of the method employed or the condition of the drain at the time and place in question. *Nelson* v. *Southern Ry. Co.*, 246 U. S. 253. *Missouri Pacific Railroad Co.* v. *Aeby*, 275 U. S. 426.

The court takes judicial notice of the fact that for some weeks immediately before the accident the sun rose and it was light for some time before plaintiff's quitting hour. *Montenes* v. *Metropolitan Street R. Co.*, 77 App. Div. 493. He worked in daylight for some time every morning during the spring and summer months, and during one year he worked days. There was nothing obscure or of recent origin about the place where he was injured. The conditions were constant and of long standing. The evidence requires a finding that he had long known the location of the drain and its condition at the place in question. The dangers attending jumping from engines in the vicinity of the drain, especially in the dark, were obvious. Plaintiff must be held to have fully understood and appreciated the risk.

It was the duty of the judge presiding at the trial to direct the jury to return a verdict in favor of the defendant. *Butler* v. *Frazee*, 211 U. S. 459, 467.

Judgment reversed.

McDONALD *v.* UNITED STATES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

No. 117. Argued January 10, 1929.—Decided February 18, 1929.

1. Service on a vessel of foreign registry can not be considered residence in the United States for naturalization purposes. P. 19.
2. A proviso is not always limited in its effect to the part of the enactment with which it is immediately associated; it may apply generally to all cases within the meaning of the language used. P. 20.

3. For the proper construction of a proviso, consideration need not be limited to the subdivision in which it is found; the general purpose of the section may be taken into account. P. 22.
4. In paragraph Seven, added to the Naturalization Law by the Act of May 9, 1918, the proviso declaring "That service by aliens upon vessels other than of American registry . . . shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens can not secure residence for naturalization purposes during service upon vessels of foreign registry," does not relate to the special classes of persons made eligible to naturalization by the preceding parts of the same paragraph, but (like other provisions in the paragaph) states a rule of general application. P. 22.

22 F. (2d) 747, affirmed.

CERTIORARI, 277 U. S. 581, to a judgment of the Circuit Court of Appeals which affirmed a judgment of the District Court denying a petition for naturalization.

Messrs. J. Harry Covington and *Dean G. Acheson,* with whom *Mr. Wm. K. Jackson* was on the brief, for petitioner.

Under § 4 of the Naturalization Act, continuous physical presence in the United States and in the particular State or Territory is not required, but continuous domicile for the statutory period must have been maintained; and the physical absence of a seaman from his domicile—whether on a foreign or a domestic vessel—does not interrupt the statutory residence required. *United States* v. *Rockteschell,* 208 Fed. 530; *In re Schneider,* 164 Fed. 335; *In re Deans,* 208 Fed. 1018; *In re Timourian,* 225 Fed. 570; *United States* v. *Jorgenson,* 241 Fed. 412; *United States* v. *Habbick,* 287 Fed. 593; *United States* v. *Dick,* 291 Fed. 420; *U. S. ex rel. Devenuto* v. *Curran,* 299 Fed. 206; *Neuberger* v. *United States,* 13 F. (2d) 541.

Subdivision 7 of § 4, added by the Act of May 9, 1918, was a war-time measure, applicable only to particular classes of aliens therein designated, and did not change the law applicable to this petitioner.

The provisos are incorporated in the very body of the subdivision. They are attached at the end of the long, involved first paragraph which specifies the aliens entitled to the special privileges and exemptions therein mentioned, and details the procedure to be observed. This procedure is singularly informal as compared with that which other aliens must follow. The provisos are immediately followed by a second paragraph of the same subdivision dealing with the same subject matter, to-wit: further exemption of such favored aliens from payment of court costs. It is evident that Congress, when it inserted these provisos, was dealing with these favored aliens; for, before turning to the consideration of other subjects covered by the Act, it completed the provisions relating to them by enacting exemptions in their favor from court costs.

Evidently it was thought by Congress that the unqualified provisions of the "seventh" subdivision were too lax as applied to alien seamen. These provisions, if the provisos had not been added, would have permitted: (a) Discontinuous or intermittent service on American ships for three years to establish residence within the United States for naturalization purposes, if some part of the service on American vessels was rendered within six months of the filing of the petition; (b) the declaration of intention to be filed within thirty days of an election; (c) the certificate of the master of such ship to be *prima facie* proof of such service and of necessary residence.

Such provisions would have been peculiarly open to abuse. But by the provisos this broad statute is restricted by providing: That declaration of intention cannot be filed within thirty days of an election; that service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and that such aliens can not se-

cure residence for naturalization purposes during service upon vessels of foreign registry; or, *per contra,* that residence within the United States for naturalization purposes can be established by such privileged aliens only by three years' continuous service on American ships, and discharge from such service had within six months prior to the filing of the petition. These circumstances show the direct and necessary relations of the provisos to the immediately preceding general enacting clauses of the "seventh" subdivision.

Keeping in mind the object and purpose of this amendatory Act, it would seem absurd that Congress, anxious as it was to make citizens of aliens who could be of service to the United States in the military, naval or merchant marine service, should at the same time deliberately cut off from citizenship persons even more desirable, and even more deserving of citizenship than the classes they were dealing with in this Act. For, if the Circuit Court of Appeals' construction is correct, an alien master mariner who had lived continuously in continental United States for twenty years, who had declared his intention of becoming a citizen and was in all other respects qualified, would be denied the privilege of citizenship, if at any time, no matter how short, within the last preceding five years he had served on a foreign vessel. Yet Congress deliberately extended citizenship to an alien who had never been in continental United States, or even in any of its territories or possessions, under less rigorous requirements, if he happened to have served the last preceding three years on a fishing vessel of the United States over twenty tons burden. *United States* v. *Nicolich,* 25 F. (2d) 245.

To give the proviso the effect and meaning claimed by the Circuit Court of Appeals would be to reverse the century-old policy of the Government as expressed in its naturalization laws and in the decisions of its courts.

If Congress had intended to reverse this policy, it would seem that it would have done so by separate enactment or in unmistakable language, and not by an obscure, ambiguous proviso.

The reports of committees and the explanations by committee members occurring in Congress while the Act of May 9, 1918, was under consideration, definitely show that the purpose of this Act was not to place any additional limitations or restrictions upon the naturalization of aliens under the provisions of the Act of June 29, 1906, but was to enlarge the right of naturalization and to extend to the classes of aliens specifically described in the Act of May 9, 1918, the opportunity to become citizens of the United States under conditions much more favorable than those extended to aliens generally by the Act of 1906.

The opinion below apparently centers on the failure of Congress to place the word "such" in front of the word "alien" in the opening clause of the proviso. That this omission was an accident is clearly shown by the second clause of the same sentence,—"and such aliens can not secure residence for naturalization purposes during service upon vessels of foreign registry." If necessary to make the intent of Congress a rational one, the Court should interpolate the word "such." *Ozawa* v. *United States,* 260 U. S. 178.

Distinguishing *Petition of MacKinnon,* 21 F. (2d) 445; *United States* v. *Habbick,* 287 Fed. 593; *In re Willis,* 169 N. Y. Supp. 261.

The proviso, even if given general scope, is not applicable to the facts of this case. Petitioner does not claim constructive residence within the United States, but actual residence. He claims a residence not on a ship, but in Massachusetts where his family is and has been established for more than five years. He does not claim

that anything be regarded as residence within the United States which is not actual bona fide legal residence in a particular house in a particular town in Massachusetts. Therefore, the first clause of the proviso can have no application to him on any view of its scope.

Its second clause is also inapplicable, since he did not secure his residence for naturalization or any other purpose, during service upon vessels of foreign registry. He came to the United States as a passenger and entered as an immigrant paying the head tax.

If the proviso is sought to be given any application to aliens outside the special and privileged classes created by subdivision "seventh," its plain words will permit no wider meaning than that an alien seaman serving on a foreign ship can not come ashore in the United States under a seaman's temporary permit and, while so present in this country, attempt to "secure" a shore residence.

Mr. George C. Butte, Special Assistant to the Attorney General, with whom *Solicitor General Mitchell, Assistant Attorney General Luhring,* and *Mr. Harry S. Ridgely* were on the brief, for the United States.

The words of the proviso show the intention of Congress to deny applicants for naturalization credit for domicile or residence in the United States during periods they serve on vessels of foreign registry. Congress had previously given advantages in naturalization to alien seamen serving on American vessels, allowing them to be naturalized after three years of such maritime service. The Act now being considered was intended to further encourage service on American merchant ships by discouraging alien seamen domiciled in the United States from serving on foreign ships. There is nothing unreasonable about this. An alien, though technically domiciled here, who spends most of his time outside the United States serving on foreign

ships, is not in a position to learn much of our institutions or to acquire an attachment to the principles of the Constitution.

A reading of the entire subdivision shows that the proviso is not limited to the classes of aliens dealt with in the subdivision, as there is no relation between service on foreign ships and the other classes of aliens dealt with in the new subdivision.

The words "service by aliens upon vessels other than of American registry" relate to all aliens in that service, and the words "such aliens" in the last clause of the proviso refer to the aliens serving on foreign vessels, mentioned in the preceding clause.

The reasoning of the courts below is more persuasive than that in *United States* v. *Nicolich,* 25 F. (2d) 245, in which the contrary conclusion was reached. The argument there that the proviso was intended only to prevent service on foreign ships from constituting in itself residence in the United States, is not reasonable. Saying that aliens serving three years on vessels of American registry might be naturalized did not make it necessary, out of abundance of caution, to add a proviso that service on vessels of foreign registry should not be considered service on American ships.

The proviso obviously deals with aliens serving on foreign ships who, by having domicile here, could claim residence. The phrase "residence for naturalization purposes" implies the existence of residence for other purposes. Nothing in the Congressional Record or Reports of Committees supports the contention of the petitioner or discloses an intention not derived from the words of the statute.

Mr. Justice Butler delivered the opinion of the Court.

Petitioner, a British subject, was born in Nova Scotia in 1877. He lawfully entered the United States at New

York, September 17, 1920. He immediately established and has since maintained a place of residence at or near Boston, Massachusetts, where his wife and child joined him September 1, 1921, and have since lived. Since his entry he has continuously served as a master of a vessel of British registry belonging to the United Fruit Company, a New Jersey corporation, plying between Boston and Central American countries. November 30, 1921, he filed his declaration of intention to become a citizen in the district court for Massachusetts, and December 22, 1926, his petition for naturalization. That court denied his application, and its judgment was affirmed by the Circuit Court of Appeals. 22 F. (2d) 747. There is conflict between that decision and one of the Circuit Court of Appeals of the Fifth Circuit. *United States* v. *Nicolich,* 25 F. (2d) 245. This Court granted a writ of certiorari. 277 U. S. 581.

The sole question is whether service on a vessel of foreign registry is to be considered residence in the United States for naturalization purposes.

The Fourth subdivision of § 4 of the Act of June 29, 1906, 34 Stat. 598, provides that on the petition of an alien for citizenship it shall be made to appear "that immediately preceding the date of his application he has resided continuously within the United States five years at least." U. S. C., Tit. 8, § 382.

That Act was amended May 9, 1918, 40 Stat. 542, by adding to § 4 seven subdivisions. The Seventh subdivision, being the first of those so added, is here involved; and, so far as material, its substance is indicated in the margin.* It contains the following: "*Provided further,*

* [The numbers and other matter within brackets are added for convenience in reading.]

Seventh. [1] Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in

That service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens can not secure residence for naturalization purposes during service upon vessels of foreign registry." U. S. C., Tit. 8, § 384.

If that provision relates only to those classified in the added subdivision, petitioner is entitled to naturalization; but if it is given general application the judgment below is right.

As a general rule, a proviso is intended to take a special case or class of cases out of the operation of the body of

---

the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment;

[2] or any alien, or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, . . . or in the . . . Navy or Marine Corps, or in the . . . Coast Guard, or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough . . . ,

[The Filipinos, aliens and Porto Ricans aforesaid] may, on presentation of the required declaration of intention petition for naturalization without proof of the required five years' residence within the United States . . . ; [U. S. C., Tit. 8, § 388 and see R. S. § 2174]

[3] any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States; [*id.* § 392]

[4] any alien declarant who has served in the United States Army, or Navy, or the Philippine Constabulary, and has been honorably

the section in which it is found. *Wayman* v. *Southard,* 10 Wheat. 1, 30. *United States* v. *Dickson,* 15 Pet. 141, 165. *Ryan* v. *Carter,* 93 U. S. 78, 83. *United States* v. *McElvain,* 272 U. S. 633, 635. But a proviso is not always limited in its effect to the part of the enactment with which it is immediately associated; it may apply generally to all cases within the meaning of the language used. *United States* v. *Babbit,* 1 Black 55. *Springer* v. *Philippine Islands,* 277 U. S. 189, 207. Little if any significance is to be given to the use of the word "provided." In

---

discharged therefrom, and has been accepted for service in either the military or naval service of the United States on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, . . . and in these cases only residence in the Philippine Islands and the Panama Canal Zone by aliens may be considered residence within the United States, and the place of such military service shall be construed as the place of residence required to be established for . . . naturalization. [*id.* § 389.]

. . . [Provisions governing procedure follow] . . .

[5] Members of the Naturalization Bureau and Service may be designated by the Secretary of Labor to administer oaths relating to the administration of the naturalization law; [*id.* § 354]

[6] and the requirement of section ten of notice to take depositions to the United States attorneys is repealed, and the duty they perform under section fifteen of the Act of June twenty-ninth, nineteen hundred and six . . ., may also be performed by the Commissioner or deputy Commissioner of Naturalization: [*id.* § 405]

[7] *Provided,* That it shall not be lawful to make a declaration of intention before the clerk of any court on election day or during the period of thirty days preceding the day of holding any election in the jurisdiction of the court: [*id.* § 374, and see § 362]

[8] *Provided further,* That service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens can not secure residence for naturalization purposes during service upon vessels of foreign registry. [*id.* § 384.]

Acts of Congress, that word is employed for many purposes. *Schlemmer* v. *Buffalo, Rochester, &c. Ry.,* 205 U. S. 1, 10. Sometimes it is used merely to safeguard against misinterpretation or to distinguish different paragraphs or sentences. *Georgia Banking Co.* v. *Smith,* 128 U. S. 174, 181. For the proper construction of the provision in question, consideration need not be limited to the subdivision in which it is found; the general purpose of the section may be taken into account. *United States* v. *Whitridge,* 197 U. S. 135, 143.

The general rule in respect of residence of aliens seeking naturalization was established by § 4 of the Act of 1906. The subdivision added by the amendatory Act takes out of that rule four classes, which include (1) native-born Filipino declarants, having served in the Navy, Marine Corps or Naval Auxiliary, (2) aliens, or Porto Ricans not citizens of the United States, having served in the Army, Navy, Marine Corps, Coast Guard or on merchant or fishing vessels of the United States, (3) aliens in the military or naval service during the war, and (4) alien declarants who have been honorably discharged from the Army, Navy or Philippine constabulary and have been accepted for military or naval service on condition that they naturalize. As to those included in the first three classes, no proof of residence is required. As to members of the fourth class, three years' residence is required. Provisions regulating procedure in cases covered by the subdivision follow. After these are the clauses designated in the margin, 5, 6 and 7, followed by the proviso above quoted.

Petitioner contends and it may be assumed that, under the Act of 1906 before the amendment, mere absence of a sailor in pursuit of his calling whether serving on vessels of United States or of foreign registry did not interrupt the required period of residence in the case of one maintaining a domicile in this country. *United States* v. *Rockteschell,*

208 Fed. 530. *United States* v. *Habbick,* 287 Fed. 593, 595.

The amendatory Act was passed in war time, and the new classes include those who, by reason of service in support of the national purpose, specially merit the protection of our flag and the benefits of citizenship. As to them Congress undoubtedly intended generously to relax the requirements for naturalization. See House Report No. 502, 65th Congress, 2d Session. But petitioner is not within any of the new classes; he claims under the earlier Act. And he insists that service on vessels of foreign registration is to be deemed residence for naturalization of aliens domiciled here who are within the five year rule. But under that construction, such service cannot be considered as residence for those within the favored classes created by the amendment.

Moreover, there is nothing in the subdivision to which the proviso can reasonably be held to relate. And, if not construed to apply to those who like petitioner are subject to the five year rule, it would have no effect. This is plainly so because those in the first three classes are not required to prove any period of residence; and the place of their military service is the place of residence required to be established by those belonging to the fourth class.

The subdivision contains provisions plainly not limited to the special classes created by it. It is manifest without discussion that the clauses numbered 5, 6 and 7 in the margin are intended to have effect beyond the scope of the subdivision. The language and circumstances attending the enactment of the amendment do not permit a construction of the proviso limiting its effect to the special classes aforesaid. It was intended to apply generally according to its terms and to establish the rule that service on foreign vessels would not be deemed residence within the United States for the purposes of naturalization.

Decree affirmed.