

sailings of its ships, the place where goods would be received, and the amount of its charges for the water transportation, manifestly did not constitute a common arrangement with the railroad for that transportation. The respondent could take delivery and pay the rail charges upon delivery without sacrificing its right to make, as it did make, its own separate contract directly with the shipper pursuant to which the goods were received and the payment made. The Government stresses the fact that circulars were issued by the railroads as to the respondent's method of shipping and that shippers were generally informed as to the way in which shipments from interior points destined to Florida ports would be handled. But this information merely gave the facts and did not alter the transaction. The respondent did not forfeit its independence merely by making its service convenient, still less by advising both the railroads and shippers of the terms of its service.

*Judgment affirmed.*

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PHILIPPIDES *v.* DAY, COMMISSIONER OF IMMIGRATION.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 92. Argued March 2, 1931.—Decided March 23, 1931.

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. 50.

37 F. (2d) 1015, affirmed.

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

*Messrs. Thomas A. Kane and George C. Vournas* submitted the cause for petitioner.

*Mr. Claude R. Branch*, Special Assistant to the Attorney General, with whom *Solicitor General Thacher* and *Messrs. Harry S. Ridgely* and *W. Marvin Smith* were on the brief, for respondent.

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 limitation 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 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

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 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. Trinkoff*, 38 F. (2d) 811. *United States ex rel. Cateches v. Day*, 45 F. (2d) 142.

*Judgment affirmed.*