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Naturalization Proceedings--Oath of Allegiance--Mental Reservations as to Bearing Arms

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NATURALIZATION PROCEEDINGS—OATH OF ALLEGIANCE—MENTAL RESERVATIONS AS TO BEARING ARMS.—Macintosh, Canadian professor in the Yale Divinity School, was denied citizenship in naturalization proceedings before the District Court for Connecticut when he affirmed a willingness to bear arms for this country *only* when the war in which the United States might be engaged was justifiable, as he saw it, under the will of God. Later the Circuit Court of Appeals reversed this decision, deciding that such support as the applicant was willing to give according to his statement was all that the Naturalization Act required of him.[1]

The Naturalization Act requires of all aliens applying for citizenship an oath which must substantially state "that he will support and defend the Constitution and laws of the United States against all enemies, domestic or foreign, and bear true faith and allegiance to the same" and also that the applicant takes the oath "freely and without any mental reservation or purpose of evasion".[2] The Federal Constitution vests in the Congress the power to press citizens into military service.[3] Hence the oath of the Naturalization Act would require any applicant to be amenable to military service.

As the Court of Appeals in the Macintosh case states, an exception to this duty to bear arms is made in the case of persons whose religious scruples are against warfare.[4] Reasoning that Macintosh's reservation was purely one of religious scruple, which was tolerated and approved by the laws of this country, the Court of Appeals affirmed his right to citizenship, denying his statements constituted such a mental reservation as would disable him.

But, then, is Macintosh's reservation, saving to himself the right to determine whether any war is conscionable or not, such a religious scruple as he is entitled to maintain? The Selective Draft Case[5], cited by the court to sustain its point, makes but bare reference to the Selective Draft Act of May 18, 1917.[6] That Act is *most* susceptible to the interpretation that *only* those religious organizations whose tenets are against *all* and *any* wars are to fall within

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[1] 42 F. (2d) 845 (C. C. A. 2nd, 1930).
[2] 34 Stat. 596 (1906) 8 U. S. C. A. (1926) § 381.
[3] Constitution, Art. 1, § 8.
[4] See Arver v. U. S. (Selective Draft Cases), 245 U. S. 366, 38 S. Ct. 159 (1917).
[5] *Supra* n. 4.
[6] 40 Stat. 76 (1917) 50 U. S. C. A. (1926) § 226 n.

the exemption under the said Act.[7] The Act of January 31, 1903[8], cited by the same court for the same purpose in *Bland v. United States*[9], is identical with the 1917 Act. One Act, June 3, 1916, does say that persons who claim exemption from military service because of religious belief shall not be required to serve; but it also states that the conscientious holding of such belief must be established under such regulations as the President shall prescribe.[10] This may be construed as the Circuit Court of Appeals construed the law in the Macintosh case; but the language of the later and other Acts, which are worded differently, and which the Court of Appeals depend upon in its decision would rather lead one to construe the Act of June 3, 1916 in accord with these other Acts. Assuming similar Draft Acts in the future to follow the standard form of exemptions laid down in the Acts of January 31, 1903 and May 18, 1917,[11] if Macintosh's personal religion is sufficient to excuse his bearing arms, and constitutes a religious scruple within the meaning of these Acts, it would follow that all the citizens of this country would be entitled to bear the same or similar religious scruples and could refuse to fight under the same construction of the Acts for them. This, needless to say, would hardly be the construction our courts would put on any wartime measures, necessitating so impractical a result. Hence it seems that the Court of Appeals has placed an illogical construction upon these Acts in order to pin their decision in the Macintosh case on it.

In *United States v. Schwimmer*[12] the Supreme Court of the United States decided that the application for naturalization should be denied because Mrs. Schwimmer, a fifty year old woman, absolutely refused to bear arms, being an uncompromising pacifist. However, she was willing to do anything else in the line of non-combative activities required of her by the government. Mr. Justice Holmes, with whom Mr. Justice Brandeis concurred, dissented briefly, stating that to his notion the question of Mrs. Schwimmer's bearing arms, being a woman over fifty, was a literal absurdity and hence so far as her ability was concerned she had

[7] "Nothing in this Act shall be construed to compel any person to serve in any of the forces herein provided for who is found to be a member of any well-recognized religious sect or organization, at present organized and existing, and, whose existing creed or principles forbid its members to participate in war of any form."

[8] 32 Stat. 775 (1903).

[9] 42 F. (2d) 842 (C. C. A. 2nd, 1930).

[10] 39 Stat. 197 (1916) 32 U. S. C. A. (1926) § 1 p. 3.

[11] *Supra* n. 8 and 6.

[12] 279 U. S. 644, 49 S. Ct. 448 (1929).

agreed to perform every function under the Constitution and laws of United States of which she would be capable. It would appear that Mrs. Schwimmer in one aspect presented a stronger case there for the court than Macintosh has here—the former really swore to do all that was *actually* within her power, while the latter reserves to himself and adopts merely conditionally, the naturalization oath, only so far as it does not conflict with his own ideas.

From another viewpoint the cases are the same, both Mrs. Schwimmer and Macintosh making reservations. The fact that Mrs. Schwimmer's reservation against bearing arms was absolute disqualified her; Macintosh does this, but to a lesser degree, making a purely conditional reservation. Yet if we are able to interpret the Naturalization Act strictly[13] and resolve all questions of doubt in favor of the United States in such proceedings, as has been laid down[14], the Act requires that the applicant must take the oath without *any* mental reservation. Courts also have laid down the rule that no reservations whatever may be kept by the applicant.[15] The Macintosh case has gone before the Supreme Court.[16]

No doubt applicants of the national prominence and position of Mr. Macintosh represent a highly desirable type of alien, to which type the United States should bend further efforts for naturalizing. The Court of Appeals has certainly reached a result which is socially desirable in this case. Yet in so doing they have employed a method of reasoning which is liable to prove a future "incubus" of a sort for them; and in trying to explain away the Schwimmer case they have only shown that if their decision does not actually fly in the face of the Schwimmer decision, they are at least "tacking hard against the wind".

—HENRY P. SNYDER.

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[13] *Supra* n. 2.

[14] U. S. v. Manzi, 276 U. S. 463, 48 S. Ct. 328 (1928).

[15] In re D——, 290 F. 863 (N. D. Ohio, 1923).

[16] Since the six to three decision in the Schwimmer case, which was decided against Mrs. Schwimmer in 1928, the personnel of the Court has changed. In that case Mr. Justice Butler rendered the opinion, and the concurring justices were Mr. Chief Justice Taft, MacReynolds, Van Devanter, Sutherland and Stone. Those dissenting were, Mr. Justice Holmes, Mr. Justice Brandeis, and Mr. Justice Sanford. Hughes has now succeeded Taft as the Chief Justice and Roberts has succeeded to Sanford's position. The general belief is that Hughes may be classified as a liberal. And Stone, though with the conservative Butler side in the Schwimmer case, is usually found on the other side; hence it is not improbable that he might shift his position in the Macintosh case. As yet, Roberts is still an enigma on the bench. Consequently this change in personnel makes it quite likely that the Court may hand down a decision affirming the Court of Appeals in the Macintosh case.