CHAPTER IV.

NATIONALITY.

SECTION 22.—INDELIBLE ALLEGIANCE—EXPATRIATION.

OPINION OF COCKBURN.

(Cockburn’s Nationality, 6–14.)

"Nationality by birth or origin depends, according to the law of some nations, on the place of birth; according to that of others on the nationality of the parents. In many countries both elements exist, one or other, however, predominating. Thus, by the law of England, the status of a subject depends generally on the place of birth: nevertheless, the descendants, of a natural-born subject, for two generations, though born out of the dominions of the Crown, are, to all intents and purposes, subjects. In like manner, by the law of France, though, generally speaking, it is necessary to be born of French parents to be a Frenchman, an exception is made in favour of the child of a foreigner, if born in France, subject only to the condition of the French nationality, being claimed within a prescribed period.

"By the common law of England, every person born within the dominions of the Crown, no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled, or merely temporarily sojourning in the country, was an English subject; save only the children of foreign ambassadors (who were excepted because their fathers carried their own nationality with them), or a child born to a foreigner during the hostile occupation of any part of the territories of England. No effect appears to have been given to descent as a source of nationality. * * *

"The law of the United States of America agrees with our own. The law of England as to the effect of the place of birth in the matter of nationality became the law of America as part of the law of the mother country, which the original settlers carried with them. * * *
"By the law of France, anterior to the revolution, a child born on French soil, though of foreign parents, was a Frenchman, as it was termed, *jure soli*; a child born of French parents out of French territory, was a Frenchman *jure sanguinis*. The framers of the Code Napoleon, adopting a sounder principle, excluded the place of birth as the source of nationality in itself; but compromising, as it were, with the old rule, they allowed the place of birth to have effect so far as to give to the offspring of an alien the right of claiming French nationality on attaining full age. The example set by the framers of the French Code has been followed by the nations by which that Code has been adopted, as also by others in remodelling their Constitutions or Codes. The result has been that, throughout the European States generally, descent, and not the place of birth, has been adopted as the primary criterion of nationality, though with a reservation in some, of a right to persons born within the territory to claim nationality within a fixed period. Thus, while in some of these countries nationality is derived from parentage alone, in others the right becomes complicated by reason that in addition to parentage, birth within the dominions of the particular country confers citizenship on the offspring of alien parents—in some absolutely—though subject to the right of the individual concerned to reject it at majority—in others on the right being claimed on certain specified conditions."