

December 1950

Constitutional Law--Treaties--The United Nations Charter as the Supreme Law of the Land

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Recommended Citation

R. E. M., *Constitutional Law--Treaties--The United Nations Charter as the Supreme Law of the Land*, 53 W. Va. L. Rev. (1950).

Available at: <https://researchrepository.wvu.edu/wvlr/vol53/iss1/7>

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instances. This trend of modifying the rule of immunity is actually doing away with the reason behind the rule. Is it not doing away with the purpose of protecting the trust funds to impose liability in any instance? In the interest of justice and public policy there should be tort liability placed on charities. It seems to be the trend of the cases to place liability on these organizations. Examples of cases denying immunity are: *Goldman v. Winkelstein*, 263 App. Div. 958, 32 N.Y.S.2d 949 (2d Dep't 1942); *Humphreys v. San Francisco Area Council, Boy Scouts of America*, 22 Cal.2d 436, 139 P.2d 941 (1943); *Foster v. Roman Catholic Diocese of Vermont*, 116 Vt. 124, 70 A.2d 230 (1950). Since the piecemeal cutting of the immunity rule is doing away with the reason behind the rule, why not do away with the rule completely? England and Canada have repudiated the rule of immunity. *Hillyer v. St. Bartholomew Hospital*, 2 K.B. 820 (1909); *Lavere v. Smith's Falls Hospital*, 35 Ont. L.R. 98 (1915).

In the preservation of the trust funds, are the courts really accomplishing their object—that of preserving the benefit of the charity to the public? Where there is immunity there is likely to be neglect. Would it not be more to the interest of the public and of the donor's intent if the charity were held to a standard of care and efficiency than if the trust funds were protected at the expense of the former?

C. M. H.

CONSTITUTIONAL LAW—TREATIES—THE UNITED NATIONS CHARTER AS THE SUPREME LAW OF THE LAND.—Plaintiff, a Japanese alien, brought this action against the State of California to determine whether land bought by him had escheated to the state under the provisions of California's Alien Land Act. Basically, the act provided that any alien who was eligible to become a citizen of the United States could own land in California; but those who were ineligible for citizenship could hold agricultural land only when a treaty so stipulated. No treaty between the United States and Japan had given this right. The superior court found that the property bought by the plaintiff had escheated on the date of the deed. *Held*, on appeal, that the statute was unenforceable because it was contrary to the provisions of the United Nations Charter, which, as a treaty of the United States, became the supreme law of

the land. Judgment reversed. *Sei Fujii v. California*, 217 P.2d 481 (Cal. Dist. Ct. App. 1950).

In a petition for rehearing, the state maintained that since Japan was not a member of the United Nations, the plaintiff was not entitled to the benefits guaranteed by the Charter. *Held*, that the Charter guaranteed equal rights to all without distinction as to race, sex, language, or religion; and therefore plaintiff was entitled to the guarantees. Petition for rehearing denied. *Sei Fujii v. California*, 218 P.2d 595 (Cal. Dist. Ct. App. 1950).

The Alien Land Act which was under attack in this case was enacted in 1920. The principal reason for its passage was to prevent the acquisition by alien Japanese and Chinese of agricultural land since it was difficult for the Western farmer to compete with the Oriental. The California statute was upheld in *Porterfield v. Webb*, 263 U.S. 225 (1935); and a similar Washington statute was held valid in *Terrace v. Thompson*, 263 U.S. 197 (1923). In these cases the Supreme Court held that the due process and equal protection clauses of the 14th Amendment had not been violated. The Court said in the *Terrace* case that each state had the right, in the absence of a contrary treaty provision, to deny aliens the right to hold land within its borders. This right stems from the common law rule that an alien had the right to take land by act of the parties, but that he had no capacity to hold it against the state. *Fairfax's Devisee v. Hunter's Lessee*, 7 Cranch 603 (U.S. 1813). It was found by the Court in the *Porterfield* case that the distinction between aliens eligible to become citizens and those who were ineligible was a reasonable classification, and was not a violation of the equal protection clause of the Constitution.

At the time of the enactment of the Alien Land Act there was a large number of aliens who were ineligible to become citizens of the United States. Practically all Asiatics were in this ineligible class. In recent years, and especially during World War II, these restrictions have been relaxed, until today Japanese are virtually the only people excluded from citizenship.

It was contended that since Japanese are practically the only people excluded from citizenship, the Alien Land Act discriminates against them solely on the basis of their race. The court in the principal case refused to question the constitutionality of the act under the 14th Amendment because it was bound by precedent. Instead, the court declared the law unenforceable on the ground that it was contrary to the principles set forth in the United Nations Charter. The decision of the court is justified if the Charter

became supreme law of the land upon ratification by the Senate. U. S. CONST. Art. VI, § 2, provides that treaties made under the authority of the United States become the supreme law of the land, and as such, supersede any state statute in conflict with it. However, it appears that whether the terms of a treaty are binding upon the courts upon ratification by the Senate depends upon whether a treaty is self-executing or executory. Chief Justice Marshall pointed out the distinction in *Foster v. Neilson*, 2 Pet. 253 (U.S. 1829). In that case he said that a treaty is to be regarded by the courts as equivalent to an act of Congress when it operates by itself, without the aid of further legislation. When the terms of the treaty import a contract, and either of the parties promises to perform a particular act, the treaty addresses itself to the political, and not the judicial department. Before this type of treaty can become a rule of the court, the legislature must execute the contract.

The question is whether the applicable provisions of the United Nations Charter are self-executing. Article 55 (c) provides that the members of the United Nations shall promote "universal respect for, and observation of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." In Article 56 the members pledge themselves to take joint and separate action to achieve the purposes set forth in Article 55. United Nations Charter, 59 STAT. 1035 *et seq.* This language implies that future legislation, putting the pledge into effect, was contemplated. If so, the Charter on the point in question would not be self-executing, and would not supersede state statutes. This line of reasoning becomes more convincing in view of the rule that when reasonably possible the provisions of a treaty will not be construed to override state laws. *Guaranty Trust Co. of New York v. United States*, 304 U.S. 126 (1938).

An alternative method of declaring the alien land laws unenforceable is presented by an Oregon supreme court decision in *Kenji Namba v. McCourt*, 185 Ore. 579, 204 P.2d 569 (1949). Oregon had an alien land act similar to the California statute. In this case the court declared the Oregon law unconstitutional on the ground that it violated the due process and equal protection clauses of the 14th Amendment. It said that although the state had the power to regulate the ownership of land by aliens within its borders, this regulation had to conform to the due process and equal protection clauses. By pointing out that Japanese were now virtually the only people covered by the law, the court showed that the classification under the law discriminated by reason of

race, and therefore violated the 14th Amendment. Although this case was referred to in the principal case, it was not followed because the court believed it to be based on a misinterpretation of recent Supreme Court decisions in *Oyama v. California*, 332 U.S. 633 (1948), and *Takahasi v. Fish & Game Comm'n*, 334 U.S. 410 (1948).

The decision in the principal case by the California district court is unique in that it is the first time a law in the United States has been declared unenforceable by virtue of the United Nations Charter. What the outcome of the case will be if it is appealed is, of course, a matter of conjecture. However, if the decision is carried to its logical conclusion, an interesting problem arises. Does the holding mean that upon ratification of the Charter all discriminatory practices in the United States became illegal? It could be argued that if the Charter is a self-executing treaty many of the provisions of the proposed Civil Rights legislation, aimed at preventing discrimination, became effective upon its ratification. It is unlikely that anything of this nature was contemplated by the Senate when it ratified the Charter. The necessity for legislation to provide machinery for enforcement and penalties for the violation of the Charter provision, would tend to show that it is not self-executing on this point.

A possible solution to this problem might be reached by holding the Charter to be self-executing in relation to the California statute since further legislation is unnecessary; but executory in relation to the Civil Rights program since enabling legislation is necessary. On the former point, no positive action is required, while in the latter case it is.

R. E. M.

HABEAS CORPUS—FEDERAL COURTS—CERTIORARI TO UNITED STATES SUPREME COURT AS A STATE REMEDY.—Petitioner was denied a writ of habeas corpus by the district court because of his failure to apply for certiorari to the United States Supreme Court after the state supreme court had squarely passed on a federal constitutional question presented. *Held*, on certiorari, affirmed. Certiorari to the United States Supreme Court is a part of the state remedies under § 2254 of the Habeas Corpus Chapter of the Judicial Code, 62 STAT. 967 (1948), 28 U.S.C. § 2254 (1948). *Darr v. Burford*, 70 Sup. Ct. 587 (1950) (5-3 decision).