

Patsone Vs. Pennsylvania

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Appeal No. : 232 U.S. 138

Appellant : Patsone

Respondent : Pennsylvania

Judgement :

Patsone v. Pennsylvania - 232 U.S. 138 (1914)

U.S. Supreme Court Patsone v. Pennsylvania, 232 U.S. 138 (1914)

Patsone v. Pennsylvania

No. 38

Argued November 4, 1913

Decided January 19, 1914

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*ERROR TO THE SUPREME COURT OF THE
COMMONWEALTH OF PENNSYLVANIA*

SYLLABUS

The Act of May 8, 1909, of Pennsylvania, making it unlawful for unnaturalized foreign born residents to kill wild game except in defense of person or property, and, to that end, making the possession of shotguns and rifles unlawful, is not unconstitutional under the due process and equal protection provisions of the Fourteenth Amendment.

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A state may protect its wild game and preserve it for its own citizens. *Geer v. Connecticut*, [161 U. S. 519](#) .

A state may classify with reference to the evil to be prevented.

The determination of the class from which an evil is mainly to be feared and specialized in the legislation is a practical one dependent upon experience, and this Court is slow to declare that the state legislature is wrong in its facts. *Adam v. Milwaukee*, [228 U. S. 572](#) .

A state may direct its police regulations against what it deems the evil as it actually exists, without covering the whole field of possible abuse. *Central Lumber Co. v. South Dakota*, [227 U. S. 157](#) .

The provisions in Article II of the treaty with Italy giving citizens of Italy the right to carry on trade on the same terms as natives of this country, and provisions in the treaty with Switzerland, applicable to citizens of Italy under the favored nation clause in Article XXIV of the treaty with Italy, relate to trade, and are not applicable to personal use of firearms, and a state statute protecting wild game and prohibiting aliens from owning shotguns and rifles is not incompatible with or violative of such treaty provisions.

Quaere, and not to be decided on this record, whether the statute in this case can be construed as precluding an alien from possessing a stock of guns for purposes of trade and whether, in that event, it would violate rights under the treaty with Italy

of 1871.

Equality of rights assured to citizens of Italy under the treaty of 1871 is that of protection and security for persons and property, and nothing in that treaty purports or attempts to prevent a state from exercising its power for preservation of wild game for its own citizens.

231 Pa.St. 46 affirmed.

The facts, which involve the constitutionality of the wild game statute of Pennsylvania making it unlawful for any unnaturalized foreign born resident to kill wild birds or animals and the validity of such statute as applied to an Italian citizen in view of the treaty with Italy, are stated in the opinion.

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MR. JUSTICE Holmes delivered the opinion of the Court.

The plaintiff in error was an unnaturalized foreign-born resident of Pennsylvania, and was complained of for owning or having in his possession a shotgun, contrary to an Act of May 8, 1909. Laws 1909, No. 261, p. 466. This statute makes it unlawful for any unnaturalized foreign-born resident to kill any wild bird or animal except in defense of person or property, and "to that end" makes it unlawful for such foreign-born person to own or be possessed of a shotgun or rifle, with a penalty of \$25 and a forfeiture of the gun or guns. The plaintiff in error was found guilty and was sentenced to pay the above-mentioned fine. The judgment was affirmed on successive appeals. 231 Pa. 46. He brings the case to this Court on the ground that the statute is contrary to the Fourteenth Amendment and also is in contravention of the treaty between the United States and Italy, to which latter country the plaintiff in error belongs.

Under the Fourteenth Amendment, the objection is twofold: unjustifiably depriving the alien of property and discrimination against such aliens as a class. But the former really depends upon the latter, since it hardly can be disputed that, if the lawful object, the protection of wild life (*Geer v. Connecticut*, [161 U. S. 519](#)),

warrants the discrimination, the means adopted for making it effective also might be adopted. The possession of rifles and shotguns is not necessary for other purposes not within the statute. It is so peculiarly appropriated to the forbidden use that, if such a use may be denied to this class, the possession of the instruments desired chiefly for that end also may be. The prohibition does not extend to weapons, such as pistols, that may be supposed to be needed occasionally for self-defense. So far, the case is within the principle of *Lawton v. Steele*, [152 U. S. 133](#) .

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See further *Silz v. Hesterberg*, [211 U. S. 31](#) ; *Purity Extract & Tonic Co. v. Lynch*, [226 U. S. 192](#) .

The discrimination undoubtedly presents a more difficult question. But we start with the general consideration that a state may classify with reference to the evil to be prevented, and that, if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one, dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished if, as a matter of fact, it is found that the danger is characteristic of the class named. *Lindsley v. National Carbonic Gas Co.*, [220 U. S. 61](#) , [220 U. S. 80](#) -81. The state "may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses." *Central Lumber Co. v. South Dakota*, [226 U. S. 157](#) , [226 U. S. 160](#) ; *Rosenthal v. New York*, [226 U. S. 260](#) , [226 U. S. 270](#) ; *L'Hote v. New Orleans*, [177 U. S. 587](#) . See further *Louisville & Nashville R. Co. v. Melton*, [218 U. S. 36](#) . The question therefore narrows itself to whether this Court can say that the Legislature of Pennsylvania was not warranted in assuming as its premise for the law that resident unnaturalized aliens were the peculiar source of the evil that it desired to prevent. *Barrett v. Indiana*, [229 U. S. 26](#) , [229 U. S. 29](#) .

Obviously the question, so stated, is one of local experience, on which this Court ought to be very slow to declare that the state legislature was wrong in its facts. *Adams v. Milwaukee*, [228 U. S. 572](#) , [228 U. S. 583](#) . If we might trust popular speech in some states, it was right; but it is enough that this Court has no such knowledge of local conditions as to be able to say that it was manifestly

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wrong. See *Trageser v. Gray*, 73 Md. 250; *Commonwealth v. Hana*, 195 Mass. 262.

The defense under the treaty with Italy of February 26, 1871 (proclaimed November 9, 1855, 17 Stat. 845), appears to us to present less difficulty. The provisions relied upon are those in Article 2, giving to citizens of Italy the right to carry on trade and to do anything incident to it upon the same terms as the natives of this country; in Article 3, assuring them security for persons and property, and that they "shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives, on their submitting themselves to the conditions imposed upon the natives;" and in Article 24, promising to the Kingdom of Italy the same favors in respect to commerce and navigation that may be granted to other nations. We will say a word about each.

The last article is supposed to make applicable a convention with Switzerland providing against more burdensome conditions' being imposed upon the residence of Swiss than upon that of citizens. But Article 24 refers only to commerce and navigation, and the case must stand wholly upon Articles 2 and 3. As to Article 2, it will be time enough to consider whether the statute can be construed or upheld as precluding Italians from possessing a stock of guns for purposes of trade when such a case is presented. The act was passed for an object with which possession in the way of trade has nothing to do, and well might be interpreted as not extending to it. There remains, then, only Article 3. With regard to that, it was pointed out below that the equality of rights that it assures is equality only in respect of protection and security for persons and property. The prohibition of a particular kind of destruction and of acquiring property in instruments intended for

that purpose establishes no inequality in either respect. It is to be remembered that the subject of this whole discussion is wild game, which the state may preserve for

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its own citizens if it pleases. *Geer v. Connecticut*, [161 U. S. 519](#) , [161 U. S. 529](#) . We see nothing in the treaty that purports or attempts to cut off the exercise of their powers over the matter by the states to the full extent. *Compagnie Francaise de Navigation a Vapeur v. State Board of Health*, [186 U. S. 380](#) , [186 U. S. 394](#) -395.

Judgment affirmed.

THE CHIEF JUSTICE dissents.

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