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Constitutional Law -- Equal Protection -- Right of Japanese Alien to Fishing License

CASES NOTED

CONSTITUTIONAL LAW—EQUAL PROTECTION—RIGHT OF JAPANESE ALIEN TO FISHING LICENSE

Respondent, a Japanese alien, was denied a fishing license by the California Fish and Game Commission because of a state statute[1] which prohibited the issuance of such licenses to "persons ineligible for citizenship." He sought to compel the Fish and Game Commission to issue him a license, claiming that the statute denied him the equal protection of the laws as guaranteed him by the Fourteenth Amendment. *Held*, that the issuance of the license will be compelled, for while discriminatory legislation to protect a special public interest is not prohibited by the Fourteenth Amendment, there is no special public interest present in the instant case to justify the legislation. *Torao Takahashi v. Fish and Game Commission*, 68 Sup. Ct. 1138 (1948).

Japanese aliens are ineligible for citizenship by federal statute[2] but aliens are guaranteed the same protection afforded by the equal protection clause of the Fourteenth Amendment as is enjoyed by United States citizens.[3] However, the equal protection clause has been interpreted as permitting the states to legislate in a discriminatory manner, curbing the rights of all or any class of its residents, when some special public interest of its citizens will be adversely affected if the discriminatory legislation is not permitted;[4] and if the discriminatory classification is reasonably relevant to the protection of the particular public interest involved.[5] The lower court concerned itself primarily with the second requisite, the reasonable relevancy of the classification to the end sought.[6] The Supreme Court points out that the right to discriminate is a necessary requisite to any classification, reasonably relevant or otherwise, by reversing the lower court decision on the ground that California's claim of a special public interest by reason of having title to the fish as trustee for its citizens was insufficient to permit such discriminatory classification.

However, past decisions reveal that a public interest in and title to the fish are to be distinguished, the latter not necessarily being an essential ingredient of the former. Had the Court in the principal case wanted to find the requisite public interest independent of the question of title, it might have

1. Cal. Fish and Game Code §§ 427, 428, 990 (1947).
2. 54 Stat. 1140 (1940), 8 U. S. C. § 703 (1946).
3. Yick Wo v. Hopkins, 118 U. S. 356 (1886).
4. Barbier v. Connolly, 113 U. S. 27 (1885).
5. Truax v. Raich, 239 U. S. 33 (1915).
6. Torao Takahashi v. Fish and Game Commission, 30 Cal. 2d 719, 185 P. 2d 805, 808 (1947).

done so by reason of numerous decisions[7] including one leading case[8] in which discrimination against aliens with respect to hunting wild game was permitted. It is submitted that the requisite public interest did exist in this situation but was declared non-existent so as to prevent California from invading a field of exclusive federal power, the regulation of alien admission and exclusion.[9] Approval of this legislation would be a denial to this fisherman of the right to work for a living in his chosen occupation, which is equivalent to denying him the right to remain in that state.[10] When viewed from the perspective that the requisite public interest will not be found to permit discriminatory legislation when to so find would allow state legislation to invade a field of exclusive federal power, the seemingly inconsistent cases previously mentioned may be reconciled with this decision.[11]

There seems little doubt that such decisions as that in the instant case, which refuse to uphold state legislation infringing upon federal power, regardless of the public interest involved, are correct, for to hold otherwise could conceivably permit the states to legislate a delegated federal power out of existence.

CONSTITUTIONAL LAW—FREEDOM OF SPEECH AS INCLUDING THE RIGHT TO BE HEARD THROUGH THE USE OF AMPLIFYING DEVICES

A municipal ordinance prohibited the use of amplifying devices in the streets and other public places without prior permission from the chief of police. Defendant, a Jehovah's Witness, after giving four amplified lectures in a public park, was denied further permission. Nevertheless, he continued to give such lectures, and was convicted and sentenced under the ordinance. On an appeal from an affirmance of the conviction by the New York Court of Appeals, *held*, that the ordinance is unconstitutional on its face, because it places the *right to be heard* in the uncontrolled discretion of the chief of police, thus violating the guarantee of free speech as protected by the Fourteenth Amendment. *Saia v. People of New York*, 68 Sup. Ct. 1148 (1948) (four Justices dissenting).

It would appear that the Court has expanded the right of free speech explicitly to include the *right to be heard* [1] through amplification under proper regulation. The term "right to be heard" is an articulation of what the courts

7. See Note, 39 A. L. R. 350 (1925).
8. Patsone v. Pennsylvania, 232 U. S. 138 (1914).
9. Fong Yue Ting v. United States, 149 U. S. 698 (1893).
10. See note 5 *supra*.
11. See notes 7 and 8 *supra*.

1. Saia v. People of New York, *supra* at 1150.