

Alaska Vs. Troy

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Court : US Supreme Court

Decided On : Feb-27-1922

Appeal No. : 258 U.S. 101

Appellant : Alaska

Respondent : Troy

Judgement :

Alaska v. Troy - 258 U.S. 101 (1922)

U.S. Supreme Court Alaska v. Troy, 258 U.S. 101 (1922)

Alaska v. Troy

No. 392

Argued December 14, 15, 1921

Decided February 27, 1922

258 U.S. 101

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF ALASKA, DIVISION No. 1*

SYLLABUS

1. Alaska has been incorporated into and is part of the United States, and the Constitution, so far as applicable, is controlling upon Congress when legislating in respect thereto. P. [258 U. S. 110](#) .
2. Section 27 of the Merchant Marine Act, forbidding, with exceptions, transportation of merchandise over routes between points within the United States in vessels not built in the United States or documented under its laws and owned by its citizens, is a regulation of commerce, and not within 8 of Art. I of the Constitution requiring uniformity throughout the United States of duties, imposts, and excises. P. [258 U. S. 110](#) .
3. Alaska is not a state within 9 of Art. I of the Constitution, declaring "No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." P. [258 U. S. 111](#) . *Downes v. Bidwell*, [182 U. S. 244](#) , considered.

Affirmed.

Appeal from a decree of the district court of the United States for the District of Alaska sustaining a demurrer to, and dismissing, the amended complaint in a suit brought by the Territory and the Juneau Hardware Company to restrain the local Collector of Customs from confiscating merchandise, shipped or to be shipped by the Hardware Company or others in Alaska, from points in the United States over Canadian Railroads to Canadian ports, and thence to Alaska by British vessels not authorized under 27 of the Merchant Marine Act, or merchandise to be shipped in like manner from Alaska to the United States.

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MR. JUSTICE Mc REYNOLDS delivered the opinion of the Court.

In the court below appellants' bill was dismissed upon demurrer. It attacks the validity of 27, Merchant Marine Act of June 5, 1920, c. 250, 41 Stat. 988, [*](#) upon

the ground that the regulation of commerce prescribed therein gives a preference to ports of the Pacific Coast states over those of Alaska, contrary to 9, Art. I, of the federal Constitution: "No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another."

The act purports, among other things, "to provide for the promotion and maintenance of the American merchant marine," and 27 forbids transportation of merchandise

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over any portion of the route between points in the United States, *including* Alaska,

"in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by 18 or 22 of this Act,"

provided that, under certain conditions this limitation shall not apply to merchandise transported between points within the United States, *excluding* Alaska, over through routes by Canadian rail lines and connecting water facilities.

The bill assumes that the preference is obvious upon a consideration of the statute, without more. And although by fostering lines of boats which afford frequent, regular and speedy service, and otherwise, the practical effect may be highly beneficial to Alaskan ports, nevertheless, in view of the record, we will assume that the act does give preference to ports of the states over those of the territory.

Alaska has been incorporated into and is part of the United States, and the Constitution, so far as applicable, is controlling upon Congress when legislating in respect thereto. *Rasmussen v. United States*, [197 U. S. 516](#) , [197 U. S. 525](#) , [197 U. S. 528](#) . It has been organized and is governed under appropriate congressional action. For present purposes, therefore, we need not inquire into the

object and scope of the treaty of cession.

The questioned regulation relates directly to commerce, and clearly is not within the usual meaning of the words of 8, Art. I, of the Constitution: "All duties, imposts and excises shall be uniform throughout the United States." That such regulations are not controlled by the uniformity clause was pointed out in [Cooley v. Board of Wardens of Port of Philadelphia](#), 12 How. 299, [53 U. S. 314](#) :

"But, having previously stated that, in this instance, the law complained of does not pass the appropriate line

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which limits laws for the regulation of pilots and pilotage, the suggestion that this law levies a duty on tonnage or on imports or exports is not admissible, and, if so, it also follows that this law is not repugnant to the first clause of the eighth section of the first article of the Constitution, which declares that all duties, imposts, and excises shall be uniform throughout the United States, for, if it is not to be deemed a law levying a duty, impost, or excise, the want of uniformity throughout the United States is not objectionable."

The appellants insist that "state" in the preference clause includes an incorporated and organized territory. This word appears very often in the Constitution, and, as generally used therein, it clearly excludes a "territory." To justify the broad meaning now suggested would require considerations more cogent than any which have been suggested. Obviously, the best interests of a detached territory may often demand that its ports be treated very differently from those within the states. And we can find nothing in the Constitution itself or its history which compels the conclusion that it was intended to deprive Congress of power so to act. See [Pennsylvania v. Wheeling & Belmont Bridge Co.](#), 18 How. 421; [Knowlton v. Moore](#), [178 U. S. 107](#) .

Great weight is attributed to certain statements concerning the preference clause found in the several opinions announced in [Downes v. Bidwell](#), [182 U. S. 244](#) , [182 U. S. 249](#) , [182 U. S. 288](#) , [182 U. S. 352](#) , [182 U. S. 354](#) -355. But none

of these opinions was accepted by a majority of the Court, and statements therein are not binding upon us. That controversy grew out of a revenue measure, and the point now presented was not directly involved. The writers used the language relied upon in arguments intended to support their particular views concerning the fundamental points. Without attempting to ascertain the exact purport of these expressions, it suffices to say that they afford no adequate support for appellants' position.

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A quotation from the opinion of the court in *Rasmussen v. United States*, [197 U. S. 516](#) , [197 U. S. 520](#) , is apposite:

"In *Dorr v. United States*, [195 U. S. 138](#) , the question was whether the Sixth Amendment was controlling upon Congress in legislating for the Philippine Islands. Applying the principles which caused a majority of the judges who concurred in *Downes v. Bidwell*, [182 U. S. 244](#) , to think that the uniformity clause of the Constitution was inapplicable to Porto Rico, and following the ruling announced in *Hawaii v. Mankichi*, [190 U. S. 197](#) , it was decided that, whilst, by the treaty with Spain, the Philippine Islands had come under the sovereignty of the United States and were subject to its control as a dependency or possession, those Islands had not been incorporated into the United States as a part thereof, and therefore Congress, in legislating concerning them, was subject only to the provisions of the Constitution applicable to territory occupying that relation."

The judgment below is

Affirmed.

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"Act of June 5, 1920 -- To provide for the promotion and maintenance of the American merchant marine, to repeal certain emergency legislation, and provide for the disposition, regulation, and use of property acquired thereunder and for other purposes."

" * * * *"

"Sec. 27. That no merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, including districts, territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by 18 or 22 of this act: *Provided*, That this section shall not apply to merchandise transported between points within the continental United States, excluding Alaska, over through routes heretofore or hereafter recognized by the Interstate Commerce Commission for which routes rate tariffs have been or shall hereafter be filed with said commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities: *Provided further*, that this section shall not become effective upon the Yukon River until the Alaska railroad shall be completed and the Shipping Board shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic."

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