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IN THE

SUPREME COURT

OF THE

STATE OF WASHINGTON

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

APPLICANT'S REPLY BRIEF

TAKUJI YAMASHITA,
Applicant.

BANKERS PRINTING CO., 1420 SECOND AVE., SEATTLE

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In reply to the brief filed in this cause by the Attorney-General your applicant desires respectfully to submit the following:

I.

The first subdivision of the brief in answer, devoted

to an attempt to demonstrate the necessity of citizenship for admission to practice law in this state, does not adequately answer applicant's contention that citizenship is not essential to such admission. In your applicant's original brief it was pointed out that as the law in this state stood in 1891 there was an undoubted requirement of citizenship for admission to the bar, but that by the law of 1895 that requirement was dispensed with through the introduction of an exception, and that the proviso added in 1897 served clearly to indicate the intention of the legislature to drop the requirement of citizenship because that proviso admitted to practice here the attorneys even of the states which do not require citizenship as a qualification for admission to the bar.

In answer to the above contention the only points urged in the brief in answer are, First, that there is a distinction between *admission to the examination* and *admission to practice*. Second, that even if citizenship is not a prerequisite in the case of attorneys coming from other states it is a prerequisite in the case of original application for admission in this state. Third, that citizenship is a prerequisite even in the case of attorneys coming from other states.

In reply to these points it is only necessary to say that your applicant has not contended that there is not a

distinction between admission to the examination and admission to practice. That distinction does not affect his case. His only contention is that the citizenship requirement having been eliminated in the case of attorneys coming from other states, there is the less reason to suppose that our legislature intended to retain that requirement in the case of original application here, particularly when, under the established rules for the construction of clauses introducing exceptions, the words of the original statute will not fairly bear any other construction. The brief in answer does not consider at all the change in the law of 1891 brought about by the enactment of the laws of 1895 and 1897. It does point out the provision of the law of 1895 which seems to require citizenship of any person practicing in this state, but that provision is negatived both by the exception contained in the law of the same year, and by the later enactment admitting attorneys from other states where citizenship is not required. In re Hong Yen Chang, 84 Cal., 163, cited on page sixteen of the brief in answer, decided under the statutes of California, is not authority in this state, where the law governing admission to the bar is entirely different.

II.

In reply to the argument embraced in the second sub-

division of the brief in answer it is only necessary to say that your applicant does not contend that the judgment admitting him to citizenship is conclusive against direct attack. He respectfully urges, however, that the authorities presented in his original brief on this question fully sustain his contention that the judgment of the Superior Court of Pierce County admitting him to citizenship is conclusive against collateral attack, and further he is confident that a careful reading of section 116 of Freeman on Judgments, cited in the brief in answer, will sustain his contention, particularly where the author says, on page 177, that "if a judgment rendered without in fact bringing the defendants into court cannot be attacked collaterally on this ground unless the want of authority over them appears in the record, it is no more void than if it were founded upon a mere misconception of some matter of law or fact occurring in the exercise of an unquestionable jurisdiction. In either case the judgment can be avoided and made *functus officio* by some appropriate proceeding instituted for that purpose, but if not so avoided must be respected and enforced."

III.

The cases of In re Ah Yup, 5 Sang. 155., In re Saito, 62 Fed., 126, and In re Kanaka Nian, 6 Utah, 259, cited in

the brief in answer were fully considered in your applicant's original brief and their weakness as authorities pointed out. The case of In re Camille, cited on page 24 of the brief in answer, can carry but little weight because it is not carefully considered, the opinion evidently having been written without any extended investigation of the decisions and statutes on the subject, and it is largely founded upon the decision in In re Ah Yup, a decision involving several fundamental inaccuracies and as poorly considered as those that have followed it. Furthermore, the case of In re Camille involved the exclusion of an applicant for citizenship who was partly of Indian blood, a race which Congress clearly intended to exclude from citizenship under the original enactment of 1802. The case of In re Po, cited on page 24 of the brief in answer, is open to the two first objections named above and is entitled to but little weight in this court because of the further fact that it was rendered by only an inferior court of New York. None of the cases cited in the brief in answer as opposed to applicant's contention is entitled to the weight that should be given to the case of In re Rodriguez, 81 Fed., 337. That case was much more fully considered than any of the others, and after an investigation of all those cases, was decided in direct opposition to them. It amounted to a clear repudiation of the reasoning upon

which the preceding cases had been founded. Although some consideration is given in the opinion to the treaties between the United States and Mexico, a careful reading of the case will show that the court based its decision squarely on the ground that the "applicant was embraced within the spirit and intent of our laws upon naturalization, whatever his status viewed solely from the standpoint of the ethnologist." The case amply and fully sustains your applicant's contention that the word "white," in our original naturalization law, as enacted in 1802, was used not in its ordinary descriptive sense, nor in a strictly scientific sense, but as a term really of exclusion intended to bar from the right of citizenship two different races, the negroes and the Indians, Congress having clearly placed the stamp of its approval upon that interpretation of the statute by two subsequent enactments, referred to in the above case, the act of July 27, 1868, and the act of May 6, 1882.

Finally, your applicant desires to call the attention of the Court to the provision of the subsisting treaty between Japan and the United States, as reported in Vol. 29, U. S. Stat. at L., page 848, giving to the Japanese all the privileges of the most favored nation, no reservation being made denying their right to citizenship, as is the case in the treaty with China, as reported in Vol. 16, U. S.

Stat. at L. The treaty with Japan, Art. I., reads as follows: * * * "They shall have free access to the Courts of Justice in the pursuit and defense of their rights; they shall be at liberty equally with native citizens or subjects to choose and employ lawyers, advocates, and representatives to pursue and defend their rights before such courts, *and in all other matters connected with the administration of justice they shall enjoy all the rights and privileges enjoyed by native citizens or subjects.*"

That treaty is the supreme law of the land and therefore confers upon the Japanese the privilege of becoming citizens independent of any statute of Congress conferring or denying that right. Certainly no rule of comity can be invoked against extending the privilege of citizenship to the Japanese because under the laws of Japan naturalization is perfectly open to any native of the United States.

In conclusion, your applicant has no apologies to make for the so-called "worn-out star-spangled banner argument." He knows of no tribunal to which an argument based upon the Declaration of Independence and the spirit of American institutions could be more appropriately addressed than to the Supreme Court of a free American state.

Respectfully submitted,

TAKUJI YAMASHITA.