CITIZENSHIP APPEAL COURT

Kamloops 1968 June 7

Ottawa June 19

IN THE MATTER OF Bjarne Almaas .....APPELLANT;

IN THE MATTER OF Edith Almaas .....APPELLANT;

IN THE MATTER OF Egon Nielsen .....APPELLANT;

IN THE MATTER OF Teresa Nielsen .....APPELLANT.

Citizenship—Appeal from rejection of application—Conscientious objection to serving in armed forces and voting in elections—Whether disqualification for citizenship—Citizenship Act, s. 10(1)(f).

Neither section 10(1)(*f*) of the *Citizenship Act* nor the oath of allegiance which an applicant for citizenship must take requires a willingness to serve in Canada's armed forces if lawfully called upon as a qualification for citizenship, and hence an applicant's objection upon religious grounds to serve in the armed forces of Canada does not disqualify him for citizenship nor preclude the court from being satisfied of his qualifications under s. 10(1) of the Act.

For similar reasons an applicant's objection upon religious grounds to voting in elections for public office neither disqualifies him for citizenship nor precludes the court from being satisfied of his qualifications under s. 10(1) of the Act.

United States v. Schwimmer 279 U.S. 644;
United States v. Macintosh 283 U.S. 605;
United States v. Bland 283 U.S. 636;
Girouard v. United States 328 U.S. 61, considered.

APPEALS from decisions of County Court of Yale, B.C.

K. D. Houghton amicus curiae.

KERR J.:—These appeals are in respect of four applications for Canadian citizenship which were heard by the County Court of Yale, British Columbia, under the provisions of the *Canadian Citizenship Act*. In each case the County Court decided that, because the applicant therein is a conscientious objector against serving in the military forces of Canada, it was not satisfied to recommend to the Secretary of State for Canada that the applicant be granted a certificate of Canadian citizenship. All four applicants appealed to this Court and the appeals were heard at Kamloops, British Columbia, on June 7, 1968.

As the general issues are the predominant features and are similar in all cases and as the facts may be briefly stated and are not in dispute, it is convenient to give one set of reasons for my disposition of the four appeals.

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Each appellant appeared in person at the hearing of the appeals and testified under oath. None was represented by counsel. The Court requested the appointment of an *amicus curiae* for each of the appeals and Mr. K. D. Houghton, Barrister of Kamloops, acted in that capacity and was of great assistance to the Court.

The general issues in all cases are the conscientious objections of the appellants to serving in the armed services of Canada and to voting in elections for public office. The latter objection was disclosed by the appellants during the hearing of the appeals when they were questioned concerning their knowledge of the responsibilities and privileges of Canadian citizenship and their willingness to take the oath of allegiance set out in the Second Schedule to the *Canadian Citizenship Act* and their intention to comply with it. All the appellants belong to the religious body known as "Jehovah's Witnesses".

The appellant, Bjarne Almaas, is a married man, carpenter by occupation, who was born in Norway in 1915, was lawfully admitted to Canada for permanent residence in 1957 and has lived in Enderby, B.C., ever since that time. His wife, Edith Almaas, was born in Norway in 1918, was lawfully admitted to Canada in 1957 for permanent residence and has lived in Enderby, B.C., ever since then. Mr. and Mrs. Almaas have three children, two of whom are under 21 years of age and live in Enderby, the third is just over 21 years old and lives in Vernon, B.C.

The appellant, Egon Nielsen, is a married man, carpenter by occupation, who was born in Denmark in 1922, was lawfully admitted to Canada for permanent residence in 1951 and has lived in Ontario and British Columbia since that time. His wife, Teresa Nielsen, is also an appellant. She was born in Denmark in 1923, was lawfully admitted to Canada for permanent residence in 1951 and has lived in Ontario and British Columbia ever since. Mr. and Mrs. Nielsen have two children who were born in Canada.

All the appellants speak English very well and impressed me favourably. In my opinion, each one is of good character and satisfies the other requirements of section 10(1) of the *Citizenship Act*. I will deal specifically with the

conscientious objections of the appellants, as these appeals are the first in this Court in which such objections have been considered.

Section 10(1) of the Act authorizes the "Minister" to grant a certificate of citizenship to any person who is not a Canadian citizen and who makes application for such a certificate if that person satisfies the "Court" as to the various matters set out therein. The Court is concerned in relation to these appeals particularly with the requirement set out in paragraph (*f*) of section 10(1), which is that the applicant satisfy the court that "he has an adequate knowledge of the responsibilities and privileges of Canadian citizenship and intends to comply with the oath of allegiance set forth in the Second Schedule".

The Oath of Allegiance is as follows:

> I, A B, swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her Heirs and Successors, according to law, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen.
>
> So help me God.

Section 33 of the Act provides that the Court shall impress upon the applicants the responsibilities and privileges of Canadian citizenship.

Each of the appellants expressed a willingness to take the oath of allegiance. Their objections to serving in the armed services and to voting are based on their convictions as to what the Bible teaches and as to what God's laws and arrangements for the human race are. They believe that "His will" will eventually come about. They are willing to serve Canada as good citizens and obey the laws of Canada, subject to the reservation that they regard what they believe to be God's laws as supreme and superior to man-made laws and in the event of conflict between the two kinds of laws, they will feel bound to obey God's laws.

Somewhat similar situations involving applicants for United States citizenship who had conscientious objections against serving in the armed forces of that country were the subject of consideration by the Supreme Court of the United States. I will quote from the decisions given by the Justices of that Court to indicate the views held by eminent

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jurists and the arguments that can be offered in favour of and against the granting of Canadian citizenship to persons who have conscientious objections such as are under consideration here.

The first case was *United States v. Schwimmer*[1], in which the Supreme Court refused citizenship to a woman who said that she was a conscientious objector and would not take up arms in defence of her country. As a condition precedent to a grant of citizenship the applicable statute law of the United States required the applicant to take an oath of allegiance which included a declaration that the applicant "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". In its decision the Supreme Court said, *inter alia*:

> That it is the duty of citizens by force of arms to defend our government against all enemies whenever necessity arises is a fundamental principle of the Constitution.
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> The common defense was one of the purposes for which the people ordained and established the Constitution. ... We need not refer to the numerous statutes that contemplate defense of the United States, its Constitution and laws by armed citizens. This Court, in the *Selective Draft Law Cases*, 245 U.S. 366, speaking through Chief Justice White, said (p. 378) that "the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need. ..."
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> Whatever tends to lessen the willingness of citizens to discharge their duty to bear arms in the country's defense detracts from the strength and safety of the Government. And their opinions and beliefs as well as their behavior indicating a disposition to hinder in the performance of that duty are subjects of inquiry under the statutory provisions governing naturalization and are of vital importance, for if all or a large number of citizens oppose such defense the "good order and happiness" of the United States can not long endure. And it is evident that the views of applicants for naturalization in respect of such matters may not be disregarded. The influence of conscientious objectors against the use of military force in defense of the principles of our Government is apt to be more detrimental than their mere refusal to bear arms. The fact that, by reason of sex, age or other cause, they may be unfit to serve does not lessen their purpose or power to influence others.

Mr. Justice Holmes delivered a dissenting opinion which was concurred in by Mr. Justice Brandeis.

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[1] 279 U.S. 644 at p. 650.

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The matter came before the Supreme Court of the United States again in 1930 in *United States v. Macintosh*[2], in which the Court refused citizenship to an applicant who was unwilling to take the oath of allegiance except with certain reservations, one of which was that he would not assist in the defence of the United States by force of arms or give any war his moral support unless he believed it to be morally justified. I quote the following excerpts from the ruling opinion of the majority of the Court:

> When he speaks of putting his allegiance to the will of God above his allegiance to the government, it is evident, in the light of his entire statement, that he means to make *his own interpretation* of the will of God the decisive test which shall conclude the government and stay its hand. We are a Christian people (*Holy Trinity Church v. United States,* 143 U.S. 457, 470-471), according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God. But, also, we are a Nation with the duty to survive; a Nation whose Constitution contemplates war as well as peace; whose government must go forward upon the assumption, and safely can proceed upon no other, that unqualified allegiance to the Nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God.
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> . . . As this Court said in *United States v. Manzi,* 276 U.S. 463, 467: "Citizenship is a high privilege, and when doubts exist concerning a grant of it, generally at least, they should be resolved in favor of the United States and against the claimant."
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> The *Naturalization Act* is to be construed "with definite purpose to favor and support the Government," and the United States is entitled to the benefit of any doubt which remains in the mind of the court as to any essential matter of fact. The burden was upon the applicant to show that his views were not opposed to "the principle that it is a duty of citizenship, by force of arms when necessary, to defend the country against all enemies, and that (his) opinions and beliefs would not prevent or impair the true faith and allegiance required by the Act." *United States v. Schwimmer, supra,* 649, 650, 653. We are of opinion that he did not meet this requirement.

In the *Macintosh* case Chief Justice Hughes wrote a dissenting opinion, with which Justices Holmes, Brandeis and Stone concurred, which included the following statements at pp. 627, 629-30, 632 & 633-34:

> . . . The question is not whether naturalization is a privilege to be granted or withheld. That it is such a privilege is undisputed. Nor, whether the Congress has the power to fix the conditions upon which

[2] 283 U.S. 605 at pp. 625 & 626.

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the privilege is granted. That power is assumed. Nor, whether the Congress may in its discretion compel service in the army in time of war or punish the refusal to serve. That power is not here in dispute. Nor is the question one of the authority of Congress to exact a promise to bear arms as a condition of its grant of naturalization. That authority, for the present purpose, may also be assumed.

The question before the Court is the narrower one whether the Congress has exacted such a promise.

. . .

. . . He declared that "his first allegiance was to the will of God"; that he was ready to give to the United States "all the allegiance he ever had given or ever could give to any country, but that he could not put allegiance to the Government of any country before allegiance to the will of God". The question then is whether the terms of the oath are to be taken as necessarily implying an assurance of willingness to bear arms, so that one whose conscientious convictions or belief of supreme allegiance to the will of God will not permit him to make such an absolute promise, cannot take the oath and hence is disqualified for admission to citizenship.

. . .

The question of the proper interpretation of the oath is, as I have said, distinct from that of legislative policy in exacting military service. The latter is not dependent upon the former. But the long-established practice of excusing from military service those whose religious convictions oppose it confirms the view that the Congress in the terms of the oath did not intend to require a promise to give such service. The policy of granting exemptions in such cases has been followed from colonial times and is abundantly shown by the provisions of colonial and state statutes, of state constitutions, and of acts of Congress.

. . .

Much has been said of the paramount duty to the State, a duty to be recognized, it is urged, even though it conflicts with convictions of duty to God. Undoubtedly that duty to the State exists within the domain of power, for government may enforce obedience to laws regardless of scruples. When one's belief collides with the power of the State, the latter is supreme within its sphere and submission or punishment follows. But, in the forum of conscience, duty to a moral power higher than the State has always been maintained. The reservation of that supreme obligation, as a matter of principle, would unquestionably be made by many of our conscientious and law-abiding citizens. The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation.

. . .

. . . The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon the very ground of the supremacy of conscience within its proper field. What that field is, under our system of government, presents in part a question of constitutional law and also, in

part, one of legislative policy in avoiding unnecessary clashes with the dictates of conscience. There is abundant room for enforcing the requisite authority of law as it is enacted and requires obedience, and for maintaining the conception of the supremacy of law as essential to orderly government, without demanding that either citizens or applicants for citizenship shall assume by oath an obligation to regard allegiance to God as subordinate to allegiance to civil power.

In 1931 the matter once again came before the Supreme Court in *United States v. Bland*[3] and the Court followed the majority decision in the *Macintosh* case.

Finally in 1946, the Supreme Court of the United States reviewed the question in *Girouard v. United States*[4]. In this case the applicant was willing to take the oath of allegiance but to the question "If necessary, are you willing to take up arms in defence of this country?" he replied, "No (Non-combatant) Seventh Day Adventist", and explained that it was a purely religious matter with him. The Supreme Court this time held that the rule in the *Schwimmer, Macintosh* and *Bland* cases that an alien who refused to bear arms will not be admitted to citizenship was fallacious and the Court overruled those previous decisions. Following are excerpts from the decision:

> The oath required of aliens does not in terms require that they promise to bear arms. Nor has Congress expressly made any such finding a prerequisite to citizenship. To hold that it is required is to read it into the Act by implication. But we could not assume that Congress intended to make such an abrupt and radical departure from our traditions unless it spoke in unequivocal terms.
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> The bearing of arms, important as it is, is not the only way in which our institutions may be supported and defended, even in times of great peril. Total war in its modern form dramatizes as never before the great cooperative effort necessary for victory. The nuclear physicists who developed the atomic bomb, the worker at his lathe, the seamen on cargo vessels, construction battalions, nurses, engineers, litter bearers, doctors, chaplains—these, too, made essential contributions. And many of them made the supreme sacrifice. Mr. Justice Holmes stated in the *Schwimmer case* (279 U.S. p. 655) that "the Quakers have done their share to make the country what it is." And the annals of the recent war show that many whose religious scruples prevented them from bearing arms, nevertheless were unselfish participants in the war effort. Refusal to bear arms is not necessarily a sign of disloyalty or a lack of attachment to our institutions. One

[3] 283 U.S. 636.
[4] 328 U.S. 61 at pp. 64-5, 68 & 69.

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> may serve his country faithfully and devotedly, though his religious scruples make it impossible for him to shoulder a rifle. Devotion to one's country can be as real and as enduring among non-combatants as among combatants. One may adhere to what he deems to be his obligation to God and yet assume all military risks to secure victory. The effort of war is indivisible; and those whose religious scruples prevent them from killing are no less patriots than those whose special traits or handicaps result in their assignment to duties far behind the fighting front. Each is making the utmost contribution according to his capacity. The fact that his rôle may be limited by religious convictions rather than by physical characteristics has no necessary bearing on his attachment to his country or on his willingness to support and defend it to his utmost.
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> Mr. Justice Holmes stated in the *Schwimmer* case (279 U.S. pp. 654-55): "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. I think that we should adhere to that principle with regard to admission into, as well as to life within this country." The struggle for religious liberty has through the centuries been an effort to accommodate the demands of the State to the conscience of the individual. The victory for freedom of thought recorded in our Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the State. Throughout the ages, men have suffered death rather than subordinate their allegiance to God to the authority of the State. Freedom of religion guaranteed by the First Amendment is the product of that struggle.
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> We conclude that the *Schwimmer, Macintosh* and *Bland* cases do not state the correct rule of law.

In considering in connection with the appeals before this Court the decisions of the Supreme Court of the United States one must bear in mind that they relate to the laws of that country and that the qualifications for citizenship and the form of the oath of allegiance there are expressed differently from the corresponding qualifications and oath of allegiance in Canada; but I do not think that there is a significant difference in the principles and the concept of good citizenship upon which the respective laws are based.

In Canada, as in the United States, the right of an alien to acquire citizenship is purely statutory. An applicant must first satisfy the court that he has the qualifications set out in section 10(1) of the *Canadian Citizenship Act* and he must be willing to take, and must intend to comply with,

the oath of allegiance. The relevant paragraph (*f*) of subsection (1) of section 10 and the oath of allegiance are expressed in general words. They do not expressly set out, as a qualification for acquiring Canadian citizenship, a willingness to serve in the armed forces of Canada if lawfully called upon to do so, nor do they require an undertaking to do so. Service in the Canadian armed forces has traditionally been on a voluntary basis. Compulsory military service has not generally been resorted to. Of course, Parliament has legislative authority to enact laws requiring persons to serve in the armed forces and has authority to impose penalties for failure to comply with such laws. Canada also has power to prescribe the qualifications that an alien must have in order to acquire citizenship; and if the *Canadian Citizenship Act* were to set out, as one of those qualifications, a willingness on the part of the applicant to serve in Canada's armed forces if lawfully called upon to do so, or if the Act were to require an undertaking to do so, the court would have no alternative but to apply the law. However, I do not construe the Act or the oath of allegiance as containing such a qualification or requirement, either expressly or by necessary implication.

The Parliament of Canada has affirmed, in the preamble to Part I, the *Bill of Rights,* chapter 44 of the 1960 statutes, that the Canadian nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions and has also affirmed that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law.

It is beyond dispute that persons who refuse to serve in the armed forces because of religious beliefs may still serve Canada well in other ways in peace and in war. They can be good citizens, notwithstanding their refusal to serve in the armed forces.

I find that the expressed unwillingness of the appellants to serve in the armed forces of Canada does not disqualify them from acquiring Canadian citizenship and does not

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preclude the Court from being satisfied as to the various matters set out in section 10(1) of the *Canadian Citizenship Act* insofar as the appellants are concerned.

Now, as to the other objection of the appellants against voting in elections for public office. This objection is also based upon religious and conscientious convictions held by them. They are unwilling to take part, by voting, in the process by which the Members of Parliament and other legislative bodies are elected. The franchise, the right to vote, is an essential feature of our democratic system of Government. People are urged to vote and are told that it is their duty to do so. Our system would falter if most qualified voters refused to vote. However, the right to vote is a privilege that many good Canadian citizens choose from time to time not to exercise, for one reason or another, even for reasons less compelling than religious convictions. I would not regard the refusal of the appellants to vote as a failure on their part to discharge their duty as citizens. As in the case of the objection to military service, and for similar reasons, I find that the objection of the appellants, on religious grounds, to voting and their intention not to vote do not disqualify them from becoming Canadian citizens and do not preclude the Court from being satisfied as to the matters set out in section 10(1) of the Act. As already stated, my opinion is that each of the appellants is of good character and satisfies the requirements of section 10(1).

The decisions appealed from are reversed and it is declared that this Court is satisfied that each of the appellants, Bjarne Almaas, Edith Almaas, Egon Nielsen and Teresa Nielsen, is a fit and proper person to be granted Canadian citizenship under section 10(1) of the *Canadian Citizenship Act*.