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No. _____

IN

SUPREME COURT

STATE OF WASHINGTON

MAY SESSION, 1902

In the Matter of the Application of Takuji Yamashita for Admission to the Bar.

Applicant's Brief.

TAKUJI YAMASHITA,
Applicant.

OLYMPIC PRINTING CO., 1420 SECOND AVE., SEATTLE

No. _____

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In the Matter of the Application of Takuji Yamashita for Admission to the Bar.

Applicant's Brief.

Upon motion for the admission of the said Takuji Yamashita as an attorney and counsellor at law of this court it appears that said Takuji Yamashita is a native of Japan and was born a subject to the Mikado; that on the 14th day of May, 1902, he was ad-

mitted as a citizen of the United States in the Superior Court of Pierce County. An applicant for admission to the bar is required to be a citizen of the United States. The court is in doubt whether a native of Japan is entitled under the naturalization laws to admission to citizenship. IT IS THEREFORE ORDERED that the said Takuji Yamashita may by himself and counsel present to the court such brief and argument as he may deem advisable, and that copies of such brief and argument may be served upon the attorney general of the state at least ten days before final hearing upon this application, and that such briefs be filed within thirty days from this date.

Entered this 16th day of May, 1902.

C. S. REINHART, *Clerk*.
F. S. GUIJOT, *Dep*.

The said applicant, a native of Japan, having been duly admitted as a citizen of the United States, on the 14th day of May, 1902, in the Superior Court of Pierce County, State of Washington, and having made an application to the Supreme Court for admission to practice as an attorney and counsellor at law in the courts of record of this state, presents the following brief, as required by the said Supreme Court, in support of his application the argument being addressed particularly to the questions: 1. Of the necessity of citizenship as a condition precedent to admission to the bar in this state; 2, to the question as to whether or not the validity of a certificate of naturalization may be attacked in a collateral proceeding, and 3, to the further question of the eligibility of a native of Japan to citizenship in the United States.

I.

The answer to the first question above assigned depends merely upon the proper interpretation of the statute of this state prescribing the conditions of admission to the bar. By careful search in the state reports I have failed to find any case in which the portion of the aforesaid statute in controversy has been construed. A review of the history of the act and an examination of the language used in the light

of the spirit of the enactment must determine the question.

The first act relating to attorneys and counsellors at law in this state was passed in 1881. Under that act it was required that all applicants for admission to the bar should be citizens of the United States (Law of 1881, Sec. 3276).

In 1891 a further act was passed on the subject, but this was simply a re-enactment of the first act, and there was, in substance, no modification to the required qualifications for admission to the bar. Under this act, "before any person shall be admitted as an attorney or counsellor at law in this state it must appear to the satisfaction of the court to which he applies for admission: 1. That he is a citizen of the United States and of the age of twenty-one years; 2. That he is of good moral character, and 3. That he has the requisite learning and ability to practice as an attorney and counsellor at law" (Law of 1891, ch 9, p. 96).

But in 1895 another law was passed in relation to admission to the bar, which is in force today. This last act provides that "no person shall be admitted to such examination unless he is twenty-one years of age, has resided in the state one year next preceding and is a citizen of the United States;

* * * *but any person residing in the state or coming into the state, for the purpose of making it his permanent residence,* upon producing satisfactory evidence that he has studied law for the period of two years, under the tuition of some attorney at law, may be admitted to such examination * * *; *provided, that any attorney may be admitted to practice in the courts of this state* upon a certificate of admission to the court of last resort of *any state or territory* in the United States."

A comparison of this act with those previously enacted will show that the Legislature, in enacting the last act (act of 1895), has evidently designed to enlarge the scope of admission to practice law in the courts of this state in two ways; first, by admitting persons who are "residing in this state or coming into the state, for the purpose of making it their permanent residence," and second, by admitting any attorney who has been admitted to practice in the courts of any state or territory in the United States.

If a construction be adopted under which the requirement of citizenship runs through the entire act, then the last two sections would be entirely inoperative.

If "the person residing in this state or coming into the state, for the purpose of making it his per-

manent residence,'' still be required to be a citizen of the United States in order to be admitted to the bar, that clause of the statute has no effect whatever, it being included in the preceding clause.

Is it reasonable to presume that the Legislature has woven senseless words into the body of the law, for mere decoration of it?

It is an established rule of statutory construction that a statute should be so construed, if possible, as to give effect to all of its clauses and provisions; and it should also be considered with reference to the pre-existing law.

U. S. v. Babbit, 1 Black, 55; 33 N. W. 247.

''Every statute,'' says Dr. Bishop, ''operates to modify or confirm something in the law which existed before.''

Bishop, Written Law, Sec. 4.

Now, the law passed in 1891 in regard to the qualifications of attorneys and counsellors at law, is a confirmation of the law of 1881. But the subsequent law passed in 1895 is a modification of that of

1891, if we give meaning to every part of the act, because it added to the original act other classes of persons qualified to practice in the courts of this state.

Furthermore, twenty states and territories in the United States do not require citizenship for admission to the bar: Delaware, District of Columbia, Florida, Idaho, Iowa, Kentucky, Maryland, Massachusetts, Missouri, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin.

Rules for Admissions to the Bar, Second Ed.

It was evidently the intention of our legisla ture in passing the law of 1895 to drop the requirement of the citizenship for admission to the bar as these other states have done. This is certainly the only reasonable inference from their failure to include in the exception introduced into the original statute by the act of 1895, beginning with the words ''but any person residing,'' etc. (The court will notice that the clause beginning as indicated above constitutes the only change in the original law brought about by the act of 1895.)

Under the express words of the *proviso* in the law of 1895 any person who has been admitted to practice in any of the states or territories above men-

tioned (as well as in other states of the Union) may be admitted to practice here, regardless of his being a citizen of the United States, if he conforms with the other qualifications mentioned. This court, under the well known rule of statutory construction, that the *proviso* must be strictly construed, certainly cannot inject into that *proviso* a clause prescribing citizenship of the United States as an additional qualification of applicants from the above mentioned states and territories, who come with the other requisites which are expressly prescribed.

U. S. v. Dickson, 15 Pet. 141.
Roberts v. Yarboro, 41 Tex. 449.
Bragg v. Clark, 50 Ala. 363.
McRae v. Holcomb, 46 Ark. 306.
Appl. of Clark, 20 Atl. 456.

And especially when a *proviso* extends to persons, in order to effectuate justice or secure benefits or remedies, it should be construed best to effectuate its purpose.

Bk. of U. S. v. McKenzie, Fed. Cases No. 927.

The *proviso* in the present case, "providing, that *any attorney* may be admitted to practice in the courts of this state upon a certificate of admission to the

court of last resort of *any state or territory* in the United States," etc., is to secure the benefit of admission to the bar in this state to the persons—all persons —who were practicing in any state or territory of the United States, without discrimination.

Now, then, in the face of this *proviso,* the proposition that all applicants for admission to the bar in this state must be citizens of the United States becomes absurd.

There is no more reason for injecting a clause requiring citizenship as a prerequisite to admission to the bar in this state into the exception mentioned above, beginning with the words, "but any person residing in this state," etc., than for injecting it into the *proviso* above mentioned. The same rule of construction applies to exceptions as to the *provisos.* And if a person not being a citizen of the United States, but practicing in another state of the Union, could be admitted to practice in this state, why could not "any person residing in this state or coming into the state, for the purpose of making it his permanent residence" (as provided in the statute, B. C. Sec. 4761)?

Furthermore, the intention of the Legislature is very clear on the face of the statute. Section 4761, B. C., says: "But any person residing in the state

* * * for the purpose of making it his permanent residence," etc. This part of the statute, read in the light of the other parts, and in its ordinary sense, is naturally understood as an addition to the other parts, imparting a new meaning to them. The word "but" has several meanings. It may be an adverb equivalent to "only"; and it may be a preposition synonymous with "except" or "beside"; and it also may be a conjunction meaning "moreover," "further," "in addition" or "in opposition to the previous fact."

The word "but," as used in the present case, cannot fail to be understood as a conjunction, adding more instances to those previously mentioned. That is, "No person shall be admitted * * * unless he be a citizen of the United States * * *; but (or in opposition to that fact) *any person* residing in this state * * * for the purpose of making it his permanent residence * * * shall be admitted."

II.

Next, we will consider the second question: "May the validity of a certificate of naturalization issued by a court of competent jurisdiction be attacked by the Supreme Court of the state in a collateral proceeding?"

Congress having power "to establish an uniform

rule of naturalization" (U. S. Constitution, Art. 1, Sec. 8) has provided in the naturalization law (Rev. St. Sec. 2165): that "He (who applies for citizenship) shall declare on oath or affirmation, before * * a court of record of any of the states having common law jurisdiction and a seal and clerk," * * * Thus the jurisdiction was conferred on the state courts as completely as on the Federal courts in the matter of naturalization.

"State courts in admitting aliens to citizenship under naturalization laws act as the United States courts."

Matter of Christern, 43 N. Y. Supr., Ct. 523.

"State courts have a competent and constitutional power to naturalize."

Matter of Ramsden (N. Y.), 13 How. Pr. 429.

People v. Seetman, 3 Park Cr. L. L. 358.

And the statute of this state (B. C. Sec. 4704) provides that "the superior courts of the several counties shall have jurisdiction, and it shall be their duty to hear application and proofs by aliens to become citizens of the United States, and to grant cer-

tificates of citizenship to such applicants, in accordance with section 2165 of the Revised Statutes of the United States." It cannot be doubted that any superior court in this state has competent and complete jurisdiction to hear the applications and proofs by aliens for citizenship in the United States and to issue a certificate therefor. And the admission of an alien by such a court, after a judicial examination as prescribed in the naturalization law has the effect and force of a judgment of such court; and the record is conclusive evidence of the facts which it recites.

Spratt v. Spratt, 4 Pet. 406.

Charles Gr. v. Salas, 31 F. R. 106.

Stark v. Chesapeake, 7 Cranch 420.

In re Coleman, F. C. 2980.

In re Christern, 43 N. Y. Supr. Ct. 523.

It is also conclusive as to the law and fact everywhere and upon all the world.

18 *Am. L. Reg.* N. S. 674.

In re Acorn, 2 Alb. 443.

People v. McGowan, 77 Ill. 644.

In the case of Spratt v. Spratt, (4 Pet. 406), Chief Justice Marshall delivered the opinion. In part he said "The various acts upon the subject submit the decision on the rights of aliens to admission as citizens to courts of record; they are to receive testimony, compare it with the law, and to judge on both law and fact. This judgment is entered on the record as the judgment of the court; it seems to us, if it be in legal form, to close all inquiry; and like every other judgment to be complete evidence of its own validity."

Admitting such to be the law, the validity of a certificate of citizenship issued by the Superior Court of Pierce County, State of Washington, reciting that "It is therefore ordered, adjudged and decreed by the Court that the said Takuji Yamashita be and is hereby admitted and declared to be a citizen of the United States of America," should not be questioned, or attacked in a collateral proceeding.

And in many cases it is decided that "it is not necessary that the record should show that all the legal prerequisites were complied with; the judgment being conclusive of such compliance, and the record cannot be attacked in a collateral proceeding."

Ritchie v. Putman (N. Y.) 13 Wend. 524.

McDaniel v. Richard (S. C.) 1 McCord 187.

People v. McGowan, 77 Ill. 646.

U. S. v. Walsh, 22 F. R. 644.

III.

We come, now, to the last question: Whether a native of Japan is entitled to become a citizen of the United States?

This is almost entirely a new question, so far as the reported cases go in this country. I have been able to find only one case in which a Japanese has applied for naturalization and the question of his eligibility to citizenship has been decided.

In re Saito, 62 Fed. Rep. 126.

In this case, the Circuit Court for the District of Massachusetts refused to admit the applicant to citizenship and based the refusal upon the ground that a native of Japan, of Mongolian race, is not entitled to naturalization, not being included within the term "White persons," those words being incorporated in the naturalization laws as early as 1802. At that time, the court goes on to say, this country was inhabited by three races, the White, the Black, and the Red. Therefore it is reasonable, to infer, that con-

gress, in designating the class of persons who could be naturalized, intended to exclude from the privilege of citizenship all alien races except the White.

Such an interpretation of the statute does not seem correct and proper.

It is submitted that it is *not reasonable to infer* that the term "White" was used in contradistinction to all alien races except the "White," so-called—at a time when the only alien races in this country were the Negroes and Indians, and when the Chinese and Japanese were not in mind and when no danger could have been anticipated therefor from their application for citizenship. (This point will be noticed more fully later). In this same case the court says, "But we are not without direct evidence of legislative intent. In 1870 * * * the question of extending the privilege of citizenship to all races of aliens came before congress for consideration. At that time Charles Sumner proposed to strike out the word "White" from the statute; and in the long debate which followed the argument on the part of the opposition was that this change would permit the Chinese (and therefor the Japanese) to become naturalized citizens, and the reply of those who favored the amendment was that this was the very purpose of the proposed change. (Cong. Globe 1869-70, Pt. 6, P. 5121.) The amendment was finally rejected."

The court is unconsciously misleading in inserting the words "and therefore the Japanese" in parenthesis as above, because the Japanese were nowhere mentioned in the debates of that period in congress, and furthermore in the later discussion of the court in this same case the words "Mongolian" and "Asiatic" are used when the debates under consideration would justify only the use of the word Chinese, and the altogether unwarrantable conclusion is drawn, as a result of this confusion in terms, that the Japanese were within the intention of congress in excluding the Chinese by the retention of the word "White." (This point more fully discussed later.) Because of the above-mentioned inaccuracies and of the fact that the court devotes no adequate consideration to the real intention of Congress in using the word "White," this case is very poor authority for doctrine it announces.

Now let us consider the words of the statutes upon the subject of naturalization. The act of 1802 provided that "any alien being a free white person may be admitted to become a citizen of the United States." (Rev. Stat. Sec. 2165.) In 1875 a modification was made to this part of the statute providing that "The provisions of this title shall apply to aliens, being free white persons and to aliens of African nativity and to persons of African descent."

From a superficial view of this part of the statute, it would, perhaps, be understood that this is a land for White and Black persons alone to the exclusion of all others.

But in the light of the history of this country, and of its institutions and remembering the spirit which pervades its constitution and its laws that certainly is a conclusion which any court should be reluctant to reach. And further, for the present leaving aside the above considerations which will be considered more at length below, the words of the law itself create some considerable doubt as to whether the expression "white persons" was used by congress with the intention of excluding all except persons of the Caucasian race. Bearing in mind the fact that in 1802, when this law was enacted, this country was threatened with a serious invasion of barbarous Blacks from Africa and that there was already on this continent a large number of savage Indians, the object of congress in using the words "White persons" is clearly evident. "In the legislation of the slave period it (the word white) referred to a person without admixture of colored blood whatever the actual complexion might be."

39 Ark. 192.

And again "White person as used in the naturalization law includes persons nearer white than Black or Red."

11 Ohio 375.

In order to see that it was not the intention of the Congress to exclude the Chinese and Japanese from citizenship under this law of 1802, we need only remember that at that time there was not a Chinese or Japanese person on this continent. China was a country but vaguely known, and Japan hardly known at all, not even accurately represented on the maps. That the word "White" was used in contradistinction to Black and Red, is the more evident from the fact that color makes no strictly scientific distinction between races; color is not necessarily a mark of ethnological difference. Congress is not a scientific convention, and it evidently used the word "White" as the most convenient popular expression which would exclude the Indians and Negroes from citizenship. That congress has not used that word scientifically and has not pretended to do so, is apparent from the law of 1875 referred to above. By that law all "aliens being free white persons and aliens of African nativity and persons of African descent are entitled to citizenship." Under those terms any person born in Africa, no matter what his color or race, whether Indian, Negro or Chinaman, is capable of becoming a citizen of this country since any such person is an alien of African nativity. Can it be possible that congress intended to make the fact of birth in Africa, the darkest of all the continents, the only passport except a white skin to American citizenship? Such a conclusion is absurd, but it is only one which we can reach, if the language of congress in this enactment is to be construed strictly. The absurd result consequent upon a strict construction raises a very substantial doubt as to the scientific accuracy of the language used and taken together with the fact that a literal construction would make accidents of form and birth and not substantial fitness the test of citizenship, thus doing violence to the liberal spirit of American institution, must compel a resort to extraneous evidence of the meaning of the terms in question, as intended by congress. If from that evidence it should appear that congress did not have the Japanese in mind when it enacted the later law, then clearly it could not be held that that law was intended to exclude the Japanese from citizenship.

In 1870, after the fifteenth amendment to the constitution had been ratified, Senator Sumner of

Massachusetts proposed to strike out the word "White" from the naturalization law. But the proposition was rejected because the discovery of gold in California had brought about the importation of a great number of Chinese laborers into the Western country, there being about eighty thousand Chinese in California alone, and over ten thousand in other Pacific Coast States. They have been brought here under contract by the "Six Great Companies" and were working practically as slaves. Their naturalization would have resulted in the complete political domination of the richest part of the Western country, by their alien owners.

A few passages from the Congressional Record of this period will show the light in which Congress regarded the law and the interpretation it placed upon the word "White."

Mr. Stewart of Nevada said: "That is a proposition to extend naturalization not to those who desire to become citizens, but to those who are being imported as slaves. I propose first to abolish slavery. I propose to liberate these persons, before they shall be naturalized by their masters for the purpose of carrying election."

(*Cong. Globe* 1870, Pt. 6, P. 5115.)

Again the same senator spoke: "Is it not the duty of humane congress to first see that no more coolies are imported into this country under these contracts? Let us liberate them, and then when a Chinaman is naturalized, if that time should come, let him be naturalized because he is a free man and voluntarily chooses to become an adopted citizen, because he becomes attached to our form of government. * * * They would understand as little of the oath, that is to be administered to them with regard to naturalization as would the wild beast of the forest."

(*Cong. Globe* 1870, P. 5125.)

Mr. William of Oregon said: "I shall not submit to have these Chinese brought here."

There is not a single reference to the Japanese throughout the whole record where this law has been under consideration. It is evident that the proposition was solely a Chinese problem and that the law was "for the single purpose of excluding the Chinese from the right of naturalization."

In re Ah Yap, F. C. 104.

As further showing the intention of congress in

retaining the word "White," the act of 1868 may be cited. By that enactment the impairment of the right of expatriation was prohibited and congress declares the policy of this government to have been "to freely receive imigrants from all nations and invest them with the rights of citizenship." Further, in 1882 congress passed an act in which it was expressly provided (U. S. Stat. at Large, p. 61, Sec. 14) "that hereafter no state court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed." Now, if the word "White" in the original enactment was understood to exclude any but the "White" from citizenship, why was this later act passed? It is unnecessary to cite to the court the familiar rule of statutory construction, that statutes in *pari materia* are to be construed together and so interpreted that they shall harmonize and full force be given to each one. If full force is to be given to the statutes of 1882, then the word "White" in the original enactment did not exclude the Chinese (and consequently not the Japanese), otherwise the act of 1882 was unnecessary. In this connection the language of the court in the case of in re Rodriguez 81 Fed. Rep. 337 is significant: "If Chinese were denied the right to become naturalized citizens under the laws exist-

From the above consideration, then, namely: 1. That contemporary history (admissible under the well known rule of statutory construction, together with a consideration of the mischief and the remedy as an aid to interpretation in cases of doubt) shows that congress had in mind only the Black and Red races as excluded by the term "White;" 2. That the congressional debates before the law was modified in 1875 show clearly that it was intended to exclude only the Chinese (Japanese in no place being mentioned as undesirable). 3. That a literal interpretation of the law of 1875 would lead to the unreasonable, absurd and unjust conclusion that birth on the African continent would remove all difficulties of race or fitness; 4. That the law of 1882 is rendered nugatory a literal interpretation of the word "white" in the law of 1875; it is clear that congress used the word "White" with an implied definition in the act of 1802 that it excluded only the Red and Black races, and that it used the same word in the ing when In re Ah Yup was decided, why did congress enact the prohibitory statute above quoted? Indeed, it is a debatable question whether the term 'free white person' as used in the original act was not employed for the sole purpose of withholding the right of citizenship from the black or African race."

later act with the implied definition that it excluded the Chinese. It is evident, then, that congress did not mean to exclude the Japanese from the right of citizenship.

The decided cases afford but little help in settling this controversy.

In the case of In re Ah Yup, *supra*, it was decided that a Chinese was not eligible to citizenship, the court using the express words that the law was intended "for the sole purpose of excluding Chinese from right of citizenship," the case therefor does not bear upon the admissibility of the Japanese to citizenship, except in so far as it implies by the use of the words above quoted that all races except the Chinese are admissible. That the court is guilty of some decided inaccuracies in the decision, is apparent from its use of the words Chinese and Mongolian as synonymous and from its further use as synonymous of the White and Caucasian, it being fully acknowledged that the Caucasian race forms only a small proportion of the white races.

In the case of In re Kanaka Nian 6 Utah 259, 21 Pac. 994; a native of Hawaii had applied for citizenship. The court denied the application, resting its decision upon the ground, first, that the applicant could not read and write English nor understand the

constitution of the United States, being therefor unfit for citizenship; and second, that the applicant belonged to a division of Malay race was theerfor not a White person within the meaning of that term as defined in the In re Ah Yup case *supra*, where it was confined to members of Caucasian race. We have already remarked the inaccuracy of that classification, and even if that classification were accurate, the authority of the case is weakened by the fact that the decision is based partly upon the unfitness of the applicant, and by the further fact that the court does exhaustively consider meaning of the term "White person," relying principally upon the case of In re Ah Yup, *supra*. Further, the court suggests a weakness in its own decision by referring, in connection with the statutes of 1882 cited above, to the rule of construction that if a portion of a number of classes are mentioned by name, such a rule of construction would in this case admit to citizenship the aliens of all other races. The court adds the remark that congress could never have intended such result. On the contrary, we have seen that congress evidently did intend exactly that result.

The case of Elk v. Wilkins 112 U. S. 94 is frequently cited in the cases on this subject, but really no bearing on the subject, the only point involved in

the case being the right of citizenship by birth and not bv noturalization, the court holding that an Indian, although born in the United States, is not subject to the jurisdiction thereof where the tribal relations have not been severed.

Finally we will consider the case of In re Rodriguez, 81 Fed. Rep. 337. It is by far the most carefully considered case on this subject and it practically "upsets the reasoning of all previous cases." (I take the liberty of quoting from an article published in the issue of the Central Law Journal for May 30, 1902, in this connection.) "Able and interesting briefs were solicited by the court from prominent attorneys treating the subject *pro* and *con* in a most exhaustive manner. They are published in full preceding the court's opinion and serve principally to show how obscure the law is upon this question. In this case the applicant was a native Mexican, a cross between the Aztec and Spaniard, with the distinctive copper colored complexion of that mixture. The most plausible argument must necessarily fail to classify such an applicant as a white person, either in the strict (scientific) sense of that term or in the construction given to it by the cases mentioned above. Nevertheless the court held that the native races of Mexico, whatever might be their status from

the standpoint of ethnologist" are embraced within the spirit and the intent of our laws upon naturalization, and "Are eligible to American citizenship." This is the latest decided case upon this question and its conclusion seems clearly correct. The reasoning by which that conclusion is reached is exactly applicable to the case at bar and completely supports the position of your applicant.

In conclusion your applicant desires to express the hope that this court will not take the position that members of a race which has shown itself in a brief period of years capable of taking its place in the front rank among the most highly civilized and enlightened nations in the world, as has the Japanese, are not fitted to become citizens of this, the most enlightened and liberty-loving nation of them all one whose government and institutions are founded upon the fundamental principles of freedom and equality, a government and institutions made possible by the blood of men who consecrated their lives to the establishment of a country in which all men are equal in rights and opportunities. Surely the Japanese are not to be denied from mere accident of birth and without regard to fitness the right to become citizens of the United States because of a strict and narrow construction of a statute which was intended only to ex-

clude from citizenship an ignorant and servile class of coolies.

Respectfully submitted

TAKUJI YAMASHITA.