

NATURALIZATION.

requires amendment. It was on all hands agreed that an end must be put to a system which claimed subjects to the Crown *jure soli* and also *jure sanguinis* even to the second generation. Then arose a controversy as to the new rule to be adopted as regards children of aliens born within the dominions of the Crown. On the one side the majority of the Commissioners—namely, Lord Clarendon, Sir R. Phillimore, Sir R. Palmer, Sir Travers Twiss, Sir John Karslake, Mr. W. E. Forster, and Mr. Cardwell—proposed the following rule: ‘All persons born within the dominions of the Crown to be British subjects, except children born of alien fathers and registered as aliens.’ On the other side Mr. Baron Bramwell, Mr. Bernard, and Mr. Harcourt held that *parentage* not *place*, ought to determine nationality. In short, the majority said: ‘Children of aliens born within the dominions of the Crown shall be aliens, with power to claim the rights of British subjects.’ Immediately after the publication of the Report, we in our review of the same declared that we considered ‘the position of the minority the more logical and the more expedient of the two.’ After the lapse of some months the Lord Chief Justice published his admirable treatise on nationality, and he supported with singular force and authority the view taken by the minority of the Royal Commissioners. His Lordship says: ‘It seems impossible to doubt that it would be for the common advantage of governments and subjects if a uniform rule were everywhere adopted. But then, what should that rule be? And first, as to nationality of origin. Should descent or place of birth be the determining cause? The nations of Continental Europe have decided in favour of descent. “Almost everywhere,” says Dr. Bar, “the nationality of the parent decides, without reference to the place of birth; and this must be acknowledged to be the right rule, seeing that *nationality essentially springs from descent*.” Descent, therefore, affords the true rule for determining nationality. This being so, it is obvious that, in adapting our law to this principle, there would be the twofold advantage—first, that we should be placing the law on the right foundation; secondly, that we should accomplish the all-important object of bringing it into unison with the law of other countries: a result which cannot otherwise be obtained, inasmuch as it would be at once idle and presumptuous to propose to other nations to adopt a false principle in order to adapt their laws to others.’ Such, then, being the state of the controversy at the opening of Parliament, we were a little curious to see in what way Her Majesty’s Government proposed to get over the difficulties besetting this cardinal point in the matter. It was rather too much to ask the Lord Chancellor to throw over the Foreign Minister, a Secretary of State, the Vice-President of the Council, the Judge of the Admiralty Court, and three great lawyers. On the other hand the Lord Chief Justice had dealt such a

deadly blow at the conclusions of the majority of the Commission, that it was absurd to attempt to revive them. So the Lord Chancellor, with laudable adroitness, cut the Gordian knot by leaving the whole question at large; and so here we have before us a bill to regulate the laws of nationality studiously abstaining from any declaration of the principle upon which nationality is to be based. As Lord Hatherley puts it, “It might have been thought at first that the best step to take in legislation would be to lay down a clear definition of what ought to be held to constitute nationality, and of what constitutes an alien; but the more this is looked into, and the more we see the inconsistency of different countries, the more clearly appears the impossibility of effectually attaining that object by any Act of Parliament; for we should be legislating in a manner which affects to bind those who are resident abroad, and under a totally different jurisdiction, over which we have no control. If any definition of that kind is to be laid down, as I hope it will be, it must be as it appears in the mode pointed out by the Lord Chief Justice and by the Commissioners, viz., by international accord and treaty rather than by legislation.’ Without staying to inquire whether this is a perfectly just representation of the argument of the Lord Chief Justice, we may at least rejoice that the Legislature will not be asked to affirm the erroneous dogma advanced by the majority of the Commission, and we may ourselves enjoy the innocent reflection that we hit at the very outset the blot in their Report. We are, however, very far from denying that it is absolutely essential that the nations of Europe and America should come to some general understanding upon the question in order to avoid the conflict of jurisdiction arising out of double nationality. But though such accord is desirable and necessary, yet we hold that the Legislature should have been asked to lend its sanction to the general rule that nationality should spring from descent. This general rule would of course be subject to the exception pointed out by the minority of the Commission, under which a child born and brought up in a foreign country would be enabled to claim citizenship in the country of his birth, and to the further exception that the descendant of a foreigner in the second generation should be presumed to be a citizen of the country of his birth, with power to reclaim alienage. But, as is clearly explained by the Lord Chief Justice, these exceptions must be affirmed by the harmonious voice of civilised nations, or at least should only exist by way of reciprocity. But whether the exceptions are to be allowed or not, yet his Lordship, as we understand him, would establish and hold to the primary rule of nationality by descent, and we are very strongly of opinion that this is the true doctrine.

Passing now from what is not in the bill to what is in the bill, we find first certain enactments relieving aliens from existing disabili-