

T 1.35

67/14

C

3 copies

U.S. WEBB
Webb, Webb & Olds
1420 Mills Tower
San Francisco, California
Telephone: Sutter 3855

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA IN AND FOR
THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

JAMES K. FISK,

Plaintiff,

-vs-

G. E. WADE, as County Clerk and
Registrar of Voters in the
County of Alameda, State of
California,

Defendant.

Filed: May 7, 1942

NO. 22177-R

COMPLAINT FOR INJUNCTION

JAMES K. FISK, plaintiff, complains of defendant above-
named and for cause of action alleges:

I.

This action arises under the Constitution and laws of
the United States and more especially under the Constitution of the
United States, Sections 1 and 2 of Article II thereof, the Four-
teenth, Fifteenth and Seventeenth Amendments thereto, Section 1 of
Article II of the Constitution of the State of California, and the
following Acts of Congress: Act of May 31, 1870, c. 114, section
1, 16 Stat. 140 (U.S.C., Title 8, section 31); Act of April 20,
1871, c. 22, section 1, 17 Stat. 13 (U.S.C., Title 8, section 43),

1 as hereinafter more fully appears. The matter in controversy ex-
2 ceeds, exclusive of interest and costs, the sum of Three Thousand
3 (\$3,000.00) Dollars. The jurisdiction of this Court is also in-
4 voked under Section 24 (1 and 14) of the Federal Judicial Code
5 (U.S.C., Title 28, section 41, subsections 1 and 14).

6
7 II.

8 The County of Alameda is a political subdivision of the
9 State of California and comprises the Sixth Congressional District
10 and a large part of the Seventh Congressional District of said
11 State. The defendant, C. E. WADE, is now and for several years
12 last past has been the County Clerk and Registrar of Voters in
13 said County and as such has been and is charged with the registra-
14 tion of all electors of the State of California who reside in said
15 County and with the care, custody and control of the register of
16 voters therein.

17 Registration of an elector in said County, as in all
18 other counties in said State, is a prerequisite and condition pre-
19 cedent to the right of an elector to vote at any and all elections
20 held in said County, including the right to vote for members of
21 the House of Representatives, for members of the Senate and for
22 Presidential Electors.

23 Such registration, as in all other counties in said
24 State, is permanent and the name of anyone placed upon the reg-
25 ister of voters remains and continues thereon during the life of
26 any such registrant and entitles such registrant to vote at any
27 and all elections held in said County, unless his registration be
28 sooner terminated for certain specified causes not herein in-
29 volved, or unless and until his registration be cancelled and
30 terminated upon the production of a certified copy of a judgment
31 directing the cancellation to be made.
32

III.

Plaintiff is a native-born citizen of the United States and is a citizen of the State of California. He is now and for several years last past has been a resident of the County of Alameda and of the Seventh Congressional District in said County, and, under the Constitution and laws of the United States and the Constitution and laws of the State of California, he is now and for several years last past has been a duly and regularly registered and qualified elector in said County and in said District, entitled to vote in said County at all elections held therein, both primary and general, and entitled to vote for members of the House of Representatives from said Seventh Congressional District, for members of the Senate, and for Presidential Electors.

Plaintiff has for several years last past regularly and customarily voted at elections held in said County. It is now his right and privilege and his intention to vote and he will regularly vote in said County at all elections held therein. A primary election will be held in the State of California on the 25th day of August, 1942, and a general election will be held therein on November 3, 1942. At said primary election plaintiff will be and is entitled to vote and will vote, as a member of the Republican Party, for the nomination of candidates for the House of Representatives, and at said general election plaintiff will be and is entitled to vote and will vote for members of the House of Representatives. Subsequent elections will thereafter be regularly held in said State and County as prescribed by law for the election of members of the House of Representatives, members of the Senate and Presidential Electors, at which plaintiff will be entitled to vote for members of the respective offices of the United States.

IV.

By the Constitution and laws of the United States and the

1 Constitution and laws of the State of California, the privileges
2 of an elector of the State of California, including the privileges
3 of voting and of registration as an elector, are granted only to
4 citizens of the United States and are expressly withheld and pro-
5 hibited to all aliens ineligible to citizenship in the United
6 States.

7
8 V.

9 The defendant, as County Clerk and Registrar of Voters of
10 the County of Alameda, charged with the registration of all
11 electors who reside in said County and with the care, custody and
12 control of the register of voters therein has for several years
13 last past registered and retained and does now retain upon said
14 register more than two thousand Japanese of the full blood born in
15 the United States and in the State of California of alien
16 parents born in the Empire of Japan. Said Japanese so registered
17 as aforesaid, and residing in said County, approximately one
18 thousand of whom have resided and do reside in the Seventh Con-
19 gressional District in said County, have for several years last
20 past customarily voted in said County at elections held therein
21 for members of the House of Representatives, for members of the
22 Senate, and for Presidential Electors, and plaintiff is informed
23 and believes, and upon such information and belief alleges, that
24 said Japanese will be permitted to and will, unless their reg-
25 istration be terminated and cancelled and their names be removed
26 and stricken from the register of voters in said County, vote for
27 nomination of candidates for the House of Representatives at the
28 primary election to be held on the 25th day of August, 1942, and
29 for members of the House of Representatives at the general elec-
30 tion to be held on the 3rd day of November, 1942. Further, said
31 Japanese, unless their registration be terminated and cancelled
32 and their names be removed and stricken from the register of

1 voters of said County, will be permitted to and will vote at sub-
2 sequent elections held in said County as prescribed by law for the
3 election of members to the aforementioned offices of the United
4 States.

5 VI.

6
7 Said Japanese of the full blood born in the United States
8 and in the State of California of alien parents born in the Empire
9 of Japan were at birth citizens, and each of them was and is a
10 citizen of the Empire of Japan, (owing allegiance to that govern-
11 ment and subject to the jurisdiction of the United States of
12 America in the same manner and to the same extent as all other
13 aliens, but not otherwise. Said Japanese so born are aliens, and
14 each of them is an alien, ineligible to citizenship in the United
15 States of America and ineligible to exercise or be accorded any of
16 the privileges of an elector of the State of California, which
17 privileges are expressly prohibited them.

18
19 VII.

20 Each of said Japanese so born and registered as aforesaid
21 in the County of Alameda has filed an affidavit of registration
22 with the defendant, as County Clerk and Registrar of Voters of the
23 County of Alameda, charged with the registration of all electors
24 who reside in said County and with the care, custody and control
25 of the register of voters therein, in which each of them has
26 stated under oath that he was and is a citizen of the United States
27 of America and of the State of California. These statements are,
28 and each of them is, false and untrue, but the defendant in his
29 capacity as aforesaid has erroneously and unlawfully accepted and
30 received said affidavits and has erroneously and unlawfully ac-
31 cepted as true said statements so made and has erroneously and un-
32 lawfully incorporated and included said affidavits and the names

1 of said Japanese in the register of electors of said County, which
2 said register shall consist of and contain the names of duly
3 qualified electors only, and is the register of electors/ used and
4 employed in said County at all elections held therein to ascertain
5 and determine the qualified electors so as to enable qualified
6 electors only to cast their votes.

7
8 VIII.

9 The rights and privileges of plaintiff as an elector of
10 the State of California, secured to him by the Constitution and
11 laws of the United States and by the Constitution and laws of the
12 State of California, comprehend and include the right and privi-
13 lege of plaintiff to have his name be and remain upon said reg-
14 ister of electors with other duly and regularly registered and
15 qualified electors only, the right and privilege to vote in said
16 County of Alameda with all other duly and regularly registered and
17 qualified electors only, and the right and privilege to have all
18 votes cast by him counted, recorded and given their full and true
19 value, force and effect with the votes of all other duly and
20 regularly registered and qualified electors only, all without
21 interference, impairment or denial by or through persons inelig-
22 ible to exercise the rights and privileges of electors of the
23 State of California.

24
25 IX.

26 Defendant, as County Clerk and Registrar of Voters in
27 said County of Alameda, by wrongfully and unlawfully permitting
28 and according registration as aforesaid to said Japanese, and by
29 retention of the names of said Japanese upon the register of
30 voters of the County of Alameda, has infringed upon, interefered
31 with and impaired said rights of the plaintiff as an elector and
32 has deprived plaintiff of the full and true value, force and

1 effect of the votes cast by him as aforesaid, and has denied and
2 deprived plaintiff of his adequate and proportionate share of
3 influence in the elections at which he has voted as aforesaid and
4 has severely and irreparably damaged and injured plaintiff in his
5 rights and privileges as an elector of the State of California.
6

7 X.

8 Unless the defendant is ordered and directed to strike
9 and remove the names of said Japanese from the register of voters
10 of the County of Alameda and is ordered and directed to terminate
11 and cancel their registration, said Japanese, who are now and have
12 been alien enemies continuously since December 7th, 1942, when the
13 United States of America became at war with the Empire of Japan,
14 will be enabled and permitted to vote, and, as plaintiff is inform-
15 ed and believes, and upon such information and belief alleges,
16 said Japanese will vote at the primary election to be held on
17 August 25th, 1942 as aforesaid, at the general election to be held
18 on November 3rd, 1942 as aforesaid, and at all subsequent elec-
19 tions held in said County, to the further and continuing irrepar-
20 able damage and injury of plaintiff in his rights and privileges
21 as a regularly and duly registered and qualified elector in the
22 State of California.
23

24 WHEREFORE, plaintiff prays that the defendant, as the
25 County Clerk and Registrar of Voters of Alameda County, charged
26 with the registration of all electors of the State of California
27 who reside in said County and with the care, custody and control
28 of the register of voters therein, and his successors in office,
29 be ordered and directed to remove and strike the names of said
30 Japanese born and registered as aforesaid from the register of
31 voters of the County of Alameda, and be ordered to terminate and
32

1 cancel their registration as electors of the State of California,
2 and for such other and further relief as may be meet and proper in
3 the premises.

4
5 U. S. WEBB

6 WEBB, WEBB & OLDS

7 Attorneys for plaintiff.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

1 STATE OF CALIFORNIA,)
2 City and County of San Francisco.) ss.

3 JAMES K. FISK, being first duly sworn, deposes and says:

4 That he is the plaintiff in the above-entitled action;
5 that he has read the foregoing Complaint and knows the contents
6 thereof and that the same is true of his own knowledge except as
7 to the matters therein stated upon information and belief, and to
8 those matters, he believes it to be true.

9 James K. Fisk

10 Subscribed and sworn to before me
11 this 7th day of May, 1942.

12 (Seal) Alfred D. Martin

13 NOTARY PUBLIC
14 In and for the City and County of
15 San Francisco, State of California.

7625

Ralph E. Hoyt,
District Attorney for Alameda County,
Attorney for Defendant,
Alameda County Court House,
1225 Fallon Street
Oakland, California,
Highgate 0507.

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JAMES E. FISK,

Plaintiff,

vs.

G. E. WADE, as County Clerk and
Registrar of Voters in the
County of Alameda, State of
California,

Defendant.

Civil Action

No. 22177 R

MOTION TO DISMISS.

Defendant G. E. Wade, sued herein in his official capacity
as County Clerk and Registrar of Voters in the County of Alameda,
State of California, moves the Court to dismiss the action on the
following grounds:

- (1) Lack of jurisdiction over the subject matter,
and (2) Failure to state a claim upon which relief can

1 be granted against this defendant.

2 This motion will be based on the complaint on file, and
3 the memorandum of points and authorities attached hereto.
4

5 RALPH E. HOYT

6 District Attorney in and for the
7 County of Alameda, State of
8 California.

9 J. F. COAKLEY

10 Chief Assistant District Attorney
11 in and for the County of Alameda,
12 State of California.

13 R. ROBERT HUNTER

14 Assistant District Attorney in and
15 for the County of Alameda, State of
16 California.

17 J. D. COOPER

18 Deputy District Attorney in and for
19 the County of Alameda, State of
20 California,

21 Attorneys for Defendant,
22 Alameda County Court House,
23 1225 Fallon Street,
24 Oakland, California.
25
26
27
28
29
30
31

1 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA
2 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SOUTHERN DIVISION
4

5 JAMES K. FISK,

6 Plaintiff,

7 vs.

8 G. E. WADE, as County Clerk and
9 Registrar of Voters in the
10 County of Alameda, State of
11 California,

12 Defendant.

Civil Action

No. 22177 R

13 MEMORANDUM OF POINTS AND
14 AUTHORITIES IN SUPPORT OF
15 DEFENDANT'S MOTION TO
16 DISMISS THE ACTION AS TO
17 DEFENDANT.

18 Defendant, G. E. Wade, in his official capacity as County
19 Clerk and Registrar of Voters in the County of Alameda, State of
20 California, furnishes herewith the following Memorandum of Points
21 and Authorities in support of his Motion to Dismiss the said action
22 as to him. Defendant sets forth the following points of law for
23 the purpose of demonstrating to this Court that he has in all of
24 his alleged actions complied with duties enjoined upon him by law,
25 and that, therefore, under the present law now existing in this
26 regard, he has committed no act or omission either in violation of
27 law or by erroneous application thereof, whereby Plaintiff or any
28 other person has been denied any rights, privileges or immunities
29 giving rise to a proper cause of action in this Court, and particu-
30 larly in the above entitled action.

31 STATEMENT OF FACTS.

Plaintiff, James K. Fisk, has filed a complaint herein
for an injunction of a mandatory nature against Defendant, G. E.
Wade, in his official capacity as County Clerk and Registrar of
Voters in the County of Alameda, State of California, praying that

1 this Court order and direct said defendant, in his said official
2 capacity, and also his successors in office, to:

3 (1) Strike and remove from the Register of Voters
4 in and for the County of Alameda, State of California,
5 the name of each and every person of Japanese ancestry
6 born in the United States of alien Japanese parents;

7 (2) Terminate and cancel the registration as electors
8 of the State of California, of each and every person of
9 Japanese ancestry born in the United States of alien
10 Japanese parents, and who is now registered as such
11 elector.

12 The material facts alleged in said complaint are as fol-
13 lows:

14 (1) That plaintiff is a citizen of the United States and
15 of the State of California and is a duly qualified elector and en-
16 titled to vote in Alameda County at all elections, including those
17 at which members of Congress are voted upon;

18 (2) That plaintiff has regularly voted at such elections
19 in the past and intends to and will vote at all such elections in
20 the future;

21 (3) That defendant, in his official capacity as Registrar
22 of Voters, has upon the Register of Voters the names of some 2,000
23 Japanese persons who were born in the United States and in the
24 State of California of Japanese parents;

25 (4) That said Japanese whose names are upon the Register
26 of Voters have heretofore, and will hereafter, vote in all elections
27 including those for nomination of candidates for members of Con-
28 gress and Presidential Electors;

29 (5) That defendant, in his said official capacity, has
30 erroneously and unlawfully accepted and received affidavits of
31 said Japanese born in the United States and in the State of Calif-

1 ornia of alien Japanese parents, to the effect that said Japanese
2 so born in the United States and in the State of California, are
3 citizens of the United States of America and of the State of Cal-
4 ifornia;

5 (6) That by virtue of said alleged erroneous and unlaw-
6 ful acts of defendant in his official capacity, said Japanese born
7 in the United States and in the State of California of alien Japa-
8 nese parents are registered and qualified electors;

9 (7) That by the retention of the names of said Japanese
10 as aforesaid, upon the Register of Voters of Alameda County, defen-
11 dant has interfered with and impaired the rights of plaintiff as
12 an elector and has deprived plaintiff of the true value, force and
13 effect of his vote and his irreparably damaged and injured plain-
14 tiff in his rights and privileges as an elector of the State of
15 California;

16 (8) That so long as said allegedly erroneous and unlaw-
17 ful acts of defendant continue, the damage to plaintiff will con-
18 tinue.

19
20 In connection with the facts alleged in the complaint, the
21 attention of the Court is respectfully directed to the following
22 matters:

23 (1) As a conclusion of law, it is alleged that by the
24 Constitution and laws of the United States and the Constitu-
25 tion and laws of the State of California, the privileges of
26 an elector of the State of California are granted only to
27 citizens of the United States and are expressly withheld and
28 prohibited to all aliens ineligible to citizenship in the
29 United States.

30 (2) As a conclusion of law, it is alleged that Japanese
31 of the full blood born in the United States and in the State

1 of California of alien parents born in the Empire of Japan,
2 were at birth, and now are, citizens of Japan, and are
3 aliens, ineligible for citizenship of the United States and
4 to be and become qualified electors of the State of Cal-
5 ifornia.

6 (3) The complaint does not allege that plaintiff is,
7 in any manner, denied the right to vote by defendant or any
8 other person.

9 (4) The complaint does not allege that any of the
10 Japanese born in the United States and in the State of
11 California, the registration of whom is complained of by
12 plaintiff, are or were at the time of their birth, born of
13 Japanese parents engaged in the consular or diplomatic
14 service of Japan, or that said parents are or were, at the
15 time of birth of said Japanese so born in the United States
16 and in the State of California, transient aliens or alien
17 public ministers and consuls.

18 Said complaint herein further alleges that said cause
19 of action arises under and by virtue of the following provisions
20 of the Constitution of the United States; of the following Acts of
21 Congress; and of the following provisions of the Constitution of
22 the State of California:

23
24 Sections 1 and 2 of Article II of the Constitution of
25 the United States;

26 Amendment 14 of the Constitution of the United States;

27 Amendment 15 of the Constitution of the United States;

28 Amendment 17 of the Constitution of the United States;

29 Act of Congress, May 31, 1870, c. 114, section 1 (16 Stat.
30 140; U.S.C., Title 8, section 31);

31 Act of Congress, April 20, 1871, c. 22, section 1 (17 Stat.
13; U.S.C., Title 8, section 43);

1 Section 1 of Article II of the Constitution of the State
2 of California;

3 Jurisdiction of this Court is also and further alleged
4 and invoked under the following enactments:

5 Section 24, sub-sections (1) and (14) of the Federal
6 Judicial Code; (U.S.C., Title 28, section 41, sub-
7 sections 1 and 14).

8 The basic and organic Constitutional and Statutory enact-
9 ments and provisions upon which this Motion to Dismiss is predicated,
10 are:

11 Article I, section 2 of the Constitution of the United
12 States;

13 Article I, section 4 of the Constitution of the United
14 States;

15 Article II, section 1 of the Constitution of the United
16 States;

17 Amendment 14 of the Constitution of the United States;

18 Amendment 15 of the Constitution of the United States;

19 Amendment 17 of the Constitution of the United States;

20 Act of Congress, May 31, 1870, c. 114; (16 Stat. 140;
21 U.S.C., Title 5, section 31);

22 Act of Congress, April 20, 1871, c. 22, section 1,
23 (17 Stat. 13; U.S.C., Title 5, section 43);

24 Section 24, sub-sections (1) and (14) of the Federal
25 Judicial Code (U.S.C., Title 28, section 41, sub-
26 sections 1 and 14);

27 Act of Congress, March 3, 1875, c. 137, section 5;
28 (18 Stat. 472; section 37 of the Federal Judicial Code;
29 U.S.C., Title 28, section 80);

30 Article II, section 1 of the Constitution of the State
31 of California;

Article V, section 20 of the Constitution of the State
of California;

Section 51 of the Political Code of the State of Calif-
ornia;

Section 20 of the Elections Code of the State of Calif-
ornia;

Section 21 of the Elections Code of the State of Calif-
ornia;

1 Section 70 of the Elections Code of the State of
2 California;

3 Section 120 of the Elections Code of the State of
4 California;

5 Section 220 of the Elections Code of the State of
6 California;

7 Section 293 of the Elections Code of the State of
8 California;

9 Section 300 of the Elections Code of the State of
10 California.

11 ARGUMENT.

12 I

13 THE COURT LACKS JURISDICTION OVER THIS ACTION
14 SINCE THERE IS NO SUBSTANTIAL FEDERAL ISSUE
15 OR QUESTION PRESENTED BY THE COMPLAINT.

16 The jurisdiction of the Federal District Courts, as pre-
17 scribed and limited by Section 24, subdivision (1) of the Federal
18 Judicial Code, extends only to cases and controversies involving
19 the sum of \$3,000.00 AND also an issue arising under the Constitu-
20 tion or laws of the United States. In this connection, said
21 Section 24, subdivision (1) aforesaid expressly provides:

22 "The district courts shall have original jurisdiction
23 as follows:

24 " of all suits of a civil nature, at common
25 law or in equity where the matter in controversy ex-
26 ceeds, exclusive of interest and costs, the sum or value
27 of \$3,000, and arises under the Constitution or laws
28 of the United States "

29 The Courts have consistently and strictly limited the
30 jurisdiction of the said district courts in accordance with the
31 apparent meaning of the statute. In the case of Helvy v. Webb,
(D.C.S.D., Cal. 1941) 36 Fed. Supp. 243, at page 243 the Court
said:

"In this complaint, jurisdiction was predicated upon
the existence of a matter in controversy arising under
the laws of the United States and exceeding the value of
\$3,000. Both elements are necessary to jurisdiction"

1 See also: Royalty Service Corp. v. City of Los Angeles,
2 (C.A. 9, 1938) 98 Fed. (2d) 551;

3 Allen v. Clark, (D.C.S.D., Cal., 1940)
4 22 Fed. Supp. 898;

5 Neale v. Railroad Commission, (D.C.S.D.,
6 Cal., 1940), 32 Fed. Supp. 407;

7 Hague v. C. I. O., 307 U.S. 496, 59 S. Ct.
8 954, 83 L. Ed. 1423 (Opinion of Roberts, J);

9 McNutt v. General Motors Acceptance Corp.,
10 298 U.S. 178, 56 S. Ct. 780, 80 L. Ed. 1135;

11 K.V.O.B., Inc., v. Associated Press, 299 U.S.
12 269, 57 S. Ct. 197, 81 L. Ed. 183;

13 Cooney v. Legg, (D.C.S.D., Cal., 1940)
14 34 Fed. Supp. 531;

15 Carroll v. Somervell, (C.C.A. 2, 1941)
16 116 Fed. (2d) 918.

17 An issue "arises under the Constitution or laws of the
18 United States" within the purview of Section 24, subdivision (1)
19 of the Federal Judicial Code when its correct determination depends
20 upon the construction of the Constitution or laws of the United
21 States, or when the right of a party may be sustained by one con-
22 struction or defeated by another. In the case of Gully v. First
23 National Bank, 299 U.S. 109, 112, 113, 57 S. Ct. 96, 81 L. Ed. 70,
24 the Court said:

25 "How and when a case arises 'under the Constitution
26 or laws of the United States' has been much considered in
27 the books. Some tests are well established. To bring a
28 case within the statute, a right or immunity created by
29 the Constitution or laws of the United States must be an
30 element, and an essential one, of the plaintiff's cause of
31 action. . . . The right or immunity must be such that it
will be supported if the Constitution or laws of the United
States are given one construction or effect, and defeated
if they receive another A genuine and present con-
troversy, and not merely a possible or conjectural one,
must exist with reference thereto, and the contro-
versy must be disclosed upon the face of the complaint,
unaided by the answer or by the petition for removal"

1 See also:

2 Allen v. Clark, (D.C.S.D. Cal., 1938)
3 22 Fed. Supp. 898.

4 In addition to being an issue "arising under the Constitu-
5 tion or laws of the United States" the said question must be a sub-
6 stantial one before the District Court can have jurisdiction under
7 Section 24, subdivision (1) of the Federal Judicial Code. In the
8 case of Gully v. First National Bank, supra., at page 114 of the
9 United States Reports, the Court said:

10 "A suit to enforce a right which takes its origin
11 in the laws of the United States is not necessarily, or
12 for that reason alone, one arising under those laws, for
13 a suit does not so arise unless it really and substantially
involves a dispute or controversy respecting the validity,
construction or effect of such a law upon the determination
of which the result depends"

14 See also:

15 Jameson & Co. v. Morgenthau, 307 U.S. 171,
59 S. Ct. 804, 83 L. Ed. 1189;

16 California Water Service Co. v. Redding,
17 304 U.S. 252, 58 S. Ct. 865, 82 L. Ed. 1323;

18 Dunning v. Agricultural Prorate Advisory
19 Commission, (D.C.N.D. Cal., 1941) 38 Fed. Supp. 393;

20 Stone v. Christensen, (D.C. Ore., 1940)
36 Fed. Supp. 739.

21 The foregoing rule that "a substantial Federal Question" is necessary,
22 to bring a controversy within the jurisdiction of the Federal District
23 Courts under Section 24, subdivision (1) of the Federal Judicial Code
24 is likewise set forth in Section 37 of the Code itself (U.S.C., Title
25 28, section 80) which provides:

26 "If in any suit commenced in a district court
27 it shall appear to the satisfaction of the said district
28 court, at any time after such suit has been brought
29 that such suit does not really and substantially involve
30 a dispute or controversy within the jurisdiction of said
31 district court the said district court shall pro-
ceed no further therein, but shall dismiss the suit or
remand it to the court from which it was removed, as justice
may require, and shall make such order as to costs as shall
be just." (Italics ours)

1 If the issue in question, although properly arising under
2 the Constitution or laws of the United States, has been previously
3 and conclusively determined and decided by the Court, it is not
4 thereafter considered "substantial" and the court is without juris-
5 diction to consider the case or action. In the case of Levering &
6 Garrigues Co. v. Morrin, 289 U.S. 103, 105, 53 S. Ct. 549, 550,
7 77 L. Ed. 1062, the Court said:

8 " Jurisdiction, as distinguished from merits,
9 is wanting where the claim set forth in the pleading is
10 plainly 'unsubstantial' and 'the federal question averred
11 may be plainly unsubstantial' either because obviously
12 without merit or because its unsoundness so clearly
results from the previous decisions of this court as to
foreclose the subject and leave no room for the inference
that the question sought to be raised can be the subject
of controversy."

13 In the case of Stone v. Christensen, supra, at page 742, the Court
14 said:

15 "The Supreme Court of the United States declared the
16 validity of the registration provisions of the act in a
17 series of cases. These decisions dispose of the claim
that there is here a substantial Federal Question, if the
situation is the same."

18 See also:

19 Dunning v. Agricultural Prorate Advisory
20 Commission, (D.C.N.D. Cal., 1941) 38 Fed. Supp. 393, at
page 395.

21 Applying the foregoing rules of law to the plaintiff's
22 complaint on file herein, it would appear that the complaint fails
23 to show that this Court has jurisdiction over the alleged cause of
24 action under the provisions of Section 24, subdivision (1) of the
25 Federal Judicial Code for the following reasons:

26 Plaintiff alleges that his right to vote for the election
27 of members of Congress and Presidential Electors is being "diluted"
28 because of erroneous and unlawful acts and practices on the part of
29 defendant. The alleged unlawful "dilution" allegedly consists in
30 allowing Japanese born in the United States and in the State of
31 California, but of alien Japanese parents, to register and qualify

1 as electors.

2 Neither the Constitution of the United States, nor any
3 Amendment thereto, expressly and directly confers the right and
4 privilege of voting upon any person whomsoever nor directly pre-
5 scribes the qualifications for voters. In this connection, the
6 following provisions of the Constitution of the United States pro-
7 vide as follows:

8 Article I, Section 2:

9 "The House of Representatives shall be composed
10 of Members chosen every second year by the people of
11 the several States, and the electors in each State
12 shall have the qualifications requisite for electors
13 of the most numerous branch of the State Legislature."
(Italics ours)

13 Article I, Section 4:

14 "The times, places and manner of holding elections
15 for Senators and Representatives, shall be prescribed in
16 each State by the Legislature thereof; but the Congress
17 may at any time by Law make or alter such regulations,
18 except as to the place of choosing Senators." (Italics ours)

17 Article II, Section 1:

18 "Each State shall appoint, in such manner as the
19 Legislature thereof may direct, a number of Electors,
20 equal to the whole number of Senators and Representatives
21 to which the State may be entitled in the Congress: But
22 no Senator or Representative, or person holding an office
23 of trust or profit under the United States, shall be
24 appointed an Elector." (Italics ours)

22 Amendment 17:

23 "The Senate of the United States shall be composed
24 of two Senators from each State, electd by the people
25 thereof, for six years; and each Senator shall have one
26 vote. The electors in each State shall have the qualifica-
27 tions requisite for electors of the most numerous branch
28 of the State Legislatures." (Italics ours)

27 It would appear from the context of each of the foregoing
28 provisions of the Constitution of the United States that the several
29 States, not the United States, directly prescribe the qualifications
30 for electors of members of Congress and Presidential Electors. In
31 none of said provisions does it appear that any qualifications, other

1 or different from those required by the State, are prescribed by the
2 United States for the purpose of voting for Federal officers.

3 The right to vote for Federal officers is, however, depen-
4 dent to some extent upon the Constitution. It has been held by the
5 Courts that the United States adopts the qualifications prescribed
6 by the State for an elector. In the case of Ex Parte Yarbrough,
7 110 U.S. 651, 663, 4 S. Ct. 152, 28 L. Ed. 274, The Court said:

8 "The States, in prescribing the qualifications of
9 voters for the most numerous branch of their own legislatures,
10 do not do this with reference to the election for members of
11 Congress. Nor can they prescribe the qualifications for
12 voters for these eo nomine. They define who are to vote
13 for the popular branch of their own legislature, and the
14 Constitution of the United States says the same persons
15 shall vote for members of Congress in that State. It adopts
16 the qualification thus furnished as the qualification of
17 its own electors for members of Congress. It is not true,
18 therefore, that electors for members of Congress owe their
19 right to vote to the State Law in any sense which makes
20 the exercise of the right to depend exclusively on the law
21 of the State."

22 See also:

23 Wiley v. Sinkler, 179 U.S. 58, 21 S. Ct. 17,
24 45 L. Ed. 84;

25 Minor v. Happersett, 21 Wall. 162;

26 McPherson v. Blacker, 146 U.S. 1, 13 S. Ct. 3,
27 36 L. Ed. 869.

28 In the case of Swafford v. Templeton, 185 U.S. 487, 492, 22 S. Ct.
29 783, 46 L. Ed. 1005, the Court interpreted the decision in Ex Parte
30 Yarbrough, *supra*, as follows:

31 "That is to say, the ruling was that the case was
equally one arising under the Constitution or laws of the
United States, whether the illegal act complained of arose
from a charged violation of some provision of the Constitu-
tion, or from the violation of a state law which affected
the exercise of the right to vote for a member of Congress,
since the Constitution of the United States had adopted,
as the qualifications of electors for members of Congress,
those prescribed by the State for electors of the most
numerous branch of the legislature of the State." (Italics
ours)

1 From the foregoing, it is apparent that while plaintiff's
2 alleged right to vote for members of Congress and Presidential
3 Electors, and the alleged violation thereof by defendant, has some
4 basis in the Constitution and laws of the United States, yet the
5 alleged right and violation depends basically upon the Constitution
6 and laws of the State of California.

7 Article II, Section 1 of the Constitution of the State of
8 California, prescribed the qualifications of electors as follows:

9 "Every native citizen of the United States, every
10 person who shall have acquired the rights of citizenship
11 under and by virtue of the treaty of Queretaro, and every
12 naturalized citizen . . . shall be entitled to vote at
13 all elections which are now or may hereafter be authorized
14 by law . . . provided, further, no alien ineligible to
15 citizenship . . . shall ever exercise the privileges of
16 an elector in this State; . . . " (Italics ours)

17 The status of a "native citizen of the United States" is
18 defined by the 14th Amendment of the Constitution of the United
19 States which provides:

20 "Section 1. All persons born or naturalized in the
21 United States, and subject to the jurisdiction thereof,
22 are citizens of the United States and of the State wherein
23 they reside . . . " (Italics ours)

24 The Courts have heretofore construed the foregoing pro-
25 visions to include all persons born in the United States of alien
26 parents who were not entitled to diplomatic immunity or whose
27 children's citizenship was not preserved by Treaty. In the case of
28 United States v. Wong Kim Ark, 169 U.S. 649, 693, 18 S. Ct. 456,
29 42 L. Ed. 890, in passing upon this issue, the Court said:

30 "The Fourteenth Amendment affirms the ancient and
31 fundamental rule of citizenship by birth within the territory,
in the allegiance and under the protection of the country,
including all children here born of resident aliens, with the
exceptions or qualifications (as old as the rule itself) of
children of foreign sovereigns or their ministers, or born
on foreign public ships, or of enemies within and during a
hostile occupation of part of our territory, and with the
single additional exception of children of members of the
Indian tribes owing direct allegiance to their several tribes.
The Amendment, in clear words and in manifest intent, in-
cludes the children born, within the territory of the United

1 States, of all other persons, of whatever race or color,
2 domiciled within the United States. Every citizen or
3 subject of another country, while domiciled here, is within
the allegiance and the protection, and consequently subject
to the jurisdiction of the United States"

4 In the case of Morrison v. The State of California, 291 U.S. 82, 85,
5 54 S. Ct. 281, 78 L. Ed. 664, the Court said:

6 "A person of the Japanese race is a citizen of the
7 United States if he was born within the United States."

8 See also:

9 Perkins v. Elg, 307 U.S. 325, 59 S. Ct. 884,
10 83 L. Ed. 1320, as the most recent confirmation of the
holding in United States v. Wong Kim Ark, supra.

11 Estate of Tetsubumi Yano, 188 Cal. 645,
206 Pac. 995.

12 It would appear that under the foregoing authorities
13 plaintiff's complaint fails to state a "substantial Federal Question"
14 in that the basic point raised therein, namely, that Japanese born
15 in the United States of America and in the State of California of
16 alien Japanese parents are not citizens of the United States but
17 aliens, has been heretofore specifically passed upon, thus under
18 the rules of law applicable leaving no room for the inference that
19 the question sought to be raised can now be the subject of contro-
20 versy.

21 It would likewise appear that plaintiff's complaint does
22 not fall within the provisions of the "Privileges and Immunities,"
23 "Due Process" or "Equal Protection" clauses of the 14th Amendment,
24 which provide:

25 "No State shall make or enforce any law which shall
26 abridge the privileges or immunities of citizens of the
27 United States; nor shall any State deprive any person of
28 life, liberty, or property without due process of law;
nor deny to any person within its jurisdiction the equal
protection of the laws."

29 The courts have, to a limited extent, considered the right
30 to vote a "Civil" right within the "Privileges and Immunities"
31 clause, but have held that the provision cannot be invoked unless a

1 specific "immunity" provided by the Constitution is violated. Thus,
2 the right to be immune from discrimination imposed by a State or its
3 agencies on account of race, color or previous condition of servi-
4 tude has been held protected.

5 See: Nixon v. Herndon, 273 U.S. 536, 541, 47 S. Ct. 446,
6 71 L. Ed. 759;

7 Nixon v. Condon, 286 U.S. 73, 52 S. Ct. 484,
8 76 L. Ed. 984;

9 Grovey v. Townsend, 295 U.S. 45, 55 S. Ct. 622,
10 79 L. Ed. 1292;

11 In the instant case, plaintiff could not and has not com-
12 plained that he is being deprived of any right, privilege or immuni-
13 ty on account of his race, color or previous condition of servitude
14 and is foreclosed, therefore, from asserting any right under this
15 portion of the 14th Amendment.

16 It would likewise appear that plaintiff's complaint is
17 not within the provisions of the 15th Amendment of the Constitution
18 of the United States which provides:

19 "Section 1. The right of citizens of the United States
20 to vote shall not be denied or abridged by the United States
21 or by any State on account of race, color, or previous
22 condition of servitude.

23 "Section 2. The Congress shall have power to enforce
24 this article by appropriate legislation."

25 It has been consistently held by the courts that this
26 Amendment did not confer the right to vote upon any person whomso-
27 ever but created an immunity from discrimination by the State on
28 account of race, color or previous condition of servitude insofar
29 as suffrage is concerned.

30 See:

31 United States v. Reese, 92 U.S. 214, 23 L. Ed. 563;

Guinn v. United States, 238 U.S. 347, 35 S. Ct. 926,
59 L. Ed. 1340;

Myers v. Anderson, 238 U.S. 368, 35 S. Ct. 932,
59 L. Ed. 1349;

1 Ex Parte Yarbrough, *supra*;

2 Lane v. Wilson, 307 U.S. 268, 59 S. Ct. 872,
3 83 L. Ed. 1281;

4 Neal v. Delaware, 103 U.S. 370, 26 L. Ed. 567.

5 In the instant case, plaintiff could not and has not al-
6 leged that he is being deprived of the right to vote because of
7 his race, color or previous condition of servitude, and is, there-
8 fore, precluded from asserting that any of his alleged rights,
9 privileges or immunities arise under the 15th Amendment.

10 A similar result, for the same and foregoing reason, fol-
11 lows in connection with the provisions of the Act of Congress of
12 May 31, 1870, c. 114, section 1 (16 Stat. 140; U.S.C., Title 8,
13 section 31) which provides:

14 "All citizens of the United States who are otherwise
15 qualified at any election by the people in any State,
16 Territory, district, municipality, or other territorial
17 subdivision, shall be entitled to vote at all such elec-
18 tions, without distinction of race, color or previous
19 condition of servitude; any constitution, law, custom,
20 usage, or regulation of any State or territory, or by or
21 under its authority to the contrary notwithstanding."

22 The foregoing Statute, like the 14th and 15th Amendments,
23 creates an immunity from discriminating against citizens on account
24 of their race, color or previous condition of servitude, and, like
25 the 15th Amendment, relates solely and expressly to an immunity in
26 cases where the right to vote is involved, under the authorities
27 cited hereinbefore in a consideration of the 15th Amendment.

28 It would further appear that plaintiff has not been de-
29 prived of any rights, privileges or immunities within the purview
30 of the Act of Congress of April 20, 1871, c. 22, section 1 (17 Stat.
31 13; U.S.C., Title 28, section 41) which provides as follows:

 "Every person, who, under color of any statute,
 ordinance, regulation, custom or usage, of any State or
 Territory, subjects or causes to be subjected, any citizen
 of the United States or other person within the jurisdiction

1 thereof to the deprivation of any rights, privileges or
2 immunities secured by the Constitution and laws, shall
3 be liable to the party injured in an action at law, suit
4 in equity, or other proper proceeding for redress."

5 The jurisdiction of the district court to entertain suits
6 instituted under the above statute is found in Section 24, subdivi-
7 sion (14) of the Federal Judicial Code, which provides:

8 "The district courts shall have original jurisdiction
9 as follows:

10 . . . Of all suits at law or in equity authorized by
11 law to be brought by any person to redress the deprivation,
12 under color of any law, statute, ordinance, regulation,
13 custom or usage, of any State, of any right, privilege,
14 or immunity, secured by the Constitution of the United
15 States, or of any right secured by any law of the United
16 States providing for equal rights of citizens of the
17 United States, or of all persons within the jurisdiction
18 of the United States."

19 The jurisdiction of the federal district courts is broader
20 under section 24, subdivision (14) of the Federal Judicial Code than
21 under subdivision (1) of the same section in that under the former
22 the jurisdictional minimum of \$3,000 need not be met. As said in
23 the case of Hague v. C.I.O. 307 U.S. 496 (per Stone, J., at page
24 529), 59 S. Ct. 954, 83 L. Ed. 1423:

25 "Thus, since 1875, the jurisdictional acts have
26 contained two parallel provisions, one conferring juris-
27 diction on the federal courts, district or circuit, to
28 entertain suits 'arising under the Constitution or laws
29 of the United States' in which the amount in controversy
30 exceeds a specific value; the other, now § 24 (14) of the
31 the Judicial Code, conferring jurisdiction on those courts
of suits authorized by the Civil Rights Act of 1871, re-
gardless of the amount of controversy."

Continuing, (at page 531 U.S. Reports) Justice Stone said:

"The conclusion seems inescapable that the right
conferred by the Act of 1871 to maintain a suit in equity
in the federal courts to protect the suitor against a
deprivation of rights or immunities secured by the Con-
stitution, has been preserved, and that whenever the right
or immunity is one of personal liberty, not dependent for
its existence upon the infringement of property rights,
there is jurisdiction in the district court under § 24 (14)
of the Judicial Code to entertain it without proof that the
amount in controversy exceeds \$3,000."

See also:

1 Ghadieli v. Delaware State Medical Society, (D.C.E.D.
2 1940) 35 Fed. Supp. 400;

3 Carroll v. Somervell (C.C.A. 2, 1941) 116 Fed. (2d) 918.

4 The right to be free from unconstitutional discriminations
5 in regard to voting can be and has been protected and enforced pur-
6 suit to the foregoing statutes.

7 See:

8 Wiley v. Sinkler, supra;

9 Swafford v. Templeton, supra;

10 Lane v. Wilson, supra;

11 However, the Act of Congress of April 20, 1871, c. 22, section 1,
12 above set forth, and section 24, subdivision (14) of the Federal
13 Judicial Code, also hereinabove set forth, do not enlarge or add to
14 the rights, privileges and immunities afforded by the Constitution
15 itself. Both statutory enactments expressly provide that only vio-
16 lations of "rights, privileges and immunities secured by the Con-
17 stitution and laws of the United States" are actionable and cogniz-
18 able thereunder.

19 It is thus submitted that by reason of the authorities
20 hereinbefore referred to, plaintiff has not shown that any of his
21 rights, privileges and immunities arising under or derived from the
22 Constitution and laws of the United States have been violated. Un-
23 der the state of facts alleged in his complaint, it appears from
24 the face thereof that defendant has not violated any of the rights,
25 privileges and immunities of plaintiff arising from the Constitution
26 and laws of the United States, and that by law, duly established,
27 plaintiff does not have any of the rights, privileges and immunities
28 claimed by him, whether allegedly arising out of the Constitution or
29 laws of the United States or out of the Constitution or laws of the
30 State of California, or arising in any other manner whatsoever.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

II

THE COMPLAINT FAILS TO STATE A CAUSE OF
ACTION OR CLAIM UPON WHICH RELIEF CAN
BE GRANTED.

The duties of defendant, in his capacity as County Clerk and Registrar of Voters, are enjoined upon him by specific directions and provisions of law and are purely ministerial. Insofar as his function in connection with the qualification and registration of electors is concerned, defendant's duties, as he understands them to be, are as follows:

Section 120 of the Election Code of the State of California provides:

"No person shall be registered as a voter except by affidavit of registration. The affidavit shall be made before the county clerk and shall set forth all of the facts required to be shown by this chapter."

Section 220 of the Elections Code of the State of California provides:

"The affidavit of registration shall show:

(a) The facts necessary to establish the affiant as an elector.

(b) Affiant's name at length, including given name, and the middle name or initial. The given name of a woman shall be preceded in all cases by the designation of Miss or Mrs.

(c) Affiant's place of residence and post-office address with sufficient particularity to identify it and to determine affiant's voting precinct.

(d) Affiant's occupation.

(e) The country or State of affiant's birth.

(f) If foreign born, how citizenship was acquired, whether by

(1) Citizenship of father.

(2) Treaty or act of congress.

(3) Order of a court of naturalization.

(4) Marriage to a citizen.

(5) Naturalization of a parent or husband.

The date or year when and the place where affiant became a citizen shall be stated except in the case of citizenship acquired by citizenship or naturalization of parents, by treaty, or by act of congress. When citizenship depends upon the citizenship or naturalization of parent or husband the name of the parent or husband shall be stated.

(g) Whether the elector is able to read the Consti-

1 tution in the English language and to write his name, and
2 whether the elector has any physical disability by reason
3 of which he can not mark the ballot; in which case the
4 nature of such disability shall be stated.

5 (h) Affiant shall sign the affidavit with his usual
6 signature, and if unable to write he shall sign with a
7 mark or cross, and the person before whom the affidavit
8 is made shall insert the date of the affidavit, which
9 shall be the date of the jurat."

10 In view of the fact that plaintiff alleges and bases his
11 action upon the sole contention that defendant is erroneously and
12 unlawfully registering aliens, the issue of the qualifications of
13 citizens must be determined. Section 1 of Article II of the Con-
14 stitution of the State of California, in this respect, provides:

15 "Section 1. Every native citizen of the United States,
16 every person who shall have acquired the rights of citizen-
17 ship under and by virtue of the treaty of Queretaro, and
18 every naturalized citizen thereof who shall have become
19 such ninety days prior to any election, of the age of twenty-
20 one years, who shall have been a resident of the State one
21 year next preceding the day of the election, and of the
22 county in which he or she claims his or her vote ninety days,
23 and in the election precinct forty days, shall be entitled to
24 vote at all elections which are now or may hereafter be
25 authorized by law; provided, any person duly registering as
26 an elector in one precinct and removing therefrom to another
27 precinct in the same county within forty days prior to an elec-
28 tion, shall for the purposes of such election be deemed to be
29 a resident and qualified elector of the precinct from which
30 he so removed until after such election; provided, further,
31 no alien ineligible to citizenship, no idiot, no insane
 person, no person convicted of any infamous crime, no person
 hereafter convicted of the embezzlement or misappropriation
 of public money, and no person who shall not be able to read
 the Constitution in the English language and write his or her
 name, shall ever exercise the privilege of an elector in this
 state; provided, that the provisions of this amendment rela-
 tive to educational qualification shall not apply to any per-
 son prevented by a physical disability from complying with
 its requisitions, nor to any person who had the right to
 vote on October 10, 1911, nor to any person who was sixty
 years of age and upwards on October 10, 1911; provided, furth-
 er, that the Legislature may, by general law, provide for the
 casting of votes by duly registered voters who expect to be
 absent from their respective precincts or unable to vote
 therein, by reason of physical disability, on the day on
 which any election is held."

 Section 51 of the Political Code of the State of Califor-
 nia provides:

 "The citizens of the state are:

1 (1). All persons born in this state and residing
2 within it, except the children of transient aliens and
3 of alien public ministers and consuls;

4 (2). All persons born out of this state who are
5 citizens of the United States and residing within this
6 state."

7 The qualifications for citizens of the State of Califor-
8 nia and of the United States are essentially the same. Under the
9 provisions of the 14th Amendment of the United States Constitution,
10 all persons born in the United States are citizens thereof (with
11 the exception of children of foreign consuls) while under the pro-
12 visions of subdivision (1) of Section 51 of the Political Code of
13 the State of California, all persons born in the State of Califor-
14 nia, which also means born in the United States, with the exception
15 of children of transient aliens and of foreign consuls, are citizens.

16 While it was held that there may be "State Citizenship"
17 as distinguished from "Federal Citizenship" in The Slaughterhouse
18 Case, 16 Wall. 36, 83 U.S. 36, 21 L. Ed. 394, (see also Boyd v.
19 Nebraska, 143 U.S. 135, 12 S. Ct. 375, 36 L. Ed. 103,) the require-
20 ments prescribed by the California Constitution are identical with
21 those required for Federal Citizenship.

22 Section 20 of the Elections Code of the State of Califor-
23 nia further provides:

24 " 'Elector' means any person who qualifies under
25 section 1 of Article II of the Constitution of this State."

26 Section 21 of the Elections Code of the State of Califor-
27 nia provides :

28 " 'Voter' means any elector who is registered under
29 the provisions of this Code."

30 Section 70 of the Elections Code of the State of Califor-
31 nia provides:

"Every person who qualifies under the provisions of
section 1 of Article II of the Constitution of this State
and who complies with the provisions of this Code govern-
ing the registration of electors is entitled to vote at
any election held within the territory within which he

1 resides and the election is held."

2 Section 184 of the Elections Code of the State of Calif-
3 ornia provides:

4 "Any person having charge of affidavits of registra-
5 tion is guilty of a misdemeanor who:

6 (a) Neglects or refuses to make all the entries pro-
7 vided for in this article.

8 (b) Neglects or refuses to take the oath of the elec-
9 tor applying to him for registration.

10 (c) Fails or neglects to comply with any provision of
11 this article."

12 It is apparent from the foregoing that defendant, as
13 County Clerk and Registrar of Voters, has no discretion whatsoever
14 in connection with considering the qualifications of electors or
15 voters. The State law sets out in detail the steps required to be
16 taken to qualify as an elector and specifies the duties and lia-
17 bility of defendant in connection therewith.

18 Plaintiff, in his complaint, fails to allege that defen-
19 dent has erroneously or unlawfully failed to comply with any or all
20 of the above specified duties but contends that defendant is depriv-
21 ing him of rights, privileges and immunities by erroneously and
22 unlawfully permitting aliens to qualify.

23 The 14th Amendment of the Constitution of the United
24 States and section 1 of Article II of the Constitution of the State
25 of California mention and provide the qualifications for citizenship.
26 Defendant is expressly bound to conform to the provisions of the
27 latter which, in turn, adopts the requirements of the former. Thus,
28 defendant is required to ascertain the meaning of the provisions of
29 the 14th Amendment of the Constitution of the United States in re-
30 gard to citizenship and apply those same qualifications as a test
31 in registering electors or voters.

32 The Supreme Court of the United States, in the case of
33 United States v. Wong Kim Ark, 169 U.S. 649, 18 S. Ct. 456, 42 L.Ed.
34 890, expressly held that children of alien parents, if born within

1 the territorial limits of the United States, are native born citi-
2 zens of the United States, with the exception of children born of
3 parents then in the diplomatic service of a foreign government or
4 whose citizenship and that of their children is preserved to the
5 country of their nativity by treaty.

6 In this case above cited, the issue was presented by a
7 defendant who was a Chinese of the full blood, born in the United
8 States of parents of full Chinese blood, who, being born in China
9 were ineligible to United States Citizenship.

10 In the case of Morrison v. The State of California, 291
11 U.S. 82, 54 S. Ct. 281, 78 L. Ed. 664, the doctrine of United
12 States v. Wong Kim Ark, supra, was expressly extended to Japanese
13 in the same circumstances.

14 As a matter of law, therefore, defendant submits that he
15 is bound and concluded in the matter of determining citizenship of
16 Japanese for voting purposes by the holdings of the Supreme Court
17 of the United States. Unless the courts reverse prior and
18 existing holdings in this respect, defendant has no choice in the
19 matter whatsoever and is compelled to register as electors, all
20 persons of full Japanese blood born in the United States and in the
21 State of California of alien Japanese parents. By the same token,
22 plaintiff is precluded from compelling defendant to do otherwise
23 in violation of defendant's duty as County Clerk and Registrar of
24 Voters.

25 CONCLUSION

26
27 It is respectfully submitted, therefore, that under and
28 by reason of the authorities herein cited, this Court is without
29 jurisdiction to entertain this suit against defendant, G. E. Wade,
30 in his official capacity as County Clerk and Registrar of Voters
31

1 in the County of Alameda, State of California, and that his motion
2 to dismiss the complaint and action should be granted.

3 Dated: June 17, 1942.

4 RALPH E. HOYT

5 District Attorney in and for the
6 County of Alameda, State of
7 California,

8 J. F. COAKLEY

9 Chief Assistant District Attorney
10 in and for the County of Alameda,
11 State of California,

12 R. ROBERT HUNTER

13 Assistant District Attorney in and
14 for the County of Alameda, State
15 of California,

16 J. D. COOPER

17 Deputy District Attorney in and for
18 the County of Alameda, State of
19 California,

20 Attorneys for Defendant, G. E. Wade,
21 as County Clerk and Registrar of
22 Voters in the County of Alameda,
23 State of California,

24 Alameda County Court House,
25 1225 Fallon Street,
26 Oakland, California.