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LOSS OF CITIZENSHIP

DENATURALIZATION

THE ALIEN IN WARTIME

By

JOHN L. CABLE

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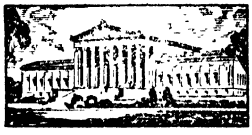

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PREFACE.

Last year 350,000 aliens applied for their "first papers" to become naturalized citizens of the United States. This is the largest number of such applicants in the history of the Naturalization Service. During that same period of time there were 250,000 aliens who were naturalized, an increase of 50% over the annual number of five years ago.

A person admitted to citizenship by naturalization is entitled to receive from the clerk of such court a "Certificate of Naturalization." This certificate and the United States citizenship it evidences, are priceless possessions of inestimable worth. United States citizenship is sought and prized as never before.

The fact that one has become a United States citizen by naturalization, and has received such a certificate of naturalization does not, however, prevent the United States from filing a court proceeding, for the purpose of revoking and setting aside the order, admitting such person to citizenship, and canceling the certificate of naturalization on the ground of fraud, or on the ground that such order and certificate of naturalization, were illegally procured.

The judicial process of revoking certificates of naturalization is sometimes called "denaturalization." Denaturalization has not been defined by either state or federal courts; in the United States it may be defined as a court proceeding to revoke and set aside a court order admitting a person to citizenship and to cancel his certificate of naturalization. It is a judicial procedure rather than an administrative one.

It was not until 1906 that denaturalization was authorized by Congress. Prior to that date the courts assumed jurisdiction of such proceedings without legislative authority.

Wholesale fraud and corruption in the practice of naturalizing aliens, the forging of and unlawful traffic in certificates of naturalization, all in large cities of the United States, were factors in causing Congress to establish the "Naturalization Act of June 29, 1906," as a means of securing honest naturalization proceedings. For the first time an explicit remedy against naturalized persons whose certificates of citizenship were fraudulently or illegally procured, was provided by including in said act, Section 15. This section makes it the duty of United States attorneys, upon affidavit showing good cause therefor, to institute judicial proceedings for the purpose of setting aside and canceling a certificate of citizenship on the ground of fraudulent or illegal procurement. Section 15 was rewritten as part of Section 338 of the present "Nationality Act of October 14, 1940."

Certificates of more than fifteen thousand naturalized citizens of the United States were cancelled by such denaturalization proceedings between the date the 1906 act became effective and the beginning of the present war.

During the first World War there was a marked increase in the number of denaturalization cases. The "successful outcome of these early litigations and the accompanying wide publicity" in the opinion of the then United States Attorney General, "had a marked effect upon naturalized citizens of disloyal tendency throughout the country.

Since the outbreak of the present Global War a large number of such cases has been referred by the present Attorney General, to the United States attorneys and the courts. The use of such proceeding constitutes an effective means of attack against disloyal naturalized citizens guilty of subversive activities. With his citizenship cancelled he becomes an alien and if born in a country with which the United States is at war, an alien enemy; he

immediately becomes subject to and is governed by laws and executive orders of the United States applicable to such aliens of enemy nationalities.

As part of his plan, Hitler directed Nazis to emigrate to this country and become United States citizens. These Nazis, in becoming naturalized falsely swore to renounce allegiance to the German Reich and falsely swore to bear true faith and allegiance to the United States. The German-American Bund, a Hitler agency, required all members to be American citizens. The Nazis had to be naturalized to become its members. In a spy trial in New York, twenty-three out of the twenty-nine defendants were naturalized citizens. These naturalized persons never in truth became citizens of this country. Denaturalization is a powerful weapon against them.

Because of the number of proceedings filed in our courts for the purpose of cancelling certificates of citizenship and the lack of a publication on the subject, the author seeks by this monograph to make available to all who may be interested, the law and decisions governing the cancellation of certificates of naturalization as well as the effect of denaturalization upon such persons and those deriving citizenship through them.

Respectfully submitted,

JOHN L. CABLE.

Lima, Ohio.

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I.

HISTORY OF THE LAW.

Naturalization is one of the powers expressly granted by the states to the federal government. The Constitution, Article I, Section 8, Clause 4, provides that "The Congress shall have power * * * to establish an uniform Rule of Naturalization." Congress has from time to time exercised that power, established the rule and declared the manner of and the conditions under which an alien may be naturalized to become a citizen of the United States. Pursuant to this authority, the first uniform rule of naturalization established by Congress was the Act of March 26, 1790, the second the Act of January 29, 1795. Congress then passed the Naturalization Act of April 14, 1802, repealing all prior rules and regulations but maintaining their main features. While Congress established uniform rules of naturalization, there was no legislative authority for instituting proceedings to revoke and set aside the order admitting a person to citizenship and canceling his certificate of naturalization.

The courts, however, without legislative authority, assumed jurisdiction in actions filed by the United States to cancel certificates of naturalization when the alien had procured citizenship by fraud. These decisions, while not uniform, are of interest.

The United States filed an action against one Norsch[1] to cancel his certificate of naturalization. The court held on June 12, 1890, that the United States could sue in a federal court for cancellation of a certificate or decree of naturalization which had been obtained by fraud in a state court, even if Congress had failed to enact express legislative authority for such a proceeding.

[1] U. S. v. Norsch 42 Fed., 417.

A court of the state of New York, having jurisdiction to naturalize, entered an order authorizing the naturalization of one Gleason. Later the United States filed an action in a federal court to set aside the order of naturalization on the ground Gleason was not qualified to become a citizen of the United States and had falsely represented the facts to the naturalization court. Gleason answered he had complied with the naturalization laws to the satisfaction of a competent court—the New York state court—and that court had entered a judgment admitting him to citizenship, which judgment was final and binding on the United States. This defense was sustained, the federal court declined to cancel Gleason's certificate of naturalization, holding [2] the decree of naturalization was conclusive; that if a federal court should cancel a certificate issued by a state court, it would produce great confusion and mischief. The court also held that the defendant, by naturalization, became a citizen of the state of New York as well as of the United States.

The United States instituted proceedings against one Kornmehl to cancel his certificate of naturalization for the reason that the petitioner had made material false statements as to his age and length of residence in the country. The court held that the naturalization was illegal and entered an order directing that the naturalization certificate be cancelled [3].

Fraudulent and illegal practices in the naturalization of aliens in the city of St. Louis in 1902 were the moving reason for the enactment of the basic Naturalization Act of June 29, 1906.

Indictments had been returned against certain leading politicians in St. Louis for violating the naturalization laws. This led to an investigation of fraudulent and illegal practices in the naturalization of aliens in other cities. Perjury and subornation of perjury were resorted

[2] U. S. v. Gleason, 78 Fed., 396 (1897).
[3] U. S. v. Kornmehl, 89 Fed., 10 (1898).

to for the purpose of deceiving the court and obtaining certificates of naturalization for aliens who had not resided in the United States for the required time. In other instances the aliens were marched into court in large companies, according to nationality. The same two persons served as witnesses for all. The oath of allegiance was administered to the whole company, although many were unable to speak or understand the English language. In other cases, certificates of naturalization were forged and sold abroad to aliens who had never been in the United States.

The Naturalization Act of June 29, 1906, clearly and carefully set forth the terms and conditions upon which an alien could become a naturalized citizen of the United States "and not otherwise." The act included three sections, 11, 15 and 23, to prevent fraudulent practices in the naturalization of aliens.

Section 11 gave the United States the specific right to appear in an adversary capacity in naturalization proceedings and in substance provided: The United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings, for the purpose of cross examining the petitioner for naturalization and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence and be heard in opposition to the granting of any petition in naturalization proceedings.[4]

Section 15 of the 1906 act granted for the first time the authority to denaturalize. That section directed United States district attorneys for the respective districts, upon affidavit showing good cause, to institute proceedings for the purpose of setting aside and cancelling the certificate of citizenship on the ground of fraud or on the ground

[4] Title VIII, Chapter 9, Section 339, U. S. C. A.

that such certificate of citizenship was illegally procured. The section further provided that if any alien who shall have secured a certificate of citizenship shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any foreign country and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent.[5]

Section 23 of the Naturalization Act of 1906 directed the court in which a person was convicted of knowingly procuring naturalization in violation of the provisions of the act to adjudge and declare the final order admitting such person to citizenship void.[6]

The 1906 act set no limitation of time within which the government must institute such proceedings, nor could the government be guilty of laches by its delay in filing such action. The hearing was and is before a court and without a jury. The fact the government had previously appeared in the naturalization court and opposed the naturalization of the petitioner is no bar to a direct cancellation proceeding. As herein shown, the law is clearly constitutional. The Supreme Court of the United States has announced from time to time, since cancellation by judicial proceedings has been specifically authorized by Congress, that Congress, having full power over naturalization of aliens, likewise has the power to provide by judicial proceedings for the orderly cancellation of certificates.

The practice of filing proceedings to cancel certificates of naturalization became widespread immediately after The 1906 Act went into effect. In the fiscal year 1907

[5] Title VIII, Chapter 9, Section 405, U. S. C. A.
[6] Title VIII, Chapter 9, Section 414, U. S. C. A.

there were eighty-six certificates cancelled; in 1908 there were four hundred and fifty-seven; and in 1909, nine hundred and twenty-one. During the thirty years following the effective date of the 1906 Act, more than twelve thousand certificates of naturalization were cancelled on the ground of fraud or on the ground that the order and certificate of naturalization were illegally procured.

The Nationality Act of October 14, 1940, is the most important naturalization legislation since the passage of the basic Naturalization Act of June 29, 1906. This act codified the nationality and naturalization laws of the United States, repealing generally all previous laws of this nature. The act went into effect January 13, 1941.

Section 11 of the 1906 Naturalization Act was rewritten as Section 334(d) of the Nationality Act of 1940,[7] and Section 15 of the 1906 Act was rewritten as Section 338(a) (b) (c) (d) (f) and (g)[8] of the 1940 Nationality Act. Section 23 of the 1906 Act was rewritten as Section 338(e)[9] of the 1940 Act. Sections 11, 15 and 23 were rewritten in substantially the same form as contained in the 1906 Act and, as rewritten, are found in the appendix hereto.

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[7] Title VIII, Chapter 11, Sec. 734(d), U. S. C. A.
[8] Title VIII, Chapter 11, Sec. 738(a) (b) (c) (d) (f) (g), U. S. C. A.
[9] Title VIII, Chapter 11, Sec. 738(e), U. S. C. A.

II.

DENATURALIZATION A CUMULATIVE REMEDY.

Congress, having the exclusive power, determined that the naturalization of aliens should be a judicial function and conferred upon certain courts the exclusive power to admit aliens to citizenship. The naturalization process includes (a) procuring certificate of arrival; (b) the declaration of intention; (c) the petition for naturalization; (d) the hearing in open court; (e) the oath of renunciation and allegiance; (f) order admitting such person to citizenship; and (g) certificate of naturalization. The process of naturalizing is instituted and conducted as other judicial procedure, as outlined in the act itself. The applicant presents himself and his witnesses in court and offers his evidence as to his right to be naturalized. The United States has a right to appear in such proceeding in order to cross examine the petitioner and his witnesses "concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings."

While Section 11 of the Naturalization Act of 1906 authorized the United States to appear in an adversary capacity in naturalization proceedings, it was not until 1926, naturalization proceedings were determined to be a "case" within the meaning of the judicial code authorizing appeals from adverse decisions. The appellate courts, however, had, prior to 1926, entertained appellate jurisdiction of naturalization proceedings without expressly considering the existence of a right to appeal. The existence of appellate jurisdiction was assumed by

the Supreme Court without discussion.[1] Appellate jurisdiction had also been exercised by the Circuit Court of Appeals in most of the circuits.[2] One Tutun sought citizenship in the United States by naturalization. The government appeared and opposed his admission. The naturalization court sustained the government and denied naturalization to Tutun, who thereupon sought to appeal the decision of the naturalization court to the United States Circuit Court of Appeals. The appellate court thereupon submitted by certificate the question whether the Circuit Court of Appeals has jurisdiction to review a decree or order of a federal district court denying the petition of an alien to be admitted by naturalization to citizenship in the United States. The government opposed the right of an alien to appeal an adverse naturalization decision. In the opinion Mr. Justice Brandeis, speaking for the court, repudiated the position of the government that naturalization cases are not appealable, holding that Congress from the beginning of the government had seen fit to provide that admission to citizenship shall be a judicial function; that an order granting or denying a petition for naturalization is clearly a final decision within the meaning of the judicial code from which an appeal will lie, although the certificate granted may be cancelled under Section 15 of the Naturalization Act. It may be said the Tutun decision constitutes a "milestone" in naturalization procedure by designating such proceedings as a "case in court." Since the Tutun decision other courts have likewise held there may be an appeal from a decree granting or denying a petition for naturalization.[3]

The right of the United States to appear in a naturalization proceeding and oppose the granting of a petition

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[1] Takao Ozawa v. U. S., 260 U. S., 178, 67 L. Ed., 199.

[2] See cases cited by Justice Brandeis in footnotes Tutun case, 270 U. S., 568, 70 L. Ed., 738.

[3] U. S. v. Ovens, 13 Fed. (2), 376; U. S. v. Bischof, 48 Fed. (2), 538; Estrin v. U. S., 80 Fed. (2), 105; U. S. v. Villaneuve, 17 Fed. Supp., 485.

for naturalization does not exhaust the remedy of the government in the event that the petition is granted. The government is not required to appeal from an adverse decision. The denaturalization law authorizes the United States, without the necessity of such appeal, to institute independent proceedings to set aside the order and cancel the certificate of naturalization on the ground that such order and certificate were procured by fraud or procured illegally.[4] This procedure is cumulative. It constitutes an independent and direct attack against fraudulent or illegal procurement of citizenship.

Since Congress had provided for an independent action —a direct attack—upon naturalization judgments, the Supreme Court was called upon to answer the defense of "res judicata" raised in proceedings instituted by the United States to cancel naturalization certificates. The first person to present this question was one Johannessen, whose certificate of naturalization the government sought to cancel. He claimed the decree of his naturalization was a final judgment, binding on the United States and barring an attack by cancellation proceedings. The Supreme Court did not at first squarely meet the issue, saying[5] that the certificate of naturalization had been granted without any appearance and opposition by the United States; that the certificate had no conclusive effect when thus procured ex parte, and that it could be directly attacked in a separate proceeding.

The same question was again presented to the Supreme Court by one Iver Ness.[6] He asked, "Whether an order entered in a proceeding to which the United States became a party under Section 11 is res judicata as to matters actually litigated therein, so that the certificate of naturalization cannot be set aside under Section 15 as having been 'illegally procured.'" The court reminded

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[4] Sec. 338 of the 1940 Act; Sec. 15 of the 1906 Act.
[5] Johannessen v. U. S., 225 U. S., 227, 56 Law Ed., 1066.
[6] U. S. v. Ness, 245 U. S., 319, 62 Law Ed., 321; 217 Fed., 169.

itself that this question was unanswered in the Johannessen case and stated the question in these words: "Do Section 11 and Section 15 afford the United States alternative or cumulative means of protection against illegal or fraudulent naturalization under the Act of June 29, 1906?" The court's answer was as follows:

"It was the purpose of Congress, by providing for appearances under Section 11, to aid the court of naturalization in arriving at a correct decision, and so to minimize the necessity for independent suits under Section 15. In most cases this assistance could be given best by an experienced examiner of the Bureau of Naturalization, familiar with the sources of information. Section 11, unlike Section 15, does not specifically provide that action thereunder shall be taken by the United States district attorneys; and if appearance under Section 11 on behalf of the government should be held to create an estoppel, no good reason appears why it should not arise equally, whether the appearance is by the duly authorized examiner or by the United States attorney. But in our opinion Section 11 and Section 15 were designated to afford cumulative protection against fraudulent or illegal naturalization."

Anna Marie Maney again raised the same question for decision by the Supreme Court. Although the United States had opposed her naturalization because she had not filed a certificate of arrival with her petition for naturalization, she had been naturalized. The Supreme Court affirmed the judgment of cancellation, holding[7] that the judgment of naturalization was not a bar—res judicata—against an attack on the ground that the required certificate of arrival was not filed with the petition.

An order admitting a person to citizenship is not "res judicata" even though the government entered its ap-

[7] Maney v. U. S., 278 U. S., 17, 73 Law Ed., 156.

pearance and unsuccessfully opposed the naturalization. The same reason for objecting may be the ground for instituting proceedings to cancel the certificate of naturalization.

The Supreme Court of the United States in the Ginsberg case [8] held that every certificate of citizenship must be treated as granted upon condition that the government may challenge it as provided in Section 15, and demand its cancellation unless issued in accordance with such requirements. The provisions which authorize the United States to appear and oppose the naturalization and the provisions for filing an independent proceeding afford cumulative, not alternative remedies.[9]

The leading case to the contrary [10] is that of Sakharem Gonesh Pandit, a high caste Hindu of full Indian blood. He applied for naturalization. The Examiner of the Bureau of Naturalization, Department of Labor, opposed the granting of a certificate on the ground he was not a white person within the meaning of the Naturalization Act. Briefs were submitted and arguments made on that issue and the naturalization court, after consideration, found Pandit to be a white person within the meaning of the act and admitted him to citizenship. The government did not appeal from this decision but filed a separate proceeding to cancel his certificate on the ground it had been illegally procured. Pandit in his answer averred the naturalization court, after due consideration and over the opposition of the naturalization examiner, had found him to be a white person eligible for citizenship within the meaning of the Naturalization Act and admitted him to citizenship. Pandit claimed such a judgment admitting him to citizenship bound the United States as no appeal

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[8] U. S. v. Ginsberg, 243 U. S., 472, 61 Law Ed., 853.

[9] U. S. v. Milder, 284 Fed., 571; U. S. v. Khan, 1 Fed. (2), 1006; U. S. v. Turlej, 18 Fed. (2), 435, Aff. 31 Fed. (2), 696; U. S. v. Unger, 26 Fed. (2), 114; U. S. v. Parisi, 24 Fed. Supp., 414.

[10] U. S. v. Pandit, 297 Fed., 529, Aff. 15 Fed. (2d), 285, Cert. denied 273 U. S., 759, 71 L. Ed., 878.

had been taken from the judgment of the naturalization court; that pursuant to that judgment he had studied law and had been admitted to practice in the State of California and was admitted to practice before the Supreme Court of the United States; that he married a white woman of the State of Michigan; that they resided in California and she had become the owner of real estate. The court held the judgment granting naturalization to Pandit after the right to citizenship had been distinctly put in issue and the United States had appeared and contested and not having been modified or reversed by a higher court, cannot be disputed in a suit by the United States to cancel the certificate of citizenship under the Nationality Act of 1906.

III.

THE LAW IS CONSTITUTIONAL.

The constitutionality of the denaturalization law was challenged on three grounds: (a) That Section 15 of the Act of June 29, 1906, was invalid as an exercise of judicial power by a legislative department; (b) that cancellation of naturalization certificate issued before June 29, 1906, being retrospective in operation, was within the prohibition of Article I, Section 9, Clause 3, of the United States Constitution, prohibiting ex post facto legislation; and (c) that it deprived the defendant in cancellation proceedings of the right of trial by jury guaranteed by the Seventh Amendment.

The Supreme Court's answer to the claims that Section 15 was unconstitutional is best illustrated by its opinions in the Johannessen and Luria cases.

The United States attorney filed court proceedings in the name of the United States by authority of Section 15 against one Johannessen to cancel his naturalization certificate issued by order of a state court. The government claimed and the defendant admitted the certificate was based on the perjured testimony of Johannessen and his two witnesses, all of whom testified Johannessen had resided in the United States the required five-year period immediately prior to his naturalization. Johannessen's counsel contended Congress had no power to authorize the cancellation of a naturalization certificate issued before the act became effective; that since Section 15 was retroactive in form, it violated Article I, Section 9 of the United States Constitution prohibiting ex post facto laws. The Supreme Court pointed out that the ex post facto prohibition applies to laws respecting criminal punishment and has no relation to retroactive legislation

of other types. The court stated that the act imposes no punishment upon a person who has procured a certificate of naturalization by fraud or illegal conduct; it simply deprives him of his ill-gotten privileges. The court held that the retroactive features of the provision of Section 15 of the Act of June 29, 1906, do not invalidate that section under the United States Constitution, Article I, Section 9, prohibiting ex post facto laws.

Johannessen also claimed that the decree of the naturalization court admitting him to citizenship was a judgment of a competent court, and subject to all the rules of law regarding judgments as such, and if Section 15 authorized the impeachment for fraud of a pre-existing judgment of a coordinate court, it was unconstitutional as an exercise of judicial power by the Legislature.

In answer to this claim the Supreme Court pointed out that a judgment of a naturalization court admitting an alien to citizenship had the same force and effect as any other judgment, that is, complete evidence of its own validity and immune from collateral attack. The court further said it does not follow that Congress may not authorize a direct attack upon certificates of citizenship in an independent proceeding as is authorized by Section 15 of the Act of 1906; holding Congress did not unconstitutionally exercise judicial power by enacting the provisions of the Act of June 29, 1906, Section 15, under which certificates of naturalization may be impeached, when fraudulently and illegally procured by perjured testimony.[1]

Action to cancel the certificate was filed against one Luria on the ground that he had violated the provision of Section 15 providing that if a naturalized citizen takes up permanent residence abroad within five years after his naturalization, it shall be prima facie evidence of a lack of intention to become a permanent citizen at the time of

[1] Johannessen v. U. S., 225 U. S., 227, 56 Law Ed., 1066.

filing the petition for citizenship. Luria contended, among other things, that the act was unconstitutional in that it did not provide for a jury trial in cancellation cases. This claim was based upon the Seventh Amendment to the Constitution, which declares that, "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." The court, however, found the action was not a suit at common law; that the right asserted and the remedy sought were essentially equitable, not legal, and that this, according to prescribed tests, made it a suit in equity; and concluded that the Seventh Amendment to the Constitution, preserving the right to trial by jury, therefore did not apply.[2]

More than twelve thousand certificates of naturalization were cancelled between the effective date of the 1906 Act and the beginning of the present Global War, with no reported decisions holding the act unconstitutional. The United States districts courts uniformly sustained the constitutionality of the act.[3]

The provisions of Section 15 have been carried over without material change and reenacted as part of Section 338 of the Nationality Act of 1940. If any defendant should question the constitutionality of Section 338, the courts would no doubt follow the decisions quoted above concerning Section 15 and hold that Section 338 is constitutional.

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[2] Luria v. U. S., 231 U. S., 9, 58 L. Ed., 101.

[3] U. S. v. Nisbet, 168 Fed., 1005; U. S. v. Simon, 170 Fed., 680; U. S. v. Mansour, 170 Fed., 671; U. S. v. Meyer, 170 Fed., 983; U. S. v Spohrer, 173 Fed., 440; Grahl v. U. S., 261 Fed., 487.

IV.

THE COURT AND THE VENUE.

Congress, having exclusive power to establish "a uniform rule of naturalization" throughout the United States, determined that naturalization proceeding should be judicial in character and conferred upon all district courts of the United States in any state, in the territory of Hawaii and Alaska, in the District of Columbia and Puerto Rico, upon the District Court of the Virgin Islands of the United States and upon all courts of record in any state or territory having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited, the exclusive jurisdiction to naturalize aliens.[1]

Congress likewise provided that denaturalization, like naturalization, should be judicial in character. The courts having jurisdiction to naturalize were given the jurisdiction to hear denaturalization proceedings.[2]

The naturalization law provides that the alien should file his petition for naturalization in the judicial district in which he resides. Congress likewise determined that an action for denaturalization should be instituted in the judicial district in which the naturalized citizen resides at the time of bringing the suit.

The denaturalization law also provides that, in case a person should, within five years of naturalization, return to the country of his nativity, or go to any other foreign country and take permanent residence therein, cancellation proceedings against him are to be filed in the judicial district in which he had his last known residence.

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[1] Sec. 3 of the Act of 1906. Sec. 301(a) of the Act of 1940; Title 8, Chapter 11, Sec. 701, U. S. C. A.

[2] Sec. 15 of the Act of 1906. Sec. 338 of the Act of 1940; Title 8, Chapter 11, Sec. 738, U. S. C. A.

It was further provided in the event that such person should be absent from the United States or from the judicial district in which he last had his residence, the cancellation proceedings are to be filed in the judicial district in which he had his last known residence, and notice of the filing of the cancellation proceedings is to be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state or the place where such suit is brought.[3]

While Congress has by law conferred upon certain state courts jurisdiction to naturalize aliens, all courts are considered federal courts for the purpose of naturalization.[4] In naturalization proceedings, the state courts act as governmental agencies of the federal government.[5] Likewise the state court procedure in naturalizing is controlled by Congress.[6]

The bill for the cancellation of the certificate of naturalization is not required to be brought in the court where the naturalization proceedings were had,[7] but must be brought in any court, state or federal, having jurisdiction to naturalize aliens and in the judicial district in which the naturalized citizen resides at the time that suit is brought.[8]

It is not necessary that the proceedings to set aside the order and cancel the certificate be commenced before the federal judge who entered the order admitting the alien to citizenship.[9]

The denaturalization proceedings may be filed in either a federal or a state court having jurisdiction to naturalize.

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[3] Sec. 338(b) of the Act of 1940, Title 8, Chapter 11, Sec. 738, U. S. C. A.
[4] U. S. v. Aakervik, 180 Fed., 137 (1910).
[5] Eldredge v. Salt Lake County, 106 Pac., 939 (1910).
[6] In re: Gee Hop, 71 Fed., 274 (1895).
[7] U. S. v. Ovens, 13 Fed. (2), 376.
[8] U. S. v. Ness, 245 U. S., 319, 62 L. Ed., 321.
[9] U. S. v. Mulvey, 232 Fed., 513; U. S. v. Ginsberg, 243 U. S., 472, 61 Law Ed., 853; U. S. v. Morena, 245 U. S., 392, 62 Law Ed., 359.

The cancellation judgment may be entered by a federal court, even though the certificates of naturalization was issued by a state court.

Where a state court has granted a certificate of naturalization, a District Court of the United States for the district in which the naturalized citizen resides has jurisdiction to cancel such certificate, if procured illegally or by fraud in the state court.

An action was filed in the United States District Court against one Henry Koopmans to cancel his certificate of naturalization on the ground that it was procured illegally. Koopmans raised the question that, since he was naturalized in a state court, a federal court had no jurisdiction to cancel his certificate of naturalization. The court however, citing many decisions, held that while it is true that there have been one or two decisions which would seem to hold that this court did not have jurisdiction to set aside the order and cancel the certificate granted by a state court, yet the great weight of the authority is to the contrary.[10]

[10] U. S. v. Koopmans, 290 Fed., 545.

V.

THE PRELIMINARY AFFIDAVIT.

The denaturalization law provides that it shall be the duty of the United States district attorneys "upon affidavit showing good cause therefor" to institute proceedings for the purpose of revoking the court order and cancelling the certificate of naturalization. The United States attorney may, on his own motion, and without having an affidavit filed or lodged with him, institute cancellation proceedings. By way of illustration, an action was filed against one Max Schwinn to cancel his naturalization certificate on the ground that it had been procured fraudulently and illegally. One of Schwinn's defenses was the claim that no affidavit showing the facts in the petition had been filed with the United States attorney, nor, if filed, had any such affidavit been presented in evidence at his trial. The court, however, held that, where a United States attorney has reason to believe that a certificate of citizenship has been procured fraudulently or illegally, he could proceed on his own motion, without any affidavit having been presented, since the affidavit mentioned in the statute is not jurisdictional.[1]

In another proceeding, against one Leles, the United States sought to cancel his certificate of naturalization. Leles claimed, among other defenses, that the affidavit lodged with the United States attorney did not state facts sufficient to warrant the bringing of the proceeding and was insufficient because it was based upon information and belief. The court held[2] that the purpose of such affidavit was merely to furnish the district at-

[1] Schwinn v. U. S., 112 Fed. (2), 74; Aff. 311 U. S., 616, 85 Law Ed., 390.

[2] U. S. v. Leles, 227 Fed., 189.

torney with authentic sources or means through which he might receive information and was not intended as a pleading; and that the affidavit on information and belief was sufficient. The court stated: "When it has accomplished this purpose of putting the wheels of justice in motion, the affidavit seems to have fulfilled its office, and so far as anything appearing in the act to the contrary, becomes functionless." The court also stated: "In the first place I do not regard the affidavit as jurisdictional in any such extreme sense as that contended for, and am not prepared to say that it furnishes the only competent basis for bringing such an action."

Until the Immigration and Naturalization Service was transferred from the Department of Labor to the Department of Justice, on June 14, 1940, the local immigration and naturalization officers reported to the Labor Department at Washington cases involving possible cancellation proceedings. There, the facts of each case were carefully considered by the Board of Review. If the board recommended that action be filed, it caused an affidavit to be carefully prepared, setting forth all the facts showing violation of the naturalization law. The affidavit was then submitted to the Department of Justice and, if on consideration that department also recommended legal proceedings, the board forwarded the affidavit to the United States attorney of the judicial district in which such naturalized citizen resided, with instructions to institute suit.

As the Naturalization Service is now a part of the Department of Justice, the facts are assembled by an attorney of the Immigration and Naturalization Service in affidavit form, and, if that department determines to institute cancellation proceedings, the affidavit is forwarded to the proper district attorney. It is not necessary to file the affidavit with the petition, although some United States attorneys quote from the affidavit in the petition, or attach the affidavit to the petition and make it a part thereof.

If a third person should file with the proper United States attorney an affidavit, correct in form and with the required statement of facts, there is a difference of opinion as to the meaning of the words "it shall be the duty of the United States district attorneys * * * upon affidavit showing good cause. * * *"

United States attorneys appear to be vested with discretionary powers as to the necessity of instituting such cancellation proceedings even if an affidavit, correct in form and contents, is filed with him by a third person. As a practical matter, the Assistant Attorney General instructs the various United States attorneys to institute cancellation proceedings where it has been concluded by him that such action is warranted. However, if the United States attorney has possession of information not previously known to the Assistant Attorney General, or for other reasons may deem it unwise to proceed with the cancellation suit, he first brings such facts or other considerations to the attention of the Assistant Attorney General, who in turn usually requests the comments and recommendation of the Naturalization Service thereon. If, upon consideration of all the additional facts and circumstances, the Assistant Attorney General decides that cancellation proceedings should not be carried further, he will instruct the United States attorney to this effect. For form of the "affidavit" see appendix.

VI.

UNITED STATES ATTORNEY ONLY PERSON AUTHORIZED TO INSTITUTE DENATURALIZATION PROCEEDINGS.

The Nationality Act of 1940 vested in the United States district attorneys the duty of instituting proceedings for the purpose of canceling certificates of naturalization. That duty, by Section 15 of the 1906 Naturalization Act, was vested not only in the United States district attorneys, but also in the Commissioner of Immigration and Naturalization. In practice cancellation suits are instituted by United States attorneys. Both Sections 15 and 338 of the denaturalization laws refer to "the petition of the United States." An examination of a large majority of the reported denaturalization cases discloses that the proceedings are always instituted in the name of the United States of America, by the United States attorneys of the respective districts. The sole right to institute proceedings for the purpose of revoking and setting aside the order admitting an alien to citizenship and canceling the certificate of naturalization vests exclusively in the United States attorney.

A private person cannot maintain a proceeding to set aside an order and cancel a certificate.[1] A state likewise cannot maintain a proceeding to cancel naturalization certificates.[2] A record of naturalization can only be attacked by the United States.[3] The filing of denaturalization proceedings vests, therefore, exclusively in the Attorney General of the United States under whose jurisdiction the Immigration and Naturalization Service functions and who has jurisdiction in the administration of Government matters over the United States attorneys.

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[1] Pintsch Compressing Co. v. Bergin, 84 Fed., 140; Commonwealth v. Paper, 1 Brewster Pa., 265.

[2] Petersen v. State, 40 Texas Civil Appeals, 175, 89 S. W., 81.

[3] U. S. v. Norsch, 42 Fed., 417.

VII.

PROCESS OR NOTICE TO DEFENDANT.

Proceedings were filed to cancel the certificate of naturalization of one Charles Sotis on the ground Sotis was a member and organizer of the Communist Party; that he took the oath of allegiance with a mental reservation and purpose of evasion and was not attached to the principles of the Constitution. Upon filing the action, a chancery subpoena out of the clerk's office was returned by the United States marshal "The within-named Charles Sotis not found in my district." Thereupon the director of that naturalization district filed on March 28, 1938, an affidavit of non-residence with the clerk of courts as follows: "That the defendant in the above-entitled cause, on due inquiry cannot be found, so that process cannot be served upon said defendant. That upon due and diligent inquiry his place of residence cannot be ascertained. Affiant further states that the last known place of residence of said defendant in the United States, was Number 752 Oakwood Boulevard, Chicago, Illinois; that upon information and belief said defendant's place of residence is unknown. And further affiant sayeth not."

A certificate of publication, filed in the office of the clerk of courts on October 14, 1938, disclosed that notice of pendency of action was published in a Chicago newspaper for four consecutive weeks, the date of first publication being September 13, 1938. It should be noted that more than five months intervened between the date the affidavit of non-residence was filed and the date of the first publication.

On January 31, 1939, the court entered a decree pro confesso and ordered that the defendant be defaulted for

want of an appearance and answer and that the allegations in the petition be taken as confessed.

On March 14, 1939, the court entered a final decree canceling the defendant's certificate and perpetually enjoining him from exercising thereunder any rights or privileges of citizenship. A copy of the decree was served on Sotis January 17, 1942.

On February 16, 1942, Sotis appeared in court and presented a motion to vacate the court's order canceling his certificate of naturalization on the ground the court did not have jurisdiction of his person by reason of failure of process or service upon him. In his motion, Sotis stated under oath that he was not absent from the United States or from the district in which he last had his residence at any time from the date of the commencement of the action to the date of the final decree canceling his certificate of naturalization. He further stated he had no notice or knowledge of the pendency of the proceedings until January 17, 1942, when two agents of the Department of Justice served a copy of the decree upon him and took from him his certificate of naturalization. The United States attorney filed a counter-motion to dismiss the motion of Sotis, the United States attorney claiming Sotis was without authority at that time to file such a motion. The court sustained the counter-motion of the United States attorney and dismissed Sotis' motion. Sotis then appealed from the order to the United States Circuit Court of Appeals.

Proceedings filed for the purpose of canceling certificates of naturalization shall be filed in the court of the judicial district in which the naturalized citizen may reside at the time. Such naturalized citizen shall be served personally with a summons and a copy of the complaint. Upon the filing by the United States attorney of a proceeding to denaturalize a naturalized citizen, the clerk of that court shall forthwith issue a summons and deliver it to the United States marshal for service

upon the defendant. The summons shall be signed by the clerk, be under the seal of the court, contain the names of the court and the names of the parties, and be directed to the defendant. The summons shall set the time within which the defendant is required to appear and defend and shall also notify him that in case of his failure so to do, judgment by default will be rendered against him for the relief demanded in the complaint. In denaturalization proceedings the law grants the defendant sixty days personal notice in which to make answer to the petition of the United States. Service of summons shall be made by the United States marshal or his deputy or some person specifically appointed by the court for that purpose. The summons and complaint shall be served together.[1]

In case the naturalized person whose certificate United States seeks to cancel is absent from the United States, or from the district in which he last had his residence, then the law authorizes service of process or notice to be made upon him by publication. The act provides "* * * if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought." [2]

Service by publication is known as constructive service. The courts have held that such constructive service is in derogation of the common law and that strict and literal compliance with a statute which authorizes such service must be made.[3]

Sotis not being found by the United States marshal

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[1] Rule 4, Rules of Federal Procedure, Title 28, Sec. 723(c).

[2] Sec. 338, Nationality Act, Oct. 14, 1940, Title 8, Chapter 11, Sec. 738, U. S. C. A.

[3] Galpin v. Page, 85 U. S., 350, 21 L. Ed., 959; U. S. v. Sharrock, 276 Fed., 30; U. S. v. Sotis, 131 Fed. (2d), 783.

in that particular district, the United States attorney proceeded to attempt service upon him by publication in a Chicago newspaper following the Illinois statute on service of summons by publication. Counsel for Sotis contended that the publication of notice did not constitute constructive service or process as the record did not show by affidavit or otherwise that the defendant was absent from the United States or from the district in which he last had his residence; that without such showing publication of notice was unauthorized and void. Sotis' counsel also and as a second ground, contended that since more than five months had elapsed between the date when the affidavit was filed wherein it was claimed Sotis could not be found, that such period of time invalidated the notice inserted in the paper. The court agreed with counsel for Sotis as to both of these claims and held that the federal act required a showing the defendant was absent from the United States or from the district in which he last had his residence; that after such showing the place of publication, the type of newspaper, the form of notice and certificate of the clerk, that a copy of such notice had been mailed to the defendant's address, should all comply with the state law. The court also held that in proceedings to cancel certificates of naturalization, a delay of five and one-half months before the first publication of notice after filing of the affidavit invalidated such notice. The court further held that since the trial court had acquired no jurisdiction of the defendant in the proceedings to cancel his certificate of naturalization, that the court could nearly three years after the entry of such decree and at a subsequent term of court, vacate and set aside such decree.[4]

[4] U. S. v. Sotis, 131 Fed. (2d), 783; see also U. S. v. Knight, 291 Fed., 129, affirmed 299 Fed., 571.

VIII.

CITIZENSHIP PROCURED BY "FRAUD."

The appropriate United States attorney is authorized to institute proceedings for the purpose of canceling the certificate of citizenship (a) on the ground of fraud, and (b) on the ground that such certificate of citizenship was illegally procured. These grounds are separate and distinct. The courts in denaturalization cases often fail to draw a line of demarcation between citizenship "fraudulently" procured and citizenship "illegally" procured. If the applicant intentionally deceives the court by false statements, or where he intentionally misrepresents certain facts or conceals material facts from the court, then citizenship has been procured by fraud. On the other hand, a certificate of citizenship is illegally procured when the applicant fails to comply with the requirements of the naturalization laws, or if there are errors or irregularities in the naturalization proceedings, as where the petitioner or the court, or both, fail to follow the specific requirements of the law.

(A) Disloyalty.

A large number of denaturalization proceedings are based on the ground of disloyalty. The claim is made that the applicant, at the time he took the oath of renunciation and allegiance, did so with a mental reservation and retained toward the country of his birth an allegiance which the laws of this country required him to renounce before he could be naturalized.

Revocation of naturalization as applied to a citizen guilty of disloyal acts or utterances is based upon the presumption that the acts and utterances subsequent to naturalization indicate a mental reservation of the ap-

plicant at the time the required oath of allegiance was taken. If such mental reservation did exist, then it is held that the applicant perpetrated fraud upon the court and his certificate of citizenship should be cancelled.

The oath of renunciation and allegiance the petitioner for naturalization is required to take is in the following form:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegience and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God. In acknowledgment whereof I have hereunto affixed my signature."

The United States attorney filed an action[1] for cancellation of naturalization certificate of one Frank Schurmann, a native of Germany, who in taking his naturalization oath swore he would renounce all allegiance and fidelity to the German government and the German Emperor. The district attorney charged in the petition that at the time Schurman took his oath he then and there fraudulently reserved, in whole or in part, his allegiance and fidelity to the Imperial German Government and William II of Germany, the German Emperor. The government's evidence disclosed that before and after the declaration of war in 1917 between the United States and Germany, Schurmann frequently praised the attitude of the Germans, defended the sinking of the Lusitania, and said he wanted to go to Germany to be a surgeon in a German hospital. He declared America was wrong in

[1] U. S. v. Schurmann, 264 Fed., 917; 18 A. L. R., 1182; App. dismissed 257 U. S., 621, 66 L. Ed., 401

entering the war and it was impossible to defeat Germany. He advised against waste of money in buying Liberty bonds. He wrote a book in 1916 entitled "The War as Seen Through German Eyes" intended to create sentiment to prevent the United States from going to war with Germany and containing a bitter denunciation of all men standing in the way of Germany's success. After war was declared between the United States and Germany, Schurmann decided to continue to sell his book. The court, in announcing the case, stated the question at issue to be whether in 1904 Schurman obtained his certificate of citizenship illegally or by false and fraudulent representations. In arriving at its decision, the court stated it was mindful that courts should be very careful about depriving one of citizenship upon evidence which, although proving lack of allegiance at the time of the investigation, may not by relation establish a lack of true faith and allegiance at the time of the issuance of the certificate. Under the circumstances of the case, the only way of determining his fidelity and allegiance in 1904 was by testing his attitude of mind and heart in 1916-17, when, under the existing conditions, men were specifically aroused to give utterance of their real sentiment and avowals of loyalty. The court found that one who spoke as plainly as Schurmann had against the United States and in favor of Germany, must have taken his oath of full faith and allegiance with a reserved determination, to be kept down, but nurtured until a momentous time might come. The time did come, and the evidence of his original fraud was Schurmann's later conduct, which, in its relation to his earlier attitude, furnished safe ground for the conclusion he committed fraud upon the court.

The United States filed an action [2] to cancel the naturalization certificate of one Herbert Mickley, charging that the defendant took his naturalization oath of alle-

[2] United States v. Mickley, 44 Fed. (Supp.), 735.

giance with undisclosed mental reservation and that his sympathies were with Germany. The court found Mickley's conduct and statements clearly indicated that his allegiance had always been with his mother country rather than with the United States and that he took his oath of allegiance with mental reservation in favor of Germany. The court therefore entered a judgment setting aside the order of naturalization and canceling his certificate.

In another case,[3] the defendant, Ebell was born in Germany, served in the German army in the World War, thereafter studied medicine, came to the United States, and became naturalized in 1939. The evidence disclosed that he corresponded with relatives and others in Germany, some of whom were officials; that he kept in touch with the conditions in Germany while visiting in Mexico; and in conversations he gave utterances showing his sympathies with German affairs and conditions in Germany and became irritated and angry when persons, American citizens, made remarks concerning the actions of the government of Germany and of the people of Germany, and on one occasion stated that Hitler would rule the world. He became associated with the leader of the German bund, Gerhardt Wilhelm Kunze, who visited in the defendant's home. The two together journeyed into Mexico. The court cancelled his certificate of naturalization on the ground that at the time of naturalization the defendant was in sympathy with and attached to the German Reich and to the doctrines of the German government which were antagonistic to the principles of the Constitution of the United States of America and the democratic government such as prevails in the United States; that Ebell did not take his oath of allegiance honestly, constituting a fraud upon the naturalization court in that he did not intend to support and defend

[3] United States v. Ebell, 44 Fed. (Supp.), 43.

the Constitution of the United States and bear true faith and allegiance to the same.

The United States filed suit for cancellation against one Wursterbarth, a native of Germany, who was naturalized in 1882. He took the oath to support the Constitution and to renounce allegiance to his former sovereign. During the first World War he expressed his desire for a German victory and stated that he recognized his allegiance to Germany to be superior to that due the United States. The court held [4] that such an attitude, expressed in 1917, a few days after our entrance into the war, and unexplained, warranted cancellation of his certificate on the ground that it was procured by fraud in that his oath to renounce allegiance to any foreign country was false because he mentally excepted the land of his nativity. The defendant claimed that this evidence of disloyalty was subsequent to his naturalization and was not sufficient to prove lack of good faith or fraudulent intention at the time he took his oath of allegiance. In reply to this contention, the court stated:

"As the years succeeding his naturalization passed, coupled with the fact that he continued to dwell within our midst, associate with our citizens, receive the benefits which this nation and its institutions have conferred upon him, acquire property here and hold public office * * * it is natural to presume that his affection and feeling of loyalty and allegiance to this country would increase, and that any ties which bound him to the country from which he came would correspondingly decrease.

If, therefore, under such circumstances, after thirty-five years, he now recognizes an allegiance to the sovereignty of his origin, superior to his allegiance to this country, it seems to me it is not only permissible to infer from that fact, but that the conclusion is irresistible, that at the time he took the oath of renunciation, he

[4] U. S. v. Wursterbarth, 249 Fed., 908.

did so with a mental reservation as to the country of his birth, and retained toward that country an allegiance which the laws of this country require him to renounce before he could become one of its citizens. Indeed, for the reasons just stated, his allegiance to the former must have been stronger than it is at present."

Another case concerned a German naturalized in 1888.[5] During the war, when he was asked to buy Liberty bonds, he emphatically refused on the ground that he was of German descent and made other statements indicating allegiance and loyalty to Germany rather than the United States. The court held that the certificate of naturalization was procured by fraud in that his oath to renounce allegiance to a foreign country was false and in taking the oath he mentally excepted the land of his nativity.

In still another case[6] a German had been naturalized in 1912. During the World War he wrote a letter to his sister in Germany which tended to show his sympathy with Germany. The court cancelled the certificate of naturalization on the ground of fraud, stating: "The existence of a condition being shown, it will be presumed, in the absence of showing to the contrary, to have theretofore existed for a reasonable time."

It should be noted that the test concerns loyalty as of the date of naturalization. Did the alien, in renouncing allegiance to his former sovereignty or country, seriously and with mental reservation, except the land of his nativity? Subsequent expressions are all considered in determining, not if, at the time of the utterances, he was in sympathy with his native land, but if the fact of such utterances creates a presumption, in the absence of a showing to the contrary, that such feeling existed at the time of the naturalization.

The government failed in its case against Woerndle in

[5] U. S. v. Darmer, 249 Fed., 989.
[6] U. S. v. Herberger, 272 Fed., 278.

an action to cancel his citizenship certificate on the ground of fraud. The court found that the defendant, born in Germany, came to the United States and became a naturalized citizen. It is charged that at the time he was naturalized he perpetrated fraud in that he falsely swore that he renounced allegiance to the Emperor of Germany when in truth and in fact he fraudulently reserved and kept in whole or in part his allegiance and fidelity to the German Imperial Government. The evidence disclosed that, prior to the time the United States entered the war, he expressed himself in favor of Germany and German victory, criticizing the administration and particularly the conduct of the President. After the United States entered the war there was no evidence of any disloyal utterances or disloyal acts. On the contrary, outwardly at least, he conducted himself as a loyal American. The court found the evidence did not disclose that at the time of his naturalization he had not fully and completely renounced allegiance to Germany and did not except, by mental reservation or otherwise, the obligations of his oath. The court therefore declined to cancel the certificate.[7]

(B) False Statements as to Marital Status.

Mrs. Marcus filed her declaration of intention and petition, as a single person, "Mary Marcus." The petition was granted and a certificate of naturalization issued to her. Action was thereafter filed by the United States to cancel the certificate of naturalization on the ground the defendant falsely stated in her petition, in answering the question as to her marital status, that she was single, whereas in fact she was then married. The defendant admitted her marriage but said it was solemnized by a registrar and would not be complete until solemnized by the religious organization to which she

[7] U. S. v. Woerndle, 288 Fed., 47.

belonged. The court quoted from that part of the naturalization law wherein the petitioner is required in her petition to answer "if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition." This portion of the law with relation to marital status applies to female as well as to the male. The court found Mrs. Marcus deliberately stated an untruth and executed an affidavit swearing that the statements in the petition were true; that the defendant was guilty of constructive fraud and ordered[8] the certificate of naturalization cancelled.

John J. Kichin made a second or bigamous marriage in 1904 and he was living in bigamous adultery at the time he was admitted to citizenship in 1912. Kichin concealed such fact from the naturalization court. In an action to set aside the court order and cancel his certificate of naturalization, the court held that if the bigamous marriage had been known to the naturalization court, Kichin would not have been naturalized; that he had committed fraud upon the court by reason thereof and his certificate of naturalization was ordered cancelled.[9]

One Rutman, the government charged, had fraudulently stated in his petition for naturalization, that he was single and made false statements with reference to his place of residence. The court, in an action for denaturalization, ordered his certificate cancelled as the evidence disclosed Rutman, at the time he was naturalized, had a common law wife with whom he was living and had also falsely stated his residence in his petition.[10]

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[8] U. S. v. Marcus, 1 Fed. (Supp.), 29 (1932).
[9] U. S. v. Kichin, 276 Fed., 818.
[10] U. S. v. Rutman, 27 Fed. (Supp.), 891.

(C) Concealed or Misrepresented Facts as to Identity.

Jose Company Perez, a native of Spain, obtained a passport to land in the United States under the name of his brother, Nicholas Company Perez, and entered through the port of New York in 1920 as a passenger on the vessel Montserrat under that name. He filed his declaration of intention and his petition for naturalization and was admitted to citizenship as Nicholas Company Perez. The brother was four and a half years younger and had never been in the United States. The court found the defendant took the oath of allegiance and procured his certificate of naturalization falsely and ordered the certificate cancelled.[11]

Giovanni Goglia, it was charged by the United States, had obtained his certificate of naturalization by false representation. The government submitted evidence Goglia in his petition made two mis-statements of facts, (a) that he resided at 41 Sackett street, Brooklyn, New York, and (b) that he had resided continuously in the United States since November, 1921, and in the state of New York since 1923. The evidence further disclosed that the defendant had no residence at 41 Sackett street, Brooklyn, New York, but slept at 276 First avenue, New York city; that the defendant had not resided continuously in the United States as he had claimed, but he had shipped as a fireman on the steamship Magyar Rosa and later on the steamship Catarina Gerolimich and had been out of the United States for a considerable period of time, including six months in 1922 and 1923 in Italy. The court held the defendant had obtained a certificate of naturalization by misrepresentation and concealment of facts amounting to fraud and ordered the certificate cancelled.[12]

Isaac Goldstein arrived in the United States on the

[11] U. S. v. Perez, 29 Fed. (Supp.), 888.
[12] U. S. v. Goglia, 21 Fed. (Supp.), 894.

vessel Constantinople under the name of Israel Grun upon a passport issued to him in that name. He filed his declaration and his petition and was naturalized as Israel Grun. Upon investigation by immigration service officials he admitted Israel Grun was his cousin two years his junior. The court found in proceedings instituted by the United States to cancel his certificate of naturalization, that the defendant had made false and fraudulent statements and had given false and fraudulent testimony constituting sufficient ground for cancellation of his certificate.[13]

(D) False Statements as to Place of Residence.

Sosti DiBlasi was naturalized as a resident of the State of Pennsylvania. The government thereafter filed proceedings to cancel his certificate on the ground he, at the time, was not a resident of Pennsylvania, but was a resident of New Jersey. The court sustained this charge, saying DiBlasi was at the time of his naturalization a resident of New Jersey and that he had intentionally misstated the facts as to his residence and the residence of his wife and children, and that by reason of such misrepresentation the defendant was guilty of fraud and ordered his certificate of cancellation cancelled.[14]

The United States filed an action against Tomasso Mira to cancel his certificate of naturalization on the ground of fraudulent and false statements made in his petition for naturalization concerning his residence in the United States. The court found from the evidence that Mira had not resided in the State of Pennsylvania as claimed in his petition, but had gone to Italy in 1919 and had not returned until 1923, cancelling the certificate of naturalization for fraud.[15]

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[13] U. S. v. Goldstein, 30 Fed. (Supp.), 771.
[14] U. S. v. DiBlasi, 1 Fed. (Supp.), 28.
[15] U. S. v. Mira, 41 Fed. (Supp.), 224.

(E) False Statements or Concealed Facts as to Character.

One Jacob Brass was admitted to be and became a citizen of the United States in February, 1927. Fourteen years later the United States attorney filed proceedings to cancel his certificate on the ground of fraud in that Brass, during his examination and preliminary hearing, had given testimony he had not been arrested for or convicted of any crime, which testimony the government charged was wilfully and knowingly false, the government further claiming that Brass had not behaved as a person of good moral character during the period required by law. The court found that Brass had secured his certificate of naturalization by false and fraudulent testimony as to his moral character by concealing his crime record from the naturalization court and ordered his certificate cancelled.[16]

The United States of America filed proceedings against Angus Antonio Mancini to cancel his certificate of naturalization on the ground of fraud in that he concealed material facts as to his moral character by falsely testifying he had never been arrested or charged with a crime. The court found Mancini had falsely and fraudulently answered and had misrepresented material facts as to his criminal records affecting his moral character, justifying cancellation of his certificate of naturalization.[17]

John Etheridge, the government charged, concealed from the court material facts as to his character; also that the defendant intended to and did mislead and deceive the court by entering the United States under a fictitious name; also fraudulently concealing he had been convicted and sentenced for forgery in a British court; also that after he had entered the United States he had twice been convicted in the State of New Jersey for

[16] U. S. v. Brass, 37 Fed. (Supp.), 698.
[17] U. S. v. Mancini, 29 Fed. (Supp.), 44.

obtaining money by false pretenses, serving sentence on each conviction. The court, in the action to cancel his certificate of naturalization found Etheridge concealed these facts from the naturalization court constituting fraud and ordered the certificate cancelled.[18]

Silcio Saracino denied under oath in his naturalization proceeding he had ever been arrested. He was admitted to citizenship and received his certificate of naturalization. The government charged Saracino knowingly concealed from the court at the time of his naturalization that he had been arrested and convicted of aggravated assault and battery with intent to kill; that this constituted fraud upon the government by concealing such facts relevant to his "moral character" and ordered the certificate concelled.[19]

Robert DeFrancis, in his petition for naturalization, stated among other things he was "attached to the principles of the Constitution of the United States." The United States attorney filed action to cancel DeFrancis' certificate of naturalization charging the defendant, during the five-year period, was not a man of good moral character, nor attached to the principles of the Constitution of the United States, nor well disposed to the good order and happiness of the United States. The United States attorney proved a number of convictions of criminal offenses involving the manufacture, sale and possession of intoxicating liquor in violation of the prohibition act; that during the examination for naturalization the court had inquired if there was any proof of the alleged conviction of the sale of intoxicating liquor. The defendant instead of answering, stood mute. The court, in ordering DeFrancis' certificate of naturalization cancelled, stated DeFrancis was the only one present who knew he had been convicted and that by standing mute, he had perpetrated fraud upon the court in securing his certificate of naturalization.[20]

[18] U. S. v. Etheridge, 41 Fed. (2d), 762.
[19] U. S. v. Saracino, 43 Fed. (2d), 76.
[20] U. S. v. DeFrancis, 50 Fed. (2d), 497.

F. Anarchist.

Michael Stuppiello, in his declaration of intention and in his petition for naturalization, swore he was not an anarchist, nor opposed to organized government and that he was attached to the principles of the Constitution. The government, in an action to cancel his certificate proved that he had been arrested on a warrant charging him with being an anarchist, that he was an anarchist and not attached to the principles of the Constitution, all of which fact he concealed during his naturalization proceedings. His certificate was ordered cancelled.[21]

Carl S. Swelgin was admitted as a naturalized citizen of the United States by an Oregon state court. The United States thereafter filed an action to vacate and set aside the certificate on the ground Swelgin was not attached to the principles of the United States, nor well disposed to the good order and happiness of the same. It was charged he was a member and organizer of Industrial Workers of the World, an organization which advocates resistance to existing government, advocating anarchy and the overthrow of established orders. The court found that when Swelgin declared he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same, he made his avowal of that which was not in his heart and he thereby deceived and fraudulently misled the court and ordered his certificate cancelled.[22]

It should be noted the naturalization law provides that an anarchist is not eligible for naturalization. The two foregoing decisions could properly have been decided upon the ground the naturalization of each was illegal rather than fraudulent.

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[21] U. S. v. Stuppiello, 260 Fed., 483.
[22] U. S. v. Swelgin, 254 Fed., 884.

IX.

CITIZENSHIP ILLEGALLY PROCURED.

Citizenship is "illegally" procured when the applicant or the court has failed to follow the requirements of the naturalization laws, or where, after a disclosure of all the facts, the court has erred in its finding of the facts, or in its application of the law.

Judge Learned Hand, expressing a small minority view, urges, as the illegal practices of officials in St. Louis in issuing spurious certificates [1] led to the adoption of Section 15 of the 1906 Act, that in defining "illegal procurement" it should be restricted to conditions similar to those at St. Louis which brought about denaturalization provisions of the 1906 Act.[2]

The Act of June 29, 1906, provided that an alien may be admitted to become a citizen of the United States in the following manner, "and not otherwise." This section was carried into the Nationality Act of 1940 by providing "a person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this act and not otherwise."

Congress having thus announced a rule of strict compliance, prescribed the qualifications for naturalization and the specific procedure to be followed by the applicant and by the court. Strict compliance with the letter of the naturalization law is required. The steps of the naturalization process include (a) possession of a certificate of arrival obtained on application to the commissioner; (b) application under oath by applicant of a signed declaration of intention to become a citizen of the United States; (c) petition for naturalization signed and sworn to by applicant and filed, with certificate of

[1] U. S. v. Lenore, 207 Fed., 865.
[2] Luria v. U. S., 184 Fed., 643.

arrival and declaration of intention attached, with the clerk of the naturalization court; (d) hearing on petition; (e) oath of renunciation and allegiance, and (f) granting of certificate of naturalization.

(A) Failure to File Certificate of Arrival or Declaration of Intention.

The naturalization law requires the petitioner, at the time of filing a petition for naturalization, to have attached thereto his certificate of arrival. This must now be obtained from the Naturalization Service. If the petitioner arrived in the United States after June 29, 1906, the certificate must state the date, place and manner of his arrival in the United States. The declaration of intention of such petitioner likewise must be filed with the petition, which certificate and declaration shall be attached to and made a part of the petition.

A case of importance involving the failure of the applicant to file with his petition a certificate of arrival finally reached the Supreme Court of the United States. The petitioner was one Iver Ness, who emigrated from Norway and arrived at the port of Buffalo by rail through Canada in August, 1906. He entered this country without submitting himself to physical examination, without paying the alien head tax, and without having his entry registered. After five years had elapsed he filed a petition for naturalization without a certificate of arrival. His petition was considered defective. He applied to the Bureau of Immigration and Naturalization for a certificate of arrival but was informed it could not be furnished because no registration of his entry had been made. Notwithstanding the failure to file a certificate of arrival, Ness received a certificate of naturalization from an Iowa state court on May 21, 1912. He thereupon offered to pay the head tax and submit himself to medical examination, but the government refused

this offer. He possessed all qualifications entitling him to naturalization other than a properly filed certificate of arrival. The government thereupon filed an action to set aside the court order and cancel the certificate of naturalization as having been illegally procured. This action was instituted in the United States District Court, Northern District of Iowa. The district judge dismissed the bill, holding that failure of the state court to insist upon a certificate of arrival was an error in procedure not affecting the validity of citizenship.[3] The government appealed to the Circuit Court of Appeals and the decree of the lower court was affirmed.[4] The case was then carried by the government to the Supreme Court of the United States, that court holding:[5] "Filing the certificate of arrival being a matter of substance, it is clear that no power is vested in the naturalization court to dispense with it. * * * And in view of the large number of courts to which naturalization of aliens was entrusted and the multitude of applicants, uniformity and strict enforcement of the law could not be attained unless the Code prescribed also the exact character of proof to be adduced. The value of contemporary documentary evidence was recognized; and the certificate of arrival was, therefore, specifically included among the prerequisites of naturalization. Naturalization granted without the certificate having been filed is therefore illegally procured."

The Supreme Court was called upon in another case to consider the effect of the failure to file a certificate of arrival and a declaration of intention with the petition. An action was filed to have the certificate of naturalization issued to one Maney cancelled on the ground that it was illegally procured because of failure to attach to the petition the certificate and the declaration. In the original naturalization proceedings the United States had

[3] U. S. v. Ness, 217 Fed., 169.
[4] U. S. v. Ness, 230 Fed., 950.
[5] U. S. v. Ness, 245 U. S., 315, 62 Law Ed., 321.

objected to the granting of the order of naturalization because of such failure. The naturalization court, however, overruled the United States, and had permitted the petitioner to file the certificate and declaration nunc pro tunc, and had admitted her to citizenship. The Supreme Court held that the failure to file the required certificate of arrival and declaration of intention with the petition was fatal and that the naturalization was acquired illegally. The court therefore affirmed the order cancelling the certificate.[6] Failure to file certificate of arrival as part of the petition has been held in other cases to render the certificate of citizenship illegally procured.[7]

(B) Lack of Necessary Time Requirements.

The Naturalization Act provides that not less than two years and not more than seven years after he has made a declaration of intention, an alien shall make and file in duplicate with the clerk of the naturalization court, a petition in writing, signed by the applicant in his own handwriting and duly verified by two credible witnesses who are citizens of the United States. In the event that less than two years or more than seven years have elapsed between the filing of such declaration of intention and the filing of the petition for naturalization, the petitioner is not entitled to secure a certificate of naturalization. Its procurement would then be illegal.

The Supreme Court has passed on this issue in the case against one Morena, who filed his declaration of intention December 15, 1905. The petition for naturalization was filed December 21, 1914. The naturalization occurred April 6, 1915. In July, 1915, the United States filed a petition to cancel the certificate of citizenship on the ground that the certificate was void because it had been granted more than seven years after the defendant had filed his declaration of intention and more than seven

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[6] Maney v. U. S., 278 U. S., 17, 73 L. Ed., 156.

[7] U. S. v. Vujnovic, 12 Fed. (Supp.), 208; U. S. v. Stranack, 6 Fed. (2d), 334; U. S. v. Parisi, 24 Fed. (Supp.), 414.

years after the Act of Congress of June 29, 1906. The Supreme Court held [8] that the naturalization was procured illegally because the petition was filed more than seven years after the filing of the declaration of intention and more than seven years after the enactment of the June 29, 1906, law.

In another case, one Van der Molen had acquired citizenship by naturalization. The government filed a proceeding to cancel on the ground that the naturalization law had been violated as two years had not elapsed between the filing of the declaration and the filing of the petition. The naturalization court, against the claim of the government, held that, although the petition was filed prior to the expiration of the two-year period, a hearing on it was not had until the two-year period had elapsed. The court, in the proceedings to cancel, held Van der Molen procured citizenship illegally, as the law stated specifically that the petition could not be filed less than two years after the filing of the declaration and that the naturalization of Van der Molen was illegally procured and should be cancelled.[9]

A certificate of naturalization was cancelled where the petitioner permitted more than seven years to expire between the filing of the declaration and the filing of the petition [10] even though the failure was due to innocent error of petitioner.[11]

(C) Open Court.

A person who has petitioned for naturalization must take his oath of renunciation and allegiance in open court before being admitted to citizenship.

One Ginsberg appeared in court for naturalization but was requested to return the following day to complete

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[8] U. S. v. Morena, 245 U. S., 392; 62 L. Ed., 359.
[9] U. S. v. Van Der Molen, 163 Fed., 650.
[10] U. S. v. Lecka, 7 Fed. (2d), 380; Contra U. S. v. Salomon, 231 Fed., 928.
[11] U. S. v. Mueller, 246 Fed., 679.

the same. On the following day Ginsberg returned and took his oath of allegiance in the judge's chamber, rather than in open court, and obtained his certificate of naturalization. Action was filed by the government to cancel his certificate on the ground that it had been illegally procured. The Supreme Court held [12] that the certificate of naturalization should be cancelled as it was illegally procured; that there must be a strict compliance with the naturalization laws and the rules and regulations thereunder, and that otherwise a certificate obtained might be set aside and cancelled. The Court in the opinion announced: "An alien who seeks political rights as a member of this nation can rightfully obtain them only upon the terms and conditions specified by Congress. Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in respect of a matter so vital to the public welfare."

"No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the government may challenge it, as provided in Section 15, and demand its cancelation unless issued in accordance with such requirements. If procured when prescribed qualifications have no existence in fact, it is illegally procured; * * *."

A more liberal view was expressed by the court in a case filed by the government against one Richmond, affecting not only Richmond but several hundred others who were naturalized at the same time and by the same procedure. It appears that Richmond and the others in due course appeared before the officials of the Naturalization Bureau of the United States at Philadelphia, complied with all requirements of law with regard to witnesses, and satisfied these officials as to character, fitness and qualifications to become citizens of the United

[12] U. S. v. Ginsberg, 243 U. S., 472, 61 L. Ed., 853.

States. Thereupon Richmond, with the several hundred others, were brought by said naturalization officials before a regular session of the United States District Court; and the naturalization officials, in accordance with the usual custom, recommended to the court, Richmond and others as qualified for citizenship. It was the practice of the judges to accept such recommendations. The clerk in the absence of the judge accepted proofs of qualifications. Richmond and the others thereupon took the prescribed oath, and certificates of naturalization were issued. The government did not appeal, but did file an action against Richmond to cancel his certificate on the ground that the judge left the bench and was absent from the court room while the clerk of courts accepted proofs from Richmond and his witnesses. The court held [13] that these facts did not constitute a violation of the naturalization laws, stating the words "illegally procured" as used in the act, must be taken in their commonly understood meaning as evidencing positive affirmative act on the part of Richmond. Cancellation denied.[14]

In 1926 the law was amended and now permits the the commissioner to designate members of the naturalization service to conduct preliminary hearing upon petitions and to make findings and recommendations to the court.

(D) Failure to Renounce Allegiance.

The law required the applicant for citizenship to renounce allegiance to all foreign governments, and particularly, by name, the head of the government of which he is a citizen at the time of his hearing.

Action was filed by the United States against one Chiaravalle for cancellation of certificate of naturaliza-

[13] U. S. v. Richmond, 17 Fed. (2d), 28.
[14] U. S. v. Nisbet, 168 Fed., 1005; U. S. v. Leles, 227 Fed., 189.

tion on the ground that he failed to renounce allegiance in accordance with this requirement. The respondent was born in Italy. He was naturalized as a Canadian citizen and then entered the United States. He later petitioned for naturalization in the United States. In taking his oath of allegiance to the United States of America on September 29, 1932, he renounced allegiance to the King of Italy rather than to King George of England. In the proceedings to cancel his certificate of naturalization the court held [15] that the right of the alien to acquire citizenship is purely statutory and a person should not be admitted unless there is a strict compliance with the rules; that the respondent, having failed to renounce allegiance to King George in England, has not complied with the law, and that his citizenship was therefore illegally procured.

The Nationality Act now provides that the renunciation is to "any foreign prince, potentate, state or sovereignty of whom or which the petitioner was before a subject or citizen." [16]

In two other proceedings filed by the United States to cancel certificates of citizenship, the applicants, by mistake had specifically renounced the wrong sovereignty in their declarations of intention. Their oaths had been correctly made at the hearings. In the actions to cancel the certificates the court ruled that if the certificates were declared illegal, every time an alien's present government changed by death, war, or otherwise, the alien would have to file a new or amended declaration of intention. The court held in both instances that these certificates were valid.[17]

(E) Failure of Residence Requirements.

The naturalization law requires that the alien shall have "continuously resided" within the United States

[15] U. S. v. Chiaravalle, 45 Fed. (Supp.), 509.
[16] Sec. 335(a), 1940 Act, Title 8, Chapter 11, Section 735(a), U.S.C.A.
[17] U. S. v. Orend, 221 Fed., 777; U. S. v. Viaropulos, 221 Fed., 485.

for a period of five years next preceding the filing of his petition. The courts are unanimous in holding that the law does not require actual uninterrupted physical residence for the entire five years, for if the alien left the country for a short visit or a short business trip he would have to commence his five-year period over again. Courts have in effect construed the words "continuously resided" as synonymous with bona fide residence and have held that a temporary absence, coupled with the then intent to return, did not disrupt the running of the period. Illustrations of these holdings are as follows:

In the Mulvey case [18] a certificate had been granted although Mulvey had left the country to visit a sick mother and had been delayed abroad for a period of two years. The court decided that the five-year probation period was established for the purpose of enabling the alien to learn of our institutions and government and held that the absence of two years was inconsistent with the five-year requirement of the act, and entered an order cancelling Mulvey's certificate.

Action for cancellation was filed by the government against one Shanahan for failure to have complied with the five years' residence requirement prior to his naturalization. The petition was dismissed, the court holding the finding of bona fide residence by the naturalization court was a finding of fact and such finding could not be disturbed under Section 15.[19]

Prior to the amendments of 1929 and 1936, the courts distinguished between aliens in foreign employment, by the United States and aliens employed by private corporations. The certificate of one Schradieck[20] was cancelled because he had spent four of the required five years abroad, as an employee of a private corporation;

[18] U. S. v. Mulvey, 232 Fed., 513.
[19] U. S. v. Shanahan, 232 Fed., 169.
[20] Schradieck v. U. S., 29 Fed. (2d), 24.

while the certificate of Jorgenson, employed abroad by the government, was not cancelled.[21]

In an action to cancel against one Grednik,[22] the court found that the five-year residence requirement was a question of fact and legal construction; that the decision of the naturalization court should not be disturbed; and that if not satisfied the government should have appealed.

The law was subsequently amended in 1929 and 1936 and now permits aliens to leave this country as employees of the government or private corporations to perform services in foreign countries without breaking the five-year bona fide residence.

(F) Good Moral Character Prior to Naturalization.

The law requires that the applicant for citizenship must prove to the naturalization court that for the period of five years next preceding his hearing he has behaved as a man of good moral character. The courts have construed this requirement in the following cases.

An action was filed by the United States to cancel a certificate of citizenship of one Wexler on the ground that Wexler had committed adultery during the five-year period, it appearing that the adultery occurred more than four years prior to the petition. All of these facts were presented to the naturalization court by the government by authority of Section 11 of the 1906 Act and in opposition to the granting of the certificate of naturalization. The naturalization court, however, found the petitioner had shown himself to be a person of good moral character. The court, in the cancellation proceedings [23] found that the applicant, during the five-year period was not a man of good moral character, was ineligible for citizenship and that therefore the citizen-

[21] U. S. v. Jorgenson, 241 Fed., 412.
[22] U. S. v. Grednik, 19 Fed. (2d), 171.
[23] U. S. v. Wexler, 8 Fed. (2d), 880.

ship was illegally procured. An order of cancellation was entered.

A similar result was reached in the case against one Turlej. The applicant had violated the recent prohibition act. When he came before the naturalization court he admitted such violation. The naturalization court thereupon admitted him to citizenship. In the action to cancel by the government, the court held that the certificate should be cancelled.[24]

In another case the applicant for citizenship had been found, in a divorce proceeding, to be guilty of adultery. In spite of this he was admitted to citizenship. The government filed an action to cancel the certificate, claiming that the defendant had not behaved as a man of good moral character, as necessary a qualification to naturalization as any other requirement of the statute. The court, however, declined to cancel the certificate.[25]

Cancellation has been allowed the government in another case of adultery [26]; and in another case of a liquor violation.[27]

(G) Ineligibility for Citizenship.
(1) Race.

The right to become a naturalized citizen of the United States extends generally to white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere. The courts have denied the right of naturalization to Afghans, Arabs, Burmese, Chinese, Hindus, Japanese and Koreans.

Until the Supreme Court of the United States held otherwise, Hindus were permitted under the naturalization law to become, by naturalization, citizens of the United States, receiving certificates of citizenship. In

[24] Turlej v. U. S., 31 Fed. (2d), 696.
[25] U. S. v. Bischof, 48 Fed. (2d), 538.
[26] U. S. v. Unger, 26 Fed. (2d), 114.
[27] U. S. v. Mirsky, 17 Fed. (2d), 275.

1923 there was presented to the Supreme Court, in the case of Bhagat Singh Thind,[28] the question, "Is a high caste Hindu of full Indian blood, born at Amritsar, Punjab, India, a white person within the meaning of Section 2169, Revised Statutes?"

Section 2169, Revised Statutes, restricted the naturalization of aliens under the provisions of the Naturalization Act "to aliens being free white persons and to aliens of African nativity and to persons of African descent." The court held that a high caste Hindu, although of the Caucasion or Aryan race, is not a white person within the meaning of the naturalization laws.

United States attorneys, following this decision, instituted suits under Section 15 of the 1906 Act to cancel citizenship of Hindus who had been naturalized, on the ground that such citizenship had been illegally procured.

Orders or judgments of cancellation were entered in several cases against naturalized Hindus.[29]

Congress took a hand in one Hindu case. It passed an act giving one Fieldbrave, who claimed he had not received notice of the cancellation proceedings, the right to a day in court to appear and defend the action to cancel his certificate, based on the ground that he was a Hindu.[30]

(2) Disbelief in or Opposition to Organized Government.

A person who disbelieves in or opposes organized government is not eligible for naturalization. One Swelgin was a member of the Industrial Workers of the World before and at the time he was admitted to citizenship, and as such he advocated the overthrow of organized government. The court ordered his certificate cancelled.[31]

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[28] U. S. v. Thind, 261 U. S., 204, 67 L. Ed., 616.

[29] Mozumdar v. U. S., 299 Fed., 240; U. S. v. Ali, 20 Fed. (2d), 998; U. S. v. Gokhale, 26 Fed. (2d), 360.

[30] H. R. 4256, 75th Congress.

[31] U. S. v. Swelgin, 254 Fed., 884.

An anarchist is not eligible for citizenship. One Strippiello, who believed in anarchy, became a citizen by naturalization. The court ordered his certificate cancelled [32] as it was illegally procured.

(3) Enemy Aliens.

An alien who is a native of a country with which the United States is at war, may be naturalized as a citizen of the United States conditioned he be otherwise eligible and is within the restrictions of Section 326 of the Nationality Act. If naturalized in violation of the restrictions, his certificate may be cancelled.

A German subject filed a petition before April 6, 1917, for United States citizenship. On final hearing, after war was declared between these two countries, he was granted his citizenship. Action to cancel his certificate was sustained and cancellation ordered on the ground that it was issued in violation of the law.[33]

(4) Unlawfully in the United States.

An alien cannot be naturalized unless he is lawfully in the United States. The courts have been called upon to cancel certificates of citizenship of persons who have been naturalized, but who had illegally entered and were unlawfully in the United States. There seems to have been no dissent in these decisions.[34]

In the case of one Barloglowski, the entry into the United States was temporary and not permanent and as such he was not eligible under the law to be naturalized. The court consequently entered an order of cancellation.[35]

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[32] U. S. v. Stuppiello, 260 Fed., 483.

[33] U. S. v. Kamm, 247 Fed., 968. Similar facts and decisions in Grahl v. U. S., 261 F., 487.

[34] U. S. v. Beda, 30 Fed. (Supp.), 446; Aff. 118 Fed. (2d), 458; U. S. v. Parisi, 24 Fed. (Supp.), 414; U. S. v. Marino, 27 Fed. (Supp.), 155.

[35] U. S. v. Bialoglowski, 21 Fed. (Supp.), 613; Aff. 101 Fed. (2d), 928.

(H) Attached to the Principles of the Constitution.

The United States filed an action to cancel the certificate of naturalization issued to William Schneiderman, a native of Russia, on the ground that it was illegally and fraudulently procured. It also charged that during the five years prior to filing his petition for naturalization, he had not behaved as a person attached to the principles of the Constitution and was not well disposed to the good order and happiness of the United States, as required by the naturalization law; that during all this time the petitioner was a member of, affiliated with, believed in and supported the principles of Communist party organizations which were opposed to the Constitution and which advised, advocated and taught the overthrow of the government, Constitution and laws of the United States by force and violence. The affidavit of the attorney in the Immigration and Naturalization Service, made part of the complaint filed by the district attorney in the United States District Court, charged that Schneiderman, when he took the oath of allegiance, did not intend to bear true faith and allegiance to the Constitution and laws of the United States. Schneiderman, in his answer, denied the material allegations of the complaint, except in so far as it charged his membership in the Communist Party of America, which he admitted. He denied that, at any time during which he was a member of the Communist Party of the United States, he believed in or advocated the overthrow of the government, Constitution or laws of the United States by force or violence or otherwise. The evidence disclosed that Schneiderman was born in Russia in 1905, entered the United States in 1908, became interested in the principles of communism and since the age of sixteen years had been active in various official capacities which were of increasing importance and responsibility in the Communist Party organization. He applied for his first papers when he was

eighteen years of age and became a United States citizen by naturalization when he was twenty-one. He admitted that at the time of his naturalization he desired to bring about a socialistic form of government and that he had consistently subscribed to the general principles of the Communist Party and the Communist International. He, however, testified to his belief that the Communist program would be a long range process and disavowed the use of force and violence or allegiance to any foreign power. Many publications concerning the Communist Party, its form of government, its beliefs, and supporting testimony of former party members were offered in evidence. The district court found that the Communist Party advocated the overthrow of the United States government by force and violence, that its principles were opposed to the Constitution and laws of the United States; that Schneiderman was a member of the Communist Party at the time of his naturalization; that he bore allegiance to the Union of Soviet Socialist Republics rather than to the United States, and that he had concealed these facts from the naturalization court. The district court further found that Schneiderman for the five years prior to filing his petition had not been attached to the principles of the Constitution and the good order of the United States; that he had taken the oath of allegiance in bad faith; and that the decree of naturalization had been illegally and fraudulently procured. The district court entered an order declaring void the certificate of citizenship.[36] The Circuit Court of Appeals affirmed the lower court on the ground that the certificate of naturalization was illegally procured.[37]

This case is now pending in the Supreme Court of the United States, writ of certiorari having been granted. Reargument requested by the court February 15, 1943.

[36] U. S. v. Schneiderman, 33 Fed. (Supp.), 510.
[37] U. S. v. Schneiderman, 119 Fed. (2d), 500.

(I) Failure of Credible Witnesses.

The petition for naturalization must also be verified by two credible witnesses, citizens of the United States, who shall state in their affidavits that they know the applicant to have been a resident for the required time, and that he is of good moral character and qualified to be admitted as a citizen. The petitioner is required to prove to the court the facts set forth in his declaration of intention and in his petition by these verifying witnesses. Naturalization without the supporting affidavits and the testimony of such witnesses is illegal.

The naturalization court permitted a petitioner to substitute a witness for a prior witness who had been found not qualified. In proceedings to cancel [38] the court sustained the government, holding that the petitioner was not permitted to substitute a witness for a prior witness. In a later case,[39] where a substituted witness had supported the testimony of the petitioner, cancellation in an action by the government was denied, as the government in the latter case had full time and opportunity to investigate the qualifications of the substituted witness.

A petition was filed against Herbert Max Schwinn to cancel his certificate on the grounds that he had procured the same by fraud and illegally. The government averred Schwinn's petition for naturalization was subscribed by two witnesses who stated in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously immediately preceding the date of filing of his petition and each had personal knowledge that he, Schwinn, is a person of good moral character. The court found the two subscribing witnesses had not known Schwinn for the stated period of five years.

[38] U. S. v. Gulliksen, 244 Fed., 727.
[39] U. S. v. Erickson, 188 Fed., 747.

Schwinn offered no other witnesses in his naturalization proceedings. The court entered a judgment of cancellation on the ground that he had failed to prove by two credible witnesses that he had resided for the required five years next preceding the filing of his petition in the United States, and also that during said five year period he was a person of good moral character.[40] The Supreme Court refused to review his case.[41]

When the subscribing witnesses had not known the petitioner for the five-year period and no other witnesses were produced, his certificate may be cancelled.[42]

(J) Illegal Entry.

Shapiro obtained a passport of a person other than herself upon which a visa was granted and by the use of which she gained admission to the United States. She became a naturalized citizen in 1932. Action by the government to cancel certificate on the ground she had not lawfully entered the United States. The court, in entering a judgment of cancellation [43] holding the term "residence" as used in this act, is "legal residence" and anyone who enters this country illegally cannot thereby acquire a legal residence as a basis for application for citizenship.

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[40] Schwinn v. U. S., 112 Fed. (2d), 74.
[41] Schwinn v. U. S., 311 U. S., 616; 85 L. Ed., 390.
[42] U. S. v. Muskowitz, 39 Fed. (Supp.), 989.
[43] U. S. v. Shapiro, 43 Fed. (Supp.), 927.

X.

PLEADINGS AND PROCEDURE.

The petition should state all of the facts necessary to prove fraud or illegality. Pleadings and procedure may be molded in any way best calculated to meet the ends of justice.[1] A bill for the cancellation of a certificate of naturalization which alleges that the alien asserted his attachment and devotion to the principles of the Constitution, whereas at the time he did so, he intended to violate the provisions of the Constitution, states a cause of action.[2] On motion of the United States Fritz Kuhn and nineteen other former members of the German-American Bund were joined to cancel their respective certificates of citizenship (joint trial January, 1943, U. S. District Court, N. Y.)

The defendant is allowed sixty days from notice of the filing of the petition in which to file his answer. The answer should clearly and succinctly set forth the defendant's defenses. The district attorney, if he so desires, may file an amended petition, whereupon the defendant may likewise file an amended answer.

It is customary in some United States district courts to adopt proceedings authorized by Rule 16 of the Rules of Civil Procedure and dispose of the cancellation proceedings by a pre-trial hearing. This procedure was recognized in an action[3] instituted against one Mickley wherein an order was entered by the trial judge for a pre-trial hearing in accordance with Rule 16[4] directed and served on both parties. A pre-trial hearing was

[1] U. S. v. Mansour, 170 Fed., 676; U. S. v. Sharrock, 276 Fed., 30.
[2] Turlej v. U. S., 31 Fed. (2d), 696.
[3] U. S. v. Mickley, 44 Fed. (Supp.), 734.
[4] 28 United States Code, following Sec. 723 (c).

held, no final judgment entered and the case was set for trial on a later date.

In a later case [5] action was instituted asking for cancellation of the naturalization certificate. A pre-trial hearing was had, which disposed of the case. In the opinion it was stated: "On May 11, 1942, defendant filed an answer herein through his attorney, John H. Fish, and in compliance with an order for Pre-Trial Hearing, under Rule 16, Federal Rules of Civil Procedure, 28 U. S. C. A., following Section 723c, entered herein and served on counsel by mail, providing in part that unless reason appeared to the contrary the court would proceed to judgment at such hearing, Mr. Louis M. Hopping, Assistant District Attorney, representing plaintiff, the defendant, his adult daughter and his attorney, Mr. Fish, appeared for such Pre-Trial Hearing. This hearing was held in open court, and the defendant and his counsel very frankly admitted that the facts were as alleged in plaintiff's petition herein, stating in explanation that defendant was a peaceful, law-abiding person and had acted without any actual fraudulent intent."

The court thereupon entered a judgment setting aside the order of the court admitting the defendant to citizenship and cancelling his naturalization certificate.

In event the trial judge finds in favor of the government, and against the defendant, a judgment and decree of cancellation is signed by the court and entered of record wherein, among other things, the court, by reason of the law and the evidence, does order, adjudge and decree that the decree of naturalization of the naturalization court entered on the ..... day of ..... admitting the defendant to citizenship is vacated, revoked, set aside, cancelled and declared null and void; the defendant's certificate of naturalization No. ..... issued under said decree to him be and the same is revoked and can-

[5] U. S. v. Chiaravalle, 45 Fed. (Supp.), 509.

celled, and the respondent be and he is directed and required to surrender to the court for cancellation the said certificate of naturalization, and the clerk of courts is ordered to cancel the said certificate so surrendered by the defendant.

The denaturalization law provides that if a judgment or decree for cancellation is entered that the clerk of courts shall transmit a certified copy of the judgment and decree of cancellation to the clerk of the naturalization court wherein the defendant was granted a certificate of naturalization; the clerk is also ordered to transmit certified copy of the judgment and decree of cancellation, together with the canceled certificate of naturalization to the Immigration and Naturalization Service of the United States Department of Justice, Washington, D. C.

Either the government or the defendant may appeal from an adverse decision.

Where no appeal is taken from a judgment of cancellation it becomes final as between the parties to the proceedings. The court denied a petition of intervention filed after term by the wife of the alien, whose certificate of citizenship was canceled.[6] If the court did not acquire jurisdiction by reason of failure of service by publication, motion to vacate and set aside a decree canceling defendant's certificate of naturalization may be filed within a reasonable time after defendant acquired knowledge of such decree.[7]

Copy of petition for cancellation, affidavit in support thereof, and answer filed by the defendant, a court order for pre-trial hearing, a judgment entered by a court canceling a certificate of naturalization, and notice of appeal are found in the appendix hereto.

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[6] Rosenberg v. U. S., 60 Fed. (2d), 475; Certificate denied, 287 U. S., 645; 77 L. Ed., 558.

[7] United States v. Sotis, 131 Fed. (2d), 783.

XI.

DEFENSES INTERPOSED.

The defendant or respondent in proceedings to cancel his certificate of naturalization, has defended on various grounds. He has contended the law under which the action is filed is unconstitutional; he has claimed the government opposed in the naturalization court his right to become an American citizen and the judgment of that court is final and binding on the government; he has defended on the ground his naturalization occurred so many years previously the statute of limitations has run against the government in filing the action, or the government is dilatory and guilty of laches; he has claimed he did not fully realize at the time he received his certificate of naturalization his loyalty to the country of his nativity would prevent him from becoming a loyal American citizen; he has insisted upon a jury trial.

The courts have unanimously held the denaturalization law to be constitutional [1]; that the government could, in the naturalization proceedings, appear and oppose his naturalization and, if the naturalization court entered an order admitting the alien to citizenship, such appearance did not bar a second proceedings to cancel his certificate of naturalization on the very ground the government advanced in opposing the naturalization. The courts have announced denaturalization was a cumulative remedy granted by Congress to assure strict compliance of the naturalization laws.[2]

The courts have also held the statute of limitation does not run against the government in a proceeding to cancel a certificate of naturalization [3]; that even if a judgment of cancellation in case of long residence in the

[1] Chapter III, supra.
[2] Chapter II, supra.
[3] U. S. v. Ali., 7 Fed. (2d), 728.

United States after naturalization would have severe effect upon the respondent, was no defense, as it is the court's duty to apply the law to the facts without regard to such result.[4] Nor is the government estopped or guilty of laches in failing to institute cancellation proceedings for more than fourteen years after certificate of naturalization had been issued where alien falsely testified he had not been convicted of any crime, the defendant asserted his conviction was a matter of public record[5], available to the government and such delay in filing the cancellation proceedings should constitute a bar.

Laches, or lapse of time, cannot be pleaded against the government in proceedings to cancel certificate of naturalization.[6] There are instances of cancellation of certificates of naturalization after thirty-five,[7] twenty-nine[8] and nine[9] years from date of naturalization.

The test is not the length of time between naturalization and filing proceeding to cancel; the test is whether the certificate in its inception was procured fraudulently or illegally. If so, action to cancel may be filed at any time after naturalization.

Herbert Mickley's certificate of naturalization was canceled, notwithstanding he claimed he did not fully realize at the time he received his certificate his loyalty to Germany would prevent him from becoming a loyal American citizen.[10]

One Chiaravalle's certificate of naturalization was canceled, the court holding[11] the fact the alien might not have fully realized at the time of petitioning for naturalization and at the time of taking the oath of allegiance to the United States that false statements in his

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[4] U. S. v. Parisi, 24 Fed. (Supp.), 414. (But see U. S. v. Aakervik, 180 Fed., 137).
[5] U. S. v. Brass, 37 Fed. (Supp.), 698.
[6] U. S. v. Spoher, 175 Fed., 440; U. S. v. Marino, 27 Fed. (Supp.), 155.
[7] U. S. v. Wursterbarth, 249 Fed., 908.
[8] U. S. v. Carmer, 249 Fed., 989.
[9] U. S. v. Herberger, 272 Fed., 278.
[10] U. S. v. Mickley, 44 Fed. (Supp.), 734.
[11] U. S. v. Chiaravalle, 45 Fed. (Supp.), 509.

petition and failure to renounce allegiance to his then sovereign would prevent him from becoming an American citizen.

One Marafioti entered into a bigamous marriage between the date of his petition and the issuance of his certificate. The court entered judgment of cancellation stating Marafioti's lack of comprehension of the consequences of his second marriage did not render his conduct innocent and was not a defense in proceeding to cancel.[12]

The government filed proceedings to cancel the certificate of naturalization of one Albert Sherman on the ground his naturalization was illegally procured as he had not behaved as a person of good moral character attached to the principles of the Constitution of the United States during the five-year period immediately preceding the filing of his petition and for the additional reason that Sherman did not take the oath of allegiance in good faith. The evidence disclosed that before making his petition and oath he solicited and aided one Antonio Naconovich in illegally becoming a citizen of the United States, knowing him to be illegally in this country. Sherman interposed the defense that he had lived properly in all other respects during said five-year period. The court in entering a judgment of cancellation held the fact that Sherman in other respects behaved as a person of good moral character was not a defense in the action by the government to cancel his certificate.[13]

Luria, in an action to cancel his certificate of naturalization, claimed the right to jury trial. The court[14] denied the defendant had such right, saying the proceedings for cancellation of his certificate of naturalization is a suit in equity and not one at common law; the United States Constitution, Seventh Amendment, did not preserve in such proceeding the right to trial by jury.

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[12] U. S. v. Marafioti, 43 Fed. (Supp.), 45.
[13] U. S. v. Sherman, 40 Fed. (Supp.), 478.
[14] Luria v. U. S., 231 U. S., 9; 58 L. Ed., 101.

XII.

EVIDENCE ADMISSIBLE TO PROVE FRAUD OR ILLEGALITY.

There is a legal presumption that the order admitting the applicant to citizenship is valid. The burden is upon the United States, in cancellation proceedings, to prove its charge of fraud or illegality. The government's evidence is not restricted to offering the record of the naturalization case. Any material evidence relating to fraud or illegality is admissible. The kind and character of evidence that is admissible is discretionary with the court. It is best shown by reference to evidence admitted in actual denaturalization cases.

Subsequent acts and declarations of the defendant have been admitted to prove that at the time of his naturalization the applicant deceived the naturalization court with respect to his belief in organized government and his adherence to the principles of the Constitution.[1]

Evidence has been admitted to prove that the defendant was, at the time of his naturalization, a member of the Industrial Workers of the World; such proof, as the court said, showed the applicant was not in his heart attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.[2]

Evidence has been received by the court to show the defendant's state of mind at periods subsequent to his naturalization, particularly during the World War.[3] Acts, circumstances, statements and utterances after naturalization have been admitted in evidence to show

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[1] Luria v. U. S., 231 U. S., 9; 56 Law Ed., 101; Glaser v. U. S., 289 Fed., 255; U. S. v. Mickley, 44 Fed. (Supp.), 734.

[2] U. S. v. Swelgin, 254 Fed., 884.

[3] U. S. v. Woerndle, 288 Fed., 47.

what was in the mind of the defendant with reference to the declaration of intention and the oath of allegiance at the time he took the oath.[4]

The court has admitted books and pamphlets which explained the doctrines of Marx, Engles, Lenin and Stalin; witnesses have been permitted to explain the position of the Communist Party with respect to communist ends and communist means. "All this printed material, together with the testimony of the witnesses, may be examined for the purpose of shedding light on the period between 1922 and 1927 when defendant was on probation. In addition the court may note defendant's conduct, as outlined above in order to throw light on his state of mind during the probation period."[5]

The introduction of the manifesto of the American Communist Party, and witnesses testifying as to the Communist Party was held not to be prejudicial[6] when the defendant had already declared himself to be a communist.

In a proceeding[7] to cancel the citizenship of one Schurmann the district court admitted evidence that before and after the declaration of war between the United States and Germany, Schurman frequently praised the attitude of the Germans, defended the sinking of the Lusitania, said he wanted to get over to Germany to be a surgeon in the German hospitals, said that anything Germany did was justified by her right to be supreme, said that America was wrong in entering the war, advised against "waste" of money in buying Liberty bonds, and made other remarks indicating his feelings were with Germany. Also admitted in the case was a book entitled "The War as Seen Through German Eyes", written by

[4] U. S. v. Ebell, 44 Fed. (Supp.), 43.
[5] U. S. v. Schneiderman, 33 Fed. (Supp.), 510, affirmed, 119 Fed. (2d), 500.
[6] U. S. v. Tapolcsanyi, 40 Fed. (2d), 255.
[7] Schurmann v. U. S., 264 Fed., 917.

Schurmann and published by him in 1916, admittedly for propaganda purposes.

In a proceeding to cancel the certificate of one Kramer, evidence was admitted that he had made disloyal remarks subsequent to naturalization, and had said that he would do all he could against the United States, that he favored Germany in the war, that he would help her by sending military information, and that he intended to return to that country.[8]

Letters written during the World War by a naturalized citizen of the United States, born in Germany, in which he criticized American war methods, and used language indicating contempt for the people of the United States, were admitted to prove disloyalty at the time of naturalization.[9]

The admittance of disloyal acts and utterances subsequent to the defendant's naturalization as evidence of original fraud is based upon the presumption that the state of mind of a person at the time of his naturalization is the same as when he subsequently commits disloyal acts or utterances. In some instances it is difficult to satisfy the court that the evidence of subsequent acts and utterances indicate a state of mind at the time of admission to citizenship. The Attorney General and his staff therefore presented to the 77th Congress a bill, H. R. 6250. Section 8 of this bill provides an additional ground for denaturalization, namely: "on the ground that his utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty." This bill passed the House only, and without a record vote.

Evidence of behavior of alien, both before his certificate was granted and thereafter, is competent and admissible as bearing on the question of his morale and his attachment to the Constitution.[10]

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[8] U. S. v. Kramer, 262 Fed., 395.
[9] U. S. v. Herberger, 272 Fed., 278.
[10] Turlej v. U. S., 31 Fed. (2d), 696.

XIII.

EVIDENCE NECESSARY TO PROVE FRAUD OR ILLEGALITY.

The judge, having found that the petitioner is entitled to be admitted as a citizen of the United States of America, signs an order to that effect, which becomes a part of the naturalization record. A certificate of naturalization is given him as evidence of his citizenship. It is this court order which the United States district attorney attacks when he institutes proceedings to revoke and cancel the naturalization certificate. The denaturalization law specifically refers to said "order" when it provides that the United States district attorney shall institute proceedings "for the purpose of revoking and setting aside the **order** admitting such person to citizenship * * *." As the United States is the plaintiff in such proceedings, so the burden is upon the United States to prove that such order was procured by fraud or procured illegally.[1]

There are many court actions, other than denaturalization proceedings, filed each year to vacate and set aside a decree or judgment of a court on the ground that it was procured by fraud or procured illegally. There is nothing new or novel about such a proceeding to revoke and set aside a court order or judgment. Courts granting naturalization have for generations revoked or canceled their own grants or judgments when convinced they were imposed upon or deceived.

A court order or judgment is presumed to be regular in all particulars. There is, therefore, a presumption of validity of each court order admitting a person as a

[1] U. S. v. Schneiderman, 33 Fed. (2d), 510; affirmed, 119 Fed. (2d), 500.

citizen of the United States. All courts seem to agree upon the fact that the burden is upon the United States to sustain its charges that the order and certificate were procured fraudulently or illegally. The courts, however, are not in accord with the degree of proof, particularly when fraud is charged.[2]

Early decisions treat an action filed for the purpose of revoking and setting aside the order admitting a person to citizenship as quasi criminal, requiring proof of fraud virtually beyond a reasonable doubt.

In an action filed in 1921 by the United States against one Sharrock to revoke and set aside an order and cancel the defendant's certificate of United States citizenship, the court in the opinion, says: "To deprive a man of his priceless possession of an inestimable right to American citizenship, there must be full proof. Nothing will warrant cancellation of his grant of citizenship but clear, unequivocal and convincing evidence that in quantity and quality inspires confidence and produces conviction of the truth of the charge virtually beyond reasonable doubt." [3]

The courts recognize that there is a distinction between proceedings to revoke and set aside an order or judgment on the general grounds, and actions when fraud is alleged. The grounds for revoking an order or judgment, other than for fraud are determined upon the preponderance of the evidence. A judgment, apparently regular and valid, will not be revoked or set aside for fraud except upon a clear showing of all the facts necessary to warrant such an action.

In denaturalization proceedings, various degrees of proof, particularly as to fraud, have been established. It seems settled, however, that if the ground of vacating the judgment is fraud, the evidence must be clear and convincing.

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[2] 3 C. J. S., 864.
[3] U. S. v. Sharrock, 276 Fed., 30.

In an action[4] filed by the United States against one Rovin, the court, in its opinion announced that the burden is upon the government to prove fraud by preponderance of the evidence. Fraud is not to be lightly inferred, but must be established by clear and convincing evidence.

In still another action[5] it was charged that the defendant had made false statements and concealed material facts with respect to his marital status, and therefore he had been naturalized by fraud. The court held: "In an action by the United States under the Naturalization Act to cancel defendant's certificate of citizenship on the theory the certificate was fraudulently and illegally procured, burden of proof on the United States did not require the government to establish its case beyond a reasonable doubt, but merely by a preponderance of the evidence."

In another proceeding to set aside the order and cancel the certificate of citizenship of one Der Manelian for fraud, it was held the burden was upon the United States to prove fraud by a preponderance of the evidence.[6] The court, however, held for the defendant on the ground that the court was not satisfied the government had established its case by clear and convincing evidence, nor had it proved by a preponderance of the evidence, the charge of fraud which it had alleged in its petition.

In the Marafioti case,[7] action by the United States to set aside the order and cancel the certificate of citizenship was based on the ground that the certificate had been illegally and fraudulently procured in that the defendant had not been a person of good moral character

[4] U. S. v. Rovin, 12 Fed. (2d), 942.
[5] U. S. v. Zgrebec, 38 Fed. (Supp.), 127.
[6] U. S. v. Der Manelian, 39 Fed. (Supp.), 959.
[7] U. S. v. Marafioti, 43 Fed. (Supp.), 45.

for the five years immediately preceding this admission to citizenship and further he had deceived the court with respect to his lack of good moral character. It was held that the government was not required to establish willful fraud, but it was sufficient to sustain the complaint for the government to prove that the certificate was ille- for the Government to prove that the certificate was illegally procured.

In another recent case [8] the court held that an order of naturalization is not to be lightly set aside unless it is clearly shown by a preponderance of competent evidence that the order and certificate have been secured by fraud or secured illegally.

The United States claimed Marini committed fraud in obtaining his naturalization. The evidence disclosed that the manifest sheet showing the defendant's entry had been altered to show a permanent instead of a temporary entry into the United States. The court denied the cancellation[9] stating: "* * * a proceeding such as this under Section 15 should not be successful unless the fraud or illegality complained of by the government as leading to the order granting of naturalization, and the certificate of citizenship issued in pursuance thereto, be proved by the clearest and most satisfactory evidence * * *."

An action in denaturalization is an equitable proceeding before a judge who is vested with discretionary powers.

Since a cancellation proceeding is equitable in character, and not criminal, the same rules as to burden of proof and weight of evidence apply, as in actions generally to revoke and set aside a judgment.

[8] U. S. v. Ebell, 44 Fed. (Supp.), 43.
[9] U. S. v. Marini, 16 Fed. (Supp.), 963.

XIV.

PRIMA FACIE EVIDENCE OR PRESUMPTION OF FRAUD FROM TAKING PERMANENT RESIDENCE ABROAD.

The denaturalization law declares in part that if a naturalized person shall within five years after such naturalization return to the country of his nativity, or go to any foreign country and take permanent residence therein, it shall be considered prima facie evidence of lack of intention on the part of such person to become a permanent citizen of the United States at the time of filing such person's petition for naturalization and, in the absence of countervailing evidence, it shall be sufficient in the proper proceedings to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained under fraud.[1]

The denaturalization law further provides that if the government offers evidence of the foregoing facts, then it is entitled to a judgment of cancellation unless the defendant offers equally countervailing evidence.

Proceedings were filed to set aside the naturalization certificate of one Joe Grenfeld. The court found the certificate of the consul showing permanent residence by the defendant at Palestine raised a presumption of lack of intention of the defendant at the time of his naturalization to become a permanent citizen of the United States. Grenfeld, by deposition at great length, stated the reasons for his going to Palestine and remaining there, described the strenuous efforts he had made to return to the United States, and stated that at no time had

[1] Sec. 23, 1906 Naturalization Act; Sec. 338, Nationality Act of 1940. Title VIII, Chapter 11, Sec. 738 (c), U. S. Code Annotated.

he intended to reside permanently in Palestine. The court in the opinion [2] called attention to the fact that the evidence submitted by the United States goes no further than to establish a rebuttable presumption which the possesser of the certificate of citizenship is free to overcome, that such presumption arose from the certificate of the consul which was all the evidence the government had presented, and such presumption vanished when confronted with Grenfeld's evidence.

In an action for cancellation instituted by the United States against one Knight,[3] the court in the opinion stated: "The government rested its case entirely upon the presumption arising from the fact of taking permanent residence in a foreign country within five years after naturalization and, having failed to prove the fact which gives rise to the presumption, the court below properly ruled there was a failure of proof."

Thus the court has stated that the government, if it proves the facts set forth in this section by a preponderance of the evidence, is entitled to a judgment of cancellation on the theory that a presumption of fraud in procuring citizenship arises from the permanent foreign residence within five years of naturalization exists. If, however, the government fails to prove that the defendant, within five years after naturalization, returned to the country of his nativity, or went to any other foreign country and took permanent residence therein, the government proceedings should be dismissed.

There is a distinction between loss of citizenship by denaturalization through establishing permanent residence abroad within five years of naturalization, and presumptive loss of citizenship arising from residence abroad. The Act of March 2, 1907, provided: "When any naturalized person shall have resided for two years

[2] U. S. v. Grenfeld, 34 Fed. (2d), 349.
[3] U. S. v. Knight, 299 Fed., 571.

in the foreign state from which he came, or for five years in any other foreign state, it shall be presumed that he has ceased to be an American citizen." It was further provided such presumption may be overcome upon presentation of satisfactory evidence to a diplomatic or consular officer of the United States under rules and regulations promulgated by the Department of State. This presumptive Act of March 2, 1907, has been repealed, but Sections 401 to 410, both inclusive, of the Nationality Act of 1940, entitled "Loss of Nationality", in substance provide how a person who has become a national by naturalization shall lose his nationality as distinguished from presumptive loss of citizenship because of residence abroad.

H. R. 6250 of the last Congress sought to provide for the issuance of Certificates of Cancellation of Citizenship in event a person had violated Sections 401 to 410 both inclusive of the Nationality Act and lost his citizenship as there is no law authorizing the issuance of such certificates. The act passed the House but failed in the Senate.

XV.

CANCELLATION FOR PERMANENT RESIDENCE ABROAD.

The law requires that a person, in order to become a naturalized citizen of the United States must intend, at the time of naturalization, to "reside permanently in the United States." The applicant for citizenship, in his declaration of intention and in his petition for naturalization, is required to declare that he intends to reside permanently in this country. The denaturalization law specifically provides that if a naturalized person shall, within five years after such naturalization, return to the country of his nativity, or go into any other foreign country and set up permanent residence therein, it is prima facie evidence that he did not intend to become a permanent citizen of the United States, and in the absence of countervailing evidence, such as a satisfactory reason for going abroad, his certificate of naturalization may be ordered canceled.

Congress requires Diplomatic and Consular Officers of the United States obtain evidence for the enforcement of this provision of the denaturalization law. "The Diplomatic and Consular Officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those persons within their respective jurisdictions who have been so naturalized and who have taken permanent residence in the country of their nativity, or in any foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to revoke and set aside the order admitting to citizenship and to cancel the certificate of naturalization." (See Section 738c, Title VIII, Chapter 11, U. S. C. A.)

Diplomatic and consular officials have for a number of years procured consents and waivers (see appendix) signed by naturalized citizens who set up a permanent residence abroad within the five-year period. Such naturalized citizen who signs the waiver and consent permits the court in denaturalization proceedings to enter a judgment canceling his certificate of naturalization. The government is saved considerable time and money when the necessity of a court hearing is thus obviated.

A case of this type of cancellation was decided by the Supreme Court in 1912. One Luria, born in Wilma, Russia, in 1865 came to New York in 1888. He entered a medical college and was graduated in 1893. He was naturalized in July, 1894. The following month he sought and obtained a passport from the department of state and in November, 1894, left the United States for the Transvaal, South Africa, arriving there in December. From that date to the date of the hearing on proceedings to cancel his certificate of naturalization in December, 1910, he resided and practiced his profession in South Africa. His only return to the United States was for four or five months in 1907 for the temporary purpose of taking a post-graduate course in a medical school in New York. When entering the school for the post-graduate course, he gave his address as Johannesburg, South Africa. The district court found and held that, within a few months after receiving his certificate of citizenship, Luria went to and took up permanent residence in South Africa; that this, under Section 15 of the Act of 1906, constituted prima facie evidence of a lack of intention on his part to become a permanent citizen of the United States at the time he applied for the certificate. Luria, in his answer, claimed he went to the Transvaal in promotion of his health. He, however, did not appear at the hearing for cancellation of his certificate, nor did he submit his deposition, although he

had ten months' notice of the date of the hearing. The Supreme Court [1] in its opinion stated it was not intended that naturalization could be secured by an alien whose purpose was to escape the duties of his native allegiance without taking upon himself the duties of citizenship in the United States, or by one whose purpose was to reside permanently in a foreign country and to use his naturalization as a shield against the imposition of duties there, while by his absence he was avoiding his duties here. The court further found that naturalization secured with such a purpose was wanting in one of its most essential elements—good faith on the part of the applicant; that such naturalization involved a wrongful use of a beneficial law. The court held that at the time Luria became a citizen of the United States by naturalization he did not intend to reside permanently in the United States, and that his certificate of naturalization should be canceled.

There were 892 cases of this kind referred by the State Department and transmitted by the Department of Justice to appropriate United States attorneys with direction to institute suits to cancel certificates of citizenship for the fiscal year ending June 30, 1939. Decrees of cancellation were entered by the district courts in 687 of these cases. In the following year 734 cases of this type were referred and transmitted. Decrees of cancellation were entered by the courts in 690 of the residence abroad cases. For the next year ending June 30, 1941, there were 837 cases of this type referred and transmitted. The report of the Attorney General does not distinguish between the number of cases of this type wherein certificates were cancelled, the report stating a total of 1,055 cases of all types were concluded by decrees cancelling certificates of naturalization.

The court found, in an action for cancellation [2] against

[1] Luria v. U. S., 231 U. S., 9, 58 L. Ed., 101.
[2] U S. v. Patterson, 4 Fed. (Supp.), 693.

one Patterson that the evidence was insufficient to show that the defendant did not intend to become a permanent citizen when applying for his certificate of citizenship. The court dismissed the government's action, holding that the naturalized citizen's resumption of residence in the land of his nativity was immaterial provided that he intended to become a permanent citizen of the United States at the time when he applied for a certificate of naturalization.

The court also held against the government[3] and found in favor of one Yatsevitch, a Russian scientist of high character. After naturalization, he went abroad for his employer, where he remained for five years, the court holding that he had not abandoned his intention to make the United States his permanent domicile.

In an action[4] filed against one Knight for an order of cancellation, it appears that he left the United States within one year after naturalization and remained abroad for twenty years. The trial court refused to order cancellation of his certificate holding there was no evidence of present intention on the part of Knight at the time of his naturalization to go abroad.

In another case[5] the court declined to cancel the certificate of naturalization on the ground of fraud, even if the evidence disclosed that the defendant within five years after naturalization took permanent residence in his native country.

One Louis Jurick was naturalized in 1899. Two years later he went to Cuba to live. He spent most of his life in Cuba. A suit to cancel his certificate was then filed. Jurick offered evidence that he had been registered as an American citizen at the American consulate at Cuba and certified to his American citizenship in all his contracts and dealings in Cuba, that he did not at any time

[3] U. S. v. Yatsevitch, 33 Fed. (2d), 342.
[4] U. S. v. Knight, 291 Fed., 129, affirmed, 299 Fed., 571.
[5] Perrone v. U. S., 26 Fed. (2d), 213, reversing 21 Fed. (2d), 583.

exercise any Cuban political functions. He voted by absentee ballot in New York. The court held[6] against the government, stating that Jurick "had offered overwhelming evidence that he never intended to give up his residence in the United States."

In an action[7] against one Ellis the court found Ellis did not in good faith intend to become a permanent citizen and that he made his oath of allegiance with a mental reservation to that effect. An order of cancellation was entered on the ground that he had procured his citizenship by fraud.

The certificate of citizenship granted to the wife of one Martin was cancelled upon evidence showing that she did not intend to remain in the United States unless her alien husband could be persuaded to emigrate to this country.[8]

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[6] U. S. v. Jurick, 16 Fed. (Supp.), 32.
[7] U. S. v. Ellis, 185 Fed., 546.
[8] U. S. v. Martin, 10 Fed. (2d), 585.

XVI.

CANCELLATION FOR KNOWINGLY PROCURING NATURALIZATION IN VIOLATION OF THE LAW.

The naturalization law expressly states that a person may be naturalized as a citizen of the United States in the manner and under the conditions set forth in the act, and not otherwise. As a further means of assuring strict compliance with the law in naturalization proceedings, and to prevent fraud or illegality in acquiring citizenship by naturalization, Congress included penal provisions in the law, the violation of which in each instance constituted a crime. The denaturalization law provides that in event a person is convicted of knowingly procuring naturalization in violation of the naturalization law, the court in which such conviction is had shall revoke the final order admitting such person to citizenship and shall declare the certificate cancelled. Section 738(e) of the denaturalization law specifically provides that "When a person shall be convicted under this act of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be cancelled. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication."

This provision of the 1940 Nationality Act was originally contained in Section 23 of the Naturalization Act of June 29, 1906. There appears to be no reported cases of such cancellation for knowingly procuring naturalization in violation of the law. One court, however, has

recognized it to be the duty of the court upon such conviction to enter an order of cancellation.

In an action against one Sourino the government indicted Sourino on three counts, charging the making of a false affidavit, the giving of false testimony, and the fraudulent procurement of naturalization. This trial resulted in an acquittal of the defendant. Action was then filed to cancel his certificate of naturalization on the ground the same had been fraudulently and illegally procured. The defendant plead res judicata. The court found the acquittal in criminal prosecution for fraudulent procurement of naturalization is not res judicata of issues of whether certificates of naturalization had been fraudulently procured or to constitute an estoppel in subsequent proceeding for cancellation of naturalization certificate, since proceeding to cancel the certificate was not the same cause of action as the criminal prosecution. In the opinion[1] the court recognizes the right of a court to cancel a certificate of naturalization upon conviction of knowingly violating the naturalization law by stating "The fact that naturalization may be revoked as an incident to conviction of fraudulent or illegal procurement thereof does not give the required identity to the two proceedings or to the things previously sought to be obtained by them; nor does it appear that any issue here in controversy was adjudicated in the criminal prosecution where the sole issue was the bar of the statute of limitations."

[1] Sourino v. U. S., 86 Fed. (2d), 309. Writ of Certiorari denied, 300 U. S., 661; 81 L. Ed., 869.

XVII.

EFFECTS OF DENATURALIZATION ON FUTURE RIGHTS AND ON DERIVATIVE CITIZENSHIP.

A person whose certificate of citizenship is cancelled becomes an alien,[1] and must comply with the laws affecting aliens. If he was a national of a country with which this country is at war he becomes an alien enemy and is subject to this country's laws and executive orders governing alien enemies. He may be deported if illegally in this country.

If, however, such person is lawfully in this country and otherwise eligible for citizenship, he is not barred, by reason of denaturalization, from again applying for citizenship under the naturalization laws. In entering an order or judgment of cancellation, a court included therein the proviso "decree will be entered accordingly without prejudice to the filing of a new application according to law." [2]

Denaturalization is a judicial function; deportation an administrative one. In cancelling the certificate of one Perez, the court announced: "On cancellation of certificate of naturalization, the court has no right to make recommendation to the Department of Labor as to whether holder of the certificate should be deported." [3]

The Attorney General of the United States faced the question of the effect of denaturalization upon derivative citizenship when a wife and minor child of one Pietio Moriani sought to enter the United States as nonquota immigrants. It appeared that Moriani was naturalized in 1919. Before five years had elapsed after his

[1] See Yale Law Journal, May, 1942, page 1222, "Cancellation of Citizenship Because of Communism," by Bernard G. Walkin.
[2] U. S. v. Marcus, 1 Fed. (Supp.), 29.
[3] U. S. v. Perez, 29 Fed. (Supp.), 888.

naturalization he returned to Italy, the land of his nativity. Thereafter he married and the child was born in 1923. Moriani's certificate of citizenship was cancelled in 1925 and in 1926 he returned to the United States as an alien and was again naturalized in 1929. He then sought to bring his wife and minor child to the United States as non-quota immigrants, contending they derived United States citizenship by his first naturalization. In an opinion in July, 1931, to the Secretary of Labor, the Attorney General advised the mother and child were not citizens of the United States, and could not enter as non-quota immigrants.[4]

In the Schneiderman case the trial court entered a judgment of cancellation[5] not only of Schneiderman's certificate of naturalization, but also of all persons who may have derived citizenship through him, the court in the judgment stating that Schneiderman and all others claiming by, through or under his decree of naturalization, are divested of their status of American citizenship and are restrained and enjoined from setting up, claiming or exercising any rights, benefits, privileges, immunities or protection as citizens of the United States under Schneiderman's decree of naturalization.[6]

The Naturalization Act of 1906 is silent as to the effect of denaturalization upon derivative citizenship.

The Nationality Act of 1940 protects the derivative citizenship of the wife and minor children of a person whose certificate of citizenship is cancelled[7] on the ground the certificate of naturalization was illegally procured, or on the ground of fraud. The Nationality Act does not protect derivative citizenship in cases of cancellation of the certificate of the father and husband (a) prior to January 13, 1941, the effective date of the Na-

[4] 36 Attorney General Opinions, 446.
[5] Schneiderman v. U. S., 33 Fed. (Supp.), 510.
[6] See Appendix.
[7] Sec. 333 (d), Nationality Act of 1940, Title VIII, Chapter 11, Sec. 738 (d).

tionality Act, (b) on the ground of actual fraud, (c) in the case of a person convicted of knowingly procuring naturalization in violation of the law, and (d) in the case of a person who within five years of naturalization takes permanent residence in a foreign country.

An alien minor child may derive American citizenship through the naturalization of the parents. An alien wife, prior to the act of September 22, 1922, could derive American citizenship through marriage to an American citizen, or through the naturalization of her alien husband. What effect, then, would the cancellation of this certificate of naturalization of the parent and husband have upon the derivative citizenship of minor children, or wife?

Congress did not, in the Nationality Act of 1940, apparently approve a prior decision of the United States District Court of Rhode Island when the court specifically found derivative citizenship shall not be lost in the case of the cancellation of the father's certificate for establishing permanent residence abroad within the five-year period. The question of effect of derivative citizenship was raised in a proceedings of one Maria Findon, a native of Glasgow, who filed her petition for naturalization in the District Court of Rhode Island. She presented as her two witnesses, John and Costa Konfondakis. The law requires a petitioner for naturalization to present in support of her right to be naturalized two witnesses who are citizens of the United States. The government objected to the naturalization of Maria Findon on the ground that her two witnesses were not citizens of the United States. It appeared that Selias Konfondikas, the father of John and Costa, was naturalized in 1893. Within five years thereafter he went abroad, set up permanent residence there and did not return to the United States. He married abroad and his two sons, John and Costa, were born in Smyrna, Asia. Both sons before reaching eighteen years of age were taken before the United

States consul at Smyrna and were registered as children of citizens of the United States. Both obtained identification certificates and took the oath of allegiance to the United States. Later both entered this country as citizens of the United States and since arriving here have exercised the privilege of citizens. The United States thereafter filed a certificate to cancel the father's certificate of naturalization on the ground that he had obtained his certificate of citizenship by fraud because within the five-year period he went abroad and set up permanent residence there. His certificate was ordered cancelled on the ground of fraud. The effect of denaturalization of the father upon the derivative citizenship of his two sons, John and Costa, was thus presented to the naturalization court in the proceedings of Maria Findon for naturalization. The court held that John and Costa Konfondikas were citizens of the United States and that the decree cancelling the naturalization of the father did not deprive the sons of their derivative citizenship as the effect of cancellation of a certificate should be so interpreted as to avoid harsh, unreasonable application in the absence of fraud.[8] It should be noted this decision is directly contrary to the apparent intention of Congress, as expressed in the Nationality Act of 1940, in that the Nationality Act of 1940 does not protect derivative citizenship of persons who acquire citizenship through one whose certificate is cancelled by going abroad within five years after naturalization for the purpose of and in establishing permanent residence in a foreign country.

It would therefore appear derivative citizenship is not affected in case the certificate of naturalization of the person from whom such citizenship is obtained is cancelled (a) on the ground it was procured by fraud, except actual fraud, and (b) on the ground such certificate was procured illegally; that in all other cases, that is to

[8] In re Findan, 4 Fed. (Supp.), 189 (1933).

say, when the certificate of naturalization of the person from or through whom derivative citizenship is obtained was cancelled (a) on the ground of actual fraud, (b) on the ground the certificate was cancelled by reason of the fact the naturalized person, within five years after naturalization, went abroad, took permanent residence in either the country of such person's nativity, or in any other foreign country, and (c) when a certificate was cancelled because a person shall be convicted under the Nationality Act of knowingly procuring naturalization in violation of the law.

XVIII.

THE ALIEN IN WAR TIME.

(A) The Alien Enemy Act.

The "Alien Enemies Act" passed by Congress dates back to July 6, 1798. This law in substance provides that whenever there is a declared war between the United States and any foreign nation or government, or invasion of this country is threatened by any foreign nation or government, and the President makes public proclamation of the event, "* * * all natives, citizens, denizens or subjects of the hostile nation or government being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. * * *."[1]

The law further provides that the President, by his proclamation shall direct the conduct to be observed on the part of the United States towards such aliens, the manner and degree of restraint or removal to which the aliens shall be subject, upon what security their residence shall be permitted. The President is also authorized to establish any other regulations found necessary for public safety.

(B) Presidential Proclamation.

The day following the attack upon the United States by Japan at Pearl Harbor, the President, by authority of the Enemy Alien Act did issue a Proclamation[2] wherein he declared that an invasion had been perpetrated upon the territory of the United States by the

[1] Title 50, Chapter III, Sections 21-24 inclusive U. S. C. A. See Appendix.

[2] Presidential Proclamation dated Dec. 7, 1941. Vol. VI Federal Register Number 239, Dec. 10, 1941.

Empire of Japan; he directed the conduct to be observed on the part of the United States towards all citizens and subjects of the Empire of Japan, being fourteen years of age and upward and within the United States, further declaring and establishing regulations governing such aliens which he found necessary for public safety.

War inevitably brings about such proclamations, regulations and instructions affecting aliens as well as alien enemies. An "alien" is a person residing here who is not a citizen of the United States. He may have taken out his "first papers". He may even have filed his petition or "second papers" for final citizenship, but until he is sworn in as a citizen, he is still an alien. An "alien enemy" is one who is still a citizen or subject of a nation with which this country is at war, of Germany, Japan or Italy, for example. There are in the United States five million aliens, of which approximately one million, one hundred thousand are alien enemies.

(C) Presidential Rules of Conduct and Regulations Governing Alien Enemies.

The Presidential Proclamations of December 7 and 8, 1941,[3] include both rules of "Conduct To Be Observed by Alien Enemies" and "Regulations" which the President found were necessary for public safety. The Rules and Regulations of December 7 and 8 apply to all natives, denizens or subjects of the Empire of Japan, Germany and Italy, being of the age of fourteen years and upwards, who shall be within the United States, or within any territory in any way subject to the jurisdiction of the United States and not actually naturalized. The rules of conduct to be observed by alien enemies in part are as follows: "All alien enemies are enjoined to preserve the peace towards the United States and to refrain

[3] For conduct to be observed by alien enemies and regulations declared and established for public safety, see presidential proclamation in appendix.

from crime against the public safety, and from violating the laws of the United States and of the States and Territories thereof; and to refrain from actual hostility or giving information, aid or comfort to the enemies of the United States or interfering by word or deed with the defense of the United States or the political processes and public opinions thereof; and to comply strictly with the regulations which are hereby or which may be from time to time promulgated by the President.

All alien enemies shall be liable to restraint, or to give security, or to remove and depart from the United States in the manner prescribed by Sections 23 and 24 of Title 50 of the United States Code, and as prescribed in the regulations duly promulgated by the President."

The regulations which the President found necessary to establish and declare for public safety, among other things prohibited such alien enemies from entering or being found in certain parts of the United States, including the Canal Zone, the Hawaiian Islands, the Philippine Islands and restricted areas thereafter prescribed by the Secretary of War. It also provided that aliens of enemy nationalities are forbidden to have any or all of the following articles and equipment in their possession: radio transmitters, short wave radio receiving sets; hand cameras; weapons or implements of war or their component parts; ammunition of all kinds; bombs; explosives or materials used in the manufacture of explosives; signal devices; codes or ciphers; papers, documents or books in which there may be invisible writing; drawings, maps or graphical representation of any military or naval installations or war equipment.

(D) Regulations of the Attorney General.

Pursuant to the authority vested in the President, he charged the Attorney General with the duty of executing all the regulations contained in the proclamation regarding the conduct of alien enemies within the continental

United States, Puerto Rico, the Virgin Islands and Alaska. The Attorney General was specifically directed to cause the apprehension of such alien enemies as in his judgment are subject to apprehension or deportation under the regulations. In carrying out such regulations the Attorney General is authorized to utilize such agencies, officers and departments of the United States and of the several states, territories, dependencies and municipalities and of the District of Columbia, as he may select for the purpose. Pursuant to this authority, the Attorney General promulgated regulations from time to time governing alien enemies.

(E) Certificates of Identification for Alien Enemies.

The Attorney General on January 22, 1942, by authority of Presidential Proclamation, promulgated "Regulations Governing Certificates of Identification for Aliens of Enemy Nationalities."[4] All aliens of enemy nationalities fourteen years and upward, who were German, Japanese or Italian citizens or subjects in the United States, including Puerto Rico, the Virgin Islands and Alaska, or persons who were stateless but who at the time at which they became stateless were German, Italian or Japanese citizens or subjects, were required to apply to their respective Postmasters prior to February 28, 1942, for Certificates of Identification. Such persons who had not reached the age of fourteen at that time were required, upon reaching that age, to immediately make application for such Certificate of Identification. To obtain such certificate, the alien, among other things, was required to fill out and sign the forms prescribed by the Attorney General for said purpose, produce his alien registration receipt card issued pursuant to the Alien Regis-

[4] Francis Biddle, pursuant to and by virtue of authority granted by the Proclamation of the President of the United States, dated January 14, 1942, requiring all aliens of enemy nationality to apply for Certificates of Identification in compliance with Rules and Regulations of the Attorney General.

tration Act. At the earliest practical date after the filing of the application, a Certificate of Identification was delivered to applicant in accordance with instructions issued by the Post Office Department. The alien was required at all times to carry his Certificate of Identification with him and at the request of a police officer, or other authorized government officer, show his certificate of identification.

In case any alien refuses to appear and obtain the Certificate of Identification his case is referred to the respective United States attorney for action, possible internment for the duration of the war may result. Whenever the holder of a Certificate of Identification changes his name under legal authority, his residence address, or his place of employment, he must give written notice of the changes immediately to the Alien Registration Division of the Immigration and Naturalization Service and to the Federal Bureau of Investigation at the office shown in the holder's Certificate of Identification. Statements of change of address or change in place of employment must also be submitted to the nearest United States attorney at least seven days before such changes take place.

The alien registration receipt card required to be produced by the applicant for his Certificate of Identification was issued pursuant to the Alien Registration Act of June 28, 1940,[5] which provides in substance it shall be the duty of every alien now or hereafter in the United States who is fourteen years of age or older, to apply for registration and to be finger-printed. The registration and finger-printing is carried on by the Immigration and Naturalization Service, Department of Justice, with the cooperation of the Post Office Department. Postmasters are required to forward promptly to the Department of Justice the registration and finger-print record of every alien registered and finger-printed by him. Approximately five million aliens were registered and finger-printed.

[5] Title 8, Chapter 10, Secs. 451-460, U. S. C. A.

The Attorney General amended his regulations governing Certificates of Identification for aliens of enemy nationality, effective October 12, 1942, so that Italian aliens are no longer classified as alien enemies and are not required to apply for and procure and carry such Certificates of Identification.[6]

Any alien of enemy nationality who fails to comply with the regulations governing Certificates of Identification is subject to apprehension, detention and internment for the duration of the war, and any alien of enemy nationality who shall aid, abet, counsel, command, induce or procure any other alien of enemy nationality to fail to comply with such regulations, is subject to apprehension, detention and internment for the duration of the war.

(F) Regulations of the Attorney General Controlling Travel and Other Conduct of Aliens of Enemy Nationality.

The regulations of the Attorney General[7] place certain restrictions upon aliens of enemy nationalities and their activities. Such enemy alien is permitted to travel within the limits of the municipality, locality or community in which he resides, or has his regular place of business and is permitted to engage in his usual activities. If he wishes to make a trip outside his home community, he is required to file a statement with the United States attorney in his district at least seven days prior to his departure. The alien may not travel unless he has a copy of the statement in his possession bearing the endorsement of the United States attorney. No alien of enemy nationality is permitted to make any flight of any nature in an airplane or other air craft nor can he use, operate or possess radio transmitters, short wave receiv-

[6] Circular No. 3589, Supplement No. 13, Oct. 23, 1942, Edward J. Ennis, director Alien Enemy Control Unit, Department of Justice.

[7] Dated February 5, 1942, pursuant to the Proclamations of the President of December 7 and 8, 1941, and January 14, 1942, covering the conduct of aliens of enemy nationalities.

ing sets, cameras, firearms and other articles specified in the President's Proclamations of December 7 and 8, 1941.

This regulation was amended by the Attorney General, effective October 19, 1942, exempting Italian aliens from the operation of such regulations. By the action of the Attorney General taken with the approval of the President, all Italian aliens in the United States were no longer to be treated as alien enemies and were free to carry on their usual activities of residents of the United States who are not classified as alien enemies. Italian nationals now travel without restriction throughout the United States, and it is not necessary for them to obtain travel permits to visit their families, relatives, business associates and friends. They are also permitted to visit members of their families in the United States armed forces for which they needed permission prior to the effective date, October 19. The Italian aliens can change their place of employment, or their occupation, and can likewise move their residence to any part of the United States without permission.[8]

(G) Property and Other Rights.

Aliens of enemy nationalities living in the United States are not, except a relative few, subject to restrictions on their property and business and may continue to conduct their business as before the declaration of war.[9]

An alien of enemy nationality may inherit property in the United States during the war, in accordance with the laws of the respective states wherein the estate is being administered. He may execute a deed of conveyance of real property or lease real property to or from other persons. He may execute a power of attorney or other

[8] Circular No. 3737, Oct. 12, 1942, issued by Edward J. Ennis, Director Enemy Control Unit, Department of Justice.

[9] Note: Trading with Enemy Alien Act and Executive Order No. 8389, Apr. 10, 1940, as amended, known as the freezing order, cover such exceptions.

legal papers. He may accept payment of an insurance policy and may pay premiums due on such policies. He may engage in any kind of business which he would ordinarily transact, subject only to restrictions applying to alien enemies. An alien enemy may testify in court as a witness. He is permitted to hold office, attend meetings or have membership in lodges, clubs, fraternal orders, or other organizations which consist chiefly of persons of German, Italian or Japanese extraction. He may subscribe to a foreign language newspaper and may speak in foreign languages or write letters in foreign languages. It is permissible for an alien to have a telephone in his home and make local and long distance calls. He may possess and use a typewriter He is permitted to hold positions on the editorial staff of newspapers and other publications and may write for such publications. All of the foregoing are rights possessed generally.

(H) The Alien Enemy Hearing Board.

The Attorney General, under authority granted him by the President, established Alien Enemy Hearing Boards in all sections of the country.[10] Each Board consists of three members appointed by the Attorney General, all of whom are citizens of the United States and residents of the district in which the Board is convened. The Board is empowered to make recommendations to the Attorney General as to the internment, release or parole of enemy aliens based upon the evidence and information submitted. The Board has power to interrogate the alien enemy and generally to conduct a hearing.

Alien enemies apprehended by the Federal Bureau of Investigation and turned over to the Immigration and

[10] There is an Alien Enemy Hearing Board in each of the nation's 85 judicial districts, and several Boards in judicial districts which are heavily populated by aliens. Attorney General Francis Biddle announced March 18, 1943, 4163 persons of enemy alien nationality arrested by the F. B. I. had been interned, 3257 were paroled, 1151 released outright since December 7, 1941 and 500 cases remained to be decided.

Naturalization Service for temporary custody, are given hearings before the Board. The United States attorneys of the respective districts, assisted by the Naturalization Service and special agents of the Federal Bureau of Investigation with respect to matters relating to such Service and such Bureau of Investigation, present each case to the Board and supervise the hearings. The case is heard as soon as practicable after the receipt of information from the Federal Bureau of Investigation and the apprehension of the alien enemy, if possible, within ten days after his apprehension. This hearing, while not a matter of right, is granted in order to give the alien enemy an opportunity to present information as to his nationality, age, loyalty, activities and other matters upon which his final disposition will be determined. A relative or friend, or other advisor may attend the alien enemy at the hearing. The alien may submit evidence in his own behalf, when his case comes up before the Board, either in the form of affidavits or through witnesses. The Board determines the number of witnesses that should be heard in each case. At the conclusion of the hearing, the Board recommends internment, release, or release on parole. The recommendation of the Board, together with the information upon which it is based, is reviewed by the Alien Enemy Control Unit, Department of Justice, and final disposition of each case is made by the Attorney General. If the Attorney General determines that the alien enemy should be interned, he is delivered into the custody of the War Department, which arranges his subsequent detention and internment for the duration of the war. If the Attorney General determines a particular alien enemy is to be paroled, the necessary arrangements for his release on parole is made by the Immigration and Naturalization Service. If an alien is placed on parole he is required to report at certain intervals to a citizen sponsor and also to the nearest parole officer of the Immigration and Naturalization Service.

Any infraction of parole requirements may result in immediate internment for the duration of the war. If a paroled alien violates a condition of the parole, the Federal Bureau of Investigation is immediately notified which has the responsibility of his apprehension.

(I) Employment.

An alien of enemy nationality may continue working at the same job he had before the United States entered the war. There is, however, one restriction and that is in the case of secret, confidential or restricted government contracts and in the case of contracts for aircraft parts or accessories. The employer must secure permission from the head of the federal department concerned for the employment of aliens. In event an alien of enemy nationality changes his place of employment, he must give notice to the United States attorney in the district of his residence of his intention to change his place of employment at least seven days before the change takes place. In filing such notice he is required to submit a statement in writing giving full particulars. As soon as he has changed his place of employment, he must also give notice of the change to the Alien Registration Division of Immigration and Naturalization Service and to the Federal Bureau of Investigation at the office shown in his Certificate of Identification. The alien is not, however, required to obtain permission for changing his employment, but must submit the foregoing statement in writing at least seven days before he actually makes such change of employment. The government even permits an alien of enemy nationality to work in factories which manufactures short wave transmitters, cameras, firearms, or other articles designated by the regulations as prohibited articles.

(J) Regulations by Secretary of War Governing Enemy Aliens.

The President of the United States, by virtue of his Proclamations of December 7 and 8, charged the Secretary of War with the duty of executing regulations regarding the conduct of enemy aliens in the Canal Zone, the Hawaiian Islands and the Philippine Islands. The President, by Executive Order of February 19, 1942, authorized the Secretary of War to prescribe military areas from which any or all persons might be excluded. This order superseded designations of prohibited and restricted areas by the Attorney General under said Proclamations of December 7 and 8 and superseded the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas. The War Relocation Authority was created by the Office of Emergency Management by Executive Order.[11]

The authority was established to provide for the removal from designated areas of persons whose removal is necessary in the interest of national security and for their relocation, maintenance and supervision. The areas are designated from time to time by the Secretary of War or appropriate military commanders under authority of executive order.[12] The Director is authorized (a) to accomplish all necessary evacuation not undertaken by the Secretary of War or appropriate military commander provided for the relocation of such persons in appropriate places, provide for their needs in such manner as a supervisor authorizes. By virtue of this order, Lieutenant General John L. DeWitt, Western Defense Commander, for example, established a military zone from which all Japanese, American citizens as well as aliens,

[11] Ex. Order 9102 of March 18, 1942.
[12] Ex. Order 9066 of Feb. 19, 1942.

must move. This zone started from the Canadian border and extended south a distance of 2,000 miles, the area comprising about two-thirds of Washington, two-fifths of Oregon and a large portion of California and the southern two-fifths of Arizona. A large number—100,000 or more—of Japanese and American citizens of Japanese descent were moved from the area thus established. Other military zones were established by the Secretary of War.

(K) Alien Enemies, if Otherwise Eligible, May Be Naturalized.

The Nationality Act does not prohibit an alien enemy, as such, from becoming a naturalized citizen of the United States during war time. A Japanese is not eligible for naturalization at any time by reason of race restriction. A German or an Italian is of a race eligible for naturalization. A German or Italian alien may be naturalized if on December 8, 1941, (1) he had made a declaration of intention or first papers at least two years before that date, or (2) was entitled to apply for citizenship without making a declaration of intention, as for example, the husband or wife of an American citizen, or (3) he had his petition for naturalization pending in court. The Regulations of the Naturalization Service provide, however, that all applications of German and Italian aliens be thoroughly investigated by the Immigration and Naturalization Service in view of war conditions. The Service is given 90 days in which to conduct an investigation and to submit an objection to the court if it feels that the individual case warrants it. If objection is entered by the Service, naturalization cannot take place until the objection is withdrawn. An alien of German or Italian nationality, whose case does not conform to any of the three conditions listed above, may become naturalized as a citizen of the United States during war time if, for the purposes of naturalization the alien applies for

and is granted an exception from the classification of "alien enemy." An Executive Order of the President, dated March 21, 1942, excepts from the classification of "alien enemy" applicants for American citizenship whom the Attorney General, after investigation, certifies as loyal to the United States.

There is nothing to prevent an alien of German or Italian nationality who is eligible for naturalization, from filing his first or second papers at any time during the war. The naturalization procedure is the same as it was before the United States entered the war, except for the fact that aliens of German or Italian nationality whose final petition for naturalization are pending in court, must now allow a period of time for investigation before final naturalization is granted.[13]

(L) Alien Enemies May Prosecute Court Actions.

An action for the wrongful death of a husband in favor of his widow, a citizen of Germany and therefore an alien enemy, was instituted in an Ohio court. The defendant claimed an alien enemy may not proceed with such court action during war time. The court, however, held [14] the action could be prosecuted in a state court of Ohio and need not be delayed until peace had been declared between the United States and Germany. The court cites with approval a statement of the present Attorney General of the United States, concluding:

"Accordingly it is important to note that no native, citizen or subject of any nation with which the United States is at war and who is a resident in the United States is precluded by federal statute or regulations from suing in federal or state courts." [15]

Kunezo Kawato, born in Japan, became a resident of the United States in 1905. On April 15, 1941, he filed a

[13] Title 8, Chapter 11, Section 726, U. S. C. A.
[14] Leiberg, Admx. v. Vitangeli, 70 O. Ap., 479.
[15] Statement of Attorney General Biddle, Jan. 31, 1942, Commerce Clearing House, War Law Service, Par. 9703. See also 137 A. L. R., 1347.

libel in admiralty against the vessel Rally in a United States District Court of California for wages he claimed due him and for injuries he claimed he sustained while engaged in the performance of his duties. Motion was filed to abate the action by reason of the state of war existing between the United States and Japan.

The Supreme Court of the United States held[16] that resident enemy aliens are precluded from bringing suit in the courts of this country only so far as this is necessary to prevent the use of our courts to accomplish a purpose which might hamper the war effort or give aid to the enemy.

(M) Federal Bureau of Investigation.

The Federal Bureau of Investigation has charge of all investigations relating to the internal security of the United States, including violation of various laws relating to espionage and sabotage. The Bureau carries on activities in the field of counter espionage. It also examines into violations of other statutes dealing with national defense, such as Foreign Agents Registration Act, the Export Control Act, and other criminal statutes in this general field.

On September 6, 1939, J. Edgar Hoover, Director of the Federal Bureau of Investigation, announced the following statement made by the President of the United States:

"The Attorney General has been requested by me to instruct the Federal Bureau of Investigation of the Department of Justice to take charge of investigative work in matters relating to espionage, sabotage, and violations of the neutrality regulations.

This task must be conducted in a comprehensive and effective manner on a national basis, and all information

[16] Ex Parte Kumezo Kawato, — U. S., —, 87 L. Ed., 94.

must be carefully sifted out and correlated in order to avoid confusion and irresponsibility.

To this end I request all police officers, sheriffs, and all other law enforcement officers in the United States promptly to turn over to the nearest representative of the Federal Bureau of Investigation any information obtained by them relating to espionage, counter espionage, subversive activities and violations of the neutrality laws."

The Director of the Federal Bureau of Investigation was authorized by Presidential warrants signed by the Attorney General to, and the Agents of that Bureau did, apprehend and detain a large number of specified alien enemies whose activities had been investigated by the Bureau and whom the Attorney General deemed dangerous to the public peace and safety of the United States. United States attorneys are directed by the Attorney General and do refer all information regarding the activities of alien enemies in their respective districts to the nearest office of the Federal Bureau of Investigation, the information is developed by the Federal Bureau of Investigation. Its survey is then presented to the United States attorneys, who in turn forward the same to the Attorney General. If the Attorney General recommends arrests, the matter is again referred to the Federal Bureau of Investigation to apprehend such alien enemies. It is the responsibility of the Federal Bureau of Investigation to apprehend those who in time of war pass surreptitiously from the enemy territory to the United States, such as agents of enemy aliens who enter the United States with explosives intended for the destruction of war industries and supplies.

The case of Herbert Hans Haupt and others is an example; Haupt and his associates, "all were taken into custody in New York or Chicago by agents of the Federal Bureau of Investigation." [17]

When Lieutenant General DeWitt established a mili-

[17] Ex Parte Richard Quirin, et al., 87 L. Ed., 1.

tary zone on the west coast and deemed that certain persons, both alien enemies and citizens, that is "all who are suspected of espionage, sabotage, fifth column or other subversive activities" be apprehended, it devolved upon the agents of the Federal Bureau of Investigation to a very great extent to apprehend such persons.

Agents of the Federal Bureau of Investigation investigate all cases of fraud perpetrated by aliens upon the courts in obtaining naturalization and it is chiefly upon the information thus obtained that the United States attorneys filed proceedings of denaturalization upon such persons.

(N) United States Attorneys.

The powers and duties of a United States attorney are defined by statute, by Presidential Proclamations and Regulations promulgated by the President and the Attorney General. The duties are numerous and generally cover both civil and criminal proceedings wherein the United States of America is a party.

It is the duty of the United States attorney to file in the name of the United States all proceedings to revoke and set aside orders and cancel certificates of naturalization when the same have been obtained by fraud or obtained illegally. He is the only one vested by law with such power. Specifically and during war time the duties of the United States attorneys are increased over and above those enumerated by statute, [18] by regulations promulgated by the President and by the Attorney General.

The United States attorney of the judicial district represents the government in all hearings before Alien Enemy Hearing Boards. In all cases involving the apprehension of alien enemies, the United States attorney serves as the legal representative of the agents of the Federal Bureau of Investigation and the members of the Immigration and Naturalization Service. It is the United

[18] Title 28, Chapter 15, Sec. 481-530, U. S. C. A.

States attorney who acts directly for the Attorney General in the arrest or apprehension and final disposition of alien enemies. He is also responsible for the enforcement of the Alien Registration Act, the Alien Certificate of Identification Act, the regulations of the Attorney General controlling the travel and other conduct of aliens of enemy nationality. It is with the United States attorneys the aliens of enemy nationality file their statements for the purposes of travel, and in general it is the United States attorney who is counsel for every governmental officer and agency wherein legal proceedings, including aliens or alien enemies, are involved.

APPENDIX.

In the Southern Division of the United States District Court for the Northern District of California.

No. 21257-R.

United States of America,
Petitioner,

vs.

William Schneiderman, Also Known as Velvel Schneiderman,
Respondent.

Complaint.

The United States of America, by Frank J. Hennessy, United States attorney for the Northern District of California, brings this complaint under the provisions of Section 15 of the Act of Congress approved June 29, 1906 (34 Stat., U. S. L., Part 1, page 696), against William Schneidermann, also known as Velvel Schneiderman, and complains and says:

I.

That on the tenth day of June, 1927, the respondent, William Schneiderman, also known as Velvel Schneiderman, a native and former citizen of Russia, and a resident of the state of California, appeared before the United States District Court for the Southern District of California, Central Division, and by decree of said court entered on the tenth day of June, 1927, was then and there admitted and declared to be a citizen of the United States of America, and a certificate of citizenship numbered 2608994 was thereupon issued to him by said court as documentary evidence of said naturalization.

II.

That by virtue and under the color of said decree of naturalization of William Schneiderman, also known as Velvel Schneiderman, as well as said certificate of citizenship No. 2608994, issued under and pursuant thereto, and not otherwise, said respondent claims to be a legally naturalized citizen of the United States, and as such naturalized citizen entitled to all the rights, benefits, privileges, immunities and protection accorded naturalized citizens of the United States.

III.

That before the filing of this complaint, affidavit was executed by Robert M. Charles, attorney for the immigration and naturalization service, United States department of labor, showing good and sufficient cause for the institution of this proceeding as required by the provisions of Section 15 of the aforesaid act of Congress of June 29, 1906, which affidavit is hereto attached, marked Exhibit "A" and made a part hereof the same as if set forth herein.

IV.

That said decree and certificate of naturalization were illegally procured and obtained in this: That respondent was not, at the time of his naturalization by said court, and during the period of five years immediately preceding the filing of his petition for naturalization, respondent had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, but in truth and in fact during all of said times respondent was a member of and affiliated with and believed in and supported the principles of certain organizations then known as the Workers (Communist) Party of America and the Young Workers (Communist)

League of America, whose principles were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the government, Constitution and laws of the United States by force and violence.

V.

That at all times subsequent to the entry of said decree of naturalization respondent has continued to be, and now is, a member of and affiliated with organizations, to wit, the Workers (Communist) Party of America and the Young Workers (Communist) League of America and the Communist Party of the United States and the Young Communist League of the United States, whose principles are opposed to the principles of the Constitution of the United States and advise, advocate and teach the overthrow of the government, Constitution and laws of the United States by force and violence, and during all of said times respondent has continued to believe in and support said principles of said organizations.

VI.

That said decree and certificate of naturalization were fraudulently procured and obtained in this: That respondent concealed from said United States District Court for the Southern District of California, Central Division, at the time of said hearing of said petition for naturalization, the facts that at the time of filing said petition and at the time of said hearing and during the period of five years immediately preceding the filing of said petition he was a member of and affiliated with certain organizations which were then known as the Workers (Communist) Party of America and the Young Workers (Communist) League of America, and that during all said times he believed in and supported the principles of said organizations as aforesaid, and by reason of this concealment said court was deceived and admitted

respondent to citizenship, and said concealment was material in this: That at all times herein mentioned the principles of said organizations were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the government, Constitution and laws of the United States by force and violence.

VII.

That respondent now resides in the city and county of San Francisco, state of California, and within the jurisdiction of this court, the last known address of respondent being 121 Haight street in said city, county and state.

Wherefore, your petitioner prays that the said respondent be compelled to answer all and singular the premises of this complaint; that said decree of naturalization be set aside, revoked, canceled and declared null and void; that respondent be required to surrender up to this court for cancellation the said certificate of naturalization No. 2608994 and that said respondent, as well as all others claiming by, through or under said naturalization be divested of their status of American citizenship illegally and fraudulently procured and obtained, as aforesaid, and that the said respondent as well as all others claiming American citizenship by, through, or under his said naturalization, be forever restrained and enjoined from setting up, claiming or exercising any rights, privileges, benefits, immunities or protection as citizens of the United States of America under said decree of naturalization or said certificate of naturalization issued thereunder, and that your petitioner have such other and further relief as the circumstances of the case may require, and as in equity and good conscience may seem meet.

Plaintiff further prays that upon the entry of a final decree in this case as heretofore prayed that the same be

entered and spread upon the records of this court pertaining to the naturalization of said respondent heretofore referred to, and that said respondent be required to forthwith surrender and deliver his said certificate of naturalization to the clerk of this court for cancellation, and that the clerk of this court be further directed to transmit a certified copy of said final decree to the Bureau of Naturalization, Department of Labor, Washington, D. C., together with the cancelled certificate of naturalization No. 2608994 of said respondent.

Frank H. Hennessy,
United States Attorney.

EXHIBIT "4."

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C-2608994.

United States of America, District of Columbia, ss.:

Robert M. Charles, being duly sworn, deposes and says:

1. That he is an attorney, immigration and naturalization service, United States Department of Labor, and as such has access to the official records of said service, from which the following facts appear:

2. That William Schneiderman, then known as Velvel Schneiderman, a native and then a subject of Russia, made declaration of intention No. 262427 on February 8, 1924, in the U. S. District Court at Los Angeles, California, in the name of Velvel Schneiderman, filed petition for naturalization No. 18758 in the same court on January 18, 1927, at which time he requested that his name be changed to William Schneiderman, and he was admitted to citizenship on June 10, 1927, certificate of naturalization No. 2608994 being issued to him on the latter date in the name of William Schneiderman;

3. That the said William Schneiderman stated under oath in said petition for naturalization that he was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body

of persons teaching disbelief in or opposed to organized government; also, he stated therein that he was attached to the principles of the Constitution of the United States; that the said petition for naturalization was verified by the joint affidavit of one Albert J. Bock and one Minnie Karasick, each of whom stated that he/she had personal knowledge that the said petitioner was a person of good moral character, attached to the principles of the Constitution of the United States and in every way qualified in affiant's opinion, to be admitted a citizen of the United States; and, that before he was admitted to citizenship the said William Schneiderman declared on oath in open court that he would support the Constitution of the United States, and that he would support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same;

4. That in truth and in fact during the five years immediately preceding the filing of his said petition for naturalization, and from the date of said petition to the time of his admission to citizenship, the said William Schneiderman did not behave as a person attached to the principles of the Constitution of the United States, and he was not attached to such principles, but during said five-year period, and thereafter, he was a member of an organization, to wit: the Workers (Communist) Party of America, which organization is opposed to the government of the United States, and teaches and advocates the overthrow of the government of the United States by force and violence;

5. That the naturalization of the said William Schneiderman was fraudulently and illegally procured in violation of the third and fourth subdivisions of Section 4 of the Naturalization Act of June 29, 1906 (34 Stat., 596; U. S. C., T. 8, Sections 381 and 382), in that:

(a) At the time of filing his petition for naturalization and at the time of his admission to citizenship he

was not attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same, and during the five-year period immediately preceding the filing of his petition for naturalization he had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same; and

(b) At the time he took said oath of allegiance, he did not in fact intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

6. That good cause exists for the institution of a suit under Section 15 of the said 1906 Act, supra (34 Stat., 601; U. S. C., T. 8, Section 405), to set aside and cancel the certificate of naturalization of the said William Schneiderman as having been fraudulently and illegally procured;

7. That the last known place of residence of the said William Schneiderman is San Francisco, California.

(Signed) Robert M. Charles.

Subscribed and sworn to before me, a notary public of the District of Columbia, this twentieth day of June, 1939.

(Signed) J. Louis Bixler,
[Seal.] Notary Public, District of Columbia.

Commission expires September 8, 1939.

(Endorsed): Filed June 30, 1939.

(Title of District Court and Cause.)

Answer.

Comes now the respondent, William Schneiderman, and for answer to the complaint on file herein, admits, denies and alleges as follows:

I.

Admits the substance of the allegations contained in paragraph I of said complaint.

II.

Admits the material allegations contained in paragraph II of said complaint.

III.

Replying to paragraph III of said complaint, respondent avers that he has no information or belief sufficient to enable him to answer the allegations therein contained; and basing his denial upon such lack of information and belief, denies each and every, all and singular, generally and specifically, the allegations in said paragraph contained.

IV.

Replying to paragraph IV of said complaint, this respondent denies each and every, all and singular, generally and specifically the allegations therein contained, but admits that at the time and place alleged in said paragraph, respondent was a member of the Communist Party of the United States of America.

V.

Replying to paragraph V of said complaint, your respondent denies each and every, all and singular, generally and specifically, the allegations therein contained

save and except that this respondent admits that at all times subsequent to the entry of said decree of naturalization respondent has continued to be and now is a member of the Communist Party of the United States of America.

VI.

Replying to paragraph VI of said complaint, respondent denies each and every, all and singular, generally and specifically, the allegations therein contained; and in particular this respondent denies that at any time during which said respondent was a member of said organization that said organization, or the principles of said organization, or the tenets of said organization, or the teachings of said organization, or the belief of said organization, or either of them were opposed or contrary to the principles of the Constitution of the United States of America; and specifically denies that either said respondent or said organization advised or advises, advocated or advocates, taught or teaches, the overthrow of the government, or the Constitution, or the laws, or the government, Constitution and laws of the United States of America by force and violence or force or violence.

VII.

Respondent admits the allegations in said paragraph contained.

And as and for a separate, further and distinct defense to said complaint, and the alleged cause of action therein purportedly stated, respondent denies that at any time during which he was a member of said Communist Party of the United States of America, that said organization believed in, taught, or advocated the overthrow of the government of the United States of America, its Constitution, or its laws; and specifically denies that during said time the said Communist Party of the United States

advised, advocated or taught the overthrow of the government of the United States, its Constitution and laws, or said government, Constitution, or laws, by force and violence, or force or violence, or by any other manner at all.

And in this connection, respondent alleges that respondent and the Communist Party of the United States of America believes in, advocates, teaches, and is committed to uphold the achievements of democracy and the rights of and to, life, liberty, and the pursuit of happiness; and to defend the United States Constitution against all of its enemies.

And as and for a further, separate and distinct defense to said complaint on file herein, respondent attaches hereto and makes a part hereof as though set out in haec verba, a copy of the Constitution of the Communist Party of the United States of America, which is marked Exhibit A, and alleges that the aims, purposes and objects of said Constitution set forth the aims, purposes, objects, beliefs, advocacies and teachings of said organization during all of the times alleged in said complaint on file herein.

Wheretofore, having fully answered, respondent prays that petitioner be awarded no relief by its complaint and that said complaint be dismissed.

Dated: September 20, 1939.

George R. Andersen,
Attorney for Respondent.

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

William Schneiderman, being first duly sworn, deposes and says: that he is the person named in the within and foregoing answer; that he has read the same and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are

therein stated upon his information or belief, and as to those matters he believes it to be true.

William Schneiderman.

Subscribed and sworn to before me this twenty-second day of September, 1939.

Nancy Everett,

Notary Public in and for the city and county of San Francisco, state of California.

(Title of District Court and Cause.)

Judgment and Decree.

The above-entitled cause having come on duly and regularly for trial on the seventh, eighth, twelfth and thirteenth days of December, 1939, before the court sitting without a jury, the respondent, William Schneiderman, also known as Velvel Schneiderman, appearing in person and by his attorney, George Andersen, Esquire, and the petitioner, the United States of America, appearing by its attorneys Frank J. Hennessy, United States attorney for the Northern District of California, and Louis R. Mercado, assistant United States attorney for the said district, and evidence both oral and documentary having been introduced and the trial thereof having been duly and regularly continued to the ninth day of April, 1940, on which day the cause was submitted for final decision, and the court having heretofore made and caused to be filed herein its written findings of fact and conclusions of law and the court being fully advised in the premises;

Now, therefore, by reason of the law and the findings of fact aforesaid, it is and this court hereby does order, adjudge and decree as follows:

That the said decree of naturalization of the United States District Court for the Southern District of Cali-

fornia, Central Division, entered on the tenth day of June, 1927, admitting said respondent William Schneiderman, also known as Velvel Schneiderman, to American citizenship, be and the same is hereby vacated, revoked, set aside, canceled and declared null and void, and that the said certificate of citizenship No. 2608994 issued under said decree to said respondent, be, and the same is hereby revoked and canceled, and that said responent be, and he is hereby directed and required to surrender up to this court for cancellation the said certificate of citizenship No. 2608994, and the said clerk of this court is hereby ordered to cancel the said certificate of citizenship, and

That he, said respondent, as well as all others claiming by, through or under the decree of naturalization aforesaid be, and they each are hereby divested of their status of American citizenship illegally and fraudulently procured and obtained as aforesaid, and the respondent, as well as all others claiming American citizenship by, through or under his said naturalization as aforesaid, be, and they each are hereby forever restrained and enjoined from setting up, claiming or exercising any rights, benefits, privileges, immunities or protection as citizens of the United States of America under said decree of naturalization, or said certificate of citizenship issued thereunder:

It is further ordered, adjudged and decreed that the clerk of this court under and pursuant to the provisions of Section 15 of the Act of Congress of June 29, 1906, aforesaid, transmit a certified copy of this decree to the clerk of the United States District Court for the Southern District of California, Central Division, and that the clerk of this court also transmit a certified copy of this decree, together with the canceled certificate of citizenship No. 2608994 to the immigration and naturalization

service of the United States Department of Labor at Washington, D. C.

Given under my hand and the seal of this court this twenty-third day of July, 1940.

Michael J. Roche,
United States District Judge.

(Endorsed): Filed July 23, 1940.

(Title of District Court and Cause.)

Notice of Appeal.

To the Clerk of the Above Entitled Court:

Notice is hereby given that William Schneiderman, respondent above named, appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the final judgment entered herein on the twenty-third day of July, 1940.

Dated: July 29, 1940.

Andersen & Reisner,
Attorneys for Respondent.

(Endorsed): Filed July 29, 1940.

(Title of District Court and Cause.)

Statement of Points on Appeal.

The respondent and appellant herein sets forth the points upon which he intends to and does rely in the consideration of his appeal:

1. Insufficiency of the evidence to show or prove any actionable fraud on the part of appellant at the time of his naturalization.

2. Insufficiency of the evidence to show or prove any illegality on the part of appellant in the naturalization proceeding in which appellant was granted citizenship.

3. Insufficiency of the evidence to show or prove that either respondent, or any organization with which he was associated, or of which he was a member, believed in the overthrow of the government by force or violence, or advocated or taught such principles.

4. Insufficiency of the evidence to show or prove that appellant, at the times mentioned in the complaint, disbelieved in organized government.

5. Insufficiency of the evidence to show or prove that appellant at the time of his naturalization was not, and had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.

6. That the fourth finding of fact is not supported by the evidence.

7. That the sixth finding of fact is not supported by the evidence.

8. That the seventh finding of fact is not supported by the evidence.

9. That the ninth finding of fact is not supported by the evidence.

10. That the statutes under which this proceeding was instituted are unconstitutional, and are unconstitutional as applied to appellant in so far as they may attempt to restrict and abridge the right of appellant to freely speak and to have freedom of thought and belief, and as denying appellant the equal protection of the laws, within the meaning of the First and Fifth Amendments to the United States Constitution.

11. That as such statutes are applied to appellant they are unconstitutional in that the word "behavior" is not defined and has been unconstitutionally applied to appellant.

Dated: August 15th, 1940.

Andersen & Resner,
Attorneys for Respondent and Appellant.

(Endorsed): Filed Aug. 23, 1940.

(Title of District Court and Cause.)

Order for Pretrial Hearing

At a session of said court held at Detroit on April 6, 1942.

Present: Hon. Arthur F. Lederle, District Judge.

The parties hereto are directed to appear before this court, in Room 712 Federal Building, Detroit, on April 15, 1942, at 9:30 a. m., for a hearing to consider and determine matters within the purview of Rule 16 of the Rules of Civil Procedure; and further, unless reason is shown to the contrary, the court will proceed to judgment at such hearing. No request for adjournment will be considered unless in the form of a motion or stipulation, showing cause for adjournment.

Arthur F. Lederle,
District Judge.

Proof of Mailing.

State of Michigan, County of Wayne, ss.:

Ruth E. Riddell, being duly sworn, deposes and says that she is deputy clerk of the above court; that on April 8, 1942, at the Detroit Post Office (Federal) building she mailed a true copy of the above order to each attorney of record in the above case, in the United States Government franked envelopes, addressed respectively as follows:

Messrs. John C. Lehr and Louis Hopping, 814 Federal Building, Detroit, Michigan;

Mr. William J. Lehmann, 2119 Dime Bank Building, Detroit, Michigan.

Ruth E. Riddell.

Subscribed and sworn to before me on April 8, 1942.

Ruby Riddell,
Notary Public, Wayne County, Michigan.

My commission expires Aug. 15, 1944.

Form of Consent and Waiver.

Used by foreign service officers, department of state to facilitate cancellation of naturalization certificates when fraudulently procured by reason of the naturalized citizen setting up residence abroad within five years of naturalization. (Sec. 338 (c) Nationality Act of 1940.)

Whereas, I, ..., then an alien and a citizen or subject of a foreign country, to-wit, ...filed a petition to become a citizen of the United States, in the.....and thereafter and on or about the....day of.....19..... the said.....made and entered a decree purporting to admit me to be and become a citizen of the United States, and a certificate of naturalization was delivered to me, and

Whereas, I, within five years after said decree was made, and on or about the .....day of .....19...., left the United States and became a permanent resident of.....;

Now, therefore, I,.....do hereby consent to the entry of a decree by the appropriate district court of the United States, setting aside and concelling the said decree of naturalization and declaring it null and void, and enjoining me forever from setting up or claiming any rights, privileges, benefits, or advantages under it, and I further consent that such a decree be entered without further notice to me. My last residence in the United States was at.....

.....
(Signature)
.....
(Date)

I hereby certify that the above is the true signature of

.....
.....
(Signature)
.....
(Title)
.....
(Date)

(Seal)
No fee.

NATURALIZATION ACT OF JUNE 29, 1906.

(Title VIII, Chapter 9, U. S. C. A.)

"Section 399. Appearance by United States and proceedings in opposition to naturalization. The United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings." (Sec. 11 of the Naturalization Act of June 29, 1906.)

(Title VIII, Chapter 9, Sec. 405, U. S. C. A.)

"Section 405. Cancellation of certificates of citizenship fraudulently or illegally procured; aliens returning to country of nativity or residing permanently in foreign country; certified copy of order cancelling certificate. It shall be the duty of the United States district attorneys for the respective districts, or the commissioner or deputy commissioner of naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had

his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state of the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this chapter shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the department of state, furnish the department of justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or cancelled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the bureau of naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judg-

ment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the bureau of naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of Sections 356, 357, 360, 362, 364, 372 to 383, 386 to 394, 396 to 405, and 407 to 415 of this title, but to all certificates of citizenship which may have been issued prior to ninety days after June 29, 1906, by any court exercising jurisdiction in naturalization proceedings under prior laws. (June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601; Mar. 4, 1913, c. 141, Sec. 3, 37 Stat. 737; May 9, 1918, c. 69, Sec. 1, 40 Stat. 544.)

"Section 414. Procuring naturalization illegally; aiding unauthorized proceedings; false testimony. Any person who knowingly procures naturalization in violation of the provisions of this chapter shall be fined not more than $5,000, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than $5,000, or imprisoned not more than five years, or both. (June 29, 1906, c. 3592, Sec. 23, 34 Stat. 603.)

THE NATIONALITY ACT OF OCTOBER 14, 1940.

(Title VIII, Chapter 11, United States Code Annotated.)

Sec. 734.

(a) * * *

(b) * * *

(c) * * *

(d) The United States shall have the right to appear before any court in any naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of the petition concerning any matter touching or in any way affecting the petitioner's right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

(e) * * *

Sec. 738. Revocation of naturalization.

(a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

(b) The party to whom was granted the naturalization alleged to have been fraudulently or illegally procured shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice in which to make answer to the petition of the United States; and if such naturalized person be absent from the

United States or from the judicial district in which such person last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

(c) If a person who shall have been naturalized shall, within five years after such naturalization, return to the country of such person's nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such person to become a permanent citizen of the United States at the time of filing such person's petition for naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained through fraud. The diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those persons within their respective jurisdictions who have been so naturalized and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to revoke and set aside the order admitting to citizenship and to cancel the certificate of naturalization.

(d) The revocation and setting aside of the order admitting any person to citizenship and canceling his certificate of naturalization under the provisions of subsection (a) of section 738 shall not, where such action takes place after the effective date of this chapter, result in the loss of citizenship or any right or privilege of citizenship which would have been derived by or available to a wife or minor child of the naturalized person

had such naturalization not been revoked, but the citizenship and any such right or privilege of such wife or minor child shall be deemed valid to the extent that it shall not be affected by such revocation; Provided, That this subsection shall not apply in any case where the revocation and setting aside of the order was the result of actual fraud.

(e) When a person shall be convicted under this chapter of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

(f) Whenever an order admitting an alien to citizenship shall be revoked and set aside or a certificate of naturalization shall be canceled, or both, as provided in this section, the court in which such judgment or decree is rendered shall make an order canceling such certificate and shall send a certified copy of such order to the Commissioner; in case such certificate was not originally issued by the court making such order, it shall direct the clerk of the naturalization court in which the order is revoked and set aside to transmit a copy of such order and judgment to the court out of which such certificate of naturalization shall have been originally issued. It shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of naturalization, if there be any, upon the records and to notify the Commissioner of the entry of such order and of such cancellation. A person holding a certificate of naturalization or citizenship which has been cancelled as provided by this section shall upon notice by the court by which the decree of

cancellation was made, or by the Commissioner, surrender the same to the Commissioner.

(g) The provisions of this section shall apply not only to any naturalization granted and to certificates of naturalization and citizenship issued under the provisions of this chapter, but to any naturalization heretofore granted by any court, and to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court. Oct. 14, 1940, c. 876, Title I, Subchap. III, Sec. 338, 54 Stat. 1158.

ALIEN ENEMIES.

(Title 50, Chapter 3, U. S. C. A.)

Section 21. Restraint, regulation, and removal. Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety. (*April 16, 1918, c. 55, 40 Stat., 531.)

Section 22. Time allowed to settle affairs and depart. When an alien who becomes liable as an enemy, in the manner prescribed in the preceding section, is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated

by any treaty then in force between the United States and the hostile nation or government of which he is a native citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality. (R. S., 4068.)

Section 23. Jurisdiction of United States courts and judges. After any such proclamation has been made, the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appearing, to order such alien to be removed out of the territory of the United States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison, or otherwise secure such alien, until the order which may be so made shall be performed. (R. S., 4069.)

Section 24. Duties of marshals. When an alien enemy is required by the President, or by order of any court, judge, or justice, to depart and to be removed, it shall be the duty of the marshal of the district in which he shall be apprehended to provide therefor and to execute such order in person, or by his deputy or other discreet person to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the

President, or of the court, judge, or justice ordering the same, as the case may be. (R. S., 4070.)

By the President of the United States of America

A Proclamation

Authority

Whereas it is provided by Section 21 of Title 50 of the United States Code as follows:

"Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety."

and

Whereas, by Sections 22, 23 and 24 of Title 50 of the United States Code further provision is made relative to alien enemies:

Proclamation.

Now, therefore, I Franklin D. Roosevelt, as President of the United States and as Commander in Chief of the Army and Navy of the United States, do hereby make public proclamation to all whom it may concern that an invasion has been perpetrated upon the territory of the United States by the Empire of Japan.

Conduct to Be Observed by Alien Enemies.

And, acting under and by virtue of the authority vested in me by the Constitution of the United States and the said sections of the United States Code, I do hereby further proclaim and direct that the conduct to be observed on the part of the United States toward all natives, citizens, denizens or subjects of the Empire of Japan being of the age of fourteen years and upwards who shall be within the United States or within any territories in any way subject to the jurisdiction of the United States and not actually naturalized, who for the purpose of this proclamation and under such sections of the United States Code are termed alien enemies, shall be as follows:

All alien enemies are enjoined to preserve the peace towards the United States and to refrain from crime against the public safety, and from violating the laws of the United States and of the States and Territories thereof; and to refrain from actual hostility or giving information, aid or comfort to the enemies of the United States or interfering by word or deed with the defense of the United States or the political processes and public opinions thereof; and to comply strictly with the regulations which are hereby or which may be from time to time promulgated by the President.

All alien enemies shall be liable to restraint, or to give security, or to remove and depart from the United States in the manner prescribed by Sections 23 and 24 of Title 50 of the United States Code, and as prescribed in the regulations duly promulgated by the President.

Duties and Authority of the Attorney General and the Secretary of War.

And, pursuant to the authority vested in me, I hereby charge the Attorney General with the duty of executing all the regulations hereinafter contained regarding the conduct of alien enemies within continental United States, Puerto Rico, the Virgin Islands and Alaska, and the Secretary of War with the duty of executing the regulations which are hereinafter set forth and which may be hereafter adopted regarding the conduct of alien enemies in the Canal Zone, the Hawaiian Islands and the Philippine Islands. Each of them is specifically directed to cause the apprehension of such alien enemies as in the judgment of each are subject to apprehension or deportation under such regulations. In carrying out such regulations within the continental United States, Puerto Rico, the Virgin Islands and Alaska, the Attorney General is authorized to utilize such agents, agencies, officers and departments of the United States and of the several states, territories, dependencies and municipalities thereof and of the District of Columbia as he may select for the purpose. Similarly the Secretary of War in carrying out such regulations in the Canal Zone, the Hawaiian Islands and the Philippine Islands is authorized to use such agents, agencies, officers and departments of the United States and of the territories, dependencies and municipalities thereof as he may select for the purpose. All such agents, agencies, officers and departments are hereby granted full authority for all acts done by them in the execution of such regulations when acting by direction of the Attorney General or the Secretary of War, as the case may be.

Regulations.

And, pursuant to the authority vested in me, I hereby declare and establish the following regulations which I find necessary in the premises and for the public safety:

(1) No alien enemy shall enter or be found within the Canal Zone and no alien enemy shall enter or leave the Hawaiian Islands or the Philippine Islands except under such regulations as the Secretary of War shall from time to time prescribe. Any alien enemy found in the Canal Zone, the Hawaiian Islands, or the Philippine Islands in violation of any such regulations and any alien enemy who enters or is found within any restricted area to be hereafter prescribed by the Military Commanders of each such territory in the Canal Zone, the Hawaiian Islands, and the Philippine Islands, may be immediately apprehended by authority of the Military Governors in each such territory, or if there be no Military Governor, then by authority of the Secretary of War, and detained until it is determined, under the regulations to be prescribed by the Secretary of War, whether any such alien enemy should be permanently interned following which such alien enemy shall either be released, released on bond, or permanently interned, as the case may be.

(2) The exercise of the power to prescribe restricted areas and the power of arrest, detention and internment of alien enemies in the Canal Zone, the Hawaiian Islands or the Philippine Islands shall be under the jurisdiction of the Military Commanders of each such territory, each acting under such regulations as the Secretary of War shall hereafter prescribe.

(3) No alien enemy shall enter or leave Alaska, Puerto Rico or the Virgin Islands except under such regulations as the Attorney General shall from time to time prescribe. Any alien enemy found in Alaska, Puerto Rico or the Virgin Islands in violation of any such regulations and any alien enemy who enters or is found within any restricted area to be hereafter prescribed by the Military Commanders of each such territory in Alaska, Puerto Rico and by the Naval Commander in the Virgin Islands, shall be immediately apprehended by the authority of the Attorney General acting through the United States

attorney in each such territory and detained until it is determined, under the regulations to be prescribed by the Attorney General, whether any such alien enemy shall either be released, released on bond, or permanently interned, as the case may be.

(4) The Military Commanders in Alaska and Puerto Rico and the Naval Commander in the Virgin Islands shall have the power to prescribe restricted areas.

(5) No alien enemy shall have in his possession, custody or control at any time or place or use or operate any of the following enumerated articles:

a. Firearms.

b. Weapons or implements of war or component parts thereof.

c. Ammunition.

d. Bombs.

e. Explosives or material used in the manufacture of explosives.

f. Short-wave radio receiving sets.

g. Transmitting sets.

h. Signal devices.

i. Codes or ciphers.

j. Cameras.

k. Papers, documents or books in which there may be invisible writing; photograph, sketch, picture, drawing, map or graphical representation of any military or naval installations or equipment or of any arms, ammunition, implements of war, device or thing used or intended to be used in the combat equipment of the land or naval forces of the United States or of any military or naval post, camp or station.

All such property found in the possession of any alien enemy in violation of the foregoing regulations shall be subject to seizure and forfeiture.

(6) No alien enemy shall undertake any air flight or ascend into the air in any airplane, aircraft or balloon of any sort, whether owned governmentally, commercially or

privately, except that travel by an alien enemy in airplane or aircraft may be authorized by the Attorney General, or his representative, or the Secretary of War or his representative in their respective jurisdictions, under such regulations as they shall prescribe.

(7) Alien enemies deemed dangerous to the public peace or safety of the United States by the Attorney General or Secretary of War, as the case may be, are subject to summary apprehension. Such apprehension shall be made in the Continental United States, Alaska, Puerto Rico and the Virgin Islands by such duly authorized officer of the Department of Justice as the Attorney General may determine. In the Canal Zone, the Hawaiian Islands and the Philippine Islands, such arrests shall be made by the Military Commanders in each such territory by authority of the respective Military Governors thereof, and if there be no Military Governor, then by authority of the Secretary of War. Alien enemies arrested shall be subject to confinement in such place of detention as may be directed by the officers responsible for the execution of these regulations and for the arrest, detention and internment of alien enemies in each case, or in such other places of detention as may be directed from time to time by the Attorney General, with respect to Continental United States, Alaska, Puerto Rico and the Virgin Islands, and by the Secretary of War with respect to the Canal Zone, the Hawaiian Islands and the Philippine Islands, and there confined until he shall have received such permit as the Attorney General or the Secretary of War with respect to the Canal Zone, the Hawaiian Islands and the Philippine Islands shall prescribe.

(8) No alien enemy shall land in, enter or leave or attempt to land in, enter or leave the United States, except under the regulations prescribed by the President in his Proclamation dated November 14, 1941, and the regulations promulgated thereunder or any proclamation or regulation promulgated hereafter.

(9) Whenever the Attorney General of the United States, with respect to the Continental United States, Alaska, Puerto Rico and the Virgin Islands, or the Secretary of War, with respect to the Canal Zone, the Hawaiian Islands, and the Philippine Islands, deems it to be necessary, for the public safety and protection, to exclude alien enemies from a designated area, surrounding any fort, camp, arsenal, airport, landing field, aircraft station, electric or other power plant, hydroelectric dam, government naval vessel, navy yard, pier, dock, dry dock, or any factory, foundry, plant, workshop, storage yard, or warehouse for the manufacture of munitions or implements of war or anything of any kind, nature or description for the use of the army, the navy or any country allied or associated with the United States, or in any wise connected with the national defense of the United States, or from any locality in which residence by an alien enemy shall be found to constitute a danger to the public peace and safety of the United States or from a designated area surrounding any canal or any wharf, pier, dock or dry dock used by ships or vessels of a designated tonnage engaged in foreign or domestic trade, or of any warehouse, shed, elevator, railroad terminal, depot or yard or other terminal, storage or transfer facility, then no alien enemy shall be found within such area or the immediate vicinity thereof. Any alien enemy found within any such area or the immediate vicinity thereof prescribed by the Attorney General or the Secretary of War, as the case may be, pursuant to these regulations, shall be subject to summary apprehension and to be dealt with as hereinabove prescribed.

(10) With respect to the Continental United States, Alaska, Puerto Rico, and the Virgin Islands, an alien enemy shall not change his place of abode or occupation or otherwise travel or move from place to place without full compliance with any such regulations as the Attorney General of the United States may, from time to time,

make and declare; and the Attorney General is hereby authorized to make and declare, from time to time, such regulations concerning the movements of alien enemies within the Continental United States, Alaska, Puerto Rico and the Virgin Islands, as he may deem necessary in the premises and for the public safety.

(11) With respect to the Canal Zone, the Hawaiian Islands and the Philippine Islands, an alien enemy shall not change his place of abode or occupation or otherwise travel or move from place to place without full compliance with any such regulations as the Secretary of War may, from time to time, make and declare; and the Secretary of War is hereby authorized to make and declare, from time to time, such regulations concerning the movements of alien enemies within the Canal Zone, the Hawaiian Islands, and the Philippine Islands as he may deem necessary in the premises and for the public safety.

(12) No alien enemy shall enter or be found in or upon any highway, waterway, airway, railway, railroad, subway, public utility, building, place or thing not open and accessible to the public generally, and not generally used by the public.

(13) No alien enemy shall be a member or an officer of, or affiliated with, any organization, group or assembly hereafter designated by the Attorney General, nor shall any alien enemy advocate, defend or subscribe to the acts, principles or policies thereof, attend any meetings, conventions or gatherings thereof or possess or distribute any literature, propaganda or other writings or productions thereof.

This proclamation and the regulations herein contained shall extend and apply to all land and water, continental or insular, in any way within the jurisdiction of the United States.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this seventh day of December in the year of our Lord one thousand nine hundred and forty-one, of the independence of the United States of America the one hundred and sixty-sixth.

Franklin D. Roosevelt.

By the President:
Cordell Hull,
Secretary of State.

Department of Justice,
Washington, D. C.

December 9, 1941.

Circular No. 3589.

To United States Attorneys:

The President of the United States, in pursuance of the powers granted him by Sections 21, 22, 23 and 24 of Title 50 of the United States Code, has issued three Proclamations, copies of which are enclosed for your information, in which he has established regulations affecting all natives, citizens, denizens or subjects of Japan, Italy and Germany.

The President, by these Proclamations, has charged the Attorney General of the United States, within Continental United States, Puerto Rico, the Virgin Islands and Alaska, and the Secretary of War in the Canal Zone, the Hawaiian Islands and the Philippine Islands with the duty of executing the aforesaid Proclamations and the regulations contained therein.

Instructions for your guidance in connection with your responsibilities concerning alien enemies are enclosed. This matter is of paramount importance and should receive your immediate attention.

Francis Biddle,
Attorney General.

Enclosures.

Instructions to United States Attorneys.

Re: Alien Enemies.

1. General.

Attached hereto is a copy of the President's Proclamation, dated December 7, 1941, proclaiming that an invasion has been perpetrated upon the territory of the United States by the Empire of Japan, and a copy of each of the two Presidential Proclamations, dated December 8, 1941, proclaiming that an invasion or predatory incursion is threatened upon the territory of the United States by Germany and Italy, respectively, and directing the conduct to be observed on the part of all natives, citizens, denizens, or subjects of the Empire of Japan, Germany and Italy, being of the age of fourteen years and upward who shall be within the United States or within any territories in any way subject to the jurisdiction of the United States and not actually naturalized.

2. Responsibility of United States Attorneys.

Primary responsibility for all administrative matters affecting alien enemies within a given district rests upon the United States attorney for that district. These instructions do not alter existing jurisdiction, authority or administration of the Federal Bureau of Investigation or Immigration Service field offices. It will, therefore, be your function to coordinate the administration of the alien enemy program in your district.

3. Persons Whose Activities Have Been Investigated and Who Are Apprehended Immediately Upon the Issuance of the Proclamation.

In pursuance of authority delegated to the Attorney General by said Proclamations the Director of the Federal Bureau of Investigation was authorized and directed by Presidential Warrant, signed by the Attorney General, to apprehend and detain a number of specified alien enemies

whom the Attorney General deemed dangerous to the public peace and safety of the United States.

4. Information Obtained About Alien Enemies After the Issuance of the Proclamation.

All information which comes to your attention hereafter regarding the activities of alien enemies in your district should be referred to the nearest office of the Federal Bureau of Investigation. Following investigation, a representative of that Bureau will confer with you concerning the information developed and in the event that you are of the opinion that an alien enemy thus investigated should be apprehended, you are directed to transmit a recommendation to that effect to the Attorney General requesting that a warrant be issued and forwarded to you. Your request should be accompanied by a summary of the information developed by the Federal Bureau of Investigation regarding the alien enemy and of any and additional facts upon which you base your recommendation and request. The sources of information in each instance should be definitely identified, due consideration being given to the necessity for protecting confidential sources of information. You will be immediately notified of the decision of the Attorney General and, in the event that your recommendation for the apprehension of the alien enemy is approved, a telegram in the following form will be sent to you:

"You are hereby authorized to request the Federal Bureau of Investigation to cause the apprehension of pursuant to the President's Proclamation, dated December , 1941."

Presidential warrants signed by the Attorney General of the United States for each person whose apprehension has been authorized will be transmitted to you immediately following the above telegram. You are reminded that all warrants for the apprehension of alien enemies

within Continental United States, Puerto Rico, the Virgin Islands and Alaska, other than the Alaskan Peninsula, are to be issued by the Attorney General. The Secretary of War is authorized to issue such warrants for the apprehension of alien enemies in the Canal Zone, the Hawaiian Islands, the Alaskan Peninsula, and the Philippine Islands.

5. Apprehensions.

The Federal Bureau of Investigation has been designated as the agency primarily responsible for the apprehension of alien enemies under Presidential warrants. Immediately following the apprehension of an alien enemy the Federal Bureau of Investigation will transmit two copies of an Alien Enemy Apprehension Report to your office, one copy of which should be retained by you and the other copy should be forwarded immediately to the Attorney General, and will promptly deliver a third copy to the officers of the Immigration Service to whom the alien enemy is delivered.

If the Special Agent in charge of the Federal Bureau of Investigation advises you of his inability to effect promptly an apprehension in a particular case, you are authorized to call upon the offices of the Immigration and Naturalization Service or the United States Marshal of your district to make such apprehensions. In these instances, you will inform the Special Agent in Charge of the local field office of the Federal Bureau of Investigation of your intention to call upon another agency to make apprehensions. If an apprehension is made by officers other than agents of the Federal Bureau of Investigation, it will be necessary that three copies of the Alien Enemy Apprehension Report be filled out by the apprehending officer and filed by him with you. One copy of this report should be promptly forwarded to the Federal Bureau of Investigation and one copy to the Attorney General. The third copy should be retained in your files.

Immediately after any apprehension under the President's Proclamation, you should telegraph to the Attorney General the name of the alien enemy apprehended, the date and place of apprehension, and the place of present detention.

6. Emergency Cases.

In an emergency case where reliable information is brought to your attention which clearly establishes that the activities of an alien enemy are imminently dangerous to the interests of the United States, you are authorized to request the Federal Bureau of Investigation to cause his apprehension without prior authorization, provided the circumstances of the case make it impracticable to communicate with the Department before taking such action. You are directed to communicate to the Department immediately full and complete information by telegraph with respect to the apprehension of such alien enemy and the basis therefor, including the date and place of apprehension and the place of present detention. You should identify the case as one of emergency by inserting the word "emergency" after the name of the alien enemy. Upon the receipt of such information, the Attorney General will issue a warrant and forward it to you immediately or transmit other appropriate instructions.

7. Further Investigation.

The Federal Bureau of Investigation will make available to you all information contained in their files concerning each apprehended alien. After examining this information you may decide that further investigation is indicated. If so, you should request the Federal Bureau of Investigation to conduct such further investigation. Similarly, you may call upon the Immigration and Naturalization Service for information then in its possession concerning the alien enemy.

8. Temporary Detention.

The alien enemies who have been apprehended will be delivered for temporary detention to the Immigration and Naturalization Service where they will be held pending a final determination of their status. During such temporary detention it will be the duty of the Immigration and Naturalization Service to require each alien enemy to fill out an Alien Enemy Questionnaire, copies of which will be furnished to your office, the Attorney General, and the Federal Bureau of Investigation field office.

The Immigration and Naturalization Service has been instructed to segregate the alien enemies from persons in custody on criminal charges.

9. The Alien Enemy Hearing Board.

In connection with the administration of the alien enemy program, the issue as to the future status of the alien enemy will be submitted to one or more alien enemy Hearing Boards in each district, the members of which will be appointed by the Attorney General. Each board will consist of three members, one of whom should be an attorney and all members should be citizens of the United States and residents of the district in which the board is convened. The alien enemy Board will be empowered to make a recommendation to the Attorney General as to the internment, release on parole, or release of the alien enemy based upon the evidence and information submitted for its consideration. This Board will have the power to interrogate the alien enemy and generally to conduct the hearing. You will present each alien enemy's case to the Board with recommendations as to the disposition thereof. A representative of the Immigration and Natralization Service and a Special Agent of the Federal Bureau of Investigation will assist you before the Board with respect to matters relating to the Immigration and Naturalization Service and the Federal Bureau of Investigation. You will provide all necessary facilities

for the Board and act generally as its administrative officer and upon you will devolve the responsibility for the transmittal of all the reports to the Department and for the completion of all steps relating to alien enemy procedure. It will be the duty of the Board to file with you for transmittal to the Attorney General a report containing recommendations on each alien enemy's case. You will promptly transmit this report to the Attorney General, together with copies of any investigative reports, other than reports of the Federal Bureau of Investigation, and a brief statement of any other information presented to the Board at the hearing. Copies of the Board's reports should also be forwarded to the Federal Bureau of Investigation and the Immigration Service. Emphasis is placed on the fact that the recommendations of the Board must be made exclusively upon the basis of the reports of the Federal Bureau of Investigation or other governmental investigative agency, and additional information developed at the hearing or contained in the Alien Enemy Questionnaire.

10. The Hearing.

Every alien enemy's case should be presented to a Board as soon as practicable after the receipt of the information from the Federal Bureau of Investigation and the apprehension of the alien enemy, and if possible within ten days after his apprehension. This hearing, while not a matter of right, is nevertheless granted in order to give the alien enemy an opportunity to present information as to his nationality, age, loyalty, activities, etc. The alien enemy should be informed of the nature of the proceedings and should be permitted to present any facts in his own behalf. A relative or friend or other adviser of the alien enemy may attend the hearing. Such person, however, will not be permitted to object to questions or make any arguments concerning any evidence on any phase of the proceeding, or otherwise to act as an

attorney. Translators, if necessary, will be furnished by the Immigration and Naturalization Service.

11. Recommendation For Disposition of Case.

At the conclusion of the hearing, the Board should recommend (1) internment, (2) release on parole, or (3) release.

After the Boards are constituted you will report to the Attorney General each Monday the names of all aliens who have been detained for more than ten days without a hearing and give the reasons therefor.

12. Review by Department.

The recommendations of the Board, together with the information upon which it is based will be reviewed in the Department and final decision as to disposition of the cases will be made by the Attorney General. You will be notified of such decision as promptly as possible and in any event within two weeks of the receipt of your recommendations and it will become your responsibility to see that the decision of the Departmnt is carried out.

13. Parole.

The responsibility for the administration of alien enemy parole has been placed by the Attorney General in the Immigration and Naturalization Service. Whenever the Attorney General determines that a particular alien enemy is to be paroled you will be so advised and the Immigration and Naturalization Service will be directed to make the necessary arrangements for his release on parole, and the Federal Bureau of Investigation will be so advised.

14. Parole Violations.

If you have reason to believe that a paroled alien enemy has violated in any substantial manner a condition of his parole, you should immediately notify the Federal Bureau of Investigation, which has the responsi-

bility to you for investigations of reported parole violations. Where the violation appears to you to be so serious that his remaining at large is a source of danger to the United States, you are authorized to request the Federal Bureau of Investigation to cause his immediate apprehension and detention pending a disposition of his case. If after investigation it does not appear that there has been a substantial violation the parole may be continued but if it appears that there has been a substantial violation you should present the facts to the Board who will make appropriate recommendation to the Attorney General. You will be promptly advised of the Attorney General's decision.

15. Internment.

If the Attorney General determines that the alien enemy should be interned you will be so advised and the Immigration and Naturalization Service will be directed to deliver him into custody of the War Department which will arrange for his subsequent detention.

16. Personal Property of Alien Enemies.

The Federal Bureau of Investigation and the Immigration and Naturalization Service have been advised that it is the duty of the officer making the apprehension to see that any property on the person of an alien enemy or in his immediate possession at the time of his apprehension is protected against loss. If any complaint or other information comes to your attention indicating that this is not being done you are instructed to report such facts to the Attorney General.

17. Attorneys, Visitors and Communications.

Alien enemies apprehended under the President's Proclamation may, at your discretion or that of the Immigration and Naturalization Service, confer in the place of confinement with attorneys or with members of their

families, under proper safeguards, and may send and receive letters provided the same are censored by the supervisory officials having custody of such alien enemy or enemies. Telephone conversations may also be conducted under close supervision. Abuse of these privileges may result in their withdrawal.

18. Conclusion.

The Attorney General is relying upon the United States attorneys to administer the alien enemy program so as to protect the interests of the nation and of the alien, preserve the integrity of the proceedings and insure their confidential character.

It is extremely important that replies to the Department's letters and telegrams with regard to alien enemies should be forwarded as soon as possible and that all actions with regard to alien enemies be expedited.

TABLE OF CASES.