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United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN T. REGAN,

Appellant,

vs.

CAMERON KING, as Registrar of Voters in the
City and County of San Francisco, State of
California,

Appellee.

Transcript of Record

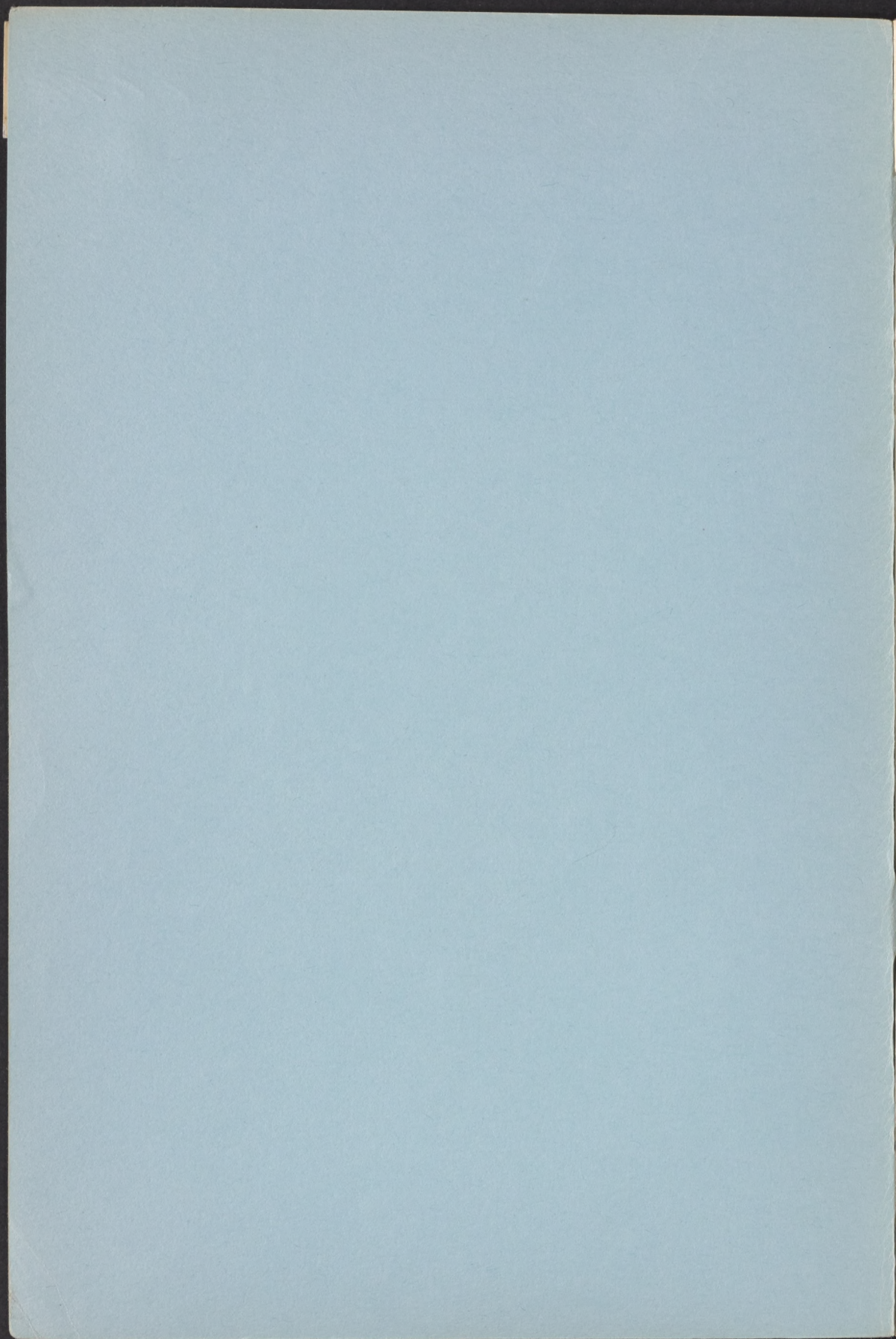
Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

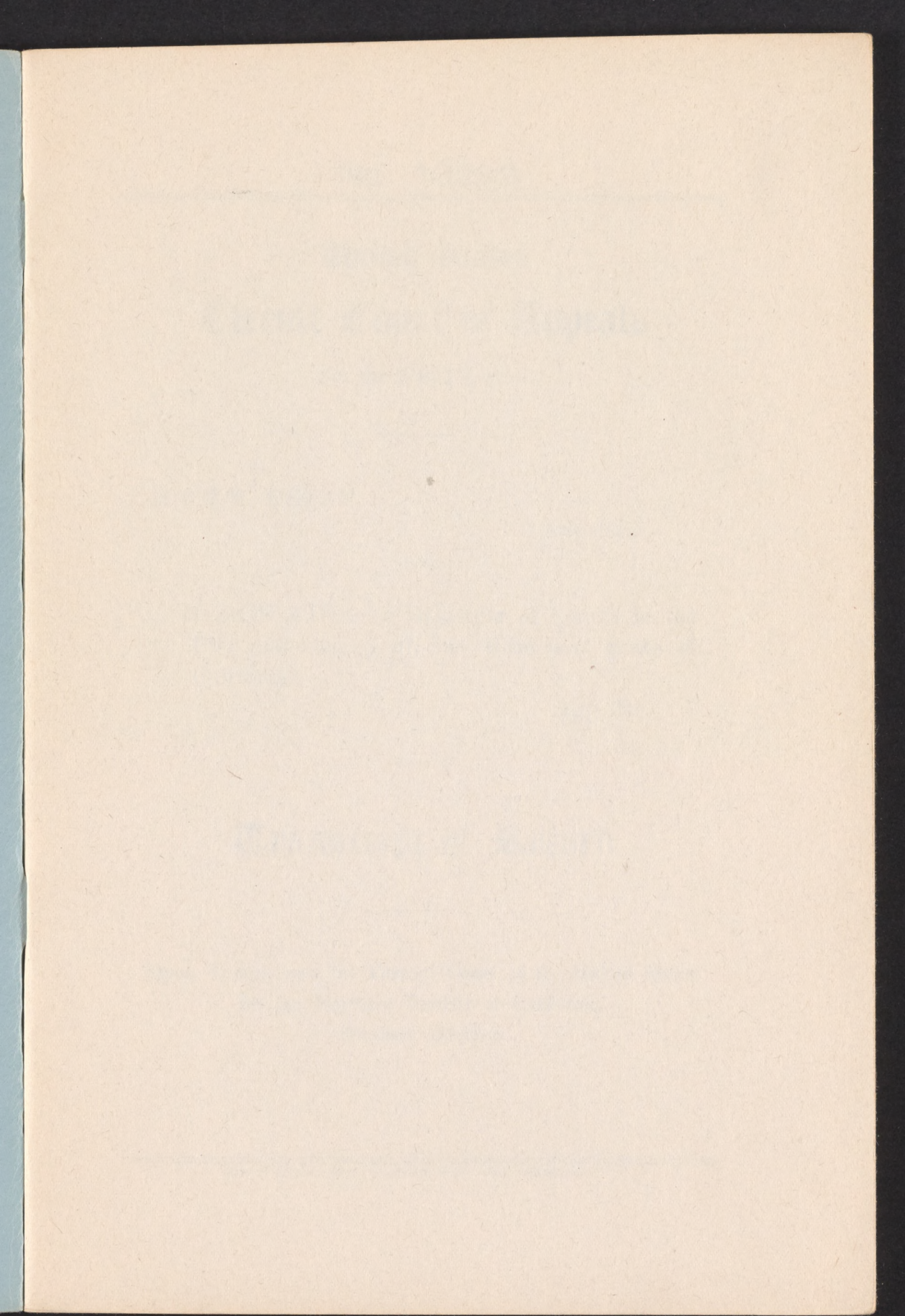
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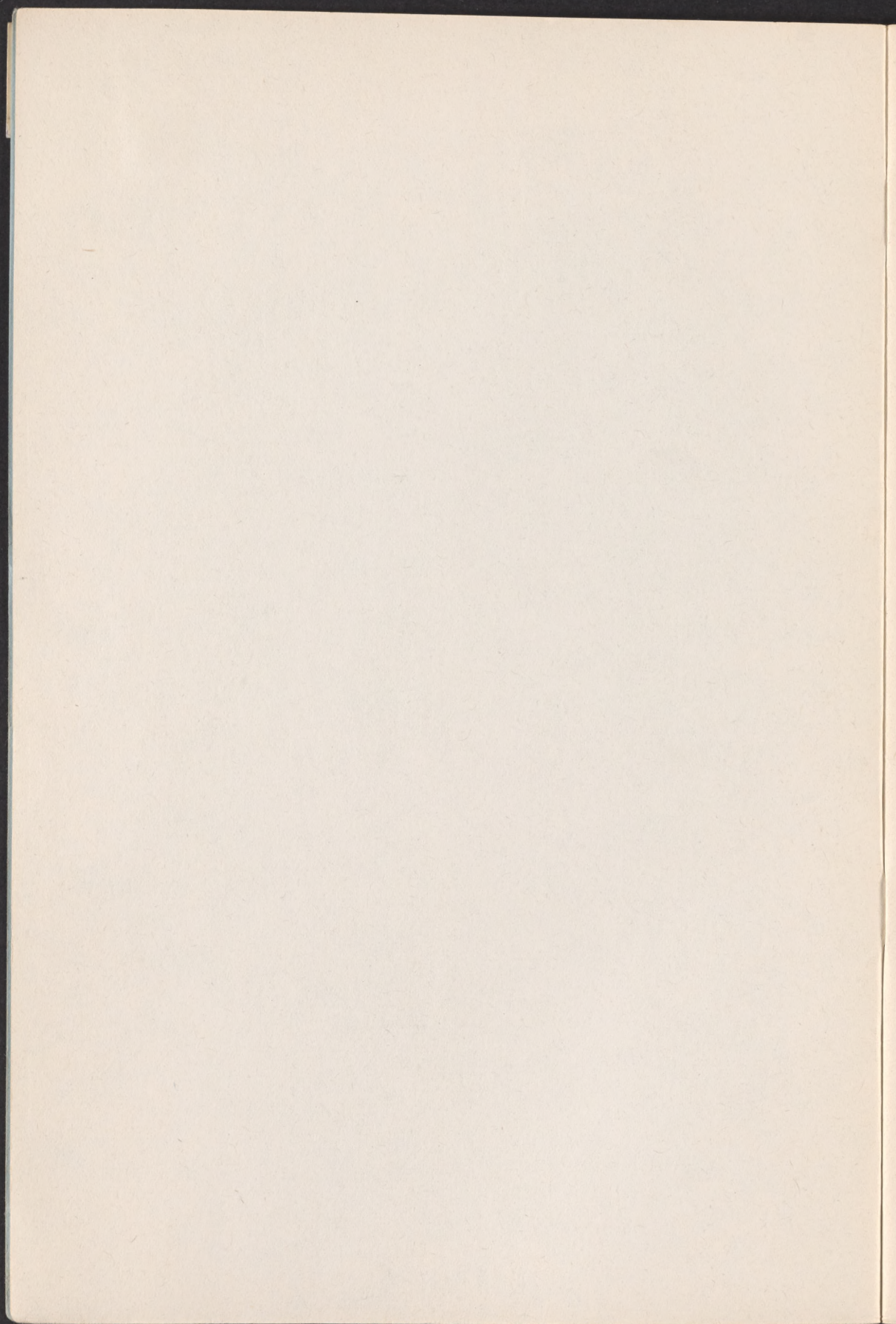
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PAUL P. O'BRIEN,

CLERK







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United States
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Attorneys for Defendant and Appellee.

In the District Court of the United States of
America in and for the Northern District of
California, Southern Division.

No. 22178-S

JOHN T. REGAN,

Plaintiff,

vs.

CAMERON KING, as Registrar of Voters in the
City and County of San Francisco, State of
California,

Defendant.

COMPLAINT FOR INJUNCTION

John T. Regan, 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 Fourteenth,
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

*Page numbering appearing at foot of page of original certified
Transcript of Record.

appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand (\$3,000.00) Dollars. The jurisdiction of this Court is also invoked under Section 24 (1 and 14) of the Federal Judicial Code (U.S.C., Title 28, section 41, subsections 1 and 14).

II.

The City and County of San Francisco is a political subdivision of the State of California and comprises the Fourth and Fifth Congressional Districts of said State. The defendant, Cameron King, is now and since March, 1941 has been the Registrar of Voters in said City and County and as such has been and is charged with the registration of all electors of the State of California who reside in said City and County and with the care, custody and control of the register of voters therein.

Registration of an elector in said City and County, as in all other counties in said State, is a prerequisite and condition precedent to the right of an elector to vote at any and all elections held in said City and County, including the right to vote for members of the House of Representatives, for members of the Senate and for Presidential Electors.

Such registration, as in all other counties in said State, is permanent and the name of anyone placed upon the register of voters remains and continues thereon during the life of any such registrant and entitles such registrant to vote at any and all

elections held in said City and County, unless his registration be sooner terminated for certain specified causes not herein involved, or unless and until his registration be cancelled and terminated upon the production of a certified copy of a judgment directing the cancellation to be made. [2]

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 City and County of San Francisco and of the Fifth Congressional District in said City and 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 City and County and in said District, entitled to vote in said City and County at all elections held therein, both primary and general, and entitled to vote for members of the House of Representatives from said Fifth 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 City and County. It is now his right and privilege and his intention to vote and he will regularly vote in said City and County at all elections held therein. A primary election will be held in the State of Cali-

fornia on the 25th day of August, 1942, and a general election will be held therein on November 3rd, 1942. At said primary election plaintiff will be and is entitled to vote and will vote, as a member of the Democratic 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 City 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 these respective offices of the United States. [3]

IV.

By the Constitution and laws of the United States and the Constitution and laws of the State of California, the privileges of an elector of the State of California, including the privileges of voting and of registration as an elector, are granted only to citizens of the United States and are expressly withheld and prohibited to all aliens ineligible to citizenship in the United States.

V.

The defendant, as Registrar of Voters of the City and County of San Francisco, charged with the registration of all electors who reside in said City and County and with the care, custody and control

of the register of voters therein, and his predecessors in office, have for several years last past registered and retained, and the defendant does now retain upon said register more than twenty-six hundred Japanese of the full blood born in the United States and in the State of California of alien parents born in the Empire of Japan. Said Japanese so registered as aforesaid, and residing in said City and County, approximately fifteen hundred of whom have resided and do reside in the Fifth Congressional District in said City and County, have for several years last past customarily voted in said City and County at elections held therein for members of the House of Representatives, for members of the Senate, and for Presidential Electors, and plaintiff is informed and believes, and upon such information and belief alleges, that said Japanese will be permitted to and will, unless their registration be terminated and cancelled and their names be removed and stricken from the register of voters in said City and County, vote for nomination of candidates for the House of Representatives at the primary election to be held on the 25th day of August, 1942, and for members of the House of [4] Representatives at the general election to be held on the 3rd day of November, 1942. Further, said Japanese, unless their registration be terminated and cancelled and their names be removed and stricken from the register of voters of said City and County, will be permitted to and will vote at subsequent elections held in said City and County as prescribed

by law for the election of members to the aforementioned offices of the United States.

VI.

Said Japanese of the full blood born in the United States and in the State of California of alien parents born in the Empire of Japan were at birth citizens, and each of them was and is a citizen of the Empire of Japan, owing allegiance to that government and subject to the jurisdiction of the United States of America in the same manner and to the same extent as all other aliens, but not otherwise. Said Japanese so born are aliens, and each of them is an alien, ineligible to citizenship in the United States of America and ineligible to exercise or be accorded any of the privileges of an elector of the State of California, which privileges are expressly prohibited them.

VII.

Each of said Japanese so born and registered as aforesaid in the City and County of San Francisco has filed an affidavit of registration with the defendant, as Registrar of Voters of the City and County of San Francisco, charged with the registration of all electors who reside in said City and County and with the care, custody and control of the register of voters therein, in which each of them has stated under oath that he was and is a citizen of the United States of America and of the State of California. These statements are, and each of them is, false

and untrue, but the defendant in his capacity as aforesaid, and his predecessors in office, have erroneously and unlawfully accepted [5] and received said affidavits and have erroneously and unlawfully accepted as true said statements so made and have erroneously and unlawfully incorporated and included said affidavits and the names of said Japanese in the register of electors of said City and County, which said register shall consist of and contain the names of duly qualified electors only, and is the register of electors used and employed in said City and County at all elections held therein to ascertain and determine the qualified electors so as to enable qualified electors only to cast their votes.

VIII.

The rights and privileges of plaintiff as an elector of the State of California, secured to him by the Constitution and laws of the United States and by the Constitution and laws of the State of California, comprehend and include the right and privilege of plaintiff to have his name be and remain upon said register of electors with other duly and regularly registered and qualified electors only, the right and privilege to vote in said City and County of San Francisco with all other duly and regularly registered and qualified electors only, and the right and privilege to have all votes cast by him counted, recorded and given their full and true value, force and effect with the votes of all other duly and regularly registered and qualified electors only, all with-

out interference, impairment or denial by or through persons ineligible to exercise the rights and privileges of electors of the State of California.

IX.

Defendant, as Registrar of Voters in said City and County of San Francisco, and his predecessors in office, by wrongfully and unlawfully permitting and according registration as aforesaid to said Japanese, and by retention of the names of said Japanese [6] upon the register of voters of the City and County of San Francisco, have infringed upon, interfered with and impaired said rights of the plaintiff as an elector and have deprived plaintiff of the full and true value, force and effect of the votes cast by him as aforesaid, and have denied and deprived plaintiff of his adequate and proportionate share of influence in the elections at which he has voted as aforesaid and have severely and irreparably damaged and injured plaintiff in his rights and privileges as an elector of the State of California.

X.

Unless the defendant is ordered and directed to strike and remove the names of said Japanese from the register of voters of the City and County of San Francisco and is ordered and directed to terminate and cancel their registration, said Japanese, who are now and have been alien enemies continuously since December 7th, 1942, when the United States of America became at war with the Empire of Japan, will be enabled and permitted to vote, and,

as plaintiff is informed and believes, and upon such information and belief alleges, said Japanese will vote at the primary election to be held on August 25th, 1942 as aforesaid, at the general election to be held on November 3rd, 1942 as aforesaid, and at all subsequent elections held in said City and County, to the further and continuing irreparable damage and injury of plaintiff in his rights and privileges as a regularly and duly registered and qualified elector in the State of California.

Wherefore, plaintiff prays that the defendant, as the Registrar of Voters of the City and County of San Francisco, charged with the registration of all electors of the State of California who reside in said City and County and with the care, custody and control of the register of voters therein, and his [7] successors in office, be ordered and directed to remove and strike the names of said Japanese born and registered as aforesaid from the register of voters of the City and County of San Francisco, and be ordered to terminate and cancel their registration as electors of the State of California, and for such other and further relief as may be meet and proper in the premises.

U. S. WEBB

WEBB, WEBB & OLDS

Attorneys for plaintiff. [8]

State of California,
City and County of San Francisco—ss.

John T. Regan, being first duly sworn, deposes and says:

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

JOHN T. REGAN

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

[Seal]

ALFRED D. MARTIN

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed May 7, 1942. [9]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT FOR
INJUNCTION

Now comes defendant herein and by way of answer to the complaint admits, denies and alleges as follows:

First Defense

That the above entitled court lacks jurisdiction over the subject matter set forth in said complaint.

Second Defense

That the above entitled court lacks jurisdiction over the person of defendant.

Third Defense

That the complaint fails to state a claim or cause of action against defendant upon which relief can be granted. [10]

Fourth Defense

I.

In answer to Paragraph I:

Denies generally and specifically, each and every, all and singular, the allegations contained in Paragraph I.

II.

In answer to Paragraph V:

Admits that part of Paragraph V from the beginning of the paragraph to and including the words "in office" on line 15, page 4.

That defendant is without knowledge or information sufficient to form a belief as to the truth of Paragraph V of the complaint commencing with the words "have for" on line 15, page 4 to the end of said paragraph.

III.

In answer to paragraph VI:

That defendant is without knowledge or information sufficient to form a belief as to the truth of Paragraph VI of the complaint from the beginning of the paragraph to and including the words "not otherwise" on line 15, page 5.

Denies generally and specifically, each and every, all and singular, the allegations contained in the remainder of said paragraph VI.

IV.

In answer to paragraph VII:

That defendant is without knowledge or information sufficient to form a belief as to the truth of Paragraph VII of the complaint from the beginning of the paragraph to and including the word "California" on line 30, page 5.

Denies generally and specifically, each and every, all and singular, the allegations contained in Paragraph VII commencing [11] ing with the words "These statements" on line 30, page 5, to and including the word "County" on line 5, page 6.

Admits the balance of the allegations contained in Paragraph VII of said complaint.

V.

In answer to Paragraph IX:

Denies generally and specifically, each and every, all and singular, the allegations contained in Paragraph IX of said complaint.

VI.

In answer to Paragraph X:

Admits that part of Paragraph X from the beginning of the paragraph to and including the word "Japanese" on line 15, page 7.

Denies that part of Paragraph X commencing with the words "who are" on line 15, page 7, to and including the word "Japan" on line 18, page 7.

That defendant is without knowledge or information sufficient to form a belief as to the truth of that part of Paragraph X commencing with the words "will be" on line 18, page 7, to and including the words "City and County" on line 23, page 7.

Denies generally and specifically, each and every, all and singular, the allegations contained in the remainder of said paragraph X.

As and for a Separate, Special and Affirmative Defense, said defendant alleges:

That as Registrar of Voters of the City and County of San Francisco it is now and has always been his duty and practice to permit native born citizens of the United States of America to register as voters and to cast their votes at all elections [12] irrespective of race, color, creed or religion.

That said defendant has no means of knowing the race, color, creed or religion of the native born registered voters of the City and County of San Francisco.

Wherefore, defendant prays for judgment including costs and general relief.

JNO. J. O'TOOLE

City Attorney of the City and
County of San Francisco

WALTER A. DOLD

Chief Deputy City Attorney
of the City and County of
San Francisco.

Attorneys for Defendant.

State of California,
City and County of San Francisco—ss.

Cameron King, being first duly sworn, deposes and says:

That he is the defendant named in the above entitled action; that he has read the foregoing Answer to Complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

CAMERON KING

Subscribed and sworn to before me this 28th day of May, 1942.

[Seal] E. WALL

Deputy County Clerk and Deputy Ex-officio Clerk
of the Superior Court.

Receipt of Service.

[Endorsed]: Filed May 28, 1942. [13]

[Title of District Court and Cause.]

MEMORANDUM AND ORDER

Plaintiff, a citizen of the United States and of the State of California, a registered voter of San Francisco, sues the Registrar of Voters of the City and County of San Francisco, alleging that more than "2600 Japanese of the full blood born in the

United States and the State of California, of alien parents born in the Empire of Japan" are erroneously registered to vote in San Francisco. He further alleges that his rights and privileges as an elector, secured to him by law, are impaired by permitting ineligible persons (Japanese) to exercise the rights and privileges of electors of the State of California. He prays that the Registrar be directed to strike the names of all Japanese [14] from the register of voters on the ground that they are enemy aliens, citizens of Japan, and therefore ineligible to citizenship and the right to vote.

Defendant Registrar answers that Japanese born here are citizens of the United States and as such are entitled to be registered as voters, and asks to be dismissed with his costs.

This case is exceptional because the sole question it presents to this court is one which has been definitely decided by the United States Supreme Court: Is a person of the Japanese race, born within the United States, a citizen? The question has been answered in the affirmative in *United States v. Wong Kim Ark*, 169 U. S. 649; *Morrison v. California*, 291 U. S. 82; and *Perkins v. Elg*, 307 U. S. 325.

Counsel for plaintiff frankly stated that he was asking this court to overrule the leading case of *United States v. Wong Kim Ark*, *supra*, because he believed the decision to be erroneous. Since the decision was rendered it has been twice cited with approval by the Supreme Court in *Morrison v. Cali-*

fornia, supra, and in Perkins v. Elg, supra. In the Morrison case Justice Cardozo, speaking for the Court, said: "A person of the Japanese race is a citizen of the United States if he was born in the United States." In the Perkins case, Chief Justice Hughes delivering the opinion, it was held that a child born here of alien parents becomes a citizen of the United States.

It is unnecessary to discuss the arguments of counsel. In my opinion the law is settled by the decisions [15] of the Supreme Court just alluded to, and the action will be dismissed, with costs to the defendant.

It is so Ordered.

A. F. ST. SURE

United States District Judge.

Dated: July 2, 1942.

[Endorsed]: Filed July 2, 1942. [16]

[Title of District Court and Cause.]

STIPULATION EXCLUDING PARAGRAPH
VI OF COMPLAINT FOR INJUNCTION
FROM CONSIDERATION

It Is Hereby Stipulated by and between the parties hereto, by and through their respective counsel, that paragraph VI of the complaint for injunction shall be excluded and eliminated from consideration by the court in this case, and that the find-

ings of fact herein need not refer to said paragraph VI.

U. S. WEBB

WEBB, WEBB & OLDS

Attorneys for Plaintiff.

JNO. J. O'TOOLE

City Attorney of the City and
County of San Francisco

WALTER A. DOLD

Chief Deputy City Attorney
of the City and County of
San Francisco,
Attorneys for Defendant

[Endorsed]: Filed Sept. 17, 1942. [17]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above entitled cause came on duly and regularly for trial and hearing before this court, sitting without a jury, U. S. Webb, Esq., of the firm of Webb, Webb & Olds, appearing for and representing the plaintiff, and John J. O'Toole, Esq., City Attorney of the City and County of San Francisco, and Walter A. Dold, Esq., Chief Deputy City Attorney of the City and County of San Francisco, appearing for and representing the defendant; and the facts having been stipulated and agreed to in open court

on [18] behalf of the respective parties hereto, and the cause submitted to this court for its decision and determination, and the court being fully advised in the premises finds the following facts:

FINDINGS OF FACT

1. 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 Fourteenth, 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), Section 24 (1 and 14) of the Federal Judicial Code (U.S.C., Title 28, section 41, subsections 1 and 14). The matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand (\$3,000.00) dollars.

2. The City and County of San Francisco is a political subdivision of the State of California and comprises the Fourth and Fifth Congressional Districts of said state. The defendant, Cameron King, is now and since March, 1941, has been the registrar of voters in said city and county and as such has been and is charged with the registration of all electors of the State of California who reside in said city and county and with the care, custody and control of the register of voters therein.

Registration of an elector in said city and county, as in all other counties in said state, is a prerequisite and condition precedent to the right of an elector to vote at any and all elections held in said city and county, including the right to vote for members of the House of Representatives, for members of the Senate and for presidential electors. [19]

Such registration, as in all other counties in said state, is permanent and the name of anyone placed upon the register of voters remains and continues thereon during the life of any such registrant and entitles such registrant to vote at any and all elections held in said city and county, unless his registration be sooner terminated for certain specified causes not here involved, or unless and until his registration be cancelled and terminated upon the production of a certified copy of a judgment directing the cancellation to be made.

3. 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 City and County of San Francisco and of the Fifth Congressional District in said city and 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 city and county and in said district, entitled to vote in said city and county at all elections held therein, both primary

and general, and entitled to vote for members of the House of Representatives from said Fifth 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 city and county. It is now his right and privilege and his intention to vote and he will regularly vote in said city and 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 3rd, 1942. At said primary election plaintiff will be and is entitled to vote and will vote, [20] as a member of the Democratic 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 city 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 those respective offices of the United States.

4. By the Constitution and laws of the United States and the Constitution and laws of the State of California, the privileges of an elector of the State of California, including the privileges of voting and of registration as an elector, are granted

only to citizens of the United States and are expressly withheld and prohibited to all aliens ineligible to citizenship in the United States.

5. The defendant, as Registrar of Voters of the City and County of San Francisco, charged with the registration of all electors who reside in said city and county and with the care, custody and control of the register of voters therein, and his predecessors in office, have for several years last past registered and retained, and the defendant does now retain upon said register many Japanese of the full blood born in the United States and in the State of California of alien parents born in the Empire of Japan, among whom are the following:

Kazuo Abe, Yasuo Wm. Abiko, Shaji Bou, Ryou-ski Ekusa, Eugenia Fujita, Helen Seyeko Fujita, Kiuoshi Fujita, Kowko Fujita, Todashi Fujita, Yoshie Fujita, Carl T. Hirota, Akira Horikoshi, Ayame Ichiyasu, Hamaye L. Ichiyasu, Toyao Ichiyasu, Tamayo Imada, Viola Hiroto Imai, Joseph Inafuku, Alexander Iseri, Fred Ken Ishigaki Kiyomi Itatani, Masayoshi Itatani, Sunao John Iwatsu, [21] Elbert E. Izumi, Kinji Kanehara, Toshiko G. Kanzaki, Kiyoski Kawaguchi, Toki Kawaguchi, Charles Kikuchi, Chiaki Kojimoto, Yone Komatsee, Benjamin Kondo, Mitsue Kono, Notoki Kudo, Kazuo Kuruma, Tokuichi Kuruma, Jennie Kinuko Muraki, Ken Matsuda, Elizabeth Kiuoko Matsuki, Paul S. Matsuki, Ruth Hisako Miho, Shuichi Miho, Sumie Miho, Toki Miho, Fred

T. Morioka, Masae Morioka, May F. Morioka, Yoshiko Morioka, Kiyoko Mary Morita, Frances Moriwaki, Lily Muramatsu, Kimi Nakahara, William Takeo Nakahara, Hatsuye Nakao, Shinichi Nishimoto, Masataro Nishimura, Kimi Helene Ogawa, Toshimi Ogawa, Kaoru Okubo, Chizuko Sakagucki, Asako Sakai, Ayako Sakai, Eiji Sakai, Suizu Sakai, Tamiku Sakai, Joseph Y. Sano, Miya L. Sano, Kikuko Shimazaki, Cherry Sujuki, George Sujuki, Hideo Suyetsugu, Geo. M. Suzuki, Henry Hideo Suzuki, Toshio Thomas Suzuki, Roy Takagi, Tomiye Takagi, Kiyoko Takahashi, Tomiko Takahashi, Yuki Mabel Nakahara Takakuwa, Esther Tani, Lily Tani, Hewton H. Tani, Rose S. Tani, Dave M. Tatsuno, Shozo F. Tsuchida, Roy G. Watanabe, Ryosuke Yamamoto, Frank Taketo Yamasaki, Toshiko Yamasaki, and William Toshi Yamazaki.

Said Japanese so registered as aforesaid, and residing in said city and county and in the Fifth Congressional District in said city and county, have, and each of them has, for several years last past customarily voted in said city and county at elections held therein for members of the House of Representatives, for members of the Senate, and for presidential electors, and said Japanese, and each of them, will be permitted to and will, unless their registrations be terminated and cancelled, and their names be removed and stricken from the register of voters in said city and county, vote for nomination of candidates for the House of Repre-

sentatives at the primary election to be held on the 25th day of August, 1942, and for members of the House of Representatives at the general election to be held on the 3rd day of November, 1942. [22] Further, said Japanese, and each of them, unless their registrations be terminated and cancelled and their names be removed and stricken from the register of voters of said city and county, will be permitted to and will vote at subsequent elections held in said city and county as prescribed by law for the election of members to the aforementioned offices of the United States.

6. Each of said Japanese, so born and registered as aforesaid in the City and County of San Francisco, has filed an affidavit of registration with the defendant, as Registrar of Voters of the City and County of San Francisco, charged with the registration of all electors who reside in said city and county and with the care, custody and control of the register of voters therein, in which each of them has stated under oath that he was and is a citizen of the United States of America and of the State of California, and the defendant in his capacity as aforesaid and his predecessors in office have accepted and received said affidavits and have accepted as true said statements so made, and have incorporated, included and retained, and the defendant does now retain said affidavits and the names of said Japanese in the register of electors of said city and county, which said register shall

consist of and contain the names of duly qualified electors only, and is the register of electors used and employed in said city and county at all elections held therein to ascertain and determine the qualified electors so as to enable qualified electors only to cast their votes.

7. The rights and privileges of plaintiff as an elector of the State of California, secured to him by the Constitution and laws of the United States and by the Constitution and laws of the State of California, comprehend and include the right and privilege of plaintiff to have his name be and remain upon said register of electors with other duly and regularly registered and [23] qualified electors only, the right and privilege to vote in said City and County of San Francisco with all other duly and regularly registered and qualified electors only, and the right and privilege to have all votes cast by him counted, recorded and given their full and true value, force and effect with the votes of all other duly and regularly registered and qualified electors only, all without interference, impairment or denial by or through persons ineligible to exercise the rights and privileges of electors of the State of California, including persons who are not citizens of the United States and persons ineligible to citizenship of the United States.

8. Unless the defendant is ordered and directed to strike and remove the names of said Japanese from the register of voters of the City and County

of San Francisco and is ordered and directed to terminate and cancel their registration, said Japanese, and each of them, will vote at the primary election to be held on August 25th, 1942 as aforesaid, at the general election to be held on November 3rd, 1942 as aforesaid, and at all subsequent elections held in said city and county.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts, the court concludes:

1. The aforementioned Japanese of the full blood born in the United States and in the State of California of alien parents born in the Empire of Japan, like all other persons of the Japanese race born in the United States, are citizens, and each of them is a citizen, of the United States, as determined by the Supreme Court of the United States in the case of *U. S. v. Wong Kim Ark*, 169 U. S. 649, and the case of *Morrison v. California*, 291 U. S. 82, and the defendant and his predecessors [24] in office have properly and lawfully accepted the affidavits of registration of said Japanese, and each of them, and have properly and lawfully registered said Japanese, and each of them, as duly and regularly qualified electors in said city and county and in said Fifth Congressional District, and the defendant does now properly and lawfully retain the names of said Japanese, and each of them, upon the register of electors of the

City and County of San Francisco so as to enable and permit said Japanese, and each of them, to vote for nomination of candidates for the House of Representatives at the primary election to be held on the 25th day of August, 1942, and for members of the House of Representatives to be held on the 3rd day of November, 1942, and to vote at all subsequent elections held in said city and county as prescribed by law for the election of members to the aforementioned offices of the United States.

2. By reason of the citizenship of the aforementioned Japanese, and each of them, plaintiff has not and will not suffer any damage. Plaintiff is not entitled to any relief in the premises and the defendant is entitled to judgment in his favor.

Let judgment be entered in conformity herewith.

Dated this 2nd day of July, 1942.

A. F. ST. SURE,

Judge of said District Court.

It Is Hereby Stipulated that the foregoing findings of fact and conclusions of law need not be served upon plaintiff.

Dated July 2nd, 1942.

WEBB, WEBB & OLDS,

Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 17, 1942. [25]

In the District Court of the United States of
America in and for the Northern District of
California, Southern Division

No. 22178-S

JOHN T. REGAN,

Plaintiff,

vs.

CAMERON KING, as Registrar of Voters in the
City and County of San Francisco, State of
California,

Defendant.

JUDGMENT

This cause came on regularly for trial before the court, sitting without a jury, on the 16th day of June, 1942, and on the 26th day of June, 1942, U. S. Webb, Esq., of the firm of Webb, Webb & Olds, appeared as attorney for plaintiff, and John J. O'Toole, Esq., City Attorney of the City and County of San Francisco, and Walter A. Dold, Esq., Chief Deputy City Attorney of the City and County of San Francisco, appeared as attorneys for the defendant, and the court having heard the testimony, and having examined the proofs offered by the respective parties, [26] and the court being fully advised in the premises, and having filed herein its findings of fact and conclusions of law, and having directed that judgment be entered in accordance therewith;

Now, Therefore, by reason of the law and findings aforesaid, It Is Hereby Ordered, Adjudged and Decreed that plaintiff take nothing by his complaint and that defendant have judgment against plaintiff.

Dated this 17th day of September, 1942.

A. F. ST. SURE,

Judge of the United States
District Court.

[Endorsed]: Filed Sept. 17, 1942. [27]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that John T. Regan, plaintiff above-named, does hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on September 17, 1942.

Dated: September 25, 1942.

U. S. WEBB,

WEBB, WEBB & OLDS,

Attorneys for Appellant

1420 Mills Tower

San Francisco, California

[Endorsed]: Filed Sept. 25, 1942. [28]

BOND ON APPEAL

S. F. #466273-J

Know All Men By These Presents, That we, John T. Regan, as principal, and Maryland Casualty Company, as surety, are held and firmly bound unto Cameron King in the full and just sum of Two Hundred Fifty and no/100 Dollars, to be paid to the said John T. Regan, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 1st day of October in the year of our Lord One Thousand Nine Hundred and forty-two.

Whereas, lately at a District Court of the United States for the Northern District of California, in a suit *depending* in said Court, between John T. Regan versus Cameron King, a judgment was rendered against the said John T. Regan and the said John T. Regan having filed in said Court a notice of appeal to reverse the judgment in the aforesaid suit, on appeal to United States Circuit Court of Appeals for the Ninth Circuit, at a session of said Circuit Court of Appeals to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, That if the said John T. Regan, shall prosecute to effect, and satisfy the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment

is affirmed, and to satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

This recognizance shall be deemed, and construed to contain the "Express Agreement" for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court. W. G. K.

Acknowledged before me the day and year first above written.

[Seal]

JOHN T. REGAN

[Seal]

MARYLAND CASUALTY
COMPANY

[Seal]

By W. G. KELSO

Attorney-in-fact

[Endorsed]: Filed Oct. 5, 1942. [29]

[Title of District Court and Cause.]

STIPULATION AS TO THE PARTS OF THE
RECORD, PROCEEDINGS AND EVIDENCE
TO CONSTITUTE RECORD ON
APPEAL.

It Is Stipulated by and between the parties hereto that the record on appeal in the above-entitled cause shall be comprised of the portions of the record, proceedings and evidence designated as follows:

1. Complaint for Injunction.

2. Answer to Complaint for Injunction.
3. Findings of Fact and Conclusions of Law.
4. Stipulation Excluding Paragraph VI of Complaint for Injunction from Consideration. [30]
5. Memorandum and Order of the Court dated July 2, 1942.
6. Judgment.
7. Notice of Appeal.
8. Bond on Appeal.
9. Statement of Points upon Which Appellant Intends to Rely upon Appeal.
10. This Stipulation of September 29, 1942 as to the contents of Record on Appeal.

It Is Further Stipulated and Agreed that the Findings of Fact made herein are true and correct, and that the Reporter's Transcript need not be made a part of the Record on Appeal.

U. S. WEBB

WEBB, WEBB & OLDS

Attorneys for Plaintiff-
Appellant.

JNO. J. O'TOOLE

WALTER A. DOLD

Received copy this 30th day of September, 1942.

JNO. J. O'TOOLE

WALTER A. DOLD

Attorneys for Defendant-
Appellee.

[Endorsed]: Filed Oct. 5, 1942. [31]

[Title of District Court and Cause.]

CONCISE STATEMENT OF THE POINTS ON
WHICH APPELLANT INTENDS TO RELY

1. The learned trial Court erred in granting judgment against plaintiff and for the defendant.

2. The learned trial Court erred in concluding that Japanese of the full blood born in the United States and in the State of California of alien parents born in the Empire of Japan are citizens of the United States.

3. The learned trial Court erred in holding that Japanese of the full blood born in the United States and in the State of California of alien parents born in the Empire of Japan are entitled to have their names registered upon the great register [32] of the State of California, and likewise erred in refusing to direct that the names so registered be by the defendant cancelled.

4. The learned trial Court erred in finding that the law involved in this case "is settled by the decisions of the United States Supreme Court" in *U. S. v. Wong Kim Ark*, 169 U. S. 649; *Morrison v. State of California*, 291 U. S. 82; and *Perkins v. Elg*, 307 U. S. 325, for the question in this case was not involved in either of the last two cases cited and, though directly involved in the *Wong Kim Ark* case, was erroneously decided and an erroneous decision

can never be accepted as settling the question so erroneously determined.

U. S. WEBB

WEBB, WEBB & OLDS

Attorneys for Appellant.

[Endorsed]: Filed Oct. 19, 1942. [33]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 33 pages, numbered from 1 to 33, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of John T. Regan, Plaintiff, vs. Cameron King, etc., Defendant, No. 22178-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of four dollars and forty cents (\$4.40) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San

Francisco, California, this 31st day of October A. D.
1942.

[Seal]

WALTER B. MALING,

Clerk.

WM. J. CROSBY,

Deputy Clerk.

[Endorsed]: No. 10299. United States Circuit
Court of Appeals for the Ninth Circuit. John T.
Regan, Appellant, vs. Cameron King, as Registrar
of Voters in the City and County of San Francisco,
State of California, Appellee. Transcript of Record.
Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.

Filed October 31, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10299

JOHN T. REGAN,

Plaintiff and Appellant,

vs.

CAMERON KING, as Registrar of Voters in the
City and County of San Francisco, State of
California,

Defendant and Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY, AND
DESIGNATION OF PARTS OF RECORD
TO BE PRINTED IN COMPLIANCE WITH
SUBDIVISION 6 OF RULE 19

On this appeal appellant intends to rely upon the
following statement of points:

1. The learned trial Court erred in granting judgment against plaintiff and for the defendant.
2. The learned trial Court erred in concluding that Japanese of the full blood born in the United States and in the State of California of alien parents born in the Empire of Japan are citizens of the United States.
3. The learned trial Court erred in holding that Japanese of the full blood born in the United States

and in the State of California of alien parents born in the Empire of Japan, are entitled to have their names registered upon the great register of the State of California, and likewise erred in refusing to direct that the names so registered be by the defendant cancelled.

4. The learned trial Court erred in finding that the law involved in this case "is settled by the decisions of the United States Supreme Court" in *U. S. v. Wong Kim Ark*, 169 U. S. 649; *Morrison v. State of California*, 291 U. S. 82; and *Perkins v. Elg*, 307 U. S. 325, for the question in this case was not involved in either of the last two cases cited and, though directly involved in the *Wong Kim Ark* case, was erroneously decided and an erroneous decision can never be accepted as settling the question so erroneously determined.

Appellant designates the following as the portions of record which he desires to be printed:

1. Complaint for Injunction.
2. Answer to Complaint for Injunction.
3. Findings of Fact and Conclusions of Law.
4. Stipulation Excluding Paragraph VI of Complaint for Injunction from Consideration.
5. Memorandum and Order of the Court dated July 2, 1942.
6. Judgment.
7. Notice of Appeal.
8. Bond on Appeal.
9. Statements of Points upon Which Appellant Intends to Rely upon Appeal; and

Copy of stipulation filed in the District Court of the United States dated September 29, 1942, entitled "Stipulation as to the Parts of the Record, Proceedings and Evidence to Constitute Record on Appeal."

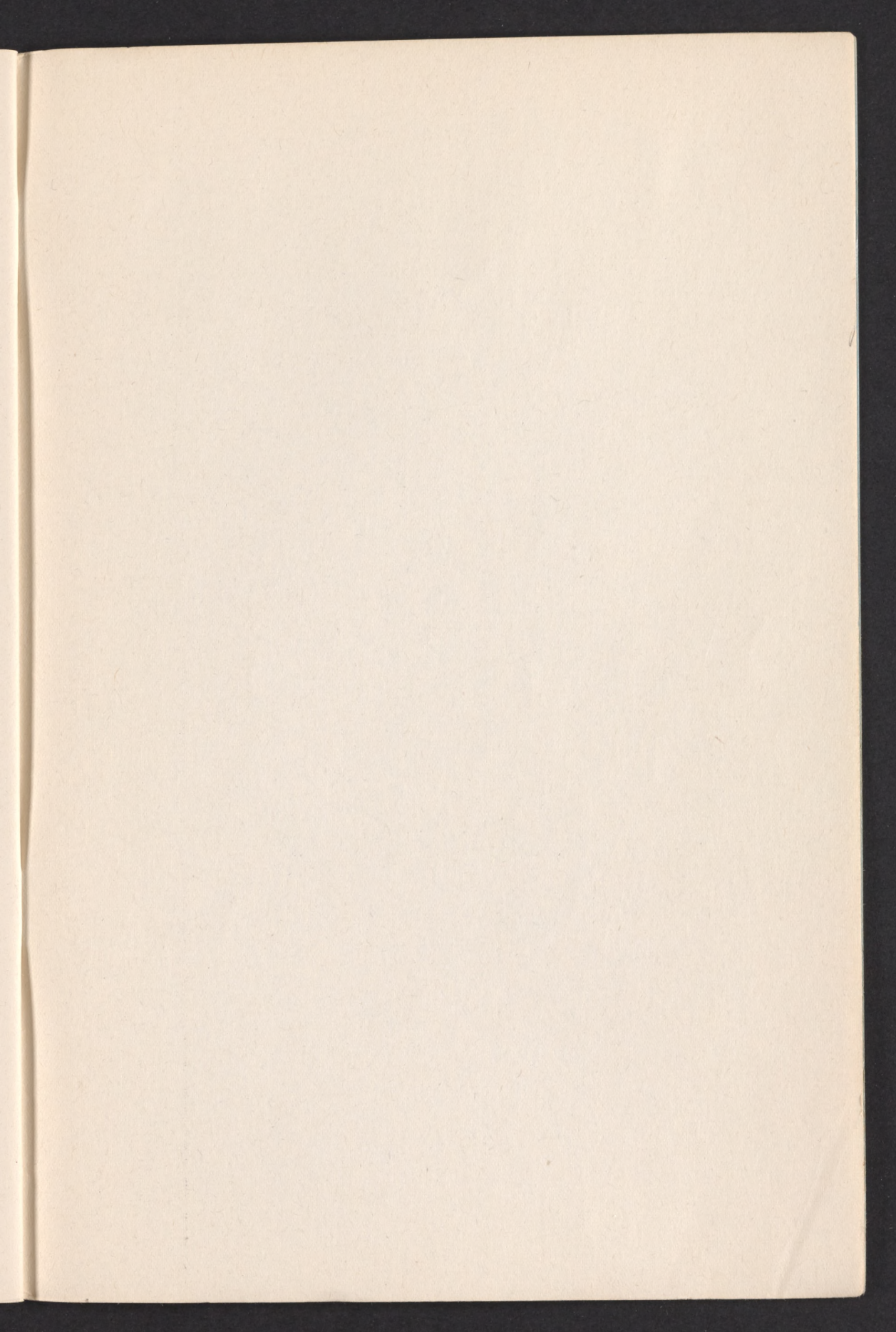
U. S. WEBB and
WEBB, WEBB & OLDS
Attorneys for Plaintiff-
Appellant.

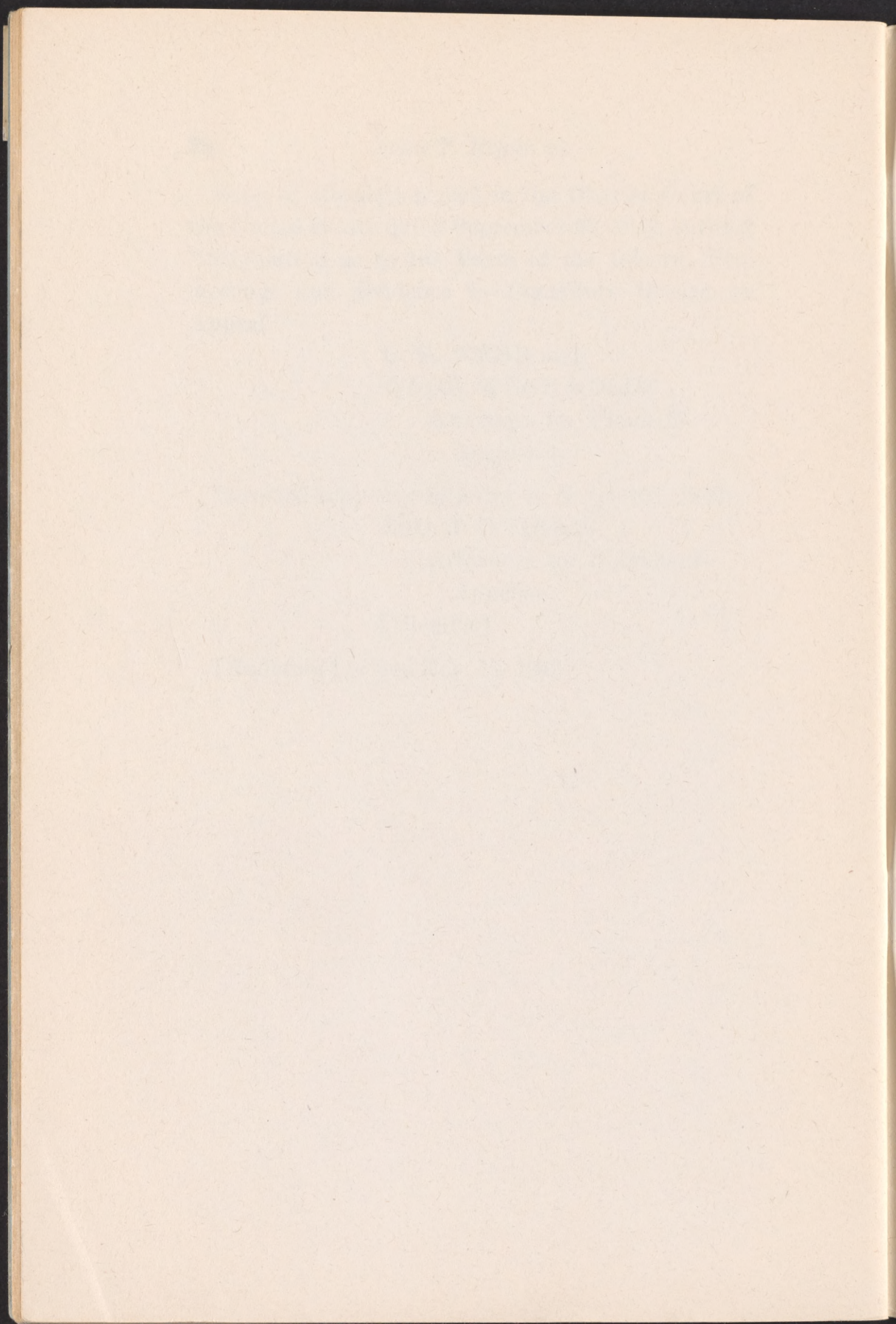
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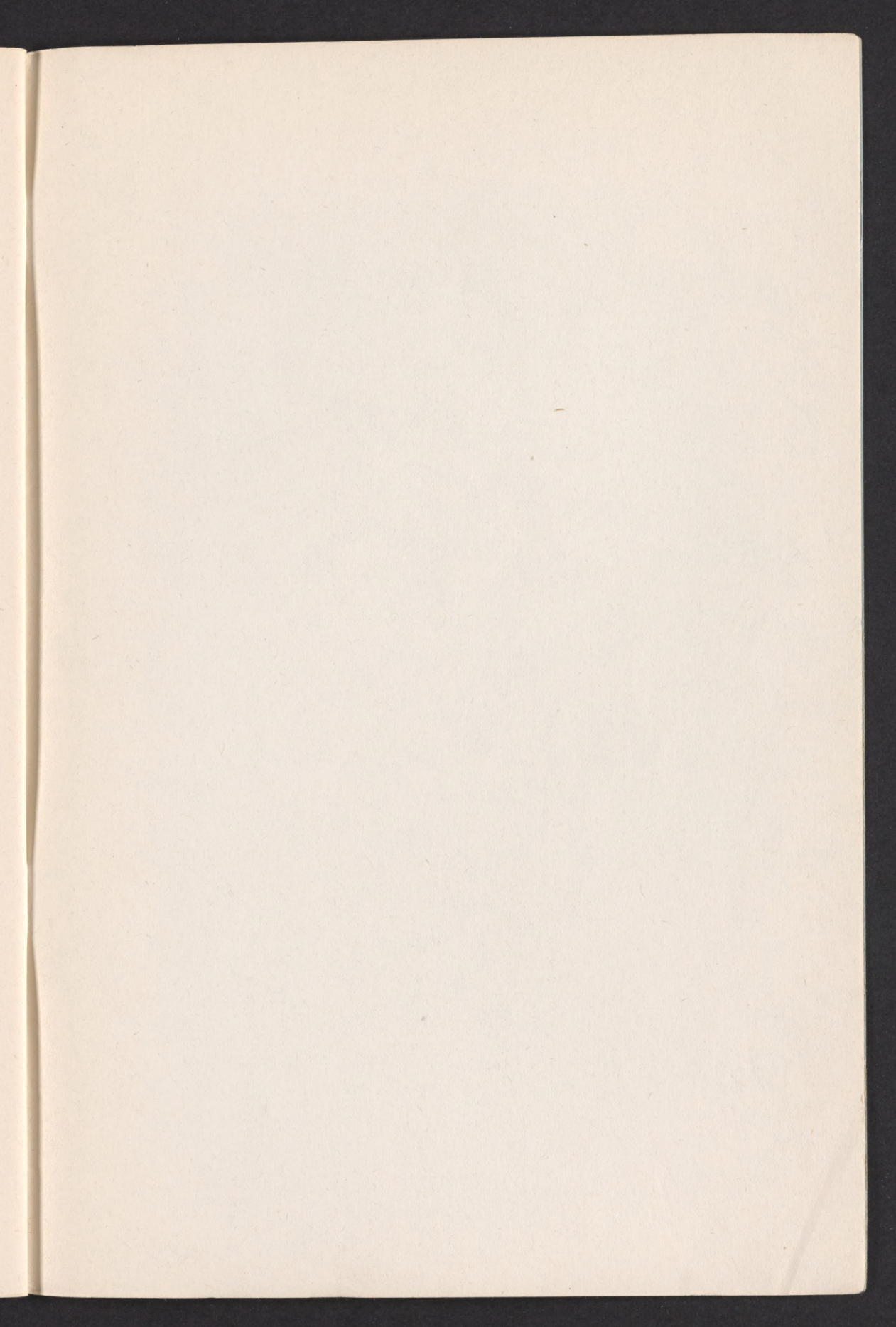
JNO. J. O'TOOLE
Attorneys for Defendant-
Appellee.

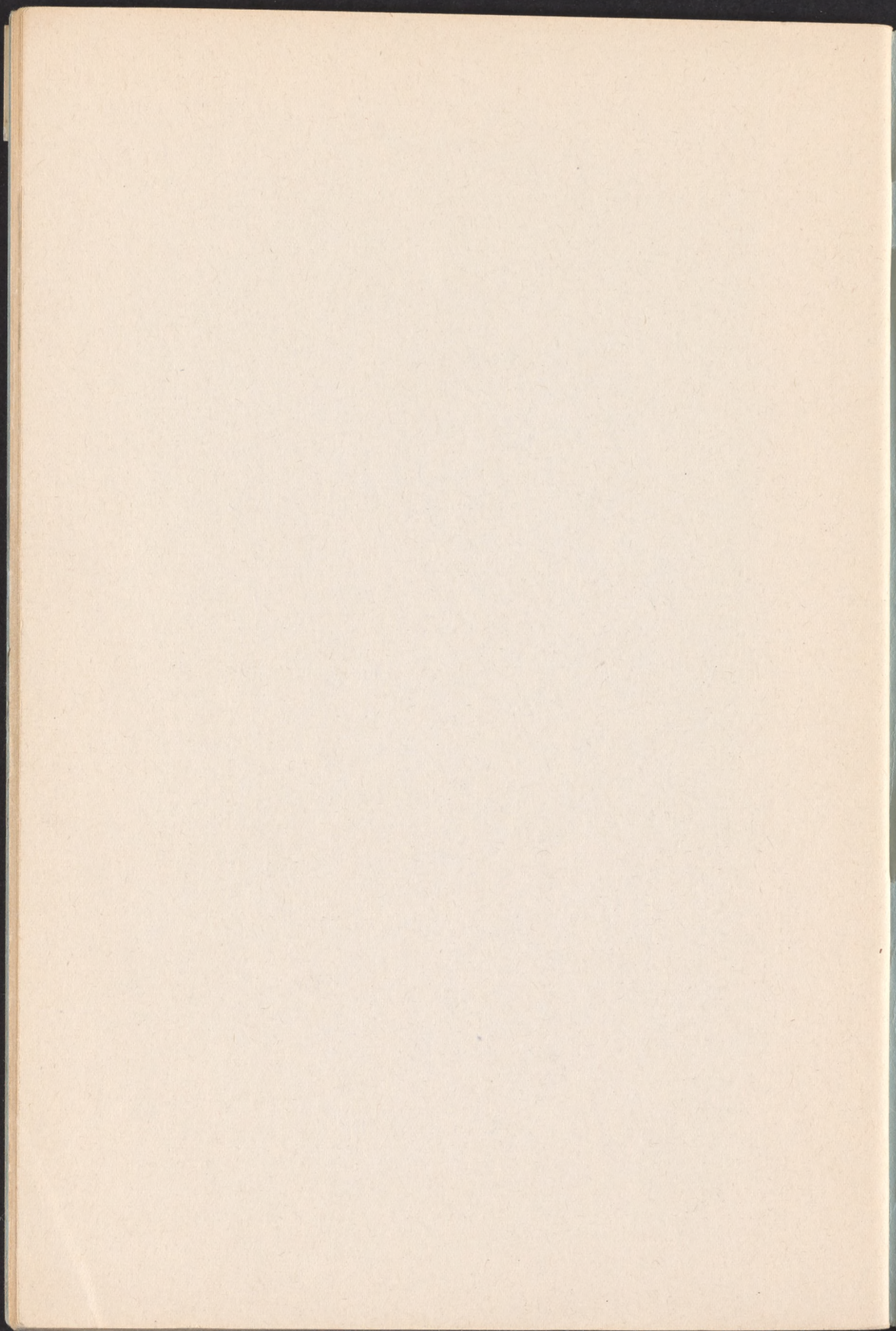
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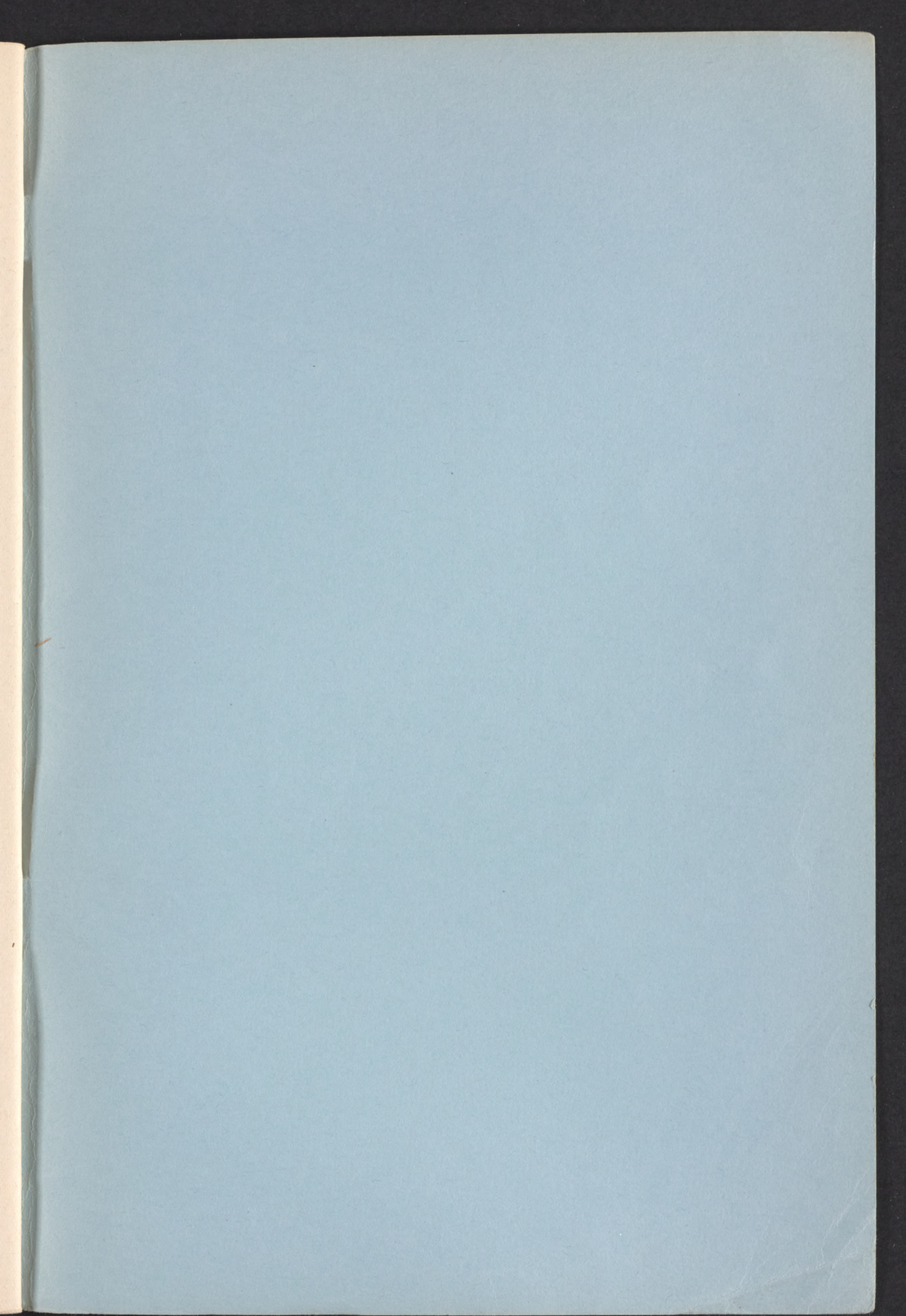
[Endorsed]: Filed Nov. 10, 1942.











NO. 10299