

**THE LAW OF
NATURALIZATION: AS
AMENDED BY THE
NATURALIZATION ACTS, 1870**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649027675

The Law of Naturalization: As Amended by the Naturalization Acts, 1870 by John Cutler

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

JOHN CUTLER

**THE LAW OF
NATURALIZATION: AS
AMENDED BY THE
NATURALIZATION ACTS, 1870**

THE LAW
OF
NATURALIZATION,

AS AMENDED BY

THE NATURALIZATION ACTS, 1870.

BY

JOHN CUTLER, B.A.,

Of Lincoln's Inn, Barrister-at-Law,

PROFESSOR OF ENGLISH LAW AND JURISPRUDENCE, AND PROFESSOR OF
INDIAN JURISPRUDENCE AT KING'S COLLEGE, LONDON.



LONDON:
BUTTERWORTHS, 7, FLEET STREET,
Sole Publishers to the Queen's most Excellent Majesty.
HODGES, FOSTER AND CO., GRAFTON STREET, DUBLIN.
1871.

The Law of Naturalization.

AS ALTERED BY

“THE NATURALIZATION ACT, 1870.”

IN any work dealing with the Naturalization Act, 1870, it would seem advisable, before taking up the statute itself, to give a brief sketch of the antecedent English law relative to the *status* or condition of subjects and aliens, with a reference now and then, by way of comparison, to the kindred laws of foreign States. This sketch, from its brevity, will necessarily be imperfect. It may suffice, however, to put those not familiar with such antecedent law in a position better to understand the statute of last session, and the sweeping changes which it effects. Those who may wish to dive deeper into the subject are referred to the published Report of the Royal Commissioners for inquiring into the Laws of Naturalization and Allegiance, upon which the statute is to a great extent founded, and which is a storehouse of information as to the laws upon the subject. In such a sketch four points ought to be brought out:—(1.) Who were

15

aliens before the statute of last session? (2.) Who were British subjects? (3.) How a British subject could become an alien. And (4.) How an alien could become a British subject.

The rule of the English common law is simple enough. Every person born within the dominions of the Crown, no matter what his parentage, is a British subject, except the children of foreign sovereigns or ambassadors, who, by a fiction of law, are considered as at home all the time that they are abroad; and every person born out of the dominions of the Crown is an alien. Therefore, children of French parents born in England are British subjects, and children of British parents born abroad are aliens. Thus the common law adopted only the *jus soli* or territorial test of nationality, and paid no attention to the *jus sanguinis*, or the test of descent. This simple rule was soon changed, and by a succession of statutory alterations the law was brought into the shape in which it existed immediately before the Act of last session, viz., that all persons born within the dominions of the Crown, and all persons born abroad* whose fathers or grand-

* By the joint effect of 4 Geo. II. c. 21, and 13 Geo. III. c. 21. An exception is, however, made of those whose fathers were at the time of their birth attainted of high treason, or liable to the penalties of high treason or felony, in case of their return to the United Kingdom without royal license, or are in the actual service of any prince or State at enmity with the Crown. Mere abjuration of his allegiance to the Crown by a British subject does not, however, deprive his children or grandchildren of the benefit of these statutes.

fathers on the father's side were born within the dominions of the Crown, were British subjects, and all other persons aliens. (For simplicity sake the conversion of aliens into British subjects by naturalization is for the present disregarded.) These statutory alterations, although they made the children of a British father and an alien mother born abroad British subjects, did not confer the same *status* on the children of a British mother and an alien father born abroad; but by an Act of the present reign* such children, though not made British subjects, were made capable of taking and holding real and personal property. With regard to the kindred rules of foreign legal systems, the law of the United States is substantially† the same as that of England. In France‡ the provisions of the Code Napoleon are in effect that the child of a French father is a French subject; but a child born abroad of a French father, who has lost his French nationality, must claim French nationality within a year of his majority, and establish himself in France if not already established; and the same applies to a child born in France of alien parents. In Prussia and Austria the child of a subject wherever born is a subject, and the child of an alien is an alien.

The difference between the status of a British subject and that of an alien in this country must

* 7 & 8 Vic. c. 66.

† See Cockburn on "Nationality," p. 12.

‡ Report of the Royal Commissioners. Appendix, p. 19.

next be discussed. Both British subjects and aliens while in the dominions of the Crown owe allegiance to the Crown; but in the case of British subjects the allegiance owed is natural allegiance* (*i. e.* that which a subject owes to his sovereign wherever he may be); whereas in the case of the alien the allegiance owed is local allegiance (*i. e.* that which a person owes to the sovereign of the country in which he may happen to be). Allegiance, it may here be remarked, is co-relative with protection; † and, therefore, as an alien owes no allegiance to the British Crown, except while resident within the dominions of the British Crown, he is not entitled to any protection except while so resident; but, as a British subject owes allegiance to the Crown while resident abroad, he is equally entitled to protection abroad. The difference then between the status of a British subject and that of an alien consists in the latter being subject to certain disabilities which the former is not, although the tendency of legislation has always been to reduce these disabilities to a *minimum*. Thus aliens once paid taxes which British subjects did not—*e. g.* the famous aliens' duty, imposed in the reign of Edward I.—but they do so no longer. In short, the disabilities of aliens were at the commencement of the present year

* As to the difference between natural and local allegiance, see Stephen's "Commentaries," vol. ii., p. 430.

† See Forsyth's "Cases and Opinions on Constitutional Law," p. 334.

but four in number, viz. (1) they were incapable of any political rights; (2) they were incapable of political rights, and could not hold any office of trust; (3) they could not own British ships; and (4) they could not hold real estate, except upon lease for a term not exceeding twenty-one years; which last disability has been removed by the Act of this session. In all other respects an alien while on British soil has exactly the same rights and privileges as a British subject. He can sue* and be sued in any court. He can be made bankrupt. The policy of the country is † to encourage foreigners to settle here for the purposes of trade, as well as to afford them, whether their estate be high or low, a secure asylum in times of trouble and reigns of terror; and even when a war breaks out between this country and the State to which an alien belongs, the alien would be permitted to continue his residence in this country so long as he conducts himself peaceably on the footing of an alien friend.

The next question is—how could an alien become a British subject? and the answer is—in two ways: by denization or naturalization. As to denization little need be said. The granting of letters of denization

* An alien plaintiff may be called upon to give security for costs, and an alien defendant in action to recover £20 or upwards may be arrested before judgment, if there is reasonable cause to believe that he is about to quit the country.

† As to the legislation for and against alien merchants, see Cockburn on "Nationality," p. 146.

is a branch of the Royal Prerogative, and remains untouched by the Act of last session, although letters have been but rarely applied for since the year 1844. A denizen, to quote Stephen's "Commentaries" (vol. ii., p. 438), "is in a kind of middle state between an alien and a natural-born subject, and partakes of both of them. He may take lands by purchase or devise which an alien in general may not, but cannot take by inheritance, for his parent (through whom he must claim) being an alien, had no inheritable blood, and therefore could convey none to his son. And upon a like defect of hereditary blood, the issue of a denizen born *before* denization cannot inherit to him, but his issue born *after* may. And no denizen can be of the Privy Council or either House of Parliament, or have any office of trust, civil or military, or be capable of any grant of lands, &c., from the Crown."

Naturalization was effected in England (for it is impossible to touch on naturalization in the colonies in so brief a sketch)* in one of four ways—(1) by Act of Parliament; (2) by certificate of a Secretary of State under the 7 and 8 Vict. c. 66; (3) by marriage (an alien woman marrying a British subject becomes thereby naturalized); † (4) by rendering certain services to the State, in return for which an alien once became *ipso facto* naturalized—*e.g.*, setting up and using certain trades for three years in England, Wales, or Berwick-on-

* But see Cockburn on "Nationality," p. 37.

† 7 & 8 Vict. c. 66, s. 16.