

APPENDIX VII.

NATIONALITY OF CHILDREN BORN ABROAD OF BRITISH PARENTS.

MEMORANDUM PREPARED IN THE HOME OFFICE.

THE acquisition of British nationality under the existing law depends upon the application of two distinct principles known as the *jus soli* and the *jus sanguinis*. The former—by which every child born in the territory of a State becomes at birth one of its nationals—is the basis of British nationality, and was, at common law (under which only those children who were born within His Majesty's allegiance were British subjects) the only way in which British nationality could be acquired.

On the other hand, the *jus sanguinis*—by which nationality is acquired through paternal descent—was unknown to the common law, and was introduced into our law by statute: See the British Nationality Act, 1730 (4 Geo. II, c.21) as to the first generation born abroad, and the British Nationality Act, 1772 (13 Geo. III, c.21), which extended the principle so as to confer the status of British subject also upon the grandson born abroad.

These statutes remained in force until the British Nationality and Status of Aliens Act, 1914, which repealed both, but in substance re-enacted the Nationality Act, 1730. British nationality so far as it depends upon the *jus sanguinis* thus became limited once more to the first generation born abroad.

This change in the law was introduced upon the recommendation of a strong interdepartmental Committee, who had reported in 1901 (Cd. 723) in favour of the retention of the *jus soli* and—as had been recommended by the Royal Commission of 1869—the limitation of the *jus sanguinis* to one generation. The main considerations in favour of that limitation are (1) that in normal circumstances the closeness of association with the British Empire of families of British descent resident in a foreign country tends to diminish with each generation born abroad, more especially if marriages with foreign women take place; (2) that the transmission of British nationality through successive generations born abroad necessarily and automatically produces many instances of dual nationality in cases where that foreign country possesses the *jus soli* (as in the case of most of the South American Republics).

As regards the first of these considerations it is still probably true that the perpetuation of the *jus sanguinis* in countries where (as in the case of the United States of America) the conditions of life are, broadly speaking, British in character, and there is no marked tendency for the formation of distinct British communities, successive generations are likely to lose touch to a large extent with the Home-country and to cease to be British in anything but name and descent. On the other hand, in those countries such as the South American Republics, Japan, Portugal, Tunis, where strong British communities have been formed, the position as it existed prior to 1914 has undoubtedly been affected by the war. In such countries, indeed, the British communities during and since the conclusion of hostilities have shown a very marked desire to assert and maintain their British character; and representations are constantly being made to H.M. Government—e.g., by British subjects themselves born abroad who joined H.M. Forces during the war—that British nationality ought to be continued beyond the first generation born abroad so as to cover their children.

As regards the second of the above considerations, a system under which a child comes into the world with two nationalities, that of his father's State and that of the State where he was born, cannot be regarded as satisfactory. In theory and in fact such a child owes allegiance simultaneously to two different sovereign States, and the inconvenience and confusion resulting from that dual status, which gives him two sets of rights and privileges and two sets of duties and obligations, is universally recognized. The policy of nationality law should be to reduce such cases to a minimum.