

# RIGHTS OF ALIENS DISCUSSED BEFORE THE ALBERTA BAR

## A. H. Clarke of Calgary Gives Able Address to Local Attorneys

Had a bomb been dropped yesterday afternoon directly on the Edmonton Court house, it would have completely wiped out the flower of the Alberta bar. The reason for this unusual gathering of the galaxy of legal talent was to listen to an intensely instructive and interesting speech by one of the most able and distinguished members of the bar, A. H. Clarke, LL.B., K.C., M.P., the subject being "Citizenship and Naturalization." To mention all those present, who listened to the speaker with the keenest interest would be to give a list of all the most prominent members of the bar in Alberta, at least in the northern portion thereof, the chairman being that popular member, C. C. McCaul.

### Aliens and Naturalization

Mr. Clarke commenced by stating that perhaps a more fitting title to his address would have been "Aliens and Naturalization." As an evidence of the value always pertaining to citizenship, Mr. Clarke quoted from Acts the words used by the centurion to the chief captain, "Take heed what thou doest for this man is a Roman." Webster's definition of a citizen was "a person, native or naturalized, who has the privilege of voting for public officers and who is qualified to fill offices in the gift of the people, also any native born or naturalized person of either sex who is entitled to full protection in the exercise and enjoyment of the so-called private rights."

### Two Kinds of Aliens.

The privileges of citizens has varied in different countries and times. In some countries at certain times aliens had as many privileges as had the citizens. In the British Empire aliens had the same rights as citizens in regard to the ownership of real and personal property and had full rights to the use of the courts to enforce their rights. There were two kinds of aliens; alien friends who were subject to a state with which our country is at peace and alien enemies who were the subjects of a state with which we were at war. An alien, whether friend or enemy, had not any absolute right to enter British territory and had no cause of action against any Canadian official who excludes him.

As a matter of practice, alien friends were admitted freely, the principal exception being to exclude immigrants of criminal or immoral character and idiots and those physically defective. Also aliens attempting to enter the country in contravention to the alien labor law. It was also a rule of law that an alien could be sent out of the realm by exercise of the Crown's prerogative, but in England the practice of a special act was required. The principal cases where aliens were deported arose under the immigration, alien labor and extradition laws. While resident in the British Empire an alien friend was entitled to full protection and owed temporary allegiance to the Crown. He could not be admitted as a barrister, could not vote at elections or hold any offices; he could not act as a juror and could not be the owner of a British ship and under the Dominion company law the majority of the directors must be British subjects. Private trading with an alien enemy was illegal without the king's license.

The mortgagee of an alien ship captured in war had no rights even though he were neutral or a British subject. An alien enemy would not be allowed to sue in our courts unless he had obtained a special license so to do from the Crown. He was in a similar position as an outlaw but was protected from being wantonly killed or outraged. Upon the resumption of peace his rights would then become those of an alien friend and were not extinguished by war.

### Proclamation of August 15

Coming to the proclamation of August 15, Mr. Clarke read the principal clause, which is as follows: "All persons in Canada of German or Austro-Hungarian nationality so long as they quietly pursue their ordinary avocations are allowed to continue to enjoy the protection of the law and be accorded the respect and consideration due to peaceful and law-abiding citizens and that they be not arrested, detained or interfered with unless there is reasonable ground to believe that they are engaged in espionage or engaging in or attempting to engage in acts of a hostile nature or are giving or attempting to give information to the enemy or unless they otherwise contravene any law, order-in-council or proclamation."

### Peaceable Aliens

In Ontario a judge had expressed the doubt as to whether this proclamation entitled an alien to sue and whether the protection granted was more than police protection. In Manitoba and British Columbia the courts held that peaceable aliens were not thereby debarred and they had the same right to sue as had a friendly alien. A similar decision had been given in England. Mr. Clarke then quoted several decisions bearing on this aspect of the law. The proclamation also provided for the internment of alien enemies who attempted to leave Canada, on there being reasonable grounds for believing that he intended to assist the enemy.

The War Measures' act (Canada) which was passed in August provided that no person under arrest or suspicion as an alien enemy shall be released or allowed out on bail or tried without the consent of the minister of justice. After this proclamation an Austrian applied for a writ of habeas corpus, alleging that he only meant going into the United States for the purpose of farming. Mr. Justice Galt, before whom the application came, held that the right of habeas corpus was only available to a subject.

### As to Naturalization

Mr. Clarke then took up the question of the right of an alien enemy to be naturalized, stating that there was no uniformity of decision upon application being made for naturalization, some judges granting it and others refusing. The matter was in the discretion of the judge before whom the case came.

By proclamation of October 28, 1914, alien enemies were required to register before duly appointed officers, provided such aliens should not be naturalized until a certificate of registration was produced and the registrar had approved of the naturalization. During

war, naturalization could not be obtained except on these conditions.

Tracing back naturalization, Mr. Clarke said that they found it first among the Jews. In ancient Greece during the heroic ages the people had few or no privileges and strangers had the same. As different states settled down into organized communities the value of citizenship became enhanced and the privilege was more sparingly bestowed.

After dealing with citizenship in Ancient Rome, Mr. Clarke came down to more modern days by stating that one of the acts of tyranny charged against George III. in the Declaration of Independence was that he had endeavored to prevent the population of the United States by obstructing the laws for naturalization of foreigners and by refusing to pass others to encourage their immigration there.

### Periods of Residence

Mr. Clarke then touched interestingly on the various countries which had passed naturalization laws at various times in the world's history and the periods of residence required in those countries, running from five years, with three years' notice of intention to apply for naturalization papers, down to those countries requiring no residence qualification which strangely enough were the countries now at war with the Allies.

In Austria, ten years' residence confers citizenship per se, while in China, foreigners were perpetually excluded except within certain prescribed limits, and except where provision is made by treaty for more extended privileges. In 1844 the first general naturalization act came into force in England; prior to that any person naturalized obtained a special act of parliament or received denization papers issued by

the crown. The act did not declare what the territorial effect of the law was to be.

### Rights and Privileges

In 1847 parliament expressly declared that the act of 1844 did not extend to British possessions, other than the United Kingdom and expressly declared that all past and future legislation of the different possessions for the conferring upon aliens of the rights and privileges of British subjects within the limits of these possessions, should be effectual and this was the position at the time of the passing of the British North America act, which gave the Dominion jurisdiction as to aliens and naturalization, since which time, according to the Hon. C. H. Doherty, no parliament in the Empire could constitutionally provide for a naturalization which could be effective throughout the Empire, the result being that a person naturalized in Canada could only be so recognized in Canada, and a person naturalized in New Zealand or any other self-governing colony had no rights of a British subject outside of their respective countries. \*

This had led to several discussions and conferences. The question was dealt with at the Imperial conferences of 1902, 1907 and 1911. Till 1870 in Great Britain a citizen could not renounce his allegiance, but this was repealed later and the right to expatriate was recognized. Under the former naturalization act, a person naturalized in Canada ceased to be a British subject on returning to his native country and while remaining in that country. While in Canada he would be a British subject, but if he returned, say to Germany he was a German subject and subject to military service.

In 1914 the governments of the

United Kingdom and the self-governing colonies, Canada, Australia, New Zealand, South Africa and Newfoundland agreed upon legislation which came into force on January 1, 1915, and of positive Anglo-Saxon character uniform naturalization laws, with the object of making naturalization in one possession effective throughout the British Empire.

### **Law In Canada**

The principal changes brought about by this law in Canada were the following: Under the present act a person naturalized ceases to be a subject of the country where he formerly resided and had the full status of British-born subject; the period of residence throughout the Empire was now five years, the former law only requiring three years. Under the old law the whole three years had to be spent in Canada, but under the new act, one year was required for resi-

dence in Canada, the other four in any part of the British Empire.

An application for naturalization must now be given to the clerk of the court three months previous to its being made and must also be posted up at the post office nearest to the residence of the applicant. Unless excused the latter must appear in person and produce the necessary evidence of his fitness to become a British subject; he must know the English or French language and, if approved by the court, the application is forwarded to the Secretary of State, who may grant or refuse it at his discretion, from which there is no appeal.

### British Subject

Under the British Nationality and Status of Aliens Act, a British-born subject is thus defined:

1. Any person born within his majesty's dominions and allegiance.

2. Any person born out of his majesty's dominions whose father was a British subject at the time of that person's birth and either was born within his majesty's allegiance or was a person to whom a certificate of naturalization had been granted.

3. Any person born on board a British ship, whether in foreign territorial waters or not.

A person was also deemed to have been born within his majesty's allegiance if born in a place whereby treaty, usage, etc., or other lawful means, his majesty exercises jurisdiction over British subjects.

Mr. Clarke further, in the course of his address, touched on various points in the law, as to the granting of certificates to aliens, residence required, status of women married to aliens, aliens' children, certificate to minor aliens, the revocation of certificates were obtained by fraud. He stated that the wife of a British subject is deemed to be herself a British subject, and that the wife of an alien was an alien. Many other points were touched upon by Mr. Clarke but which were more or less of a highly technical character and of more absorbing interest to the legal mind than to the general public.

At the conclusion of the address Mr. Clarke took his seat amidst loud applause. A hearty vote of thanks was passed to the speaker, amongst others expressing their high appreciation being Mr. McCull, Mr. Moir and Mr. Ford.