AUSTRIA-HUNGARY.

No. 218.]

Mr. Chew to Mr. Blaine.

LEGATION OF THE UNITED STATES,
Vienna, December 23, 1891. (Received January 11, 1892.)

SIR: Application having been made to this legation by Mr. Rudolph G. W. Lippitt for the renewal of a passport issued to him on the 31st of December, 1879, by Hon. John A. Kasson, then minister of the United States at this capital, and his claim to the further protection of our Government resting, in my opinion, on doubtful grounds, it has been determined to lay the facts in the case before the Department of State and await its instruction before action is taken in the matter.

In answer to the usual interrogatories Mr. Lippitt stated that he was born in Vienna on January 27, 1858, his father being a native-born citizen of the United States, and, at the time, temporarily residing abroad in the capacity of secretary of this legation. That he (the applicant) has lived abroad all his life, with the exception of two visits to the United States, the first of which was made while he was an infant, when he, of course, had no power of election as to the location of his domicile, and which lasted for about one year; and the second while he was yet a minor, on which occasion his sojourn was of but a few months duration. Until he attained his majority his time was divided between England, France, and Austria, and upon coming into possession of his estate he took up his permanent residence in the latter country, subsequently married a subject thereof, and established his domicile, living in summer at Thurnesch, Styria, and in winter at Vienna.

Mr. Lippitt further stated that his citizenship of the United States had never been questioned, and it follows, as a matter of course, that he has enjoyed all the privileges and immunities common to citizens of the United States and to subjects of Austria, and has avoided all corresponding duties in each country. He has had two sons born to him, both of whom, he stated, had been registered at the consulate-general of the United States in this city as American citizens.

That Mr. Lippitt was born heir to the nationality which he still claims, is conceded. Section 1993 of the Revised Statutes of the United States expressly provides that “All children heretofore born or hereafter born, out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States.”

There is, therefore, no room for doubt, under the facts stated above, that Mr. Lippitt was born an American citizen. The question is, however, whether by his own voluntary action in establishing his domicile abroad without having ever taken up his residence in the United States and with no present intention of so doing, he has not forfeited his birthright? Certainly it would seem that he is in error in believing his sons entitled to registration as American citizens, for the statute above cited
clearly goes on to state "but the rights of citizenship shall not descend to children whose fathers never resided in the United States."

With the request that the State Department will favor this legation with its opinion as to the political status of Mr. Lippitt and his sons, under the within representation of facts, I have, etc.,

JOHN J. CHEW.

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Mr. Blaine to Mr. Grant.

No. 179.] DEPARTMENT OF STATE,
Washington, January 25, 1892.

SIR: Mr. Chew's dispatch No. 218 of the 23d ultimo, relative to the application of Mr. R. G. W. Lippitt for a passport, has been received.

Mr. Lippitt, by virtue of section 1993 of the Revised Statutes, was born a citizen of the United States, but he does not appear to have resided in this country in such a sense as to entitle his children to American citizenship. As Mr. Lippitt is now nearly 34 years of age, and during his whole life has resided abroad, having had, since his arriving at majority, a permanent domicile in Austria, the country of his birth, it may be fairly presumed that he has no definite intention of returning to this country within a reasonable time to perform the duties of American citizenship. Unless it is made to appear to your satisfaction that such is his intention, his application for a passport should properly be denied.

I am, etc.,

JAMES G. BLAINE.

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Mr. Grant to Mr. Wharton.

[Extract.]

No. 284.] LEGATION OF THE UNITED STATES,
Vienna, July 1, 1892. (Received July 16.)

SIR: I have the honor to inclose herewith a full copy of the correspondence which has passed between this legation and the imperial and royal ministry of foreign affairs here, concerning the intended expulsion from the Austro-Hungarian monarchy of Leon Spitzer, a naturalized citizen of the United States, of Austrian birth.

Mr. Spitzer's case is similar to many others which have been, and are now, continually being brought to the notice of this legation, many of which cases have already been reported to the State Department at Washington.

In view of these continued expulsions of naturalized American citizens, it would seem that the time has come when the Government of the United States should take a firm stand in this matter in order to retain the proper respect of foreigners for our great nation and to secure protection for the citizens of the United States in this monarchy.

I therefore ask for instructions and beg to bring to your especial consideration in connection with this subject the case of Leon Spitzer.

I have, etc.,

FREDERICK D. GRANT.
AUSTRIA-HUNGARY.

[Inclosure 1 in No. 284.]

Mr. Grant to Count Kalnoky.

LEGATION OF THE UNITED STATES,

Vienna, March 11, 1892.

YOUR EXCELLENCY: I have the honor to place before your excellency the case of Mr. Leon Spitzer, a naturalized American citizen of Austrian birth, who has received notice from the commissary of police of the seventh district of this city of his expulsion from Austria.

Mr. Spitzer called at this legation this morning and showed me a legal notification which he had received March 4, directing him to appear before the police magistrate of the seventh district the following day. Mr. Spitzer states that he did as he was directed, and that upon appearing before the police magistrate he was informed that he had been expelled from Austria under article 2, paragraph 5, of the law of the 27th of July, 1871, Mr. Spitzer also told me that he had been informed at the same time that it was his right to appeal his case to the “Statthalterei,” which privilege he had availed himself of March 9, through his attorney, Dr. Carl Ritter Schierl von Moorburg.

I enclose herewith, for your excellency’s information, a copy of an affidavit sworn to this day by Mr. Spitzer, many of the facts contained therein being verified by documents which Mr. Spitzer carried upon his person.

From his affidavit it appears that Mr. Spitzer emigrated to the United States when he was less than 15 years old, before he could possibly have been called upon in any way to perform military duty, and it is stated in Mr. Spitzer’s affidavit, and this statement is verified by his naturalization certificate, that he resided in the United States uninterruptedly for five years or longer. These facts indicate that all the provisions of the treaty between the United States and Austria-Hungary of September 20, 1870, were complied with and none of them transgressed. It would appear, therefore, that should the police carry out their decree in expelling Mr. Spitzer, they would be violating the said treaty, a condition which, I am sure, the Imperial and Royal Government of Austria-Hungary would be slow to sanction.

Placing the statement and the affidavit of Mr. Spitzer before your excellency, I most respectfully request that his case be investigated, and, should the facts as stated in his affidavit not be proven false, that the imperial and royal authorities will cause that protection to be extended to this citizen of the United States which is guaranteed by the treaty of September 20, 1870.

While awaiting a reply, I avail, etc.,

FREDERICK D. GRANT.

[Inclosure to inclosure 1 in No. 284.]

Affidavit of Leon Spitzer.

VIENNA, AUSTRIA, March 11, 1892.

I solemnly swear that I was born at Vienna, Austria, on or about the 28th day of January, 1867; that I emigrated to the United States, sailing on board the Labrador, from Havre, France, on or about the —— day of February, 1882; that I resided six and a half years uninterruptedly in the United States, from 1882 to 1889, at New York City; that I was naturalized as a citizen of the United States before the superior court of New York at New York City, on the 7th day of January, 1889; that I am domiciled in the United States, my permanent residence therein being at New York City, in the State of New York, where I follow the occupation of “manufacturer,” that I last left the United States on the —— day of November or December, 1888, on board the Ems, arriving at Bremen the latter part of 1889; that I have resided at Vienna since July, 1890; that I am now temporarily residing in Vienna; and that I intend to return to the United States within two years with the purpose of residing and performing the duties of citizenship therein.

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.

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[Inclosure 2 in No. 284.—Translation.]

Mr. Welsezscheimb to Mr. Grant.

MINISTRY OF FOREIGN AFFAIRS,
Vienna, March 20, 1892.

Sir: The imperial and royal ministry of foreign affairs had the honor of receiving the esteemed note of the 11th instant, No. 114, relating to the expulsion of Leon Spitzer, a naturalized citizen of the United States, and has at once placed itself in communication with the ministry of the interior, in order that this affair might receive due investigation.

Without desiring to anticipate the results of the investigations which the competent imperial and royal authorities will institute, the ministry of foreign affairs nevertheless thinks proper to direct the attention of the honorable envoy of the United States to the fact that Leon Spitzer is to be classed among those former Austrian subjects who went to America and became naturalized sometime before their liability to military service had actually commenced, but with the intention and in anticipation of the circumstances, to avoid their legal obligations at home.

The expulsion of such individuals is based, as shown by reference to article 2, section 5, of the law of July 27, 1871, upon considerations of public order which is threatened to their former home by the sojourn of individuals who emigrated in "fraude legis," but it is by no means, as asserted in the above-mentioned esteemed note, a violation of the treaty of September 20, 1870, which would be the case only if Leon Spitzer on his return had been called upon to serve his military term, or had been called to account for nonfulfillment of his military duty, none of which has been the case.

On the other hand, it must be observed, as already dwelt upon by the ministry of foreign affairs on a former occasion in the note of March 5, 1889, No. 4746, that every state has a right to expel foreigners from its territory for reasons as above stated, and that the question whether and when reasons for such expulsion exist, can be judged only by an internal point of view.

The ministry of foreign affairs reserves to itself the privilege to convey to the honorable envoy of the United States the result of the investigation instituted in Leon Spitzer's case.

The undersigned avails, etc.,

WELSESCHEIMB,
For the Minister of Foreign Affairs.

[Inclosure 3 in No. 284.—Translation.]

Count Welsezscheimb to Mr. Grant.

MINISTRY OF FOREIGN AFFAIRS,
Vienna, June 20, 1892.

Sir: Supplementary to the note of March 20 last, concerning the expulsion of Leon Spitzer, a naturalized citizen of the United States, from the kingdoms and countries represented in the Reichsrath, the ministry of foreign affairs has the honor to inform the honorable envoy of the United States that a communication received from the ministry of the interior shows that the opinion expressed in the above-mentioned note relative to the grounds which prompted the expulsion, as well as the statement of the steps which the authorities took in their proceedings against Spitzer, have been fully verified by the result of the investigations.

The minister of the interior now makes known that Leon Spitzer was expelled forever from the countries represented in the Reichsrath by virtue of an order published by the police dated March 2, 1892, No. 16087, on the ground of paragraph 2, section 5, of the law of July 27, 1871, No. 88, for reasons of public security, which sentence was appealed to by Spitzer and now awaits the final decision of the estadthalter of Lower Austria.

The sentence is based upon the following facts:

Leon Spitzer, who went to America when he was 16 years old, was naturalized there in 1889, without previously having rendered him military obligations in this country, nor without first having obtained the consent to emigrate, as provided by the Austrian laws, although he was notified by the imperial royal consular-general in New York, under date of July 16, 1887, by order of the magistrate of this city, to report within six months to the military board of examination at Vienna for the purpose of military duty.
NOR have any subsequent steps been taken by Leon Spitzer, or his father (Moritz Spitzer) to justify his son’s neglect or to make good his shortcomings.

Not until the beginning of 1890, after having acquired naturalization in the United States, Spitzer returned to Austria and took up his permanent residence in Vienna. The above-named having, therefore, by avoiding to render his military duty, and by taking up his domicile here, given a stimulus to actions tending to weaken the armed force of the monarchy. The ministry of the interior adds that the dispositions made regarding Spitzer are fully based upon the provisions of the law and of Article II of the treaty of September 20, 1870, because the expulsion of Spitzer, whose name was struck from the conscription rolls after his American citizenship had become evident, was not decreed as a punishment for nonfulfillment of military duty, but rather as a measure adopted by the authorities for the protection and in the interest of public order.

This alone must be regarded as a justifiable and legal act, irrespective of the fact that Spitzer, during his stay and since his return, was sentenced by decree of the court at Hietzing, dated August 26, 1891, for forging a public document, and fined 15 florins for assault and battery. His expulsion for these reasons was perfectly legal, and was demanded by public order and security.

In view of all these facts, the ministry of the interior declares to be in no position to oppose the confirmation of the decree of expulsion intended by the Statthalter of Lower Austria, but has complied with suggestions made by the ministry of foreign affairs, and has ordered that a sufficient length of time be granted to Spitzer in which to settle his private affairs before leaving the country.

The undersigned avail, etc.,

Welserscheimb,
For the Minister of Foreign Affairs.

[Inclosure 4 in No. 284.]

Mr. Grant to Count Kalnoky.

Legation of the United States,
Vienna, June 14, 1892.

YOUR EXCELLENCY: Upon my return from Buda-Pesth, June 11, I found the esteemed note of the imperial and royal ministry of foreign affairs, dated June 10 last, and signed by His Excellency Count Welserscheimb, in which he says, “that in view of certain facts the ministry of interior declares itself not in a position to cancel the decree of expulsion, which the Statthalter of Lower Austria intends to promulgate against Leon Spitzer.”

Count Welserscheimb also says in the above-mentioned esteemed note that “the ministry of the interior now makes it known that Leon Spitzer was expelled forever from the countries represented in the Reichsrath, by virtue of an order published by the police dated March 22, 1892, No. 18087, on the ground of paragraph 2, section 5, of the law of July 27, 1871, No. 88.”

Upon a perusal of the law of July 27, 1871, No. 88, it seems evident that the imperial and royal police have, in expelling Leon Spitzer, not only violated the treaty of September 20, 1870, but also the law of July 27, 1871. For paragraph 1 of the said law provides that only persons enumerated under a, b, c, and d can be expelled from the Empire, and that their return can only be prohibited after repeated expulsions. Section 1, paragraph 2, of the same law, prohibits the police from expelling anyone not enumerated under a, b, c, and d, of section 1, for a limited time or forever. I do not presume, of course, to discuss any apparent violation of Austrian laws by the Austrian police except when, by such violation or execution, that protection of American citizens which is guaranteed by solemn treaty stipulations may be denied to them.

In Article I of the treaty September, 1870, the Imperial and Royal Government of Austria-Hungary guarantees that citizens of the Austro-Hungarian monarchy who have “resided in the United States of America uninterrupted at least five years, and during such residence have become naturalized citizens of the United States, shall be held by the Government of Austria and Hungary to be American citizens, and shall be treated as such.”

Paragraph 1 of Article II provides for the return of a naturalized citizen of the United States to his native land, and limits his liability to trial and punishment for actions committed before his emigration.

Paragraph 2 of Article II details explicitly the military offenses for which a naturalized citizen of the United States, of Austro-Hungarian birth, remains liable for trial and punishment upon his return to his native land, and especially states that a
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"former citizen of the Austro-Hungarian monarchy, naturalized in the United States, who by, or after, his emigration has transgressed the legal provisions on military duty by any acts or omissions other than those enumerated in clauses numbered 1, 2, and 3, on his return to his original country, neither be held subsequently to military service nor remain liable to trial and punishment for nonfulfillment of his military duty."

Now, recurring to the esteemed note of June 10, the imperial and royal ministry of foreign affairs is pleased to say the intended decree of expulsion against Spitzer is based upon the following facts:


"Abends sind weder von Leon Spitzer, noch von seinem in Wien lebenden Vater, Moritz Spitzer, spätesthin irgend welche Schritte unternommen worden um die Verhältnisse des Estener nachträglich zu erübrigen beziehungsweise zu sondern.

"Erst Anfangs 1890, also nach erwirkter Naturalization in den Vereinigten Staaten von Amerika, kehrte Leon Spitzer nach Oesterreich zurück und nahm in Wien wieder seinen dauernden Aufenthalt.

"Nach dem Geramnete somit die gesetzlich Wehrpflicht angemessen unangängen hat, und durch Gestattung seines hierländischen Aufenthaltes die Anregung zu ähnlichen, die Interessen der Wehrkraft der Monarchie schädigenden Vorgangen geboten wurde."

"It does not appear that any of these accusations against Spitzer, even if just, could in any way be considered as proof of his violation of the provisions of the treaty of September 20, 1870, or justify his being sentenced to expulsion from his native country under the law of July 27, 1871, No. 88, according to which can be expelled only (a) a vagabond, or person unwilling to work and who lives upon public charity; (b) or a tramp without home or income and no visible means of support; (c) or a public prostitute who had been warned to leave; or (d) criminal discharged from prison whose stay would endanger persons and property in the community.

"It is difficult for one to fully comprehend the statement made by the imperial and royal minister of the interior, that the expulsion of Spitzer is fully based upon the law and upon Article II of the treaty of September 20, 1870, because his expulsion was not decreed as a punishment for nonfulfillment of military duty, when at the same time the imperial and royal minister of the interior says that the sentence is based upon the facts that "Leon Spitzer, who went to America when he was 16 years of age, was naturalized there in 1889, without previously having rendered his military obligations in this country, nor without having first obtained the consent to emigrate as provided by the Austrian laws, although he had been notified by the magistrat of this city, through the imperial and royal consulat-general at New York, under date of July 16, 1897, to report within six months to the military board of Oestrowth at Vienna, for the purpose of military duty. Nor have any subsequent steps been taken by Leon Spitzer or his father Moritz Spitzer to justify his neglect or to make good his shortcomings."

"The object which the President of the United States had in view when he directed his pleni potentiaries to negotiate the treaty of September 20, 1870, was to fix the status of that class of naturalized citizens of the United States who had been born in the Austro-Hungarian monarchy and to secure to these citizens the privilege of returning without molestation to their native land at such times and for such periods of time as they might desire. The articles of the treaty were discussed by the pleni potentiaries appointed by the President of the United States and by His Imperial and Royal Majesty; after the pleni potentiaries had agreed upon each of the provisions of the treaty, the treaty, as a whole, was placed before the proper authorities of the respective countries, when it was reviewed, ratified, and promulgated upon the 1st day of August, 1871. Since the promulgation of this treaty, the Government of the United States has observed in the spirit and in the letter of its writings every stipulation of this treaty. Frankly, can your excellency assert that the Government of the Austro-Hungarian monarchy have done the same?"

The following facts have been reported to me by the Government at Washington: That the late political conditions of Europe have been such that the governments of Austria-Hungary have deemed it advisable to change their military laws in 1870 and adopt laws which call for a limited amount of military service from every male subject of his majesty who is capable of bearing arms; that many natives of the Austro-Hungarian monarchy have found it convenient to take advantage of the
treaty of September 20, 1870, to become citizens of the United States, solely for the purpose of evading the military duties which the government of their native land calls upon them to perform, and that these alleged American-citizens, caring nothing for their adopted country, have returned immediately to their native land, thereby cheating their adopted country as well as the land of their birth, where they bring into disrepute the good name of American citizenship and make it more difficult for the United States Government to extend that watchful care and protection to its citizens abroad which all good citizens have a right to expect from their country. The authorities of the Government at Washington have authorized me to inform the Imperial and Royal Government of Austria-Hungary (I have already conveyed this information to the chiefs of section of the imperial and royal ministry of foreign affairs) of their readiness to take into consideration any amendment of the treaty of September 20, 1870, which the Imperial and Royal Government might wish to propose. Inasmuch as the people referred to are undesirable as citizens of the United States, I have no doubt but that any reasonable proposal of amendment of the treaty, which does not disallow the right of emigration, but which would lead to obliteration from the class who emigrate to the United States those subjects of Austria-Hungary whose only purpose it is to defraud both countries, would receive favorable consideration from the United States Government. But until the treaty is legally changed the Government at Washington will abide by the provisions of that treaty as they stand and will expect the Imperial and Royal Government of Austria-Hungary to do likewise.

Taking all the facts in this case of Leon Spitzer into consideration, it seems to be my duty, as the representative of the United States, a great power now upon friendly terms with Austria-Hungary, to protest decidedly and firmly against the intended action of the Statthalterei of Lower Austria in publishing a decree of expulsion of an American citizen from all the countries represented in the Reichsrath, which expulsion is in violation of the solemn stipulations of a treaty under which he should be protected.

It may be proper for me to state here in connection with this case that Mr. Spitzer called at this legation some weeks ago, when he said that he was about to return to his home in America; he also expressed the hope that the Statthalterei would quash the decree of his expulsion, as its publication would prevent his visiting again in future his parents, who are now growing old. If Mr. Spitzer departed at the time he seemed to intend to leave, he is now in the United States.

The undersigned avails, etc.,

FREDERICK D. GRANT.

[Inclosure 5 in No. 284—Translation.]

Count Welserscheid to Mr. Grant.

MINISTRY OF FOREIGN AFFAIRS,
Vienna, June 27, 1872.

SrR: In the esteemed note of the 14th instant, No. 130, the honorable envoy of the United States was pleased to revert once more to the expulsion of Leon Spitzer, a naturalized citizen of the United States, from the countries represented in the Reichsrath, and to express the view, in the arguments brought forth, that the expulsion of Spitzer was not only in violation of the law of July 27, 1871, No. 88, on which the right of the authorities is based, but also contrary to the provisions of Article II of the treaty of September 20, 1870.

It is in this connection that the ministry of foreign affairs wishes to call the attention of the honorable envoy of the United States to the following observations: As for the assertion that Spitzer's expulsion was in violation of the law of July 27, 1871, as Spitzer was not one of the persons enumerated in the list given in paragraph 1 of that law, who were liable to such proceedings, it will suffice to remark that Spitzer's expulsion was not based upon paragraph 1 of the law of July 27, 1871, but upon paragraph 2, line 5, of that law, as the minister of foreign affairs had the honor of observing.

Paragraph 2, line 5, of that law, however, leaves no room for doubt that, irrespective of the cases enumerated in paragraph 1, persons who are not domiciled in the territory in which this law is in force, when their stay there is a source of danger to public peace and security, may be expelled from the entire territory in which this law is valid.

It follows that the law in question, which applies to all foreigners, was applied in the present instance in perfectly legal form, and the complaint that the imperial and royal authorities, in proceeding against Spitzer, had violated the law of July 27,
1871, is totally unfounded. The further complaint that Spitzer’s expulsion, as a punishment inflicted upon him, is in violation of the provisions of Article II of the treaty of September 20, 1870, is also without foundation.

In this connection the ministry of foreign affairs would once more call attention to what has already been said repeatedly, and which the note of March 20 last reiterates, that such expulsion is not to be considered as a punishment and can consequently not be called a violation of the treaty of September 20, 1870, which assertion could be made only in case the individual in question was held, on his return to this country, to perform his military duty or would be held to answer the charge of having failed to comply with the military laws.

The expulsion ordered in Spitzer’s case must therefore be regarded simply as a measure adopted by the authorities to guard against the disturbance of public peace and as a right which every state possesses to exclude from its territory foreign subjects whose behavior brings them in conflict with public interest, a right the exercise of which must be reserved without special agreements and which the treaty of September 20, 1870, had neither the will nor the power to confine.

That Spitzer’s expulsion is also provided for by the law of July 27, 1871, on the ground of which it was carried out, and that it does not bear the character of a punishment, is seen by reference to line 6, paragraph 2, of this law, which says that in cases where expulsion is inflicted as punishment, it must be provided for by the criminal laws.

In view of the foregoing, as well as with reference to the detailed statements which the ministry of foreign affairs has made to the honorable envoy of the United States in this as well as in various similar cases, it is believed that the discussion on this subject in general and on this present case in particular can now be considered as terminated, the more so in Spitzer’s case, who, during his recent stay, committed two punishable actions, which alone would justify his expulsion, and of which account was given in the note of the 10th instant to the honorable envoy of the United States.

It is with much gratification that the ministry of foreign affairs has learned, from the note mentioned above, that the United States Government is ready and prepared to revise the naturalization treaty of September 20, 1870, according to mutual requirements, for which it renders its thanks and hopes that before long it will be able to make propositions with this view, which are now the subject of discussions by the respective ministries.

The undersigned avails, etc.,

WELSERSCHEIM,
For the Minister of Foreign Affairs.

[Inclosure 6 in No. 284.]

Mr. Grant to Count Kalnoky.

LEGATION OF THE UNITED STATES,
Vienna, June 30, 1892.

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of an esteemed note from the imperial and royal ministry of foreign affairs, dated June 27, and signed by his excellency Count Welserscheimb, second chief of section, which esteemed note was in reply to one from myself numbered 130, and dated the 14th of May.

In the above-mentioned esteemed note of the 27th instant his excellency, Count Welserscheimb, in referring to the case of the expulsion of Mr. Leon Spitzer, is pleased to say, on the part of the imperial and royal ministry of foreign affairs, in effect that the discussion of the right of the imperial and royal authorities to expel from this monarchy naturalized American citizens of Austro-Hungarian origin can now be considered as terminated, this being so in particular in reference to Leon Spitzer’s case.

The authorities of the United States Government have as yet held to the opinion that under the treaty of September 20, 1870, naturalized citizens of the United States of Austro-Hungarian origin were guaranteed the same protection in Austria-Hungary, with three specific exceptions enumerated in the treaty, as that granted to native-born citizens of the United States. The imperial and royal authorities of Austria-Hungary place a different interpretation upon this treaty. It evidently becomes, therefore, the duty of this legation to discuss each case of expulsion of a naturalized American citizen from this monarchy which may arise until the Government of the United States accepts the interpretation given to the treaty by the imperial and royal authorities or until the imperial and royal authorities concur in the interpretation made by the United States Government.
This legation makes no reference herewith to the case of Mr. Leon Spitzer and the decision of the imperial and royal ministry in regard to it, but will now hasten to forward a full report of the case to the Department of State at Washington.

I avail myself, etc.,

FREDERICK D. GRANT.

[Inclosure 7 in No. 284. Translation.]

Law of July 27, 1874, regarding the regulation of expulsion by the police.

The expulsion from a certain place or locality can be ordered only against persons who do not belong to the territory where this law is valid, and their expulsion over the frontier by the police can only be applied to the persons herein enumerated:

(a) Vagabonds and people unwilling to work, who live on public charity.
(b) Individuals without documents and home, who have no income, and no lawful means of living.
(c) Public prostitutes who disregard orders to leave given them by the authorities.
(d) Criminals discharged from prison, when their stay endangers persons or property.

At repeated expulsion return may be prohibited.

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The expulsion by the police from one or several places with order never to return, or not to return within a certain length of time, can be applied only to persons enumerated in paragraph 1.

It will be carried out when public interests are endangered, principally in that locality from which the person shall be removed.

The expulsion of a person from a community where his home and domicile is, is objectionable.

When the right to domicile has been acquired in a certain place, expulsion from it can not take place.

Aside from this persons who are not domiciled within the territory in which this law is in force, can be expelled from the entire territory or from part thereof, if their stay, for reasons of danger to public order or security is objectionable.

Mr. Foster to Mr. Grant.

No. 232.]  DEPARTMENT OF STATE,
Washington, July 23, 1892.

SIR: I have received your No. 284 of the 1st instant, with copies of correspondence relative to the intended expulsion of Leon Spitzer, a naturalized American citizen from Austria-Hungary.

Your course in this matter has been in entire accord with the principles maintained by this Government in analogous cases, and your clear exposition and presentation of the law and facts involved leave little to add.

This Government can readily appreciate the irritation and resentment experienced by the Austro-Hungarian Government towards its former subjects who had acquired American citizenship merely to evade military duty and having secured immunity return to their former homes and sow dissatisfaction and dissension among the subjects of the Empire. Nor is the Government of the United States desirous to extend its protection to that class of persons who assume none of the duties of citizenship while claiming all of its privileges and benefits, and has expressed its readiness to consider any proposition which the Austro-Hungarian Government may make with a view to modifying the naturalization treaty of 1870.
But so long as the treaty remains in force the United States Government will insist upon a strict compliance with its terms, and after a careful examination of the case in point is reluctantly obliged to dissent from the views expressed by the Austro-Hungarian Government.

Leon Spitzer was expelled forever from the dominions of Austria-Hungary, as alleged by the Government of that country, in accordance with the provisions of Article II, section 5 of the law of July 27, 1871, which reads as follows:

Aside from this, persons who are not domiciled within the territory in which this law is in force can be expelled from the entire territory or from part thereof, if their stay for reasons of danger to public order or safety is objectionable.

Although the right of a government to expel objectionable characters from its territory is no more denied than its right to enact any other laws or regulations of intra-territorial force which it may deem suitable or necessary, nevertheless, when such laws or regulations affect citizens of the United States, this Government expects that they be founded on the principles of reason and justice, and that they should not merely emanate from the will of an arbitrary power. Reasonable grounds therefore should exist and be made known justifying the expulsion of Leon Spitzer from the Austro-Hungarian Dominions.

I premise that as the case of Leon Spitzer does not come under the three exceptions specified in the naturalization treaty of 1870, he is in all respects and purposes on an identical footing with a natural-born American citizen.

The reasons alleged by the Austro-Hungarian Government for Spitzer's expulsion and which I quote in full from the note of Count Welser-sheimb for minister of foreign affairs, to you of the 10th June, 1892, are inadequate and inconclusive. He says:

The sentence is based upon the following facts:

Leon Spitzer, who went to America when he was 16 years old, was naturalized in 1889, without previously having rendered his military obligations in this country, nor without first having obtained the consent to emigrate, as provided by the Austrian laws, although he was notified by the imperial royal consulate-general in New York, under date of July 16, 1887, by order of the magistrate of this city to report within six months to the military board of examination at Vienna, for the purpose of military duty.

Nor have any subsequent steps been taken by Leon Spitzer, or his father, Moritz Spitzer, to justify his son's neglect or to make good his shortcomings. Not until the beginning of 1890, after having acquired naturalization in the United States, Spitzer returned to Austria and took up his permanent residence in Vienna.

The above named having therefore by avoiding to render his military duty and by taking up his domicile here, given a stimulus to actions tending to weaken the armed force of the monarchy. The minister of the interior adds that the dispositions made regarding Spitzer are fully based upon the provisions of the law and of article second of the treaty of September 20, 1870, because the expulsion of Spitzer, whose name was struck from the conscription rolls after his American citizenship had become evident, was not de creed as a punishment for nonfulfillment of military duty, but rather as a measure adopted by the authorities for the protection and in the interest of public order.

This alone must be regarded as a justifiable and legal act, irrespective of the fact that Spitzer, during his stay and since his return, was sentenced by decree of the court at Hietzing, dated August 16, 1891, for forging a public document and fined 15 florins for assault and battery. His expulsion for these reasons was perfectly legal and was demanded by public order and security.

The first paragraphs would seem to indicate that Spitzer was expelled for nonfulfillment of his military obligations, but the untenability of this position is admitted immediately afterwards when the minister of the interior states that his expulsion was not decreed as a punishment for nonfulfillment of military duty but rather as a measure adopted by the authorities for the protection and in the interest of public order.
The last paragraph alleges that Spitzer was convicted of forging a public document and was fined 15 florins for assault and battery as an additional reason for his expulsion.

But in the note of June 27 from Count Welsersheimb to you he states that "where expulsion is inflicted as a punishment, it must be provided for by the criminal laws."

Spitzer was therefore by distinct admission not expelled for violation of his military obligations nor for the crime and offenses of forgery and assault, but purely as a preventive or precautionary measure, by the arbitrary degree of the Austro-Hungarian Government.

Had Spitzer been expelled for an action punishable by the laws of his original country committed before his emigration, including avoidance of or desertion from his military obligations, this Government would have no occasion to intervene. And this would be equally true had Spitzer been expelled by the judgment of a competent court for the alleged crime of forgery or perhaps the offense of assault.

As however he was expelled on the vague and indefinite ground of "the interest of public order," and as no valid and explicit reasons in support of the order are alleged, your action in making a formal protest is approved by the Department.

I am, etc.,

John W. Foster.