1964

*Nov. 23
Dec. 21

PAOLO VIOLI .....APPELLANT;

AND

THE SUPERINTENDENT FOR THE EASTERN DISTRICT OF THE IMMIGRATION BRANCH OF THE CANADIAN DEPARTMENT OF CITIZENSHIP AND IMMIGRATION AND THE HONOURABLE THE MINISTER OF CITIZENSHIP AND IMMIGRATION OF CANADA .....RESPONDENTS.

APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Immigration—Deportation—Habeas corpus—Deportation order suspended for specified period of probation—Review without notice—Attempt to implement order long after expiry of probationary period—Whether authority to enforce order—Immigration Act, R.S.C. 1952, c. 325, ss. 8, 15(1), 17, 19(e), 26, 31(4), 33—Canadian Bill of Rights, 1959-60 (Can.), c. 44.

The appellant's two brothers, R and G, were admitted to Canada as immigrants. After they had both been convicted of an offence under the *Criminal Code*, within the meaning of s. 19(1)(e)(ii) of the *Immigration Act*, they were ordered to be deported by a special inquiry officer whose order was upheld by the Immigration Appeal Board. Then each brother was informed by letter that his deportation order was deferred, in the case of R for a period of twelve months and in the case of G for a period of six months, provided no unfavourable report was received during that period, at the end of which a further study of their cases was to be made. Some three years later in the case of R and eighteen months in the case of G, they were arrested and detained pursuant to a warrant of arrest signed by the Minister, and both were informed by letter that their cases had been reviewed and that the deportation orders were to be implemented. Neither had had any notice of the time or place of this review. The issuance of a writ of habeas corpus with certiorari in aid was refused by the trial judge. This judgment was affirmed by a majority in the Court of Appeal. An appeal was launched in this Court.

Held (Taschereau C.J. and Abbott and Judson JJ. dissenting): The appeal should be allowed.

Per Cartwright, Fauteux, Martland, Ritchie, Hall and Spence JJ.: Following the expiration of the stipulated periods of probation, the Minister could not thereafter hold the deportation orders in suspense and require their enforcement at any time he chose, at his own discretion. Having exercised his power of review, as he chose to do, under s. 31(4) of the Act, his decision to grant a probationary period was, by the terms of that subsection, final. After the expiration of the probationary periods, the Minister did not have power to make a further review and to decide to extend the probationary period for an additional time. In the absence of any event occurring during the probationary period which

*PRESENT: Taschereau C.J. and Cartwright, Fauteux, Abbott, Martland, Judson, Ritchie, Hall and Spence JJ.

would have justified his so doing, the Minister did not thereafter have the statutory authority to enforce the deportation orders. The position was the same as if he had allowed the appeals from the decisions of the Immigration Appeal Board.

Per Taschereau C.J. and Abbott and Judson JJ., *dissenting*: What the Minister did was to confirm the deportation orders but defer their execution. The Minister alone had power to do so under s. 31(4). Had the brothers been able to satisfy the Minister that they should be allowed to remain, he could then have exercised the discretionary power conferred upon him by s. 31(4) and have quashed the orders. The Minister is the only person authorized to quash such an order. The Courts have no power to do so. The exercise of that power requires positive action on the part of the Minister and is not to be inferred from circumstances such as a delay in the execution. Even if such a delay were relevant to the continuing validity of the orders, which it was not, deferment in this case was not unreasonable. The fact that the Minister signed the warrants of arrest was evidence that he had no intention of quashing the deportation orders.

Immigration—Expulsion—Habeas corpus—Ordonnance d'expulsion suspendue pour une période spécifique sous surveillance—Revision sans avis—Tentative de donner suite à l'ordonnance longtemps après l'expiration de la période sous surveillance—Autorité de mettre en vigueur l'ordonnance—Loi sur l'immigration, S.R.C. 1952, c. 325, arts. 8, 15(1), 17, 19(e), 26, 31(4), 33—Loi sur la déclaration canadienne des droits, 1960 (Can.), c. 44.

Les deux frères de l'appelant, R et G, furent admis au Canada comme immigrants. Après qu'ils furent tous deux trouvés coupables d'une infraction sous le Code criminel, selon les prévisions de l'art. 19(1)(*e*)(ii) de la *Loi sur l'immigration*, une ordonnance d'expulsion fut émise par un enquêteur spécial. Cette ordonnance fut maintenue par la Commission d'Appel. Chacun des frères fut informé par lettre que son ordonnance d'expulsion était retardée, dans le cas de R pour une période de douze mois et dans le cas de G pour une période de six mois, à condition qu'aucun rapport défavorable ne soit reçu durant cette période, à la fin de laquelle une autre étude de leur cas serait faite. Quelques trois ans plus tard dans le cas de R et dix-huit mois dans le cas de G, ils furent tous deux arrêtés et détenus en vertu d'un mandat d'arrestation signé par le ministre, et tous deux furent informés par lettre que leur cas avait été revisé et que les ordonnances de déportation devaient être effectuées. Ils n'avaient reçu aucun avis du temps et de la place de cette revision. Le juge au procès a refusé d'émettre le bref d'habeas corpus. Ce jugement fut confirmé par une décision majoritaire de la Cour d'Appel. D'où le pourvoi devant cette Cour.

Arrêt: L'appel doit être maintenu, le Juge en Chef Taschereau et les Juges Abbott et Judson étant dissidents.

Les Juges Cartwright, Fauteux, Martland, Ritchie, Hall et Spence: A l'expiration de la période sous surveillance spécifiée, le ministre ne pouvait pas maintenir l'ordonnance d'expulsion en suspens et exiger leur expulsion à n'importe quel temps de son choix, de sa propre discrétion. Ayant exercé son pouvoir de revision, comme il l'a fait, sous l'art. 31(4) de la loi, sa décision d'accorder une période sous surveillance était finale de par les termes de cet article. Après l'expiration de la période sous surveillance, le ministre n'avait pas le pouvoir de faire une autre revision et de décider d'étendre pour un temps additionnel

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cette période sous surveillance. En l'absence de tout événement survenant durant cette période qui l'aurait justifié de le faire, le ministre n'avait pas alors l'autorité statutaire de mettre en vigueur les ordonnances d'expulsion. La situation était la même que s'il avait maintenu les appels de la décision de la Commission d'Appel.

Le Juge en Chef Taschereau et les Juges Abbott et Judson, *dissidents:* Le ministre approuva les ordonnances de déportation mais décida d'en retarder leur exécution. Seul le ministre avait ce pouvoir sous l'art. 31(4). Si les deux frères avaient pu satisfaire le ministre qu'on devait leur permettre de demeurer, il pouvait alors exercer le pouvoir discrétionnaire qui lui est conféré par l'art. 31(4) et annuler les ordonnances. Seul le ministre a l'autorité pour annuler une telle ordonnance. Les Cours n'ont pas ce pouvoir. L'exercice de ce pouvoir requiert une action positive de la part du ministre et ne peut pas être inféré des circonstances telles que le délai dans l'exécution. Même si un tel délai était pertinent à la continuité de la validité de l'ordonnance, ce qui n'est pas le cas ici, le retardement dans ce cas n'était pas déraisonnable. Le fait que le ministre ait signé les mandats d'arrestation était une preuve qu'il n'avait pas l'intention d'annuler les ordonnances d'expulsion.

APPEL d'un jugement de la Cour du banc de la reine, province de Québec, affirmant un jugement du Juge Martel qui avait refusé l'émission d'un bref d'habeas corpus. Appel maintenu, le Juge en Chef Taschereau et les Juges Abbott et Judson étant dissidents.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, province of Quebec[1], affirming a judgment of Martel J. which had quashed a writ of habeas corpus with certiorari in aid. Appeal allowed, Taschereau C.J. and Abbott and Judson JJ. dissenting.

A. H. J. Zaitlin, Q.C., for the appellant.

C. A. Geoffrion, Q.C., for the respondents.

The judgment of the Chief Justice and Abbott and Judson JJ. was delivered by

ABBOTT J. (*dissenting*):—The facts and the relevant provisions of the *Immigration Act,* R.S.C. 1952, c. 325, are set out in the reasons of my brother Martland which I have had the advantage of perusing. I agree with him that the letters written by officers of the Department of Citizenship and Immigration which he has quoted, should be accepted as evidence that the Minister of Citizenship and Immigration had seen fit to exercise the power of review given to him under subs. 4 of s. 31 of the Act. I regret however that I am obliged to differ as to the legal effect of that review.

[1] [1965] Que. Q.B. 81.

The only persons entitled to enter Canada and to remain here as of right, are Canadian citizens and persons having a Canadian domicile. All others desiring to do so must comply with the requirements of the *Immigration Act* and the regulations made thereunder.

Rocco Violi and his twin brother Giuseppe were admitted to Canada as immigrants, on December 28, 1958, and thereafter under s. 4 of the Act, could acquire a Canadian domicile by having their place of domicile for at least five years in Canada after landing. During that period they were, in effect, here on probation and liable to deportation in the circumstances set out in s. 19 of the Act. Among other grounds deportation may be ordered if a landed immigrant has been convicted of an offence under the *Criminal Code*. Each of the brothers was convicted of such an offence.

Under the Act, residence in Canada after the making of a deportation order and prior to its execution is not to be counted towards the acquisition of Canadian domicile by a person against whom such order has been made.

The validity of the deportation orders made against the Violi brothers is not challenged. In my view, what the Minister did was to confirm the two deportation orders but defer their execution to enable each of the two brothers, as stated in one of the letters, "to demonstrate that you can rehabilitate yourself". There is no express power given under the Act to grant such a deferment but in my view the Minister—and the Minister alone—had power to do so under s. 31(4). Such deferment was certainly not adverse to the interests of the two brothers. Had they been able to satisfy the Minister that they should be allowed to remain in Canada, he could then have exercised the discretionary power conferred upon him in s. 31(4) and have quashed the deportation orders. In the final analysis the Minister is the only person authorized under the Act to quash such an order. The courts have no power to do so.

In my view the exercise of that power by the Minister requires positive action on his part and is not to be inferred from circumstances such as delay in the execution of the deportation order.

Execution of the deportation order against Rocco Violi was deferred for some three years and that against Giuseppe for some eighteen months. Even if such a delay were relevant to the continuing validity of the orders (which in

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my opinion it was not) deferment for such periods was not in my view unreasonable in the circumstances.

That the Minister himself had no intention of quashing the deportation orders is evidenced by the fact that he signed the warrants under s. 15(1) of the Act for the arrest of the two brothers.

For these reasons as well as for those of Rivard J. in the Court below, with which I am in substantial agreement, I would dismiss the appeal with costs.

The judgment of Cartwright, Fauteux, Martland, Ritchie, Hall and Spence JJ. was delivered by

MARTLAND J.:—This is an appeal from a judgment of the Court of Queen's Bench (Appeal Side) of the Province of Quebec[1], which, by a majority of three to two, dismissed the appellant's appeal from a judgment of the Superior Court for the District of Montreal, which had dismissed the appellant's petition for a writ of habeas corpus and for a writ of certiorari in aid. The facts involved in the appeal are not in issue.

Rocco Violi and Giuseppe Violi, both brothers of the appellant, were admitted to Canada as immigrants on December 28, 1958. On July 20, 1960, Rocco Violi was found guilty of causing bodily harm with a knife, contrary to s. 216A of the *Criminal Code,* and was sentenced to six months' imprisonment. On December 22, 1961, Giuseppe Violi was convicted for failure to stop his motor vehicle at the scene of an accident, contrary to s. 221(2) of the *Criminal Code.* He was sentenced to a fine and costs, which he paid.

Following each of these convictions an inquiry was held by a Special Inquiry Officer, pursuant to s. 19(2) of the *Immigration Act,* R.S.C. 1952, c. 325 (which statute is hereinafter referred to as "the *Act*"). In each case an order for deportation was issued, pursuant to s. 28(3) of the Act. The one relating to Rocco Violi was made on February 1, 1961, and the one relating to Giuseppe Violi was made on October 16, 1962. In each case an appeal was taken to an Immigration Appeal Board, in accordance with s. 31 of the Act, and in each case the appeal was dismissed. The decisions were delivered in the case of Rocco Violi on February 20, 1961, and in the case of Giuseppe Violi on November 19, 1962.

[1] [1965] Que. Q.B. 81.

Before continuing with the recital of the facts, it would be desirable, at this point, to quote s. 31 of the Act, as the subsequent events have to be considered in the light of this section and, in particular, subs. (4).

31. (1) Except in the case of a deportation order referred to in subsection (5) of section 7, subsection (4) of section 8 or section 30, an appeal may be taken by the person concerned from a deportation order if the appellant forthwith serves a notice of appeal upon an immigration officer or upon the person who served the deportation order.

(2) All appeals from deportation orders shall be reviewed and decided upon by the Minister with the exception of appeals that the Minister directs should be dealt with by an Immigration Appeal Board.

(3) An Immigration Appeal Board or the Minister, as the case may be, has full power to consider all matters pertaining to a case under appeal and to allow or dismiss any appeal, including the power to quash an opinion of a Special Inquiry Officer that has the effect of bringing a person into a prohibited class and to substitute the opinion of the Board or of the Minister for it.

(4) The Minister may in any case review the decision of an Immigration Appeal Board and confirm or quash such decision or substitute his decision, therefor as he deems just and proper and may, for these purposes, direct that the execution of the deportation order concerned be stayed pending his review and decision, and the decision of the Minister on appeals dealt with or reviewed by him or the decision of the majority of an Immigration Appeal Board on appeals, other than those reviewed by the Minister, is final.

In the case of Rocco Violi, following the decision of the Immigration Appeal Board, he received a letter, dated February 24, 1961, as follows:

OTTAWA, February 24, 1961.

Mr. Rocco Violi,
c/o Governor, Montreal Gaol,
800 Gouin Boulevard West,
MONTREAL, Quebec.

Dear Sir:

In his letter of February 24, 1961, the Appeal Clerk, General Board of Immigration Appeals, informed you that your appeal against the order of deportation made at Montreal, Quebec, on February 1, 1961, had been carefully considered and dismissed.

This letter is to inform you that it has been decided to defer deportation proceedings for a period of 12 months to give you a chance to demonstrate that you can rehabilitate yourself.

The local Immigration office will be required to submit a report on your circumstances in one year and I would therefore ask you to keep them informed of your address. I would also like to advise you that any unfavourable reports could mean the carrying out of the deportation order.

Yours very truly,
E. P. Beasley,
Chief,
Admissions Division.

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c.c. Governor, Montreal Gaol, 800 Gouin Boulevard West, MONTREAL, P.Q. Please hand the original of this letter to Mr. Violi who is an inmate of your institution.

c.c. Appeal Clerk, General Board of Immigration Appeals, OTTAWA. File 61-48.

c.c. (in dup.) District Superintendent, MONTREAL. File ED 2-10217. For your information and report in 12 months' time.

In the case of Giuseppe Violi, following the decision of the Immigration Appeal Board, he received a letter, dated December 10, 1962, as follows:

OTTAWA 4, December 10, 1962.

Mr. Giuseppe Violi,
4666 Charleroi,
Montreal North, P.Q.

Dear Sir:

On November 26th, 1962, you were informed by the Appeal Clerk of the Immigration Appeal Board that your appeal, taken from a deportation order made against you at Montreal on October 16, 1962 had been dismissed.

I have been directed to advise you that the deportation proceedings are being suspended for a period of six months provided no unfavourable report is received during that period. A further study of this case will be made in six months' time.

I wish to make it quite clear to you that should a further unfavourable report be received, consideration will be given to proceedings immediately with your deportation to Italy.

A copy of this letter has been sent to your Counsel, Mr. Jean Blain.

Yours very truly,

C. J. Dagg,
for A/Chief, Admissions Division.

c.c. Mr. Jean Blain, Barrister and Solicitor, 170 Dorchester Blvd. East, Suite 204, Montreal, P.Q.

c.c. Appeal Clerk, Immigration Appeal Board, Ottawa, Ontario.

c.c. Eastern District Superintendent, Montreal. Reference file ED2-10217. Should there be an unfavourable report during this six-month period, an immediate report should be submitted. If there is no unfavourable report, please investigate the present circumstances and submit a report on the same in six months' time, together with your recommendation.

This letter was followed by a letter dated May 28, 1963, in the following terms:

305 Dorchester Boulevard West
Montreal 1, Que.
ED. 3-347
May 28, 1963.

Mr. Giuseppe Violi,
4666 Charleroi Street,
Montreal North 39, P.Q.

Dear Sir:

This is to inform you that your case has been reviewed and it has been decided that it will not be necessary for you to report to this office as you have been doing in the past; however, it will be necessary for you to present yourself at this office on May 15, 1964.

Meanwhile, it will be necessary for you to inform us of any change of address.

Yours very truly,
for District Supervisor of Admissions.

There is no evidence of any further action on the part of the Department of Citizenship and Immigration, or of any further communication to either of the two brothers until the end of March, 1964. On April 1, 1964, each of them received a letter, in the same form, save as to the date of the deportation order. The one to Rocco Violi is as follows:

Dear Sir:

I have been directed to inform you that your case has been carefully reviewed and that it has been decided to implement the deportation order rendered against you at Montreal on February 1, 1961.

Your deportation to Italy will be effected as soon as the necessary arrangements in this regard have been completed.

Yours very truly,
(Sgd.) Leo R. Vachon.
Leo R. Vachon,
Regional Administrator,
Eastern Region.

It is admitted that neither Rocco Violi nor Giuseppe Violi had any notice of the time or place of any review of the deportation order affecting him.

Each of the two letters dated April 1, 1964, was dispatched to the recipient in care of the Governor of Montreal Gaol, where each was detained pursuant to a warrant of arrest, which had been issued by the Minister of Citizenship and Immigration (hereinafter referred to as "the Minister"), dated March 25, 1964, and a letter, from a departmental official to the Governor of the Gaol, dated March 26, 1964, requiring his detention there for deportation.

The appellant filed his petition in the Superior Court of Quebec, District of Montreal, for the issuance of a writ of

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habeas corpus and a writ of certiorari in aid on April 2, 1964.

From the foregoing facts it is clear that each of the two persons involved committed an offence under the *Criminal Code*, within the meaning of s. 19(1)(*e*)(ii) of the Act, and thereby became subject to deportation. The relevant portions of s. 19 provide as follows:

> 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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> . . . .
>
> (*e*) any person, other than a Canadian citizen or a person with Canadian domicile, who
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> . . . .
>
> (ii) has been convicted of an offence under the *Criminal Code*,
>
> . . . .
>
> (2) Every person who is found upon an inquiry duly held by a Special Inquiry Officer to be a person described in subsection (1) is subject to deportation.

It is also clear that the Special Inquiry Officer properly made deportation orders, pursuant to s. 28 of the Act, and that the appeals from the deportation orders were properly dealt with, pursuant to s. 31, by the Immigration Appeal Boards. None of these matters is questioned by the appellant as to its legal validity.

At that stage the Minister had discretion, pursuant to s. 31(4), to review, or to refrain from reviewing, the decision of the Immigration Appeal Board. Had he adopted the latter course, the decision of the Board in each case would have been final. However, he elected in each case to review the decision of the Board and it is necessary to consider what are the consequences of that action on his part.

Counsel for the respondent urged that the letter of February 24, 1961, to Rocco Violi and the letters of December 10, 1962, and May 28, 1963, written to Giuseppe Violi were written by departmental officials without any statutory authority to do so. I am not prepared to accept that submission. The first-mentioned letter uses the phrase "it has been decided to defer deportation proceedings . . . ." The second letter contains the phrase "I have been directed to advise you that the deportation proceedings are being suspended . . . ." The last-mentioned letter states: "This

is to inform you that your case has been reviewed . . . ." I think we are entitled to presume that these were properly authorized communications, in the absence of any evidence to the contrary, and the only authority for them is the exercise by the Minister of his power to review the decision of an Immigration Appeal Board under s. 31(4).

The power there given is to confirm or quash the Board's decision, neither of which was done, or to "substitute his decision therefor as he deems just and proper." What then is the interpretation to be given to these letters? The respondent argues that they merely hold out the hope that eventually, if the recipient of the letter succeeds in rehabilitating himself in the opinion of the Department, the deportation order against him may be revoked, and that they do not promise a revocation nor promise a decision within any specified delay. The appellant contends that the decision made by the Minister, on his review of an appeal to the Immigration Appeal Board, is final and that he cannot, by such decision, retain power to enforce the deportation orders at any time he should see fit, arbitrarily.

Counsel for the appellant placed reliance upon s. 33(1) of the Act, which provides: "Unless otherwise provided in this Act, a deportation order shall be executed as soon as practicable."

He contended that this is not a case in which the Act otherwise provides and that failure to observe the provision resulted in the lapse of the order.

Counsel for the respondent relied upon s. 33(2) which provides: "No deportation order becomes invalid on the ground of any lapse of time between its making and execution."

I am not prepared to agree that the two deportation orders lapsed because of the delay which was stipulated in the letters written to Rocco and Giuseppe Violi. However, subs. (1) does contemplate that if a deportation order is to be enforced there shall not be undue delay. Subsection (2), in my opinion, means that lapse of time *per se* does not result in a deportation order becoming invalid. In the present case, however, there is more involved than mere lapse of time. The issue here involves the powers of the Minister in respect of the enforcement of deportation orders.

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The letter of February 24, 1961, to Rocco Violi stipulated a probationary period of 12 months and required a report, at the end of that time, from the District Superintendent. The letter of December 10, 1962, to Giuseppe Violi provided for a probationary period of six months and required a report from the District Superintendent at the end of that time. Both periods expired and no steps were then taken to enforce the deportation orders.

The question in issue is whether, following the expiration of those stipulated periods, the Minister can thereafter hold the deportation orders in suspense and require their enforcement at any time he chooses, at his own discretion. I do not think he can. Having exercised his power of review, under s. 31(4), his decision is, by the terms of that subsection, final. This decision was to grant to each of the persons involved a probationary period. The probationary periods expired and no steps was then taken to enforce the orders. The Minister did not, thereafter, have power to make a further review and to decide to extend the probationary period for an additional time. Nothing has been said on behalf of the respondent to establish the existence of any authority given to the Minister to adopt such a course.

In my opinion, having made the decision which he did in each case, on his review of the decisions of the Immigration Appeal Boards, in the absence of any event occurring during the probationary period which would have justified his so doing, the Minister did not thereafter have the statutory authority to enforce the deportation orders. The position is the same as if he had allowed the appeals from the decisions of the Immigration Appeal Boards.

In my opinion, therefore the appeal should be allowed, the detention of Rocco and Giuseppe Violi should be declared illegal and they should be released from detention forthwith. It should be recommended that the Minister should pay the appellant's costs throughout.

Appeal allowed with costs, TASCHEREAU C.J. *and* ABBOTT *and* JUDSON J.J. *dissenting.*

Attorney for the appellant: A. H. J. Zaitlin, Montreal.

Attorneys for the respondents: Geoffrion & Prud'Homme, Montreal.