Takao Ozawa v. United States, 1922

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By the Origins Act of 1790, only free whites were entitled to become naturalized U.S. citizens. The law was meant to keep African Americans, of whom there were a small number of freedmen, from becoming citizens.

In 1868 the Fourteenth Amendment to the U.S. Constitution made all "persons born or naturalized in the United States" citizens. Although the amendment made former slaves and anyone else born in the United States citizens, it did not overturn the Origins Act, which continued in effect, thus barring nonwhites born outside the United States from becoming naturalized citizens.

In 1914, Takao Ozawa, who had immigrated to the United States from Japan in 1894, decided to challenge the law and fight for naturalization. His case went all the way to the U.S. Supreme Court and in the process opened a public debate over the question of race.

The following is the court's decision in the case, in which it ruled that Ozawa was not eligible for citizenship as outlined by the Origins Act. Race continued to be a deciding factor in naturalization until passage of the McCarren-Walter Act in 1952.

PRIMARY SOURCE DOCUMENT

Takao Ozawa v. United States

(Argued Oct. 3 and 4, 1922. Decided Nov. 13, 1922.)

No. 1.

1. Aliens 61—Statute held not to repeal by implication statute specifying aliens who may be naturalized.

Act June 29, 1906 (Comp. St. S 4351 et seq.), regulating the naturalization of aliens, and expressly repealing certain sections of the Revised Statutes other than section 2169 (Comp. St. S 4358), which provides that the provisions of that title shall apply to free white persons and aliens of African nativity or descent, does not repeal section 2169 by implication; there being nothing in either repugnant to the other.

2. Aliens 61—Provisions specifying aliens who may be naturalized applies to present naturalization law.

Rev. St. S 2169 (Comp. St. S 4358), providing that the provisions of "this title" shall apply to aliens who are free white persons, etc., uses the quoted words merely to identify the provisions referred to, and applies to Naturalization Act June 29, 1906, as well as the naturalization provisions of the Revised Statutes, and is not now limited to the unrepealed sections of that title.

3. Aliens 61—Statute held not to confer eligibility to citizenship on all aliens.

Act June 29, 1906, S 4 (Comp. St. S 4352), providing that "an alien" may be admitted to citizenship "in the following manner, and not otherwise," does not confer the privilege of naturalization on all aliens, but relates only to the manner or procedure to be followed.

4. Statutes 211—Reference to title or chapter of Revised Statutes is merely method of identifying provisions intended.

The division of the Revised Statutes into titles and chapters is chiefly a matter of convenience, and reference to a given title or chapter is merely a ready method of identifying the particular provisions which are meant.

5. Statutes 181(1)—Duty of court to give effect to intent.

It is the duty of the court in construing a statute to give effect to the intent of Congress.

6. Statutes 184—When language leads to unreasonable result, reason of enactment, design and purpose considered.

Primarily the intent of Congress in adopting a statute is ascertained by giving the words their natural significance, but, if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, the court may look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail.

7. Aliens 61—As brown or yellow races are not "white persons" within statute, they are excluded from naturalization.

Though, when the Naturalization Act of 1790 first restricted naturalization to free white persons, it may have been done solely to exclude Negroes and Indians, and though its framers may have assumed that they were the only persons who would fall outside the designation "white," as the brown or yellow races of Asia are not included, they are necessarily excluded.

8. Aliens 61—"Free" in statute specifying aliens who may be naturalized has no practical significance.

Under Rev. St. S 2169 (Comp. St. S 4358), limiting naturalization to free white persons, etc., the word "free," originally used in recognition of the existence of slavery, no longer has any practical significance.

9. Aliens 61—"White persons" who may be naturalized are persons of Caucasian race.

Rev. St. S 2169 (Comp. St. S 4358), limiting naturalization to "white persons" and persons of African nativity or descent, uses the quoted words as importing a racial, and not an individual, test, and as meaning persons of the Caucasian race, regardless of the color of the skin of the individual.

10. Aliens 61—Members of Japanese race not eligible to naturalization.

The Japanese race is not Caucasian, and under Rev. St. S 2169 (Comp. St. S 4358), persons of that race born in Japan are not eligible to naturalization.

11. Aliens 61—Court can only ascertain will of Congress; enlightenment of Japanese immaterial as affecting right to naturalization.

In passing on the eligibility of persons of the Japanese race to naturalization, the court has no function other than to ascertain and declare the will of Congress, and the culture or enlightment of the Japanese people are not matters which can properly be considered.

On a Certificate from the United States Circuit Court of Appeals for the Ninth Circuit.

Application by Takao Ozawa for admission to citizenship. The petition was denied, and the applicant appealed to the Circuit Court of Appeals, which certified questions to the Supreme Court. Questions answered.

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*Mr. Solicitor General Beck. of Washington, D. C., for the United States.

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*Mr. Justice SUTHERLAND delivered the opinion of the Court.

The appellant is a person of the Japanese race born in Japan. He applied, on October 16, 1914, to the United States District Court for the Territory of Hawaii to be admitted as a citizen of the United States. His petition was opposed by the United States District Attorney for the District of Hawaii. Including the period of his residence in Hawaii appellant had continuously resided in the United States for 20 years. He was a graduate of the Berkeley, Cal., high school, had been nearly three years a student in the University of

California, had educated his children in American schools, his family had attended American churches and he had maintained the use of the English language in his home. That he was well qualified by character and education for citizenship is conceded.

The District Court of Hawaii, however, held that, having been born in Japan and

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being of the Japanese race, *he was not eligible to naturalization under section 2169 of the Revised Statutes (Comp. St. S 4358), and denied the petition. Thereupon the appellant brought the cause to the Circuit Court of Appeals for the Ninth Circuit and that court has certified the following questions, upon which it desires to be instructed:

"1. Is the act of June 29, 1906 (34 Stats. at Large, pt. 1, p. 596), providing 'for a uniform rule for the naturalization of aliens' complete in itself, or is it limited by section 2169 of the Revised Statutes of the United States?

"2. Is one who is of the Japanese race and born in Japan eligible to citizenship under the naturalization laws?

"3. If said act of June 29, 1906, is limited by section 2169 and naturalization is limited to aliens being free white persons and to aliens of African nativity and to persons of African descent, is one of the Japanese race, born in Japan, under any circumstances eligible to naturalization?"

These questions for purposes of discussion may be briefly restated:

1. Is the Naturalization Act of June 29, 1906 (Comp. St. S 4351 et seq.), limited by the provisions of section 2169 of the Revised Statutes of the United States?

2. If so limited, is the appellant eligible to naturalization under that section?

First. Section 2169 is found in title XXX of the Revised Statutes, under the heading "Naturalization," and reads as follows:

"The provisions of this title shall apply to aliens, being free white persons and to aliens of African nativity and to persons of African descent."

The act of June 29, 1906, entitled "An act to establish a Bureau of Immigration and Naturalization, and to provide for a uniform

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rule for the naturalization of aliens *throughout the United States," consists of 31 sections and deals primarily with the subject of procedure. There is nothing in the circumstances leading up to or accompanying the passage of the act which suggests that any modification of section 2169, or of its application, was contemplated.

The report of the House Committee on Naturalization and Immigration, recommending its passage, contains this statement:

"It is the opinion of your committee that the frauds and crimes which have been committed in regard to naturalization have resulted more from a lack of any uniform system of procedure in such matters than from any radical defect in the fundamental principles of existing law governing in such matters. The two changes which the committee has recommended in the principles controlling in naturalization matters and which are embodied in the bill submitted herewith are as follows: First, the requirement that before an alien can be naturalized he must be able to read, either in his own language or in the English language and to speak or understand the English language; and, second, that the alien must intend to reside permanently in the United States before he shall be entitled to naturalization."

This seems to make it quite clear that no change of the fundamental character here involved was in mind.

Section 26 of the Act (Comp. St. S 4381) expressly repeals sections 2165, 2167, 2168, 2173 of title XXX, the subject-matter thereof being covered by new provisions. The sections of title XXX remaining without repeal are: Section 2166, relating to honorably discharged soldiers; section 2169 (Comp. St. S 4358), now under consideration; section 2170 (section 4360), requiring five years' residence prior to admission; section 2171 (section 4352[11]), forbidding the admission of alien enemies; section 2172 (section 4367), relating to the status of children of naturalized persons; and section 2174 (section 4352[8]), making special provision in respect of the naturalization of seamen.

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[1] *There is nothing in section 2169 which is repugnant to anything in the act of 1996. Both may stand and be given effect. It is clear, therefore,that there is no repeal by implication.

[2, 3] But it is insisted by appellant that section 2169, by its terms is made applicable only to the provisions of title XXX, and that it will not admit of being construed as a restriction upon the act of 1906. Since section 2169. it is in effect argued, declares that "the provisions of thistitle shall apply to aliens being free white persons, * * *" it should be confined to the classes provided for in the unrepealed sections of that title, leaving the act of 1906 to govern in respect of all other aliens,without any restriction except such as may be imposed by that act itself.

It is contended that, thus construed, the act of 1906 confers the privilege of naturalization without limitation as to race, since the general introductory words of section 4 (Comp. St. S 4352) are:

"That an alien may be admitted to become a citizen of the United States in the following manner, and not otherwise."

But, obviously, this clause does not relate to the subject of eligibility but to the manner," that is, the procedure, to be followed. Exactly the same words are used to introduce the similar provisions contained in section 2165 of the Revised Statutes. In 1790 the first naturalization act provided that—

"Any alien being a free white person * * * may be admitted to become a citizen. * * *" 1 Stat. 103, c. 3.

This was subsequently enlarged to include aliens of African nativity and persons of African descent. These provisions were restated in the Revised Statutes, so that section 2165 included only the procedural portion, while the substantive parts were carried into a separate section (2169) and the words "An alien" substituted for the words "Any alien."

In all of the naturalization acts from 1790 to 1906 the privilege of naturalization was

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confined to white persons *(with the addition in 1870 of those of African nativity and descent), although the exact wording of the various statutes was not always the same. If Congress in 1906 desired to alter a rule so well and so long established it may be assumed that its purpose would have been definitely disclosed and its legislation to that end put in unmistakable terms.

The argument that, because section 2169 is in terms made applicable only to the title in which it is found, it should now be confined to the unrepealed sections of that title, is not convincing. The persons entitled to naturalization under these unrepealed sections include only honorably discharged soldiers and seamen who have served three years on board an American vessel, both of whom were entitled from the beginning to admission on more generous terms than were accorded to other aliens. It is not conceivable that Congress would deliberately have allowed the racial limitation to continue as to soldiers and seamen to whom the statute had accorded an especially favored status, and have removed it as to all other aliens. Such a construction cannot be adopted unless it be unavoidable.

[4] The division of the Revised Statutes into titles and chapters is chiefly a matter of convenience, and reference to a given title or chapter is simply a ready method of identifying the particular provisions which are meant. The provisions of title XXX affected by the limitation of section 2169, originally embraced the whole subject of naturalization of aliens. The generality of the words in section 2165. "An alien may be admitted. * * *" was restricted by section 2169 in common with the other provisions of the title. The words "this title" were used for the purpose of identifying that provision (and others), but it was the provision which was restricted. That provision having been amended and carried into the act of 1906, section 2169 being left intact and un

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repealed, it will require some*thing more persuasive than a narrowly literal reading of the identifying words "this title" to justify the conclusion that Congress intended the restriction to be no longer applicable to the provision.

[5, 6] It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail. See Church of the Holy Trinity v. United States, 143 U. S. 457, 12 Sup. Ct. 511, 36 L. Ed. 226; Heydenfeldt v-Daney Gold, etc., Co., 93 U. S. 634, 638, 23 L. Ed. 995. We are asked to conclude that Congress, without the consideration or recommendation of any committee, without a suggestion as to the effect, or a word of debate as to the desirability, of so fundamental a change, nevertheless, by failing to alter the identifying words of section 2169, which section we may assume was continued for some serious purpose, has radically modified a statute always theretofore maintained and considered as of great importance. It is inconceivable that a rule in force from the beginning of the government, a part of our history as well as our law, welded into the structure of our national polity by a century of legislative and administrative acts and judicial decisions, would have been deprived of its force in such dubious and casual fashion. We are, therefore, constrained to hold that the act of 1906 is limited by the provisions of section 2169 of the Revised Statutes.

Second. This brings us to inquire whether, under section 2169, the appellant is eligible to naturalization. The language of the naturalization laws from 1790 to 1870 had been uniformly such as to deny the privilege

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of *naturalization to an alien unless he came within the description "free white person." By section 7 of the act of July 14, 1870 (16 Stat. 254, 256 [Comp. St S 4358]), the naturalization laws were "extended to aliens of African nativity and to persons of African descent." Section 2169 of the Revised Statutes, as already pointed out, restricts the privilege to the same classes of persons, viz. "to aliens [being free white persons, and to aliens] of African nativity and to persons of African descent." It is true that in the first edition of the Revised Statutes of 1873 the words in brackets, "being free white persons, and to aliens" were omitted, but this was clearly an error of the compilers and was corrected by the subsequent legislation of 1875 (18 Stat. 316, 318). Is appellant, therefore, a "free white person," within the meaning of that phrase as found in the statute?

[7] On behalf of the appellant it is urged that we should give to this phrase the meaning which it had in the minds of its original framers in 1790 and

that it was employed by them for the sole purpose of excluding the black or African race and the Indians then inhabiting this country. It may be true that those two races were alone thought of as being excluded, but to say that they were the only ones within the intent of the statute would be to ignore the affirmative form of the legislation. The provision is not that Negroes and Indians shall be excluded, but it is, in effect, that only free white persons shall be included. The intention was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified. It is not enough to say that the framers did not have in mind the brown or yellow races of Asia. It is necessary to go farther and be able to say that had these particular races been suggested the language of the act would have been so varied as to include them within its privileges. As said by Chief Justice Marshall in Dartmouth Col

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lege *v. Woodward, 4 Wheat, 518, 644 (4 L. Ed. 629), in deciding a question of constitutional construction:

"It is not enough to say that this particular case was not in the mind of the convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a special exception. The case, being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the Constitution in making it an exception."

If it be assumed that the opinion of the framers was that the only persons who would fall outside the designation "white" were Negroes and Indians, this would go no farther than to demonstrate their lack of sufficient information to enable them to foresee precisely who would be excluded by that term in the subsequent administration of the statute. It is not important in construing their words to consider the extent of their ethnological knowledge or whether they thought that under the statute the only persons who would be denied naturalization would be Negroes and Indians. It is sufficient to ascertain whom they intended to include and having ascertained that it follows, as a necessary corollary, that all others are to be excluded.

[8] The question then is: Who are comprehended within the phrase "free white persons"? 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 any practical significance and may now be disregarded.

[9] We have been furnished with elaborate briefs in which the meaning of the

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words "white person" is discussed *with ability and at length, both from the standpoint of judicial decision and from that of the science of ethnology. It does not seem to us necessary, however, to follow counsel in their extensive researches in these fields. It is sufficient to note the fact that these decisions are, in substance, to the effect that the words import a racial and not an individual test, and with this conclusion, fortified as it is by reason and authority, we entirely agree. Manifestly the test afforded by the mere color of the skin of each individual is impracticable, as that differs greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races. Hence to adopt the color test alone would result in a confused overlapping of races and a gradual merging of one into the other, without any practical line of separation. Beginning with the decision of Circuit Judge Sawyer, in Re Ah Yup, 5 Sawy. 155, Fed. Cas. No. 104 (1878), the federal and state courts, in an almost unbroken line, have held that the words "white person" were meant to indicate only a person of what is popularly known as the Caucasian race. Among these decisions, see, for example: In re Camille (C. C.) 6 Fed. 256; In re Saito (C. C.) 62 Fed. 126; In re Nian, 6 Utah, 259, 21 Pac. 993, 4 L. R. A. 726; In re Kumagai (D. C.) 163 Fed. 922; In re Yamashita, 30 Wash. 234, 237, 70 Pac. 482. 94 Am. St. Rep. 860; In re Ellis (D. C.) 179 Fed. 1002; In re Mozumdar (D. C.) 207 Fed. 115, 117; In re Singh (D. C.) 257 Fed. 209, 211, 212; and In re Charr (D. C.) 273 Fed. 207. With the conclusion reached in these several decisions we see no reason to differ. Moreover, that conclusion has become so well established by judicial and executive concurrence and legislative acquiescence that we should not at this late day feel at liberty to disturb it, in the absence of reasons far more cogent than any that have been suggested. United States v. Midwest Oil Co., 236 U. S. 459, 472, 35 Sup. Ct. 309, 59 L. Ed. 673.

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*The determination that the words "white person" are synonymous with the words "a person of the Caucasian race" simplifies the problem, although it does not entirely dispose of it. Controversies have arisen and will no doubt arise again in respect of the proper classification of individuals in border line cases. The effect of the conclusion that the words "white person" means a Caucasian is not to establish a sharp line of demarcation between those who are entitled and those who are not entitled to naturalization, but rather a zone of more or less debatable ground outside of which, upon the one hand, are those clearly eligible, and outside of which, upon the other hand, are those clearly ineligible for citizenship. Individual cases falling within this zone must be determined as they arise from time to time by what this court has called, in another connection (Davidson v. New Orleans, 96 U. S. 97, 104, 24 L. Ed. 616), "the gradual process of judicial inclusion and exclusion."

[10] The appellant, in the case now under consideration, however, is clearly of a race which is not Caucasian and therefore belongs entirely outside the zone on the negative side. A large number of the federal and state courts have so decided and we find no reported case definitely to the contrary. These decisions are sustained by numerous scientific authorities, which we do not deem it necessary to review. We think these decisions are right and so hold.

[11] The briefs filed on behalf of appellant refer in complimentary terms to the culture and enlightenment of the Japanese people, and with this estimate we have no reason to disagree; but these are matters which cannot enter into our consideration of the questions here at issue. We have no function in the matter other than to ascertain the will of Congress and declare it. Of course there is not implied—either in the legislation or in our interpretation of it—any suggestion of individual unworthiness or racial inferiority. These considerations are in no manner involved.

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*The questions submitted are therefore answered as follows:

Question No. 1. The act of June 29, 1906, is not complete in itself, but is limited by section 2169 of the Revised Statutes of the United States.

Question No. 2. No.

Question No. 3. No.

It will be so certified.