SWITZERLAND.

TREATY (1850) BETWEEN THE UNITED STATES AND SWITZERLAND—DENUNCIATION OF ARTICLES VIII TO XII.

Mr. Pioda to Mr. Day.

LEGATION OF SWITZERLAND IN THE UNITED STATES,
Washington, June 29, 1898.

SIR: In virtue of the treaty of friendship, commerce, and extradition between the Swiss Confederation and the United States of America of November 25, 1850, my Government instructs me formally to request through your excellency, as I hereby have the honor to do, that it may please the United States Government to extend to Swiss imports in the United States the concessions stipulated on the 30th ultimo by the United States with France, by means of the arrangement which went into operation on the 1st instant.

My Government would consider a refusal on the part of the United States Government as a violation of the treaty aforesaid, and especially of articles 8, 9, 10, and 12. The most-favored-nation clause, which is contained in those articles, is absolutely unlimited.

It is therefore my duty to ask that it may please the United States Government to give, immediately, the necessary instructions, to the end that Swiss products may enjoy, on entering the territory of the Union, the concessions granted to France in the aforesaid arrangement.

Feeling confident that the United States Government will recognize the justice of the request made by the Government of the Swiss Confederation, and awaiting the communications which your excellency will be pleased to address to me on this subject, I avail myself of this occasion, Mr. Secretary of State, to offer you the assurance, etc.

J. P. PIODA.

Mr. Day to Mr. Pioda.

No. 179.] DEPARTMENT OF STATE, *July 29, 1898.*

SIR: I have the honor to acknowledge the receipt of your note of the 29th ultimo, in which, in conformity with the instructions of your Government, you ask that the concessions stipulated for in the reciprocity agreement between the United States and France of May 28, 1898, be extended to importations from Switzerland. You state that your Government would consider a refusal of this request as a violation of the treaty between the United States and the Swiss Confederation of November 25, 1850, and especially of Articles VIII, IX, X, and XII thereof. You observe that the most-favored-nation clause, which is contained in these articles, is "absolutely unlimited."

The Department has noticed with some surprise the positiveness of the terms in which the demand of your Government is put forward.

Whatever may be the views of any other government on the subject, the Government of the United States has consistently maintained the view that the most-favored-nation clause does not entitle a third government to demand the benefits of a special agreement of reciprocity.

The articles of the treaty of 1850, which you designate in your note, merely embody an agreement for the most-favored-nation treatment.

Article VIII provides that in all that relates to "the importation, exportation, and transit of their respective products the contracting parties shall treat each other, reciprocally, as the most favored nation, union of nations, state, or society, as is explained in the following articles," namely, Articles IX, X, XI, XII.

Article IX stipulates that neither of the contracting parties "shall impose any higher or other duties upon the importation, exportation, or transit of the natural or industrial products of the other than are or shall be payable upon the like article being the product of any other country."

Article X provides that neither of the contracting parties shall "grant any favor in commerce to any nation, union of nations, state, or society which shall not immediately be enjoyed by the other party."

Article XI reserves to each party the liberty to determine the manner of establishing the origin of its own products in case of the imposition of a differential duty.

Article XII contains various stipulations, none of them pertinent to the present subject of discussion.

The various provisions above set forth constitute, as the treaty itself declares, a guaranty of most-favored-nation treatment in matters of commerce.

It is and always has been the view of this Government that a reciprocity treaty is a bargain and not a favor, and that it therefore does not come within the scope of the most-favored-nation clause.

The position of the United States, as thus expressed, is not only well known, but has been frequently and generally conceded. It was accepted and carried out in the case of the reciprocity treaty between the United States and Great Britain of 1854 in relation to Canada; in the case of the reciprocity treaty with Hawaii of 1875, which was renewed in 1884, and in the case of the reciprocity agreements under the United States tariff act of October 1, 1890.

The Department, as at present advised, is not aware that the Government of Switzerland has on any previous occasion claimed the advantages accruing to the contracting parties under any of the reciprocity treaties of the United States.

On the grounds above set forth this Government is unable to admit that the demand put forward in your note is well founded, or that the refusal to concede it constitutes a violation of any of the treaty stipulations between the two Governments.

In conclusion I desire to add that, if the Government of Switzerland wishes to secure for itself the advantages impartially held out by the act of Congress under which the agreement with France of May 28, 1898, was concluded, the Department will be glad to enter into negotiations with you for the purpose of effecting a similar arrangement.

Accept, Mr. Minister, etc.,

WILLIAM R. DAY.

Mr. Pioda to Mr. Adee.

LEGATION OF SWITZERLAND IN THE UNITED STATES,
Washington, D. C., September 26, 1898.

SIR: I have had the honor to receive and to communicate to my Government the note of your excellency's honorable predecessor of July 29, written in reply to the request made in mine of June 29, that the reductions in import duties granted to France by the reciprocity treaty of May 30, 1898, should be extended to Swiss productions.

My Government instructs me to inform your excellency that it can not declare itself satisfied with that reply, and that it must persist in its claim, the justice of which can not escape you after a reexamination of the question.

Your predecessor was pleased to admit, himself, that Articles VIII to XII of the treaty of 1850 guarantied the rights of the most favored nation to both contracting parties; but he added that these rights did not extend to reciprocity treaties, the latter constituting, in his view, a "bargain" rather than a "favor." The said note invokes, moreover, the fact that this view has always been maintained by the United States in the controversies of the same kind which it has had with other countries.

Allow me to remark that this view is in contradiction to the precise terms of the treaty and to the negotiations which led to its conclusion.

Article VIII provides as follows: "In all that relates to the importation and transit of their respective products, the United States of America and the Swiss Confederation shall treat each other, reciprocally, as the most favored nation, * * * as is explained in the following articles."

Now, as regards the products comprised in the reciprocity treaty in question, the most favored nation is France, since the duties on its products have been reduced for the benefit of that country. Every reciprocity treaty is evidently a "bargain" between the two parties, but the reductions which the United States have granted to France certainly constitute a "favor" to the latter country, just as the concessions which she has made, by way of compensation, constitute a favor to the United States. The expression "most favored nation" is, therefore, properly invoked in this case.

The most-favored-nation clause, which figures in a general way in Article VIII, is most clearly developed in Articles IX, X, and XI.

The first of these articles (IX) reads as follows: "Neither of the contracting parties shall impose any other or higher duties upon the importation, exportation, or transit of the natural or industrial products of the other than are or shall be payable upon the like articles being the produce of any other country." * * * It appears expressly, from this article, that the most-favored-nation clause extends to import duties, and that it comprises not only the duties in force at the time of the conclusion of the treaty, but also such as may be levied in future on the productions of any country.

Article X is in substance as follows: "Each of the contracting parties hereby engages not to grant any favor in commerce to any nation * * * which shall not immediately be enjoyed by the other party."

Allow me to call your very special attention to the precision with which this article stipulates for the immediate extension to one of the contracting parties of any favor granted by the other to a third nation.

The expression "immediate" leaves no doubt that the reciprocal enjoyment of the favors is not to be preceded by any understanding as to compensation.

Finally, Article XII, which treats of the flag, repeats very clearly that Swiss productions arriving under the flag of the United States or that of one of the most favored nations are to pay the same duties as the productions of the latter nation. As France is the most favored nation as regards spirits and other articles comprised in the reciprocity treaty, similar Swiss goods imported under the French flag could not, even if Articles VIII, IX, and X did not exist, be subjected to higher duties than spirits and other productions of French origin.

It is not, furthermore, only the text of the treaty which speaks in favor of the claim raised, but also the declared wish of the plenipotentiary of the United States of America who was charged with the negotiations.

In the treaties concluded by the United States with other countries, Belgium, Italy, Austria-Hungary, Denmark, and Prussia, for instance, which treaties were concluded partly before and partly subsequently to 1850, the most-favored-nation clause is followed by either one or the other of the following restrictive provisions: "gratuitously, if the concession or favor to such other State is gratuitous, and on allowing the same compensation, or its equivalent, if the concession is conditional;" or * * * "freely, when freely granted to such other nation, or on allowing the same compensation when the grant is conditional."

Such a provision is entirely wanting in our treaty, and its absence is not due to chance, but to a very clearly expressed intention. As you will be pleased to observe, by reading the inclosed message, which was addressed by the federal council to the federal assembly December 3, 1850, a provision of this kind was, it is true, proposed by Mr. Dudley Mann, plenipotentiary of the United States of America, but the Swiss delegates having made some objections to accepting it, Mr. Mann abandoned it "out of friendly consideration for Switzerland."

It was evidently feared that such a provision would open the door to a discriminating and even prohibitory system of treatment. The correctness of these fears is well shown by the controversy now under consideration. If, as is claimed by the United States Government, spirits and other articles of French origin may receive, on entering the United States, more favorable treatment than similar articles of Swiss origin, the effect of this may certainly be to exclude the latter articles from the said market, that is to say, to prohibit them. The same situation would arise if the United States should conclude reciprocity treaties with other countries.

Switzerland would be in constant danger of losing the market for one or another of her productions in the United States unless she offered a compensation each time, or if the latter should not be deemed sufficient.

There is no doubt whatever that the Swiss delegates wished to protect their country from such contingencies when they refused the insertion in the treaty of the restrictive clause proposed by Mr. Mann. They demanded and obtained a full and unlimited guarantee of the usage of the most favored nation.

I trust, in view of this fact, that the Government of the United States of America will not hesitate to concede our claim, and that it will admit the justice of our contention the more readily inasmuch as

the special conditions which induced Mr. Mann to renounce a restriction of favored usage for Switzerland have not ceased to exist. In fact, as is stated in the message referred to, Mr. Mann further proposed the following addition to Article X of the treaty, the text of which I have reproduced above:

The United States pledge themselves the more readily to this stipulation inasmuch as the Swiss Confederation has inserted in its constitution certain liberal provisions which specially favor the productions of the United States.

It clearly appears from this proposed addition—afterwards withdrawn by its author, owing to the objections of the Swiss delegates—that Mr. Mann desired to do justice to Switzerland by granting to her, by means of the specially precise provisions of Article X and of the other articles invoked, the unlimited rights of the most favored nation, and by thereby showing that that country, by reason of the facilities which it granted already and in principle to the commerce of the United States, had established in advance, of its own accord, the compensations for the advantages which it might reasonably expect to derive itself from the clause conceded. This view held by Mr. Mann has lost nothing of its value. This appears from article 29 of the Swiss federal constitution and from the duties imposed upon the productions of the United States according to the principles which it embodies. The said article contains the following provisions:

The collection of the federal taxes (péages) shall take place in accordance with the following principles:

1. Import duties.

a. Materials required by the manufacturing industries and the agriculture of the country shall be taxed as low as possible.

b. The same shall be the case with articles necessary for the subsistence of the people.

c. Fancy articles shall be subject to the highest taxes.

Except in the case of obstacles over which no control can be exercised these principles shall be observed when treaties of commerce are concluded with foreign countries.

2. Export duties shall be as moderate as possible.

The principal articles which the United States export to Switzerland are: Raw cotton (according to the Swiss statistics for 1897 to the value of $2,730,635), wheat ($1,931,380), petroleum ($1,076,050), unmanufactured tobacco ($742,210), leather ($710,685), canned meats ($818,540), lard ($279,795), dried fruits ($216,100), bicycles ($53,600).

These articles are now subject to the following duties in Switzerland, France, and Germany:

	Duties expressed in per cent of the approximate value, Switzerland.		Duties on 100 kilograms.	
			France.	Germany.
			Dollars.	*Dollars.*
Raw cotton	0.06	0.3	Exempt.	Exempt.
Wheat	.06	1.4	1.40	1.87
Petroleum	2.25	13.0	1.80 2.50	1.50
Unmanufactured tobacco	5.00	26.2	Monopoly.	21.25
Leather	1.60 3.20	2.4–6.7	5 to 12	4.50 9.00
Canned meats	1.20	5.4	3.00 5.00	4.25 5.00
Lard	1.00	9.2	5.00	2.50
Dried fruits	.50	3.75	2.00	1.00
Bicycles	14.00	8.00	44.00	6.00

This table clearly shows that Swiss duties are exceedingly moderate, both as regards the value of the goods and in comparison to the duties levied by other countries. I will add, at the same time, that the principal Swiss productions exported to the United States pay there, for the most part, enormous duties, greatly in excess of those levied in Switzerland on American articles.

Our right to the usage of the most favored nation is thus doubly and trebly guaranteed, without any restriction, by the treaty of 1850 and by the history of its negotiation.

In view of this array of evidence in support of the claim of my Government, the objection which consists in saying that the most-favored-nation clause does not apply to reciprocity treaties, and that the United States have always maintained this restrictive interpretation, loses all possible value as regards the treaty with Switzerland.

In the note above referred to the fact is invoked that on other occasions Switzerland has not claimed the rights of the most favored nation. I had the honor to explain the reason of this in my note of July 29. I then stated, in substance, that the reductions of duties that were granted in 1890 to Brazil and other States, on the basis of the McKinley tariff, had reference to sugar, coffee, tea, hides, and other articles which Switzerland does not export; that Switzerland, consequently, had no interest in claiming these favors. It is, furthermore, to be remarked that the nonpresentation of a claim by Switzerland, even if that country had been justified in presenting it by a real interest, would in no wise detract from the value and justice of the present claim.

Your predecessor was pleased to add, at the end of his note, that the United States Government was prepared to enter into negotiations with Switzerland in order to render the "advantages" conceded to France accessible to her by means of the treaty based upon section 3 of the tariff.

As appears from the foregoing, my Government asks that these favors be granted without any negotiation and without compensation, as a necessary consequence of the treaty of 1850, and by way of respect for that international instrument. In a general way, and abandoning the ground of right, in order to speak of the question of fitness, I would remark that the reciprocal treatment, without compensation, which has been agreed upon between our two nations, is altogether in favor of the United States. The concessions which have been granted to France, and the benefit of which is claimed by my Government, are of exceedingly small importance to it. In 1897 Switzerland exported to the United States spirits to the amount of 215,000 francs. The exports of other articles, viz, tartar, wine lees, wine, vermuth, pictures, drawings, and statuary amount to little or nothing. On the other hand, Switzerland, by her treaties with Germany, Austria-Hungary, and Italy, has reduced her duties on canned meats, dried fruits, and bicycles, among other things. The imports of these American articles into Switzerland in 1897, at these reduced rates, were as follows:

	Francs.
Canned meats, 18,518 metric quintals, valued at	2,592,520
Dried fruits, 13,381 metric quintals, valued at	1,070,480
Bicycles, 1,144, valued at	268,000

If the instrument of 1850 did not oblige Switzerland to treat the

United States on the footing of the most favored nation, the said articles would pay the following high duties:

Canned meats, 8 francs per 100 kilograms, instead of 6 francs.

Dried fruits, 5 francs per 100 kilograms, instead of 2½ francs.

Bicycles, 100 francs per 100 kilograms, instead of 70 francs.

You will observe from the foregoing that it would be greatly to the interest of Switzerland to adopt your interpretation and, consequently, to levy its high duties upon your productions. Nevertheless, the question is not now to seek the advantages of the treaty of 1850, but to respect its text and its spirit, whatever they may be, and to claim its strict and loyal execution.

Trusting that after a careful examination of the considerations which I have had the honor to set forth above, you will be pleased to favor me with a reply satisfying the claim of my Government, I beg you to accept, etc.,

J. B. PIODA.

Mr. Hay to Mr. Pioda.

No. 201.]

DEPARTMENT OF STATE,
Washington, November 21, 1898.

SIR: Your communication to this Department under date of the 26th of September, 1898, was duly received and has been carefully considered.

Your note of the 29th of June, 1898, claimed for Swiss products, without compensatory concessions, the benefit of the concessions recently made by the United States to France in return for specific compensations granted by France. My predecessor found himself unable to accept the construction of the most-favored-nation clauses of the treaty of 1850 between the United States and Switzerland which your Government had presented in the note referred to. In his response under date of July 29 he maintained that construction which had been uniformly given to such clauses by the Government of the United States for nearly a century, namely, that they were intended to constitute a mutual security against gratuitous preferences which might from various motives of policy be given to the commerce of another nation and were never intended as a surrender of the right of either nation to independently adjust the interests of its special commerce with any other country by special and mutually compensatory contract.

In this view I am forced to concur, not only by the language of the treaty, which does not deny that right, but by long-continued precedents affirming that construction. Article X of the treaty in question expressly refers to the granting of "any favor in commerce." That which is obtained only for an adequate price is in no proper sense "a favor." It is a purchase, a relation of buying and selling, however important may be the mutual advantage of the transaction. The plain object of the clauses in question is to secure equality of treatment, not superiority over all others by exceptional treatment.

In 1817, when a similar question arose upon a claim made upon this Government by France, John Quincy Adams, one of the masters of international law, then Secretary of State and afterwards President, declared in respect of the French claim, that "the most-favored-nation clause only covered gratuitous favors, and did not touch concessions for equivalents." President Monroe, in his message to Congress of

1821, reaffirmed this view, saying: "If this should be so construed as that France should enjoy, of right and without paying the equivalent, all the advantages of such conditions as might be allowed to other powers in return for important concessions made by them, then the whole character of the stipulations would be changed. She would not only be placed on the footing of the most favored nation, but on a footing held by no other nation."

In succeeding Administrations of this Government down to the present time the like rulings have been declared and made public. They have also been affirmed by the Executive Department of Justice. It is also to be noted that in 1887 the highest tribunal of this country, the Supreme Court of the United States, upon an appeal to it by claimants under the treaty with Denmark, gave judgment according to this interpretation of the most-favored-nation clause.

Having in view this unbroken line of precedents from an early period in the history of the United States, and the publicity of the record, we might be permitted to suppose that all nations having like commercial conventions with the United States must be aware of the meaning which has been uniformly attributed to these clauses by this Government. This construction is quite as much for the advantage of other contracting governments as it is to the United States. It is established upon considerations of reason and justice, and upon the reeognized national need of freedom in adapting international contracts to the differing conditions of international trade with different countries. Manifestly, Switzerland has the most-favored-nation treatment so long as she may have the same privileges on terms equivalent to those granted to the other country.

The second ground of reclamation by the Swiss Government is stated as follows in your note of the 26th of September:

[Translation.]

It is not, furthermore, only the text of the treaty which speaks in favor of the claim raised, but also the declared wish of the plenipotentiary of the United States of America who was charged with the negotiations.

In support of this statement you inclose a copy of the message of the Federal Council to the Federal Assembly, accompanying the treaty of 1850 when referred to them for approval.

This message represents that the American plenipotentiary who conducted the negotiations in effect agreed to that interpretation of the treaty for which the Swiss Government now contends, and signified it by withdrawing a stipulation from the projet which would have been inconsistent with such interpretation. It further appears that the Swiss Government ratified the treaty under the distinct representation that its construction was the same that it now claims.

In order to ascertain if the convention was also ratified by the Government of the United States under circumstances which necessarily implied a knowledge of that understanding, an examination has been made of the original correspondence of the American negotiator with his Government, and of its connection with its ratification.

As the result of this investigation, it appears that the Executive department was advised by its plenipotentiary of the alleged understanding, that the dispatch indicating it was communicated by the President to the Senate in connection with the treaty submitted for ratification, and that the treaty was ratified without amendment of the clauses in question.

Under these circumstances we believe it to be our duty to acknowledge the equity of the reclamation presented by your Government. Both justice and honor require that the common understanding of the high contracting parties at the time of the executing of the treaty should be carried into effect.

It is also my duty to advise you that the foregoing recognition of the equity of the claim of your Government compels us at the same time to regard the Articles VIII, IX, X, XI, XII, of the treaty as henceforth constituting an exception to the otherwise uniform policy of the United States. This policy has been to treat the commerce of all friendly nations with equal fairness, giving exceptional "favors" to none. Should this Government continue to give to Swiss products gratuitously all advantages which other countries only acquire for an equivalent compensation, it would expose itself to the just reproaches of other Governments for its exceptional favoritism. We desire that our friendly international policy should be maintained in its uniform application to all our commercial relations.

It may, therefore, be necessary, in case the Governments of the United States and of Switzerland should not be able to agree upon some practicable arrangement of the matter in question, that the President should communicate to your Government notice of his intention to arrest the operation of the treaty of 1850, or of the clauses of said treaty numbered from VIII to XII.

Accept, etc.,

JOHN HAY.

Mr. Hay to Mr. Du Bois.

No. 127.]

DEPARTMENT OF STATE,
Washington, November 28, 1898.

SIR: I inclose herewith for your information a copy of a note [1] of the 21st instant from the Department in reply to the demand of the Swiss Government for the benefit, without compensatory concessions, of the provisions of the recent reciprocity agreement between this country and France.

I am, etc.,

JOHN HAY.

Mr. Hay to Mr. Deucher.

No. 204.]

DEPARTMENT OF STATE,
Washington, December 7, 1898.

SIR: In connection with my note to you, No. 201, of the 21st ultimo, I have the honor to inform you that, under the circumstances therein set out, the Secretary of the Treasury has directed the customs officials of the United States to impose and collect on the products of Switzerland exported to the United States from that country similar to those enumerated in the reciprocal commercial arrangement with France, proclaimed on May 30, 1898, the rates of duty imposed and collected on such merchandise imported from France under said reciprocal arrangement.

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[1] Printed. ante.

I inclose a copy of the direction referred to, from which you will also see that all entries of such products imported from Switzerland on and after June 1, 1898, which have been otherwise liquidated, shall be reliquidated in accordance with the above ruling.

Accept, etc.,

JOHN HAY.

Mr. Hay to Mr. Du Bois.

No. 131.]

DEPARTMENT OF STATE,
Washington, December 14, 1898.

SIR: Referring to the Department's No. 127 of the 28th ultimo, relative to the reply of this Department to the demand of the Swiss Government for the benefit, without compensatory concessions, of the provisions of the recent reciprocity agreement between this country and France, I inclose for your information copy of a further note [1] to the Swiss legation at this capital on the subject.

I am, etc.,

JOHN HAY.

Mr. Hay to Mr. Leishman.

No. 138.]

DEPARTMENT OF STATE,
Washington, December 29, 1898.

SIR: Your attention is recalled to my No. 201, dated November 21, 1898, addressed to Mr. Pioda at Washington, copy of which was forwarded to your legation.

In concluding that note to Mr. Pioda I indicated to him the embarrassment of this Government in its commercial relations with other countries resulting from the construction now given to the most-favored-nation clauses of the treaty of 1850. I also expressed to him the alternative necessity of a further conventional understanding with the Swiss Government, or else the arrest of the operation of the treaty of 1850 in the manner provided by said treaty.

In the hope of avoiding the latter alternative by a resort to the former, I inclose herewith a projet of convention which leaves the existing treaty intact except so far as the four articles in question are concerned.

You will seize the first opportunity to present this projet to his excellency the minister for foreign affairs, with the request for his early consideration of it, assuring him at the same time of our earnest desire to conclude this question with the least possible derangement of our conventional relations as they have existed for the last half century.

It is understood that Mr. Pioda is soon to return to his post in Washington, and it is hoped that he may bring with him the requisite authority to conclude the proposed convention in order that it may be ratified by the Senate at its present session.

I am, etc.,

JOHN HAY.

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[1] Printed, ante.

Mr. Leishman to Mr. Hay.

No. 124.]

UNITED STATES LEGATION,
Berne, Switzerland, January 14, 1899.

SIR: In compliance with instructions contained in your dispatch No. 138 of December 29 last, I at once communicated with His Excellency the President of the Swiss Confederation, as per copy herewith inclosed, and realizing the desirability of prompt action, I followed it up with a personal interview, knowing from a personal communication from my friend, Mr. Pioda, who is spending his holiday on his estate in Perugia, Italy, that it was not his intention to return to Switzerland before returning to his post of duty, and that he intended sailing direct from Naples on the 20th instant.

The President promised to give the matter prompt consideration, but as it is necessary to first refer the matter to the minister of commerce, it will probably not be possible to arrive at any definite conclusion ere Mr. Pioda's departure, and even should the federal council decide favorably on the matter it could not be formally ratified on the part of the Swiss Government until the next regular meeting of the Swiss Federal Assembly in June next.

Regretting my inability to comply more closely with the desire expressed in your dispatch,

I have, etc.,

JOHN G. A. LEISHMAN.

[Inclosure.]

Mr. Leishman to Mr. Muller.

UNITED STATES LEGATION,
Berne, Switzerland, January 11, 1899.

SIR: I beg leave to submit to your excellency a copy of a projet of convention which I have just received from the honorable Secretary of State, which if promptly executed by your excellency's Government and the Government of the United States would leave the existing treaty between our respective countries intact, except so far as the four articles in question are concerned.

Legislation of this character is rendered necessary, as already indicated by the honorable Secretary of State to your honored representative at Washington, owing to the embarrassment of the Government of the United States in its commercial relations with other countries resulting from the construction now given to the most-favored-nation clauses of the treaty of 1850 between the Swiss Confederation and the United States of America, and I earnestly request that your excellency will give the inclosed projet of convention your early and favorable consideration, so as to enable the Department of State to submit the proposed convention to the Senate for ratification during the present session, which expires March 4 next.

With the assurances of the earnest desire of my Government to conclude the question with the least possible derangement of our conventional relations, which have existed for nearly half a century, and begging, etc.,

JOHN G. A. LEISHMAN.

Mr. Leishman to Mr. Hay.

No. 131.]

UNITED STATES LEGATION,
Berne, Switzerland, February 16, 1899.

SIR: Referring to your dispatch No. 138, of December 29, 1898, not having received any reply to my note of January 11 addressed to the President of the Swiss Confederation, copy of which was inclosed to you in my dispatch No. 124, of January 14, 1899, I again addressed a

note to the President, under date of February 14, 1899, calling attention to this fact and requesting a prompt decision, in response to which I am just in receipt of a note from the Swiss federal council containing a counter proposition and proposed projet of convention, copies of which are herewith transmitted, together with translation, which I hasten to forward by first mail, with the hope that it may reach you in time to enable you to submit the matter during the present session of the Senate, in the event of the proposed changes in projet of convention meeting with your approval; and as the note of the Swiss federal council is self-explanatory it is hardly necessary for me to add any comments, and can only regret that the delay in receiving a reply, which, considering the importance of the matter, has not been unreasonable, leaves so little time for consideration ere the closing of the present session of the Senate.

Regretting my inability to more clearly carry out your wishes, I have, etc.,

JOHN G. A. LEISHMAN.

[Inclosure No. 1.]

Mr. Leishman to Mr. Muller.

UNITED STATES LEGATION,
Berne, Switzerland, February 14, 1899.

SIR: I respectfully beg leave to call your excellency's attention to my note of January 11, inclosing a copy of a proposed projet of convention, and owing to the urgency and importance of the matter venture to hope that your excellency will kindly furnish me with your reply, so as to enable me to forward same to the honorable Secretary of State by the end of the present week, as otherwise, in the event of favorable action on the part of your excellency's Government, the papers could not reach Washington in time to enable the Department of State to submit the proposed convention to the Senate for ratification during the present session, which expires on March 4 next; and as the next regular session does not take place until December, failure to secure the necessary legislation would leave my Government in an embarrassing position, for reasons already explained.

With the hope that I may be favored with a prompt and favorable reply, and begging your excellency, etc.,

JOHN G. A. LEISHMAN.

[Inclosure No. 2.—Translation.]

Mr. Muller to Mr. Leishman.

BERNE, *February 14, 1899.*

SIR: We had the honor to receive your excellency's note of January 11 last, by which you have made known to us the projet of a supplementary convention destined to modify the application of Articles VIII, IX, X and XII, of the treaty of establishment and commerce concluded on November 25, 1850, between Switzerland and the United States of America.

The essential point of this convention would have the object of limiting the application of the treatment of the most favored nation to those articles only for which one or other of the contracting parties has accorded to another nation, of its own free will and without any compensation, reductions on the import duties, while all other articles for which the reduction of the duties has only been admitted in return for compensation should be excluded from the treatment of favor. We beg, in the first place, to observe that the projet, compared with other treaties concluded by the United States, appears to contain a deficiency, in consequence of which Switzerland could not claim the advantages of treatment accorded to third parties even if she offered equivalent compensations.

The Government of the United States will recognize that by this fact alone Switzerland would find herself in a position of inferiority toward other nations.

Further, and leaving on one side what we believe to be an involuntary omission, the proposed addition to the treaty of 1850 would make Switzerland lose the only advantage that the articles in question offered from a practical point of view. In fact, as the United States have not, to our knowledge, till now accorded concessions without compensations to any country, and as the tariff bill of the 24th of July, 1897, only takes account of concession in exchange for compensations, the clause of the treatment of most favored nation, so interpreted, would become a dead letter for Switzerland.

Under these conditions we regret not to be able to discover of what advantage it would be to our country to give its assent to the projet of a supplementary convention as proposed by the Government of the United States, and to the conclusion of which it subordinates the abandonment of its intention to denounce the treaty of 1850.

Being, however, animated by a desire to prove our good will to your Government, and to smooth away the difficulties raised by the clause of the most favored nation, we believe it to be possible to attain this end by the conclusion of a customs convention, relating to which projet we still expect the communication of the demands to be formulated by the United States in reply to those that we have had the honor to make known to your excellency in our note of the 11th of October last. If it should be possible to arrive by such an act at an understanding as to the duties to be imposed on our principal articles of export to the United States we should be disposed to consent at the same time to restrict to these articles the treatment of the most favored nation established by the treaty of 1850, and to forfeit our claim to this treatment for any other articles.

We annex, by way of explanation, the projet of a convention conceived according to this idea.

The Government of the United States will recognize that a solution of this nature would do away with the difficulties created by the afore-mentioned treaty.

In fact it would restore to the union a complete liberty of action with respect to almost all the points of its customs tariff. of these we should keep only the advantages of the gratuitous concessions, which advantages are also reserved to the other States that have concluded treaties with the United States.

The unlimited right of the most-favored nation would only be maintained in favor of a very small number of articles of predominating interest to Switzerland, including concessions in return for compensations.

But while, at the same time fixing on a mutual understanding the duties to be imposed on these articles and on those of interest to the United States, the drawback that other countries could pretend to the same treatment with respect to said articles without fulfilling analogous conditions would be avoided; that is to say, that these States would be obliged as we are to come to an understanding with the United States and to offer them compensations. This, if we have rightly understood, is the end pursued by your Government in its projet of convention, which projet, therefore, is in its consequences identical with ours, with the difference that this last would at the same time permit both parties to guarantee their principal products against the eventuality of a system of favor exclusively of profit to other countries. On the other hand, the projet of the Government of the United States would purely and simply annul the advantages of the clauses of the treaty of 1850, and far from this offering a more considerable profit to your nation, it would cause it to lose even that which it actually derives from the said clauses, especially with regard to preserved meats and other products, as we have had the honor to show more clearly in our note of the 1st of September last. We do not mention the advantages which might follow upon the conclusion of the proposed convention.

With the hope that your Government will kindly examine our objections and our proposals with the attention that they merit, we avail ourselves of this opportunity to renew, etc.

In the name of the Swiss Federal Council.

The president of the Confederation:

MULLER,
The Chancellor of the Confederation.

[Inclosure No. 3.]

PROJET OF A CONVENTION.

The Federal Council of the Swiss Confederation and the President of the United States of America, animated by the desire to maintain the amicable relations,

happily existing between the two countries, as also to develop the commercial relations and to prevent any difficulties between them, notably to obviate, by an additional convention, the embarrassments and difficulties which may result from the interpretation given to articles VIII, IX, X, and XII of the treaty concluded between the two Governments on November 25, 1850, have for this end appointed as their plenipotentiaries:

The Federal Council of the Swiss Confederates,

The President of the United States of America,

Who, after having exchanged their credentials, found to be correct and in due form, have agreed to the following stipulations:

ART. I.

For the products of Swiss origin, hereafter named, the import duties into the United States of America are fixed as follows:

ART. II.

The products of the United States of America, hereafter designated, shall pay the following duties upon entering Switzerland:

ART. III.

The contracting parties, thus specially and mutually favoring their commercial relations, agree not to accord any favor to another country for the products above mentioned in Articles I and II unless it be also immediately and without compensation extended to similar products of the other party, even if the said favor be accorded in return for compensation.

ART. IV.

As to the products not enumerated in Articles I and II, the contracting parties will reciprocally treat each other on the footing of the most-favored nation, applying to each other the advantages accorded or that may be accorded the third parties; gratuitously, if these advantages have been granted gratuitously, or in exchange for equivalent compensations if they are based on compensations.

ART. V.

The Articles VIII, IX, X, and XII of the treaty of establishment and commerce, concluded between the two contracting parties on November 25, 1850, will, as soon as the present convention enters into force, be interpreted conformably with Articles III and IV above stipulated.

ART. VI.

The present convention shall be ratified; it will enter into force immediately after the exchange of the instruments of ratification, which must take place as early as possible after the ratification by the Governments of the two countries.

It will be in force for four years. In the event of neither of the contracting parties having notified the other twelve months before the end of this period of its intention to put an end to the effects of the convention, it will remain obligatory until after the expiration of one year dating from the day when one or the other of the contracting parties shall have denounced it.

In testimony whereof the plenipotentiaries have signed the present convention in the English and French languages and have affixed their seals.

Also done in quadruplicata at Washington, to the ——— of ———, 1899.

Mr. Hay to Mr. Leishman.

No. 157.]

DEPARTMENT OF STATE,
Washington, March 8, 1899.

SIR: In my note addressed to Mr. Pioda, the Swiss minister at Washington, under date of November 21, 1898, I remarked that "Should this Government continue to give to Swiss products gratuitously all

advantages which other countries only acquire for an equivalent compensation, it would expose itself to the reproaches of other governments for its exceptional favoritism."

This apprehension has already been justified by recent international complaints.

I further advised him that it might be necessary, "in case the Governments of the United States and of Switzerland should not be able to agree upon some practicable arrangement of the matter in question, that the President should communicate to your (his) Government, notice of his intention to arrest the operation of the treaty of 1850, or of the clauses of said treaty numbered from VIII to XII."

In view of the note addressed to you by His Excellency, the President of the Swiss Confederation, under date of the 14th of February last, and of the necessary lapse of time before the ratifications of any new conventional arrangement between the United States and Switzerland can be effected and exchanged, this Government desires now to give notice of the termination of the treaty of 1850, in accordance with Article XVIII of said treaty. You will therefore give the required notification to His Excellency, the President of the Swiss Confederation, of the intention of the United States to arrest the operations of Articles VIII to XII, inclusive, of the convention signed on the 25th day of November, 1850. You may read to him this instruction, and will leave with him a copy of the subjoined announcement. You will, of course, advise this Department of the date on which you shall have given the above notification. The negotiations already initiated at Washington will in the meantime proceed to a conclusion.

I am, etc.,

JOHN HAY.

To the PRESIDENT OF THE SWISS CONFEDERATION:

EXCELLENCY: In accordance with the instructions of my Government, I have the honor to announce to Your Excellency the intention of the United States to arrest the operations of the convention between the two Governments signed under date of November 25, 1850, so far as the operation of Articles XIII, IX, X, XI, and XII are concerned.

(Date.)

(Signature.)

Mr. Hay to Mr. Leishman.

No. 161.]

DEPARTMENT OF STATE,
Washington, March 17, 1899.

SIR: Your dispatch No. 131, dated February 16, 1899, with its inclosures, is received.

The communication of His Excellency the President of the Swiss Confederation, addressed to you under date of the 14th of February, which accompanied your dispatch, has been carefully considered.

His Excellency was correct in assuming that we have no desire to withhold from Switzerland the usual grant of most-favored-nation treatment in respect to compensatory and reciprocal agreement, allowing to Switzerland the benefit of such concession for an equivalent compensation. The projet of treaty transmitted to him left all the Articles VIII to XII in force, except in respect to the claim of compen-

satory grants to third nations. The privilege claimed by His Excellency seemed to us to be involved in the articles as they remained after applying the construction of the treaty which was given in article 1 of our projet.

In order, however, to remove all doubt, we withdraw article 1 of the projet submitted to His Excellency, and propose to substitute the following articles, which repeat the language of Articles VIII and X of the existing treaty, with an added clause which follows substantially the customary provisions of our treaties with other European Governments:

ARTICLE I.

In all that relates to the importation, exportation, and transit of their respective products the United States of America and the Swiss Confederation shall treat each other, reciprocally, as the most-favored nation, union of nations, state or society. In order the more effectually to attain the object contemplated each of the contracting parties hereby engages not to grant any favor in commerce to any nation, union of nations, state or society which shall not immediately be enjoyed by the other party, who shall enjoy the same gratuitously if the concession shall have been gratuitous, or on giving a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concessions shall have been conditional.

ARTICLE II.

The foregoing article is adopted as a substitute for Articles VIII, IX, and XII of the treaty between these high contracting parties signed at Berne on the 25th day of November, A. D. 1850, and the articles so numbered shall cease to have effect from the date of exchange of the ratifications of this convention.

* * * * * * *

In respect to the remaining suggestions of His Excellency as embodied in his projet of treaty, we regret to find them unacceptable in principle.

Article III of that projet reasserts the principle on account of which we felt obliged to denounce the existing treaty. It simply limits its application to a given list of exports. Our whole system of commercial treaties is based upon the principle of equality of treatment toward all friendly nations. Hence, all noncompensatory modifications of our tariff upon imports, whether by legislation or convention, inure to the benefit of all countries having most-favored-nation stipulations with the United States, and all compensatory modifications inure to the benefit of all who will give to the United States an equivalent compensation.

It was the necessity of bringing the Swiss treaty into harmony with this long-continuing policy of the United States which led to this correspondence. That object would be defeated by an acceptance of His Excellency's projet.

The amendment of the existing treaty which we propose, while it secures no exceptional advantage to Switzerland, continues our mutual treaty relations on a basis of security against the effects of discriminating adverse action by either party, and leaves them free to adjust by a separate convention the conditions of their special commerce.

After the adjustment of this prior question of the existing treaty we shall be most willing to proceed with negotiations for continuing to Switzerland by reciprocal agreement the benefits of the concessions made to France which Switzerland now enjoys only for the limited time of the duration of the denounced treaty. This we hope to accomplish in the most friendly spirit.

It appears to us to be equally desirable for the interests of both countries that the general relations established by the treaty of 1850

should remain undisturbed. His Excellency the President will doubtless concur in this opinion. In that case, the only question is whether Switzerland will accept in respect to commerce the same position in her relations with the United States which is occupied by the other countries of Europe. This is the object of the proposals on our part. If they are accepted, the denunciation may be revoked, and the new convention can be made to go into effect at the expiration of the year's notice already given, leaving to Switzerland the exceptional advantages now enjoyed until that date.

You will communicate the foregoing views to His Excellency, and leave with him a copy of this instruction. It will be more convenient for the negotiation if the Swiss Government will be pleased to give its instructions on the subject to the Swiss minister at Washington, who was formerly charged with them, and with whom the further negotiations may be conducted with greater facility.

I am, etc.,

JOHN HAY.

Mr. Leishman to Mr. Hay.

No. 139.]

UNITED STATES LEGATION,
Berne, Switzerland, March 23, 1899.

SIR: I have the honor to advise that in obedience with instructions contained in your dispatch, No. 157, of March 8, which only reached me late on the 22d, I called to-day by appointment on the President of the Swiss Confederation, and after reading the contents of your dispatch to His Excellency I left with him a formal notice announcing the intention of the United States to arrest the operation of Articles VIII, IX, X, XI, and XII of the treaty of November 25, 1850, in strict accordance with form suggested in your dispatch.

His Excellency stated that the matter would at once be referred to the chief of the department of commerce, and expressed the hope that an early and satisfactory settlement would be reached, and after a mutual exchange of courtesies the interview ended.

I have, etc.,

JOHN G. A. LEISHMAN.

Mr. Leishman to Mr. Hay.

No. 142.]

UNITED STATES LEGATION,
Berne, Switzerland, April 1, 1899.

SIR: Immediately upon receipt of your dispatch, No. 161, of March 17, which only reached me this morning, in accordance with instructions contained therein, I presented a copy of your dispatch to His Excellency the President of the Swiss Confederation, and will take pleasure in communicating with you further upon receipt of His Excellency's reply.

I have, etc.,

JOHN G. A. LEISHMAN.

Mr. Leishman to Mr. Hay.

No. 153.]

UNITED STATES LEGATION,
Berne, Switzerland, June 2, 1899.

SIR: Referring to my dispatch, No. 139, of March 23, 1899, I now have the honor to transmit to you herewith copy together with trans-

lation of a note from the Swiss Government, dated May 31, informing me of its decision to accept the denunciation of the Articles VIII to XII of the treaty of November 25, 1850, between the United States and Switzerland.

I have, etc.,

JOHN G. A. LEISHMAN.

[Inclosure.—Translation.]

BERNE, *May 31, 1899.*

MR. MINISTER: In reply to Your Excellency's note of March 23, last, we have the honor to inform you that we have decided to accept the denunciation of the Articles VIII to XII of the Treaty of Establishment and of Commerce concluded between Switzerland and the United States on November 25, 1850.

The denunciation having taken place on the 23d of March of this year, these articles, in conformity with Article XVIII of the treaty, remain in force twelve months after the denunciation—that is, till 23d March, 1900.

Please accept, Mr. Minister, etc.,

In the name of the Swiss Federal Council.

The President of the Confederation:

MULLER.

The Chancellor of the Confederation:

RINGIER.

PASSPORT FOR JULES MICHOT, PRESUMABLY BORN IN THE UNITED STATES AND RESIDING TEMPORARILY IN SWITZERLAND.

Mr. Leishman to Mr. Hay.

No. 155.]

UNITED STATES LEGATION,
Berne, Switzerland, June 14, 1899.

SIR: I beg leave to lay before you an application for passport of Jules Michot, claiming to be a native-born citizen of the United States, together with the correspondence with Consul Ridgely with regard to the matter, and await your decision and instructions in the case.

I have, etc.,

JOHN G. A. LEISHMAN.

[Inclosure 1.]

NATIVE.

I, Jules Michot, a native and loyal citizen of the United States, do hereby apply to the legation of the United States at Berne for a passport for myself.

In support of the above application I do solemnly swear that I was born at Philadelphia, in the State of Pennsylvania, on or about the —— day of October, 1878.

That I do not know who my father was or whether he be alive or dead; indeed, I know nothing about my origin further than I have learned from the facts set forth in the accompanying record of the court of common pleas No. 3 of Philadelphia. I was brought from Philadelphia to Switzerland by my adopted mother, Rosalie Michot, whom I believe to be my own mother, in 1891, and since the month of July, 1891, I have lived in Geneva, where I am now learning the trade of a confectioner.

Rosalie Michot having married and left this country for Australia, where she is now living, I am without parents or relatives at Geneva and desire to establish my identity as a native-born citizen of the United States, to which country I declare it to be my intention to return within two years with the purpose of residing and performing the duties of citizenship therein, and that I desire the passport for the purpose of establishing my identity as a native-born citizen of the United States.

OATH OF ALLEGIANCE.

Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same, and that I take this obligation freely, without any mental reservation or purpose of evasion. So help me God.

JULES MICHOT.

CONSULATE OF THE UNITED STATES AT GENEVA.
Sworn to before me this 18th day of May, 1899.

BENJ. R. RIDGELY, *Consul.*

[Inclosure 2.]

To the honorable the judges of the court of common pleas No. 3 of Philadelphia County:

The petition of Rosalie Michot, of the said county, respectfully represents that she is desirous of adopting a boy called Jules Michot, a child without known parents, as one of her heirs, and for that purpose she herein declares her said desire, and also that she will perform all the duties of a parent to the said Jules Michot.

The petitioner further represents that the said boy was given to her on the 10th of January, 1879, at a station between Philadelphia and New York, the name of said station being unknown to your petitioner; that the age of the child at this said time was about three months; that every effort has been made by your petitioner to find the parents of the said child, and that these efforts have been unsuccessful. That the said child has resided with your petitioner and been supported and cared for as her own child since the said 10th day of January, 1879.

The petitioner therefore prays the court, if satisfied that the welfare of the child known as Jules Michot will be promoted by said adoption, your petitioner being the next friend of said child, to decree that the said child known as Jules Michot may assume the name of the petitioner, namely, of Jules Michot, and have all the rights of a child and heir of the petitioner and be subject to the duties of such a child. And she will ever pray.

Rosalie Michot, being duly sworn according to law, deposes and says that the facts above are true to the best of her information and bellef.

Sworn and subscribed this 8th day of October, A. D. 1891. (Signed) Rosalie Michot.

[SEAL.]

J. M. R. JERMON, *Notary Public.*

And now, to wit, October 10, 1891, upon the petition of Rosalie Michot, and it appearing that Jules Michot, the child therein mentioned, has been supported by the said Rosalie Michot for the space of eleven years, and the said Rosalie Michot being the next friend of said child, and the court being satisfied upon due consideration that the welfare of the said Jules Michot would be promoted by being adopted as her child and one of her heirs, decree that the said child shall assume the name of Jules Michot, and have all the rights of a child and heir of the said Rosalie Michot and be subject to the duties of a child.

T. K. FINLETTER.

[Inclosure 3.]

THE COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

I, M. Russell Thayer, esquire, prothonotary of the several courts of common pleas, numbers one, two, three, and four, respectively, of the county of Philadelphia, do certify that the foregoing is a true copy of the petition and consent of Rosalie Michot, next friend of Jules Michot, for adoption and the decree of the court that said Jules Michot be adopted and assume the name and be subject of the duties of a child of said Rosalie Michot, of September term, 1891, number 203, as full, entire, and complete as the same remains on file in the court of common pleas No. 3, of the county of Philadelphia aforesaid, in the case above stated.

In testimony whereof I have hereunto set my hand and affixed the seal of the said courts this eighth day of March, in the year of our Lord one thousand eight hundred and ninety-nine (1899).

M. RUSSELL THAYER, *Prothonotary.*

COUNTY OF PHILADELPHIA, *ss:*

I, T. K. Finletter, presiding judge of the court of common pleas No. 3 for the county of Philadelphia, do certify that the foregoing record, certificate, and attestation, made by M. Russell Thayer, esquire, prothonotary of the said court, whose name is thereunto subscribed and the seal of the said court affixed, are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand this 8th day of March in the year of our Lord one thousand eight hundred and ninety-nine (1899).

T. K. FINLETTER,
President Judge Court of Common Pleas No. 3.

[Inclosure 4.]

Mr. Ridgely to Mr. Leishman.

CONSULATE OF THE UNITED STATES OF AMERICA,
Geneva, June 3, 1899.

SIR: I have the honor to inclose herewith the application of Jules Michot, a native citizen of the United States, for a passport for himself, and beg you to take his case into consideration at your earliest convenience.

In my opinion, the young man is a native citizen of the United States and is entitled to a passport. I myself wrote to Philadelphia for proof of his origin and secured the extract from the record of the court of common pleas No. 3, which I inclose herewith. He is a poor little fellow, but seems to be full of spirit and pluck, and I hope you will take a favorable view of his application.

I am, etc.,

BENJAMIN H. RIDGELY, *Consul.*

[Inclosure No. 5.]

Mr. Leishman to Mr. Ridgely.

UNITED STATES LEGATION,
Berne, Switzerland, June 5, 1899.

SIR: Replying to your letter of 3d instant, inclosing an application of Jules Michot, I regret to say that unless the young man can furnish additional evidence in regard to the place of his birth I would not feel warranted in issuing a passport to him without first submitting the matter to the Department of State.

Of course I appreciate the difficulty of the young man in obtaining the information under the circumstances stated in the petition, but while it may be a fair presumption that a child fround on the train between Philadelphia and New York at the tender age of 3 months was born in the United States it is not at all conclusive, especially as there is nothing to show that either the father or the mother were citizens of the United States. Young Michot is still under age and consequently can not be called upon to do military service in Switzerland for some months to come, so that he can not be inconvenienced very much by the delay, and if you are satisfied from your personal examination that the young man is really honest and sincere in his desire to return to the United States within a reasonable length of time I will submit the matter to the Department for decision.

Regretting that I can not see my way at present to grant the application,

I am, etc.,

JOHN G. A. LEISHMAN.

[Inclosure No. 6.]

Mr. Ridgely to Mr. Leishman.

CONSULAR SERVICE, UNITED STATES OF AMERICA,
Geneva, June 9, 1899.

SIR: Replying to yours of the 5th instant relative to the application of Jules Michot for passport, I have the honor to request that you submit the application,

together with my letter and the record of the court, to the Department of State as you kindly propose to do in your communication above referred to.

The young man has in him the feeling and spirit of a native-born American boy and is sincere in his desire to return to the United States.

I am, etc.,

BENJ. H. RIDGELY, *Consul.*

[Inclosure No. 7.]

Mr. Leishman to Mr. Ridgely.

UNITED STATES LEGATION,
Berne, Switzerland, June 13, 1899.

SIR: I am in receipt of your favor of the 9th instant, and in compliance with your request I will submit the application of Jules Michot, together with the papers in connection with the case, to the Department of State for decision.

Yours, etc.,

JOHN G. A. LEISHMAN.

Mr. Hay to Mr. Leishman.

No. 178.] DEPARTMENT OF STATE,
Washington, July 12, 1899.

SIR: I have to inform you that your dispatch, No. 155, of the 14th ultimo, submitting to the Department for its decision the application of Mr. Jules Michot for a passport as an American citizen, has been received. The nationality of the mother not being determinable in this case, since she is, like the father, an absolutely unknown quantity, the only question is, Was the applicant born in the United States? If he was, he is a citizen by right, and is, under our practice, entitled to our protection during his minority, wherever he may be, since no act of the parents or of anyone else can deprive him of the right conferred upon him by his birth.

The woman's petition to the court of common pleas No. 3, at Philadelphia, was so far accepted by the court that it granted her prayer and gave her the child in adoption. She swore that it had been left with her near Philadelphia when it was about three months old, and that she knew nothing of its parentage or place of birth. The applicant himself, however, thinks this woman is really his mother. This opinion, based upon years of filial association with her, is probably correct; but it is only an opinion, and need not disturb the presumption that the child was born in the country where its existence first became known. The applicant himself has always been led to believe that he was born in Philadelphia, and has taken oath accordingly. At any rate, your desire for additional evidence in regard to the place of birth is one palpably impossible of gratification. There can not be a record of the birth, as the child was either a foundling or the birth was concealed. The woman is on record as swearing her ignorance on the subject. The circumstances being as set forth in the papers, there would seem to be no escape from the presumption that the child was born in the United States and should accordingly be granted a passport.

I am, etc.,

JOHN HAY.

PASSPORT APPLICATION OF EDWARD KLIPFEL, A NATURALIZED CITIZEN, WHO STATES THAT HE HAS NO INTENTION OF RETURNING TO THE UNITED STATES.

Mr. Leishman to Mr. Hay.

No. 157.] UNITED STATES LEGATION,
Berne, Switzerland, June 19, 1899.

SIR: I beg leave to inclose herewith the application[1] of Edward Klipfel, a naturalized citizen of the United States, who states in his application that he has no intention of returning to the land of his adoption, in which case, under ordinary circumstances and according to the rules of the Department, I would feel compelled to refuse a passport; but as Mr. Klipfel resided sixteen years in the United States, having only left last June, and as his three minor children are native-born citizens, I deem it best to refer the case for your decision and await your further instructions in the matter.

I have, etc.,

JOHN G. A. LEISHMAN.

Mr. Hay to Mr. Leishman.

No. 177.] DEPARTMENT OF STATE,
Washington, July 3, 1899.

SIR: I have to inform you that your dispatch No. 157, of the 19th ultimo, in regard to the application of Edward Klipfel for a passport, has been received. In view of Mr. Klipfel's sworn statement that he has "no idea of returning to the United States," it is clear that he can not properly receive a passport. The Department's position on this point is well established and should be adhered to. He can not expect to receive the protection that a passport affords when he manifests no intention of performing the duties of a citizen of the United States. But this act of his does not deprive his children, who were born in this country and have been taken away by him, of their right to our protection until they reach their majority and may elect an allegiance of their own; and if you should be called upon to do so, you should recognize them as citizens of the United States.

I am, etc.,

JOHN HAY.

PASSPORTS TO ELISE AND EMMA BERNOT, INFANTS, BORN IN UNITED STATES OF ALIEN PARENTS.

Mr. Leishman to Mr. Hay.

No. 170.] UNITED STATES LEGATION,
Berne, Switzerland, October 6, 1899.

SIR: I beg leave to submit the question of the propriety of issuing a passport to Elise and Emma Bernot, aged 7 and 5 years, respectively.

These children, according to certificates issued by the board of health of Hoboken, N. J., were born in the United States of alien

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[1] Not printed.

parents, although the grandfather, who resides in Berne, with whom the children are living, states that the father has taken out his first papers and is still living in the United States. It appears, however, that the parents have practically deserted the children, the father's whereabouts being unknown and the mother living an immoral life in Long Island, so that the grandfather is not only willing but anxious to keep the children, but experiences considerable trouble, as the Swiss authorities refuse to allow the children to remain without a passport, not recognizing them as Swiss, as the mother lost her right through her marriage, her husband being a German and a deserter from the army. Under these trying circumstances, the children having been born in the United States, I respectfully submit for your consideration the question whether protection can be afforded the children during their minority.

Awaiting your instructions, I have, etc.,

JOHN G. A. LEISHMAN.

Mr. Hay to Mr. Leishman.

No. 185.] DEPARTMENT OF STATE,
Washington, October 24, 1899.

SIR: I have to acknowledge the receipt of your No. 170, of the 8th instant, in regard to the case of Elise and Emma Bernot, aged 7 and 5 years, respectively, who, according to certificates issued by the board of health of Hoboken, N. J., were born in the United States of alien parents. You inquire whether protection can be afforded the children during their minority.

In reply I have to say that no principle is better settled than that birth in the United States, irrespective of the nationality of the parents, confers American citizenship. Upon the facts stated, therefore, these girls are citizens of the United States, and as such are entitled to passports and the protection of this Government.

I am, etc.,

JOHN HAY.

Mr. Hay to Mr. Leishman.

No. 186.] DEPARTMENT OF STATE,
Washington, October 26, 1899.

SIR: Supplementing the Department's No. 185, of the 24th instant, you are informed that the children Elise and Emma Bernot, being too young to understand the nature of an oath, the application for passports in their behalf may be made by their guardian.

I am, etc.,

JOHN HAY.

PASSPORT, REFUSAL OF LEGATION AT BERNE TO ISSUE, TO FRED. KNECHTENHOFER.

Mr. Leishman to Mr. Hay.

No. 180.] UNITED STATES LEGATION,
Berne, Switzerland, November 24, 1899.

SIR: I beg leave to lay before you the case of Mr. Fred. Knechtenhofer, who applied for a passport through the consul of Berne, which,

after carefully considering, I decided to refuse, and if the reasons for refusal appear sound and logical and the decision meets with your approval, I would like to place same on record at this legation as a guide for the future, as the question at issue refers more particularly to Switzerland, as it involves the vexed question of dual citizenship.

The circumstances of the case are as follows: The said Fred. Knechtenhofer was born in Switzerland in the year 1873, emigrating to the United States in 1893, soon after he had passed the twentieth year, and shortly before reaching his majority, when he would be subject to military service. Promptly on arriving at 21 he made application to become naturalized, and on 19th September, 1899, was granted his certificate as an American citizen by the court of Buchanan County, at St. Joseph, Mo., and within one month after receiving his papers he left the United States, sailing on the steamer *Westernland*, on the 18th October, 1899, in order to return to his native land, where he is now living with his father.

Upon examining the application it appeared to me that this was one of the many cases where American citizenship was obtained merely as a convenience, to be used as a cloak to shield the individual from his obligations at home, without incurring any new, and at the same time conserve his right as a Swiss citizen, which can only be lost by the voluntary act of the individual in the manner prescribed by law. I thereupon instructed the consul to propound the following questions to the young man:

First. Whether he had resigned his Swiss citizenship in the manner prescribed by law; and, second, whether he was willing to make a special affidavit declaring his bona fide intention of returning to the United States in order to reside there and perform the duties of a citizen. His reply to the first question was, that he had not renounced his Swiss citizenship, and, upon being pressed further, admitted that it was not his intention to do so. Regarding the second question, he evidently had no intention of returning to the United States, having looked on the statement in application of his intention to return within two years as a matter of form, as he stated that it was his intention to remain with his father and help him work the farm. Now, the granting of a passport under above conditions, which the prima facie evidence which is ordinarily demanded would warrant, might, in the event of the Swiss Government calling on the party to perform military service, cause the Government of the United States considerable annoyance, and consequently I respectfully submit the following questions, i. e.:

On account of the peculiar conditions which exist in Switzerland, is the minister warranted in refusing a passport to a native-born Swiss who returns to the country of his birth after acquiring American citizenship, unless he can clearly show that he has formally renounced his Swiss citizenship in the manner prescribed by law, which every Swiss is thoroughly familiar with; and further, as a matter of fact, can a Swiss who, in order to become a citizen of the United States, must, when taking the oath of allegiance, first renounce allegiance to any foreign power, especially to the land of his birth—can he, without false swearing and thus obtaining his certificate of naturalization by fraud, be considered a bona fide citizen of the United States as long as he conserves his Swiss citizenship, which he well knows he can not lose except by his own act in formally renouncing same?

Awaiting your advice and instructions, I have, etc.,

JOHN G. A. LEISHMAN.

Mr. Hay to Mr. Leishman.

No. 190.] DEPARTMENT OF STATE,
Washington, December 12, 1899.

SIR: I have to acknowledge the receipt of your No. 180, of the 24th ultimo, reporting your refusal to issue a passport to Mr. Frederick Knochtenhofer, the circumstances of whose case are as follows: He was born in Switzerland in 1873; came to the United States in 1893, soon after he had passed his twentieth year and shortly before reaching his majority, when he would be subject to military service; was naturalized in the United States on September 19, 1899; left the United States within one month thereafter, when he returned to his native land, where he is now living with his father. In answer to inquiries put to him he admitted that he had not renounced his Swiss citizenship and did not intend to do so, and had no intention of returning to the United States to live.

Under the circumstances cited, the Department approves your action in refusing him a passport.

You ask advice on the following points:

1. Are you warranted in refusing a passport to a native-born Swiss who returns to the country of his birth after acquiring American citizenship, unless he can clearly show that he has formally renounced his Swiss citizenship in the manner prescribed by Swiss law?

In reply to this I have to say, that the laws of the United States do not require the consent of the government of the alien's origin or a compliance with the laws of such country relative to renunciation of allegiance as a prerequisite to naturalization here. You would, therefore, not be justified in making it a condition to the issuance of a passport that the applicant shall show that he has formally renounced Swiss citizenship in the manner prescribed by Swiss law.

2. "Can a Swiss who, in order to become a citizen of the United States, must, when taking the oath of allegiance, first renounce allegiance to any foreign power, especially to the land of his birth—can he, without false swearing and thus obtaining his certificate of naturalization by fraud, be considered a bona fide citizen of the United States as long as he conserves his Swiss citizenship, which he well knows he can not lose except by his own act in formally renouncing same?"

This is in effect, can a person who obtains his certificate of naturalization by fraud be considered a bona fide citizen of the United States? Naturalization being a judicial act, there is no authority on the part of the executive to declare that a naturalized citizen of the United States is not a citizen because of fraud in the procurement of his citizenship. That can only be determined judicially by a competent court of the United States. But this does not interfere with the exercise of the discretionary power vested in the Secretary of State in the matter of granting passports and protecting American citizens abroad, and the Department's standing rule is to withhold a passport from any holder of naturalization papers found to have been obtained by fraud.

I am, etc.,

JOHN HAY.