



posed toward the principles and policies of this government. The courts can do no more than interpret the law. It is for the Congress to point the policy of the government, and if the word 'white' in its popular sense is of too broad a signification, as applied to persons deemed suitable to become citizens of the United States, the remedy is easily at hand by an amendment of the law."

If the matter rested here there would seem to be no doubt as to the right of the applicant to an order in his favor. It is suggested, however, that the Supreme Court in the Thind case, 261 U. S. 204, has laid down a rule which makes it impossible for the court to grant this application. In the Ozawa case the Court refers to the case of In re Mozumdar, 207 Fed. 115, and uses with reference to that and the other cases cited, the following language:

"With the conclusion reached in these several decisions, we see no reason to differ."

In the Mozumdar case the applicant came from the northern part of India and was a high-caste Hindue of full blood. Notwithstanding the language used in the Ozawa case, the Supreme Court in the Thind case held that a high-caste Hindu of full blood could not be admitted.

It is urged that as the Supreme Court in the Thind case withdrew its approval of the Mozumdar case we must extend this withdrawal of approval to the Ellis case also.

Attention is called to the following language on page 214 of the Thind case:

"What, if any, people of primarily Asiatic stock come within the words of this 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 1873, 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. C. 80, 18 Stat. 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. 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."

The effect of the paragraph just quoted depends necessarily upon what the Court had in mind by the phrase "people of primarily Asiatic stock."

If we turn to the Encyclopedia Britannica and look at the articles on "Asia" we find the following significant statement:

"The idea of Asia as originally formed was necessarily indefinite, and long continued to be so; and the area to which the name was finally applied, as geographical knowledge increased, was to a great extent determined by arbitrary and not yet very precise conceptions, rather than on the basis of natural relations and differences subsisting between it and the surrounding regions."

If we look at the map we find that the place where this man was born is on a parallel of longitude which runs West of Moscow. This is some distance West of Armenia but even in the case of Armenia the line of longitude runs only a short distance to the East of Moscow.

In a very interesting opinion in 174 Federal Reporter, 834, Circuit Judge Lowell, speaking of the Armenians, said:

"In so far as the test is affected by 'ideals, standards and aspirations,' the result is the same. In the warfare which has raged since the beginning of history about the eastern Mediterranean between Europeans and Asiatics, the Armenians have generally, though not always, been found on the European side. They resisted both Persians and Romans, the latter somewhat less strenuously. By reason of their Christianity, they generally ranged themselves against the Persian fire worshipers, and against the Mohammedans, both Saracens and Turks. Conquered by the Saracens in the seventh century, they recovered their independence in the ninth century under princes, who, they said, were of the lineage of David. Finally conquered in Armenia by the Turks, their refugees set up an independent state in Cilicia.

'Streaming the ensign of the Christian cross  
Against black pagans, Turks and Saracens.'"

He then proceeds to point out how illogical it is to classify the Finns and Maygars as whites and at the same time to classify the Armenians as Asiatics. He said:

"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, while the Finns by ethnological theory, and the Maygars by their known history, are deemed to belong to the Mongolian or yellow race."

I cannot bring myself to think that the Supreme Court intended to include under the description "people of primarily Asiatic Stock" those peoples around the Mediterranean and Black Seas, which, while they lived in countries that are now down on the map in an arbitrary geographical division called by map-makers "Asia", are really peoples whose history and development are identical with that of the peoples of the North which are put down on the map in Europe. Certainly, in dealing with peoples in this indefinite way, the test to be applied is that of racial characteristics and not that of arbitrary, geographical lines.

I think that I should admit this applicant to citizenship. I understand that it is important that there should be uniformity in the rulings on these questions. It is the duty of each Judge, however, to decide these questions according to his own judgment.

Each one of these cases is a law suit. The duty of the Court is to take the statute as he finds it and to apply it as he would in any other law suit - nothing more, nothing less. To do anything else puts him in the position of arrogating to the judicial branch of the government authority which is properly legislative.

Each applicant is entitled to have his case decided when it is presented to the Court for decision in order that he may have an opportunity to defend the judgment in his own case and not to be left dependent upon the result of some other

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case in the decision of which he has no opportunity to be heard.

The applicant in this case is admitted to citizenship. The clerk may administer the oath.

Wilkinson

United States District Judge.

27 June, 1924

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