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THE ATTORNEY GENERAL OF CANADA ..... APPELLANT;

AND

SHIRLEY KATHLEEN BRENT ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Immigration — Habeas corpus — Certiorari — Alien — Deportation order — Whether quashable—Whether order-in-council making regulations, invalid—Delegation of authority—Jurisdiction to review case—Immigration Act, R.S.C. 1952, c. 325, ss. 39, 61—Immigration Regulation 20(4).*

S. 61 of the *Immigration Act* (R.S.C. 1952, c. 325) authorizes the Governor in Council to make regulations respecting the prohibiting or limiting of admission of persons by reason of an enumerated list of matters.

By Regulation 20(4), the Governor in Council enacted that admission is prohibited "where in the opinion of a Special Inquiry Officer such person should not be admitted by reason of" the same enumerated list of matters that are found in s. 61 of the Act.

The respondent, a citizen of the United States of America and who did not have a Canadian domicile, was ordered deported by a special immigration officer as unsuitable under this regulation. The respondent applied for a writ of habeas corpus with certiorari in aid and also for an order by way of certiorari quashing the deportation.

The judge of first instance ordered her discharged from custody. In view of the decision of this Court in *Masella* v. *Langlais* ([1955] S.C.R. 263), the Court of Appeal for Ontario struck out the direction for the respondent's discharge but quashed the deportation order.

*Held:* Upon appeal by leave of the Court of Appeal its order should be confirmed.

Regulation 20(4) is invalid because there is no power, under s. 61 of the *Immigration Act,* in the Governor in Council to delegate, as was done by this regulation, his authority to immigration officers. In view of this invalidity, s. 39 of the Act does not prevent the Court from exercising its jurisdiction by way of certiorari and quashing the deportation order.

APPEAL from the judgment of the Court of Appeal for Ontario (1), quashing a deportation order.

*D. W. Mundell, Q.C., J. S. Pickup, Q.C.* and *L. A. Couture* for the appellant.

*F. A. Brewin, Q.C.,* and *J. F. McCallum* for the respondent.

The judgment of the Court was delivered by:—

THE CHIEF JUSTICE:—At the conclusion of the argument on behalf of the appellant, this appeal was dismissed with costs.

The respondent is a citizen of the United States of America and has not a Canadian domicile. She applied at the Immigration Station in Toronto for admission to Canada for permanent residence where she was examined by an Inspector and referred to a Special Immigration Officer. The latter made an order for her deportation and her appeal to the Minister of Citizenship and Immigration was dismissed. She then applied for a writ of *habeas corpus* with *certiorari* in aid to determine the validity of the deportation order and also made application for an order by way of *certiorari* quashing that order. Mr. Justice Wilson,

(1) [1955] O.R. 480; 3 D.L.R. 587.

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before whom the matter came in the first instance, ordered her discharge from custody. In view of the decision of this Court in *Masella* v. *Langlais* (1), the Court of Appeal for Ontario (2), since the appellant was not in custody, amended the order of Wilson J. by striking out the direction for her discharge but quashed the deportation order. By leave of the Court of Appeal, the Attorney General of Canada appealed to this Court. It is sufficient to refer to one of the reasons for which the Court of Appeal quashed the deportation order.

By s. 61 of *The Immigration Act*, R.S.C. 1952, c. 325:—

61. The Governor in Council may make regulations for carrying into effect the purposes and provisions of this Act and, without restricting the generality of the foregoing, may make regulations respecting .....

.....

(*g*) the prohibiting or limiting of admission of persons by reason of

(i) nationality, citizenship, ethnic group, occupation, class or geographical area of origin,

(ii) peculiar customs, habits, modes of life or methods of holding property,

(iii) unsuitability having regard to the climatic, economic, social, industrial, educational, labour, health or other conditions or requirements existing, temporarily or otherwise, in Canada or in the area or country from or through which such persons come to Canada, or

(iv) probable inability to become readily assimilated or to assume the duties and responsibilities of Canadian citizenship within a reasonable time after their admission.

The relevant part of the Order-in-Council purportedly passed in pursuance of this section is paragraph (4) of Clause 20 which reads:—

(4) Subject to the provisions of the Act and to these regulations, the admission to Canada of any person is prohibited where in the opinion of a Special Inquiry Officer such person should not be admitted by reason of

(*a*) the peculiar customs, habits, modes of life or methods of holding property in his country of birth or citizenship or in the country or place where he resided prior to coming to Canada;

(*b*) his unsuitability, having regard to the economic, social, industrial, educational, labour, health or other conditions or requirements existing, temporarily or otherwise, in Canada or in the area or country from or through which such person comes to Canada, or

(*c*) his probable inability to become readily assimilated or to assume the duties and responsibilities of Canadian citizenship within a reasonable time after his admission.

(1) [1955] S.C.R. 263.

(2) [1955] O.R. 480; 3 D.L.R. 587.

I agree with Mr. Justice Aylesworth, speaking on behalf of the Court of Appeal, that Parliament had in contemplation the enactment of such regulations relevant to the named subject matters, or some of them, as in His Excellency-in-Council's own opinion were advisable and not a wide divergence of rules and opinions, everchanging according to the individual notions of Immigration Officers and Special Inquiry Officers. There is no power in the Governor General-in-Council to delegate his authority to such officers.

S. 39 of the Act was relied upon by the appellant:—

> 39. No court and no judge or officer thereof has jurisdiction to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or order of the Minister, Deputy Minister, Director, Immigration Appeal Board, Special Inquiry Officer or immigration officer had, made or given under the authority and in accordance with the provisions of this Act relating to the detention or deportation of any person, upon any ground whatsoever, unless such person is a Canadian citizen or has Canadian domicile.

However, the order of deportation of the Special Inquiry Officer was not "had, made or given under the authority and in accordance with the provisions of this Act" because the regulation relied upon is invalid and the section, therefore, does not prevent the Court from exercising its jurisdiction by way of *certiorari* and quashing the deportation order.

*Appeal dismissed with costs.*

Solicitor for the appellant: *F. P. Varcoe.*

Solicitor for the respondent: *F. A. Brewin.*