Correspondence.

SALT LAKE CITY,
October 17th, 1870.

To the Editor of the Deseret News:—Sir,—A few days ago there appeared in your columns, an opinion of the Honorable J. B. McKaen, Chief Justice of this Territory, on the subject of Naturalization, which I read with some attention, and which induced me once more to examine the subject and write an opinion of my own. There is an additional reason for my again examining the subject, which is this: It is well known to the people here and elsewhere, that I, at one time, was Judge of the Supreme Court, in this Territory, and of one of the District Courts afterwards a Probate Judge of the Territory. In both of these capacities I administered to applicants the oath of naturalization, which I should not have done, had I not believed the Probate Courts were courts of record within the meaning of the Acts of Congress on this subject.

The Constitution of the United States, Article 1., Sec. VIII., provides, among other things, that Congress shall have power to establish a uniform rule of naturalization. This confers on Congress the exclusive power to establish the rule and the only inhibition this power is, that the *rule* must be *uniform*. It must, therefore, be the same in all courts and in all of the States and Territories.

Congress, in the exercise of this power on the 26th of March, A. D. 1790, passed an act on this subject (Sec. 1. statuts at large p. 103) which however was repealed on the 29th of January, A. D. 1795, and another act passed. (See the same p. 414.) By this Act it was provided that an alien, being a free, white person, may be admitted to become a citizen of the United States or any of them on the following conditions, and not otherwise:

First.—He shall have declered on oath or affirmation, before the Supreme, Superior, District, or Circuit Court of some one of the States, or of the Territories North-west or South of the river Ohio, or a Circuit or District Court of the United States, three years at least before his admission, that it was, *bona fide*, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, State or Sovereignty whatever, and particularly, by name, the Prince, Potentate, State or Sovereignty, whereof such alien may, at the time, be a citizen or subject.

Secondly.—He shall, at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he has resided within the United States five years at least, and within the State or Territory, where such court is at the time held, one year at least; that he will support the Constitution of the United States; and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, State or Sovereignity whatever, and particularly by name, the prince, potentate, State or Sovereignty whereof he was before a citizen or subject: which proceedings shall be recorded by the clerk of the court.

Thirdly.—The court admitting such alien shall be satisfied that he has resided within the limits and under the jurisdiction of the United States five years; and it shall further appear to their satisfaction, that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

The remaining portions of this law related to a renunciation of hereditary titles, if any, of the alien, to aliens then in the United States, and to children of naturalized citizens; they, therefore, need not be farther noticed.

It will be perceived by the first clause above mentioned, that the courts, before whom this oath of the alien was to be made, are sufficiently comprehensive to include all courts of record in all the States and Territories, and the United States courts, except the Supreme Court of the United States. This, too, in its very terms, included all the Territories then existing. It will also be perceived that the oath was to be made by the alien himself and not by any other person for him. This was most obvious, for no one could know besides himself what his *bona fide* intent was. It is further to be noticed that the oath required in the second clause was to be made by himself, in which he was to state that he had resided within the United States five years at least, and within the state or territory where such court was held one year at least, and then, that he would support the Constitution of the United States, &c., and that he would renounce and abjure, &c. By the third clause the court was to be satified, in addition to the residence, that he during the five years, had behaved as a man of good moral character, also as a man attached to the principles of the Constitution of the United States, and as a man well disposed to the good order and happiness of the same; but the act did not provide the kind of evidence to be submitted to the court on this subject, except the oath of the applicant. To make this a little plainer I will recapitulate: the court must be satisfied that the alien had, first: resided five years within the jurisdiction of the United States; and, second: one year within the state or Territory within which the court was sitting; and, third: of a prior oath affirmation of his *bona fide* intent to become a citizen of the United States and to renounce former allegiance; and, fourth: that during the five years he had behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well-disposed to the good order and happiness of the same; but this act does not require the applicant to be well disposed to any law of Congress though such law may be supreme. If in did, it would require of him what is not required of any natural-born citizen; on the contrary, every natural born citizen, though he has not the right to disobey a law to the principles of which he feels opposed, has an inalienable right, which cannot be bought nor sold nor surrendered, to oppose a principle in which he does not concur, provided that opposition does not amount to a resistance of the law. The very basis of civil liberty permits all citizens, native or naturalized, to have a voice and to cause their opinions honestly entertained to be heard in the councils, territorial, state or national, and seek to have modified or repealed, any law to which they are opposed.

June 18th, A. D. 1798, (Sec. 1 statutes at large p 566) Congress passed a supplemental act on this subject, in which, among other things, it required a declaration on oath or affirmation to be made five years instead of three years before admission, and the residence within the jurisdiction of the United States to be fourteen years instead of five years, and the residence within the state or territory within which the court was sitting admitting the alien, to be five years instead of one year. The other provisions of this act are unimportant. On the 14th of April, A. D. 1802, Congress repealed all these laws and passed another on the same subject; (Sec. 11, statutes at large, p 153). This act so far as is necessary to be mentioned is in these words: "That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

First, that he shall have declared, on oath or affirmation, before the Supreme, Superior, District or Circuit Court of some one of the States, or of the territorial districts of the United States, or a Circuit or District Court of the United States, three years at least, before his admission, that it was, *bona fide*, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whatever, and particularly by name, the prince, potentate, state or sovereignty whereof such alien may at the time be a citizen or subject.

Secondly, that he shall, at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Thirdly, that the court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that during that time, he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same: *Provided*, that the oath of the applicant shall, in no case, be allowed to prove his residence."

It is here to be noticed that the act of A. D. 1795, and the act of A. D. 1802, as above quoted, are very similar, though not identical in their provisions. I will therefore notice the difference. The Act of A. D. 1795 in the first clause used the words, when speaking concerning the courts before whom the proceedings could be had—"of the territories north, west or south of the river Ohio." The Act of A. D. 1802 omits these words and uses in their place the following, "of the Territorial districts of the United States."

In the second clause of A. D. 1795, contains the words when speaking concerning the oath of affirmation of the applicant for admission, that, "he has resided within the jurisdiction of the United States, five years at least, and within the state or territory where such court is at the time held, one year at least. The Act of A. D. 1802 omits these words in its second clause.

The third clause of both acts are not the same in words though the same in meaning with this difference only; the oath of the alien is not to be admitted to prove his residence. The balance of this Act, with the exception of Section 3 which I shall presently notice, contains provisions for a renunciation of titles of nobility; for aliens to make entry of their arrival in the United States; and for children of naturalized citizens; all of which are immaterial to the present inquiry. Between A. D. 1795 and 1802 a doubt had arisen in some of the States, but not in the Territories, as to what courts were intended in the act of A. D. 1795 by the term "District or Circuit Courts." To remove this doubt Sec. 3 of the Act of A. D. 1802 was introduced; this Section reads as follows:

SEC. 3. And whereas, doubts have arisen whether certain courts of record in some of the States, are included within the description of District or Circuit courts; "Be it further enacted, that *every court record* in any individual State, *having common law jurisdiction*, and a *seal* and *clerk* or *prothonotary* shall be considered as a District court within the meaning of this Act; and every alien who may have been naturalized in *any such court*, shall enjoy, from and after the passing of the Act, the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States. From this it appears, that all courts having common law jurisdiction, which have a seal, keep a record and have a clerk or prothonotary, are courts of record within the meaning of these acts. Therefore if the Governor and Legislative Assembly of Utah had a right to confer common law jurisdiction in the Probate Courts and require them to make a record, keep a seal and a clerk or prothonotary, as they have done, then they are courts of record within the meaning of these Acts; if not, then to be admitted a citizen before these courts is without the authority of law, and therefore void. This is a question about which the Judges sent here have differed, and as yet, it has not been decided by the Supreme Court of the United States; until that is done the question is not likely to be settled.

March 26th, A. D. 1804 (see 11 statutes at large, p. 292) Congress made further provisions upon the subject, but the act throws no light upon the matter now considered. On the 3rd of March, A. D. 1813, (see 11 statutes at large p. 811, Sec. 12) the following further provisions were made:

SEC. 12. And be it further enacted, that no person who shall arrive in the United States, from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States, who shall not for the continued term of five years next preceding his admission as aforesaid, have resided within the United States, without being at any time during the said five years, out of the United States.

It is to be remembered that this last act was passed when the nation was at war with England.

March 22nd, A. D., 1816, (see 111 statutes at large, page 259, Sec. 1), further provisions were made which are these: That the certificate of report and registry, required as evidence of the time of arrival in the United States, according to the Second Section of the Act of the 14th of April, one thousand eight hundred and two, entitled: "An Act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on this subject;" and also a certificate from the proper clerk or prothonotary, of the declaration of intention, made before a *court of record*, and required as the first condition, according to the first section of said act, shall be exhibited by every alien on his application to be admitted a citizen of the United States, in pursuance of said act, who shall have arrived within the limits and under the jurisdiction of the United States since the eighteenth day of June, one thousand eight hundred and twelve, and shall each be recited at full length, in the record of the court admitting such alien.

This provision being made on account of the war, was subsequently repealed; but I bring it forth to show the spirit of the act. In the same act there are provisions to admit certain persons without the declaration which are not necessary to state, therefore I omit them.

On the 26th of March, 1824, (see IV statues at large, page 69), further provisions were made, admitting persons who come here as minors under the age of twenty-one years to be admitted to become citizens without a prior declaration, and permitted persons who had made the declaration to be admitted citizens in two years instead of three, as before that time the law had been.

And again in A. D. 1828 Congress further provided: That the residence of the applicant shall be proven by citizens of the United States, whose names shall be entered on the record. I have now brought forward all the essential acts of Congress on this subject, and find, with the exception of a short time, from 1798 until 1802, and with the exception of from 1812 until 1816, the time of war with England, one essential, uniform rule, and this rule is in substance this: First.—The alien must be a white citizen or subject of some foreign nation. Second.—He must declare on oath or affirmation, now at least two years prior to admission, before a court of record, that it is, *bona fide*, his intention to become a citizen of the United States, and to renounce and abjure forever all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly the one from which he came. Third.—He must reside in the United States five years, and in the State or Territory where admitted one year at least, before his admission. Fourth.—He must, during these five years, behave as a man of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order of the same. *Fifth.—He must take an* oath or affirmation *before* a court of record to support the Constitution of the United States, and to renounce and abjure forever all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly, by name, his allegiance to his former government. This being done, the legal requirements are satisfied, and vest in him the right to be admitted, as more than this is without the authority of law and is not required. But the difficulty, and *the only difficulty*, consists in what constitutes a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order of the same. These are things about as well understood by one learned man as by another, so I shall not attempt to define them; but I ask, is there any, even the least hint, of a religious qualification?

I find also from the beginning of the government of the United States until the present time an encouragement held out by law, directly or indirectly, to foreigners to come here and reside and to become citizens of the United States. Permit me now, for the purpose of presenting the matter of morality in a clear light, to ask a few questions of a religious nature, and afterward a few questions of a civil character. To do so, for the sake of brevity I will suppose each applicant to be, so far as ordinary human foresight would discern, an honest, upright, intelligent, business person. I will take a Jew, who believes in the first five books of the Old Testament, but does not believe the prophecies, is he an immoral man because he does not believe the prophecies? Take a Jew who believes the whole of the Old Testament, but does not believe the New, is he an immoral man because he does not believe the New Testament? Suppose a member of the Greek church, who believes the Czar and not the Pope is the head of the church, is he an immoral man because he does not believe the Pope is the head of the church? Take a Catholic, who believes the Pope is the head of the church, and does not believe the King of England is the head of the church, is he an immoral man because he does not believe the King of England is the head of the church? Take a Protestant, who believes in the Old and New Testament, but who does