

SEI FUJII, Appellant, v. THE STATE OF CALIFORNIA, Respondent

L. A. No. 21149

Supreme Court of California

38 Cal. 2d 718; 242 P.2d 617; 1952 Cal. LEXIS 221

April 17, 1952

OVERVIEW: The alien resident, an alien Japanese who was ineligible to citizenship under the naturalization laws, challenged a judgment that certain real property purchased by him had escheated to the State. He contended that the Alien Land Law had been invalidated by the U.N. Charter and that it violated the Fourteenth Amendment. The court reversed the lower court's judgment. The court held first that the U.N. Charter did not provide relief for the alien resident because it was not a self-executing treaty so as to supersede inconsistent state legislation as provided in U.S. Const. art VI. However, the court determined that the Alien Land Law violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The court held that the statutory classification of aliens on the basis of eligibility to citizenship was suspect because it in fact it classified on the basis of race or nationality. Applying a "most rigid scrutiny" standard of review, the court found that the legislation was not reasonably related to any legitimate governmental interest.

OUTCOME: The court reversed the judgment declaring that the property escheated to the State.

OPINIONBY:

GIBSON

OPINION:

[*720] [**619] Plaintiff, an alien Japanese who is ineligible to citizenship under our naturalization laws, appeals from a judgment declaring that certain land purchased by him in 1948 had escheated to the state. There is no treaty between this country and Japan which confers upon plaintiff the right to own land, and the sole question [***2] presented on this appeal is the validity of the California Alien Land Law. n1

n1 The pertinent portions of the alien land law (1 Deering's Gen. Laws, Act 261), as amended in 1945, are as follows:

[HN1] "§ 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

[HN2] "§ 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the manner and to the extent, and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise. ...

[HN3] "§ 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in Section 2 of this act, ... shall escheat as of the date of such acquiring, to, and become and remain the property of the state of California. ..."

[***3]

United Nations Charter

It is first contended that the land law has been invalidated and superseded by the provisions of the United Nations Charter pledging the member nations to promote the observance of human rights and fundamental freedoms without distinction as to race. Plaintiff relies on statements in the preamble and in articles 1, 55 and 56 of the charter. n2

n2 [HN4] **The preamble** recites that "We the peoples of the United Nations determined ... to reaffirm faith in fundamental human rights ... and for these ends ... to employ international machinery for the promotion of the economic and social advancement of all peoples; have resolved to combine our efforts to accomplish these aims."

Article 1 states that

"**The Purposes of the United Nations are: ...**

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and **encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion ...**"

Articles 55 and 56 appear in chapter IX, entitled "International Economic and Social Cooperation." [HN5] Article 55 provides:

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the **United Nations shall promote:**

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."**

Article 56 provides: "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

[***4]

[*721] **It is not disputed that the charter is a treaty, and our federal Constitution provides that treaties made under the authority of the United States are part the supreme law of the land and that the judges in every state are bound thereby.** (U.S. Const., art. VI) **A treaty, however, does not automatically supersede local laws which are inconsistent with it unless the treaty provisions are self-executing.** In the words of Chief Justice Marshall: A treaty is "to be regarded in courts of justice as equivalent to an act of the Legislature, whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract -- when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the Legislature must execute the contract, before it can become a rule for the court." (*Foster v. Neilson* (1829), 2 Pet. (U.S.) 253, 314 [7 L.Ed. 415].) n3

n3 **In *Foster v. Neilson*, certain treaty provisions were held not to be self-executing on the basis of construction of the English version of the document. Subsequently, upon consideration of the Spanish version, the provisions in question were held to be self-executing.** (*United States v. Percheman*, 7 Pet. (U.S.) 51 [8 L.Ed. 604].) Chief Justice Marshall's language in the Foster case, however, has been quoted with approval in later cases. (*United States v. Rauscher*, 119 U.S. 407, 417-418 [7 S.Ct. 234, 239-240, 30 L.Ed. 425]; *Valentine v. United States*, 299 U.S. 5, 10 [57 S.Ct. 100, 103, 81 L.Ed. 5].)

[**5] [HN7]

In determining whether a treaty is self-executing courts look to the intent of the signatory parties as manifested by the language of the instrument, and, if the instrument is uncertain, recourse may be had to the circumstances surrounding its execution. (See *Foster v. Neilson*, 2 Pet. (U.S.) 253, 310-316 [7 L.Ed. 415]; *United States v. Percheman*, [*722] 7 Pet. (U.S.) 51, 58-59 [8 L.Ed. 604]; *Jones v. Meehan*, 175 U.S. 1, 10-23 [20 S.Ct. 1, 5-10, 44 L.Ed. 49]; *Chew Heong v. United States*, 112 U.S. 536, 539-543 [5 S.Ct. 255, 256-258, 28 L.Ed. 770]; *Cook v. United States*, 288 U.S. 102, 119 [53 S.Ct. 305, 311, 77 L.Ed. 641]; cf. *Nielsen v. Johnson*, 279 U.S. 47, 52 [49 S.Ct. 223, 224, 73 L.Ed. 607].) In order for a treaty provision to be operative without the aid of implementing legislation and to have the force and effect of a statute, **it must appear that the framers of the treaty intended to prescribe a rule that, standing alone, would be enforceable in the courts.** (See *Head Money Cases* [*Edye v. Robertson*], 112 U.S. 580, 598 [5 S.Ct. 247, 254, 28 L.Ed. 798]; *Whitney v. Robertson*, 124 U.S. 190, 194 [8 [*6] S.Ct. 456, 458, 31 L.Ed. 386]; *Cook v. United States*, 288 U.S. 102, 118-119 [53 S.Ct. 305, 311, 77 L.Ed. 641]; *Valentine v. United States*, 299 U.S. 5, 10 [57 S.Ct. 100, 103, 81 L.Ed. 5]; *Bacardi Corp. v. Domenech*, 311 U.S. 150, 161 [61 S.Ct. 219, 225, 85 L.Ed. 98].)

It is clear that the provisions of the preamble and of article 1 of the Charter which are claimed to be in conflict with the alien land law are not self-executing. They state general purposes and objectives of the United Nations Organization and do not purport to impose legal obligations on the individual member nations or to [*621] create rights in private persons. It is equally clear that none of the other provisions relied on by plaintiff is self-executing. Article 55 declares that the United Nations "shall promote ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion," and in article 56, the member nations "pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55." **Although the member nations have obligated themselves to cooperate with the international organization in promoting respect for, and observance of, human rights, it is plain that it was contemplated that future legislative action by the several nations would be required to accomplish the declared objectives, and there is nothing to indicate that these provisions were intended to become rules of law for the courts of this country upon the ratification of the charter.**

The language used in articles 55 and 56 is not the type customarily employed in treaties which have been held to be self-executing and to create rights and duties in individuals. For example, the treaty involved in *Clark v. Allen*, 331 U.S. 503, 507-508 [67 S.Ct. 1431, 1434, 91 L.Ed. 1633, 170 A.L.R. 953], relating to the rights of a national of one country to inherit real property located in another country, specifically provided that "such national shall be allowed a term of three years in which to sell the property ... and withdraw the proceeds ..." free from any discriminatory taxation. (See, also, *Hauenstein v. Lynham*, 100 U.S. 483, 488-490 [25 L.Ed. 628].) In *Nielsen v. Johnson*, 279 U.S. 47, 50 [49 [*8] S.Ct. 223, 73 L.Ed. 607], the provision treated as being self-executing was equally definite. There each of the signatory parties agreed that "no higher or other duties, charges, or taxes of any kind, shall be levied" by one country on removal of property therefrom by citizens of the other country "than are or shall be payable in each State, upon the same, when removed by a citizen or subject of such state respectively." In other instances [HN8] treaty provisions were enforced without implementing legislation where they prescribed in detail the rules governing rights and obligations of individuals or specifically provided that citizens of one nation shall have the same rights while in the other country as are enjoyed by that country's own citizens. (*Bacardi Corp. v. Domenech*, n4 311 U.S. 150, 158-159 [61 S.Ct. 219, 224, 85 L.Ed. 98]; *Asakura v. Seattle*, 265 U.S. 332, 340 [44 S.Ct. 515, 516, 68 L.Ed. 1041]; see *Maiorano v. Baltimore & Ohio R.R. Co.*, 213 U.S. 268, 273-274 [29 S.Ct. 424, 425-426, 53 L.Ed. 792]; *Chew Heong v. United States*, 112 U.S. 536, 541-542 [5 S.Ct. 255, 257, 28 L.Ed. 770].)

n4 It should be noted, however, that the treaty involved in the Bacardi case also contained a specific provision, not discussed by the court, that its terms "shall have the force of law in those States in which international treaties possess that character, as soon as they are ratified by their constitutional organs." (311 U.S. 150, 159 [61 S.Ct. 219, 224, 85 L.Ed. 98].)

[***9]

It is significant to note that **when the framers of the charter intended to make certain provisions effective without the aid of implementing legislation they employed language which is clear and definite and manifests that intention.** For example, **article 104** provides: "The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes." **Article 105** provides: "1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes. 2. Representatives of the [*724] Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization." In *Curran v. City of New York*, 77 N.Y.S.2d 206, 212, these articles were treated as being self-executory. (See, also, *Balfour, Guthrie & Co. v. United States*, 90 F.Supp. 831, 832.)

The provisions in the charter pledging cooperation in promoting observance fundamental freedoms lack the mandatory quality and definiteness which would indicate an intent to create justiciable rights in private persons immediately upon ratification. Instead, they are framed as a promise of future action by the member nations. Secretary of State Stettinius, chairman of the United States delegation at the San Francisco Conference where the charter was drafted, stated in his report to President Truman that article 56 "pledges the various countries to cooperate with the organization by joint and separate action in the achievement of the economic and social objectives of the organization without infringing upon their right to order their national affairs according to their own best ability, in their own way, and in accordance with their own political and economic institutions and processes." (Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State, Department of State Publication 2349, Conference Series 71, p. 115; Hearings before the Committee on Foreign Relations, United States Senate [Revised] July 9-13, 1945, p. 106.) The same view was repeatedly expressed by delegates of other nations in [***11] the debates attending the drafting of article 56. (See U.N.C.I.O. Doc. 699, II/3/40, May 30, 1945, pp. 1-3; U.N.C.I.O. Doc. 684, II/3/38, May 29, 1945, p. 4; Kelsen, *The Law of the United Nations* [1950], footnote 9, pp. 100-102.)

The humane and enlightened objectives of the United Nations Charter are, of course, entitled to respectful consideration by the courts and legislatures of every member nation, since that document expresses the universal desire of thinking men for peace and for equality of rights and opportunities. **The charter represents a moral commitment of foremost importance,** and we must not permit the spirit of our pledge to be compromised or disparaged in either our domestic or foreign affairs. **We are satisfied, however, that the charter provisions relied on by plaintiff were not [*725] intended to supersede existing domestic legislation, and we cannot hold that they operate to invalidate the Alien Land Law.**

Fourteenth Amendment of the Federal Constitution

The next question is whether the Alien Land Law violates the due process and equal protection clauses of the Fourteenth Amendment. Plaintiff asserts, first, that the statutory classification of aliens [***12] on the basis of eligibility to citizenship is arbitrary for the reason that discrimination against an ineligible alien bears no reasonable relationship to promotion of the safety and welfare of the state. He points out that the land law distinguishes not between citizens and aliens, but between classes of aliens, and that persons eligible to citizenship are given all the rights of citizens regardless of whether they desire or intend to become naturalized. Secondly, he contends that the effect of the statute, as well as its purpose, is to discriminate against aliens solely on the basis of race and that such discrimination is arbitrary and unreasonable.

... (long discussion omitted)

The California Alien Land Law is obviously designed and administered as an instrument for racial discrimination, and the most searching examination discloses no circumstances justifying classification on that basis. There is nothing to indicate that those alien residents who are racially ineligible for citizenship possess characteristics which are dangerous to the legitimate interests of the state, or that they, as a class, might

use the land for purposes injurious to public morals, safety or welfare. Accordingly, we hold that the alien land law is invalid as in violation of the Fourteenth Amendment.

The judgment is reversed.

Edits to this document

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