

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

4                   UNITED STATES OF AMERICA,  
5   Plaintiff-Appellant,  
6   - vs -  
7                   SAKHARAM GANESH PANDIT,  
8   Defendant-Appellee.

9   }                   No. G-111-T,  
10    }                   EQUITY

11                   OBJECTIONS MADE AND AMENDMENTS PROPOSED TO PLAINTIFF -  
12                   APPELLANT'S STATEMENT OF TESTIMONY  
13                   UNDER EQUITY RULE 75 B.

14                   The following amendments and objections to the statement  
15                   of evidence filed by Plaintiff-Appellant in this cause are pro-  
16                   posed by the Appellee, and are filed for presentation to the  
17                   Court:

18                   (1) Insert after line 30, page 1 of Plaintiff-Appel-  
19                   lant's statement the following, and delete line 31:

20                   Defendant urged that he had nowhere admitted that he  
21                   was a high caste Hindu of full Indian blood born in Punjab,  
22                   India. That the ultimate fact alleged in Plaintiff's bill was  
23                   that defendant was not a free white person which defendant had  
24                   specifically denied, and that the allegation in the bill that,  
25                   on information and belief defendant was a high caste Hindu of  
26                   full Indian blood was an allegation of evidentiary facts, and as  
27                   such surplusage, and not required to be admitted or denied under  
28                   Equity Rule No. 30. One of the things defendant desired to  
29                   present was the propositions presented in the Thind case, 261  
30                   U.S. 204, which went up on a demurrer admitting all the allega-  
31                   tions of the complaint. "But such is not the case in our plead-  
32                   ings here."

THE COURT: What I want to get at to save the time of the  
court, it is not conceded that the defendant is a high caste

1 Hindu of full Indian blood, born at Punjab, India.

2 MR. NEWBY: He is not, and we propose to prove that he is  
3 not. We don't want to deceive the Court. We will admit, and the  
4 proof will show, that he is a Hindu, but not an Indian of full  
5 blood, and does not come within the classification of the Third  
6 case.

7 THE COURT: Do you intend to prove that by ethnological  
8 testimony, as developed by Mr. Justice Sutherland?

9 MR. NEWBY: Yes; and by Mr. Pandit himself.

10 THE COURT: I won't permit you to set this court up  
11 against the Supreme Court of the United States.

12 MR. NEWBY: And we don't <sup>want</sup> to; but in that case it was  
13 admitted.....

14 THE COURT: If there is a clear issue on that it would  
15 present a litigable matter. But under the Supreme Court de-  
16 cision, if there is no issue, if there is no question as to what  
17 his lineage was, or what his ancestry was, or his place of birth,  
18 then it becomes a question which has already been decided by the  
19 Supreme Court of the United States.

20 MR. NEWBY: All we are contending for is that after the  
21 evidence shall be presented, then of course it does present a  
22 question of law, but we don't think it is presented on the basis  
23 of the pleadings as they appear.

24 THE COURT: The motion to strike out is denied. . . . .  
25 I don't want this court to be put in the absurd position of at-  
26 tempting to review a question that the Supreme Court of the  
27 United States has decided.

28 MR. NEWBY: We are not asking the Court to do that. We  
29 think the case can be distinguished. But after we present the  
30 facts, if the Court thinks not, we will confine ourselves to the  
31 question of equitable estoppel.

32 THE COURT: That is what I want to hear.

1 MR. SIMPSON: May we have an exception to the ruling of  
2 the court refusing to strike out the fourth affirmative defense?

3 THE COURT: Yes.

4 (2) On p.2. at end of line 14 add the words: "very well";

5 (3) On p.2, line 18 add the word "County" after "Los  
6 Angeles". And replace last three words on line 18 to the end  
7 of 6th line (the word "all") on line 25, by:-

8 MR. SIMPSON: At that time was any testimony introduc-  
9 ed to establish Mr. Pandit's race?

10 A. There was.

11 Q. Did Mr. Pandit testify as to that fact?

12 A. He filed a very voluminous brief in support of it.

13 Q. I am simply getting at the question of fact, not the  
14 question of law. Did he testify whether or not he was a high  
15 caste Hindu of full Indian blood, born in India?

16 A. That is my recollection at this late date, that that  
17 was the contention which he made.

18 Q. Was there any evidence introduced to show that he was  
19 not a high caste Hindu of full Indian blood, born in India?

20 MR. NEWBY: We object to that as calling for the conclu-  
21 sion of the witness.

22 THE COURT: That would be a matter for judicial inter-  
23 pretation.

24 Q. By Mr. Simpson: Was there any dispute as to whether  
25 or not he was a high caste Hindu of full Indian blood?

26 MR. NEWBY: We object to that.

27 MR. SIMPSON: The point I am making is not as to wheth-  
28 er or not the conclusion of the court there was correct, but the  
29 question of whether or not the matter before the Superior Court  
30 judge was based upon the contention and evidence as to whether  
31 or not he was a high caste Hindu of full Indian blood, or whether  
32 the evidence was disputed that he was a high caste Hindu of full

1 Indian blood, and from that evidence the court drew an erroneous  
2 conclusion.

3 MR. NEWBY: The objection to this particular question is  
4 as to the form of it. We have no objection to the witness tes-  
5 tifying to the substance of any testimony given as to the issue  
6 involved. I think the issue was as to whether he was a white  
7 person within the meaning of the naturalization section.

8 MR. SIMPSON: I am not asking him that. I am asking him  
9 whether there was any evidence introduced to rebut Mr. Pandit's  
10 testimony to the effect that he was a high caste Hindu of full  
11 Indian blood.

12 THE COURT: Answer the question.

13 A. No, there was no contest on that point at all.

14 (4) P.2, line 29<sup>1</sup>: Replace "provisions" by "instructions"  
15 as the first word of line.

16 (5) P.3. line 1: Drop the second word "good".

17 P.3: Replace last two words of line 5 ("prepared") to  
18 end of line 10 ("Morrison") by the following:

19 Q. by Mr. Palmer: I direct your attention to this paper;  
20 is that a paper prepared by you?

21 A. Yes, sir; that was prepared by me, under the direction  
22 of the Chief Examiner at that time in San Francisco.

23 Q. That was George A. Crutchfield?

24 A. Yes.

25 Q. And you filed this in the Superior Court, or a copy of  
26 it?

27 A. I did file that.

28 MR. SIMPSON: I object to that as incompetent, irrelevant  
29 and immaterial, and not within the issues of the case, and I ask  
30 that our objection go in before the answer.

31 THE COURT: May I see that?

32 Q. BY THE COURT: Was this used in the proceedings before  
Judge Morrison, Mr. Jones?



1 A. Just a moment, your honor. Yes; undoubtedly it was.

2 THE COURT: Overruled.

3 MR. SIMPSON: Exception.

4 (7) P.3. line 24: First word should be "petitioner" and  
5 not "petition".

6 (8) Instead of the dashes in P.4. line 16 write the follow-  
7 ing:

8 (Said Defendant's Exhibit A is indorsed as follows:)

9 "IN THE SUPERIOR COURT.

10 STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12

13 In the Matter of the Petition for Naturalization

14 No. 2377

15 SAKHARAM GANESH PANDIT

16

17 BRIEF.

18 --o--

19

20 (9) In place of P.4. line 16½ to P.5. line 19½. copy the  
21 following:

22 Q. BY MR. PALMER: Were you present all of the time when  
23 the testimony was being taken in this case?

24 A. I believe I was, surely.

25 Q. How many witnesses were examined, do you remember?

26 A. I don't remember that now. I don't remember that there  
27 were any witnesses examined, save the witnesses to his petition.

28 Q. And Mr. Pandit.

29 A. And Mr. Pandit.

30 Q. Was that testimony taken down by a reporter, do you  
31 know?

32 A. I don't remember.

1 Q. How long ago was that?

2 A. I don't know. It must have been ten, twelve, thirteen  
3 or fourteen years ago.

4 Q. Anyhow some years ago?

5 A. Some years ago, yes.

6 Q. And you can't be entirely positive that he testified  
7 at that time that he was of full Indian blood?

8 A. I could not state positively at this time. Can I quali-  
9 fy a little further, your honor?

10 THE COURT: Surely.

11 A. I will say this, Mr. Palmer, that the issue was that a  
12 Hindu was not eligible for naturalization. And that was the in-  
13 struction. That was my instruction on which I objected to his ad-  
14 mission to citizenship.

15 Q. That was the objection you had and that was the one  
16 you reported?

17 A. That was the instructions from the department at  
18 Washington, and Mr. Pandit answered it in a very voluminous brief  
19 that he filed.

20 Q. And then the judge decided in his favor?

21 A. He did.

22 MR. SIMPSON: I object to that as immaterial.

23 THE COURT: Overruled.

24 MR. SIMPSON: Exception.

25 Q. BY THE COURT: Just one question, Mr. Jones, before the  
26 Government closes. It is really a matter of record, but if the  
27 Government objects to it, it may do so, notwithstanding the court  
28 asks the question. During these proceedings in the Superior Court  
29 of the State of California, in and for the County of Los Angeles,  
30 before Judge Morrison, one of the regular judges of the court at  
31 that time, the defendant in this case, who was the petitioner in  
32 that proceeding, was admitted to citizenship, was he?

1           A. He was.

2           MR. SIMPSON: I object to that as calling for the con-  
3 clusion of the witness. While the order was made stating that  
4 he should be naturalized as a citizen, that did not admit him  
5 to citizenship.

6           THE COURT: You mean it was adjudicated without jurisdic-  
7 tion, and therefore void?

8           MR. SIMPSON: Yes.

9           THE COURT: I don't mean it in that sense, that is, in the  
10 legal sense. I am speaking now as to the procedure that was  
11 attempted to be followed by that court in that hearing at that  
12 time.

13           A. Judge Morrison had the case under advisement, your hon-  
14 or, for a number of months; and he handed down a written decision  
15 in Mr. Pandit's case admitting him to citizenship.

16           Q. BY THE COURT: Were you present when Mr. Pandit there-  
17 after took the oath of allegiance to the United States?

18           A. Yes, I am sure I was. It was taken in open court.

19           Q. Did he take the oath of allegiance to the United  
20 States of America?

21           A. He did.

22           Q. That is, he seemed to take the oath?

23           A. Yes.

24           Q. Did he comply with all the departmental regulations  
25 respecting the recordation of the naturalization proceedings?

26           A. Yes, I think he complied with all departmental re-  
27 quirements.

28           Q. Do you remember what year that was?

29           A. I do not. It is a matter of record.

30           Q. Yes, I think it is pleaded.

31           A. That was at the term of the Superior Court on the 7th  
32 of May, 1914.

1 Q. And the government took no further action in the matter  
2 no affirmative action until the filing of this petition for the  
3 revocation of his naturalization?

4 A. Not to my knowledge. The matter, of course, was re-  
5 ported to the Bureau. And I received no instructions to proceed  
6 further.

7 Q. Let me examine you a little further. Your own view  
8 was that you, as the government's representative, should contest  
9 the application before the Superior Court. Is that it?

10 A. Yes.

11 Q. And the court's decision was adverse to your contention  
12 and that of the government?

13 A. Yes.

14 Q. Did you immediately report that matter to your superior  
15 in Washington?

16 A. At once. Rather, pardon me, I reported it to the Chief  
17 Examiner at San Francisco.

18 Q. And he reported it to Washington?

19 A. Yes, I assume that he proceeded to report it to Wash-  
20 ington.

21 Q. It was your duty to report it to your immediate superi-  
22 or in San Francisco.

23 A. Yes.

24 Q. Do you remember what you reported to him with respect  
25 to a recommendation as to further proceedings by the government  
26 in the matter?

27 A. I can't recall at this time; and my files of those  
28 days are destroyed.

29  
30 (10) P.5: Add at end of page:

31 Q. BY MR. SIMPSON: In answer to the court's question as  
32 to whether Judge Morriescn admitted Mr. Pandit to citizenship, you  
answered "Yes". Now, I want to ask you this question.

1 Is it not a fact that after Judge Morrison had decided the case  
2 he made an order which purported to allow Mr. Pandit to become  
3 a citizen of the United States and that pursuant to that order  
4 a certificate of naturalization and citizenship was issued to  
5 him?

6 MR. NEWBY: We object on the ground that it calls for the  
7 conclusion of the witness, is irrelevant and immaterial, and I  
8 call the court's attention to the fact that the very petition  
9 on which this matter started alleges the fact of the granting of  
10 the citizenship. It is the foundation of this entire proceeding.  
11 The government alleges that in its petition for cancellation.

12 MR. SIMPSON: We admit that it was issued and the order  
13 made but it is a conclusion as to whether the certificate which  
14 was issued did grant citizenship.

15 MR. NEWBY: That is a question of law for the court.

16 MR. SIMPSON: The reason I asked that question was because  
17 the court asked a question which we objected to, calling for the  
18 conclusion of the witness, a conclusion of law on behalf of the  
19 witness, as to whether or not it did admit him to citizenship.

20 THE COURT: I didn't intend to go that far. It seems to  
21 me that is one of the very questions which is here; that if it is  
22 a void naturalization no petition is necessary to declare it so.  
23 And that the government having come into a court of equity to ask  
24 the aid of equity, in annulling what is admitted to be a decree  
25 'ab initio', must submit itself to the rules and jurisdiction,  
26 and must come in with clean hands, must come in with all of the  
27 obligations that another suitor comes into a court of equity with,  
28 and the court must administer equity commensurate with the facts  
29 disclosed by the record. That is the reason I think it is material.  
30 I know just what the government's position is. But it seems to me  
31 it is a little inconsistent in its position. If the naturalization  
32 is void 'ab initio', there is not any necessity for the proceeding.

1 It is not a voidable act. It is a void act, if the government's  
2 position is correct. If it is a voidable act, it is necessary  
3 for the court to pursue the remedy. But taking your position  
4 that the order of the Superior Court was a void order, and void  
5 from the beginning, you are a little inconsistent in your posi-  
6 tion, in asking the court's aid. The objection is overruled  
7 and the motion denied.

8 MR. SIMPSON: Exception.

9 (12) P.6, line 7: Add:

10 The motion to dismiss was denied.

11 (13) P.6. line 17, After the word "follows" on precede-  
12 ing line and before the word "order" on succeeding line, insert:  
13 CERTIFICATE OF ARRIVAL - FOR NATURALIZATION PURPOSES.

14 To be issued immediately prior to petitioning.

15 Department of Labor. Immigration Service.

16  
17 Office of Commission<sup>er</sup>/of Immigration

18 at Ellis Island, N.Y. June 5. 1913.

19 This is to certify that the following - named alien arriv-  
20 ed at the port indicated, on the date, and in the manner described  
21 below, viz:

22 Name of alien: Sakharam Ganesh Pandit

23 Port of entry: New York, N.Y.

24 Date of arrival: Aug. 28. 1906.

25 Name of vessel: Kronprinz Wm.

26 Byron H. Uhl

27 (Title). Acting Commissioner  
28  
29  
30  
31  
32

1 In the Matter of the Petition of  
2 Sakharam Ganesh Pandit  
3 To be admitted a citizen of the  
4 United States of America

} Filed June 13, 1913.  
}

6 OATH OF ALLEGIANCE

7 I hereby declare on oath that I absolutely and entirely  
8 renounce and abjure all allegiance and fidelity to any foreign  
9 prince, potentate, state or sovereignty, and particularly to  
10 George V, King of Great Britain and Ireland of whom I have here-  
11 tofore been a subject; \* \* \* \* ; that I will support and  
12 defend the constitution and laws of the United States of America  
13 against all enemies, foreign and domestic; and that I will bear  
14 true faith and allegiance to the same.

15 Sakharam Ganesh Pandit.

16  
17 Subscribed and sworn to before me in open court, this  
18 7th day of May A.D. 1914

19 (Seal)

20 Willis I. Morrison

21 Clerk.

22  
23 (14) P.6, line 26, Add, next to margin:

24 "By the Court."

25 (15) P.6, line 27½, add:

26 Certificate of Naturalization No. 445063, issued on the  
27 7th day of May, A.D. 1914.

28 (Endorsement as follows:) "In the Matter of the Petition of  
29 Sakharam Ganesh Pandit to be admitted a Citizen of the United  
30 States. Certified Copy of Record."

31 MR. PALMER: I desire to offer also the certificate of the  
32 United States - the certificate of naturalization No. 445,063,

1 of the Defendant, and we ask that it be admitted with permission  
2 to file a copy. I will show the Court the original.

3 THE COURT: Very well. The copy is admitted.

4 (16) P.7. line 30; after "Exhibit C" in preceding line  
5 add:

6 and is identical with "Plaintiff's Exhibit C" attached to  
7 its Petition for Cancellation of Naturalization" filed in this/<sup>cause.</sup>

8 (17) P.7, line 18 $\frac{1}{2}$ . Add:

9 MR. PALMER: At the bottom of page 5, it is alleged, in  
10 the fourth paragraph. All of that is alleged, if your honor  
11 please.

12 (18) P.7, line 27; Change South Hampton to Southampton.

13 (19) P.8, line 1. After the word "Government" add "in this  
14 case", before the word "was".

15 (20) P.8, line 2: After the word "present" add ", repre-  
16 senting the Government."

17 (21) P.8, line 12: Between the word "Jones" on preceding  
18 line and the word "the" on following line, insert:

19 A copy of Defendant's Exhibit A in this case was the  
20 brief filed with the judge by Mr. Jones, and a copy was served  
21 on me.

22 (22) P.8, line 14 $\frac{1}{2}$ : Substitute for word "under" the  
23 words "on the".

24 (23) P.8, line 18: After the first word "citizenship"  
25 add "some time".

26 (24) P.8, line 19: After the word "case", add "Mr. Jones  
27 was very cordial", before "and he said":

28 (25) P.8, line 27: Insert between "after that" and "I  
29 went" the words "no decision having been rendered."

30 (26) P.8, line 28: Insert word "rather" between "was" and  
31 "anxious".

32 (27) P.9, line 4: <sup>Replace</sup> "think so much of the opinion" by "agree  
with me,"



1 (28) P.9, line 8: Insert between "me" and "questions" -  
2 "a good many".

3 (29) P.9, line 10½: Change "have" to "had".

4 (30) P.9, line 11½: Insert <sup>after</sup> "Morrison", and before "said":  
5 Asked me if I was a lawyer, and on being informed I was  
6 not,

7 (31) P.9, line 17½ - 18½: Substitute for "say that from  
8 the record" the word "welcome" and substitute for "would be" the  
9 word "as".

10 (32) P.9, line 20: Between the paragraphs, add:

11 I met Mr. Jones many times after my naturalization but  
12 he never indicated that there was any desire on the part of the  
13 United States to take an appeal in my case or question my certi-  
14 ficate in any way. When I was coming out of the Superior  
15 Court Clerk's office with my naturalization certificate on May 7,  
16 1914, I met Mr. Jones at the entrance to the building and he re-  
17 marked: "Well, Mr. Pandit, now that you are a citizen, you may be  
18 required to go on military duty on the Mexican border where men  
19 are wanted at the present time."

20 (33) P.9, line 26: After the word "Philosophy", add "and  
21 is the highest degree conferred by the orthodox Sanskrit univer-  
22 sities in India".

23 (34) P.9, line 27-30: <sup>(Extensive)</sup> Delete lines, and replace by "Prior  
24 to my application for naturalization, I had not gone through a  
25 regular course of study of the law; and I told the naturalization  
26 court that if I were admitted to citizenship, I intended to  
27 study law. Sgf

28 (35) P.9, line 31: Insert between "of" and "citizenship"  
29 the words "allegiance to the United States and acquired".

30 (36) P.9, line 31: After word "citizenship" add: " I pro-  
31 ceeded to equip myself for the practice of law, and devoted all  
32 of my time during the latter half of 1914, 1915 and 1916 to

1 the study of law.

2 <sup>Page 9</sup>  
(37) Delete last three words in line 31 and all of line 32.

3 (38) P.10, line 19 $\frac{1}{2}$ : Insert between "I was" and "admitted",  
4 the word "thereafter".

5 (39) P.10: Substitute for lines 21 $\frac{1}{2}$  to end of 25 $\frac{1}{2}$ , the  
6 following:

7 "Court for the Southern District of California. And I  
8 was admitted to practice in the United States District Court  
9 for the Northern District of California and in the Circuit Court  
10 of Appeals for the Ninth Circuit."

11 BY THE COURT: Admitted there as a general practitioner  
12 and not specially for any case - admitted generally?

13 A. Yes.

14 THE COURT: I suppose that will be stipulated, Mr. Simpson,  
15 that no one but a 'bona fide' citizen of the United States, or  
16 at least one who presumptively is such, can practice generally in  
17 those courts.

18 MR. SIMPSON: No, your honor. We will stipulate that under  
19 the pro-

20 (40) P.10, line 28 $\frac{1}{2}$ : Insert between "A" and "citizen" the  
21 words "bona fide".

22 (41) P.10, line 32 $\frac{1}{2}$ : Insert between "Circuit" and "of  
23 California" the words "Court of Appeals".

24 (42) At the end of page 10 add:

25 THE COURT: That covers it.

26 (43) P.11, Delete last seven words of line 7 $\frac{1}{2}$  to end of  
27 line 14 $\frac{1}{2}$ . And add: "Courts.

28 MR. SIMPSON: If Mr. Pandit testifies that he was admitted  
29 to practice in the State Courts of California and in the Federal  
30 Courts, we don't intend to introduce anything to the contrary.  
31 But of course his testimony is subject to <sup>our</sup> objection.

32 THE COURT: And so understood.

1 Q. BY THE COURT: Has there ever been any proceeding by  
2 any of the State or Federal officials, or by the Bar Association  
3 of any community, preferring charges against you of any kind?

4 A. No.

5 Q. Never been any disbarment proceedings?

6 A. No.

7 Q. Or any proceedings for the revocation of your license  
8 to practice law filed?

9 A. No.

10 Q. Have you been assuming to act as an attorney-at-law in  
11 the state?

12 A. Yes.

13 Q. And have been appearing in the courts?

14 A. Yes.

15 Q. What courts?

16 A. In the Superior Court and Federal Courts.

17 Q. Have you appeared in the general practice of the law  
18 in the State or Federal Courts since you were admitted?

19 A. Yes, I have appeared many times.

20 Q. Have you appeared since this petition for revocation  
21 was filed?

22 A. Yes, I have appeared, but comparatively few times.

23 Q. You have always openly published the fact that you  
24 were an attorney-at-law?

25 A. Yes; although several of my clients have come to me  
26 and said: "We did not know you were practicing law or we would  
27 have come back to you. We saw in the paper they would cancel  
28 your citizenship and you would lose your license." I lost quite  
29 a good deal of my practice that way."

30 (44) P.11, line 16 $\frac{1}{2}$  - 21: Replace with following:  
31 a notary public's commission to the State of California. In reply  
32 the Secretary of State wrote asking me if I was a citizen, and if  
I was a naturalized citizen to forward my certificate, and when

1 he was satisfied I was a citizen. . . . .

2 MR. SIMPSON: I object to that; that is a conclusion of  
3 the witness. He can state what was done.

4 Q. BY MR. PALMER: Yes. Did you send him the certificate?

5 A. No, I did not. I told him where the record of the certi-  
6 ficate was filed, and that if he could not be satisfied that way  
7 I would send him the certificate. And soon after that the Govern-  
8 or of California sent me my commission as notary public. Thereupon  
9 I took my oath and gave bond, and acted as a notary for four years.  
10 Then I wrote back asking for a renewal of the commission as the  
11 old one had expired; and they sent the renewal immediately. I  
12 qualified again by taking oath and giving bond, and I am now a  
13 notary public.

14 (45) P.12. Delete lines 1 - 7, and substitute as follows:

15 MR. PALMER: Will you stipulate that under the Alien Land  
16 Law he cannot own real estate?

17 MR. SIMPSON: No, I won't stipulate to that. That is a  
18 question of law.

19 MR. PALMER: Will you stipulate that the Court may consider  
20 in evidence the Alien Land Law of the State of California?

21 MR. SIMPSON: I think the Court is entitled to take judi-  
22 cial knowledge of the statutes of California, and can determine  
23 whether under the statutes of California an alien<sup>is</sup> entitled to own  
24 a home, not property for agricultural purposes, but a residence or  
25 home - consider all those questions of law - but all of this testi-  
26 mony is objected to as incompetent, irrelevant and immaterial and  
27 does not constitute a defense to the action.

28 THE COURT: Yes. it is so understood. The objection is  
29 overruled.

30 MR. SIMPSON: And is an exception allowed all the way  
31 through?

32 THE COURT: It will be so noted.

1 (46) P.12. Delete line 17 last four words to end of line  
2 26 $\frac{1}{2}$ , and substitute therefor:

3 She could have proved up on that soon after this cancel-  
4 lation suit was filed, but this matter pending she has waited,  
5 but she will have to prove up in a year or so or lose it.

6 BY THE COURT: Under what phase of the Public Land Law  
7 was that taken up?

8 A. Originally under the Desert Land Act; and later, I  
9 think about 1920, under the Relief Act of March 4, 1915.

10 Q. Was it her intention of filing proof under the Desert  
11 Land Act, or this Act?

12 A. The Relief Act.

13 Q. Have you examined both of those Acts yourself, Mr.  
14 Pandit?

15 A. I did a considerable time ago.

16 Q. Does each of them require that the claimant be a bona  
17 fide citizen of the United States?

18 A. Yes.

19 Q. So that if your naturalization is cancelled, your  
20 wife's application will also be cancelled - is that your posi-  
21 tion?

22 A. Yes.

23 Q. She would be an alien, she would be the wife of an  
24 alien?

25 A. The wife of an ineligible alien, and therefore inad-  
26 missible to citizenship.

27 THE COURT: That is what I meant.

28 (47) P.12, line 30 $\frac{1}{2}$ . Before closing the brackets, and  
29 after "D" add the words "in evidence".

30 (48) P.13. line 13 $\frac{1}{2}$  to 23 $\frac{1}{2}$  <sup>(both inclusive)</sup> Delete lines and substitute  
31 as follows:

32 Q. BY THE COURT: I want to ask you a question: These

1 moneys that you have paid toward proving up this claim, were  
2 moneys that were accumulated since your marriage?

3 A. Yes.

4 Q. And has your wife contributed anything toward proving  
5 up that claim since your marriage?

6 A. In what way?

7 Q. In money or services.

8 A. Well, she has gone and looked at the land.

9 Q. Has either of you resided there?

10 A. No.

11 Q. Has she contributed any money since your marriage  
12 herself?

13 A. She has typed letters that have been written for her  
14 in connection with the land, and has looked up things for me  
15 that were necessary and seen people in connection with it.

16 MR. SIMPSON: I object to that as not responsive to the  
17 question, and I ask that it be stricken out.

18 THE COURT: Motion denied.

19 MR. SIMPSON: Exception.

20 Q. Have there been any improvements made on the property  
21 at all?

22 A. Yes.

23 Q. How lately?

24 A. Last year there were some made and also this year.

25 Q. Of what character were the improvements?

26 A. A barn that was blown down, which was built by us be-  
27 fore, that was put up again, and some acreage -I forget the num-  
28 ber of acres - 40 or 50 acres, have been plowed and disced, and  
29 then planted.

30 Q. That was done by you folks?

31 A. Yes.

32 Q. Not on a lease or anything of that kind?

1 A. No.

2 Q. And do you include that in the \$500.00 that you say  
3 you paid out?

4 A. Yes.

5 THE COURT: Proceed Mr. Palmer.

6 Q. BY MR. PALMER: Mr. Pandit, have you been able to get  
7 water for that land?

8 A. No.

9 Q. Is that the reason you have not finally proved up on  
10 it?

11 A. Yes. We tried to. We tried to drill a well, but it  
12 didn't do anything. And so we are waiting, hoping some day to get  
13 water.

14 Q. Waiting for the high line canal?

15 A. Yes, the All-American Canal.

16 Q. And this money that was earned and applied by you on  
17 that land - that was applied on your wife's land?

18 A. Yes.

19 Q. You understood that?

20 A. Yes.

21 Q. It was community money that was applied?

22 A. Yes.

23 Q. And you haven't made any effort to have the land put in  
24 your name at all?

25 A. No, I haven't.

26 Q. What is the land worth?

27 A. It is hard to say. I don't know. If we get water,  
28 or get oil on it, it will be worth a great deal of money.

29 Q. Is there an opportunity to get water from the develop-  
30 ment of the Colorado river - is that your idea?

31 A. Yes; all the people who have claims there are looking  
32 for it.

- 1 (49) P.13: Add at end of page: "changed my nationality  
2 and"
- 3 (50) P.14, line 26: Change "Ribica" to "Arabica".
- 4 (51) P.15, line 8 $\frac{1}{2}$ : Change "an American citizen" to "a cit-  
5 izen of America".
- 6 (52) P.15, line 25 $\frac{1}{2}$ : Delete comma before the semi-colon.
- 7 (53) P.15, line 27: Add after third word ("lived"), "which  
8 was located on about an acre of land."
- 9 (54) P.15: Delete last five words of line 28 and first  
10 five words of line 29.
- 11 (55) P.16, line 9 $\frac{1}{2}$ : Delete last sentence of the paragraph,  
12 and write in its place: "I do not know just which 400 acres of  
13 agricultural land was set aside for me. But my mother wrote  
14 that it was the best agricultural land in the very fertile pro-  
15 vince of Gujarat. And taking the average of the agricultural  
16 land owned by my father, its value would be from \$250.00 to  
17 \$600.00 per acre."
- 18 (56) P.16, line 12 $\frac{1}{2}$ : Insert between "died" and "in" the  
19 word "early".
- 20 (57) P.16, line 14 $\frac{1}{2}$ : After the word "money" add "earned by  
21 her as inspectress of schools",
- 22 (58) P.16, line 14 $\frac{1}{2}$ : Change "amont" to "amount".
- 23 (59) P.16, line 18 $\frac{1}{2}$ : After "would" add "have", and change  
24 "like" to "liked".
- 25 (60) P.16, line 24: Insert between "would" and "come" the  
26 word "have".
- 27 (61) P.16. Delete last two lines, and also delete first  
28 14 $\frac{1}{2}$  lines of P.17 and substitute therefor:
- 29 The aboriginal people of India - the original race or  
30 blood of India - is of Negrito stock. It is confined to the  
31 comparatively inaccessible mountainous parts of the country.  
32 These people avoid civilization. The Hindus have absolutely no  
social or other intercourse with them. The Aryan people invaded



1 India in more recent times, and their decedents are the modern  
2 Hindus.....

3 (62) P.18, Delete lines 31 and 32 and substitute therefor:  
4

5 MR. PALMER: This question, I think, your honor, is ad-  
6 dressed to his own ancestry.  
7

8 THE COURT: I think that he can tell the court in so many  
9 words whether he falls within the boundary set by the Supreme  
10 Court, whether he is a high caste Hindu of full Indian blood. The  
11 Supreme Court has answered that question, and there is no room for  
12 any other answer in any court until they shall have modified their  
13 view. The only reason --I thought I made that clear--in ruling  
14 on the motion to dismiss was because of the language in the de-  
15 cision which I considered to be sufficient to justify this court  
16 sitting as a court of equity to hear the specific proofs in this  
17 particular case, so the court will be able to determine whether  
18 or not the principle announced in the Thind case by the Supreme  
19 Court is applicable to this particular and specific instance; and  
20 in ruling on that and in striking out certain portions of the an-  
21 swer, on the motion of the government, I thought I made clear what  
22 the view of the court was. The fourth and fifth defenses are the  
23 only ones the court will hear you on.

24 MR. PALMER: We desire an exception to the ruling of the  
25 court.

26 THE COURT: The language of the decision I think is this,  
27 gentlemen: On page 207 of the official volume of the Supreme  
28 Court Reports, 261 U.S.: "This cause is here upon a certificate  
29 from the Circuit Court of Appeals, requesting the instruction of  
30 this court in respect of the following questions: 1. Is a high  
31 caste Hindu of full Indian blood, born at Amritsar, Punjab, India,  
32 a white person within the meaning of Section 2169, Revised Stat-

1   utes; 2. Does the Act of February 5, 1917, 39 Stats.at L., 875,  
2   Chapter XXIX, Section 3, disqualify from naturalization as citi-  
3   zens those Hindus, now barred by that act, who had lawfully en-  
4   tered the United States prior to the passage of said act. The  
5   appellee was granted a certificate of citizenship by the District  
6   Court of the United States for the District of Oregon, over the  
7   objection of the naturalization examiner of the United States. A  
8   bill in equity was then filed by the United States, seeking a can-  
9   cellation of the certificate on the ground that the appellee was  
10  not a white person, and therefore not lawfully entitled to natur-  
11  alization. The District Court, on motion, dismissed the bill".  
12  I think, parenthetically, so that there will be no misunderstand-  
13  ing, so far as this court's mind is concerned, that when the  
14  term "white person" is used there, it means white persons, persons  
15  within the common understanding. It does not mean in a scientific  
16  sense.

17         The law does not mean it in its generic sense.

18         Continuing, the Supreme Court said: "And an appeal was tak-  
19  en to the Circuit Court of Appeals." Now this is the language which  
20  I consider permits you to come into court. Continuing: "No ques-  
21  tion is made in respect of the individual qualifications of the  
22  appellee. The sole question is whether he falls within the class  
23  designated by Congress as eligible."

24         So that the remaining question undecided, in my judgment,  
25  is the individual right of this petitioner, this defendant in this  
26  case, under the special issue framed by the pleadings in this case,  
27  and particularly under the fourth and fifth affirmative defenses,  
28  to secure the invocation of the equitable power of this court to  
29  prevent a cancellation of his naturalization papers. That is the  
30  only question, as I see it, in the case.

31         MR. SIMPSON: Did I understand you to say that they are al-  
32  lowed to defend on the fourth and fifth defenses? My record shows

1 that the fifth defense was stricken out. If I am in error I  
2 want to get a motion in the record--

3 MR. PALMER: Yes; I think the court inadvertently said  
4 "fifth".

5 THE COURT: Yes. The fourth affirmative defense is the  
6 only one.

7 MR. NEWBY: Practically the same matter is set up in the  
8 fourth, but in different language.

9 (63) P.19, line 4: Insert "a" between "by" and "Sanekrit".

10 (64) P.19, line 12 $\frac{1}{2}$ : Insert in place of comma between "tha"  
11 and "do":- "You mean, or"

12 (65) P.19, line 17 $\frac{1}{2}$ : Insert between "law" and "whether"  
13 ", of"

14 (66) P.19, line 18 $\frac{1}{2}$ : Insert between "not" and "a":  
15 "a Hindu",

16 (67) P.19: Add at bottom of page:

17 Q. You state that after that time you studied law and  
18 were admitted to practice?

19 A. Yes.

20 Q. Do you know the date you were admitted to practice law?

21 A. Yes; December 20, 1917.

22 Q. You also stated that these proceedings to cancel certifi-  
23 ficate of naturalization had damaged you by the reason of the fact  
24 that you have lost some of your law practice?

25 A. It has. I think I testified it had damaged my practice.

26 Q. Can you tell us of one client that you have lost by  
27 reason of these proceedings?

28 A. Yes.

29 Q. Who was it?

30 A. Orshoff, a client I had for some time.

31 Q. Is there any other instance?

32 A. There are others that I cannot tell off-hand. Because

1 it extends over a period of two or three years. It was something  
2 that could not be remedied, so I paid no attention to it. But I  
3 could think of several.

4 Q. Could you estimate off-hand the amount that you have lost  
5 by reason of the institution of these proceedings?

6 A. Yes.

7 Q. But you haven't as yet lost your license to practice  
8 law?

9 A. No.

10 Q. This home which you state you purchased in Los Angeles,  
11 was that purchased before or after your marriage?

12 A. Just before marriage, a couple of months before.

13 Q. And you were married, I believe, on June 5, 1920?

14 A. Some time about that, Yes.

15 Q. That is the home in which you now reside?

16 A. Yes.

17 Q. You stated on direct examination that your wife, prior  
18 to your marriage to her, had filed an application for entry upon  
19 some desert land?

20 A. Yes.

21 Q. The application was filed on June 28, 1913, was it not?

22 A. Yes.

23 Q. And rejected at that time?

24 A. Yes, rejected because the filing fees were not paid.

25 Q. I believe you testified that the money you paid in con-  
26 nection with the improvement of this land upon which your wife  
27 filed prior to the time that you married her, was paid by you af-  
28 ter your marriage?

29 A. Yes.

30 Q. How much did you pay?

31 A. About \$500.00.

32 Q. BY THE COURT: About \$500.00?

A. Yes, sir.

1 Q. BY MR. SIMPSON: Do you know when you paid that?

2 A. Between 1920 and now.

3 Q. Can you tell us when the last payment was made?

4 A. Yes. The last payment was made within the last six  
5 months.

6 Q. And how much was it?

7 A. \$100.00.

8 Q. To whom was that paid?

9 A. To a Mr. Kenyon.

10 Q. For what purpose?

11 A. For ploughing and planting.

12 Q. That was paid during the year 1925, was it?

13 A. Yes.

14 Q. When did you make any other payments?

15 A. I paid the taxes at different times. The last one I  
16 think was about within the last month or two; quite recently.  
17 I think some time after October 1925.

18 Q. How much?

19 A. I don't remember. I think it was about \$25.00, some-  
20 thing like that.

21 Q. You have accounted for about \$125.00; can you go back  
22 further and account for any more?

23 A. Yes. I have been paying taxes for the last four years,  
24 and also some delinquent taxes of previous years.

25 Q. So that the money you have expended on payments on  
26 this property consisted chiefly of taxes?

27 A. Taxes and work on the land.

28 Q. What other work have you paid for besides the \$100.00  
29 that you paid for ploughing and planting?

30 A. Similar kind of work.

31 Q. Prior to that? Was that money paid for work done prior  
32

1 to the last six or ten months?

2 A. Yes, sir. I have been paying since 1920.

3 Q. Do you know whether water has been obtained for the  
4 land yet?

5 A. No, no water.

6 Q. And I believe you testified that you didn't know the  
7 value of the land there?

8 A. Well, there have been some oil wells, some oil found,  
9 within a few miles of where the place is; and some of the peo-  
10 ple there are very hopeful that some day they will get oil. So  
11 it is hard to estimate the value, in view of that oil prospect.

12

13 Q. I believe you testified that you were born in India?

14 A. Yes.

15 Q. When did your father die, Mr. Pandit?

16 A. About 1913.

17 Q. When <sup>did</sup> your mother die?

18 A. 1916.

19 Q. And of what does your family, your relatives, now  
20 consist?

21 A. I have three brothers and two sisters.

22 Q. And are they now residing in India?

23 A. Yes. One sister, however, is in England; - at present  
24 studying medicine in Ireland.

25 Q. When was it, Mr. Pandit, that you communicated to your  
26 brother or mother the news that it was your intention to reside in  
27 the United States and make this your home?

28 A. Well, I don't know that I said that exactly in that way.  
29 I remember that in 1911 when I declared my intention to become a  
30 citizen, I wrote to them and told them I intended to become a cit-  
31 izen, and I may have said these other things.

32

1 Q. When was it that your mother at your request - we will  
2 say - cut you off from your family inheritance?

3 A. The letter regarding that was written before my natural-  
4 ization, when they were trying to settle up matters in connection  
5 with my father's property. Just after my petition was filed, I sent  
6 my mother a power of attorney saying she could do what she liked  
7 with my share of the property. After I was naturalized, I wrote  
8 on May 7th or 9th, 1914, a letter to my mother to which she replied  
9 at once, and I replied to her letter immediately on its receipt -  
10 all as I testified on direct examination.

11 Q. That was after Judge Morrison had entered his order?

12 A. Yes.

13 Q. For the issuing of the certificate?

14 A. Yes.

15 Q. But prior to that time you had already determined - had  
16 formed a bona fide intention - to reside in the United States?

17 A. Yes.

18 Q. That being true, your station as a doctor of philosophy  
19 and these other social advantages which you have testified to  
20 would have been lost, even though you did not secure a certificate  
21 of citizenship?

22 A. No; because I did not give up my allegiance at that time.  
23 I only had an intention.

24 Q. You just had an intention to give it up?

25 A. Yes.

26 Q. Your intention then was to stay in the United States  
27 if you became a citizen, and not if you did not?

28 A. Certainly.

29 Q. You intended, then, to return to India if you did not  
30 become a citizen?

31 A. Or to some other country, but not to stay here.  
32

1 Q. Then the renunciation of your family and property  
2 rights was voluntary, a voluntary act on your part, was it not?

3 A. Yes, because of my acquisition of citizenship; other-  
4 wise it would not have been.

5 THE COURT: I want to follow that up a moment. I think it  
6 is material.

7 Q. BY THE COURT: As I understand you, you renounced your  
8 property rights because you believed you were eligible to citizen-  
9 ship in the United States?

10 A. Yes. After I was admitted to citizenship, not before;  
11 not when I declared my intention.

12 Q. I don't mean that. Why did you relinquish your rights  
13 to share in your property in your native land?

14 A. Because from 1911 on, when I began writing to them about  
15 my intention to become a citizen and to take up my permanent resi-  
16 dence here, I saw there was a sort of feeling that I was not act-  
17 ing right toward my native country and toward the family. Seeing  
18 that, I also thought if I was going to stay here and become a citi-  
19 zen and never go to India, and never do anything for them, that I  
20 had no right to take anything from them. So I renounced my rights  
21 when I was sure I had become a citizen.

22 Q. Under the custom and law in your native land, did you  
23 forfeit your property rights when you declared your intention to  
24 become a citizen?

25 A. No. I did not.

26 Q. When did your forfeiture of those rights become absolute?

27 A. When?

28 Q. Yes; when did the forfeiture of your property rights in  
29 your native land become absolute?

30 A. The property was divided in 1916--no; before 1916.  
31 It must have been 1914 or 1915; some time before my mother's  
32 death, because she divided it up. She decided who should have



1 what, and that was accepted by all, and I suppose that acceptance  
2 was filed in court, and that was all the probating of it.

3 Q. It was your mother who expressed in these letters this  
4 dissatisfaction?

5 A. Yes.

6 Q. Over your renunciation of your native land?

7 A. Yes; but after I wrote that letter renouncing my inheri-  
8 tance, she thought I should keep some of it anyway.

9 Q. That is what I want to get at, was the renunciation of  
10 your inheritance in any wise connected with the acquisition of  
11 your citizenship in the United States?

12 A. Yes, sir. It was right after my acquisition of citizen-  
13 ship that I wrote renouncing my rights, and she wrote back saying  
14 perhaps it was not prudent, that I might want to come back, and  
15 that I should have some of the property, and then I wrote back  
16 and stated I had already acquired the rights of citizenship, and  
17 that I intended to permanently reside in the United States, and  
18 that there was no likelihood of my coming to India to stay. So I  
19 confirmed what I had said before.

20 Q. At that time the government and none of its officers  
21 had notified you that they would oppose your application for citi-  
22 zenship?

23 A. Oppose it?

24 Q. Yes.

25 A. No; none; only that Mr. Jones said that there was no  
26 question about my being in good standing, and Judge Morrison said,  
27 "There is no question about your eligibility. You are fully qual-  
28 ified."

29 Q. And after you had knowledge of that kind, you wrote  
30 home renouncing your inheritance, is that it?

31 A. Yes.

32

1 REDIRECT EXAMINATION BY MR. PALMER.

2 After I had declared my intention and taken out my citizen-  
3 ship papers and had been naturalized, if I had then returned to  
4 India to visit or to stay, my status would have been that of an  
5 outcast. I would have lost my former status because I had given  
6 up my family and allegiance, and had taken up another allegiance  
7 in preference to my native country. I could not, by returning and  
8 declaring my intention to become a citizen of India, have rein-  
9 stated myself in my former social status. Because when caste is  
10 lost it is lost forever. There is never an opportunity to recov-  
11 er. You must be born again into the caste. I had lived in India  
12 31 years before coming to this country. The rejection of my  
13 wife's filing on the desert land entry was due to the fact that  
14 she did not know she had to pay the fee of \$60 or \$80 immediat-  
15 ly. She filed her application on June 28, 1913; she was sent no-  
16 tice of rejection, from the Land Office, on account of non-payment  
17 of fees on the 30th; on the 1st of July she paid the fee and the  
18 entry was allowed or reinstated. It is still pending and has not  
19 been cancelled. All payments and all work required by the law  
20 have been kept up. Some time ago my wife wrote a letter to the  
21 Department of the Interior asking the Department in regard to a  
22 railroad or tramway that some company had placed right across  
23 her land, if they could not put those people off her entry. In re-  
24 ply the Department wrote that those people had filed some kind of  
25 an application for a railroad, and that our rights were prior to  
26 their rights, but that it would be a private action between us,  
27 However, the Department wanted to draw her attention to the fact  
28 that at the time she makes proof she will have to prove that she  
29 is an American citizen, and that they understood she had married  
30 an alien, and that if she had married an alien ineligible to cit-  
31 izenship, then the application would be revoked.  
32

1 Q. I show you this paper consisting of a printed leaf and  
2 three pages of typewritten letter, and ask you if that is the  
3 letter you received--if that is the letter received by your wife  
4 from the Department of the Interior in answer to the letter you  
5 spoke of?

6 A. Yes; that is it.

7 MR. PALMER: We offer it in evidence.

8 MR. SIMPSON: objected to on the same grounds that we  
9 heretofore objected to the testimony, and upon the further  
10 ground that it is not proper redirect examination.

11 MR. NEWBY: As to that, if there is any doubt on that, we  
12 will ask to have him considered as being recalled.

13 THE COURT: Objection overruled.

14 MR. SIMPSON: Exception.

15 (Defendant's Exhibit E. is, in part, in words and figures  
16 as follows, to wit:)

17 (68) Delete P.20 and P.21 to end of line 13.

18 (69) P.22: Delete line 11 $\frac{1}{2}$  to end of line 14, and substi-  
19 tute therefor:

20 (Public--No. 346--67th Congress.)

21 (H.R. 12022.)

22 An Act Relative to the naturalization and citizenship of  
23 married women.

24 Be it enacted by the Senate and House of Representatives  
25 of the United States of America in Congress assembled, That the  
26 right of any woman to become a naturalized citizen of the United  
27 States shall not be denied or abridged because of her sex or be-  
28 cause she is a married woman.

29 Sec. 2. That any woman who marries a citizen of the  
30 United States after the passage of this act, or any woman whose  
31 husband is naturalized after the passage of this act, shall not  
32

1 become a citizen of the United States by reason of such marriage  
2 or naturalization; but, if eligible to citizenship, she may be  
3 naturalized upon full and complete compliance with all require-  
4 ments of the naturalization laws, with the following exceptions:

5 (a) No declaration of intention shall be required;

6 (b) In lieu of the five-year period of residence within  
7 the United States and the one-year period of residence within the  
8 State or Territory where the naturalization court is held, she  
9 shall have resided continuously in the United States, Hawaii,  
10 Alaska, or Porto Rico for at least one year immediately preceding  
11 the filing of the petition.

12 Sec. 3. That a woman citizen of the United States shall  
13 not cease to be a citizen of the United States by reason of her  
14 marriage after the passage of this act, unless she makes a for-  
15 mal renunciation of her citizenship before a court having juris-  
16 diction over naturalization of aliens: Provided, That any woman  
17 citizen who marries an alien ineligible to citizenship shall  
18 cease to be a citizen of the United States. If at the termina-  
19 tion of the marital status she is a citizen of the United States,  
20 she shall retain her citizenship regardless of residence. If dur-  
21 ing the continuance of the marital status she resides continuous-  
22 ly for two years in a foreign State of which her husband is a citi-  
23 zen or subject, or for five years continuously outside of the  
24 United States, she shall thereafter be subject to the same pre-  
25 sumption as is a naturalized citizen of the United States under the  
26 second paragraph of section 2 of the act entitled 'an act in ref-  
27 erence to the expatriation of citizens and their protection a-  
28 broad', approved March 2, 1907. Nothing herein shall be construed  
29 to repeal or amend the provisions of Revised Statutes 1999 or of  
30 section 2 of the expatriation act of 1907 with reference to expa-  
31 triation. \* \* \* \* \*

32 Sec. 5. That no woman whose husband is not eligible to

1 citizenship shall be naturalized during the continuance of the  
2 marital status. \* \* \* \* \*

3  
4 Approved, September 22, 1922.

5 4633.

6 WASHINGTON: GOVERNMENT PRINTING OFFICE  
7 1922."

8  
9 (70) P.23, line 29½: Between lines 29 and 30 insert the  
10 following:

11 RECROSS EXAMINATION BY MR. SIMPSON

12 BY MR. SIMPSON:

13 Q. I want to ask you a couple more questions. What effect,  
14 if any, would the filing of your declaration of intention have  
15 upon your social status in India?

16 A. None whatever.

17 Q. The fact that you declared your intention to become a  
18 citizen of the United States and reside permanently therein would  
19 not affect your social status whatever?

20 A. No. It is the renunciation of allegiance that has that  
21 effect.

22 Q. The mere fact that you intend to renounce your allegiance  
23 does not affect it?

24 A. No.

25 Q. I suppose your answer would be the same as to the peti-  
26 tion for naturalization?

27 A. Yes.

28 Q. That likewise?

29 A. The petition is a more serious matter; it is pretty  
30 close to the time of naturalization.

31 Q. The filing of that petition, would that constitute a  
32

1 renunciation of your social status in India?

2 A. No; it is not when you file your petition. It is when  
3 you renounce your allegiance and are admitted to citizenship.

4 Q. When you actually make the renunciation regardless of  
5 the prior intention that you may have made--the loss is not sus-  
6 tained until there is actually an oath taken of allegiance?

7 A. Yes.

8 Q. And does the same hold true as to the privilege or right  
9 that you had to become a member of this society that you refer to?

10 A. You mean the degree from the Sanskrit university?

11 Q. Yes. You state in paragraph 8 of your affirmative de-  
12 fense that the degree which you had received--I don't know how to  
13 pronounce it--but it corresponds with the degree of doctor of  
14 philosophy?

15 A. Yes.

16 Q. That it is a very high honor, and that that degree  
17 would have enabled you to secure admission to any learned insti-  
18 tution or assembly of Hindus in India. Is it true that upon re-  
19 ceiving a certificate of naturalization that you lost that right  
20 to become a member of that assembly of Hindus?

21 A. No; that has nothing to do with the assembly of Hindus.  
22 That is subsequent to the degree. The degree was lost, not di-  
23 rectly by taking the oath of allegiance, but was lost by losing  
24 status, social status; because, as I said, only Brahmans are given  
25 that degree or can retain that degree, and as soon as I lost my  
26 social status I lost the degree.

27 Q. Is that degree dependent upon education or learning or  
28 social status?

29 A. Both.

30 Q. All of them, or one of them.

31 A. A man of any other caste than a Brahman, no matter how  
32 learned he might be, could never get that.

1 Q. Would the filing of the petition for naturalization or  
2 the declaration of intention have forfeited that?

3 A. No; I told you all those things are forfeited when you  
4 give up your allegiance to your native land and at no other time.

5

6

7 (71) P. 24, line 5. Between "having" and "naturalized" in-  
8 sert the word "been"

9 (72) P.24; Delete last six words of line 19 to end of line  
10 22 and insert:

11 Q. As his secretary, what did you do in regard to his cor-  
12 respondence?

13 MR. SIMPSON: I object on the further ground that it is  
14 not within the issues of the case.

15 THE COURT: How is that material?

16 MR. PALMER: It is preliminary.

17 THE COURT: Overruled.

18 A. He always passed his letters to me to read before he  
19 sent them out, in case he made some slip of the pen in writing  
20 them. Most of his letters were given to me to read and some of  
21 them to answer. Others he answered, but at his request I read  
22 almost every letter that came in or went out.

23 Q. Are you familiar with Mr. Pandit's associates in this  
24 country?

25 A. I am.

26 Q. Who have they been?

27 A. They have all been white people.

28 MR. SIMPSON: Objected to as incompetent, irrelevant and  
29 immaterial.

30 THE COURT: The government, as I understand it, is not at-  
31 tacking Mr. Pandit's personal qualifications for citizenship?  
32

1 MR. SIMPSON: No. I don't think there is any such question.

2 THE COURT: It is entirely upon the question of his ineli-  
3 gibility.

4 MR. SIMPSON: Yes; it is not a matter of his character. I  
5 don't think anything but the primary statutory qualification of  
6 eligibility is involved in this case, so far as we are concerned,  
7 but I don't see that the testimony given by this witness so far  
8 is within the fourth affirmative defense, which simply alleges  
9 that the defendant and Mrs. Pandit contracted a marriage, and that  
10 if his citizenship should be canceled it might throw doubt upon  
11 the legality of the marriage. What the writing of letters and his  
12 social activities have been, I don't see where it is material.

13 THE COURT: It is material if the government is going to  
14 raise any question about it. If the government is not questioning  
15 the personal characteristics of Mr. Pandit for citizenship, it is  
16 not material, but if it is going in any manner to assert that be-  
17 cause of the lack of any personal qualifications he should be de-  
18 prived of citizenship, it is very material. As I understood the  
19 government's case--if I am not correct, let's understand it now  
20 and save a lot of time--but as I understand the government's case,  
21 the government is resting entirely upon the fact that he is a Hin-  
22 du and therefore is not a white person within the meaning of the  
23 Revised Statutes controlling naturalization of persons.

24 MR. SIMPSON: That is true.

25 THE COURT: That is the sole contention of the government?

26 MR. SIMPSON: Yes; and in that connection we would like  
27 to call your honor's attention to the case decided by the Supreme  
28 Court, the Ozawa case, involving a Japanese who had been educated  
29 and spent a great many years in this country, a graduate of the  
30 Berkeley school and a student at the University of California, and  
31 who possessed wonderful qualifications so far as his personal qual-  
32 ifications and principles were concerned, yet the Supreme Court said



1 he was not a person eligible to citizenship and his citizenship  
2 should be cancelled.

3 THE COURT: He was never admitted, as I understood it.

4 MR. NEWBY: That is an original case, not a cancellation.

5 THE COURT: That is what I thought. That is different.

6 MR. SIMPSON: Assuming that the evidence is introduced  
7 in support of the fourth affirmative defense of estoppel, I  
8 don't see that there is anything pleaded in the fourth affirma-  
9 tive defense concerning the loss of Mr. Pandit's social status  
10 in this country. He has pleaded lost social standing in  
11 India by reason of the procuring of citizenship, but not that he  
12 will lose any social standing in this country.

13 THE COURT: He alleges he is a member of the bar and the  
14 presumption is that he cannot become a member of the bar until  
15 he has first demonstrated to the courts that he is a man of moral  
16 character. Now, if he loses his license to practice law, it is  
17 somewhat of a reflection upon him, upon his social standing.  
18 That is one of his averments that he is resting secure upon--  
19 that by the government's action, the government's acquiescence  
20 by its silence, he became a citizen and was admitted to the bar.  
21 Now, if his citizenship is revoked, as correlative to that revo-  
22 cation, his license to practice law would be taken from him, which  
23 would impair his social standing. I think that is a fair infer-  
24 ence.

25 THE COURT: The government is not questioning the personal  
26 integrity of Mr. Pandit. Now, let's not misunderstand that, so  
27 there will be no equivocation in the record hereafter. There is  
28 no question about that, Mr. Simpson?

29 MR. SIMPSON: No, sir, I have no evidence to introduce  
30 that in any wise attacks the social and moral standing of Mr.  
31 Pandit.

32 THE COURT: And you do not attack it?

1 MR. SIMPSON: And I do not attack it; no.

2 THE COURT: Otherwise he would have to make a showing. If  
3 not, I should permit him to introduce evidence along that line.  
4 It seems to me now there is only one issue here as made by the  
5 government, and upon that issue alone I will permit evidence.

6 THE COURT: It is now in the record that the government  
7 does not question the fact that Mr. Pandit is married to a woman  
8 of the white race? Is that right?

9 MR. SIMPSON: No contention to the contrary. If she fur-  
10 ther testifies that she was born in this country, we don't in-  
11 tend to introduce any evidence to refute that.

12 THE COURT: He testified to that himself. If there is to  
13 be any question on that I want to know it now, so we will not take  
14 up unnecessary time.

15 (73) P.24, lines 25-26: Delete and substitute following:

16 His business was that of teaching and lecturing. He lec-  
17 tured at the University of Chicago, in schools, churches and other  
18 halls. Since Mr. Pandit's

19 (74) P.24, line 28: Change last word from "none" to "no".

20 (75) P.24, For line 30 substitute the following:

21 United States; and have always been considered such since.  
22 I have never been outside the United States.

23 BY THE COURT: Pardon me. You were married in what part of  
24 California?

25 A. In Los Angeles.

26 Q. I presume we will take judicial knowledge of the fact  
27 that in order to marry within California she must have complied  
28 with the laws of California relative to marriage.

29 MR. SIMPSON: In what respect?

30 THE COURT: License, authenticated and recorded.

31 MR. SIMPSON: Yes. We don't make any contention other than  
32 that. If they testify they went through the necessary formalities

1 to become man and wife, we have nothing to the contrary to offer,  
2 and we will stipulate to that.

3 THE COURT: In other words, it is a statutory marriage?

4 MR. SIMPSON: Yes.

5 MR. PALMER: We have the certificate.

6 MR. SIMPSON: We don't want it.

7 THE COURT: You are not questioning it?

8 MR. SIMPSON: No. We are not questioning that they were  
9 legally in the state of California.

10 MR. NEWBY: That is, after securing a license?

11 MR. SIMPSON: Yes; in compliance with the statutory require-  
12 ments.

13 THE COURT: That is material, because there is a law that  
14 forbids marriage between mixed races.

15 MR. PALMER: May we show in the record that the license is  
16 recorded in Book 348, page 279 of "Marriages"?

17 THE COURT: What is the date?

18 MR. PALMER: That is on the 10th day of June, 1920 that it  
19 was recorded.

20 MR. SIMPSON: We will stipulate--we want it underatooof  
21 that all this testimony is subject to our objection that it does  
22 not constitute a defense.

23 THE COURT: Overruled.

24 Q. BY MR. PALMER: Did you see any communications between  
25 him and his mother in regard to his property, the property in  
26 India?

27 A. I read letters right along as they came.

28 Q. You may tell the court what took place in that corre-  
29 spondence between Mr. Pandit and his mother in regard to the pro-  
30 perty of Mr. Pandit's father.

31 MR. SIMPSON: I object on the ground that no proper foun-  
32 dation was laid, and it is not the best evidence.

1 THE COURT: Objection sustained. I understand the govern-  
2 ment is not going to contest the evidence which he offered.

3 MR. SIMPSON: No.

4 THE COURT: So it is not necessary to corroborate it.

5 (76) P.24: Delete last two lines. Also delete first 17½  
6 lines of P.25, and substitute as follows:-

7 CROSS EXAMINATION BY MR. SIMPSON

8 The legal description of my claim is the west half of  
9 Section 4, Township 14 South, Range 10 East, S.B.E. & M. I paid  
10 \$80.00 filing fee on the 1st of July 1913. The first year's work  
11 cost me \$320.00. The work for the second year's proof cost \$320.00.  
12 The work for the proof of the third year also cost \$320.00. I do  
13 nor remember the dates on which the various payments were made. I  
14 paid \$500.00 for locating the land. That was at the very begin-  
15 ning. Part of the work on the land consisted of building a barn and  
16 corral, clearing land, filling and working it over.

17 Q. The last payment you made was \$160.00, was it?

18 A. That \$160.00 was the initial payment under an applica-  
19 tion under the Relief Act.

20 Q. And that was paid prior to your marriage?

21 A. Well, I am not sure. Let me see - I am not sure.

22 Q. Have you paid anything since you have been married,  
23 to the Land Office?

24 A. I haven't. Mr. Pandit has been in charge of it ever  
25 since.

26 Q. You filed upon the land in 1913, and the last payment  
27 you made upon it was in 1920?

28 A. I didn't make it.

29 Q. You didn't make any payment?

30 A. The last payment was made in 1920, or before that.  
31 Since we were married Mr. Pandit took care of it.

32

1 Q. But you made no payment since the 5th day of June 1920?

2 A. I had nothing to do with it. He had the entire care of  
3 it.

4 Q. And how long did you say you have known Mr. Pandit?

5 A. Since 1906.

6 REDIRECT EXAMINATION BY MR. PALMER

7 Mr. Pandit attended to the land after we were married, and  
8 I have paid no more attention to it since then.

9  
10 MR. SIMPSON: At this time, and for the purpose of <sup>the</sup> record,  
11 we move to strike out all the testimony given by Mr. Pandit and  
12 Mrs. Pandit on the same grounds specified in our objections during  
13 the testimony.

14 THE COURT: Motion denied.

15 MR. SIMPSON: Exception.

16 THE COURT: Gentlemen, I don't care to go into any ques-  
17 tion as to Mr. Pandit's social standing, whether he associated  
18 with white persons or not. I think that is not disputed by the  
19 government, and I don't care to take up the time of hearing evi-  
20 dence on it.

21 (77) P.26, line 8: Between "status" and "in" insert the  
22 word "and"

23 (78) P.26, line 9: Delete second word ("and")

24 (79) P.26, line 29: Delete the words "of the status".

25 (80) P.26, line 31: Substitute for that line, the follow-  
26 ing:

27 "caste system in India. I am, to a certain extent, quite"

28 (81) P.27, line 1: Delete "to a certain extent".

29 (82) P.27, line 7: Substitute for the first seven words, the  
30 following:

31 "To be an outcast in India means"

32 (83) P.27: Delete line 23½ to end of page. also all of

1 pages 28, 29 and 30. And substitute therefor:

2 I reside in Los Angeles. I am a teacher in the sociological  
3 department at the University of Southern California. I attended  
4 an institution in Pasadena and also the University of Southern  
5 California. I graduated from Grand Island College, <sup>and</sup> attended the  
6 University of Chicago, where a Master's and a Doctor's degree  
7 were conferred upon me. The line of my study for many years has  
8 been in the field of sociology and anthropology. I lived in India  
9 for three years and made some investigations in parts of India,  
10 and the result of my investigations has been brought out in book  
11 form under the title "The Naga Tribe of Assam" published by Mac  
12 Millan in London. The Nagas are not Hindus. I spent some time  
13 among groups of Hindus in India and have been reading a great  
14 deal of literature regarding the Hindu groups. I have studied the  
15 structure of the caste system in India to some extent.

16 Q. Will you tell the court what the result of your investi-  
17 gation is in regard to that structure?

18 MR. SIMPSON: I object to it as incompetent, irrelevant and  
19 immaterial, calling for the conclusion of the witness, and not  
20 within the issues of the case.

21 THE COURT: I don't know. I don't know if this is within  
22 the issues or not. In view of the Thind case, it seems to me we  
23 will have to accept that as authoritative whether scientific gen-  
24 tlemen agree with it or not. The Supreme Court has spoken on  
25 that, and I don't believe there is any room for questioning it so  
26 far as this court is concerned.

27 MR. NEWBY: We are not undertaking to question that pro-  
28 position except to show that our loss of caste there would affect  
29 this man, that is the idea. We are not undertaking anything more  
30 than to show the Court that this man by becoming a citizen of the  
31 United States has lost his caste there.

32 THE COURT: I didn't know the purpose of it. Objection over-

1 ruled.

2 MR. SIMPSON: Exception.

3 THE WITNESS: The caste system is very rigid. A rigid  
4 line is drawn between the castes and a member of one caste might  
5 not break over into another. And if one does break in, then of  
6 course, he tends to lose his place in that particular group. The  
7 Brahman group particularly, according to my impression, from what  
8 I gathered from my study and observation, is very rigid in that  
9 respect. The Brahman caste is at the top. If a person drops  
10 out of the Brahman caste he might as well drop out of sight, be-  
11 cause he loses his status and there is no chance or opportunity  
12 for him there any more. That is, if he is in the Brahman caste  
13 and drops out of that, if he does anything that makes him an out-  
14 caste, then there is no opportunity for him to live in India and  
15 accomplish anything. He loses everything. When a Brahman breaks  
16 away he becomes accursed, and loses out entirely.

17 Q. Do you know what effect it would have upon a Brahman  
18 if he would come to the United States, for instance, and would  
19 become a naturalized citizen of the United States and forswear  
20 his allegiance to India?

21 MR. SIMPSON: Objected to as incompetent, irrelevant and  
22 immaterial, calling for the conclusion of the witness, and not  
23 within the issues of the case. The witness has not qualified as  
24 an expert to testify in such matters.

25 THE COURT: Overruled.

26 MR. SIMPSON: Exception.

27 A. Legally I do not know. I do not know about it techni-  
28 cally. But socially, it would mean that he would lose out.

29 Q. What do you mean by dropping out?

30 A. You lose status. Allegiance to the Brahman caste brings  
31 you up to the very top in India. The Brahman goes around with his  
32 head up and shoulders back. If he does anything that would cause

1 him to lose that position, he would go down, and he would not be  
2 able to look up again.

3 Q. BY THE COURT: Does the Brahman in India exercise rights  
4 as a British subject?

5 A. Yes.

6 Q. I mean, do they do it because of necessity or through  
7 choice? Does the Brahman as a caste, the Hindu caste, hold itself  
8 aloof from the rest of the citizenry and accept the political sta-  
9 tus simply because they have to accept it?

10 A. I think it is a matter of having to do it.

11 Q. Is it your opinion that a man loses his caste in India,  
12 that is, loses his social position, when there is a change in  
13 political status, but no religious change? For instance assum-  
14 ing citizenship in the United States?

15 A. When he leaves that country and forswears allegiance to  
16 it, and becomes a citizen of another country, it is practically  
17 the same as if he changed his religion. He loses caste, social  
18 status.

19 (84)P.32, line 2: Delete last three words and down to line  
20 19½, and replace by the following:-

21 I am familiar with "The Races of Man" by Denniker, Keane's  
22 "Man: Past and Present", "Man's Place in Nature" by Huxley, "The  
23 Dictionary of Races", Senate Document 662, Sixty-first Congress,  
24 3rd Session, 1910-1911. I am also familiar with the Aryan Theory.  
25 I had read the foregoing works before the decision of the Supreme  
26 Court in the Thind case. I read them again after the perusal of  
27 that decision. I am familiar with Blumenbach's views. I have al-  
28 so read articles on these subjects in various scientific maga-  
29 zines, and have discussed things anthropological and ethnological  
30 with some of the great authorities. I have read a number of books,  
31 among them, the recent work of Professor Dixon of Harvard Universi-  
32 ty, and the recent work of Professor Kroeber, Head of the Depart-



1 ment of Ethnology and Anthropology at Berkeley, California.  
2 Further, I have made a special study of the races of mankind.

3 Q. Now would you tell the court what effect the change  
4 in political allegiance from India to the United States has upon  
5 social status, as a study?

6 MR. SIMPSON: I object to that as having been asked and  
7 answered.

8 THE COURT: I think he has. But it may be answered again.

9 MR. SIMPSON: Exception.

10 A. The allegiance prized by Hindus is the allegiance to  
11 India and not to the British Empire or to the British Crown.  
12 Their nationality is Indian or Hindu, and not British nationality.  
13 And as things, social, political and religious are closely knit  
14 together and inseparable in the Hindu community, the loss of  
15 caste, or social status is the inevitable penalty meted out for  
16 change of religion, or national allegiance, or the violation of  
17 communal decencies.

18 (85) P.32, line 26½: Add the following:

19 REBUTTAL

20 MR. SIMPSON: We offer in evidence a certified copy from  
21 the records of the United States Land Office, showing the record  
22 of entries of Lillian B. Stringer, now Pandit, on Section 4,  
23 Township 14 South, Range 10 East, S.B.B. & M., the west half of  
24 that property.

25 MR. NEWBY: We object to it on the ground it is immaterial.  
26 If counsel will state the purpose of it--we haven't been able to  
27 discover it.

28 MR. SIMPSON: This record shows the original date of the  
29 filing of the application for the desert land entry, and shows  
30 what steps, if any, have been taken since, from that time down to  
31 the present time to perfect proof on this entry; the amount of  
32

1 money represented to have<sup>been</sup> expended in improvements. The total  
2 amount, according to this record, is around \$1200.00 and showing  
3 that the last payment was made in May, 1920, which would be prior  
4 to the date of the marriage of Mr. Pandit and his wife. I think  
5 the record is of further materiality as showing that a period of  
6 nearly twelve years has elapsed since the original entry was made  
7 and final proof has not been made by the entryman, and the record,  
8 I believe, will show that it was not through any act on the part  
9 of the government that it was not done.

10 MR. NEWBY: I suppose, your honor, that that goes to the  
11 weight, but I want to call the court's attention to the fact that  
12 the record does not purport to show the amount spent for improve-  
13 ments.

14 THE COURT: I am aware of that.

15 MR. SIMPSON: To a certain extent it does. In the last  
16 column it shows what the entryman represented as the amount of  
17 money paid out.

18 MR. PALMER: It does not show what the testimony of Mrs.  
19 Pandit shows, that she paid \$500.00 for the location.

20 THE COURT: I don't think the record in the Land Office  
21 shows all expenditures. It shows what it shows. Objection over-  
22 ruled.

23 (Plaintiff's Exhibit 2 in evidence.)

24 (Plaintiff's Exhibit No. 2, in words and figures follow-  
25 ing:)

26  
27 4-051 039211 01631

28 (In pencil) Notify Swing, Childers and Roberts of any  
29 attempt to transfer this entry.

30 KIND: Desert Land.

SERIAL No. 019238

31 NAME

DATE

32 Lillian B. Stringer (Now Pandit)

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ADDRESS

5135 Range View Ave.

Los Angeles, Cal.

DESCRIPTION OF LAND SECTION TOWNSHIP RANGE AREA

W 1/2 4 14 S 10 E 320

(In pencil)

Tp Sus 4/1/15 - 10/17/23

320.21

DATE

NOTATIONS

\$80.05

Rec. 111559

1913

June 28 Application filed and rejected because purchase money \$80.00 not paid.

" 30 Notice of Rej sent to claimant Reg. Mail.

July 1 Money p'd Entry allowed

1914

July 2 Service of Delg accepted. Reg. Mail

" 8 Service of DN accepted. Reg. Mail

Aug. 25 Application for extension of 60 days within which to file final proof.

Sept. 11 Reported to G.L.O. for can'l of entry.

Oct. 31 Appl'n for extension sent G.L.O.

1915

Feb. 19 "G" of 2/13/15, rejects appl'n for extension to submit yearly proof.

" 23 Notice " sent to claimant; Reg. Mail.

" 27 Service "G" 2/13/15 accepted, Reg. Mail.

Mar. 15 1st yearly proof filed \$320

Mar. 15 1st yearly proof filed \$320

Mar. 31 Report as to yearly proof to G.L.O.

June 11 2nd proof \$320.00

1918

April 16 3rd proof \$320. \$80.00 for corral 108 ft. x 192 ft.

SE cor. of NW1, \$240 bordering 30

acres near it.

DATE NOTATION

1 April 16 Appl'n for relief act of Mar 4, 1915  
2 " 17 " " " " " " " " " to F/D

3 1920

4 Mar 6 "F W.J.C. 3/1/20 grants relief.

5 NOTICE of above sent to Claimant; Reg. Mail  
6 Lillian B. Stringer  
7 Reg. card filed  
8 3/27/20.

9 (In pencil) Mar 23  
10 April 1920 Registry receipt filed.

11 " 20 " Initial payment of \$160.00 made rec.no. 2306895.

12 May " Reported to G.L.O. (In pencil.) E.N due  
13 10/19/28

14 U.S. Land Office, Los Angeles, Cal.

15 Dec. 11, 1925.

16 L. I. B.B. Smith, Register of the U.S. Land Office  
17 at Los Angeles, California, hereby certify that the fore-  
18 going is a full true and correct copy of the Serial Register of  
19 the entry of Lillian B. Stringer, (Now Pandit)  
20 now on file in this office.

21 (Signed) B.B. Smith

22 Register,

23 6-1267.

24 -:o:-

25 HENRY J. BURK

26 called as a witness in rebuttal on behalf of the plaintiff, being  
27 first duly sworn, testified as follows:

28 DIRECT EXAMINATION BY MR. ARMSTRONG

29 I am county surveyor of Imperial County, and have been so  
30 engaged for about seven years. I have recently made an examina-  
31 tion of the piece of land described as the west half of Section 4,  
32

1 Township 14 South, Range 10 East, San Bernardino Base Meridian,  
2 in the County of Imperial, State of California. I made an examina-  
3 tion of that property in January 1925 to see how much work, improve-  
4 ments, have been made on it.

5 Q. State what improvements, if any, you observed on the  
6 land?

7 MR. PALMER: I object to it as incompetent, irrelevant  
8 and immaterial.

9 THE COURT: Overruled. Answer the question.

10 A. I did.

11 Q. BY MR. ARMSTRONG: Just state what those improvements  
12 were, if there were any?

13 A. There was plowing and discing, furrows, about 60 feet  
14 apart.

15 Q. On how much of the land were those furrows made?

16 A. I think about 30 acres; I estimate there was something  
17 like that.

18 Q. And the furrows were about 60 feet apart?

19 A. Yes.

20 Q. And the discing you speak of, about what area did the  
21 discing cover?

22 A. I think about the same.

23 Q. Is that the same 30 acres that the furrows were made on?

24 A. Yes.

25 Q. Did you observe any other improvements on the land?

26 A. No; I did not.

27 Q. Are you familiar, either from experience or in any  
28 other way, with the value, that is, the cost of making the im-  
29 provements of that kind?

30 A. Well, I think I am.

31 Q. Well, have you been engaged in farming activities?  
32

1 A. I have, some.

2 Q. Did you ever actually put up improvements, work on im-  
3 proving land in the way this land was improved?

4 A. Why, I developed 160 acres; leveled it up and put it in  
5 crop.

6 Q. In your opinion, what would you say was the value of the  
7 improvements?

8 MR. NEWBY: I object to it. There has been no proper  
9 foundation laid.

10 THE COURT: The value of the improvements?

11 MR. ARMSTRONG: Yes. He testified there were furrows  
12 about 60 feet apart on approximately 60 acres, and that this 30  
13 acres was disced.

14 MR. NEWBY: Also, it is not shown that the witness knew  
15 anything about the improvements before; this is five years, more  
16 than five years ago, since these improvements were started, and he  
17 visited the place in January 1925. A great deal could have happened  
18 in the intervening time.

19 THE COURT: I suppose the government has a right to offer  
20 evidence to show what amount was expended for plowing and discing.  
21 That is all it amounts to. Objection overruled.

22 Q. BY MR. ARMSTRONG: What would you think it would cost  
23 to do that work?

24 A. Why, the plowing, just plowing the furrows--I don't think  
25 it would cost more than \$200.00.

26 Q. BY MR. NEWBY: \$200.00?

27 A. \$200.00.

28 Q. BY MR. ARMSTRONG: Did the land, the balance of it,  
29 show that it had been leveled?

30 A. No; it didn't. There were mounds on it.

31 Q. BY THE COURT: Where is the land?

32 A. It lies in the west side of Imperial Valley.

1 Q. Locate it with respect to some of the towns?

2 A. Well, it would be north of Placer City.

3 Q. Placer City is on the main San Diego line?

4 A. Yes.

5 Q. Out from El Centro?

6 A. Well, it is on the San Diego & Eastern, west of El  
7 Centro about 20 miles.

8 Q. How near Indian Canyon is it--is Indian Canyon in that  
9 vicinity?

10 A. Yes.

11 Q. That land has a potential value, hasn't it, on account  
12 of the prospective improvements on the Colorado river?

13 A. Well, yes, in a way.

14 Q. In other words, if anything is ever done that land  
15 will be of some value?

16 A. It is good land.

17 Q. It is good desert land as it is?

18 A. Yes.

19 Q BY MR. ARMSTRONG: Is there any other portion of the  
20 land that you spoke of that has improvements on it; any improve-  
21 ments made on the rest of the land; are there any improvements  
22 made on the land other than on the 30 acres?

23 A. No. No improvements. There was a little corral there,  
24 but I think that corral was off to one side, off that land. It  
25 seems to me it was not on that land.

26 Q. Do you know how far it is to water on this land?

27 MR. PALMER: Down or sidewise?

28 Q. BY MR. ARMSTRONG: How far is it to the closest water?

29 A. There would not be any water nearer than the west high  
30 line canal. I could not say how many miles it is, but I think ap-  
31 proximately eight or ten miles directly west, from the main canal.  
32

CROSS EXAMINATION

1 BY MR. PALMER:

2 Q. You say you saw a corral there?

3 A. Yes.

4 Q. Had you ever been on that land before January 1925?

5 A. Yes; I drove across it several years before that, but  
6 I didn't look at it. I didn't look at that particular piece of  
7 land.

8 Q. You didn't notice what had been done; you never took  
9 time to look and see what had been done except in this January?

10 A. I went away. . . .

11 Q. You were called upon to go and look at that land to be  
12 a witness in this case, to see what was done on the land?

13 A. I was called to go and examine it.

14 Q. Well, that was by the government, was it not?

15 A. No; a private party.

16 Q. A private party?

17 A. Yes.

18 Q. A private party had you go and examine the land?

19 A. I went to examine the land for the Portland Cement peo-  
20 ple.

21 Q. For the Portland Cement people?

22 A. Yes; Mr. Watson was the manager.

23 Q. They are trying to get that land, are they?

24 MR. SIMPSON: I object to that as not proper cross-examina-  
25 tion.

26 THE COURT: Overruled. I think it goes to the value of it.  
27 The question is a little bit unfair, whether they are trying to  
28 get the land.

29 Q. BY MR. PALMER: Well, who was it that hired you to go  
30 there, Mr. Burk?

31 A. I think it was Mr. Watson.

32 Q. And what position did he hold with the Portland Cement



1 Company?

2 A. He was manager.

3 Q. He was manager of the Portland Cement Company, where?

4 A. At Placer City.

5 Q. At Placer City; and is that land--that land has on it  
6 material that would make cement?

7 A. No. It is out on the desert.

8 Q. For what purpose did Mr. Watson have you go there to  
9 examine the land?

10 A. I could not tell you.

11 Q. Didn't he tell you why he wanted you to go and see it?

12 A. No, he didn't. He told me to go out and examine it,  
13 and I made the examination and made a little drawing.

14 Q. Is it not a fact that there was a railroad across there  
15 at that time?

16 A. There was a railroad there when I went out.

17 MR. SIMPSON: I don't understand what land you refer to.

18 MR. PALMER: The land in question.

19 THE COURT: You were not here during Mr. Armstrong's ex-  
20 amination.

21 MR. SIMPSON: They are talking about two pieces of land, that  
22 of the Portland Cement Company and that of Mr. Pandit.

23 MR. PALMER: No.

24 THE COURT: They are talking about the same land.

25 Q. BY THE COURT: The Portland Cement Company's manager  
26 asked you to go and look over the Pandit land?

27 A. Yes, sir.

28 Q. BY MR. PALMER: There is a railroad running over this  
29 parcel of land?

30 A. Yes.

31 Q. Which road is that?

32 A. It is a narrow-gauge road that runs out to the mine.

1 Q. That goes out to the Cement Company's mines?

2 A. Yes, sir.

3 Q. This railroad runs from Placer City, which is on the  
4 San Diego & Eastern, isn't it?

5 A. Yes.

6 Q. And runs out across the land of Mr. Pandit and over  
7 to the Portland Cement Company's mine?

8 A. Yes.

9 Q. And they sent you out there to see what improvements  
10 had been put on there, with the idea of getting control of this  
11 land, didn't they?

12 A. I don't know.

13 MR. ARMSTRONG: I object to that. This witness, if he  
14 hadn't been told by the manager what the purpose of it was, could  
15 not know.

16 THE COURT: If he doesnot know, he can say so. Overruled.

17 A. What was the question?

18 MR. PALMER: Read the question.

19 (Question read.)

20 A. I don't think so.

21 Q. How much did they pay you for going out there and mak-  
22 ing this examination?

23 A. He paid me my regular fees.

24 Q. How much was that?

25 A. A day's work.

26 Q. And how much was that?

27 A. \$15.00.

28 Q. And expenses?

29 A. What is it?

30 Q. And your expenses?

31 A. Yes.

32 Q. You were living at El Centro?

1 A. Yes.

2 Q. What were the expenses that he paid you?

3 A. I don't think there were any expenses connected with  
4 it. That is what I charged them; I think for a day's work.

5 Q. Just \$15.00?

6 A. Yes.

7 Q. BY THE COURT: What did Mr. Watson say to you when he  
8 engaged you?

9 A. I didn't question him at all about what it was for.

10 Q. He just asked you to go out and make this investiga-  
11 tion?

12 A. Yes.

13 Q. Did he tell you what he wanted you to investigate?

14 A. He wanted me to look it over and see how much improve-  
15 ments had been made on it. I didn't ask him, but I understood  
16 it was for the purpose of a right of way.

17 Q. Was the railroad right of way on the land at that  
18 time?

19 A. It was, on part of it; it ran across part of it.

20 Q. BY MR. PALMER: And you understood he wanted to extend  
21 that right of way over another portion of it?

22 A. No; I understood there was some trouble about getting  
23 the right of way across the land, and the railroad had already been  
24 built several years ago. It was not any of my business, and I  
25 didn't inquire into it.

26 Q. Well, there had been a right of way acquired across the  
27 land, and you understood from Mr. Watson that they were seeking  
28 an additional or extended right of way?

29 A. Yes; seeking to perfect their right of way, I think it  
30 was. They hadn't made a survey. They had a surveyor of the road  
31 out there making a survey at the time I was there. He was with me.

32

1 Q. Who was with you?

2 A. I cannot think what his name is, but he was a little,  
3 small man, working for the company.

4 Q. Working for the Portland Cement Company?

5 A. Yes, sir; a surveyor.

6 Q. He was a surveyor?

7 A. Yes.

8 Q. And he surveyed the right of way?

9 A. No; I don't think he surveyed the road. The road was  
10 surveyed long before that.

11 Q. You made a drawing?

12 A. I made a little sketch of the land, that is all.

13 Q. Is that the only piece you made a drawing of?

14 A. That is all.

15 Q. Is that the only piece you investigated that day?

16 A. Yes.

17 Q. What did the drawing show, have you a copy of it with  
18 you?

19 A. No.

20 Q. What did the drawing show?

21 MR. ARMSTRONG: I object to it as not the best evidence.

22 THE COURT: He hasn't it here; do you want to take the  
23 time to bring it in?

24 MR. ARMSTRONG: It is in relation to what?

25 MR. PALMER: I want to know what was on the drawing.

26 MR. ARMSTRONG: I object to it as immaterial.

27 THE COURT: Overruled.

28 A. Why, the drawing would show, as I stated in my affida-  
29 vit, where the work had been done.

30 Q. BY MR. PALMER: Did your drawing show the location of  
31 the railroad over the property?

32 A. I could not say whether I sketched in the railroad or  
not.

1 Q. You don't remember that?

2 A. If I did, it was only approximately.

3 Q. Did you in your drawing indicate where the improve-  
4 ments were?

5 A. I think I did.

6 Q. Did you indicate where the corral was?

7 A. I think I did. I could not say. I don't remember. I  
8 didn't try to remember that. I made the drawing and that was all  
9 there was to it.

10 Q. What did you do with the drawing?

11 A. I think their attorney got the drawing. I don't know.

12 Q. Their attorney got it?

13 A. Yes; an attorney.

14 Q. Did you know at the time you were making that examina-  
15 tion that they were preparing to contest the claim of Mr. Pandit  
16 to that land?

17 MR. ARMSTRONG: I object to that as assuming a fact not in  
18 evidence.

19 Q. BY MR. PALMER: Of Mrs. Pandit?

20 MR. SIMPSON: Mr. Burk went there and made an examination  
21 at the request of the United States Attorney's office. I know  
22 that.

23 THE COURT: You were not here when he testified on direct.  
24 He testified differently.

25 MR. SIMPSON: He testified that Mr. Watson asked him to go  
26 up there, but he was not asked why he went out. He went out to  
27 make an examination and determine the amount of the improvement. I  
28 I know of my own knowledge the reason he went out there was because  
29 the request went from our office through the cement company to have  
30 him communicate with us. There is no doubt that the cement com-  
31 pany is interested in knowing who was interested in the land. They  
32 were interested in the value of it. The request went from my of-

1 fice through the attorneys of the company.

2 MR. NEWBY: We would like for counsel to state why he com-  
3 municated with the attorney of the railroad.

4 MR. SIMPSON: Simply because we were communicated with by  
5 them, asking us what the status of the Pandit case was.

6 MR. NEWBY: I thought so.

7 MR. SIMPSON: That is our case.

8 MR. NEWBY: I want to show by Mr. Pandit the point where  
9 that railroad went through there, and that there were no proceed-  
10 ings whatever to condemn a right of way. They just went in there  
11 and built a railroad over his land.

12 THE COURT: Very well.

13

14

SURREBUTTAL:

15

16

S.G. PANDIT

17

recalled as a witness in his own behalf, in surrebuttal, testified  
18 further as follows:

19

DIRECT EXAMINATION

20

BY MR. NEWBY:

21

Q. State what you know about that railroad being built  
22 across this land of your wife?

23

MR. SIMPSON: I object to it as incompetent, irrelevant  
24 and immaterial.

25

THE COURT: Overruled.

26

MR. SIMPSON: Exception.

27

A. About 1918 or '19, a couple of men came to my wife and  
28 wanted to buy a right of way across that land for a railroad, and  
29 she turned them over to me. They came to my office in the Bank  
30 of Italy Building and talked the matter over with me, and they  
31 said, "We will go just across the corner of your land; that is  
32 all we want, and it will do good to the land. Everybody has been

1 giving land, and we expect you to do the same thing." After  
2 some talk I told them I didn't think Mrs. Stringer would give  
3 the land away that way, and they came back and I told them that  
4 unless they were willing to pay something for it they would not  
5 get the land. I didn't know anything about it; I didn't know  
6 they had put the railroad on it already without her consent.  
7 About two or three years after, the men came again. They had  
8 never told me they had put the railroad on it. I think last  
9 year or the year before last --it was early last year-- a man  
10 came three or four times from the Portland Cement Company and  
11 said they had succeeded to the rights of the Gypsum Company,  
12 and they wanted to build a railroad, but they wanted only a  
13 30-foot strip through a corner of the land, and they gave me  
14 a description of the strip they wanted. I said I would look it  
15 over, and I put it aside. They didn't want to pay anything for  
16 it, but they said they would pay \$100.00, "because you have no  
17 title to the land yet." I examined the description that they  
18 left, and I asked Mr. Kenyon, who had done the work for us  
19 there, how much of this land it would take, what corner it would  
20 go through, and he said the railroad was there already. I said,  
21 "How long has it been there?" and he said "Three or four years";  
22 and he said, "I thought you had allowed them to place it there".  
23 I said, "No; I haven't". He said, "It cuts right across the  
24 better portion of your land. That half of the land is better  
25 than the other half of the land, and it goes through the better  
26 half of the land". I looked at the description and I saw that it  
27 went through from one side to the other, from east to west, and  
28 when the man came again to see me I asked him about it, and he  
29 said, "No; it is the worst portion of the land". And I said,  
30 "You asked me for permission to put the railroad through,  
31 and you already had it there". And he said, "We have a little  
32 piece of it, but if you don't give us permission, we will move

1 it." I said, "Take it out", and he said, "We will take it out."  
2 He came back again and I said, "Have you taken it out?" He said,  
3 "Well, our surveyors are working there", and I said, "You have  
4 the railroad through our land, and we want it taken out, or pay  
5 for it". Then I wrote to them at San Francisco, three letters,  
6 in the name of my wife, and registered them, and they never  
7 replied. I asked them to have the railroad taken off the land  
8 or to pay proper compensation for it, but I received no reply.

9 Q What was the name of the attorney?

10 A I don't remember.

11 MR. NEWBY: That is all.

12 CROSS-EXAMINATION

13 BY MR. SIMPSON:

14 I did not want them to run across the land at all. But  
15 when I found that they were already there for several years  
16 without my knowledge or permission, I may have asked them to  
17 pay \$5,000.00 or move the tracks. I do not remember at this  
18 time just what payment I mentioned as the alternative of their  
19 getting off our land.

20 - o -

21 THE COURT: You may proceed with the argument, gentlemen.

22 MR. SIMPSON: . . . I want to frankly state to the Court  
23 that in a case of this character, and particularly in this case,  
24 my sympathies are all with the defendant. Perhaps I might go  
25 further and say that the equities would all be in favor of the  
26 defendant . . . .

27 - o -

28 The following observation was made by the Court to counsel  
in the course of the argument for the government:

29 THE COURT: Prior to the decision of the Supreme Court  
30 of the United States in the case of Thind, it was understood,  
31 and it was the rule of decision of the Federal Court that  
32 high caste Hindus were not ineligible to citizenship. Now,



1 under that theory of the law, and it was the theory--it was not  
2 an established principle, but it was the theory of the law, and  
3 had been announced by proper authority, to-wit, the Federal  
4 Court in construing acts of Congress, construing the inherent  
5 rights of aliens within the United States, which is an ex-  
6 clusive prerogative of the Federal Court. In construing those  
7 laws and those rights, the Federal Courts announced rules which  
8 enabled Mr. Pandit and those coming within his class to apply  
9 for and obtain citizenship in the United States. Now, did not  
10 that become a vested right, especially to the extent of being  
11 irrevocable when the government accepted those decisions and  
12 took no action of any kind to have the law declared otherwise?  
13 And the law was not declared otherwise until the decision of the  
14 Supreme Court of the United States at the October term, 1922.  
15 Now, if, however, it is to be held that the law, declared to  
16 be such in October, 1922, relates back to 1913 and 1914, or  
17 previous thereto, it is not only an impairment of a vested  
18 right. For is it not a contravention of the constitutional  
19 enactment against ex-post facto laws, retroactive statutes,  
20 which deprive him of a right which he had under the law as it  
21 existed at that particular time? I am aware of decisions which  
22 hold that changes in procedure do not operate to invalidate  
23 ex-post facto laws. But is this not a change in status, not a  
24 change in procedure at all. Is it not an attempt on the part  
25 of the government to take from an individual a constitutional  
26 right which he has, and which had been made applicable to him,  
27 because of the fact that he was--and I use the term advisedly--  
28 because he had complied with all the regulations and laws as  
29 interpreted and applied by the United States Courts up to the  
30 time of the Thind case?

31 At the close of the government's opening argument,  
32 the Court made the following observation to defendant's counsel:

1 THE COURT: Before you proceed, Mr. Palmer, I want to say  
2 that I think there is a line of demarcation between what might  
3 be considered personal individual qualifications. I am not  
4 speaking so much of the cultural qualifications. I don't think  
5 I would waste very much time on that in view of the Supreme  
6 Court's decision in the Thind case. The questions presented  
7 here that I think are of moment in the consideration of the  
8 fourth affirmative defense are, the obtaining of property rights,  
9 and the social status, and by that I mean in as far as the  
10 marriage relation is concerned, and in as far as the right of  
11 the individual to pursue a lawful employment where he has com-  
12 plied with the regulations that were in effect at the time that  
13 he became possessed of the right to pursue such employment.  
14 In other words, the ~~Respondent~~, according to the evidence, is  
15 an attorney at law, and has pursued the practice of law as a  
16 means of livelihood. Now, if the certificate of naturalization  
17 is revoked at this late date, as a part of this revocation  
18 will be a revocation of his license to pursue his lawful calling,  
19 because there is no way he can pursue the practice of law  
20 without making secure his citizenship. The same is true with  
21 respect to his marriage. If it is judicially declared that his  
22 citizenship is void because of the fact that he is not a white  
23 person within the meaning of the naturalization statute, then  
24 it follows that his marriage should be annulled. Those are  
25 matters which I am referring to as individual qualifications  
26 of the respondent in this case. I don't believe that the  
27 Supreme Court in the Thind case referred to such a class of  
28 individual qualifications. I don't think it makes any differ-  
29 ence whether a man belongs to the highest class of a race or  
30 to a lower. That is not the question which we are considering  
31 here, and it is not the question which the Supreme Court con-  
32 sidered in the Thind case. We are considering here more

1 especially the individual qualifications of this respondent in  
2 as far as his property and his status are concerned, his per-  
3 sonal status. All of those rights I am inclined to feel have  
4 become vested by reason of his political status, and as the law  
5 existed up until the decision in the Thind case.

6 Now, there is one further observation in that line that  
7 might be worthy of consideration when you discuss it, and that  
8 is that the Supreme Court in the very last part of this decision  
9 says the following, quoting from page 215 of the official  
10 volume: "It is not without significance in this connection"--  
11 after discussing the question whether a person coming from  
12 India is eligible to citizenship, they say as follows--"It is  
13 not without significance in this connection that Congress, by  
14 the act of February 5, 1917, has now excluded from admission  
15 into this country all natives of Asia within designated limits  
16 of latitude and longitude, including the whole of India. This  
17 not only constitutes conclusive evidence of the congressional  
18 attitude of opposition to Asiatic immigration generally, but  
19 is persuasive of a similar attitude toward Asiatic naturaliza-  
20 tion as well, since it is not likely that Congress would be  
21 willing to accept as citizens a class of persons whom it rejects  
22 as immigrants."

23 Now, that is rather pertinent language. I think it shows  
24 that until that time Congress had never legislated upon the  
25 subject, and therefore, is there not some room to believe that  
26 Congress, not having legislated upon the matter, and the courts  
27 having judicially applied the law up until the October term,  
28 1922 of the Supreme Court, holding that persons having the  
29 qualifications that Mr. Pandit possesses, were qualified to be  
30 citizens of the United States and were not within the class--that  
31 is what I had in mind when I said that the state of the law was  
32 such up until the Thind decision that Mr. Pandit's status was

1 that he was eligible. Not only had he been admitted to citizen-  
2 ship, but all of the declared pronouncements--all of those that  
3 are recorded at least--were to the effect that Mr. Pandit was  
4 within that class that was eligible to citizenship. That is a  
5 material fact, it seems to me, as going to determine whether or  
6 not at this late date the equities of the case require that he  
7 surrender all of these rights which he has enjoyed because the  
8 law said he was vested with them, and that he surrender as well  
9 his marital status. I think those are matters which constitute  
10 in this case the essential, the individual qualifications of the  
11 respondent, and the Supreme Court in the Thind case was not con-  
12 sidering any individual qualifications. That is the only line  
13 of distinction between the Thind case and the case at bar. We  
14 will recess until 2 o'clock. I think you ought to confine  
15 yourself to that, gentlemen. I think we are precluded to a  
16 great extent by the Thind case. I think you are precluded in  
17 this case as to any finding of whether or not Mr. Pandit belongs  
18 to a race which is excluded.

19  
20 (86) P. 32. Delete l. 27 $\frac{1}{2}$  to end of page and first seven lines  
21 of page 33, and substitute therefor:

22 After the argument

23 S. G. PANDIT

24 recalled for further direct testimony, testified as follows:

25 DIRECT EXAMINATION BY MR. NEWBY:

26 Since I have been appointed notary public, I have earned  
27 about \$50.00 annually from notarial work. The notarial commission  
28 is a great accommodation in the practice of law, and also  
29 draws practice.

30 THE COURT: State again what your position is with respect  
31 to your marriage.

32 A I had no intention of staying in this country unless

1 I could become a citizen, and when Mr. Jones opposed my natural-  
2 ization, I said to some people, "I don't think I will stay here  
3 if they don't want me as a citizen. I will probably go back.  
4 I won't take up the study of American law. I will study law  
5 somewhere else". About a month after, I saw Mr. Jones and saw  
6 the judge, and they seemed to think I was eligible and could be  
7 admitted, then I decided I would stay here. After that I wrote  
8 home saying that if I married at all I would marry here in  
9 America, but I never would have thought of marrying if I was not  
10 going to stay here. I was not going to stay here if I was not  
11 admitted as a citizen.

12 Q If you had not been admitted to citizenship, would you  
13 have married the party whom you afterwards married?

14 A No. I never would have thought of it.

15

16 (87) Unless the opinion orally delivered by the Court at the  
17 end of the trial of this cause, on December 16, 1925, goes in  
18 as per No. 5 of Defendant's Praecipe for Record filed this day,  
19 insert it at this place as per copy attached, *hereto.*

20

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*D. G. Pandit*  
*Defendant - Appellee*

1 THE COURT: I don't see any necessity, gentlemen, in view  
2 of my own conviction upon the matter, of taking it under ad-  
3 visement. The question here is largely a pioneer question.

4 I haven't been able to find any decision analogous to the  
5 situation that I conceive to be the issue before the court  
6 now. So, it seems to me that it is simply a waste of time to  
7 delay a decision in the case, in view of my own conclusions  
8 on the issue.

9 I think we may premise the matter by saying that in as  
10 far as the racial status of Mr. Pandit is concerned, there is  
11 no room for argument under the decision of the Supreme Court  
12 in the Thind case, 261 U.S., 204. Therefore, I think it must  
13 be established, both as a finding of fact in the case and as a  
14 legal conclusion to be drawn therefrom, that Mr. Pandit falls  
15 within the determination of a class of aliens who are ineligible  
16 for naturalization under the decision of the Supreme Court of  
17 the United States.

18 Now, the question then comes, if that is true, has he  
19 presented, first of all, a legal defense to this suit which is  
20 not a naturalization proceeding at all, and which is not an  
21 ex-parte proceeding, but is a proceeding on the chancery side  
22 of the federal court, wherein there are two suitors, one the  
23 government and the other the respondent or the defendant Pandit,  
24 the citizen, because in approaching this matter we must assume  
25 that he is now a citizen of the United States. The ultimate  
26 question is whether that status will now be taken from him under  
27 the allegations of the bill and the answer of the defendant,  
28 as contained particularly in the fourth separate defense. That  
29 involves a discussion of whether the doctrine of equitable  
30 estoppel is applicable in a suit of this nature. I fail to see  
31 why it is not, because it is an equitable proceeding, and it  
32 does not make any difference whether the government is one of the

1 suitors or whether it is a suit in equity between private  
2 individuals, because it is universally held that when the  
3 government sues in a court of equity it does so only upon the  
4 same basis as an individual who comes into equity asking for a  
5 decree, and the issues which are litigable between two  
6 individuals are litigable and are to be decided according to  
7 the same equitable principles where the government is a suitor.

8         The facts bring the case, I think, clearly under the  
9 principle of equitable estoppel just read by Mr. Simpson from  
10 Corpus Juris. The government appeared in the naturalization  
11 proceeding where in Mr. Pandit was admitted to citizenship, so  
12 it was not really an ex-parte proceeding. Formerly most of  
13 these proceedings were purely ex-parte proceedings, where the  
14 government did not appear. But since the inauguration of the  
15 Naturalization Division in the Department of Labor--I believe  
16 it is--the naturalization examiner has appeared on behalf of  
17 the government and has conducted the proceedings. That was  
18 the case when Mr. Pandit was admitted to citizenship. So  
19 that these proceedings which we are examining--and I think it  
20 must be borne in mind throughout that we are not examining  
21 the question in the abstract as the Supreme Court was in the  
22 Thind case, an abstract racial question, but we are here  
23 examining a question of equity wherein we are to apply all of  
24 those beneficent principles which have made the court of  
25 equity the strong arm of rectitude in the government that it  
26 is. Why is not the government, then, held to the same rules?  
27 There is no good reason why it should not be so held. It is  
28 argued that no person has a right to citizenship except upon  
29 compliance with the regulatory measures which the government  
30 has adopted therefor. With that principle there can be no  
31 dispute, but we are not concerned with the question of  
32 whether a Hindu of high caste is applying for citizenship.  
If we were, we would summarily dispose of the issues, because

1 there can be no room for doubt in our minds, since the Supreme  
2 Court decision in the Thind case. These persons are not  
3 entitled to citizenship and cannot be admitted by any of the  
4 courts. That is not the question here. Here is a person who  
5 has been admitted, and who was admitted at a time when the  
6 state of the law extant was that he was entitled to be admitted  
7 to citizenship of the United States. At that time I think  
8 perhaps there were decisions in individual cases where individ-  
9 ual trial judges, district judges, probably decided on denying  
10 citizenship to persons, but there was no authoritative, binding  
11 decision by any of the appellate tribunals of the federal  
12 judicial system which precluded Hindus of the high caste from  
13 American citizenship. On the contrary, all of the written  
14 decisions that I have been able to find were to the contrary.

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



1 Now, if there is anything at all, that would estop the govern-  
2 ment. Because it is the same government that is now demanding  
3 that this court take from him that citizenship; it is the  
4 same government that dealt with him, dealt with his wife, with  
5 an acknowledgement of the fact that he was lawfully entitled to  
6 citizenship. Because if Mrs. Pandit is married to a man who is  
7 ineligible for citizenship, she has no right to any of those  
8 possessory claims which she has entered on the public domain.

9 So there can be no question that upon the doctrine cited in  
10 Corpus Juris, there was a case where the government dealt with  
11 the status of Mr. Pandit in a way that it can hardly be per-  
12 mitted now to repudiate. I regard the acquisition of this  
13 government's possessory right as one of the most important  
14 features. Because there is no doubt at all that whatever rights  
15 Mrs. Pandit has gained, will be rendered insecure at least,  
16 probably totally defeated, by the revocation of the citizenship  
17 of her husband, upon the grounds set out in this petition.  
18 Because the government is not asking for the revocation of this  
19 citizenship upon any ground except the one that this man is  
20 ineligible for American citizenship. Now, if he is ineligible  
21 for American citizenship, his wife cannot acquire any possessory  
22 right to public domain.

23 It might be said that that is a right for the wife to  
24 assert. But it is not. Because the proof shows that the  
25 property is being acquired as community property, and from  
26 community funds; that they have jointly gone into the enter-  
27 prise, and that Mr. Pandit has paid during the marriage a  
28 certain amount of money toward the perfection of this property  
29 right.

30 There are other matters that appeal to the conscience  
31 of the court, but it may be that under the application of cold  
32 legal principles that they are not sufficient to justify the

1 court in this case in refusing to cancel Mr. Pandit's cer-  
2 tificate. But I cannot leave them out of consideration. The  
3 intent of the naturalization law should be read into this case.  
4 And the intent is to have aliens who come to this country  
5 lawfully--and Mr. Pandit came lawfully, because this exclusion  
6 act was not in effect when he came, not in effect at the time  
7 he sought citizenship, did not become effectual until very  
8 recently as compared to the time of his coming and his  
9 acquisition of citizenship--it is the intent of this country  
10 to have all aliens who come here lawfully and conduct them-  
11 selves properly, to become citizens, become parts of the  
12 American national family, to identify themselves with this  
13 country in a substantial and patriotic manner, and they do so  
14 by becoming American citizens. It is much better to have  
15 aliens citizens of the United States than it is to have for-  
16 eigners in the United States. So that construction should be  
17 adopted by a court of equity which will have the effect of  
18 encouraging the desirable aliens to become citizens rather than  
19 ostracizing them from our political family. Now, this man is  
20 a member of the political family. He underwent the acid test  
21 at the time of the hearing before the state court. And there  
22 is not a scintilla of evidence--there is not even an imputation  
23 made by the government--but that he has conducted himself in  
24 a satisfactory manner in as far as his civic conduct is con-  
25 cerned, and in as far as the discharge of his duties of citizen-  
26 ship are concerned.

27 In view of all these facts, should the court take  
28 from him--where it is a novel question whether equitable  
29 estoppel does not exist--whether the court should adopt, should  
30 assume, that position that will take from him his citizenship;  
31 and require that he, if he desires to pursue the matter further,  
32 shall expend sufficient money and shall submit himself to the

1 necessary humiliation that will exist if his citizenship is  
2 taken from him? I don't think so. I don't think the court is  
3 justified in doing that.

4           There is a case in the Supreme Court which I think is  
5 somewhat illuminating on this question. That is the case of  
6 Johannessen v. United States, found in 225 U.S., beginning at  
7 page 227. It is so pertinent, that I think just a few excerpts  
8 from it will indicate the mind of this court on the matter of  
9 this fourth defense. I won't read it all because it is long,  
10 but there are some portions that I want the record to show,  
11 which reflect the views of the court on this matter. I think it  
12 disposes of the situation which I suggested this morning at the  
13 conclusion of the morning recess, and seems to indicate that the  
14 suggestion that I made about ex-post facto features of this law  
15 being retrospective is inapplicable. It seems to indicate that  
16 those provisions only apply to criminal proceedings or pro-  
17 ceedings wherein there is some penalty--I mean some legal penalty,  
18 imposed by the statute. This is what the decision says--I  
19 won't take the time to read it all. Section 15 of the Act of  
20 June 29, 1906, which is the same act and the same section under  
21 which this proceeding is instituted, provides: "That it shall  
22 be the duty of the United States District Attorneys for the  
23 respective districts, upon affidavit showing good cause therefor,  
24 to institute proceedings in any court having jurisdiction to  
25 naturalize aliens in the judicial district in which the natural-  
26 ized citizen may reside at the time of bringing the suit, for  
27 the purpose of setting aside and canceling the certificate of  
28 citizenship on the ground of fraud, or on the ground that such  
29 certificate of citizenship was illegally procured." Now, those  
30 are the two reasons or the two grounds upon which the government  
31 may act; either upon the ground of fraud or on the ground that  
32 the certificate of citizenship was illegally procured. Now,

1 what is the meaning of that word "procured"? These words in  
2 the statute are full of meaning. They are not placed there  
3 aimlessly, and not to be interpreted. "Procured" means that  
4 there must have been something done by the actor which puts  
5 into effect the illegality. It does not mean that if there is  
6 some procedural step taken that is not properly taken, but  
7 taken by the government officer, and a person secures a right  
8 thereunder, that the government years afterwards can come in  
9 and say, "We made a mistake. This man was not in the country  
10 long enough. It is true he didn't commit perjury. He told us  
11 the truth, but we assumed that he was here sufficiently long  
12 to establish legal residence; and now we find he was not, and  
13 we want a court of equity to revoke his certificate." I do  
14 not believe that such a situation can exist in a court of  
15 equity under the statutes, and I think the Supreme Court has  
16 practically settled the matter by its decision in other cases  
17 construing these two features of Section 15. There is another  
18 thing in connection with that. The statute itself, Section 15  
19 itself, recites that a proceeding may be instituted by the  
20 United States District Attorney in the district in which the  
21 naturalized citizen may reside at the time of bringing the  
22 suit. Now, what does that mean? That he is a citizen, and that  
23 he has the status of a citizen, even though he may have procured  
24 it by fraud; and that, therefore, it is not a proceeding that  
25 is analogous to or synonymous with a status that is acquired  
26 by virtue of a document that is void 'ab initio', but that it  
27 is merely voidable, a voidable act which the government may  
28 vitiate upon proper showing. Now, that brings into play all  
29 equitable doctrines to resist the voiding of a document which  
30 has been legally issued. It depends entirely upon what the  
31 government did--whether it by its own conduct was primarily  
32 responsible for the deficiency in as far as the legality of

1 the certificate is concerned; and, secondly, if it acquiesced  
2 in that insufficiency by dormancy, or failure to act, espec-  
3 ially when it had knowledge of the facts upon which the gov-  
4 ernment now seeks to act. Now, there is no doubt but that  
5 the government was apprised of the situation by Mr. Jones, and  
6 it did nothing for ten years, practically. It permitted the  
7 respondent to change his entire life; permitted him to relin-  
8 quish all the ties that bound him to his native land; per-  
9 mitted him to assume a different station and take up the pursuit  
10 of law; and to outline his life along a certain vocation, a  
11 certain profession, and to pursue that profession in the belief  
12 that he had a right to pursue it; to become married to an  
13 American woman; to get her to take up real property; to act  
14 as a notary public--it might invalidate many titles--I won't say  
15 as a legal conclusion that that would follow, but it would  
16 raise the question of the invalidity of documents that were  
17 acknowledged by Mr. Pandit as a notary public. So, the extent  
18 of a decree of this kind puts it entirely out of the purview of  
19 the authority. The rights of so many people would be affected.  
20 Not only would the status of the defendant be affected, but the  
21 rights of others, who have secured rights because of the belief  
22 that Mr. Pandit was an American citizen, which belief the  
23 government has permitted him to continue in for ten years. I  
24 believe to ask a court of equity to pioneer, especially in  
25 wresting from him his citizenship, is not proper upon the  
26 circumstances shown by the record.

27 Now, the Supreme Court in this case goes on to discuss  
28 the question as to whether or not this statute is retrospective  
29 or ex-post facto, and determines that it is not, and uses  
30 language of this kind, which I think is perfectly clear: "The  
31 act does not purport to deprive a litigant of the fruits of a  
32 successful controversy in the courts." That is not the

1 situation in the case at bar. In the Johannessen case it was  
2 purely an ex-parte proceeding. In the case at bar it is not  
3 an ex-parte proceeding in which Mr. Pandit was admitted to  
4 citizenship. It is true that the government did not file a  
5 formal written statement, but the government's representative,  
6 Mr. Jones, who was present there, objected to the admission of  
7 Mr. Pandit and filed a brief in opposition, and announced a rule  
8 which ultimately the Supreme Court established was the correct  
9 rule. That is not an ex-parte proceeding. It was a pro-  
10 ceeding in which the government appeared and in which the rights  
11 of the parties were adjudicated and which in no sense was an  
12 ex-parte proceeding, but was a proceeding, in the language of  
13 the Johannessen case, in which the litigant did deprive himself  
14 of the fruits of a successful controversy in the courts. The  
15 government took no further action; permitted the matter to  
16 remain dormant, not only dormant, but as I said before, the  
17 government permitted the wife of the man whom they now say never  
18 was a citizen, to assume to act as the wife of an American  
19 citizen, as the wife of a man eligible for American citizenship.  
20 I think that estops it. If anything does, that does.

21 The question narrows itself down in my opinion to this  
22 one proposition: Does the doctrine of equitable estoppel  
23 operate against the government in proceedings to revoke nat-  
24 uralization where there is no charge of fraud? I cannot see on  
25 any theory of reasoning why it is not applicable.

26 The Supreme Court in this Johannessen case further  
27 said that the act in effect provides for a new form of judicial  
28 review. It says: "The act in effect provides for a new form of  
29 judicial review of a question that is in form, but not in  
30 substance, concluded by the previous record, and under con-  
31 ditions affording to the parties whose rights are brought into  
32 question full opportunity to be heard. Retrospective acts of

1 this character have often been held not to be an assumption by  
2 the legislative department of judicial powers. An alien has no  
3 moral nor constitutional right to retain the privileges of  
4 citizenship if, by false evidence or the like, an imposition has  
5 been practiced upon the court, without which the certificate of  
6 citizenship could not and would not have been issued." Now,  
7 there has been no such condition here at all. There has been no  
8 deception practiced on the court that admitted him to citizen-  
9 ship; no irregularity committed by him which was tantamount to  
10 an affirmative act, and no illegality procured, to use the  
11 language of the statute. Mr. Pandit procured no illegality to be  
12 done in obtaining citizenship, nor did he procure it by any  
13 fraud, nor was there any imposition practiced upon the court  
14 which led the court to issue the certificate of citizenship to  
15 Mr. Pandit. "As was well said by Chief Justice Parker in  
16 Foster v. Essex Bank, 16 Mass., 273, 'There is no such thing as  
17 a vested right to do wrong.'" That is the principle of equity  
18 here. There must have been a wrong done by the defendant,  
19 especially where the lapse of time intervenes, ten years, where  
20 a person lives secure in the belief that he has a right. Before  
21 he can be deprived of that right in a court of equity, there  
22 must be a showing that he participated in a wrong, either by  
23 fraud or had procured some illegal action to be taken by the  
24 court. "The remaining points taken by the appellant may be  
25 briefly disposed of. One is that the provisions of Section 15  
26 of the Act of 1906 are not retrospective. This is refuted by  
27 a reading of the closing paragraph of the section. Finally, it  
28 is insisted that, if retrospective in form, the section is void,  
29 as an ex-post facto law within the prohibition of Article 1,  
30 Section 9 of the Constitution. It is, however, settled that  
31 this prohibition is confined to laws respecting criminal punish-  
32 ments, and has no relation to retrospective legislation of any other

1 description. The act imposes no punishment upon an alien who has  
2 previously procured a certificate of citizenship by fraud or  
3 other illegal conduct." Now, what is meant by "illegal conduct"?  
4 It does not mean some technical imperfection. It does not  
5 mean because there has been a mistake made by either the court  
6 or by governmental agencies, in as far as computation of time  
7 is concerned, or having the necessary number of witnesses, or  
8 any matter of that kind, where the government has acted upon the  
9 belief that all of those matters did exist and has continued to  
10 be dormant for a period of ten years. It does not mean any such  
11 thing. "It simply deprives him of his ill-gotten privileges.

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

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



1 own judgment is that it has, and that in this case the equities  
2 are with the defendant.

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

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7 *Saharam Ganesh Pandit*  
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9 Defendant-Appellee

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