Ex parte Crouse (4 Wharton 9)
Supreme Court of Pennsylvania, Eastern District
January 5, 1839, Decided

Prior History

This was a habeas corpus directed by the keeper and managers of the "House of Refuge," in the county of Philadelphia, requiring them to produce before the court one Mary Ann Crouse, an infant, detained in that institution. The petition for the habeas corpus was in the name of her father.

By the return to the writ it appeared, that the girl had been committed to the custody of the managers by virtue of a warrant under the hand and seal of Morton Mc Michael, Esq., a justice of the peace in the county of Philadelphia, which recited that complaint and due proof had been made before him by Mary Crouse, the mother of the said Mary Ann Crouse, "that the said infant by reason of vicious conduct, has rendered her control beyond the power of the said complainant, and made it manifestly requisite that from regard to the moral and future welfare of the said infant she should be placed under the guardianship of the managers of the House of Refuge;" and the said alderman certified that in his opinion the said infant was "a proper subject for the said House of Refuge." Appended to the warrant of commitment were the names and places of residence of the witnesses examined, and the substance of the testimony given by them respectively, upon which the adjudication of the magistrate was founded.

The House of Refuge was established in pursuance of an Act of Assembly passed on the 23rd day of March 1826. The sixth section of that act declared that the managers should, "at their discretion, receive into the said House of Refuge, such children who shall be taken up or committed as vagrants, or upon any criminal charge, or duly convicted of criminal offences, as may be in the judgement of the Court of Oyer and Terminer, or of the Court of Quarter Sessions of the peace of the county, or of the Mayors Court of the city of Philadelphia, or of any alderman or justice of the peace, or of the managers of the almshouse and house of employment, be deemed proper objects." By a supplement to the act passed on the 10th day of April 1835, it was declared, that in lieu of the provisions of the act of 1826, it should be lawful for the managers of the House of Refuge "at their discretion to receive

into their care and guardianship, infants, males under the age of twenty-one years, and females under the age of eighteen years committed to their custody in either of the following modes, *viz*: First: Infants committed by an alderman or justice of the peace on the complaint and due proof made to him by the parent, guardian or next friend of such infant, that by reason of incorrigible or vicious conduct such infant has rendered his or her control beyond the power of such parent, guardian or next friend, and made it manifestly requisite that from regard to the morals and future welfare of such infant, he or she should be placed under the guardianship of the managers of the House of Refuge. Second: Infants committed by the authority aforesaid, where complaint and due proof have been made that such infant is a proper subject for the guardianship of the managers of the House of Refuge, in consequence of vagrancy, or of incorrigible or vicious conduct, and that from the moral depravity or otherwise of the parent or next friend in whose custody such infant may be, such parent or next friend is incapable or unwilling to exercise the proper care and discipline over such incorrigible or vicious infant. Third: Infants committed by the courts of the Commonwealth in the mode provided by the act to which this is a supplement."

Headnote

The provisions of the acts of 23rd of March, 1826, and 10th of April 1835, which authorize the committal of infants to the House of Refuge, under certain circumstances, and their detention there, without a previous trial by jury, are not unconstitutional.

Counsel

Mr. W.L. Hirst, for the petitioner, now contended, that these provisions, so far as they authorized the committal and detention of an infant without a trial by jury, were unconstitutional. He referred to the sixth and ninth sections of the Bill of Rights; and cited the *Commonwealth v. Addicks*, 5 Binn. 520; s.c.2s. & R. 174; *Commonwealth v. Murray*, 4 Binn. 492, 494.

Mr. Barclay and Mr. J.R. Ingersoll, for the managers of the House of Refuge.

Opinion

PER CURIAM – The House of Refuge is not a prison, but a school. Where reformation, and not punishment, is the end, it may indeed be used as a prison for juvenile convicts who would else be committed to a common goal; and in respect to these, the constitutionality of the act which incorporated it, stands clear of controversy. It is only in respect of the application of its discipline to subjects admitted on the order of the court, a magistrate or the managers of the Almshouse, that a doubt is entertained. The object of the charity is reformation, by training its inmates to industry; by imbuing their minds with principles of morality and religion; by furnishing them with means to earn a living; and, above all, by separating them from the corrupting influence of improper associates. To this end may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae*, or common guardian of the community? It is to be remembered that the public has a paramount interest in the virtue and knowledge of its members, and that of strict right, the business of education belongs to it. That parents are ordinarily entrusted with it is because it can seldom be put into better hands; but where they are incompetent or corrupt, what is there to prevent the public from withdrawing their faculties, held, as they obviously are, at is sufferance? The right of parental control is a natural, but not an unalienable one. It is not excepted by the declaration of rights out of the subjects of ordinary legislation; and it consequently remains subject to the ordinary legislation; and it consequently remains subject to the ordinary legislative power which, if wantonly or inconveniently used, would soon be constitutionally restricted, but the competency of which, as the government is constituted, cannot be doubted. As to abridgement of indefeasible rights by confinement of the person, it is no more than what is borne, to a greater or less extent, in every school; and we know of no natural right to exemption from restraints which conduce to an infant's welfare. Nor is there a doubt of the propriety of their application in the particular instance. The infant has been snatched from a course which must have ended in confirmed depravity; and, not only is the restraint of her person lawful, but it would be an act of extreme cruelty to release her from it. REMANDED.