Michigan Law Review

Volume 46 | Issue 6

1948

CONSTITUTIONAL LAW -EQUAL PROTECTION - CALIFORNIA ALIEN LAND LAW

J. R. Mackenzie
University of Michigan Law School

CONSTITUTIONAL LAW — EQUAL PROTECTION — CALIFORNIA ALIEN LAND LAW—A Japanese alien [1] paid for some agricultural land in California which was conveyed to his seven-year-old citizen son. All records indicated that the son owned the land, although the father, his guardian, managed it. The California Alien Land Law [2] prohibits ownership of any interest in agricultural land by aliens ineligible for citizenship.[3] Property acquired in violation of the statute escheats as of the date of acquisition,[4] as does land transferred "with intent to prevent, evade, or avoid escheat." [5] This intent is presumed prima facie whenever an ineligible alien pays the consideration for a transfer of land to one who may lawfully hold it.[6] In escheat proceedings against the son and his father as guardian, the trial court found intent to avoid escheat from: (1) the statutory presumption of such intent; (2) an inference of like intent from the conveyance to a child; (3) an inference of lack of good faith from the father's failure to file annual guardian reports; and (4) an inference from the father's silence that his testimony would have damaged the son's cause. The Supreme Court of California affirmed.[7] On appeal to the United States Supreme Court, *held*, reversed. There were no "exceptional circumstances" to justify the ab-

[1] Recent extensions of naturalization privileges have not included the Japanese. Principal case at 270, note 3.

[2] 1 Cal. Gen. Laws (Deering, Supp. 1945) Act 261.

[3] Id., § 2. Ineligible aliens "may acquire, possess, enjoy, use, cultivate, occupy, and transfer real property, or any interest therein . . . and have in whole or in part the beneficial use thereof . . . (as) . . . prescribed by any treaty now existing . . . and not otherwise." The Treaty with Japan, 37 Stat. L. 1504 (1911), which still controls the construction of the statute although abrogated in 1940, did not provide for holding of agricultural land. Palermo v. Stockton Theatres, Inc., (Cal. App. 1946) 172 P. (2d) 103.

[4] Cal. Gen. Laws (Deering, Supp. 1945) Act 261, § 7.

[5] Id., § 9.

[6] Id., § 9(a). Upheld, Cockrill v. California, 268 U.S. 258, 45 S.Ct. 490 (1925).

[7] Oyama v. California, 29 Cal. (2d) 164, 173 P. (2d) 794 (1946). The court noted that no question of deprivation of property was involved, the land having "escheated to the state instanter" without vesting in the son. Query: Where an intent, the basis for the escheat, is established by a presumption, may the court say that an attack on the presumption is precluded by the effect of the established intent?

normal burden of proof [8] placed on the defendant in view of the equal protection clause of the Fourteenth Amendment and the federal statute requiring states to permit all citizens to take and hold property.[9] *Oyama v. California,* (U.S. 1948) 68 S.Ct. 269.

At common law, no alien could hold land as against the state.[10] The question presented by the Alien Land Law was whether the state can enforce escheat provisions directed only against particular racial classes of aliens. That a state has no right to exclude Chinese from fishing privileges [11] or to administer police legislation so as to discriminate against racial groups [12] had already been decided, but the discriminatory land law was upheld as constitutional.[13] The majority opinion in the principal case avoided a reconsideration of that issue by assuming the constitutionality of the law and holding it invalid as applied. Four concurring justices, however, felt that the statute itself should now be declared unconstitutional. Justices Black and Douglas found it to conflict with the equal protection clause, with federal laws and treaties governing aliens, and with the United Nations' pledge of respect for "human rights and fundamental freedoms for all without distinction as to race. . . ." [14] Justices Murphy and Rutledge reached the same conclusion after a thorough analysis of the history of the statute and the reasons urged in its support.[15] The three dissenting justices were of opinion that, unless the statute itself is challenged, its application in the principal case must be upheld on the ground that a state may prevent evasion of its valid

[8] Under California law, there would normally be no resulting trust to the father, the complete conveyance would raise the presumption of a gift, and the ward would not be penalized for his guardian's default.

[9] 14 Stat. L. 27 (1866), U.S. Rev. Stat. (1878) § 1978, 8 U.S.C. (1940) § 42.

[10] Fairfax's Devisee v. Hunter's Lessee, 7 Cranch (11 U.S.) 603 (1813); Hauenstein v. Lynham, 100 U.S. 483 (1879); TIFFANY, REAL PROPERTY, Zollman ed., § 845 (1940). In California, however, an early statute permitted "any person, whether citizen or alien" to hold and dispose of real property. Civil Code (1872) § 671, amended by Cal. Acts Amendatory of the Codes (1873-1874) p. 218.

[11] In Re Ah Chong, (C.C. Cal. 1880) 2 F. 733.

[12] Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064 (1886).

[13] Porterfield v. Webb, 263 U.S. 225, 44 S.Ct. 21 (1923), controlled by Terrace v. Thompson, 263 U.S. 197, 44 S.Ct. 15 (1923), involving the Washington Alien Land Law. Despite the statute, ineligible aliens may arrange gifts of land to their minor children, and may be guardians of their estates. People v. Fujita, 215 Cal. 166, 8 P. (2d) 1011 (1932). For adverse criticism of the Supreme Court decisions, see Powell, "Alien Land Cases in United States Supreme Court," 12 CAL. L. REV. 259 (1924); McGovney, "The Anti-Japanese Land Laws of California and Ten Other States," 35 CAL. L. REV. 7 (1947).

[14] Principal case at 276-277.

[15] They rejected the arguments that (1) racial discrimination in the naturalization laws is "in and of itself" a sufficient basis for discrimination in re land ownership; (2) eligibility to citizenship is essentially related to allegiance to the state and ability to work effectively for its welfare; (3) Japanese aliens might acquire all the land in California; (4) Japanese should be barred from farming because white farmers may suffer from their competition; (5) clannishness, disloyalty and inferiority are permanent racial characteristics of the Japanese.

laws, and that the burden placed on the defendant was no greater than that placed on any grantee of land paid for by an ineligible alien. The evident antipathy toward the statute revealed in Justice Jackson's dissent, after his attack on "racism" in the *Korematsu* case,[16] suggests that he might join the four [17] in overthrowing the Alien Land Law if the issue of its constitutionality comes squarely before the Court. Such action would affect considerable pending litigation.[18] The statute should become a dead issue eventually, however, even if the majority of the Court remains unwilling to invalidate it, since California's ineligible aliens comprise a small, aged, and steadily declining class.[19]

J. R. Mackenzie

[16] Korematsu v. United States, 323 U.S. 214 at 243, 65 S.Ct. 193 (1944), dissenting opinion.

[17] Note 14, supra.

[18] In early 1946, more than fifty cases were pending under the Alien Land Law, all against Japanese. Ferguson, "The California Alien Land Law and the Fourteenth Amendment," 35 CAL. L. REV. 61 (1947).

[19] 56 YALE L.J. 1017 at 1028 (1947).