Victoria

1154

IN THE SUPREME COURT OF BRITISH COLUMBIA.

IN THE MATTER OF THE IMMIGRATION ACT

and

IN THE MATTER OF MUNETAKA SAMEJIMA

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE FISHER.

This is an application on behalf of one Munetaka Samejima for his discharge under habeas corpus proceedings. On the return to the writ the Immigration Officer in charge states that the said Munetaka Samejima is a person detained for the purpose of deportation from Canada under and by virtue of an order for deportation dated at Victoria, B.C. the 29th day of April, 1931 and reading in part as follows:

> "This is to certify that the rejected person above named (being the said Munetaka Samejima), a person who entered Canada at Vancouver, B. C., from Yokohama, Japan.....on September 29th, 1928, has been examined by the Board of Inquiry at this Port, and has been rejected for the following reasons: In that he is in Canada contrary to the provisions of the Immigration Act and effected entry contrary to the provisions of Section 33, subsection (7) of said Act."

The order purports to be made under section 33 of the Immigration Act and it is submitted on behalf of the applicant that it was not "had, made or given under the authority and in accordance with the provisions of this Act," that it does not therefore fall within the prohibition of section 23 of the Act, and the applicant is therefore entitled on these proceedings to be discharged from custody. Reliance is placed upon the case of Rex v Lantalum; ex parte Offman (1921) 62 D.L.R. 223, and the case of In re Narain Singh (1913) 18 B.C. 506. In the Offman case it was held that an order of deportation made under section 33 of the Immigration Act, form "B" (similar to present form "C")

789 1

is defective, if, in the reasons for granting the order, reference is made to an Order in Council instead of the reasons for rejection being stated in full as required by the Act, and an intended immigrant in the custody of the immigration authorities is entitled on habeas corpus proceedings to be discharged from custody. Grimmer, J. at page 238 says:

> "This matter, involving, as it does, the liberty of the person, requires to my mind that all the provisions of the statute which are invoked in its support and in support of the position which is taken in this case by the Board of Inquiry should be strictly performed. While the provisions of sec. 23 are very large, very conclusive, as far as the words themselves are concerned, yet as reference has been made, they contain words which clearly point out to me at all events, that the decision which is arrived at by the officer or Board which made the inquiry into the matter must absolutely be made, had, or given under the authority and in accordance with the provisions of the Act relating to the detention or deportation of a subject whose deportation may be inquired into, and I am of the opinion that the form of the order which has been referred to, is as much a portion of the statute as any of the individual sections thereof. I am therefore of the opinion that when a person is ordered to be deported out of the country, the reasons for the deportation should be clearly stated in the order, and it is not a compliance therewith merely to refer under the instructions "Here state reasons in full" to the minutes of the Order in Council which provides the reason upon which the Board of Inquiry or immigration officer in charge may found or base its or his decision that the person or immigrant should be deported, and as, in this case, the order which made the deportation possible only used as the reason therefor the letters and figures "P.C.23," it is in my opinion not in accordance with the provisions of the Act under which the order is made."

At page 246 Crocket, J. says:

> "With regard to the merits I fully concur in the judgment of the Chief Justice that the order for deportation, under which Offman was and is held, was defective in not stating in full, as required by form B in the schedule to the Immigration Act the reasons for rejection. With all respect, however, I am unable to agree with his conclusion that he was precluded by the terms of sec. 23 of the Immigration Act from ordering the discharge of the applicant notwithstanding the defective order under which he was detained.

The prohibition of that section, applies in judgment only to proceedings, decisions or ... "had, made or given under the authority and in accordance with the provisions of this Act." The order in question, having omitted to state the reasons for rejection, which the Act clearly requires to be stated in full, is not an order, which was made or given in accordance with the provisions of the Act, and does not therefore fall within the prohibition of sec. 23."

In the Narain Singh case at page 510-11, Hunter C.J.B.C., says as follows:

"The Court having concluded that the persons detained were entitled to their discharge on these grounds, it was then urged by Mr. Taylor that they were also held because of misrepresentations. But the order for deportation does not state that this was a reason for detention. The only reason, so-called, assigned, which could have any bearing on the matter, is given as "section 33." This section contains a number of subsections prohibiting different acts, and I do not think it is a proper compliance with the Act to refer generally to the section in this way as a reason for deportation. Common justice requires, and I think Parliament intended, that when a person is ordered to be deported out of the country, the reason for so doing should be clearly stated, in order that he might at least know what was the reason, and, in any event, a reason stated in such a fashion would not constitute a good return to a writ of habeas corpus.

Reference was also made to section 23, which purports to limit the jurisdiction of the Court to interfere with deportation proceedings. It is, however, specifically enacted, that such restruction applies only to proceedings "had under the authority and in accordance with the provisions of this Act," and it would, indeed, be strange to find that the doors of the Court were shut against any person of any nationality, no matter what the act complained of might be."

In the present case it may be noted that in the order for deportation the only reason given is that "he (i.e. Munetake Samejima) is in Canada contrary to the provisions of the Immigration Act and effected entry contrary to the provisions of section 33, subsection 7 of said Act." As was said in the Narain Singh case of section 33, so I think it may be said of subsection 7, that it prohibits different acts, and in my opinion it may also be said that the subsection creates several quite distinct offences with respect to entry. In this connection reference might be made

to In re Wong Shee (1922) 31 B.C. 145, where at page 149-50 Martin J.A. says:

> "At one time during the argument I was not satisfied that the "reason" required by Form B (Order for Deportation) was sufficiently given in the order in question, wherein it is stated to be that the applicant "Belongs to the laboring classes," without stating whether the class was of skilled or unskilled labour as set out in the order in council of June 9th, 1919, defining prohibited "classes or occupations." But upon further consideration I find myself unable to say that it is not, on the facts, a practical and sufficient, although not the most precise, definition of the applicant's disqualifications."

Counsel on behalf of the Department of Immigration has called my attention to what is called the decision of the Board, as though that would constitute sufficient compliance with the requirements, but it should be noted that it is only the recital that goes any further than the order of deportation and it only does so by purporting to recite a complaint received under section 40 of the Immigration Act which requires "full particulars" to be given. It should be noted, however, that this complaint is set out in the Warrant issued by the Deputy Minister of Immigration and Colonization on the authority of which the Board of Inquiry was held, and which was issued under section 42 upon the written complaint being received. A perusal of the Warrant shows that the complaint is recited there as being in exactly the same terms as the Order is, so that this would not seem to be any more definite. In any case, however, my view would be that it is the order itself, under which the applicant is held in custody, that must be considered, and after carefully considering such order, I have come to the conclusion that the reason required by Form C is not sufficiently given, and

following the decision in Rex v Lantalum; ex parte Offman, supra, I hold that the order of deportation is defective and not one given or made in accordance with the provisions of the Act, and the applicant is entitled to be discharged from custody. Order accordingly.

.....

A. I. Fisher
J.

July 8th, 1931.

BRITISH COLUMBIA. SUPREME COURT (VICTORIA).
VOL. 12: REASONS FOR JUDGEMENT; NOS. 912 - 1180.

IN THE SUPREME COURT OF BRITISH COLUMBIA.

IN THE MATTER OF THE IMMIGRATION ACT, Chapter 93, R. S. C. 1927 and Amending Act,

and

IN THE MATTER OF MUNETAKE SAMEJIMA.

JUDGMENT OF THE HONOURABLE MR. JUSTICE MURPHY.

Of the various points raised before me in support of this application I think the Court can only take cognizance of one, namely, that the applicant has already been discharged in this same matter by having succeeded in a habeas corpus application.

The claim upon which he obtained his release was that the warrant was deficient inasmuch as it did not set out with sufficient particularity the breach of the Immigration Act of which he had been found guilty. It appears, however, from the case of Rex v. Brixton Prison, 23 Cox, page 192, where the accused has been set at liberty by the Court merely upon the ground of error in procedure, a new warrant can be issued and he held under it. As in my opinion the warrant under which the applicant is now held is a valid document the application is dismissed.

D. Murphy J.

Victoria, B. C.,
30th October, 1931.