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 Thind 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 *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

from Corpus Juris. The government appeared in the naturalization proceeding wherein Mr. Pandit was admitted to citizenship, so it was not really an ex-parte proceeding. Formerly most of these proceedings were purely ex-parte proceedings, where the government did not appear, but since the inauguration of the Naturalization Division in the Department of Labor—I believe it is—the naturalization examiner has appeared on behalf of the government and has conducted the proceedings. That was the case when Mr. Pandit was admitted to citizenship, so that these proceedings which we are examining—and I think it must be borne in mind throughout that we are not examining the question in the abstract as the Supreme Court was in the Thind case, an abstract racial question, but we are here examining a question of equity wherein we are to apply all of those beneficent principles which have made the court of equity the strong arm of rectitude in the government that it is. Why is not the government, then, held to the same rules? There is no good reason why it should not be so held. It is argued that no person has a right to citizenship except upon compliance with the regulatory measures which the government has adopted therefor. With that principle there can be no dispute, but we are not concerned with the question of whether a Hindu of high caste is applying for citizenship. If we were, we would summarily dispose of the issues, because there can be no room for doubt in our minds, since the Supreme Court decision in the Thind case. These persons are not entitled to citizenship and cannot be admitted by any of the courts. That is not the question here. Here is a person who has been admitted, and who was

admitted at a time when the state of the law extant was that he was entitled to be admitted to citizenship of the United States. At that time I think perhaps there were decisions in individual cases where individual trial judges, district judges, probably decided on denying citizenship to persons, but there was no authoritative, binding decision by any of the appellate tribunals of the federal judicial system which precluded Hindus of the high caste from American citizenship. On the contrary, all of the written decisions that I have been able to find were to the contrary.

Now, that was the situation when Mr. Pandit made his application for citizenship. The government resisted his application for citizenship and set up the fact that he was ineligible because of his race. The matter was determined adversely to the government. The government took no move in the matter whatsoever. Thereupon the title to citizenship was made secure to the respondent here, and he proceeded, as he had a right to, to assume the activities, the prerogatives and rights of an American citizen; studied law, passed the examination, and finally became admitted to the bar, and pursued his vocation in an honorable way for many years. He entered into the marriage state with a woman, relying upon the statute that he was authorized by law so to do, not only because of his citizenship, but because of his race. He, together with his wife, in her name—and this, to my mind, is one of the most important features of the legal situation as presented—his wife commenced proceedings with the government looking toward the acquisition of a property right upon the public domain. Now, if there is anything at all that would estop the government, be-

cause it is the same government that is now demanding that this court take from him that citizenship; it is the same government that dealt with him, dealt with his wife, with an acknowledgment of the fact that he was lawfully entitled to citizenship, because if Mrs. Pandit is married to a man who is ineligible for citizenship, she has no right to any of those possessory claims which she has entered on the public domain—so, there can be no question that upon the doctrine cited in Corpus Juris, there was a case where the government dealt with the status of Mr. Pandit in a way that it can hardly be permitted now to repudiate. I regard the acquisition of this government's possessory right as one of the most important features, because there is no doubt at all that whatever rights Mrs. Pandit has gained, will be rendered insecure at least, probably totally defeated, by the revocation of the citizenship of her husband, upon the grounds set out in this petition, because the government is not asking for the revocation of this citizenship upon any ground except the one that this man is ineligible for American citizenship. Now, if he is ineligible for American citizenship, his wife cannot acquire any possessory right to public lands on the public domain.

It might be said that that is a right for the wife to assert, but it is not, because the proof shows that the property is being acquired as community property, and from community funds; that they have jointly gone into the enterprise, and that Mr. Pandit has paid during the marriage a certain amount of money toward the perfection of this property right.

There are other matters that appeal to the conscience of the court, but it may be that under the application of

cold legal principles they are not sufficient to justify the court in this case in refusing to cancel Mr. Pandit's certificate, but I cannot leave them out of consideration. The intent of the naturalization law should be read into this case, and the intent is to have aliens who come to this country lawfully—and Mr. Pandit came lawfully, because this exclusion act was not in effect when he came, not in effect at the time he sought citizenship, did not become effectual until very recently as compared to the time of his coming and his acquisition of citizenship. It is the intent of this country to have all aliens who come here lawfully and conduct themselves properly, become citizens, become members of the American national family, to identify themselves with this country in a substantial and patriotic manner, and do so by becoming American citizens. It is much better to have aliens citizens of the United States than it is to have foreigners in the United States; so, that construction should be adopted by a court of equity which will have the effect of encouraging the desirable aliens to become citizens rather than ostracizing them from our political family. This man is now a member of the national family. He underwent the acid test at the time of the hearing before the state court, and there is not a scintilla of evidence—there is not even an imputation made by the government but that he has conducted himself in a satisfactory manner in so far as the discharge of his duties of citizenship are concerned.

In view of all of these facts, should the court take from him, where it is a novel and doubtful question, where the question is whether equitable estoppel exists—whether the court should adopt, should assume a position

that will take from him his citizenship after all these years and require that he, if he desires to pursue the matter further, shall expend money and shall submit himself to the humiliation that will exist if his citizenship is taken from him—I don't think so. I don't think the court is justified in doing that in this case.

There is a case in the Supreme Court which I think is somewhat illuminating on this question. That is the case of Johannessen v. United States, found in 225 U. S., beginning at page 227. It is so pertinent, that I think just a few excerpts from it will indicate the mind of this court on the matter of this fourth defense. I won't read it all because it is long, but there are some portions that I want the record to show, which reflect the views of the court on this matter. I think it disposes of the situation which I suggested this morning at the conclusion of the morning recess, and seems to indicate that the suggestion that I made about ex-post facto features of this law are inapplicable. It seems to indicate that those provisions only apply to criminal proceedings or proceedings wherein there is some penalty—I mean some legal penalty, imposed by the statute. This is what the decision says—I won't taken the time to read it all. Section 15 of the Act of June 29, 1906, which is the same act and the same section under which this proceeding is instituted, provides: "That it shall be the duty of the United States District Attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the

certificate of citizenship on the ground of fraud, or on the ground that such certificate of citizenship was illegally procured." Now, those are the two reasons or the two grounds upon which the government may act; either upon the ground of fraud or on the ground that the certificate of citizenship was illegally procured. Now, what is the meaning of that word "procured"? These words in the statute are full of meaning. They are not placed there aimlessly, and not to be interpreted. "Procured" means that there must have been something done by the actor which puts into effect the illegality. It does not mean that if there is some procedural step taken that is not properly taken, but taken by the government officer, and a person secures a right thereunder, that the government years afterwards can come in and say, "We made a mistake. This man was not in the country long enough. It is true he didn't commit perjury. He told us the truth, but we assumed that he was here sufficiently long to establish legal residence, and now we find he was not, and we want a court of equity to revoke his certificate." I do not believe that such a situation can exist in a court of equity under the statutes, and I think the Supreme Court has practically settled the matter by its decision in other cases construing these two features of Section 15. There is another thing in connection with that, the statute, itself Section 15, itself, recites that a proceeding may be instituted by the United States District Attorney in the district in which the naturalized citizen may reside at the time of bringing the suit. Now, what does that mean? That he is a citizen, and that he has the status of a citizen, even though he may have procured it by mistake of law and

that therefore it is not a proceeding that is analogous to or synonymous with a status that is acquired by virtue of a document that is void ab initio, but that it is merely voidable, a voidable act which the government may vitiate upon the proper showing. Now, that brings into play all equitable doctrines to resist the voiding of a document which has been issued. It depends entirely upon what the government did—whether it by its own conduct was primarily responsible for the deficiency in as far as the legality of the certificate is concerned; and, secondly, if it acquiesced in that insufficiency by dormancy, or failure to act, especially when it had knowledge of the facts upon which it now seeks to act. Now, there is no doubt but that the government was apprised of the situation by Mr. Jones, and it did nothing for ten years. It permitted the respondent to change his entire life; permitted him to relinquish all of the ties that bound him to his native land; permitted him to assume a different station and take up the pursuit of law; and to outline his life along a certain vocation, a certain profession, and to pursue that profession in the belief that he had a right to pursue it; to become married to an American woman; to get her to take up real property; to act as a notary public—it might invalidate many titles —I won't say as a legal conclusion that such would follow, but it would raise the question of the invalidity of documents that were acknowledged by Mr. Pandit as a notary public. So, the extent of a decree of this kind puts it entirely out of the purview of the authority. The rights of so many people would be affected; not only would the status of the defendant be affected, but the rights of others, who have secured rights because of the

belief that Mr. Pandit was an American citizen, which belief the government has permitted him to continue in for ten years. I believe to ask a court of equity to pioneer, especially in wresting from him his citizenship, is not proper upon the circumstances shown by the record.

Now, the Supreme Court in this case goes on to discuss the question as to whether or not this statute is retrospective or ex-post facto, and determines that it is not, and uses language of this kind, which I think is perfectly clear: "The act does not purport to deprive a litigant of the fruits of a successful controversy in the courts." That is not the situation in the case at bar. In the Johannessen case it was purely an ex-parte proceeding. In the case at bar it is not an ex-parte proceeding in which Mr. Pandit was admitted to citizenship. It is true that the government did not file a formal written statement, but the government's representative, Mr. Jones, who was present there, objected to the admission of Mr. Pandit and filed a brief in opposition, and announced a rule which ultimately the Supreme Court established was the correct rule. That is not an ex-parte proceeding. It was a proceeding in which the government appeared and in which the rights of the parties were adjudicated and which in no sense was an ex-parte proceeding, but was a proceeding, in the language of the Johannessen case, in which the litigant did deprive himself of the fruits of a successful controversy in the courts. The government took no further action; permitted the matter to remain dormant, not only dormant, but as I said before, the government permitted the wife of the man whom they now say never was a citizen, to

assume to act as the wife of an American citizen, as the wife of a man eligible for American citizenship. I think that estops it. If anything does, that does.

The question narrows itself down in my opinion to this one proposition, Does the doctrine of equitable estoppel operate against the government in proceedings to revoke naturalization where there is no charge of fraud? I cannot see on any theory of reasoning why it is not applicable.

The Supreme Court in this Johannessen case further said that the act in effect provides for a new form of judicial review. It says, "The act in effect provides for a new form of judicial review of a question that is in form, but not in substance, concluded by the previous record, and under conditions affording to the parties whose rights are brought into question full opportunity to be heard. Retrospective acts of this character have often been held not to be an assumption by the legislative department of judicial powers. An alien has no moral or constitutional right to retain the privileges of citizenship if, by false evidence or the like, an imposition has been practiced upon the court, without which the certificate of citizenship could not and would have been issued." Now, there has been no such condition here at all. There has been no deception practiced on the court that admitted him to citizenship; no irregularity committed by him which was tantamount to an affirmative act, and no illegality procured, to use the language of the statute. Mr. Pandit procured no illegality to be done in obtaining citizenship, nor did he by any fraud, nor was there any imposition practiced upon the court which led the court to issue the certificate of citizenship to Mr. Pandit. "As was well said by Chief Justice Parker in Foster v. Essex Bank, 16 Mass., 273, 'There is no such thing as a vested right to do wrong.' " That is the principle of equity here. There must have been a wrong done by the defendant, especially where the lapse of time intervenes, ten years, where a person lives secure in the belief that he has a right. Before he can be deprived of that right in a court of equity, there must be a showing that he participated in a wrong, either by fraud or had procured some illegal action to be taken by the court. "The remaining points taken by the appellant may be briefly disposed of. One is that the provisions of Section 15 of the Act of 1906 are not retrospective. This is refuted by a reading of the closing paragraph of the section. Finally, it is insisted that, if retrospective in form, the section is void, as an ex-post facto law within the prohibition of Article 1 Section 9 of the Constitution. It is, however, settled that this prohibition is confined to laws respecting criminal punishments, and has no relation to retrospective legislation of any other description. The act imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct." Now, what is meant by "illegal conduct"? It does not mean some technical imperfection. It does not mean because there has been a mistake made by either the court or by governmental agencies, in as far as computation of time is concerned, or having the necessary number of witnesses, or any matter of that kind, where the government has acted upon the belief that all of those matters did not exist and has continued to be dormant for a period of ten years. It does not mean any such thing. "It simply

deprives him of his ill-gotten privileges. We do not question that an act of legislation having the effect to deprive a citizen of his right to vote because of something in his past conduct which was not an offense at the time it was committed, would be void as an ex-post facto law." This seems pretty close to that. "But the act under consideration inflicts no such pnishment, nor any punishment, upon a lawful citizen. It merely provides that, on good cause shown, the question whether one who claims the privilege of citizenship under the certificate of a court has procured that certificate through fraud or other illegal contrivance shall be examined and determined in orderly judicial proceedings. The act makes nothing fraudulent or unlawful that was honest and lawful when it was done."

Now, what is there in this case that justifies the court in taking his citizenship away? Nothing, except the fact that Mr. Pandit belongs to an excluded class. So that brings us back to the premise that we started from, as the determining factor in the case, whether or not in a proceeding to revoke a certificate of naturalization where the proceeding is brought under Section 15 in a court of equity of the United States, has the court the right to weigh the equities of the case? My own judgment is that it has, and that in this case the equities are with the defendant.

For these reasons, findings and decree will be as above indicated.

SAMUEL W. McNABB,
United States Attorney.
Donald Armstrong,
Assistant United States Attorney
Solicitors for Plaintiff-Appellant.

APPROVED AND ALLOWED as a Statement of Testimony of the case on appeal this 11 day of May, A. D. 1926,

Paul J. McCormick
United States District Judge.

[Endorsed]: Filed Jun. 16, 1926. Chas. N. Williams, Clerk By R S Zimmerman Deputy Clerk

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[Title of Court and Cause.]

MEMORANDUM OPINION.

BLEDSOE, Judge:—

In each of the above entitled actions the matters before the Court is a motion to dismiss the petition or complaint for the cancellation of an order of naturalization, brought under Section 15 of the Naturalization Act of 1906. In each case the right to a cancellation of the naturalization of the defendant is based upon the allegation, admitted by the motion to dismiss, that defendant is and was a high-caste Hindoo of full Indian blood, and as such not admissible to citizenship in the United States of America under the provisions of Section 2169 of the Revised Statutes. That such an individual is not admissible to citizenship may not now be questioned in this Court. United States vs Thind, 261 U. S. 204.

The only question remaining is whether or not an order made admitting such person to citizenship after full and fair investigation by the Court, is an order susceptible of being cancelled under and pursuant to the provisions of Section 15 of the Naturalization Law of 1906 as being an instance of a certificate of citizenship