IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

TATOS C. CANTOZIAN,

Defendant.

DEFENDANT'S BRIEF

This is a suit brought to cancel the decree of this court admitting the defendant to American citizenship. He is not charged with any fraud in the representations made at the time when the decree was passed. Plaintiff's cause of action is based solely on the contention that as a member of the Armenian race, born in Sivas in Turkey, he is ineligible to American citizenship. The federal statutes and the recent federal decisions are conclusive to the effect that the right of this defendant to American citizenship is dependent upon the answer to the question, is he a white man?

IMPORTANCE OF QUESTION

The question involves much more than the inconvenience which the defendant may suffer if a decree is entered for plaintiff. In deciding the case of Ozawa v. United States, 67 L. Ed. 199, 209, Mr. Justice Sutherland said:

> "It is sufficient to note the fact that these decisions are, in substance, to the effect that the words import a racial, and not an individual, test, and with this conclusion, fortified as it is by reason and authority, we entirely agree. Manifestly the test afforded by the mere color of the skin of each individual is impracticable, as that differs greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races. Hence to adopt the color test alone would result in a confused overlapping of races and a gradual merging of one into the other, without any practical line of separation."

In the more recent case of United States v. Bhagat Singh Thind, Mr. Justice Sutherland reiterated the above holding. In speaking of the words "white persons" as found in the naturalization statute, he said:

> "They imply . . . . a racial test."

The complexion of the individual whose citizenship is at stake is a matter of but little moment. This point is further emphasized by the following language found in the opinion of Mr. Justice Sutherland in the case of United States v. Thind, 43 Sup. Ct. Rep. 341. In speaking of the conditions which obtained in 1790 when the first naturalization statute was adopted, he says:

> "The immigration of that day was almost exclusively from the British Isles and Northwestern Europe, whence they and their forbears had come. When they extended the privilege of American citizenship to 'any alien being a free white person' it was these immigrants--bone of their bone and flesh of their flesh--and their kind whom they must have had affirmatively in mind. The succeeding years brought immigrants from Eastern, Southern and Middle Europe, among them the Slavs and the dark-eyed, swarthy people of Alpine and Mediterranean stock, and these were received as unquestionably akin to those already here and readily amalgamated

> with them. It was the descendants of these, and other immigrants of like origin, who constituted the white population of the country when section 2169, re-enacting the naturalization test of 1790, was adopted and, there is no reason to doubt, with like intent and meaning."

Armenians, like native Americans, differ greatly from each other in their complexions. The evidence in this case will show that there are many Armenians who have light eyes and whose skin is as light as that of most Oregonians. Take them as a race, and their complexion will be found to be lighter than that of the Portugese, Spaniards, and the southern Italians. These considerations are offered parenthetically. The ultimate point which we are endeavoring to make is that the decision of the court in this case will determine not merely the right of this defendant to citizenship, but also the right in that regard of the entire Armenian race. Our evidence will show that when the census of 1920 was taken, there were in this country 52,840 persons of Armenian birth or parentage. The number at this date is doubtless larger. A large percentage of these persons consider that they are American citizens. If it shall be determined that the defendant has been improperly admitted to citizenship, there will doubtless be proceedings brought all over the Union to cancel the citizenship papers of other men of Armenian birth, and the decree in each of these cases will follow the decree to be rendered in the case at bar.

American citizenship is a valuable franchise. The right to vote is regarded by many as essential to adequate protection of the individual and especially of a class or race of people. To live in a country where universal suffrage is provided, and yet to be denied the right to vote, is a positive hardship.

There are at the bar of New York City nine men of Armenian birth. Under the laws of New York State, if these men are not American citizens, they are not entitled to continue the practice of their profession. Laws are being enacted with increasing frequency limiting occupations and licenses to American citizens. The hardship of living in America without American citizenship will increase with the lapse of time.

Perhaps more important than all other considerations, is the trend of legislation, especially in the western states, with reference to the ownership of land by aliens, and especially by aliens ineligible to American citizenship. A large proportion of the Armenians residing in this country are farmers and they consider that they own their own land. The largest single colony outside of New York City is found in the San Joaquin valley in California. On the 19th of May, 1913, California passed its first statute excluding from the ownership of land in that state aliens ineligible to American citizenship. Deering Code, second edition, volume 5, page 176. This statute has been strengthened by subsequent enactments and it is unquestionably the law

that if these men of Armenian birth are ineligible to American citizenship, they cannot hold land in California and the probabilities are that they can be deprived of all land acquired since the 19th of May, 1913.

Section 33 of Article II of the constitution of Washington, prohibits alien ownership of land in that state. In accordance with the constitutional provision, Washington has enacted a drastic statute providing for the escheat of all lands transferred to aliens. Remington Code of 1923, volume 3, section 1058 et seq. See also chapter 70 of the laws of Washington for 1923.

The Oregon legislature of 1923 adopted a similar statute, chapter 98 of the laws of Oregon for 1923, page 145 of the Session Laws.

It is not only important to the Armenian race that this case shall ultimately be decided in such a manner as to assure their eligibility to American citizenship, but the decision in the District Court is a matter of great importance to them. An adverse decision of this case by this court will cloud land titles, interfere with real estate transactions, probably interrupt the exercise of the right of suffrage, prevent the further admission of Armenians to the bar in many jurisdictions, and subject the race to miscellaneous hardship and inconvenience far reaching in character.

Those representing the defendant in this case

are within their rights in urging the court not to render a decision which will have these effects unless the law clearly and beyond all peradventure demands such a decision from the court.

THE AUTHORITIES

The decree passed by this court admitting the defendant to citizenship was a determination of the question involved in this case, and we submit that the court should adhere to the decision so rendered, unless required to depart from it by the duty of following some binding decision or some statute clearly applicable. The defendant was admitted to citizenship on the 17th of May, 1923. Mr. Justice Sutherland's opinion in United States v. Thind was passed on the 19th of February, 1923, and this court was advised of the decision at the time when the decree of naturalization was passed. No act of Congress subsequent to May 17, 1923, is relevant to the question submitted herein.

IN RE HALLADJIAN

The above case decided by Judge Lowell sitting in the Circuit Court for Massachusetts on the 24th of December, 1909, and reported in 174 Fed. 834, determines the precise question with which we are concerned in this case. The entire opinion is interesting, and the court will doubtless read it before determining the case at bar. It is conceded by the defendant that a part of the reasoning upon which Judge Lowell based his decision is no longer to be followed because of the subsequent

decision in United States v. Thind, but the conclusions of Judge Lowell were based in part on a determination of the very questions which Mr. Justice Sutherland holds to be controlling and determinative in his opinion in United States v. Thind. We quote the following language from page 838 of 174 Federal:

> "The United States contends, further, that there is an Asiatic or yellow race, to which belong substantially all Asiatics, including these petitioners. No authority to support this theory is cited by reference to history, to ethnological theory, either ancient or modern, or to physical appearance. In their appearance, some or all of the petitioners would pass undistinguished in western Europe. They are no darker than many western Europeans, and they resemble the Chinese in feature no more than they resemble the American aborigines."

Also the following from page 840:

> "If, however, notwithstanding these considerations, we are compelled by statute to classify for the purposes of American naturalization every man livingon the earth as a member of some one race, we shall find that the Armenians have always been classified in the white or Caucasian race, and not in the yellow or Mongolian. Ethnological theories have varied greatly and at short intervals. Color, language, the shape of the head, the kind of hair, and other characteristics have been made the basis of one classification or another. Their tradition makes Armenians descend from Japhet; their language is classed as Indo-European. This court cannot be expected in any reasonable time to get a thorough education in ethnology, especially in modern ethnological theories. Its information is got at second or third hand; but a casual examination of books on ethnology, standing together on the shelves of a large library, old and new, weighty and unimportant, shows complete agreement in the proposition that Armenians are to be classed as white or Caucasian, rather than as Mongolian or yellow. Figuier, Brace, Keane, Pickering, Brinton, Hutchinson, Jeffries, Pritchett, and Retzel, authors taken quite at random, all reach the same conclusion. This is true of Blumenbach, an influential author of the eighteenth century, and of Quatrefages and Huxley about a century later. Cuvier expressly included Armenians, as well as Hindoos, in the Caucasian race, as distinguished from the Mongolian. With this agree modern travelers, such as Bryce and W. H. Ward."

Also the following from page 841:

> "If the court should inquire, as the United States suggests concerning Hebrews, May Armenians 'become westernized and readily adaptable to European standards?' the answer is, Yes. They have dealt in business with Greeks, Slavs, and Hebrews, as well as with Turks, they have sought a modern education at Robert College and other American schools in the East, and they have pursued by immigration the civilization of Great Britain and of the United States.
>
> "For all these reasons the Armenians are not to be excluded from naturalization by reason of their race. So far as the test by race is applicable, they are to be classed as Caucasians or white."

A decision so squarely in point, rendered by a jurist of high standing after such careful consideration of the entire question involved, should be followed unless it is the duty of the court to depart from its conclusions in order to follow a binding decision of the Federal Supreme Court, or the Court of Appeals for the Ninth District, or to carry into effect some statute enacted since December 24, 1909.

There is no such statute, and the only two decisions which will be relied upon by plaintiff as calling upon the court to announce a different conclusion from that rendered by Judge Lowell, are the cases already referred to: Ozawa v. United States, 67 L. Ed. 199, and United States v. Thind, 43 Sup. Ct. Rep. 338.

OZAWA V. UNITED STATES, 67 L. Ed. 199.

The above case involved the right of a Japanese to naturalization. The court held that he was not eligible to naturalization. We have already quoted from one part of the opinion which we regard as relevant to the question before the court for determination in this case,

and we find one other part of the opinion which must be answered. On page 209 67 L. Ed., Mr. Justice Sutherland says:

> "Beginning with the decision of Circuit Judge Sawyer, in Re Ah Yup (1878) 5 Sawy. 155, Fed. Cas. No. 104, the Federal and state courts, in an almost unbroken line, have held that the words 'white person' were meant to indicate only a person of what is popularly known as the Caucasian race. Among these decisions, see, for example: Re Camille, 6 Sawy. 541, 6 Fed. 256; Re Saito, 62 Fed. 126; Re Hian, 6 Utah, 259, 4 L. R. A. 726, 21 Pac. 993; Re Kumagai, 163 Fed. 922; Re Yamashita, 30 Wash. 234, 237, 59 L. R. A. 671, 94 Am. St. Rep. 860, 70 Pac. 482; Re Ellis, 179 Fed. 1002; Re Mozumdar, 207 Fed. 115, 117; Re Singh, 257 Fed. 209, 211, 212; and Re Charr, 273 Fed. 207. With the conclusion reached in these several decisions, we see no reason to differ. Moreover, that conclusion has becomeso well established by judicial and executive concurrence and legislative acquiescence that we should not, at this late day, feel at liberty to disturb it, in the absence of reasons far more cogent than any that have been suggested. United States v. Midwest Oil Co. 236 U. S. 459, 472, 59 L. ed. 673, 680, 35 Sup. Ct. Rep. 309."

The court of last resort is committed to the doctrine that only persons of the Aryan, Caucasian, or Indo-European races, and Negroes are eligible to American citizenship. It therefore becomes necessary for us to satisfy the court that the Armenians are a Caucasian or Aryan people. For this purpose we have taken the depositions of three of the most eminent ethnic scholars to be found in the world: Professor Paul Rohrbach, Roland B. Dixon, and Franz Boas. The depositions of these witnesses, together with the deposition of Dr. James L. Barton, have been printed for purposes of convenience, and we will refer to the printed volume rather than to the manuscript on file. All of these witnesses testify that the Armenians are an Aryan race and that they are allied with

the Alpine stock. Modern ethnologists divide the inhabitants of Europe into three races: Nordic, Alpine, and Mediterranean. The views of Dr. Rohrbach are found on pages 9 and 10 of the printed volume; those of Dr. Dixon on pages 23 and 24, and of Professor Boas on pages 71, 77, 78, 86, 89, and 94. On page 29 of the printed pamphlet, Professor Dixon quotes from Von Luschan who, the testimony shows, was one of the two or three greatest anthropologists of Europe. On page 30, he quotes from Professor A. C. Haddon, professor of Anthropology at Cambridge University in England. On page 81 Professor Boas quotes from Von Luschan, on page 84 from Friedrich Braun, on page 85 from Guiseppi Sergi. On pages 86 to 87, Professor Boas says:

> "Q. What is the concurrent opinion of modern Anthropologists of authority in America and in Europe as to the proper race grouping of the Armenian people who inhabit Asia Minor? A. I think that before, --undoubtedly to the Alpine branch of the European race, and more particularly with the Dinaric group.
> Q. And are they always grouped as part of what is known familiarly as the 'white race'? A. Surely. The Alpines are clearly a part of the white race.
> Q. Is it the fact that many of the modern writers, beginning with Blumenbach down, have invariably classified the Armenians with the white or Caucasian race? A. I do not know of any case where they have been classified otherwise. I might refer you perhaps again to an English writer, Duckworth, who speaks about a variation of the form of the nose in the white race, and who speaks incidentally also of the Armenians and some other European type, and just in the same way as Braun; he includes the Armenians in the white race as a self-evident fact."

In his opinion in United States v. Thind, Mr. Justice Sutherland cites as an authority Senate Document No. 662 of the Third Session of the Sixty-first Congress in a report of the Immigration Commission entitled "Dictionary

of Races or Peoples." The article on the Armenian race in this publication is as follows:

> "The Aryan race or people of Armenia, in Asiatic Turkey. Linguistically the Armenians are more nearly related to the Aryans of Europe than to their Asiatic neighbors, the Syrians, Arabs, and Hebrews (Semites), and especially the Turks and Kurds, the inveterate enemies of the Armenians. In language the latter are more European than are the Magyars, the Finns, or the Basques of Europe. The nearest relatives of the Armenic tongue are the other members of the Indo-Iranic group of Aryan languages, which includes the Persian, the Hindi, and the Gypsy. In religion the Armenians differ from all the above-named peoples excepting the Syrians in that they are Christian. They boast a church as old as that of Rome. To add to the ethnical confusion they are related physically to the Turks, although they exceed these, as they do almost all peoples, in the remarkable shortness and height of their heads. The flattening of the back of the head is noticeable at once in most Armenians. It can only be compared to the flattened occiput of the Malay, often noticed in Filipinos. (See articles on the above races.)
>
> "Only a fraction of the Armenians are found in their own country, Armenia; perhaps 650,000 out of a total variously estimated at from 3,000,000 to 5,000,000. Over 1,000,000 live in Russia, in the Transcaucasus (only 30,000 in Ciscaucasia); 400,000 in European Turkey, 100,000 in Persia; about 15,000 in or near Hungary; and 6,000 in India and Africa. Perhaps half their number still live in different parts of the Turkish dominions. Large numbers of those who have migrated did so because of the persecutions of the Turks and Kurds directed against them. Their rate of immigration is very low, about 1 per 2,000 of population. They stand among the smallest in number of our immigrant races or peoples, only 2,644 arriving in 1907, and 26,498 during the 12 years 1899-1910, but form noticeable colonies, especially in New York and Massachusetts. These two States receive nearly two-thirds of their number."

LANGUAGE.

When the writer was in college, the language of a people was looked to as the best evidence of its origin. There has been a change in the point of view of the experts, and it must, of course, be conceded that there are many cases where the language spoken by a race affords no

clue to its ethnic origin. The familiar example is that of the American Negro. For whatever bearing it may have upon the question at issue here, it is worth while to emphasize the fact that the Armenian language is an Indo-European language closely related to the various languages spoken in Europe and America. Rohrbach 10, Dixon 24, Bons 80.

We will offer evidence to show the similarity of a number of Armenian words with the corresponding words in the English language.

When the testimony is all in, we think there can be no doubt in the mind of the court that the language quoted above from Mr. Justice Sutherland's opinion in Ozawa v. United States does not require the court to pass a decree for plaintiff in the case at bar. The Armenians are an Aryan or Caucasian people.

ACT OF FEBRUARY 5, 1917.

Mr. Justice Sutherland concludes his opinion in United States v. Thind with the following language:

> "It is not without significance in this connection that Congress, by the Act of February 5, 1917, 39 Stat. 874, c. 29 Sec. 3 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, Sec. 4289½b), 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."

The portion of the statute to which the learned Justice referred is as follows:

> "Unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or dependency situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north."

The fiftieth meridian of longitude east from Greenwich runs near Teheran and Ispahan in Persia, and all of Armenia lies west of it. We may say parenthetically that Sivas, where the defendant was born, is about two and one-half meridians of longitude east of Jerusalem. The prohibition against citizenship which the court draws from the act of 1917 has no relevancy to the case at bar.

CONGRESSIONAL DEBATES

We think that the chief reliance of plaintiff in the case at bar will be found in the following language of Mr. Justice Sutherland in United States v. Thind, 43 Supreme Ct. Rep. 341:

> "What, if any, people of primarily Asiatic stock come within the words of the section we do not deem it necessary now to decide. There is much in the origin and historic development of the statute to suggest that no Asiatic whatever was included. The debates in Congress during the consideration of the subject in 1870 and 1875, are persuasively of this character. In 1873, for example, the words

> 'free white persons' were unintentionally omitted from the compilation of the Revised Statutes. This omission was supplied in 1875 by the act to correct errors and supply omissions. 18 Stat. c. 80, p. 318. When this act was under consideration by Congress efforts were made to strike out the words quoted, and it was insisted upon the one hand and conceded upon the other, that the effect of their retention was to exclude Asiatics generally from citizenship. While what was said upon that occasion, to be sure, furnishes no basis for judicial construction of the statute, it is, nevertheless, an important historic incident, which may not be altogether ignored in the search for the true meaning of words which are themselves historic."

It is probably sufficient for our purpose to call the court's attention to the words which immediately follow those quoted above, and which plainly show that the learned Justice did not intend to exclude from citizenship all natives of the continent of Asia. The two sentences which follow those above quoted are as follows:

> "That question, however, may well be left for final determination until the details have been more completely disclosed by the consideration of particular cases, as they from time to time arise. The words of the statute, it must be conceded, do not readily yield to exact interpretation, and it is probably better to leave them as they are than to risk undue extension or undue limitation of their meaning by any general paraphrase at this time."

We have, however, carefully read the Congressional debates to which Mr. Justice Sutherland refers. It must be borne in mind that in his opinion in United States v. Thind, the learned Justice was considering the eligibility of the Hindu race to American citizenship. It may be possible to draw from the Congressional debates an inference that it was the intention of Congress in 1870 and 1875 to exclude from citizenship residents of India because India adjoins China, but the race almost wholly referred to

in these debates is the Chinese race. The debates will be found in extenso in the Congressional record for the Second Session of the Forty-first Congress, Part 6, pages 5121 to 5125, 5150 to 5177. Also in the Congressional Record for the Second Session of the Forty-third Congress, Volume 3, Part 2, pages 1081 to 1082, and 1236 to 1258.

Prior to 1870 there had been extensive naturalization frauds in the City of New York. For the purpose of preventing a repetition of these frauds, the House had enacted a statute modifying the methods of naturalising foreigners and throwing restrictions about the procedure. The bill passed by the House contained no provision modifying the statutes in force in 1870 with reference to eligibility to American citizenship. When the act came before the Senate, Charles Sumner endeavored to add an amendment to it which would strike out the word "white" from the statute defining the eligibility of aliens to American citizenship. George H. Williams, then senator from Oregon, moved an amendment to the effect that the statute should not be interpreted in such a manner as to hold a native of China eligible to citizenship. On the Fourth of July, 1870, there was an extensive debate based upon these two propositions. Senator Stewart of Nevada on page 5152 of the Congressional Record uses the word "Asiatics" but the context shows clearly that he was speaking and thinking of China, although possibly he may have considered the Japanese as well. He strongly supported the amendment proposed by Senator Williams and his argument is based to a considerable extent on the fact

that the Chinese were a pagan people and unable to understand our form of government. It is inconceivable to the writer that any one could read the speech of Senator Stewart and draw therefrom an inference that it was his intention or desire to exclude from eligibility to American citizenship the Christian people in whose behalf we are defending this case.

Senator John Sherman suggested as an objection to Sumner's amendment that it involved extending citizenship to all of the pagan races of the world. Throughout the debate the fact that the Chinese were a pagan people was a point emphasized again and again by the different senators who took part in the discussion. On page 5154 of the Congressional Record, Senator Lyman Trumbull of Illinois advocated extending citizenship to the Chinese. On pages 5155 to 5156 Senator Williams strongly argues in favor of his amendment. He contends that under the declaration of independence "Chinese coolies, Hottentots, South African Bushmen and Digger Indians, heathen, pagan and cannibal" have no right to participate in this government. His ultimate contention is that Congress has the right to define those eligible to citizenship. On page 5156, Senator Sumner argues that the principles of the declaration of independence forbid discrimination based on color. Senator Williams replies arguing that the power of Congress is plenary and the Chinese should not be admitted to citizenship. He says:

> "Elements that will not coalesce with the other elements of our population and form together a national entity are dangerous to the peace and

integrity of this nation. Mongolians, no matter how long they may stay in the United States, will never lose their identity as a peculiar and separate people. They never will amalgamate with persons of European descent."

Senator Williams emphasizes the inability of the Chinese to understand the obligations of an oath. He also speaks of their paganism. On pages 5158 to 5159 Senator Carl Schurz of Missouri argues that Chinamen who come to this country with intent to return to China should not be naturalized, but that the privilege should be extended to Chinamen who intend to remain. He favors the Sumner amendment. On pages 5160 to 5161 Senator Matt Carpenter of Wisconsin argues that men who support Negro suffrage can not consistently oppose extending the right of suffrage to the Chinese. On page 5162 Senator Wilson of Massachusetts expresses his belief in the wisdom of extending the suffrage to Chinamen. He argues, however, that the amendments of Senator Sumner and Senator Williams are not germane to the act under consideration and that for that reason he is voting against them. On page 5164 Senator Lyman Trumbull disputes the relevancy of the suggestion that the Chinese are pagan. He calls attention to the Jews who are received into American citizenship. What Senator Trumbull has to say on this subject is based on the recognition by everybody that Jews are eligible to American citizenship. This portion of the debate is extremely significant as showing that there was no thought in Congress at the time in question of excluding from American citizenship all of those born in Asia or whose ancestral home is on that continent. Senator Trumbull on pages 5164 to

5165 argues that it is the duty of Congress to pass a naturalization law uniform in its application to all foreigners. On pages 5165 to 5166 he contends that the effect of the Williams amendment is to admit to naturalization all foreigners except Chinamen. He praises the civilization of China. On page 5168 Senator Pomeroy argues that Chinamen should be admitted to citizenship. On page 5175 Senator Oliver P. Morton of Indiana contends that naturalization is a question of governmental policy and not one of right in the alien. Senator Howe of Wisconsin offers an amendment excluding from citizenship all persons born in a pagan country unless they abjure paganism. On page 5176 of the record, there is found a vote on the Sumner amendment. It was beaten by thirty to fourteen. The Williams amendment was withdrawn. Senator Warner then moved:

> "That the naturalisation laws are hereby extended to aliens of African nativity and to persons of African descent."

This amendment carried by a vote of twenty-one to twenty. On page 5177 Senator Sumner renewed his amendment to strike out the word "white" and there was another vote taken, the amendment being beaten by twenty-six to twelve. Senator Trumbull moved to amend by expressly including as eligible to American citizenship "persons born in the Chinese Empire." This amendment was beaten by a vote of thirty-one to nine.

The foregoing is an abstract of everything found in the Congressional Record for 1870 which is believed by the writer of this brief to be relevant in any way to the question under consideration.

On the 9th day of February, 1875, there was a de-

bate in the House which then had under consideration a bill to correct mistakes made in the drafting of the Revised Statutes. Mr. Poland of Vermont called attention to the mistake which is referred to in Mr. Justice Sutherland's opinion and by reason of which the words "free white persons" had been omitted from the naturalization statute. He offered an amendment restoring these words to the statute. The discussion is found on pages 1081 to 1082, Volume 3, Part 2, of the Congressional Record for the Second Session of the Forty-third Congress. Mr. Willard of Vermont objected to the amendment proposed by Mr. Poland. He thought Chinese should be made eligible to citizenship. Mr. Page of California argued that the Burlingame treaty reserved to the United States the right to exclude Chinese from citizenship. On page 1082 of the Congressional Record he said:

> "When this question was discussed in the Senate some three or four years ago upon a motion of Mr. Sumner to strike out the word 'white' from the naturalization laws, the Pacific Coast senators at that time prevailed upon him to consent to amend the naturalization laws so as to include persons of African descent which would exclude Asiatics."

The context shows that Mr. Page was referring only to the Chinese. He speaks of them in the sentences preceding that quoted and also in the sentence which follows, calling attention to the fact that there were 80,000 Chinese then resident in California. Mr. Willard withdrew his objection which had taken the form of an amendment to Mr. Poland's motion. Mr. Willard took the view which was pressed upon him by other members of the House that Congress was engaged merely in codifying the laws and particularly in correcting mistakes which had been made

therein and that matters of substance were irrelevant to the subject under consideration.

The statute which finally resulted from the debate of July 4, 1870 was the Act of July 14, 1870, and the statute which resulted from the debate of February 9, 1875, was the Act of February 18, 1875. The discussion in the Senate in consideration of this latter statute had to do wholly with questions of verbiage and is not helpful to the consideration of the matters now before the court. The Senate debate is found on pages 1236 to 1238 of Volume 3, Part 2, of the Congressional Record for the Second Session of the Forty-third Congress.

Whatever may be said of the above discussion with reference to the light it throws on the intention of Congress to admit or exclude natives of India from citizenship, we confidently maintain that it shows no intention whatever to exclude the Armenians, a Christian people living in Asia Minor. In every case where the word "Asiatics" is used in the entire debate, the context shows that it has reference to the Chinese and possibly some reference also to the Japanese and other pagan peoples concededly incapable of understanding our form of government and assimileting with our people.

HISTORIC ORIGIN

We have sufficiently discussed our contention that the prohibitions against citizenship recognized by the recent decisions of the Federal Supreme Court are inapplicable to Armenians.

We think it well to emphasize the fact that the Armenians are not a race of Asiatic origin. Well authenticated history is to the effect that they originated in Thessaly which was in the northerly Balkan country and emigrated therefrom about the seventh century B. C. The following language is found in Book 7 of Herodotus, chapter 73, Rawlinson's translation third edition, volume 4, page 67:

> "The dress of the Phrygians closely resembled the Paphlagonian, only in a very few points differing from it. According to the Macedonian account, the Phrygians, during the time that they had their abode in Europe and dwelt with them in Macedonia, bore the name of Brigians; but on their removal to Asia they changed their designation at the same time with their dwelling place.
>
> "The Armenians, who are Phrygian colonists, were armed in the Phrygian fashion. Both nations were under the command of Artochmes, who was married to one of the daughters of Darius."

Francois Lenormant in his essay written in French and which was translated for us by the French Consul in the City of Portland, says:

> "As for the Armenians properly speaking, it was a general tradition of classic antiquity that they were issues of Phrygia and belonged to the same race as the Phrygians (Quoting Herodotus VII, p. 73). The most serious testimony affirms that the two people spoke idioms extremely similar. (Quote Greek) and, in fact, the Phrygian words coming down to us, which are manifestly Aryan and tend on certain sides to Zend (Quoting authorities) are bound very closely to those of the Aryan vocabulary. (See authority).
>
> "The Phrygian race is extended into the entire north of Asia Minor; it occupies, apart from Phrygia properly speaking, the Mysie and the Troade, countries which constituted that which was called Little Phrygia (Strab 12, p. 571) and it advanced even up into the Lydie (Strab. 12, p. 542, 571). We know that Galatia was only a dismemberment of Phrygie, and took its name from the Gauls who came and affixed themselves there in the III century before our era. (Strab. 12, p. 565) Thus the nation of the Phrygians

extended from the shores of the Hellespont and from the Aegean Sea as far as the Halys (References). The Mariandynians and the Cauconos were attached to the same family. (Strab. 12, p. 542). The Bithynie was also, in the beginning, a dependence of Phrygia. (Stab. 12, p. 565) The true national name of this race was Bryges (Herodotus VII, 73 Stab. VII, p. 295; X. p. 471), a name which presents a remarkable analogy with that of Bhrigu of Indian tradition. (See Lanbloix, Mem. of l'Acad. des Inscr. nouv. t XIX, 2nd part, p. 339) But one tradition, no less contestable, is that which described the original Armenians of Phrygia, making the Phrygians come from Thrace into Asia Minor, crossing the Bhosporous (Herodotus VII, 73 Ref.), a migration, anterior by several centuries to the war of Troy, since Homer represents the Phrygians as one of the most numerous peoples of Asia Minor at the epoch of that war. (Reference), and since they made of Pelops a Phrygian who came from Asia Minor into Greece (Reference from Herodotus VII, 8 & 11). At the time of Herodotus (VI, 45), there was still in Thrace a people of Bryges. The same fact of having arrived from Thrace in Asia Minor is attested by the Bithynians (Reference Herodotus I, 38), whose relationship to the Phrygians we have just noted. It seems then to result from such an assemblage of traditions that this group of people coming from the common cradle of the Aryan race, instead of operating its migration directly through Atropatene and Armenia, would have been of those who surround the Pont-Euxin, would have descended into Thrace and from there, turning again toward the east, would have passed into Asia Minor. Traditions attributing to them this itinerary are confirmed by the facts which we have just established for the ethnography of Armenia until the VII century before our era, since it results from these facts that the Armenians, properly speaking, instead of representing the antique stop of a part of the nation in one of the stages of its route, actually come from Phrygia, and advanced gradually from the west to the east, at an epoch relatively near us, in the group of Armenian mountains."

Professor Dixon on page 28 quotes from D. G. Brinton with reference to race qualification:

> "Its latest contingent, the Armenian people, was a branch of the Thracian Briges and occupied their territory in Asia Minor about 700 B. C."

On the same page he quotes from H. F. B. Lynch: "All the evidence points to the conclusion that they (the Armenians) entered their historical seats from the west, as a branch

of a considerable immigration of Indo-European peoples crossing the straits from Europe into Asia Minor and perhaps originally coming from homes in the steppes north of the Black Sea."

Professor Boas says on page 76: "The evidence is so overwhelming that nobody doubts any more their early migration from Thrace across the Hellespont into Asia Minor."

On page 79, Professor Boas quotes from De Morgan's work:

> "The Armenians were armed like the Phrygians of whom they were a colony. . . . . According to the Macedonians, the Phrygians called themselves Briges so long as they remained in Europe, but after passing into Asia changed their name in changing their country and took the name Phrygians. In this case as in all others in which Herodotus speaks of traditions, his statements are not to be doubted. . . . It follows from the documents in our possession that the movement of the Armenians from Cappadocia towards the plateau of Erzeroum took place in the 8-7th century B. C., and at least 600 years before our era they occupied several districts in the neighborhood of Arrarat and Lake Van."

ARMENIANS WHITE PERSONS--ASSIMILABILITY

Mr. Justice Sutherland announces his conclusions in United States v. Thind in the following language:

> "What we now hold is that the words 'free white persons' are words of common speech, to be interpreted in accordance with the understanding of the common man, synonymous with the word 'Caucasian' only as that word is popularly understood. As so understood and used, whatever may be the speculations of the ethnologist, it does not include the body of people to whom the appellee belongs. It is a matter of familiar observation and knowledge that the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white. The children of English, French,

> German, Italian, Scandinavian, and other European parentage quickly merge into the mass of our population and lose the distinctive hallmarks of their European origin. On the other hand, it can not be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry. It is very far from our thought to suggest the slightest question of racial superiority or inferiority. What we suggest is merely racial difference, and it is of such character and extent that the great body of our people instinctively recognize it and reject the thought of assimilation."

The ultimate question here for determination, therefore, is whether Armenians are white persons as the words are understood by the man on the street, whether they assimilate readily with the native American population and with other white peoples generally. The depositions which we have already taken throw considerable light on this subject. Professor Paul Rohrbach is probably as well qualified to enlighten the court on that subject as any man in the world. He states that it is easier for him to name the countries in which he has not been than the countries which he has visited. A world-wide traveler, he has observed Armenians in their contact with other peoples in many countries. He says page 5:

> "Q. I will ask you whether the Armenians in the different countries where you have found them intermarry with the white people? A. Oh, yes, everywhere.
> Q. What have you observed particularly with reference to their intermarriage with Russians?
> A. There are thousands and thousands of intermarriages. There is not any difference in feeling for Armenian or Russian people.
> Q. No prejudice one way or the other? A. No, absolutely no prejudice."

Also page 8:

> "Q. Have you ever known a case where an Armenian has been discriminated against on account of his color, in the matter of accommodation at hotels?
> A. No, no, no.

"Q Or on sleeping cars? A. No.
Q. Or in any other place of entertainment or amusement? A. No.
Q. And what is the fact as to whether they mingle with white people all over the world? A. Yes."

Also pages 10 and 11:

"Q. Dr. Rohrbach, in the light of your study of the subject, and of your contact with the Armenian people, wherever you have met them throughout the world, state whether or not they are white persons in your opinion? A. White.
Q. What is that? A. Absolutely white.
Q. Do you know of any part of the world where they are regarded as other than white persons? A. No. For instance, personally I would marry--I wouldn't hesitate to marry an Armenian girl, suppose she were willing to take me."

Dr. James L. Barton, Foreign Secretary of the American Board of Foreign Missions and Chairman of the Board of Directors of the Near East Relief, is also a gentleman abundantly qualified to advise the court on this subject. He says pages 52 to 53:

"Q. Have you had occasion to observe and study the social standing and assimilation of Armenians in other countries than Armenia? A. I have, very widely, in Europe, Paris, London, England, Italy, and of course, throughout the United States I have been in very close relations with them since I came back in 1892, and have always kept in close relation with Armenians; and I have at the present time very close relations with them.
Q. Have you observed their assimilability or non-assimilability with other white peoples, and if so, to what extent and with what result? A. Yes. I have had much experience in that line, both in Turkey and in this country, with regard to their assimilability with Europeans. In this country they mix very freely with our people, so much so that our missionaries often complain that Armenians come to America to study for positions in American colleges in Turkey, and marry American wives, and are then lost to the work over there; that is, they marry American wives and their wives do not wish to go back to Turkey, and they are lost to our missionary work. I have been a guest in many an Armenian home in American where Armenians had American wives, and I have been in England where they have English wives.
Q. And is the same true of France and Italy?
A. I have not come in contact with them socially in France and Italy. I have come in contact with

them in other relations, but I do not know intimately any Armenian in France who has married a French wife. I have heard there are many, but I cannot say myself from personal knowledge. I do know of them in America to my personal knowledge, in large numbers. I have been a guest in many of their homes.
Q. Could you give us any details as to intermarriage in America, which would aid us in forming a judgment of individual Armenians. A. Yes." . . . .

"A. I know of ten or fifteen in Boston who have married American wives. I have been thinking rapidly over different individuals. I have been a guest at many of their homes, and we class them with Americans without any distinction. Their relations and affiliations in American colleges, in American churches and in American clubs and fraternal societies here are always upon the basis of social equality. They are always treated as whites, as distinguished from colored people or Japanese or Chinese or Hindoos. Many Armenians are pastors of our churches, where there are no Armenians in the congregation, and they are genuine American churches. One of these Armenians has recently died in Boston, who was an old friend that I knew, and they had a large public funeral service. For thirty years he was Methodist pastor of large churches in Boston and immediate vicinity. For years he was pastor of one of the old historic churches, the Methodist Temple, in Boston. He had an American wife.
Q. And did the Methodist Temple have an Armenian congregation? A. I do not suppose they had any Armenians; certainly none that I know of. It was essentially an American Church and an American congregation. He never had a pastorate at an Armenian church.
Q. And his ministrations as pastor extended to your knowledge, over a period of thirty years? A. To my knowledge; I have known him for that time.
Q. And always as a pastor of American Methodist churches, which were not Armenian in any sense?
A. No. Not an Armenian church in any sense."

Professor Boas gives us some interesting facts bearing on the assimilation of Armenians with French and Poles, pages 82 to 84:

"Q. Will you state the substance of what Mr. Mathorez says in the work that you have just referred to? A. He studied the general migration of Armenians into France from the tenth century up to the present time, and he discusses particularly the fate of the colony in Marseilles, where, by the way, there is still a street called the Rue des Armeniens, showing that at

one time there must have been a great many there. On page 86 he states that the most important contribution of the Armenians to French economic life is the introduction of madder by Joannes Althen (Artin). A statue of Althen was erected in Avignon in 1846. During the last two centuries the immigration of Armenians has been considerable. In concluding his remarks, the author says:

> 'As other foreigners who came to France under the ancien regime, the Armenians saw themselves devoured by the French nation. That these Catholic from the East have not played an important part in our national history and demography is probably due to the fact that their assimilation to France has been very rapid. They were too few to marry among themselves, and they have immediately upon their arrival submerged themselves in the great French family.'

Would you like me to make a remark about a similar question of immigration in Poland?
Q. I should like it very much. A. There has been a strong immigration of Armenians into Poland from the eleventh to the fourteenth century. At one time they had very important buildings, a church and a court building in Lemberg. We have of course no statistics of the numbers that came in, but a very conservative estimate would be that there must have been over 100,000. At the present time, according to the Austrian census of 1910, there cannot be more than 5,000 Armenians in Poland or Galicia, which of course would mean that the remainder of their descendants had completely amalgamated with the people."

This memorandum is written in advance of the trial of the case, but we are confident that when all the testimony is in, the court will find that the testimony is overwhelming as to the assimilability of the Armenian race with other white people, and particularly with native American stock. We will be able to show particularly that the defendant and his family have mingled with the people of Oregon for many years; that his daughters have been educated in the public schools and have taken part in the social life of the city and that in all their lives the color line has never been drawn against them or any of them, and that they have gone through life up to the present

time treated everywhere and by everybody as white people. This testimony, we contend, brings us clearly within the rule announced by Mr. Justice Sutherland and entitles us to a decree.

CONSTRUCTION OF STATUTE

If any other reason is necessary to be given to support our contentions in this case, it is found in the fact that the naturalization statute has been construed by the executive branch of the government and by the courts as authorizing the naturalization of Armenians. The census of 1920 shows that 10,574 natives of Armenia, then living in the United States, had been naturalized. This is the only suit, as we understand the facts, which has ever been brought by the government in which a different contention has been advanced. In 2 Lewis Sutherland Statutory Construction, Section 474, page 889, it is said:

> "The practical construction given to a doubtful statute by the department or officers whose duty it is to carry it into execution is entitled to great weight and will not be disregarded or overturned except for cogent reasons, and unless it is clear that such construction is erroneous."

Edwards' Lessee v. Darby, 12 Wheaton 206, 210, 6 L. ed. 603, 604 to 605. The court had before it in this case the construction of an act of the legislature of North Carolina. The contention was advanced that the commissioners of that state had no authority to survey certain reservations, al-

though they had assumed this authority. The court said:

> "In the construction of a doubtful and ambiguous law, the cotemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect."

United States v. The State Bank of North Carolina, 6 Peters 29, 39; 8 L. ed. 308, 312. This case involved the construction of a statute giving the United States priority over other claimants in the distribution of an insolvent estate. The court said at page 312 of Lawyers' edition:

> "It is not unimportant to state that the construction which we have given to the terms of the act, is that which is understood to have been practically acted upon by the government as well as by individuals, ever since its enactment . . . . A practice so long and so general, would of itself furnish strong grounds for a liberal construction, and could not now be disturbed without introducing a train of serious mischiefs. We think the practice was founded in the true exposition of the terms and intent of the act; but if it were susceptible of some doubt, so long an acquiescence in it would justify us in yielding to it as a safe and reasonable exposition."

The Union Insurance Company v. John Blair Hoge, 21 How. 35, 16 L. ed. 61,68. This case holds that in considering the charter of an insurance company, the fact that state officers charged with the duty of supervising its organization have construed the charter as being in accordance with the state law under which it is formed is entitled to great weight and should perhaps be regarded as decisive.

United States v. Moore, 95 U. S. 760; 24 L. ed. 588, 589. This case involved the construction of a statute fixing the pay of surgeons in the navy. The court said:

"The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons."

CONCLUSION.

On the whole case we earnestly submit that there is no reason why the defendant should be deprived of his American citizenship. that neither the statute, the decisions, nor public policy call for the ruling asked by plaintiff in this case, a ruling which would be disastrous and destructive in the highest degree, not only to the defendant, but to thousands of men of the same nativity and origin, and which could be of practical benefit to no one.

If it is desired to check the immigration of Armenians, the power of Congress to act in this behalf is unquestioned and plenary. We think that the court's sense of justice will protect us against a decision which would do untold damage to men of Armenian nativity now in the United States.

Respectfully submitted,

McCamant & Thompson

Solicitors for Defendant

William D. Guthrie

Of Counsel