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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	PLAINTIFF'S BRIEF
TATOS OSGIHAN CARTOZIAN, Defendant	)	

All the allegations of the Bill of Complaint are admitted. There is but one question before the Court for determination - Is an Armenian, born at Sivas, Turkey in Asia Minor, and of Armenian blood and race, a "white person" within the meaning of the act of 1798, and subsequent amendments and enactments? No question of the individual character, habits, religion or racial superiority and inferiority is involved, the only question being, does the Defendant belong to a race of white persons as that term was understood and intended to be applied by the representative or common mind of America. The test, formerly sometimes applied, based upon the question as to whether the applicant for citizenship belonged to the "Caucasian" or "Aryan" race, is no longer accepted, neither is the question to be determined upon anthropological or ethnological theories. In this connection Mr. Justice Sutherland, in United States vs. Thind, 261 U. S. 204, says:

> "In the endeavor to ascertain the meaning of the statute we must not fail to keep in mind that it does not employ the word "Caucasian" but the words "white persons", and these are words of common speech and not of scientific origin. The word "Caucasian" was not employed by law but was probably wholly unfamiliar to the original framers of the statute in 1790 * * * * The words of the statute are to be interpreted in accordance with the understanding of the common man from whose vocabulary they were taken. See Maillard vs. Lawrence (16 How. 251, 261).

not only

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> They imply, as we have said, a racial test; but the term 'race' is one which, for the practical purposes of the statute, must be applied to a group of living persons now possessing in common the requisite characteristics, not to groups of persons who are supposed to be or really are descended from some remote, common ancestor, but who, whether they both resemble him to a greater or less extent, have, at any rate, ceased altogether to resemble one another. It may be true that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity, but the average man knows perfectly well that there are unmistakable and profound differences between them today; and it is not impossible, if that common ancestor could be materialized in the flesh, we should discover that he was himself sufficiently differentiated from both of his descendants to preclude his racial classification with either. The question for determination is not, therefore, whether by the speculative processes of ethnological reasoning we may present a probability to the scientific mind that they have the same origin, but whether we can satisfy the common understanding that they are now the same or sufficiently the same to justify the interpreters of a statute - written in the words of common speech, for common understanding, by unscientific men - in classifying them together in the statutory category as white persons".

If, then, we shall be guided by the decision rendered by Mr. Justice Sutherland in the Thind case, there will be little occasion for the Court to devote time in considering the personal opinions of the witnesses in behalf of the defendant, or the speculative reasoning and theories of ethnologists. To the opinions of these witnesses should also be applied the rule applicable to expert testimony.

There is evidentiary value in the voluminous records or tables of witnesses, names and birth places of Armenians who have married Americans, or the fact that Armenians have become affiliated with American fraternal, educational and religious organizations. The whole problem relates back to the original question - Is an Armenian a "white person" as understood by the common mind of America and intended to be included within the races of persons who are admissible under the naturalization law.

If the defendant is a "white person" within the meaning of Section 2169 Revised Statutes, he is entitled to a certificate of naturalization; otherwise not.

In the Thind case it is further said:

"The words of familiar speech, which were used by the original framers of the law, were intended to include only the type of man whom they knew as white. The immigration of that day was almost exclusively from the British Isles and northwestern Europe, whence they and their forebears had come. When they extended the privilege of American citizenship to 'any alien being a free white person' it was these immigrants - bone of their bone and flesh of their flesh - and their kind whom they must have had affirmatively in mind. The succeeding years brought immigrants from eastern, southern, and middle Europe, among them the Slavs and the dark eyed, swarthy people of Alpine and Mediterranean stock, and these were received as unquestionably akin to those already here and readily amalgamated with them. It was the descendants of these, and other immigrants of like origin, who constituted the white population of the country when section 2169, re-enacting the naturalization test of 1790, was adopted."

In connection with the latter portion of the foregoing quotation, it is proper to observe that while the witnesses on behalf of defendant testified and attempted to establish the fact, based upon the theories of ethnologists, that the Armenian race had its origin and belonged to the Alpine branch of European stock, yet it is admitted that at least from a period as early as seven or eight centuries prior to the beginning of the Christian era, the Armenians were inhabitants of Asia and are properly classified in the popular mind as Asiatics. In this connection we further quote from the Thind case:

"What, if any, people of primarily Asiatic stock come within the words of the section we do not deem it necessary now to decide. There is much in the origin and historic development of the statute to suggest that no Asiatic whatever was included. The debates in Congress, during the consideration of the subject in 1870 and 1875, are persuasively of this character * * * * While what was said upon that occasion, to be sure, furnished no basis for judicial construction of the statute, it is, nevertheless, an important historic incident, which may not be altogether ignored in the search for the true meaning of words which are themselves historic".

There have been introduced in evidence here reports of Congressional committees on immigration. Unlike debates in Congress, these reports become and are official and even though the reports were not introduced in evidence, courts take judicial knowledge of them as they do of geographical and historical matters. From these reports, coupled with the fact that in the recent Act of Congress passed the present year limiting immigration in such

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ways as practically to exclude all future immigration of Armenians, we have the definite interpretation of the meaning of the term "white persons" as intended to be applied and as understood by the representatives of the common mind of America. In this connection we further quote from Justice Sutherland's decision:

> "It is not without significance in this connection that Congress, by the Act of February 5, 1917 (39 Stat. 874, c.29, sec. 3), has now excluded from admission into this country all natives of Asia within designated limits of latitude and longitude, including the whole of India. This not only constitutes conclusive evidence of the congressional attitude of opposition to Asiatic immigration generally, but is persuasive of a similar attitude toward Asiatic naturalization as well, since it is not likely that Congress would be willing to accept as citizens a class of persons whom it rejects as immigrants."

Solicitors for defendant have presented an ably prepared brief. We shall not undertake to discuss at length the matters therein stated. We feel that the question for decision is not a seriously involved one and that the presentation of a lengthy brief would be unwarranted and to undertake to answer the various questions raised by Solicitors for defendant is beyond our purpose. We do not controvert the statement that the Armenians are capable, ambitious and industrious; that they are patriotic; that they embraced the Christian religion at an early period in the Christian era. It is true that much inconvenience and even loss to the Armenians would follow the holding that they are not within the class intended by the framers of the law to be included within the class admissible as citizens.

However, it may be as truthfully argued that many of these commendable characteristics are to be found in the Japanese and Hindu races, notwithstanding the fact that they have been specifically held to be not admissible as citizens.

On Page Nine of defendant's brief the statement is made that it is "necessary for us to satisfy the Court that Armenians are Caucasian or Aryan people". In the Thind case,

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this classification was discounted by the Court as a true means of determining the racial classification for admission.

On Page Fifteen of defendant's Brief, Solicitors for defendant call attention to the fact that the Act of 1917, draws the line of exclusion from immigration in such a way as not to exclude Armenians. In answer to this statement, we have only to remind the Court that the 1924 Act in effect provides a new line which does exclude Armenians.