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RIGHT OF THE UNITED STATES TO DEPORT ALIENS ON THE GROUND OF ANARCHICAL TEACHINGS.—The right of a sovereign nation to control all persons and things within its territorial confines has been succinctly, yet comprehensively stated by Chief Justice Marshall: [1]

> "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. * * * This consent may be either express or implied."

Embraced within this broad statement of the right of sovereign nations lies the inherent right of such nations to exclude foreigners seeking admission,[2] and when admitted, to expel them on such

[1] Exchange *v.* M'Faddon, 7 Cranch 116, 136.
[2] "If any government deems the introduction of foreigners, or their merchandise, injurious to the interests of their own people, they are

grounds as may, in their own discretion, warrant the exercise of that right.[3] It is a right based upon the accepted principle of International Law, that every independent nation may determine for itself who shall compose the members of its society.[4] As has been stated in the Fong Yue Ting Case,[5] the right to exclude aliens and the right to expel them rest, in fact, upon one foundation, emanating from the same source, and in truth, are but one and the same right, springing from the duty of a government to preserve its independence, to prevent its safety and security from being undermined by foreign aggression and intrusion. In the performance of this supreme duty there inheres in the nation the right to resist such dangers of aggression and encroachment, whether given impetus by foreign powers in their national entity or by foreign groups as individuals, who have found their way into the country. Whenever a government feels that such groups of aliens or that individual aliens are undermining the security or the stability of the government, or that the peace and welfare of the people are placed in jeopardy by their presence or the doctrines which they disseminate, or when a class of aliens refuses to accept citizenship, or are not prone to assimilate the manners and customs of the inhabitants, the government may resort to the right of deporting them.[6]

This right, as stated above, is a confirmed doctrine of International Law, and has been repeatedly enunciated by the Secretaries of State in their diplomatic correspondence.[7] From the earliest

at liberty to withhold the indulgence. The entry of foreigners and their effects is not an absolute right, but one of imperfect obligation, and it is subject to the discretion of the government which tolerates it." 1 KENT, COM., 12th ed., 35.

[3] "Every nation has a right to refuse admitting a foreigner into her territory, when he cannot enter it without exposing the nation to evident danger, or doing her a manifest injury. What she owes to herself, the care of her own safety, gives her this right; and, in virtue of her national liberty, it belongs to the nation to judge whether her circumstances will or will not justify the admission of that foreigner. * * *

"Thus, also, it has a right to send them elsewhere, if it has just cause to fear that they will corrupt the manners of the citizens, that they will create religious disturbances, or occasion any other disorder, contrary to the public safety. In a word, it has a right, and is even obliged, in this respect, to follow the suggestions of prudence." VATTEL, LAW OF NATIONS, lib. 1, §§ 230, 231.

[4] TAYLOR, INTERNATIONAL PUBLIC LAW, § 186.

[5] 149 U. S. 698.

[6] Chae Chan Ping *v.* United States, 130 U. S. 581.

[7] Meyer Gad, a Russian subject, settled in Prussia, from which country he was expelled as guilty of various acts of dishonesty toward his employer. Later he visited the United States where he claimed to have been naturalized. He afterwards returned to Prussia, the scene of his former alleged misconduct. He was notified by the German government that he must leave the country within six weeks. Meyer Gad then filed his complaint with the Secretary of State of the United States, Mr. Bayard. Referring thereto, Mr. Bayard said: "* * * on general principles it is within the power of the German government to make and enforce such a decree of expulsion, nor can this government

days of our government this right of a society to select its members, in time of peace as well as in time of war, has been recognized. A notable example of its exercise was the alien law of the United States in the year 1798.[8]

The passage of the Chinese Exclusion Acts[9] has given rise to numerous cases questioning the right of the United States to expel foreigners after they have been admitted into this country and attacking the constitutionality of such statutes.[10] The Federal Courts of the country have repeatedly declared in all cases in which these questions have been raised that, as a matter of public policy, the United States, by congressional enactment, may exclude and expel individual aliens or classes of aliens from its dominions; and that such statutes enacted by Congress are not unconstitutional.[11] In short, the statutes giving the executive department of the United States the power to expel undesirable aliens, derive their force from the impregnable doctrine of the law of nations. The government does not draw its right from these statutes, but rather from the principles of International Law, of which they are but declaratory, being merely the expression of the government indicating those who are to be denied the privilege extended to aliens to reside within its borders. These statutes may be termed guides—enumerating those who are to be considered undesirables, whether on economic, social or political grounds, and as such to be denied admission, or if admitted, to be subject to deportation whenever the government determines that there is occasion to exercise that right.

These principles and decisions take on an added interest in the light of the stirring events of the day. The war has left in its wake a spirit of unrest, which has been seized upon by individuals affiliated with anarchical groups, to propagate their theories of hostility to existing government, instilling within certain classes a spirit of violence and resistance to those in authority, advocating the wanton destruction of property and by overt acts putting into practice the theories which they hold.

Statutes have been enacted, providing for the exclusion and deportation of aliens who are anarchists, or who believe in, or advocate resistance to existing governments or their overthrow by

object, unless the exclusion be enforced with undue harshness. The same prerogative was asserted by our government in the alien act; and we have recently taken measures to exclude paupers and convicts from our shores." Mr. Bayard, Secretary of State, to Mr. Pendleton, July 9, 1885. 2 WHARTON, INTERNATIONAL LAW DIGEST, § 206.

[8] Mr. Marcy, Secretary of State, to Mr. Fay, March 22, 1856. 2 WHARTON, INTERNATIONAL LAW DIGEST, § 206.

[9] May 6, 1882, 22 Stat. 58, c. 126; July 5, 1884, 23 Stat. 115, c. 220; October 1, 1888, 25 Stat. 504, c. 1064.

[10] Nishimura Ekiu *v.* United States, 142 U. S. 651; Wong Wing *v.* United States, 163 U. S. 228; Low Wah Suey *v.* Backus, 225 U. S. 460.

[11] Wong Wing *v.* United States, *supra;* Low Wah Suey *v.* Backus, *supra; Ex parte* Hamaguchi, 161 Fed. 185.

force or violence.[12] These statutes, it seems, apply not only to those who advocate the unlawful destruction of property, resistance to the government and the assassination of public officials, but also to the so-called philosophical anarchists, those who regard the anarchistic teachings of Zola and Kropotkin to be the panacea for all human ills, but who, though they regard the state and government as obstacles to the happiness of mankind, nevertheless, like Tolstoi, are averse to the use of force in any form, advocating these changes through the medium of education and moral suasion. These theorists and utopians are also included under these statutes; Congress regarding them as inimical to the government, and the welfare of the country, not because of their entertaining these views, but because of their circulating them and consequently influencing the minds of others.

The question was touched upon in a *dictum* in a case[13] arising under the Act of March 3, 1903,[14] which provides for the exclusion of "anarchists, or persons who believe in, or advocate the overthrow by force or violence of the Government of the United States or of all government or of all forms of law, or the assassination of public officials."

"If," said Mr. Chief Justice Fuller, "this should be construed as defining the word 'anarchist' by the words which follow, * * * it would seem that when an alien arrives in this country, who avows himself to be an anarchist, without more he accepts the definition." The court further stated that if the word "anarchist" be interpreted as including aliens of anarchistic beliefs, who harbor no evil intent, it would follow that the intention of Congress must have been to exclude even such aliens as being dangerous to the public weal. The court, however, was not called upon to make such an interpretation; the defendant was declared to be one who did advocate the use of force and violence.

This question was fully met in a recent case, *Lopez* v. *Howe*, 259 Fed. 401, an appeal from a decree of deportation for the violation of the Immigration Act of Feb. 5, 1917,[15] which supplemented, in a measure, the Act of March 3, 1903, making it conform to conditions existing under the stress of war. The court in this case held that: "The fact that he (the relator) is only a philosophical anarchist, and not an advocate of a resort to force and revolution, makes him, in the opinion of Congress, none the less a dangerous

[12] Act of March 3, 1903, entitled "An Act to Regulate the Immigration of Aliens into the United States," 32 Stat. 1213, c. 1012, § 2; Immigration Act of Feb. 5, 1917, 39 Stat. 874, c. 29.

[13] Turner *v.* Williams, 194 U. S. 279, 293, 294.

[14] *Supra.* See note 12.

[15] *Supra.* See note 12. Section 19 provides for the deportation of the following classes of aliens, irrespective of the time of their entry into the United States: "Any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the government of the United States or of all forms of law or the assassination of public officials."

presence. His theories, if they could be put into practise, would end the government of the United States. * * * If the government considers his presence undesirable, because of his advocacy of a doctrine which it regards as inimical to civilization, it must have the power to send him out of the country, and back to the country whence he came."

An alien, according to the court, does not forfeit the right to partake of the hospitality of the country simply because he leans toward a particular creed or philosophy, or because of the ideas and thoughts he may entertain; but that privilege is forfeited when he attempts to disseminate ideas regarded by Congress as hostile to the institutions of this country, or gives utterance to such thoughts and seeks to instill them into the minds of others.

THE RIGHT OF A PRIVATE INDIVIDUAL TO SUE OUT A WRIT OF MANDAMUS WHERE THE QUESTION IS ONE OF GENERAL PUBLIC INTEREST.—It seems to be well settled that a private individual can sue out a writ of mandamus where he has a special interest in the result.[1] Where the relator is a taxpayer, there are many cases holding that he has a private, special right as a result of his direct pecuniary interest, aside from his interest as a member of the community.[2] But whether or not the taxpayer is affected specially in the payment of his own taxes, it is generally held that his interest is sufficient where, as a member of the general public, he sues out a writ compelling a public officer to perform certain ministerial duties which affect the whole community.[3] In New York, a relator, who was a citizen and taxpayer, attempted to sue out a writ of mandamus to compel the collection of a certain tax, and it was held that, inasmuch as the people themselves are the plaintiffs in a proceeding by mandamus against a public officer, it does not matter who the relator is, so long as his interest is common to the whole community.[4]

A mandamus will lie in most States to compel the performance of ministerial duties by a public officer, where the relator is a voter

[1] Bryce *v.* Burke, 172 Ala. 219, 55 South. 635, containing *dicta* to the effect that the individual need not have a special interest, if the case be one of public interest; Napier *v.* Poe, 12 Ga. 170.

[2] State *ex rel.* Coe *v.* Fyler, 48 Conn. 145; Decatur County Commissioners *v.* State, 86 Ind. 8, upholding Hamilton *v.* State *ex rel.* Bates, 3 Ind. 452.

[3] In State *v.* Weld, 39 Minn. 426, 40 N. W. 561, relators were freeholders, taxpayers and voters; in Lay *v.* Common Council of Hoboken, 75 N. J. L. 315, 67 Atl. 1024, relator was citizen, resident and owner of taxable real estate therein; so in Hummelshime *v.* Hirsch, 114 Md. 39, 79 Atl. 38, relator was citizen, voter and taxpayer; Hyatt *v.* Allen, 54 Cal. 353; State of Nevada *v.* Gracey, 11 Nev. 223 (writ dismissed on other grounds). See note in 28 Am. Rep. 448.

[4] People *ex rel.* Stephens *v.* Halsey, 37 N. Y. 344, approving People *v.* Collins, 19 Wend. (N. Y.) 56.

RECENT DECISIONS

ALIENS—DEPORTATION—ANARCHICAL TEACHINGS.—The relator, an alien, was found teaching and advocating the principles of anarchy. A decree was approved by the Commissioner of Immigration to deport the relator for violation of the Immigration Act of February 5, 1917, which provides for the deportation of certain classes of aliens, including anarchists, irrespective of the time of their entry into the United States. The relator contended that he did not come within the purview of the statute because he was a philosophic anarchist and opposed to the use of force and violence. *Held*, the relator comes within the meaning of the statute and may be deported. *Lopez* v. *Howe* (C. C. A.), 259 Fed. 401. See NOTES, p. 201.

APPEAL AND ERROR—SUPERSEDEAS BOND—WHEN JUDGMENT "AFFIRMED"—A judgment was recovered for a certain sum of money with interest. A writ of error and supersedeas was granted to that judgment, provided the defendant should execute a penalty bond with approved security and condition according to law. This having been done, the Supreme Court of Appeals entered an order annulling the judgment and remanding the cause for a new trial with the proviso, however, that if the defendant in error should, within ninety days, enter a remittitur for the interest granted by the lower court, the judgment should stand affirmed. This remittitur was entered and the question then arose as to whether or not the judgment had been affirmed within the intent and meaning of the condition of the supersedeas bond so as to hold the sureties liable. *Held*, the judgment had been affirmed. *National Surety Co.* v. *Commonwealth* (Va.), 99 S. E. 657.

The obligation of sureties upon bonds is *strictissimi juris* and is not to be extended by implication beyond the very terms of the contract. See *Mann* v. *Mann*, 119 Va. 630, 89 S. E. 897; *Crane* v. *Buckley*, 203 U. S. 441. And the obligation of a supersedeas bond being purely a matter of statutory requirement the provision of the statute is to be read into every such bond. *Bemiss* v. *Commonwealth*, 113 Va. 489, 75 S. E. 115. Consequently the decisions as to what constitutes an affirmance within the condition of a supersedeas bond will vary according to the statutes of the different states. However, under a statute similar to that of the Virginia Code, a judgment affirming the judgment of the lower court as to the principal sum and six per cent interest, upon the plaintiff's remitting an illegal excess of interest recovered in the lower court, was held to be such an affirmance of the judgment as to bind the surety. *Orr* v. *Hopkins*, 124 U. S. 510.

A fortiori, where the condition of the bond, or the statute under which it is executed, specifically provides that the sureties shall be liable to pay the judgment of the superior court whether that judgment be an entire or partial affirmance of the judgment of the lower court, the sureties are bound in case the judgment is reversed with condition