

[Endorsed]: Filed Jan. 8, 1926. Chas. N. Williams,
Clerk By Louis J. Somers Deputy Clerk

[Title of Court and Cause.]

DECREE

This cause came on to be heard at this term and was argued by Counsel; and thereupon upon consideration thereof it was ordered, adjudged and decreed as follows, viz:

That the bill of complaint of the plaintiff herein be denied and that the certificate of naturalization issued to the defendant on the 7th day of May, 1914, by the county clerk and ex officio clerk of the Superior Court of the State of California, in and for the County of Los Angeles, numbered 445063, be not canceled, and the bill of plaintiff is dismissed. [P. J. M.]

It is further ordered, adjudged and decreed that the defendant have judgment against the plaintiff for his costs in this behalf laid out and expended, taxed at \$.....

Dated this 8th day of January, 1926.

Paul J. McCormick
Judge.

Decree entered and recorded 1/8/26

Chas. N. Williams Clerk.

By Louis J. Somers Deputy Clerk.

[Endorsed]: Received copy of the within proposed decree this 23d day of December 1925. J. Edwin Simpson, assistant United States attorney, attorney for plaintiff. Filed Jan 8, 1926 Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

STATEMENT OF TESTIMONY UNDER EQUITY
RULE 75 B.

The following is Plaintiff-Appellant's condensed statement in narrative form of the testimony introduced upon the trial of the above entitled cause made in pursuance of Equity Rule 75b and lodged in the Clerk's office for the examination of defendant, as provided by said rule.

This cause came on regularly to be heard on the 15th day of December, 1925, at which time plaintiff renewed its motion to strike the whole of the fourth affirmative defense from the answer upon the grounds set forth in its motion to strike, and further moved the court to strike from the answer that part thereof alleging "that defendant is, and at all the times herein mentioned, was a white person entitled to be naturalized under the laws of the United States," upon the ground that it was a conclusion of the pleader contrary to law and inconsistent with the admissions of the answer that defendant was a high caste Hindu, of full Indian blood, born in India.

Defendant urged that he had nowhere admitted that he was a high caste Hindu of full Indian blood born in Punjab, India. That the ultimate fact alleged in Plaintiff's bill was that defendant was not a free white person which defendant had specifically denied, and that the allegation in the bill that, on information and belief defendant was a high caste Hindu of full Indian blood **was an allegation of evidentiary facts, and as such surplusage, and not required to be admitted or denied under Equity Rule No. 30.** One of the things defendant

desired to present was the propositions presented in the Thind case, 261 U. S. 204, which went up on a demurrer admitting all the allegations of the complaint. "But such is not the case in our pleadings here."

THE COURT: What I want to get at to save the time of the court, it is not conceded that the defendant is a high caste Hindu of full Indian blood, born at Punjab, India.

MR. NEWBY: He is not, and we propose to prove that he is not. We don't want to deceive the Court. We will admit, and the proof will show, that he is a Hindu, but not an Indian of full blood, and does not come within the classification of the Thind case.

THE COURT: Do you intend to prove that by ethnological testimony, as developed by Mr. Justice Sutherland?

MR. NEWBY: Yes, and by Mr. Pandit himself.

THE COURT: I won't permit you to set this court up against the Supreme Court of the United States.

MR. NEWBY: And we don't want to; but in that case it was admitted

THE COURT: If there is a clear issue on that it would present a litigable matter. But under the Supreme Court decision, if there is no issue, if there is no question as to what his lineage was, or what his ancestry was, or his place of birth, then it becomes a question which has already been decided by the Supreme Court of the United States.

MR. NEWBY: All we are contending for is that after the evidence shall be presented, then of course it does present a question of law, but we don't think it is presented on the basis of the pleadings as they appear.

(Testimony of Frederick Jones.)

THE COURT: The motion to strike out is denied. I don't want this court to be put in the absurd position of attempting to review a question that the Supreme Court of the United States has decided.

MR. NEWBY: We are not asking the Court to do that. We think the case can be distinguished. But after we present the facts, if the Court thinks not, we will confine ourselves to the question of equitable estoppel.

THE COURT: That is what I want to hear.

MR. SIMPSON: May we have an exception to the ruling of the Court refusing to strike out the fourth affirmative defense?

THE COURT: Yes.

The Court then proceeded with the cause upon the issues joined by the complaint and the fourth defense of the answer, and the following proceedings were had and testimony taken:

FREDERICK JONES

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SIMPSON:

Q. What is your occupation, Mr. Jones?

A. I am district director of naturalization for this district.

Q. How long have you been in the naturalization service?

A. Since 1907.

Q. Do you know the defendant, Mr. Pandit?

A. Very well.

Q. How long have you known him?

(Testimony of Frederick Jones.)

A. Well, I have known Mr. Pandit, I expect, close to fifteen years; from the time he was naturalized.

Q. Were you in the naturalization service at the time his application for naturalization came up for hearing in the Superior Court of Los Angeles County?

A. I was.

Q. At that time was any testimony introduced to establish Mr. Pandit's race?

A. There was.

Q. Did Mr. Pandit testify as to that fact?

A. He filed a very voluminous brief in support of it.

Q. I am simply getting at the questions of fact, not the questions of law. Did he testify as to whether or not he was a high caste Hindu of full Indian blood, born in India?

A. That is my recollection at this late day, that that was the contention that he made.

Q. Was there any evidence introduced to show that he was not a high caste Hindu of full Indian blood, born in India?

MR. NEWBY: We object to that as calling for the conclusion of the witness.

THE COURT: That would be a matter for judicial interpretation.

Q. BY MR. SIMPSON: Was there any dispute as to whether or not he was a high caste Hindu of full Indian blood?

MR. NEWBY: We object to that.

MR. SIMPSON: The point I am making is not as to whether or not the conclusion of the court there was correct, but the question of whether or not the matter

(Testimony of Frederick Jones.)

before the Superior Court judge was based upon the contention and evidence as to whether or not he was a high caste Hindu of full Indian blood, or whether the evidence was disputed that he was a high caste Hindu of full Indian blood, and from that evidence the court drew an erroneous conclusion.

MR. NEWBY: The objection to this particular question is as to the form of it. We have no objection to the witness testifying to the substance of any testimony given as to the issue involved. I think the issue was as to whether he was a white person within the meaning of the naturalization section.

MR. SIMPSON: I am not asking him that. I am asking him whether there was any evidence introduced to rebut Mr. Pandit's testimony to the effect that he was a high caste Hindu of full Indian blood.

THE COURT: Answer the question.

A. No. There was no contest on that point at all.

Q. BY MR. SIMPSON: I hand you here what purports to be an affidavit signed by Frederick Jones, and I will ask you to examine that and state if you can if you have ever seen it before?

A. I have.

Q. Do you know whose signature that is, "Frederick Jones"?

A. Mine.

Q. Sworn to by you before Miss Olive A. Pixley?

A. Yes, sir.

Q. What did you do with that affidavit?

A. This affidavit was forwarded to the Bureau of Naturalization at Washington.

(Testimony of Frederick Jones.)

Q. In pursuance of the provisions of the naturalization act?

A. Yes, sir; and the instructions of the Bureau.

MR. SIMPSON: At this time, your honor, we offer the affidavit in evidence.

MR. NEWBY: That is the basis for these proceedings?

MR. SIMPSON. Yes. A copy of it is attached to the complaint.

MR. NEWBY: No objection.

(Plaintiff's Exhibit 1 is in words and figures as follows, to-wit:)

"AFFIDAVIT (In pencil:) 265

C-445063

STATE OF CALIFORNIA)
) SS.
County of Los Angeles)

Frederick Jones, being first duly sworn, deposes and says: that he is a duly appointed, qualified, and acting examiner of the Bureau of Naturalization, United States Department of Labor. That on May 7th, 1914 the Superior Court in and for the County of Los Angeles, State of California granted petition of naturalization to Sakharem Ganesh Pandit to be admitted a citizen of the United States of America and that certificate of naturalization No. 445063 was issued to him.

That, upon information and belief, the above named Sakharem Ganesh Pandit is a high caste Hindu of full Indian blood and is not a white person within the meaning of Section 2169 of the United States Revised Stat-

(Testimony of Frederick Jones.)

utes, and therefore, the order admitting him to citizenship in the United States was illegal.

That, upon information and belief, the present address of said Sakharem Ganesh Pandit is 5125 Range View Ave., Los Angeles, California.

That, in view of the facts above stated, and in conformity with the decree of the Supreme Court of 'The United States of America, Appellant, ver. Bhagat Singh Thind, 202', affiant verily believes that the certificate of naturalization issued to said Sakharem Ganesh Pandit by virtue of the order of the Superior Court in and for the County of Los Angeles, State of California as hereinbefore mentioned should be canceled.

(Signed) Frederick Jones.

Subscribed and sworn to before me this 9th day of April, 1923.

(Signed) Olive A. Pixley,

Notary Public in and for the County of Los Angeles, State of California."

(Notarial Seal impressed of Olive A. Pixley, Notary Public, Los Angeles County, California.)

—o—

MR. SIMPSON: That is all.

CROSS-EXAMINATION.

BY MR. PALMER:

Q. Were you present during all the time that this case was being heard in the Superior Court?

A. I was.

Q. Who was the judge who tried the cause?

A. Judge Morrison.

(Testimony of Frederick Jones.)

Q. Did you enter an appearance there for the United States?

A. I represented the United States.

MR. SIMPSON: We object to that as incompetent, irrelevant and immaterial and not within the issues of the case.

MR. PALMER: It is cross-examination as to what took place.

THE COURT: I don't understand what you mean by "appearance," Mr. Palmer?

MR. PALMER: I mean whether he contested the matter there.

MR. SIMPSON: If he did, it is not a matter of defense under the Supreme Court's decision.

THE COURT: I think not.

MR. PALMER: I think it goes to one of the matters pleaded.

THE COURT: That is a matter of defense. It is not a part of the government's case.

MR. PALMER: It is cross-examination.

THE COURT: You may offer him as your own witness later on. That is not proper cross-examination. The burden is upon you to prove your affirmative defenses.

BY MR. PALMER: I direct your attention to this paper; is that a paper prepared by you?

A. Yes, sir; that was prepared by me, under the direction of the Chief Examiner at that time in San Francisco.

Q. That was George A. Crutchfield?

A. Yes.

(Testimony of Frederick Jones.)

Q. And you filed this in the Superior Court, or a copy of it?

A. I did file that.

MR. SIMPSON: I object to that as incompetent, irrelevant and immaterial, and not within the issues of the case, and I ask that our objection go in before the answer.

THE COURT: May I see that?

Q. BY THE COURT: Was this used in the proceedings before Judge Morrison, Mr. Jones?

A. Just a moment, your honor. Yes; undoubtedly it was.

THE COURT: Overruled.

MR. SIMPSON: Exception.

Q. BY MR. PALMER: This is the copy that was delivered to Mr. Pandit?

A. I presume it is.

MR. PALMER: We offer it in evidence.

MR. SIMPSON: I object to it as incompetent, irrelevant and immaterial, and not within the issues of the case.

THE COURT: Overruled.

MR. SIMPSON: Exception.

(Defendants Exhibit A is in words and figures as follows, to-wit:)

(Testimony of Frederick Jones.)

“SUPERIOR COURT STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF
LOS ANGELES

In the Matter of the)
Petition for Naturalization)
of) BRIEF.
SAKHARAM GANESH PANDIT)
No. 2377)

I.

“Petitioner is a member of the Hindu race.

II.

Section 2169 United States Revised Statutes (As amended, 1875) ‘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.’

III.

The attention of this Honorable Court is directed to the decisions of various courts upon the subject as to the eligibility for naturalization of the petitioner in question; the decisions referred to are as follows:

In re Po, 28 N. Y. Suppl. 383 (Burmese).

In re Kanaka Nian, 6 Utah, 259, 21 Pac. 993
(Hawaiian)

In re Alverto, 198 Fed. 688 (Filipino)

In re Dolla, 177 Fed. 101 (Hindu)

IV.

The attention of the Court is also called to the fact that on May 3, 1913, Judge Rudkin in the United States District Court, at Spokane, Washington, decided that a Hindu of high caste is a free white person, and entitled to become an American citizen.

(Signed) Geo. A. Crutchfield,
Chief Naturalization Examiner,
By Fred'k. Jones,
For the Bureau of Naturalization.”

(Testimony of Frederick Jones.)

(Said Defendant's Exhibit A is indorsed as follows:)

“IN THE SUPERIOR COURT
State of California
County of Los Angeles.

In the matter of the petition for naturalization
No. 2377

SAKHARAM GANESH PANDIT

—
BRIEF.”
—o—

Q. BY MR. PALMER: Were you present all of the time when the testimony was being taken in the case?

A. I believe I was; surely.

Q. How many witnesses were examined, do you remember?

A. I don't remember that now. I don't remember that there were any witnesses examined, save the witnesses to his petition.

Q. And Mr. Pandit?

A. And Mr. Pandit.

&. Was that testimony taken down by a reporter, do you know?

A. I don't remember.

Q. How long ago was that?

A. I don't know. It must have been ten, twelve, thirteen or fourteen years ago.

Q. Anyhow, some years ago?

A. Some years ago; yes.

(Testimony of Frederick Jones.)

Q. And you can't be entirely positive as to just what Mr. Pandit testified about his race?

A. No, I could not at this time; no.

Q. Now, are you sure that he testified at that time that he was of full Indian blood?

A. I could not state positively at this time. Can I qualify a little further, your honor?

THE COURT: Surely.

A. I will say this, Mr. Palmer, that the issue was that a Hindu was not eligible for naturalization, and that was the instruction—that was my instruction on which I objected to his admission to citizenship.

Q. That was the objection that you had, and that was the one you reported?

A. That was the instruction from the department in Washington, and Mr. Pandit answered it in a very voluminous brief that he filed.

Q. And then the judge decided in his favor?

A. He did.

MR. SIMPSON: I object to that as immaterial.

THE COURT: Overruled.

MR. SIMPSON: Exception.

Q. BY MR. PALMER: Was there any appeal by the United States Government from that decision?

MR. SIMPSON: I object to it as incompetent, irrelevant and immaterial, and not a matter of defense. The question of the appealing from the order is improper, not only because there is no provision for appeal in such cases by the government, but for the further reason that the affirmative defense set up in the answer on that point is stricken out. It is a matter, if any-

(Testimony of Frederick Jones.)

thing, of defense, and not for cross-examination of this witness, and I object to it on the further ground that it is not proper cross-examination.

THE COURT: I think that is a matter of defense. Sustained.

MR. PALMER: That is all.

MR. SIMPSON: That is all. That is the Government's case.

Q. BY THE COURT: Just one question, Mr. Jones, before the Government closes. It is really a matter of record, but if the Government objects to it, it may do so, notwithstanding the court asks the question. During these proceedings in the Superior Court of the State of California, in and for the County of Los Angeles, before Judge Morrison, one of the regular judges of that court at that time, the plaintiff in that case—this defendant in this case, who was the petitioner in that proceeding, was admitted to citizenship, was he?

A. He was.

MR. SIMPSON: I object to that as calling for the conclusion of the witness. While the order was made stating that he should be naturalized as a citizen, that did not admit him to citizenship.

THE COURT: You mean it was adjudicated without jurisdiction, and therefore void?

MR. SIMPSON: Yes.

THE COURT: I don't mean it in that sense, that is, in the legal sense. I am speaking now as to the procedure that was attempted to be followed by that court in that hearing at that time.

(Testimony of Frederick Jones.)

A. Judge Morrison had the case under advisement, your honor, for a number of months, and he handed down a written decision in Mr. Pandit's case admitting him to citizenship.

Q. BY THE COURT: Were you present when Mr. Pandit thereafter took the oath of allegiance to the United States?

A. Yes; I am sure I was. It was taken in open court.

Q. Did he take the oath of allegiance to the United States of America?

A. He did.

Q. That is, he seemed to take the oath?

A. Yes.

Q. Did he comply with all the departmental regulations respecting the recordation of the naturalization proceedings?

A. Yes; I think he complied with all departmental requirements.

Q. Do you remember what year that was?

A. I do not. It is a matter of record.

Q. Yes. I think it is pleaded.

A. That was at the term of the Superior Court on the 7th of May, 1914.

Q. And the government took no further action in the matter, no affirmative action until the filing of this petition for the revocation of his naturalization?

A. Not to my knowledge. The matter, of course, was reported to the Bureau, and I received no instructions to proceed further.

(Testimony of Frederick Jones.)

Q. Let me examine you a little further. Your own view was that you as the government's representative should contest the application before the Superior Court, is that it?

A. Yes.

Q. And the Court's decision was adverse to your contention and that of the government?

A. Yes.

Q. Did you immediately report that matter to your superior in Washington?

Q. At once; rather, pardon me, I reported it to the Chief Examiner at San Francisco.

A. And he reported it to Washington?

A. Yes; I assume that he proceeded to report it to Washington.

Q. It was your duty to report it to your immediate superior in San Francisco?

A. Yes.

Q. Do you remember what you reported to him with respect to a recommendation as to further proceedings by the government in the matter?

A. I can't recall at this time, and my files of those days have been destroyed.

MR. SIMPSON: We will at this time move to strike from the record the questions and answers—the questions asked by the court with reference to the contest, and the steps, if any were taken, taken after the order was made purporting to admit Mr. Pandit to citizenship.

THE COURT: The motion is denied.

(Testimony of Frederick Jones.)

MR. SIMPSON: Exception. May I ask one more question of Mr. Jones?

THE COURT: Yes.

Q. BY MR. SIMPSON: In answer to the court's question, as to whether Judge Morrison admitted Mr. Pandit to citizenship, you answered "Yes". Now, I want to ask you this question: Is it not a fact that after Judge Morrison had decided the case he made an order which purported to allow Mr. Pandit to become a citizen of the United States, and that pursuant to that order a certificate of naturalization and citizenship was issued to him?

MR. NEWBY: We object on the ground that it calls for the conclusion of the witness, is irrelevant and immaterial and I call the court's attention to the fact that the very petition on which this matter started alleges the fact of the granting of the citizenship. It is the foundation of this entire proceeding. The government alleges that in its petition for cancellation.

MR. SIMPSON: We admit that it was issued and the order made, but it is a conclusion as to whether the certificate which was issued did grant citizenship.

MR. NEWBY: This is a question of law for the court.

MR. SIMPSON: The reason I asked that question was because the court asked a question which we objected to, calling for the conclusion of the witness, a conclusion of law, on behalf of the witness, as to whether or not it did admit him to citizenship.

THE COURT: I didn't intend to go that far. It seems to me that is one of the very questions that is

(Testimony of Frederick Jones.)

here, that if it is a void naturalization no petition is necessary to declare it so, and that the government having come into a court of equity to ask the aid of equity in annulling what is admitted to be a decree ab initio, must submit itself to the rules and jurisdiction and must come in with clean hands, must come in with all of the obligations that another suitor comes into a court of equity with, and the court must administer equity commensurate with the facts disclosed by the record. That is the reason I think it is material. I know just what the government's position is, but it seems to me it is a little inconsistent in its position. If the naturalization is void ab initio, there is not any necessity for the proceeding. It is not a voidable act. It is a void act, if the government's position is correct. If it is a voidable act, it is necessary for the court to pursue the remedy, but taking your position that the order of the Superior Court was a void order and void from the beginning, you are a little inconsistent in your position, in asking the court's aid. The objection is overruled and the motion denied.

MR. SIMPSON: Exception.

MR. PALMER: We desire at this time to move to dismiss the petition because there is no testimony here upon which to base a cancellation of this citizenship paper. There is no testimony offered by the Government that would entitle it to a cancellation, and for that reason we ask that the petition be dismissed.

THE COURT: The motion to dismiss is denied.

DEFENSE:

MR. PALMER: We offer in evidence a certified copy of the certificate of arrival of the defendant, and of the declaration of intention, and the petition for naturalization of the defendant, and the affidavits of the petitioner and witnesses, and the order of the court admitting the defendant to citizenship.

These instruments were marked defendant's Exhibit "B", and received in evidence without objection. The exhibit is, as follows:

"form 526

"CERTIFICATE OF ARRIVAL—FOR NATURALIZATION PURPOSES.

10564-S

872771

Serial No. 872771

(In pen and ink:) For use of aliens arriving in United States after June 29, 1906. To be issued immediately prior to petitioning.

(In pen and ink:) Note to Clerk of Court. Insert the above serial number in the duplicate petition at the point indicated and immediately above the line of the certificate. 'Declaration of Intention and certificate of Arrival from the Department of Commerce and Labor. Filed this.....day of..... 19...'

Department of Labor

Immigration Service.

Office of Commissioner of Immigration at Ellis Island, N. Y. June 5, 1913.

This is to certify that the following-named alien arrived at port indicated, on the date and in the manner described below, viz:

Name of alien: Sakharam Gamesh Pandit

Port of entry: New York, N. Y.

Date of arrival: August 28, 1906.

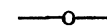
Name of vessel: Kronprinz Wm. Line N. G. L.

Byron H. Uhl

(Title) Acting Commissioner

J

(In pen and ink:) *Or railroad Company or any other conveyance.)



Form 2203

87277

Triplicate

Department of Commerce and Labor (To be given to the person making the declaration)

No. 6094 Naturalization Service

UNITED STATES OF AMERICA

Declaration of Intention

(Invalid for all purposes seven years after the date hereof).

Circuit Court of the United States) In the Circuit Court Northern District of Illinois) SS of the United States

I, Sakharam Ganesh Pandit, aged 35 years, occupation lecturer, do declare on oath that my personal description is: Color white, complexion dark, height 5 feet 4 inches, weight 134 pounds, color or hair gray, color of eyes brown, other visible distinctive marks none. I was born

in Ahmedabad, India on the 20th day of December, anno Domini 1875; I now reside at (in pen and ink:) (Give number, street, city or town, and state) 6500 Lexington Avenue, Chicago, Illinois. I emigrated to the United States of America from Southampton, England on the vessel (in pen and ink:) (If alien arrived otherwise than by vessel, the character of conveyance, or name of transportation company should be given) Kronprinz Wilhelm; my last foreign residence was London, England. It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to George V. King of Great Britain and Ireland of whom I am now a subject; I arrived at the port of New York, in the state of New York on or about the 28th day of August, anno Domini 1906; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me God.

Sakharam Ganesh Pandit

(Original signature of declarant.)

Subscribed and sworn to before me this 24th day of March, anno Domini 1911.

John H. R. Jamar

Clerk of the United States Circuit Court

(SEAL)

By Thomas V. Lell, Deputy Clerk.

No. 2377

44

ORIGINAL

U. S. Department of Labor

Naturalization Service

UNITED STATES OF AMERICA

Petition for Naturalization.

To the Honorable the Superior Court of the State of California, in and for Los Angeles County.

The petition of Sakharam Ganesh Pandit hereby filed, respectfully showeth:

First. My place of residence is 5135 Range View Ave., Los Angeles, Cal.

(Give number, street, city or town, and state.)

Second. My occupation is Lecturer and Teacher.

Third. I was born on the 20th day of Dec. anno Domini 1875, at Ahmedabad, India.

Fourth: I emigrated to the United States from Southampton, England, on or about the 22 day of Aug. anno Domini 1906, and arrived in the United States, at the port of New York, on the 28 day of Aug. anno Domini 1906, on the vessel Kronprinz Wilhelm.

(If alien arrived otherwise than by vessel, the character of conveyance and name of transportation company should be given.)

Fifth. I declared my intention to become a citizen of the United States on the 24 day of March, anno Domini 1911, at Chicago, Ill., in the Circuit Court of Northern Dist. of Illinois.

Sixth. I am not married.

Seventh. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or

opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty and particularly to George V. King of Great Britain and Ireland, of whom at this time I am a subject, and it is my intention to reside permanently in the United States.

Eighth. I am able to speak the English language.

Ninth. I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to-wit; since the 28 day of August, anno Domini 1906, and in the State of California, continuously next preceding the date of this petition, since the 28 day of August, anno Domini 1911, being a *residence* within this State of at least one year next preceding the date of this petition.

Tenth. I have not heretofore made petition for citizenship to any court.

Attached hereto and made part of this petition are my declaration of intention to become a citizen of the United States, and the certificate from the Department of Labor, together with my affidavit and the affidavits of two verifying witnesses thereto, required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Sakharam Ganesh Pandit

(Complete and true signature of petitioner.)

Declaration of Intention and Certificate of Arrival No. 872771 from Department of Labor filed this 13 day of June, 1913.

AFFIDAVITS OF PETITIONER AND WITNESSES

State of California)
 o SS
County of Los Angeles)

The aforesaid petitioner being duly sworn, deposes and says that he is the petitioner in the above-entitled proceedings; that he has read the foregoing petition and knows the contents thereof; that the said petition is signed with his full true name; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Sakharam Ganesh Pandit

(In pencil:) (Complete and true signature of petitioner.)

Mrs. Stringer, occupation Housewife, residing at 5135 Range View Ave. Los Angeles, Cal. and Wm. M. Healey, occupation Merchant, residing at 5834 No. Los Angeles St. each being severally, duly and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known Sakharam Ganesh Pandit, the petitioner above mentioned, to have resided in the United States continuously immediately preceding the date of filing his petition, since the 28 day of Aug. anno Domini 1911, and in the State in which the above-entitled petition is made continuously since the 28 day of Aug., anno Domini 1911; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States,

and that the petitioner is in every way qualified, in his opinion, to be admitted a citizen of the United States.

Mrs. Lillian B. Stringer

(In pen and ink:) (Signature of witness.)

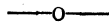
William M, Healey

(In pen and ink:) (Signature of witness.)

Subscribed and sworn to before me by the above-named petitioner and witnesses this 13 day of June, anno Domini 1913.

H. J. Lelande (in pencil:) County Clerk and ex-officio Clerk of the Superior Court in and for the County of Los Angeles, State of California.

By P. J. O'Donnell, Deputy Clerk.



(To be pasted on the back of the petition below the order of court, admitting petitioner. See Rule 19 Naturalization Regulations.) Petition No. 2377.

Affidavit of Witnesses

Court Superior, Superior Court of the State of California, in and for Los Angeles County

In the matter of the petition of Sakharam Ganesh Pandit to be admitted a citizen of the United States of America.

State of California)
) SS
County of Los Angeles)

Mrs. Stringer, occupation Housewife, residing at 5135 View Ave., L. A. Calif. and Mrs. Lucy Adams, occupation Housewife, residing at 327 W. 45th St., L. A. Cal.,

each being severally, duly and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known Sakharam Ganesh Pandit, the petitioner above mentioned, to be a resident of the United States for a period of at least 13 May 1908

years continuously immediately preceded to 28 Aug. 1911

ing the date of filing his petition, and of the District in which the above-entitled application is made for a period of years immediately preceding the date of filing his petition and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted a citizen of the United States.

Mrs. Lillian Stringer

Mrs. Lucy E. Adams

Subscribed and sworn to before me this day of anno Domini 19 . . .

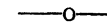
H. J. Lelande

County Clerk and Ex-Officio Clerk of the Superior Court in and for the County of Los Angeles, State of California. Clerk.

by P. J. O'Donnell

Deputy Clerk.

(Seal affixed)



In the matter of the Petition of)
 Sakharam Ganesh Pandit) Filed June 13, 1913.
 To be admitted a citizen of the)
 United States of America.)

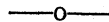
OATH OF ALLEGIANCE:

I hereby declare on oath that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to George V, King of Great Britain and Ireland of whom I have heretofore been a subject; (and that I further renounce the title of....., and order of nobility which I have heretofore held); that I will support and defend the constitution and laws of the United States of America against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same.

Sakharam Ganesh Pandit

Subscribed and sworn to before me in open Court, this 7 day of May A. D. 1914 (SEAL)

Willis I. Morrison, Clerk.



ORDER OF COURT ADMITTING PETITIONER

Upon consideration of the petition of Sakharam Ganesh Pandit, and affidavits in support thereof, and further testimony taken in open Court, it is ordered that the said petitioner, who has taken the oath required by law, be, and hereby is, admitted to become a citizen of the United States of America, this 7 day of May A. D. 1914.

(In pencil:) (It is further ordered, upon consideration of the petition of the said.....that his name be, and hereby is, changed to..... under authority of the provisions of Section 6 of the Act approved June 29, 1906 (34 Stat. L. pt. 1, p. 596), as amended by the Act approved March 4, 1913, entitled 'An Act to create a Department of Labor.')

By the Court

Willis I. Morrison

Judge.

Certificate of Naturalization No. 445063, Issued on the 7th day of May, A. D. 1914.

STATE OF CALIFORNIA,)
) ss.
 County of Los Angeles.)

No. 2377—(Naturalization)

I, L. E. LAMPTON, County Clerk and ex-officio Clerk of the Superior Court, do hereby certify the foregoing to be a full, true and correct copy of the original Naturalization Papers of SAKHARAM GANESH PANDIT on file in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court this 17th day of November, 1925.

L. E. Lampton, County Clerk,

By (Signed) D. M. Forbes

Deputy Clerk.

(Seal of the Superior Court of Los Angeles County, California affixed.)

(75—Clerk—Certified Copy)''

(Endorsements as follows:) "In the matter of the Petition of Sakharam Ganesh Pandit To be Admitted a Citizen of the United States. Certified Copy of Record."

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MR. PALMER: I desire to offer also the certificate of the United States—the certificate of naturalization, No. 445,063, of the defendant, and we ask that it be admitted with permission to file a copy. I will show the court the original.

THE COURT: Very well. The copy is admitted.

(Defendant's Exhibit C is in words and figures as follows, to-wit:)

"No. 445,063 To be given to the person naturalized.

THE UNITED STATES OF AMERICA.

Certificate of Naturalization

Petition Volume 11, Number 2377

Description of holder, Age, 38 years; height 5 feet, 5¾ inches, color White; complexion, Dark; color of eyes, Brown; color of hair, Drk. Gray; visible distinguishing marks, none. Name, age and place of residence of wife, not married.

Names, ages and places of residence of minor children, None.

State of California) Sakharam Ganesh Pandit
) ss.
County of Los Angeles) (Signature of holder)

Be it remembered that Sakharam Ganesh Pandit then residing at number 5135 Range View Ave., City of Los Angeles, State of California, who previous to his naturalization was a subject of Great Britain, having applied to be admitted a citizen of the United States of America

pursuant to law, and, at a Regular term of the Superior Court of the State of California, in and for Los Angeles County, held at Los Angeles, Cal., on the 7th day of May in the year of our Lord nineteen hundred and fourteen, the court having found that the petitioner had resided continuously within the United States for at least five years and in this State for at least one year immediately preceding the date of the filing of his petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that he was entitled to be so admitted, it was thereupon ordered by the said Court that he be admitted as a citizen of the United States of America.

In testimony whereof the seal of said court is hereunto affixed on the 7th day of May in the year of our Lord nineteen hundred and fourteen, and of our Independence the one hundred and thirty-eighth.

H. J. Lelande,

County Clerk and ex-officio clerk of the Superior Court in and for the County of Los Angeles, State of California.

By P. J. O'Donnell, Deputy
(Official character of attester)

SEAL
of the Superior Court.

: DEPARTMENT OF LABOR :
: _____ :

(Testimony of S. G. Pandit.)

S. G. PANDIT

called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PALMER:

I am the defendant, S. G. Pandit, who was naturalized under an order of Judge Willis I. Morrison, of the Superior Court. I was never served with any notice of appeal from that decision.

Q. Were you ever served with any notice of a petition to review the judgment in the case in the United States Court?

MR. SIMPSON: We object to that as incompetent, irrelevant, and immaterial, and not within the issues in the case. I might call the attention of the Court to the fact that the separate affirmative defenses setting up the question of fact that this action is barred by failure to appeal by the statute of limitations and res adjudicata have all been stricken from the answer.

MR. PALMER: At the bottom of page 5 that is alleged, in the first paragraph of the fourth defense. All of that is alleged, if your honor please.

THE COURT: Overruled.

MR. SIMPSON: Exception.

(Exception NO.....)

A. I was not.

The petition served upon me in this case about nine years after I was naturalized, is the first paper served upon me in regard to voiding the naturalization. I arrived in the United States, at New York, August 8,

(Testimony of S. G. Pandit.)

1906, from Southampton, England. I filed a declaration of intention in 1911, in the United States Circuit Court at Chicago. Thereafter, in 1913, I filed a petition to be naturalized with the Superior Court of the State of California, in and for the County of Los Angeles. Several hearings were had on the petition. Mr. Frederick Jones, the witness for the Government in this case was present representing the Government. I testified at the hearings. At the contest on the hearing before Judge Morrison, Mr. Jones stated to the Court; "We don't know about people in India. There are various classes, and so on, and it will be hard for us to decide who are eligible, and who are not, and, therefore, the best thing is to let in nobody," and, therefore, he moved that the applicant, not being a white person, should not be admitted to citizenship. I represented myself. The matter was submitted to Judge Morrison upon briefs filed by myself, and one by Mr. Jones. A copy of defendant's exhibit "A" in this case was the brief filed with the judge by Mr. Jones, and a copy was served on me. The case was argued two or three times, and Judge Morrison had it before him about nine months, and decided it in my favor. I then took the oath of allegiance on the order of the Court, and in the presence of Mr. Jones.

I had a conversation with Mr. Jones regarding my citizenship some time after the first hearing. I asked Mr. Jones when the Judge would decide the case. Mr. Jones was very cordial and he said: "Well, Mr. Pandit, you are a learned man. I was very much impressed by your brief, and there is no question about your being admitted to citizenship, but the Judge is going to take

(Testimony of S. G. Pandit.)

a little time so that the door may not be thrown open to such as are not desirable, and that is the only reason he is going to take time. Otherwise, he would admit you in three minutes. There is no question about that." After that, no decision having been rendered, I went to see Judge Morrison, and told him I was rather anxious for an early decision, because I intended to study law to get admitted to practice here, and I would not do it, if I was not going to be admitted, and he said: "Well, there is no question about your eligibility or about your being admitted. You will be admitted. You are perfectly safe in going ahead with your study of the law. I have to take a little time to write the opinion carefully, and while you may not agree with me, there are some people from your country who would not be desirable, and I want to prepare an opinion in such a way that the door would not be left open to them."

At the second hearing, Judge Morrison asked me a good many questions about myself personally, and Mr. Jones asked two or three questions. With reference to the brief I had filed, Judge Morrison asked me if I was a lawyer, and on being informed I was not, said: "Well, I want to congratulate you, Mr. Pandit, on the preparation of that brief, because it was the most interesting brief this Court has had the pleasure of reading, and I wish you all success in your future career as a lawyer." Mr. Jones then said: "Your Honor, the United States Government wants to echo the sentiments expressed by the Court, and wants to welcome Mr. Pandit as a worthy addition to the citizenry of the United States."

(Testimony of S. G. Pandit.)

Mr. Jones at no time after my naturalization indicated that there was any desire on the part of the United States to take an appeal in my case or question my certificate in any way. When I was coming out of the Superior Court Clerk's office with my naturalization certificate on May 7, 1914, I met Mr. Jones at the entrance to the building and he remarked: "Well, Mr. Pandit, now that you are a citizen, you may be required to go on military duty on the Mexican border where men are wanted at the present time."

When I came to the United States, I was lecturing and teaching. I had been educated in the University of Bombay, the English University, and in the Ranavira Pathashala at Benares, a Sanskrit School. I later received the Degree of Mahamahopadhyaya, which corresponds with the American Degree of Doctor of Philosophy, and is the highest degree conferred by the orthodox Sanskrit Universities in India. Prior to my application for naturalization, I had not gone through a regular course of study of the law; and I told the naturalization court that if I were admitted to citizenship, I intended to study law.

After I took the oath of allegiance to the United States and acquired citizenship, I proceeded to equip myself for the practice of law, and devoted all of my time during the latter half of 1914, 1915 and 1916 to the study of law.

MR. SIMPSON: I don't want to keep making objections to the testimony, but the Government at this time desires to interpose an objection to the testimony given by the witness on the ground that it is incompetent, irrel-

(Testimony of S. G. Pandit.)

evant, and immaterial, and does not constitute a defense to the issues raised by the pleadings. The general objection can go to all of the questions, except where I otherwise make a specific objection.

THE COURT: It may be so understood.

MR. PALMER: We have no objection.

MR. SIMPSON: And my exception will go to each of the objections, if the same is overruled.

THE COURT: Yes, the objection goes to the general line of questions that are admissible under the fourth affirmative defense pleaded in the answer, and as to all questions the objection is overruled, and the exception noted.

MR. SIMPSON: Exception.

(Exception No.);

I was thereafter admitted to practice law by the District Court of Appeal of California, in the United States District Court for the Southern District of California and I was admitted to practice in the United States District Court for the Northern District of California, and in the Circuit Court of Appeals for the Ninth Circuit.

BY THE COURT: Admitted there as a general practitioner and not specially for any case—admitted generally?

A. Yes.

THE COURT: I suppose that will be stipulated, Mr. Simpson, that no one but a 'bona fide' citizen of the United States, or at least one who presumptively is such, can practice generally in those courts.

(Testimony of S. G. Pandit.)

MR. SIMPSON: No your honor. We will stipulate that under the provisions of the Code of the State of California, as they were in effect at the time Mr. Pandit was admitted to practice law, it was necessary that the person be a bona fide citizen of the United States, or have filed a bona fide declaration of intention to become such, and that the same qualifications were necessary in the United States District Court and the Circuit Court of Appeals for the Ninth Circuit.

THE COURT: That covers it.

Since my admission to practice law, I have earned my livelihood by practicing law, and have done nothing else. I have maintained an office. This proceeding has damaged my practice considerably, so that I am now at a disadvantage in proceeding with my practice. I have been acting as an Attorney at Law, and appeared in the Superior Court and Federal Courts.

MR. SIMPSON: If Mr. Pandit testifies that he was admitted to practice in the State Courts of California and in the Federal Courts, we don't intend to introduce anything to the contrary. But of course his testimony is subject to our objection.

THE COURT: And so understood.

Q. BY THE COURT: Has there ever been any proceeding by any of the State or Federal officials, or by the Bar Association of any community, preferring charges against you of any kind?

A. No.

Q. Never been any disbarment proceedings?

A. No.

(Testimony of S. G. Pandit.)

Q. Or any proceedings for the revocation of your license to practice law filed?

A. No.

Q. Have you been assuming to act as an attorney-at-law in the state?

A. Yes.

Q. And have been appearing in the courts?

A. Yes.

Q. What courts?

A. In the Superior Court and Federal Courts.

Q. Have you appeared in the general practice of the law in the State or Federal Courts since you were admitted?

A. Yes, I have appeared many times.

Q. Have you appeared since this petition for revocation was filed?

A. Yes, I have appeared, but comparatively few times.

Q. You have always openly published the fact that you were an attorney-at-law?

A. Yes; although several of my clients have come to me and said: "We did not know you were practicing law or we would have come back to you. We saw in the paper they would cancel your citizenship and you would lose your license." I lost quite a good deal of my practice that way.

After I was granted citizenship, I applied for and received a notary public's commission in the State of California. In reply to my application the Secretary of State wrote asking me if I was a citizen, and if I

(Testimony of S. G. Pandit.)

was a naturalized citizen to forward my certificate, and when he was satisfied I was a citizen. . . .

MR. SIMPSON: I object to that; that is a conclusion of the witness. He can state what was done.

Q. BY MR. PALMER: Yes. Did you send him the certificate?

A. No. I did not. I told him where the record of the certificate was filed, and that if he could not be satisfied that way I would send him the certificate. And soon after that the Governor of California sent me my commission as notary public. Thereupon I took my oath and gave bond, and acted as a notary for four years. Then I wrote back asking for a renewal of the commission as the old one had expired; and they sent the renewal immediately. I qualified again by taking oath and giving bond, and I am now a notary public.

MR. NEWBY: We would like to read Section 792, of the Political Code of California on the qualifications of notaries public: "Every person appointed as notary public must, at the time of appointment, be a citizen of the United States and of this State, and twenty-one years of age; must have resided in the county for which the appointment is made for six months. Women having these qualifications may be appointed."

In 1920, which was after I was naturalized, I bought a home in Los Angeles, which I still own, and it is valued at about \$15,000.00 or in excess thereof.

MR. PALMER: Will you stipulate that under the Alien Land Law he cannot own real estate?

MR. SIMPSON: No, I won't stipulate to that. That is a question of law.

(Testimony of S. G. Pandit.)

MR. PALMER: Will you stipulate that the Court may consider in evidence the Alien Land Law of the State of California?

MR. SIMPSON: I think the Court is entitled to take judicial knowledge of the statutes of California, and can determine whether under the statutes of California an alien is entitled to own a home, not property for agricultural purposes, but a residence or home—consider all those questions of law—but all of this testimony is objected to as incompetent, irrelevant and immaterial and does not constitute a defense to the action.

THE COURT: Yes. It is so understood. The objection is overruled.

MR. SIMPSON: And is an exception allowed all the way through?

THE COURT: It will be so noted.

After my naturalization, and in 1920, I married Mrs. Lillian B. Stringer, a white woman, born in the State of Michigan, of white American parents. We are still married. About 1913, or 1914, which was prior to our marriage, my wife made an application to enter on 320 acres of desert land in the Imperial Valley. Up to 1920, the year we got married, she invested about \$1500.00 in this land, and since that time I have paid about \$500.00, making a total of about \$2,000.00. She could have proved up on that soon after this cancellation suit was filed, but this matter pending she has waited, but she will have to prove up in a year or so or lose it.

BY THE COURT: Under what phase of the Public Land Law was that taken up?

(Testimony of S. G. Pandit.)

A. Originally under the Desert Land Act; and later, I think about 1920, under the Relief Act of March 4, 1915.

Q. Was it her intention of filing proof under the Desert Land Act, or this Act?

A. The Relief Act.

Q. Have you examined both of those Acts yourself, Mr. Pandit?

A. I did a considerable time ago.

Q. Does each of them require that the claimant be a bona fide citizen of the United States?

A. Yes.

Q. So that if your naturalization is canceled, your wife's application will also be canceled—is that your position?

A. Yes.

Q. She would be an alien, she would be the wife of an alien?

A. The wife of an ineligible alien, and therefore inadmissible to citizenship.

THE COURT: That is what I meant.

MR. PALMER: We offer in evidence certified copies of the application, and so on, in that Desert Land Entry to show the present status of the application. (Defendant's Exhibit "D" in evidence.)

MR. SIMPSON: We renew our objection to that on the ground that it is incompetent, irrelevant and immaterial; that it appears on its face that it is incomplete, and that the only purpose it could have, if any purpose, would be to show that some damage might accrue to a third person and not to the defendant himself; on

(Testimony of S. G. Pandit.)

the further ground that it will appear from the application, rather from the document itself, that final proof could have been made a long time ago; in fact, the original entry, according to the testimony, was made in 1913, and final proof has not yet been made.

THE COURT: Overruled.

MR. SIMPSON: Exception, please.

Q. BY THE COURT: I want to ask you a question: These moneys that you have paid toward proving up this claim, were moneys that were accumulated since your marriage?

A. Yes.

Q. And has your wife contributed anything toward proving up that claim since your marriage?

A. In what way?

Q. In money or services.

A. Well, she has gone and looked at the land.

Q. Has either of you resided there?

A. No.

Q. Has she contributed any money since your marriage herself?

A. She has typed letters that have been written for her in connection with the land, and has looked up things for me that were necessary and seen people in connection with it.

MR. SIMPSON: I object to that as not responsive to the question, and I ask that it be stricken out.

THE COURT: Motion denied.

MR. SIMPSON: Exception.

Q. Have there been any improvements made on the property at all?

(Testimony of S. G. Pandit.)

A. Yes.

Q. How lately?

A. Last year there were some made and also this year.

Q. Of what character were the improvements?

A. A barn that was blown down, which was built by us before, that was put up again, and some acreage—I forget the number of acres, 40 or 80 acres, have been plowed and disced, and then planted.

Q. That was done by you folks?

A. Yes.

Q. Not on a lease or anything of that kind?

A. No.

Q. And do you include that in the \$500.00 that you say you paid out?

A. Yes.

THE COURT: Proceed Mr. Palmer.

Q. BY MR. PALMER: Mr. Pandit, have you been able to get water for that land?

A. No.

Q. Is that the reason you have not finally proved upon it?

A. Yes. We tried to. We tried to drill a well, but it didn't do anything. And so we are waiting, hoping some day to get water.

Q. Waiting for the high line canal?

A. Yes, the All-American Canal.

Q. And this money that was earned and applied by you on that land—that was applied on your wife's land?

A. Yes.

Q. You understood that?

(Testimony of S. G. Pandit.)

A. Yes.

Q. It was community money that was applied?

A. Yes.

Q. And you haven't made any effort to have the land put in your name at all?

A. No, I haven't.

Q. What is the land worth?

A. It is hard to say. I don't know. If we get water, or get oil on it, it will be worth a great deal of money.

Q. Is there an opportunity to get water from the development of the Colorado river—is that your idea?

A. Yes; all the people who have claims there are looking for it.

At the time I made application for citizenship, I had the status in my native land, India, of a Brahman. I was born a Brahman, and the Brahmans are the highest class in Hindu Society, and among the Brahmans, the Marata Brahmans, to whom I belong, are considered all over India to be the highest and purest of all of the Hindus, so I had quite a high standing. I was born in Ahmedabad, Province of Bombay, Western India.

When I gave up my allegiance to my nation, and changed my nationality and took up allegiance to the United States, I automatically lost my social position in India; that is, I became an outcaste. An outcaste has no social standing at all, and the higher one's caste originally, the lower he falls, on the theory that those who are high ought to know better than those who are lower. An outcaste cannot have any social position at all, not only with the caste to which he belongs, but in all castes of Hindu society. All he can do is to associate

(Testimony of S. G. Pandit.)

with the so-called "Hill Tribes," the aboriginal people, a kind of negroid stock, with which the Hindus have no social intercourse whatever.

If my certificate of naturalization should be canceled, and I should return to India, I couldn't associate with my own family now. They would not even eat with me, and, of course, there is no possibility of any other social relation; in fact, even any water touched by me would be considered polluted by my own mother, if she were living, and she would not drink it, no matter how much she loved me, because that is against the rules. And in the matter of social status, that is a matter of birth, and once lost, is lost forever.

My father owned considerable property in India. He owned several thousand acres of land, some of it good agricultural land, and some of it plantation of *Acacia Arabica*.

I was the eldest son in the family. Under the law in my native country, the eldest son usually gets all of the inheritance. In India, people usually do not go into court on matters of inheritance, but they are settled by the oldest member of the family. Then if there is any dissatisfaction they go to court. In our family we haven't for many generations gone to court in such matters, and the matter was, in fact, decided after my father's death by my mother, as to what would go to each of the children.

In 1911, after I filed my declaration of intention, I wrote to my mother that I intended to become an American citizen; that I had been a citizen of India by birth, but intended to become a citizen of America by

(Testimony of S. G. Pandit.)

choice. From letters received after that, I saw that she didn't quite like that idea. She mentioned that I was cutting myself away from the family, and from my country, and I noticed also a growing feeling that seemed to attach to both my brothers and my mother, that I hadn't done the right thing; and that they were dissatisfied. As soon as I got my naturalization papers, in 1914, I wrote back to them, saying I had become a citizen, and that I had noticed that they were not quite satisfied with my giving up of allegiance to India, and taking up allegiance to the United States, and, therefore, I did not wish to inherit anything from my father, or any of the property in India whatsoever. My mother then wrote to me, saying that she would like me to reconsider that decision, and that my share of the property, according to the division previously made, was four hundred acres of the best agricultural land in Gujarat; that I would also inherit the home in which we lived, and which was located on about an acre of land in the best part of the City of Ahmedabad, which is a metropolitan city, some family heirlooms, jewelry and money. She wanted me to reconsider my decision to relinquish my rights in the ancestral property, saying: "You may not always be in love with America, and if you return to India, after relinquishing all rights voluntarily to your property, then to the certain ignominy of ostracism, there would be added the possibility of hunger and exposure." After that letter I wrote back to her that I would remain here; that if I married, I would marry an American Woman; that I had no intention of

(Testimony of S. G. Pandit.)

returning to India; and that I didn't want any property in India.

When I was in India, in 1906, the value of the home was about \$30,000.00. "I do not know just which 400 acres of agricultural land were set aside for me. But my mother wrote me that it was the best agricultural land in the very fertile province of Gujarat. And taking the average of the agricultural land owned by my father, its value would be from \$250.00 to \$600.00 per acre."

My sister died early in 1920. Her estate included the largest private library in India, funds of her own, real estate, and money earned by her as inspectress of schools, the exact amount of which I do not know. It was several thousand dollars. She left all of this property to my brothers and sisters and nephews. In drawing up her will a short time before her death, my brother mentioned that she would have liked to have left me all of her property in trust for all of my brothers and sisters, but I had already given up a more considerable share of property from parental inheritance, and, therefore, she was sure that I wouldn't accept my legacy or inheritance from her, so she gave the share that would have come to me to my youngest brother. My sister and I were about the same age; had been to school and college together; and had been together more than any of the other brothers and sisters.

Whether my parentage is of Indian blood, depends upon what is meant by "Indian blood." It is in one sense, and it is not in another. The aboriginal people of India—the original race or blood of India—is of Negrito stock. It is confined to the comparatively in-

(Testimony of S. G. Pandit.)

accessible mountainous parts of the country. These people avoid civilization. The Hindus have absolutely no social or other intercourse with them. The Aryan people invaded India in more recent times, and their descendants are the modern Hindus.

MR. SIMPSON: We object to all this hearsay testimony. Mr. Pandit cannot of his own knowledge know when those people came, and whence they came. It is all taken from history, if anything, and what is written in the books, and I don't think Mr. Pandit is here to qualify as an expert on those matters.

THE COURT: I don't believe that is an issue, in view of the decisions, gentlemen. Judge Sutherland goes into the ethnology and ancestry of the high caste Hindu of full Indian blood, and I think his views on that are binding on this court, as a question of law. He seems to have gone into that very comprehensively, and has reached certain conclusions which the Supreme Court has adopted, and I think those constitute the law of the case in as far as this court is concerned on questions of ancestry or lineage, or any similar question. I don't believe you can go behind that decision now. The only question is as to Mr. Pandit's personal ancestry, not as to the tribal movements or inter-racial intermingling of the people who lived in that part of the world. Those matters seem to have been very well considered by the Supreme Court in the Thind case, and I think I am bound by the opinion of Judge Sutherland.

THE WITNESS: I was coming to my own ancestry in that way, by showing the difference in general ancestry and my own.

(Testimony of S. G. Pandit.)

Q. You may give, Mr. Pandit, your own ancestry, if you can do so.

MR. SIMPSON: We object to it as incompetent, irrelevant and immaterial, for the reason that Mr. Pandit can answer whether or not he is a high caste Hindu of full Indian blood or not. He has already testified that he was born in India, and the answer does not deny that he is a high caste Hindu of full Indian blood. It is specifically alleged in the complaint that he is, and the answer does not deny it, and under Equity Rule 30 allegations of the complaint not denied in the answer, except as to value and damage, are deemed admitted. If it is not denied it is not within the issues.

MR. PALMER: The answer does allege that he is a white person and entitled to be naturalized.

THE COURT: I am not going to hear you on that, gentlemen, at all. I am convinced that under the Thind case, he is not. The only right he will have is that given him because of the interposition of equity.

MR. PALMER: This question, I think, your honor, is addressed to his own ancestry.

THE COURT: I think that he can tell the court in so many words whether he falls within the boundary set by the Supreme Court, whether he is a high caste Hindu of full Indian blood. The Supreme Court has answered that question, and there is no room for any other answer in any court until they shall have modified their view. The only reason—I thought I made that clear—in ruling on the motion to dismiss was because of the language in the decision which I considered to be sufficient to justify this court sitting as a court of equity

(Testimony of S. G. Pandit.)

to hear the specific proofs in this particular case, so the court will be able to determine whether or not the principle announced in the Thind case by the Supreme Court is applicable to this particular and specific instance, and in ruling on that and in striking out certain portions of the answer, on the motion of the government, I thought I made clear what the view of the court was. The fourth and fifth defenses are the only ones the court will hear you on.

MR. PALMER: We desire an exception to the ruling of the court.

THE COURT: The language of the decision I think is this, gentlemen: On page 207 of the official volume of the Supreme Court Reports, 261 U. S.: "This cause is here upon a certificate from the Circuit Court of Appeals, requesting the instruction of this court in respect of the following questions: 1. Is a high caste Hindu of full Indian blood, born at Amritsar, Punjab, India, a white person within the meaning of section 2169, Revised Statutes; 2. Does the Act of February 5, 1917, 39 Stats. at L., 875, Chapter XXIX, Section 3, disqualify from naturalization as citizens those Hindus, now barred by that act, who had lawfully entered the United States prior to the passage of said act. The appellee was granted a certificate of citizenship by the District Court of the United States for the District of Oregon, over the objection of the naturalization examiner of the United States. A bill in equity was then filed by the United States, seeking a cancellation of the certificate on the ground that the appellee was not a white person, and therefore not lawfully entitled to

(Testimony of S. G. Pandit.)

naturalization. The District Court, on motion, dismissed the bill." I think parenthetically, so that there will be no misunderstanding, so far as this court's mind is concerned, that when the term "white person" is used there, it means white persons, persons within the common understanding. It does not mean in a scientific sense.

The law does not mean it in its generic sense.

Continuing, the Supreme Court said: "And an appeal was taken to the Circuit Court of Appeals." Now this is the language which I consider permits you to come into court. Continuing: "No question is made in respect of the individual qualifications of the appellee. The sole question is whether he falls within the class designated by Congress as eligible."

So that the remaining question undecided, in my judgment, is the individual right of this petitioner, this defendant in this case, under the special issue framed by the pleadings in this case, and particularly under the fourth and fifth affirmative defenses, to secure the invocation of the equitable power of this court to prevent a cancellation of his naturalization papers. That is the only question, as I see it, in the case.

MR. SIMPSON: Did I understand you to say that they are allowed to defend on the fourth and fifth defenses? My record shows that the fifth defense was stricken out. If I am in error I want to get a motion in the record—

MR. PALMER: Yes; I think the court inadvertently said "fifth."

THE COURT: Yes. The fourth affirmative defense is the only one.

(Testimony of S. G. Pandit.)

MR. NEWBY: Practically the same matter is set up in the fourth, but in different language.

When I foreswore my allegiance to all other states than the United States, and took up my allegiance to it, I became an outcaste, and no one but a Brahman can hold a degree conferred by a Sanskrit University, so I automatically lost it by the naturalization proceedings.

CROSS-EXAMINATION.

BY MR. SIMPSON:

I testified on Direct Examination that at the naturalization hearing held in the Superior Court of the State of California, in and for the County of Los Angeles, there was a contest.

Q. By that you mean or do you mean there was any testimony introduced disputing the fact that you were a Hindu, of full Indian blood?

A. No. No testimony was introduced disputing the fact that I was a white person.

Q. The contest was on the question of law of whether or not a Hindu, a high caste Hindu, of full blood, was a free white person?

MR. PALMER: We object on the ground it is assuming that that issue was presented that he was a high caste Hindu of full Indian blood. That is assuming something not in evidence, and we object to it.

THE COURT: Objection overruled.

MR. PALMER: The question of whether he was a high caste Hindu of full Indian blood was not raised.

MR. SIMPSON: Q. It was not disputed?

A. It was not raised at all.

Q. Whether or not you are a Hindu?

(Testimony of S. G. Pandit.)

A. Of full Indian blood.

Q. You state that after that time you studied law and were admitted to practice?

A. Yes.

Q. Do you know the date you were admitted to practice Law?

A. Yes; December 20, 1917.

Q. You also stated that these proceedings to cancel certificate of naturalization had damaged you by reason of the fact that you have lost some of your law practice?

A. It has. I think I testified it had damaged my practice.

Q. Can you tell us of one client that you have lost by reason of these proceedings?

A. Yes.

Q. Who was it?

A. Orshoff, a client I had for some time.

Q. Is there any other instance?

A. There are others that I cannot recall off-hand. Because it extends over a period of two or three years. It was something that could not be remedied, so I paid no attention to it. But I could think of several.

Q. Could you estimate off-hand the amount that you have lost by reason of the institution of these proceedings?

A. Yes.

Q. But you haven't as yet lost your license to practice law?

A. No.

Q. This home which you state you purchased in Los Angeles, was that purchased before or after your marriage?

(Testimony of S. G. Pandit.)

A. Just before marriage, a couple of months before.

Q. And you were married, I believe, on June 5, 1920?

A. Some time about that. Yes.

Q. That is the home in which you now reside?

A. Yes.

Q. You stated on direct examination that your wife, prior to your marriage to her, had filed an application for entry upon some desert land?

A. Yes.

Q. The application was filed on June 28, 1913, was it not?

A. Yes.

Q. And rejected at that time?

A. Yes, rejected because the filing fees were not paid.

Q. I believe you testified that the money you paid in connection with the improvement of this land upon which your wife filed prior to the time that you married her, was paid by you after your marriage?

A. Yes.

Q. How much did you pay?

A. About \$500.00.

Q. BY THE COURT: About \$500.00.

A. Yes, sir.

Q. BY MR. SIMPSON: Do you know when you paid that?

A. Between 1920 and now.

Q. Can you tell us when the last payment was made?

A. Yes. The last payment was made within the last six months.

Q. And how much was it?

(Testimony of S. G. Pandit.)

A. \$100.00.

Q. To whom was that paid?

A. To a Mr. Kenyon.

Q. For what purpose?

A. For ploughing and planting.

Q. That was paid during the year 1925, was it?

A. Yes.

Q. When did you make any other payments?

A. I paid the taxes at different times. The last one I think was about within the last month or two; quite recently. I think some time after October, 1925.

Q. How much?

A. I don't remember. I think it was about \$25.00, something like that.

Q. You have accounted for about \$125.00; can you go back further and account for any more?

A. Yes. I have been paying taxes for the last four years, and also some delinquent taxes of previous years.

Q. So that the money you have expended on payments on this property consisted chiefly of taxes?

A. Taxes and work on the land.

Q. What other work have you paid for besides the \$100.00 that you paid for ploughing and planting?

A. Similar kind of work.

Q. Prior to that? Was that money paid for work done prior to the last six or ten months?

A. Yes, sir. I have been paying since 1920.

Q. Do you know whether water has been obtained for the land yet?

A. No, no water.

(Testimony of S. G. Pandit.)

Q. And I believe you testified that you didn't know the value of the land there?

A. Well, there have been some oil wells, some oil found, within a few miles of where the place is; and some of the people there are very hopeful that some day they will get oil. So it is hard to estimate the value, in view of that oil prospect.

Q. I believe you testified that you were born in India?

A. Yes.

Q. When did your father die, Mr. Pandit?

A. About 1913.

Q. When did your mother die?

A. 1916.

Q. And of what does your family, your relatives, now consist?

A. I have three brothers and two sisters.

Q. And are they now residing in India?

A. Yes. One sister, however, is in England;—at present studying medicine in Ireland.

Q. When was it, Mr. Pandit, that you communicated to your brother or mother the news that it was your intention to reside in the United States and make this your home?

A. Well, I don't know that I said that exactly in that way. I remember that in 1911 when I declared my intention to become a citizen, I wrote to them and told them I intended to become a citizen, and I may have said these other things.

Q. When was it that your mother at your request—we will say—cut you off from your family inheritance?

(Testimony of S. G. Pandit.)

A. The letter regarding that was written before my naturalization, when they were trying to settle up matters in connection with my father's property. Just after my petition was filed, I sent my mother a power of attorney saying she could do what she liked with my share of the property. After I was naturalized, I wrote on May 7th or 9th, 1914, a letter to my mother to which she replied at once, and I replied to her letter immediately on its receipt—all as I testified on direct examination.

Q. That was after Judge Morrison had entered his order?

A. Yes.

Q. For the issuing of the certificate?

A. Yes.

Q. But prior to that time you had already determined—had formed a bona fide intention—to reside in the United States?

A. Yes.

Q. That being true, your station as a doctor of philosophy and these other social advantages which you have testified to would have been lost, even though you did not secure a certificate of citizenship?

A. No; because I did not give up my allegiance at that time. I only had an intention.

Q. You just had an intention to give it up?

A. Yes.

Q. Your intention then was to stay in the United States if you became a citizen, and not if you did not?

A. Certainly.

(Testimony of S. G. Pandit.)

Q. You intended, then, to return to India if you did not become a citizen?

A. Or to some other country, but not to stay here.

Q. Then the renunciation of your family and property rights was voluntary, a voluntary act on your part, was it not?

A. Yes, because of my acquisition of citizenship; otherwise it would not have been.

THE COURT: I want to follow that up a moment I think it is material.

Q. BY THE COURT: As I understand you, you renounced your property rights because you believed you were eligible to citizenship in the United States?

A. Yes. After I was admitted to citizenship, not before; not when I declared my intention.

Q. I don't mean that. Why did you relinquish your rights to share in your property in your native land?

A. Because from 1911 on, when I began writing to them about my intention to become a citizen and to take up my permanent residence here, I saw there was a sort of feeling that I was not acting right toward my native country and toward the family. Seeing that, I also thought if I was going to stay here and become a citizen and never go to India, and never do anything for them, that I had no right to take anything from them. So I renounced my rights when I was sure I had become a citizen.

Q. Under the custom and law in your native land, did you forfeit your property rights when you declared your intention to become a citizen?

A. No, I did not.

(Testimony of S. G. Pandit.)

Q. When did your forfeiture of those rights become absolute?

A. When?

Q. Yes, when did the forfeiture of your property rights in your native land become absolute?

A. The property was divided in 1916—no; before 1916. It must have been 1914 or 1915; some time before my mother's death, because she divided it up. She decided who should have what, and that was accepted by all, and I suppose that acceptance was filed in court, and that was all the probating of it.

Q. It was your mother who expressed in these letters this dissatisfaction?

A. Yes.

Q. Over your renunciation of your native land?

A. Yes; but after I wrote that letter renouncing my inheritance, she thought I should keep some of it anyway.

A. That is what I want to get at, was the renunciation of your inheritance in any wise connected with the acquisition of your citizenship in the United States?

A. Yes, sir. It was right after my acquisition of citizenship that I wrote renouncing my rights, and she wrote back saying perhaps it was not prudent, that I might want to come back, and that I should have some of the property, and then I wrote back and stated I had already acquired the rights of citizenship, and that I intended to permanently reside in the United States, and that there was no likelihood of my coming to India to stay. So I confirmed what I had said before.

Q. At that time the Government and none of its officers had notified you that they would oppose your application for citizenship?

(Testimony of S. G. Pandit.)

A. Oppose it?

Q. Yes.

A. No; none. Only that Mr. Jones said that there was no question about my being in good standing, and Judge Morrison said, "There is no question about your eligibility. You are fully qualified."

Q. After you had knowledge of that kind, you wrote home renouncing your inheritance, is that it?

A. Yes.

REDIRECT EXAMINATION BY MR. PALMER.

After I had declared my intention and taken out my citizenship papers and had been naturalized, if I had then returned to India to visit or to stay, my status would have been that of an outcaste. I would have lost my former status because I had given up my family and allegiance, and had taken up another allegiance in preference to my native country. I could not, by returning and declaring my intention to become a citizen of India, have reinstated myself in my former social status. Because when caste is lost, it is lost forever. There is never an opportunity to recover. You must be born again into the caste. I had lived in India 31 years before coming to this country. The rejection of my wife's filing on the desert land entry was due to the fact that she did not know she had to pay the fee of \$60 or \$80 immediately. She filed her application on June 28, 1913; she was sent notice of rejection, from the Land Office, on account of non-payment of fees on the 30th; on the 1st of July she paid the fee and the entry was allowed or reinstated. It is still pending and has not been canceled. All payments and all work required by the law

(Testimony of S. G. Pandit.)

have been kept up. Some time ago my wife wrote a letter to the Department of the Interior asking the Department in regard to a railroad or tramway that some company had placed right across her land, if they could not put those people off her entry. In reply the Department wrote that those people had filed some kind of an application for a railroad, and that our rights were prior to their rights, but that it would be a private action between us. However, the Department wanted to draw her attention to the fact that at the time she makes proof she will have to prove that she is an American citizen, and that they understood she had married an alien, and that if she had married an alien ineligible to citizenship, then the application would be revoked.

Q. I show you this paper consisting of a printed leaf and three pages of typewritten letter, and ask you if that is the letter you received—if that if the letter received by your wife from the Department of the Interior in answer to the letter you spoke of?

A. Yes; that is it.

MR. PALMER: We offer it in evidence.

MR. SIMPSON: Objected to on the same grounds that we heretofore objected to the testimony, and upon the further ground that it is not proper redirect examination.

MR. NEWBY: As to that, if there is any doubt on that, we will ask to have him considered as being recalled.

THE COURT: Objection overruled.

MR. SIMPSON: Exception.

[Defendant's Exhibit "E" is in part, in words and figures, as follows, to-wit:]

"CIRCULAR NO. 857.

CITIZENSHIP OF MARRIED WOMEN.

Department of the Interior,
General Land Office,
Washington, October 11, 1922.

Registers and Receivers, United States Land Offices.

Gentlemen: Your attention is directed to the act of Congress approved September 22, 1922 (Public, No. 346), entitled 'An Act relative to the naturalization and citizenship of married women', a copy of which is appended.

In all cases of applications for entry of public land, or proofs in support of such entries, by married women otherwise duly qualified to make such entry or proof, you will require a showing of such facts concerning marital status and citizenship as may be rendered necessary by the provisions of said act.

The act makes no change in the existing requirements with respect to a female citizen of the United States who, after initiating a claim to public land, marries an alien, as set forth in paragraph 2, Circular No. 361 (43 L. D. 444) and she must show that her husband is entitled to become a citizen of the United States.

Office Circular No. 44 of August 17, 1911 is revoked.

Very respectfully,

William Spry,
Commissioner.

Approved October 11, 1922,

E. C. Finney,
First Assistant Secretary."

(Public—No. 346—67th Congress.)

(H. R. 12022)

An Act Relative to the Naturalization and Citizenship of Married Women.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of any woman to become a naturalized citizen of the United States shall not be denied or abridged because of her sex or because she is a married woman.

Sec. 2. That any woman who marries a citizen of the United States after the passage of this act, or any woman whose husband is naturalized after the passage of this act, shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

(a) No declaration of intention shall be required;

(b) In lieu of the five-year period of residence within the United States and the one-year period of residence within the State or Territory where the naturalization court is held, she shall have resided continuously in the United States, Hawaii, Alaska, or Porto Rico for at least one year immediately preceding the filing of the petition.

Sec. 3. That a woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after the passage of this act,

unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens: Provided, That any woman citizen who marries an alien ineligible to citizenship shall cease to be a citizen of the United States. If, at the termination of the marital status she is a citizen of the United States, she shall retain her citizenship regardless of residence. If, during the continuance of the marital status she resides continuously for two years in a foreign state of which her husband is a citizen or subject, or for five years continuously outside of the United States, she shall thereafter be subject to the same presumption as is a naturalized citizen of the United States under the second paragraph of section 2 of the act entitled 'an act in reference to the expatriation of citizens and their protection abroad', approved March 2, 1907. Nothing herein shall be construed to repeal or amend the provisions of Revised Statutes 1999 or of section 2 of the expatriation act of 1907 with reference to expatriation.

* * * *

Sec. 5. That no woman whose husband is not eligible to citizenship shall be naturalized during the continuance of the marital status. * * * *t

Approved, September 22, 1922.

4633

WASHINGTON: GOVERNMENT PRINTING
OFFICE 1922"

"UNITED STATES
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
WASHINGTON

April 25, 1925.

In reply please refer to
El Centro 01631 'F' WJC

Information relative to rights
on an unperfected entry.

Mrs. Lillian B. Pandit,
5135 Range View Avenue,
Los Angeles, California.

My dear Madam:

Reference is had to your letter of March 31, 1925, requesting an interpretation of the purchase provisions of the Act of March 4, 1915 (38 Stat. 1161), with respect to the requirements as to agricultural use and improvements, and as to what are your rights against a railroad company that has laid its tracks across your land.

In answer to the first question, there is no requirement that a specific area must be cultivated, but the cultivation must be sufficient in extent and of such character as will demonstrate good faith on your part. As to the improvements, it must be shown that they are of a character conducive to the agricultural development of the land. Corrals, fencing, clearing and breaking preparatory to cropping the land and wells for stock watering purposes may be accepted under the regulations.

(Testimony of S. G. Pandit.)

A copy of Circular 474 is enclosed for your guidance and your attention is especially directed to paragraph 49 of said circular.

The records of this office disclose that under the Act of January 21, 1895, the Imperial Gypsum and Oil Company on July 3, 1923, under serial No. 05713, filed a map and an application for a right of way across this land and that said map and application was approved March 4, 1924. As your entry was allowed July 1, 1913, it takes precedence over this company's claim to the land.

Your question with respect to the tramroad involves a matter more or less personal in character and is outside of the jurisdiction of this office. Your remedy lies in the local courts for restitution for any injury suffered by you from such tramroad.

The record discloses that since making this entry you have re-married. In order that you may be fully advised as to the showing you will be required to make as to citizenship, when submitting your final proof, your attention is directed to the marked passages in the enclosed circular 857.

Very respectfully,

Thos. O. Havell

Acting Commissioner.

4-18-mvd."

RECROSS EXAMINATION BY MR. SIMPSON.

Q I want to ask you a couple more questions. What effect, if any would the filing of your declaration of intention have upon your social status in India?

(Testimony of S. G. Pandit.)

A None whatever.

Q The fact that you declared your intention to become a citizen of the United States and reside permanently therein would not affect your social status whatever?

A No. It is the renunciation of allegiance that has that effect.

Q The mere fact that you intend to renounce your allegiance does not affect it?

A No.

Q I suppose your answer would be the same as to the petition for naturalization?

A Yes.

Q That, likewise?

A The petition is a more serious matter; it is pretty close to the time of naturalization.

Q The filing of that petition, would that constitute a renunciation of your social status in India?

A No; it is not when you file your petition. It is when you renounce your allegiance and are admitted to citizenship.

Q When you actually make the renunciation regardless of the prior intention that you may have made—the loss is not sustained until there is actually an oath taken of allegiance?

A Yes.

Q And does the same hold true as to the privilege or right that you had to become a member of this society that you refer to?

A You mean the degree from the Sanskrit University?

(Testimony of S. G. Pandit.)

Q Yes. You state in paragraph 8 of your affirmative defense that the degree which you had received—I don't know how to pronounce it—but it corresponds with the degree of doctor of philosophy?

A Yes.

Q That it is a very high honor, and that that degree would have enabled you to secure admission to any learned institution or assembly of Hindus in India. Is it true that upon receiving a certificate of naturalization that you lost that right to become a member of that assembly of Hindus?

A No. That has nothing to do with the assembly of Hindus. That is subsequent to the degree. The degree was lost, not directly by taking the oath of allegiance, but was lost by losing status, social status, because, as I said, only Brahmans are given that degree or can retain that degree, and as soon as I lost my social status I lost the degree.

Q. Is that degree dependent upon education or learning or social status?

A Both.

Q All of them, or one of them?

A A man of any other caste than a Brahman, no matter how learned he might be, could never get that.

Q Would the filing of the petition for naturalization or the declaration of intention have forfeited that?

A No; I told you all those things are forfeited when you give up your allegiance to your native land and at no other time.

(Testimony of Lilian Bernice Pandit.)

LILIAN BERNICE PANDIT

called on behalf of the defendant, being first duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. PALMER:

I am the wife of S. G. Pandit, having married him June 5, 1920, in the City of Los Angeles. Prior to that time I knew of his having been naturalized as a citizen of the United States. I had filed a claim in 1913 for 320 acres of desert land in the Imperial Valley, and had paid about \$1500.00 on it at the time I married Mr. Pandit. Since that time, as nearly as I can say, \$500.00 has been paid on it. It has never been proved up on finally, but it can be at any time now. I have known Mr. Pandit since 1906. I was associated with him in business as his Secretary, from 1910 to 1920, in Chicago and Los Angeles.

(It was then stipulated that the same general objection by the plaintiff was in effect as to the testimony given by Mrs. Pandit with reference to the matters set forth in the fourth defense, upon the same grounds that the objection was made to the testimony of Mr. Pandit, and that an exception was allowed to the order of the Court overruling the objection).

Q As his secretary, what did you do in regard to his correspondence?

Mr. Simpson: I object on the further ground that it is not within the issues of the case.

THE COURT: How is that material?

MR. PALMER: It is preliminary.

(Testimony of Lilian Bernice Pandit.)

THE COURT: Overruled.

A He always passed his letters to me to read before he sent them out, in case he made some slip of the pen in writing them. Most of his letters were given to me to read and some of them to answer. Others he answered, but at his request I read almost every letter that came in or went out.

Q Are you familiar with Mr. Pandit's associates in this country?

A I am.

Q Who have they been?

A They have all been white people.

MR. SIMPSON: Objected to as incompetent, irrelevant and immaterial.

THE COURT: The government, as I understand it, is not attacking Mr. Pandit's personal qualifications for citizenship?

MR. SIMPSON: No. I don't think there is any such question.

THE COURT: It is entirely upon the question of his ineligibility.

MR. SIMPSON: Yes, it is not a matter of his character. I don't think anything but the primary statutory qualification of eligibility is involved in this case, so far as we are concerned, but I don't see that the testimony given by this witness so far is within the fourth affirmative defense, which simply alleges that the defendant and Mrs. Pandit contracted a marriage, and that if his citizenship should be canceled it might throw doubt upon the legality of the marriage. What the writing of letters and

(Testimony of Lilian Bernice Pandit.)

his social activities have been, I don't see where it is material.

THE COURT: It is material if the government is going to raise any question about it. If the government is not questioning the personal characteristics of Mr. Pandit for citizenship, it is not material; but if it is going in any manner to assert that because of the lack of any personal qualifications he should be deprived of citizenship, it is very material. As I understood the government's case—if I am not correct, let's understand it now and save a lot of time—but as I understand the government's case, the government is resting entirely upon the fact that he is a Hindu and therefore is not a white person within the meaning of the Revised Statutes controlling naturalization of persons.

MR. SIMPSON: That is true.

THE COURT: That is the sole contention of the government?

MR. SIMPSON: Yes; and in that connection we would like to call your honor's attention to the case decided by the Supreme Court, the Ozawa case, involving a Japanese who had been educated and spent a great many years in this country, a graduate of the Berkeley School and a student at the University of California, and who possessed wonderful qualifications so far as his personal qualifications and principles were concerned, yet the Supreme Court said he was not a person eligible to citizenship and his citizenship should be canceled.

THE COURT: He was never admitted, as I understood it.

(Testimony of Lilian Bernice Pandit.)

MR. NEWBY: That is an original case, not a cancellation.

THE COURT: That is what I thought. That is different.

MR. SIMPSON: Assuming that the evidence is introduced in support of the fourth affirmative defense of estoppel, I don't see that there is anything pleaded in the fourth affirmative defense concerning the loss of Mr. Pandit's social status in this country. He has pleaded lost social standing in India by reason of the procuring of citizenship, but not that he will lose any social standing in this country.

THE COURT: He alleges he is a member of the bar and the presumption is that he cannot become a member of the bar until he has first demonstrated to the courts that he is a man of moral character. Now, if he loses his license to practice law, it is somewhat of a reflection upon him, upon his social standing. That is one of his averments that he is resting secure upon—that by the government's action, the government's acquiescence by its silence, he became a citizen and was admitted to the bar. Now, if his citizenship is revoked, as correlative to that revocation, his license to practice law would be taken from him, which would impair his social standing. I think that is a fair inference.

THE COURT: The government is not questioning the personal integrity of Mr. Pandit. Now, let's not misunderstand that, so there will be no equivocation in the record hereafter. There is no question about that, Mr. Simpson?

(Testimony of Lilian Bernice Pandit.)

MR. SIMPSON: No, sir, I have no evidence to introduce that in any wise attacks the social and moral standing of Mr. Pandit.

THE COURT: And you do not attack it?

MR. SIMPSON: And I do not attack it; no.

THE COURT: Otherwise he would have to make a showing. If not, I should permit him to introduce evidence along that line. It seems to me now there is only one issue here as made by the government, and upon that issue alone I will permit evidence.

THE COURT: It is now in the record that the government does not question the fact that Mr. Pandit is married to a woman of the white race? Is that right?

MR. SIMPSON: No contention to the contrary. If she further testifies that she was born in this country, we don't intend to introduce any evidence to refute that.

THE COURT: He testified to that himself. If there is to be any question on that I want to know it now, so we will not take up unnecessary time.

I was born in Michigan. My parents are of English and French descent. When I met Mr. Pandit he was associating with white people only. His business was that of teaching and lecturing. He lectured at the University of Chicago, in schools, churches and other halls. Since Mr. Pandit's admission to practice law in California, December 21, 1917, he has been practicing law and earning his livelihood in that way, and no other. Prior to my marriage to Mr. Pandit, I was a citizen of the United States and have always been considered such since. I have never been outside the United States.

(Testimony of Lilian Bernice Pandit.)

BY THE COURT: Pardon me. You were married in what part of California.

A In Los Angeles.

Q I presume we will take judicial knowledge of the fact that in order to marry within California she must have complied with the laws of California relative to marriage.

MR. SIMPSON: In what respect?

THE COURT: License, authenticated and recorded.

MR. SIMPSON: Yes. We don't make any contention other than that. If they testify they went through the necessary formalities to become man and wife, we have nothing to the contrary to offer, and we will stipulate to that.

THE COURT: In other words, it is a statutory marriage?

MR. SIMPSON: Yes.

MR. PALMER: We have the certificate.

MR. SIMPSON: We don't want it.

THE COURT: You are not questioning it?

MR. SIMPSON: No. We are not questioning that they were legally in the state of California.

MR. NEWBY: That is, after securing a license?

MR. SIMPSON: Yes; in compliance with the statutory requirements.

THE COURT: That is material, because there is a law that forbids marriage between mixed races.

MR. PALMER: May we show in the record that the license is recorded in Book 348, page 279 of "Marriages"?

(Testimony of Lilian Bernice Pandit.)

THE COURT: What is the date?

MR. PALMER: That is on the 10th day of June, 1920, that it was recorded.

MR. SIMPSON: We will stipulate—we want it understood that all this testimony is subject to our objection that it does not constitute a defense.

THE COURT: Overruled.

Q BY MR. PALMER: Did you see any communications between him and his mother in regard to his property, the property in India?

A I read letters right along as they came.

A You may tell the court what took place in that correspondence between Mr. Pandit and his mother in regard to the property of Mr. Pandit's father.

MR. SIMPSON: I object on the ground that no proper foundation was laid, and it is not the best evidence.

THE COURT: Objection sustained. I understand the government is not going to contest the evidence which he offered.

MR. SIMPSON: No.

THE COURT: So it is not necessary to corroborate it.

[It was stipulated that all of this testimony stipulated to was admitted subject to the objection of plaintiff that it did not constitute a defense, and that an exception was noted to the order of the Court, overruling the objection.]

MR. SIMPSON: At this time, and for the purpose of the record, we move to strike out all of the testimony given by Mr. Pandit and Mrs. Pandit on the same grounds specified in our objections during the testimony.

(Testimony of Lilian Bernice Pandit.)

THE COURT: Motion denied.

MR. SIMPSON: Exception.

CROSS EXAMINATION BY MR. SIMPSON:

The legal description of my claim in the west half of Section 4, Township 14 South, Range 10 East, S. B. B. & M. I paid \$80.00 filing fee on the 1st of July, 1913. The first year's work cost me \$320.00. The work for the second year's proof cost \$320.00. The work for the proof of the third year also cost \$320.00. I do not remember the dates on which the various payments were made. I paid \$500.00 for locating the land. That was at the very beginning. Part of the work on the land consisted of building a barn and corral, clearing land, filling and working it over.

Q The last payment you made was \$160.00, was it not?

A That \$160.00 was the initial payment under an application under the Relief Act.

Q And that was paid prior to your marriage?

A Well, I am not sure. Let me see—I am not sure.

Q Have you paid anything since you have been married to the Land Office?

A I haven't. Mr. Pandit has been in charge of it ever since.

Q You filed upon the land in 1913, and the last payment you made upon it was in 1920?

A I didn't make it.

Q You didn't make any payment?

A The last payment was made in 1920, or before that. Since we were married Mr. Pandit took care of it.

(Testimony of B. M. Simha.)

Q But you made no payment since the 5th day of June, 1920?

A I had nothing to do with it. He had the entire care of it.

Q And how long did you say you have known Mr. Pandit:

A Since 1906.

B. M. SIMHA

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PALMER:

I am a native of India, and am familiar with the degree of Mahamahopadhyaya that Mr. Pandit has from the Sanskrit University. It is a very high degree.

MR. SIMPSON: I object as incompetent, irrelevant, and immaterial, and not within the issues of the case, and cannot constitute a defense to this action.

THE COURT: Overruled.

MR. SIMPSON: Exception.

The degree is given only by the Sanskrit University in that country, and they give it only to Brahmans.

Q What does it entitle a man to?

MR. SIMPSON: The same objection.

THE COURT: Overruled.

MR. SIMPSON: Exception.

A It gives him a high social status and in regard to the societies of learning entitles him to enjoy those societies and at the same time he might obtain a position as professor. (The same objection was interposed by

(Testimony of B. M. Simha.)

counsel for plaintiff; was overruled by the court, and an exception noted.)

(Exception No.....).

I was educated in India, England, and in this country, and am a naturalized citizen of England at this time.

MR. SIMPSON: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. SIMPSON: Exception.

(Exception No.....).

BY MR. PALMER:

Q Are you familiar with the society in India?

A Yes.

Q What is the status of the society there?

(Counsel for Plaintiff objected, upon the grounds that it was incompetent, irrelevant, and immaterial, and calling for the opinion and conclusion of the witness, which objection was overruled and an exception noted.)

(Exception No.....)

The construction of society in India depends upon birth, and Mr. Pandit belongs to the highest society. They have the caste system in India. I am, to a certain extent, quite familiar with the social structure. The effect upon a person's social standing in a caste, if he forswears his allegiance to India, is that he becomes an outcaste. (This testimony was admitted over objection of plaintiff, that it was immaterial, and an exception noted to the ruling of the court).

(Exception No.....)

To be an outcaste in India means that society would have nothing to do with him. He is regarded as an

(Testimony of William C. Smith.)

outcaste of society, and other people of society would not even drink with him, and he would be refused admission to any places of worship. If a man belongs to the Brahman Caste, and does something that would make him inadmissible to associate with the members of that caste, he could not associate with the members of that caste, he could not associate with the next lower caste, or any caste, he would lose all his social status, and the only place for him is with the outcastes, or with the "Hill Tribes". He would not be able to associate with congenial people.

CROSS EXAMINATION

BY MR. SIMPSON: The Brahman Caste is the highest caste of Hindus.

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WILLIAM C. SMITH

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. PALMER:

I reside in Los Angeles. I am a teacher in the sociological department at the University of Southern California. I attended an institution in Pasadena and also the University of Southern California. I graduated from Grand Island College and attended the University of Chicago, where a Master's and Doctor's degree were conferred upon me. The line of my study for many years has been in the field of sociology and anthropology. I lived in India for three years and made some investi-

(Testimony of William C. Smith.)

gations in parts of India, and the result of my investigations has been brought out in book form under the title "The Naga Tribe of Assam" published by MacMillan in London. The Nagas are not Hindus. I spent some time among groups of Hindus in India and have been reading a great deal of literature regarding the Hindu groups. I have studied the structure of the caste system in India to some extent.

Q Will you tell the court what the result of your investigation is in regard to that structure?

MR. SIMPSON: I object to it as incompetent, irrelevant and immaterial, calling for the conclusion of the witness, and not within the issues of the case.

THE COURT: I don't know. I don't know if this is within the issues or not. In view of the Thind case, it seems to me we will have to accept that as authoritative whether scientific gentlemen agree with it or not. The Supreme Court has spoken on that, and I don't believe there is any room for questioning it so far as this court is concerned.

MR. NEWBY: We are not undertaking to question that proposition except to show that our loss of caste there would affect this man, that is the idea. We are not undertaking anything more than to show the Court that this man by becoming a citizen of the United States has lost his caste there.

THE COURT: I didn't understand the purpose of it. Objection overruled.

MR. SIMPSON: Exception.

(Testimony of William C. Smith.)

THE WITNESS: The caste system is very rigid. A rigid line is drawn between the castes, and a member of one caste might not break over into another. And if one does break in, then of course, he tends to lose his place in that particular group. The Brahman group particularly, according to my impression, from what I gathered from my study and observation, is very rigid in that respect. The Brahman caste is at the top. If a person drops out of the Brahman caste he might as well drop out of sight, because he loses his status and there is no chance or opportunity for him there any more. That is, if he is in the Brahman caste and drops out of that, if he does anything that makes him an outcaste, then there is no opportunity for him to live in India and accomplish anything. He loses everything. When a Brahman breaks away he becomes accursed and loses out entirely.

Q Do you know what effect it would have upon a Brahman if he would come to the United States, for instance, and would become a naturalized citizen of the United States and forswear his allegiance to India?

MR. SIMPSON: Objected to as incompetent, irrelevant and immaterial, calling for the conclusion of the witness, and not within the issues of the case. The witness has not qualified as an expert to testify in such matters.

THE COURT: Overruled.

MR. SIMPSON: Exception.

A Legally I do not know. I do not know about it technically. But socially, it would mean that he would lose out.

Q What do you mean by losing out?

(Testimony of William C. Smith.)

A You lose status. Allegiance to the Brahman caste brings you up to the very top in India. The Brahman goes around with his head up and shoulders back. If he does anything that would cause him to lose that position, he would go down, and he would not be able to look up again.

Q BY THE COURT: Does the Brahman in India exercise rights as a British subject?

A. Yes.

Q I mean, do they do it because of necessity or through choice? Does the Brahman as a caste, the Hindu caste, hold itself aloof from the rest of the citizenry and accept the political status simply because they have to accept it?

A I think it is a matter of having to do it.

Q Is it your opinion that a man loses his caste in India, that is, loses his social position, when there is a change in political status, but no religious change? For instance, assuming citizenship in the United States?

A When he leaves that country and forswears allegiance to it, and becomes a citizen of another country, it is practically the same as if he changed his religion. He loses caste, social status.

MR. SIMPSON: At this time we ask the court to strike from the record all testimony given by this witness, on the ground that it is incompetent, irrelevant and immaterial, and not within the issues of the case; testimony given by him or his conclusions on matters upon which he is not qualified as an expert to speak.

THE COURT: Motion denied.

MR. SIMPSON: Exception.

(Exception No.....)

(Testimony of S. G. Pandit.)

S. G. PANDIT

re-called for further examination, testified as follows:

DIRECT EXAMINATION.

BY MR. NEWBY:

Q. Mr. Pandit, state to the Court what study, if any, you have made in anthropology?

MR. SIMPSON: I object to it as incompetent, irrelevant, and immaterial, and not within the issues of the case.

THE COURT: Overruled.

MR. SIMPSON: Exception.

(Exception No.....).

BY MR. NEWBY:

Q. The races of men?

A. I first studied anthropology in India. I was born a Brahman, and the Brahmans make a specialty of this race question, because the divisions of society in India are based on it. Then I studied it in the University of Bombay. I studied some anthropology and ethnology there, and after that I made a special study of it out of my own personal experience and travel all over Northern and Western India and Burma. I took measurements, and studied people and their history. I have a full set of instruments for that purpose, and have taken anthropological measurements in this country, in France and England. In India, I was a lecturer, and politically, a member of the Indian National Congress, which is a body of the elect of India, of the intelligentsia of India, that consists of many thousands of people, and has been sitting for more than forty years.

(Testimony of S. G. Pandit.)

I am familiar with "The Races of Man" by Denniker, Keane's "Man: Past and Present," "Man's Place in Nature" by Huxley, "The Dictionary of Races," Senate Document 662, Sixty-first Congress, 3rd Session, 1910-1911. I am also familiar with the Aryan Theory. I had read the foregoing works before the decision of the Supreme Court in the Thind case. I read them again after the perusal of that decision. I am familiar with Blumenbach's views. I have also read articles on these subjects in various scientific magazines, and have discussed things anthropological and ethnological with some of the great authorities. I have read a number of books, among them, the recent work of Professor Dixon of Harvard University, and the recent work of Professor Kroeber, Head of the Department of Ethnology and Anthropology at Berkeley, California. Further I have made a special study of the races of mankind.

Q. Now would you tell the court what effect the change in political allegiance from India to the United States has upon social status, as a study?

MR. SIMPSON: I object to that as having been asked and answered on direct examination.

THE COURT: I think he has. But it may be answered again. Objection overruled.

In India they don't make the distinction that we make here, or that is made in western countries generally between social, religious, and political matters. They are all intertwined closely. Just as in the West, you make a difference, a distinction, between science, philosophy, and religion. But it is all the same there. You cannot separate them. If you lose your social status you cannot get it

(Testimony of S. G. Pandit.)

back. If you belong to a lower social status, you cannot get up higher in India. In the past, it used to be the usual thing that all these studies of men were intertwined. In India, a man has more freedom in regard to his opinion, but no individual freedom in regard to his actions. If a man gives up his allegiance to his country, they don't consider it allegiance to the British Empire. They don't pay any attention to George, The King. They don't care about the British Empire. They don't consider any nationality except Indian Nationality, and when you give up allegiance to that, you are lost.

MR. SIMPSON: We ask that that testimony be stricken, as incompetent, irrelevant, and immaterial.

THE COURT: Motion denied.

MR. SIMPSON: Exception.

(Exception No.....)

MR. PALMER: The defendant rests.

REBUTTAL

MR. SIMPSON:

We offer in evidence a certified copy from the records of the United States Land Office, showing the record of entries of Lillian B. Stringer, now Pandit, on Section 4, Township 14 South, Range 10 East, S. B. B. & M., the west half of that property.

MR. NEWBY: We object to it on the ground it is immaterial. If counsel will state the purpose of it—we haven't been able to discover it.

MR. SIMPSON: This record shows the original date of the filing of the application for the desert land entry, and shows what steps, if any, have been taken since,

(Testimony of S. G. Pandit.)

from that time down to the present time to perfect proof on this entry; the amount of money represented to have been expended in improvements. The total amount, according to this record, is around \$1200.00 and showing that the last payment was made in May, 1920, which would be prior to the date of the marriage of Mr. Pandit and his wife. I think the record is of further materiality as showing that a period of nearly twelve years has elapsed since the original entry was made and final proof has not been made by the entryman, and the record, I believe, will show that it was not through any act on the part of the government that it was not done.

MR. NEWBY: I suppose, your honor, that that goes to the weight, but I want to call the court's attention to the fact that the record does not purport to show the amount spent for improvements.

THE COURT: I am aware of that.

MR. SIMPSON: To a certain extent it does. In the last column it shows what the entryman represented as the amount of money paid out.

MR. PALMER: It does not show what the testimony of Mrs. Pandit shows, that she paid \$500.00 for the location.

THE COURT: I don't think the record in the land office shows all expenditures. It shows what it shows. Objection overruled.

(Plaintiff's Exhibit 2 in evidence)

(Plaintiff's Exhibit No. 2, in words and figures following:)

4-051	039211	01631			
(In pencil) Notify Swing, Childers and Roberts of any attempt to transfer this entry.					
KIND	Desert Land	SERIAL NO.	091238		
	NAME		DATE		
	Lillian B. Stringer (Now Pandit)				
	ADDRESS				
	5135 Range View Ave.				
	Los Angeles, Cal.				
	DESCRIPTION				
	OF LAND	SECTION	TOWNSHIP	RANGE	AREA
	W $\frac{1}{2}$	4	14S	10E	320
	(In pencil)				320.21
	Tp Sus 4/1/15 - 10/17/23				
DATE	NOTATIONS				\$80.05.
	Rec. 111559				
1913					
June 28	Application filed and rejected because purchase money \$80.00 Not paid.				
" 30	Notice of Rej sent to claimant Reg. Mail.				
July 1	Money p'd Entry allowed				
1914					
July 2	Service of Delg accepted. Reg. Mail				
" 8	Service of DN accepted. Reg. Mail				
Aug. 25	Application for extension of 60 days within which to file final proof.				
Sept. 11	Reported to G. L. O. for Can'l of entry.				
Oct. 31	App'l'n for extension sent G. L. O.				
1915					
Feb. 19	"G" of 2/13/15 Rejects app'l'n for extensions to submit yearly proof				

Feb. 23 Notice of sent to claimant, reg. mail.
 " 27 Service of G 2/13/15 accepted reg. mail.
 Mar. 15 1st yearly proof filed \$320.
 June 11 2nd proof \$320.00
 1918
 April 16 3rd proof \$320. \$80.00 for corral 108 ft. x 192
 ft. SE cor of NWL, \$240 bordering
 30 acres near it
 April 16 Appl'n for relief act of Mar. 1915
 " 17 " " " " " " " " to F/D
 1920
 Mar. 6 "F. W. J. C. 3/1/20 grants relief.
 NOTICE of above sent to Claimant; Reg. Mail
 Lillian B. Stringer
 Reg. card filed
 3/27/20.
 (In pencil) Mar. 23, 1920 Registry receipt filed.
 April 1920 Initial payment of \$160.00 made rec. no.
 2306895
 May 1920 Reported to G. L. O. (In Pencil) E. N. Due
 10/19/28
 U. S. Land Office, Los Angeles, Cal.
 Dec. 11, 1925.
 L. I, B. B. Smith, Register of the U. S. Land Office at
 Los Angeles, California, hereby certify that the forego-
 ing is a full true and correct copy of the Serial Register
 of the entry of Lillian B. Stringer, (Now Pandit) now
 on file in this office.
 (Signed) B. B. Smith,
 Register, 6-1267.

(Testimony of Henry J. Burk.)

HENRY J. BURK

called as a witness in rebuttal on behalf of the plaintiff,
 being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ARMSTRONG.

I am county surveyor of Imperial County, and have
 been so engaged for about seven years. I have recently
 made an examination of the piece of land described as
 the west half of Section 4, Township 14 South, Range
 10 East, San Bernardino Base Meridian, in the County
 of Imperial, State of California. I made an examina-
 tion of that property in January 1925 to see how much
 work, improvements, have been made on it.

Q. State what improvements, if any, you observed
 on the land?

MR. PALMER: I object to it as incompetent, irrele-
 vant, and immaterial.

THE COURT: Overruled. Answer the question.

A. I did.

Q. BY MR. ARMSTRONG: Just state what those
 improvements were, if there were any?

A. There was plowing and discing, furrows, about
 60 feet apart.

Q. On how much of the land were those furrows
 made?

A. I think about 30 acres; I estimate there was some-
 thing like that.

Q. And the furrows were about 60 feet apart?

A. Yes.

Q. And the discing you speak of, about what area
 did the discing cover?

(Testimony of Henry J. Burk.)

A. I think about the same.

Q. Is that the same 30 acres that the furrows were made on?

A. Yes.

Q. Did you observe any other improvements on the land?

A. No; I did not.

Q. Are you familiar, either from experience or in any other way, with the value, that is, the cost of making the improvements of that kind?

A. Well, I think I am.

Q. Well, have you been engaged in farming activities?

A. I have some.

Q. Did you ever actually put up improvements, work on improving land in the way this land was improved?

A. Why, I developed 160 acres; leveled it up and put in crop.

Q. In your opinion, what would you say was the value of the improvements?

MR. NEWBY: I object to it. There has been no proper foundation laid.

THE COURT: The value of the improvements?

MR. ARMSTRONG: Yes. He testified there were furrows about 60 feet apart on approximately 60 acres, and that this 30 acres was disced.

MR. NEWBY: Also, it is not shown that the witness knew anything about the improvements before; this is five years, more than five years ago, since these improvements were started, and he visited the place in Jan-

(Testimony of Henry J. Burk.)

uary 1925. A great deal could have happened in the intervening time.

THE COURT: I suppose the government has a right to offer evidence to show what amount was expended for plowing and discing. That is all it amounts to. Objection overruled.

Q. BY MR. ARMSTRONG: What would you think it would cost to do that work?

A. Why, the plowing, just plowing the furrows—I don't think it would cost more than \$200.00.

Q. BY MR. NEWBY: \$200.00?

A. \$200.00.

Q. BY MR. ARMSTRONG: Did the land, the balance of it, show that it had been leveled?

A. No; it didn't. There were mounds on it.

Q. BY THE COURT: Where is the land?

A. It lies in the west side of Imperial Valley.

Q. Locate it with respect to some of the towns.

A. Well, it would be north of Placer City.

Q. Placer City is on the main San Diego line?

A. Yes.

Q. Out from El Centro?

A. Well, it is on the San Diego & Eastern, west of El Centro about 20 miles.

Q. How near Indian Canyon is it—is Indian Canyon in that vicinity?

A. Yes.

Q. That land has a potential value, hasn't it, on account of the prospective improvements on the Colorado river?

(Testimony of Henry J. Burk.)

A. Well, yes, in a way.

Q. In other words, if anything is ever done that land will be of some value?

A. It is good land.

Q. It is good desert land as it is?

A. Yes.

Q. BY MR. ARMSTRONG: Is there any other portion of the land that you spoke of that has improvements on it; any improvements made on the rest of the land; are there any improvements made on the land other than on the 30 acres?

A. No. No improvements. There was a little corral there, but I think that corral was off to one side, off that land. It seems to me it was not on that land.

Q. Do you know how far it is to water on this land?

MR. PALMER: Down or sidewise?

Q. BY MR. ARMSTRONG: How far is it to the closest water?

A. There would not be any water nearer than the west high line canal. I could not say how many miles it is, but I think approximately eight or ten miles directly west, from the main canal.

CROSS EXAMINATION

BY MR. PALMER:

Q. You say you saw a corral there?

A. Yes.

Q. Had you ever been on that land before January 1925?

A. Yes; I drove across it several years before that, but I didn't look at it. I didn't look at that particular piece of land.

(Testimony of Henry J. Burk.)

Q. You didn't notice whae had been done; you never took time to look and see what had been done except in this January?

A. I went away. . . .

Q. You were called upon to go and look at that land to be a witness in this case, to see what was done on the land?

A. I was called to go and examine it.

Q. Well, that was by the government, was it not?

A. No; a private party.

Q. A private party?

A. Yes.

Q. A private party had you go and examine the land?

A. I went to examine the land for the Portland Cement people.

Q. For the Portland Cement people?

A. Yes; Mr. Watson was the manager.

Q. They are trying to get that land, are they?

MR. SIMPSON: I object to that as not proper cross-examination.

THE COURT: Overruled. I think it goes to the value of it. The question is a little bit unfair, whether they are trying to get the land.

Q. BY MR. PALMER: Well, who was it that hired you to go there, Mr. Burk?

A. I think it was Mr. Watson.

Q. And what position did he hold with the Portland Cement Company?

A. He was manager.

(Testimony of Henry J. Burk.)

Q. He was manager of the Portland Cement Company, where?

A. At Placer City.

Q. At Placer City; and is that land—that land has on it material that would make cement?

A. No. It is out on the desert.

Q. For what purpose did Mr. Watson have you go there to examine the land?

A. I could not tell you.

Q. Didn't he tell you why he wanted you to go and see it?

A. No, he didn't. He told me to go out and examine it, and I made the examination, and made a little drawing.

Q. Is it not a fact that there was a railroad across there at that time?

A. There was a railroad there when I went out.

MR. SIMPSON: I don't understand what land you refer to.

MR. PALMER: The land in question.

THE COURT: You were not here during Mr. Armstrong's examination.

MR. SIMPSON: They are talking about two pieces of land, that of the Portland Cement Company and that of Mr. Pandit.

MR. PALMER: No.

THE COURT: They are talking about the same land.

Q. BY THE COURT: The Portland Cement Company's manager asked you to go and look over the Pandit land?

(Testimony of Henry J. Burk.)

A. Yes, sir.

Q. BY MR. PALMER: There is a railroad running over this parcel of land?

A. Yes.

Q. Which road is that?

A. It is the narrow *guage* road that runs out to the mine.

Q. That goes out to the Cement Company's mines?

A. Yes, sir.

Q. This railroad runs from Placer City, which is on the San Diego & Eastern, isn't it?

A. Yes.

Q. And runs out across the land of Mr. Pandit and over to the Portland Cement Company's mine?

A. Yes.

Q. And they sent you out there to see what improvements had been put on there, with the idea of getting control of this land, didn't they?

A. I don't know.

MR. ARMSTRONG: I object to that. This witness, if he hadn't been told by the manager what the purpose of it was, could not know.

THE COURT: If he does not know, he can say so. Overruled.

A. What was the question?

MR. PALMER: Read the question.

(Question read.)

A. I don't think so.

Q. How much did they pay you for going out there and making this examination ?

(Testimony of Henry J. Burk.)

A. He paid me my regular fees.

Q. How much was that?

A. A day's work.

Q. And how much was that?

A. \$15.00.

Q. And expenses?

A. What is it?

Q. And your expenses?

A. Yes.

Q. You were living at El Centro?

A. Yes.

Q. What were the expenses that he paid you?

A. I don't think there were any expenses connected with it. That is what I charged them; I think for a day's work.

Q. Just \$15.00.

A. Yes.

Q. BY THE COURT: What did Mr. Watson say to you when he engaged you?

A. I didn't question him at all about what it was for.

Q. He just asked you to go out and make this investigation?

A. Yes.

Q. Did he tell you what he wanted you to investigate?

A. He wanted me to look it over and see how much improvements had been made on it. I didn't ask him, but I understood it was for the purpose of a right of way.

Q. Was the railroad right of way on the land at that time?

(Testimony of Henry J. Burk.)

A. It was, on part of it; it ran across part of it.

Q. BY MR. PALMER: And you understood he wanted to extend that right of way over another portion of it?

A. No; I understood there was some trouble about getting the right of way across the land, and the railroad had already been built several years ago. It was not any of my business, and I didn't inquire into it.

Q. Well, there had been a right of way acquired across the land, and you understood from Mr. Watson that they were seeking an additional or extended right of way?

A. Yes; seeking to perfect their right of way, I think it was. They hadn't made a survey. They had a surveyor of the road out there making a survey at the time I was there. He was with me.

Q. Who was with you?

A. I cannot think what his name is, but he was a little, small man, working for the company.

Q. Working for the Portland Cement Company?

A. Yes, sir; a surveyor.

Q. He was a surveyor.

A. Yes.

Q. And he surveyed the right of way?

A. No; I don't *hink* he surveyed the road. The road was surveyed long before that.

Q. You made a drawing?

A. I made a little sketch of the land, that is all.

Q. Is that the only piece you made a drawing of?

A. That is all.

Q. Is that the only piece you investigated that day?

(Testimony of Henry J. Burk.)

A. Yes.

Q. What did the drawing show, have you a copy of it with you?

A. No.

Q. What did the drawing show?

A. MR. ARMSTRONG: I object to it as not the best evidence.

THE COURT: He hasn't it here; do you want to take the time to bring it in?

MR. ARMSTRONG: It is in relation to what?

MR. PALMER: I want to know what was on the drawing.

MR. ARMSTRONG: I object to it as immaterial.

THE COURT: Overruled.

A. Why, the drawing would show, as I stated in my affidavit where the work had been done.

Q. BY MR. PALMER: Did your drawing show the location of the railroad over the property?

A. I could not say whether I sketched in the railroad or not.

Q. You don't remember that?

A. If I did, it was only approximately.

Q. Did you in your drawing indicate where the improvements were?

A. I think I did.

Q. Did you indicate where the corral was?

A. I think I did. I could not say. I don't remember. I didn't try to remember that. I made the drawing and that was all there was to it.

Q. What did you do with the drawing?

(Testimony of Henry J. Burk.)

A. I think their attorney got the drawing. I don't know.

Q. Their attorney got it?

A. Yes; an attorney.

Q. Did you know at the time you were making that examination that they were preparing to contest the claim of Mr. Pandit to that land?

MR. ARMSTRONG: I object to that as assuming a fact not in evidence.

Q. BY MR. PALMER: Of Mrs. Pandit?

MR. SIMPSON: Mr. Burk went there and made an examination at the request of the United States Attorney's office. I know that.

THE COURT: You were not here when he testified on direct. He testified differently.

MR. SIMPSON: He testified that Mr. Watson asked him to go up there, but he was not asked why he went out. He went out to make an examination and determine the amount of the improvement. I know of my own knowledge the reason he went out there was because the request went from our office through the cement company to have him communicate with us. There is no doubt that the cement company is interested in knowing who was interested in the land. They were interested in the value of it. The request went from my office through the attorneys of the company.

MR. NEWBY: We would like for counsel to state why he communicated with the attorney of the railroad.

MR. SIMPSON: Simply because we were communicated with by them, asking us what the status of the Pandit case was.

(Testimony of S. G. Pandit.)

MR. NEWBY: I thought so.

MR. SIMPSON: That is our case.

MR. NEWBY: I want to show by Mr. Pandit the point where that railroad went through there, and that there were no proceedings whatever to condemn a right of way. They just went in there and built a railroad over his land.

THE COURT: Very well.

SURREBUTTAL:

S. G. PANDIT

recalled as a witness in his own behalf, in surrebuttal, testified further as follows:

DIRECT EXAMINATION

BY MR. NEWBY: State what you know about the railroad being built across this land of your wife?

MR. SIMPSON: I object to it as incompetent, irrelevant, and immaterial.

THE COURT: Overruled.

MR. SIMPSON: Exception.

A. About 1918 or '19, a couple of men came to my wife and wanted to buy a right of way across that land for a railroad, and she turned them over to me. They came to my office in the Bank of Italy Building and talked the matter over with me, and they said, "We will go just across the corner of your land; that is all we want, and it will do good to the land. Everybody has been giving land, and we expect you to do the same thing." After some talk I told them I didn't think Mrs. Stringer would give the land away that way, and they came back and I told them that unless they were willing

(Testimony of S. G. Pandit.)

to pay something for it they would not get the land. I didn't know anything about it; I didn't know they had put the railroad on it already without her consent. About two or three years after, the men came again. They had never told me they had put the railroad on it. I think last year or the year before last—it was early last year—a man came three or four times from the Portland Cement Company and said they had succeeded to the rights of the Gypsum Company, and they wanted to build a railroad, but they wanted only a 30 foot strip through a corner of the land, and they gave me a description of the strip they wanted. I said I would look it over, and I put it aside. They didn't want to pay anything for it, but they said they would pay \$100.00, "because you have no title to the land yet." I examined the description that they left, and I asked Mr. Kenyon, who had done the work for us there, how much of this land it would take, what corner it would go through, and he said the railroad was there already. I said, "How long has it been there?" He said, "Three or four years"; and he said, "I thought you had allowed them to place it there." I said "No; I haven't". He said "It cuts right across the better portion of your land. That half of the land is better than the other half of the land, and it goes through the better half of the land." I looked at the description and I saw that it went through from one side to the other, from east to west, and when the man came again to see me I asked him about it, and he said, "No; it is the worst portion of the land." And I said, "You asked me for permission to put the railroad through, and you already had it

(Testimony of S. G. Pandit.)

there." And he said, "We have a little piece of it, but if you don't give us permission, we will move it.." I said, "Take it out," and he said, "We will take it out." He came back again and I said, "Have you taken it out?" And he said, "Well, our surveyors are working there," and I said, "You have the railroad through our land, and we want it taken out or pay for it." Then I wrote to them at San Francisco, three letters, in the name of my wife, and registered them, and they never replied. I asked them to have the railroad taken off the land or to pay proper compensation for it, but I received no reply.

Q. What was the name of the attorney?

A. I don't remember.

MR. NEWBY: That is all.

CROSS-EXAMINATION

BY MR. SIMPSON:

Q. How much did you want them to pay for the 30-foot strip of land?

MR. NEWBY: I object to that as not proper cross-examination.

THE COURT: Overruled.

A. I asked them to make an offer, and when he said \$100.00 we didn't want that. I didn't want it to run across the land at all.

Q. I didn't ask you that. I asked you how much you demanded from them?

A. I didn't demand anything. I asked them how much they would offer, and they said, and it was not satisfactory.

(Testimony of S. G. Pandit.)

Q. You didn't ask them for \$5,000.00 for that right of way across there?

A. I don't know that I would take that.

Q. You told them you would take \$5,000.00?

A. I may have told them that. I don't remember.

REDIRECT EXAMINATION

BY MR. NEWBY:

Q. Did you ever ask them for \$5,000.00 to go across that land?

A. No, but when I found they were already there, I may have told them \$5,000.00 or \$10,000.00 or anything.

THE COURT: You may proceed with the argument, gentlemen.

MR. SIMPSON: . . . Perhaps I might go farther and say that the equities are all in favor of the defendant.

During the course of the government's opening argument, the court made the following observation:

THE COURT: Prior to the decision of the Supreme Court of the United States in the case of *Thind*, it was understood, and it was the rule of decision of the Federal Court that high caste Hindus were not ineligible to citizenship. Now, under that theory of the law, and it was the theory—it was not an established principle, but it was the theory of the law, and had been announced by proper authority, to-wit: the Federal Court in construing acts of Congress, construing the inherent rights of aliens within the United States, which is an exclusive prerogative of the Federal Court. In construing those laws and those rights, the Federal Courts announced rules which enabled Mr. Pandit and those com-

(Testimony of S. G. Pandit.)

ing within his class to apply for and obtain citizenship in the United States. Now, did not that become a vested right, especially to the extent of being irrevocable when the government accepted those decisions and took no action of any kind to have the law declared otherwise? And the law was not declared otherwise until the decision of the Supreme Court of the United States at the October term, 1922. Now, if, however, it is to be held that the law, declared to be such in October, 1922, relates back to 1913 and 1914, or previous thereto, it is not only an impairment of a vested right. For is it not a contravention of the constitutional enactment against ex-post facto laws, retroactive statutes, which deprive him of a right which he had under the law as it existed at that particular time? I am aware of decisions which hold that changes in procedure do not operate to invalidate ex-post facto laws. But is this not a change in status, not a change in procedure at all. Is it not an attempt on the part of the government to take from an individual a constitutional right which he has, and which had been made applicable to him, because of the fact that he was—and I use the term advisedly—because he had complied with all the regulations and laws as interpreted and applied by the United States Courts up to the time of the Third case?

At the close of the government's opening argument, the Court made the following observation to defendant's counsel:

THE COURT: Before you proceed, Mr. Palmer, I want to say that I think there is a line of demarcation between what might be considered personal individual

qualifications. I am not speaking so much of the cultural qualifications. I don't think I would waste very much time on that in view of the Supreme Court's decision in the Third case. The questions presented here that I think are of moment in the consideration of the fourth affirmative defense are, the obtaining of property rights, and the social status, and by that I mean in as far as the marriage relation is concerned, and in as far as the right of the individual to pursue a lawful employment where he has complied with the regulations that were in effect at the time that he became possessed of the right to pursue such employment. In other words, the respondent, according to the evidence, is an attorney at law, and has pursued the practice of law as a means of livelihood. Now, if the certificate of naturalization is revoked at this late date, as a part of this revocation will be a revocation of his license to pursue his lawful calling, because there is no way he can pursue the practice of law without making secure his citizenship. The same is true with respect to his marriage. If it is judicially declared that his citizenship is void because of the fact that he is not a white person within the meaning of the naturalization statute, then it follows that his marriage should be annulled. Those are matters which I am referring to as individual qualifications of the respondent in this case. I don't believe that the Supreme Court in the Third case referred to such a class of individual qualifications. I don't think it makes any difference whether a man belongs to the highest class of a race or to a lower. That is not the question which we are considering here, and it is not the question which the Supreme Court considered in the Third case. We

are considering here more especially the individual qualifications of this respondent in as far as his property and his status are concerned, his personal status. All of those rights I am inclined to feel have become vested by reason of his political status, and as the law existed up until the decision in the Thind case.

Now, there is one further observation in that line that might be worthy of consideration when you discuss it, and that is that the Supreme Court in the very last part of this decision says the following, quoting from page 215 of the official volume: "It is not without significance in this connection"—after discussing the question whether a person coming from India is eligible to citizenship, they say as follows—"It is not without significance in this connection that Congress, by the act of February 5, 1917, has now excluded from admission into this country all natives of Asia within designated limits of latitude and longitude, including the whole of India. This not only constitutes conclusive evidence of the congressional attitude of opposition to Asiatic immigration generally, but is persuasive of a similar attitude toward Asiatic naturalization as well, since it is not likely that Congress would be willing to accept as citizens a class of persons whom it rejects as immigrants."

Now, that is rather pertinent language. I think it shows that until that time Congress had never legislated upon the subject, and therefore, is there not some room to believe that Congress, not having legislated upon the matter, and the courts having judicially applied the law up until the October term, 1922, of the Supreme Court, holding that persons having the qualifications that Mr. Pandit possesses, were qualified to be citizens of the

United States and were not within the class—that is what I had in mind when I said that the state of the law was such up until the Thind decision that Mr. Pandit's status was that he was eligible. Not only had he been admitted to citizenship, but all of the declared pronouncements—all of those that are recorded at least—were to the effect that Mr. Pandit was within that class that was eligible to citizenship. That is a material fact, it seems to me, as going to determine whether or not at this late date the equities of the case require that he surrender all of those rights which he has enjoyed because the law said he was vested with them, and that he surrender as well his marital status. I think those are matters which constitute in this case the essential, the individual qualifications of the respondent, and the Supreme Court in the Thind case was not considering any individual qualifications. That is the only line of distinction between the Thind case and the case at bar. We will recess until 2 o'clock. I think you ought to confine yourself to that, gentlemen. I think we are precluded to a great extent by the Thind case. I think you are precluded in this case as to any finding of whether or not Mr. Pandit belongs to a race which is excluded.

The cause was then argued, and after argument, Mr. Pandit was re-called for further testimony, and testified as follows:

Since I have been appointed notary public, I have earned about \$50.00 annually from notarial work. The notarial commission is a great accommodation in the practice of law, and also draws practice.

THE COURT: State again what your position is with respect to your marriage.

A. I had no intention of staying in this country unless I could become a citizen, and when Mr. Jones opposed my naturalization, I said to some people, "I don't think I will stay here if they don't want me as a citizen. I will probably go back. I won't take up the study of American law. I will study law somewhere else". About a month after, I saw Mr. Jones and saw the judge, and they seemed to think I was eligible and could be admitted, then I decided I would stay here. After that I wrote home saying that if I married at all I would marry here in America, but I never would have thought of marrying if I was not going to stay here. I was not going to stay here if I was not admitted as a citizen.

Q. If you had not been admitted to citizenship, would you have married the party whom you afterwards married?

A. No. I never would have thought of it.

—o—

THE COURT: I don't see any necessity, gentlemen, in view of my own conviction upon the matter, of taking it under advisement. The question here is largely a pioneer question. I haven't been able to find any decision analogous to the situation that I conceive to be the issue before the court. So, it seems to me that it is simply a waste of time to delay a decision in the case, in view of my own conclusions on the issue.

I think we may premise the matter by saying that in as far as the racial status of Mr. Pandit is concerned, there is no room for argument under the decision of the Supreme Court in the Third case, 261 U. S. 204.

Therefore, I think it must be established, both as a finding of fact in the case and as a legal conclusion to be drawn therefrom, that Mr. Pandit falls within the determination of a class of aliens who are ineligible for naturalization under the decision of the Supreme Court of the United States. Now, the question then comes, if that is true, has he presented, first of all, a legal defense to this suit which is not a naturalization proceeding at all, and which is not an ex-parte proceeding, but is a proceeding on the chancery side of the federal court, wherein there are two suitors, one the government and the other the respondent or the defendant Pandit, the citizen, because in approaching this matter we must assume that he is now a citizen of the United States. The ultimate question is whether that status will now be taken from him under the allegations of the bill and the answer of the defendant, as contained particularly in the fourth separate defense. That involves a discussion of whether the doctrine of equitable estoppel is applicable in a suit of this nature. I fail to see why it is not, because it *is* an equitable proceeding, and it does not make any difference whether the government is one of the suitors or whether it is a suit in equity between private individuals, because it is universally held that when the government sues in a court of equity it does so only upon the same basis as an individual who comes into equity asking for a decree, and the issues which are litigable between two individuals are litigable and are to be decided according to the same equitable principles where the government is a suitor.

The facts bring the case, I think, clearly under the principle of equitable estoppel just read by Mr. Simpson