

THE AMERICAN PASSPORT IN RUSSIA

The National Convention of the Republican Party held at Chicago, Ill., adopted, June 22, 1904, the following declaration:

We commend the vigorous efforts made by the Administration to protect American citizens in foreign lands and pledge ourselves to insist upon the just and equal protection of all our citizens abroad. It is the unquestioned duty of the Government to procure for all our citizens without distinction the rights of travel and sojourn in friendly countries, and we declare ourselves in favor of all efforts tending to that end.

The National Convention of the Democratic Party held at St. Louis, Mo., adopted, on July 8, 1904, the following:

We pledge ourselves to insist upon the just and lawful protection of our citizens at home and abroad, and to use all proper measures to secure for them, whether native born or naturalized, and without distinction of race or creed, the equal protection of laws and the enjoyment of all rights and privileges open to them under the covenants of our treaties of friendship and commerce; and if, under existing treaties, the right of travel and sojourn is denied to American citizens or recognition is withheld from American passports by any countries on the ground of race or creed, we favor the beginning of negotiations with the governments of such countries to secure by treaties the removal of these unjust discriminations.

We demand that all over the world a duly authenticated passport issued by the Government of the United States to an American citizen shall be proof of the fact that he is an American citizen, and shall entitle him to the treatment due him as such.

These two declarations, although general in terms, refer, as a matter of fact, to the Russian Empire. Though the abuse at which they are aimed concerns all the citizens of the United States, it more specifically affects those of the Jewish faith, whether natural born or naturalized. Article VI, Section 2, of the Constitution reads as follows:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

From this it will be seen that it is part of our fundamental system that all treaties made with the authority of the United States are the supreme law of the land. The relations of this Government with the Russian government so far as commerce, access, and travel are concerned, rest upon the treaty of 1832. The first article of this treaty reads as follows:

There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States shall mutually have liberty to enter the ports, places, and rivers of the territories of each party wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition to their submitting to the laws and ordinances there prevailing and particularly to the regulations in force concerning commerce.

By the wording of this treaty, the executive branch of the government is obligated to secure, in Russia, equal rights, without any distinction whatsoever, for all citizens of the United States.

That such rights are not secured may be learned from the following circular issued by the Secretary of State to naturalized American citizens born in Russia who apply for a passport with the intention of travelling in Russia:

DEPARTMENT OF STATE

Washington,19

To

Sir:

The Department has received your letter of stating that you were born in Russia and have acquired natur-

alization as a citizen of the United States, and asking whether, in the event of your return for a limited period to your native country, your passport as an American citizen will protect you from molestation or punishment from the Russian authorities. In reply, you are informed that, according to this Department's information, it is a punishable offense under Russian law for a Russian to become a citizen of any other country without Imperial consent. Although this law is at variance with our institutions and our statutes, this Government cannot encourage American citizens whom the law might affect to expect immunity from its operations if they place themselves within its sphere.

The laws of Russia also exclude from Russian territory, except by special permission, all people of the Jewish faith, and while this Government has been endeavoring for some years past to secure a relaxation of these enactments, it is only proper to warn those who are within the category to which they refer that it has not yet been able to secure from the Russian Government a promise of uniform treatment for all American travellers in Russia, without regard to their religious faith or place of birth.

I am, sir,

Your obedient servant,

The refusal of the Russian Government to abide by the terms of its treaty and the obligation of the United States, both by law and treaty, to the protection of all its citizens has led to discussion in various quarters. On two occasions it has formed the subject of reference in the annual message of the President of the United States to the Congress. President Arthur, in December, 1883, wrote:

While there has arisen during the year no grave question affecting the status in the Russian Empire of American citizens of other faith than that held by the national church, this Government remains firm in its conviction that the rights of its citizens abroad should be in no wise affected by their religious belief.

Again, in 1895, President Cleveland made the following statement in his message to Congress:

Correspondence is on foot touching the practice of Russian consuls within the jurisdiction of the United States to interrogate citizens as to their race and religious faith, and upon ascertainment thereof to deny the Jews authentication of passports or

legal documents for use in Russia. Inasmuch as such a proceeding imposes a disability which in the case of succession to property in Russia may be found to infringe the treaty rights of our citizens, and which is an obnoxious invasion of our territorial jurisdiction, it has elicited fitting remonstrance, the result of which, it is hoped, will remove the cause of complaint.

But long before this diplomatic correspondence was active on the subject. Indeed, it is not too much to say that the violation of this article of the Treaty of Commerce of 1832 has been the principal cause of difference between our own country and that of the Czar. A cursory examination of the diplomatic correspondence of the United States offers a mass of material on the subject, double in size of that which could be contained in a volume like the present one. As early as 1866, a case of this kind formed the subject of correspondence between Cassius M. Clay, our Minister to St. Petersburg, and William H. Seward, and there were other sporadic cases, but it was not until 1880 that diplomatic correspondence concerning the Jews in Russia became active. William M. Evarts, in forwarding a communication on the subject to John W. Foster, Minister to St. Petersburg, under date of April 14, 1880, observed:

You are sufficiently well informed of the liberal sentiments of this government to perceive that whenever any pertinent occasion may arise its attitude must always be in complete harmony with the principle of extending all rights and privileges, without distinction on account of creed.

On June 28, 1880, he wrote:

I have to observe that in the presence of this fact, that an American citizen has been ordered to leave Russia on no other ground than he is the professor of a particular creed, or the holder of certain religious views, it becomes the duty of the Government of the United States, which impartially seeks to protect all its citizens of whatever origin or faith, solemnly, but with all respect to the Government of His Majesty, to protest. . . . The

United States could not fail to look upon the expulsion of one of its citizens from Russia, on the simple ground of his religious ideas or convictions, except as a grievance, akin to that which Russia would doubtless find in the expulsion of one of her own citizens from the United States on the ground of his attachment to the faith of his fathers.

It appears, however, that the person involved was obliged to leave Russia. Nevertheless, our Government did not abandon his case, for on September 4, 1880, Mr. Evarts wrote to Mr. Foster as follows:

If the meaning of this is that a citizen of the United States has been broken up in his business at St. Petersburg, simply for the reason that he is a Jew rather than a believer in any other creed, then it is certainly time for this government to express itself as set forth in the instructions above mentioned. It should be made clear to the Government of Russia that in the view of this government the religion professed by one of its members has no relation to that citizen's right to the protection of the United States, and that in the eye of this government an injury officially dealt to Mr. Pinkos in St. Petersburg, on the sole ground that he is a Jew, presents the same aspect that an injury officially done to a citizen of Russia in New York for the reason that he attends any particular church there, would to the view of His Majesty's Government.

But this strong protest apparently had no result, for on October 20, 1880, Mr. Foster reported to the Department of State that "it became his unpleasant duty to report another similar case," which later formed the subject of correspondence between John W. Foster, when Secretary of State, and Andrew D. White, the latter writing: "I am satisfied that sooner or later the Russian Government must modify or repeal its illiberal laws respecting the Jews, and I will lose no opportunity to do what I can to hasten that event." On October 7, 1880, Mr. Foster addressed a note to the Russian Government on the subject, and on October 22 of the same year, Mr. Hay wrote to Mr. Foster with regard to this case as follows:

Your course appears to have been discreet, and it is hoped that you will press your representations to the successful establishment of the principle of religious toleration for our citizens peacefully travelling abroad, which we as a nation have such a deep interest in maintaining.

On December 30, 1880, Mr. Foster reports an interview with M. de Giers. The dispatch, which is a very long one, contains an account of interviews both with the Minister of Foreign Affairs and with General Melikoff, Minister of the Interior, and from it the following paragraphs are quoted:

It will be seen that the answer to my protest, in the case of Pinkos, is in substance that all the acts of the Russian authorities complained of were in strict accordance with the existing laws. In Wilczynski's case the minister states that, in view of the intervention of the legation, he will be permitted to return to St. Petersburg and remain for six months. It is to be noted that this is the extreme length of time granted to any foreign resident upon his national passport.

Notwithstanding the definite character of these replies, I deemed it important to hold the conference with the minister, agreed upon in my last visit, and I accordingly called at the foreign office at the hour designated, on the 16th instant, and was received by Mr. de Giers. I thanked him for the prompt answer which he had given to my notes in regard to Pinkos and Wilczynski, but said that I had thought it desirable to have a personal interview (especially as the conclusions reached by his government in neither case were entirely satisfactory), as in this way we might the better reach some understanding and avoid future trouble. His answer in the case of Pinkos was that all the acts complained of were in strict accordance with the laws. In my effort to investigate the question I had found great difficulty in learning what the laws were in relation to the Jews. I could find no digest of them, but had been given a large volume, in the Russian language, of nearly twelve hundred pages, which I was informed related exclusively to the laws and regulations governing the Jews in Russia. It appeared almost impossible for me to learn what the laws now existing were, and he could readily understand the difficulty a foreign Jewish merchant or visitor would have in understanding them. I recognized the considerate attention which the Russian Government had shown to all the requests of the legation regarding American Jews; but my government objected to the discrimination on account of religion or

race, which made the intervention of the legation necessary. It claimed for its citizens of the Jewish faith the same rights and protection extended to other American citizens, and insisted that there should be no distinction in applying the treaty guarantee of reciprocal liberty of commercial intercourse. If the Russian government was not prepared to concede this, then until the views of these two governments could be harmonized, as new cases were constantly arising, it was desirable to know what the Russian laws and regulations in regard to foreign Jews were, and whether some general rule or course of action could be indicated, so that American Jews would know what treatment they might expect.

The minister, Mr. de Giers, answered that the Russian Government had found the Jewish question a very vexatious and disagreeable one, both as to the internal relations, and the treatment of foreign Jews.

So far as concerned Jews who were bona fide American citizens (not disguised German Jews), he would assure me of the most liberal treatment, as he knew it was the desire of the Emperor to show all possible consideration to American citizens. If such came to St. Petersburg and encountered any trouble, if I would merely send him an unofficial note, he would give them all the time I might ask for them to remain here to attend to their business. He expected to go to see the Emperor that day and would inform him that he had given me assurance that the American Jews should have this privilege, and he was sure his sovereign would approve his action; but this would be a special exception, as the existing laws must stand for the present for the protection of the government.

I thanked the minister for the consideration which he proposed to show to this class of my countrymen and to the legation, and assured him that I highly appreciated the friendly spirit manifested towards the United States. I was, however, sorry to learn that the laws could not be entirely repealed, as such a course would be much more in accordance with the views entertained by my government, and it would be highly gratifying to it to see all prohibitions against Jews, naturalized or foreign, abolished.

I have further to report that, acting upon the spirit of the instructions contained in your No. 2, of April 14 last, and with the object of impressing more fully upon the ministry the views of our government on the general subject of reform in Jewish legislation, I have also had a conversation with the minister of worship, who listened with much interest to my presentation of the subject. He said that a commission was now engaged in studying the question of reform in these laws. He frankly recognized that the laws were not fully in accordance with the spirit of the age, and stated that it was the earnest desire of the

Russian Government to conform its code on this subject more nearly to the civilization of this century, but it found itself surrounded by many difficulties to which other nations were not subjected, and that great prudence had to be exercised in the remedial measures taken. . . .

I thought proper to again visit the foreign office on yesterday, and in recalling the subject to Mr. de Giers' attention, I referred to my interview with the minister of the interior, General Melikoff, as very pleasant and cordial, but said that that interview developed more fully that the Russian Government was disposed to grant what we desired only as a favor when my government asked it as a right. We objected to any discrimination being made against American citizens on account of religion, as our government was bound to extend equal protection to all its citizens without distinction; and, while I highly appreciated the consideration which it was proposed to show to American citizens of the Jewish faith, I feared my government would not be satisfied with the attitude which was assumed on the question as a matter of right.

In a dispatch dated March 3, 1881, Mr. Evarts, in a letter to Mr. Foster, shifts the discussion to the sole ground of American citizenship in the following words:

I have observed, however, that, in some of your conversations and writings with the foreign office, you give prominence to the natural American sympathy with oppressed Jews elsewhere as a motive for our solicitude as to the treatment of the Jews in Russia. Such solicitude might very properly exist; but in your presentation of the facts you should be careful to impress that we ask treaty treatment for our aggrieved citizens, not because they are Jews, but because they are Americans. Russia's treatment of her own Jews, or of foreign Jews resorting thither, may, in determinate cases, attract the sympathy of the American People, but the aim of the Government of the United States is the specific one of protecting its own citizens. If the hardships to which Russian and foreign Jews are subjected involves our citizens, we think we have just grounds for remonstrance and expectancy of better treatment.

This government does not know or inquire the religion of the American citizens it protects. It cannot take cognizance of the methods by which Russian authorities may arrive at the conclusion or conjecture that any given American citizen professes the Israelitish faith. The discussion of the recent cases has not yet developed any judicial procedure whereby an American citi-

zen, otherwise unoffending against the laws, is to be convicted of Judaism, if that be an offense under Russian law; and we are not disposed to regard it as a maintainable point that a religious belief is, or can be, a military offense, to be dealt with under the arbitrary methods incident to the existence of a "state of siege."

This government is not unmindful of the difficulties under which, as is alleged, that of Russia labors in dealing with those of her subjects whom she may deem disaffected; but the reasons adduced and methods adopted against them should have no application to American citizens sojourning peacefully for business or pleasure, in Russia, for they are not to be charged with abstract political disaffection to a government to which they owe no allegiance; and, if charged with the commission of unlawful acts, they should have guilt explicitly imputed and proven. In the latter case, the religion of the accused cannot be admitted as proof or presumption, either of guilt or innocence.

It is not the desire of this government to embarrass that of Russia by insistence upon these points with any degree of harshness, when the disposition reported in your dispatches is so conciliatory, and when the treatment offered may operate effectively to remove or prevent future causes of complaint based on the ill-treatment of American citizens alleged to be Jews. It is most desirable, however, that you should not pretermit your efforts to bring the matter to such a stage as will insure for peaceable and law-abiding Americans in Russia like treaty rights and personal freedom of creed as Russians enjoy in the United States.

All the answers of the Russian Foreign Office to the representations of the United States appeal to the fact that the proscriptive laws against the Jews were in existence prior to the treaty of 1832; that they, therefore, must be assumed under the treaty, and, furthermore, that the Jewish question in Russia presented economic and other difficulties, and that the Jews were allied with the Revolutionary Party. In a dispatch from Mr. Blaine to Mr. Foster, dated July 29, 1881, there occur the following passages, which are worthy of note, and which effectually disputed this claim:

These questions of the conflict of local law and international treaty stipulations are among the most common which have engaged the attention of publicists, and it is their concurrent judgment that where a treaty creates a privilege for aliens in express

terms, it cannot be limited by the operation of domestic law without a serious breach of good faith which governs the intercourse of nations. So long as such a conventional engagement in favor of the citizens of another state exists, the law governing natives in like cases is manifestly inapplicable.

I need hardly enlarge on the point that the Government of the United States concludes its treaties with foreign states for the equal protection of all American citizens. I can make absolutely no discrimination between them, whatever be their origin or creed. So that they abide by the laws, at home or abroad, it must give them due protection and expect like protection for them. Any unfriendly or discriminatory act against them on the part of a foreign power with which we are at peace would call for our earnest remonstrance, whether a treaty existed or not. . . .

From the time when the treaty of 1832 was signed down to within a very recent period, there had been nothing in our relations with Russia to lead to the supposition that our flag did not carry with it equal protection to every American within the dominions of the empire. Even in questions of citizenship affecting the interests of naturalized citizens of Russian origin, the good disposition of the imperial government has been on several occasions shown in the most exemplary manner; and I am sure the actual counselors of His Majesty cannot but contemplate with satisfaction the near approach made in 1874 to the arrangements of negotiation for a treaty of naturalization between the two countries. . . .

The imperial ordinance of the Czar Alexander I, of 13th August, 1807, decrees a rigid system of passports for foreigners, entering Russia, and is applicable to "all foreigners, of whatsoever nationality," but intimates no restriction on travel or sojourn in Russia by reason of race or faith. This ordinance was modified and amplified by the ukase of 25th February, 1817, but still without any manner of religious proscription or restriction.

From this time down to 1860, I can find no trace of the enforcement, especially against American citizens, of the restrictions against Jewish travel or residence which are stated to have existed when our treaty with Russia was signed. . . .

To bar an American citizen whose rights might be so concerned from personal appearance in protection of those rights might be a distinct departure from the engagement of the treaty, while to suppose that his case might come under the discretionary authority of the police or the military power, which might refuse his personal sojourn in any part of the empire, or allow it under conditions depending on their good will, is to suppose a submission of the guarantees of the treaty to a tribunal never contemplated by its framers.

I cannot better bring this instruction to a close than by repeating and amplifying those views which the President so firmly holds and which he so anxiously desires to have recognized and responded to by the Russian Government.

He conceives that the intention of the United States in negotiating and concluding the treaty of December 18, 1832, and the distinct and enlightened reciprocal engagements then entered into with the Government of Russia, give us a moral ground to expect careful attention to our opinions as to its rational interpretation in the broadest and most impartial sense; that he would deeply regret, in view of the gratifying friendliness of the relations of the two countries which he is so desirous to maintain, to find that this large national sentiment fails to control the present issue, or that a narrow and rigid limitation of the construction possible to the treaty stipulations between the two countries is likely to be adhered to; that if, after a frank comparison of the views of the two governments, in the most amicable spirit and with the most earnest desire to reach a mutually agreeable conclusion, the treaty stipulations between the United States and Russia are found insufficient to determine questions of nationality and tolerance of individual faith, or to secure to American citizens in Russia the treatment which Russians receive in the United States, it is simply due to the good relations of the two countries that these stipulations should be made sufficient in these regards; and that we can look for no clearer evidence of the good will which Russia professes toward us than a frank declaration of her readiness to come to a distinct agreement with us on these points, in an earnest and generous spirit. . . .

You can further advise him that we can make no new treaty with Russia, nor accept any construction of our existing treaty, which shall discriminate against any class of American citizens on account of their religious faith.

I cannot but feel assured that this earnest presentation of the views of this government will accord with the sense of justice and equity of that of Russia, and that the questions at issue will soon find their natural solution in harmony with the spirit of tolerance which pervaded the ukase of the Empress Catherine a century ago, and with the statesman-like declaration of the principle of reciprocity found in the later decree of the Czar Alexander II, in 1860.

On September 7, 1886, a new case having arisen, Mr. Lothrop sent a dispatch to Mr. Bayard, from which the following extracts are made:

Every effort seems to have been made to induce the Imperial authorities to modify its laws in favor of our citizens, but, wholly without success. There is now no probability of any such modification. Indeed, there seems now to be a revival of strictness in enforcing this restriction. Strict orders have been issued to Russian officials abroad not to visa the passports of any persons recognized as foreign Jews. The object is to turn all such persons back at the frontier, and thus prevent their entering the empire. If, however, any get through, their passports are subjected to renewed scrutiny in all large cities, and if they are recognized they are ordered forthwith to leave. The papers announce that only a few days ago two English Jews, one of them a member of Parliament, were peremptorily expelled at Moscow.

On August 29, a most respectable Hebrew merchant of New York, a native-born citizen of the United States, who was traveling in Russia as a tourist with his family, was waited on at his hotel in this city by the police, his passport returned to him, and he was ordered to leave the city that night. He came to me immediately, and I at once not only went to the foreign office, but filed a protest in writing against this order, and asked its revocation. My explanation of this gentleman's character and the purpose of his visit was very readily accepted and the order of expulsion revoked. . . .

. . . . The Imperial Government defends its position on the ground that every country must have full liberty to determine who shall have the right to enter and dwell in its territory. . . . It is not pretended that American citizens of the Hebrew faith have ever at any time proved dangerous to the peace or safety of the Empire. But it is urged that discrimination between nationalities is inadmissible, and that the harshness of the general rule is mitigated by special permission given in all proper cases upon special application.

I believe that the Russian officials are disposed to be obliging in this respect, but it can never be acceptable that any body of American citizens should be subject to any such necessity. It seems to be an imputation on that which is justly held most sacred. Still, as there is not the slightest inclination to abrogate, or even modify the law, it may be desirable that the facts be more fully known in America.

Much annoyance and mortification would be saved if our Hebrew fellow-citizens desiring to come to Russia should apply for special leave. Letters of introduction to the legation would be most useful in promoting such application. Permission could doubtless be obtained in all ordinary cases.

Mr. Bayard, replying under date of September 23, 1886, wrote as follows:

The Government of the Czar is fully aware that we do not admit the principle of discriminating against any American citizens because of their religious tenets.

Another case arose in 1893, and the Department of State wrote to Mr. White as follows:

It is not constitutionally within the power of this Government, or of any of its authorities, to apply a religious test in qualification of the equal rights of all citizens of the United States; and it is therefore impossible to acquiesce in the application of such a test, within the jurisdiction of the United States, by the agents of a foreign power, to the impairment of a right of any American citizen or in derogation of the certificate of this Government to the fact of such citizenship.

On several occasions in the past this Government has made temperate but earnest remonstrance against the examination into the religious faith of American citizens by the Russian authorities. . . .

His Majesty's Government, however, surely cannot expect the United States to acquiesce in the assumption of a religious inquisitorial function within our own borders, by a foreign agency, in a manner so repugnant to the national sense.

I cannot but surmise that some strange misapprehension exists in this regard in the mind of His Majesty's Government, which your accustomed ability and tact may explain and perhaps remove.

In 1895, Mr. Breckinridge, our Minister at St. Petersburg, wrote to the Russian Minister of Foreign Affairs as follows:

I am directed by my Government to bring to the attention of the Imperial Government the refusal of the Russian consul of New York to visé passports issued by the United States to its citizens if they are of the Jewish faith.

As your excellency is aware it has long been a matter of deep regret and concern to the United States that any of its citizens should be discriminated against for religious reasons while peacefully sojourning in this country, or that any such restraint should be imposed upon their coming and going. Painful as this policy toward a class of our citizens is to my Government, repugnant to our constitutional duty to afford them in every possible way equal protection and privileges and to our sense of their treaty rights, yet it is even more repugnant to our laws and the national sense for a foreign official, located within the jurisdiction of the United States, to there apply a religious test to any of our citizens

to the impairment of his rights as an American citizen or in derogation of the certificate of our Government to the fact of such citizenship.

It is not constitutionally within the power of the United States Government, or of any of its authorities, to apply a religious test in qualification of equal rights of all citizens of the United States, and no law or principle is more warmly cherished by the American people. It is therefore impossible for my Government to acquiesce in any manner in the application of such a test within its jurisdiction by the agents of a foreign power.

When this matter was the subject of correspondence between my Government and the Imperial representative at Washington, as shown by Prince Cantacuzene's note of February 20, 1893, such action by the Russian consul at New York was shown to be "according to the instructions of his Government."

I can sincerely assure you that the continuation of this practice is as embarrassing as it is painful to my Government, especially when it is on the part of a nation for whose Government and people such intimate friendship has so long been manifested by the United States. I am happy that in this spirit I can frankly submit the matter to your excellency with the sincere hope that assurance can be given that such practices will be henceforth interdicted on the part of Russian officials located within the jurisdiction of the United States.

Mr. Peirce, writing to the State Department on June 13, 1895, reported a conversation with the Russian Minister of Foreign Affairs, from which the following extracts are made:

That viewing the Jewish question as she (Russia) does, as one of race and not of religion, but in which the two questions are inseparable, so far as her purposes are concerned, she refuses to permit foreign Jews of any nationality to enter her borders and swell the numbers already there. For this reason the Government has instructed all Russian consuls in all countries to refuse to visé the passports of foreign Jews. On the other hand, and speaking of his own opinion, as the real purpose of the laws forbidding the entry of foreign Jews into Russia is to prevent their settlement here and their engaging in trade within Russian territory, and not to prevent the entrance of tourists, temporary sojourners, or Jews whose purpose in coming is not of an objectionable nature to the Government, Baron Osten-Sacken said that, in his opinion, there should be a change in the present practice regarding the admission of foreign Jews.

I expressed the hope that the Imperial Government would find

it compatible with its policy to admit American citizens into Russia, without inquiry as to their religious opinions or race, upon presentation of their passports. That with us the Hebrews had proved themselves to be good and law-abiding citizens, who prospered without preying upon others, but that whatever might be the opinion of the Imperial Government upon this question, the interpretation and application of the Federal Laws discourage citizens of the United States of all creeds, taking up permanent residence in a foreign country and continuing to claim the protection of our Government as such citizens; that such citizenship involves certain obligations which require a residence in our country, and that therefore it is unlikely that Hebrews bearing American passports would become permanently settled in Russia. This Baron Osten-Sacken admitted was a forcible argument, and he expressed himself as hopeful that it would be possible to bring about a satisfactory revision of Russian practice as regards the admission of American Jews into the Empire.

At the same time, he said that were an answer to Mr. Breckinridge's note demanded the reply could not be favorable. That the laws of Russia are framed with regard to her own views of her own good. I took occasion to point out to the Baron that the purport of Mr. Breckinridge's note was to protest against the extra-territorial act of an agent of a foreign Government, upon our soil, applying a religious test to citizens of the United States, an act not constitutionally within the power of any officer of our own government to perform, and not to criticise the Russian Laws.

On July 5, 1895, Mr. Adee, writing to the Legation at St. Petersburg, said:

Your conclusion that it is inexpedient to press the complaint to a formal answer at present appears to be discreet, but the Department must express its deep regret that you have encountered in the foreign office a reluctance to consider the matter in the light in which this Government has presented it. The Russian Government can not expect that its course in asserting inquisitorial authority in the United States over citizens of the United States as to their religious or civil status can ever be acceptable or even tolerable to such a Government as ours, and continuance in such a course after our views have been clearly but considerately made known may trench upon the just limits of consideration.

This dispatch is illustrated by a letter to the Russian Consulate General at New York from an American citizen asking

permission to visit Russia. Upon his declaration that he was a Jew, he received a reply to the effect that he must secure permission to visit Russia from the Ministry of the Interior.

Under date of July 4, 1895, in course of a long dispatch, Mr. Breckinridge wrote to Mr. Olney as follows:

The first and chief difficulty so far experienced has been to get the Russian Government to consider this question separately and simply as it is presented by the United States apart from any collateral question.

As the record shows, former discussion has largely involved the general Jewish question, particularly as presented by the internal policy of Russia. So long as an ulterior purpose of this character is in any degree suspected, the Russian Government will consider that to be the real issue it has to meet, and it will politely but consistently refuse to amend its ways.

The next difficulty has been to secure a due apprehension of the real nature and importance of the matter, even after it has been separately considered. It is quite difficult for Russians to consider it as more than an administrative regulation pitted against their regulations, changeable at the will of some high official, and meant only to serve purposes of convenience.

I have politely but consistently refused to enter into any discussion in this connection except under the precise proposition submitted by the Department, and I have iterated and reiterated that proposition, to the exclusion of all others, as clearly and as pointedly, as I could.

On August 22, 1895, Mr. Adee wrote to Mr. Breckinridge as follows:

Apart from the constitutional objections to the discrimination made by Russian consular officers against American Jews, this Government can never consent that a class embracing many of its most honored and valuable citizens shall, within its own territory, be subjected to invidious and disparaging distinctions of the character implied in refusing to visé their passports. For, notwithstanding Prince Lobanow's suggestion that his Government's consular regulation upon the subject under consideration does not apply to all Israelites and therefore can not be regarded as a discrimination against them on religious grounds, the fact remains that the interrogatories propounded to applicants for the consular visé relate to religious faith, and upon the response depends the consul's action.

Viewed in the light of an invidious discrimination tending to discredit and humiliate American Jews in the eyes of their fellow-citizens, it is plain that the action of Russian consular officers does produce its effect within American territory, and not exclusively in Russian jurisdiction.

But the Russian discrimination against American Jews is not confined simply to the matter of viséing passports. This Department was informed a few years since by the Russian minister here that Russian consuls in this country would refuse authentication to legal documents for use in Russia when Jews are ascertained to be interested. This is not merely an unjust and invidious discrimination against Jews, but would seem to be plainly a violation of the spirit of Article X of the treaty of 1832 between this country and Russia in respect to the property rights of American citizens in that country.

In a dispatch dated October 23, 1895, from the Department of State to the Legation at St. Petersburg, after acknowledging the receipt of a set of regulations relating to the Jews in Russia, the document continues:

This does not touch the essential question to which the Department's previous instructions have invited attention, namely, the assumption by the agents of Russia in the United States of Inquisitorial functions touching the religious faith of applicants for passports. If anything, it presents the subject in a still more unfavorable light, for it seems that those Russian agents in a foreign territory may in their discretion inquire into the business standing of the principal of the commercial house employing a Hebrew agent, and act favorably or unfavorably, according to their own judgment of its importance.

The question is not whether the Russian Government by Imperial order or ministerial regulation has directed its consuls to make such inquiries in respect to the religious faith or business transactions of American citizens, but whether the Imperial Government has any right to make such inquisition in a foreign country when the effect may be to disregard the Government's certification of the fact of citizenship; or, assuming for the argument's sake, but not by way of admission, that such a right may technically exist, the question remains whether the assumption to exercise it in face of the temperate but earnest remonstrances of this Government against foreign interference with the private concerns of its citizens, is in accordance with those courteous principles of comity which this Government is so anxious to observe in its relations with all foreign states.

These are but examples of the numerous dispatches interchanged between the United States and Russia during the past forty years, upon this subject. That the result thus far has been unsatisfactory to our Government appears from the circular issued to naturalized American citizens born in Russia, who desire to obtain passports, and from the following:

DEPARTMENT OF STATE, Washington, August 1, 1901.

NOTICE TO AMERICAN CITIZENS FORMERLY SUBJECTS
OF RUSSIA WHO CONTEMPLATE RETURNING
TO THAT COUNTRY

The information given below is believed to be correct, yet is not to be considered as official, as it relates to the laws and regulations of a foreign country.

A Russian is enrolled for military service at the beginning of the twenty-first year of his age, and remains on the rolls to the end of his forty-third year; but at the age of 15 he is considered to be among those who are liable to perform military service, and he can not, after reaching that age, ask for permission to become a citizen of a foreign country, unless he has performed his military service. A Russian who becomes a citizen of a foreign country without Imperial consent is liable under Russian law to the loss of all his civil rights and to perpetual banishment from the Empire. If he returns he is liable to deportation to Siberia. When a Russian emigrates before he is 15 years old, and subsequently becomes a citizen of another country, he is equally liable to punishment, unless when he attained the age of 21 years he took steps necessary to obtain the consent of the Emperor to his expatriation.

Naturalized Americans of Russian birth, of the Jewish race, are not allowed to enter Russia except by special permission. For this, they may apply to the minister of the interior, but the Department can not act as intermediary in making the application.

There is no treaty between the United States and Russia defining the status of American citizens of Russian birth upon their return to Russia.

No one is admitted to Russia without a passport. It must be visaed by a Russian diplomatic or consular representative. Upon entering Russia it should be shown at the first Government house, and the holder will be given another passport or permit of sojourn. At least twenty-four hours before departure from Russia

this permit should be presented and a passport of departure will be granted and the original passport returned. A fresh permit to remain in Russia must be obtained every six months.

Within the past two years the subject has attracted attention in Congress.

On March 28, 1902, the Honorable Henry M. Goldfogle, representing the Ninth District of New York in the Congress of the United States, submitted to the House of Representatives the following resolution:

Resolved, by the House of Representatives of the United States, That the Secretary of State be, and he hereby is, respectfully requested to inform this House whether American citizens of the Jewish religious faith, holding passports issued by this Government, are barred or excluded from entering the territory of the Empire of Russia, and whether the Russian Government has made or is making any discrimination between citizens of the United States of different religious faiths or persuasions, visiting or attempting to visit Russia, provided with American passports; and whether the Russian Government has made regulations restricting or specially applying to American citizens, whether native or naturalized, of the Jewish religious denomination holding United States passports, and if so, to report the facts in relation thereto, and what action concerning such exclusion, discrimination, or restriction, if any, has been taken by any Department of the Government of the United States.

This resolution was referred to the Committee on Foreign Affairs and ordered to be printed. On April 30, 1902, the Committee made the following report:

The Committee on Foreign Affairs, to whom was referred House resolution 183, calling upon the Secretary of State to inform the House of Representatives whether the Russian Government is discriminating against Americans of Jewish faith visiting or attempting to visit Russia, have duly considered the same, and report it back to the House with the following amendment:

In line 3, after the word "Representatives," insert the words "if not incompatible with public interests."

As amended the Committee recommends the adoption of the resolution.

The amendment was agreed to. Before the resolution as amended was voted upon, Mr. Goldfogle spoke to it at length. The resolution was adopted.

On May 5, 1902, the following letter from the Secretary of State responding to the above inquiry was received by the House of Representatives, referred to the Committee on Foreign Affairs, and ordered to be printed:

To the House of Representatives: In response to the resolution of the House of Representatives, of April 30, 1902, the undersigned Secretary of State has the honor to say that the resolution involves two questions:

- (1) Whether American Jews holding American passports are, as a fact, excluded from Russia, and
- (2) Whether American Jews are discriminated against by Russia, and are at a greater disadvantage before that Government than are the Jews of other countries.

The second question may be categorically answered in the negative. Such a discrimination, if it were made, would call forth immediate action of protest from this Government.

This Department has no information remotely indicating that American Jews stand upon a footing different from that occupied by the Jews of other countries in the administration of Russian law.

The exclusion of naturalized citizens of Russian origin and of Jews from Russia was commented upon by Secretary Olney in his report to the President for the year 1896:

"The published correspondence for a number of years back has shown the persistence of the United States in endeavoring to obtain for its citizens, whether native or naturalized, and irrespective of their faith, the equality of privilege and treatment stipulated for all American citizens in Russia by existing treaties. Holding to the old doctrine of perpetual allegiance; refusing to lessen its authority by concluding any treaty recognizing the naturalization of a Russian subject without prior imperial consent; asserting the extreme right to punish a naturalized Russian on return to his native jurisdiction, not merely for unauthorized emigration, but also specifically for the unpermitted acquisition of a foreign citizenship, and sedulously applying at home and through the official acts of its agents abroad, to all persons of the Jewish belief, the stern restrictions enjoined by Russian law, the Government of Russia takes ground not admitting of acquiescence by the United States, because at variance with the

character of our institutions, the sentiments of our people, the provisions of our statutes, and the tendencies of modern international comity.

Under these circumstances conflict between national laws, each absolute within the domestic sphere and inoperative beyond it, is hardly to be averted."

Since this report the position of the Department has not changed, and its efforts to secure uniform treatment for American citizens in Russia, begun many years ago, have continued, although they have not been attended with encouraging success.

The Department of State now sends to all persons of Russian birth who receive passports an unofficial notice showing what are the provisions of Russian law liable to affect them, in order that they may not incur danger through ignorance. In transmitting a copy of this notice to the ambassador of the United States at St. Petersburg, for his information, he was instructed February 15, 1901, as follows:

"The inclosed notice to American citizens formerly subjects of Russia who contemplate returning to that country the Department is sending to all persons born in Russia who receive passports. It is sent to you merely for your information and you are instructed that it is not intended to mean that there has been any abatement on the part of this Government in its policy of protecting equally naturalized and native-born Americans during their travels or sojourn abroad, as the law requires. Nor does the notice foreshadow any mitigation of such dissent as this Government may have expressed to the laws or regulations of Russia which may deny equality of treatment to all law-abiding American citizens, regardless of their place of birth."

Respectfully submitted.

JOHN HAY.

DEPARTMENT OF STATE, *Washington*, May 2, 1902.

There the matter rested until, on January 4, 1904, Mr. Goldfogle introduced a second resolution:

Resolved, That it is the sense of the people of the United States that uniform treatment and protection should be accorded to every American citizen, regardless of race or creed, when travelling or sojourning abroad, and that every earnest effort should be made by the executive department of this Government to secure from the Imperial Government of Russia such uniformity of treatment and protection, especially in the recognition and honoring of the passports held by our citizens, to the end that there be no discrimination made by the Government of Russia between American citizens on the ground of their religious belief or faith; and

the President of the United States is hereby respectfully requested to take such steps and cause such diplomatic negotiations to be set on foot as may tend to secure, through means of treaty or otherwise, the honoring and the uniform recognition by the Russian Government and its authorities of American passports, irrespective of the religious faith or denomination of their holders to the end that every law-abiding citizen provided with a passport duly issued by this Government shall, regardless of what may be his race, creed, or religious faith, have freedom in travelling and sojourn in the territory of Russia, subject to such provisions in any treaty between the United States and Russia as are not inconsistent with the spirit and intent of this resolution.

This resolution gave rise to notable addresses in the House of Representatives by the Honorable Francis Burton Harrison, of New York, the Honorable Henry M. Goldfogle, of New York, the Honorable Martin Emerich, of Illinois, and the Honorable Alfred Lucking, of Michigan.

On February 18, 1904, the House Committee on Foreign Affairs granted a hearing to Mr. Goldfogle, Mr. Harrison, and the Honorable Simon Wolf, on the resolution introduced by Mr. Goldfogle concerning the treatment of Americans abroad.

On April 14, the House Committee on Foreign Affairs submitted a favorable report on the following substitute for the Goldfogle resolution, which was unanimously adopted on April 21:

That the President be requested to renew negotiations with the Governments of countries where discrimination is made between American citizens on the ground of religious faith or belief, to secure, by treaty or otherwise, uniformity of treatment and protection to American citizens holding passports duly issued by the authorities of the United States, in order that all American citizens shall have guaranteed freedom of travel and sojourn in those countries without regard to race, creed or religious faith.

In conformity with this action taken by the House of Representatives, the Department of State has again formally opened the passport question. At the date of writing no reply

has been received from Russia, and the American dispatch is as yet unpublished.

That the diplomatic correspondence of many years and the campaign carried on in the House of Representatives more recently has not been without result, is evident from the "planks" adopted by the two great political parties. American citizens are thus irrevocably committed to the inviolability of the American passport. With the Jewish citizens of the United States the settlement of the question has become a passion, and they will not rest content until the rights of American citizenship are recognized by all nations who desire to maintain friendly relations with this Government, and until the absolute equality of all American citizens regardless of race or creed is fully and finally admitted.

August 3, 1904