Canada v. Singh
[Thirty-Nine Hindis (Re)]

In re Narain Singh et al.

[1913] B.C.J. No. 97

15 D.L.R. 189

British Columbia Supreme Court
Victoria, British Columbia

Hunter C.J.B.C.

November 28, 1913.

---

1 **HUNTER C.J.B.C.**:-- Habeas corpus proceedings to test the legality of the detention of 39 Hindus held under deportation orders.

2 As to four of the Hindus, their counsel, Mr. Bird, abandoned proceedings, so that the question now concerns the other 35. The main dispute was as to the validity of the orders in council known as P.C. No. 926 and No. 920, passed on the 9th of May, 1910.

3 At the outset, Mr. Bird vehemently urged that Parliament knew that it was impossible for Hindus to came to a Canadian port by a continuous journey and that it had employed a subterfuge to place a ban on Hindus as a race, and that, therefore, the Court ought to be astute, if possible, to defeat the alleged injustice. As to this, it seems necessary once more to point out that in dealing with Acts of Parliament, the Court is not concerned with questions of expediency or good faith, but only with their validity and interpretation.

4 To consider the two orders in council: As to No. 926, it is objected that the expression "Asiatic origin" is used, whereas the statute uses "Asiatic race." It is obvious that the word "origin" includes more than the word "race." A person born in India of British parents domiciled there would be of Asiatic origin, but not of Asiatic race. The prohibition in the order in council, therefore, exceeds that contained in the statute itself and is, accordingly, ultra vires. Again, the order in council requires the immigrant to have $200 in his own right in actual and personal possession, whereas the statute does not require that the money shall be in actual and personal possession. If an immigrant had the money in his own right in a Victoria bank at the time of his arrival, he would satisfy the requirements of the statute, but not those of the order in council. The order in council is, therefore, had on this account. Other objections were also urged, but it is unnecessary to deal with them.

5 As to the order in council No. 920: This order in council has already been declared invalid by MORRISON, J. in In re Rahim (1911), 16 B.C.R. 471, on the ground that it omitted the qualifying

word "naturalized" before the word "citizens," in conformity with the amending Act, and, no doubt, as he says, the fact of the change in the statute had been overlooked, and I might add that the amending Act was assented to only four days before the order in council was passed.

6 Mr. Taylor, however, urged that the order in council might be upheld in part, so far as regards the requirements about natives. The difficulty is that the word "native" is used as a noun in the order in council and would, therefore, include persons of British race born in India, which it is difficult to suppose Parliament intended, whereas in the statute it is used as an adjective, qualifying the word "citizens," and it is obvious that the expression "native" includes more than the expression "native citizens."

7 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.

8 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 restriction 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.

Application granted.

qp/s/qlsjh/qlcla

Dominion Law Reports

CITED "D.L.R."

A NEW ANNOTATED SERIES OF REPORTS
COMPRISING EVERY CASE REPORTED
IN THE COURTS OF EVERY PROVINCE,
AND ALSO ALL THE CASES DECIDED
IN THE SUPREME COURT OF CANADA,
EXCHEQUER COURT AND THE RAILWAY
COMMISSION, TOGETHER WITH CANADIAN
CASES APPEALED TO THE PRIVY COUNCIL

VOL. 15

EDITED BY

W. J. TREMEEAR
C. B. LABATT *and*
EDWIN BELL

ASSISTED BY A STAFF OF EDITORS

CONSULTING EDITOR

E. DOUGLAS ARMOUR, K.C.

TORONTO:
CANADA LAW BOOK CO., LIMITED
32-34 TORONTO STREET
1914

MAN.

C. A. 1913

WATSON STILLMAN CO. v. NORTHERN ELECTRIC CO.

later stage of the pleadings the case could be referred, but merely state that at this stage it can not.

The plaintiffs are not parties to the arbitration agreement with the city, and I see no reason why they should be delayed in exercising their ordinary rights, to have the matters tried in the ordinary way.

I would allow the appeal and set aside the order appealed against, costs of the appeal and of the order appealed against to be costs in the cause to the plaintiffs.

Perdue, J.A.

PERDUE, J.A., concurred with CAMERON, J.A.

Cameron, J.A.

CAMERON, J.A.:—In the agreement of June 2, 1909, the Watson Stillman Co. are designated as the "contractors." It is this that gives some plausibility to the argument that clause 15 of the general conditions, in the contract between the defendant company and the city of Winnipeg, is applicable to and part of the above agreement under the provisions of section 3 thereof, which binds the plaintiff company

the contractors (as named in that agreement) to do all work in accordance with and carry out all undertakings as called for in specifications of the city of Winnipeg hereto attached marked "D"

and in other particulars not here material. But the term "contractors" in clause 15 of the general conditions refers expressly to the Northern Electric Co. as appears by the contract between that company and the city. The second sentence of clause 15 must, therefore, be read as if it were worded:—

As between the Northern Electric Company and the city, the city engineer is to be the sole judge and arbitrator as to the mode in which the work is to be carried out—whether the Northern Electric Co. is making satisfactory progress in view of the time for completion, the sufficiency, quality and quantity of the work done or materials furnished and also of all questions that may arise as to the meaning and interpretation of the specifications and plans and, as between the Northern Electric Co. and the city, the city engineer is to be sole judge and arbitrator as to every other matter or thing incident to, bearing upon or arising out of the contract between the Northern Electric Co. and the city, and the specifications therein referred to.

That being, to my mind, the true intent and meaning of clause 15, it is quite inapplicable to, and, therefore, not part of, the agreement between the parties to this action, and here in question.

I agree with the conclusion arrived at by the Chief Justice, whose judgment I have read.

Appeal allowed.

Re THIRTY-NINE HINDUS.

B. C.

S. C. 1913

British Columbia Supreme Court, Hunter, C.J. November 28, 1913.

1. DEPORTATION (§ I—4)—IMMIGRATION RESTRICTIONS — ASIATICS FROM BRITISH TERRITORY—ASIATIC "ORIGIN" OR ASIATIC "RACE."

Where a statute authorizes the regulation of the immigration of persons of the "Asiatic race" by orders-in-council, an order-in-council purporting to regulate the immigration of persons of "Asiatic origin" is *ultra vires* as exceeding the statutory authority, the words "Asiatic origin" being wide enough to include persons of the British race born in Asia who would not be within the words "Asiatic race" used in the statute.

[See Annotation on exclusion and deportation of immigrants from British territory, at end of this case.]

2. DEPORTATION (§ I—5)—JURISDICTION—ORDER TO SHEW GROUND OF EXCLUSION.

When a person is ordered to be deported out of the country, the reason for the deportation should be clearly stated in the order, and it is not a compliance merely to refer, under the heading of "reasons," to the section number of the statute under which the order purported to be made.

3. HABEAS CORPUS (§ I C—11)—VALIDITY OF ORDER-IN-COUNCIL—DEPORTATION UNDER IMMIGRATION LAWS—ASIATICS FROM BRITISH TERRITORY.

A discharge on *habeas corpus* may be ordered in respect of a deportation order against Asiatics under an order-in-council which exceeds in its scope the powers conferred by Parliament; the orders-in-council P.C. 920 and 926 are both invalid as exceeding the prohibition of the statute as to persons to be debarred from entering Canada.

[*Re Rahim*, 4 D.L.R. 701, referred to.]

4. DEPORTATION (§ I—5)—IMMIGRATION LAW—FIXED SUM OF MONEY TO BE POSSESSED BY IMMIGRANT AT TIME OF ENTRY.

A requirement under an immigration law that the immigrant shall have, on arrival, a stated sum in his own right, does not alone demand that the money shall be in his actual and personal possession, and would be satisfied by his having the money on deposit in a Canadian bank.

Statement

HABEAS corpus proceedings to test the legality of the detention of thirty-nine Hindus held under deportation orders.

J. E. Bird, for application.

W. J. Taylor, K.C., *contra*.

Hunter, C.J.

HUNTER, C.J.:—As to four of the Hindus, their counsel, Mr. Bird, abandoned proceedings, so that the question now concerns the other 35.

The main dispute was as to the validity of the orders-in-council known as P.C. No. 926 and No. 920, passed on May 9, 1910.

At the outset Mr. Bird vehemently urged that Parliament knew that it was impossible for Hindus to come to a Canadian port by a continuous journey and that it had employed a subterfuge to place a ban on Hindus as a race and that, therefore, the Court ought to be astute, if possible, to defeat the alleged injustice. As to this it seems necessary once more to point out that in dealing with Acts of Parliament the Court is not con-

B. C.
S. C.
1913
RE THIRTY-NINE HINDUS.
Hunter, C.J.

cerned with questions of expediency or good faith, but only with their validity and interpretation.

To consider the two orders-in-council. As to No. 926 it is objected that the expression "Asiatic origin" is used, whereas the statute uses "Asiatic race." It is obvious that the word "origin" includes more than the word "race." A person born in India of British parents domiciled there would be of Asiatic origin, but not of Asiatic race. The prohibition of the order-in-council therefore, exceeds that contained in the statute itself and is, accordingly, *ultra vires*. Again, the order-in-council requires the immigrant to have $200, in his own right in actual and personal possession whereas the statute does not require that the money shall be in actual and personal possession. If an immigrant had the money in his own right in a Victoria bank at the time of his arrival he would satisfy the requirements of the statute but not those of the order-in-council. The order-in-council is therefore bad on this account. Other objections were also urged, but it is unnecessary to deal with them.

As to the order-in-council No. 920. This order-in-council has already been declared invalid by Mr. Justice Morrison in *Rahim's Case*, 16 B.C.R. 471, affirmed 4 D.L.R. 701, on the ground that it omitted the qualifying word "naturalized" before the word "citizens" in conformity with the Amending Act, and, no doubt, as he says, the fact of the change in the statute had been overlooked, and I might add that the Amending Act was assented to only four days before the order-in-council was passed.

Mr. Taylor however urged that the order-in-council might be upheld in part so far as regards the requirements about natives. The difficulty is that the word "native" is used as a noun in the order-in-council and would therefore include persons of British race, born in India, which it is difficult to suppose Parliament intended, whereas in the statute it is used as an adjective qualifying the word "citizens," and it is obvious that the expression "native" includes more than the expression "native citizens."

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 this matter is given as section 33.

This section contains a number of sub-sections 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 so 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*.

B. C.
S. C.
1913
RE THIRTY-NINE HINDUS.
Hunter, C.J.

Reference was also made to sec. 23 which purports to limit the jurisdiction of the Court to interfere with deportation proceedings. It is however, specifically enacted that such restriction 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.

Order for discharge.

Annotation—Deportation (§ I—4)—Exclusion from Canada of British subjects of Oriental origin.

Annotation
Deportation of Asiatics

By A. H. F. LEFROY, K.C.

This case, in itself, merely decides that two Dominion orders-in-council are invalid because they exceed the powers given by the Dominion Immigration Act on which they purport to be based. But read in connection with the Dominion order-in-council passed a few days after the judgment, which prohibits until March 31 next, the landing at ports in British Columbia of any immigrant who is an artisan, or skilled or unskilled labourer, it brings up the general question of Canada and the other self-governing Dominions refusing to British subjects the right of entry. Hindus from British India are as much British subjects as Canadians; whether they are equally British citizens, or whether a distinction can be usefully drawn between "British citizens" and "British subjects," is a point which has been recently mooted, but need not be discussed here. Immigration and agriculture are the only two matters over which the British North America Act explicitly confers concurrent jurisdiction on the Dominion Parliament and the provincial Legislatures, but with the proviso that provincial legislation shall have effect so long and so far only as it is not repugnant to any Act of the Parliament of Canada. The Dominion Parliament has very properly undertaken to regulate immigration, for as Mr. Joseph Chamberlain, then Secretary of State for the Colonies, said in a despatch to Lord Minto, of January 22, 1901, "the whole scheme of the British North America Act implies the exclusive exercise by the Dominion of all national powers, and, though the power to legislate for promotion and encouragement of immigration into the provinces may have been properly given to the provincial legislatures, the right of entry into Canada of persons voluntarily seeking such entry is obviously a purely national matter, affecting as it does the relation of the Empire with foreign states" (Provincial legislation, 1899-1900, p. 139). And the federal Government regards with jealousy any attempt at provincial legislation in relation to immigration in view of the Dominion legislation on that subject, and has quite recently exercised the veto power against it: (Provincial legislation, 1867-1895, pp. 634-5; 1899-1900, at pp. 134-8; 1901-1903, pp. 64, 74-5).

But what is of more importance in connection with this subject is that the Imperial Government has officially conceded the right of

B. C.

Annotation

Deportation of Asiatics

Annotation *(continued)*—**Deportation (§ I—4)—Exclusion from Canada of British subjects of Oriental origin.**

this Dominion, and the other self-governing Dominions to legislate for the exclusion of immigrants, though British subjects. Lord Crewe, Secretary of State for India, speaking at the last Imperial conference, said: "I fully recognize, as His Majesty's Government fully recognize, that as the Empire is constituted, the idea that it is possible to have an absolutely free interchange between all individuals who are subjects of the Crown, that is to say, that every subject of the King, whoever he may be, or wherever he may live, has a natural right to travel or still more to settle in any part of the Empire, is a view which we fully admit, and I fully admit as representing the India Office, to be one which cannot be maintained. As the Empire is constituted it is still impossible that we can have a free coming and going of all the subjects of the King throughout all parts of the Empire. Or to put the thing in another way, nobody can attempt to dispute the right of the self-governing Dominions to decide for themselves whom, in each case, they will admit as citizens of their respective Dominions."

As Sir Samuel Griffith, Chief Justice of Australia, and a member of the Judicial Committee of the Privy Council, has recently said, the following propositions seem to correctly express the existing state of the law:—

1. British nationality confers upon the holders of the status of British nationals the right to claim the protection of the British Sovereign as against foreign powers.

2. It does not, of itself, entitle the holder to any political rights or privileges within any part of the Empire, but it may be a condition of the enjoyment of such rights and privileges.

3. In the absence of any positive law to the contrary, a British national is probably entitled to claim the right of entry into any part of the British Empire.

4. A competent legislative authority of any part of the Empire may, by positive law, restrict or deny that right of entry.

So another writer, who has held the Governorship of the Windward Islands, in a collection of papers recently published in England under the title of "British Citizenship," says: "If a man of colour who is a British subject seeks to enter and settle in Australia, he finds that he is subject to certain disabilities by reason of his colour; his rights as a British subject do not include the right to enter and remain in every part of the Empire on the same terms as if he were a pure white. And it is impracticable to prevent a self-governing colony from imposing disabilities on persons of colour seeking to enter it, whether they are British subjects or not."

But in truth we are in a region other than—perhaps we should say higher than—that of mere law. We are dealing with matters which will find their ultimate settlement not in the provisions of any statute, but as the final resultant of varying sentiments, conflicting interests, and competing patriotisms. The exclusion of British subjects, whatever their colour, from any part of British soil, will at best be regarded as a lamentable necessity by those who have the interests of the Empire at heart. It will call for the exercise of the highest statesmanship, and much mutual forbearance, to adjust these matters without disturbing the pax Britannica.

MAN.

K. B.
1913

NORTH WEST BATTERY Ltd. v. HARGRAVE.

Manitoba King's Bench, Curran, J. December 13, 1913.

1. SALE (§ III C—72)—RESCISSION—FRAUD—PUFFING.

Mere puffing and favourable comment on the part of an agent or promoter to present his company shares to an intending investor so as to induce the investor to purchase, do not constitute misrepresentation or fraud.

2. CORPORATIONS AND COMPANIES (§ IV G 6—155)—OFFICERS' MEETINGS—CHANGING NUMBER OF DIRECTORATE.

Where a board of directors consisting of three members were unanimous in deciding that the board should be increased to seven members, but the resolution was not reduced to writing, a subsequent meeting of shareholders may confirm the directors' resolution although it was not in writing, by electing a directorate of seven members.

[*Colonial Assurance Co.* v. *Smith*, 4 D.L.R. 814, 22 Man. L.R. 441; and *Kelly* v. *Electrical Construction Co.*, 16 O.L.R. 232, referred to.]

3. CORPORATIONS AND COMPANIES (§ IV G 1—109)—DIRECTORATE—REDUCTION OF ITS MEMBERSHIP, HOW EFFECTED.

A board of directors of seven members having been determined upon by a resolution of the previous board of three directors and elected by the shareholders of the company in accordance therewith, the new board was validly elected and constituted so as to authorize a call on the unpaid shares of the company.

4. CORPORATIONS AND COMPANIES (§ V B 1—176)—STOCK—TRANSFER, WHEN COMPLETE—ALLOTMENT—PARTIAL PAYMENT.

The allotment of shares in a company is evidenced by production of the minute book of the directors' meeting moving a resolution allotting stock to the different persons whose names appear in the list set out in the minutes and a contract is completed on posting the notice of allotment.

[*Re Imperial Land Co.*, L.R. 7 Ch. 587; *Household Fire Insurance Co.* v. *Grant*, L.R. 4 Ex.D. 216, referred to.]

5. CORPORATIONS AND COMPANIES (§ V B 1—177)—STOCK—CONDITIONS TO SUBSCRIPTION—SEAL, EFFECT.

That an application for shares in a company is under seal does not dispense with the necessity of the company doing something to indicate its acceptance and communicating such acceptance to the applicant to make a complete contract.

[*Re Provincial Grocers Ltd.*, 10 O.L.R. 705; *Nelson Coke and Gas Co.* v. *Pellatt*, 4 O.L.R. 481, referred to.]

Statement

ACTION to recover unpaid calls on shares in a joint stock company.

Judgment was given for the company.

J. B. Hugg, and *A. K. Dysart*, for plaintiff.

W. H. Curle, and *F. M. Burbidge*, for defendant.

Curran, J.

CURRAN, J.:—The plaintiff is a company incorporated under and subject to the provisions of the Manitoba Joint Stock Companies Act with its head office at the city of Winnipeg. The defendant is a merchant residing in the city of Winnipeg.

The defendant applied for 10 shares of the stock of the plain-