4) Supreme Court of California

In re Clausen's Estate Oct. 10. 1927 (259 P. 1094)

Konsularbefugnisse — Meistbegünstigungsklausel — Vertragsauslegung.

Die Meistbegünstigungsklausel eines Vertrages bezieht sich nur auf die in diesem Vertrag geregelten Materien.

Tatbestand. Der dänische Konsul in Kalifornien erhebt den Anspruch, den auf dänische, in Dänemark wohnende Erben eines in Kalifornien verstorbenen Dänen entfallenden Teil des Nachlasses zur Weiterleitung an die Erben in Empfang zu nehmen und dafür zu quittieren. Er stützt sich dabei auf die Meistbegünstigungsklausel in dem dänisch-amerikanischen Vertrag vom 10. Aug. 1826 (8 U. S. Stat. at L. 340), aus der er den Anspruch herleitet, ebenso behandelt zu werden wie deutsche Konsuln nach dem deutsch-amerikanischen Vertrag vom 14. 10. 1925 (44 U. S. Stat. at L. part 3. 2154); in diesem wird den Konsuln der vertragschließenden Staaten das Recht, den Nachlaß verstorbener Staatsangehöriger in Empfang zu nehmen, ausdrücklich eingeräumt.

Aus den Gründen: ". . .Because the 'most favored nation' clause appears in article 8 of said treaty [1]), which is regulatory of commercial and navigation relations between the two nations, it is claimed that whatever treaty rights or privileges any other nation may have secured to itself by reason of its treaty agreements with the United States are ... extended to all other nations though not parties to said treaty agreements, provided the treaties with said nations which are strangers to said treaty agreements contain the 'most favored nation' clause ...

By the language of the article ... it is manifest that the rights, privileges, and immunities guaranteed to consuls are relative to navigation and commerce, granting to the consuls of each contracting nation the rights, privileges, and immunities that are germane to and tend to assist or promote commerce and navigation, and such other rights and privileges as friendly nations accord to one another. Said Danish treaty contains no words equivalent to the language expressly inserted in the German treaty which appellant seeks to adopt by reference ...

Our treaty with Denmark was ratified almost a century before the right contended for by appellant was given to any nation or inserted in any treaty to which this nation was a party. Obviously it was not within the contemplation of either of the powers in our treaty with the King of Denmark to confer upon the consul or vice consul of Denmark a right not then given to other nations. Neither is there anything in said Danish treaty that would justify the construction sought by appellant

[1]) Der dänisch-amerikanische Vertrag vom 10. Aug. 1826.

to be placed upon it. In fact, it does not contain the provisions found in numerous modern treaties made by this nation with other nations to the effect that future privileges and immunities accorded to the consuls of the most favored nations will inure to the benefit of Denmark. It may, however, by a reasonably liberal construction, be held that any privileges, rights, or immunities granted to consuls of other nations, if within the scope of the subject dealt with in our treaty with Denmark, would also inure to the benefit of the Danish consuls or other representatives.

The right asserted by appellant is not a mere right, privilege, or immunity ordinarily accorded to consular or other representatives of a foreign power which may be said to naturally come within the purview of the comity of nations. It is obviously something more. Whether or no either of the treaty-making powers, the United States or Denmark, intended to confer upon its consular officers the authority claimed by appellant nowhere appears in the treaty, and an American court might properly be chargeable with unwarranted presumption should t attempt, in the absence of language plainly expressing or necessarily implying such intent, to confer upon the consulate of foreign nations powers or privileges in important matters not conferred upon them by the nations which they represent ... If the Kingdom of Denmark desires to depart from the long-established practice of transmitting to its subjects their distributable shares of estates due them from foreign lands, it is most reasonable to assume that it would negotiate a treaty to that effect or express its desire in some other official form ...

Applying the well-recognized rule that treaties are subject to the same rules of interpretation as other documents, and aided by the further consideration that those nations which have deemed it wise to change the rule of transmitting property acquired from estates in foreign lands to their subjects to whom distribution is ordered, have done so by express treaty provisions, we conclude that inasmuch as the treaty made between the United States and the King of Denmark contains no such provision or article, the appellant is without authority to maintain this proceeding."

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