

4-1930

Aliens-Opinions and Beliefs as Affecting True Faith and Allegiance

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Recommended Citation

(1930) "Aliens-Opinions and Beliefs as Affecting True Faith and Allegiance," *Indiana Law Journal*: Vol. 5 : Iss. 7 , Article 5.

Available at: <https://www.repository.law.indiana.edu/ilj/vol5/iss7/5>

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Bloomington

RECENT CASE NOTES

ALIENS—OPINIONS AND BELIEFS AS AFFECTING TRUE FAITH AND ALLEGIANCE—Respondent was born in Hungary; came to the United States to visit and lecture. She is a woman of education and accomplishments. On application for citizenship she stated she fully believed in our form of government, had read, and was willing to take the oath of allegiance. Question 22 of the application was: "If necessary, are you willing to take up arms in defense of this country?" She answered: "I would not take up arms personally." . . . "I cannot see that a woman's refusal to take up arms is a contradiction to the oath of allegiance." For the fulfillment of the duty to support and defend the Constitution and laws she had in mind other means. . . . "I disapprove of the government asking me to fight personally with my fists or carrying a gun." . . . "I consider it a question of conscience."

The Naturalization Act of 1906 requires: The applicant for naturalization "shall . . . declare on oath . . . that he will 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." . . . "It shall be made to appear to the satisfaction of the court that the application . . . (is) . . . attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same." (8 U. S. C. A. No. 381, and No. 382.)

The question was whether this applicant, a woman 49 years old, was entitled to citizenship. *Held*: Application denied. Supreme Court of the United States, May 27, 1929, 279 U. S. 644; 49 S. Ct. 448 (Holmes, Brandeis, and Sanford, JJ., dissenting; reversing decision by Judge Anderson, 27 F. (2d) 742).

The cases are few, and not exactly in point. None was cited by the court on the crucial point. Two cases held that a male conscientious objector could, in the discretion of the court, be refused citizenship. *In re Rocper*, (1921) 274 F. 490 (U. S. D. C., Del.), and *State ex rel. Weisz v. District Court*, (1921) (Mont.) 202 Pac. 387. *Tutan v. U. S.*, (U. S. C. C. A. Mass.) (1926) 12 F. (2d) 763, held that the requirements of the naturalization law must be construed liberally in favor of the petitioner.

The argument of the court seems to be two-fold. First: It is a principle of the Constitution that citizens must fight to defend the country by arms, when necessary. To this principle the applicant is not attached. Therefore she is not attached to the principles of the Constitution, within the statutory requirement. If the court intends to assign the refusal of the applicant to bear arms herself as a reason for her exclusion, it should be noted that here is an altogether new doctrine in the annals of civilized government: and obvious implication that women are expected as a matter of positive duty to fight "with their fists and carry a gun." Such doctrine is not inferable from the Draft cases. For in those cases the court had before it a law drafting only men.

Hence, it would seem that if the court is making the unwillingness of the applicant personally to take up arms a bar to her entrance, the court has erred in assuming as an universal major premis one to which there

is, or at least has heretofore been, an universally recognized exception as to the obligation of women.

But the court seems to insist that the main ground of its opinion is not the personal unwillingness of the applicant to fight, but rather her profession of a creed which is opposed to fighting. The second argument it gives for denying the applicant citizenship runs something like this: The good order and happiness of the United States require that one should not counsel citizens not to defend their country by arms, in contravention of one of the principles of the Constitution. Applicant would use her "influence" to prevent citizens from defending their country by arms. Therefore applicant is neither well disposed to the good order and happiness of the United States nor attached to this principle of the Constitution, as required by the Act of Congress. The heart of this argument seems to be that applicant is undesirable because opposed to the constitutional principles of defense of country. To this Justice Holmes replies: "Surely it cannot show lack of attachment to the principles of the Constitution that she thinks it can be improved." It would seem that the majority considered defense of country necessarily synonymous with defense by arms, and that Holmes conceives that she believes in defense of country, but in a mode different from the usual one. She conceives the duty as one requiring her to work constantly for the abolition of the danger against which the Constitution calls us to defend. Most of us think she is stubborn not to fight when necessity calls for such: yet to her point of view it is our own stubbornness which prevents the success of her plan which would render fighting impossible, and defense complete. She will not defend in our way; neither will we defend in hers. Such is the situation, as it seems to her.

As to the argument of the court that applicant would use her "influence" to keep other citizens from fighting, it may be noted that those conscientious objectors who are already citizens do this very thing (at least by example). Hence the inquiry must be whether we are to show the same tolerance for free thought with regard to admission into, as well as life within this country. Holmes first says: "Some of her remarks might excite popular prejudice, but if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought that we hate." He then makes it clear that to draw any such distinction in treatment is by implication to question the constitutional devotion of a respected class of citizens. He says: "Recurring to the opinion that bars this applicant's way, I would suggest that the Quakers have done their share to make this country what it is, that many citizens agree with the applicant's belief, and that I had not supposed hitherto that we regretted our inability to expel them because they believed more than some of us do in the teachings of the Sermon on the Mount."

J. V. H.