Bugajewitz Vs. Adams

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Appeal No. : 228 U.S. 585

Appellant : Bugajewitz

Respondent : Adams

Judgement :

Bugajewitz v. Adams - 228 U.S. 585 (1913)
U.S. Supreme Court Bugajewitz v. Adams, 228 U.S. 585 (1913)

Bugajewitz v. Adams

No. 239

Submitted April 21, 1913

Decided May 12, 1913

228 U.S. 585

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLORADO

SYLLABUS

Congress has power to order the deportation of aliens whose presence in the country it deems hurtful, and this applies to prostitutes regardless of the time they have been here.

The determination of whether an alien falls within the class that Congress had declared to be undesirable, by facts which might constitute a crime under local law, is not a conviction of crime, nor is deportation a punishment.

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The prohibition of *ex post facto* laws in Art. I, 9 of the federal Constitution has no application to the deportation of aliens.

There is a distinction between the words "as provided" and "in the manner provided;" the former may be controlled by an express limitation in the statute, while the latter must not be so controlled, and so *held* that the limitation in 3 of the Act of February 20, 1907, was stricken out by the Act of February 26, 1910, notwithstanding a reference in the latter act to a section in the former act in which the limitation was referred to.

The facts, which involve the power of Congress to deport aliens and the construction of the Acts of Congress relating to deportation of alien prostitutes, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an appeal from an order discharging a writ of habeas corpus and remanding the petitioner to custody. The ground of the appeal is that the Act of March 26, 1910, c. 128, 2, 36 Stat. 263, 265, relied on as authority for the arrest, impairs the petitioner's constitutional rights. It appears from the petition and the

return to the writ that the petitioner is an alien; that she entered the United States not later than January 4, 1905, and that she was arrested on August 3, 1910, on an order of the Acting Secretary of Commerce and Labor, directing the Immigrant Inspector to take her into custody, and to grant her a hearing to show cause why she should not be deported. The order recited that she was then a prostitute and inmate of a house of prostitution, and that she was a prostitute at the time of entry, and entered the United States for the purpose of prostitution or for an immoral purpose. The answer to the return demurs to its sufficiency, and denies that she was a prostitute at the time of entry, or that she entered the United States for any of the purposes alleged; but we must take it at least that she is a prostitute now.

By the Act of February 20, 1907, c. 1134, 3, 34 Stat. 898, 899, any alien woman found practicing prostitution within three years after she should have entered the United States was to be deported "as provided by sections twenty and twenty-one of this act." This section was amended by the Act of March 26, 1910, c. 128, 2, 36 Stat. 265,

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and the limitation of three years was stricken out, but the amendment still refers to 20, 21, and orders deportation "in the manner provided by" 20, 21. The beginning of these two sections provides for the taking into custody of aliens subject to removal, within three years from entry, and so it has been argued in other cases that the three-year limitation still holds good. The construction of the amendment was not relied on here, but, before we can deal with the constitutional question, it becomes necessary to dispose of that point. We are of opinion that the effect of striking out the three-year clause from 3 is not changed by the reference to 20 and 21. The change in the phraseology of the reference indicates to narrowed purpose. The prostitute is to be deported, not "as provided," but "in the manner provided," in 20, 21. Those sections provide the means for securing deportation, and it still was proper to point to them for that. *United States v. Weis,* 181 F. 860; *Chomel v. United States,* 192 F. 117

The attempt to reopen the constitutional question must fail. It is thoroughly established that Congress has power to order the deportation of aliens whose presence in the country it deems hurtful. The determination by facts that might constitute a crime under local law is not a conviction of crime, nor is the deportation a punishment; it is simply a refusal by the government to harbor persons whom it does not want. The coincidence of the local penal law with the policy of Congress is an accident. *Fong Yue Ting v. United States,* 149 U. S. 698 , 149 U. S. 707 , 149 U. S. 728 -730; *Wong Wing v. United States,* 163 U. S. 228 , 163 U. S. 231 ; *Zakonaite v. Wolf,* 226 U. S. 272 , 226 U. S. 275 ; *Tiaco v. Forbes, ante,* p. 229 U. S. 549 . The prohibition of *ex post facto* laws in Article 1, 9, has no application, *Johnannessen v. United States,* 225 U. S. 227 , 225 U. S. 242 , and, with regard to the petitioner, it is not necessary to construe the statute as having any retrospective effect.

Judgment affirmed.