

1 IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

3 THE UNITED STATES OF AMERICA )  
4 Plaintiff )  
5 vs. )  
6 AKHAY KUMAR MOZUMDAR )  
7 Defendant )

IN EQUITY  
No. H 5 J

MOTION TO DISMISS PETITION

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9 And now comes Akhay Kumar Mozumdar, defendant in the  
10 above cause, and moves the Court to dismiss the petition filed in  
11 this cause, because said petition does not state any matter of  
12 equity entitling plaintiff to the relief prayed for, nor are the  
13 facts as stated sufficient to entitle plaintiff to any relief  
14 against this defendant.

15 Wherefore defendant prays the judgment of this Court  
16 whether he shall further answer, and that he be dismissed with  
17 his costs.

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Solicitor for Defendant

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21 POINTS AND AUTHORITIES:

22 I. Facts alleged do not support charge of illegality:

23 United States v. Rockteschell, (C.C.A., 9th Circuit)  
24 125 C.C.A. 532, 535, 536, 208 Fed.534;

25 Tiedt v. Carstensen, 61 Iowa 334, 16 N.W.214;

26 United States v. Luria, 184 Fed.643, 646, 647;

27 United States v. Nechman, 183 Fed.788, 790;

28 Johannessen v. United States, 225 U.S. 227, 242, 32  
29 Sup.Ct.613, 56 L.Ed.1066;

United States v. Lenore, 207 Fed.865-871.

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31 II. Citizenship, once bestowed upon proceedings in the  
32 federal courts, should not be lightly taken away:

1 United States v. Woerndle, (C.C.A 9th Circuit) 288  
2 Fed.47.

3 United States v. Sharrock, 276 Fed.30, 32.

4 III. The true rule is to give a change of judicial construc-  
5 tion in respect to a statute the same operation in existing rights  
6 that would be given to a legislative amendment; that is to say,  
7 make it prospective but not retroactive:

8 Ohio Life Ins.Co. v. Debolt, 16 How.416, 432, 14 L.Ed.  
9 997;

10 Hardigree v. Mitchum, 51 Ala.151, 154;

11 Lyon v. Richmond, 2 Johns.Ch.59;

12 Louisiana v. Pilsbury, 105 U.S.278, 294, 26 L.Ed.1090;

13 Douglass v. Pike County, 101 U.S.677, 25 L.Ed.968;

14 Center School Tp. v. State, 150 Ind.168, 173, 49 N.E.  
15 961;

16 Haskett v. Maxey, 134 Ind.182, 33 N.E.358, 19 L.R.A.379.

17 IV. A right, question or fact distinctly put in issue and  
18 directly determined by a court of competent jurisdiction, cannot  
19 be disputed in a subsequent suit between the same parties or their  
20 privies:

21 Southern Pacific R. Co. v. United States, 168 U.S.1,48,  
22 18 Sup.Ct.18, 27, 42 L.Ed.355;

23 Black on Judgments, Sec.500, 504.  
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