

Philippides Vs. Day

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Court : US Supreme Court

Decided On : Mar-23-1931

Appeal No. : 283 U.S. 48

Appellant : Philippides

Respondent : Day

Judgement :

Philippides v. Day - 283 U.S. 48 (1931)

U.S. Supreme Court Philippides v. Day, 283 U.S. 48 (1931)

Philippides v. Day

No. 92

Argued March 2, 1931

Decided March 23, 1931

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

An alien who arrived in this country as a seaman after the effective date of the Immigration Act of 1924, and deserted, and who remained here longer than permitted by the regulations under that Act, may be deported after, as well as within, the three years after entry. P. [283 U. S. 50](#) .

37 F.2d 1015 affirmed.

Certiorari, 281 U.S. 716, to review a judgment refusing petitioner's discharge on habeas corpus.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

The petitioner was arrested in New York on December 19, 1928, and after a hearing was ordered to be deported to Greece on the ground that he had remained in the United States for a longer time than permitted under the Immigration Act of 1924 or the regulations made under it. He is a native of Greece, shipped from that country as a seaman, and arrived at New York on September 10, 1925, when he deserted, and has remained in this country ever since -- that is, for more than three years before the arrest. He sued out a writ of habeas corpus, setting up the Immigration Act of February 5, 1917, c. 29, 34, 39 Stat. 874, 896, as a statute of limitations entitling him to remain. The writ was ordered to be dismissed by the district court and the order was affirmed by the Circuit Court of Appeals for the Second Circuit. 37 F.2d 1015, citing *United States ex rel. Piccolella v. Commissioner of Immigration*, 36 F.2d 1022, which in turn cites *United States ex rel. Rios v. Day*, 24 F.2d 654. A contrary decision was reached by the Circuit Court of Appeals for the Ninth Circuit in *Carr, Director of Immigration v. Zaja*, 37 F.2d 1016, and writs of certiorari were granted by this Court.

Section 34 of the Act of 1917 provides that

"any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall at any time

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within three years thereafter, . . . be taken into custody,"

and upon the conditions there stated shall be deported. It may be assumed that, under this statute, the time within which a seaman can be arrested for deportation is limited to three years from the date of entry. But by the Immigration Act of May 26, 1924, c.190, 14, 43 Stat. 153, 162,

"Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act, or regulations made thereunder,"

is to be deported in the same manner as provided for in 19, 20, of the Immigration Act of 1917. It is argued elaborately for the petitioner and is conceded by the government, that 34 of the earlier act is not repealed by the later one. See 25 of the latter. For the purposes of this case, we may assume this to be true, and that, in accordance with this 25, the earlier Act 34 is in force, if not inapplicable. But we cannot accept the conclusion that deserting alien seamen are thereby made a favored class to be retained in this country when other aliens would be compelled to leave. "Any alien" in 14 of the Act of 1924 includes alien seamen on its face and by the definition in 28, *ibid*. It is obvious that the petitioner, whether he entered rightfully or wrongfully, remained in the United States longer than he was permitted to by the law. He deserted after the Act of 1924 was in effect. The regulations under 15 and 19 of the Act of 1924 allowed only sixty days to alien seamen permitted to enter. If he entered without permission, he was not entitled to more. It seems to us too clear to need argument that the limitation of three years in 34 of the Act of 1917 does not override or qualify the clear and definite terms of 14 of the Act of 1924. Those terms must prevail. *Zurbrick v. Trafficoff*, 38 F.2d 811;

United States ex rel. Cateches v. Day, 45 F.2d 142.

Judgment affirmed.

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