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Evacuation + Resettlement Study

IN THE
Southern Division
OF THE
United States District Court
IN AND FOR THE
Northern District of California

Before Honorable A. F. ST. SURE, Judge

JOHN T. REGAN,

Plaintiff,

VS.

CAMERON KING, Registrar of the City
and County of San Francisco.

Defendant.

No. 22,178

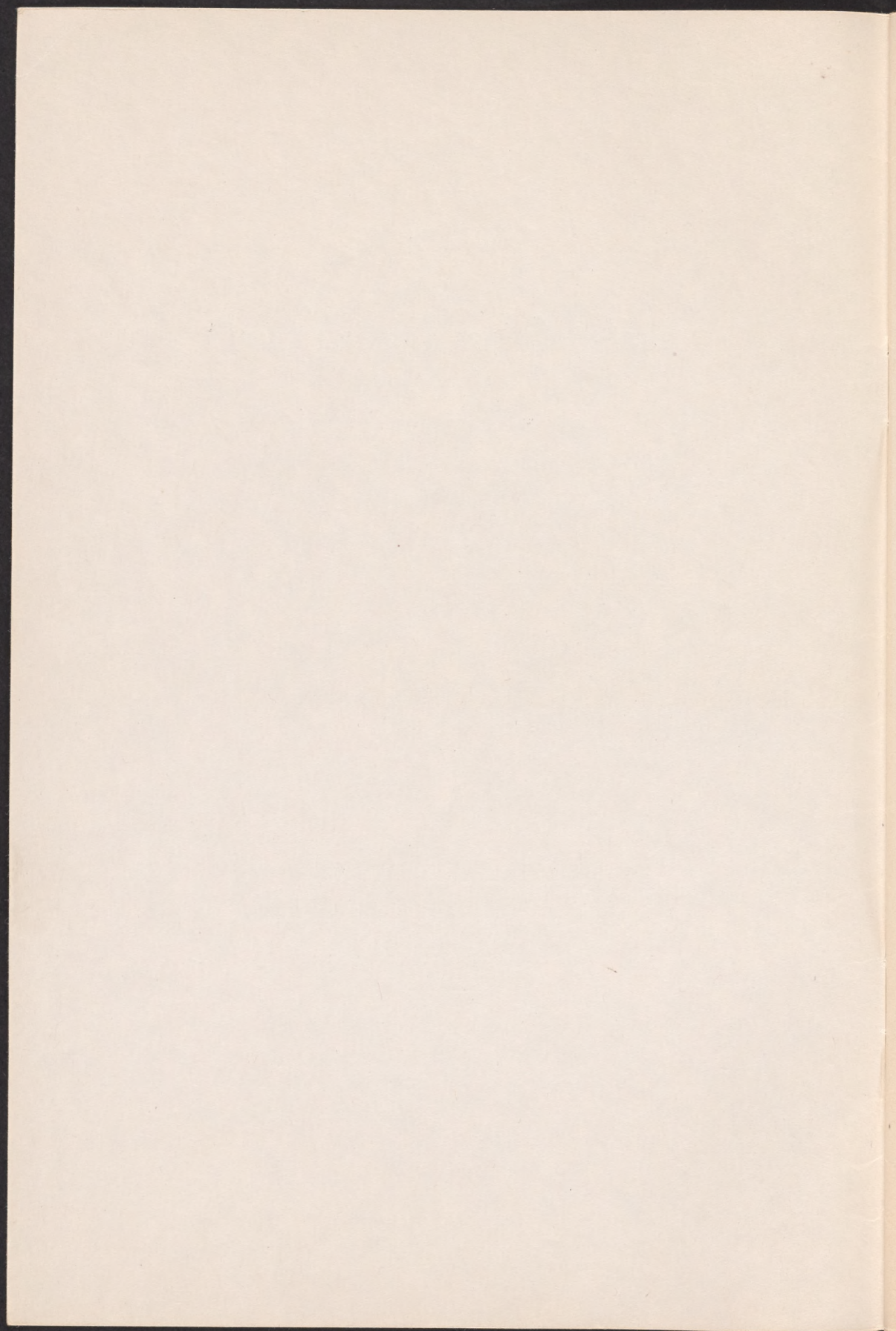
ORAL ARGUMENT OF U. S. WEBB
(with corrections and quotations from
authorities referred to).

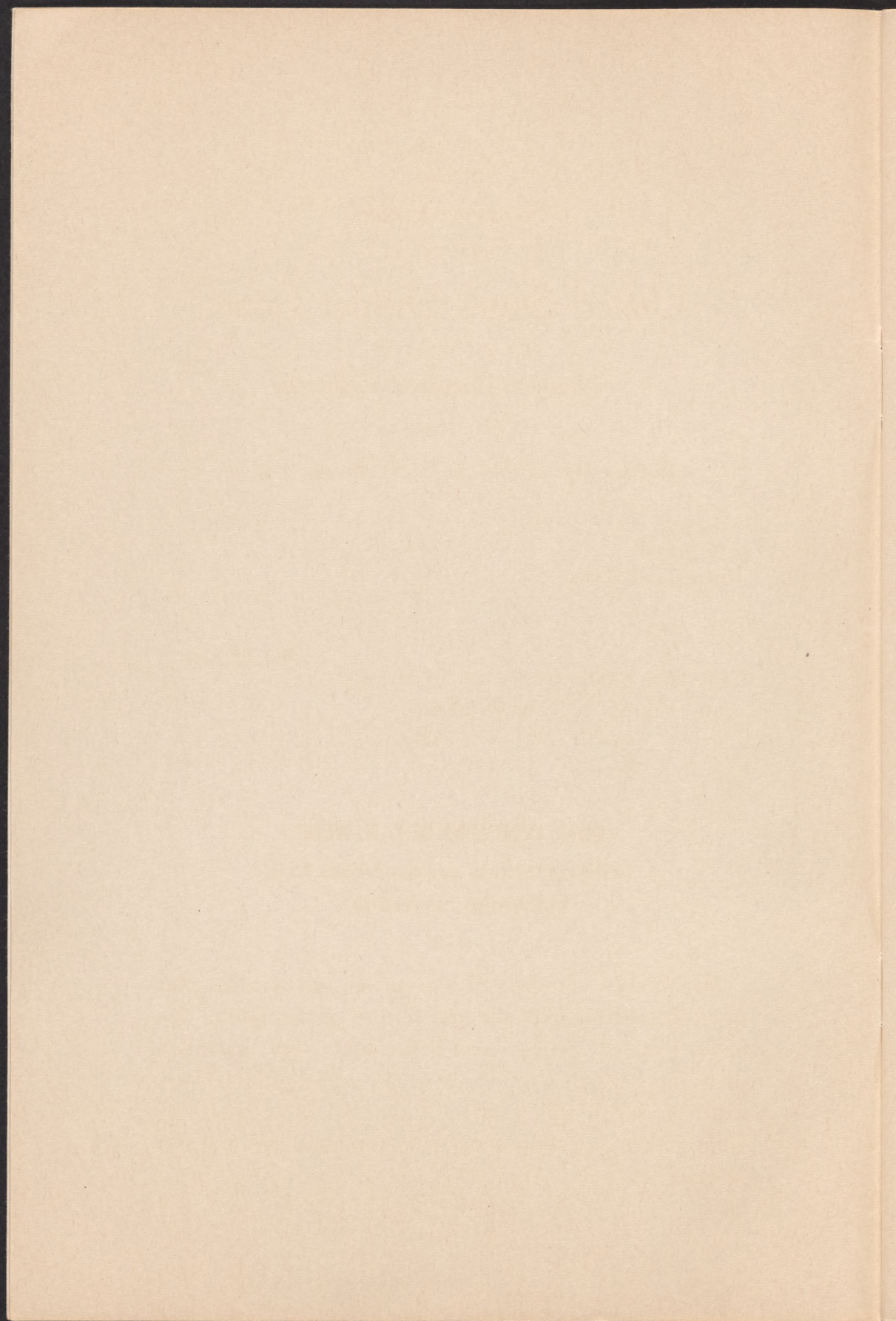
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Mills Tower, San Francisco,

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Mr. Webb. If your Honor please, we realize that upon the threshold is the question of jurisdiction. We have pleaded federal constitutional and statutory provisions which we feel show the jurisdiction of this cause to be in this Court. I do not know that Mr. Dold makes any contention as to the question of jurisdiction.

Mr. Dold. No, we are not making any contention in regard to jurisdiction. Our sole point is the major point of the case, no incidental point whatever.

Mr. Webb. We will file the memorandum in support of jurisdiction.

The Court. Yes.

Mr. Webb. Then we will not hereinafter refer to the matter of jurisdiction and will treat all issuable facts as settled by the stipulation, and in the course of our presentation, we will refer with some liberty to historical facts of which the Court will take judicial notice, for the question, as we conceive it to be, involves the history of this Republic and the history prior to its formation.

The legal question is, Is a member of the Japanese race, born in the United States, a citizen of the United States? I might add, so that it will not appear that I am presenting this narrowly, that the question, incidentally, involves races other than the Japanese. In short, the question, as we conceive it to be, involves the citizenship of all people born in the United States of parents who are not of the white or Caucasian race. In our discussion and in review of the history of the country, we will use the term "white" because those who first determined in this land who would be eligible to citizenship in the Republic of the United States used the term "white" and did not use a racial term.

The citizenship of the Japanese is claimed under the Fourteenth Amendment of the Federal Constitution.

By way of explanation, it should be mentioned here that following the Civil War, that through the operation of the Fourteenth and Fifteenth Amendments to the Federal Constitution and the Naturalization Law as amended in 1870, citizenship and the right of suffrage was extended to Negroes.

The provision of the Fourteenth Amendment, with which we are concerned, is "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside". That language is general and broad and has been construed to include every person born in the United States. We are not here concerned with those who are naturalized through the statutory process of naturalization, but only with persons born in the United States of parents ineligible to citizenship in the United States, and we are aware that it has been held that such persons were automatically made citizens by the language quoted from the Fourteenth Amendment.

That amendment was introduced in Congress in 1866, a year following the close of the Civil War, at a time when those whom, with all respect, I might refer to as Abolitionists, had gotten a majority control of the Federal Congress, and the Fifteenth Amendment extending to Negroes the right of suffrage speedily followed the ratification of the Fourteenth Amendment. The purpose of these amendments was to enfranchise the Negro in order to dominate the political result in the states that had seceded. This may be only a sidelight, but it is historically correct.

We have examined at great length five volumes of the Congressional Record, which contains the discussions relative to the Fourteenth Amendment. Many hundred pages are taken up by these discussions, both in the Senate and in the House of Representatives. Our examination was for the purpose of determining what was conceived to be and understood to be the main purpose of that amendment, and I may say to your Honor without question that it was advanced on the one side by those who held its purpose to be to citizenize the Negro, and was opposed by those who agreed that such was its main purpose. The amendment was ratified by the required number of States in the latter part of 1868. Two months before the introduction of the Fourteenth Amendment, what was called the Civil Rights Act was passed by Congress, framed in language quite similar to that used in the Fourteenth Amendment and having the same general purpose.

We admit that the Fourteenth Amendment has wide application and that it brings into citizenship all members of the Negro race born in the United States, and let it be distinctly understood that the status of the Negro is in nowise involved in this action. The amendment has a much wider significance and a wider scope of operation. Our contention is that the quoted provision of the Fourteenth Amendment made citizens of all persons born in the United States of parents who were eligible to citizenship, except children of certain representatives of foreign governments, with whom we are not here concerned.

“All persons born or naturalized in the United States” fall within two groups or classes, wide apart and unrelated, in the one group are all persons born in the United States of parents who are eligible to naturalization, and in the other group, all persons born in the United States of parents who are not eligible to naturalization. Those who hold that it has a wider significance than I have indicated, contend that it automatically citizenizes—I do not know whether that word is in the dictionary or not, but I use it——

The Court. It sounds all right.

Mr. Webb. Citizenizes all persons born in the United States of parents eligible to citizenship and also children born in the United States of parents not eligible to citizenship.

The construction for which we contend limiting the grant to persons born in the United States of parents eligible to citizenship, limits its scope to the white race; excludes from its operation three-fifths of the peoples of the world. That construction would exclude from its operation all colored races except the Negro, and would exclude approximately three-fifths of the world's population. It would exclude the Hindus, the Chinese, the Japanese, and all others who are not of the Caucasian race, while the construction which gives citizenship to the Japanese, would likewise give citizenship to all of the peoples of the world, of whatever race, born within the territory of the United States.

This country, your Honor, was settled by the white race. This country was settled by Europeans only, and there was found^{ed} here a cosmopolitan population composed of every European people, all of whom were members of what we term, for lack of a better name, the Caucasian race. At that time there ^{were} ~~was~~ no Japanese in North America, so far as history records, and there are people wishing now that the same thing could be said today. There was not at that time an Asiatic, so far as history records, within the United States; the only possible exception, not at the time of the settlement, but sometime later, were some who came here as seamen and what-not. Those who formed the original thirteen Colonies, those who framed the Articles of Confederation, those who framed the Declaration of Independence, were all white people, Caucasians. But they had no contact with any other people, they had no thought of any other people; they were not seeking to build a new world and government for any people other than the white people, their own kind. The Boston Tea Party was attended by whites only. The battles of Lexington and Bunker Hill were fought by whites. At Valley Forge Washington prayed for the whites, and when the Declaration of Independence was adopted, the declaration that these United States are and of right ought to be free and independent, it was a declaration by and for white people. None other participated in its consideration, none other participated in its design.

The war of the Revolution was fought by white people, and won by white people, except in so far as the Indians participated on one side or on the other. The treaty of peace was signed by and for white people, and after that independence had been achieved the representatives of the thirteen Colonies met for the purpose of reconstructing the Articles of Confederation. It was that same people who met to better protect the continuing government thus formed, the government originally formed by the Articles of Confederation; and when, after months of deliberation, it was ascertained that the Articles of Confederation were defective, that an attempt to remodel and amend was fruitless, it was determined by those people of the government that a new organic law should be framed and they addressed themselves to the drafting of a Constitution.

After some four months of deliberation by perhaps the most foreseeing patriotic, liberty-loving people that have assembled under one roof, the Constitution of the United States, as it now stands, except for the amendments that have since been added, was adopted. It was adopted as a new and basic law of the Republic of the United States, a government to be composed of the people who had framed it, the people who upon the battlefield and upon the sea had won the right and power to frame a new Government, framed for and by them.

The first words of the Constitution are "We the People of the United States", and "We the People" as there used referred to and included only white

peoples, Caucasians, the people who then composed the United States, some three millions of human beings who had challenged the people across the ocean, that they might enjoy the blessings of liberty for themselves and their posterity, and they builded a new government based upon that Constitution which expressed and guaranteed them the rights which had been denied them by their respective governments in Europe, and they were seeking, and acting, and doing all this for their own people.

That Constitution was adopted in 1787 and ratified by the requisite number of States in 1788.

Among the many powers conferred upon Congress by the sovereign people was the power to adopt and provide for an uniform system of naturalization.

It was recognized by the framers of the Constitution that other people would come to this land, and it was recognized that before they could become participants in the activities of this Government, that they should by some process be metamorphosed into United States citizenship, that they should in some fashion renounce the obligation of allegiance to the government from which they came, and take on by affirmative oath the support of the government to which they came. And in the exercise of the power so conferred over naturalization by the Constitution, the Congress of the United States, either at its first or second session, exercised that power by drafting an uniform law of naturalization—extending the right to “free white persons”. The word “free” was used in the original Act, and has been continued to be used

until the present day. The language was such as to give the right of naturalization to all free white persons.

The word "free" was used because at that time and prior white slavery or white bondage was known to some extent in the Colonies, and certainly in the countries from which these people came. It was said by the Court in *U. S. v. Ozawa*, 260 U. S. 178, 67 L. ed. 199,

"Undoubtedly the word 'free' was originally used in recognition of the fact that slavery then existed, and that some white persons occupied that status. The word, however, has long since ceased to have practical significance and may now be disregarded."

That Act so passed in 1790 did not use the term "Caucasian", did not use a racial term, but used "white persons", and why? Because, your Honor, those who framed it were speaking of the persons whom they knew; they were speaking of the persons, that class of persons who had aided in the building of the new Republic; they were speaking of persons who settled the country; they had not in view or in contemplation people other than the white people.

At that time they were not distressed by the presence of Orientals; at that time there was no threat of Oriental invasion—in fact, they were at that time far from the Pacific Ocean. But they were acting for and speaking for their own people.

When they opened or began that Constitution with the words, "We the People of the United States",

those words comprehended the white people, the people who had founded the government and for whom the government had been founded. They did not contemplate or think that they were building a government for all the peoples of the world, to which all of the peoples of the world might come, and of which all of the peoples of the world might become citizens and participate in that government.

That is evidenced not only by the Naturalization Act of 1790. Following that, the Naturalization Act was changed or modified in some particulars on more than twelve occasions between 1790 and 1870, and in every modification, in every new enactment, notwithstanding what changes might be made in other respects, always there stood as the Rock of Gibraltar, "white persons". By the naturalization law there has never been extended to any people other than white people the right to become naturalized under the uniform naturalization law. The Act was amended in 1795, 1802, 1812, 1822, 1862 and 1870 and on a number of occasions since, but always the term "white persons" was used except in 1873 when the naturalization law was codified and inadvertently the term "white persons" was omitted. This circumstance will later be referred to.

In 1862 and at later dates acts were passed which enabled aliens who had served in the armed forces of the United States to be naturalized in shorter time and under more favorable terms than were required by the general naturalization law, and it was contended that these acts included all aliens who had

so served regardless of race or color. When this contention was submitted to the Courts, it was held that the term "aliens" as used in these acts included only such aliens as were eligible to naturalization under the general naturalization law. Such was the holding of the Supreme Court of the United States in *Toyota v. U. S.*, 268 U. S. 102. Such was the holding also by the Supreme Court of California in *Sato v. Hall*, 191 Cal. 510.

See also:

In re En Sk Song, 271 Fed. 23;

In re Geromino Para, 269 Fed. 643;

In re Buntaro Kumagai, 163 Fed. p. 922.

In 1873 the naturalization laws were generally revised and codified, and in that codification the word "white" was omitted. At the following session of Congress, in 1874, a bill was offered to restore the word "white", and it was shown by the codification committee that the word "white" was unintentionally omitted, a clerical error, and Congress restored the word "white" to the Act in 1874. A few months intervened, in which the word "white" was out of the law, but when discovered was immediately restored. It is curious, too, that when it was proposed to restore the word "white" to the statute, there were some who opposed it, stating the time had come to open naturalization to all peoples of the world, and that was opposed and overwhelmingly defeated by Congress at that time, and in 1874 the words "free white persons" as used in the Act of 1790 were restored to the statute and have remained in the statute until the present day.

The word "free" as used in the statute is now without significance, as was indicated by the Supreme Court of the *United States* in *U. S. v. Ozawa*, heretofore cited and quoted from.

Now, that is the history of one side of the governmental activity, showing beyond the question of doubt that it was the first and continued and undeparted-from doctrine of the framers of this government, and those who administered it through the course of 150 years, that citizenship should be restricted to Caucasians, to white persons only.

I, your Honor, would admit that I might be considered presumptuous if I presented this contention as an original thought, but I am not the originator of the idea. I am not a pioneer in the field. I have eminent authority for the position that I have attempted to state here.

We are asking your Honor to decide this case contrary to a decision rendered by the Supreme Court of the United States, 44 years ago, and we are asking it for two reasons: One, that the decision of the Supreme Court, 44 years ago, was error, and the decision of your Honor today opposed thereto would be correct. We would not avoid the case of *United States v. Wong Kim Ark*, reported in 169 U. S. 649. That case involved the right of a Chinese born in the United States to citizenship under the Fourteenth Amendment to the Federal Constitution. That was the first occasion when that question reached the Supreme Court, and the Court thirty years after the Constitutional provision was passed, held that the

applicant in that case, being born in the United States of Chinese parentage, was by virtue of the Fourteenth Amendment citizenized, made a citizen.

Justice Gray, in writing the opinion, based it primarily upon the proposition that the common law of England, as it existed in that day, made citizens of all persons born in the British Empire, and that somewhere, somehow, the United States adopted that common law of England, that it came across the sea and crept its way into the Constitution of the United States, and we were bound and chained by the common law of England. Five justices concurred with Justice Gray in that view. Justice McKenna did not participate. Two justices dissented, and I wish to present this question this morning upon the dissenting opinion in that case and authorities in harmony with it, and I say that judges and jurists, lawyers and publicists continue to criticize the prevailing opinion not only as to error, but as one of the most injurious and unfortunate decisions ever rendered by that Court.

That dissenting opinion was written by Chief Justice Fuller, and upon the law as expounded in that opinion I take my stand. I submit to you the two opinions, and if the prevailing opinion addresses itself to your Honor's judgment, you will follow it, but I assume that if after full consideration of the matter your Honor believes that the prevailing opinion is wrong, then your Honor will be freed from the duty and obligation to follow it. I take it to be the duty of judges to follow if they can in good conscience and good judgment the decisions of the Su-

preme Court of the United States. But if they cannot, I take it that they are at liberty to dissent or to decide a case contrary to the expression of the Supreme Court's views. I know all of us, your Honor included, have taken an oath to support the Constitution of the United States, but I don't know of any official who has taken an oath to follow without question the opinion of the Supreme Court of the United States, or the decisions of any Court. Hence, with entire freedom, I bring to your Honor this case, knowing that we are asking that your Honor render a decision contrary to that heretofore announced, but we have no reluctance in so doing.

The dissenting opinion was concurred in by Justice Harlan. Your Honor would not hesitate, ordinarily, to follow Justice Harlan, a judge who stood out in that Court for about thirty years, as one of the most dominating minds that ever occupied a position on that Court. He joined in this dissent, and the dissenting opinion challenges with vigor and with conclusive logic the law as declared in the majority opinion. The dissenting opinion cites in its support outstanding authority, denies that the common law of England controlled that particular question or that it was in force, except insofar as it was in harmony with the spirit and purposes of the Constitution. The dissenting opinion states the obvious truth that "every rule of the common law and every statute of England obtaining in the colonies in derogation of the principles upon which the new government was founded was abrogated", and points out that "there

is nothing to show that in the matter of nationality they intended to adhere to principles derived from regal government, which they had just assisted in overthrowing", and here I wish to read a page or two of that opinion:

"The true bond which connects the child with the body politic is not the matter of an inanimate piece of land, but the moral relations of his parentage. The place of birth produces no change in the rule that children follow the condition of their fathers, for it is not naturally the place of birth that gives rights, but extraction."

The opinion continues along this line, and may I ask my associate, Miss Webb, to read a short extract from it?

Miss Webb. This is on pages 709 and 710:

"And to the same effect are the modern writers, as for instance, Bar, who says, 'To what nation a person belong is by the laws of all nations closely dependent on descent; it is almost an universal rule that the citizenship of the parent determines it—that of the father where children are lawful, and where they are bastards, that of their mother, without regard to the place of their birth; and that it must necessarily be recognized as the correct canon, since nationality is in its essence dependent on descent'. International Law, Section 31.

"The framers of the Constitution were familiar with the distinction between the Roman law and the feudal law, between obligations based on territoriality and those based on the personal and invisible character of origin, and there is nothing

to show that in the matter of nationality they intended to adhere to principles derived from regal government, which they had just assisted in overthrowing.

“Manifestly, when the sovereignty of the Crown was thrown off and an independent government established, every rule of the common law and every statute of England obtaining in the colonies, in derogation of the principles on which the new government was founded, was abrogated.

“The states, for all national purposes embraced in the Constitution, became one, united under the same sovereign authority, and governed by the same laws, but they retained their jurisdiction over all persons and things within their territorial limits, except where surrendered to the general government, or restrained by the Constitution, and protection to life, liberty, and property rested primarily with them. So far as the *jus commune*, or folk-right, relating to the rights of persons, was concerned, the colonies regarded it as their birthright, and adopted such parts of it as they found applicable to their condition. *Van Ness v. Packard*, 27 U. S. 2 Pet. 137 (7:374).

“They became sovereign and independent states, and when the Republic was created each of the thirteen states had its own local usages, customs, and common law, while in respect of the national government there necessarily was no general, independent and separate common law of the United States, nor has there ever been. *Wheaton v. Peters*, 33 U. S. 8 Pet. 591, 658.

“As to the *jura coronae*, including therein the obligation of allegiance, the extent to which these

ever were applicable in this country depended on circumstances, and it would seem quite clear that the rule making locality of birth the criterion of citizenship because creating a permanent tie of allegiance, no more survived the American Revolution than the same rule survived the French Revolution.

“Doubtless, before the latter event, in the progress of monarchical power, the rule which involved the principle of liege homage may have become the rule of Europe; but that idea never had any basis in the United States.”

The Court. You have filed a memorandum which is limited entirely to the question of jurisdiction?

Mr. Webb. Entirely to the question of jurisdiction.

The Court. Have you a memorandum prepared containing the authorities you mentioned in your argument this morning?

Mr. Webb. I can do so.

The Court. Submit them.

Mr. Webb. I will hand those in, your Honor.

The Court. All I want is the citation.

Mr. Webb. There are some other authorities which it may be very interesting to read.

Now, I am closing with two or three propositions in order to bring this to, I think, a logical conclusion.

Prior to 1922 the Courts had frequently, under the Naturalization Law, naturalized Orientals, particularly Hindus—and some other colored races were being naturalized under peculiar conditions. In 1922 there came before the Supreme Court the case of *United States of America v. Ozawa*, a Japanese; that

case is reported in 260 U. S. 178. Earlier cases that came before the Courts were usually determined upon the question of race.

It had been held that the Hindu traced his ancestry back somewhere in the illimitable past to the Aryans. By permission of the Supreme Court of the United States, I entered the *Ozawa* case and filed a brief with the Court, making the contention that it was not a racial question that governed, but that it was a question of color, and that races could be resorted to as a source of information in order to determine color. That view was taken by the Supreme Court, and for the first time Justice Sutherland writing the opinion concurred in by an unanimous Court, held that it was not a question of race, but that the real question was if the applicant was a "white person" as that term was understood by those who first used it. *Ozawa* was a Japanese, not a member of the white race, and therefore not eligible to naturalization. It was this same thought that was presented to the Senate Immigration Committee in 1924, and which controlled the Congress in the adoption in that year of the amendment to the Immigration Law which excluded from immigration all persons ineligible to naturalization under the uniform Naturalization Law.

Now the *Wong Kim Ark* case extends citizenship automatically to the children of all the races of the world born here, and possibly if the Darwin theory of human origin be correct, it might include the chimpanzee of Central Africa who happens to be born in the United States.

A year following the case of *United States v. Thind*, reported in 261 U. S. came up, and again Judge Sutherland, writing the opinion and giving the *Ozawa* case as authority held that Hindus cannot claim to be of the white race, or to have been descended from the white race, and that the people who had adopted the Naturalization Law in 1790 meant it to be understood that it included no other people. The opinion supports the argument which I have here attempted to make that this country was a white man's country and is yet a white man's country if its laws be properly construed.

About 1890 the Chinese Exclusion Law was adopted. In 1917 an Act was adopted which prohibited immigration to this country of the people of a large area in which was included all of India, and Justice Sutherland comments upon that Act and his logic there is quite worth considering. In the opinion it is said:

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

Now, the decision in this case, your Honor, shows under the doctrine of the *Wong Kim Ark* case that citizenship in the United States is forever withheld from the parents, but without oath, without pledge, without examination of any character, it automatically grants citizenship to the children of those parents, and it is that inconsistency that this opinion points out.

I call your Honor's attention now to the prevailing opinion in the *Wong Kim Ark* case, and to a provision of the Constitution of the United States which was not referred to in that opinion, and that is the first paragraph of the Constitution, commonly called the Preamble, which declares the intent and purpose and objectives of that instrument. That paragraph is:

“We the People of the United States in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

Your Honor, it may well be that the admission to citizenship in this country of Caucasians from any nation would comply and conform to the purposes of that provision, but it requires no proof to show that the admission of Japanese to citizenship does not comply or conform to the purposes to be achieved by that instrument. The admission of Japanese to citizenship does not tend to insure domestic tranquillity. We have had fifty years of that experience, showing that it establishes domestic disturbance.

Their admission to citizenship does not tend to provide for the common defense. Already, in frantic efforts to provide for the country's defense since Pearl Harbor, we have incurred obligations in excess of two hundred million dollars to segregate them, to prevent their active aid to a foreign foe, to prevent their aiding the enemy by activities behind the lines. Does their citizenship tend to provide for the common defense? Hardly. Nor does it tend to promote the general welfare.

Does anyone now imagine for a moment that the admission of these people to citizenship in this country does or can in any way promote the general welfare of this Republic?

That section of the Constitution was not referred to, and, your Honor, I say that with those declared purposes before you I think it would be an easy matter to decide this case in accordance with the prayer of the plaintiff, for your Honor can see that the writer of the Wong Kim Ark opinion, in his effort to ascertain what the Constitution meant, did not use the only key that unlocks this provision, did not use the only light which shows what it meant; he omitted to consider the purposes, the objective of that Constitution, and decided the question upon the narrow construction repudiated by two of his associates, and that has shocked the thinking world since. ✓

I know that your Honor has not the power to destroy the decision that I complain of, but that decision has never been challenged; that Court has never

had an opportunity to correct itself. This is the first time the question has been presented. Your Honor cannot, I say with regret, by a blow destroy that opinion, but your Honor has the opportunity to strike the first blow.

That the Preamble of the Constitution was overlooked and disregarded by the Court in the *Wong Kim Ark* case is plainly evident. If the language of the Fourteenth Amendment had been construed consistently with the objects and purpose of the Constitution as declared in the Preamble, a different result would surely have been reached. That the Preamble is a guide for construction is established by countless authorities. The consideration that should be given to the Preamble in the construction of subsequent provisions of the Constitution is stated by *Story on the Constitution*, 5th Ed., Chap. VI, Sec. 459, as follows:

“The importance of examining the preamble, for the purpose of expounding the language of a statute, has been long felt, and universally conceded in all juridical discussions. It is an admitted maxim in the ordinary course of the administration of justice, that the preamble of a statute is a key to open the mind of the makers, as to the mischiefs which are to be remedied and the objects which are to be accomplished by the provisions of the statute. We find it laid down in some of our earliest authorities in the common law, and civilians are accustomed to a similar expression, *cessante legis proemio, cessat et ipsa lex*. Probably it has a foundation in the expression of every code of written law, from the

universal principle of interpretation, that the will and intention of the legislature are to be regarded and followed. It is properly resorted to where doubts or ambiguities arise upon the words of the enacting part; for if they are clear and unambiguous, there seems little room for interpretation, except in cases leading to an obvious absurdity, or to a direct overthrow of the intention expressed in the preamble."

The rule thus stated is frequently approved by the Courts and by other writers on the Constitution. If this proceeding results in a decision of the Supreme Court of the United States overruling the decision rendered in the *Wong Kim Ark* case, then indeed a new birth of freedom will be given us.

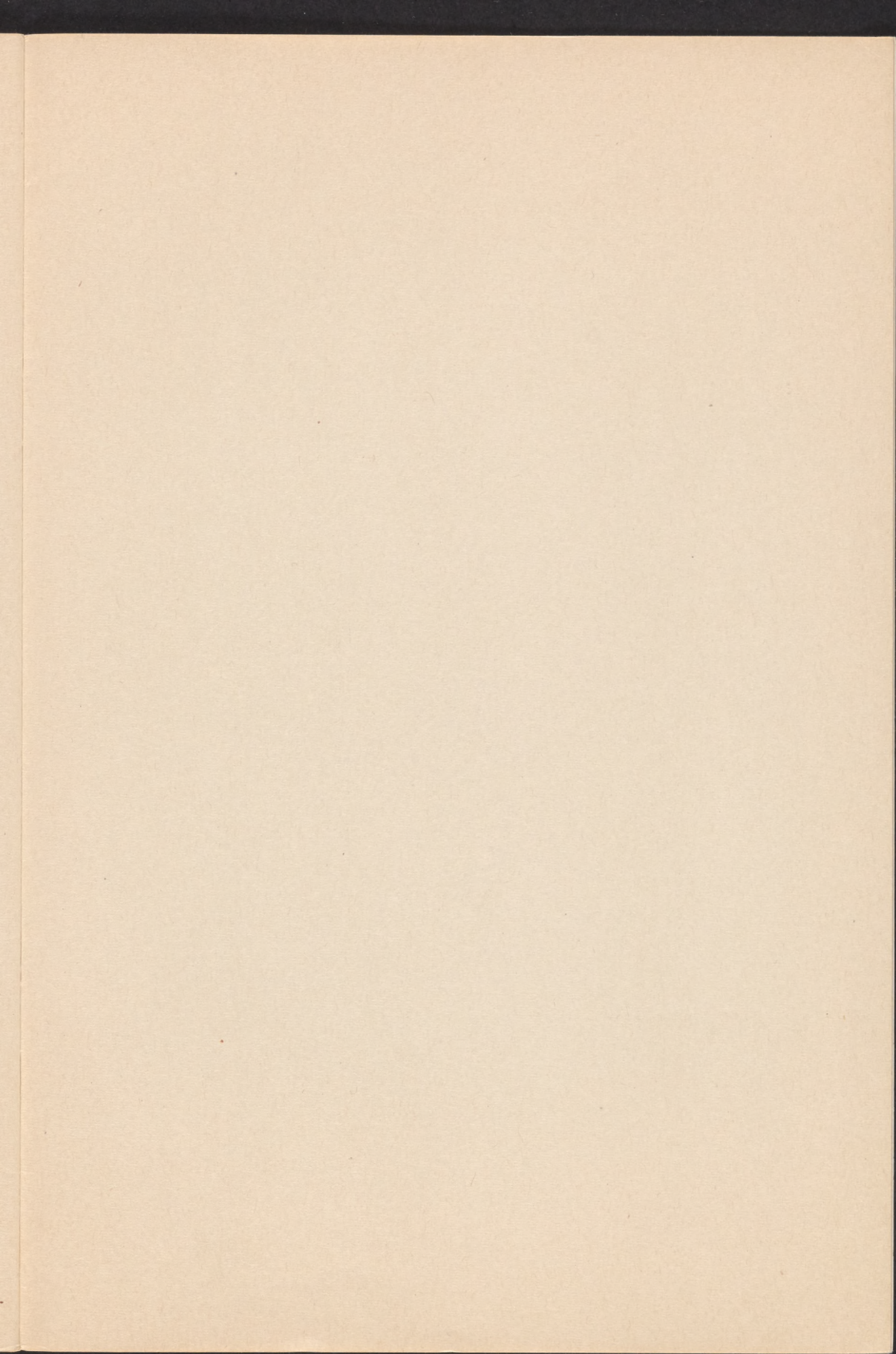
I thank your Honor.

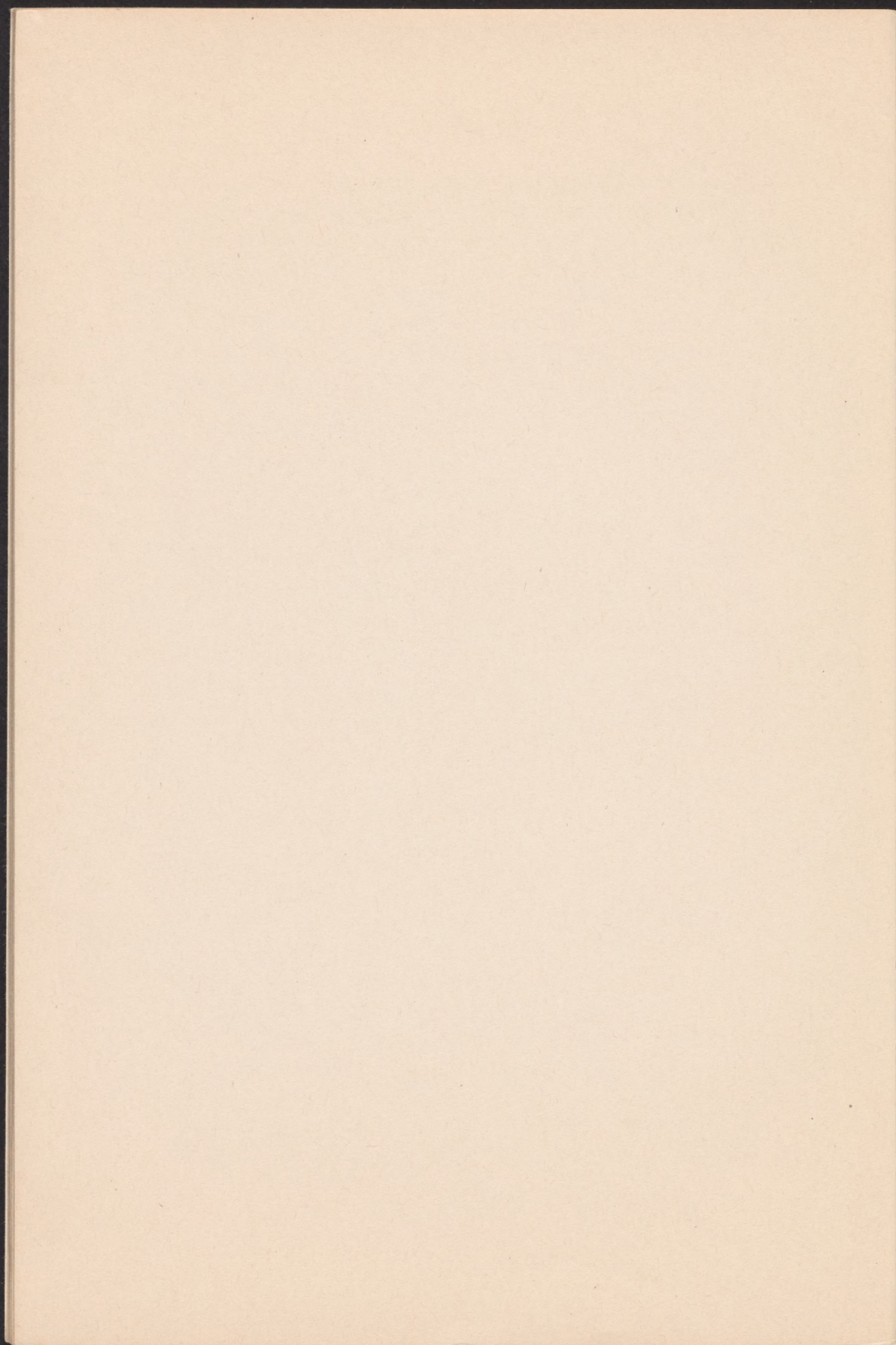
and intention of the Legislature are to be ascertained and followed. It is generally assumed to be the duty of the Legislature to provide for the support of the public schools, and it is the duty of the courts to enforce the provisions of the law in that regard. The courts are not to interfere with the legislative power of the Legislature, but they are to see that the law is faithfully executed.

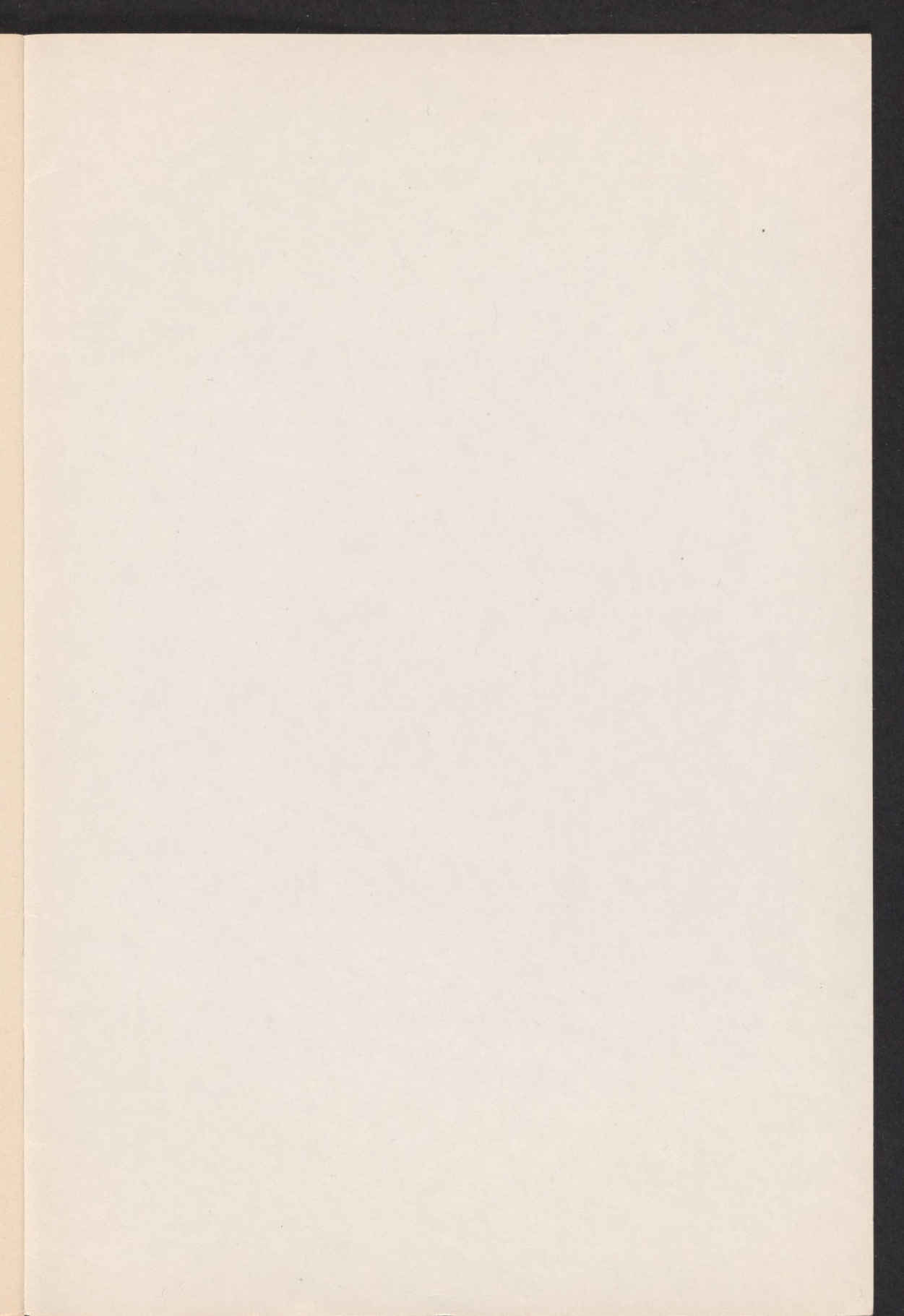
The same rule applies to the other branches of the Government. The Executive is to execute the laws as they are passed by the Legislature, and the Judiciary is to interpret the laws as they are passed by the Legislature. The three branches are co-equal and co-dependent, and each is to perform its duty faithfully and impartially.

I think you agree.

Yes, I think you agree. The same principle applies to the other branches of the Government. The Executive is to execute the laws as they are passed by the Legislature, and the Judiciary is to interpret the laws as they are passed by the Legislature. The three branches are co-equal and co-dependent, and each is to perform its duty faithfully and impartially. The same rule applies to the other branches of the Government. The Executive is to execute the laws as they are passed by the Legislature, and the Judiciary is to interpret the laws as they are passed by the Legislature. The three branches are co-equal and co-dependent, and each is to perform its duty faithfully and impartially.







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

JOHN T. REAGAN,))
 Plaintiff,))
 vs.))
))
CAMERON KING, as Registrar)
of the Voters in the City)
and County of San Francisco,)
State of California,)
 Defendant.))

No. 22178-S

BRIEF OF WAYNE M. COLLINS AS AMICUS CURIAE ON BEHALF
OF THE AMERICAN CIVIL LIBERTIES UNION.

It is a source of satisfaction in these troubled times, when some would shake our faith in our institutions and scoff at law to realize it is our own Declaration of Independence that proclaims it to be a self-evident truth "that all men are created equal" and that "they are endowed by their Creator with certain inalienable rights" and that "among these are life, liberty, and the pursuit of happiness" to secure which "governments are instituted among men, deriving their just powers from the consent of the governed."

It must appear strange to a few that it was this newly created government of the People that added to its Constitution the 14th Amendment, Section 1 of which provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they live."

This Section is not a mere declaratory one. It is an absolute grant of citizenship to any person born in the United States whether born of alien parentage or not, the place of birth being the criterion of nationality.

U.S. v. Wong Kim Ark, 169 U.S. 649; 18 S. Ct. 456.

Perkins v. Elg, 307 U.S. 325; 59 S. Ct. 884

The instigators of this suit evidently attach little significance to the decision of the U. S. Supreme Court. What they ask, in substance, is that his Court overthrow the decisions of the highest tribunal

in the land. Authority, precedent and finality of decision make but make little impression upon them.

In Morrison v. People of the State of California, 291 U.S. 82, 54 S. Ct. 281, the Supreme Court of the United States declared, once and forever, that our native born of Japanese ancestry are citizens of the United States in the following language:

"A person of the Japanese race is a citizen of the United States if he was born within the United States. U.S. v. Wong Kim Ark, 169 U.S. 649; 18 S.Ct. 456."

Petitioner's counsel argues for a "white" America - over a century and a half too late. He does not wish to deprive American negroes of citizenship, excepting, however, those who are of Hottentot lineage, according to the tenor of his argument. Perhaps he recalls a civil war was fought to emancipate and liberate them from a feudal yoke. He would, however, uproot and remove all other citizens who are not of a derivative white stock and confidently doubt the American public would emancipate and liberate them if necessary. Evidently he would also transplant the American Indians whom it would seem have some moral if not a legal claim to inhabit at least some areas on this continent.

No one is, according to his vague definition, entitled to be classified as "white" in order to enjoy the privileges of citizenship unless he can trace his pedigree to European whites of untainted racial blood. What he means by "white" is nebulous to say the least. The loose term does not seem to refer to an "albino" but to a probable "pink" as George Bernard Shaw has so acutely observed.

Purity of race is a fiction. Counsel for petitioner is unaware that there is no such thing as a "white" race. There is no such thing as a pure race extant on earth. Even the detested German Aryan is a Baltic admixture and not entirely free from a touch of Mongol blood - the Hun in him has twice made its appearance in our generation. There is no race - there is only mixture. The "white" race is a product of the imagination. What plaintiff's counsel has done is obvious. He has confused the word "white" with the word "Aryan" as understood in modern Germany under Nazi rule. All citizens whom he loves are Aryan - all others are non-Aryan whom he would deprive of citizenship. So runs the thread of his argument and it is a rather confused and entangled web he has spun that has served but to entrap the spinner. Europe has not, within known historical eras, witnessed a pure race. That continent has always been inhabited by mixed racial stocks of incompletely known origins. It is known that no European blood has been entirely free from Mongol, Hindu, Egyptian, Arabic and Slav blood infiltration. Those who would claim purity of blood must trace their genealogy back to the Neanderthal man, thence to the suspected ape-like ancestor of man, and then bridge the enormous gap through aions to a particular lowly amoeba to which the word "white" would lack significance.

He would also deprive native born Filipinos, Hawaiians, Chinese and Hindus of citizenship simply because they do not fall within his definition of "white" or "Aryan". These native born Americans are descendants of ancestors who inhabited other countries but left other descendants who today are our allies on far-flung battle-fields and engaged in a titanic human struggle to establish civil liberties and equality throughout the world. Thousands of these native born American citizens of alien parentage now serve in our military and naval forces in defense of our traditional rights and liberties. Those who instituted this action have chosen a strange time in which to launch an assault on cherished constitutional rights. The attack is the embodiment of intolerance toward minorities within our midst who are good and loyal citizens and an affront to our allies

of other races and other creeds. It succeeds only in demonstrating that bigotry is to be discovered among individuals of professed intelligence and academic eminence.

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Plaintiff's counsel has suggested that a so-called dual citizenship arising out of a registration by ones parents with a foreign consul during ones minority is a waiver of citizenship in the United States. However, the U. S. Supreme Court has decided the question to the contrary. It has held that if a native born child is, during his minority, taken abroad where he is considered naturalized under a statute of the foreign country such does not constitute a renunciation of citizenship in the United States and the child can return to these shores upon attaining his majority and elect to retain citizenship in the United States.

Perkins v. Elg, supra.

U. S. v. Wong Kim Ark, supra.

Had plaintiff's counsel taken the trouble to examine Japanese law he would have discovered that in 1924 the Diet of Japan adopted an Act releasing **from** Japanese citizenship any child born abroad subsequent to its passage and not registered within 14 days thereafter at a Japanese consulate. He also seems to be unaware that by an Act of Congress Japanese aliens who served in our armed forces during the World War were admitted to citizenship upon application for naturalization being made by them (See, 8 U.S.C.A. Sec. 392 et. seq.) and that large numbers thereof took advantage of the Act. He would apparently not only ignore the Constitution and the decision of the Judiciary but also Acts of Congress as well.

What the petitioner's counsel asks of this court is that it, as the judicial servant of the Republic that is the closest approximation to a true democracy on earth, discriminate against native born citizens on the basis of race, color or creed and to do this despite constitutional prohibitions and the decisions of the U.S. Supreme Court. What he asks is an enormous spiritual throwback that would seem to adumbrate a menacing fascism.

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The right to vote is one of the inalienable privileges of national citizenship guaranteed by the 15th Amendment of the U.S. Constitution to all citizens regardless of racial origin for Section 1 thereof reads as follows:

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

The 15th Amendment is, therefore, a conclusive barrier set up against the precise thing the plaintiff attempts to do herein. It has been repeatedly declared to prevent the United States and the States within the Union from giving preference, in the matter of voting, to one citizen over another on account of race, color or previous condition of servitude.

U.S. v. Reese (Ky. 1876), 92 U.S. 217; 23 L. Ed. 563

U.S. v. Harris (Tenn. 1883), 106 U.S. 637; 15 Ct. 601

Le Grand v. U.S. (C.C.Tex. 1882), Fed. 577, 578

The adoption of the 15th Amendment has the effect in law of removing from a state constitution, or rendering inoperative, a provision which restricts the rights of suffrage to the white race.

Lane v. Wilson (Okla. 1939), 307 U.S. 268; 59 S. Ct. 872

Neal v. Delaware (Del. 1811), 103 U. S. 389, 26 L. Ed. 567

The right to vote has been exercised by citizens of Oriental parentage since the adoption of the Constitution. The 15th Amendment does but remove all doubt of their right so to do. The American public has long acquiesced in their right to vote and the Amendment has long received an unvarying and uninterrupted contemporaneous construction granting the right. It would also now seem, by judicial construction, to be one of the "privileges and immunities" of citizens within the meaning of Section 2 of Article IV of the U.S. Constitution and a property right protected by the "due process" clause of the 5th Amendment and the "due process" and the "equal protection of the laws" clauses of the 14th Amendment. The prohibitions against depriving citizens of their civil rights imposed by the Civil Rights Statutes (18 U.S.C.A. Sec. 51-52; and 8 U.S.C.A. Sec. 41-43) are ignored by the plaintiff.

It was the deprivation of civil liberties in Germany that paved the road for the rise of Hitler and enabled him and his minions to make the life of the German people a protracted funeral march to the grave. It is only a voice alien to America that would deprive unfortunate citizens of Japanese extraction of their voting privilege. Those who are actually responsible for instigating this assault on human rights and constitutional privileges are true to their type. They fish in troubled waters. They exhibit the typical courage of the opportunists - they kick the weak, the helpless and the prostrate. It is regrettable that our democratic institutions have, among good men and women, spawned a type of being upon whom, unfortunately, we condescend to confer honor and the mantle of citizenship, however undeserved.

It is significant that the leadership of the old agitational groups from which this suit seems to have stemmed has changed its name, but not its identity, to a more euphemistic appellation and now would seemingly masquerade in garments that bear the semblance of respectability. The suit is an unwarranted and unjustified attack on constitutional rights. It is not based upon an appeal to reason but to prejudice. It springs from a hate that was the product of a past age which was nourished on inflammatory literature and yellow-journalism.

We have no doubt that this Court will adhere with characteristic courage and fidelity to the Constitution and to the decisions of the U.S. Supreme Court which are applicable to the issues hereing. We demand, therefore, that the petition of plaintiff be denied and that the defendant have judgment. We express the hope that the denial will put an end to similar vicious assaults upon long established constitutional rights, privileges and liberties.

Respectfully Submitted,

Wayne m. Collins as
amicus curiae for the
Northern California
Branch of the
American Civil Liberties Union

May 28, 1942

3 copies

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Tel. No. - HEmlock 1322
Attorneys for Defendant.

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

JOHN T. REGAN,

Plaintiff,

No. 221783

vs.

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

Defendant.

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.

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1 ing with the words "These statements" on line 30, page 5, to and
2 including the word "County" on line 5, page 6.

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

5 V.

6 In answer to Paragraph IX:

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

10 VI.

11 In answer to Paragraph X:

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

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

18 That defendant is without knowledge or information
19 sufficient to form a belief as to the truth of that part of
20 Paragraph X commencing with the words "will be" on line 18, page
21 7, to and including the words "City and County" on line 23, page
22 7.

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

26 AS AND FOR A SEPARATE, SPECIAL AND AFFIRMATIVE DEFENSE,
27 said defendant alleges:

28 That as Registrar of Voters of the City and County of
29 San Francisco it is now and has always been his duty and practice
30 to permit native born citizens of the United States of America
31 to register as voters and to cast their votes at all elections

1 irrespective of race, color, creed or religion.

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

5 WHEREFORE, defendant prays for judgment including costs
6 and general relief.

7
8 Geo. J. O'Toole
9 CITY ATTORNEY of the City and
County of San Francisco

10 Walter A. Jones
11 CHIEF DEPUTY CITY ATTORNEY of the
12 City and County of San Francisco

13 Attorneys for Defendant.

14
15 STATE OF CALIFORNIA, *
16 City and County of San Francisco.* ss.

17 CAMERON KING, being first duly sworn, deposes and says:
18 That he is the defendant named in the above entitled action;
19 that he has read the foregoing Answer to Complaint and knows the
20 contents thereof; that the same is true of his own knowledge ex-
21 cept as to the matters therein stated on information or belief,
22 and as to those matters he believes it to be true.

23 Cameron King
24

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

27 E. Hall
28 Deputy County Clerk and Deputy Ex-
officio Clerk of the Superior Court.
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