AUSTRIA-HUNGARY.

DIFFERENTIAL DUTY ON SUGAR IMPORTED FROM BOUNTY-PAYING COUNTRIES.¹

Mr. Hengelmüller to Mr. Gresham.

IMPERIAL AND ROYAL AUSTRO-HUNGARIAN LEGATION,
Washington, January 3, 1895.

Mr. Secretary of State: I have the honor to inform your excellency that I have received instructions from my Government to enter a protest against the discriminating duty on sugar from Austria-Hungary which was imposed by the new customs tariff of August 28, 1894.

This discriminating usage, according to which sugar on which a bounty is paid in Austria-Hungary, and which is exported to the United States, is obliged to pay a duty of one-tenth of a cent per pound, is entirely at variance with Article III of the treaty concluded in the year 1829 between Austria-Hungary and the United States, which treaty stipulates that goods imported into the United States from Austria-Hungary shall be subjected to no discrimination in respect to duties.

I also take the liberty to refer to the notes exchanged between this Imperial and Royal Legation and the Department of State of May 2 and 3, 1892, which form a new basis of the commercial relations existing between Austria-Hungary and the United States, and on which the proclamation of President Harrison of May 26, 1892, was based.

In that exchange of notes Austria-Hungary declared that it was prepared to grant the same reductions of duties that were granted to other countries, and that were included in the most-favored-nation clause, to similar North American products, on the supposition that a continuance of the exemption from duties mentioned in section 3 of the North American customs tariff of October 10, 1890, would be guaranteed, especially to sugar imported into the United States from Austria-Hungary.

The importation of sugar from Austria-Hungary into the United States is now subjected not only to the duties established in Schedule E, No. 1824, of the new tariff of August 28, 1894, but is also subjected to an addition of one-tenth of a cent per pound, which is levied on the sugar of countries that allow an export bounty on this article.

The high Imperial and Royal Government can not deny that a public bounty is paid in Austria-Hungary on the exportation of sugar. Yet the same export bounty was paid in the year 1892, when the aforesaid arrangement was made. It clearly appears, moreover, from the system of sugar taxation which is in force in Austria-Hungary, that the export bounty is now allowed simply as a measure which has been forced upon the country, exceptionally, and owing to the state of affairs in the competing States.

The granting of export bounties is, furthermore, a domestic concern.

¹Reprinted from Senate Ex. Doc. No. 58, 53d Congress, 3d session.
of the State that grants them, and therefore gives no right to other countries to impose additional duties, which would render illusory the most-favored-nation principle, on which our relations with North America have been based since 1829.

The Imperial and Royal Government is consequently compelled to enter a decided protest against that provision of the new North American customs tariff which establishes a discriminating usage for Austro-Hungarian sugar.

Austria-Hungary is conscious of having kept the promise made in that exchange of notes with regard to the usage to be granted to North American products on their importation into Austria-Hungary. The Imperial and Royal Government therefore feels authorized, in view of the friendly relations existing between it and the United States, to expect that the latter country, even if it thinks that it can not, for reasons connected with its customs policy, any longer continue the exemption from duty on raw sugar which was guaranteed in 1892, will nevertheless cease to refuse to this article, when imported from Austria-Hungary, the same usage that it grants to the productions of the most favored nation.

The result of a continuance of the existing state of things would be that the Imperial and Royal Government would be obliged to act independently as regards the usage to be granted to North American productions when imported into Austria-Hungary. We should be all the more compelled so to act, inasmuch as, according to another provision of the new North American tariff law, sugar from States allowing export bounties may, on certain conditions, and provided that such States comply with certain formalities to be specified by the Secretary of the Treasury, be exempted from paying the additional duty; and it is consequently possible for countries that secretly allow bounties, and the levying of whose taxes is controlled with difficulty, to secure exemption from the additional duty, while the sugar of countries that openly meet the bounty question, and whose action is altogether aboveboard, is excluded from competition in the North American market.

Trusting that your excellency will not refuse to consider the foregoing statements, and that you will use your kind mediation to the end that the Federal Government may take such action as will meet the wishes of the Imperial and Royal Austro-Hungarian Government, I take the liberty to request that I may be informed, with as little delay as possible, concerning the view taken of this communication by the Federal Government.

Accept, etc.,

HENGELMÜLLE.

Mr. Gresham to Mr. Hengelmüller.

DEPARTMENT OF STATE,
Washington, January 28, 1895.

SIR: I have the honor to acknowledge the receipt of your note of the 3d instant, protesting against the discriminating duty of one-tenth of 1 cent a pound on sugar which receives a bounty on exportation to the United States from Austria-Hungary.

This protest is grounded on Article III of the treaty of 1829 and on the commercial arrangement reached by exchange of notes May 2d and 3d, 1892, and proclaimed by the President on the 26th of the same month.
I need not at present do more than observe, first, that the third article
of the treaty relates to equality of treatment of imports under the flag
of either country, and does not seem applicable to the present matter;
and, second, that the arrangement of 1892, being concluded under the
authority of the third section of the tariff act of 1890, necessarily came
to an end by the repeal of that section when the existing tariff act took
effect.

Discussion of the questions you present may, with propriety, be post-
poned in view of the pendency of a bill in Congress providing for the
repeal of the provision of the present law imposing the differential
duty. When that bill is disposed of, I may communicate further with
you on the subject.

Accept, etc.,

W. Q. GRESHAM.

Mr. Hengelmüller to Mr. Gresham.

IMPERIAL AND ROYAL AUSTRO-HUNGARIAN LEGATION,
Washington, January 31, 1895. (Received Feb. 1, 1895.)

Mr. SECRETARY OF STATE: I have the honor to acknowledge the
receipt of the note whereby your excellency had the kindness to reply
to the protest of the Imperial and Royal Government which was filed
by me on the 3d instant against the additional duty of one-tenth of a
cent per pound on sugar of Austro-Hungarian origin.

While I take note of your excellency’s desire to postpone the discus-
sion of this question until it shall have been decided by the bill on the
subject which is now before Congress, and so report to my high Gov-
ernment, it is proper for me to inform your excellency that the refer-
ence to Article III of our treaty of commerce in my note of the 3d
instant was simply due to an unfortunate clerical error, and that,
instead of Article III, the reference should have been to Article V,
which contains the most-favored-nation clause, and reads as follows:

No higher or other duties shall be imposed on the importation into the United
States of any article the produce or manufacture of the dominions of Austria, and
no higher or other duties shall be imposed on the importation into the dominions of
Austria of any article the produce or manufacture of the United States, than are or
shall be payable on the like article being the produce or manufacture of any other
foreign country. Nor shall any prohibition be imposed on the importation or export-
tation of any article the produce or manufacture of the United States, or of the
dominions of Austria, to or from the ports of the United States, or to or from the
ports of the dominions of Austria, which shall not equally extend to all other nations.

Accept, etc.,

HENGELMÜLLER.

ACCEPTANCE OF PASSPORTS AS PRIMA FACIE EVIDENCE OF
CITIZENSHIP.

Mr. Hengelmüller to Mr. Gresham.

[Translation.]

IMPERIAL AND ROYAL AUSTRO-HUNGARIAN LEGATION,
Washington, May 1, 1895.

Mr. SECRETARY OF STATE: According to information received by
the Imperial and Royal ministry of the national defense at Vienna,
Friedrich Hellebrand, who was born at Tattenik, Austria, in the year 1869, who emigrated to America in 1884, whose name was enrolled in the list of those subject to military duty in the parish to which he belonged, and who is now registered there as being illegally absent, recently returned to his native place and exhibited an American passport, declaring that he had become a citizen of the United States.

The imperial and royal ministry of the national defense therefore asks my mediation for the purpose of ascertaining whether Friedrich Hellebrand has really become a citizen of the United States, and whether he is consequently to be exempted from the performance of military duty, and from the consequences of the nonperformance thereof, in pursuance of Article I, paragraph 1, and Article II, final paragraph, of the treaty between Austria-Hungary and the United States of America which was concluded September 20, 1870.

I consequently have the honor, in pursuance of instructions received from my Government, to beg your excellency to be pleased to procure the necessary information in this case and to transmit the same to me returning at the same time the passport of the person aforesaid.

Accept, etc.,

HENGELMÜLLER.

Mr. Uhl to Mr. Hengelmüller.


STR: I have the honor to acknowledge the receipt of your note of the 1st instant, with which, by direction of the Imperial and Royal ministry of the national defense at Vienna, you send me an original passport, No. 3897, issued by this Department on the 7th day of August, 1893, to Frederick Hillebrandt, “for the purpose,” as you state, “of ascertaining whether Friedrich Hellebrand has really become a citizen of the United States, and whether he is consequently to be exempted from the performance of military duty, and from the consequences of the non-performance thereof, in pursuance of Article I, paragraph 1, and Article II, final paragraph, of the treaty between Austria-Hungary and the United States of America which was concluded September 20, 1870.”

No previous instance is recalled, certainly not in late years, of such a reference on the part of the Austro-Hungarian Government, and it would be much regretted were the present instance to form a precedent. The passports issued by the Secretary of State, under the seal of this Department, are evidence of the facts therein certified, and they would fail of the purpose for which they are issued were foreign authorities at liberty to disregard them until certified anew by the authority which issued them.

1 Citizens of the Austro-Hungarian Monarchy who have resided in the United States of America uninterruptedly 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.

2 On the other hand, a 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 above enumerated in the clauses numbered one, two, and three, can, on his return to his original country, neither be held subsequently to military service nor remain liable to trial and punishment for the nonfulfillment of his military duty.
In many recent instances, and notably in Austria-Hungary, this Government has had occasion to remonstrate against the embarrassment to, and even the deprivation of, personal liberty to which the holders of United States passports have been subjected by the action of the local authorities in detaining them while their passports were held for investigation or sent to the United States legation in the country for attestation of the facts therein certified. Protracted correspondence on the subject was held between the American legation at Vienna and the Imperial and Royal foreign office in 1893 and 1894, in the course of which the United States minister was instructed to convey to your Government the views here entertained touching what appeared to be the insupportable assumption of the Austro-Hungarian officials that a foreign passport is valueless as evidence per se, an assumption which, as Mr. Gresham instructed Mr. Bartlett Tripp under date of September 4, 1893,¹ "is wholly incompatible with the universally admitted doctrine that a state is the sole and ultimate judge of the citizenship of its own dependents, and is, in its sovereign capacity, competent to certify to the fact. A passport, in the eye of international law, is one of the highest sovereign acts of a state whereby it attests that the holder is a lawful citizen. In the nature of the case it must be assumed to be prima facie valid until shown to be otherwise. This Government can be satisfied with no less degree of respect in Austria-Hungary for its sovereign acts than it shows in the United States for the like sovereign acts of Austria-Hungary."

In Count Welsersheimb’s note to Mr. Tripp of August 18, 1894, your Government admits "the necessity that papers issued by the competent authorities of one country should be respected and recognized by the authorities of a third state as long as these documents do not bear unmistakable proofs of having been counterfeited or otherwise obtained by fraud."

This last reservation is responsive to the proposition of the United States Government that the prima facie evidence of a verity supplied by the passport might be traversed by allegation of fraud, in which case this Government would hold itself ready to investigate the allegation when duly presented, and act as its duty might require.

It was supposed that the question at issue was definitely set at rest by this correspondence. Your present note, however, revives it in a modified form, for in place of the ex parte and independent municipal investigation of American passports by the Austro-Hungarian authorities, against which we have heretofore had just ground to remonstrate, a passport bearing the signature of the Secretary of State and seal of this Department is now sent to the authority which granted it "for the purpose of ascertaining whether Friedrich Hellebrand has really become a citizen of the United States."

No imputation of fraud or irregularity in connection with the passport in question is presented to this Government for investigation and action—nothing is asked save a renewed attestation of the fact already certified by the passport itself, that the bearer is a lawful citizen of the United States and as such entitled to the rights guaranteed to citizens by the existing treaties between the United States and Austria-Hungary.

This Government stands ready, as assurance has been before given, to cooperate in the investigation of any case where reasonable evidence of the fraudulent use of a United States passport may be forth-
coming, and to that end the legations of the United States abroad will
cheerfully render assistance, so far as an examination of the authen-
ticity of the document is concerned, whenever there may be good
ground to believe that a passport has been forged or tampered with,
or is held by another than the person to whom it was lawfully issued,
or was procured by fraud.

Having thus stated the views of this Government in the premises,
and assuming that the Friedrich Hellebrand to whom your inquiry
relates is the same as the Frederick Hillebrandt mentioned in the pass-
port you inclose, I may state, without prejudice to the position herein
taken that the passport in question was duly issued by this Depart-
ment upon proof that the applicant had been lawfully naturalized after
more than five years' residence in the United States. Our statutes
penalize the issuance of a passport to any person not a citizen of the
United States.

Returning the passport of Frederick Hillebrandt as requested, I
avail, etc.,

EDWIN F. UHL,
Acting Secretary.

Mr. Uhl to Mr. Tripp.

No. 141.]

DEPARTMENT OF STATE,
Washington, May 9, 1895.

SIR: I inclose for your information a copy of a note from the Austro-
Hungarian minister of the 1st instant,¹ and of the Department's reply
of the 8th,² in regard to his inquiry concerning the case of Frederick
Hillebrandt, to whom a passport, No. 3897, was issued August 7, 1893.
I add, also, a copy of Mr. Hillebrandt's application of August 4, 1893,
as well as a copy of an instruction, No. 19, of November 26, 1892,³ to the
United States minister at St. Petersburg, in a somewhat similar case,
and which emphasizes the point that this Government expects its pass-
ports to be accepted abroad as prima facie evidence of citizenship.
When their validity is assailed by competent proof, the hearty cooper-
ation of this Government may be relied upon to investigate and deter-
mine the disputed point.

I am, etc.,

EDWIN F. UHL.

Mr. Hengelmüller to Mr. Uhl.

[Translation.]

IMPERIAL AND ROYAL AUSTRO-HUNGARIAN LEGATION,
Washington, May 16, 1895.

HIGHLY ESTEEMED SIR: I have the honor to acknowledge, with
thanks, the receipt of your note of the 8th instant, No. 27, whereby
your excellency had the kindness to furnish me the information which
I had requested concerning the American citizenship of Friedrich
Hellebrand.

¹ See page 8.
² See page 9.
³ Printed in Foreign Relations, 1892, p. 530.
Your excellency stated, at the same time, that this information was furnished without prejudice to the position taken by the United States in relation to the prima facie evidence furnished by passports, and prefaced your esteemed note with some remarks in which that position was defined at length, and reference was made to the correspondence between the Imperial and Royal ministry of foreign affairs and the American legation at Vienna which grew out of the return to Austria of certain American citizens who had formerly been Austrian or Hungarian subjects.

In this connection, I would remark that it did not come within the scope of the inquiry which I was instructed to make to raise a discussion relative to the questions of principle thus arising.

I do not know what circumstances led the Imperial and Royal authorities to entertain doubts concerning the American citizenship which had been actually acquired by Friedrich Hellebrand notwithstanding the fact that he was in possession of a regular passport. By way of possible explanation, and as a purely private supposition, I nevertheless take the liberty to call your excellency's attention to the circumstance that passport No. 3897 was issued by the State Department to Frederick Hillebrandt, whereas the bearer of said passport is enrolled in the military list of his original place of residence as Friedrich Hellebrand.

Accept, etc.,

HENGELMÜLLER.

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Mr. Uhl to Mr. Hengelmüller.

No. 31.]

DEPARTMENT OF STATE,
Washington, May 22, 1895.

SIR: I have the honor to acknowledge the receipt of your note of the 16th instant, in further relation to your inquiry of May 1, touching the naturalization of Friedrich Hellebrand.

In my reply to you, of the 8th instant, I noted the discrepancy in the spelling, to which your present note adverts, but, not clearly perceiving how the submission of a passport issued by this Department in favor of Mr. Hillebrandt could enlighten the inquiry of your note as to whether Mr. Hellebrand has been naturalized a citizen of the United States, I naturally inferred that the passport and your inquiry related to the same person and that the variation was a mere slip of the pen, especially as you spoke of the enclosure as "the passport of the above named" (Hellebrand).

Should a case of disputed indentity be presented, raising doubt as to whether the actual possessor of the passport issued to Frederick Hillebrandt is the person therein mentioned, a case of fraudulent impersonation of the rightful owner of a genuine passport would arise, which this Government would be happy to assist in investigating through its legation in Austria-Hungary, and in regard to which it would adopt such course as the facts developed would warrant.

It is submitted, however, that your note of the 1st instant does not present such a case for consideration, and seems to admit of no other response than that already made, namely, that the passport, No. 3897, issued to Frederick Hillebrandt, is what it purports to be, a genuine certification of the citizenship of the person to whom it was lawfully issued.

Accept, etc.,

EDWIN F. UHL,
Acting Secretary.
RIGHT OF JUDICIAL OFFICERS TO DISREGARD PASSPORTS AS PRIMA FACIE EVIDENCE OF CITIZENSHIP.

Mr. Tripp to Mr. Olney.

No. 151.] LEGATION OF THE UNITED STATES, Vienna, July 26, 1895. (Received August 9.)

SIR: I have the honor to submit for your consideration the correspondence between this legation and the Imperial and Royal ministry of foreign affairs of Austria-Hungary in reference to the case of Solomon Czosnek, as shown by notes and translations herewith inclosed, the facts of which are as follows:

Solomon Czosnek was born at Chrzanow, in the province of Galicia, of Austrian parents, on the 1st day of April, 1873. In 1878 his father emigrated to America, and having established a permanent home in the United States sent for his family, consisting of a wife, the complainant, Solomon Czosnek, and a younger brother. Subsequently, in 1888, the father was duly naturalized a citizen of the United States, his son Solomon being then a minor of the age of 16 years. Young Solomon Czosnek continued to reside in the United States until January, 1895, when, desiring to visit Austria-Hungary upon some matters of business connected with his father's affairs, he applied to and obtained from the Department of State at Washington a passport in the usual form, the same being dated January 5, 1895, and numbered 7178.

Arriving at Chrzanow about the 1st of March, 1895, he was summoned by the local military authorities to appear for military duty. To this summons he replied that he was an American citizen and not subject to military duty in Austria-Hungary, and exhibited his passport. Subsequently he was arrested by the criminal authorities upon the complaint of the district attorney at Krakau, charging him with a violation of the military law of Austria-Hungary by evading military service when properly summoned. Upon this complaint, which in no way attacks or seeks to impeach the passport of Czosnek, he was bound over to the district court to answer the criminal charge therein contained. Czosnek appealed to this legation and I intervened in his behalf, which resulted in his discharge, as disclosed by the correspondence itself.

The case becomes valuable as a precedent in this, that, while in the John Benich case (see my dispatch No. 931) the Government of Austria-Hungary admitted the position taken by the Department of State through this legation, viz, that the passport of a friendly nation was prima facie evidence of citizenship and must be respected as such by local executive and administrative officers, the right has several times been suggested that judicial officers might with impunity act in disregard of the same. I therefore took occasion in this case to deny the right of the district attorney, whose complaint is herein set out in full, to hold this man to answer for failure to perform military duty in Austria-Hungary, at the same time ignoring his right as an American citizen and treating with contempt his passport from the State Department.

Without trenching upon the debatable ground of how far the courts of a friendly nation may go in reviewing the decisions of another friendly nation in reference to the status of a citizen claimed by either

1 Foreign Relations, 1894, p. 36.
Government, I contented myself with politely but firmly contending that in a case where no charges of fraud were made against the person presenting the passport, in its procurement or as to his own identity, etc., the judicial officers were as much bound as executive or administrative officers to respect the paper when fair upon its face, and that it must be taken by them as prima facie evidence of the facts therein recited; and it gives me great pleasure to say that this view is shared by the Imperial and Royal ministry of foreign affairs for Austria-Hungary, as will be seen by its final note, a translated copy of which is herewith submitted, and by which this legation is informed that the district attorney at Krakau was not only instructed to immediately dismiss his complaint, but that in future the judicial authorities of Galicia were instructed that they must be governed in similar cases by the treaty and the views expressed in my notes to the imperial and royal ministry of foreign affairs.

It gives me great pleasure to add that since the determination of the Benich case, to which I have already referred, the annoyances of our citizens bearing American passports have been much less frequent, and it is to be hoped that the determination of this case and the instructions that have in accordance therewith been issued to the local authorities of Galicia will perhaps entirely end all further annoyance and hindrance to American travel in the provinces of Austria-Hungary. The frequent complaints in the past, it gives me pleasure to say, have not arisen from any want of courtesy or consideration on the part of any officials of the foreign office, or of the higher officers of State, but from overzeal and want of knowledge on the part of provincial officers or local authorities not under the control or jurisdiction of the ministry of foreign affairs.

Trusting that the determination of this matter may meet with your favor and approval,

I have, etc.,

BARTLETT TRIPP.

[Inclosure 1 in No. 151.]

Mr. Tripp to Count Goluchowsky.

UNITED STATES LEGATION,
Vienna, May 23, 1895.

YOUR EXCELLENCY: One Solomon Czosnek, a naturalized citizen of the United States, makes complaint to this legation that he has been arrested at Chrzanow, Galicia, and held to answer the criminal charge of illegally abstaining from fulfilling military duty. The facts, as presented to this legation, are as follows:

Solomon Czosnek was born in Chrzanow, Galicia, on April 1, 1872, of Austrian parents. In 1878 the father emigrated to America, and having established a home in the United States sent for his family, consisting of a wife and two sons, the complainant, Solomon Czosnek, and a younger brother; that subsequently in 1888, the father, having made previous application, was duly naturalized a citizen of the United States, this complainant being at that time 16 years of age; that he has since said naturalization and since his arrival in the United States continuously resided therein until January, 1895, when, desiring to visit Austria upon matters of business, he applied to the Department of State at Washington, D. C., and was granted a passport in the usual form, the same being numbered 7178 and bearing date January 5, 1895.
Arriving at Chrzanow, he was, about the 1st of March, 1895, summoned to appear for military duty, to which summons he replied by submitting his passport and claim of American citizenship.

Mr. Czosnek was, on the 1st of May, 1895, subsequently arrested and held to answer the criminal charge of illegally abstaining from fulfilling military duty as above stated. To this charge he made the same answer and again exhibited his passport, which was taken from him by the local authorities, and has since been retained by them. Mr. Czosnek desires to visit Russia and other parts of Europe before returning to America, but is still detained at Chrzanow under surveillance and his passport is still withheld from him.

If the facts are as stated in the complaint made to this legation, a great wrong has been done Mr. Czosnek, one which your excellency, it is confidently expected, will immediately take measures to correct.

Under the naturalization laws of the United States, when the father becomes a naturalized citizen of that Government his wife and minor children become, ipso facto, citizens of the United States, and the citizenship of this son, under the facts herein stated, it will be at once admitted, comes clearly within the terms of the treaty of 1870, which provides that “citizens of the Austro-Hungarian Monarchy who have resided in the United States of America uninterruptedly 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.”

This is but one of several instances in which the local, civil, and military authorities of Austria-Hungary have deemed it their right to pass upon the validity or authenticity of American passports, whereby our citizens have been long hindered and delayed, and in some cases have been arrested and put to great cost and inconvenience. In the case of John Benich (see note of this legation to the foreign office, No. 93, under date of August 23, 1894), I took occasion to express fully and at length the views entertained by my Government as to the right of the local authorities of one government to review the decision of another friendly government under the general principles of international law, and in which view Count Welsersheim, speaking for his excellency the minister of foreign affairs, in his reply (see note from foreign office of date August 18, 1894, No. 28523-7), approving the views therein expressed, took occasion to say:

In regard to that part of the esteemed letter of September 26, 1893, which treats of the necessity that papers issued by the competent authorities of one country should be respected and recognized by the authorities of a third state, as long as these documents do not bear unmistakable proofs of having been counterfeited or otherwise obtained by fraud, the provincial government of Croatia-Slavonia-Dalmatia begs leave to say that it fully shares the views expressed in that part of the note, and that the governor has not failed to instruct all his subordinate officers to act in the future in due conformity.

Again assuring your excellency, as in my note in that case I took occasion to do, that should any case arise in which the passport of an American citizen is drawn in question as to the identity of its bearer, or as to fraud in the procurement of the passport itself, this legation will hold itself in readiness to aid in causing the allegations and complaints to be immediately investigated by the authority from which the document issued, to the end, in all cases when the charges are sustained, that the document may be canceled and the bearer of the same be convicted and punished, my Government must insist, where its passport, bearing upon its face an apparent validity, is presented to the local authorities of your Government, that it must be respected as such.
without subjecting its bearer to months of delay and great expense in proving and determining the facts of which the paper is prima facie evidence and, as to the local authorities to whom it is presented, the best evidence.

Being assured by our previous correspondence that no difference of opinion can possibly exist between the two Governments as to the legal questions involved, I trust it is not asking too much to request that such instructions may be issued to the different provinces of Austria-Hungary as may in the future save your excellency the annoyance, and this legation the trouble, of making and passing upon complaints of American citizens deprived of their rights by provincial authorities acting in violation of the rules of international law governing the intercourse of friendly powers.

And at the same time permit me, etc.,

BARTLETT TRIPP.

[Inclosure 2 in No. 151.—Translation.]

Mr. CZIRAKY to Mr. TRIPP.

VIENNA, June 27, 1895.

SIR: The ministry of foreign affairs has not neglected to address itself to the minister of public defense in regard to the nonfulfillment of the military duty on the part of the alleged citizen of the United States, Solomon Czosnek, as requested in the esteemed note of May 23 last, No. 96, in order that the case in question be fully investigated and further steps be subsequently taken.

The minister of public defense now reports that the investigations which have been made furnish the following result:

Solomon Czosnek, born in Chrzanow in 1872, was called to report for military duty, by ticket No. 584, in the year 1893. He did not answer this summons, however, neither in 1893 nor in 1894, for the reason that he had gone to America when he was 16 years old in company with his mother, without having obtained a permit to emigrate. He was, therefore, carried on the descriptive rolls according to paragraph 109 of the military law, and marked as being absent.

On his return to his native town in 1894, he was summoned by the authorities of his community to appear before the military board of examination, and in February, 1896, he reported to the district captain at Chrzanow, protesting against his enrollment on the ground of having become a citizen of the United States by the naturalization of his father in 1888, when he was yet a minor. To prove his assertion, he produced the passport which had been issued to him.

His statements were written down by the district captain at Chrzanow, and afterwards transmitted to the state attorney at Krakau for further action.

In the course of proceeding against Solomon Czosnek the district court at Chrzanow had taken the passport away from the accused, and had forwarded the same to the United States legation at Vienna, with the request that its genuineness be verified, asking at the same time whether the owner of the document in question was really an American citizen.

A reply has so far, as the provincial governor at Lemberg under date of June 8 reports, not yet been received, and the provincial government of Galicia is of opinion that Solomon Czosnek's passport is still
with the United States legation. The accused, it must here be said, is not deprived of his liberty, and is allowed to move about freely.

The case, as it appears from the foregoing, being still pending, the ministry of public defense is unable to act before judgment has been passed, the more so as it must first be ascertained whether Solomon Czosnek is the legitimate son of the father who emigrated to America and whether he received his citizenship with the latter according to law.

While the ministry of foreign affairs reserves to itself the privilege of giving further information to the honorable envoy of the United States as soon as received, the undersigned avails, etc.,

CZIRAKY,
For the Minister of Foreign Affairs.

[Inclosure 3 in No. 151.]

Mr. Tripp to Count Goluchowsky.

UNITED STATES LEGATION,
Vienna, June 27, 1895.

YOUR EXCELLENCY: Referring to the note from this legation, No. 96, of May 23, 1895, in reference to the case of Solomon Czosnek, I have the honor to further say that I have this day received from Mr. Czosnek another communication containing copy of an “Anklage-Akt” served upon him, a duplicate of which is herewith enclosed for the consideration of your excellency.

If the reasons given by the district attorney for holding this man to answer before the courts to a criminal charge are the real and only ones against him, I am sure your excellency will agree with me that it is my duty to insist upon prompt and immediate discharge. The district attorney says:

In view, however, that the accused, although he emigrated before he was liable to military duty, received no permit from the minister of defense (par. 64 of the military law), or at least can not produce one, it can not be assumed that he is exempt from military duty even if he should be provided with a United States passport.

In other words, a United States passport is not prima facie evidence that a man is an American citizen, and as such exempt from military duty. The language used admits of no other meaning.

No charge is brought against this man that his passport has been obtained by fraud, that he is not the identical person therein named, but he is arrested upon the ground that he was born a citizen of Austria-Hungary and has failed to report for military duty during the three years 1893, 1894, 1895, since he has become of age, and this in spite of his passport as an American citizen, which he presents and the authenticity of which stands unchallenged and undenied. Your excellency will agree with me that no principle of international law permits the passports of a friendly nation to be thus ignored or even treated with contempt.

Without desiring to enter upon the field of discussion as to how far or under what circumstances a friendly nation is permitted to attack the passports of the citizens of another friendly nation, I content myself with denying the position taken by the district attorney in this case and the reasons given by him for holding this man to answer a criminal charge and for assuming that he may do so notwithstanding the passport, and without attempt at impeaching the same. As Mr.
Czosnek has already been long detained in Chrzanow at great expense, and the reasons given by the local authorities are such as can not be admitted in justification of his further detention; I am led to confidently expect that your excellency will immediately take such steps in the premises as will make complaint as to further action on the part of the local authorities in Chrzanow unnecessary by my Government.

I avail, etc.,

BARTLETT TRIPP.

[Subinclusion.—Translation.]

CHARGES.

The state attorney at Krakau charges Solomon Czosnek, of Chrzanow, 23 years old, single, commercial correspondent, to have avoided rendering military duty, and to have been outside of the limits of the Austro-Hungarian Empire during 1893 and 1894, at a time when he should have reported for service, by which act he violated the provisions of paragraph 45 of the law of April 11, 1889, N-41, and it is ordered that he be tried before the provincial court at Krakau, where he will be summoned, and that during the trial the documents issued by the district captain at Chrzanow on April 3, 1895, and May 22, as well as those of the chief of the community at Chrzanow of April 18, 1895, and all the testimonials of the accused, be admitted.

REASONS.

It appears that the accused was born in 1872 at Chrzanow, and was therefore liable to military duty in 1893, 1894, and 1895. He did not report, however, until in the spring of 1895.

He alleges to have emigrated when 16 years old, to have become a citizen of the United States, for which reason he did not report for military duty; nor did he do so until he came to Chrzanow, at the beginning of 1895, when he was summoned. In view of the fact, however, that the accused, although he emigrated before he was liable to military duty, received no permit from the ministry of public defense (par. 64 of military law), or at least can not produce one, it can not be assumed that he is exempt from military duty, even if he be provided with a United States passport, and as he failed to fulfill his military duties in 1893 and 1894, and was during that time in America, the charges appear to be well founded.

Krakau, May 31, 1895.

THE STATE ATTORNEY.

[Inclosure 4 in No. 151.]

Mr. Tripp to Count Goluchowsky.

UNITED STATES LEGATION,
Vienna, June 29, 1895.

YOUR EXCELLENCY: This legation has the honor to acknowledge the receipt of the esteemed note of June 27 last in reference to the case of Solomon Czosnek, and replying thereto in addition to my note No. 103, of June 27 last, upon the same subject-matter, I have the honor to say in reference to the statement that the district court at Chrzanow has forwarded the passport of Mr. Czosnek to this legation for authentication, that it has never been received at this legation, and if it has been sent, as therein stated, it must have been lost or miscarried. If received by me it would have been examined and promptly returned to the officer from whom received.

Begging permission to again call the attention of your excellency to the contents of my note No. 103, of June 27 last, already herein referred to, and which must have been written subsequently to the esteemed note to which this is in reply; I take this occasion, etc.,

BARTLETT TRIPP.
SIR: The ministry of foreign affairs had the honor of receiving the esteemed notes of June 27 (No. 103) and of June 29 (No. 104) in which the honorable envoy of the United States was pleased to refer to the case of Solomon Czosnek, a naturalized citizen of the United States, arrested at Chrzanow for nonfulfillment of his military duty, denying the position taken by the district attorney at Krakau against the above-named Solomon Czosnek for the reason of having violated the provisions of paragraph 45 of the military law.

The ministry of justice, to whom the matter was referred by the ministry of foreign affairs, now reports that it has not delayed to instruct the State attorney at Krakau to submit the case to a full investigation and to make the necessary depositions with all possible haste.

From the report, which was accordingly made by the State attorney at Krakau, under date of July 10, to the ministry of justice, it appears that the State attorney, after having convinced himself of the lawful naturalization of Solomon Czosnek in the United States, and of the unquestionable genuineness of the passport produced by Czosnek, and his identity, has instructed the district attorney at Krakau to withdraw the charges brought against Czosnek under date of May 31, and to cause the passport, which was among the papers taken from him at the time, to be returned to Solomon Czosnek.

The State attorney at Krakau has, moreover, informed the district attorney that the proceedings instituted by the latter in the premises were not in conformity with the existing regulations, and has at the same time instructed the authorities under his jurisdiction to act in future in strict compliance with the provisions of the treaty of September 20, 1870, and with the views expressed by the honorable envoy of the United States regarding the prima facie evidence of foreign and American passports and documents proving the identity of persons.

While the undersigned has the honor to inform the honorable envoy of the United States of this decision, he avails, etc.,

PASSETTI,
For the Minister of Foreign Affairs.

Mr. Adee to Mr. Tripp.

No. 170.]  DEPARTMENT OF STATE,
Washington, August 12, 1895.

SIR: I have to inform you that your dispatch No. 151, of the 26th ultimo, transmitting copies of your correspondence with the Austro-Hungarian foreign office in regard to the case of Solomon Czosnek, a naturalized American citizen, who was arrested on a charge of evading military duty in his native country, has been received.

It appears from the correspondence that Solomon Czosnek was born in Chrzanow, in the province of Galicia, of Austrian parents, in 1873. His father went to the United States and was naturalized while Solomon was a minor. In 1895 Solomon went to Chrzanow on business, having provided himself with a passport from this Department. He was arrested for violating military law in evading service, was bound over
to the district court to answer the criminal charge, and through your intervention he was discharged.

The case is a valuable one, because in the Benich case and other cases the authorities of Austria-Hungary, while admitting that a passport of a friendly nation is prima facie evidence of citizenship and must be respected by administrative officers, have suggested that judicial officers might act in disregard of it. In this case you contended that when there is no charge of fraud in the procurement of a passport or as to the identity of the person presenting it, it must be respected by judicial as well as administrative officers, and the correspondence shows that this view was shared by the Austro-Hungarian minister, who instructed the attorney to dismiss the complaint, and added that hereafter the judicial authorities of Galicia would be instructed to be governed in all similar cases by the views expressed in your notes. You add that since the determination of the Benich case the annoyances of our citizens bearing American passports have been much less frequent, and you express the opinion that now they will entirely end. They seem to have been due in the past not to any want of courtesy on the part of the officials of the foreign office or of the higher officials of State, but from overzeal and want of knowledge on the part of local authorities not under the control or jurisdiction of the ministry of foreign affairs.

The Department fully approves of your course in regard to the case in question.

I am, etc.,

ALVEY A. ADEE,
Acting Secretary.

CITIZENSHIP CASE OF EDWARD KOVACSY.

Mr. Tripp to Mr. Olney.

No. 147.]

UNITED STATES LEGATION,
Vienna, June 30, 1895. (Received July 18.)

SIR: I have the honor to submit for your consideration the facts in the case of Hugo Kovacsy, and my action in the premises as follows: Mr. Hugo Kovacsy, a native of Hungary, emigrated with his wife to the United States in the year 1871, where, having resided continuously until 1876, a period of five years, he was naturalized and became a citizen of the United States. In the year 1874, about two years prior to such naturalization, Edward Kovacsy, a son of the said Hugo Kovacsy and wife, was born in New York City. In 1878 Hugo Kovacsy, his wife, and infant son returned to Hungary, to their native town, where they have since continually resided. The father claims still to be an American citizen and to have never renounced in any way his allegiance to his adopted country. He has, however, never returned, nor has his wife or son ever returned, even for a visit to the United States, since their departure in 1878, but the father has been engaged in business here and has reared and educated the son here in Hungary, and declares that he has never had any intention of again returning to the United States, except perhaps for a visit, since he left it in 1878.

The son Edward is now 21 years of age and has been summoned to appear for examination as a soldier in the Hungarian army, and the father appeals to this legation for its intervention upon the ground that the son is an American citizen. The son declares that he never intends to go to America to reside, but expects and intends to remain in Hun-
gary, so far as he knows, during his natural life, but claims to be an American citizen by reason of his birth.

Upon these facts I stated to the father and son that the son, by reason of the peculiar circumstances of his birth, belonged to that class of individuals who were privileged to choose for themselves whether on coming of age they would become a citizen of the country of their own and father’s domicile or of the country in which they were born; that if he now elected to go to America, in good faith to take upon himself the duties of citizenship there, I would issue to him a passport and intervene in his behalf by application to the Government of Austria-Hungary to release its claim upon him as a subject of Hungary. He expressed a willingness to go to America if he might be again permitted to immediately return to reside as before permanently in Hungary.

I explained to him fully why, as in his case, the power of the Government of the United States could not be invoked to protect a citizen of Austria-Hungary against the execution of its own laws. He was now at that period of his life when he must elect whether he would be a Hungarian or an American. If he elected to be a Hungarian, the United States would not intervene to prevent him from performing the duties of a Hungarian citizen, among which was his duty to serve in its armies as required by its laws. If he elected to be a citizen of the United States, good faith required that he should place himself in a position to be ready to perform the duties his native country might require of him, which he could not do as a resident abroad; that the duties of citizens and Governments toward each other were reciprocal; that the citizen who claimed from his Government the right of protection must himself be ready to perform toward his Government the duties of a citizen when required; that while he might still claim to be an American citizen, I could accept nothing less in his case than an actual renunciation of the domicile so long maintained in Hungary and a return to the United States in good faith to make it his permanent home. This he declined to do, and I have refused to intervene, subject to your approval.

It may not be out of place for me to briefly state my view of the general principles of international law which seem to make the case easy of determination.

Under the Austro-Hungarian law a citizen born abroad of Austro-Hungarian parentage is and continues to be, unless he renounces his allegiance, an Austro-Hungarian subject; which is the rule obtaining in most European States, and although there is some conflict in the decisions, I do not understand that it is now seriously claimed on the part of our Government that the fourteenth amendment, or section 1992 of the Revised Statutes of the United States, extends to a case of a child born in America of foreign parentage and having only a temporary domicile therein. The words of the statute, “subject to the jurisdiction thereof,” and of the fourteenth amendment, “not subject to the jurisdiction of the United States,” which are used as qualifying the clause making all persons born or naturalized in the United States citizens, it seems to me, clearly except children of foreigners temporarily residing in the country; such children are subject to the jurisdiction of the country of which their parents are citizens, and not to the jurisdiction of the United States. The son therefore became a citizen of the United States, not by the accident of birth, but by the naturalization of his father, two years later, and this citizenship he could abandon or elect to maintain on arriving at age, irrespective of whether his father did or did not in the meantime abandon his own right of American citizenship.
On arriving at the age of discretion, however, the act of election should be something more tangible than the mere statement of the candidate that he elects to be an American citizen, especially in a country where, as in this, there is every inducement to be in name an American citizen, and in fact an Austrian subject; and in such cases I have deemed it prudent to require that the assertion shall be accompanied by some act of good faith, such as placing himself within the jurisdiction of the country of which he claims protection, or some other act of sacrifice on his part which may satisfy me that his purpose is not one of evasion, but that in good faith he is and intends to be a citizen of the United States.

I shall await your approval or disapproval of my action before taking any further steps in the premises.

I have, etc.,

BARTLETT TRIPP.

Mr. Ade to Mr. Tripp.

No. 164.]

DEPARTMENT OF STATE,
Washington, July 23, 1895.

SIR: I have received your dispatch No. 147, of the 20th ultimo, in regard to the case of Hugo Kovacsy and his son Edward, a young man of 21 years of age, born in the United States, who has been summoned to appear for examination as a soldier in the Hungarian army.

In view of the refusal of Edward Kovacsy to elect American citizenship by coming to the United States, in good faith to reside and perform the duties of citizenship, your course in refusing to intervene to secure for him exemption from military service in Austria is approved.

Your general discussion of the question of citizenship and the fourteenth amendment and section 1902 of the Revised Statutes has been read with interest. The argument advanced by you has much force. It seems, however, not to be in harmony with the decisions of the circuit court of the United States, which hold that birth in the United States creates citizenship, irrespective of the nationality of the parents. The correctness of this view is enforced, it seems to me, by the fact that thousands of persons born here of alien parents who were never naturalized and who have returned to their native countries, are exercising all the rights of American citizenship by virtue of their birth here.

I am, etc.,

ALVEY A. ADEE,
Acting Secretary.

CITIZENSHIP CASE OF SALOMON FADEN.

Mr. Townsend to Mr. Olney.

No. 163.]

UNITED STATES LEGATION,
Vienna, October 14, 1895. (Received Oct. 30.

SIR: I have the honor to present to your notice the case of Salomon Faden, a native of Hungary, born in 1870, emigrated to the United States when 16 years of age, remained there five years and a half, was naturalized before the common pleas court of Hudson County, N.J., on September 17, 1891; left the United States, returning to his native country immediately after obtaining his naturalization certificate and a
passport from the Department of State dated September 30, 1891, numbered 33122.

When he obtained the above passport he evidently affirmed his "intention to return to the United States within two years, with the purpose of residing and performing the duties of citizenship therein." Two years later, when his passport had expired, he applied to this legation and obtained a renewal of the same, October 2, 1893, at which time he again took the oath of allegiance and declared his intention to return to the United States within two years to perform the duties of citizenship. As his passport has again expired, he now applies for a renewal of the same, after having twice failed to adhere to his declared intention of returning to the United States.

After a thorough investigation of this case, I have unearthed the following facts: Salomon Faden belongs to a largely increasing class of citizens of Austria-Hungary who run away to the United States just prior to the time when they are to be called into the military service of their country, remaining in the United States just long enough to obtain a naturalization certificate, returning to the country of their birth, and continuing to reside there for the rest of their lives, their every voluntary act showing a determination to abandon their acquired citizenship, yet wishing to retain and claim the protection of the strong arm of the United States Government, without showing any intention to return the favor by any act of allegiance or support of the Constitution.

It is this class of naturalized citizens, who do not appreciate the high honor and privilege of American citizenship, except so far as they can use it as a means of escaping their duties in their native country, that have brought our citizenship into disrepute, have created a feeling of disrespect to our naturalization certificates among the authorities of this Government, and have thereby subjected the bona fide naturalized citizens of the United States who wish to return to this country for a temporary visit to their families to endless trouble, annoyance, and expense.

Salomon Faden, under my cross-examination, admitted that he had never voted in the United States, did not pay a penny of tax there, owned no property of any kind, had no business connection with any American house, had no domicile in the United States; in fact, had virtually severed all connection with his adopted country, a country which, in the eyes of this class, is good enough to protect them, but not good enough to live in.

Since he obtained his last passport, in October, 1893, he has married here a native girl with some money, has purchased a business in his native town, and practically settled down there to raise a family. He says that "if his business does not go, he may try his luck in America." In view of these facts I am holding his application for a third passport, subject to instructions from the Department. This case brings forward a question which is growing yearly more and more serious to our naturalized citizens of Austro-Hungarian birth. This country is full of this class of citizens, as well as a large number who contemplate a trip to America with the sole object of avoiding military duty. I have talked to scores of them at wayside inns and in small villages about the country; they knew me only as a tourist, and they have expressed their opinions and intentions freely. It is nearly always the same story; instead of America being regarded as a land of promise for the poor emigrant, a country to grow up in and earn a respectable livelihood, to become good, useful citizens thereof, with all the rights, privileges, and liberties which the term implies, it is looked upon as a land where they can quickly and easily obtain a paper which will allow them to
shirk the performance of their duties to their native land, and place
them above their fellows who have not been sharp enough to make
the journey at a proper age, as a means of obtaining freedom from
work and military discipline.

This class of citizen tell me that they can make a better living here
than in America, and the secret of it is that they are not working men
or laborers, but sharp, shrewd traders, money lenders, and small village
storekeepers, who are much too clever in handling the monetary unit
of the country for the peasants and farm hands, with whom they have
their principal dealings. In America the same class of laborers are
less ignorant, better educated, and more intelligent in every way, so it
becomes there a question of “Greek meets Greek,” with the advantage
in favor of the native American workingman. The crowning disgrace
to our citizenship, which I have time and again observed in this class,
is that they can neither read, write, nor speak the English language,
they having spent their time while in the United States among the
members of a foreign colony, where their native language is almost
entirely spoken, and they have not the smallest conception of the Con-
stitution of the United States, or the nature of the oath of allegiance
which they take every two years with perfect equanimity.

In view of the above facts, am I authorized in renewing the passport
of Salomon Faden?

I have, etc.,

LAWRENCE TOWNSEND.

Mr. Olney to Mr. Townsend.

No. 189.] DEPARTMENT OF STATE,

Washington, October 31, 1895.

SIR: Your No. 163, of the 14th instant, in relation to the application
for a renewed passport made by Salomon Faden, has been received.

Mr. Faden’s prior application, upon which a renewal of a previous
passport granted by this Department was obtained by him at your
legation October 2, 1893, having contained a positive declaration to
return to the United States within two years to perform the duties of
citizenship, it would require now very conclusive proof of his deter-
mination to so return in order to issue him a third passport. The facts
you state, however, conspicuously negative any such purpose of return,
and Mr. Faden’s declaration to you that, if the business he has estab-
lished in his native town “does not go, he may try his luck in America,”
is entirely too indefinite to be considered.

For some years the Department has in special cases, upon the re-
peated application for renewal of passports, directed that the appli-
cant be warned that the declaration of intention to return to the
United States is not an empty phrase, and that in the case of a further
renewal being sought withholding of a passport would probably fol-
low. You do not state whether any such warning was given to Mr.
Faden, but his case does not seem sufficiently meritorious to invite the
Department to stretch its custom in this regard. Both on the pre-
sumption and the facts he may be deemed to have voluntarily repatri-
atated himself, and if he has not actually resumed Austrian allegiance in
conformity with the laws of that country, he has at least voluntarily
abandoned practical allegiance to the Government of his acquired
nationality to such an extent as to absolve it in return from the duty
of protecting him while he maintains indefinite and apparently perma-
nent domicile in the land of his birth.

I am, etc.,

RICHARD OLNEY.