

6 Phil. 306

[G.R. No. 2517. June 02, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. R. W. ALMOND,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

R. W. Almond was charged with the violation of the provisions of the act of Congress of March 3, 1903,^[1] entitled "An act to regulate the immigration of aliens into the United States."

The complaint alleges—

"That the said R. W. Almond was between the dates of October 20 and October 30, 1904, master and in charge of the steamship *Rubi*, which, on or about October 27, 1904, did bring to the Philippine Islands from the British port of Hongkong, China, one Tawas Tahan, an alien of East India, afflicted with trachoma, a loathsome contagious disease. The said R. W. Almond, on or about October 27, 1904, did permit the said Tawas Tahan to land in the Philippine Islands from the said steamship *Rubi* at a place and time other than that designated by the immigration officers, and contrary to the express instructions issued by the said immigration officers."

Violations of this act are penalized by sections 8, 18, and 19, which are as follows:

"SEC. 8. That any person, including the master, agent, owner, or consignee of any vessel, who shall bring into or land in the United States, by vessel or otherwise, or who shall attempt, by himself or through another, to bring into or

land in the United States, by vessel or otherwise, any alien not duly admitted by an immigrant inspector, or not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine not exceeding one thousand dollars for each and every alien so landed or attempted to be landed, or by imprisonment for a term not less than three months nor more than two years, or by both such fine and imprisonment.”

“SEC. 18. That it shall be the duty of the owners, officers, an agents of any vessel bringing an alien to the United States to adopt due precautions to prevent the landing of any such alien from such vessel at any time or place other than that designated by the immigration officers, and any such owner, officer, agent, or person in charge of such vessel who shall land or permit to land any alien at any time or place other than that designated by the immigration officers, shall be deemed guilty of a misdemeanor, and shall on conviction be punished by a fine for each alien so permitted to land of not less than one hundred nor more than one thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment, and every such alien so landed shall be deemed to be unlawfully in the United States and shall be deported, as provided by law.

“SEC. 19. That all aliens brought into this country in violation of law shall, if practicable, be immediately sent back to the countries whence they respectively came on the vessels bringing them. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came; and if any master, person in charge, agent, owner, or consignee of any such vessels shall refuse to receive back on board thereof, or of any other vessel owned by the same interest, such aliens, or shall neglect to detain them thereon, or shall refuse or neglect to return them to the foreign port from which they came, or to pay the cost of their maintenance while on land, such master, person in charge, agent, owner, or consignee shall be deemed guilty of a misdemeanor and shall, on conviction, be punished by a fine of not less than three hundred dollars for each and every such offense; and no such vessel shall have clearance from any port of the United States while any such fine is unpaid: *Provided*, That the Commissioner-General of Immigration, under the direction or with the approval of the Secretary of the Treasury, may suspend, upon conditions to be prescribed by the Commissioner-General, the deportation of any alien found to have come under promise or

agreement of labor or service of any kind if, in his judgment, the testimony of such alien is necessary on behalf of the United States Government in the prosecution of offenders against the provisions of sections four and five of this act: *Provided*, That the cost of maintenance of any person so detained resulting from such suspension of deportation shall be paid from the "immigrant fund," but no alien certified, as provided in section seventeen of this act, to be suffering with a loathsome or with a dangerous contagious disease other than one of a quarantinable nature, shall be permitted to land for medical treatment thereof in the hospitals of the United States."

We think the evidence of record sufficient to sustain the contention of the defendant that he adopted due precautions to prevent the landing of the said Tawas Tahan, and that if the landing was made it was made without defendant's knowledge or consent, and despite the precautions taken to prevent it.

Since the accused neither willfully nor negligently permitted the alien to land, it is manifest that a conviction could not be had under sections 8 or 19 (*Hackfeld & Co. vs. U. S.*, 197 U. S., 442), and therefore the prosecution relies on the provisions of section 18, which in some respects is more comprehensive in its terms than either of the other two, being applicable to all cases where an alien is landed or permitted to land at any time or place other than that designated by the immigration officers.

It is contended that the language of this provision makes the owner, officer, agent, or person in charge of a vessel responsible criminally, and at all events where an alien lands from the vessel at any time or place other than that designated by the immigration officers, or, in other words, that the officer or person in charge is criminally responsible in all such cases, even though he has taken every possible precaution and done all in his power to prevent the unlawful landing.

The defendant, on the contrary, contends that the word "permit," as used in section 18 of the statute, implies that the landing of the alien, to constitute a criminal offense, must be with the express or tacit consent of the owner, officer, agent, or person in charge of the vessel.

The Century Dictionary and Cyclopedia defines the word "permit" as follows:

“1. To suffer or allow to be, come to pass, or take place, by tacit consent or by not prohibiting or hindering; allow without expressly authorizing.

“2. To grant leave or liberty by express consent; allow expressly; give leave, liberty, or license to; as, a license that *permits* a person to sell intoxicating liquors.”

It will be seen that the word may be taken as importing either consent, tacit or express, or suffering, or allowing to be, to come to pass, or to take place, by merely not prohibiting or hindering; and the important question to be determined in this case is whether a conviction can be sustained when it appears that there was no consent, either tacit or express, to the landing of the alien, and at most a mere suffering or allowing to land by not actually hindering.

The statute is largely penal in its provisions, and in construing it the rule laid down by Chief Justice Marshall in *United States vs. Wiltberger* (5 Wheat, 76-95) should be applied:

“The rule of penal laws to be construed strictly is perhaps not much less old than constructing itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment.”

The statute imposes upon one who has brought immigrant aliens into a United States port the duty of adopting due precautions to prevent the landing of any such alien at any time or place other than that designated by the immigration officers and fixes a penalty for permitting an alien so to land.

If by this requirement it was intended to make the ship owner or master an insurer at all hazards that all aliens aboard would strictly conform with the orders of the immigration officers, it would seem that Congress would have chosen terms more clearly indicative of such intention, and instead of using a word of uncertain meaning, would have affixed the penalty in cases wherein the owner, master, or person in charge had permitted the alien to land in violation of law, either with or without fault on his part. Where the statute permits of a construction which does not require this absolute insurance of the strict compliance by all the alien passengers aboard a vessel with the rules laid down by the immigration officers, but holds the ship's officer to the care and diligence required by the circumstances, we do

not feel inclined to adopt the construction least favorable to the accused. This statute imports a duty, and in the absence of a requirement that it shall be performed at all hazards, we think no more ought to be required than a faithful and careful effort to carry out the duty imposed.

The act of Congress should be given a reasonable interpretation, with a view to effect its purpose to prevent the unlawful introduction of alien immigrants into this country. If this provision should be construed as making the ship's officer criminally responsible at all hazards for every breach of the rules of the immigration officers in regard to the landing of aliens, the ship's officers would doubtless claim the right to use all the force necessary to avoid the penalty of the law, and to compel ail immigrant aliens to comply with the rules laid down by the immigration officers. What would be the result of such power it is easy to imagine. It is difficult to see how a ship's officer could insure compliance with these rules by all alien passengers aboard his ship without such confinement and detention as might result in great hardship to every immigrant passenger aboard his vessel, whether such passenger has or has not the intention or desire to violate any law of this country. We think this statute was not intended to secure the obedience to all the rules of the immigration officers at all hazards, but at most to require good faith and full diligence in the effort to comply with them.

The foregoing argument is in large part adopted from the reasoning of the opinion of the Supreme Court of the United States in *Hackfeld vs. United States*, cited above, which construes the provisions of section 19 of the Immigration Act. We think the argument applies with even greater force to the provisions of section 18. Section 19 imposes a duty on ship's officers and owners in connection with the return to the port whence they came of aliens who have unlawfully landed in the country, while section 18 imposes a duty upon the owners of the vessel and its officers as to the control of all alien immigrants on board. In the former case the harsh severity of the law, if it were construed to mean that the owners and officers of the vessel are responsible criminally and at all hazards, would only affect the limited number of those aliens who had actually violated the law, whereas in the latter case it would impose unreasonable burdens and restrictions on all immigrants coming into the country.

The judgment and sentence of the trial court is reversed, and the accused is acquitted of the offense with which he is charged, with the costs of both instances *de officio*. After twenty days judgment will be entered in accordance herewith, and the bond for the appearance of the accused will be canceled and the record returned to the court from whence it came. So

ordered.

Arellano, C. J., Torres, and Mapa, JJ., concur.

CONCURRING

WILLARD J.:

I concur in the result. It appears that an order had been issued by the proper authority and delivered to the captain, directing him to detain Tawas Tahan on the ship for return to Hongkong. The case, therefore, comes clearly within the provisions of section 19, which is the only section applicable thereto.

^[1] 2 Pub. Laws, 576.
