DONALD EDWIN MOORE ..... APPELLANT;

AND

THE MINISTER OF MANPOWER AND IMMIGRATION ..... RESPONDENT.

1968
*June 10
June 24

ON APPEAL FROM THE IMMIGRATION APPEAL BOARD

Immigration—Deportation—Deportee illegally in country—Deportee arrested when about to leave voluntarily—Inquiry and order for deportation—Order not specifying destination—Whether order validly made—Whether deportee entitled to choose destination—Immigration Act, R.S.C. 1952, c. 325, ss. 2(d), 26, 36, 40.

The appellant, a citizen of the United States with a criminal record in that country and who had been deported from Canada in 1959, entered Canada in 1967 from Panama by air carrying a Canadian passport stating that he was born in Canada and was a Canadian citizen. Two days after his entry and while waiting to board a plane to Panama, he was arrested. An inquiry was ordered under s. 26 of the *Immigration Act*, R.S.C. 1952, c. 325, and the appellant was ordered deported. The deportation order did not specify the country to which he was to be deported, but the Minister has stated that he intends to direct that the appellant be deported to the United States. An appeal to the Immigration Appeal Board was dismissed. The appellant was granted leave to appeal to this Court.

Held (Spence J. dissenting): The appeal should be dismissed.

Per Cartwright C.J. and Martland, Judson and Ritchie JJ.: The discretion of the Director under s. 26 of the *Immigration Act* to order an inquiry is purely administrative and not subject to judicial review.

*PRESENT: Cartwright C.J. and Martland, Judson, Ritchie and Spence JJ.

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The Special Inquiry Officer had jurisdiction to make the deportation order since the appellant was unlawfully in Canada. It is not necessary that the destination be stated in the order of deportation.

The appellant had no right to choose his destination. The choice rests with the Minister and not with the person to be deported. The Minister has that power and his mode of exercising that choice does not raise a question of law which is reviewable by this Court.

Per Cartwright C.J. and Martland J.: The onus of proving that a deportation order valid on its face is in fact not made *bona fide,* is on the party who alleges it. In the case at bar the appellant has not discharged that onus.

Per Spence J., *dissenting*: The purpose of the deportation provisions in the *Immigration Act* is to prevent the entry into Canada of a person who is not entitled under the provisions of the statute to enter and to evict from Canada any person who is remaining in Canada and is not entitled under the provisions of the Act to so remain. The discretion given to the Director under s. 26 of the Act is semi-judicial in character. In view of the circumstances of this case, no inquiry could, in the terms of s. 26, have been "warranted". All that had to be done in order to carry out the purposes of deportation, *i.e.,* the getting out of Canada of a person not entitled to remain, was to let the appellant proceed to board the plane.

Immigration—Expulsion—Personne étant dans le pays illégalement—Personne mise sous arrêt alors qu'elle était sur le point de quitter le pays volontairement—Enquête et ordonnance d'expulsion—Ordonnance ne spécifiant pas la destination—Ordonnance a-t-elle été validement émise—La personne expulsée a-t-elle le droit de choisir sa destination—Loi sur l'immigration, S.R.C. 1952, c. 325, art. 2(d), 26, 36, 40.

L'appelant, un citoyen des États-Unis ayant un dossier criminel dans ce pays et qui avait été expulsé du Canada en 1959, est entré au Canada en 1967, venant du Panama par avion, et étant en possession d'un passeport canadien indiquant qu'il était né au Canada et qu'il était un citoyen canadien. Il fut mis sous arrêt deux jours après son entrée et alors qu'il attendait à l'aérogare pour s'embarquer à bord d'un avion à destination du Panama. La tenue d'une enquête fut ordonnée en vertu de l'art. 26 de la *Loi sur l'immigration,* S.R.C. 1952, c. 325, et une ordonnance d'expulsion fut rendue contre l'appelant. Cette ordonnance ne spécifait pas le pays où l'appelant devait être renvoyé, mais le Ministre a déclaré qu'il avait l'intention d'ordonner que l'appelant soit renvoyé aux États-Unis. Un appel à la Commission d'appel de l'immigration a été rejeté. L'appelant a obtenu la permission d'en appeler à cette Cour.

Arrêt: L'appel doit être rejeté, le Juge Spence étant dissident.

Le juge en Chef Cartwright et les Juges Martland, Judson et Ritchie: La discrétion conférée au Directeur par l'art. 26 de la *Loi sur l'immigration* d'ordonner une enquête est purement administrative et n'est

pas sujette à être revisée par les tribunaux. L'enquêteur spécial avait la juridiction d'émettre l'ordonnance d'expulsion puisque l'appelant était au Canada illégalement. Il n'est pas nécessaire que l'ordonnance d'expulsion mentionne l'endroit où la personne expulsée doit être renvoyée.

L'appelant n'avait pas le droit de choisir sa destination. Le choix appartient au Ministre et non pas à la personne qui doit être expulsée. Le Ministre a ce pouvoir et la manière dont il exerce ce choix ne soulève pas une question de droit qui peut être revisée par cette Cour.

Le Juge en Chef Cartwright et le Juge Martland: Il incombe à la personne qui plaide ce moyen de prouver qu'une ordonnance d'expulsion, valide à sa face, n'a pas, en fait, été émise de bonne foi. Dans l'instance, l'appelant n'a pas rencontré ce fardeau.

Le Juge Spence, *dissident*: Le but des dispositions de la *Loi sur l'immigration* visant l'expulsion est d'empêcher l'entrée au Canada d'une personne qui n'a pas droit, en vertu des dispositions de la Loi, d'y entrer et d'expulser du Canada toute personne qui y demeure alors qu'elle n'a pas droit, en vertu des dispositions de la Loi, d'y demeurer. La discrétion conférée au Directeur en vertu de l'art. 26 de la Loi a un caractère semi-judiciaire. Dans les circonstances, une enquête, selon les termes de l'art. 26, n'était pas «justifiée». Pour rencontrer les exigences du statut, *i.e.*, de voir à ce qu'une personne qui n'a pas droit de demeurer au Canada sorte du pays, on n'avait qu'à laisser l'appelant s'embarquer sur l'avion.

APPEL d'une décision de la Commission d'appel de l'immigration confirmant une ordonnance d'expulsion. Appel rejeté, le Juge Spence étant dissident.

APPEAL from a decision of the Immigration Appeal Board affirming a deportation order. Appeal dismissed, Spence J. dissenting.

Bernard Chernos, for the appellant.

C. R. O. Munro, Q.C., and *N. M. Thurm,* for the respondent.

Martland J. concurred with the judgment delivered by

THE CHIEF JUSTICE:—This appeal is brought, pursuant to leave granted by this Court on May 27, 1968, from a decision of the Immigration Appeal Board given on April 9, 1968, which dismissed an appeal from a deportation order made against the appellant by a Special Inquiry Officer dated February 1, 1968.

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Cartwright C.J.

The facts are succinctly stated in the reasons of my brother Judson. I agree with his conclusions that a decision of the Director, pursuant to s. 26 of the *Immigration Act*, to cause an inquiry to be held is not subject to judicial review and that the Special Inquiry Officer had jurisdiction to make the deportation order.

It is clear since the decision of this Court in *Rebrin v. Bird*[1] that a deportation order is valid in form although it does not name the country to which the person named is to be deported but it does not follow from this that it would be improper for the order to specify that country. The wording of s. 40(2) of the *Immigration Act* quoted by my brother Judson appears to contemplate the destination being named in either the deportation order or a separate order or direction made by the Minister, Director, a Special Inquiry Officer or an immigration officer.

In the case at bar no such separate order appears to have as yet been made but the Minister has stated, in a letter to the solicitor for the appellant, that if the deportation order is upheld he intends to direct that the appellant be deported to the United States.

There was no doubt ample evidence before the Special Inquiry Officer to warrant and indeed to require the making of a deportation order. The Minister has not as yet made an order naming the country to which the appellant is to be deported but the question as to whether the Minister or the appellant has the right to choose that destination is one of law depending on the construction of the Act and the regulations and was fully argued before us and should now be decided.

It is to be regretted that the words of the Statute do not deal explicitly with the question. It would have been easy to do so. I agree, for the reasons he has given, with the view of my brother Judson that the conclusion to be drawn from the wording of the Act is that the choice rests with the Minister.

It remains to consider the argument addressed to us by Mr. Chernos which is summarized in his factum as follows:

> The true purpose of these deportation proceedings has been to surrender the appellant to a foreign state because he is an alleged fugitive

[1] [1961] S.C.R. 376, 34 C.R. 412, 130 C.C.C. 55, 27 D.L.R. (2d) 622.

criminal sought by such foreign state. For that purpose it was necessary to arrest the appellant to prevent his return to Panama and to institute deportation proceedings against him although he neither desired nor intended to come into or remain in Canada. Since November 26, 1967, the appellant has been attempting to quit Canada to return at his own expense to Panama from whence he came. The only proper inference from this evidence is that the real object of these deportation proceedings is the surrender of a 'fugitive criminal' to the United States of America because the United States of America wants him. An exercise of the power to deport for the purpose of extradition is an abuse which should be restrained by this Court. An order of deportation for such purpose is 'ultra vires' the Minister, not made in good faith, neither genuine nor bona fide, and but a sham and a device to perpetrate an illegal act.

Section 22 of the *Immigration Appeal Board Act* is as follows:

> 22. Subject to this Act and except as provided in the *Immigration Act*, the Board has sole and exclusive jurisdiction to hear and determine all questions of fact or law, including questions of jurisdiction, that may arise in relation to the making of an order of deportation or the making of an application for the admission to Canada of a relative pursuant to regulations made under the *Immigration Act*.

By s. 23(1) of that Act, which gives a right of appeal to this Court with leave, our jurisdiction is limited to dealing with questions of law.

The appellant's submission quoted above is made on the supposition that the appellant has been ordered not merely to be deported but to be deported to the United States. I have already pointed out that no irrevocable decision has been made by the Minister in regard to this but I propose to consider the submission on the basis that such a direction has been made. That was the basis on which this branch of the argument proceeded.

I agree with the view expressed by Stephenson J. in *Regina v. Governor of Brixton Prison Ex parte Soblen*[2], that the onus of proving that a deportation order valid on its face is in fact a sham, or not made *bona fide*, is on the party who alleges it, "however difficult it may be for him to discharge the onus".

In the case at bar that onus has not, in my opinion, been discharged. It was urged by Mr. Chernos in the course of his forceful argument that only one inference can be drawn

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[2] [1963] 2 Q.B. 243 at 281.

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from the combined circumstances that the appellant has both the desire and the means of returning to Panama the country whence he came, that the Minister has announced his intention of deporting him to the United States and that that country has requested his return as a fugitive criminal. I am unable to agree. To decide that the deportation proceedings are a sham or not bona fide it would be necessary to hold that the Minister did not genuinely consider it in the public interest to expel the appellant. This is the view expressed in *Soblen's* case, *supra,* and I agree with it.

In the case at bar, there are good reasons for expelling the appellant as is shown in the reasons of my brother Judson. A person who is unlawfully in Canada cannot exempt himself from liability to have an inquiry directed and to be ordered to be deported by demonstrating his desire to leave Canada voluntarily. The question whether, in such circumstances, deportation proceedings should be initiated is not committed to the Courts.

Once it has been held that a valid deportation order has been made which does not name the destination to which the deportee is to be sent, and that in such circumstances Parliament has committed to the Minister the choice as to what that destination shall be, I agree with my brother Judson that the Minister's mode of exercising that choice does not raise a question of law which is reviewable by this Court on an appeal brought pursuant to s. 23(1) of the *Immigration Appeal Board Act.*

I wish to guard myself against being supposed to say that if the facts were found to be as suggested by Mr. Chernos the Courts would be powerless to intervene and to declare that an act having the appearance of being done under the authority of the *Immigration Act* and in accordance with its provisions is *ultra vires* because in reality done for a purpose other than that specified by the Statute.

Since the facts established do not warrant a finding that the order appealed from was wrong in law, or that the proceedings and decisions of which the appellant complains were not taken and made in good faith it follows that this appeal cannot succeed.

For the reasons given by my brother Judson and those stated above, I would dismiss the appeal.

Martland and Ritchie JJ. concurred with the judgment delivered by

JUDSON J.:—The appellant, Donald Edwin Moore, entered Canada on November 24, 1967. He came from the Republic of Panama by way of Mexico. On November 26, 1967, he went to the Toronto International Airport to return to Panama. He had a return ticket for this purpose. He was waiting to board the aircraft when he was arrested. He was notified on November 28, 1967, that the Director of Immigration had directed an enquiry under s. 26 of the *Immigration Act*. On February 1, 1968, following the enquiry, the appellant was ordered to be deported. The deportation order did not specify the country to which he was to be deported. On February 1, 1968, the appellant served Notice of Appeal to the Immigration Appeal Board. The Board dismissed the appeal on April 9, 1968. The appeal to this Court is, with leave, from the dismissal of the appeal by the Immigration Appeal Board.

The first submission of the appellant is that the Special Inquiry Officer should have declined to act and permitted him to leave Canada as he was trying to do. It is argued that the Special Inquiry Officer had no jurisdiction since the appellant was neither seeking to come into Canada nor seeking to remain in Canada. The answer to this submission is that the appellant was unlawfully in Canada contrary to the *Immigration Act*. On May 8, 1959, a deportation order had been made against him and he was deported to the United States on May 22, 1959. He was therefore in breach of s. 19(*e*)(ix) of the *Immigration Act*. He was also in possession of a Canadian passport which stated that he was born in Canada and was a Canadian citizen. He was, in fact, born in the United States and was a citizen of that country. When he was trying to leave, he produced that passport for the purpose of obtaining from Canadian Pacific Airlines a tourist card to enable him to enter Mexico on his return journey. He also had a serious criminal

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record in the United States. This was the reason for his deportation in 1959. There can be no doubt that the deportation order was properly made.

The next submission is that the deportation order should have stated the Republic of Panama as the destination, as the appellant requested. The deportation order simply orders a deportation and does not specify any destination. The answer to this submission is that the order was made in accordance with the terms of the Act and Regulation 22. Regulation 22 provides that a Special Inquiry Officer making a deportation order shall make the deportation order in the form prescribed by the Minister. This form does not provide for a destination being stated. It was considered in *Rebrin v. Bird and the Minister of Citizenship and Immigration*[3] and was held to be valid.

The only question in this appeal is whether the person being deported has a right to choose his destination after a deportation order has been validly made. "Deportation" is defined by the Act in s. 2(*d*):

> 2. In this Act
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> (*d*) "deportation" means the removal under this Act of a person from any place in Canada to the place whence he came to Canada or to the country of his nationality or citizenship or to the country of his birth or to such country as may be approved by the Minister under this Act, as the case may be.

Section 36 provides:

> (1) Subject to subsection (2), a person against whom a deportation order has been issued shall be deported to the place whence he came to Canada or to the country of which he is a national or citizen or to the country of his birth or to such country as may be approved by the Minister under this Act.
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> (2) Unless otherwise directed by the Minister or an immigration officer in charge, a person against whom a deportation order has been made may be requested or allowed to leave Canada voluntarily.

The only provisions for voluntary departure in the Act are contained in s. 36(2), just quoted, and s. 40(2), which imposes a liability for the costs of deportation on a transportation company in certain events.

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[3] [1961] S.C.R. 376, 34 C.R. 412, 130 C.C.C. 55, 27 D.L.R. (2d) 622.

Section 40(2) reads:

(2) Where a deportation order or rejection order is made against a person other than a person described in subsection (1), the transportation company that brought him to Canada shall, where he is deported, pay the costs of deportation or rejection from the port of entry from which he will leave Canada and shall at its expense convey him or cause him to be conveyed to the place whence he came to Canada or to the country of which he is a national or citizen or to the country of his birth as directed in the deportation order, rejection order or other order or direction made by the Minister, Director, a Special Inquiry Officer or an immigration officer or at the request of the transportation company and subject to the approval of the Minister, to a country that is acceptable to such person and that is willing to receive him.

Section 36(2) and the concluding words of s. 40(2) are permissive only and do not compel the Minister to act under them. The definition of "deportation" and s. 36(1) state four possible destinations:

(a) the place whence he came;

(b) the country of which he is a national or citizen;

(c) the country of birth;

(d) such country as may be approved by the Minister under this Act.

The sections do not state that the Minister may make the choice, if the facts of a given case permit a choice. Neither do they impose any limitation on the power of the Minister. We have here a valid deportation order. There are four stated destinations. My conclusion on this legislation is that the choice rests with the Minister and not with the person to be deported. He has the power and its mode of exercise does not raise a question of law which is reviewable by this Court.

It has been stated that the discretion given to the Director under s. 26 of the Act is quasi judicial in character and subject to review by a court if it thinks that he acted on insufficient information. I cannot agree with this. The discretion is purely administrative and not subject to judicial review.

This matter was fully dealt with in this Court in *Calgary Power Limited v. Copithorne*[4] and the above proposition

[4] [1959] S.C.R. 24, (1958), 16 D.L.R. (2d) 241, 78 C.R.T.C. 31.

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decisively rejected. The implications of any such doctrine are serious. The administration of the *Immigration Act* would be paralysed. There would be repercussions on the laying of informations and the preferring of indictments under the *Criminal Code*, and, in all probability, on the powers of arrest.

I state this conclusion without finding it necessary to consider s. 22, 14-15-16 Eliz. II, c. 90, the *Immigration Appeal Board Act* enacted in 1967. It reads as follows:

> 22. Subject to this Act and except as provided in the *Immigration Act*, the Board has sole and exclusive jurisdiction to hear and determine all questions of fact or law, including questions of jurisdiction, that may arise in relation to the making of an order of deportation or the making of an application for the admission to Canada of a relative pursuant to regulations made under the *Immigration Act*.

and replaces s. 39 of the old Act, which read as follows:

> 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.

I would dismiss the appeal.

SPENCE J. (*dissenting*):—I have had the privilege of reading the reasons for judgment of the Chief Justice and Judson J. I am unable to agree with the conclusions therein for the following reasons.

The purpose of the deportation provisions in the *Immigration Act* is to prevent the entry into Canada of a person who is not entitled under the provisions of the statute to enter and to evict from Canada any person who is remaining in Canada and is not entitled under the provisions of the Act to so remain. The definition of "deportation" in s. 2(*d*) commences with the words " 'deportation' means the removal under this Act of a person from any place in Canada . . ."

Section 11(2) of the statute provides:

> 11. (2) A Special Inquiry Officer has authority to inquire into and determine whether any person shall be allowed to come into Canada or to remain in Canada or shall be deported.

The special inquiry officer in the present case informed the appellant of such purpose of the inquiry. As pointed out by Judson J., the appellant was arrested under the provisions of s. 16 of the *Immigration Act*, and I agree with my learned brother that he was properly so arrested.

Section 19(1)(*a*) of said statute provides:

> 19. (1) Where he has knowledge thereof, the clerk or secretary of a municipality in Canada in which a person hereinafter described resides or may be, an immigration officer or a constable or other peace officer shall send a written report to the Director, with full particulars, concerning
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> (*a*) any person, other than a Canadian citizen, who engages in, advocates or is a member of or associated with any organization, group or body of any kind that engages in or advocates subversion by force or other means of democratic government, institutions or processes, as they are understood in Canada;

In compliance with that section, R. G. Lynn, Immigration Officer in Toronto, Ontario, on November 27, 1967, reported by telegram and that report was produced as an exhibit before the special inquiry officer. It reads as follows:

IMM TOR
27-11-67 1:35 195
DIST ADMIN TOR URGENT ATTN ENFORCEMENT
TO DIRECTOR OF IMMIGRATION

PURSUANT TO SUBPARAGRAPHS (IV), (VIII) AND (IX) OF PARAGRAPH (E) OF SUBSECTION (1) OF SECTION 19 OF THE IMMIGRATION ACT, THIS IS A REPORT CONCERNING DONALD EDWIN MOORE A PERSON OTHER THAN A CANADIAN CITIZEN OR A PERSON WITH CANADIAN DOMICILE WHO WAS A MEMBER OF A PROHIBITED CLASS AT THE TIME OF HIS ADMISSION TO CANADA, NAMELY THE PROHIBITED CLASS DESCRIBED IN PARAGRAPH (D) OF SECTION 5, WHO CAME TO CANADA OR REMAINS THEREIN WITH A FALSE OR IMPROPERLY ISSUED PASSPORT OR BY REASON OF ANY FALSE OR MISLEADING INFORMATION, FORCE, STEALTH OR OTHER FRAUDULENT OR IMPROPER MEANS WHETHER EXERCISED OR GIVEN BY HIMSELF OR BY ANY OTHER PERSONS AND WHO RETURNS TO OR REMAINS IN CANADA CONTRARY TO THE PROVISIONS OF THIS ACT AFTER A DEPORTATION ORDER HAS BEEN MADE AGAINST HIM

SIGNED R G LYNN
IMMIGRATION OFFICER
TORONTO ONTARIO 27 NOVEMBER 1967

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The duty of the Director of Immigration to whom such report was made is set out in s. 26 of the *Immigration Act* as follows:

> 26. Subject to any order or direction by the Minister, the Director shall, upon receiving a written report under section 19 *and where he considers that an inquiry is warranted,* cause an inquiry to be held concerning the person respecting whom the report was made.

(The emphasis is my own.)

There was no order or direction by the Minister in the present case. Acting upon this report, one J. B. Bissett, the Chief Enforcement Officer, Home Branch, purporting to act for the Director of Immigration, on the 28th of November 1967, telegraphed to the District Administrator of Immigration in Toronto largely repeating from Lynn's telegram report which I have set out above and concluding, "I direct that an inquiry be held". I shall presume, without further investigation, that Mr. Bissett could so act for the Director of Immigration as that issue was not referred to by counsel in argument before this Court. Presuming Mr. Bissett's act to be that of the Director, it is quite evident that he was purporting to exercise a discretion given to the Director by the provisions of s. 26 of the *Immigration Act* which I have quoted. The words "and where he considers that an inquiry is warranted" expressly provide for such discretion. The discretion, in my view, is semi-judicial in character because its exercise results in the setting up of an inquiry to determine whether the appellant should be permitted to remain in Canada or to be deported. I need cite no authority for the proposition that in such a quasi-judicial exercise of discretion the person purporting to exercise the discretion must do so judicially. It is, surely, the essence of a judicial exercise of discretion that a person receive proper and complete information upon the matter as to which he is to exercise the said discretion.

Mr. Lynn, in his written report which I have quoted, made no mention whatsoever that at the time when the appellant was arrested he was in the Malton Airport at Toronto awaiting the opportunity to board the plane to Panama or that he always has insisted and still does insist

that he desires not to remain in Canada but to leave Canada and to leave Canada just as quickly as he is permitted. Had the Director or Mr. Bissett acting in his place and stead been so informed it would seem inevitable that he would have come to the conclusion that an inquiry was not "warranted". All that had to be done in order to carry out the purposes of deportation, i.e., the getting out of Canada of a person not entitled to remain, was to let the appellant proceed and therefore no inquiry could, in the terms of s. 26, have been "warranted".

Counsel for the Minister pointed out that the appellant had been guilty of several serious infractions of the provisions of the *Immigration Act* for which he was subject to prosecution. Of course, the complete answer to that submission is that under Part VI of the *Immigration Act* there is not only a statement of the various offences but detailed provision as to their prosecution and to date there has been no attempt to institute any such prosecution. Any such purpose for the arrest of the appellant would seem to have been long since forgotten. Counsel for the Minister also pointed out that the appellant is said to have committed various offences in the United States of America and that the authorities there seek his return for the purpose of prosecuting him upon such offences. Again, there is a procedure recognized in international law and made statutory in Canada by the provisions of the *Extradition Act,* R.S.C. 1952, c. 322, as amended, a procedure which has been used on very many occasions for the purpose of delivering to the authorities of the United States of America persons who are charged with extraditable offences thereunder. In the present case, this Court has not been informed of any attempt to commence proceedings under the provisions of the *Extradition Act.*

Counsel for the Minister argued that if this appeal were allowed and the deportation order quashed the appellant would be free and could change his mind about his desire to leave Canada and could disappear. Of course, there are means both legal and practical to prevent that. I am sure that the Department of Manpower and Immigration could

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provide a sufficiently alert guard to make certain that the appellant boarded the plane for Panama from which he came through Mexico and once he was aboard and the plane was in flight it would be a little difficult for him to change his mind and return to Canada. Secondly, at the slightest indication of a change of mind, the appellant would become a person who being in Canada and not being entitled to be in Canada sought to remain in Canada, and then would be a proper subject for a hearing by an inquiry officer, and could, of course, be detained for such purpose. Thirdly, there are always the possible charges under the *Immigration Act* hanging over the head of the appellant.

For these reasons, I would allow the appeal and quash the deportation order.

Under the provisions of s. 23(3) of the *Immigration Appeal Board Act,* 14-15-16 Eliz. II, c. 90, no order as to costs should be made.

Appeal dismissed, SPENCE J. *dissenting.*

Solicitor for the appellant: A. C. Bazos, Toronto.

Solicitor for the respondent: D. S. Maxwell, Ottawa.