

Asakura Vs. City of Seattle

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Court : US Supreme Court

Decided On : May-26-1924

Appeal No. : 265 U.S. 332

Appellant : Asakura

Respondent : City of Seattle

Judgement :

Asakura v. City of Seattle - 265 U.S. 332 (1924)

U.S. Supreme Court Asakura v. City of Seattle, 265 U.S. 332 (1924)

Asakura v. City of Seattle

No. 211

Argued February 25, 1924

Decided May 26, 1924

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ERROR TO THE SUPREME COURT

OF THE STATE OF WASHINGTON

SYLLABUS

1. The treatymaking power extends to all proper subjects of negotiation between our government and foreign nations, including that of promoting friendly relations by establishing rules of equality between foreign subjects while here and native citizens. P. [265 U. S. 341](#) .

2. A rule of equality thus established stands on the same footing of supremacy as the federal Constitution and laws, cannot be rendered nugatory in any part of the United States by municipal ordinances or state laws, operates without the aid of legislation, state or national, and is to be applied and given authoritative effect by the courts. *Id.*

3. A treaty is to be liberally construed; when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. P. [265 U. S. 342](#) .

4. The Treaty of April 5, 1911, with Japan, provides that 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, . . . to own or lease and occupy shops, . . . to lease land for . . . 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,"

and "shall

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receive . . . the most constant protection . . . for their property." *Held*, that pawnbroking, which is licensed and recognized as a business by the law of the Washington, is "trade" within the meaning of the treaty, and that a city ordinance in that state which undertook to confine the business to citizens of the United States was void as applied to a Japanese subject lawfully admitted to this country. P.

122 Wash. 81, reversed.

Error to a decree of the Supreme Court of Washington which sustained an ordinance of the City of Seattle restricting the business of pawnbroking, in a suit brought by Asakura to prevent its enforcement.

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MR. JUSTICE BUTLER delivered the opinion of the Court.

Plaintiff in error is a subject of the Emperor of Japan, and, since 1904, has resided in Seattle, Washington. Since July, 1915, he has been engaged in business there as a pawnbroker. The city passed an ordinance, which took effect July 2, 1921, regulating the business of pawnbroker and repealing former ordinances on the same subject. It makes it unlawful for any person to engage in the business unless he shall have a license, and the ordinance provides

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"that no such license shall be granted unless the applicant be a citizen of the United States." Violations of the ordinance are punishable by fine or imprisonment or both. Plaintiff in error brought this suit in the Superior Court of King County, Washington, against the city, its Comptroller and its Chief of Police to restrain them from enforcing the ordinance against him. He attacked the ordinance on the ground that it violates the treaty between the United States and the Empire of Japan, proclaimed April 5, 1911, 37 Stat. 1504, violates the Constitution of the State of Washington, and also the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States. He declared his willingness to comply with any valid ordinance relating to the business of pawnbroker. It was shown that he had about \$5,000 invested in his business, which would be broken up and destroyed by the enforcement of the ordinance. The Superior Court granted the relief prayed. On appeal, the supreme court of the state held the ordinance valid and reversed the decree. The case is here on writ of

error under 237 of the Judicial Code.

Does the ordinance violate the treaty? Plaintiff in error invokes and relies upon the following provisions:

"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, 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. . . . The citizens or subjects of each . . . shall receive, in the territories of the other, the most constant protection and security for their persons and property. . . ."

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A treaty made under the authority of the United States

"shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

Constitution, Art. VI, 2.

The treaty-making power of the United States is not limited by any express provision of the Constitution, and, though it does not extend "so far as to authorize what the Constitution forbids," it does extend to all proper subjects of negotiation between our government and other nations. *Geofroy v. Riggs*, [133 U. S. 258](#) , [133 U. S. 266](#) -267; *In re Ross*, [140 U. S. 453](#) , [140 U. S. 463](#) ; *Missouri v. Holland*, [252 U. S. 416](#) . The treaty was made to strengthen friendly relations between the two nations. As to the things covered by it, the provision quoted establishes the rule of equality between Japanese subjects while in this country and native citizens. Treaties for the protection of citizens of one country residing in the territory of another are numerous, [*](#) and make for good understanding between nations. The treaty is binding within the State of Washington. *Baldwin v.*

Franks, [120 U. S. 678](#) , [120 U. S. 682](#) -683. The rule of equality established by it cannot be rendered nugatory in any part of the United States by municipal ordinances or state laws. It stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States. It operates of itself, without the aid of any legislation, state or national, and it will be applied and given authoritative effect by the courts. *Foster v. Neilson*, 2 Pet. 253, [27 U. S. 314](#) ; *Head Money Cases*, [112 U. S. 580](#) , [112 U. S. 598](#) ; *Chew Heong v. United States*, [112 U. S. 536](#) , [112 U. S. 540](#) ; *Whitney v. Robertson*, [124 U. S. 190](#) , [124 U. S. 194](#) ; *Maiorano v. Baltimore & Ohio R.Co.*, [213 U. S. 268](#) , [213 U. S. 272](#) .

The purpose of the ordinance complained of is to regulate, not to prohibit, the business of pawnbroker. But it

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makes it impossible for aliens to carry on the business. It need not be considered whether the state, if it sees fit, may forbid and destroy the business generally. Such a law would apply equally to aliens and citizens, and no question of conflict with the treaty would arise. The grievance here alleged is that plaintiff in error, in violation of the treaty, is denied equal opportunity.

It remains to be considered whether the business of pawnbroker is "trade" within the meaning of the treaty. Treaties are to be construed in a broad and liberal spirit, and when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. *Hauenstein v. Lynham*, [100 U. S. 483](#) , [100 U. S. 487](#) ; *Geofroy v. Riggs*, *supra*, [133 U. S. 271](#) ; *Tucker v. Alexandroff*, [183 U. S. 424](#) , [183 U. S. 437](#) . The ordinance defines "pawnbroker" to

"mean and include every person whose business or occupation [it] is to take and receive by way of pledge, pawn or exchange, goods, wares or merchandise, or any kind of personal property whatever, for the repayment or security of any money loaned thereon, or to loan money on deposit of personal property,"

and defines "pawnshop" to "mean and include every place at which the business of pawnbroker is carried on." The language of the treaty is comprehensive. The phrase "to carry on trade" is broad. That it is not to be given a restricted meaning is plain. The clauses "to own or lease . . . shops, to lease land for . . . commercial purposes, and generally to do anything incident to or necessary for trade," and "shall receive . . . the most constant protection and security for their . . . property . . . " all go to show the intention of the parties that the citizens or subjects of either shall have liberty in the territory of the other to engage in all kinds and classes of business that are or reasonably may be embraced within the meaning of the word "trade" as used in the treaty.

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By definition contained in the ordinance, pawnbrokers are regarded as carrying on a "business." A feature of it is the lending of money upon the pledge or pawn of personal property which, in case of default, may be sold to pay the debt. While the amounts of the loans made in that business are relatively small, and the character of property pledged as security is different, the transactions are similar to loans made by banks on collateral security. The business of lending money on portable securities has been carried on for centuries. In most of the countries of Europe, the pledge system is carried on by governmental agencies; in some of them, the business is also carried on by private parties. In England, as in the United States, the private pledge system prevails. In this country, the practice of pledging personal property for loans dates back to early colonial times, and pawnshops have been regulated by state laws for more than a century. We have found no state legislation abolishing or forbidding the business. Most, if not all, of the states provide for licensing pawnbrokers and authorize regulation by municipalities. While regulation has been found necessary in the public interest, the business is not on that account to be excluded from the trade and commerce referred to in the treaty. Many worthy occupations and lines of legitimate business are regulated by state and federal laws for the protection of the public against fraudulent and dishonest practices. There is nothing in the character of the business of pawnbroker which requires it to be excluded from the field covered by the above quoted provision,

and it must be held that such business is "trade" within the meaning of the treaty. The ordinance violates the treaty. The question in the present case relates solely to Japanese subjects who have been admitted to this country. We do not pass upon the right of admission or the construction of the treaty in this respect, as that question is not before us, and would require consideration of

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other matters with which it is not now necessary to deal. We need not consider other grounds upon which the ordinance is attacked.

Decree reversed.

* See "Handbook of Commercial Treaties," prepared by United States Tariff Commission, 1922.

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