

GERMANY.

ARBITRATION OF THE PREFERENTIAL TREATMENT OF CLAIMS AGAINST VENEZUELA.

[See under the Netherlands, p. 505.]

NEUTRALITY OF CHINA IN THE WAR BETWEEN RUSSIA AND JAPAN.

Mr. Hay to Mr. Tower.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, February 8, 1904.

(Mr. Hay instructs Mr. Tower to consult the minister for foreign affairs in regard to the possibility and desirability of neutral powers concurrently using good offices with Russia and Japan (in case a state of war should unfortunately be created) to induce them to respect the neutrality of China and in all practicable ways her administrative entity, to localize and limit as much as possible the area of hostilities, so that undue excitement and disturbance of the Chinese people may be prevented and the least possible loss to the commerce and the peaceful intercourse of the world may be occasioned. If this proposition is acceptable suggest that instructions be sent to the German representatives at St. Petersburg, Tokyo, and Peking. All the signatories of the protocol of Peking will then be consulted.)

Mr. Tower to Mr. Hay.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Berlin, February 9, 1904.

(Mr. Tower reports that he has communicated to the German minister for foreign affairs Department's telegram of February 8 concerning the neutrality of China, and asked him whether this proposition of the United States is acceptable to the Imperial German Government. In reply he stated that the proposition is entirely

agreeable to the German Government, and that Germany is ready, on receipt of further information from Washington, to instruct in this sense its representatives at St. Petersburg, Tokyo, and Peking. He said further that the German Government sympathizes fully with the purpose of the United States on behalf of humanity, the protection of foreigners in China, the maintenance of order, and the safeguarding of the commerce of the world. He added that Germany believes that to attain these purposes the support of the neutrality of China would be the most available means; and the German Government is prepared to act in harmony with the United States and the other neutral powers to assure the neutrality of China in so far as this may be compatible with the respective military interests of the belligerent powers.)

Mr. Tower to Mr. Hay.

No. 294.]

AMERICAN EMBASSY,
Berlin, February 10, 1904.

SIR: I have the honor to acknowledge the receipt, on Tuesday morning, the 9th of February, of your dispatch in regard to the maintenance of the neutrality of China during the war between Russia and Japan.

Immediately upon the receipt of this message I proceeded to the Imperial German ministry for foreign affairs, where I had a personal interview with Baron von Richthofen, imperial secretary of state for foreign affairs, and communicated to him the contents of your telegram. I handed to Baron von Richthofen a memorandum, a copy of which is herewith respectfully inclosed.

Upon leaving the ministry for foreign affairs I telegraphed to you the reply of the German Government in a dispatch, a copy of the text of which, as well as a copy of the text of your dispatch to me, is hereto attached.

I have, etc.,

CHARLEMAGNE TOWER.

[Inclosure.]

A copy of a memorandum handed by Mr. Tower to Baron von Richthofen, imperial secretary of state for foreign affairs, on Tuesday, February 9, 1904, at 12 o'clock noon.

I am to consult his excellency as to the possibility and desirability of a joint action of the neutral powers to use their good offices with Russia and Japan, in case of actual war, in order that the neutrality of China may be respected and her administrative entity maintained in so far as possible; and also that the area of hostilities may be limited as far as it may be possible to do so and localized so as to prevent undue excitement and disturbance of the Chinese people, and to attain the least possible loss to the commerce and the peaceful intercourse of the world.

If this proposition seems acceptable to his excellency I am instructed to suggest to him that instructions may be sent in this sense to the German representatives in St. Petersburg, Tokio, and Peking.

And all the signatories of the protocol of Peking will then be consulted.

I am also to intimate to his excellency in confidence that this circular is sent at the suggestion of the German Government.

Mr. Hay to Mr. Tower.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, February 10, 1904.

(Mr. Hay acknowledges Mr. Tower's telegram of the 9th instant and states that, in view of the cordial and satisfactory response of the German Government, the Department will at once communicate the views of the United States to all the neutral signatories of the protocol of Peking, and instruct our representatives at St. Petersburg, Tokyo, and Peking in the same sense.)

Mr. Tower to Mr. Hay.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Berlin, February 11, 1904.

(Mr. Tower reports that Department's telegram, announcing that instructions have been sent to the United States representatives at St. Petersburg, Tokyo, and Peking, has been communicated to the German minister for foreign affairs, and he replied that the necessary instructions will be sent at once to the German representatives in those capitals. He was also informed that the views of the United States will be communicated immediately to all the neutral signatories of the protocol of Peking.)

Mr. Hay to Mr. Tower.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
February 15, 1904.

(Mr. Hay instructs Mr. Tower to convey to the Emperor the President's profound appreciation of his generous initiative and powerful cooperation in the matter of Chinese neutrality.)

Mr. Tower to Mr. Hay.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Berlin, February 17, 1904.

(Mr. Tower reports that he has conveyed to the Emperor the profound appreciation of the President of his initiative and cooperation in the matter of Chinese neutrality, and that the Emperor was exceedingly gratified and expressed most friendly sentiments toward the President.)

Mr. Tower to Mr. Hay.

[Telegram.—Paraphrase.]

AMERICAN EMBASSY,
Berlin, February 20, 1904.

(Mr. Tower reports that Department's telegram conveying the reply of the Russian Government has been communicated to the German minister for foreign affairs, who said that the German Government is gratified that the proposal of the United States concerning the neutrality of China has been so generally accepted in principle by the powers. In the course of the conversation he intimated that he considers it to be of moment that China be made aware how important it is that she should scrupulously respect the laws of neutrality herself, and he intimated also that a message to this effect has already gone to China from Germany.)

PASSPORT APPLICATION OF ROBERT ALBERT BÖKER.

Mr. Hay to Mr. Dodge.

No. 179.]

DEPARTMENT OF STATE,
Washington, April 26, 1904.

SIR: The Department is in receipt of the card from your embassy dated April 14, 1903, showing that the ambassador refused to issue a passport to Robert Albert Böker, who was born in Leipsic May 25, 1885, of native American parents, on the ground that he was unwilling to swear to an intention to go to the United States to live.

The Department has repeatedly ruled that a person born abroad of American parents, being born a citizen of the United States under the law (section 1993, Revised Statutes of the United States), is entitled to the protection of this Government's passport until he shall have reached the age of 21 years, when he may elect another nationality if he choose. Until that age he is not competent to make such election and retains the status which his birth conferred. (See Foreign Relations, 1879, p. 815; 1901, p. 421; also Van Dyne on Citizenship, p. 32 et seq.)

The facts being as set forth on the card, it would appear that a passport should have been granted Mr. Böker, and you will accordingly recall the embassy's refusal to issue one in his favor and recall the cards announcing such refusal which may have been sent to other embassies and legations.

I am, etc.,

JOHN HAY.

Mr. Tower to Mr. Hay.

No. 358.]

AMERICAN EMBASSY,
Berlin, May 13, 1904.

SIR: I have the honor to acknowledge the receipt of your dispatch No. 179, of the 26th of April, 1904, in regard to the issuing of a passport to Robert Albert Böker.

Application was made in March, 1904, by Mr. Böker, through the United States consulate at Leipzig for a passport. The facts of the case, as they are reported to me by the applicant himself and by the consul at Leipzig, are as follows:

Robert Albert Böker was born in Leipzig on the 23d of May, 1885; he has lived in Leipzig all his life; he does not speak English; he has no connection with the United States, and to all intents and purposes he is a German.

His grandfather went to America in 1823, and resided there until 1853, when he returned to Germany and lived in Bonn until his death in 1884, having returned to his original domicile, therefore, and continued to reside there for thirty-one years after leaving America. It is not stated by the consul whether he was ever naturalized as an American citizen.

The father of the present applicant, Robert Anton Gescheid Böker, who is the son of Mr. Böker above referred to, was born at New York City on the 25th of January, 1845, but returned to Germany with his father at the age of 8 years, in 1853. He has continued to reside in Germany ever since, though he declares that he returned to America once upon a visit, in regard to which, however, Mr. Warner, the consul at Leipzig, writes to me, "when it was and how long he remained there he does not remember."

In forwarding to me the application of Mr. Böker for a passport the consul at Leipzig wrote to me on the 11th of March: "Neither the said applicant nor his father speaks English. The father can not say that he ever intends to return to the United States for the purpose of residing there. It is my opinion that he never will do so. The applicant can not say how long he will live in America. His idea in going there would seem to be solely for the purpose of evading military service." And in a subsequent letter, dated the 18th of March, the consul further declares in regard to the applicant Böker: "He should hardly be regarded as an American citizen, but rather as a child born of German parents temporarily residing in the United States."

It appears, therefore, that the father of the applicant, although born in the United States, abandoned his claim to American citizenship very early in his life, and has never made any effort or indication of his intention to resume it. His son, the present applicant, occupies indeed the position of a child born abroad of a father born in America, and I did not lose sight of this fact in considering his application for a passport.

I wrote to the consul at Leipzig on the 16th of March as follows: "The claim of this young man to American citizenship is slender at best. It is true that under our laws he may claim American citizenship by the fact that he is the son of an American, but on the other hand the burden is upon him to show that he has not abandoned his rights, and that while he is to all intents and purposes a German, intending to spend his life in Germany, with all his interests here, he seeks to escape the performance of his military service and his obligations as a German by clothing himself with a fictitious immunity under the guise of an American passport. The only way in which he can assert his determination to avail himself of his rights in America is by going to the United States, not only to make a visit to his elder brother" (of which he had declared his intention in order

to strengthen his application for a passport), "but to remain there, and absolutely in good faith to perform his duties as an American citizen."

A few days later the young man in question, Robert Albert Böker, came to this embassy, accompanied by his father, and I discussed this matter with them personally. I informed the applicant Böker that under the laws of the United States he is considered to be an American citizen by reason of his having been born abroad the son of a father who was born in the United States, and that he would have the right, upon coming of age to elect whether he would continue his American citizenship or become a German subject, and I told him that he could prove such election of American citizenship only by going to the United States to perform there his duties as an American citizen. He admitted, however, that he had no intention of going to the United States, either to live or to reside for any length of time, though he reiterated his statement that he intended to go to New York to visit a brother who lives there and is engaged in business there. I made an effort to obtain from him a declaration of a reasonable intention upon his part to reside in America and perform his duties there as an American citizen, but I failed in this, for he would not make any such declaration.

The young man appeared to me to be seeking a passport, as the consul had already intimated to me, solely for the purpose of evading military service in Germany, and I declined, therefore, to issue a passport to him, lest by so doing I should enable him to use the privileges of American citizenship, which he evidently does not deserve, and through them, while not rendering any service to the United States, to escape his obligations in Germany, where he was born and has been raised and intends to live.

I have the honor to request your further instructions in regard to this case.

I have, etc.,

CHARLEMAGNE TOWER.

Mr. Hay to Mr. Tower.

No. 192.]

DEPARTMENT OF STATE,
Washington, May 31, 1904.

SIR: The Department has received your No. 358, of May 13, relative to the rejection by your embassy of the application for a passport of Robert Allen Böker.

From the facts set forth by you it appears his father was an American citizen by birth, but he left this country permanently when he was 8 years of age, in 1853, and when the applicant was born had lived in Germany thirty-two years; and apparently he never performed the duties of an American citizen.

The Department has ruled: "If born after the father has in any way expatriated himself, the children born abroad are to all intents and purposes aliens, and not entitled to protection from the United States" (For. Rel. 1873, pt. 2, p. 1191); and again: "If the father has, at the time of the birth of a son, abandoned his citizenship in the

United States, the son can make no claim to such citizenship." (For. Rel. 1885, p, 396.) See Van Dyne on Citizenship, page 34.

It seems, therefore, that as the applicant's father had forfeited his right to protection as an American citizen when his son was born, the son is for this reason not entitled to receive such protection, and the rejection of the son's application for a passport appears to be proper; but not, however, for the reasons given by the embassy in its letter to the consul at Leipzig and in the card announcing the rejection sent to this Department, since, as the Department's No. 179, of April 26, 1904, stated, if the applicant was born an American citizen his intent to come to this country would be immaterial during his minority.

I am, etc.,

JOHN HAY.

PASSPORT OBTAINED FRAUDULENTLY BY JOSEF HENRY TETZ.

Mr. Dodge to Mr. Hay.

No. 531.]

AMERICAN EMBASSY,
Berlin, November 12, 1904.

SIR: I have the honor to inclose herewith the passport of one Josef Henry Tetz (Department of State No. 9279, of June 24, 1904), as well as copies of letters from the consul-general at Hamburg, dated the 20th ultimo, and from the police authorities of that city, dated the 18th ultimo, the latter also with an English translation. From these letters this man appears to have made the following statements:

He was born at Memel, East Prussia, on March 5, 1881, of a father who has never been to the United States. In 1885 or 1886 he emigrated with relations to the United States, where he remained until 1890. He then returned to Germany and remained here continuously until the end of April, 1904, when he again went to the United States, remaining there until July last. While in the United States, during these three months, he claims to have been naturalized an American citizen, and he obtained the inclosed passport. When questioned by the consul-general as to how he obtained this passport, he was not able to give any precise information; neither was he able to give any information as to how he became naturalized, but declared that he had left his naturalization certificate with relations in Holland. I accordingly immediately requested the consul-general at Hamburg to secure and forward to the embassy, if possible, the naturalization certificate mentioned, and to-day I have been informed by him that Tetz declares that he has been unable to find this document in Holland. The consul-general adds: "So far as I am able to judge, he has never been in possession of one." Under these circumstances, as it would seem that Tetz has no right to the passport in question, it is herewith returned for such further investigation and instructions in regard to this matter as may seem proper.

I have, etc.,

H. PERCIVAL DODGE.

[Inclosure 1.]

*Mr. Pitcairn to Mr. Dodge.*AMERICAN CONSULATE-GENERAL,
Hamburg, October 20, 1904.

SIR: I have the honor to transmit herewith a copy of a letter which I have this day received from the Hamburg police department, stating that a passport issued to Josef Henry Tetz by the Department of State on June 24, 1904, bearing No. 9279, appears to have been obtained illegally.

Josef Tetz states that his father is not an American citizen, he never having been in the United States. He himself has only been in the United States from his third to seventh year, and when he was 23 years of age he went the United States from May to July, 1904, during which time his uncle, whose address he is no longer aware of, aided him to procure the passport, which I herewith inclose.

I have also cross-examined Tetz, and he has made the same statements to me as he has done to the police department. He says that he does not know what statements his uncle made in order to procure him the passport, he using as an excuse that he is not fluent with the English language.

I would respectfully request that the embassy instruct me as to what steps I am to take in the matter.

I have, etc.,

HUGH PITCAIRN.

[Subinclosure.—Translation.]

*Director of Police Doctor Roscher to Mr. Pitcairn.*HAMBURG, *October 18, 1904.*

The merchant Joseph Henry Tetz, born on the 5th of March, 1881, at Memel, in East Prussia, has reported himself here as a citizen of the United States of America, showing the inclosed passport as identity.

The person named is, according to investigation, a son of the native Russian merchant Moritz Tetz, who has lived in Memel uninterruptedly since the year 1865, and who has never lived in North America. Josef Henry Tetz, when questioned, stated that in the year 1885 or 1886—that is, at the age of 4 or 5 years—he went to New York with relations, remaining there until 1890. From 1890 until April of this year he has, according to his own statement, always lived in Germany. Then from May to July of the present year he says he was again in New York, and that during this time he acquired American citizenship. He states that he has left his naturalization certificate with relations in Holland.

Since doubt has arisen here whether Tetz has acquired American citizenship in a regular and legal manner, I have the honor to request that the consulate-general will kindly inform me whether Tetz is to be considered an American citizen.

DOCTOR ROSCHER.

Mr. Hay to Mr. Tower.

No. 280.]

DEPARTMENT OF STATE,
Washington, December 2, 1904.

SIR: The Department has received Mr. Dodge's No. 521, of the 12th ultimo, relative to the case of Josef Henry Tetz, to whom this Department issued passport No. 9279 on June 24, 1904.

The application upon which the passport was issued showed that Tetz was a native citizen of the United States, and, as the passport was obtained by fraud, as appears from the information conveyed in Mr. Dodge's dispatch, you are instructed to notify the proper authorities in Germany that Josef Henry Tetz is not a citizen of the United States, and that his passport has been withdrawn for the reasons set forth in this instruction.

I am, etc.,

JOHN HAY.

FINE IMPOSED UPON EMIL VIBERT FOR NONPERFORMANCE OF MILITARY SERVICE.

Mr. Tower to Mr. Hay.

No. 331.]

AMERICAN EMBASSY,
Berlin, April 5, 1904.

SIR: I have the honor to call to your attention the case of one Emil Vibert, a naturalized American citizen now residing in New York, who has recently expressed a desire to return to Germany upon a visit.

It appears that Mr. Vibert was born in St. Quirin, Lorraine, on the 1st of February, 1874, and emigrated to the United States with his father in 1886, having resided in America ever since. He was naturalized in the United States district court for the southern district of New York on the 22d of November, 1895, as is shown by his naturalization certificate, which was duly presented at this embassy.

The case was brought to my attention by the United States consul at Kehl on the 18th of December, 1903, by a letter in which the consul informed me that Mr. Vibert's father now resides at St. Quirin, in Lorraine, and Mr. Vibert "would like to have permission to visit his old home for a period of six months, namely, from April 1 until September 30, 1904."

Upon receipt of this letter and upon due proof of the naturalization of Mr. Vibert, I addressed a note, on the 28th of December, 1903, to the imperial German ministry for foreign affairs, asking that Mr. Vibert might be allowed to visit his father, in accordance with his request.

I have now received a note verbale, under date of the 27th of March, 1904, from the ministry for foreign affairs, a copy and a translation into English of which are herewith inclosed, in which the ministry announces that Emil Vibert is still a German subject and was condemned by the court in Zabern, on the 5th of April, 1897, to pay a fine of 600 marks or to undergo an imprisonment of forty days, with the costs, for nonperformance of military duty, which sentence has as yet not been carried out.

Mr. Vibert's American citizenship is not recognized in Germany, under the old contention that the treaties with the United States in regard to naturalization do not apply to the imperial provinces of Alsace and Lorraine, and therefore the ministry for foreign affairs announces that as a German subject he does not require permission to return to his own country, but that if he comes back to his home the sentence now pending against him will be carried out and he will be forcibly enrolled in the army.

But the ministry further announces that, in view of the intervention of the embassy of the United States in behalf of Mr. Vibert, the authorities of Alsace and Lorraine have declared themselves willing, upon payment by him of the fine imposed upon him and the costs, to grant a request, if made by him, for his release from German nationality and then to give him permission to make a visit to Alsace-Lorraine.

A copy of the entire correspondence relating to this case is herewith respectfully inclosed.

I have, etc.,

CHARLEMAGNE TOWER.

[Inclosure 1.]

*Mr. Brittain to Mr. Dodge.*AMERICAN CONSULATE,
Kehl, December 18, 1903.

SIR: I beg to inclose the citizenship papers of Emil Vibert, who wishes to return to Germany for the purpose of a visit.

He would like to have permission to visit his old home for a period of six months, namely from April 1 until September 30, 1904.

Mr. Vibert went to the United States with his father in 1886, at the age of 12 years. His father resides now at St. Quirin, Lorraine, near Saarburg.

I am, etc.,

JOSEPH I. BRITTAİN.

[Inclosure 2.]

*Mr. Dodge to Mr. Brittain.*AMERICAN EMBASSY,
Berlin, December 19, 1903.

SIR: The embassy returns herewith the naturalization certificate of Emil Vibert, and informs you that it will take proper action with a view to obtaining the desired permission for this gentleman if you will submit to it further details concerning him, and especially the place and date of his birth, whether he has made former visits to Germany, etc.

I am, etc.,

H. PERCIVAL DODGE.

[Inclosure 3.]

*Mr. Brittain to Mr. Dodge.*AMERICAN CONSULATE,
Kehl, December 26, 1903.

SIR: In response to your letter of the 19th instant I herewith return the citizenship papers of Emil Vibert, and beg to state that he was born February 1, 1874, and emigrated to the United States in 1886, and has never returned to Germany.

He was born in St. Quirin, Lorraine, near Saarburg.

I am, etc.,

JOSEPH I. BRITTAİN.

[Inclosure 4.]

Note verbale from the American Embassy to the Imperial Ministry for Foreign Affairs.

BERLIN, *December 28, 1903.*

The embassy of the United States of America has the honor to request, if it be found to be perfectly convenient and proper, that one Emil Vibert, an American citizen of German origin, may be allowed to visit his father at his former home at St. Quirin, near Saarburg, Lorraine, for about six months, namely from April 1 until September 30, 1904.

The embassy is informed that Vibert was born at St. Quirin in 1874, and emigrated to the United States in 1886, becoming duly naturalized there an American citizen in the United States district court for the southern district of New York, November 22, 1895, as is shown by the naturalization certificate in his possession. Vibert has not returned to Germany since his emigration, and is at present in the United States.

[Inclosure 5.]

Note verbale from the Imperial Ministry for Foreign Affairs to the American Embassy.

BERLIN, *March 27, 1904.*

In reply to the note verbale of the 28th of December, 1903, the ministry for foreign affairs has the honor to inform the embassy of the United States of America that an investigation has shown that Emil Vibert is still a German subject, and was sentenced, on the 5th of April, 1897, by the court at Zabern, to pay a fine of 600 marks or undergo an imprisonment of 40 days and pay the costs. The sentence has not yet been carried out. As a German subject, Vibert would not require special permission to visit Alsace-Lorraine; but if he returned to his native country he would have to submit to the execution of the sentence pending against him and would be forcibly enrolled in the army.

In view of the intervention of the embassy of the United States of America in Vibert's behalf, the authorities have expressed their willingness to release him from his German nationality, if he so desires, upon his paying the fine now outstanding against him and the costs; and permission will then be granted him to make a visit in Alsace-Lorraine.

Mr. Hay to Mr. Dodge.

No. 182.]

DEPARTMENT OF STATE,
Washington, May 5, 1904.

SIR: I have to acknowledge the receipt of Mr. Tower's No. 31 of the 5th ultimo, in regard to the case of Emil Vibert, for whose return to Germany to visit his father for a period of six months permission was sought by the embassy and refused by the German Government, on the ground that as the naturalization treaties of the United States do not apply to the Imperial provinces of Alsace and Lorraine, Vibert is still a German subject, and was condemned by the court in Zabern, on April 5, 1897, to pay a fine of 600 marks or to undergo an imprisonment of forty days, with the costs, for nonperformance of military duty, which sentence has as yet not been carried out.

It appears from your dispatch that Vibert, who was born in St. Quirin, Lorraine, February 1, 1874, emigrated to the United States in 1886, since when he has not once returned to Germany, but has lived continually in this country, where he was naturalized as a citizen of the United States in November, 1895.

Mr. Vibert has, therefore, been absent from Germany for a period of from seventeen to eighteen years, and would seem to have lost his German allegiance, according to the North German law of June 1, 1870 (extended to Alsace-Lorraine by the Imperial law of January 8, 1875), by a residence of more than ten years abroad.

It was apparently on this account that in the somewhat similar case of Casimir Hartmann (Foreign Relations, 1897, pages 230 and 231) Hartmann was recognized as a foreigner and released from military service; and while this Government does not concede the contention of the German Government as to the nonapplicability of the naturalization treaties to Alsace-Lorraine, but leaves that question open to discussion, the Department is of the opinion that intervention in Vibert's behalf, both as to his return to his native place for a visit and for a rescission of the fine and sentence against him.

would be successful if, in addition to his American citizenship, such intervention was based on the forfeiture of his German allegiance under the law alluded to, by his absence of more than ten years.

For information on this point the Department invites your perusal of the instructions sent by Mr. Olney to Mr. Jackson on March 3, 1896, and printed in the volume of Foreign Relations for that year.

I am, etc.,

JOHN HAY.

Mr. Tower to Mr. Hay.

No. 368.]

AMERICAN EMBASSY,
Berlin, May 27, 1904.

SIR: I have the honor to acknowledge the receipt of your instruction No. 182, of the 5th of May, 1904, in regard to the case of Emil Vibert, whose request to return to Germany to visit his father was refused by the German Government on the ground that as the naturalization treaties of the United States do not apply to the Imperial provinces of Alsace and Lorraine the said Vibert is still a German subject, and that if he returns to Germany he will be subject to pay the fine of 600 marks which was imposed upon him for nonperformance of military duty.

In accordance with your instructions, I had an interview, immediately upon receipt of your dispatch, with His Excellency Doctor von Mühlberg, acting Imperial German secretary of state for foreign affairs, to whom I presented again the subject of this case. I called to the attention of Dr. von Mühlberg the fact that Mr. Vibert emigrated to the United States in 1886, when he was but 12 years of age, and that he has been absent from Germany for a period of about eighteen years, in consequence of which he has lost his German allegiance under the German law of 1870; and I reminded Doctor von Mühlberg that Mr. Vibert has in the meantime been duly naturalized a citizen of the United States.

In regard to the fine which was imposed upon Vibert, Doctor von Mühlberg replied that it would not be affected by the fact of his having been absent from Germany for more than ten years, because it had been kept alive and been renewed from time to time under due process of law, and that it would accordingly apply to Vibert if he returned to Germany. The case resolves itself, therefore, into a question as to whether the German Government will recognize the citizenship of Mr. Vibert under the treaties of naturalization between Germany and the United States. The German Government does not consider these treaties as extending to the provinces of Alsace and Lorraine, largely because of a great variety of difficulties as to the application of the local treaties between the various German States themselves, which arose from the formation of the German Empire, and as no means have as yet been discovered to compose these questions of internal administration the position of the provinces of Alsace and Lorraine has been left until the present time undefined in this regard, whilst still forming a portion of the Empire. There is evidently no intent upon the part of the German Government to create any difficulties in connection with the application to Alsace and Lor-

raine of its naturalization treaties with the United States, although this application has been held in abeyance up to the present time for the reasons which I have just mentioned; but I judge from the conversation which I had with Doctor von Mühlberg that if the Government of the United States wishes to open negotiations the Imperial German Government would be inclined so to extend the provisions of the naturalization treaties with the United States that they should apply also to the provinces of the Reichsland.

In the meantime, however, I presented to Doctor von Mühlberg the case of Emil Vibert and called to his attention as forcibly as possible the fact that Vibert has legally acquired American citizenship and is entitled under it to the rights and privileges which such citizenship carries with it; and I asked him to have Vibert's citizenship duly recognized, permission granted to him to return to Lorraine upon a visit to his father, and the fine of 600 marks removed.

Doctor von Mühlberg very courteously examined the details of the subject and promised me to give it his personal attention.

I have, etc.,

CHARLEMAGNE TOWER.

Mr. Tower to Mr. Hay.

No. 382.]

AMERICAN EMBASSY,
Berlin, June 11, 1904.

SIR:

* * * * *

Regarding the case of Emil Vibert, a naturalized American citizen, who has asked for permission to return to Lorraine upon a visit to his father, I have received a note from Doctor von Mühlberg, a copy and a translation into English of which are hereto attached, in which the acting secretary of state says, in answer to my request that the fine imposed upon Mr. Vibert for nonperformance of military duty should be removed, that, "the annulment of the fine and costs could be obtained only as an act of grace," and, therefore, he suggests that Mr. Vibert shall address to the Emperor a petition for the annulment of the fine with costs and for his release from German allegiance.

If Mr. Vibert chooses to avail himself of this proposition and will send to me accordingly a petition addressed to the Emperor, I shall transmit it, with your approval, to the imperial ministry for foreign affairs, and shall support it, in so far as may be proper for me to do so. I am inclined to believe that such a petition would be granted.

I have, etc.,

CHARLEMAGNE TOWER.

[Inclosure.]

Doctor von Mühlberg to Mr. Tower.

IMPERIAL MINISTRY FOR FOREIGN AFFAIRS,
Berlin, June 3, 1904.

In reply to the note of the 27th of May, the undersigned has the honor to inform His Excellency, Mr. Charlemagne Tower, ambassador extraordinary and

plenipotentiary of the United States of America, that the ten years residence abroad by which a German loses his allegiance to Germany, in accordance with paragraph 21, clause 1, of the imperial law of June 1, 1870, does not apply to minors, but only to such as have attained their majority. In the case of Emil Vibert, who was born on the 1st of February, 1874, this term can only be reckoned from the 1st of February, 1895, and has therefore not yet been concluded. Under these circumstances Vibert is still a German subject, as was stated in the note verbale of the imperial ministry for foreign affairs, dated March 27, 1904.

In that note verbale it was stated that, in view of the intervention of his excellency the ambassador in Vibert's behalf, the proper authorities would be willing to release him from his German allegiance upon his making such a request and paying the fine outstanding against him, together with the costs. The annulment of the fine and costs could only be brought about by an act of grace. Vibert's interests would, therefore, probably best be served by his addressing a petition to His Majesty the Emperor, praying for the annulment of the fine and costs imposed upon him in consequence of his having evaded his military duties, and for his release from German allegiance. If the ambassador will support such a petition in having it sent to the imperial ministry for foreign affairs, the undersigned will gladly lend his good offices, in view of the special interest in this case taken by the ambassador, to the end that the petition may reach its high destination.

The undersigned avails himself, etc.,

MÜHLBERG.

Mr. Hay to Mr. Tower.

No. 207.]

DEPARTMENT OF STATE,
Washington, June 13, 1904.

SIR: I have to acknowledge the receipt of your No. 368, of the 27th ultimo, respecting the military case of Emil Vibert.

Your action is approved, and the Department will await the formal presentation of the case to the German Government.

In the meantime the Department has under consideration your observations concerning the application to Alsace and Lorraine of our naturalization treaties with the German Government.

I am, etc.,

JOHN HAY.

Mr. Hay to Mr. Tower.

No. 215.]

DEPARTMENT OF STATE,
Washington, June 28, 1904.

SIR: I have to acknowledge the receipt of your No. 382, of the 11th instant, reporting the result of your formal presentation to the German Government of the military case of Emil Vibert, a naturalized American citizen, who has asked for permission to return to Lorraine on a visit to his father.

The Department is of opinion that you may inform Mr. Vibert of the suggestion from the foreign office that the only means for Mr. Vibert to obtain release from German allegiance and the annulment of the fine imposed on him in 1898 for nonperformance of military service is by favorable action on a petition to be addressed by Mr. Vibert to His Majesty the Emperor.

Should Mr. Vibert send such a petition to the embassy you may

transmit it to the German foreign office. But in order that such course may not be construed as a tacit admission, at least, of the German contention that Vibert is still a German subject, which is opposed to the contention of this Government that the naturalization treaties existing between the two countries are applicable to Alsace-Lorraine, and that under such treaties Vibert is and should be recognized as a citizen of the United States, you will, in transmitting the petition, state to the imperial ministry for foreign affairs that in doing so the embassy's action is not to be understood as conceding the German contention that the naturalization treaties do not apply to Alsace-Lorraine.

I am, etc.,

JOHN HAY.

**NEUTRALITY OF GERMANY IN THE WAR BETWEEN RUSSIA
AND JAPAN.**

Mr. Dodge to Mr. Hay.

No. 440.]

AMERICAN EMBASSY,

Berlin, August 17, 1904.

SIR: I have the honor to report to you that I was informed yesterday by Doctor von Mühlberg, imperial acting secretary of state for foreign affairs, at the usual weekly diplomatic reception, that the Russian ships which had taken refuge at Tsingtau, including the battle ship *Cesarevitch* and three torpedo boats, had been disarmed by the German authorities and would not be allowed to repair. No reason had been given for this step, contrary to what had been reported in some of the newspapers. Doctor von Mühlberg then said that the position of neutrals in regard to allowing the ships of belligerents to repair in neutral ports was a very difficult one. The principles of international law in regard to this were very difficult of application. Of course it could not be laid down that Germany would under no circumstances allow belligerent ships to repair in her ports, but in the present case it had been decided not to allow this to be done. He had reason to believe that the British Government would act in a similar case as the German Government had done. In regard to the officers and men belonging to these ships and numbering about 1,000, the Japanese Government had been asked whether it had any objection to their being sent to Russia under proper safeguards.

I am, etc.,

H. PERCIVAL DODGE.