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CRIMINAL LAW—PROSECUTION OF MORMON "FUNDAMENTALISTS" UNDER THE MANN ACT—DOCTRINE OF CAMINETTI V. UNITED STATES—Petitioners, Mormon "Fundamentalists,"[1] transported one or more plural wives in interstate commerce. They were convicted in the district court[2] on the authority of *Caminetti v. United States*[3] for violation of the Mann Act which prohibits the transportation of women or girls in commerce "for the purpose of prostitution or debauchery, or for any other immoral purpose."[4] The circuit

[1] For a description of the Mormon teaching and practice of plural marriages, see "Pleas for Religious Liberty and the Rights of Conscience," the arguments delivered by counsel for the plaintiff in error, April 28, 1886, in Snow v. United States, 118 U.S. 346, 6 S. Ct. 1059 (1886).

[2] (D.C. Utah 1944) 56 F. Supp. 890.

[3] 242 U.S. 470, 37 S. Ct. 192 (1917).

[4] The White Slave Traffic Act, 36 Stat. L. 825, c. 395, § 2 (1910), 18 U.S.C. (1940) § 397-404.

court[5] affirmed and the United States Supreme Court granted certiorari. *Held*, affirmed. The phrase "or for any other immoral purpose" was properly interpreted in *Caminetti v. United States* to extend the prohibition of the act to cases where the transportation was voluntary and lacked the element of commercialized vice.[6] *Cleveland v. United States*, (U.S. 1946) 67 S. Ct. 13.

In *Caminetti v. United States*, the Supreme Court decided that the defendant had violated the White Slave Traffic Act, more familiarly known as the Mann Act, in transporting a woman in interstate commerce to become his mistress. The Court felt that the facts were covered by the words "or for any other immoral purpose," a phrase which had been held to include concubinage in *United States v. Bitty*,[7] a prosecution under the immigration laws decided a few years earlier.[8] Counsel in the *Caminetti* case argued that the interpretation given the phrase in *United States v. Bitty* might have been justified because it had appeared as an amendment broadening an earlier provision of the law but that the legislative history of the Mann Act indicated that Congress intended only to reach the problem of commercialized vice.[9] This was the position taken by a strongly worded dissent in that case.[10] But the Court, speaking through Justice Day, relied on the reasoning of the *Bitty* case to decide that since Congress had employed the word "prostitution," it would be impossible to limit the application of the act to commercialized vice and give any effect to the phrase "or for any other immoral purpose." [11] If the Court in the principal case had been unwilling to extend the rule of the *Caminetti* case to the slightly different facts of plural marriages purportedly sanctioned by petitioners' religion, it could have limited that decision to its exact facts, or overruled it as a misinterpretation of Congressional intent in the Mann Act. The authority of Congress to forbid the use of interstate commerce to effect immoral purposes of any description is taken for granted,[12] and the Supreme Court has consistently denied that a violation of a law embodying a principle of common morality can be excused by pleading the religious convictions of the offender.[13] It is further evident that the *Caminetti* decision is sound statutory interpretation in so far as restricting the

[5] (C.C.A. 10th, 1945) 146 F. (2d) 730.

[6] The opinion of the Court was delivered by Justice Douglas. Justice Rutledge concurred on the theory that the case was governed by Caminetti v. United States so long as that decision was not overruled. Justices Black and Jackson would have reversed by limiting the Caminetti decision to its facts. Justice Murphy dissented in the belief that the Court should have overruled Caminetti v. United States.

[7] 208 U.S. 393, 8 S. Ct. 396 (1908).

[8] 34 Stat. L. 898 at 899, § 3, c. 1134 (1907). The act forbade the importation into the United States "of any alien woman or girl for the purpose of prostitution, or for any other immoral purpose."

[9] See 242 U.S. 470 at 476 ff., 37 S. Ct. 192 (1917).

[10] Id. at 496 ff. Justice McKenna with whom Chief Justice White and Justice Clarke concurred.

[11] Id. at 487.

[12] Hoke v. United States, 227 U.S. 308, 33 S. Ct. 281 (1913).

[13] Reynolds v. United States, 98 U.S. 145 (1878); Davis v. Beason, 133 U.S. 333, 10 S. Ct. 299 (1890); Romney v. United States, 136 U.S. 1, 10 S. Ct. 792 (1890). The cited cases all arose out of legislation designed to suppress the Mormon practice of plural marriages.

operation of the act to commercialized vice would be to ignore the language "or for any other immoral purpose." There is, however, authority for refusing to apply a statute to a state of facts which comes within its terms but which the legislature clearly never intended to affect.[14] In *State v. Day*[15] the Maine court concluded that a state statute punishing the intra-state transportation of "any female person for the purpose of prostitution or for any other immoral purpose"[16] did not apply to a case of simple fornication. The court did not believe the legislature intended to penalized as a felony what previously had been treated as a misdemeanor simply because the offense was preceded by transportation. In interpretating the Mann Act, however, the Supreme Court has not had so direct a means of assuring itself of the Congressional intent. Apart from the question of the *Caminetti* case, it may be that to have reached the opposite result in the principal case would have been inconsistent with another decision of long established authority. In *Athanasaw v. United States*[17] the Supreme Court held that the defendant had violated the Mann Act when he transported a girl in interstate commerce to appear in a chorus, though it was not established that he intended her prostitution or her immoral use by himself or others. The Court approved a jury instruction of the lower court that the defendant was guilty if he had brought the girl into an environment which would "induce her to give herself up to a condition of debauchery which eventually and naturally would lead to a course of immorality sexually."[18] This decision has been followed in a long line of cases.[19] It was used in *Beyer v. United States*[20] as authority to convict defendants who had hired girls as night club employees by written contracts which forbade their engaging in prostitution. It sufficed that defendants had "placed the girls in an environment in which they were likely to be solicited to engage in prostitution. . . ."[21] It is difficult to see how petitioners in the principal case, who had conducted women in interstate commerce for their own immoral purposes,[12] could have been acquitted so long as it is an offense under the Mann Act merely to transport a woman into circumstances where her immoral conduct is likely to result.

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[14] In Church of the Holy Trinity v. United States, 143 U.S. 457, 12 S. Ct. 511 (1892), the Supreme Court held that an act of Congress which made it unlawful to import any alien ". . . to perform labor or service of any kind in the United States . . ." should not be construed to apply to the plaintiff in error's employment of an English rector.

[15] 132 Me. 38, 165 A. 163 (1933).

[16] Me. Rev. Stat. (1930) c. 135, § 22.

[17] 227 U.S. 326, 33 S. Ct. 285 (1913).

[18] Id. at 332.

[19] United States v. Lewis, (C.C.A. 7th, 1940) 110 F. (2d) 460; Pine v. United States, (C.C.A. 5th, 1943) 135 F. (2d) 353.

[20] (C.C.A. 9th, 1918) 251 F. 39.

[21] Id. at 41.

[22] Part of Justice Murphy's dissent discusses polygamy as a form of marriage and distinguishes it from vulgar immorality. It is at least questionable whether conclusions about polygamy drawn from a consideration of societies where it is a prevailing institution were relevant in the principal case. The facts of each offense are sketched in the opinion of the district court (note 2, supra). Three of the petitioners, for example, had contrived the marriage of one of their number with a minor girl of retarded mentality.