

Observing the Workings of the Present Naturalization Laws

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LIMITLESS examples taken from the administration of what is supposed to be a uniform Naturalization law would seem to indicate that the goal of idealism in uniformity is yet far from attained; there being as yet neither any uniform code of requirements in law to be followed by the judges, any uniform plan for examiners, nor any uniform statutes to be followed by the clerks. And yet, after all, laws exist only in the incarnation of the living court, and the validity of democratic institutions depends upon human nature as epitomized in the individual.

The past year or two might be designated in the annals of Naturalization procedure as the era of conflicting judicial interpretations of what Congress has not said and enlightened rulings, coming with gattling-gun rapidity from the Department of Labor on what its views were as to what Congress should have said before it ever went into the business of enacting deportation, and quota immigration, laws.

Throughout the country in general, and even within the confines of each political division there exists at the present time an unfortunate state of affairs in respect to various conflicting opinions of the courts regarding the question of admissibility to citizenship of aliens who claimed exemption from Military Service during the war. If a citizenship applicant happens to file in one court, he is admitted; if he files in another, equally available and under identical circumstances, he is denied. Several petitioners in a particular city are, for instance, in the Federal Courts being consistently denied citizenship because of the drastic draft ruling obtaining therein, all of whom would be admitted, had they filed in the State court, a tribunal exercising equal and concurrent jurisdiction within the same municipality.

In some jurisdictions the World War terminated on Nov. 11th, 1918; in others it was by judicial decree prolonged to July 2nd, 1921. In an Oregon court hostilities ceased immediately after the registering alien had returned and filed his draft questionnaire, some months before the Armistice. In some sections of California so far as an alien petitioner is concerned, the conflict is still on in all its fury. This inability to arrive at a definite date for the termination of the war, has not resulted in the only subtlety to bother Naturalization judges, for they are still very much confused in their efforts to construe such technical Naturalization terms as "white person," "continuous residence" and "attachment to the Constitution." But if the judiciary has failed to come to a common understanding in one direction, it has made notable progress in another, for it is now practically conceded that if it was assumed that a claim of exemption from Military Service by an alien was in and of itself such a breach of one's attachment to the principles of the Constitution as to deny him Citizenship, then there should be a locus poenitentia whence such attachment might again be presumed to begin since Congress has not by legislation, as in the case of Neutrals, forever debarred from Citizenship any particular class of aliens. This day of repentance has been fixed by many courts as

being identical with the time the World War actually ended.

The most startling and apparently most novel method of determining the date, was announced in the U. S. District Court of the Southern Division of California known among students as the Bledsoe decision. This court held that a claim of exemption from the draft for non-citizenship conclusively showed a disloyal attitude and that such attitude was presumed to continue indefinitely thereafter until a new Declaration of Intention was executed. It may be observed that since this decision goes beyond all others, yet reported, in its extreme presumptions against the petitioner, and since it is still being followed in some jurisdictions—although it has been in substance repudiated by the Circuit Court of Appeals of the United States of the Ninth District—it might not here be amiss to accord it brief consideration.

In the first place a superior court has held that there is no ground for holding that a claim of exemption from Military Service because of alienage absolutely proved that the applicant's Declaration of Intention was made malafide, or that he was not attached to the principles of the Constitution. One could not therefore accept without qualification the major premise of the Bledsoe decision not only in view of its practical reversal by a higher court, but because of the fact that disloyalty to a yet unadopted country could ill be presumed from the friendly acts of the resident subjects of another nation. An alien enemy, who had not expressed an intention to become a citizen of the United States during the war, owed total allegiance to his native Government and not to the United States. His claiming exemption was not only an unquestioned right of privilege but the very form of the questionnaire suggested to him an affirmative answer. Particularly unhappy was the plight of the German, Austrian, Bulgarian or Turk who, upon capture, while fighting against his own kin, could expect naught other than the dismal certainty of execution as a traitor. His only vestige of protection could lie in American Citizenship, which was utterly impossible of attainment at the time.

This contention in behalf of the alien enemy should mean no disparagement to the claims of an alien friend and, too, so far as he is concerned the world holocaust should be considered a thing of the past. Although the cause of the Italian, Roumanian, or Russian was our cause, yet were he a slacker he was no more contemptible than the native born citizen who was likewise seized with an attack of chilblains in his pedal extremities when the draft came on. The President has long since pardoned political prisoners of war, believing that justice would best be served by forgetting the differences and animosities of a past hysteria. If criminals, duly convicted by court action for offenses against the Government, have been pardoned by executive clemency, how much more should the alien of co-belligerent nations be accorded an equal degree of mercy in a judicial proceeding, especially where he has been convicted of no crime, but may have committed an indiscretion seven years in the past—a rather