

Webb Vs. O'Brien

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Appeal No. : 263 U.S. 313

Appellant : Webb

Respondent : O'Brien

Judgement :

Webb v. O'Brien - 263 U.S. 313 (1923)

U.S. Supreme Court Webb v. O'Brien, 263 U.S. 313 (1923)

Webb v. O'Brien

No. 26

Argued April 23, 24, 1923

Decided November 19, 1923

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SYLLABUS

1. A citizen can have no legal right to enter into a contract involving land with an alien who cannot legally make and carry out the contract. P. [263 U. S. 321](#) .
2. In the absence of a treaty to the contrary, a state has power to deny aliens the right to own land within its borders. P. [263 U. S. 322](#) .
3. A cropping contract between an owner of land in California and a Japanese alien which, though it may not amount to a lease or a transfer of an interest in real property, is more than a contract of employment in that it gives the alien a right to use, and have a share in the benefit of, the land for agricultural purposes exceeds the privileges granted to such aliens by Art. I of the treaty of February 21, 1911, 37 Stat. 1504, between the United States and Japan, and is forbidden by the California Alien Land Law, which denies to aliens ineligible to citizenship permission to have or enjoy any privilege, not prescribed in the treaty in respect to the use or the benefit of land for agricultural purposes. P. [263 U. S. 322](#) .
4. In forbidding such contracts, the state law violates no right of the landowner or the alien under the federal Constitution. P. [263 U. S. 324](#) . See *Terrace v. Tompson*, ante, [263 U. S. 197](#) ; *Porterfield v. Webb*, ante, [263 U. S. 225](#) . *Truax v. Raich*, [239 U. S. 33](#) , distinguished.

279 F. 117 reversed.

Appeal from a decree of the district court granting an interlocutory injunction in a suit to enjoin state officials from instituting proceedings to enforce the California Alien Land Law.

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MR. JUSTICE BUTLER delivered the opinion of the Court.

This is a suit brought by the appellees to enjoin the Attorney General of California and the District Attorney

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of Santa Clara County from instituting any proceedings to enforce the California Alien Land Law [[Footnote 1](#)] against them.

O'Brien is a citizen and resident of California, and owns 10 acres of agricultural land in the County of Santa Clara.

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Inouye is a capable farmer, and is a Japanese subject living in California. O'Brien and Inouye desire to enter into a cropping contract covering the planting, cultivating,

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and harvesting of crops to be grown on the land. They allege that the execution of such a contract is necessary in order that the owner may receive the largest return from the land, and that the alien may receive compensation therefrom; that the Attorney General and district attorney have threatened to and will enforce the act against them if they execute the contract, and will forfeit or attempt to forfeit the land by an escheat proceeding, and will prosecute them criminally for violating the act. They aver that the act is so drastic, and the penalties for its violation are so great, that neither of them may execute the contract even for the purpose of testing its validity and its application thereto, and that, unless the court shall determine the validity of the act and its application, they will be compelled to submit to it, whether valid or invalid, and to the appellants' interpretation of it, and so be deprived of their property without due process of laws and denied the equal protection of the laws in contravention of the Fourteenth Amendment.

Appellees applied for an interlocutory injunction. The matter was heard by three judges, as provided in 266 of the Judicial Code. The injunction was granted, and the Attorney General and district attorney appealed.

O'Brien, who is a citizen, has no legal right to enter into the proposed contract with Inouye, who is an ineligible Japanese alien, unless the latter is permitted by law to

make and carry out such a contract. At common law, aliens, though not permitted to take land by operation of law, may take by the act of the parties, but they have no capacity to hold against the state, and the land so taken may be escheated to the state. See [Fairfax's Devisee v. Hunter's Lessee](#), 7 Cranch. 603, [11 U. S. 609](#) , [11 U. S. 619](#) -620; [Doe ex dem. Gouverneur's Heirs v. Robertson](#), 11 Wheat. 332, [24 U. S. 355](#) ; [Phillips v. Moore](#), [100 U. S. 208](#) , [100 U. S. 212](#) ; [Atlantic & Pacific Railroad v. Mingus](#), [165 U. S. 413](#) , [165 U. S. 431](#) . In the absence of

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a treaty to the contrary, the state has power to deny to aliens the right to own land within its borders. [Terrace v. Thompson](#), [263 U. S. 197](#) ; [Haugenstein v. Lynham](#), [100 U. S. 483](#) , [100 U. S. 484](#) -488; [Blythe v. Hinckley](#), 127 Cal. 431, *aff'd*, [180 U. S. 180](#) U.S. 333, [180 U. S. 340](#) ; [In the Matter of Okahara](#), 216 P. 614. The provision of the act which limits the privilege of ineligible aliens to acquire real property or any interest therein to that prescribed by treaty is not in conflict with the Fourteenth Amendment. [Terrace et al. v. Thompson](#), *supra*; [Porterfield v. Webb](#), [263 U. S. 225](#) ; [In the Matter of Okahara](#), *supra*. The treaty between the United States and Japan (37 Stat. 1504-1509) does not confer upon the citizens or subjects of either in the territories of the other the right to acquire, possess, or enjoy lands for agricultural purposes. [Terrace et al. v. Thompson](#), *supra*; [In the Matter of Okahara](#), *supra*.

By the proposed cropping contract, Inouye is given the right for a term of four years to plant, cultivate, and harvest crops -- berries and vegetables -- on the land, and to be free from interference by the owner, who undertakes to protect him during the term against interference by any other person. He is entitled to housing for himself, and is granted the right to employ others to work on the land, and to give to them free ingress and egress and the right to live on the land. He is entitled to one-half of all crops grown on the land during the term, to be divided after they are harvested and before removal from the land, and is given a reasonable time after the expiration of the term to remove his share of the crops. He is required to accept his share of the crops as reimbursement for expenditures made to carry on

the farming operations, and as his only return from the undertaking. Assuming that the proposed arrangement does not amount to a leasing or to a transfer of an interest in real property, and that it includes the elements of a contract of employment (*In the Matter of Okahara, supra*), we are of opinion that it is more than a contract of employment, and that, if executed, it will give to

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Inouye a right to use and to have or share in the benefit of the land for agricultural purposes. And this is so, notwithstanding other clauses of the contract to the effect that the general possession of the land is reserved to the owner, that the cropper shall have no interest or estate whatever in the land, that he is given one-half of all crops grown as compensation for his services and labor, and that division of the crops is to be made after they are harvested and before their removal from the land.

The treaty grants liberty to own or lease and occupy houses, manufactories, warehouses, and shops, and to lease land for residential and commercial purposes. [[Footnote 2](#)] Section 2 of the act extends the privilege to acquire, possess, enjoy, and transfer real property or any interest therein only in the manner and to the extent and for the purposes prescribed in the treaty. The treaty given no permission to enjoy, use, or have the benefit of land for agricultural purposes. The privileges granted by the act are carefully limited to those prescribed in the treaty. The act as a whole evidences legislative intention that ineligible aliens shall not be permitted to have or enjoy any privilege in respect of the use or the benefit of land for agricultural purposes. And this view is supported by the circumstances and negotiations leading up to the making of the treaty. See *Terrace v. Thompson, supra*; *Same v. Same*, 274 F. 841, 844, 845. As applied to this case, the act may be read thus:

"Ineligible aliens may own or lease houses, manufactories, warehouses, and shops, and may lease land for residential and commercial purposes. These

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things, but no possession or enjoyment of land otherwise, are permitted."

The term of the proposed contract, the measure of control and dominion over the land which is necessarily involved in the performance of such a contract, the cropper's right to have housing for himself and to have his employees live on the land, and his obligation to accept one-half the crops as his only return for tilling the land clearly distinguish the arrangement from one of mere employment. The case differs from *Truax v. Raich*, [239 U. S. 33](#) . In that case, a statute of Arizona making it a criminal offense for an employer of more than five workers, regardless of kind or class of work or sex of workers, to employ less than 80 percent native-born citizens of the United States was held to infringe the right, secured by the Fourteenth Amendment, of a resident alien to work in a common occupation -- cooking in a restaurant. The right to make and carry out cropper contracts such as that before us is not safeguarded to ineligible aliens by the Constitution. A denial of it does not deny the ordinary means of earning a livelihood or the right to work for a living. The practical result of such contract is that the cropper has use, control, and benefit of land for agricultural purposes substantially similar to that granted to a lessee. Conceivably, by the use of such contracts, the population living on and cultivating the farm lands might come to be made up largely of ineligible aliens. The allegiance of the farmers to the state directly affects its strength and safety. *Terrace v. Thompson, supra*. We think it within the power of the state to deny to ineligible aliens the privilege so to use agricultural lands within its borders.

The decision of the Supreme Court of California in *In the Matter of Okahara, supra*, a habeas corpus case, does not support the appellees' contention. In that case, an ineligible Japanese was held on a warrant charging him with conspiracy to effect a transfer of real property in violation

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of 10 of the Alien Land Law. The gravamen of the offense charged was that Okahara, in furtherance of the conspiracy, executed a contract with another whereby the latter transferred to him for a term of five years an interest in 20 acres

of agricultural land. The only question before the court in that case was whether the contract amounted to a transfer of real property or of an interest therein in violation of 10. The court said:

"the instrument before us cannot be characterized as a lease or transfer of any interest in real property, because it lacks many of the essential elements of a lease, while, on the other hand, it bears all the characteristics of an agreement of hiring. But if it cannot be said to be an agreement of employment pure and simple, it cannot under any rule of construction be held to be more than a cropping contract."

After referring to the terms of the contract and reviewing authorities, it said:

"The argument that the law forbids the making of a contract of employment or agreement to till the soil on shares can only be sustained by adopting the theory that the particular agreement under consideration transfers an interest in land."

The court held that the contract did not violate 10, and discharged Okahara. The contract in that case differs in important particulars from the one before us; but, in the view we take of this case, we need not determine whether, within the meaning of the act, the contract between O'Brien and Inouye, if executed, would effect a transfer of an interest in real property. The question in this case is not whether the proposed contract is prohibited by 10, but it is whether appellees have shown that they have a right under the Constitution or treaty to make and carry out the contract, and are entitled to an interlocutory injunction against the officers of the state. A negative answer must be given.

The privilege to make and carry out the proposed cropping contract, or to have the right to the possession, enjoyment,

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and benefit of land for agricultural purposes as contemplated and provided for therein, is not given to Japanese subjects by the treaty. The act denies the privilege because not given by the treaty. No constitutional right of the alien is

infringed. It therefore follows that the injunction should have been denied.

The order appealed from is reversed.

MR. JUSTICE Mc REYNOLDS and MR. JUSTICE BRANDEIS think there is no justiciable question involved, and that the case should have been dismissed on that ground.

MR. JUSTICE SUTHERLAND took no part in the consideration or decision of this case.

[[Footnote 1](#)]

Initiative Measure Adopted November 2, 1920 (Statutes 1921, p. lxxxiii).

"Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit, and inherit real property, or any interest therein, in this state in the same manner and to the same extent as citizens of the United States except as otherwise provided by the laws of this state."

"Section 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy, and transfer real property, or any interest therein, in this state in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise."

Section 3 provides that any company, association or corporation a majority of whose members are ineligible aliens or in which a majority of the issued capital stock is owned by such aliens is permitted to acquire, possess, enjoy, and convey real property or any interest therein in the manner and to the extent and for the purposes prescribed by any treaty, etc. Hereafter, ineligible aliens may become members of or acquire shares of stock in any company, association or corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purposes prescribed by any treaty . . . and not otherwise.

Section 4 provides that no ineligible alien and no company, association or corporation mentioned in 3 may be appointed guardian of that portion of the estate of a minor which consists of property which such alien or such company, association or corporation is inhibited from acquiring, possessing, enjoying or transferring by reason of the provisions of the act. The superior court may remove the guardian of such an estate whenever it appears to the satisfaction of the court that facts exist which would make the guardian ineligible to appointment in the first instance.

"Section 5(a). The term 'trustee' as used in this section means any person, company, association, or corporation that, as guardian, trustee, attorney in fact, or agent, or in any other capacity, has the title, custody or control of property, or some interest therein, belonging to an ineligible alien or to the minor child of such an alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying or transferring it. . . ."

"(b). Annually every such trustee must file a verified written report showing:"

" * * * *"

"(3). An itemized account of all expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof is required of such trustee."

Section 6 provides for sale and distribution of proceeds when, by reason of the provisions of the act, heir cannot take real property or membership or shares of stock in a company, association, or corporation.

Section 7 provides for the escheat of property acquired in fee by any ineligible alien, and that no alien, company, association or corporation mentioned in 2 or 3 hereof shall hold for a longer period than two years, the possession of any agricultural land acquired in the enforcement of or in satisfaction of a mortgage or other lien hereafter made or acquired in good faith to secure a debt.

"Section 8. Any leasehold or other interest in real property less than the fee hereafter acquired in violation of the provisions of this act by any ineligible alien . . . or by any company, association or corporation mentioned in section 3 of this act, shall escheat to the State of California. . . . Any share of stock or interest of any member in a company, association, or corporation hereafter acquired in violation of the provisions of 3 of this act shall escheat to the State of California."

"Section 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed or sought to be conveyed shall escheat to the state if the property interest involved is of such a character that an ineligible alien . . . is inhibited from acquiring, possessing, enjoying, or transferring it, and if the conveyance is made with intent to prevent, evade, or avoid escheat as provided for herein."

"Section 10. If two or more persons conspire to effect a transfer of real property, or of an interest therein, in violation of the provisions hereof, they are punishable by imprisonment in the county jail or state penitentiary not exceeding two years, or by a fine not exceeding five thousand dollars, or both."

[[Footnote 2](#)]

"Article I. The citizens or subjects of each of the high contracting parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses, and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms, as native citizens or subjects submitting themselves to the laws and regulations there established."