers conferred upon me by section 19 of the British Nationality and Status of Aliens Act, 1914¹ (hereinafter referred to as 'the principal Act'), I, Leopold Charles Maurice Stennett Amery, one of His Majesty's Principal Secretaries of State, make the following Regulations:—

FORM OF CERTIFICATE OF NATURALISATION IN BRITISH INDIA

1. A certificate of naturalisation granted in British India under section 2 or under sub-section (1) of section 5, read with sub-section (1) of section 8 of the principal Act, shall be in one of the following forms:—

(A) *Where the Names of Children are not included*

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Certificate of Naturalisation

Whereas *A.B.* has applied for a certificate of naturalisation, alleging with respect to himself (herself) the particulars set out below, and has satisfied the Governor-General of India in Council that the conditions laid down in the above mentioned Act for the grant of a certificate of naturalisation are fulfilled in the said *A.B.*'s case:

Now, therefore, in pursuance of the powers conferred on the Governor-General of India in Council by the said Act, the Governor-General of India in Council hereby grants to the said *A.B.* this certificate of naturalisation, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf the said *A.B.* shall, subject to the provisions of the said Act, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, duties, and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this
day of

(Signed) *E.F.*

(*Secretary to the Government of India.*)

¹ 4 & 5 Geo. 5, c. 17.

Particulars relating to Applicant

Full Name
 Address
 Trade or occupation
 Place and date of birth
 Nationality
 Single, married, etc.
 Name of wife or husband
 Names and nationality of parents

(B) Where the Names of Children are included

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Certificate of Naturalisation

Whereas *A.B.* has applied for a certificate of naturalisation, alleging with respect to himself (herself) the particulars set out below, and has satisfied the Governor-General of India in Council that the conditions laid down in the above mentioned Act for the grant of a certificate of naturalisation are fulfilled in the said *A.B.*'s case:

And whereas the said *A.B.* has also applied for the inclusion in accordance with sub-section (1) of section 5 of the said Act of the name (names) of certain of his (her) child (children) born before the date of this certificate and being a minor (minors), and the Governor-General of India in Council is satisfied that the name (names) of his (her) child (children), as hereinafter set out, may properly be included:

Now, therefore, in pursuance of the powers conferred on the Governor-General of India in Council by the said Act, the Governor-General of India in Council hereby grants to the said *A.B.* this certificate of naturalisation, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf the said *A.B.* shall, subject to the provisions of the said Act, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, duties, and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

And the Governor-General of India in Council further declares that this certificate extends to the following minor child (children) of the said *A.B.*:—

(Here insert name and date of birth of any child to be included.)

In witness whereof I have hereto subscribed my name this
day of

(Signed) *E.F.*

(Secretary to the Government of India.)

B b

Particulars relating to Applicant

Full Name
 Address
 Trade or occupation
 Place and date of birth
 Nationality
 Married, etc
 Name of wife or husband
 Names and nationality of parents

FORM OF SPECIAL CERTIFICATE IN CASE OF DOUBT

2. (1) A special certificate of naturalisation granted in British India under section 4 read with sub-section (1) of section 8 of the principal Act to a person with respect to whose nationality a doubt exists, shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Special Certificate of Naturalisation granted to a Person with respect to whose Nationality as a British Subject a doubt exists

Whereas *A.B.*, with respect to whose nationality as a British subject a doubt exists, has applied for such a special certificate of naturalisation as is provided for by section 4 of the above mentioned Act, alleging with respect to himself (herself) the particulars set out below:

And whereas the Governor-General of India in Council is satisfied that such a certificate may properly be granted:

Now therefore, in pursuance of the powers conferred on the Governor-General of India in Council by the said Act and for the purpose of quieting doubts as to the right of the said *A.B.* to be a British subject, the Governor-General of India in Council hereby grants to the said *A.B.* this special certificate of naturalisation, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf the said *A.B.* shall, subject to the provisions of the said Act, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this day of

(Signed) *E.F.*

(Secretary to the Government of India.)

Particulars relating to Applicant

Full Name
 Address
 Trade or occupation
 Place and date of birth
 Single, married, etc.
 Name of wife or husband
 Names and nationality of parents

(2) Where the names of children are to be included, paragraphs corresponding to the second and fourth paragraphs of Form (B) prescribed by Regulation 1 shall be inserted in the certificate.

FORM OF CERTIFICATE OF NATURALISATION FOR MINORS

3. A certificate of naturalisation granted in British India to a minor under sub-section (2) of section 5 read with sub-section (1) of section 8 of the principal Act shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Certificate of Naturalisation granted to a Minor

Whereas an application has been made for the grant of a certificate of naturalisation to *A.B.*, a minor, alleging with respect to the said *A.B.* the particulars set out below:—

And whereas the Governor-General of India in Council is satisfied that such a certificate may properly be granted:

Now therefore, in pursuance of the powers conferred on the Governor-General of India in Council by the said Act, the Governor-General of India in Council hereby grants to the said *A.B.* this certificate of naturalisation, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf, the said *A.B.* shall, subject to the provisions of the said Act, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this
 day of

(Signed) *E.F.*

(*Secretary to the Government of India.*)

Particulars relating to Applicant

Full Name
 Address
 Trade or occupation
 Place and date of birth
 Nationality
 Names and nationality of parents

FORM OF CERTIFICATE IN THE CASE OF PERSONS PREVIOUSLY NATURALISED

4. (1) A certificate of naturalisation granted in British India under section 6 read with sub-section (1) of section 8 of the principal Act to a person who was naturalised in British India before the passing of that Act, shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Certificate of Naturalisation granted to a Person who was naturalised before the passing of the above mentioned Act

Whereas *A.B.*, who was naturalised before the passing of the above-mentioned Act, has applied for a certificate of naturalisation under the said Act, alleging with respect to himself (herself) the particulars set out below:—

And whereas the Governor-General of India in Council is satisfied that such a certificate may properly be granted:

Now therefore, in pursuance of the powers conferred on the Governor-General of India in Council by the said Act, the Governor-General of India in Council hereby grants to the said *A.B.* this certificate of naturalisation, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf, the said *A.B.* shall, subject to the provisions of the said Act, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this day of

(Signed) *E.F.*

(Secretary to the Government of India.)

Particulars relating to Applicant

Full Name
 Address
 Trade or occupation
 Place and date of birth
 Single, married, etc.
 Name of wife or husband
 Names and nationality of parents
 Date of previous naturalisation

(2) Where the names of children are to be included, paragraphs corresponding to the second and fourth paragraphs of Form (B) prescribed by Regulation 1 shall be inserted in the certificate.

FORM OF CERTIFICATE OF NATURALISATION IN THE CASE OF A
WOMAN MARRIED TO A SUBJECT OF A STATE AT WAR WITH HIS
MAJESTY

5. (1) A certificate of naturalisation granted in British India under section 10 read with sub-section (1) of section 8 of the principal Act to a woman, who was at birth a British subject and is the wife of a subject of a State at war with His Majesty, shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Certificate of Naturalisation granted to a Woman who was at birth a British subject and is married to a subject of a State at War with His Majesty

Whereas *A.B.*, who was at birth a British subject and is the wife of an alien who is a subject of a State at war with His Majesty, has made a declaration that she desires to resume British nationality and has applied for a certificate of naturalisation alleging with respect to herself the particulars set out below:—

And whereas the Governor-General of India in Council is satisfied that it is desirable that the said *A.B.* be permitted to resume British nationality and that such a certificate may properly be granted:

Now therefore, in pursuance of the powers conferred on the Governor-General of India in Council by the said Act, the Governor-General of India in Council hereby grants to the said *A.B.* this certificate of naturalisation, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf she shall, subject to the provisions of the said Act, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this
day of

(Signed) *E.F.*

(*Secretary to the Government of India.*)

Particulars relating to Applicant

Full Name
Address
Trade or occupation
Place and date of birth
Nationality
Name of husband
Names and nationality of parents

(2) Where the names of children are to be included, paragraphs corresponding to the second and fourth paragraphs of Form (B) prescribed by Regulation 1 shall be inserted in the certificate.

6. (1) A certificate of naturalisation granted in British India under section 2 read with sub-section (1) of section 8 of the principal Act, and in accordance with section 4 of the British Nationality and Status of Aliens Act, 1943,¹ (hereinafter referred to as 'the Act of 1943') shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACTS, 1914 TO 1943

Certificate of Naturalisation

Whereas during the period specified in section 4 of the British Nationality and Status of Aliens Act, 1943, *A.B.* has applied for a certificate of naturalisation, alleging with respect to himself (herself) the particulars set out below:—

And whereas it appears to the Governor-General of India in Council that the said *A.B.* is, or has during that period been, a French national:

And whereas the Governor-General of India in Council is satisfied that the said *A.B.* is (or has during that period been) a member of His Majesty's Forces, and is a proper person to be naturalised as a British subject:

Now therefore, in pursuance of the powers conferred on the Governor-General of India in Council by the said Acts, the Governor-General of India in Council hereby grants to the said *A.B.* this certificate of naturalisation, and declares that upon taking the oath of allegiance within the time and in the manner required by the regulations made in that behalf he (she) shall, subject to the provisions of the said Acts, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, duties and liabilities, to which a natural-born British subject is entitled or subject, and have to all intents and purposes the status of a natural-born British subject.

In witness whereof I have hereto subscribed my name this
 day of

(Signed) *E.F.*

(*Secretary to the Government of India.*)

Particulars relating to Applicant

Full name
 Rank
 Unit
 Service
 Place and date of birth
 Single, married, etc.
 (if the applicant is no longer a member of His Majesty's Forces)
 Address
 Trade or occupation

(2) Where the names of children are to be included, paragraphs corresponding to the second and the fourth paragraphs of Form (B) prescribed by Regulation 1 shall be inserted in the certificate.

FORM OF DECLARATION OF ALIENAGE

7. A declaration of alienage made in British India shall be in one of the following forms according to the circumstances:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Declaration of Alienage

I, *A.B.*, of

being the son (daughter) of *C.B.* to whom a certificate of naturalisation has been granted, in which certificate of naturalisation, in accordance with sub-section (1) of section 5 of the above-mentioned Act, my name was included, and having attained my majority within one year before the present date,

or, being a person who, by reason of my having been born within His Majesty's dominions and allegiance (on board a British ship), am a natural-born British subject, but who at my birth (during my minority) became under the law of a subject also of that State, and am still such a subject, and of full age and not under disability,

or, being a natural-born British subject, who was born out of His Majesty's dominions and being of full age and not under disability,

or, having been originally a subject or citizen of
being a State with which His Majesty has by Order in Council declared that he has entered into such a convention as is mentioned in section 15 of the above-mentioned Act, and having been naturalised as a British subject,

or, being the wife of *C.B.*, a person whose certificate of naturalisation has been revoked within six months before the present date (and being also the mother of the following minor children of the marriage of the said *C.B.*, and myself, namely,)

do hereby renounce my nationality as a British subject.

(Signed) *A.B.*

Made and subscribed this

day of before me.

(Signed) *X.Y.*

(*Official title*)

FORM OF DECLARATION OF RETENTION OF BRITISH NATIONALITY

8. (1) A declaration of retention of British nationality made in British India under sub-section (4) of section 10 of the principal Act, by the wife of a man ceasing during the continuance of his marriage to be a British subject, shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Declaration of Retention of British Nationality

I, *A.B.*, of _____, being the wife of _____, who, during the continuance of my marriage to him, namely, on or about the _____ day of _____ nineteen hundred and _____, has ceased to be a British subject, hereby declare that I desire to retain British nationality.

(Signed) *A.B.*

Made and subscribed this _____ day of _____ before me.

(Signed) *X.Y.*

(Official Title)

(2) A declaration of retention of British nationality made in British India under section 6 of the Act of 1943, by a person whose British nationality depends upon the fact that his birth was registered at a Consulate of His Majesty shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACTS, 1914 TO 1943

Declaration of Retention of British Nationality

I, *A.B.*, of _____, having acquired British nationality by reason of the facts that my father was a British subject at the time of my birth and that my birth was duly registered in accordance with the provisions of the above-mentioned Acts, for the purpose of asserting my British nationality hereby declare that I wish to retain British nationality.

(Signed) *A.B.*

Made and subscribed this _____ day of _____ before me.

(Signed) *X.Y.*

(Official Title)

FORM OF DECLARATION OF ACQUISITION OF BRITISH NATIONALITY

9. A declaration of acquisition of British nationality made in British India under sub-section 5 of section 10 of the principal Act, by the wife of a man to whom a certificate of naturalisation has been granted shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Declaration of Acquisition of British Nationality

I, *A.B.*, of _____, being the wife of *C.B.*, to whom a certificate of naturalisation (No. _____) was granted on or about _____ hereby declare that I desire to acquire British nationality.

(Signed) *A.B.*

Made and subscribed this _____ day of _____ before me.

(Signed) *X.Y.*

(Official Title)

FORM OF DECLARATION OF RESUMPTION OF BRITISH NATIONALITY

10. A declaration of resumption of British nationality made in British India under section 12 of the principal Act, by a person who has ceased to be a British subject upon his parent ceasing during the minority of that person to be a British subject, shall be in the following form:—

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

Declaration of Resumption of British Nationality

I, *A.B.*, of _____, having ceased to be a British subject during my minority, by reason of my father (mother) having ceased to be a British subject, and having attained my majority within one year before the present date, hereby declare that I wish to resume British nationality.

Made and subscribed this _____ day of _____ before me.
(Signed) *A.B.*
(Signed) *X.Y.*
(Official Title)

TIME WITHIN WHICH OATH OF ALLEGIANCE TO BE TAKEN

11. The oath of allegiance shall be taken within one calendar month after the date of the certificate of naturalisation to which it relates, or within such extended time as the Governor-General of India in Council may direct, and if the oath is not so taken the certificate shall not take effect.

PERSONS BEFORE WHOM THE OATH OF ALLEGIANCE MAY BE TAKEN

12. (1) The following persons may administer the oath of allegiance:—
In British India—

Any officer not below the rank of a district magistrate or a magistrate of the first class.

In England or Northern Ireland—

Any justice of the peace or any commissioner authorised to administer oaths in the Supreme Court.

In Scotland—

Any sheriff, sheriff-substitute, or justice of the peace.

In a British Possession (other than British India)—

Any judge of any court of civil or criminal jurisdiction, any justice of the peace, or any officer for the time being authorised by law, in the place in which deponent is, to administer an oath for any judicial or other legal purpose.

In any British Protectorate or British protected State or territory in respect of which a Mandate on behalf of the League of Nations has been accepted by His Majesty—

Any officer for the time being authorised by law in that territory to administer an oath for any judicial or other legal purpose.

Elsewhere—

Any consular officer of His Majesty.

(2) Where a certificate of naturalisation is granted to a person who is serving in His Majesty's naval, military or air forces, the oath of allegiance may be administered by any officer holding a commission in any of those forces.

OATH OF ALLEGIANCE

13. (1) The oath of allegiance shall be subscribed as well as taken, and the form in which the oath of allegiance is subscribed and attested shall be as follows:—

I, *A.B.*, swear by Almighty God that I will be faithful and bear true allegiance to His Majesty, King George the Sixth, His Heirs and Successors, according to law.

Sworn and subscribed this	(Signed) <i>A.B.</i> day of	before me.
	(Signed) <i>X.Y.</i> (Official Title)	

(2) The oath of allegiance sworn, subscribed and attested as herein directed shall in every case be endorsed on the certificate of naturalisation to which it relates.

REGISTRATION OF CERTIFICATES OF NATURALISATION AND OATHS OF ALLEGIANCE

14. Every certificate of naturalisation granted in British India and every oath of allegiance relating to any such certificate shall be registered both in London at the Home Office and in British India at such place as the Governor-General of India in Council may direct.

PROOF OF OATH OF ALLEGIANCE

15. The oath of allegiance may be proved in any legal proceedings by the production of the original certificate or any copy thereof certified to be a true copy by the Secretary to the Government of India or by any person authorised by the Governor-General of India in Council in that behalf.

PERSONS BEFORE WHOM DECLARATIONS MAY BE MADE

16. The persons before whom declarations of alienage and declarations of retention, acquisition or resumption of British nationality may be made, shall be the same as the persons by whom the oath of allegiance may be administered in accordance with paragraph (1) of Regulation 12.

REGISTRATION OF DECLARATIONS

17. Every declaration of alienage and declaration of retention, acquisition or resumption of British nationality made in British India shall be registered both in London at the Home Office, and in British India at such place as the Governor-General of India in Council may direct.

FEES

18. (1) Subject to the provisions of these Regulations, the following fees may be taken and shall be applied in the manner hereinafter shown:—

TABLE OF FEES

<i>The Matter in which the Fee may be taken</i>	<i>The Amount of the Fee</i>	<i>To whom Payment of Fee to be made</i>
	Rs.	
The grant of a certificate of naturalisation to a woman who was a British subject previously to her marriage to an alien and the registration of the certificate and oath of allegiance in respect thereof.	3	To the Government of India or such officer as may be authorised by them in this behalf.
The grant of a certificate of naturalisation in other cases, and the registration of the certificate and the oath of allegiance in respect thereof.	100	The same.
Taking a declaration of alienage or of retention, acquisition or resumption of British nationality.	2	The same.
Administering the oath of allegiance.	2	The same.
The registration of a declaration of alienage or of retention, acquisition or resumption of British nationality.	8	The same.
Certified copy of any declaration or certificate with or without oath.	8	The same.

Of the fee of Rs. 100 payable in respect of the grant of a certificate of naturalisation Rs. 15 shall be payable on the submission of the application for a certificate, and shall in no circumstances be returned; the remaining Rs. 85 shall be payable on the receipt of the decision to grant a certificate.

(2) No fee shall be payable upon the grant of a certificate of naturalisation in accordance with section 4 of the Act of 1943 and no fee shall be payable upon the administering of the oath of allegiance in accordance with paragraph (2) of Regulation 12 by an officer holding a commission in His Majesty's naval, military or air forces.

REVOCATION

19. The British Nationality and Status of Aliens (India) Regulations made on the 8th December, 1936,¹ and the 11th June, 1940,² are hereby revoked, but without prejudice to anything done thereunder.

SHORT TITLE

20. These Regulations may be cited as the British Nationality and Status of Aliens (India) Regulations, 1945.

L. S. Amery,

One of His Majesty's Principal Secretaries of State.

Whitehall.

10th July, 1945.

¹ S.R. & O. 1936 (No. 1418) I, p. 80.

² S.R. & O. 1940 (No. 956) I, p. 86.

APPENDIX 8

LIST OF INDIAN NATIVE STATES

Agar	Bagasra Vala Samat	Bhalgam Bhaldoi
Aiyavej	Katra	Bhalgamda
Ajaigarh	Baghal	Bhalusna
Akadia	Baghat	Bhandaria
Akala	Bahawalpur	Bharatpur
Akalkot	Bajana	Bharejda
Alampur (Diwani)	Balasinor	Bhathan
Alidhra	Balsan	Bhavnagar
Alipura	Bamanbor	Bhawal
Alirajpur	Bamra	Bhayavadar
Alwa	Banganapalle	Bhilodia
Alwar	Banka Pahari	Bhimora
Amala	Bansda	Bhoika (Thana)
Amb	Banswara	Bhoika
Ambaliara	Bantwa (Chhota Majmu)	Bhojavadar
Amrapur (Dhrafa Thana)	Bantwa Majmu	Bhopal
Amrapur (Pandu Mewas)	Baoni	Bhor
Anandpur (Chotila Thana)	Baramba	Bhutan
Anandpur, Khacher Desa Bhoj	Baraundha (Pathar Kachhar)	Bihat
Anandpur Khacher Dada and Nana Jiwa	Baria	Bihora
Anghad	Baroda	Bija
Anida	Barwala	Bijawar
Ankevalia	Barwani	Bijna
Athgarh	Bashahr	Bikaner
Athmallik	Bastar	Bilaspur (Kahlur)
Aundh	Baudh	Bilbari
Avchar	Bavda	Bildi
	Bawishi Thana	Bilkha
	Benares	Bodanones
	Beri	Bolundra
	Bhadarwa	Bonai
	Bhadli	Bundi
	Bhadvana	Cambay
Babra (Babra Thana)	Bhadwa	Chalala
Bagasra (Majmu)	Bhaisaunda	Chamardi (Vachhani)
Bagasra Vala Goded Matra	Bhajji	Chamba
	Bhalala	Champraj Jasa Taluka
		Chanchana

Chandup	Deodar Thana	Gadhula
Changbhakar	Derbhavti	Gadvi
Charkha	Derdi-Janbai	Gandhol
Charkhari	Derol	Gangpur
Cherra	Devalia	Garmali (Moti)
Chhaliar	Dewas (Junior	Garmali (Nani)
Chhatarpur	Branch)	Garrauli
Chhota Udepur	Dewas (Senior	Gaurihar
Chhuikhadan	Branch)	Gavridad
Chinchli Gaded	Dhamasia Alias Van-	Gedi
Chiroda	mala	Ghazipur
Chitral	Dhami	Ghodasar
Chitravav (Devani)	Dhar	Gigasaran
Chobari	Dharampur	Gondal
Chok (Chok-Datha	Dhari	Gotardi
Thana)	Dhenkanal	Gothda
Chorangla	Dhola (Devani)	Gundiala
Chotila	Dholarva	Gwalior
Chotila Thana	Dholpur	
Chuda	Dhrafa (Dhrafa	Hadala
Chudesar	Thana)	Hadol
Cochin	Dhrangadhra	Halaria
Cooch Behar	Dhrol	Hapa
Cutch	Dhudhrej	Harsurpur
	Dhurwai	Hasht-bhaya Jagirs
Dabha	Dir	Himmat Bahadur
Dadhalia	Dodka	Hindol
Dahida	Dudhpur	Hunza
Dangavadar	Dujana	Hyderabad
Dangs	Dungarpur	
Danta		Iavej
Darkoti	Eastern Kathiawar	Ichalkaranji
Darod	Agency	Idar
Dasada	Eastern States Agency	Ijpura
Daspalla		Ilol
Datha	Faridkot	Indore
Datia		Itaria
Dedan (Kotila Shri	Gabat	Itwad
Unad Bhan)	Gad-Boriad	
Dedan (Majmu)	Gadhali (Songadh	Jafrabad (Janjira)
Dedarda	Thana)	Jaipur
Dedhrota	Gadhwada Thana	Jaisalmer
Deloli	Gadhia	Jakhan
Deodar	Gadhka	Jalia (Amraji)

Jalia-Devani	Kaner	Khijadia Dosaji
Jalia-Kayaji	Kanjarda	(Songadh Thana)
Jalia-Manaji	Kankasiali	Khijadia-Nayani (La-
Jambughoda (Naru-	Kanker	khapadar Thana)
kot)	Kankrej Thana	Khilchipur
Jamkhandi	Kanoda	Khirasra
Jammu and Kashmir	Kanpur Ishwaria	Khyrim
Janbai-ni-Derdi	Kantharia	Kirli
Janjira	Kapshi	Kishengarh
Jaora	Kapurthala	Kolhapur
Jasdan	Karauli	Korea
Jashpur	Kariana	Kotah
Jaso	Karmad	Kotda-Nayani
Jath	Karol	Kotda Pitha
Jawhar	Kasalpura	Kotda Sangani
Jesar	Kashmir—see Jammu	Kotharia
Jetpur	and Kashmir	Kothi
Jhabua	Kasla Paginu Muwada	Kuba
Jhalawar	Kathiwara	Kumharsain
Jhamar	Kathrota	Kunihar
Jhamka (Velani)	Katodia (Vachhani)	Kurundwad Senior
Jhampodad	Katosan	Kurundwad Junior
Jhari Gharkhadi	Katosan (Thana)	Kurwai
Jhinjuwada	Kawardha	Kushalgarh
Jigni	Keonjhar	Kuthar
Jind	Keonthal (Junga)	
Jiral Kamsoli	Kesaria	Lakhapadar (Lakha-
Jobat	Khadal	padar Thana)
Jodhpur (Marwar)	Khairagarh	Lakhtar (Lakhtar
Jubbal	Khairpur	Thana)
Jumkha	Khambhala	Laliad
Junagadh	Khambhlav	Langrin
Junapadar	Khandia	Las Bela
	Khandpara	Lathi
Kadana	Khaniadhana	Lawa
Kadoli	Kharan	Likhi
Kagal (Senior)	Khari	Limbda
Kagal (Junior)	Kharsawan	Limbdi
Kalahandi (Karond)	Khasi Hills	Lodhika Majmu
Kalat	Khedawada	Lodhika Mulwaji Es-
Kalsia	Kherali	tate
Kamadhia	Khijadia	Lodhika Thana
Kamalpur	Khijadia (Babra	Lodhika Vijaysinhji
Kamta Rajaula	Thana)	Estate

Loharu	Muhammadgarh	Palasvihir
Lugasi	Muli	Paldeo (Nayagaon)
Lunawada	Mulila-Deri	Paliad (Paliad Thana)
	Munjpur	Palitana
Magodi	Myllem	Pal Lahara
Maguna	Mysore	Pan Talavdi
Maharam		Panchavda (Vach-
Mahlog	Nabha	hani)
Mahuva (Nana)	Nadala	Pandu (Pandu Mewas)
Maihar	Nagir	Panna
Makrai	Nagod (Unchehra)	Partabgarh
Malaisohmat	Nahara	Pataudi
Maler Kotla	Naigawan Rebai	Patdi
Malia	Nalagarh (Hindur)	Pathari (Bhopal)
Malpur	Nalia	Patiala
Manavadar (Bantwa)	Nandgaon	Patna
Manavav	Nangam	Pethapur
Mandi	Narsingarh	Phaltan
Mandwa	Narsinghpur	Phulra
Mangal	Narukot (Jambu-	Pimpladevi
Manipur	ghoda)	Pimpri
Manpur	Naswadi	Pipalia
Mansa	Natwarnagar	Piploda
Mariaw	Nawanagar	Poicha
Mathwar	Nayagarh	Poonch
Matra-Timba	Nilgiri	Porbandar
Mawiang	Nilvala	Prempur
Mawsynram	Nobosophoh	Pudukkottai
Mayapadar	Noghanvadar	Punadra
Mayurbhanj	Nongkhlaw	
Mehmadpura	Nongspung	Radhanpur
Mengani	Nongstoin	Raigarh
Mevasa		Raika
Mevli	Orchha (Tikamgarh)	Rairakhhol
Miraj Senior		Rai Sankli
Miraj Junior	Pachhegam (Devani)	Rajgarh (Bhopal)
Mohanpur	Songadh Thana	Rajkot
Mohur	Pah	Rajpara (Chok Thana)
Moka Paginu Muwada	Pahra (Chaubepur)	Rajpara (Halar)
Monvel	Pal	Rajpipla
Morchopna	Palaj	Rajpur (Gujarat State)
Morvi	Palali	Rajpur (Western In-
Mota Kothasna	Palanpur	dia)
Mudhol	Palasni	Ramanka

Ramanka Devani	Sanjeli	Tajपुरी
Ramas	Sankheda Mewas	Talcher
Rambrai	Sanosra	Talsana
Ramdurg	Sant	Taraon (Pathraundi)
Ramparda	Santalpur (Thana)	Tavi
Rampur	Sarangarh	Tehri-Garhwal
Rampura (Gujarat States)	Sardargadh	Tejpura
Rampura (Western India States)	Sardarpur	Terwada
	Sarila	Thana Devli
Ranasan	Sar Lashkar Bahadur	Thara
Randhia	Sata-no-ness	Tharad
Ranigam	Sathamba	Tharoch
Ranipura	Satlasna	Thumbala
Ranparda (Chok Thana)	Satudad Vavdi	Tigiria
	Savanur	Timba
Ranpur	Sawantwadi	Toda-Vachhani
Ratanmal	Sayla	Tonk (Rajputana)
Ratanpur-Dhamanka	Sebdi-vadar	Torgal
Ratlam	Sejakpur	Tori-Fatehpur
Rengan	Seraikela	Travancore
Rewa	Shahpur	Tripura
Rohisala	Shahpura	
Rozwa	Shanor	Uchad
Rupal	Shivbara	Udaipur (Eastern States Agency)
	Sihora	Udaipur (Mewar)
	Sikkim	Umeta
	Silana	Umri
Sabar Kantha (Agency)	Sindhiapura	Untdi
Sachin	Sirmur (Nahan)	
Sahuka	Sirohi	
Sailana	Sisang-Chandli	Vadal Bhandaria
Sakti	Sitamau	Vadali
Samadhiala (Chak Thana)	Sohawal	Vadhyawan
Samadhiala	Sonepur	Vadia (Wadia)
Samadhiala Chhabha-	Songadh Thana	Vadod (Devani)
dia	Songadh (Vachhani)	Vadod (Jhalawad)
Samla	Sudamada Dhandhal-	Vaghavadi (Vaghvori)
Samthar	pur	Vajiria
Sanala	Sudasna	Vakhtapur
Sandur	Suigam	Vaktapur
Sangli	Suket	Vala
Sangri	Surgana	Valasna
	Surguja	Vana
	Swat	Vanala

Vangadhra	Vijayanagar	Wadi Estate
Vanod	Virampura	Wadia (Vadia)
Varahi (Thana)	Virpur	Wankaner
Varnolmal	Virsoda	Wao
Varnol Moti	Virva	Warahi, M. S. Jora-
Varnol Nani	Vishalgad	varkhanji
Varsoda	Vithalgadh	Warahi, M. S. Murid-
Vasan Sevada	Vivra	khanji
Vasan Virpur	Vora	Wasna
Vasavad Majmu		Western Kathiawar
Vasurna	Wadagam	Agency
Vatrak Kantha Thana	Wadhwan (Vadwan)	W. S. Himatsinhji,
Vavdi-Dharvala	Wadhwan Bhoika	Deodar
Vavdi Vachhani	Thana	W. S. Khanji, Deodar
Vejanoness	Wadhwan C. S.	
Vekaria	Wadhwan District	
Vichhavad	Thana	Zainabad

APPENDIX 9

AGREEMENTS CONCERNING NATIONALITY SIGNED AT THE HAGUE CODIFICATION CONFERENCE, 1930

INTERNATIONAL CONVENTION ON CERTAIN QUESTIONS RELATING TO
THE CONFLICT OF NATIONALITY LAWS, THE HAGUE, APRIL 12, 1930

THE President of the German Reich; the Federal President of the Austrian Republic; His Majesty the King of the Belgians; His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, etc., etc.

Considering that it is of importance to settle by international agreement questions relating to the conflict of nationality laws;

Being convinced that it is in the general interest of the international community to secure that all its members should recognise that every person should have a nationality and should have one nationality only;

Recognising accordingly that the ideal towards which the efforts of humanity should be directed in this domain is the abolition of all cases both of statelessness and of double nationality;

Being of opinion that, under the economic and social conditions which at present exist in the various countries, it is not possible to reach immediately a uniform solution of all the above-mentioned problems;

Being desirous, nevertheless, as a first step toward this great achievement, of settling in a first attempt at progressive codification, those questions relating to the conflict of nationality laws on which it is possible at the present time to reach international agreement,

Have decided to conclude a convention.

CHAPTER I

GENERAL PRINCIPLES

ARTICLE 1

It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom and the principles of law generally recognised with regard to nationality.

ARTICLE 2

Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.

ARTICLE 3

Subject to the provisions of the present convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.

ARTICLE 4

A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.

ARTICLE 5

Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall, of the nationalities which any such person possesses, recognise exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.

ARTICLE 6

Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorisation of the State whose nationality he desires to surrender.

This authorisation may not be refused in the case of a person who has his habitual and principal residence abroad, if the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied.

CHAPTER II

EXPATRIATION PERMITS

ARTICLE 7

In so far as the law of a State provides for the issue of an expatriation permit, such a permit shall not entail the loss of the nationality of the State which issues it, unless the person to whom it is issued possesses another nationality or unless and until he acquires another nationality.

An expatriation permit shall lapse if the holder does not acquire a new nationality within the period fixed by the State which has issued the permit. This provision shall not apply in the case of an individual who, at the time when he receives the expatriation permit, already possesses a nationality other than that of the State by which the permit is issued to him.

The State whose nationality is acquired by a person to whom an expatriation permit has been issued shall notify such acquisition to the State which has issued the permit.

CHAPTER III

NATIONALITY OF MARRIED WOMEN

ARTICLE 8

If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband.

ARTICLE 9

If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality.

ARTICLE 10

Naturalisation of the husband during marriage shall not involve a change in the nationality of the wife except with her consent.

ARTICLE 11

The wife who, under the law of her country, lost her nationality on marriage, shall not recover it after the dissolution of the marriage except on her own application and in accordance with the law of that country. If she does recover it, she shall lose the nationality which she acquired by reason of the marriage.

CHAPTER IV

NATIONALITY OF CHILDREN

ARTICLE 12

Rules of law which confer nationality by reason of birth on the territory of a State shall not apply automatically to children born to persons enjoying diplomatic immunities in the country where the birth occurs.

The law of each State shall permit children of consuls *de carrière*, or of officials of foreign States charged with official missions by their Governments, to become divested, by repudiation or otherwise, of the nationality of the State in which they were born in any case in which on birth they acquired dual nationality, provided that they retain the nationality of their parents.

ARTICLE 13

Naturalisation of the parents shall confer on such of their children as, according to its law, are minors the nationality of the State by which the naturalisation is granted. In such case the law of that State may specify the conditions governing the acquisition of its nationality by the minor children as a result of the naturalisation of the parents.

In cases where minor children do not acquire the nationality of their parent as the result of the naturalisation of the latter, they shall retain their existing nationality.

ARTICLE 14

A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.

A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found.

ARTICLE 15

Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.

ARTICLE 16

If the law of the State whose nationality an illegitimate child possesses recognises that that nationality may be lost as a consequence of a change in the civil status of the child (legitimation, recognition), such loss shall be conditional on the acquisition by the child of the nationality of another State under the law of that State governing the effect of the change in civil status upon nationality.

CHAPTER V

ADOPTION

ARTICLE 17

If the law of a State recognises that its nationality may be lost as the result of adoption, this loss shall be conditional upon the acquisition by the person adopted of the nationality of the person by whom he is adopted, under the law of the State of which the latter is a national governing the effect of adoption upon nationality.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

ARTICLE 18

The high contracting parties agree to apply the principles and rules contained in the preceding articles in their relations with each other, as from the date of the entry into force of the present convention.

The inclusion of the above-mentioned principles and rules in the convention shall in no way be deemed to prejudice the question whether they do or do not already form part of international law.

It is understood that, in so far as any point is not covered by any of the provisions of the preceding article, the existing principles and rules of international law shall remain in force.

ARTICLE 19

Nothing in the present convention shall affect the provisions of any treaty, convention or agreement in force between any of the high contracting parties relating to nationality or matters connected therewith.

ARTICLE 20

Any high contracting party may, when signing or ratifying the present convention or acceding thereto, append an express reservation excluding any one or more of the provisions of articles 1 to 17 and 21.

The provisions thus excluded cannot be applied against the contracting party who has made the reservation nor relied on by that party against any other contracting party.

ARTICLE 21

If there should arise between the high contracting parties a dispute of any kind relating to the interpretation or application of the present convention, and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the parties providing for the settlement of international disputes.

In case there is no such agreement in force between the parties, the dispute shall be referred to arbitration or judicial settlement, in accordance with the constitutional procedure of each of the parties to the dispute. In the absence of agreement on the choice of another tribunal, the dispute shall be referred to the Permanent Court of International Justice, if all the parties to the dispute are parties to the Protocol of the 16th December, 1920, relating to the statute of that court, and if any of the parties to the dispute is not a party to the Protocol of the 16th December, 1920, the dispute shall be referred to an arbitral tribunal constituted in accordance with the Hague Convention of the 18th October, 1907, for the Pacific Settlement of International Disputes.

ARTICLE 22

The present convention shall remain open until the 31st December, 1930, for signature on behalf of any member of the League of Nations or of any non-member State invited to the First Codification Conference

or to which the Council of the League of Nations has communicated a copy of the convention for this purpose.

ARTICLE 23

The present convention is subject to ratification. Ratifications shall be deposited with the secretariat of the League of Nations.

The Secretary-General shall give notice of the deposit of each ratification to the members of the League of Nations and to the non-member States mentioned in article 22, indicating the date of its deposit.

ARTICLE 24

As from the 1st January, 1931, any member of the League of Nations and any non-member State mentioned in article 22 on whose behalf the convention has not been signed before that date may accede thereto.

Accession shall be effected by an instrument deposited with the secretariat of the League of Nations. The Secretary-General of the League of Nations shall give notice of each accession to the members of the League of Nations and to the non-member States mentioned in article 22, indicating the date of the deposit of the instrument.

ARTICLE 25

A *procès-verbal* shall be drawn up by the Secretary-General of the League of Nations as soon as ratifications or accessions on behalf of ten members of the League of Nations or non-member States have been deposited.

A certified copy of this *procès-verbal* shall be sent by the Secretary-General of the League of Nations to each member of the League of Nations and to each non-member State mentioned in article 22.

ARTICLE 26

The present convention shall enter into force on the ninetieth day after the date of the *procès-verbal* mentioned in article 25 as regards all members of the League of Nations or non-member States on whose behalf ratifications or accessions have been deposited on the date of the *procès-verbal*.

As regards any member of the League or non-member State on whose behalf a ratification or accession is subsequently deposited, the convention shall enter into force on the ninetieth day after the date of the deposit of a ratification or accession on its behalf.

ARTICLE 27

As from the 1st January, 1936, any member of the League of Nations or any non-member State in regard to which the present convention is then in force may address to the Secretary-General of the League of

Nations a request for the revision of any or all of the provisions of this convention. If such a request, after being communicated to the other members of the League and non-member States in regard to which the convention is then in force, is supported within one year by at least nine of them, the Council of the League of Nations shall decide, after consultation with the members of the League of Nations and the non-member States mentioned in article 22, whether a conference should be specially convoked for that purpose or whether such revision should be considered at the next conference for the codification of international law.

The high contracting parties agree that, if the present convention is revised, the revised convention may provide that upon its entry into force some or all of the provisions of the present convention shall be abrogated in respect of all of the parties to the present convention.

ARTICLE 28

The present convention may be denounced.

Denunciation shall be effected by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all members of the League of Nations and the non-member States mentioned in article 22.

Each denunciation shall take effect one year after the receipt by the Secretary-General of the notification, but only as regards the member of the League or non-member State on whose behalf it has been notified.

ARTICLE 29

1. Any high contracting party may, at the time of signature, ratification or accession, declare that, in accepting the present convention, he does not assume any obligations in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories; and the present convention shall not apply to any territories or to the parts of their population named in such declaration.

2. Any high contracting party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the convention shall apply to all or any of his territories or to the parts of their population which have been made the subject of a declaration under the preceding paragraph, and the convention shall apply to all the territories or the parts of their population named in such notice six months after its receipt by the Secretary-General of the League of Nations.

3. Any high contracting party may, at any time, declare that he desires that the present convention shall cease to apply to all or any of his colonies, protectorates, overseas territories or territories under

suzerainty or mandate, or in respect of certain parts of the population of the said territories, and the convention shall cease to apply to the territories or to the parts of their population named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. Any high contracting party may make the reservations provided for in article 20 in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of these territories, at the time of signature, ratification or accession to the convention or at the time of making a notification under the second paragraph of this article.

5. The Secretary-General of the League of Nations shall communicate to all the members of the League of Nations and non-member States mentioned in article 22 all declarations and notices received in virtue of this article.

ARTICLE 30

The present convention shall be registered by the Secretary-General of the League of Nations as soon as it has entered into force.

ARTICLE 31

The French and English texts of the present convention shall both be authoritative.

In faith whereof the Plenipotentiaries have signed the present Convention.

Done at The Hague on the twelfth day of April, one thousand nine hundred and thirty, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations and of which certified true copies shall be transmitted by the Secretary-General to all the Members of the League of Nations and all the non-Member States invited to the First Conference for the Codification of International Law.

INTERNATIONAL PROTOCOL RELATING TO MILITARY OBLIGATIONS IN CERTAIN CASES OF DOUBLE NATIONALITY, THE HAGUE, APRIL 12, 1930

THE undersigned plenipotentiaries, on behalf of their respective Governments,

With a view to determining in certain cases the position as regards their military obligations of persons possessing two or more nationalities,

Have agreed as follows:—

ARTICLE 1

A person possessing two or more nationalities who habitually resides in one of the countries whose nationality he possesses, and who is in fact

most closely connected with that country, shall be exempt from all military obligations in the other country or countries.

This exemption may involve the loss of the nationality of the other country or countries.

ARTICLE 2

Without prejudice to the provisions of article 1 of the present Protocol, if a person possesses the nationality of two or more States and, under the law of any one of such States, has the right, on attaining his majority, to renounce or decline the nationality of that State, he shall be exempt from military service in such State during his minority.

ARTICLE 3

A person who has lost the nationality of a State under the law of that State and has acquired another nationality, shall be exempt from military obligations in the State of which he has lost the nationality.

ARTICLE 4

The high contracting parties agree to apply the principles and rules contained in the preceding article in their relations with each other, as from the date of the entry into force of the present Protocol.

The inclusion of the above-mentioned principles and rules in the said article shall in no way be deemed to prejudice the question whether they do or do not already form part of international law.

It is understood that, in so far as any point is not covered by any of the provisions of the preceding articles, the existing principles and rules of international law shall remain in force.

ARTICLE 5

Nothing in the present Protocol shall affect the provisions of any treaty, convention or agreement in force between any of the high contracting parties relating to nationality or matters connected therewith.

ARTICLE 6

Any high contracting party may, when signing or ratifying the present Protocol or acceding thereto, append an express reservation excluding any one or more of the provisions of articles 1 to 3 and 7.

The provisions thus excluded cannot be applied against the high contracting party who has made the reservation nor relied on by that party against any other high contracting party.

ARTICLE 7

If there should arise between the high contracting parties a dispute of any kind relating to the interpretation or application of the present

Protocol and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the parties providing for the settlement of international disputes.

In case there is no such agreement in force between the parties, the dispute shall be referred to arbitration or judicial settlement, in accordance with the constitutional procedure of each of the parties to the dispute. In the absence of agreement on the choice of another tribunal, the dispute shall be referred to the Permanent Court of International Justice, if all the parties to the dispute are parties to the Protocol of the 16th December, 1920,¹ relating to the Statute of that Court, and if any of the parties to the dispute is not a party to the Protocol of the 16th December, 1920, the dispute shall be referred to an arbitral tribunal constituted in accordance with The Hague Convention of the 18th October, 1907, for the Pacific Settlement of International Conflicts.²

ARTICLE 8

The present Protocol shall remain open until the 31st December, 1930, for signature on behalf of any member of the League of Nations or of any non-member State invited to the First Codification Conference or to which the Council of the League of Nations has communicated a copy of the Protocol for this purpose.

ARTICLE 9

The present Protocol is subject to ratification. Ratifications shall be deposited with the Secretariat of the League of Nations.

The Secretary-General shall give notice of the deposit of each ratification to the members of the League of Nations and to the non-member States mentioned in article 8, indicating the date of its deposit.

ARTICLE 10

As from the 1st January, 1931, any member of the League of Nations and any non-member State mentioned in article 8 on whose behalf the Protocol has not been signed before that date may accede thereto.

Accession shall be effected by an instrument deposited with the Secretariat of the League of Nations. The Secretary-General of the League of Nations shall give notice of each accession to the members of the League of Nations and to the non-member States mentioned in article 8, indicating the date of the deposit of the instrument.

ARTICLE 11

A *procès-verbal* shall be drawn up by the Secretary-General of the League of Nations as soon as ratifications or accessions on behalf of ten

¹ See 'Treaty Series No. 23 (1923)', Cmd. 1981.

² See Parliamentary Paper 'Miscellaneous No. 6 (1908)', Cd. 4175.

members of the League of Nations or non-member States have been deposited.

A certified copy of this *procès-verbal* shall be sent by the Secretary-General to each member of the League of Nations and to each non-member State mentioned in article 8.

ARTICLE 12

The present Protocol shall enter into force on the 90th day after the date of the *procès-verbal* mentioned in article 11 as regards all members of the League of Nations or non-member States on whose behalf ratifications or accessions have been deposited on the date of the *procès-verbal*.

As regards any member of the League or non-member State on whose behalf a ratification or accession is subsequently deposited, the Protocol shall enter into force on the ninetieth day after the date of the deposit of a ratification or accession on its behalf.

ARTICLE 13

As from the 1st January, 1936, any member of the League of Nations or any non-member State in regard to which the present Protocol is then in force, may address to the Secretary-General of the League of Nations a request for the revision of any or all of the provisions of this Protocol. If such a request, after being communicated to the other members of the League and non-member States in regard to which the Protocol is then in force, is supported within one year by at least nine of them, the Council of the League of Nations shall decide, after consultation with the members of the League of Nations and the non-member States mentioned in article 8, whether a conference should be specially convoked for that purpose or whether such revision should be considered at the next conference for the codification of international law.

The high contracting parties agree that, if the present Protocol is revised, the new Agreement may provide that upon its entry into force some or all of the provisions of the present Protocol shall be abrogated in respect of all of the Parties to the present Protocol.

ARTICLE 14

The present Protocol may be denounced.

Denunciation shall be effected by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all members of the League of Nations and the non-member States mentioned in article 8.

Each denunciation shall take effect one year after the receipt by the Secretary-General of the notification, but only as regards the member of the League or non-member State on whose behalf it has been notified.

ARTICLE 15

1. Any high contracting party may, at the time of signature, ratification or accession, declare that, in accepting the present Protocol, he does not assume any obligations in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories; and the present Protocol shall not apply to any territories or to the parts of their population named in such declaration.

2. Any high contracting party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the Protocol shall apply to all or any of his territories or to the parts of their population which have been made the subject of a declaration under the preceding paragraph, and the Protocol shall apply to all the territories or the parts of their population named in such notice six months after its receipt by the Secretary-General of the League of Nations.

3. Any high contracting party may, at any time, declare that he desires that the present Protocol shall cease to apply to all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories, and the Protocol shall cease to apply to the territories or to the parts of their population named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. Any high contracting party may make the reservations provided for in article 6 in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of these territories, at the time of signature, ratification or accession to the Protocol or at the time of making a notification under the second paragraph of this article.

5. The Secretary-General of the League of Nations shall communicate to all the members of the League of Nations and the non-member States mentioned in article 8 all declarations and notices received in virtue of this article.

ARTICLE 16

The present Protocol shall be registered by the Secretary-General of the League of Nations as soon as it has entered into force.

ARTICLE 17

The French and English texts of the present Protocol shall both be authoritative.

In faith whereof the Plenipotentiaries have signed the present Protocol.

Done at The Hague on the twelfth day of April, one thousand nine hundred and thirty, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations and of which certified true copies shall be transmitted by the Secretary-General to all the members of the League of Nations and all the non-member States invited to the First Conference for the Codification of International Law.

PROTOCOL RELATING TO A CERTAIN CASE OF STATELESSNESS,
THE HAGUE, APRIL 12, 1930

THE undersigned Plenipotentiaries, on behalf of their respective Governments,

With a view to preventing statelessness arising in certain circumstances,

Have agreed as follows:—

ARTICLE 1

In a State whose nationality is not conferred by the mere fact of birth in its territory, a person born in its territory of a mother possessing the nationality of that State and of a father without nationality or of unknown nationality shall have the nationality of the said State.

ARTICLE 2

The high contracting parties agree to apply the principles and rules contained in the preceding article in their relations with each other, as from the date of the entry into force of the present Protocol.

The inclusion of the above-mentioned principles and rules in the said article shall in no way be deemed to prejudice the question whether they do or do not already form part of international law.

It is understood that, in so far as any point is not covered by any of the provisions of the preceding article, the existing principles and rules of international law shall remain in force.

ARTICLE 3

Nothing in the present Protocol shall affect the provisions of any treaty, convention or agreement in force between any of the high contracting parties relating to nationality or matters connected therewith.

ARTICLE 4

Any high contracting party may, when signing or ratifying the present Protocol or acceding thereto, append an express reservation excluding any one or more of the provisions of articles 1 and 5.

The provisions thus excluded cannot be applied against the high contracting party who has made the reservation, nor relied on by that party against any other high contracting party.

ARTICLE 5

If there should arise between the high contracting parties a dispute of any kind relating to the interpretation or application of the present Protocol, and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the parties providing for the settlement of international disputes.

In case there is no such agreement in force between the parties, the dispute shall be referred to arbitration or judicial settlement, in accordance with the constitutional procedure of each of the parties to the dispute. In the absence of agreement on the choice of another tribunal, the dispute shall be referred to the Permanent Court of International Justice, if all the parties to the dispute are parties to the Protocol of the 16th December, 1920,¹ relating to the Statute of that Court, and if any of the parties to the dispute is not a party to the Protocol of the 16th December, 1920, the dispute shall be referred to an arbitral tribunal constituted in accordance with The Hague Convention of the 18th October, 1907, for the Pacific Settlement of International Conflicts.²

ARTICLE 6

The present Protocol shall remain open until the 31st December, 1930, for signature on behalf of any member of the League of Nations or of any non-member State invited to the First Codification Conference or to which the Council of the League of Nations has communicated a copy of the Protocol for this purpose.

ARTICLE 7

The present Protocol is subject to ratification. Ratifications shall be deposited with the Secretariat of the League of Nations.

The Secretary-General shall give notice of the deposit of each ratification to the Members of the League of Nations and to the non-member States mentioned in article 6, indicating the date of its deposit.

ARTICLE 8

As from the 1st January, 1931, any member of the League of Nations and any non-member State mentioned in article 6 on whose behalf the Protocol has not been signed before that date may accede thereto.

Accession shall be effected by an instrument deposited with the Secretariat of the League of Nations. The Secretary-General of the League of Nations shall give notice of each accession to the members of the League of Nations and to the non-member States mentioned in article 6, indicating the date of the deposit of the instrument.

¹ See 'Treaty Series No. 23 (1923),' Cmd. 1981.

² See Parliamentary Paper 'Miscellaneous No. 6 (1908)', Cd. 4176.

ARTICLE 9

A *procès-verbal* shall be drawn up by the Secretary-General of the League of Nations as soon as ratifications or accessions on behalf of ten members of the League of Nations or non-member States have been deposited.

A certified copy of this *procès-verbal* shall be sent by the Secretary-General to each member of the League of Nations and to each non-member State mentioned in article 6.

ARTICLE 10

The present Protocol shall enter into force on the 90th day after the date of the *procès-verbal* mentioned in article 9 as regards all members of the League of Nations or non-member States on whose behalf ratifications or accessions have been deposited on the date of the *procès-verbal*.

As regards any member of the League or non-member State on whose behalf a ratification or accession is subsequently deposited, the Protocol shall enter into force on the ninetieth day after the date of the deposit of a ratification or accession on its behalf.

ARTICLE 11

As from the 1st January, 1936, any member of the League of Nations or any non-member State in regard to which the present Protocol is then in force, may address to the Secretary-General of the League of Nations a request for the revision of any or all of the provisions of this Protocol. If such a request, after being communicated to the other members of the League and non-member States in regard to which the Protocol is then in force, is supported within one year by at least nine of them, the Council of the League of Nations shall decide, after consultation with the members of the League of Nations and the non-member States mentioned in article 6, whether a conference should be specially convoked for that purpose, or whether such revision should be considered at the next conference for the codification of international law.

The high contracting parties agree that, if the present Protocol is revised, the new agreement may provide that upon its entry into force some or all of the provisions of the present Protocol shall be abrogated in respect of all of the parties to the present Protocol.

ARTICLE 12

The present Protocol may be denounced.

Denunciation shall be effected by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all members of the League of Nations and the non-member States mentioned in article 6.

Each denunciation shall take effect one year after the receipt by the Secretary-General of the notification, but only as regards the member of the League or non-member State on whose behalf it has been notified.

ARTICLE 13

1. Any high contracting party may, at the time of signature, ratification or accession, declare that, in accepting the present Protocol, he does not assume any obligations in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories; and the present Protocol shall not apply to any territories or to the parts of their population named in such declaration.

2. Any high contracting party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the Protocol shall apply to all or any of his territories or to the parts of their population which have been made the subject of a declaration under the preceding paragraph, and the Protocol shall apply to all the territories or the parts of their population named in such notice six months after its receipt by the Secretary-General of the League of Nations.

3. Any high contracting party may, at any time, declare that he desires that the present Protocol shall cease to apply to all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories, and the Protocol shall cease to apply to the territories or to the parts of their population named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. Any high contracting party may make the reservations provided for in article 4 in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of these territories, at the time of signature, ratification or accession to the Protocol, or at the time of making a notification under the second paragraph of this article.

5. The Secretary-General of the League of Nations shall communicate to all the members of the League of Nations and the non-member States mentioned in article 6 all declarations and notices received in virtue of this article.

ARTICLE 14

The present Protocol shall be registered by the Secretary-General of the League of Nations as soon as it has entered into force.

ARTICLE 15

The French and English texts of the present Protocol shall both be authoritative.

In faith whereof the Plenipotentiaries have signed the present Protocol.

Done at The Hague on the twelfth day of April, one thousand nine hundred and thirty, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations, and of which certified true copies shall be transmitted by the Secretary-General to all the Members of the League of Nations and all the non-Member States invited to the First Conference for the Codification of International Law.

INTERNATIONAL PROTOCOL CONCERNING STATELESSNESS, THE HAGUE, APRIL 12, 1930

THE undersigned Plenipotentiaries, on behalf of their respective Governments,

With a view to determining certain relations of stateless persons to the State whose nationality they last possessed,

Have agreed as follows:—

ARTICLE 1

If a person, after entering a foreign country, loses his nationality without acquiring another nationality, the State whose nationality he last possessed is bound to admit him, at the request of the State in whose territory he is:

- (i) if he is permanently indigent either as a result of an incurable disease or for any other reason; or
- (ii) if he has been sentenced, in the State where he is, to not less than one month's imprisonment and has either served his sentence or obtained total or partial remission thereof.

In the first case the State whose nationality such person last possessed may refuse to receive him, if it undertakes to meet the cost of relief in the country where he is as from the thirtieth day from the date on which the request was made. In the second case the cost of sending him back shall be borne by the country making the request.

ARTICLE 2

The high contracting parties agree to apply the principles and rules contained in the preceding article in their relations with each other, as from the date of the entry into force of the present Protocol.

The inclusion of the above-mentioned principles and rules in the said article shall in no way be deemed to prejudice the question whether they do or do not already form part of international law.

It is understood that, in so far as any point is not covered by any of the provisions of the preceding article, the existing principles and rules of international law shall remain in force.

ARTICLE 3

Nothing in the present Protocol shall affect the provisions of any treaty, convention or agreement in force between any of the high contracting parties relating to nationality or matters connected therewith.

ARTICLE 4

Any high contracting party may, when signing or ratifying the present Protocol or acceding thereto, append an express reservation excluding any one or more of the provisions of articles 1 and 5.

The provisions thus excluded cannot be applied against the high contracting party who has made the reservation nor relied on by that party against any other high contracting party.

ARTICLE 5

If there should arise between the high contracting parties a dispute of any kind relating to the interpretation or application of the present Protocol and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the parties providing for the settlement of international disputes.

In case there is no such agreement in force between the parties, the dispute shall be referred to arbitration or judicial settlement, in accordance with the constitutional procedure of each of the parties to the dispute. In the absence of agreement on the choice of another tribunal, the dispute shall be referred to the Permanent Court of International Justice, if all the parties to the dispute are parties to the Protocol of the 16th December, 1920,¹ relating to the Statute of that Court, and if any of the parties to the dispute is not a party to the Protocol of the 16th December, 1920, the dispute shall be referred to an arbitral tribunal constituted in accordance with The Hague Convention of the 18th October, 1907, for the Pacific Settlement of International Conflicts.²

ARTICLE 6

The present Protocol shall remain open until the 31st December, 1930, for signature on behalf of any member of the League of Nations or of any non-member State invited to the First Codification Conference or to which the Council of the League of Nations has communicated a copy of the Protocol for this purpose.

ARTICLE 7

The present Protocol is subject to ratification. Ratifications shall be deposited with the Secretariat of the League of Nations.

¹ See 'Treaty Series No. 23 (1923)', Cmd. 1981.

² See Parliamentary Paper 'Miscellaneous No. 6 (1908)', Cd. 4175.

The Secretary-General shall give notice of the deposit of each ratification to the members of the League of Nations and to the non-member States mentioned in article 6, indicating the date of its deposit.

ARTICLE 8

As from the 1st January, 1931, any member of the League of Nations and any non-member State mentioned in article 6 on whose behalf the Protocol has not been signed before that date, may accede thereto.

Accession shall be effected by an instrument deposited with the Secretariat of the League of Nations. The Secretary-General of the League of Nations shall give notice of each accession to the members of the League of Nations and to the non-member States mentioned in article 6, indicating the date of the deposit of the instrument.

ARTICLE 9

A *procès-verbal* shall be drawn up by the Secretary-General of the League of Nations as soon as ratifications or accessions on behalf of ten members of the League of Nations or non-member States have been deposited.

A certified copy of this *procès-verbal* shall be sent by the Secretary-General to each member of the League of Nations and to each non-member State mentioned in article 6.

ARTICLE 10

The present Protocol shall enter into force on the ninetieth day after the date of the *procès-verbal* mentioned in article 9 as regards all members of the League of Nations or non-member States on whose behalf ratifications or accessions have been deposited on the date of the *procès-verbal*.

As regards any member of the League or non-member State on whose behalf a ratification or accession is subsequently deposited, the Protocol shall enter into force on the ninetieth day after the date of the deposit of a ratification or accession on its behalf.

ARTICLE 11

As from the 1st January, 1936, any member of the League of Nations or any non-member State in regard to which the present Protocol is then in force, may address to the Secretary-General of the League of Nations a request for the revision of any or all of the provisions of this Protocol. If such a request, after being communicated to the other members of the League and non-member States in regard to which the Protocol is then in force, is supported within one year by at least nine of them, the Council of the League of Nations shall decide, after consultation with the members of the League of Nations and the non-member States mentioned in article 6, whether a conference should be specially

convoked for that purpose or whether such revision should be considered at the next conference for the codification of international law.

The high contracting parties agree that, if the present Protocol is revised, the new Agreement may provide that upon its entry into force some or all of the provisions of the present Protocol shall be abrogated in respect of all of the parties to the present Protocol.

ARTICLE 12

The present Protocol may be denounced.

Denunciation shall be effected by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all members of the League of Nations and the non-member States mentioned in article 6.

Each denunciation shall take effect one year after the receipt by the Secretary-General of the notification, but only as regards the member of the League or non-member State on whose behalf it has been notified.

ARTICLE 13

1. Any high contracting party may, at the time of signature, ratification or accession, declare that, in accepting the present Protocol, he does not assume any obligations in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories; and the present Protocol shall not apply to any territories or to the parts of their population named in such declaration.

2. Any high contracting party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the Protocol shall apply to all or any of his territories or to the parts of their population which have been made the subject of a declaration under the preceding paragraph, and the Protocol shall apply to all the territories or the parts of their population named in such notice six months after its receipt by the Secretary-General of the League of Nations.

3. Any high contracting party may, at any time, declare that he desires that the present Protocol shall cease to apply to all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories, and the Protocol shall cease to apply to the territories or to the parts of their population named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. Any high contracting party may make the reservations provided for in article 4 in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of these territories, at the time of

signature, ratification or accession to the Protocol or at the time of making a notification under the second paragraph of this article.

5. The Secretary-General of the League of Nations shall communicate to all the members of the League of Nations and the non-member States mentioned in article 6 all declarations and notices received in virtue of this article.

ARTICLE 14

The present Protocol shall be registered by the Secretary-General of the League of Nations as soon as it has entered into force.

ARTICLE 15

The French and English texts of the present Protocol shall both be authoritative.

In faith whereof the Plenipotentiaries have signed the present Protocol.

Done at The Hague on the twelfth day of April, one thousand nine hundred and thirty, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations and of which certified true copies shall be transmitted by the Secretary-General to all the members of the League of Nations and all the non-member States invited to the First Conference for the Codification of International Law.

APPENDIX 10

THE PALESTINIAN CITIZENSHIP ORDERS, 1925 TO 1942, CONSOLIDATED ¹

WHEREAS by treaty, capitulation, grant, usage, sufferance and other lawful means His Majesty has power and jurisdiction within Palestine:

And whereas it is desirable to regulate the grant and acquisition of Palestinian citizenship:

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act, 1890, or otherwise, in His Majesty vested, is pleased by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

PART I

- Turkish subjects resident in Palestine to become Palestinian citizens.
1. (1) Turkish subjects habitually resident in the territory of Palestine upon the 1st day of August, 1925, shall become Palestinian citizens.
- Right to opt for Turkish and other nationalities and conditions governing the same.
- (2) Any person over eighteen years of age who by virtue of this Article becomes a Palestinian citizen may within a period of two years from the 6th day of August, 1924, by declaration made as hereinafter provided state his option for Turkish nationality and subject to the provisions of this Article shall cease to be a Palestinian citizen:

Provided that such person shall not for the purposes of this Order be deemed to have ceased to be a Palestinian citizen unless and until he has obtained a certificate from such officer as may be prescribed by Regulation under this Order that he has transferred his place of residence from Palestine.

(3) Any person over eighteen years of age who by virtue of clause (1) of this Article becomes a Palestinian citizen and differs in race from the majority of the population of Palestine may in the like manner and subject to the same conditions opt for the nationality of one of the States in which the majority of the population is of the same race as the person exercising the right to opt subject to the consent of that State and he shall thereupon cease to be a Palestinian citizen.

1A. (1) Turkish subjects who were habitually resident in the territory of Palestine upon the sixth day of August, 1924, but

¹ S.R. & O. (1925), No. 777; *ibid.* (1939), No. 863; *ibid.* (1941), No. 1121; *ibid.* (1942), No. 1177.

ceased to be so habitually resident before the first day of August, 1925, shall be deemed to have become Palestinian citizens, unless before the twenty-third day of July, 1931, they shall have voluntarily acquired another nationality.

(2) Nevertheless, the High Commissioner shall have power in the case of any person who becomes a Palestinian citizen by virtue of the preceding paragraph and shall make an application to this effect within four years of the twenty-third day of July, 1931, to apply to any such person the provisions of paragraphs 2 and 3 of Article 1 of this Order, and to extend the period of option provided for therein.

2. (1) Persons of over eighteen years of age who were born within Palestine and acquired on birth or subsequently and still possess Turkish nationality and on the first day of August, 1925, are habitually resident abroad, may acquire Palestinian citizenship by opting in such manner as may be prescribed by Regulation under this Order, subject to the consent of the Government of Palestine which may be granted or withheld in its absolute discretion:

Acquisition
of
Palestinian
citizenship
by Turkish
subjects
born in
Palestine
and now
resident
abroad.

Provided that without prejudice to the foregoing provisions the consent of the Government of Palestine may be refused unless an agreement on the subject has been concluded between the said Government and the Government of the country where the person concerned is resident and shall be refused if the person desiring to opt possesses another nationality in addition to Turkish nationality. This right of option must be exercised within two years from the sixth day of August, 1924.¹

(2) Persons of over eighteen years of age at the 6th of August, 1924, who were born within Palestine and acquired on birth or subsequently and still possess Turkish nationality and on the first day of August, 1925, were habitually resident abroad and have since maintained an unbroken personal connection with Palestine and intend to resume permanent residence in Palestine, may acquire Palestinian citizenship by opting in such manner as may be prescribed by Regulation under this Order, subject to the consent of the Government of Palestine which may be granted or withheld in its absolute discretion.

Provided that, without prejudice to the foregoing conditions, the consent of the Government of Palestine may be refused unless an agreement on the subject has been concluded between the said Government and the Government of the country

¹ Varied by Proclamation dated November 12, 1925, under Article 24.

where the person concerned is resident, and shall be refused if the person desiring to opt possesses another nationality in addition to Turkish nationality. This right of option must be exercised within six years of the twenty-fifth day of July, 1939.

PART II

Persons
becoming
Palestinian
citizens by
birth.

3. Subject to the provisions of Part I of this Order the following persons shall be deemed to be Palestinian citizens:

- (a) Any person born in lawful matrimony within Palestine whose father at the time of such person's birth was a Palestinian citizen.
- (b) Any person born in lawful matrimony out of Palestine whose father was a Palestinian citizen at the time of that person's birth and was either born within Palestine or had obtained a certificate of naturalisation, or who had acquired Palestinian citizenship under Article 1 or Article 5 of this Order.
- (c) Any person born whether in or out of lawful matrimony within Palestine who does not by his birth or by subsequent legitimization acquire the nationality of any other State or whose nationality is unknown.

Acquisition
of Pales-
tinian
citizenship.

4. (1) Any person over 18 years of age, who, within two years from the date at which this Order comes into force, by declaration made as hereinafter provided states his desire to become a Palestinian citizen and satisfies the authority before whom the declaration is made that he fulfils the following conditions, namely:—

- (a) That the declarant was born within Palestine and acquired on birth or subsequently and still possesses Turkish nationality: and
- (b) That the declarant shall have been resident within Palestine for not less than six months immediately prior to the date of making such declaration: and
- (c) That the declarant has not, while resident in any country other than Palestine acquired any foreign nationality may, subject to the approval of the High Commissioner acquire Palestinian citizenship, and the High Commissioner may grant to such a person a certificate of Palestinian citizenship.

(2) A person by whom a declaration has been made, and to whom a certificate of Palestine citizenship has been granted, in accordance with the provisions of this Article shall be deemed to be a Palestinian citizen from the date of such declaration.

5. (1) Persons who have made a declaration of their intention to opt for Palestinian citizenship in accordance with Article 2 of the Palestine Legislative Council Election Order, 1922, and have received provisional certificates of Palestinian citizenship and have, since declaring their intention to opt for Palestinian citizenship, been ordinarily resident in Palestine shall be deemed to have made a declaration under Article 4 of this Order, and shall, subject to the approval of the High Commissioner, be deemed to be entitled to acquire Palestinian citizenship under that Article, and the High Commissioner may grant to such persons certificates of Palestinian citizenship.

Acquisition of Palestinian citizenship by persons who have already declared intention to opt for Palestinian citizenship.

(2) A person by whom a declaration has been made, and to whom a certificate of Palestine citizenship has been granted, in accordance with the provisions of this Article shall be deemed to be a Palestinian citizen from the date of such certificate.

6. Save as provided in Articles 10 and 12 of this Order, for the purpose of Parts I and II of this Order the status of a married woman will be governed by that of her husband and the status of a child who has not attained the age of majority by that of its father.

Status of married women and minors.

PART III

7. (1) The High Commissioner may grant a certificate of naturalisation as a Palestinian citizen to any person who makes application therefor and who satisfies him:—

Naturalisation.

(a) That he has resided in Palestine for a period not less than two years out of the three years immediately preceding the date of his application.

(b) That he is of good character and has an adequate knowledge of either the English, the Arabic or the Hebrew language.

(c) That he intends, if his application is granted, to reside in Palestine.

(2) A certificate of naturalisation shall not take effect until the applicant has taken the oath of allegiance in the form stated in the Schedule to this Order:

Provided that any person authorised to make a solemn affirmation or declaration instead of taking an oath may make such affirmation or declaration in lieu of such oath.

(3) The grant of a certificate of naturalisation shall be in the absolute discretion of the High Commissioner, who may with or without assigning any reason give or withhold the certificate as he thinks most conducive to the public good; and no appeal shall lie from his decision.

(4) In the case of a woman who was a Palestinian citizen previously to her marriage to an alien and whose husband has died or whose marriage has been dissolved, the requirements as to residence prescribed in clause (1) (a) of this Article shall not apply.

(5) The High Commissioner may in any special case, if he thinks fit, grant a certificate of naturalisation, although the two years' residence has not been within the last three years immediately preceding the date of the application.

(6) For the purposes of this Article—

(a) a period spent in the service of the Government of Palestine; or

(b) a period of service in His Majesty's Forces immediately following a period of residence in Palestine.

may, if the High Commissioner thinks fit, be treated as equivalent to a period of residence in Palestine.

Rights and
obligations
of naturalised
person.

8. A person to whom a certificate of naturalisation is granted by the High Commissioner shall, subject to the provisions of this Order, be entitled to all political and other rights, powers and privileges and be subject to all obligations, duties and liabilities to which a Palestinian citizen is entitled or subject.

Status of
minor
children of
naturalised
person.

9. (1) Any child under the age of majority of a person applying for a certificate of naturalisation may with the approval of the High Commissioner be included by name in the certificate of naturalisation granted to his parent and shall thereupon become a Palestinian citizen:

Provided that any such child may within twelve months after attaining his majority make a declaration of alienage and shall thereupon cease to be a Palestinian citizen.

Naturalisation
of minor.

(2) The High Commissioner may in any special case grant a certificate of naturalisation to any minor whether or not the conditions required by this Order have been complied with.

Persons
under disability
not eligible for
naturalisation.

(3) Except as otherwise provided in this Order a certificate of naturalisation shall not be granted to any person under disability.

Revocation
of naturalisation.

10. (1) Where it appears to the High Commissioner that a certificate of naturalisation granted by him has been obtained by false representation or fraud or by concealment of material circumstances, or that the person to whom the certificate is granted has, since the grant, been for a period of not less than three years ordinarily resident out of Palestine and has not maintained substantial connection with Palestine, or has

shown himself by act or speech to be disaffected, or disloyal to the Government of Palestine, the High Commissioner may, subject to the approval of one of His Majesty's Principal Secretaries of State, by order revoke the certificate, and the order of revocation shall have effect from such date as the High Commissioner may direct.

(2) The High Commissioner may, for the like reasons, and subject to the like approval, annul a Certificate of Citizenship granted under the provisions of Articles 4 and 5 hereof, or a declaration of the retention or resumption of citizenship made under the provisions of Article 12 and paragraph (2) of Article 14 of this Order.

(3) Where the High Commissioner revokes a certificate of naturalisation or annuls a declaration he may order the certificate of naturalisation or any documentary evidence of the acceptance of the declaration to be given up and cancelled and any person refusing or neglecting to give up the certificate or documents shall be liable on conviction to a fine not exceeding one hundred Palestinian pounds.

11. (1) Where a certificate of naturalisation granted to a man is revoked, the High Commissioner may by Order direct that his wife and his minor children (or any of them) shall cease to be Palestinian citizens, and any such person shall thereupon become an alien; but except when the High Commissioner directs as aforesaid, the nationality of the wife and minor children of the man whose certificate is revoked shall not be affected by the revocation, and if they are already Palestinian citizens, they shall remain Palestinian citizens;

Provided that:—

- (a) it shall be lawful for the wife of any such person within six months after the date of the order of revocation to make a declaration of alienage, and thereupon she and any minor children of her husband and herself shall cease to be Palestinian citizens and shall become aliens; and
- (b) the High Commissioner shall not make any such order as aforesaid in the case of a wife who was at birth, or who became in virtue of Articles 1 and 6 of this Order, a Palestinian citizen, unless he is satisfied that if she had held a certificate of naturalisation in her own right, the certificate could properly be revoked under this Order.

(2) The provisions of this article shall as respects persons affected thereby, have effect in substitution for any other provisions of this Order as to the effect upon the wife and children

Annulment of acquisition of Palestinian citizenship etc.

Certificates and documents to be returned in case of revocation or annulment.

Effect of revocation of certificate of naturalisation.

of any person where the person ceases to be a Palestinian citizen and such other provisions shall accordingly not apply in any such case.

Effect of
revocation
of certifi-
cate of
naturalisa-
tion, etc.

11A. Where a certificate of naturalisation is revoked or a certificate of citizenship or a declaration of the acquisition, retention or resumption of citizenship is annulled as aforesaid, the former holder of the certificate or the declarant, as the case may be, shall become an alien.

PART IV

Status of
married
women.

12. (1) Subject to the provisions of this Article, the wife of a Palestinian citizen shall be deemed to be a Palestinian citizen and the wife of an alien shall be deemed to be an alien.

(2) Where after the 25th day of July, 1939, an alien woman marries a Palestinian citizen, she shall not, by reason of such marriage, become a Palestinian citizen; but the High Commissioner may grant her a certificate of naturalisation, if she makes application therefor, whether or not the conditions required by Part III of this Order have been complied with.

(3) Where a woman has married an alien and was at the time of her marriage a Palestinian citizen, she shall not, by reason only of her marriage, be deemed to have ceased to be a Palestinian citizen unless and until she possesses the nationality of her husband.

(4) Where a man has, during the continuance of his marriage, ceased to be a Palestinian citizen, his wife shall not, by reason only of that fact, be deemed to have ceased to be a Palestinian citizen unless and until she possesses some other nationality possessed by her husband.

(5) Where a man has, during the continuance of his marriage, ceased to be a Palestinian citizen and solely by reason of his acquisition of a new nationality his wife, being a Palestinian citizen, also acquires that nationality, she may, whether her marriage is still continuing or not, at any time within a period of twelve months from the date on which she so acquired that nationality, or at such later date as the High Commissioner may in special circumstances allow, make a declaration that she desires to retain Palestinian citizenship and thereupon she shall be deemed to have remained a Palestinian citizen.

(6) Where on or after the 25th day of July, 1939, a certificate of naturalisation is granted to an alien, his wife shall not thereby become a Palestinian citizen, but she may, with the approval of the High Commissioner, be included by name in

the certificate granted to her husband and shall thereupon become a Palestinian citizen.

(7) Where the wife of an alien, who was a Palestinian citizen previously to her marriage, is living apart from her husband in such circumstances that the separation may, in the opinion of the High Commissioner, be presumed to be permanent, the High Commissioner may, if he thinks fit, grant her a certificate of naturalisation as if her marriage had been dissolved.

13. A woman who, having been a Palestinian citizen has by, or in consequence of, her marriage become an alien, shall not by reason only of the death of her husband, or the dissolution of her marriage, cease to be an alien, and a woman who, having been an alien has by, or in consequence of, her marriage become a Palestinian citizen, shall not by reason only of the death of her husband or the dissolution of her marriage cease to be a Palestinian citizen.

14. (1) Where a person ceases to be a Palestinian citizen, Status of minor children. whether by declaration of alienage, or otherwise, every child of that person being a minor shall thereupon cease to be a Palestinian citizen, if such child has already obtained or obtains, on that person ceasing to be a Palestinian citizen, the nationality of some other country:

Provided that where a widow or a woman whose marriage has been dissolved by a decree of divorce marries an alien, any child of hers by her former husband shall not, by reason only of her marriage, cease to be a Palestinian citizen.

(2) Any child who has so ceased to be a Palestinian citizen may, within one year after attaining his majority, make a declaration that he wishes to resume the status of Palestinian citizen, and shall thereupon become a Palestinian citizen from the date of such declaration.

15. A Palestinian citizen who, when in any foreign State and not under disability, by obtaining a certificate of naturalisation or by any other voluntary and formal act, becomes naturalised therein shall thenceforth be deemed to have ceased to be a Palestinian citizen. Loss of Palestinian citizenship.

16. Any person who after the coming into force of this Order has by birth become a Palestinian citizen but who at his birth or during his minority became under the law of any other State a national of that State and is still such a national may if of full age and not under disability make a declaration of alienage Declarations of alienage.

and on making such declaration shall cease to be a Palestinian citizen.

Persons ceasing to be Palestinian citizens not discharged from obligations incurred prior to that date. Procedure. 17. Where any Palestinian citizen ceases to be a Palestinian citizen he shall not thereby be discharged from any obligation, duty or liability in respect of any act done before he ceased to be a Palestinian citizen.

18. A declaration of alienage or of acquisition, resumption or retention of Palestinian citizenship shall be made in Palestine before such officer as may be prescribed by Regulation under this Order or outside Palestine before an officer in the diplomatic or consular service of Great Britain.

Power of High Commissioner to make regulations. 19. The High Commissioner may make regulations generally for carrying into effect the objects of the Order and in particular with respect to the following matters:—

- (a) The form and registration of certificates of naturalisation granted by the High Commissioner.
- (b) The form and registration of declarations of option for Turkish nationality or of alienage and declarations of acquisition, resumption or retention of Palestinian citizenship.
- (c) The fees to be paid in respect of any declaration or grant under this Order.
- (d) The procedure to be followed in regard to the revocation and annulment of certificates of naturalisation, certificates of citizenship and declarations of acquisition, retention or resumption of citizenship, including the endorsement of certificates granted to persons other than those whose citizenship will be affected by the revocation or annulment.

Status of wives and children of persons acquiring Palestinian citizenship. 20. Where in pursuance of this Order any person has become a Palestinian citizen under Article 6 by virtue of the acquisition of Palestinian citizenship by the husband or parent of that person under Article 4 or Article 5, or the name of any person is included in a certificate of naturalisation granted to the husband or parent of that person, such person shall, for the purposes of this Order, be deemed to be a person who has acquired Palestinian citizenship under the said Article 4 or Article 5 or a person to whom a certificate of naturalisation may be granted, as the case may be; and the provisions of this Order relating to the annulment of certificates of Palestinian citizenship and the revocation of certificates of naturalisation

shall, so far as applicable, have effect (but only, in the case of a child, as from the date when such child attains its majority) as though a certificate of Palestinian citizenship, or a certificate of naturalisation, as the case may be, had been granted to such person.

21. For the purpose of this Order:

Definitions.

- (1) The expression 'Palestine' includes the territories to which the mandate for Palestine applies, except such parts of the territory comprised in Palestine to the East of the Jordan and the Dead Sea as were defined by Order of the High Commissioner dated the 1st September, 1922.
- (2) The expression 'Palestinian citizen' means a person who is by birth or becomes by naturalisation or otherwise a Palestinian citizen.
- (3) The expression 'Alien' means a person who is not a Palestinian citizen.
- (4) The expression 'disability' means the status of being a married woman or a minor, lunatic or idiot, or otherwise legally incompetent.
- (5) The age of majority shall be taken to be 18 years calculated according to the Gregorian calendar.

22. If any person for any of the purposes of this Order knowingly makes any false representation or any statement false in a material particular, he shall, in Palestine, be liable on conviction in respect of such offence to imprisonment with or without hard labour for any term not exceeding three months.

Penalty for making false statements.

23. The powers of the High Commissioner under this Order, other than those conferred by Articles 10 and 24, which shall be exercisable by the High Commissioner alone, may be exercised by the High Commissioner or a person acting under his authority. The term 'High Commissioner' shall include every person for the time being administering the Government of Palestine.

Exercise of High Commissioner's powers.

24. The High Commissioner may by Proclamation in the Gazette at any time within two years from the date of the commencement of this Order and subject to his obtaining the previous approval of a Secretary of State vary, annul or add to any of the provisions of this Order in order to carry out the purposes of the same and may provide for any other matters necessary in order to carry into effect the provisions thereof.

Power to vary this Order.

- Power of
revocation,
etc., re-
served to
His
Majesty.
Date of
coming
into force.
Title.
25. His Majesty, His Heirs and Successors in Council, may at any time revoke, alter or amend this Order.
26. This Order shall come into force on the first day of August, 1925.
27. This Order shall be known as the Palestinian Citizenship Orders 1925 to 1941, Consolidated.

SCHEDULE

OATH OF ALLEGIANCE

‘I, A.B., Swear by Almighty God that I will be Faithful and Loyal to the Government of Palestine.’

APPENDIX 11

LIST OF PLACES

WHERE BY TREATY, CAPITULATION, GRANT, USAGE, SUFFERANCE, OR OTHER LAWFUL MEANS HIS MAJESTY EXERCISES OR EXERCISED JURISDICTION OVER BRITISH SUBJECTS

It should be noticed that the Act of 1943 uses the words 'where His Majesty was, at the time of that person's birth, exercising jurisdiction over British subjects'. It is necessary to inquire in what places His Majesty exercises jurisdiction to-day, and in what places His Majesty formerly exercised jurisdiction, but has now ceased to do so. We must first note that the words used are taken almost verbally from the preamble to the Foreign Jurisdiction Act, 1890 (Appendix 14), and due regard must be paid, in using this list, to the language of that preamble and of Sections 1 and 2 of that Act. The preamble to the Foreign Jurisdiction Act, 1890 recites that 'whereas by treaty, capitulation, grant, usage, sufferance and other lawful means Her Majesty the Queen has jurisdiction within divers foreign countries, and it is expedient to consolidate the Acts relating to the exercise of Her Majesty's jurisdiction out of Her dominions'. Section 16 of the Act defines 'foreign country' as 'any country or place out of Her Majesty's dominions' and 'jurisdiction' includes 'power'. All the classes of places included in the following list are out of His Majesty's dominions, but the nature and extent of the jurisdiction varies. In most places out of His Majesty's dominions His Majesty does not exercise jurisdiction over British subjects (e.g. the ordinary case of a foreign country, such as France, which is an independent sovereign state). There is, of course, a personal jurisdiction pertaining to His Majesty which he possesses over British subjects everywhere, but it cannot be, and is not, exercised *within* a foreign country except by treaty, usage, &c., as recited in the preamble. The fact, therefore, that His Majesty in Parliament or in Council legislates for British subjects in respect of their conduct outside His dominions is not equivalent to exercising jurisdiction over them within foreign countries. In countries where there is a local ruler, whether under His Majesty's protection or not, the right to exercise jurisdiction is normally derived from a treaty between His Majesty and the ruler. Regarding countries where there is no such ruler Section 2 of the Act of 1890 provides:

'Where a foreign country is not subject to any government from whom Her Majesty the Queen might obtain jurisdiction in the manner recited by this Act, Her Majesty shall by virtue of this Act have

jurisdiction over Her Majesty's subjects for the time being resident in or resorting to that country, and that jurisdiction shall be jurisdiction of Her Majesty in a foreign country within the meaning of the other provisions of this Act.'

Under this Section fall the first class listed below (protectorates and mandates). The distinction between a protectorate and a colony is familiar to all; here we need only point out that colonies do not enter the picture for the present purpose at all, as they are not 'foreign countries' and not 'places' within the meaning of the nationality provisions of the Acts of 1914 and 1943. In the protectorates and mandates there is clearly jurisdiction over everyone, including British subjects, and the mode of its exercise is defined by Orders in Council of which references may be found in the books.¹ In the second class listed below the jurisdiction is exercised within a country which is, in international law, an independent state, but, for special historical reasons, His Majesty acquired by treaty, usage, &c., jurisdiction within that country over British subjects. In the third class we have states under His Majesty's protection, in some of which His Majesty exercises jurisdiction over British subjects, in others jurisdiction over certain classes of British subjects, in others no jurisdiction at all.

The following list is not to be taken as an infallible guide, for, in some cases, there is doubt, for example, as to the exact date when extritorial rights ceased in a foreign country, but for most practical purposes it is believed that the list will be found useful in ascertaining whether a person was born in a 'place' within the meaning of the Acts of 1914 and 1943, and so, without registration or other formality, become a natural-born British subject.

Territories which were formerly protectorates or protected states but have now been annexed are not included (e.g. Cyprus), but mention is made of some cases falling into other classes (mandates and protected states) where the jurisdiction ceased at a recent date. All known cases of foreign countries falling into the second class (foreign countries within which His Majesty now or formerly exercised extritorial rights) are included, together with the date, or approximate date, when the jurisdiction ceased.

This list is in no way official, and in cases of difficulty the appropriate Government department should be consulted.

1. *Protectorates² and mandated areas*

Aden protectorate.

Bechuanaland.

¹ Halsbury's *Statutes of England* (1929), v. 796; *Cumulative Supplement*, No. 14 (1945), v. 2946.

² The word protectorate is added after some protectorates in the list to distinguish them from colonies of the same name of which they geographically form a part,

British Solomon Islands.
 Cameroons under British mandate.
 Gambia protectorate.
 Kenya protectorate.
 Nigeria protectorate.
 Northern territories of the Gold Coast protectorate.
 Nyasaland.
 Naumi mandate.
 Pacific islands south of the equator under Australian mandate.
 Palestine mandate (excluding Transjordan now independent).
 Sierra Leone protectorate.
 Swaziland.
 Tanganyika mandate.
 Togoland.
 Zanzibar.

Formerly mandates

Iraq, until December 19, 1924. B.T.S. (1925), No. 17.
 Transjordan, until June 17, 1946. B.T.S. (1946), No. 32.

2. *Places where, by agreement or usage, His Majesty possesses extritorial rights or formerly possessed them, with the approximate date, in the latter case, of the cessation of such rights*

(a) Still in existence:

Spanish Morocco (under ancient treaty rights).

Muscat and Oman. See the Muscat Order in Council of July 25, 1939 (S.R. & O., No. 1580).

Saudi Arabia. Here His Majesty's Government have never made any formal statement renouncing their capitulatory rights, but it has not been their policy to exercise them.

Bulgaria. The Bulgarian Order in Council, 1912 (which applied the Ottoman Order in Council, 1910 to Bulgaria) has never been revoked, but His Majesty's Government have long since ceased to exercise extritorial rights in this country.

(b) Foreign countries in which His Majesty formerly exercised extritorial rights which have now ceased.

<i>Country</i>	<i>Date of Cessation</i>	<i>Source</i>
ALBANIA.	February 6, 1926.	B.T.S. (1926), No. 3.
ALGERIA.	Lapsed since about 1830 (date of French occupation).	
BOSNIA and HERZEGOVINA.	Renounced by declaration of October 10, 1880.	S.P., vol. 94, p. 838.

and from which they are, for ordinary administrative purposes, indistinguishable. The word 'mandate' is added to indicate mandated areas.

<i>Country</i>	<i>Date of Cessation</i>	<i>Source</i>
CHINA.	May 20, 1943.	B.T.S. (1943), No. 2. See also the Order in Council of 1943.
EGYPT.	May 8, 1937, under the Convention of Montreux.	B.T.S. (1937), No. 55.
ETHIOPIA.	April 30, 1942. See the Ethiopia (Termination of Jurisdiction) Order in Council 1942.	S.R. & O., No. 908.
GREECE.	In relation to territories, including Crete, acquired by Greece after the Balkan Wars, in which, by reason of the fact that they formed part of the Ottoman Empire, His Majesty possessed extritorial rights, an exchange of notes in August and September 1914 between His Majesty's Government and the Government of Greece in effect abolished these rights.	S.P., vol. 108, p. 868. S.P., vol. 108, p. 868.
JAPAN.	July 17, 1899. See Order in Council of October 7, 1899.	S.P., vol. 86, p. 46.
MONTENEGRO.	In effect on the recognition of this country's independence on July 13, 1878.	S.P., vol. 69, p. 758.
MOROCCO (Tangier).	June 1, 1925. See the Morocco (Tangier) Order in Council 1925.	S.R. & O. No. 503.
MOROCCO (French Zone).	January 1, 1938. See the Morocco (French Zone) Order in Council 1937.	S.R. & O., No. 1214.
PERSIA.	May 10, 1928. See the Persia Order in Council 1928.	S.P., vol. 128, p. 49.
ROUMANIA.	Extritorial rights had fallen into disuse many years before the recognition of Roumanian independence by the Treaty of Berlin, 1878, although no formal declaration was made abolishing them.	
SERBIA.	February 7, 1880 (except for the proviso that the capitulations, as regards judicial matters, should remain in full force, as far as they concerned the mutual relations between British subjects and other Powers retaining such rights. The last treaty containing privileges of this sort (France and Serbia) expired on July 24, 1893, after which date His Majesty's rights may be deemed to have lapsed.	S.P., vol. 71, p. 19.
SIAM.	March 30, 1926 (subject to exceptions abolished as from February 22, 1940, by the Thailand Order in Council 1940).	B.T.S. (1926), No. 7.
SYRIA and LEBANON.	February 1, 1924. A notice was issued by the Secretary of State on January 16, 1924, under para. 3 (i) of the Turkey Order in Council 1922 providing	S.P., vol. 94, p. 29.

<i>Country</i>	<i>Date of Cession</i>	<i>Source</i>
	that so much of the Ottoman Order in Council 1910 as related to the power and jurisdiction of the Courts in Syria within the boundaries of the area under French mandate should cease to apply as from February 1, 1924.	
TRIPOLITANIA.	In October 1912 the Italian ambassador informed His Majesty's Government in pursuance of the recognition by the Powers of Italian sovereignty over Tripolitania and Cyrenaica the special regime formerly enjoyed in those territories by foreigners in virtue of the capitulations had automatically ceased and that the Italian authorities had therefore been instructed that the provisions of common law should be applied to foreigners as from November 1912.	
TUNIS.	By the Tunis Order in Council December 31, 1883, the Orders in Council regulating Her Majesty's jurisdiction in Tunis were to cease to be in force and operation as from January 1, 1884, as regards all such matters and cases as came within the jurisdiction of the French tribunals. See also Article 1 of Anglo-French Convention of 1897 (entered into force October 1897).	S.P., vol. 74, p. 694. S.P., vol. 89, p. 41.
TURKEY.	August 6, 1924. See Article 28 of the Treaty of Lausanne, 1923, and the Ottoman Order in Council 1924.	S.P., vol. 119, p. 154. B.T.S. (1923), No. 16.

3. *Indian native states and British protected states.*

(a) *Indian native states.*

A complete list of Indian native states is given in Appendix 8. Broadly speaking the position in those states is that non-official British Indian subjects are subject to the jurisdiction of the State Courts, but Europeans and Government officials who are British subjects are not subject to their communal jurisdiction. Offences committed by the latter are tried normally, not by British Courts in the states, but by the Courts in British India. The Indian legislature can, and does, make laws applicable to all British subjects in the states, and such persons can be tried in British India for breaches of these laws committed in state territory. There are certain areas (forts, &c.) where the Ruler has made a complete cession of jurisdiction to His Majesty. It will thus be seen that the extent of the jurisdiction can, and may, vary both in extent and in the categories of British subjects to which it extends. The question

may be debatable what amount of jurisdiction suffices to cause the references to 'places in which His Majesty exercises jurisdiction over British subjects' to apply, and whether it is necessary, in order that it should apply, that the jurisdiction should extend over British subjects generally. No general answer to the question can be given, for each case must be considered on its merits. The cases free from doubt appear to be those where His Majesty exercises jurisdiction over all British subjects inside one of the states.

(b) British protected states.

These are decreasing in number. Sarawak¹ and North Borneo² were, until July 1, 1946, and July 15, 1946, respectively, protected states, and so were the Malay States, federated and unfederated (now protectorates: Malayan Union Order in Council of March 27, 1946). The only British protected states now in existence are:

Tonga.

Sheikhdoms in the Persian Gulf:

Koweit.

Bahrein.

Qatar.

Trucial sheikhdoms (Debai, Sharjah, Ajman, Kalba, Umm-al-Qaiwain, Abu Dhabi, Ras-al-Khaimah).

Brunei.

His Majesty formerly exercised jurisdiction in Sarawak and the Malay States, but as these are still protectorates he continues to exercise jurisdiction there. He still exercises jurisdiction in Tonga and in the Sheikhdoms in the Persian Gulf above-mentioned. In North Borneo His Majesty exercised no jurisdiction within the meaning of the Act of 1890, and the position in Brunei is not free from doubt (see Hertslet's *Commercial Treaties*, vol. 23, p. 285 ; vol. 24, p. 171 ; vol. 25, pp. 32, 41-2).

¹ Sarawak Cession Order in Council 1946.

² North Borneo Cession Order in Council 1946.

APPENDIX 12

SECTION 188 OF THE SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925

(1) ANY person who is a natural-born subject of His Majesty, or whose right to be deemed a natural-born subject of His Majesty depends wholly or in part on his legitimacy or on the validity of any marriage, may, if he is domiciled in England or Northern Ireland or claims any real or personal estate situate in England, apply by petition to the court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage.

(2) Any person who is so domiciled or claims as aforesaid, may apply to the court for a decree declaring his right to be deemed a natural-born subject of His Majesty.

(3) Applications under sub-sections (1) and (2) of this section may be included in the same petition and on any such application the court shall make such decree as the court thinks just, and the decree shall be binding on His Majesty and all other persons whatsoever:

Provided that the decree of the court shall not prejudice any person—

- (i) if it is subsequently proved to have been obtained by fraud or collusion; or
- (ii) unless that person has been cited or made a party to the proceedings or is the heir-at-law, next of kin, or other real or personal representative of, or derives title under, or through, a person so cited or made a party.

(4) A copy of every petition under this section and of any affidavit accompanying the petition shall be delivered to the Attorney-General at least one month before the petition is presented or filed, and the Attorney-General shall be a respondent on the hearing of the petition and on any subsequent proceedings thereto.

(5) In any application under this section such persons shall, subject to rules of court, be cited to see proceedings or otherwise summoned as the court shall think fit, and any such persons may be permitted to become parties to the proceedings and to oppose the application.

(6) The provisions of this Act relating to matrimonial causes shall, so far as applicable, extend to any proceedings under this section.

(7) No proceedings under this section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

APPENDIX 13

FOREIGN MARRIAGE ACT, 1892

An Act to consolidate Enactments relating to the Marriage of British Subjects outside the United Kingdom. [27th June 1892.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Validity of marriages solemnized abroad in manner provided by Act. 1. All marriages between parties of whom one at least is a British subject solemnized in the manner in this Act provided in any foreign country or place by or before a marriage officer within the meaning of this Act shall be as valid in law as if the same had been solemnized in the United Kingdom with a due observance of all forms required by law.

Notice to marriage officer of intended marriage. 2. In every case of a marriage intended to be solemnized under this Act, one of the parties intending marriage shall sign a notice, stating the name, surname, profession, condition, and residence of each of the parties, and whether each of the parties is or is not a minor, and give the notice to the marriage officer within whose district both of the parties have had their residence not less than one week then next preceding, and the notice shall state that they have so resided.

Filing in registry and posting up of notice. 3. (1) The marriage officer shall file every such notice, and keep it with the archives of his office, and shall also, on payment of the proper fee, forthwith enter in a book of notices to be kept by him for the purpose, and post up in some conspicuous place in his office, a true copy of every such notice, and shall keep the same so posted up during fourteen consecutive days before the marriage is solemnized under the notice.

(2) The said book and copy posted up shall be open at all reasonable times, without fee, to the inspection of any person.

Requirement of like consent to marriage as in England, and power to forbid marriage. 4. (1) The like consent shall be required to a marriage under this Act as is required by law to marriages solemnized in England.

(2) Every person whose consent to a marriage is so required may, at any time before the solemnization thereof under this

Act, forbid it by writing the word 'forbidden' opposite to the entry of the intended marriage in the book of notices, and by subscribing thereto his name and residence, and the character by reason of which he is authorised to forbid the marriage; and if a marriage is so forbidden the notice shall be void, and the intended marriage shall not be solemnized under that notice.

5. (1) Any person may on payment of the proper fee enter with the marriage officer a caveat, signed by him or on his behalf, and stating his residence and the ground of his objection against the solemnization of the marriage of any person named therein, and thereupon the marriage of that person shall not be solemnized until either the marriage officer has examined into the matter of the caveat and is satisfied that it ought not to obstruct the solemnization of the marriage, or the caveat is withdrawn by the person entering it.

Caveat against marriages may be lodged with marriage officer.

(2) In a case of doubt the marriage officer may transmit a copy of the caveat, with such statement respecting it as he thinks fit, to a Secretary of State, who shall refer the same to the Registrar-General, and the Registrar-General shall give his decision thereon in writing to the Secretary of State, who shall communicate it to the marriage officer.

(3) If the marriage officer refuses to solemnize or to allow to be solemnized in his presence the marriage of any person requiring it to be solemnized, that person may appeal to a Secretary of State, who shall give the marriage officer his decision thereon.

(4) The marriage officer shall forthwith inform the parties of and shall conform to any decision given by the Registrar-General or Secretary of State.

6. Where a marriage is not solemnized within three months next after the latest of the following dates—

When marriage not solemnized within three months a new notice required.

(a) the date on which the notice for it has been given to and entered by the marriage officer under this Act, or

(b) if on a caveat being entered a statement has been transmitted to a Secretary of State, or if an appeal has been made to a Secretary of State, then the date of the receipt from the Secretary of State of a decision directing the marriage to be solemnized,

the notice shall be void, and the intended marriage shall not be solemnized under that notice.

7. Before a marriage is solemnized under this Act, each of the parties intending marriage shall appear before the marriage

Oath before marriage.

officer, and make, and subscribe in a book kept by the officer for the purpose, an oath—

- (a) that he or she believes that there is not any impediment to the marriage by reason of kindred or alliance, or otherwise; and
- (b) that both of the parties have for three weeks immediately preceding had their usual residence within the district of the marriage officer; and
- (c) where either of the parties, not being a widower or widow, is under the age of twenty-one years, that the consent of the persons whose consent to the marriage is required by law has been obtained thereto, or, as the case may be, that there is no person having authority to give such consent.

Solemniza-
tion of mar-
riage at
office in
presence of
marriage
officer and
two wit-
nesses.

8. (1) After the expiration of fourteen days after the notice of an intended marriage has been entered under this Act, then, if no lawful impediment to the marriage is shown to the satisfaction of the marriage officer, and the marriage has not been forbidden in manner provided by this Act, the marriage may be solemnized under this Act.

(2) Every such marriage shall be solemnized at the official house of the marriage officer, with open doors, between the hours of eight in the forenoon and three in the afternoon, in the presence of two or more witnesses, and may be solemnized by another person in the presence of the marriage officer, according to the rites of the Church of England, or such other form and ceremony as the parties thereto see fit to adopt, or may, where the parties so desire, be solemnized by the marriage officer.

(3) Where such marriage is not solemnized according to the rites of the Church of England, then in some part of the ceremony, and in the presence of the marriage officer and witnesses, each of the parties shall declare,

‘I solemnly declare, that I know not of any lawful impediment why I *A.B.* [*or C.D.*] may not be joined in matrimony to *C.D.* [*or A.B.*].’

And each of the parties shall say to the other,

‘I call upon these persons here present to witness, that I *A.B.* [*or C.D.*] take thee, *C.D.* [*or A.B.*], to be my lawful wedded wife [*or husband*].’

Marriage
fees to mar-
riage officer
and registra-
tion of
marriages.

9. (1) The marriage officer shall be entitled, for every marriage solemnized under this Act by him or in his presence, to have from the parties married the proper fee.

(2) He shall forthwith register in duplicate every such mar-

riage in two marriage register books, which shall be furnished to him from time to time for that purpose by the Registrar-General (through a Secretary of State), according to the form provided by law for the registration of marriages in England, or as near to that form as the difference of the circumstances admits.

(3) The entry in each book of every such marriage shall be signed by the marriage officer, by the person solemnizing the marriage, if other than the marriage officer, by both the parties married, and by two witnesses of the marriage.

(4) All such entries shall be made in regular order from the beginning to the end of each book, and the number of the entry in each duplicate shall be the same.

(5) The marriage officer by whom or in whose presence a marriage is solemnized under this Act may ask of the parties to be married the several particulars required to be registered touching the marriage.

10. (1) In January in every year every marriage officer shall make and send to a Secretary of State, to be transmitted by him to the Registrar-General, a copy, certified by him to be a true copy, of all the entries of marriages during the preceding year in the register book kept by him, and if there has been no such entry, a certificate of that fact; and every such copy shall be certified, and certificate given, under his hand and official seal.

Annual forwarding of copies of register book to Secretary of State.

(2) The marriage officer shall keep the duplicate marriage register books safely until they are filled, and then send one of them to a Secretary of State, to be transmitted by him to the Registrar-General.

11. (1) For the purposes of this Act the following officers shall be marriage officers, that is to say:—

Marriage officers and their districts.

(a) Any officer authorised in that behalf by a Secretary of State by authority in writing under his hand (in this Act referred to as a marriage warrant); and

(b) Any officer who, under the marriage regulations hereinafter mentioned is authorised to be a marriage officer without any marriage warrant,

and the district of a marriage officer shall be the area within which the duties of his office are exerciseable, or any such less area as is assigned by the marriage warrant or any other warrant of a Secretary of State, or is fixed by the marriage regulations.

(2) Any marriage warrant of a Secretary of State may authorize to be a marriage officer—

- (a) a British ambassador residing in a foreign country to the government of which he is accredited, and also any officer prescribed as an officer for solemnizing marriages in the official house of such ambassador;
- (b) the holder of the office of British consul in any foreign country or place specified in the warrant; and
- (c) a governor, high commissioner, resident, consular or other officer, or any person appointed in pursuance of the marriage regulations to act in the place of a high commissioner or resident, and this Act shall apply with the prescribed modifications to a marriage by or before a governor, high commissioner, resident, or officer so authorised by the warrant, and in such application shall not be limited to places outside Her Majesty's dominions.

(3) If a marriage warrant refers to the office without designating the name of any particular person holding the office, then, while the warrant is in force, the person for the time being holding or acting in such office shall be a marriage officer.

(4) A Secretary of State may, by warrant under his hand, vary or revoke any marriage warrant previously issued under this Act.

(5) Where a marriage officer has no seal of his office, any reference in this Act to the official seal shall be construed to refer to any seal ordinarily used by him, if authenticated by his signature with his official name and description.

Marriages on board Her Majesty's ships on foreign stations. 12. A marriage under this Act may be solemnized on board one of Her Majesty's ships on a foreign station, and with respect to such marriage—

- (a) subject to the marriage regulations a marriage warrant of a Secretary of State may authorise the commanding officer of the ship to be a marriage officer;
- (b) the provisions of this Act shall apply with the prescribed modifications.

Avoidance of objections to marriages on account of want of formalities or authority of officer. 13. (1) After a marriage has been solemnized under this Act it shall not be necessary, in support of the marriage, to give any proof of the evidence for the time required by or in pursuance of this Act of either of the parties previous to the marriage, or of the consent of any person whose consent thereto is required by law, nor shall any evidence to prove the contrary be given in any legal proceeding touching the validity of the marriage.

(2) Where a marriage purports to have been solemnized and registered under this Act in the official house of a British ambassador or consul, or on board one of Her Majesty's ships, it shall not be necessary in support of the marriage, to give any proof of the authority of the marriage officer by or before whom the marriage was solemnized and registered, nor shall any evidence to prove his want of authority, whether by reason of his not being a duly authorised marriage officer or of any prohibitions or restrictions under the marriage regulations or otherwise, be given in any legal proceeding touching the validity of the marriage.

14. If a marriage is solemnized under this Act by means of any wilfully false notice signed, or oath made by either party to the marriage, as to any matter for which a notice, or oath, is by this Act required, the Attorney General may sue for the forfeiture of all estate and interest in any property in England accruing to the offending party by the marriage; and the proceedings thereupon, and the consequences thereof, shall be the same as are provided by law in the like case with regard to marriages solemnized in England according to the rites of the Church of England.

Forfeiture of property in case of fraudulent marriage.

15. If a person—

- (a) knowingly and wilfully makes a false oath or signs a false notice, under this Act, for the purpose of procuring a marriage, or
 - (b) forbids a marriage under this Act by falsely representing himself to be a person whose consent to the marriage is required by law, knowing such representation to be false,
- such person shall suffer the penalties of perjury, and may be tried in any county in England and dealt with in the same manner in all respects as if the offence had been committed in that county.
- Punishment of false oath or notice.

16. (1) Any book, notice, or document directed by this Act to be kept by the marriage officer or in the archives of his office, shall be of such a public nature as to be admissible in evidence on its mere production from the custody of the officer.

Evidence.

(2) A certificate of a Secretary of State as to any house, office, chapel, or other place being, or being part of, the official house of a British ambassador or consul shall be conclusive.

17. All the provisions and penalties of the Marriage Registration Acts, relating to any registrar, or register of marriages or certified copies thereof, shall extend to every marriage officer,

Application of Registration Acts to this Act.

and to the registers of marriages under this Act, and to the certified copies thereof (so far as the same are applicable thereto), as if herein re-enacted and in terms made applicable to this Act, and as if every marriage officer were a registrar under the said Acts.

Registration of marriages solemnized under local law.

18. Subject to the marriage regulations, a British consul, or person authorised to act as British consul, on being satisfied by personal attendance that a marriage between parties, of whom one at least is a British subject, has been duly solemnized in a foreign country, in accordance with the local law of the country, and on payment of the proper fee, may register the marriage in accordance with the marriage regulations as having been so solemnized, and thereupon this Act shall apply as if the marriage had been registered in pursuance of this Act, except that nothing in this Act shall affect the validity of the marriage so solemnized.

Power to refuse solemnization of marriage where marriage inconsistent with international law.

19. A marriage officer shall not be required to solemnize a marriage, or to allow a marriage to be solemnized in his presence, if in his opinion the solemnization thereof would be inconsistent with international law or the comity of nations;

Provided that any person requiring his marriage to be solemnized shall, if the officer refuses to solemnize it or allow it to be solemnized in his presence, have the right of appeal to the Secretary of State given by this Act.

Fees. 54 & 55 Vict. c. 36.

20. The proper fee under this Act shall be such fee as may for the time being be fixed under the Consular Salaries and Fees Act, 1891; and the fee so fixed as respects a consul shall be the fee which may be taken by any marriage officer; and the provisions relating to the levying, application, and remission of and accounting for fees under that Act shall apply to the same when taken by any marriage officer who is not a consul.

Power to make marriage regulations.

21. (1) Her Majesty the Queen in Council may make regulations (in this Act referred to as the marriage regulations)—

(a) Prohibiting or restricting the exercise by marriage officers of their power under this Act in cases where the exercise of those powers appears to Her Majesty to be inconsistent with international law or the comity of nations, or in places where sufficient facilities appear to Her Majesty to exist without the exercise of those powers, for the solemnization of marriages to which a British subject is a party; and

- (b) Determining what offices, chapels, or other places are, for the purposes of marriages under this Act, to be deemed to be part of the official house or the office of a marriage officer; and
- (c) Modifying in special cases or classes of cases the requirements of this Act as to residence and notice, so far as such modification appears to Her Majesty to be consistent with the observance of due precautions against clandestine marriages; and
- (d) Prescribing the forms to be used under this Act; and
- (e) Adapting this Act to marriages on board one of Her Majesty's ships; and to marriages by or before a governor, high commissioner, resident, or other officer, and authorising the appointment of a person to act under this Act in the place of a high commissioner or resident; and
- (f) Determining who is to be the marriage officer for the purpose of a marriage in the official house of a British ambassador, or on board one of Her Majesty's ships, whether such officer is described in the regulations or named in pursuance thereof, and authorising such officer to act without any marriage warrant; and
- (g) Determining the conditions under which and the mode in which marriages solemnized in accordance with the local law of a foreign country may be registered under this Act; and
- (h) Making such provisions as seem necessary or proper for carrying into effect this Act or any marriage regulations; and
- (i) Varying or revoking any marriage regulations previously made.

(2) All regulations purporting to be made in pursuance of this section may be made either generally or with reference to any particular case or class of cases, and shall be published under the authority of Her Majesty's Stationery Office, and laid before both Houses of Parliament, and deemed to be within the powers of this Act, and shall while in force have effect as if enacted by this Act.

(3) Any marriage regulations which dispense for any reason, whether residence out of the district or otherwise, with the requirements of this Act as to residence and notice, may require as a condition or consequence of the dispensation, the production of such notice, certificate, or document, and the

taking of such oath, and may authorise the publication or grant of such notice, certificate, or document, and the charge of such fees as may be prescribed by the regulations; and the provisions of this Act, including those enacting punishments with reference to any false notice or oath, shall apply as if the said notice, certificate, or document were a notice, and such oath were an oath, within the meaning of those provisions.

Validity of
marriages
solemnized
within
British
lines.

22. It is hereby declared that all marriages solemnized within the British lines by any chaplain or officer or other person officiating under the orders of the commanding officer of a British army serving abroad, shall be as valid in law as if the same had been solemnized within the United Kingdom, with a due observance of all forms required by law.

Saving.

23. Nothing in this Act shall confirm or impair or in anywise affect the validity in law of any marriage solemnized beyond the seas, otherwise than as herein provided, and this Act shall not extend to the marriage of any of the Royal family.

Definitions.

24. In this Act, unless the context otherwise requires,—

The expression ‘Registrar-General’ means the Registrar-General of Births, Deaths, and Marriages in England:

The expression ‘Attorney General’ means Her Majesty’s Attorney General, or if there is no such Attorney General, or the Attorney General is unable or incompetent to act, Her Majesty’s Solicitor General, for England:

The expression ‘the Marriage Registration Acts’ means the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter eighty-six, intituled ‘An Act for registering births, deaths, and marriages in England’ and the enactments amending the same:

The expression ‘official house of a marriage officer’ means, subject to the provisions of any marriage regulations, the office at which the business of such officer is transacted, and the official house of residence of such officer, and, in the case of any officer, who is an officer for solemnizing marriages in the official house of an ambassador, means the official house of the ambassador:

The expression ‘consul’ means a consul-general, consul, vice-consul, pro-consul, or consular agent:

The expression ‘ambassador’ includes a minister and a chargé d’affaires:

The expression ‘prescribed’ means prescribed by marriage regulations under this Act.

25. This Act shall come into operation on the first day of January next after the passing thereof. Commence-
ment of
Act.

26. (1) The Acts specified in the schedule to this Act are hereby repealed to the extent in the third column of that Schedule mentioned. Repeal and
savings.

Provided that—

- (a) any Order in Council in force under any Act so repealed shall continue in force as if made in pursuance of this Act; and
- (b) any proceedings taken with reference to a marriage, any register book kept, and any warrant issued in pursuance of the Acts hereby repealed, shall have effect as if taken, kept, and issued in pursuance of this Act; and
- (c) The fees which can be taken in pursuance of the Acts hereby repealed may continue to be taken in like manner as if fixed in pursuance of the Consular Salaries and Fees Act, 1891, and may be altered accordingly; and
- (d) The forms prescribed by or in pursuance of the Acts hereby repealed may continue to be used as if prescribed by an Order in Council under this Act.

(2) Every marriage in fact solemnized and registered by or before a British consul or other marriage officer in intended pursuance of any Act hereby repealed shall, notwithstanding such repeal or any defect in the authority of the consul or the solemnization of the marriage elsewhere than at the consulate, be as valid as if the said Act had not been repealed, and the marriage had been solemnized at the consulate by or before a duly authorized consul;

Provided that this enactment shall not render valid any marriage declared invalid before the passing of this Act by any competent court, or render valid any marriage either of the parties to which has, before the passing of this Act, lawfully intermarried with any other person.

27. This Act may be cited as the Foreign Marriage Act, 1892. Short title.

SCHEDULE

ENACTMENTS REPEALED

<i>Session and Chapter</i>	<i>Title</i>	<i>Extent of Repeal</i>
4 Geo. 4. c. 91.	An Act to relieve His Majesty's subjects from all doubt concerning the validity of certain marriages solemnized abroad.	The whole Act, so far as unrepealed.
12 & 13 Vict. c. 68.	The Consular Marriage Act, 1849.	The whole Act.
31 & 32 Vict. c. 61.	The Consular Marriage Act, 1868.	The whole Act.
33 & 34 Vict. c. 14.	The Naturalization Act, 1870.	In section eleven, the words, 'and of the marriages of persons married at any of Her Majesty's embassies or legations.'
53 & 54 Vict. c. 47.	The Marriage Act, 1890.	The whole Act.
54 & 55 Vict. c. 74.	The Foreign Marriage Act, 1891.	The whole Act.

APPENDIX 14

FOREIGN JURISDICTION ACT, 1890

An Act to consolidate the Foreign Jurisdiction Acts. [4th August 1890.]

WHEREAS by treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within divers foreign countries, and it is expedient to consolidate the Acts relating to the exercise of Her Majesty's jurisdiction out of Her dominions:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It is and shall be lawful for Her Majesty the Queen to hold, exercise, and enjoy any jurisdiction which Her Majesty now has or may at any time hereafter have within a foreign country in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory. Exercise of jurisdiction in foreign country.

2. Where a foreign country is not subject to any government from whom Her Majesty the Queen might obtain jurisdiction in the manner recited by this Act, Her Majesty shall by virtue of this Act have jurisdiction over Her Majesty's subjects for the time being resident in or resorting to that country, and that jurisdiction shall be jurisdiction of Her Majesty in a foreign country within the meaning of the other provisions of this Act. Exercise of jurisdiction over British subjects in countries without regular governments.

3. Every act and thing done in pursuance of any jurisdiction of Her Majesty in a foreign country shall be as valid as if it had been done according to the local law then in force in that country. Validity of acts done in pursuance of jurisdiction.

4. (1) If in any proceeding, civil or criminal, in a court in Her Majesty's dominions or held under the authority of Her Majesty any question arises as to the existence or extent of any jurisdiction of Her Majesty in a foreign country, a Secretary of State shall, on the application of the court, send to the court within a reasonable time his decision on the question, and his decision shall for the purposes of the proceeding be final. Evidence as to existence or extent of jurisdiction in foreign country.

(2) The court shall send to the Secretary of State, in a document under the seal of the court, or signed by a judge of the

court, questions framed so as properly to raise the question, and sufficient answers to those questions shall be returned by the Secretary of State to the court, and those answers shall, on production thereof, be conclusive evidence of the matters therein contained.

Power to extend enactments in First Schedule. 5. (1) It shall be lawful for Her Majesty the Queen in Council, if She thinks fit, by Order to direct that all or any of the enactments described in the First Schedule to this Act, or any enactments for the time being in force amending or substituted for the same, shall extend, with or without any exceptions, adaptations, or modifications in the Order mentioned, to any foreign country in which for the time being Her Majesty has jurisdiction.

(2) Thereupon those enactments shall, to the extent of that jurisdiction, operate as if that country were a British possession, and as if Her Majesty in Council were the Legislature of that possession.

Power to send persons charged with offences for trial to a British possession. 6. (1) Where a person is charged with an offence cognizable by a British court in a foreign country, any person having authority derived from Her Majesty in that behalf may, by warrant, cause the person so charged to be sent for trial to any British possession for the time being appointed in that behalf by Order in Council, and upon the arrival of the person so charged in that British possession, such criminal court of that possession as is authorised in that behalf by Order in Council, or if no court is so authorised, the supreme criminal court of that possession, may cause him to be kept in safe and proper custody, and so soon as conveniently may be may inquire of, try, and determine the offence, and on conviction punish the offender according to the laws in force in that behalf within that possession in the same manner as if the offence had been committed within the jurisdiction of that criminal court.

Provided that—

(a) A person so charged may, before being so sent for trial, tender for examination to a British court in the foreign country where the offence is alleged to have been committed any competent witness whose evidence he deems material for his defence and whom he alleges himself unable to produce at the trial in the British possession:

(b) In such case the British court in the foreign country shall proceed in the examination and cross-examination of the witness as though he had been tendered at a trial before that court, and shall cause the evidence so taken to be

reduced into writing, and shall transmit to the criminal court of the British possession by which the person charged is to be tried a copy of the evidence, certified as correct under the seal of the court before which the evidence was taken, or the signature of a judge of that court:

- (c) Thereupon the court of the British possession before which the trial takes place shall allow so much of the evidence so taken as would have been admissible according to the law and practice of that court, had the witness been produced and examined at the trial, to be read and received as legal evidence at the trial:
- (d) The court of the British possession shall admit and give effect to the law by which the alleged offender would have been tried by the British court in the foreign country in which his offence is alleged to have been committed, so far as that law relates to the criminality of the act alleged to have been committed, or the nature or degree of the offence, or the punishment thereof, if the law differs in those respects from the law in force in that British possession.

(2) Nothing in this section shall alter or repeal any law, statute, or usage by virtue of which any offence committed out of Her Majesty's dominions may, irrespectively of this Act, be inquired of, tried, determined, and punished within Her Majesty's dominions, or any part thereof.

7. Where an offender convicted before a British court in a foreign country has been sentenced by that court to suffer death, penal servitude, imprisonment, or any other punishment, the sentence shall be carried into effect in such place as may be directed by Order in Council or be determined in accordance with directions given by Order in Council, and the conviction and sentence shall be of the same force in the place in which the sentence is so carried into effect as if the conviction had been made and the sentence passed by a competent court in that place.

Provision as to place of punishment of persons convicted.

8. Where, by Order in Council made in pursuance of this Act, any British court in a foreign country is authorised to order the removal or deportation of any person from that country, that removal or deportation, and any detention for the purposes thereof, according to the provisions of the Order in Council, shall be as lawful as if the order of the court were to have effect wholly within that country.

Validity of acts done under Order in Council.

Power to assign jurisdiction to British courts in cases within Foreign Jurisdiction Act. 9. It shall be lawful for Her Majesty the Queen in Council, by Order, to assign to or confer on any court in any British possession, or held under the authority of Her Majesty, any jurisdiction, civil or criminal, original or appellate, which may lawfully by Order in Council be assigned to or conferred on any British court in any foreign country, and to make such provisions and regulations as to Her Majesty in Council seem meet respecting the exercise of the jurisdiction so assigned or conferred, and respecting the enforcement and execution of the judgments, decrees, orders, and sentences of any such court, and respecting appeals therefrom.

Power to amend Orders in Council. 10. It shall be lawful for Her Majesty the Queen in Council to revoke or vary any Order in Council made in pursuance of this Act.

Laying before Parliament, and effect of Orders in Council. 11. Every Order in Council made in pursuance of this Act shall be laid before both Houses of Parliament forthwith after it is made, if Parliament be then in session, and if not, forthwith after the commencement of the then next session of Parliament, and shall have effect as if it were enacted in this Act.

In what cases Orders in Council void for repugnancy. 12. (1) If any Order in Council made in pursuance of this Act as respects any foreign country is in any respect repugnant to the provisions of any Act of Parliament extending to Her Majesty's subjects in that country, or repugnant to any order or regulation made under the authority of any such Act of Parliament, or having in that country the force and effect of any such Act, it shall be read subject to that Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be void.

(2) An Order in Council made in pursuance of this Act shall not be or be deemed to have been, void on the ground of repugnancy to the law of England unless it is repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid.

Provisions for protection of persons acting under Foreign Jurisdiction Acts. 13. (1) An action, suit, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or of any enactment repealed by this Act, or of any Order in Council made under this Act, or of any such jurisdiction of Her Majesty as is mentioned in this Act, or in respect of any alleged neglect or default in the execution of this Act, or of any such enactment, Order in Council, or jurisdiction as aforesaid, shall not lie or be instituted—

(a) in any court within Her Majesty's dominions, unless it is

commenced within six months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage within six months next after the ceasing thereof, or where the cause of action arose out of Her Majesty's dominions within six months after the parties to the action, suit, prosecution, or proceeding have been within the jurisdiction of the court in which the same is instituted; nor

- (b) in any of Her Majesty's courts without Her Majesty's dominions, unless the cause of action arose within the jurisdiction of that court, and the action is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.

(2) In any such action, suit, or proceeding, tender of amends before the same was commenced may be pleaded in lieu of or in addition to any other plea. If the action, suit, or proceeding was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action, suit, or proceeding.

14. It shall be lawful for Her Majesty the Queen in Council to make any law that may seem meet for the government of Her Majesty's subjects being in any vessel at a distance of not more than one hundred miles from the coast of China or of Japan, as fully and effectually as any such law might be made by Her Majesty in Council for the government of Her Majesty's subjects being in China or in Japan.

Jurisdiction over ships in certain Eastern seas.

15. Where any Order in Council made in pursuance of this Act extends to persons enjoying Her Majesty's protection, that expression shall include all subjects of the several princes and states in India.

Provision as to subjects of Indian princes.

16. In this Act,—

The expression 'foreign country' means any country or place out of Her Majesty's dominions:

The expression 'British court in a foreign country' means any British court having jurisdiction out of Her Majesty's

Definitions.

dominions in pursuance of an Order in Council whether made under any Act or otherwise:

The expression 'jurisdiction' includes power.

Power to
repeal or
vary Acts
in Second
Schedule.
Repeal.

17. The Acts mentioned in the Second Schedule to this Act may be revoked or varied by Her Majesty by Order in Council.

18. The Acts mentioned in the Third Schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned: Provided that,—

(1) Any Order in Council, commission, or instructions made or issued in pursuance of any enactment repealed by this Act, shall, if in force at the passing of this Act, continue in force, until altered or revoked by Her Majesty as if made in pursuance of this Act; and shall, for the purposes of this Act, be deemed to have been made or issued under and in pursuance of this Act; and

(2) Any enactment, Order in Council, or document referring to any enactment repealed by this Act shall be construed to refer to the corresponding enactment of this Act.

Short title. 19. (1) This act may be cited as the Foreign Jurisdiction Act, 1890.

(2) The Acts whereof the short titles are given in the First Schedule to this Act may be cited by the respective short titles given in that schedule.

SCHEDULES

FIRST SCHEDULE (Sections 5, 19)

<i>Session and Chapter</i>	<i>Title</i>	<i>Enactments which may be extended by Order in Council</i>	<i>Short title</i>
12 & 13 Vict. c. 96.	An Act to provide for the Prosecution and Trial in Her Majesty's Colonies of Offences committed within the jurisdiction of the Admiralty.	The whole Act.	Admiralty Offences (Colonial) Act, 1849.
14 & 15 Vict. c. 99.	An Act to amend the law of evidence.	Sections seven and eleven.	Evidence Act, 1851.
17 & 18 Vict. c. 104.	The Merchant Shipping Act, 1854.	Part X.	

<i>Session and Chapter</i>	<i>Title</i>	<i>Enactments which may be extended by Order in Council</i>	<i>Short title</i>
19 & 20 Vict. c. 113.	An Act to provide for taking evidence in Her Majesty's Dominions in relation to civil and commercial matters pending before Foreign tribunals.	The whole Act.	Foreign Tribunals Evidence Act, 1856.
22 Vict. c. 20.	An Act to provide for taking evidence in Suits and Proceedings pending before Tribunals in Her Majesty's Dominions, in places out of the jurisdiction of such tribunals.	The whole Act.	Evidence by Commission Act, 1859.
22 & 23 Vict. c. 63.	An Act to afford Facilities for the more certain Ascertainment of the Law administered in one Part of Her Majesty's Dominions, when pleaded in the Courts of another Part thereof.	The whole Act.	British Law Ascertainment Act, 1859.
23 & 24 Vict. c. 122.	An Act to enable the Legislatures of Her Majesty's Possessions Abroad to make Enactments similar to the Enactment of the Act ninth George the Fourth, chapter thirty-one, section eight.	The whole Act.	Admiralty Offences (Colonial) Act, 1860.
24 & 25 Vict. c. 11.	An Act to afford facilities for the better ascertainment of the Law of Foreign Countries when pleaded in Courts within Her Majesty's Dominions.	The whole Act.	Foreign Law Ascertainment Act, 1861.
30 & 31 Vict. c. 124.	The Merchant Shipping Act, 1867.	Section eleven.	
37 & 38 Vict. c. 94.	The Conveyancing (Scotland) Act, 1874.	Section fifty-one.	
44 & 45 Vict. c. 69.	The Fugitive Offenders Act, 1881.	The whole Act.	
48 & 49 Vict. c. 74.	The Evidence by Commission Act, 1885.	The whole Act.	

SECOND SCHEDULE (Section 17)

Acts which may be revoked or varied by Order in Council

<i>Session and Chapter</i>	<i>Title</i>	<i>Extent of Repeal</i>
24 & 25 Vict. c. 31.	An Act for the prevention and punishment of offences committed by Her Majesty's subjects within certain territories adjacent to the colony of Sierra Leone.	The whole Act.
26 & 27 Vict. c. 35.	An Act for the prevention and punishment of offences committed by Her Majesty's subjects in South Africa.	The whole Act.

THIRD SCHEDULE (Section 18)

Enactments repealed

<i>Session and Chapter</i>	<i>Title or Short Title</i>	<i>Extent of Repeal</i>
6 & 7 Vict. c. 94.	The Foreign Jurisdiction Act, 1843.	The whole Act.
20 & 21 Vict. c. 75.	An Act to confirm an Order in Council concerning the exercise of jurisdiction in matters arising within the kingdom of Siam.	The whole Act.
28 & 29 Vict. c. 116.	The Foreign Jurisdiction Act Amendment Act, 1865.	The whole Act.
29 & 30 Vict. c. 87.	The Foreign Jurisdiction Act Amendment Act, 1866.	The whole Act.
33 & 34 Vict. c. 55.	The Siam and Straits Settlements Jurisdiction Act, 1870.	The whole Act.
38 & 39 Vict. c. 85.	The Foreign Jurisdiction Act, 1875.	The whole Act.
30 & 40 Vict. c. 46.	An Act for more effectually punishing offences against the laws relating to the slave trade.	Sections four and six.
41 & 42 Vict. c. 67.	The Foreign Jurisdiction Act, 1878.	The whole Act.

APPENDIX 15

EIRE AND DIPLOMATIC PROTECTION

THE following extract from *The Times* of April 20, 1939, is of interest:

‘In the course of a speech in the Senate last night Mr. de Valera announced that an important change had been made in the form of passport to be used by citizens of Eire. Hitherto protection for Irish citizens travelling abroad has been invoked in the name of the King, but in future the formula will be:

‘The Minister for External Affairs of Eire hereby requests and requires all those whom it may concern to allow the bearer to pass freely without let or hindrance and to afford . . . every assistance and protection of which . . . may stand in need.

(Signed) EAMON DE VALERA.’

The following Parliamentary Question and Answer which occurred in the House of Commons on June 12, 1939, are of interest:

Sir Ronald Ross asked the Prime Minister whether he proposes to continue the arrangement by which British diplomatic and consular officials abroad look after the interests of Eire and her citizens in those countries in which Eire has no separate representation, in view of the fact that, by issuing passports in the name of the President of Eire, that country has dissociated itself from other countries of the British Commonwealth?

Mr. Butler. Notwithstanding the fact that Eire passports will, in future, be issued by the Minister for External Affairs in his own name alone, and not in the name of the King, it is not at present proposed by His Majesty's Government in the United Kingdom to make any alteration in the arrangement under which United Kingdom diplomatic and consular officers look after the interests of Eire and citizens of Eire in those countries in which Eire has no separate diplomatic or consular representation.

Sir Ronald Ross. Have there been any protests from the Government of Eire that her citizens are being treated as though they were British citizens, or have there been any protests against their receiving benefits as if they were British citizens?

Mr. Butler. No, Sir. They seem to have been gratefully received.

It is understood that the answer given above still represents the practice followed in the matter.

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