War-Eemption from Military Service

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War—Exemption from Military Service.—The appellant, a member of the Jehovah's Witnesses religious organization, failed to report for induction on the ground that he should have been exempted from military service by virtue of his position as minister. The court held that he was not a minister within the meaning of the statute; 50 U.S.C.A. 305(d). that ordination is not sufficient to bring an individual within such meaning; that the term "minister" implies the same relationship to the Jehovah's Witness organization as in older denominations; and that the commission of each member of this group to make converts does not constitute such member eligible for exemption within the meaning of Congress. Seele v. United States, 133 F.(2d) 1015 (C.C.A. 8th, 1943).

At the basis of the decisions is the fact that exemption from military service because of religious convictions or activities is not a constitutional right. The power of Congress to declare war and to raise and support armies embraces authority to make all laws necessary and proper for carrying such power into execution. U.S.C.A. Const. Art. 1, sec. 8. Implied in the power is the right of Congress to draft any men who may be needed. Speaking of the deferment of ministers and the consideration shown conscientious objectors, it has been said, "Immunity arises solely through Congressional grace in pursuance of a traditional American policy of deference to conscientious objection and holy calling." Rase v. United States, 129 F. (2d) 204 (C.C.A. 6th, 1942). Since exemption is a privilege rather than a right, the burden is not upon the government but upon one claiming exemption to bring himself clearly within the excepted class. Seele v. United States, supra.

It follows also that the obligation of a local draft board to grant the registrant a fair hearing does not mean a trial in any strict or formal judicial sense. In the case of error, the remedy of appeal is provided within the administrative set-up. Review by the courts is granted only when the local draft board has acted arbitrarily and capriciously. United States v. Grieme, 128 F. (2d) 811 (C.C.A. 3rd, 1942). This is in keeping with the doctrine that when Congress establishes fact finding bodies, the decision of the director are final. The courts will only review if the action is arbitrary and without basis on the theory that the board has exceeded its authority. Bates and Guild Co. v. Payne, 194 U. S. 106, 24 S.Ct. 629, 48 L. Ed. 894.

Seele's case was heard in the District Court on an appeal from criminal prosecution. This is not the only means of obtaining judicial review. If the registrant has exhausted his administrative remedies, on proof that the investigation has not been fair or that the board has abused its discretion by a finding contrary to all substantial evidence, relief may be granted by the courts under a writ of habeas corpus. Rase
v. United States, supra. A registrant who has already been inducted into military service may by writ of habeas corpus obtain a judicial determination as to whether the local draft board acted in an arbitrary manner. United States v. Grieme, supra. The case cited held that the writ of habeas corpus was the only way to obtain judicial review of the decision of the local draft board, that the only point in issue in a criminal prosecution for failure to report for induction was whether the registrant intentionally failed to report, that arbitrary action of the draft board was not a defense to a criminal prosecution for failure to comply with the order. United States v. Grieme, supra.

The theory underlying the decision in the case of United States v. Grieme would seem to be that the registrant must submit himself to the order of the draft board. Therefore, a writ of habeas corpus would be in order. The theory of the Secele case in allowing the point of the validity of the draft board decision to be brought into issue would seem to be that the registrant has some degree of choice as to whether or not he will submit himself to the order of the draft board. Whatever the underlying theories, both methods of getting a review are well established and probably will be continued in use, though seemingly in contradiction with one another.

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War—Rights of Enemy Aliens in Our Courts.—Petition for a writ of mandamus in the Supreme Court of the United States to compel the District Court of the United States for the Southern District of California to vacate a judgment dismissing an action on the ground that the petitioner, a resident of the United States, is an alien enemy, and to proceed to trial of his action.

The petitioner in this case, one Kumezo Kawato, was born in Japan, but became a resident of the United States in 1905. On April 15, 1941, he brought an action in libel against the vessel RALLY in the District Court for the Southern District of California, claiming damages for wages due him for services as seaman and fisherman on the RALLY. He also alleged that he had sustained severe injuries while engaged in the performance of his duties and sought an allowance for maintenance and medical expenses.

The owners of the vessel RALLY moved, on January 20, 1942, to abate the action on the ground that Kawato, by reason of the state of war then existing between Japan, his native country, and the United States, had become an enemy alien and therefore had no right to "prosecute any action in any court of the United States during the pendency of said war." The District judge granted the motion.