

WHEREFORE, plaintiff prays that the said matters above referred to may be stricken out and taken for naught and that the plaintiff may have judgment as prayed for in the complaint.

Dated this 17th day of March, 1924.

JOSEPH C. BURKE,
United States Attorney.
J. E. Simpson
J. E. Simpson
Assistant U. S. Attorney.
Attorneys for Plaintiff.

[Endorsed]: Rec'd copy Mar. 17, 1924 Newby & Palmer, Attys for deft. Filed March 17, 1924. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy.

At a stated term, to wit: The January Term, A. D. 1925 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday the 9th day of January, in the year of Our Lord one thousand nine hundred and twenty-five.

Present:

The Honorable PAUL J. McCORMICK, District Judge.

UNITED STATES OF AMERICA,	} No. G-111
Plaintiff,	
vs.	Eq.
Sakharem Ganesh Pandet,	} Defendant.

The plaintiff's amended motion to strike out of the answer certain pleas thereof is granted except as to defendant's fourth defense therein, and as to such de-

fense the plaintiff's amended motion is denied. The foregoing ruling is made in accordance with memorandum opinion filed this date.

14/454

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled cause came on regularly for hearing in the above entitled court before the Honorable Paul McCormick, Judge, on the 15th day of December, 1925; the plaintiff appearing by Samuel W. McNabb, United States Attorney, and J. E. Simpson, Assistant United States Attorney, and the defendant appearing by Newby & Palmer, his attorneys, and the cause came on for hearing upon the bill of complaint of the plaintiff, and the defendant's first and fourth defense thereto as pleaded in the answer of the defendant to the said bill of complaint, and evidence both oral and documentary having been introduced and arguments of counsel heard, the cause was submitted to the court for its finding and decree, and the court being sufficiently advised in the premises makes the following findings of fact and conclusions of law in said cause:

I.

The defendant Sakharam Ganesh Pandit was born in Ahmedabad, India, on the 20th day of December A. D. 1875, and is a high class Hindu of the Brahman caste, and of full Indian blood, and that he has a status of high social standing in his native country of India; that he attended in India the Pathashala (being the orthodox San-

skrit University) in Benares, India, and he attained and had conferred upon him at Dharwar, India, in 1904, the degree of Mahamahopadhyaya (corresponding in this country to the degree of doctor of philosophy), which said degree is a very high honor in defendant's native country of India, and such degree enabled defendant to gain admission to any learned institution or assembly of Hindus in India; that defendant also attended the English University at Bombay in India and there received the degree of B. A.; that in the year 1906 the defendant arrived in the United States at the City of New York on the 28th day of August upon the vessel Crown Prinz Wm., and afterward on the 24th day of March, 1911, he duly filed his declaration of intention to become a citizen of the United States with the Clerk of the United States Circuit Court for the Northern District of Illinois, and that at said time he was a subject of George V., King of Great Britain and Ireland and Emperor of India; that thereafter on the 13th day of June, 1913, defendant filed a petition to be naturalized as a citizen of the United States in the Superior Court of the State of California, in and for the County of Los Angeles; that the said Superior Court then and there had competent jurisdiction to hear and determine such petition, and afterwards such proceedings were had in said cause, which was numbered in said court 2377 of petitions for naturalization, that witnesses were called and documentary evidence submitted upon the part of petitioner, the said defendant. That the United States of America appeared in said cause by Frederick Jones, Esq., who was then and there the duly appointed, qualified and acting examiner of the Bureau of Naturalization, United States Department of Labor, and con-

tested the defendant's right to naturalization upon the same grounds alleged in the petition herein for cancellation, and cross-examined the said petitioner and his witnesses and argued the said cause before the court on behalf of the United States and filed a brief on behalf of the United States in said cause contesting the granting of naturalization to this defendant; that after said hearing said cause was held under consideration by said court for about nine (9) months; that afterwards on May 7th, 1914, the said Superior Court, having been fully advised in the premises, rendered its judgment and decree in said cause, granting the said petition of this defendant to be naturalized as a citizen of the United States and issued to the defendant a certificate of naturalization, No. 445063, all of which was then and there well known to the plaintiff and to the said Frederick Jones, Examiner as aforesaid, and the said Frederick Jones, as such examiner, did then and there write a full report of the said proceeding and of the determination thereof, and reported the same to his superior officer for transmission to the United States Government authorities at Washington.

II.

That the plaintiff herein, the United States of America, did not make a motion for a new trial in said cause and never appealed from said judgment, either to the courts of California having appellate jurisdiction or to the courts of the United States having appellate jurisdiction over said cause, and took no proceeding whatever to change, modify or reverse the said judgment, or to cancel the said certificate of naturalization until the 23d day of June, 1923, when the petition

herein was filed in this court—about nine (9) years after the granting and issuing to this defendant of the certificate of naturalization aforesaid.

III.

That the defendant relied upon the finality and binding force of said judgment of the Superior Court of the State of California, and relied upon the fact that the United States of America took no action whatever to vacate, reverse or modify the said judgment, either by a motion for a new trial, or by an appeal, or by writ of error to any court whatsoever, or by filing a petition to cancel the said certificate of naturalization, and so relying upon the non-action and acquiescence of the United States aforesaid, the defendant began and prosecuted with all his ability and energy the study of the law, and on the 20th day of December, 1917, after having duly passed an examination before the State Bar Examiners of the State of California, this defendant was duly admitted to practice law as an attorney and counsellor in all of the courts of the State of California.

IV.

That afterward on the 21st day of December, 1917, so relying upon the said non-action and acquiescence of the plaintiff herein defendant upon application duly made was duly and regularly admitted as a proctor, advocate, attorney, solicitor and counsellor in the above entitled district court of the United States, and ever since said date the defendant has devoted his time and attention to, and earned his livelihood by, practicing as such attorney and counsellor in the courts of the State of California and of the United States, and afterward the defendant was duly and regularly admitted to practice

as a proctor, advocate, attorney, solicitor, and counsellor in the Circuit Court of Appeals of the United States for the Ninth Circuit.

V.

That since said certificate of naturalization was granted to defendant, said defendant fully relying upon the finality of the judgment granting such certificate and the acquiescence of the United States therein, has procured himself to be appointed a Notary Public and has a commission issued by the Governor of the State of California as such Notary Public, and the defendant is a duly qualified, appointed and acting Notary Public of the State of California, and as such has been earning fees of a yearly value of not less than Fifty Dollars (\$50.00), and the said Notary commission is of value also to the defendant as attracting to himself cases and business in his said profession as an attorney.

VI.

That the defendant, relying upon the conclusiveness and finality of his said naturalization and upon the non-action of the United States Government in reference thereto, and believing that he was a duly, regularly and lawfully naturalized citizen of the United States, bought himself a home in the City of Los Angeles in the State of California of the value of about Fifteen Thousand (\$15,000.00) Dollars, and he is now the owner thereof and resides with his family therein.

VII.

That said defendant, fully relying upon the finality and legality of said certificate of naturalization and the acquiescence of the United States therein, contracted a marriage with a white American woman citizen of the

United States born in the State of Michigan, and that said marriage was duly and regularly contracted, a license having been procured therefor, the ceremony performed according to law, and a certificate of such marriage being duly recorded as provided by statute, and that such marriage was contracted in the County of Los Angeles, State of California, on June 5th, 1920.

VIII.

That prior to the marriage of the defendant the defendant's wife, then Lillian B. Stringer, was a citizen of the United States, and as such had filed her application in the proper United States land office for three hundred twenty (320) acres of desert land in the Imperial Valley, in Imperial County in California, to-wit:

The West half of Section four (4), Township fourteen (14) South, Range ten (10) East, S. B. B. & M.,

and the defendant's said wife had, prior to her marriage, spent in reclamation work upon said land the sum of about One Thousand Five Hundred (\$1,500.00) Dollars, and since the marriage of defendant and said Lillian B. Stringer they have invested of the earnings of the community the sum of Five Hundred (\$500.00) Dollars in the reclamation work upon said land; that the time to make final proof upon said land for the purpose of procuring a patent therefor from the Government of the United States has arrived.

IX.

That the defendant would not have remained in the United States if he had believed that he would be unable to obtain and retain citizenship therein, and his remaining in the United States was dependent upon his ac-

quiring of citizenship, and the defendant would not have married an American woman if he had not fully relied upon and believed in the finality of the judgment of the court granting him citizenship.

X.

That under the laws and customs of defendant's native country India the defendant, by renouncing his allegiance to such country and by taking the oath of allegiance to the United States of America, abandoned his high social station that he had occupied in his said native country, and he also abandoned and sacrificed his standing as a member of the Brahman caste, and he also abandoned and surrendered his honorary degree of Mahamahopadhyaya.

XI.

That the defendant was the eldest son in his father's family and as such was entitled to inherit, by the laws of his country, the home, and in addition thereto to inherit about four hundred (400) acres of the most fertile agricultural land in his native country, and the family home which he would have inherited is of the value of about Thirty Thousand (\$30,000.00) Dollars, and the agricultural lands which he would have inherited of the value of from One Hundred Thousand (\$100,000.00) Dollars to Two Hundred Fifty Thousand (\$250,000.00) Dollars, and the said defendant relying upon the lawfulness and regularity of his naturalization, and relying upon the acquiescence of the United States therein, abandoned his right to the said ancestral home and to the said lands greatly to his pecuniary damage.

XII.

That the defendant had a sister residing in India who recently died, and because of the change of allegiance

of the defendant, and his becoming a citizen of the United States, she failed to will him any portion of her estate greatly to the defendant's pecuniary damage.

XIII.

That by reason of the taking of the oath of allegiance by the defendant and his abandonment of his citizenship in his native country, all of which was in reliance upon the legality of his citizenship in the United States, defendant has lost his citizenship in his native country and has lost his position as a member of the Brahman caste, and would be, if he returned to his native country, an outcast and incapable of associating with any of the castes in his native country.

XIV.

That if the plaintiff herein is permitted to cancel the naturalization certificate of the defendant and to set aside his naturalization, the defendant's wife will thereby lose her citizenship in the United States and she will then be and become an alien, being the wife of an alien, and she will lose her claim to the desert lands aforesaid, to the great pecuniary loss of this defendant and to his said wife.

XV.

That if the petition of the plaintiff herein is granted and the naturalization certificate of the defendant is canceled, the defendant will lose his commission as a Notary Public of the State of California, greatly to his pecuniary damage and loss.

XVI.

That if the naturalization certificate of this defendant is canceled the defendant will be deprived of the right to practice law in the State of California, and in the

courts of the United States, and will be deprived of his means of making a livelihood for himself and his family, greatly to his pecuniary damage and loss.

That the defendant at the time of his naturalization complied with all of the provisions of the statutes on naturalization in every particular, and there was no irregularity or fraud in the procuring and granting of said naturalization to the defendant, and at the time that said naturalization certificate was granted and issued to the defendant the great weight of authority was to the effect that the defendant was entitled to be naturalized and there was no authoritative decision to the contrary. That the defendant was, at the time of his naturalization, ever since has been and now is a person morally, mentally and physically qualified and fit to be naturalized as a citizen of the United States.

Conclusions of Law.

And as conclusions of law from the above and foregoing findings of fact the court holds:

1. That the plaintiff is estopped from prosecuting this action to cancel the certificate of naturalization of the defendant herein; and the bill should be dismissed. [P. J. M.]

2. That the defendant is entitled to a decree that the plaintiff take nothing by reason of the proceedings herein, and that the defendant have judgment for his costs. A decree is directed to be entered in accordance with the foregoing findings of fact and conclusions of law.

Dated January 8th, 1926.

Paul J. McCormick
Judge.

[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