


1 IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
3 No. G 111 Equity

4 THE UNITED STATES OF AMERICA )  
5 Plaintiff )  
6 vs. ) MOTION TO DISMISS AND POINTS  
7 SAKHARAM GANESH PANDIT ) AND AUTHORITIES IN SUPPORT  
8 Defendant ) THEREOF

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

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

19  Defendant.

20 In Propria Persona

21  
22 POINTS AND AUTHORITIES

23 I

24 Sec. 15 of the Naturalisation Act of June 29, 1906,  
25 does not detract from or add to the rights and remedies of the  
26 government as they existed prior to the statute.

27 United States v. Albertini, 206 Fed.133.

28 Mr. Bonyng, 40 Congressional Record 7874.

29 II

30 The history of the legislation of June 29, 1906 dis-  
31 tinctly indicates that the mischievous practices which the stat-  
32 ute was intended to correct were: (1) FRAUD -- in the obtaining

1 of certificates of naturalization through the deception of the  
2 court by means of perjury and subornation of perjury; and (2)  
3 ILLEGALITY -- in the obtaining of false and spurious certificates  
4 without any judicial proceeding whatever or by a proceeding in  
5 court which was itself sham and spurious.

6 United States v. Lenore, 207 Fed.865, 870.

7 Dolan v. United States, 69 C.C.A.274, 133 Fed.440.

8 Report of Special Commission appointed by President  
9 Roosevelt, March 1, 1905, to inquire into natural-  
ization matters.

10 Report of Mr. Van Deuzen, Special Examiner appoint-  
11 ed by the Department of Justice in 1903 to inquire  
into naturalization frauds.

12 Report of the United States Attorney General for  
13 1903.

14 House Document, No.44 (Miscellaneous), 59th Con-  
gress, 1st Session.

15 Congressional Record, vol.40 part of page 7036.

16 III

17 The word "procure", as used in the pleadings in an  
18 action, implies an initial, active and wrongful effort.

19 Nash v. Douglass, 12 Abb.Prac.(N.S.) 187, 190.  
20 23 Neb.45.

21 2 Ben.(U.S.D.C.) 196.

22 Bouvier's Law Dictionary.

23 IV

24 There is an obvious distinction between "erroneous  
25 proceedings" which are termed "illegalities", and "erroneous  
26 decisions of fact" of which illegality can never be predicated.

27 Tiedt v. Carstensen et al, 61 Iowa 334, 116 N.W.  
28 214, and cases there cited.

29 V

30 If a court be clothed with authority to decide upon  
31 facts submitted to it, its decision cannot be "illegal", if the  
32 subject matter and parties are within its jurisdiction; for the

1 law entrusts the decision to the discretion of the tribunal.

2 United States v. Rodgers, 112 C.C.A.382, 191 Fed.970.

3 United States v. Mulvey, 232 Fed.513, 520 -- Dis-  
sentsing Opinion of Judge Hough.

4 United States v. Shanahan, 232 Fed.169.

5 United States v. Nechman, 183 Fed.788.

6 2 Corpus Juris 1126.

7 Tiedt v. Carstensen, 61 Iowa 334, 116 N.W.214.

8 United States v. Lenore, 207 Fed.865.

9 United States v. Luria, 184 Fed.643.

10 United States v. Rockteschell, 125 C.C.A.(Ninth  
11 Circuit) 532, 208 Fed.530.

#### 12 VI

13 The correctness of a finding of fact, so long as the  
14 same is within the bounds of reason involves no question of law,  
15 and cannot be reviewed or disturbed.

16 United States v. Rockteschell, 125 C.C.A.(Ninth  
17 Circuit) 532, 208 Fed.530, 536.

18 United States v. Rodgers, 112 C.C.A.382, 191 Fed.970.

19 United States v. Meyer, 170 Fed.983.

20 United States v. Shanahan, 232 Fed.169.

#### 21 VII

22 An action under Sec.15 of the Naturalization Act of June  
23 29, 1906, is in no sense an appeal from or review of the proceed-  
24 ings upon the petition for naturalization. It is an independent  
25 action based upon fraud or illegality in the procurement of the  
26 certificate. Therefore it cannot be permitted to perform the  
27 office of an appeal by retrying such questions as the propriety  
28 of the rulings of the naturalization court on the competency or  
29 weight of the evidence or the credibility of witnesses, even  
30 though such rulings may have been clearly erroneous.

31 United States v. Ness, 245 U.S.319, 325, 38 Sup.  
32 Ct.118, 62 L.Ed.319.

United States v. Milder, (C.C.A.), 284 Fed.571.

VIII

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2           Citizenship, once bestowed upon proceedings in court,  
3 should not be lightly taken away.

4                   United States v. Woerndle, (Circuit Court of Appeals,  
5                   Ninth Circuit) 288 Fed.47.

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

7                   United States v. Knight, 291 Fed.129, 134.  
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