

# BAVARIA

## BAVARIA, 1845.

CONVENTION WITH BAVARIA, CONCLUDED AT BERLIN JANUARY 21, 1845; RATIFICATION ADVISED BY SENATE, WITH AMENDMENT, MARCH 15, 1845; RATIFIED BY PRESIDENT MARCH 18, 1845; RATIFICATIONS EXCHANGED AT BERLIN NOVEMBER 4, 1845; PROCLAIMED AUGUST 15, 1846. January 21, 1845.

*Convention for the mutual abolition of the droit d'aubaine and taxes on emigration between the United States of America and His Majesty the King of Bavaria.*

The United States of America and His Majesty the King of Bavaria, having agreed, for the advantage of their respective citizens and subjects, to conclude a convention for the mutual abolition of the droit d'aubaine and taxes on emigration, have named, for this purpose, their respective Plenipotentiaries, namely: Contracting parties.

The President of the United States of America has conferred full powers on Henry Wheaton, their Envoy Extraordinary and Minister Plenipotentiary at the Royal Court of Prussia; and His Majesty the King of Bavaria, upon Count Maximilian von Lerchenfeld-Kœfering, his Chamberlain, Envoy Extraordinary and Minister Plenipotentiary at the Royal Prussian Court, Commander of the Royal Order of the Knights of St. George, of the Order for Merit in Civil Service of the Bavarian Crown, of St. Michael, Grand Cross of the Russian Imperial Order of St. Anne of the first class, of the Royal Prussian Order of the Red Eagle of the first class, Commander, Grand Cross of the Royal Swedish Order of the North Star, and Great Commander of the Royal Greek Order of the Saviour; Negotiators.

Who, after having exchanged their said full powers, found in due and proper form, have agreed to and signed the following articles:

### ARTICLE I.

Every kind of droit d'aubaine, droit de retraite, and droit de détraction or tax on emigration, is hereby, and shall remain, abolished between the two contracting parties, their States, citizens, and subjects, respectively. Abolition of droit d'aubaine and taxes on emigration.

### ARTICLE II.

Where, on the death of any person holding real property within the territories of one party, such real property would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a term of two years to sell the same, which term may be reasonably prolonged according to circumstances, and to withdraw the proceeds thereof, without molestation, and exempt from all duties of détraction. Heirs to real property.

### ARTICLE III.

The citizens or subjects of each of the contracting parties shall have power to dispose of their personal property within the States of the other, by testament, donation, or otherwise; and their heirs, legatees, and donees, being citizens or subjects of the other contracting party, shall succeed to their said personal property, and may take possession Disposal and inheritance of personal property.

thereof, either by themselves or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the inhabitants of the country where the said property lies shall be liable to pay in like cases.

## ARTICLE IV.

Property of absent heirs.

In case of the absence of the heirs, the same care shall be taken provisionally of such real or personal property as would be taken in a like case of property belonging to the natives of the country, until the lawful owner or the person who has a right to sell the same, according to Art. II, may take measures to receive or dispose of the inheritance.

## ARTICLE V.

Disputes concerning inheritances.

If any dispute should arise between different claimants to the same inheritance, they shall be decided in the last resort according to the laws, and by the judges, of the country where the property is situated.

## ARTICLE VI.

Bavarian laws to prevent emigration.

But this convention shall not derogate in any manner from the force of the laws already published, or hereafter to be published, by His Majesty the King of Bavaria, to prevent the emigration of his subjects.

## ARTICLE VII.

Ratifications.

This convention is concluded subject to the ratification of the President of the United States of America, by and with the advice and consent of their Senate, and of His Majesty the King of Bavaria, and the ratifications thereof shall be exchanged at Berlin within the term of fifteen months from the date of the signature hereof, or sooner if possible.

Signatures.

In witness whereof the respective Plenipotentiaries have signed the above articles, as well in English as in German, and have thereto affixed their seals.

Date.

Done in quadruplicate, in the city of Berlin, on the twenty-first day of January, one thousand eight hundred and forty-five, in the sixty-ninth year of the independence of the United States of America, and the nineteenth of the reign of His Majesty the King of Bavaria.

[L. S.]  
[L. S.]

HENRY WHEATON.  
GRAF v. LERCHENFELD.

## BAVARIA, 1853.

Sept. 12, 1853.

EXTRADITION CONVENTION WITH BAVARIA, CONCLUDED AT LONDON SEPTEMBER 12, 1853; RATIFICATION ADVISED BY SENATE, WITH AMENDMENT, JULY 12, 1854; RATIFIED BY PRESIDENT JULY 24, 1854; RATIFICATIONS EXCHANGED AT LONDON NOVEMBER 1, 1854; PROCLAIMED NOVEMBER 18, 1854.

*Convention for the mutual extradition of fugitives from justice in certain cases, concluded between the Government of the United States on the one part, and the Kingdom of Bavaria on the other part.*

Contracting parties.

The United States of America and His Majesty the King of Bavaria, actuated by an equal desire to further the administration of justice, and to prevent the commission of crimes in their respective countries, taking into consideration that the increased means of communication between Europe and America facilitate the escape of offenders, and that, conse-

quently, provision ought to be made in order that the ends of justice shall not be defeated, have determined to conclude an arrangement destined to regulate the course to be observed in all cases with reference to the extradition of such individuals as, having committed any of the offences hereafter enumerated, in one country, shall have taken refuge within the territories of the other. The constitution and laws of Bavaria, however, not allowing the Bavarian Government to surrender their own subjects for trial before a foreign court of justice, a strict reciprocity requires that the Government of the United States shall be held equally free from any obligation to surrender citizens of the United States. For which purposes the high contracting powers have appointed as their Plenipotentiaries :

The President of the United States, James Buchanan, Envoy Extraordinary and Minister Plenipotentiary of the United States at the court of the United Kingdom of Great Britain and Ireland ; His Majesty the King of Bavaria, Augustus Baron de Cetto, his said Majesty's Chamberlain, Envoy Extraordinary and Minister Plenipotentiary at the court of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Knight Commander of the Order for Merit of the Bavarian Crown and of the Order for Merit of St. Michael, Knight Grand Cross of the Royal Grecian Order of our Saviour ;

Negotiators.

Who, after reciprocal communication of their respective full powers, found in good and due form, have agreed to the following articles :

#### ARTICLE I.

The Government of the United States and the Bavarian government promise and engage, upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, to deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other : *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed ; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered ; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

Extradition of criminals.

Evidence of criminality.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

Expenses of arrest and delivery.

#### ARTICLE II.

The stipulations of this convention shall be applied to any other State of the German Confederation which may hereafter declare its accession thereto.

Accession to convention by other German States.

#### ARTICLE III.

None of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

Neither party to surrender its own citizens.

ARTICLE IV.

Retention of accused person to answer for local offenses.

Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the State where he has sought an asylum or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE V.

Duration of convention.

[See Article III, treaty of 1868, p. 45.]

The present convention shall continue in force until the first of January, one thousand eight hundred and fifty-eight; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and fifty-eight.

ARTICLE VI.

Ratifications.

The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by the Government of Bavaria, and the ratifications shall be exchanged in London within fifteen months from the date hereof, or sooner if possible.

Signatures.

In faith whereof the respective Plenipotentiaries have signed this convention and have hereunto affixed their seals.

Date.

Done in duplicate, in London, the twelfth day of September, one thousand eight hundred and fifty-three, and the seventy-eighth year of the independence of the United States.

[L. S.]  
[L. S.]

JAMES BUCHANAN.  
AUG. DE CETTO.

BAVARIA, 1868.

May 26, 1868.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND HIS MAJESTY THE KING OF BAVARIA RELATIVE TO NATURALIZATION, CONCLUDED AT MUNICH MAY 26, 1868; RATIFICATION ADVISED BY SENATE JUNE 29, 1868; RATIFIED BY PRESIDENT JULY 17, 1868; RATIFICATIONS EXCHANGED AT MUNICH SEPTEMBER 18, 1868; PROCLAIMED OCTOBER 8, 1868.

Contracting parties.

His Majesty the King of Bavaria and the President of the United States of America, led by the wish to regulate the citizenship of those persons who emigrate from Bavaria to the United States of America, and from the United States of America to the territory of the Kingdom of Bavaria, have resolved to treat on this subject, and have, for that purpose, appointed Plenipotentiaries to conclude a convention, that is to say;

Negotiators.

His Majesty the King of Bavaria, Dr. Otto, Baron of Völderndorff, Councillor of Ministry; and the President of the United States of America, George Bancroft, Envoy Extraordinary and Minister Plenipotentiary;

Who have agreed to and signed the following articles:

ARTICLE I.

Who to be deemed naturalized citizens.

[See protocol, p. 46.]

Citizens of Bavaria who have become, or shall become, naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States five years, shall be held by Bavaria to be American citizens, and shall be treated as such.

Reciprocally, citizens of the United States of America who have become, or shall become, naturalized citizens of Bavaria, and shall have resided uninterruptedly within Bavaria five years, shall be held by the United States to be Bavarian citizens, and shall be treated as such.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

Declaration of intention.

## ARTICLE II.

A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration, saving always the limitation established by the laws of his original country, or any other remission of liability to punishment.

Offenses committed before emigration.  
[See protocol, p. 46.]

## ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part, and Bavaria on the other part, the twelfth day of September, one thousand eight hundred and fifty-three, remains in force without change.

Convention of 1853 remains in force.  
[See pp. 42-44.]

## ARTICLE IV.

If a Bavarian, naturalized in America, renews his residence in Bavaria, without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally, if an American, naturalized in Bavaria, renews his residence in the United States, without the intent to return to Bavaria, he shall be held to have renounced his naturalization in Bavaria. The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

Renunciation of naturalization.  
[See protocol, p. 46.]  
Intent not to return.

## ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

Duration of convention.

## ARTICLE VI.

The present convention shall be ratified by His Majesty the King of Bavaria, and by the President, by and with the advice and consent of the Senate of the United States, and the ratifications shall be exchanged at Munich within twelve months from the date hereof.

Ratifications.

In faith whereof the Plenipotentiaries have signed and sealed this convention.

Signatures.

MUNICH, the 26th May, 1868.

Date.

[SEAL.]  
[SEAL.]

GEO. BANCROFT.  
DR. OTTO FHR. VON VÖLDERNDORFF.

## PROTOCOL.

*Done at Munich the 26th May, 1868.*

May 26, 1868.

The undersigned met to-day to sign the treaty agreed upon in conformity with their respective full powers, relating to the citizenship of those persons who emigrate from Bavaria to the United States of America, and

Protocol.

from the United States of America to Bavaria; on which occasion the following observations, more exactly defining and explaining the contents of this treaty, were entered in the following protocol:

## I.

## RELATING TO THE FIRST ARTICLE OF THE TREATY.

What is required to constitute a naturalized citizen.

1. Inasmuch as the copulative "and" is made use of, it follows, of course, that not the naturalization alone, but an additional five years' uninterrupted residence is required, before a person can be regarded as coming within the treaty; but it is by no means requisite that the five years' residence should take place after the naturalization. It is hereby further understood that if a Bavarian has been discharged from his Bavarian indigene, or, on the other side, if an American has been discharged from his American citizenship in the manner legally prescribed by the Government of his original country, and then acquires naturalization in the other country in a rightful and perfectly valid manner, then an additional five years' residence shall no longer be required, but a person so naturalized shall from the moment of his naturalization be held and treated as a Bavarian, and reciprocally as an American citizen.

Meaning of words "resided uninterruptedly."

2. The words "resided uninterruptedly" are obviously to be understood, not of a continual bodily presence, but in the legal sense; and therefore a transient absence, a journey, or the like, by no means interrupts the period of five years contemplated by the first article.

## II.

## RELATING TO THE SECOND ARTICLE OF THE TREATY.

No punishment for emigration.

1. It is expressly agreed that a person who, under the first article, is to be held as an adopted citizen of the other State, on his return to his original country cannot be made punishable for the act of emigration itself, not even though at a later day he should have lost his adopted citizenship.

## III.

## RELATING TO ARTICLE FOUR OF THE TREATY.

Rights of resident aliens.

1. It is agreed on both sides that the regulative powers granted to the two Governments respectively by their laws for protection against resident aliens, whose residence endangers peace and order in the land, are not affected by the treaty. In particular the regulation contained in the second clause of the tenth article of the Bavarian military law of the 30th of January, 1868, according to which Bavarians emigrating from Bavaria before the fulfilment of their military duty cannot be admitted to a permanent residence in the land till they shall have become 32 years old, is not affected by the treaty. But yet it is established and agreed, that by the expression "permanent residence" used in the said article, the above described emigrants are not forbidden to undertake a journey to Bavaria for a less period of time and for definite purposes, and the Royal Bavarian Government moreover cheerfully declares itself ready, in all cases in which the emigration has plainly taken place in good faith, to allow a mild rule in practice to be adopted.

Meaning of term "permanent residence."

Recovery of former citizenship.

2. It is hereby agreed that when a Bavarian naturalized in America, and reciprocally an American naturalized in Bavaria, takes up his abode once more in his original country without the intention of return to the country of his adoption, he does by no means thereby recover his former citizenship; on the contrary, in so far as it relates to Bavaria, it depends on His Majesty the King whether he will or will not in that event grant the Bavarian citizenship anew.

The article fourth shall accordingly have only this meaning, that the adopted country of the emigrant cannot prevent him from acquiring once more his former citizenship; but not that the State to which the emigrant originally belonged is bound to restore him at once to his original relation.

On the contrary, the citizen naturalized abroad must first apply to be received back into his original country in the manner prescribed by its laws and regulations, and must acquire citizenship anew, exactly like any other alien.

But yet it is left to his own free choice whether he will adopt that course or will preserve the citizenship of the country of his adoption.

The two Plenipotentiaries give each other mutually the assurance that their respective Governments in ratifying this treaty will also regard as approved and will maintain the agreements and explanations contained in the present protocol, without any further formal ratification of the same.

[L. S.]  
[L. S.]

GEO. BANCROFT.  
DR. OTTO FHR. VON VÖLDERNDORFF.