PARAGRAPH TWENTY-FIVE OF THE NEW GERMAN CITIZENSHIP LAW

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HERBERT ADAMS GIBBONS in *The New Map of Europe* tells us that "in recent years there has come to the front [in Germany] more than ever the theory that German nationality cannot be lost by foreign residence or by transference of allegiance to another State." To Gibbons' satisfaction "convincing proof of this is found in the new citizenship law, sanctioned with practical unanimity by the *Reichstag* and *Bundesrath,* which went into effect on January 1, 1914." As "the most interesting of all" he quotes: "Article XXV, section 2, of which says: 'Citizenship is not lost by one who before acquiring foreign citizenship has secured on application the written consent of the competent authorities of his home state to retain his citizenship.'" Commenting on this section 2 of § 25 he thinks that "the result of this law, since the war broke out, has been to place a natural and justifiable suspicion upon all Germans living in the countries of the enemies of Germany", inasmuch as, according to his opinion, "a legal means has been given to these naturalized Germans to retain, *without the knowledge of the nations where their oath of allegiance has been received in good faith,* citizenship in Germany."

The subject has been presented in like manner by many other writers. However, when viewed in its historical perspective, i.e., when viewed in the light of the debates in the *Reichstag* during the reading of the prospective law and in the light of comparison with the corresponding laws of other nations, the case assumes a somewhat different aspect.

Unquestionably Mr. Gibbons is right when he asserts that "in recent years there has come to the front [in Ger-

many] more than ever the theory that German nationality cannot be lost by foreign residence ''; but he is in error when he claims that a preponderance of opinion opposes also the loss of German citizenship " by transference of allegiance to another state.'' According to the old naturalization law of 1870, German nationality was lost by a ten years' residence abroad and by acquisition of foreign allegiance. By force of the new law, mere residence abroad does no longer entail the loss of the *Reichsangehoerigkeit,* while in principle and in practice the *Reichsangehoerigkeit* is still lost when its loss is considered as meeting with the intention of the German assuming foreign nationality. Unmistakably clear in this regard is what Dr. Clemens Delbrueck, Secretary of State for the Interior, said on February 23, 1912, during the debate on the first reading of the law in the *Reichstag.* " It has been stated ''—so we read—" that we must apply the principle that German nationality acquired by birth, wherever our cradle may have stood, can never be lost. This principle has been expressed in the maxim: *semel Germanus, semper Germanus.* However nice this may sound, applied to practical life it has its disadvantages and, on the other hand, has not the advantages expected. If we accept the principle that who has become a German, or who was born a German, must remain a German, we must at the same time at least admit that he who clearly and explicitly announces that he does not wish to remain a German cannot (or must not) forcibly be kept in allegiance to a country to which he does not desire to belong—especially if such forcible allegiance should create for him difficulties in his relations to the country which, as he rightly or wrongly believes, he should prefer to his own native land. In consequence thereof we have in the new bill eliminated the loss of the *Staatsangehoerigkeit* resulting from lapse of time, but we consider it imperative that the *Staatsangehoerigkeit* be lost when a German has acquired a foreign nationality by means of a formal application.'' The same thoughts are expressed by Dr. Emil Belzer, member of the Centre party in the *Landtag* and *Reichstag,* during the second reading of the proposed law. Dr. Belzer said:

> This bill intends to make an end of the unhappy state of affairs which permits Germans who desire to remain German nationals while residing abroad to lose their German citizenship [on account of such

residence in a foreign state]. As a rule the loss of German citizenship is entailed only when the individual explicitly declares his intention to give up the fatherland or when such intention must be assumed from the fact that he acquires foreign citizenship or that he neglects to fulfill his military obligations. It is clear that much is to be said against double allegiance. . . I need call your attention only to the international complications which might be the result. . . .

And thus § 17, section 2, decrees that:

> Citizenship is lost—
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> By the acquisition of foreign citizenship (§ 25).

The § 25 here referred to contains, however, one proviso to section 2 of § 17, in so far as it makes to some extent or in exceptional cases the loss of German nationality through acquisition of foreign citizenship subject to the willingness of the individual to lose his *Reichsangehoerigkeit.*

While section 1 of § 25 stipulates that:

> A German . . . loses his citizenship on acquiring foreign citizenship, provided the foreign citizenship is acquired as a result of his own application. . . .

section 2 provides that:

> Citizenship is not lost by one who before acquiring foreign citizenship has secured on application the written consent of the competent authorities of his home State to retain his citizenship. . . .

This section 2, as far as quoted, has given rise to the opinion, expressed by Gibbons, that thus "a legal means has been given to the naturalized Germans to retain, *without the knowledge of the nations where their oath of allegiance has been received in good faith,* citizenship in Germany."

But in order to give such an interpretation the semblance of merit Gibbons was forced to, and actually did, suppress the rest of section 2 and the entire section 3 of § 25. The closing sentence of section 2 stipulates that:

> Before the consent [to retain German citizenship] is given the German consul is to be heard.

Section 3 states that:

> The Imperial Chancellor may order, with the consent of the Federal Council, that persons who desire to acquire citizenship in a specific foreign country, may not be granted the consent provided for in paragraph 2 [i.e. section 2 of §25].

And Gibbons further suppresses § 36, which orders that:

Treaties concluded by the Federal States with foreign countries prior to the going into effect of this law remain undisturbed.

There is being circulated in the United States a leaflet, apparently of unknown origin, which also gives this § 25 in the curtailed form chosen by Mr. Gibbons. This leaflet then proffers an opinion similar to that expressed by Gibbons, quoting an unnamed "international law review" to the effect that "a text like Paragraph 2 of Article 25 *is a direct invitation to fraud and perjury.*"

The meaning of the parts suppressed is that each individual case, where a German applying for foreign citizenship desires to retain his *Reichsangehoerigkeit,* is subject to the consent of the Imperial Chancellor and the Federal Council, such consent being dependent upon the report of the German consul abroad, who passes on the merit or the demerit of everyone of these applications. From the clauses suppressed it appears further that section 2 of § 25 is not applicable to Germans who have become citizens in countries whose treaties with the "German states" preclude double citizenship in whatever form; that the countries not having any such treaties with the German states know very well what to expect from their new citizens; and that, if the procedure sanctioned by the new German law deserves to be called an "*invitation to fraud and perjury,*" the foreign Governments which, under the given conditions, continue to naturalize German immigrants must be considered as the participants in guilt. Of this last phase more will be said anon.

That the conditions created by section 2 of § 25, while eminently satisfactory from the German point of view, would by no means be accepted without criticism abroad was indeed expected by those responsible for the new state of affairs. But according to the German view this new measure seems to be considered as to some extent retaliatory in character and, in the opinion of the German legislators, seems to constitute a somewhat belated attempt to follow the time-honored practice of Germany's shrewd and experienced rival across the Channel. Such at least are the thoughts voiced in the *Reichstag* by Baron von Richthofen, chairman of the committee appointed to frame the new law. "We also welcome the fact"—so he said during the debate on the first reading—"that the bill permits

Germans who, for motives of an economic kind, are compelled to acquire a foreign nationality, to retain at the same time the *Reichsangehoerigkeit*. This subject has frequently been discussed in the foreign press. It cannot, of course, be ignored that those countries which make the permit of certain economic activities conditional upon acceptance of their citizenship, view it with disfavor if at the same time the *Reichsangehoerigkeit* is retained. The country which has voiced an opinion on this subject is Russia. But I think that we need not pay too much heed to this fact, since the bill provides that a German acquiring foreign citizenship can retain his *Reichsangehoerigkeit* only upon application, so that it is absolutely optional with him to renounce his old allegiance. As far as other countries are concerned the conditions resulting from the new law are extremely desirable. I need but remind you of the fact that in England admission to the Exchange is granted a German merchant only if he possesses English citizenship. It is certainly very hard that every German desirous of doing business at the London Exchange should be compelled to give up his *Reichsangehoerigkeit*. And further, in the countries of Latin South America it is by no means easy for a German who does not possess the citizenship of those countries to compete with those who have become citizens. I also wish to call your attention to the fact that in this respect England, for instance, has shown us the way, inasmuch as that country permits its nationals to acquire foreign citizenship while at the same time retaining their own; and that up to the present one has not heard that this has prompted any other state to voice a complaint."

What Baron von Richthofen here says of English double citizenship applied, of course, to the time this statement was made. Since 1914, however, England seems to have mended her ways in this respect. The British Nationality and Status of Aliens Act of August 7, 1914, in section III, No. 13, states, without any proviso, that:

> A British subject who, when in any foreign state and not under disability, by obtaining a certificate of naturalization, or by any other voluntary and formal act becomes naturalized therein, shall thenceforth be deemed to have ceased to be a British subject.

The loss of British nationality was for the first time, and then only conditionally, acceded to by England in 1870.

Section 6 of the Naturalization Act of that year agrees that:

> Any British subject who has at any time before, or may at any time after the passing of this act, when in any foreign state and not under any disability voluntarily become naturalized in such a state, shall from and after the time of his having become naturalized in such a foreign state, be deemed to have ceased to be a British subject and be regarded as an alien. . . .

However, No. 1 of this section provides:

> That where any British subject has before the passing of this Act voluntarily become naturalized in a foreign state and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this Act, make a declaration that he is desirous of remaining a British subject, and upon such declaration hereinafter referred to as a declaration of British nationality being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of treaty to that effect.

There seems to have existed among the English legislators a considerable difference of opinion regarding the exact interpretation of this section. According to the Lord Chancellor, speaking to the House of Lords during the second reading of the Bill, "they further recommended that, inasmuch as it would be well to make these regulations retrospective, and clear the whole question at once, it might be advisable to allow a period of time within which any person who, at the passing of the Act, has been so naturalized in any foreign country, might, if he thought fit, give up such naturalization, and return to the country of which he was originally a citizen." Speaking on the same subject on May 9 he said: "The aim of the Bill—though, as he had explained, it could not be thoroughly carried out—was to enable any person with a double allegiance to elect which country he would be a subject of." The Earl of Clarendon, commenting upon the same subject to the House of Lords on May 3, is reported in *Hansard's Debates* to have expressed his opinion to the effect that "his noble and learned Friend on the Woolsack had referred, with great propriety and force, to the evils resulting from a system of double nationality," that "it was in truth an evil which they were

bound, as far as possible, to remove," but that " he doubted whether the Bill now under consideration would have that effect," that " the difficulties connected with the subject were apparent throughout the Bill " as, for instance, " in the first paragraph [of section 6] . . . they would find the system of double nationality," that " it was limited, undoubtedly, to British subjects who became naturalized in foreign countries," but that " we gave what might possibly prove a very large class the privilege of being restored to British nationality, and that without the consent of the country which might have adopted them, and in which they might have become naturalized."

And, as a matter of fact, the Bill, as it became law, provides that Britishers who, before the passing of the Act of 1870, had become citizens of a foreign country were to be re-admitted to the full rights of English nationals and were to enjoy the benefit of these rights at least during their presence in the United Kingdom, while at the same time they were permitted to retain their foreign citizenship.

Thus No. 1 of section 6 of the Naturalization Act of 1870 clearly establishes the principle of double citizenship, though seemingly not quite in the same sense or to the same extent of the German law of 1914.

But there is another passage, section 8, of the law of 1870, which reads as follows:

> A natural-born British subject who has become an alien in pursuance of this act, and is in this act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's principal secretaries of state for a certificate hereinafter referred to as a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The said secretary of state shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization. . . .

And further:

> A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign state of which he became a subject he shall not be deemed to be a British subject unless he has ceased to

be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.

In his *Nationality* Piggott gives his, and, it is safe to say, the only possible, interpretation of this section:

> The conditions for re-patriation are therefore: residence in the United Kingdom or service under the Crown, for not less than five years, within a period of eight years, prior to the application, coupled with an intention either to reside in the United Kingdom, or to serve under the Crown. . . . The special qualification of s. 7 is reproduced; the certificate of re-admission like the certificate of naturalization, to have no effect in the state in which the British subject has become naturalized, unless he has ceased to be a subject either in pursuance of the laws thereof, or of a treaty to that effect.
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> The introduction of this qualification [so Piggott continues] was inevitable, as the principle of recognition of the foreign law pervades the Act. Even in the case of those who were naturalized [in a foreign country] prior to the Act, and who were, after declaring their British nationality, held never to have been other than British subjects, the qualification was introduced: it could hardly have been omitted in the case of those who resumed [British] nationality after naturalization [in a foreign country] expressly recognized by the Act. . .

This section 8 then permits any "natural-born British subject" to become, "in pursuance of this act," that is, also after this act has become law, a citizen of a foreign country, and permits re-admittance, at the discretion of "one of Her Majesty's principal secretaries of state," to the British fold while at the same time he is allowed to retain his foreign citizenship, with the only proviso that, when staying within the limits of the foreign state of which he also is a citizen, he shall not be considered a British subject.

The German law, as we have seen, permits a German to retain, at the discretion of the Chancellor and the Federal Council, his German nationality and then to accept foreign citizenship without the limitation of the English law, a limitation, however, whose validity is seriously questioned by none less than Piggott. "There is here to be noticed," he also says, "one point which is too apt to be overlooked. Naturalization involves something more than a mere document declaratory of the fact that a certain person has been received into the new allegiance: the oath of that new allegiance has been taken; and the argument that the certificate does not make the holder of it a British subject outside of the United Kingdom overlooks the fact that there

is in the oath itself no such limitation, and also that there is no provision for release from its obligations."

Both the English and the German law emphasize the validity of existing naturalization treaties with other states.

Concerning the motives underlying No. 1 of section 6—and, by inference, those of section 8—of the British law of 1870, we find very little in the meager debates as quoted by Hansard. And what little we do find there coincides with Piggott's view that the object of the British Government seems to have been to give those who otherwise would have lost their British nationality the privilege to retain the same with its full rights and benefits. On the other hand, Piggott frankly admits that those who now would take advantage of this exceptional opportunity were living in foreign countries and had acquired foreign citizenship in order to enjoy commercial and other advantages accessible only to citizens of the countries in which they have chosen to reside. "There were probably," so he writes on pp. 143-144, "at the time the Act of 1870 was passed, many who had adopted for convenience a foreign nationality—convenience of residence, convenience of commerce: neither of which in some states is so free for foreigners as for subjects. The law, by its non-recognition of foreign naturalizations, by its strict adherence to the old common law maxim, may be said to have expressly sanctioned this: at least it declined to attach any consequence to it. Therefore, when it was decided to recognize naturalizations for the future, and when the logical consequence, the recognition of naturalizations in the past had also been decided on, it became necessary to provide for those who had not intended to cast themselves adrift from their British allegiance, which the law had allowed them to retain. . . ."

Still, the "international law review" quoted in the leaflet mentioned, makes bold to assert that "that which is new [in the German law] and apparently without precedent, is a legislative disposition inviting nationals to secure abroad, through fictitious naturalization, certain material advantages reserved for natives of the country." And still, such naturalization is here spoken of as "fictitious," although the countries where Germans may apply for citizenship, while at the same time they retain their *Reichsangehoerigkeit,* are only those which have no naturalization treaties with the German states, and although even

these countries have it in their power to regulate this matter to their own satisfaction by the means of concluding such treaties, of granting German nationals the same privileges which their own nationals enjoy in Germany, or by way of framing their oath of allegiance in such a manner that those taking the oath must, without reservation, forswear allegiance to their former sovereign.

The difficulty in this respect, however, is to be found in the fact that the countries which are most likely to resent Germany's "bold step" are themselves hardly in a position to "throw stones." Italy and France, for instance, absolve no national who has become a citizen of a foreign country from his own allegiance so long as, according to their own laws, he is subject to military duty; and, according to their laws, every son born to a national, be it on native or foreign soil, is subject to military duty. France provides for an exception in the application of the law by "special consent from the Government." (For a detailed statement of the workings of the French and Italian laws and of the consequences accruing to the individuals held to be subject to these laws and, no less, to the countries whose allegiance these individuals claim by choice of their free will, see: *The Literary Digest* for July 10, 1915.) Russia, as is well known, never releases her natives from Russian allegiance except by special ukase of the Czar. And England, as the German claim goes, was, at the time of the inauguration of the German law, doing nothing less than the Germans proposed to do.

That the oath of allegiance in the form applied in the United States would everywhere preclude the retaining of German citizenship is the opinion expressed by Richard W. Flournoy, Jr., Chief of the United States Bureau of Naturalization, who thus interprets section 2 of § 25 of the German law: "According to this provision, a German residing in a foreign land may acquire naturalization therein without giving up his German nationality unless the laws of that country require renunciation of the prior allegiance." (*American Journal of International Law,* 1914, p. 480.)

To state further, as Mr. Flournoy does on p. 481, that "this provision can have no application to Germans who are naturalized as citizens of the United States, since it is a specific requirement of our naturalization law that an

alien who applies for naturalization must expressly renounce allegiance to all other sovereignties, and particularly by name to the sovereignty to which he at the time owes allegiance", appears almost superfluous unless Mr. Flournoy by means of this specific statement intends to take the wind out of the sails of those who, for reasons best known to themselves, seek to alarm the American public by their attempt to represent the new German law as being applicable to the United States. One of these attempts is found in the alleged quotation from the unnamed "international law review" which declares as follows: "For example in the United States of North America, Article 4 of the Federal Law of June 29th, 1906, enacts that the candidate for naturalization must declare ON OATH *that he intends bonâ fide to become a citizen of the United States, and that he means to renounce, for ever, all allegiance and all duty and fidelity to every prince, potentate, state or sovereign whose subject for the moment he may happen to be.* Such being the conditions imposed, the German who, before soliciting American naturalization, should have made use of the faculty recognized by article 26 [25], paragraph 2, of the German law, would, whatever his motive—the acquisition of economic advantages or the right to landed property in States of the Union—render himself guilty of perjury, and the consul would be in reality an accomplice." One G. De Wesselitsky, in his book *Russia and Democracy* warns us that "this matter seems to be becoming very prominent in the United States just now." The same trend of thought or intention appears to be underlying Sir Gilbert Parker's reference to this subject when, in the *World in the Crucible* he quotes various statements concerning the German-American National Alliance and the Central Society of German Veterans and Soldier societies of North America, attributed to one Herr Witte, former Press Attaché to the German Embassy in Washington, and then adds in his own words that these statements should "be read in connection with the fact that in 1913 Germany passed a law preserving for a German his nationality even when he has become naturalized in another country."

The latest attempt in this direction is the assertion made by Frances A. Kellor in her *Straight America*, where it is claimed that "while there exists a naturalization treaty with Germany, this did not prevent the Ger-

mans from passing the law of nationality of June 1, 1914, which practically nullifies the [Bancroft] treaty." Senator Lodge, writing to Secretary Lansing, is quoted in the *Literary Digest*, July 10, 1915, as stating that "the German law . . . does not create a conflict of laws, but establishes a dual allegiance which, as you point out, is contrary to our laws and absolutely incompatible with our oath of allegiance." This passage, given without its context, seems to permit of double interpretation, and even its reference to Secretary Lansing, as pointing out what Senator Lodge here states, does not remove the uncertainty as to its real meaning. Senator Lodge in this statement may be expressing a view similar to that held by the critics just quoted, to the effect that the German law, being considered applicable to the United States, does indeed sanction a fictitious naturalization of Germans in the United States and, by doing so, nullifies the Bancroft treaty, a view rendered absolutely untenable by § 36 of the German law itself, which explicitly assures the continued validity of existing naturalization treaties with other nations. On the other hand, one may be permitted to read into the Senator's words Mr. Flournoy's verdict: that the oath of allegiance, as rendered by applicants for naturalization in the United States, demands renunciation of fealty to the country from which the applicant hails, that section 2 of § 25 of the German law sanctions in certain cases the acquisition of foreign citizenship without such renunciation, and that, in consequence thereof, section 2 of § 25 of the German law can not be, and is not, applicable to the United States.

Mr. Flournoy suggests that "the whole subject of the law of citizenship, in which there is now so much confusion, or at least, in particular phases of it, might well be made the topic of discussion by the Hague Conference."—Would it be amiss to ask whether or not the coming peace convention, which will have to untangle theories vastly more confusing and will have to counterpoise tendencies infinitely more antagonistic, could legitimately make part of its task the adjustment of the conflicting principles and practice of the laws of citizenship as they are now enacted and enforced by the nations concerned?

J. MATTERN.

A CONJECTURE OF INTENSIVE FICTION

BY W. D. HOWELLS

THE theorist of intensive fiction must first make reasonably sure that there is such a thing, and when he has done this he must show the reader that it differs from extensive fiction, if he can. Instead, I had proposed to take the first proposition for granted, and then to suppose that the second was a matter of universal knowledge. With such an easy scheme it was quite as simple to inquire who had shown the greatest mastery of intensive fiction, and it was logical to believe that women had shown the same superiority in it as in gardening, say, while men had excelled in the more extensive forms of imaginative literature as in farming. At the same time, it would be candid to leave the whole question in a solution of reasonable doubt whether there was any such literary thing as intensive fiction and to hold one's self ready to renounce one's theory of it. I was moved, somewhat elatedly, to this conclusion by remembering that the most delightful of women novelists allows her most delicately ironical character to question the equally undisputed opinion that "the talent of writing agreeable letters is peculiarly feminine . . . As far as I have had opportunity of judging," Henry Tilney says, "it appears to me that the usual style of letter-writing among women is faultless, except in three particulars. . . . A general deficiency of subject, a total inattention to stops, and a very frequent ignorance of grammar."

Tilney's wit does not pass upon the question of woman's superiority in gardening which had not come up, and I had taken her excellence for granted because the robuster energies of man were more adapted to farming. Woman, I reasoned, is naturally fitted for the intensive culture of a small space of ground, from which by thoroughly enriching and tilling it she can garner the results of a very much larger