MEMORANDUM re NATURALIZATION OF ORIENTALS

(JAPANESE)

See In re Kalladjian 174 F. 834

In regard to the naturalization of Japanese, I have been unable to find any decision of a circuit court of appeals. However, the three lower courts in which this question has arisen have decided it adversely to the petitioners.

The first of these cases, In re Saito, 62 Fed. 126, was decided in the Circuit Court of the District of Massachusetts, June 27, 1894, Judge Colt, saying:

> "The act relating to naturalization declares 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.' Rev. Stat. sec. 2169. . . . The history of legislation on this subject shows that congress refused to eliminate 'white' from the statute for the reason that it would extend the privilege of naturalization to the Mongolian race, and that when, through inadvertence, this word was left out of the statute, it was again restored for the very purpose of such exclusion. . . . Whether this question is viewed in the light of congressional intent, or of the popular or scientific meaning of 'white persons,' or of the authority of adjudicated cases, the only conclusion I am able to reach, after careful consideration, is that the present application must be denied."

In the supreme court of Washington, October 22, 1902, in the case of In re Takuji Yamashita, 30 Pac. 482, 59 L. R. A. 761, it was decided that "A native of Japan is neither 'a free

> white person,' nor an alien of African nativity or of African descent, so as to be entitled to naturalization under Rev. St. U. S. sec. 2169."

The question in this case came up under an application by a Japanese for admission to the bar, one of the qualifications for which was that applicants should be citizens of the United States.

The application for naturalization of Buntaro Kumagai, a Japanese, before Judge Hanford of the District Court, Western District of Washington, on September 3, 1908, was denied in the following language:

> "The use of the words 'white persons' clearly indicates the intention of Congress to maintain a line of demarkation between races, and to extend the privilege of naturalization only to those of that race which is predominant in this country. (citing In re Ah Yup, Fed. Cas. No. 104, and the cases of Yamashita and Saito, supra.) As this applicant is of a different race, the court is constrained to deny his application on the ground that the laws enacted by Congress do not extend to the people of his race the privilege of becoming naturalized citizens of this country." In re Buntaro Kumagai, 163 Fed. 922, 924.

In the case of In re Young, 198 Fed. 715, the applicant was the son of a German father and a Japanese mother. This case was decided in the district court of the Western District of Washington, August 15, 1912, Judge Cushman saying:

> "It is just as certain that, whether we consider the Japanese as of the Mongolian race, or the Malay race, they are not included in what are commonly understood as 'white persons.' In the abstractions of higher mathematics, it may be plausibly said that the half of infinity is equal to the whole of infinity; but in the case of such a concrete thing as the person of a human being it cannot be said that one who is half white and half brown or yellow is a white person, as commonly understood."

In the case of In re Knight, 171 Fed. 299, 300, (decided July 13, 1909, in the district court of the Eastern district of New York) the court held that,

> "A person of the Mongolian race, either Chinese or Japanese, cannot be naturalized, even with honorable service in the army or navy."