

## An Act respecting Naturalization and Aliens.

[Assented to 21st March, 1881.\*]

Preamble. HER MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:— †

## INTERPRETATION CLAUSE.

Interpretation. 1. In this Act, if not inconsistent with the context or subject-matter thereof,—

Disability. "Disability" means the status of being an infant, lunatic, idiot, or married woman:

\* In force 4th July, 1883. See sec. 2, and note.

† By the Imperial Act it is provided that:—"All laws, statutes and ordinances which may be duly made by the legislature of any British possession for imparting to any person 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. '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 Naturalization Act, 1870. (Imp.) sec. 16.*)

“ Officer in the Diplomatic Service of Her Majesty ” means any Ambassador, Minister or Chargé d’Affaires, or Secretary of Legation, or any person appointed by such Ambassador, Chargé d’Affaires, or Secretary of Legation to execute any duties imposed by *The Naturalization Act*, 1870, (Imperial) on an officer in the Diplomatic Service of Her Majesty :

Officer in  
diplomatic  
service of  
H.M.

“ Officer in the Consular Service of Her Majesty ” means and includes Consul-General, Consul, Vice-Consul and Consular Agent, and any person for the time being discharging the duties of Consul-General, Consul, Vice-Consul or Consular Agent :

Officer in  
consular ser-  
vice of H.M.

“ Oath ” includes affirmation in the case of a person allowed by law to affirm in judicial cases :

Oath.

“ County ” includes a union of counties and a judicial district or other judicial division :

County.

“ Alien ” includes a statutory alien : \* Alien.

“ Subject ” includes a citizen when the foreign country referred to is a republic.

Subject.

\* I. e. one who has become an alien in pursuance of the Act.

When this Act shall be in force.

2. This Act shall not come into force until on, from and after a day to be appointed in that behalf by proclamation of the Governor published in the *Canada Gazette*.\*

Short title.

3. This Act may be cited for all purposes as "*The Naturalization Act, Canada, 1881*."

#### STATUS OF ALIENS IN CANADA.

Aliens may hold and transmit property of any kind.

4. 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,—(a)

(a). Upon the corresponding provision of the English Act, Lord Chancellor Hatherley observed that some reasons may have existed formerly from jealousy of foreigners acquiring undue influence at times, when we had monarchs with foreign possessions, or who were of foreign origin, and who might be disposed to parcel out among their favorites large tracts of land, \* \* \* these reasons no longer

\* See Proclamation *Canada Gazette* of July, 1883, declaring Act in force on, from and after 4th July, 1883.

existed, and the sooner they got rid of this invidious distinction the better.\*

And the object of the provisoes, as the Solicitor-General in the Commons, in reply to objections, said, was to preserve the distinction between the rights which an alien would acquire under this clause, and those further rights which he would acquire by naturalization. If the provisoes were not inserted, the very fact of empowering aliens to hold real property might be taken as a qualification for municipal and other offices and franchises, and then there would be no need of a Naturalization Act.†

The question of suspending the operation of the Act with regard to enjoyment of property by aliens subjects of any State at war with Her Majesty during the continuance of such hostilities was left to the discretion of the Secretary of State.‡

While, prior to 1849, the law of England introduced by the Act of 1792, which incapacitated aliens from holding or transmitting real estate, prevailed in Upper Canada, in Lower Canada an alien could hold real estate, but at his death it would go to the Crown (*The Mayor of Lyons v. The East India Co.* 1 Moo. P. C. 267, 284); and when the fact of alienage was established according to English law, the civil consequences of it were determinable by the local law (*Donegani v. D.*, 3 Knapp P. C. 84). A collective naturalization of certain classes of aliens in Lower Canada was effected by 1 W. 4 c. 53 (L. C.), conferring upon them the capacities of British subjects with regard to real estate. But the Act of the Parliament of Canada of 1849 (12 Vic. cap. 197, sec. 12; C. S. C. cap. 8); together with the Act of 1865 (29 Vic. cap. 16), set the whole question at rest,

\* *Halsard* (Imp.) 1870.

† *Ibid.*

‡ *Ibid.*

placing aliens on the same footing as to taking, holding, and disposing of real estate as British subjects in both Upper and Lower Canada. (See *Corse v. C.*, 4 L. C. Rep. 310, 318).

The local law of Ontario is the same as that of the Dominion in this respect (R. S. O. cap. 97).

The Naturalization Act (Imp.), sec. 2, corresponding with the above provision of the Act of Canada, has been held not retrospective, and that the Court of Chancery will enforce in favour of the Crown a trust of land for an alien created prior to the Act: (*Sharp v. St. Sauveur*, L. R. 7 Chy. App. 343). The Ontario Act, however, is expressly made retrospective to 1849.

Not to vote  
on it.

1. That this section shall not qualify an alien for any office, or for any municipal, parliamentary, or other franchise (*b*);

(*b*) Aliens cannot be elected members of Parliament. (*May's Parl. Prac.* 9th ed., p. 31; *Lex Parliamentaria*, 182; and see Form of Writ for general election; *Todd's Parl. Law*, App. xv; and *Whitelock*, vol. i, p. 2).

Aliens are disqualified from voting at elections. (See cases collected in *Hodgins' Voters' List*, 100).

It is not sufficient in case of a contested election, to swear that certain voters are aliens without giving particular evidence to show that they are aliens, and how, as by having been born in a certain place named out of the allegiance of the British Crown. (*Regina v. Beckwith*, 1 Pr. R. 278, 284).

Imp. Stat. 7 Geo. IV, (1826) c. 68, enabled persons naturalized in Upper Canada to be summoned to the Legislative Council of the Province and to vote at elections.

The place of a senator becomes vacant upon his becoming a subject or citizen of a foreign power. (*B. N. A. Act*, sec. 31, sub-sec. 2).

As to the disabilities of aliens in the United States, see *ante* p. 5; and *Cooley* on Constitutional Limitations, 5th ed. 38, 752; and *ante* p. 5.

2. That this section shall not entitle To have only rights expressly given. 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 Act not to affect dispositions made before its passing. 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 coming into force of this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this Act :

4. That this section shall not qualify As to owning ships. an alien to be the owner of a British ship (c).

(c). If any unqualified person acquires as owner any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, such interest shall be forfeited to Her Majesty (*Merchant's Shipping Act*, sec. 103, sub-sec. 3), unless such interest be acquired by death of an owner, or marriage with a female owner. (*Ibid.*, sec. 62-64).

In the debate on the English bill Lord Chancellor Hatherley, in reply to Lord Westbury as to proposal to allow aliens to become owners of British ships said, that his own opinion was that a provision to allow aliens to be registered as owners of British ships was one of all others most likely to lead us into conflict with other countries. It was not at all probable that any other country would recognize for instance, a vessel owned by a Frenchman, resident in England, as a British vessel. Difficulties would be constantly arising.

It was held in the Supreme Court, Nova Scotia, that an alien being disqualified from taking a bill of sale or transfer of a British vessel under 17 & 18 Vic., cap. 104, the agreement sued on (viz., for purchase of shares in such a vessel by an alien) could not be enforced. (*Cullen v. McFurlane et al.* *Geldert and Oxley's N. S. Decision*, S. C. 468).

An alien is not entitled to own or register a ship or vessel of the United States. (*Parson's on Shipping*, vol. i. pp. 28-9).

Declaration of alienage in cases within convention with a foreign state.

5. Where Her Majesty has entered into a convention with any foreign State to the effect that the subjects of that State who have been naturalized as British subjects may divest themselves of their status as British subjects, and where Her Majesty, by Order in Council, passed under the third section of *The Naturalization Act*, 1870, (Imperial) has declared that such convention has been entered into by Her Majesty,—then, from and after the date of such Order in

Council, any person being originally a subject of the State referred to in such Order, who has been naturalized as a British subject within Canada 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, within Canada, be <sup>Effect of such declaration.</sup> regarded as an alien, and as a subject of the State to which he originally belonged as aforesaid (*d*).

(*d*). It was thought desirable that a certain time after the passage of the Act should be allowed persons who had become naturalized to choose between their nationality of origin and the acquired nationality, and to enable them to become denaturalized if they should so elect. And this involving an international question, it was the subject of treaty.\* (See convention or treaty between Great Britain and the United States. App.)

The British Order in Council, so far as the United States were concerned, required by the Imperial Act, section 3, from which this section of the Canadian Act is taken, was passed 17th August, 1870.† After reciting that section of the Act it proceeds:—"And whereas, on about the 13th day of May last past, a convention between Her Majesty and the President of the United States of America was duly signed at London, the ratifications whereof were duly exchanged at London, the 10th day of August, instant, whereby the subjects or citizens of the United States of

\* Hansard (Imp.) 1870.

† *Hertslets*, vol. xiii, p. 967.

America, who have been naturalized as British subjects, are at liberty to renounce their naturalization and divest themselves of their status as such British subjects, provided that such renunciation be publicly declared within two years after the exchange of the ratifications of the said convention. Now, therefore, Her Majesty, by and with the advice of Her Privy Council, doth hereby declare that Her Majesty has entered into a convention with the said United States of America, to the effect that the subjects or citizens of those states who have been naturalized as British subjects may divest themselves of their status as such subjects.

Signed,—ARTHUR HELPS."

See also sec. 9, sub-sec. 1.

Before whom  
such declara-  
tion may be  
made.

6. A declaration of alienage may be made as follows:—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, or 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.

7. 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 within Canada 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 within Canada cease to be a British subject (*e*).

Declaration of alienage by persons being H. M.'s subjects, by birth, but also subjects of a foreign state by the law thereof.

(*e*). This section is in pursuance of the policy of the bill to do away with twofold nationality. Lord Penzance said it was not an infrequent case that the child of a foreign parent was born within British dominions, and from the moment of his birth he became, without any will of his own, a subject of two different countries; there were impressed on him a double allegiance and a double nationality. The converse of this case is provided for by the latter part of the section, viz., persons born out of Her Majesty's dominions who, by reason of parentage, were British subjects.\* (See Form of Declaration, *post*).

\* Hansard (Imp.) 1870. See further, speeches of Mr. Vernon Harcourt and Sir Roundell Palmer, *ib*.

Juries *de  
medietate*  
abolished.

8. From and after the coming into force of this Act, an alien shall not be entitled to be tried by a jury *de medietate linguæ*, but shall be triable in the same manner as if he were a natural-born subject.

#### EXPATRIATION (*f*).

Alienage in  
Canada of  
British sub-  
ject natural-  
ized in a  
foreign State.

9. Any British subject who has, at any time before, or may at any time after the coming into force of this Act, when in any foreign State and not under any disability, voluntarily (*g*) become naturalized in such State, shall, from and after the time of his so having become naturalized in such foreign State, be deemed within Canada to have ceased to be a British subject, and be regarded as an alien: Provided,

(*f*). This section corresponds with sec. 6 of the Imperial Act as to the capacity of a British subject to renounce allegiance to Her Majesty, the words "within Canada" being inserted.

It should be free to every one to expatriate and denationalize himself, and to transfer his allegiance to another country. (*Lord Ch. J. Cockburn on Nationality*, p. 214). The leading principle of the bill was the abrogation of the old legal rule, *nemo potest exuere patriam*, an old rule of law which, however expedient and useful it may have been in other times, and in a different state of society, has become obsolete and is inapplicable in the case of a country which,

like England at the present day, encourages emigration on a very large scale. (See speeches of Lord Chancellor Hatherley and the Earl of Derby, Hansard, Imp. 1870, and *ante* 19).

(g). Lord Chancellor Hatherley explained that the word "voluntarily" was necessary, as follows: In several of the Southern States of America men were naturalized against their will by Acts of the Legislature, and it would be grossly unfair to refuse to receive back as citizens persons who had been compelled to cast off their allegiance to this country if they came asking us to be reinstated in their privileges. And in Prussia no person could hold a consular or diplomatic position in a fortified town unless he were naturalized. A practical result of this had occurred. An Englishman who had acted as consul in Prussia, and who had necessarily been naturalized, was afraid to let his sons visit him in Prussia because they would be liable to the conscription as subjects.

1. That where any British subject has before the coming into force of this Act voluntarily become naturalized in a foreign State and yet is desirous of remaining a British subject within Canada, he may, at any time within two years (*h*) after the coming into force 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 continu-

Proviso  
How such  
subject may  
remain a  
British sub-  
ject in Ca-  
nada.

Declaration  
and its effect.

Except when  
he is within  
such foreign  
State.

ally a British subject within Canada, with this qualification, that he shall not, when within the limits of the foreign State in which he has been naturalized, be deemed within Canada 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 (*i*).

(*h*). This period, as explained by the Lord Chancellor, was given for the benefit of those who had been naturalized abroad previous to the passing of the measure, and who, according to the existing law, were still British subjects, to choose whether they would remain foreign subjects or return and reclaim their citizenship in England. That was a point upon which he thought there could be no real difference of opinion, for up to this time, when a man asked for naturalization abroad he knew that he would remain a British subject, and it would be unjust by *ex post facto* legislation to deprive him of that privilege. The international measure could only be made perfect by agreement with all foreign states, but a great step was made by pointing out to other states the principle deemed most expedient for adoption—namely, that as soon as a man was naturalized in one country he ceased, *ipso facto*, to belong to another. (See conventions or treaties between Great Britain and the United States in Appendix).

(*i*) The commissioners on the English Naturalization Bill recommended that when a person had fairly and voluntarily caused himself to be naturalized in one country he should cease, *ipso facto*, to be subject to the country which he had quitted, and become the subject of the country he had

adopted. They further recommended that inasmuch as it would be well to make these regulations retrospective, and clear the whole question at once, it might be advisable to allow a period of time within which any person who, at the passing of the Act, has been so naturalized in any foreign country might, if he thought fit, give up such naturalization and return to the country of which he was originally a citizen. Sec. 5, *ante*, provides for the case of an alien who had become naturalized in Canada; this provides for the case of a British subject who has been naturalized abroad, divesting himself of his acquired nationality within a given time. (See Form of Declaration, *post*).

2. A declaration of British nationality <sup>Where and before whom such declaration may be made.</sup> may be made, and the oath of allegiance be taken as follows:—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, or 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.

Alien having resided in Canada, or been in the service of a Canadian Government, not less than three years within the time to be limited by the Governor in Council, may take oaths and apply for certificate as a British subject.

10. An alien who, within such limited time (*j*) before taking the oaths or affirmations of residence and allegiance and procuring the same to be filed of record as hereinafter prescribed, as may be allowed by order or regulation of the Governor in Council\* has resided in Canada for a term of not less than three years, or has been in the service of the Government of Canada, or of the Government of any of the Provinces of Canada, or of two or more of such governments, for a term of not less than three years, and intends, when naturalized, either to reside in Canada, or to serve under the Government of Canada or the government of one of the Provinces of Canada, or two or more of such governments, may take and subscribe the oaths of residence and allegiance or of service and allegiance in form A in the schedule hereto or to the like effect, and apply for a certificate in the form B in said schedule. †

(*j*). The order or regulation of the Governor in Council allows five years immediately preceding the taking of the oaths, as the limited period here referred to (*Vide post*):

\* *Vide Regulations, post.*

† *Vide in re C. C. Webster.* Appendix.

that is, during such period of five years, the applicant must have resided or served the period mentioned in this section. The new law differs in this respect from the Act of 1868. For practice in England under regulations made for carrying the Act of 1870 (Imp.) into effect. (See Appendix).

11. Every such oath shall be taken <sup>Where and before whom such oaths may be taken.</sup> and subscribed by such alien, and may be administered to him by any of the following persons, viz. :—A judge of a court of record in Canada, a commissioner authorized to administer oaths in any court of record in Canada, a commissioner authorized by the Governor General to take oaths under this Act, a Justice of the Peace of the County or district where the alien resides, a Notary Public, a Stipendiary Magistrate, a Police Magistrate.

12. The alien shall adduce in support <sup>Evidence of residence or service required.</sup> of his application such evidence of his residence or service, and intention to reside or serve, as the person before whom he takes the oaths aforesaid may require ; and such person, on being satisfied with such evidence, and that the alien is of good character, shall grant to such alien a certificate in the form B in the schedule hereto or to the like effect (*k*).

(*k*). In a case before the Supreme Court of New Brunswick upon section 4, sub-sec. 3, of the Act of 1868, it was held that the certificate there provided for, similar to that

prescribed by this section, should be signed by the person who administered the oaths of residence and allegiance. (*Re Dezeter, An Alien*, 1 Can. Law Times, 115).

Presentation of certificate      13. Such certificate shall be presented,—

In Ontario.      *In Ontario*, to the Court of General Sessions of the Peace of the county within the jurisdiction of which the alien resides, or to the Court of Assize or *Nisi Prius* during its sitting in such county ;

In Quebec.      *In Quebec*, to the Circuit Court in and for the circuit within the jurisdiction of which the alien resides ;

In Nova Scotia.      *In Nova Scotia*, to the Supreme Court or to the Circuit Court during its sittings in the county within the jurisdiction of which the alien resides, or to the County Court of such county.

In New Brunswick.      *In New Brunswick*, to the Supreme Court or the Court of Assize or *Nisi Prius* during its sitting in the county within the jurisdiction of which the alien resides, or to the County Court of such county.

In British Columbia.      *In British Columbia*, to the Supreme Court during its sittings in the electoral district within the jurisdiction of which the alien resides, or to the Court of Assize

or *Nisi Prius* during its sittings in such electoral district, or to the County Court of such electoral district ;

*In Manitoba*, to the Court of Queen's In Manitoba.  
Bench during its sittings in the county within the jurisdiction of which the alien resides, or to the Court of Assize or *Nisi Prius* during its sittings in such county, or to the County Court of such county ;

*In Prince Edward Island*, to the Su- In Prince  
preme Court during its sittings in the Edward  
county within which the alien resides, or Island.  
to the Court of Assize or *Nisi Prius* during its sittings in such county, or to the County Court of such county,—

In open court, on the first day of some To be in open  
general sitting of such court ; and there- Court.  
upon such court shall cause the same to be openly read in court ; (l) and, if during such sitting the facts mentioned in such certificate are not controverted, or any To be filed  
other valid objection made to the natural- of record if  
ization of such alien, such court, on the not invali-  
last day of such sitting, shall direct that dated.

(l) The certificate required by the Act, 31 Vict., cap. 66, sec. 5, must have been read on the first day of term in open court. (*Exp. Dow*, 2 P. & B. (*New Brunswick Rep.*) 302; see also case of *C. C. Webster*, in Appendix).

such certificate be filed of record in the court. \*

In the North-West Territories, &c,

14. In the North-West Territories and in the District of Keewatin, such certificate shall be presented to such authorities or persons as may be provided by order or regulation of the Governor-General in Council, † and thereupon such authority or person shall take such proceedings with respect to such certificate, and shall cause the same to be filed of record in such way as may be provided by such order or regulation.

Certificate of naturalization from a Court.

15. The alien shall, after the filing of such certificate, be entitled, under the seal of the Court if such certificate has been presented to a Court, to a certificate of naturalization in the form C in the schedule hereto annexed or to the like effect; and if the certificate has been presented to an authority or person, as provided by order or regulation of the Governor General in Council, the alien shall be entitled to receive from such authority or person a certificate of naturalization authenticated as may be provided by such order or regulation. ‡

From an authority duly empowered by the Governor in Council

\* See decision of Judge Ardagh, Co. Simcoe, Ont., *In re C. C. Webster*, a contested case, in Appendix.

† *Vide* Regulations, *post*.

‡ *Ibid*.

16. The certificate granted to an alien who applies for naturalization on account of service under the Government, as provided by the tenth section hereof, shall be filed of record in the office of Her Majesty's Secretary of State for Canada; and thereupon the Governor General in Council may authorize the issue of a certificate of naturalization to such alien in the form D in the schedule hereto or to the like effect.

If certificate of naturalization be on account of service.

17. An alien to whom a certificate of naturalization is granted shall, within Canada, 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 \* within Canada, with this qualification (*m*), 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 or convention to that effect. †

Rights of alien so naturalized.

Exception when he is within the State of which he was a subject.

(*m*) The qualification of the effect of naturalization, and the exception to it which follows, with the similar qualifica-

\* See *ante*, p. 49. as to object of provisos in sec. 4.

† See Convention between United States and Great Britain in Appendix.

tion and exception in section 9, sub-section 1, and in section 23, are inserted in deference to the rights of foreign governments under the rules of international law before referred to.\*

Again, the language of the Lord Chancellor may be cited with advantage. Upon this provision, referring to Lord Westbury's proposed amendment that the bill should require a foreigner to obtain the consent of his own country before he could be naturalized in England, he said, "There were countries even in the present day which declined altogether to allow their subjects to accept foreign naturalization and to become subjects of a foreign state. All those states which adopted the Code Napoleon were in the position—that after the naturalization of their subjects in a foreign country, their natural status in the country from which those persons proceeded was lost. But there were other countries, such as Prussia, and other states in Germany where a different law prevailed, they refused to permit any such rejection of this allegiance by their subjects. The question, therefore, came to this, whether we were prepared to refuse every foreigner who could not obtain previous leave from the country of his origin the right of naturalization in England. What would that principle involve? Heretofore we had opened our gates wide to all the persecuted in all parts of the globe, and there had been times in which it would have been impossible for those who sought refuge on our shores from what they conceived to be the persecution of their own governments to obtain the consent of those governments to their settling here. Such consent might have been refused for example by Russia in regard to the Poles, and other Powers of Europe might have taken the same course. \* \* \* He apprehended that neither

\* *Vide ante*, pp. 40, 58. These qualifying words are inserted in passports issued to British subjects as shown in the form in Appendix.

House of Parliament would be ready to part with that great distinction, the hospitality this country extended to all, coming from every land, who were in trouble or distress. But if we opened to them our hospitality should we say that they were to be incapable of becoming our fellow-subjects if they desired it? For we could not expect them always to obtain the consent of the countries from which they came. Could we tell them we would have nothing to do with them beyond affording them shelter for a time, that they could not remain and settle among us as citizens? "What under such a rule would have become of all the Huguenot families who came over here on the revocation of the edict of Nantes, and who had produced some of the ablest men in this country from that time—men some of whom might be mentioned as sitting in that House with honour? It was not likely that those refugees would have obtained leave from the government of Louis XIV. to become naturalized in England. He trusted, therefore, that their lordships would not shut the door against the possibility of foreigners being naturalized in this country unless they could procure the consent of the state from which they come. That subject had been well weighed by the government who had acted on the well-considered report of the commissioners. From that report it would be found that the countries from which the greater number of foreigners proceeded who would be naturalized here were countries where the cessation of a subject's original status was not permitted. When the matter came to be considered it would be a serious thing to deny such persons naturalization when they desired permanently to settle in this country" (*Hansard*, Imp. 1870).

18. A special certificate of naturaliza-  
 tion may, in manner aforesaid, be granted  
 to any person with respect to whose

Certificate of  
 naturaliza-  
 tion where  
 nationality  
 is doubtful.

nationality as a British subject a doubt exists, and such certificate may specify that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be deemed 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. Such special certificate may be in the form E in the schedule hereto annexed or to the like effect.

Effect thereof  
As to aliens  
naturalized  
before this  
Act.

19. An alien who has been naturalized previously to the coming into force of this Act may apply for a certificate of naturalization under this Act, and such certificate may be granted to such naturalized alien upon the same terms and subject to the same conditions upon which such certificate might have been granted if such alien had not been previously naturalized.

And as to  
British sub-  
ject by birth  
who has be-  
come an  
alien.

20. A natural born British subject who has become an alien in pursuance of this Act or of any Act or law in that behalf, and is, in this Act, referred to as a "statutory alien," may, upon the same terms and subject to the same conditions as are required in the case of an alien applying for a certificate of naturalization,

apply to the proper Court or authority or person in that behalf for a certificate, hereinafter referred to as a "certificate of re-admission to British nationality," re-admitting him to the status of a British subject within Canada.\* Such certificate may be in the form F in the schedule hereto annexed or to the like effect.

Certificate of re-admission within Canada.

21. A copy of the certificate of naturalization may be registered in the Land Registry Office of any county or district or registration division within Canada, and a copy of such registry certified by the registrar or other proper person in that behalf, shall be sufficient evidence of the naturalization of the person mentioned therein, in all courts and places whatsoever.

Registration of certificate in Land Registry office.

22. The clerk of the court by which the certificate of naturalization is issued shall, for all services and filings in connection with such certificate, be entitled to receive from such person the sum of twenty-five cents, and no more; and no further or other fee shall be payable for or in respect of such certificate. The registrar shall, for recording a certificate

Fees on issue of certificate by a Court.

\* See *ante*, p. 14. "Repatriation." And see sec. 23 as to rights of such persons.

And to Registrar for recording it.

of naturalization be entitled to receive from the person producing the same for registry, the sum of fifty cents, and a further sum of twenty-five cents for every search and certified copy of the same, and no more.

Rights of statutory alien re-admitted within Canada.

23. A statutory alien to whom a certificate of re-admission to British nationality within Canada 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 within Canada,—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 within Canada, unless he has ceased to be a subject of that foreign State according to the laws thereof, or in pursuance of a treaty or convention to that effect.†

Provision in case of certain convention by H. M. with a foreign State.

24. Where any foreign State has, before or after the coming in force of this Act, entered into a convention with Her Majesty to the effect that the subjects of that State who have been naturalized as British subjects may divest themselves of their status as subjects of such foreign

\* See note to sec. 17.

† See Treaty between Great Britain and United States in Appendix.

State, and where such convention or the laws of such foreign State require a residence in Canada of more than three years or a service under the Government of Canada or of any of the Provinces of Canada, or of two or more of such Provinces, of more than three years, as a condition precedent to such subjects divesting themselves of their status as such foreign subjects—an alien being a subject of such foreign State, who desires to divest himself of his status as such subject, may, if at the time of taking the oath of residence or service he has resided or served the length of time required by such convention or by the laws of the foreign State, instead of taking the oath shewing three years residence or service, take an oath shewing residence or service for the length of time required by such convention or by the laws of the foreign State; and the certificate to be granted to the alien under the twelfth section hereof shall state the period of residence or service sworn to. The certificate of naturalization shall likewise state the period of residence or service sworn to, and the statement in such certificate of naturalization shall be sufficient evidence of such residence or service in all courts and places whatsoever.

How alien subject of such State may obtain certificate of naturalization.

What the certificate shall show and its effect.

As to aliens in such case of convention who have become entitled to privileges of British birth in Canada.

25. An alien who, either before or after the coming into force of this Act, has, whether under this Act or otherwise, become entitled to the privileges of British birth in Canada, and who is a subject of a foreign State with which a convention to the effect above mentioned has been entered into by Her Majesty, and who desires to divest himself of his status as such subject, and who has resided or served the length of time required by such convention or by the laws of the foreign State, may take the oath of residence or service shewing residence or service for the length of time required by such convention or by the laws of the foreign State, and apply for a certificate (or a second certificate, as the case may be) of naturalization under this Act.

#### NATIONAL STATUS OF MARRIED WOMEN AND INFANT CHILDREN.

Married woman.

26. A married woman shall, within Canada, be deemed to be a subject of the State of which her husband is for the time being a subject (*n*).

(*n*) This section and the following sections 27 to 31 inclusive correspond to section 10 Imp. Act of 1870, and its sub-sections, and sec. 3 of Imp. Act of 1872, upon which there was some discussion in the Imperial Parliament.

Mr. Alderman Lawrence objected that \* \* \* "A married woman might have married a British subject, yet by a former clause in the Bill combined in the present one, if the husband made himself an alien, the wife although residing with her children in this country, and judicially separated from her husband who lived abroad, would be made a foreign subject against her will, \* \* \* through his changing his nationality. Sir ROUNDSELL PALMER, said those questions were very carefully considered in the commission, and it was proposed that they should be settled in accordance with the universal principles of private International Law. It was quite settled as a matter of International Law generally that the status of the wife and that of the minor children followed the status of the husband and father. The Bill proceeded on that principle, and no harm could result from that, because it was only political status that was in question; the Bill abolished all distinctions which at present existed between aliens and others as to the enjoyment of property. The Bill not only preserved the rights of children who did not go abroad, but enabled those children who left this country, and wives who became widows, or were divorced, to return to the condition of British subjects, if they thought fit. MR. JESSEL said that the object of the Bill was to amend our naturalization law, so as to make it conform more nearly to the International Law; and therefore it was necessary to adopt the general rule that the wife should follow the nationality of her husband. He believed that the objection to the clause was a mere theoretical one; except, sentimentally, the legal status of the wife would not be altered by the act of her husband. If hardship should follow from the provision in a case where there had been a judicial separation, the remedy would be to alter the law in respect of judicial separations, so as to make a woman judicially separated a *feme sole*. (*Hansard, Imp. 1870*).

Widow being a British subject by birth who has become an alien by marriage.

27. 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, within Canada, in manner provided by this Act.

Children of British subjects who have become aliens.

28. 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, within Canada, be deemed to be a subject of the State of which the father or mother has become a subject, and not a British subject.\*

Children of parents who have been re-admitted to British nationality.

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

\* *Vide ante*. p. 73.

30. Where the father, or the mother being a widow, has obtained a certificate of naturalization within Canada, every child of such father or mother who during infancy has become resident with such father or mother within Canada shall, within Canada, be deemed to be a naturalized British subject (o).

Where the parents have obtained certificates of naturalization.

(o) According to continental law the nationality of natural children depends on the mother, except, indeed, where, as can be done under that law as distinguished from that of England, the father, by subsequent marriage, or by formal recognition, legitimizes the offspring. And whenever the parents are unknown, they are presumed to have belonged to the country in which the child is found; so that the child of unknown parents always takes the nationality of the country in which he is first found. (*Cockb.* 25; *Story Confl. Law*, 546).

A bequest of personalty in an English will to the children of a foreigner must be construed to mean his legitimate children, and by international law as recognized in this country (*i. e.* England), those children are legitimate whose legitimacy is established by the laws of the father's domicile. (*Re Andros, Andros v. Andros*, L. R. 24, Ch. D. 637 (1882). See further as to status of children born out of lawful wedlock, *Phillimore Int. Law*, 2nd ed. vol. iv, cap. 24).

31. Nothing in this Act contained shall deprive any married woman of any estate or interest in real or personal property to which she may have become

Act not to affect acquired rights of married women.

entitled previously to the coming into force of this Act, or affect such estate or interest to her prejudice.

Regulations by Governor-in-Council as to— 32. The Governor-General in Council may by regulation provide for the following matters:— (*p*)

(*p*). Some of the matters specified in this section appear to have been provided for in the Act itself with Schedule of Forms, and not wholly left to regulation by Order in Council; *e. gr.*: those matters specified in sub-sections 2, 3, 7 and 8. For other matters see Regulations in Appendix.

Declaration. 1. The form and registration of declarations of British nationality ;\*

Registration. 2. The form and registration of certificates of naturalization in Canada ;

Re-admission. 3. The form and registration of certificates of re-admission to the British nationality within Canada ;

Alienage. 4. The form and registration of declarations of alienage ; †

Transmission of evidence for purposes of this Act. 5. The transmission to Canada 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 Canada, or of any

\* To be registered in the office of the Secretary of State of Canada. See Regulations in Appendix.

† *Ibid.*

copies of such declarations or certificates, also of copies of entries contained in any register kept out of Canada in pursuance of or for the purpose of carrying into effect the provisions of this Act ;

6. With the consent of the Treasury <sup>Fees on registration.</sup> Board, 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 ; \*

7. The persons by whom the oaths may <sup>Oaths.</sup> be administered under this Act ;

8. Whether or not such oaths are to be <sup>Subscription of oaths.</sup> subscribed as well as taken, and the form in which such taking and subscription are to be attested ;

9. The registration of such oaths ; <sup>Registration.</sup>

10. The persons by whom certified <sup>Copies.</sup> copies of such oaths may be given ;

11. The transmission to Canada for <sup>Transmission of oaths, &c., taken out of Canada.</sup> the purpose of registration or safe keeping, or of being produced as evidence, of any oaths taken in pursuance of this Act out

\* See Table of Fees in Appendix.

of Canada, or of any copies of such oaths, also of copies of entries of such oaths contained in any register kept out of Canada in pursuance of this Act ;

Proof. 12. The proof, in any legal proceeding, of such oaths ;

Fees. 13. With the consent of the Treasury Board, the imposition and application of fees in respect of the administration or registration of any such oath.\*

Repealing or altering regulations.

The Governor-General in Council, 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 Governor-General in Council 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.

Presumption as to regulations.

Proof of declarations.

33. 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 the Clerk or acting clerk of the Queen's Privy Council for Canada, or by any person

\* See Table of Fees in Appendix.

authorized by regulations of the Governor-General in Council 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.

34. A certificate of naturalization, or of <sup>Proof of certificates.</sup> re-admission 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 the Clerk or acting clerk of the Queen's Privy Council for Canada, or by any person authorized by regulations of the Governor-General in Council to give certified copies of such certificate; and the statement of the period of residence or service in a certificate of naturalization shall be sufficient evidence of such residence or service in all courts and places whatsoever.

35. Entries in any register authorized <sup>Proof of entries of registration.</sup> to be made in pursuance of this Act may be proved by such copies and certified in such manner as may be directed by regulation of the Governor-in-Council, by the Clerk or acting clerk of the Queen's Privy Council for Canada, or by the Secretary

of State ; and the copies of such entries shall be evidence of any matters by this Act or by any regulation of the Governor in Council authorized to be inserted in the register.

Application of a certain Act of this session.

36. Any Act passed during the present session touching documentary evidence, shall apply to any regulation made by the Governor-General in Council, in pursuance of or for the purpose of carrying into effect any of the provisions of this Act.\*

#### MISCELLANEOUS.

As to acts done before naturalization.

37. 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.

As to aliens naturalized in any part of Canada before this Act.

38. Each and every person who, being by birth an alien, had, on or before the coming into force of this Act, become entitled to the privileges of British birth, within any part of Canada, by virtue of any general or special Act of Naturalization in force in such part of Canada, shall

\* See the Act to amend the law respecting documentary evidence in certain cases, 44 Vict. cap. 28. (Cau.)

hereafter be entitled to all the privileges by this Act conferred on persons naturalized under this Act.

39. Nothing in this Act contained shall repeal or in any manner affect the Act of the Legislature of Upper Canada, passed in the fifty-fourth year of the reign of His late Majesty King George the Third, intituled "*An Act to declare certain persons therein described Aliens, and to vest their estates in His Majesty,*" or any proceedings had under the said Act. Act not to affect Act of U. C., 54 Geo. 3. c. 9.

40. Nor shall anything in this Act contained repeal or in any manner affect the Act of the legislature of the late Province of Canada, passed in the session held in the fourth and fifth years of Her Majesty's reign, chapter seven, intituled "*An Act to secure to and confer upon certain inhabitants of this Province, the civil and political rights of Natural born British Subjects,*" or the first, second or third section of the Act of the said legislature passed in the twelfth year of Her Majesty's reign chapter one hundred and ninety-seven, intituled "*An Act to repeal a certain Act therein mentioned and to make better provision for the Naturalization of Aliens,*"—or impair or affect the naturalization of any Nor certain Acts of Province of Canada. 4, 5 V., c. 7. 12 V., c. 197.

Or the rights of those naturalized under them. person naturalized under the said Acts, or either of them, or any rights acquired by such person or by any other party by virtue of such naturalization, all which shall remain valid and be possessed and enjoyed by such person or party respectively.

As to persons entitled to be naturalized before January, 1868, under the law of any Province of Canada.

41. Every person who, being by birth an alien, did, prior to the first day of January, 1868, take the oaths of residence and allegiance required by the naturalization laws then in force in that one of the Provinces now forming the Dominion of Canada, in which he then resided, shall, within Canada, be admitted to all the rights and privileges of a natural born British subject conferred upon naturalized persons by this Act; and the certificate of the Judge, Magistrate, or other person before whom such oaths were taken and subscribed, shall be evidence of his having taken them; or he may take and subscribe the oath in form G in the schedule hereto before some judge, justice, or person authorized to administer the oaths of residence and allegiance under this Act, in the county or district in which he resides.\*

Aliens who had their settled abode in certain Provinces, on

42. All aliens who had their settled place of abode in either of the late Provinces of Upper Canada or Lower Canada

\* This section is in effect a re-enactment of sec. 1 of 34 Vict. cap. 22.

or Canada, or in Nova Scotia or New Brunswick, on or before the first day of July, A.D. 1867\*, or in Rupert's Land or the North-West Territories on or before the fifteenth day of July, A.D. 1870,† or in British Columbia, on or before the 20th day of July, A.D. 1871‡, or in Prince Edward Island, on or before the first day of July, A.D. 1873,§ and who are still residents in Canada, shall be deemed, adjudged, and taken to be, and to have been entitled to all the privileges of British birth within Canada as if they had been natural born subjects of Her Majesty, subject to the following provision, that is to say:—That no such person (being a male) shall be entitled to the benefit of this Act, unless nor until he shall take the oaths of allegiance and residence|| in the form prescribed by this Act, before some Justice of the Peace or other person authorized to administer oaths under this Act.

certain named days, to be British subjects on taking oaths of allegiance, and residence.

43. The oaths taken under the last preceding section shall be filed of record, if the person making them resides in the

Where the oaths required by s. 42 shall be filed of record

\* Date of Union of Provinces named in Proclamations, *Canada Gazette* 1867, pp. 1835, 1839.

† Date of admission to Dominion, see Stats. Can. 1872, p. lxxv.

‡ Date of admission, see Stats. Can. 1872, p. lxxxiv.

§ Date of admission, see Stats. Can. 1873, p. ix.

|| See Forms, pp. 87, 93.

Province of Ontario, with the Clerk of the Peace of the county in which he resides,—if he resides in the Province of Quebec, with the Clerk of the Circuit Court of the circuit within which he resides,—if he resides in Nova Scotia, with the Clerk of the Supreme Court,—and if he resides in New Brunswick, with the Clerk of the Supreme Court,—if he resides in British Columbia or Prince Edward Island, with the Clerk of the Supreme Court,—if he resides in Manitoba with the Clerk of the Court of Queen's Bench, or with the Clerk of the County Court of the county in which he resides,—if he resides in the North-West Territories or in the District of Keewatin, with such person or authority as may be provided by order or regulation of the Governor General in Council;\* and upon its being so filed, the person making it shall be entitled to the benefit of this Act and of the privileges of British birth within Canada, and shall also, upon payment of a fee of twenty-five cents, be entitled to a certificate from the person with whom the oaths have been filed, in the form H of the schedule hereto or to the like effect; and the production of such certificate shall be *prima facie* evidence of his naturalization under this Act,

Effect of  
filing: fee for  
certificate,  
and its effect.

\* *Vide ante*, p. 64, and Regulations in Appendix.

and that he is entitled to and enjoys all the rights and privileges of a British subject.

44. The Governor in Council may appoint, from time to time, Commissioners to take and administer oaths under this Act. Commissioners for administering oaths.

PENALTY FOR FALSE SWEARING.

45. Any person wilfully swearing falsely, or making any false affirmation under this Act, shall be deemed guilty of wilful and corrupt perjury, and shall, on conviction, in addition to any other punishment authorized by law, forfeit all the privileges or advantages which he or she would otherwise, by making such oath or affirmation, have been entitled to under this Act; but the rights of others in respect to estates derived from or held under him or her, shall not thereby be prejudiced, excepting always such others as shall have been cognizant of the perjury at the time the title by which they claim to hold under him or her was created. Punishment for false swearing or affirming.

46. After the coming into force of this Act, no alien shall be naturalized within Canada, except under the provisions of this Act. Proviso; Saving rights of others.

46. After the coming into force of this Act, no alien shall be naturalized within Canada, except under the provisions of this Act. Future naturalization only under this Act.