U.S. Supreme Court

Yick Wo v. Hopkins, 118 U.S. 356 (1886)

Justia Law

Yick Wo v. Hopkins

Submitted April 14, 1886

Decided May 10, 1886

118 U.S. 356

Syllabus

In a suit brought to this court from a State court which involves the constitutionality of ordinances made by a municipal corporation in the State, this court will, when necessary, put its own independent construction upon the ordinances.

A municipal ordinance to regulate the carrying on of public laundries within the limits of the municipality violates the provisions of the Constitution of the United States if it confers upon the municipal authorities arbitrary power, at their own will, and without regard to discretion in the legal sense of the term, to give or withhold consent as to persons or places, without regard to the competency of the persons applying, or the propriety of the place selected, for the carrying on of the business.

An administration of a municipal ordinance for the carrying on of a lawful business within the corporate limits violates the provisions of the Constitution of the United States if it makes arbitrary and unjust discriminations, founded on differences of race between persons otherwise in similar circumstances.

The guarantees of protection contained in the Fourteenth Amendment to the Constitution extend to all persons within the territorial jurisdiction of the United States, without regard to differences of race, of color, or of nationality.

Those subjects of the Emperor of China who have the right to temporarily or permanently reside within the United States, are entitled to enjoy the protection guaranteed by the Constitution and afforded by the laws.

These two cases were argued as one, and depended upon precisely the same state of facts; the first coming here upon a writ of error to the Supreme Court of the State of California, the second on appeal from the Circuit Court of the United States for that district. The plaintiff in error, Yick Wo, on August 4, 1885, petitioned the Supreme Court of California for a writ of habeas corpus, alleging that he was illegally deprived of his personal

liberty by the defendant as sheriff of the city and county of San Francisco.

The sheriff made return to the writ that he held the petitioner in custody by virtue of a sentence of the Police Judges Court, No. 2, of the city and county of San Francisco, whereby he was found guilty of a violation of certain ordinances of the board of supervisors of that county, and adjudged to pay a fine of $10, and, in default of payment, be imprisoned in the county jail at the rate of one day for each dollar of fine until said fine should be satisfied, and a commitment in consequence of nonpayment of said fine.

The ordinances for the violation of which he had been found guilty were set out as follows:

Order No. 156, passed May 26, 1880, prescribing the kind of buildings in which laundries may be located.

"The people of the city and county of San Francisco do ordain as follows:"

"SEC. 1. It shall be unlawful, from and after the passage of this order, for any person or persons to establish, maintain, or carry on a laundry within the corporate limits of the city and county of San Francisco without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone."

"SEC. 2. It shall be unlawful for any person to erect, build, or maintain, or cause to be erected, built, or maintained, over or upon the roof of any building now erected or which may hereafter be erected within the limits of said city and county, any scaffolding without first obtaining the written permission of the board of supervisors, which permit shall state fully for what purpose said scaffolding is to be erected and used, and such scaffolding shall not be used for any other purpose than that designated in such permit."

"SEC. 3. Any person who shall violate any of the provisions of this order shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment. "

Order No. 1587, passed July 28, 1880, the following section:

"SEC. 68. It shall be unlawful, from and after the passage of this order, for any person or persons to establish, maintain, or carry on a laundry within the corporate limits of the city and county of San Francisco without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone."

The following facts were also admitted on the record: that petitioner is a native of China and came to California in 1861, and is still a subject of the Emperor of China; that he has been engaged in the laundry business in the same premises and building for twenty-two years last past; that he had a license from the board of fire wardens, dated March 3, 1884, from which it appeared

"that the above described premises have been inspected by the board of fire wardens, and upon such inspection said board found all proper arrangements for carrying on the business; that the stoves, washing and drying apparatus, and the appliances for heating smoothing irons are in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of order No. 1617, defining 'the fire limits of the city and county of San Francisco and making regulations concerning the erection and use of buildings in said city and

county,' and of order No. 1670, 'prohibiting the kindling, maintenance, and use of open fires in houses;' that he had a certificate from the health officer that the same premises had been inspected by him, and that he found that they were properly and sufficiently drained, and that all proper arrangements for carrying on the business of a laundry, without injury to the sanitary condition of the neighborhood, had been complied with; that the city license of the petitioner was in force and expired October 1st, 1885, and that the petitioner applied to the board of supervisors, June 1st, 1885, for consent of said board to maintain and carry on his laundry, but that said board, on July 1st, 1885, refused said consent."

It is also admitted to be true, as alleged in the petition, that, on February 24, 1880,

"there were about 320 laundries in the city and county of San Francisco, of which

about 240 were owned and conducted by subjects of China, and of the whole number, *viz.,* 320, about 310 were constructed of wood, the same material that constitutes nine-tenths of the houses in the city of San Francisco. The capital thus invested by the subjects of China was not less than two hundred thousand dollars, and they paid annually for rent, license, taxes, gas, and water about one hundred and eighty thousand dollars."

It was alleged in the petition, that

"your petitioner and more than one hundred and fifty of his countrymen have been arrested upon the charge of carrying on business without having such special consent, while those who are not subjects of China, and who are conducting eighty odd laundries under similar conditions, are left unmolested and free to enjoy the enhanced trade and profits arising from this hurtful and unfair discrimination. The business of your petitioner, and of those of his countrymen similarly situated, is greatly impaired, and in many cases practically ruined, by this system of oppression to one kind of men and favoritism to all others."

The statement therein contained as to the arrest, &c., was admitted to be true, with the qualification only that the eighty odd laundries referred to are in wooden buildings without scaffolds on the roofs.

It was also admitted

"that petitioner and 200 of his countrymen similarly situated petitioned the board of supervisors for permission to continue their business in the various houses which they had been occupying and using for laundries for more than twenty years, and such petitions were denied, and all the petitions of those who were not Chinese, with one exception of Mrs. Mary Meagles, were granted."

By section 2 of article I of the Constitution of California, it is provided that

"any county, city town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws."

By section 74 of the Act of April 19, 1856, usually known as the consolidation act, the board of supervisors is empowered, among other things,

"to provide by regulation for the prevention and summary removal of nuisances to public health, the

prevention of contagious diseases; . . . to prohibit the erection of wooden buildings within any fixed limits where the streets shall have been established and graded; . . . to regulate the sale, storage, and use of gunpowder or other explosive or combustible materials and substances, and make all needful regulations for protection against fire; to make such regulations concerning the erection and use of buildings as may be necessary for the safety of the inhabitants."

The Supreme Court of California, in the opinion pronouncing the judgment in this case, said:

"The board of supervisors, under the several statutes conferring authority upon them, has the power to prohibit or regulate all occupations which are against good morals, contrary to public order and decency, or dangerous to the

public safety. Clothes washing is certainly not opposed to good morals or subversive of public order or decency, but, when conducted in given localities, it may be highly dangerous to the public safety. Of this fact, the supervisors are made the judges, and, having taken action in the premises, we do not find that they have prohibited the establishment of laundries, but that they have, as they well might do, regulated the places at which they should be established, the character of the buildings in which they are to be maintained, etc. The process of washing is not prohibited by thus regulating the places at which and the surroundings by which it must be exercised. The order No. 1569 and section 68 of order No. 1587 are not in contravention of common right or unjust, unequal, partial, or oppressive in such sense as authorizes us in this proceeding to pronounce them invalid."

After answering the position taken in behalf of the petitioner, that the ordinances in question had been repealed, the court added:

Barbier v. Connolly,, and *Soon Hing v. Crowley,*

The writ was accordingly discharged, and the prisoner remanded.

In the other case, the appellant, Wo Lee, petitioned for his discharge from an alleged illegal imprisonment upon a state of facts shown upon the record precisely similar to that in the case of Yick Wo. In disposing of the application, the learned Circuit Judge, Sawyer, in his opinion, 26 Fed.Rep. 471, after quoting the ordinance in question, proceeded at length as follows:

"Thus, in a territory some ten miles wide by fifteen or more miles long, much of it still occupied as mere farming and pasturage lands and much of it unoccupied sand banks, in many places without a building within a quarter or half a mile of each other, including the isolated and almost wholly unoccupied Goat Island, the right to carry on this, when properly guarded, harmless and necessary occupation, in a wooden building is not made to depend upon any prescribed conditions giving a right to anybody complying with them, but upon the consent or arbitrary will of the board of supervisors. In three-fourths of the territory covered by the ordinance, there is no more need of prohibiting or regulating laundries than if they were located in any portion of the farming regions of the State. Hitherto, the regulation of laundries has been limited to

the thickly settled portions of the city. Why this unnecessary extension of the limits affected, if not designed to prevent the establishment of laundries, after a compulsory removal from their present locations, within practicable reach of the customers or their proprietors? And the uncontradicted petition shows that all Chinese applications are, in fact, denied, and those of Caucasians granted -- thus, in fact, making the discriminations in the administration of the ordinance, which its terms permit. The fact that the right to give consent is reserved in the ordinance shows that carrying on the laundry business in wooden buildings is not deemed, of itself, necessarily dangerous. It must be apparent to every well informed mind that a fire, properly guarded, for laundry purposes, in a wooden building, is just as necessary, and no more dangerous, than a fire for cooking purposes or for warming a house. If the ordinance under consideration is valid, then the board of supervisors can pass a valid ordinance preventing the maintenance, in a wooden

building, of a cooking stove, heating apparatus, or a restaurant, within the boundaries of the city and county of San Francisco, without the consent of that body, arbitrarily given or withheld, as their prejudices or other motives may dictate. If it is competent for the board of supervisors to pass a valid ordinance prohibiting the inhabitants of San Francisco from following any ordinary, proper, and necessary calling within the limits of the city and county except at its arbitrary and unregulated discretion and special consent, and it can do so if this ordinance is valid, then it seems to us that there has been a wide departure from the principles that have heretofore been supposed to guard and protect the rights, property, and liberties of the American people. And if, by an ordinance, general in its terms and form like the one in question, by reserving an arbitrary discretion in the enacting body to grant or deny permission to engage in a proper and necessary calling, a discrimination against any class can be made in its execution, thereby evading and, in effect, nullifying the provisions of the National Constitution, then the insertion of "

brk:

provisions to guard the rights of every class and person in that instrument was a vain and futile act. The effect of the execution of this ordinance in the manner indicated in the record would seem to be necessarily to close up the many Chinese laundries now existing, or compel their owners to pull down their

present buildings and reconstruct of brick or stone, or to drive them outside the city and county of San Francisco to the adjoining counties, beyond the convenient reach of customers, either of which results would be little short of absolute confiscation of the large amount of property shown to be now, and to have been for a long time, invested in these occupations. If this would not be depriving such parties of their property without due process of law, it would be difficult to say what would effect that prohibited result. The necessary tendency, if not the specific purpose, of this ordinance, and of enforcing it in the manner indicated in the record, is to drive out of business all the numerous small laundries, especially those owned by Chinese, and give a monopoly of the business to the large institutions established and carried on by means of large associated Caucasian capital. If the facts appearing on the face

of the ordinance, on the petition and return, and admitted in the case and shown by the notorious public and municipal history of the times indicate a purpose to drive out the Chinese laundrymen, and not merely to regulate the business for the public safety, does it not disclose a case of violation of the provisions of the Fourteenth Amendment to the National Constitution, and of the treaty between the United States and China, in more than one particular? . . . If this means prohibition of the occupation and destruction of the business and property of the Chinese laundrymen in San Francisco -- and it seems to us this must be the effect of executing the ordinance -- and not merely the proper regulation of the business, then there is discrimination and a violation of other highly important rights secured by the Fourteenth Amendment and the treaty. That it does mean prohibition as to the Chinese it seems to us must be apparent to every citizen of San Francisco who has been here long enough to be familiar with the cause of an active and aggressive branch of public opinion and of public notorious events. Can a court be blind to what must be necessarily known to every intelligent person in the State? *See Ah Kow v. Nunan,* 5 Sawyer, 552, 560; 3 Wall. 97, ; *Brown v. Piper,*, .

But, in deference to the decision of the Supreme Court of California in the case of *Yick Wo,* and contrary to his own opinion as thus expressed, the circuit judge discharged the writ and remanded the prisoner.