

miralty and maritime cases there is no such limitation as to the mode of proceeding, and Congress may therefore in cases of that description give either party right of trial by jury, or modify the practice of the court in any other respect that it deems more conducive to the administration of justice."

In this instance a remedy is provided to fit the agreement. The Congress has authorized the court to direct the parties to proceed to arbitration in accordance with a valid stipulation of a maritime contract, and to enter a decree upon the award found to be regular and within the terms of the agreement. We think that the objection on constitutional grounds is without merit.

Decree affirmed.

UNITED STATES EX REL. POLYMERIS ET AL. *v.*
TRUDELL, IMMIGRATION INSPECTOR.

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

No. 162. Argued December 9, 1931.—Decided January 4, 1932.

1. Under the Immigration Act of May 26, 1924, § 13 (a), (b), and the executive regulations pursuant thereto, an alien who was lawfully domiciled in this country but who went abroad for a temporary visit, cannot reënter unless he has either an immigration visa or a return permit. P. 280.
 2. In habeas corpus to determine the right of an alien to enter the country, the burden of proof is upon the alien. P. 281.
- 49 F. (2d) 730, affirmed.

CERTIORARI, *post*, p. 601, to review a judgment reversing an order of the District Court discharging two aliens from the custody of immigration officers by a writ of habeas corpus.

Mr. Harold Van Riper for petitioners.

Mr. Claude R. Branch, with whom Solicitor General Thacher, Assistant Attorney General Dodds, and Messrs. Frank M. Parrish and William H. Riley, Jr., were on the brief, for respondent.

MR. JUSTICE HOLMES delivered the opinion of the Court.

The relators, Aspasia Polymeris and her daughter Antigone, are Greek citizens who lawfully entered the United States in 1909 and lived for a number of years in New York City, which became and remains their domicil. In 1923, on account of the illness of Aspasia's husband, they went back to Greece with the intention, which the courts below found that they retained, of making only a temporary visit. The death of the husband and the necessity of settling his estate prolonged their stay until 1924. Beginning in that year they made several unsuccessful applications to the United States Consul General at Athens for documents that would permit them to return to New York. Finally, in 1929, they got authority to cross Canada, on a pretended trip from Greece to Japan, and, in 1930, presented themselves at St. Albans, Vermont, for admission to the United States. They were taken into custody by the immigration inspector and sought release by habeas corpus, on the ground that they were entitled to enter the country. It was held that they "were properly excluded under § 13 (a) of the Immigration Act of May 26, 1924, 43 Stat. 153, 161, since the Secretary of Labor did not admit them in his discretion, . . . and neither presented an unexpired valid immigration visa or an unexpired valid permit to reënter in accordance with the regulations promulgated under § 13 (b) of that Act." 49 F. (2d) 730. A contrary decision was reached in *Johnson v. Keating*, 17 F. (2d) 50. Therefore a writ of certiorari was granted by this Court.

The relators have no right to enter the United States unless it has been given to them by the United States.

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Counsel for Parties.

The burden of proof is upon them to show that they have the right. Immigration Act of 1924, § 23, 43 Stat. 165; Code, Title 8, § 221. By § 13, and the regulations under it, as remarked by the court below, a returning alien can not enter unless he has either an immigration visa or a return permit. The relators must show not only that they ought to be admitted but that the United States, by the only voice authorized to express its will, has said so. Obviously it has not done so, and therefore the judgment must be affirmed.

Judgment affirmed.

LEWIS ET AL., TRUSTEES, *v.* REYNOLDS, COLLECTOR OF INTERNAL REVENUE.

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

No. 115. Argued December 8, 9, 1931.—Decided January 4, 1932.

In acting upon a claim for refund based upon the disallowance of a particular deduction, the Commissioner of Internal Revenue has authority to reaudit the return and to reject the claim on the basis of the disallowance of another deduction even though the statute of limitations prevents him from making an additional assessment for the year involved. P. 283.

48 F. (2d) 515, affirmed.

CERTIORARI, *post* p. 600, to review a decision affirming a judgment in favor of the Collector in an action for a refund of income taxes.

Mr. N. E. Corthell for petitioners.

Assistant Attorney General Youngquist, with whom *Solicitor General Thacher*, *Messrs. Whitney North Seymour* and *Sewall Key*, and *Miss Helen R. Carlross* were on the brief, for respondent.