NATURALIZATION OF INDIVIDUALS BY SPECIAL ACTS OF CONGRESS: HEARINGS, H. J. RES. 79, SERIAL 6, MAY 17, JUNE 3 AND 27, 1921

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Trieste

NATURALIZATION OF INDIVIDUALS BY SPECIAL ACTS OF CONGRESS

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HEARINGS

BEFORE

THE COMMITTEE ON IMMIGRATION AND NATURALIZATION

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

FIRST SESSION

ON

H. J. RES. 79

A JOINT RESOLUTION ADMITTING GEORGE A. HUNTLEY TO THE RIGHTS AND PRIVILEGES OF A CITIZEN OF THE UNITED STATES

Serial 6

MAY 17, JUNE 3 AND 27, 1921

STATEMENTS OF

W. W. CHALMERS, JOHN L. CABLE, RILEY J. WILSON, JOHN E. RAKER, JOHN C. BOX, JOHN C. KLECZKA, A. WARNER PARKER

AND A PAPER ON

"Some Vexatious Questions Relating to Nationality," by Fred K. Nielsen

WASHINGTON
GOVERNMENT PRINTING OFFICE
1921

51461

COMMITTEE ON IMMIGRATION AND NATURALIZATION.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS.

ALBERT JOHNSON, Washington, *Chairman*.

ISAAC SIEGEL, New York.
J. WILL TAYLOR, Tennessee.
JOHN C. KLECZKA, Wisconsin.
WILLIAM N. VAILE, Colorado.
HAYS B. WHITE, Kansas.
GUY L. SHAW, Illinois.
ROBERT S. MALONEY, Massachusetts.
ARTHUR M. FREE, California.
JOHN L. CABLE, Ohio.

ADOLPH J. SABATH, Illinois.
JOHN E. BAKER, California.
RILEY J. WILSON, Louisiana.
JOHN C. BOX, Texas.
L. B. RAINEY, Alabama.

P. F. SNYDER, *Clerk*.

JUL 19 1924

NATURALIZATION OF INDIVIDUALS BY SPECIAL ACTS OF CONGRESS.

COMMITTEE ON IMMIGRATION AND NATURALIZATION,
HOUSE OF REPRESENTATIVES,
Tuesday, May 17, 1921.

The committee met at 10.30 o'clock a. m., Hon. Albert Johnson (chairman) presiding.

The CHAIRMAN. The committee will be in order. The meeting this morning was called for the purpose of considering House joint resolution 79, introduced by Representative Chalmers, which reads as follows:

[H. J. Res. 79, Sixty-seventh Congress, first session.]

JOINT RESOLUTION Admitting George A. Huntley to the rights and privileges of a citizen of the United States.

Whereas George A. Huntley was born in Bristol, England, in 1865, but emigrated to this country and received his medical education in this country in the Universities of Vermont, New York, and Harvard, and has established permanent residence in this country; and

Whereas said George A. Huntley joined the American Baptist Foreign Mission Society in 1897, and from then until 1914 was stationed in Hanyang, China, where he was well known to many officers of the American Consular Service; and

Whereas said George A. Huntley's sympathies and interests have been with the United States for many years, so that it has been a matter of keen regret to him and his family that they have been unable to live long enough in the United States to become naturalized; and

Whereas said George A. Huntley and family have for many years done their utmost to uphold American ideals and promote American interests in China, and hope to continue so to do, but would be greatly aided in this if they were granted American citizenship: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That George A. Huntley be, and he is hereby, admitted to all the rights and privileges of a citizen of the United States.

Mr. RAKER. Mr. Chairman, I am going to raise an objection to the consideration of this bill, not to be acted upon now by the committee, but on its final action, on the ground that it is not within the power of Congress to grant a special bill naturalizing any individual.

The CHAIRMAN. We will debate that when you are ready.

Mr. RAKER. I do not want to debate it. I just want to put my objection before the committee, and let it be pending when the committee takes up the bill. Under the Constitution of the United States, Section VIII, we find the following provision:

SEC. VIII. The Congress shall have power * * *
4. To establish an uniform rule of naturalization.

The whole matter, then, will come up before the committee and before the House, on which I will submit authorities and other mat-

ters to follow in the proceedings later, and I do this not because it is this case but because of the desire by many individuals to receive a special act of Congress, and to have the matter determined as far as Congress will for the future guidance of the committee.

My theory simply is that the Constitution has established the power of Congress, and has defined that power by saying Congress can establish an uniform rule for naturalization, but it has not given it the power to naturalize by a special act individuals separate and distinct from the uniform rule that they should enact.

The CHAIRMAN. Having raised that point, you do not care to have a bill sent to the floor of the House for a decision to be reached there, do you?

Mr. RAKER. Well, I think the committee can, in the first place, dispose of it, and if we should report adversely on the bill, then the party would have the right, under the rule on an adverse report, to call it up and have the House pass on it, and of course Congress might do anything. It is then up to Congress to determine whether or not these acts are within its power as defined by the Constitution. That has been called to my attention, but I felt it my duty to call it to the attention of the committee first, and then when the matter comes up in the House at any time later to specifically call it to the attention of the House. Whereas it might not be a sufficient objection to prevent its consideration, still it will call it to the attention of the House, so that they may act upon it in one way or the other, and then the matter will eventually get into the courts for final adjudication.

The CHAIRMAN. Now, then, Congress having granted naturalization in special cases in the past, do you contend that Congress has no right to grant a later naturalization in a special case?

Mr. RAKER. My contention is this, Mr. Chairman, that the power of Congress is limited by that provision of the Constitution. That is specific in that it must be a uniform rule. They have now exhausted their power by adopting a uniform rule for the naturalization of citizens, and the method and mode of that naturalization, and they can not legally, by special act of Congress, naturalize a person.

In the case of Ex parte Frank Knowles (5 Calif., 300) the Supreme Court of California, speaking with reference to this constitutional provision, used the following language:

> That the States, if they choose to exercise the power as an original one, must abide by the rule which Congress makes, there can not be the slightest difference of opinion. The power given to Congress was, according to my apprehension, intended to provide a rule for the action of the States, and not a rule for the action of the Federal Government. Else why was the term "uniform" made to qualify "rule"? If it was designed simply to give the power of making citizens to Congress, simpler modes of expression might have been used, and ought to have been required, and surely there would have been no use for the term "uniform." Why should the rule be uniform, unless more than one had to exercise the rule? It certainly could not have been imagined that Congress would have made a rule for its own action, or the action of its own officers, which could have operated without uniformity.

In other words, Congress has to make a uniform rule for the naturalization of all people. Now, they have made that rule, and they exhausted their power when they did it, and they are prohibited by the Constitution from acting on special cases by naturalizing people themselves.

Mr. Box. If they act on cases which do not come within the rule, do they not destroy uniformity?

Mr. Raker. Yes.

The Chairman. Concerning certain cases in which naturalization has been granted by Congress, which amounted to repatriation, do you think those were without the power of Congress?

Mr. Raker. Well, that is a uniform rule; that does not designate anyone. It is a uniform rule as to naturalization applying to every one that comes within that class. Congress says that those who have expatriated themselves and done certain things, and then others that come within a certain specified rule—that all people of that class, by doing certain things, can become citizens of the United States.

The Chairman. Since I have been in Congress I remember three cases. One was the case of Mrs. Slidel, of Louisiana, the widow of the Confederate emissary, who was restored to citizenship by an act of Congress, and then in recent years we restored Mrs. Mumm to citizenship, and then there was the Chicago case, Mrs. DeHaven-Alten, the granddaughter of Admiral Decatur.

Mr. Raker. Now, I find this, Mr. Chairman, upon investigation, and I will just let it go in the record. The Library of Congress was only able to find two cases, although there are some of the late ones.

The first is House joint resolution 238, Fifty-fifth Congress, second session, "To readmit Nellie Grant Sartoris to the character and privilege of a citizen of the United States" (30 Stat. L., 1496), May 18, 1898.

The second is Senate bill 3419, Sixty-third Congress, first session, "Admitting to citizenship and fully naturalizing George Edward Lerrigo, of the city of Topeka, in the State of Kansas" (38 Stat. L., 1476), February 23, 1915. Then it shows the action taken.

Then there is the case of Joseph Beech, act of February 20, 1917, Senate joint resolution 208 (39 Stat. L., pt. 2, p. 1495); Senate joint resolution 208, Senate Report No. 1037; passed the Senate at page 3062; passed the House at page 3431; private resolution 5.

Then there is the case of Augusta Louise De Haven-Alten, Senate resolution 134; debated and passed the Senate at page 1818; House Report No. 619; debated in House, pages 5106–5111; Senate concurs in House amendment; private resolution 21, Sixty-sixth Congress.

Then there is the case of Frances S. Mumm, Senate joint resolution 90; debated and passed the Senate at page 6429; House Report No. 363; debated and passed the House at pages 6678–6680; private resolution 1.

The Chairman. How about the Slidell case?

Mr. Raker. That is all I could find.

The Chairman. The Slidell case was passed about three Congresses ago. Mrs. Slidell, Mrs. Mumm, and Mrs. De Haven were women who were American born, but married aliens. Then there was the Lerrigo case. He was British born. That case was somewhat similar to this one, except that Lerrigo thought he had been naturalized through his father.

Mr. Raker. It just seems to me that it is worthy of the deep attention of the House.

In the case of United States *v.* Wong Kim Ark (169 U. S., 649) the Supreme Court of the United States, at page 702, said:

A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, either by treaty, as in the case of annexation of foreign territory or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals as in the ordinary provisions of the naturalization acts.

That comes right close to the point.

So I will make that statement for discussion when the matter comes up before the committee.

Mr. SABATH. Your contention is that the Constitution provides that Congress shall have power to establish a uniform rule for naturalization?

Mr. RAKER. Yes.

Mr. SABATH. You do not take into consideration that that means a uniform rule as to States and as to people?

Mr. RAKER. It means that Congress did not think to say that at all.

Mr. SABATH. That is what it means, that it shall be uniform as to States and as to people, but it can not take away from Congress the power to legislate.

Mr. BOX. Has Congress any power that is not given it by the Constitution?

Mr. SABATH No; it has not, but it has the power of naturalization.

Mr. BOX. Where do you get it?

Mr. SABATH. Right here in the Constitution.

Mr. BOX. But that is "to establish a uniform rule."

Mr. SABATH. To establish a uniform rule of naturalization, namely, there shall be no exceptions made as to States or as to people.

Mr. BOX. I am inclined to take Judge Raker's view of it. I had reached a conclusion that was a matter of policy, but I am indebted to him for this important suggestion.

Mr. FREE. I think it is going to open the door to a lot of vicious legislation if we naturalize people in this way. That is my personal view. Hereafter I think it will be my policy to vote against any special naturalization bills.

Mr. SABATH. In four years we have only passed six bills.

The CHAIRMAN. We are not loaded with such bills. We have before the committee in each Congress two or three special naturalization bills. I believe, however that a dozen or more bills would be offered this session if Members thought they could get them out of this committee. You will notice that, as a rule, these bills have come to us after being passed in the Senate.

Mr. SABATH. Judge Raker searched the record, and he goes back to the Sartoris case.

Mr. RAKER. The librarian could only find two. These last cases they did not get because they had no index.

Mr. RAKER. This is what the Department of Labor says. I wrote to all the departments on the matter.

DEPARTMENT OF LABOR,
Washington, D. C., May 13, 1921.

MY DEAR MR. RAKER: In the absence of the Secretary your letter of the 9th, with reference to House joint resolution 34 for the naturalization of Emil S. Fischer, has come to me for reply.

The question you propound, of course, is essentially one of law, and it is possible that the Attorney General may have passed upon the question. I find upon investigation that the Bureau of Naturalization, so far as it has had occasion to form an opinion on the question, has held the belief that the Congress of the United States is probably without power to naturalize an alien. Section 8 of Article I of the Constitution, as quoted in your letter, in very simple language gives Congress the power "to establish a uniform rule of naturalization," and that seems to be the limit of power vested in Congress. It might well be that Congress might establish the rule that aliens shall only be naturalized by act of Congress. It is clear, however, that whatever the rule is it must be uniform. Congress having established by statute well-defined rules for naturalization it would seem that it had exhausted its power on the subject. It does seem to this department that when naturalization is to be had by the processes set up by statutes enacted by Congress and thereupon Congress naturalizes some one, or attempts to do so by joint resolution, that the provision of the Constitution of a uniform rule is violated.

Historically considered this department is unable to ascertain that the subject has ever reached any of our courts for consideration. It never has reached the Supreme Court of the United States. It would also appear that this practice of naturalization by congressional action finds its original precedent in the naturalization of Mrs. Sartoris, who was before her marriage Nellie Grant, daughter of Gen. Grant. A strong appeal was made at that time based upon sentiment and Congress acted. It appears that that action has been taken as a precedent ever since.

From an administrative standpoint this department, of course, feels that it is wise that there shall be a uniform rule of naturalization. Injurious consequences may result from establishing the practice of nonuniform rules, but the practice is still more dangerous, it seems to this department, when we consider that extended indulgence in this practice may involve great property rights and great human rights some day should the question reach the courts and the decision of the court should result in declaring many people aliens who had proceeded in the belief that they were citizens.

Very sincerely, yours,

E. J. HENNING,
Assistant Secretary.

Hon. JOHN E. RAKER,
Washington, D. C.

I wrote to the Department of Justice, and if you desire, I will read that letter. They are very discreet on the matter, and naturally so. The letter is as follows:

DEPARTMENT OF JUSTICE,
Washington, D. C., May 14, 1921.

Hon. JOHN E. RAKER,
House of Representatives.

MY DEAR MR. CONGRESSMAN: I beg to acknowledge your letter of the 9th instant, inclosing a copy of House joint resolution 34, Sixty-seventh Congress, first session, providing for the admission of Emil S. Fischer to the rights and privileges of a citizen of the United States. You request such information as the department may feel at liberty to give with respect to the right of Congress to deal with the subject matter, in view of the constitutional provision (Art. I, sec. 8, cl. 4) that Congress shall have power "to establish a uniform rule of naturalization * * *."

I regret to say that the authority of the Attorney General, as you doubtless know, to give official opinions is restricted to such questions as may be submitted to him by the President or the head of an executive department. For your information, however, it may not be improper to add informally that it has been repeatedly declared by the courts that the Constitution vests the power of naturalization exclusively in Congress. Instances of collective naturalization by treaty, as in the case of the annexation of foreign territory, and by statute, as in the case of the admission of a State into the Union, are numerous. (Boyd *v.* Nebraska, 143 U. S., 135; Contzen *v.* United States, 179 U. S., 191; United States *v.* Wong Kim Ark, 169 U. S., 649.) In the last-mentioned case, the Supreme Court of the United States, at page 702, said:

"A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, either by treaty, as in the case of the annexation