GERMANY.

Mr. Wharton to Mr. Phelps.

No. 146.] DEPARTMENT OF STATE,
Washington, September 8, 1890.

SIR: I transmit herewith copy of a letter addressed to this Department under date of 23d ultimo by Mr. George Haberacker, of Cleveland, Ohio, in relation to the impressment into the Bavarian army of his brother, John Haberacker.

From this letter, and from the newspaper clipping which accompanied it, the facts of the case may be thus conveniently summarized:

John Haberacker was born in Windsheim, Bavaria, on August 18, 1869, and has but very recently attained his twenty-first year. His father was a subject of Bavaria, and died in that country in 1883, when John was 14 years old. His widow emigrated to the United States the same year (1883), bringing her minor children with her. Three years later (in 1886) the widow Haberacker married one Andrew Knauss, a Bavarian by birth, but then for thirty-three years a citizen of the United States by naturalization. About three months ago Mr. Knauss and his wife went to Bavaria to visit relatives at Windsheim, taking with them John Haberacker, who had not yet reached full age. They returned in July, leaving John in Windsheim for a further stay of a fortnight. On August 3, a few days before he had arranged to return to the United States, John Haberacker was arrested as liable to military service and taken to Uffenheim, where a partial examination was had. Thence he was taken to Anspach, where he was heard before a military court and adjudged liable to three years' service as a Bavarian subject in the armies of the Kingdom. He was accordingly assigned to the Fourteenth Regiment of Infantry, on duty at Nuremberg, where he was when last heard from.

The statutes of the United States applicable to the case are as follows:

SEC. 1994. Any woman who is now, or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States * * * being under the age of 21 years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof.

It has been held by our courts that the husband's citizenship confers citizenship upon the wife without application for naturalization on her part or the usual qualifications. There is also an express decision of the United States circuit court (13 Federal Reporter, 82) that upon the marriage of a resident alien woman with a naturalized citizen both she and her infant son, dwelling in this country, become citizens of the

United States as fully as if they had become such in the special mode prescribed by the naturalization laws.

It is conclusive, therefore, under the laws of this country, that John Haberacker, upon the marriage of his mother to Knauss in 1886, became a naturalized American citizen. That he shall be treated as such by the Royal Government of Bavaria, our treaty with that Government of May 26, 1868, only requires further that he "shall have resided uninterruptedly within the United States for five years."

It is the generally accepted theory in this country that a widowed mother may reasonably and in good faith change the domicile of her minor children. When the boy John Haberacker, therefore, came to this country to live, in 1883, with his mother, his only natural protector, the United States thereby became his domicile. It is understood that in some of the systems of European law a different view prevails, viz, that the minor's domicile is fixed by the father's death and can not be changed during minority by the mother. The Department is not informed, however, that the law of Bavaria in this regard is different from our own. And in any event, whatever view that Government may entertain as to the legal domicile of Haberacker, with respect, for instance, to such a question as the succession to property in that Kingdom, it is believed that they will agree with us that the facts in this case constitute such an uninterrupted residence in this country as is contemplated by the treaty and bring Haberacker's case within its provisions.

In this connection the stipulations of section III of the supplementary protocol of Munich, signed May 26, 1868, have a pertinent application. It is therein provided that while Bavarians "emigrating from Bavaria before the fulfillment of their military duty can not be admitted to a permanent residence in the land till they shall have become 32 years old" does not forbid a journey to Bavaria for a less period of time and for definite purposes, and the Royal Bavarian Government cheerfully undertakes, in cases of good faith, "to allow a mild rule in practice to be adopted." The emigration of a child of 14 in the care of his widowed mother suggests no bad faith. The child at that age could not have been enrolled for service under a draft, or stood in service under the flag, or broken a leave for a limited time, or failed to respond, while on unlimited leave, to a call into the service to which he belonged—which are the usual conditions under which service is exacted of Germans returning to Germany after naturalization abroad. The general rule now observed in practice throughout the German Empire corresponds with the specific rule laid down in article II of the treaty of naturalization of July 19, 1868, between the United States and Baden, and its reasonableness and justice commend it as equitably governing such cases. Under it emigration, even if transgressing other legal provisions on military duty than the cases of practical desertion or evasion of an accrued and existing obligation to service at the time, which are recited above, does not subject the emigrant on return to be held to military service or to be tried and punished for nonfulfillment of military duty.

In view of the above, I have to direct you to call the facts in this case to the attention of the Government of Bavaria, in the confident belief that that Government will be pleased to take steps looking to Haberacker's prompt release from his present enforced military service.

In conclusion, I must caution you not to allow the consideration of this case to be prejudiced by the statement in his brother's letter (George Haberacker) of August 19, 1890, that John, on reaching his legal age, "had intended to take out his full papers, if necessary, on his return."

The brother's supposition that some formal act of the court might be required to confirm his citizenship, but which we have found to be unnecessary, can have no bearing either way.

I am, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

[Inclosure 1 in No. 146.]

Mr. Haberacker to Mr. Blaine.

288 ST. CLAIR STREET,
Cleveland, Ohio, August 19, 1890. (Received August 21.)

HONORABLE SIR: I most respectfully submit the inclosed clipping from a Cleveland paper of this date, which is a correct statement of the facts of arrest, etc., of John Haberacker, my brother, in Bavaria. He reached his twenty-first year yesterday, and had intended to take out his full papers, if necessary, on his return.

Praying you to see that justice is done him, his parents and the undersigned hopefully await your assistance.

Yours, most respectfully,

GEORGE HABERACKER.

[Inclosure.—From the Cleveland Plaindealer of August 19, 1890.]

Newspaper account of the arrest of John Haberacker.

A Cleveland boy sojourning in Bavaria has been arrested and forced into the military service of the Kingdom.

This is the plight that John Haberacker, whose home is in No. 288 St. Clair street, is in. The young man reached his majority only yesterday. His twenty-first birthday he will never forget as long as he lives. He celebrated it gloomily, despondently, and hopelessly in the uniform of a conscript.

John is a native of Bavaria, it is true, where he was born in 1869. When he was 14 years old his father died. His mother soon after, with her family, including John, came to America, coming direct to Cleveland. Here the widow Haberacker married Andrew Knauss, with whom John has ever since lived, the treatment he received from his foster father being that due a son in fact. He went to school until he had learning enough to prepare himself for whatever vocation he might choose. He determined to learn the art of printing. He did, and was for a long while, and when he went abroad, employed as a compositor on the Waechter am Erie. He was industrious, apt, and attentive to business, giving promise of getting along exceptionally well. He was popular with his friends, being possessed of many excellent traits not common in the modern-day youth. Last May Mr. Knauss concluded to visit his old home, Windsheim, a town in Bavaria. It was the former home also of his wife and John's birthplace.

So the three sailed from New York in the early part of that month, arriving all right at their destination, where they had a splendid time with their relations, friends, and acquaintances until July 23, when Mr. Knauss and his wife left on their return trip to America. But John remained behind. Boy like, he had not had his trip out and desired to stay in Windsheim two weeks longer, expecting in that time to meet Prof. Hamm, of this city, who is leader of the Harmonie Singing Society here, and who had been traveling in Europe, and is now on the water homeward bound. John planned to leave Windsheim August 7. On the morning of August 3, between 5 and 6 o'clock, before he was up, a military official came to his boarding place and alarmed the house. To the question, "Who is there?" he made known his official character, and when he was afterwards politely and fearfully asked his errand he said he came to arrest John Haberacker for fleeing from the country to avoid doing military duty, as required of all native able-bodied youth 18 years old and upward.

The intelligence was conveyed to John. He could not make it out. He was an American, he thought, having grown up with that idea, and how the Government of Bavaria had any claim on him as a subject he could not understand. He was dazed and had to be reminded that he was under arrest and must accompany the officer, who deigned no further explanation, assuring him, however, that he was carrying out his orders and that he had no alternative in their execution. John, trembling, accompanied him. There being no tribunal in Windsheim having jurisdiction of the case, he was transferred with much dispatch to Uffenheim the same day. A partial

inquiry into the facts was made, and the following morning, which was August 5, he was sent to Anspach, where he had a hearing in a military court. The finding was that he was liable to do military service as a Bavarian subject. He was sentenced, accordingly and in effect, to three years in the army. There being a garrison at Nuremberg, he was assigned the same day to the Fourteenth Infantry, where he is now in a barracks doing such duty as is required of a private soldier. His brother George, who is a dealer in picture frames at No. 288 St. Clair street, received two letters from him yesterday. In them he recites the story told in the foregoing narrative. He gives evidence of despair while he appeals for deliverance. While, he says, he has not been treated harshly, still no encouraging words are spoken, and he is left under the impression that there is no escape for him.

In extenuation of the Bavarian authorities, they urge that he is a citizen of Bavaria and as such owes allegiance to that Government, because his father was born and died there. While he will not admit that, and knows that it had always been his intention to become a citizen of the United States, if he was not already, coming to Cleveland as he did with his only surviving parent seven years ago to make this their permanent residence, he is uneasy, apprehensive, and discouraged. He dreads to have to throw away three of the best years of his life in a foreign army, there being nothing in it, not even profitable experience.

Mr. and Mrs. Knauss were seen at their residence. Both are worried almost sick over the matter. The brother George, too, is put out, but he has confidence in being able to get the Department of State at Washington interested in the outrage, and expects to secure John's early release. He has been advised that this may be accomplished if Secretary Blaine can be induced to lend his assistance and the power of his portfolio. The question involved is an international one, and must be determined by settling whether John is a subject of Bavaria or a citizen of the United States. At the time of his arrest and temporary absence from this country he was a minor, but his parents, his mother and stepfather, were citizens of the United States. The question presented, with the phases that the facts of this particular case give it, is a new one, and much interest will be aroused in its determination. Meantime poor John will be compelled to bear arms for a Government that he regards as alien. He is deserving of not only sympathy, but the interference of the city of Cleveland in his behalf. Such intercession should be made at Washington that he will be set free without the least delay, and the wrong should be completely vindicated. It is not John alone who has been injured. The city of Cleveland, the State of Ohio, and the United States have been grossly insulted, and satisfaction should be demanded. That means, first of all, that John should be given his liberty. Some of the friends of the unfortunate young man are at sea as to how to bring the case properly to the notice of Secretary Blaine. If the mayor happens to be in the city he should not hesitate to investigate the matter thoroughly; and when he has done that he will not be satisfied until John Haberacker is discharged from the Bavarian army and permitted to return to Cleveland.

The family are respectable, intelligent, well-to-do folks. Mr. Knauss has been in the United States twenty-nine years. He has lived in this city much of that period. Seldom has a stronger case for the interference of the Government in defense of one of its citizens been made. Not the slightest provocation appears for this high-handed, cruel outrage, and the victim is a peaceful, orderly, quiet, sober, and in every way excellent young man, who had gone to Bavaria to visit the scenes of his early childhood, intending to come back to his home, his permanent residence—Cleveland.

[Inclosure 2 in No. 146.]

Mr. Haberacker to Mr. Blaine.

288 ST. CLAIR STREET,
Cleveland, Ohio, August 23, 1890. (Received August 25.)

DEAR SIR: I respectfully and earnestly desire to call to your attention a matter which in my humble opinion is well worthy of your consideration. My brother, John Haberacker, a resident of this city, was arrested in Bavaria on August 3, while on a visit there, and impressed into the Bavarian army against his will. He came to this country with our mother, a sister, and myself in October of 1883. My brother John was then 14 years of age, and reached his twenty-first birthday on the 18th. My mother was a widow upon coming to America, my father having died a citizen of Bavaria. Three years later she married Andrew Knauss, a native of Germany, but for thirty-three years a naturalized citizen of the United States. On attaining my own majority I duly became an elector in accordance with the laws, and my brother John fully intended to do likewise. Before it became possible, however,

for him to regularly take out his paper, lacking three months of being of age, my mother and stepfather went on a visit to relatives to Windsheim, Bavaria, and John accompanied them. There he was arrested and taken before the military court at Anspach and assigned to the Fourteenth Infantry regiment stationed at Nuremberg.

I do not know what the regulations of your high office are in such matters, nor do I know what information will be valuable in the case. I inclose an account of the case,* which was published in the Cleveland Plaindealer on August 19 and is a clear and correct statement of the circumstances so far as is known by us. If you consider the matter worthy of your notice and will kindly let me know what further information is necessary, I will be very happy to serve you.

I have, etc.,

GEORGE HABERACKER.

Mr. Coleman to Mr. Blaine.

No. 177.] LEGATION OF THE UNITED STATES,
Berlin, September 23, 1890. (Received October 13.)

SIR: Referring to the Department's instruction No. 146, of the 8th instant, relating to the case of John Haberacker, I have the honor to transmit herewith a copy of my note of intervention in behalf of that gentleman, addressed to the foreign office to-day. I have informed Mr. Haberacker of this action in his behalf through our consulate at Nuremburg, in which city the regiment in which he is performing military service is stationed.

I have, etc.,

CHAPMAN COLEMAN.

[Inclosure in No. 177.]

Mr. Coleman to Freiherr Marschall.

LEGATION OF THE UNITED STATES,
Berlin, September 23, 1890.

The undersigned, chargé d'affaires *ad interim* of the United States of America, has the honor, acting under special instructions from his Government, to request that his excellency Freiherr Marschall von Bieberstein, imperial secretary of state for foreign affairs, will kindly use his mediation in inviting the attention of the Royal Bavarian Government to the facts below summarized of the case of John Haberacker, a naturalized citizen of the United States now performing enforced military service in the army of Bavaria.

John Haberacker was born in Windsheim, Bavaria, on August 18, 1869, and has but very recently attained his twenty-first year. His father was a subject of Bavaria and died in that country in 1883, when John was 14 years old. His widow emigrated to the United States the same year (1883), bringing her minor children with her. Three years later (in 1886) the widow Haberacker married one Andrew Knauss, a Bavarian by birth, but then for thirty-three years a citizen of the United States by naturalization. About three months ago Mr. Knauss and his wife went to Bavaria to visit relatives at Windsheim, taking with them John Haberacker, who had not yet reached full age. They returned in July, leaving John in Windsheim for a further stay of a fortnight. On August 3, a few days before he had arranged to return to the United States, John Haberacker was arrested as liable to military service and taken to Uffenheim, where a partial examination was had. Thence he was taken to Anspach, where he was heard before a military court and adjudged liable to three years' service as a Bavarian subject in the armies of the Kingdom. He was accordingly assigned to the Fourteenth Regiment of Infantry, on duty at Nuremberg, where he was when last heard from.

The statutes of the United States applicable to the case are as follows:

"SEC. 1994. Any woman who is now or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.

"SEC. 2172. The children of persons who have been duly naturalized under any law

* For this inclosure see inclosure to inclosure 1.

of the United States, * * * being under the age of 21 years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof.

It has been held by the courts of the United States that the husband's citizenship confers citizenship upon the wife without application for naturalization on her part or the usual qualifications. There is also an express decision of the United States circuit court (13 Federal Reporter, 82) that upon the marriage of a resident alien woman with a naturalized citizen both she and her infant son, dwelling in the United States, become citizens thereof as fully as if they had become such in the special mode prescribed by the naturalization laws.

It is conclusive, therefore, under the laws of the United States, that John Haberacker, upon the marriage of his mother to Knauss in 1886, became a naturalized American citizen. That he should be treated as such by the Royal Government of Bavaria, the treaty of the United States with that Government of May 26, 1868, only requires further that he "shall have resided uninterruptedly within the United States for five years."

It is the generally accepted theory in the United States that a widowed mother may reasonably and in good faith change the domicile of her minor children. When the boy John Haberacker, therefore, came to the United States to live, in 1883, with his mother, his only natural protector, that country thereby became his domicile. The Government of the undersigned is not informed that the law of Bavaria, in this regard, is different from that of the United States. And in any event, whatever view that Government may entertain as to the legal domicile of Haberacker, with respect, for instance, to such a question as the succession to property in that Kingdom, it is believed that they will agree with the Government of the United States that the facts in this case constitute such an uninterrupted residence in that country as is contemplated by the treaty and bring Haberacker's case within its provisions.

In this connection, the stipulations of section III of the supplementary protocol of Munich, signed 26th of May, 1868, have a pertinent application. It is therein provided that while "Bavarians emigrating from Bavaria before the fulfillment of their military duty, can not be admitted to a permanent residence in the land till they shall have become 32 years old," does not forbid a journey to Bavaria for a less period of time and for definite purposes, and the Royal Bavarian Government cheerfully undertakes, in cases of good faith, "to allow a mild rule in practice to be adopted." The emigration of a child of 14 in the care of his widowed mother suggests no bad faith. The child at that age could not have been enrolled for service under a draft, or stood in service under the flag, or broken a leave for a limited time, or failed to respond, while on unlimited leave, to a call into the service to which he belonged—which are the usual conditions under which service is exacted of Germans returning to Germany after naturalization abroad. The general rule now observed in practice throughout the German Empire appears to correspond with the specific rule laid down in article II of the treaty of naturalization of July 19, 1868, between the United States and Baden, and its reasonableness and justice commend it as equitably governing such cases. Under it emigration, even if transgressing other legal provisions on military duty than the cases of practical desertion or evasion of an accrued and existing obligation to service at the time, which are recited above, does not subject the emigrant on return to be held to military service or to be tried and punished for nonfulfillment of military duty.

In view of the foregoing facts and considerations, the undersigned begs to give expression to the confident belief entertained by his Government that the Royal Bavarian Government will be pleased to take steps looking to Haberacker's prompt release from his present enforced military service, and avails, etc.

CHAPMAN COLEMAN.

Mr. Phelps to Mr. Blaine.

[Extract.]

No. 223.] LEGATION OF THE UNITED STATES,
Berlin, January 24, 1891. (Received February 10.)

SIR: I have the honor to call your attention to the debate, which occupied two sessions of the Reichstag, one on Wednesday, the other on Friday of this week.

The occasion was a resolution pertinent to a section in an appropriation bill, then pending, introduced by Dr. Barth, a leading member of

the Liberal party, to the effect "that the chancellor be requested to withdraw the order of March 6, 1883, which forbids the importation of swine, swine flesh, and sausage of American production."

The debate was opened by Dr. Barth. He referred to the origin of this policy of exclusion as so near in time and spirit to Germany's adoption of the protective system that one can not but draw the inference that it was a part of that system; and the probability that the policy of exclusion was one of protection and not of sanitation was used with more or less directness by all who subsequently spoke on his side, and as earnestly and uniformly denied by those who spoke for the Government.

On our side nothing new was or could be said. The swine was healthy, and its flesh was eaten in the United States, in England, and elsewhere without harm. German laborers needed it as a cheap nourishment. The United States ought no longer to be annoyed by such a severe and unjust reflection upon its great staple. The measure when passed eight years ago was passed as merely "temporary;" and, finally, the American Government had passed a measure intended to make so thorough an examination of the animal and its product as to remove any ground for apprehension as to its healthy condition.

The Government, speaking by von Boetticher, the vice-chancellor, answered some of these pleas and ignored others. He was willing to give the people cheap food, but he wanted it to be good food. He still maintained that our swine flesh was more trichinous than Germany's; claimed that English and Dutch used it with impunity because they never used it uncooked; found fault with the manner in which our slaughtering and preparing was done, on the statements of American journals, made apparently in local rivalry; and finally expressed dissatisfaction with our act of August 30, 1890, "providing for the inspection of meats for exportation," etc., because the examination was not compulsory and because it was made on the product already boxed.

He spoke of some new measures already introduced into our Congress, which, by supplying these conditions, admitted the defects of the present law, and finally closed, leaving the decided impression that, as his knowledge of the present law was evidently slight, he was making rather perfunctory objections to it, because his Government had not yet found time to thoroughly examine the provisions of this act and were fencing for time to learn them, and still more to learn what would be their practical effect after they had been longer in operation.

It was encouraging to find in the spirit, if not in the words, of his speeches that, under the influence of public opinion or its own convictions, the Government was moving towards repeal and waiting only for the fullest measure of sanitary security.

Von Marschall, the minister of foreign affairs, entered in the debate only to say that a careful investigation was being made of the facts of the case and of the efficiency of the act of Congress above referred to through the consular and other representatives of the German Government in the United States.

It was a great satisfaction to hear Windthorst, the great leader of the Central or Catholic party, which casts always a solid hundred votes, say that he was ready to remove restriction, and only waited, as the Government was doing, until the assurance was satisfactory that American swine flesh could be used without injury to German health.

The National Liberals, to the surprise of many, voted with Dr. Barth. The vote was 106 for the resolution and 133 against it.

I have, etc.,

WM. WALTER PHELPS.

Mr. Phelps to Mr. Blaine.

No. 224.] LEGATION OF THE UNITED STATES,
Berlin, January 31, 1891. (Received February 18.)

SIR: I am in receipt of your instruction requesting me to fully state the present condition of the case of Mr. John Haberacker.

The case of Mr. Haberacker was presented to the foreign office as urgent September 23 last. As nothing was heard of the case, either from the consulate at Nuremberg or from Mr. Haberacker himself, the legation had assumed that Mr. Haberacker had been discharged, and that the foreign office, as is often its practice under such circumstances, would either make such reply at its leisure or assume that its prompt recognition of the legation's request by the discharge of the soldier made a formal reply unnecessary.

It may be proper here to say that we have as yet had no direct evidence from Mr. Haberacker himself that he has any desire to leave the Bavarian army. He has never addressed a word to the legation, nor caused any word to be addressed to it by any person here in his behalf. I believe that Mr. Consul Black himself, though in the city where his regiment is stationed, has never heard from or seen him. This is so different from ordinary cases, where the soldier impressed generally takes every opportunity to announce his fate, to bewail it, and to clamor for a speedy deliverance from it, that it is inexplicable.

Immediately on the receipt of your instruction of January 12, Mr. Coleman went personally to the foreign office and insisted upon prompt action. They had nothing there to communicate except that the matter had been transmitted to Munich. This was not surprising, as the machinery of federal relations between the German Empire and the Bavarian Kingdom has never yet worked easily or smoothly. In every case since I have been in charge, notably in the case of Mr. Rosenwald's exequatur as consular agent at Bamberg, progress was made only after greatest delay by my almost personal influence and solicitation both at the Berlin and Munich ends.

Mr. Coleman received a promise that the case should receive speedy attention. If we get no fruits of the promise in a day or two, I will make formal and written inquiry. Before this personal interview at the foreign office, to assure ourselves that Mr. Haberacker was not already discharged, we telegraphed to Mr. Black. We inclose a copy of his written and telegraphic reply. You will notice that even there, at close range, there is so little expression of dissatisfaction, if any, on the part of Mr. Haberacker that the consul finds it difficult to find out for certain if the young man is still in the army or not. If in, he has all the liberty of the mail and of the consul's office, and his is the first case within the knowledge of the legation where a person in his circumstances has not used all these opportunities with annoying assiduity.

Notwithstanding Mr. Haberacker's indifference and the lack, apparently, of any request or wish from him for the intervention of our Government, I will, under instruction, follow up the case as if it had the usual form and merits, unless I receive word to the contrary from the Department.

I have, etc., WM. WALTER PHELPS.

Since the signature was appended to the above dispatch a communication on the subject has been received from the foreign office, a translation of which is herewith inclosed.

FEBRUARY 2, 1891.

[Inclosure 1 in No. 224.]

Mr. Black to Mr. Phelps.

No. 36.] CONSULATE OF THE UNITED STATES,
Nuremberg, January 27, 1891.

SIR: I have the honor to inform you that I received from the colonel of the Fourteenth Regiment here an answer to my request for information as to John Haberacker.

While the answer is not direct, it, I think, undoubtedly shows that Haberacker is still in the military service here. Independent of that, however, my secretary informs me that when he went to the barracks to deliver my letter thanking the colonel for his information, the "Unterofficier" on duty in the colonel's office told him that John Haberacker is at present serving in the first company of the Fourteenth Regiment in this city.

I inclose you my letter to the colonel and his reply to the same, and when you have finished with them you will be kind enough to return them, so that I can place them on file in this consulate.

Upon this information I telegraphed you this afternoon as follows:

"Judge from reply is still here. Have written.

BLACK."

I have, etc.,

WM. J. BLACK,
United States Consul.

[Inclosure A.—Translation.]

Mr. Black to Col. Lindhamer.

CONSULATE OF THE UNITED STATES,
Nuremberg, January 26, 1891.

DEAR SIR: His excellency the minister of the United States of America at Berlin instructs me to inquire whether John or Johann Haberacker or Haberacher is still serving in the fourteenth infantry regiment. I therefore have the honor to requst that you will kindly give me the desired information at your earliest convenience and the date of his discharge in case it has taken place. I am instructed to give his excellency information by telegraph.

Very respectfully,

WM. J. BLACK,
United States Consul.

[Inclosure B.]

Col. Lindhamer to Consul Black.

NUREMBERG, *January 27, 1891.*

Answered briefly by the respectful statement that Johann Haberacker (typesetter), born at Windsheim, has on August 5, 1890, been mustered into the regiment (owing military duty), who might not otherwise be found for service when wanted (*unsicherer Dienstpflichtiger*).

LINDHAMER,
Colonel Fourteenth Infantry Regiment.

[Inclosure 2 in No. 224.—Translation.]

The foreign office to Mr. Phelps.

FOREIGN OFFICE,
Berlin, January 31, 1891.

In response to the note of September 23 last, the foreign office has the honor to inform the American legation that negotiations for the discharge from military serv-

ice of John Haberacker have been entered into with the Royal Bavarian Government, and that it is expected that they will be concluded shortly.

As soon as the said Government will have made known its decision, the foreign office will not fail to make further communication to the American legation.

Mr. Phelps to Mr. Blaine.

[Extract.]

No. 229.] LEGATION OF THE UNITED STATES,
Berlin, February 6, 1891. (Received February 26.)

SIR: I transmit herewith a copy of the communication made by me this day to the foreign office.

It was my original purpose, in pursuance of the policy I have deemed most likely to secure the admission of American pork, to take notice of the debate of January 21 and 23 in the Reichstag on Dr. Barth's resolution asking the chancellor to remove the restriction on its admission.

Afterwards I found in German discussion, newspaper and conversational, much stress laid upon the statement of the vice-chancellor, made in the debate, that the question of the healthfulness of our pork was answered favorably by those who ate it cooked, unfavorably by those—the Germans—who ate it raw. The distinction he made is not new, but is certainly receiving an attention it never had before, either because it was the only shadow of a reason the Government could give for retaining the restriction or because it was uttered from the ministerial bench by a vice-chancellor. Under these circumstances, in view of the unexpected attention this point was receiving, I changed my mind, and determined to open the old subject only enough to let in the suggestion I wanted to make as to the obvious answer to be made to the charge that American pork was unwholesome to those who ate it uncooked.

This was the sole purpose of my communication of this date to the foreign office, and anything else contained in it is put there only as a framework or setting for that suggestion.

I have, etc.,

WM. WALTER PHELPS.

[Inclosure in No. 229.]

Mr. Phelps to Baron Marschall.

LEGATION OF THE UNITED STATES,
Berlin, February 6, 1891.

The undersigned, envoy, etc., of the United States of America, has the honor to inform his excellency Freiherr Marschall von Bieberstein, imperial secretary of state for foreign affairs, that, in a natural curiosity to hear a debate on a subject in which the joint interests of Germany and the United States were in question, he attended the sessions of the Reichstag at the end of last month, when the proposition of Representative Barth that the chancellor of the Empire be requested to remove the restriction on the importation of American pork was the order of the day. The vice-chancellor of the Empire, intervening in the discussion, intimated that his Government still believed that the swine of America were unhealthy, and was not yet satisfied that the new tests provided by the United States Government, under the act of Congress of August 30, 1890, were sufficient to insure the health of American consumers against the dangers of trichinæ, which he still believed were to be found in American pork.

As his excellency Freiherr Marshall von Bieberstein promptly and clearly stated

subsequently in the debate that under the auspices of the foreign office investigations were being made in the United States as to the truth of both these propositions, and as the undersigned was and is sure that such investigations would establish the fact that this American product was at least as free from trichinæ as that of Germany, and that the new American system of examination afforded sufficient guaranty against its exportation if any invoice should prove tainted or unsound, the undersigned deemed it unnecessary at the moment to formally traverse the statements of the vice-chancellor or to file a protest against the injustice of them.

Upon reflection, the undersigned has changed his conclusions so far only as to think it might be his duty to complete the record of this occasion, since the charge was made by briefly stating in behalf of his Government its unwillingness to admit the truth of the charge against the methods of examining it. He does not wish, in making this denial, to open a subject which has filled the files of the foreign office, where his excellency so ably presides, and of this legation, from which the undersigned's predecessors for more than ten years have sent testimony, argument, and appeal to show how unnecessary, how unjust, almost how unfriendly, was the exclusion of a useful American product on grounds which the experience and science of the world outside of Germany, and which the leading scientists in Germany, have declared untenable.

It would be useless to open the subject, for there is nothing new that can be said. Everybody knows that 65,000,000 Americans eat American pork, and that there has not been a case of illness or death reported as occurring from its use. The undersigned, whose life has been a public one, bringing him into contact with thousands of his countrymen of all classes and in different parts of the country, never heard of a case, nor an allusion to the subject, except one of wonder where the German Government could have found reasons for believing American pork unhealthy. Everybody knows that 35,000,000 Englishmen eat it, and that it is the staple and cheap nourishment of the British laborer, whose health and strength are models for emulation. Everybody knows that it is eaten with only desirable results all over the world, except in France, and everybody believes, even if everybody doesn't know, that in France, if American pork is longer to be excluded, which seems improbable, it is excluded on other than sanitary grounds; for the French Academy of Medicine long since declared it healthy, and the great French Exposition gave it its highest award in competition with the world.

The undersigned is informed that this almost universal testimony met with a single objection: American pork is harmless to Americans and other consumers, because they eat it cooked; is harmful to German consumers, however, because they use it uncooked. In answer to this statement, may it not be urged that 6,000,000 Americans born in Germany or from parents who were born in Germany probably retain to a great extent the tastes and habits of their Fatherland in this particular? Yet it has never been charged that American pork has done them any harm.

But the undersigned, as already stated, has no design to enter upon any discussion of the case on this occasion and has addressed his excellency at all only to place on record the denial of the charges that American pork is unhealthy.

The undersigned gladly avails himself, etc.

WM. WALTER PHELPS.

Mr. Phelps to Mr. Blaine.

No. 245.] LEGATION OF THE UNITED STATES,
Berlin, March 2, 1891. (Received March 14.)

SIR: I transmit herewith the reply of the imperial foreign office to our intervention in the case of John Haberacker.

The Government of the Empire in this reply does nothing except to transmit under imperial form and in imperial words the conclusion, and the arguments to support it, of the Bavarian Kingdom, in whose army Haberacker is now serving.

In my dispatch No. 224, of January 31 last, treating of the case, I called attention to this peculiar feature: there was no evidence that Haberacker had applied for or even desired his release from military service. No word has been received from him nor sign made by him since that date.

Under these circumstances there seems no necessity of special dispatch in traversing and discussing the conclusion reached by the German Government, and I transmit its communication, asking for such suggestions for my reply as you may be pleased to send me.

I have, etc.,

WM. WALTER PHELPS.

[Inclosure in No. 245.—Translation.]

Freiherr von Rotenhan to Mr. Phelps.

FOREIGN OFFICE,
Berlin, February 28, 1891.

Recurring to the note verbale of the 31st ultimo, the undersigned has the honor to inform the envoy extraordinary and minister plenipotentiary of the United States of America, Mr. William Walter Phelps, that the Royal Bavarian Government does not consider the American citizenship of John Haberacker, now performing military service in Bavaria, as proven. In section 1993, Revised Statutes, the principle is laid down that the citizenship of the father decides that of the children, and it is not to be assumed that this principle, which coincides with all known views of law, was intended to be modified by section 1994 or section 2172.

As regards section 2172, it, in connection with the two above-cited provisions of law, may, according to the views of the Bavarian Government, well give rise to a doubt that the naturalization of both parents is requisite to convey American citizenship to their minor children also, or whether the naturalization of the father alone is sufficient. From this provision the conclusion can not, however, be arrived at, notwithstanding the conflicting decision of a single American court, that a minor whose father, as in Haberacker's case, has never lived in the United States should acquire American citizenship solely by virtue of the naturalization of his mother.

The Royal Bavarian Government therefore believes that John Haberacker should continue to serve with the flag, unless it is convincingly proven by appropriate American authority that by the law of the United States he has acquired American citizenship by the marriage of his mother with an American.

The undersigned avails, etc.,

ROTENHAN.

Mr. Wharton to Mr. Phelps.

No. 229.] DEPARTMENT OF STATE,
Washington, March 26, 1891.

SIR: I have to acknowlege the receipt of your dispatch No. 245, of the 2d instant, relative to the case of John Haberacker, held to military service in the Bavarian army, in which you transmit the reply of the imperial foreign office to your intervention in his behalf, in accordance with the instruction of this Department, No. 146, of September 8 last.

Article 1 of our treaty with Bavaria, concluded May 26, 1868, provides that—

Citizens of Bavaria who have become, or shall become, naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States for five years, shall be held by Bavaria to be American citizens and shall be treated as such.

The reply of the imperial foreign office admits Haberacker's requisite residence in this country, and that whether or not he has become a naturalized American citizen is to be determined solely by the local law of the United States. Hence that reply says:

The Royal Bavarian Government therefore believes that John Haberacker should continue to serve with the flag, unless it is convincingly proven by appropriate American authority that by the law of the United States he has acquired American citizenship by the marriage of his mother with an American.

This Government's view of Haberacker's citizenship is objected to on the ground that—

> In section 1993, Revised Statutes, the principle is laid down that the citizenship of the father decides that of the children, and it is not to be assumed that this principle, which coincides with all known views of law, was intended to be modified by section 1994 or section 2172.

The Bavarian Government entirely overlooks the fact that section 1993, to which reference is made, is not a part of, and does not in any way relate to, our naturalization laws.

It and the previous section (1992) define who are native-born citizens of the United States. The first of the two sections adopts in its entirety the principle of nationality of origin dependent upon the place of birth. The second section adopts in part only the other theory of dependence upon the nationality of the parents. In this respect the laws of this country do not differ materially from the laws of most other countries, in which both elements *jus soli* and *jus sanguinis*, as a rule, exist, though not always the same one predominating. (Cockburn on Nationality, chap. 1.)

Section 1993 is a restrictive statute, and provides, as to children born out of the limits and jurisdiction of the United States, that only those are citizens thereof by birth whose "fathers" (1) were citizens, and (2) were such at the time of the birth of the child, and (3) have at some time resided in this country. These restrictions relate solely to the determination, under the laws of the United States, of the national status of a child at birth. Each of the restrictions may be presumed to have been used intentionally, and all of them, from their very nature, could not have been used in our naturalization laws, even if it had been desired. Excepting the case of posthumous children, every child at birth has a father, and if a child is to inherit citizenship it most properly takes that of the father. The United States could scarcely have claimed the citizenship of children born in a foreign country of an American mother and an alien father, while, on the other hand, if the father was a citizen the mother would be one also under our laws by virtue of her marriage.

There is no question as to Haberacker's status at birth. It is only on account of being born an alien that he comes within the purview of sections 1994 and 2172, which relate solely to citizenship by naturalization.

Those two sections point out some but not all of the several methods by which aliens can be and are admitted to citizenship in this country. Although section 1994 is not found in title XXX in connection with most of the laws on the subject of naturalization, it is nevertheless solely a naturalization law. It is uniformly held under it that an alien woman, who might herself be lawfully naturalized, by marriage to a citizen becomes herself a citizen without any previous declaration or act on her part, or without reference to the previous length of her residence in this country, as fully to all intents and purposes as if she had become a citizen upon her own application and by the judgment of a competent court.

Haberacker's mother, by her marriage to Knauss, a citizen, was accordingly "duly naturalized under any (a) law of the United States." It only remains to determine whether she is a "person" within the meaning of section 2172. If so, her minor son, residing with her at the time in this country, likewise became a citizen. The word "person" may be presumed to have been used as intentionally in this section as the word "fathers" was used in section 1993. By the death of the

father the mother often becomes the natural protector of the child. Such a child can only be excluded from the benefits of section 2172 by a forced construction of its language, which view is also strengthened by the fact that it reads: "The children of persons who have been duly naturalized under any law of the United States." It clearly contemplates the case of persons naturalized under other than the regular and usual provision with respect thereto.

The exact point at issue was decided in the case of the United States *vs.* Kellar (13 Federal Reporter, 82), to which reference was made in Department's instruction No. 146, of September 8. It was decided in the court of next highest jurisdiction to the Supreme Court of the United States, and by Mr. Justice Harlan, one of the most distinguished judges of the Supreme Court. The same question is not known to have ever been passed upon by the Supreme Court, but it is not a question of itself alone appealable to that court. The decisions, however, of the State and Federal courts have been uniform with respect thereto.

Judge Harlan, in the course of his opinion, said:

> The case seems to be so distinctly one of those embraced by the very language of section 2172 that argument could not make it plainer.

The Kellar case, decided in 1882, is not a "conflicting decision of a single American court." I find upon a little investigation that section 2172 has been construed in exactly the same way to confer citizenship upon the minor child of a widow marrying a citizen, in 1885, by the supreme court of the State of New York, in the case of the People *vs.* Newell (38 Hun., 78), and again in 1888 by the supreme court of the State of Missouri, in the case of Gunn *vs.* Hubbard (97 Mo., 321), and I fail to find any cases which, even by implication, throw any doubt upon the correctness of those decisions. In consideration of the uncontradicted opinion of the supreme courts of two of our greatest States and the decision of one of the justices of the Supreme Court of the United States upon this point, it is believed that the Royal Bavarian Government will accept this interpretation as correct in the premises and readily assent to treat Haberacker as an American citizen.

With reference to the suggestion in your dispatch whether Haberacker is really held to service against his will, I would say that his case was presented to the Department by his brother and strongly urged for immediate action. It has since that time also been the subject of repeated inquiry by the member of Congress representing the district where Haberacker's family resides. Until the contrary appears, therefore, the Department is bound to believe that he is so restrained. But it is only necessary to request that he be released if he so desires. The opportunity for that having been given, he of course may avail himself of it or not as he chooses.

I am, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Mr. Blaine to Mr. Phelps.

No. 245.] DEPARTMENT OF STATE,
Washington, May 1, 1891.

SIR: Your attention is invited to the inclosed copy of a letter from the Secretary of the Treasury, dated the 29th ultimo, and to its accompaniment, copy of the affidavit of Nikolaus Bader, an alien who was,

on the 23d ultimo, refused permission to land by the superintendent of immigration at New York.*

Bader declares in his affidavit that he is a native of Germany; that "his passage to this country was paid by the authorities in Stauzach, Germany," and that "in 1864 he murdered a girl with whom he was in love, and for which he was imprisoned and served one year, when he was declared insane and confined in an insane asylum, where he has been twenty-four years, and from which he was discharged somewhat over a year ago; that he requested to be sent to America, and the authorities then sent him here."

It is the wish of the Department that you present the case, by a temperate but firm and explicit note, to the consideration of the Imperial Government.

I am, etc.,

JAMES G. BLAINE.

[Inclosure in No. 245.]

Mr. Foster to Mr. Blaine.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, April 29, 1891.

SIR: I have the honor to inclose herewith a copy of the affidavit of Nikolaus Bader, an alien who, on arrival at the port of New York on the 23d instant on the steamship *Waesland* from Antwerp, was prohibited from landing by the superintendent of immigration at that port as belonging to the excluded classes, and has been returned by the same vessel to the port from which he came.

If Bader's statement be true as set forth in his affidavit, he was sent to this country by the authorities of Stauzach, Germany, with knowledge that he had been convicted and imprisoned for murder and afterwards confined for insanity.

The case is submitted to you as being one that might properly be brought to the attention of the German authorities.

Respectfully yours,

CHARLES FOSTER,
Secretary.

[Inclosure.]

Affidavit of Nikolaus Bader.

CITY AND COUNTY OF NEW YORK, *ss*:

Nikolaus Bader, being duly sworn, deposes and says: That he is 59 years of age, is a native of Germany, and arrived at the port of New York on the 23d day of April, 1891, per steamship *Waesland* from Antwerp, and is accompanied by none. Deponent further states that his passage to this country was paid by the authorities in Stauzach, Germany, and that his intended destination is New York city, to which place deponent has passage tickets. Deponent's occupation is that of laborer, and that his object in coming to the United States is to seek work. Deponent says his health is pretty fair and he has with him $1 in money and ——— of the value of $——. Deponent has been an inmate of an almshouse, and has received public aid and support, and has been convicted of crime.

Deponent has no relatives or friends in this country; that in 1864 he murdered a girl with whom he was in love, and for which he was imprisoned and served one year, when he was declared insane and confined in an insane asylum, where he has been twenty-four years, and from which he was discharged somewhat over a year ago; that he requested to be sent to America and the authorities there sent him here.

NIKOLAUS BADER.

Sworn to before me this 23d day of April, 1891.

SVEN A. SMITH,
Assistant Inspector.

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* For the balance of the correspondence in this case see Austria-Hungary.

Mr. Wharton to Mr. Phelps.

No. 257.] DEPARTMENT OF STATE,
Washington, June 15, 1891.

SIR: I inclose for your information a copy of a note* sent to the German minister in this city in relation to the inspection recently put in operation by the Secretary of Agriculture, in accordance with the act of Congress of March 3 last, for the inspection of cattle and hogs and their products.

A copy of this law and the regulations under it was sent to you with instruction No. 234, of April 1 last, for submission to the German Government. It is presumed you have already brought this important document to the attention of the minister for foreign affairs, although no acknowledgment from you of its receipt has yet reached the Department.

In a brief interview which the German minister sought with the Secretary of State in New York last month, he gave intimation of the intention of his Government to accept the inspection provided under this act as satisfactory and to revoke the prohibition of American pork in Germany, but he also coupled this intimation with a desire to secure an assurance from the Government of the United States that the President would not exercise his power under section 3 of the tariff act of October 1, 1890, and reimpose duty on German sugars imported into the United States after January 1, 1892; and the minister has repeated this statement verbally and informally to officials of this Department. The President, however, does not at present see how the revocation of the pork prohibition should be made to depend upon his action under section 3 of the tariff act. The German Government has persistently adhered to the position that the origin and maintenance of the pork prohibition was based on the absence of, or imperfect, inspection of American pork, which, it was alleged, exposed German consumers to disease. If that Government recognizes the sufficiency of the present inspection, it hardly seems reasonable to ask that the United States should purchase the revocation of the prohibition by a promised concession of duties on sugar. The President is disposed to treat with the German Government respecting commercial reciprocity, under section 3 above cited, with the greatest spirit of liberality, and the prompt action of that Government regarding the pork inspection will have its due weight in determining the terms of the reciprocity arrangement; but it would hardly comport with the past contention of the German Government to make the revocation of the prohibition dependent upon an act having no relation to it.

The foregoing views are communicated to you for your information and for such use as your judgment may determine in case the subject may arise in your intercourse with the German Government. The Department has sympathized with your expressed desire not to embarrass the pork question by any undue haste or imprudent reference to the powers of retaliation with which Congress has clothed the President; but, in view of the great pains which this Government has taken to conform its inspection of pork to the requirements of the German Government, and of the prolonged exclusion of this important and healthful American product, the President feels that the time is near at hand when the prohibition should be removed.

The Department was advised in December last by Consul-General

* For this inclosure see note to German minister of June 15.

Edwards of the removal of the prohibition by imperial decree against the pork of Denmark, Sweden, and Norway, leaving the United States, so far as known here, the only country shut out from the German market; and the continuance of the prohibition after due notice of the inspection now established would seem to be such an unfriendly discrimination against the United States that this Government is unwilling to believe it can be contemplated by the imperial authorities.

Your attention is directed to the statement made in the inclosed note to the German minister that pork inspected under the existing regulations will be ready for exportation by September 1, and it is regarded as a reasonable expectation that by that date the German markets will be open to that American product.

I am, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Mr. Phelps to Mr. Blaine.

No. 289.] LEGATION OF THE UNITED STATES,
Berlin, July 1, 1891. (Received July 16.)

SIR: I have the honor to inform the Department that I have to-day issued a passport to Christian Henne on his application, a copy of which is herewith inclosed.

About the 1st of December, 1889, the Department of State furnished for the use of the legation three kinds of forms of application for passports: (1) for a "native," (2) for a "naturalized" person, and (3) for a "person claiming citizenship through the naturalization of husband or parent." No instructions accompanied these blank forms, but under the "general instructions in regard to passports—1888" issued by the Department it has heretofore been the practice of the legation to use the third form—a copy of which is inclosed—in the case of children of naturalized parents, wherever born. An exception has been made to this general rule in the case of those children who were born in the United States, and who dwelt therein until they became of age and were competent of themselves to decide to which country they would give allegiance.

I have specially reported the case of Christian Henne in order to avail myself of the opportunity it occasions to ask of the Department answers to the following questions:

(1) Is the form of application for "native" or for "person claiming citizenship through the naturalization of * * * parent," the latter requiring the production of the father's certificate of naturalization, to be used in the case of a child born in the United States of a naturalized father?

(2) In this connection, is it material whether the birth of the child took place within the United States before or after the naturalization of the father; and if so, what proof can be required of the correctness of statements in regard to the relative dates of these events?

(3) In considering the form of application to be used and its requirements, is it material whether the child born in the United States of a naturalized parent leaves the United States before he is twenty-one?

(4) In the sense of the Department, does the child born in the United States of a naturalized parent claim citizenship through such naturalization or through his American birth?

While awaiting the Department's reply to these questions the legation will continue the practice as under the present interpretation of previous instructions.

I have, etc.,

WM. WALTER PHELPS.

[Inclosure 1 in No. 289.]

Christian Henne's application for a passport.

NATIVE.

No. 923.] Issued July 1, 1891.

I, Christian Henne, a native and loyal citizen of the United States, hereby apply to the legation of the United States at Berlin for a passport for myself.

I solemnly swear that I was born at Los Angeles, in the State of California, on or about the 21st day of February, 1873; that before his death my father was a naturalized citizen of the United States; that I am domiciled in the United States, my permanent residence being at Los Angeles, in the State of California, where I follow the occupation of student; that I left the United States on the 10th day of June, 1890, and am now temporarily residing at Mittenweida, Saxony; that I intend to return to the United States 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 identification.

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.

CHRISTIAN HENNE.

UNITED STATES CONSULATE,
Chemnitz, Saxony.

Sworn to before me, this 19th day of May, 1891.

FREDERICK B. TUTTLE,
Vice and Deputy Consul.

DESCRIPTION OF APPLICANT.

Age, 18 years; stature, 5 feet 11½ inches, English; forehead, square; eyes, gray; nose, straight; mouth, medium; chin, normal; hair, brown; complexion, fair; face, round.

[Inclosure 2 in No. 289.]

Form of application for passport for person claiming citizenship through naturalization of husband or parent.

No. ——.] Issued ——, 18—.

I, ——— ———, a naturalized and loyal citizen of the United States, hereby apply to the legation of the United States at ——— for a passport for myself,———.

I, solemnly swear that I was born at ——— on or about the —— day of ———, 18—; that my ——— emigrated to the United States, sailing on board the ——— from ———, on or about the —— day of ———, 18—; that he resided —— years uninterruptedly in the United States, from —— to —— at ———; that he was naturalized as a citizen of the United States before the ——— court of———, at ———, on the —— day of ———, 18—, as shown by the accompanying certificate of naturalization; that I am the —— of the person described in said certificate; that I am the bearer of passport No. ——, issued by ——— on the —— day of ———, 18—, which is returned herewith; that I am the identical person referred to in said passport; that I have resided in the United States uninterruptedly for —— years, from —— to ——, at ———; that I am domiciled in the United States, my permanent residence being at ———, in the State of———, where I follow the occupation of ———; that I last left the United States on the —— day of ——, 18—, on board the ———, ar-

riving in ——— the —— day of ———, 18—; that I have resided in ——— since the —— day of ———, 18—; that I am now temporarily residing at ———; and that I intend to return to the United States within ——— with a purpose of residing and performing the duties of citizenship therein.

I desire the passport for the purpose of———.

OATH OF ALLEGIANCE.

Further, etc.

Mr. Phelps to Mr. Blaine.

No. 292.] LEGATION OF THE UNITED STATES,
Berlin, July 6, 1891. (Received July 16.)

SIR: I have the honor to inclose herewith a copy of my note addressed to-day to the foreign office referring to the removal of the restrictions on the importation of American pork, and to be, sir, etc.,

WM. WALTER PHELPS.

[Inclosure No. 292.]

Mr. Phelps to Freiherr von Rotenhan.

LEGATION OF THE UNITED STATES,
Berlin, July 6, 1891.

Referring to the "Regulations for the safe transport of cattle from the United States to foreign countries," of which a copy was sent to the foreign office on the 24th of June last, the undersigned, envoy, etc., of the United States of America, wishes to call the attention of Freiherr von Rotenhan, acting secretary of state for foreign affairs, to the fact that this body of regulations completes a code for the inspection and care of domestic animals on sea and land and for the food produced from them which is more extensive and complete than anything of the kind ever before attempted.

The undersigned takes especial pleasure in informing the undersecretary of state that, of this code, those regulations which provide for the inspection of live hogs and the carcasses and products of these animals are now in successful operation, and that the pork inspected under them will be ready for exportation by September 1.

It is the object of this note to give this information and to ask if the German Government will be ready at that time to admit it. It seems to the President but a reasonable expectation that by that date the German markets should be opened to that American product. The German market had been originally closed to it and kept so under allegations of its unhealthfulness, which the Government of the United States never admitted, and which the experience of the American people, large and constant consumers of pork, disproved. Upon conviction, however, that the German Government was sincere in this opinion, and upon its repeated assurance that it excluded this product for no other reason, Congress passed an act which provided an inspection which should meet this objection.

The provisions of this act were not strict enough to satisfy the scruples of the German Government, and Congress passed a second act, now in force, and embodied in it every provision which was said to be lacking in the first. This act may be described as one containing every safeguard against disease which science suggested. Inspection is compulsory and made universal throughout the United States. The swine is examined before slaughter, and his body after slaughter, by the microscope, and the products which have passed examination are marked and identified through all stages of subsequent preparation for market. The chief inspectors employed in the examination are men tried in veterinary science, and the microscopists are under the direction of experienced scientists of that line. The only ground for refusing to the United States a right of commerce now extended to all other nations having thus been completely removed by an inspection which involves large expenditure, which was undertaken avowedly in order to satisfy the objections raised by the German Government, it seems unnecessary to urge upon the acting secretary of state the policy of meeting promptly and in the same spirit the advances of a friendly

Government, which feels that in this instance it has not been treated like other nations. It would seem that the 1st of September were a proper date to renew a trade which is sure to be beneficial to both peoples, and that prompt notice of the fact should be given, that the large interests affected by this peaceful revolution may provide for it.

The undersigned avails, etc.,

WM. WALTER PHELPS.

Mr. Wharton to Mr. Phelps.

No. 271.] DEPARTMENT OF STATE,
Washington, July 18, 1891.

SIR: In view of the fact that the German minister at Washington has been given official notice of the establishment of the inspection of pork under the recent law and regulations, and that he is understood to be making reports to his Government of the character and progress of the inspection, it is not necessary at present to give you further instructions on the subject than those contained in Department's No. 257, of the 15th instant.

It is well, however, in your informal intercourse with the officials of the German Government, to have them bear in mind that pork inspected under the regulations will be ready for foreign shipment by September 1, and that it is expected that the prohibition of its admission into German territory will by that date be removed.

I am, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Mr. Wharton to Mr. Phelps.

No. 276.] DEPARTMENT OF STATE,
Washington, July 22, 1891.

SIR: I have to acknowledge the receipt of your No. 289, of the 1st instant, in regard to the various forms of application for passports. For convenience, your inquiries will be enumerated in their order and answered accordingly.

(1) Is the form of application for a "native" or for a "person claiming citizenship through the naturalization of * * * parent," the latter requiring the production of the father's certificate of naturalization, to be used in the case of a child born in the United States of a naturalized father?

In this relation you inclose the application of Christian Henne, who, it appears, was born in California in 1873, of a naturalized father.

Your use of the "native" form in this case was correct.

(2) In this connection is it material whether the birth of the child took place within the United States before or after the naturalization of the father; and, if so, what proof can be required of the correctness of statements in regard to the relative dates of these events?

The practice of the Department is to issue a passport to all applicants as natives where they swear to their birth in the United States, whether prior or subsequent to their father's naturalization.

This practice has doubtless grown up in view of section 1992 of the Revised Statutes, which declares that—

All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.

You ask, "What proof can be required of the correctness of the statements in regard to the relative dates of these events?" viz, whether the birth was before or after naturalization.

The Department does not require any proof. It trusts to the oaths of the applicant and his witnesses, as in reality it is obliged to do, unless extraneous circumstances suggest the statement to be false. The issuance of a passport is largely discretionary, and the Department is compelled to use its best judgment in every case, and so is a minister. It is not doubted that courts of this country, which are exclusively charged with the subject of granting certificates of naturalization, have been imposed upon by unscrupulous persons, and that, even where the production of such a paper to the Department has, for all practical purposes, decided the status of the person as entitled to a passport, the Department has frequently been imposed upon. So also in similar cases have our legations. But where one's best judgment is exercised in each particular instance, it is not perceived that more can be required in the absence of strong suggestion of fraud.

(3) In considering the form of application to be used and its requirements, is it material whether the child born in the United States of a naturalized parent leaves the United States before he is twenty-one?

Here again the question is to be decided by the special circumstances surrounding each case. Much necessarily depends upon the applicant's own statements and the features that attend the case, or that may be naturally deduced by reason of certain statements made or omitted.

A child born in the United States subsequent to the naturalization of the father is a citizen of the United States by exclusive right, and it is held that in such case the removal of the father with the minor child to the country of the father's origin does not affect the right of the child to citizenship, even should the father resume his original status during the child's minority. But in the case of a child born in the United States prior to the father's naturalization there may be a question should the father resume his original allegiance, taking the minor child with him. In such cases the child is held to have a choice of citizenship on reaching his majority. You will find several instructions on file in your legation dealing with this point.

In this connection you will recall the case of Miss Gudeman, which formed the subject of my instruction No. 262, of June 27, 1891.

In that it was alleged that Miss Gudeman was born in the city of New York of a naturalized father, and that you declined to issue the passport for which she had applied unless she should produce the certificate of her father's naturalization. After briefly reviewing the facts as they were reported in her case, the conclusion was reached that she was entitled to a passport, provided they should be found to be as stated. I then added:

While it is apparent that the Department does not make the exhibition of the certificate of naturalization of Miss Gudeman's father a condition precedent to the issuance of a passport, she having been born in the United States and being domiciled here, the Department is not to be understood as holding that in such a case as hers the claims of this Government to the citizenship of a person born here of foreign parents are, in the absence of the naturalization of the parent, exclusive.

The production of the father's certificate of naturalization is never required by the Department of an applicant who swears he was born in the United States. It is, however, invariably required of persons born abroad who claim citizenship through the subsequent naturalization of the parent in the United States.

(4) In the sense of the Department, does the child born in the United States of a naturalized parent claim citizenship through such naturalization or through his American birth.

Section 1992 of the Revised Statutes of the United States, to which I have heretofore referred, covers your inquiry, and the child becomes an American citizen, under that provision of law, in virtue of his or her birth in the United States.

It is not practicable to lay down fixed or arbitrary rules for the government of every case, but the foregoing general principles will, it is thought, while answering your several inquiries, aid you in dealing with future cases.

I am, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Mr. Phelps to Mr. Blaine.

No. 324.] LEGATION OF THE UNITED STATES,
Berlin, September 3, 1891. (Received September 21.)

SIR: I have this day addressed to you the following telegram:

The decree repealing the decree excluding American pork has been signed. May I, through you, congratulate the President that under his auspices the long struggle to secure this right is successfully ended?

I do this upon the receipt of a telegram from Baron von Marschall, which tells me that the decree has been signed and will be published to-night in the Official Gazette.

With the kindness which has characterized the treatment extended to me by all connected with the foreign office, I was assured before leaving Berlin that I should receive immediate notice of the event. The delay following the agreement reached on the 22d of August in the correspondence between our acting secretary and Mr. von Mumm was due to the necessity, either one of constitutional necessity or of policy, of getting the consent of all the States of the Empire to the decree.

That seems to have been happily accomplished, and an important product of our country is now formally vindicated.

I inclose the text of the decree, from which you will see that the vindication is complete and without condition.

I need not give expression to the satisfaction I feel at the completion of a task to which for two years I have given so much time and attention.

I have, etc.,

WM. WALTER PHELPS.

[Inclosure in No. 324.—Translation.]

Decree repealing decree excluding American pork.

We William, by the grace of God German Emperor, King of Prussia, etc., decree in the name of the Empire, the assent of the Bundesrath having been obtained, what follows:

SECTION 1. The decree respecting the prohibition of the importation of swine, swine's flesh, and sausages of American origin of March 6, 1883 (Imperial Law Gazette, page 31), ceases to be of force for living swine, as well as for such products as are provided with an official certificate stating the flesh has in the land of origin been examined pursuant to the rules in force there, and has been found free from qualities injurious to health.

SEC. 2. The chancellor of the Empire is empowered to adopt appropriate measures for the control of the character of the swine flesh imported from America.

SEC. 3. This decree enters into force on the day of its publication. In testimony whereof our own proper signature and the imperial seal are hereto affixed.

Done at Castle Schwarzman, the 3d of September, 1891.

[L. S.]

WILLIAM.
VON CAPRIVI.

Mr. Phelps to Mr. Blaine.

[Telegram.]

LEGATION OF THE UNITED STATES,
Berlin, September 12, 1891.

Pork admitted on American inspection certificate. Germany imposes no other condition.

PHELPS.

Mr. Wharton to Mr. Phelps.

No. 305.] DEPARTMENT OF STATE,
Washington, September 22, 1891.

SIR: Your dispatch No. 324, of the 3d instant, relative to the decree admitting American pork into Germany, has been received.

The Department learned with great satisfaction from your telegram of the 3d instant that the German Government, by a friendly act of simple justice, had terminated the exclusion of American pork from Germany. Thanking you for the very cordial and efficient manner in which you have coöperated with the Department in bringing about this happy result,

I am, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Mr. Phelps to Mr. Blaine.

No. 342.] LEGATION OF THE UNITED STATES,
Berlin, October 17, 1891. (Received November 7.)

SIR: I have the honor to transmit herewith, for the consideration and decision of the Department, an application for a passport received today from our consulate at Hamburg. The application is for Mrs. Wilhelmine S. Cadmus and her six minor children. With this application I also transmit one upon which a passport was issued by the legation under date of June 5, 1889, to Mr. Henry Cadmus, the husband, since deceased, of the present applicant.

The following circumstances make me doubt as to what my action should be in this case. Mrs. Cadmus has resided abroad with her children since 1873; all her children were born abroad, and she expresses the intention to stay here until their education is completed. Her youngest child is now only some 3 years of age.

I have informed Mrs. Cadmus, through our consulate at Hamburg,

that her application had been referred to the Department, stating the reasons for this action and promising to inform her so soon as a decision is reached.

I have, etc.,

WM. WALTER PHELPS.

Mr. Phelps to Mr. Blaine.

[Extract.]

No. 344.] LEGATION OF THE UNITED STATES,
Berlin, October 21, 1891. (Received November 7.)

SIR: I inclose a copy of the last note I addressed to the foreign office in regard to the case of John Haberacker.

You will notice that as far as possible I made my protest against the unfavorable decision of the case communicated to me on March 2 last entirely in the spirit and almost in the words of Mr. Wharton's instruction No. 229, of March 26. I could not conceive a better form in which to present our argument.

As yet I have received no answer.

I have, etc.,

WM. WALTER PHELPS.

[Inclosure in No. 344.]

Mr. Phelps to Freiherr Marschall.

LEGATION OF THE UNITED STATES,
Berlin, April 20, 1891.

In acknowledging the receipt of the communication from the imperial foreign office, dated February 28, 1891, which conveys to the undersigned the conclusion of the Royal Bavarian Government that the claim made by John Haberacker, now performing military service in Bavaria, that he is an American citizen, is not proven, the undersigned, envoy, etc., of the United States of America, begs to submit to his excellency Freiherr Marschall von Bieberstein, imperial secretary of state for foreign affairs, the following consideration, as calculated to show that the Royal Bavarian Government, in its examination of the law and decision of the United States, fell into a misconception not unnatural in the circumstances.

Article 1 of the treaty between the United States and Bavaria concluded May 26, 1868, provides that "citizens of Bavaria who have become, or shall become, naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States for five years, shall be held by Bavaria to be American citizens and shall be treated as such."

The reply of the imperial foreign office admits Haberacker's requisite residence in the United States, and that whether or not he has become a naturalized citizen is to be determineed solely by the local law there, and adds: "The Royal Bavarian Government believes that John Haberacker should continue to serve under German colors, unless it is clearly shown by American authorities that he has, under the law of the United States, acquired American citizenship through the marriage of his mother with an American."

The Government of the United States claims that Haberacker is a citizen under the facts of his case as stated in the original application for his discharge from military service. The Bavarian Government objects to the claim because "in section 1993, Revised Statutes, the principle is laid down that the citizenship of the father decides that of the children, and it is not to be assumed that this principle, which coincides with all known views of law, was intended to be modified by section 1994 or section 2172."

The Bavarian Government seems in this assumption to overlook entirely the fact that section 1993, to which reference is made, is not a part of and does not relate in

any way to the naturalization laws of the United States. It and the previous section (1992) define who are native-born citizens of the United States. The first of the two sections adopts in its entirety the principle that nationality depends upon the place of birth. The second section adopts in part only the other theory—that the nationality of the person depends upon the nationality of the parents. In this respect the laws of the United States do not differ materially from the laws of most other countries, in which both elements *jus soli* and *jus sanguinis*, as a rule, exist, though not always the same one predominating.

Section 1993 is a restrictive statute, and provides as to children born out of the limits and jurisdiction of the United States that only those are citizens thereof by birth whose "fathers" (1) were citizens, and (2) were such at the time of the birth of the child, and (3) have at some time resided in that country. These restrictions relate solely to the determination, under the laws of the United States, of the national status of the child at birth. Each of the restrictions may be presumed to have been used intentionally, and all of them, from their very nature, could not have been used in the naturalization laws of the United States, even if it had been desired. Excepting the case of posthumous children, every child at birth has a father, and if a child is to inherit citizenship it most properly takes that of the father. The United States could scarcely have claimed the citizenship of children born in a foreign conntry of an American mother and an alien father, while, on the other hand, if the father was a citizen the mother would be one also under the United States laws by virtue of her marriage.

There is no question as to Haberacker's status at birth. It is only on account of being born an alien that he comes within the purview of sections 1994 and 2172, which relate solely to citizenship by naturalization. These two sections point out some but not all the several methods by which aliens can be and are admitted to citizenship in the United States. Although section 1994 is not found in title XXX in connection with most of the laws on the subject of naturalization, it is nevertheless a naturalization law. It is uniformly held under it that an alien woman, who might herself be lawfully naturalized, by marriage to a citizen, becomes herself a citizen without any previous declaration or act on her part, or without reference to the previous length of her residence in the country, as fully, to all intents and purposes, as if she had become a citizen upon her own application and by the judgment of a competent court.

Haberacker's mother, by her marriage to Knauss, an American citizen, was accordingly "duly naturalized under any (a) law of the United States." It only remains to determine whether she is a "person" within the meaning of section 2172. If so, her minor son residing with her at the time in the United States likewise became a citizen. The word "person" may be presumed to have been used as intentionally in this section as the word "fathers" was used in section 1993. By the death of the father the mother often becomes the natural protector of the child. Such a child can only be excluded from the benefit of section 2172 by a forced construction of its language, which view is also strengthened by the fact that it reads, "the children of persons who have been duly naturalized under any law of the United States." It clearly contemplates the case of persons naturalized under other than the regular and usual provisions with respect thereto

The exact point at issue was decided in the case of the United States *vs.* Kellar (13 Federal Reporter, 82) to which reference was made in this legation's note of September 23 last. It was decided in the court of next highest jurisdiction to the Supreme Court of the United States and by Mr. Justice Harlan, one of the most distinguished judges of the Supreme Court. The same question is not known to have ever been passed upon by the Supreme Court, but it is not a question of itself alone appealable to that court. The decisions, however, of the State and Federal courts have been uniform with respect thereto.

Judge Harlan, in the course of his opinion, said: "The case seems to be so distinctly one of those embraced by the very language of section 2172 that argument could not make it plainer."

The Kellar case, decided in 1882, is not a "conflicting decision in a single American court." It is found upon investigation that section 2172 has been construed in exactly the same way to confer citizenship upon the minor child of a widow marrying a citizen, in 1885 by the supreme court of the State of New York in the case of the People *vs.* Newell (38 Hun., 78), and again in 1888 by the supreme court of the State of Missouri in the case of Gunn *vs.* Hubbard (97 Mo., 321), and no cases are found which even by implication throw any doubt upon the correctness of those decisions. In consideration of the uncontradicted opinion of the supreme court of two of the greatest States and the decision of one of the justices of the Supreme Court of the United States upon this point, it is believed that the Royal Bavarian Government will accept this interpretation as correct in the premises and readily assent to treat Haberacker as an American citizen.

The undersigned avails, etc.,

WM. WALTER PHELPS.

Mr. Blaine to Mr. Phelps.

No. 330.] DEPARTMENT OF STATE,
Washington, November 11, 1891.

SIR: Your No. 342, of October 17 last, transmitting copy of the application of Mrs. Wilhelmine S. Cadmus for a passport for herself and her six minor children, and requesting instructions thereupon, has been received.

Mrs. Cadmus, being the widow of a citizen of the United States, would prima facie seem to be entitled by our statutes to the rights and privileges of American citizenship, and accordingly to a passport within the discretion of the Department, and such passport would, of course, properly include her minor children. But the facts as they are related in her case require a very liberal exercise of that discretion on my part or the denial of her application.

From your dispatch and her application it appears that Mrs. Cadmus is of German birth; that she has resided abroad since 1873; that she is now domiciled at Hamburg, in her native country; that all her children were born abroad; and that it is her intention to remain there until their education shall be completed, the eldest being 18 and the youngest but 3 years of age.

The advantages derivable from the foreign upbringing and education of the children of American citizens are not apparent, and this view of the case is rather emphasized than mitigated by the reflection that the children were born out of the country; but the fault is that of the parents or guardians, not that of the children. In other circumstances I would be inclined to deny the application of Mrs. Cadmus; but as the case stands I am disposed to instruct you to grant her a passport at this time, that the right of her sons to elect American citizenship on their majority may be preserved unimpaired. As they come of age, however, and separate passports become necessary to them, their right thereto must be determined independently and upon their own merits.

You may therefore comply with the pending request of Mrs. Cadmus.

I am, etc.,

JAMES G. BLAINE.

Mr. Phelps to Mr. Blaine.

No. 363.] LEGATION OF THE UNITED STATES,
Berlin, December 3, 1891. (Received December 23.)

SIR: Referring to the case of John Haberacker, now performing military service in Bavaria, I have the honor to inclose herewith a translation of a note to-day received from the foreign office in reply to my note of April 20, a copy of which has already been transmitted to you with my dispatch No. 344, of October 21.

I have, etc.,

WM. WALTER PHELPS.

[Inclosure in No. 363.—Translation.]

FOREIGN OFFICE,
Berlin, December 1, 1891.

The undersigned, replying to the note of the 20th of April last (F. O., No. 211), has the honor to inform the envoy extraordinary and minister plenipotentiary of the

United States of America, Mr. William Walter Phelps, that the Royal Bavarian Government has made a renewed and thorough investigation of the case of John Haberacker, but finds no reason for discharging him from the Bavarian army.

The Bavarian Government is guided in this by the following considerations:

According to the treaty of May 26, 1868, subjects of the Kingdom of Bavaria are to be regarded as Americans only when they become "naturalized" citizens of the United States of America and have resided in that country uninterruptedly for five years. As only the latter of these preliminaries has been performed, it can not therefore be admitted that Haberacker was naturalized in America.

Under title XXX of the Revised Statutes, headed "naturalization," the manner in which the naturalization of foreigners is to be effected is determined, and in section 2165 it is expressly stated that this is to be done as prescribed therein "and not otherwise." True, it is stated in section 2172 that minor children of persons duly naturalized are to be regarded as American citizens; but if, on this account, Haberacker's personal naturalization would not be required, it would in all events be necessary that his mother at least had become naturalized. But even this is not the case.

Haberacker's mother became an American citizen by her marriage with an American citizen, according to section 1994 of the Revised Statutes. This legal provision, can not, however, be regarded as a special manner of naturalization. It is not to be found in title XXX of the Revised Statutes, headed "naturalization," but, as is the case with section 1993, in title XXV, headed "citizenship." In the envoy's note above referred to it is expressly stated that section 1993 is not a part of the American naturalization laws, and in no wise applies to naturalization. The same must be said of section 1994.

If the word "naturalized" had been omitted in the treaty of 1868, the above section might perhaps apply to a case such as that now under consideration. This view is debarred by the express use of that word, and it could hardly have been thought of when the treaty was negotiated. For, according to the principles of American law—which in this instance are precisely the same as the German—the marriage of an American woman to a foreigner can not deprive the children of her first marriage of their American citizenship.

From this standpoint it amounts to nothing that Haberacker, according to American decisions, is regarded as an American citizen. It is enough that he did not become a "naturalized" citizen of the United States.

The undersigned begs that this decision of the Bavarian Government be communicated to the American Government, and at the same time avails, etc.

ROTENHAN.

Mr. Blaine to Mr. Phelps.

No. 381.] DEPARTMENT OF STATE,
Washington, March 19, 1892.

SIR: I have to acknowledge the receipt of your dispatch No. 363, of December 3 last, relative to the case of John Haberacker, in which you inclose a copy of a note dated December 1 from the German foreign office in reply to your note of April 20, 1891. It states that—

> The Royal Bavarian Government has made a renewed and thorough investigation of the case of John Haberacker, but finds no reason for discharging him from the Bavarian army.

It is desirable to recall at this time the facts upon which the present difference in opinion of the two Governments arises. They were briefly summarized in instruction No. 146, of September 8, 1890, as follows:

> John Haberacker was born in Windsheim, Bavaria, on August 18, 1869, and has but very recently attained his twenty-first year. His father was a subject of Bavaria and died in that country in 1883, when John was 14 years old. His mother emigrated to the United States the same year (1883), bringing her minor children with her. Three years later, in 1886, the widow Haberacker married one Andrew Krauss, a Bavarian by birth, but then for thirty-three years a citizen of the United States by naturalization. About three months ago Mr. Krauss and his wife went to Bavaria to visit relatives at Windsheim, taking with them John Haberacker, who had not reached full age. They returned in July, leaving John in Windsheim for a further stay of a fortnight. On August 3, a few days before he had arranged to return to the

United States, John Haberacker was arrested as liable to military service and taken to Uffenheim, where a partial examination was had. Thence he was taken to Anspach, where he was heard before a military court, and adjudged liable to three years' service as a Bavarian subject in the armies of the Kingdom. He was accordingly assigned to the Fourteenth Regiment of Infantry, on duty at Nuremburg, where he was when last heard from.

The foregoing statement of the case has not in the course of this protracted discussion been brought in question.

It was held in 1882, in the United States circuit court, by Mr. Justice Harlan, that—

> Upon the marriage of a resident alien woman with a naturalized citizen, she, as well as her infant son dwelling in this country, became citizens of the United States as fully as if they had become such in the special mode prescribed by the naturalization laws. (United States *vs.* Kellar, 13 Fed. Rep., 82.)

You were instructed, therefore, and you so notified the imperial office, that Haberacker was a naturalized American citizen.

Article 1 of the treaty between the United States and Bavaria, concluded May 26, 1868, provides that—

> Citizens of Bavaria who have become, or shall become, naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States for five years, shall be held by Bavaria to be American citizens, and shall be treated as such.

As there was no question that Haberacker had "resided uninterruptedly within the United States for five years," you were instructed to represent to the German Government the unlawfulness of his enforced detention for military duty, and to request his discharge.

Baron Rotenhan, in his note to you of February 28, 1891, said that—

> The Royal Bavarian Government does not consider the American citizenship of John Haberacker, now performing military service in Bavaria, as proven.

And his note concludes with the statement that that Government "believes that John Haberacker should continue to serve with the flag, unless it is convincingly proven by appropriate American authority that by the law of the United States he has acquired American citizenship by the marriage of his mother with an American." This was important as limiting the real question at issue. It admitted the requisite residence of Haberacker in this country, and it also admitted, what this Government holds to be incontrovertible, that whether Haberacker is a naturalized American citizen is determinable solely by the local law of the United States.

In replying, on April 20, 1891, to the foregoing note, you pointed out that the exact question in issue had not only been decided by the United States circuit court in the case of the United States *vs.* Kellar, cited above, but also by the supreme court of the State of New York, in People *vs.* Newell (38 Hun., 78) and by the supreme court of the State of Missouri, in Gumm *vs.* Hubbard (97 Mo., 321). To these uncontradicted decisions might be added, also, that of the supreme court of the State of Illinois to the same effect in Kreitz *vs.* Behrensmeyer (125, 111, 141). Under our system of law, the decisions of the courts upon the construction and scope of a statute are conclusive. Haberacker's American citizenship, therefore, is as clearly established as if the language of the statute had been expressly drawn to cover his case. Although the language of Baron Rotenhan's note of December 1, 1891, is not so clear in that regard as might be desired, I understand from it that he does not longer contest that point. This relieves me from the embarrassment, under which I have heretofore labored, of attempting to discuss a case which, in the language of Mr. Justice Harlan, "seems

to be so distinctively one of those embraced by the very language of section 2172 that argument could not make it plainer."

But now the Royal Bavarian Government rests its case upon an entirely new point. Baron Rotenhan's note concludes as follows:

> From this standpoint it amounts to nothing that Haberacker, according to American decisions, is regarded as an American citizen. It is enough that he did not become a "naturalized citizen of the United States."

The reasoning of his note, which, while impliedly admitting that Haberacker has become a citizen of the United States, denies that he is a naturalized citizen, and so comes within the provisions of article 1 of the treaty of 1868, I quote in full. It is as follows:

> Under title XXX of the Revised Statutes, headed "naturalization," the manner in which the naturalization of foreigners is to be effected is determined; and in section 2165 it is expressly stated that this is to be done as prescribed therein, "and not otherwise." True, it is stated in section 2172 that minor children of persons duly naturalized are to be regarded as American citizens; but if, on this account, Haberacker's personal naturalization would not be required, it would in all events be necessary that his mother at least had become naturalized. But even this is not the case. Haberacker's mother became an American citizen by her marriage with an American citizen, according to section 1994 of the Revised Statutes. This legal provision can not, however, be regarded as a special manner of naturalization. It is not to be found in title XXX of the Revised Statutes, headed "naturalization," but, as is the case with section 1993, in title XXV, headed "citizenship." In the envoy's note above referred to it is expressly stated that section 1993 is not a part of the American naturalization laws, and in no wise applies to naturalization. The same must be said of section 1994. If the word "naturalized" had been omitted in the treaty of 1868, the above section might perhaps apply to a case such as that now under consideration. This view is debarred by the express use of that word, and it could hardly have been thought of when the treaty was negotiated, for, according to the principles of American law, which in this instance are precisely the same as the German, the marriage of an American woman to a foreigner can not deprive the children of her first marriage of their American citizenship.

The full meaning of such a contention is worthy of notice. If Haberacker is not a naturalized American citizen, it is simply because his mother is not. If she is not, then none of the wives of former subjects of Bavaria naturalized in this country are naturalized citizens and entitled to the protection of the treaty; and its intended scope would be most seriously reduced.

The inference drawn from these words, "and not otherwise," is a superficial one, which an understanding of their historical origin ought to dissipate and the decisions at least completely negative. Title XXX of the Revised Statutes, relating to naturalization, is based upon the act of Congress of the 14th of April, 1802. That act began as follows:

> That any alien being a free white person may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise.

The foregoing language was substantially copied into section 2165, although between April 14, 1802, and the revision of the statutes in 1878 there were many general and particular acts of naturalization which were not brought into title XXX, and among them section 2 of the act of February 10, 1855, which is embodied in section 1994 of the Revised Statutes. But, giving the words "and not otherwise" full force and effect, they do not necessarily conflict with other modes of naturalization which the Revised Statutes point out. The same authority which enacted section 2165 also enacted section 1994. It is a fundamental rule of construction that such meanings are to be attributed, if possible, to the different parts of a code of laws that full effect may be given to the whole. That is accomplished in this case by understanding the words "and not otherwise" as limiting the procedure re-

quisite under the particular modes of naturalization pointed out in title XXX, and those modes only.

Whole classes of people, and all persons domiciled under certain conditions within designated geographical limits, have been naturalized by acts of Congress, and even by treaties with foreign powers, without any of the formalities provided for in title XXX. Mr. Chief Justice Fuller, in delivering the opinion of the Supreme Court in the late case of Boyd *vs.* State of Nebraska, decided February 1, 1892, says:

> It is insisted that Boyd was an alien upon the ground that the disabilities of alienage had never been removed, because he had never been naturalized. Naturalization is the act of adopting a foreigner and clothing him with the privileges of a native citizen, and relator's position is that such adoption has neither been sought nor obtained by respondent under the acts of Congress in that behalf. Congress, in the exercise of the power to establish an uniform rule of naturalization, has enacted general laws, under which individuals may be naturalized, but the instances of collective naturalization by treaty or by statute are numerous.

The opinion cites numerous examples of such cases. Boyd, who was born in Ireland, had been elected governor of the State of Nebraska, to which office he was ineligible unless an American citizen. Although he had not been naturalized in the manner pointed out in title XXX, Revised Statutes, still the Supreme Court held that he had been otherwise naturalized, and that he was entitled to hold the office to which he had been elected.

There are two steps in the naturalization of Haberacker:

(1) The naturalization of his mother by her marriage to Krauss. This is provided for in section 1994, which is not found in title XXX.

(2) His naturalization by virtue of the naturalization of his mother. This is provided for in section 2172, which is a part of title XXX, and so there can be no question but that it is a naturalization law.

The whole matter, therefore, turns upon the point whether or not an alien woman, by her marriage to an American citizen, becomes a naturalized citizen. That she becomes a citizen is admitted, and that she becomes a naturalized citizen can be shown to be equally clear.

The expression "shall be deemed a citizen" in section 1994, or, as it was in the second section of the original act of February 10, 1855, "shall be deemed and taken to be a citizen," was the language of the bill as it was reported to the House of Representatives on January 13, 1854, by the Judiciary Committee. Mr. Cutting, who was instructed by the committee to report the bill, in doing so said that the section "was taken in so many words, or in nearly so many words, from the recent act of 1844, Victoria." That statute (7 and 8 Victoria, c. 66, sec. 16) provides:

> That any woman, married, or who shall be married, to a natural-born subject or person naturalized, shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural-born subject.

Mr. Cutting also said:

> The section, in my opinion, ought to be immediately passed, for there is no good reason why we should put a woman into the probationary term required by the naturalization laws, nor to the inconvenience of attending at the necessary courts or places for the purpose of declaring her intentions and renouncing her allegiance, nor, again, put the husband to the expense of the proceeding. (Cong. Globe, first session Thirty-third Congress, p. 170.)

The intention of Congress was clearly to make the effect of the marriage of an alien woman to an American citizen, as regards citizenship, the equivalent of naturalization in the courts, or, as it is more fully expressed in the English statute, that by such marriage she should be deemed and taken to be naturalized.

If there were any doubt regarding the construction of this statute, the decisions of the courts are explicit and, under our system of jurisprudence, conclusive. The United States circuit court say, in Leonard *vs.* Grant (5 Fed. Rep., 16):

> The phrase "shall be deemed a citizen," in section 1994, Revised Statutes, or, as it was in the act of 1855, "shall be deemed and taken to be a citizen," while it may imply that the person to whom it relates has not actually become a citizen by the ordinary means or in the usual way, as by the judgment of a competent court upon a proper application and proof, yet it does not follow that such person is on that account practically any the less a citizen. The word "deemed" is the equivalent of "considered" or "judged;" and therefore whatever an act of Congress requires to be "deemed" or "taken" as true of any person or thing must, in law, be considered as having been duly adjudged or established concerning such person or thing, and have force and effect accordingly. When, therefore, Congress declares that an alien woman shall, under certain circumstances, be "deemed" an American citizen, the effect, when the contingency occurs, is equivalent to her being naturalized directly by an act of Congress, or in the usual mode thereby prescribed.

And Mr. Justice Harlan, in United States *vs.* Kellar, cited above, says:

> The marriage of the defendant's mother with a naturalized citizen was made by the statute an equivalent in respect of citizenship to formal naturalization under the acts of Congress. Thenceforward she was to be regarded as having been duly naturalized under the laws of this country.

The general purport of the decisions is that an alien woman of the class of persons that can be naturalized is as effectually naturalized, to all intents and purposes, by her marriage to a citizen as if by the judgment of a competent court.

A complete answer to the whole contention of the Bavarian Government is that there are only two classes of citizens known in our law, viz, natural-born citizens and naturalized citizens. Mr. Chief Justice Fuller, in the late case of Boyd *vs.* State of Nebraska, cited above, defines naturalization to be "the act of adopting a foreigner and clothing him with the privileges of a native citizen." And Attorney-General Black, in an opinion to the President, July 4, 1859, said:

> What, then, is naturalization? There is no dispute about the meaning of it. The derivation of the word alone makes it plain. All lexicographers and all jurists define it in one way. In its popular, etymological, and legal sense it signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject. (9 A. G., 359.)

The publicists are to the same effect. Calvo says (Le Droit International, fourth edition, par. 581):

> La naturalisation est l'acte par lequel un étranger est admis au nombre des naturels d'un État et par suite obtient les mêmes droits et les mêmes privilèges que s'il était né dans le pays.

Where our law makes a child a citizen at the moment of birth, whether that be because born within the United States (as provided in section 1992 and in the fourteenth amendment to the Constitution) or because born of American parents abroad (as provided in section 1993), such a child is a natural-born citizen. If, however, a person is born an alien, there is no way by which he can be made a citizen except by adopting him and clothing him with the privileges of a native citizen, which is naturalization.

The position of the Royal Bavarian Government is not strengthened by the contention of Baron Rotenhan's note that by both the German and American law, which, he alleges, "in this instance are precisely the same," the marriage of a German or American woman to a foreigner can not deprive the children of her first marriage of their native citizenship. I refrain from any discussion whether the foregoing is, in fact,

American law, as in any event it is immaterial to the present case. The very cases contemplated by the treaty are those of conflicting claims to the allegiance of the same person. If by the laws of Bavaria every Bavarian that became a naturalized citizen of the United States ceased, *ipso facto*, to be a Bavarian subject, and by the laws of the United States every native American that became a naturalized citizen of Bavaria ceased likewise to be an American citizen, there would have been no occasion for the treaty. It was necessitated by the very fact that it was or might be possible for the same person to be claimed as a citizen or subject of both countries. By its provision it is wholly unimportant whether or not under Bavarian law Haberacker at his naturalization in America ceased to be a Bavarian subject. The treaty provides that, having been so naturalized and having resided within the United States uninterruptedly for five years, he shall be treated by Bavaria as an American citizen.

In my first instruction to you regarding this case, September 8, 1890, I said:

> It is conclusive, therefore, under the laws of this country that John Haberacker, upon the marriage of his mother to Krauss in 1886, became a naturalized American citizen.

The foregoing was repeated, in its exact language, in Mr. Coleman's note to the imperial foreign office on September 23, 1890. At the very beginning it was admitted, as it must have been, that the determination of that question was dependent solely upon the laws of the United States. I can not refrain, therefore, from expressing regret that the deliberate and well-considered statement of this Government as respects its own law should not have been accepted by the Imperial Government of Germany. By reason of this protracted discussion Haberacker has already been held to more than one-half of the term of service to which, as it is thought must now plainly appear to its satisfaction, he was unlawfully adjudged. He is entitled to be released therefrom, and you are directed to present the foregoing views to the imperial foreign office, with a renewed request that action to that end may promptly be taken by the Royal Bavarian Government.

I am, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

CORRESPONDENCE WITH THE LEGATION OF GERMANY AT WASHINGTON.

Mr. Wharton to Count von Arco Valley.

DEPARTMENT OF STATE,
Washington, June 15, 1891.

SIR: I inclose herewith for your information a copy of the act of the Congress of the United States, approved March 3 last, and the regulations of the Secretary of Agriculture, dated March 25, in execution of the law providing for the inspection of live cattle, hogs, and carcasses and products of these animals intended for interstate commerce and for exportation to foreign countries.

It will be seen that under the provisions of the law this inspection for the commerce stated is made compulsory and of universal applica-

tion throughout the whole territory of the United States. It is also to be noted that not only is this inspection to be made of the live animals before they are slaughtered, but that a careful post-mortem inspection with microscopic examination is to be enforced immediately after slaughtering.

Not only is provision made for the proper disposition of all animals and their carcasses found upon such inspection to be diseased or unfit for food, but the products which have passed inspection are carefully marked and identified through all stages of preparation for, and shipment to, market.

I am requested by the Secretary of Agriculture to state to you that the above-mentioned microscopic inspection is now in operation in one of the most important centers of pork-packing operations in this country, and will be generally applied as speedily as possible, and that he will be pleased to extend to any representatives of your Government all necessary facilities for free and thorough examination of the manner in which this inspection is being enforced. He also desires to have you informed that pork products inspected in conformity to the said law and regulations will be properly cured and ready for shipment abroad on or before the 1st of September next.

I am directed by the President to say that he confidently hopes that, in view of this inspection made under the direction and at the expense of the Government of the United States, the German Imperial Government will no longer exclude this important product of the United States from the markets of the German Empire.

Accept, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Mr. von Mumm to Mr. Blaine.

IMPERIAL GERMAN LEGATION,
Washington, September 3, 1891.

Mr. SECRETARY OF STATE: In conformity with orders received, I have the honor to advise you that the bulletin of the laws of the Empire of this date publishes an imperial ordinance, going into effect at once, by virtue of which the interdiction pronounced in the year 1883, for sanitary reasons, against the entry of swine, hog meat, and sausages of American origin shall be raised, provided the same (products) are officially examined in accordance with the provisions of the law of the 3d March of this year and the regulations of the 25th of March of this year and supplied with the prescribed certificates.

Accept, etc.,

A. v. MUMM.

Mr. Wharton to Mr. von Mumm.

DEPARTMENT OF STATE,
Washington, September 10, 1891.

SIR: I have the honor to acknowledge the receipt of your note of the 3d instant, by which this Department is advised that the interdiction pronounced by the Government of Germany in 1883, for sanitary

reasons, against the entry of swine, hog meat, and sausages of American origin has been raised, provided those products shall be officially examined in accordance with the law of the United States approved March 3, 1891, and the regulation issued by the Secretary of Agriculture March 25, 1891, providing for necessary certificates.

In reply I desire to express to you, and through you to the Government of His Majesty, the gratification of the President, not only that this long-pending question has been satisfactorily settled, but that the decree for the removal of the prohibition has been issued by the German Government so promptly after the agreement to that end had been reached.

Accept, etc.,

WILLIAM F. WHARTON,
Acting Secretary.