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Constitutional Law - Constitutionality of Alien Land Laws - Effect of United Nations Charter

The insurer probably could have avoided the result of the instant decision by inserting in its policy a "no action" clause[17] The courts generally hold that such a clause forbids joinder of the insurer in a suit against the insured;[18] and only a specific statute enabling joinder of the insurer will override such a clause within a policy.[19]

The case appears to be one of first impression in North Dakota, although three other cases have been found which consider the related question of the propriety of informing jurors that the defendant has insurance, when no insurer is a party to the record. A careful study of these cases[20] indicates that the North Dakota Supreme Court recognizes the prejudicial effect of such information where it is injected for no purpose other than to encourage a larger verdict against the defendant; but these cases in no way deny the right to join an insurance company as defendant where a direct cause of action exists against that company under a reasonable construction of our pleading statutes.

CONSTITUTIONAL LAW—CONSTITUTIONALITY OF ALIEN LAND LAWS—EFFECT OF UNITED NATIONS CHARTER. The California Alien Land Law[1] prohibits, except as prescribed by treaty, the ownership of agricultural land[2] by aliens ineligible to citizenship, and provides for the escheat

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[17] A "no action" clause provides that no action can be brought against the insurer until the liability of the insured is first determined by judgment against him. It is designed to keep the fact of insurance out of a jury trial. See Morgan v. Hunt, 196 Wis. 298, 220 N. W. 224 (1928); Appleman, Insurance Law and Practice, § 4861 (1942).

[18] Stearns v. Graves, 61 Idaho 232, 99 P. 2d 955, 958 (1940). See, holding that a "no action" clause forbids joinder of an insurer even where the policy is written under a compulsory insurance statute: Pageway Coaches v. Bransford, 71 S. W. 2d 561 (Tex. Civ. App. 1934), aff'd 129 Tex. 327, 104 S. W. 2d 471 (1937); Polzin v. Wachtl, 209 Wis. 289, 245 N. W. 182 (1932); cf. Milliron v. Dittman, 180 Cal 443, 181 Pac. 779 (1919). Contra: Thompson v. Bass, 167 S. C. 345, 166 S. E. 346 (1932).

[19] Compare Bergstein v. Popkin, 202 Wis. 625, 233 N. W. 572 (1930), with Lang v. Baumann, 213 Wis. 258, 251 N. W. 461 (1933).

[20] Beardsley v. Ewing, 40 N. D. 373, 168 N. W. 791 (1918) (holding it is within discretion of trial court to declare mistrial if plaintiff so questions witness that jurors learn that defendant is insured); Stoskoff v. Wicklund, 49 N. D. 708, 193 N. W. 312 (1923) (holding trial court must declare mistrial upon defendant's motion, if plaintiff so questions witness that jurors learn that defendant is insured); Jacobs v. Nelson, 67 N. D. 27, 268 N. W. 873 (1936) (holding that where defendant has sought to impeach credibility of plaintiff's witness, plaintiff can by his witness bring out the fact of insurance when necessary to explain the impeaching matter; defendant in effect invited plaintiff to put in prejudicial matter of insurance).

[1] 1 Cal. Gen. Laws, Act 261 (Deering 1944, Supp. 1945). In North Dakota aliens are authorized by N. D. Rev. Code §§ 47-0111 and 56-0116 (1943) to acquire and dispose of land as if they were citizens.

[2] Although the prohibition refers to all "real property" it actually applies only to agricultural land, because of a commercial treaty between the United States and Japan, 37 Stat. 1504 (1911), authorizing citizens of Japan "to lease land for residential and commercial purposes..." Jordan v. Tashiro, 278 U. S. 123 (1928).

of any agricultural land acquired by such an alien in violation of the law with intent to evade the law, this intent being presumed whenever an ineligible alien pays the consideration for a transfer to a citizen or an eligible alien.[3]

Sei Fujii, a Japanese alien ineligible to citizenship,[4] acquired land by deed in July, 1948. He brought action against the State of California to determine whether the land had escheated. From a judgment of the Superior Court of Los Angeles County, that the land had escheated to the state on the date of the deed, the plaintiff appealed. The District Court of Appeal, unanimously reversing judgment, *held* that the Alien Land Law is unenforceable because it is contrary to the letter and spirit of the United Nations Charter, which as a treaty ratified by the United States became the supreme law of the land.[5] "The Alien Land Law must therefore yield to the treaty as the superior authority." *Sei Fujii v. State,* 217 P. 2d 481 (Cal. App. 1950). On rehearing,[6] the court held that the fact that Japan is not a member of the United Nations does not render its nationals ineligible to the Charter guarantee under Article 55(c) of equal rights to all "without distinction as to race, sex, language, or religion."[7]

Until recent years, the constitutionality of state alien land laws has been unsuccessfully challenged in the Supreme Court of the United States and in state appellate courts.[8] The argument has been that a state, under its police power to promote the peace and general welfare of its citizens, can determine whether or not aliens shall own agricultural land; subject, of course, to constitutional limitations.[9] In the absence of treaty and congressional action regulating alien land ownership, the principal obstacle to state discrimination against aliens is the Fourteenth Amendment, which provides that no state shall deprive "any person" of life, liberty, or property without due process of law, or deny "any person" the equal protection of the law.[10]

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[3] 1 Cal. Gen. Laws, Act 261 §§ 1, 2, 7, 9, and 9(a) (Deering 1944, Supp. 1945).

[4] 54 Stat. 1140, 8 U. S. C. § 703 (1946). A "person of the Japanese race, if not born a citizen, is ineligible to become a citizen, i. e., to be naturalized." Morrison v. California, 291 U. S. 82, 85 (1934).

[5] U. S. Const. Art. VI, cl. 2. With the advice and consent of the Senate, the Charter was ratified as a treaty by the President on August 8, 1945. 59 Stat. 1031 (1945).

[6] 218 P. 2d 595 (Cal. App. 1950).

[7] 59 Stat. 1045-46 (1945). Compare Charter Articles 1 (3), 59 Stat. 1037 (1945), and 13(1)(b), 59 Stat. 1039 (1945).

[8] See e. g., Terrace v. Thompson, 263 U. S. 197 (1923); Cockrill v. California, 268 U.S. 258 (1924); People v. Osaki, 209 Cal. 169, 286 Pac. 1025 (1930); In re Fujimoto's Guardianship, 130 Wash. 188, 226 Pac. 505 (1924). But see Applegate v. Luke, 173 Ark. 93, 291, S.W. 978 (1927), where the Arkansas Alien Land Law was held unconstitutional as a violation of the state constitution.

[9] Rottschaefer, American Constitutional Law 520 (1939).

[10] U. S. Const. Amend. XIV, § 1. For arguments that state alien land laws are unconstitutional under the Fourteenth Amendment, see Ferguson, **The California Alien Land Law and the Fourteenth Amendment,** 35 Calif. L. Rev. 61 (1947); McGovney, **The Anti-Japanese Land Laws of California and Ten Other States,** 35 Calif. L. Rev. 7 (1947).

"Any person" includes aliens.[11] Another obstacle, largely ignored, is the provision of § 41 of the Civil Rights Act that "all persons" in the jurisdiction of the United States shall have "the full and equal benefit of all laws" as is enjoyed by citizens, and shall be subject to the same liabilities " of every kind, and to no other."[12] "All persons" also includes aliens.[13] A third obstacle, largely unrealized, is that state discrimination against aliens interferes with the exclusive powers of the federal government respecting foreign affairs.[14] Such state discrimination has created serious conflict between the United States and the foreign homeland of the aliens.[15] When California enacted its Alien Land Law in 1913, after years of political agitation arising from racial prejudice and from intense competition between citizen and alien for land and employment, the reaction in Japan was a violent anti-American feeling which almost resulted in war between Japan and the United States.[16] If war had resulted, not California alone, but the whole nation would have suffered.[17] "Legal imposition of distinct, unusual and extraordinary burdens and obligations upon aliens...thus bears an inseparable relationship to the welfare and tranquillity of all the states, and not merely to the welfare and tranquillity of one."[18]

Nonetheless, state alien land laws have been sustained by the United States Supreme Court for over a quarter of a century,[19] on the sole ground that they were a valid exercise of state police power consistent with the Fourteenth Amendment.[20]

But recent decisions indicate that the Court has revised its attitude as to state laws discriminating against resident aliens. In

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[11] Truax v. Raich, 239 U.S. 33, 39 (1915).

[12] 16 Stat. 144 (1870), 8 U.S. C. § 41 (1946).

[13] Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886).

[14] Note, **Conflict Between Local and National Interests in Alien Landholding Restrictions**, 16 U. of Chi. L. Rev. 315, 322 (1949); **cf.** Donelson, **Federal Supremacy and the Davidowitz Case**, 29 Geo. L. J. 755, 758-59 (1941).

[15] Note, **Conflict Between Local and National Interests in Alien Landholding Restrictions**, 16 U. of Chi. L. Rev. 315, 322 (1949).

[16] **See** Oyama v. California, 332 U. S. 633, 655-56 (1948) (concurring opinion); McWilliams, Prejudice 46 (1944).

[17] **See** Chy Lung v. Freeman, 92 U.S. 275, 279 (1879); Note, **Conflict Between Local and National Interests in Alien Landholding Restrictions**, 16 U. of Chi. L. Rev. 315, 322 (1949).

[18] Hines v. Davidowitz, 312 U.S. 52, 65-66 (1941).

[19] In a series of decisions by Mr. Justice Butler: Terrace v Thompson, 263 U.S. 197 (1923), sustaining the Washington Alien Land Law prohibiting ownership of agricultural land by nondeclarant or ineligible aliens; Porterfield v. Webb, 263 U.S. 225 (1923), sustaining the California law prohibiting ownership of agricultural land by ineligible aliens; Webb v. O'Brien, 263 U.S. 313 (1923), sustaining a provision of the California law prohibiting share-cropping agreements with ineligible aliens; Frick v. Webb, 263 U.S. 326 (1923), sustaining a provision of the California law prohibiting the sale of shares of stock in agricultural corporations to ineligible aliens; Cockrill v. California, 268 U. S. 258 (1924), sustaining a provision of the California law creating a presumption of intent to evade the law whenever an ineligible alien paid the consideration for a transfer to a citizen or an eligible alien.

[20] Rottschaefer, American Constitutional Law 520 (1939).

Takahashi v. Fish and Game Commission[21] the Court declared that a California statute, prohibiting the issuance of commercial fishing licenses to aliens ineligible to citizenship, was unconstitutional because it denied such aliens the equal protection of the law, in violation of the Fourteenth Amendment and § 41 of the Civil Rights Act. "The Fourteenth Amendment and the laws adopted under its authority...embody a general policy that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws."[22]

Perhaps more significant is the recent decision of the Court in *Oyama v. California.*[23] In this case a Japanese alien ineligible to citizenship paid the consideration for a transfer of agricultural land to his son, a citizen by birth.[24] The State of California obtained a judgment declaring an escheat of the land, on the ground that it had been transferred with an intent to violate and evade the Alien Land Law. On certiorari, the Supreme Court of the United States, reversing judgment in a 5-3 decision, *held* that the section of the Alien Land Law creating the presumption of the intent to violate the law whenever an ineligible alien pays the consideration for a transfer to a citizen, was unconstitutional because it discriminated against citizen children of ineligible aliens, depriving them of the equal protection of the law guaranteed by the Fourteenth Amendment. Four justices concurred, in two separate opinions,[25] on the broader ground that the entire Alien Land Law was unconstitutional because it was in conflict with the Fourteenth Amendment. They also declared that it was inconsistent with the obligations of the United States under article 55(c) of the United Nations Charter.[26]

Although the *Oyama* case did not invalidate the California Alien Land Law, it was used as a means of invalidating a similar Oregon law,[27] in the case of *Namba v. McCourt.*[28] In this case the Oregon Supreme Court held that state's Alien Land Law unconstitutional because it violated the equal protection and due process clauses of the Fourteenth Amendment. The court acknowledged that the *Oyama* case had not overruled the prior decisions of the United States Supreme Court, but, after an extended review of the majority and concurring opinions concluded that it limited their application by requiring a closer, more critical, scrutiny of state laws which discriminate against aliens. The Court declared that discrimination

[21] 334 U. S. 410 (1948).

[22] Mr. Justice Black, id. at 420.

[23] 332 U.S. 633 (1948).

[24] United States v. Wong Kim Ark., 169 U.S. 649 (1898). "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside..." U.S. Const. Amend. XIV, § 1.

[25] 332 U.S. 633, 647-74 (1948).

[26] See id. at 649-50 and 673 for statements as to the United Nations Charter.

[27] Ore. Comp. L. Ann. §§ 61-101 to 61-106, 61-108 to 61-111 (1940); Oregon Laws 1945, Chapter 436, §§ 1 and 2.

[28] 185 Ore. 579, 204 F.2d 569 (1949).

against the small and diminishing class of aliens ineligible to citizenship was related to no reasonable purpose of the state, and was therefore invalid under the Fourteenth Amendment. The Court also declared that such discrimination was inconsistent with the obligations of the United States under Article 55 (c) of the United Nations Charter.[29]

While the courts in the *Namba* and *Oyama* cases recognized the binding forces of Article 55(c), the California court in the *Fujii* case appears to be the first to base a decision entirely on that Article. However, the High Court of Ontario, Canada, in the case of Re *Drummond Wren.*[30] appears to be the first to have given it legal effect, as one of several bases for invalidating a restrictive covenant against the sale of land "to Jews or persons of objectionable nationality."[31] Clearly, then, the Charter has more content than a mere Utopian dream.

And, as a treaty of the United States, it is a very effective means of circumventing the police power of the states, which has been regarded as a qualification on the Fourteenth Amendment in the sense that it defines the boundaries of the application of that Amendment. A treaty is not subject to that qualification.[32] A treaty is, without qualification, "the supreme law of the land;...anything in the Constitution or *laws of any State* to the contrary notwithstanding."[33] Consequently, by the decision of the California court in the *Fujii* case, based on the supremacy of the United Nations Charter as a treaty, the Achilles' heel of state alien land laws has at last been discovered.[34]

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[29] 204 P.2d at 579.

[30] (1945) Ont. R. 778, (1945) 4 D.L.R. 674 (Ont. H. C.), 59 Harv. L. Rev. 803 (1946).

[31] "I have always felt Re **Drummond Wren** to be a landmark case in the legal order of the entire world, and one that should always be held in honor." Sayre, **Shelley v. Kraemer and United Nations Law**, 34 Iowa L. Rev. 1, 2 (1948); see Sayre, **United Nations Law**, 25 Can. B. Rev. 810, 821 (1947).

[32] Missouri v. Holland, 252 U.S. 416, 433 (1920); Rottschaefer, American Constitutional Law 382-86 (1939).

[33] U.S. Const. Art. VI, cl. 2. (Italics supplied.)

[34] The American Bar Association Committee for Peace and Law Through United Nations, recognizing the great significance of the decision, fears that if affirmed it "will furnish a treaty basis without need of any other constitutional sanction, for claiming invalidation of state laws that make any distinction or classification on account of sex, race, color..." **Report of Committee for Peace and Law Through United Nations** 21 (American Bar Association, Sept. 1, 1950). The Committee recommends study of the question whether the Constitution should be amended so that no treaty shall be the supreme law of the land until Congress first passes enabling legislation. **Id.** at 1 and 24. The desirability of such an amendment is highly questionable, since it would render the conduct of international relations more difficult at a time when greater co-operation among nations is essential.