ARTURO RAFAEL ESPAILLAT-RODRIGUEZ ..... APPELLANT;

1963

*June 13, 14
Oct. 1

AND

HER MAJESTY THE QUEEN ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Immigration—Person having ceased to be a non-immigrant applying to become a permanent resident of Canada—Failure to comply with regulations as to visa and medical certificate—Deportation order—Jurisdiction of Special Inquiry Officer—Immigration Act, R.S.C. 1952, c. 325.

The appellant, a citizen of the Dominican Republic, entered Canada in November 1961, at which time he held a diplomatic passport. In January 1962, he exchanged his diplomatic passport for an ordinary passport. In the following March he reported to an immigration officer, pursuant to s. 7(3) of the *Immigration Act* that he had ceased to be a non-immigrant and applied to become a permanent resident of Canada. After a hearing before a Special Inquiry Officer under ss. 27 and 28 of the Act, an order of deportation was made against the appellant on the ground that he was a person other than a person referred to in s. 28(2) in that, not being a Canadian citizen or a person having Canadian domicile, he was not a person who could come into Canada as of right, that he was a person seeking admission to Canada but was a member of the prohibited class described in s. 5(*t*) of the Act because (a) he was not in possession of a valid and subsisting immigrant visa issued by a visa officer as required by s. 28(1) of the *Immigration Regulations,* Part 1, and (b) his passport did not bear a medical certificate duly signed by a medical officer, nor was he in possession of a medical certificate in the form prescribed by the Minister as required by s. 29(1) of the said Regulations. An appeal to the Immigration Appeal Board, under s. 31 of the Act, was dismissed and this decision was subsequently confirmed by the Minister. The appellant then brought proceedings by way of *certiorari* to quash the deportation order. The application was refused by the High Court and an appeal to the Court of Appeal was dismissed. The appellant then appealed to this Court.

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

Per Taschereau C.J. and Abbott, Judson and Hall JJ.: The administrative responsibility of granting or refusing the immigrant visa, required by the regulations as a condition precedent to landing in Canada, was entrusted, under the Act, to certain designated officers located outside Canada. Immigration officers at points of entry in Canada were given no authority to grant such a visa. The Minister was given wide discretionary powers and it might well be that he had power to waive the visa requirements, but in the present case he was not prepared to take such action. Regulation 28(1) was not beyond the power of the Governor in Council to enact.

The Special Inquiry Officer had jurisdiction to make the deportation order. The hearing was in accordance with the provisions of the Act and the

*PRESENT: Taschereau C.J. and Cartwright, Abbott, Judson and Hall JJ.

1963

ESPAILLAT-RODRIGUEZ v. THE QUEEN

order was based on findings of fact which had not been challenged. The order having been made under the authority of and in compliance with the Act, under s. 39, a court had no jurisdiction to interfere.

De Marigny v. Langlais, [1948] S.C.R. 155, referred to. *Ex parte Mannira* (1959), 17 D.L.R. (2d) 482, agreed with.

Per Cartwright J., dissenting: Regulation 28 was procedural rather than substantive; and the general words of ss. 5(*t*) and 7(3) of the Act must be construed as rendering this regulation inapplicable to an applicant who is in fact at the time of seeking admission lawfully present in Canada. Similarly, the purpose of regulation 29 was to prevent a would-be immigrant setting out for Canada if he falls within classes (*a*), (*b*), (*c*) or (*s*) of s. 5 of the Act and in so far as it contemplates a medical certificate obtained in the country whence the applicant came it also was inapplicable to the case of a person who has for some time prior to making application for admission been lawfully present in Canada. This was not to say that the appellant did not have to obtain a medical certificate to establish that he did not fall within any of the aforementioned classes. In the present case there was uncontradicted sworn testimony that the applicant was in perfect health and that he asked to be informed to whom he could submit himself for an examination. To deny him this information and a reasonable time in which to obtain a certificate would be to deny him the sort of hearing to which under the Act and the common law he was entitled.

Ex parte Mannira, supra; Attorney-General of Canada v. Brent, [1956] S.C.R. 318, referred to.

APPEAL from an order of the Court of Appeal for Ontario, dismissing an appeal from an order of McRuer C.J.H.C. Appeal dismissed, Cartwright J. dissenting.

F. A. Brewin, Q.C., and *C. Sirois*, for the appellant.

D. S. Maxwell, Q.C., and *N. A. Chalmers*, for the respondent.

The judgment of Taschereau C.J. and Abbott, Judson and Hall JJ. was delivered by

ABBOTT J.:—The appellant, who is a citizen of the Dominican Republic, entered Canada on or about November 4, 1961, and since that date has not been out of Canada. On entering Canada, he carried a diplomatic passport issued by the Dominican Republic which was based on his having been made Commercial Attaché for that Republic in Iran. He also held a Canadian diplomatic visa issued at the Canadian Embassy in the Dominican Republic. He therefore entered Canada as a non-immigrant pursuant to paragraph (*a*) of subs. (1) of s. 7 of the *Immigration Act*, R.S.C. 1952, c. 325.

His appointment as Commercial Attaché was cancelled at the beginning of January 1962 and he was then issued with an ordinary passport by the Embassy of the Dominican Republic in Ottawa. Apparently he then decided to retire "from political ways" and to apply to become a resident of Canada.

In March 1962, appellant reported to an immigration officer pursuant to s. 7(3) of the *Immigration Act* that he had ceased to be a non-immigrant and signed an application form to become a permanent resident in Canada. He was duly examined pursuant to s. 20 of the Act by an immigration officer and on July 10, 1962, a report was made by the said officer to a Special Inquiry Officer pursuant to s. 23 that the appellant was not a Canadian citizen nor a person who had acquired Canadian domicile and that it would or might be contrary to the Act or the *Immigration Regulations* to grant him admission to Canada as a permanent resident as he was a member of the prohibited class referred to in subs. (*t*) of s. 5 of the Act by reason of the fact:

1. that he was not in possession of a valid and subsisting immigrant visa, issued by a visa officer, as required by subs. (1) of s. 28 of the *Immigration Regulations,* Part I; and
2. his passport did not bear a medical certificate duly signed by a medical officer, nor was he in possession of a medical certificate in the form prescribed by the Minister, as required by subs. (1) of s. 29 of the *Immigration Regulations,* Part I.

On July 17, 1962, a hearing pursuant to ss. 27 and 28 of the Act was held before Mr. Collingwood Schreiber, a Special Inquiry Officer at Ottawa, at which the appellant was represented by counsel. No exception was or has been taken to the conduct of this hearing.

Immediately following the said inquiry, the Special Inquiry Officer made an order of deportation against appellant pursuant to s. 28(3) of the Act on the ground that he was a person other than a person referred to in subs. (2) of the same section in that, not being a Canadian citizen or a person having Canadian domicile, he was not a person who could come into Canada as of right, that he was a person seeking admission to Canada but was a member of the pro-

1963

ESPAILLAT-RODRIGUEZ v. THE QUEEN

Abbott J.

hibited class described in s. 5(*t*) of the Act because (a) he was not in possession of a valid and subsisting immigrant visa issued by a visa officer as required by subs. (1) of s. 28 of the *Immigration Regulations*, Part I, and (b) his passport did not bear a medical certificate duly signed by a medical officer, nor was he in possession of a medical certificate in the form prescribed by the Minister as required by subs. (1) of s. 29 of the said Regulations, Part I. It is sufficient to support the deportation order that appellant had failed to comply with either of the said sections: *De Marigny v. Langlais*[1].

Appellant appealed to the Immigration Appeal Board under s. 31 of the Act and, after a hearing, the Immigration Appeal Board on August 9, 1962, dismissed this appeal.

On September 19, 1962, the Honourable R. A. Bell, the then Minister of Citizenship and Immigration, after reviewing the circumstances of the case, pursuant to s. 31 of the *Immigration Act* confirmed the decision of the Immigration Appeal Board and stated that he did not feel that there was any justification for his intervention as Minister. On October 25, 1962, after still further representations and after a further review, the Minister again stated that he could find no justification for interfering with the deportation order which had been made.

By originating notice of motion dated November 1, 1962, appellant brought proceedings for an order by way of *certiorari* to quash the deportation order "on the ground of the lack of jurisdiction". The said application came on for hearing before the Chief Justice of the High Court of Ontario on November 30, 1962, and was dismissed without written reasons, the learned Chief Justice considering himself bound by the decision of the Court of Appeal for Ontario in *Ex parte Mannira*[2].

An appeal from this order was dismissed by the Court of Appeal for Ontario on March 4, 1963, also without written reasons, that Court no doubt considering itself bound by its previous decision in the *Mannira* case. The present appeal by leave of the Court of Appeal for Ontario is from that decision. At the hearing before us Mr. Brewin

[1] [1948] S.C.R. 155 at 160, 2 D.L.R. 801, 91 C.C.C. 313, 5 C.R. 403.
[2] [1959] O.W.N. 109, 17 D.L.R. (2d) 482.

agreed that if the *Mannira* case was rightly decided this appeal fails. In my respectful view it was rightly decided.

In its essential features the present appeal does not differ in any material respect from that in *Ex parte Mannira*. In both cases the appellant had entered Canada as a non-immigrant. As such, under s. 7(3) of the Act, he had no higher rights than a would-be immigrant presenting himself at a port of entry for admission as a permanent resident of Canada. In both cases appellant was not in possession of the immigrant visa or the medical certificate required under the regulations. Such regulations were passed under s. 61 which in its terms authorizes the Governor in Council to make regulations respecting "the terms, conditions and requirements with respect to the possession of . . . passports, visas or other documents pertaining to admission; . . ." Regulation 28(1) is such a regulation and it reads:

> 28. (1) Every immigrant who seeks to land in Canada shall be in possession of a valid and subsisting immigrant visa issued to him by a visa officer and bearing a serial number which has been recorded by the officer in a register prescribed by the Minister for that purpose, and unless he is in possession of such visa, he shall not be granted landing in Canada.

"Visa officer" is defined in regulation 2(h) as follows:

> 2. (*h*) "visa officer" means—
>
> (i) an immigration officer stationed on duty outside of Canada and authorized by the Minister to issue visas or letters of pre-examination for the purpose of section 28, and
>
> (ii) in a country where no such immigration officer is stationed
>
> (A) a diplomatic or consular officer of Canada, or
>
> (B) a diplomatic or consular officer of the United Kingdom if there is no diplomatic or consular officer of Canada in the country; . . .

The only persons entitled to enter Canada as of right are Canadian citizens and persons having Canadian domicile. All others desiring to do so must comply with the requirements of the statute and regulations.

In the *Immigration Act,* Parliament has provided for the control of immigration to Canada and for the selection of prospective immigrants. The regulations passed under the authority of the Act clearly contemplate that the examination of persons seeking permanent admission to Canada in order to determine their suitability whether from a medical standpoint, an internal security point of

1963

ESPAILLAT-RODRIGUEZ v. THE QUEEN

Abbott J.

view or otherwise, should be conducted abroad, in the homeland of the prospective immigrant. No doubt there are sound reasons for such a requirement.

The administrative responsibility of granting or refusing the immigrant visa, required by the regulations as a condition precedent to landing in Canada, has been entrusted to certain designated officers located outside Canada. Immigration officers at points of entry in Canada are given no authority to grant such a visa.

The Minister of Citizenship and Immigration is given wide discretionary powers under the Act and it may well be that he has power to waive the visa requirements. The record shows that in the present case he was not prepared to take such action.

The word "visa" is used in the Act itself and the term is familiar to anyone who travels outside the boundaries of his own country. It is merely a certificate or endorsement upon a passport or other similar document, made by a person authorized to do so, that the bearer of the document is entitled to proceed to the country to which he seeks entry: See Webster Third New International Dictionary under the word "visa".

Appellant submits however that regulation 28(1) is beyond the power of the Governor in Council to enact because it purports to delegate to specified immigration officials and diplomatic or consular officers, an absolute discretion to grant or refuse such immigrant visa. As I have said, the administrative responsibility of granting or refusing the immigrant visa required by regulation 28(1) has been entrusted to certain designated officers located outside of Canada. It must be entrusted to someone and the duty of such officers is to ascertain whether or not an applicant for permanent landing in Canada comes within one of the prohibited classes. That question is a question of fact.

The present regulation 28(1) is similar in its terms to the former regulation 18(4) considered in *Ex parte Mannira,* and on this point I adopt the following statement of Schroeder J.A.[1]:

> I cannot agree with the submission that Reg. 18(4) is invalid on the ground that it purports to delegate an authority committed to the Governor-General in Council to officers outside of Canada. There is cer-

[1] (1959), 17 D.L.R. (2d) 482 at 491.

tainly no factual basis which supports counsel's suggestion. Moreover it impresses me that if an officer empowered to issue an immigrant visa were to exercise his powers improperly, such abuse of authority could hardly be held to affect the validity of the Regulation.

The Special Inquiry Officer had jurisdiction to make the deportation order. The hearing before him was in accordance with the provisions of the *Immigration Act*. The order was based on findings of fact which have not been challenged.

There is nothing to indicate that appellant ever applied to the proper visa officer as defined in s. 2(h) of the regulations for an immigrant visa. The Examining Officer and Special Inquiry Officer merely applied, after a hearing and in accordance with the provisions of the *Immigration Act*, regulations validly made by the Governor in Council to prevent those who come into Canada as non-immigrants from achieving a preferred or special position in relation to permanent admission to Canada. The order of deportation against appellant having been made under the authority of and in compliance with the provisions of the *Immigration Act*, under s. 39, a court has no jurisdiction to interfere with the order.

The appeal should be dismissed with costs.

CARTWRIGHT J. (*dissenting*):—This appeal is brought, pursuant to leave granted by the Court of Appeal for Ontario, from an order of that Court dismissing an appeal from an order of McRuer C.J.H.C. whereby the application of the appellant for an order in lieu of a writ of *certiorari* to quash a deportation order made against the appellant on July 17, 1962, by Collingwood Schreiber, a Special Inquiry Officer, was dismissed.

There is no dispute as to the relevant facts.

The appellant is a citizen of the Dominican Republic. He was born in that country on October 2, 1921. He entered Canada on November 4, 1961, to visit his children who were attending school in Ottawa. He has remained in this country ever since. At the time of his entry he held a diplomatic passport issued by the Dominican Republic which was based on his having been appointed Commercial Attaché for the Dominican Republic in Iran; endorsed on this passport was a Canadian diplomatic visa issued at the Canadian Embassy in the said Republic. The appellant's

1963

ESPAILLAT-RODRIGUEZ v. THE QUEEN

Cartwright J.

appointment as Commercial Attaché was cancelled at the beginning of January 1962, and he exchanged his diplomatic passport for an ordinary passport which was issued to him at the Embassy of the Dominican Republic in Ottawa on January 12, 1962. This ordinary passport was cancelled but was re-validated at the same Embassy on May 29, 1962; it will expire on May 29, 1964.

It is common ground that the appellant entered Canada lawfully as a non-immigrant. Following the exchange of his diplomatic passport for an ordinary passport he decided to seek to become a resident of Canada and early in March 1962, pursuant to s. 7(3) of the *Immigration Act*, R.S.C. 1952, c. 325, hereinafter referred to as "the Act", he reported to an immigration officer at Ottawa that he had ceased to be a non-immigrant; he was told to return on March 29, 1962, for a further interview.

On March 29, 1962, the appellant was interviewed by an immigration officer at whose request he signed an application to become a permanent resident of Canada. This officer examined the appellant under oath and told him that he would be informed of the decision made on his application. Thereafter the appellant attended at the same office every two weeks to inquire whether a decision had been reached. On June 13, 1962, the appellant received a letter dated June 11, 1962, signed by the Immigration Officer in charge at the Immigration Port of Ottawa, stating that his application was refused and that he was required to leave Canada within 30 days.

On July 11, 1962, the appellant received a letter dated July 10, 1962, from Collingwood Schreiber, Special Inquiry Officer of the Department of Immigration, stating that his application had been reviewed by an immigration officer who had made a report pursuant to s. 23 of the Act which said, "You are a member of the prohibited class referred to in Section 5, paragraph 't' of the Immigration Act by reason of the fact that (i) you are not in possession of a valid and subsisting immigrant visa issued by the visa officer as required by subsection (1) of section 28 of the Immigration Regulations Part I, (ii) your passport does not bear a medical certificate duly signed by a medical officer nor are you in possession of a medical certificate in the form prescribed by the Minister as required by subsection (1) of section 29 of the Immigration Regulations

Part I." This letter required the appellant to appear for a special inquiry on Tuesday, July 17, 1962, at the Immigration Office in Ottawa.

On the following day the appellant attended at the Immigration Office at Ottawa and asked for arrangements to be made to enable him to be medically examined by a medical officer appointed by the Minister so that he could obtain a medical certificate as required by the Regulations but the representative of the Immigration Office informed the appellant that there was nothing for him to do but wait and present himself at the special inquiry.

On July 17, 1962, the appellant attended at the Immigration Office and a special inquiry under the Act was held by the Special Inquiry Officer, Mr. Schreiber. At the end of the hearing the decision was announced and an order for the deportation of the appellant was made. The order recites that under s. 28 of the *Immigration Act* and on the basis of the evidence adduced at the inquiry held at the Immigration Office of Ottawa on July 17, 1962, the Special Inquiry Officer had reached the decision that the appellant might not come into Canada or remain in Canada as of right in that (i) he was not a Canadian citizen, (ii) he was not a person having a Canadian domicile and that he was a member of a prohibited class described under paragraph "t" of s. 5 of the *Immigration Act* as he could not or did not fulfil or comply with the conditions or requirements of the Act or the Regulations by reason of the fact that (i) he was not in possession of a valid and subsisting immigrant visa issued by a visa officer as required by subs. (1) of s. 28 of the Regulations of the *Immigration Act,* Part I, and (ii) his passport did not bear a medical certificate duly signed by a medical officer, nor was he in possession of a medical certificate in the form prescribed by the Minister as required by subs. (1) of s. 29 of the Regulations of the *Immigration Act,* Part I.

An appeal taken to the Immigration Appeal Board was dismissed on August 9, 1962. Representations were made to the Minister of Citizenship and Immigration, but the order for deportation was not altered.

The decision of the Minister not to interfere with the deportation order was communicated to the appellant's solicitor by a letter dated October 25, 1962, and on November 1, 1962, the application to the Supreme Court of On-

1963

ESPAILLAT-RODRIGUEZ v. THE QUEEN

Cartwright J.

tario to quash that order was launched. The notice of motion was directed to Mr. Schreiber and he returned to the Court the record of his inquiry including the transcript of the evidence taken before him on July 17, 1962. In support of the motion was filed an affidavit made by the appellant in which were set out the facts recited above amongst others.

The motion was heard by McRuer C.J.H.C. on November 30, 1962, and was dismissed at the conclusion of the argument without recorded reasons. An appeal heard by the Court of Appeal on March 4, 1963, was similarly dismissed without recorded reasons. It would appear that the learned Chief Justice of the High Court and the Court of Appeal regarded themselves as bound by the earlier judgment of the Court of Appeal in *Ex parte Mannira*[1], a decision which counsel for the appellant submits should be over-ruled.

In support of the appeal counsel for the appellant submits that the Special Inquiry Officer was without jurisdiction to make the deportation order for the following reasons:

(*a*) Regulation 28(1) is *ultra vires* the Governor in Council as the said regulation purports to vest in a visa officer absolute and uncontrolled discretion to grant or refuse a visa as a condition of admission to Canada without giving any reasons therefor, or granting any hearing to the would-be immigrant.

(*b*) Because Regulation 28(1) as applied in the present case is inconsistent with the provisions of s. 7, subs. (3) of the *Immigration Act*.

(*c*) Because Regulation 29, in requiring that no immigrant should be granted landing in Canada without a medical certificate, necessarily contemplates that the immigrant be given an opportunity to appear before a medical officer who might grant or refuse a medical certificate in accordance with the regulations and a deportation order made on the basis of the absence of a medical certificate when no opportunity is afforded to obtain one is invalid.

(*d*) In the alternative, Regulation 29 is *ultra vires* the Governor in Council.

(*e*) Because the proceedings in this case effectively denied to the appellant a hearing as to his admissibility provided for by the *Immigration Act*.

(*f*) The order of deportation is inconsistent with the Canadian Bill of Rights, 1960 (Can.), c. 44, s. 2(*e*).

If, but only if, the deportation order made by the Special Inquiry Officer was made under the authority and in accordance with the provisions of the Act the Court would be

[1] [1959] O.W.N. 109, 17 D.L.R. (2d) 482.

without jurisdiction to quash it, by reason of the provisions of s. 39. In dealing with the predecessor of that section in *Samejima v. The King*[1], Duff J., as he then was, said:

> The chief question I desire to discuss is the effect of section 23 of the *Immigration Act*. The words, "had made or given under the authority and in accordance with the provisions of this Act relating to the detention or deportation of any rejected immigrant, passenger or other person, upon any ground whatsoever, unless such person is a Canadian citizen or has Canadian domicile" are an essential part of this section; and its disqualifying provisions obviously can only take effect where the conditions expressed in these words are fulfilled. In particular, the phrase "in accordance with the provisions of this Act" cannot be neglected; their meaning is plain. The "order" returned as justifying the detention must be "in accordance with the provisions of this Act". It must not, that is to say, be essentially an order made in disregard of some substantive condition laid down by the Act.

It is necessary to consider the application of the relevant provisions of the Act to the facts of this particular case.

Section 7(3) of the Act is as follows:

> (3) Where any person who entered Canada as a non-immigrant ceases to be a non-immigrant or to be in the particular class in which he was admitted as a non-immigrant and, in either case, remains in Canada, he shall forthwith report such facts to the nearest immigration officer and present himself for examination at such place and time as he may be directed and shall, for the purposes of the examination and all other purposes under this Act, be deemed to be a person seeking admission to Canada.

The appellant complied with the terms of this subsection.

It is not questioned that the Special Inquiry Officer, Mr. Schreiber, had authority to enter upon and hold the hearing which took place before him on July 17, 1962. The procedure to be followed and the duties of the Special Inquiry Officer in respect of the hearing are laid down in s. 27 and subss. (1) and (2) and (3) of s. 28 of the Act which read as follows:

> 27 (1) An inquiry by a Special Inquiry Officer shall be separate and apart from the public but in the presence of the person concerned wherever practicable.
>
> (2) The person concerned, if he so desires and at his own expense, shall have the right to obtain and to be represented by counsel at his hearing.
>
> (3) The Special Inquiry Officer may at the hearing receive and base his decision upon evidence considered credible or trustworthy by him in the circumstances of each case.
>
> (4) Where an inquiry relates to a person seeking to come into Canada, the burden of proving that he is not prohibited from coming into Canada rests upon him.

[1] [1932] S.C.R. 640 at 641, 4 D.L.R. 246, 58 C.C.C. 300.

1963

ESPAILLAT-RODRIGUEZ v. THE QUEEN

Cartwright J.

28 (1) At the conclusion of the hearing of an inquiry, the Special Inquiry Officer shall render his decision as soon as possible and shall render it in the presence of the person concerned wherever practicable.

(2) Where the Special Inquiry Officer decides that the person concerned is a person who

(*a*) may come into or remain in Canada as of right;

(*b*) in the case of a person seeking admission to Canada, is not a member of a prohibited class; or

(*c*) in the case of a person who is in Canada, is not proven to be a person described in paragraph (*a*), (*b*), (*c*), (*d*) or (*e*) of subsection (1) of section 19,

he shall, upon rendering his decision, admit or let such person come into Canada or remain therein, as the case may be.

(3) In the case of a person other than a person referred to in subsection (2), the Special Inquiry Officer shall, upon rendering his decision, make an order for the deportation of such person.

The inquiry was held in the presence of the appellant and he was represented by counsel.

It has already been mentioned that the Special Inquiry Officer returned to the Court the transcript of the evidence taken before him. There is nothing in that evidence to suggest that the appellant is a member of any prohibited class other than the class described in clause (*t*) of s. 5, upon which the decision of the Special Inquiry Officer was based. In particular, the unchallenged evidence shewed that the appellant was possessed of ample means and that he and the other members of his family were in excellent health.

By reason of the concluding words of subs. (3) of s. 7, quoted above,—"and shall, for the purposes of the examination and all other purposes under this Act, be deemed to be a person seeking admission to Canada" the duty of the Special Inquiry Officer was that prescribed by clause (*b*) of subs. (2) of s. 28, quoted above, that is to say, he was required to decide whether the appellant was or was not a member of a prohibited class.

The Special Inquiry Officer having decided to make a deportation order was required by s. 13(*a*) of *Immigration Regulations*, Part II to forthwith inform the appellant "as to the provisions of the Act or the Regulations pursuant to which the order was made". This duty was duly performed.

The answer to the question whether or not the deportation order was made in accordance with the provisions of the Act depends upon the construction of the relevant

provisions of the Act and of the Regulations and upon whether the Regulations relied on by the respondent are *intra vires* of the Governor General in Council.

In entering upon the question of construction, the Act and the valid relevant Regulations must be read together and considered as a whole; and it is necessary to bear in mind the rule of construction expressed in the maxim *"Verba generalia restringuntur ad habilitatem rei vel aptitudinem personae"*. (Bac. Max. Reg. 10). The following passage in Maxwell on Interpretation of Statutes, 9th ed., 1946, at p. 63 has often been quoted with approval:

> It is in the interpretation of general words and phrases that the principle of strictly adapting the meaning to the particular subject-matter with reference to which the words are used finds its most frequent application. However wide in the abstract, they are more or less elastic, and admit of restriction or expansion to suit the subject-matter. While expressing truly enough all that the Legislature intended, they frequently express more, in their literal meaning and natural force; and it is necessary to give them the meaning which best suits the scope and object of the statute without extending to ground foreign to the intention. It is, therefore, a canon of interpretation that all words, if they be general and not express and precise, are to be restricted to the fitness of the matter. They are to be construed as particular if the intention be particular; that is, they must be understood as used with reference to the subject-matter in the mind of the Legislature, and limited to it.

We are particularly concerned with s. 5(*t*) of the Act and with ss. 28(1) and 29(1) of the *Immigration Regulations*, Part I. These read as follows:

> 5. No person, other than a person referred to in subsection (2) of section 7, shall be admitted to Canada if he is a member of any of the following classes of persons:
>
> * * *
>
> (*t*) persons who cannot or do not fulfil or comply with any of the conditions or requirements of this Act or the regulations or any orders lawfully made or given under this Act or the regulations. (Subs. (2) of s. 7 has no application to the facts of this case).
>
> 28 (1) Every immigrant who seeks to land in Canada shall be in possession of a valid and subsisting immigrant visa issued to him by a visa officer and bearing a serial number which has been recorded by the officer in a register prescribed by the Minister for that purpose, and unless he is in possession of such visa, he shall not be granted landing in Canada.
>
> 29 (1) No immigrant shall be granted landing in Canada (*a*) if his passport, certificate of identity or other travel document required by these Regulations does not bear a medical certificate duly signed by a medical officer, or
>
> (*b*) if he is not in possession of a medical certificate, in the form prescribed by the Minister, showing that he does not fall within one of the classes described in paragraph (*a*), (*b*), (*c*), or (*s*) of section 5 of the Act.

1963

ESPAILLAT-RODRIGUEZ v. THE QUEEN

Cartwright J.

The evidence of the appellant taken at the hearing on July 17, 1962, established that at that time he was not in possession of an immigrant visa, his passport did not bear a medical certificate and he was not in possession of a medical certificate in the form referred to in s. 29(1)(*b*). On proof or admission of these facts the Special Inquiry Officer decided that he was required by subs. (3) of s. 28 to make an order of deportation. This view was supported by the judgment of the Court of Appeal in *Ex parte Mannira, supra,* in which case a similar order made by the same Special Inquiry Officer was ordered to be quashed by a judgment of Ferguson J.[1], but was upheld by the Court of Appeal.

If the words of s. 5(*t*) and s. 7(3) of the Act and ss. 28 and 29 of the Regulations are interpreted literally they would seem to require the making of a deportation order in this case; but, in my opinion, the general words with which s. 7(3) concludes cannot be applied literally to a person who has for some time been lawfully in Canada and who entered Canada under such circumstances that he would not have and would not be required to have either an immigrant visa as described in s. 28(1) or a medical certificate as described in s. 29(1) of the Regulations. Such a literal application would in most, if not all, cases arising under s. 7(3) render the inquiry a mere formality bound to result in the making of a deportation order; the effect of the subsection would be to require the person concerned to return whence he came rather than to require the holding of an inquiry as to whether he was a member of any prohibited class.

When the Act is read as a whole its purpose is plain. It regulates the admission to Canada of persons who are neither Canadian citizens nor possessed of Canadian domicile as defined in the Act and the expulsion of such persons who may have been allowed to enter. A person who seeks to enter Canada as an immigrant is entitled to a hearing (s. 20(1) and s. 27 of the Act). The burden of proving that he is not prohibited from coming into Canada rests upon him, (s. 27(4)), but if he succeeds in proving this before the Special Inquiry Officer, it is the duty of that officer to admit him and the applicant has a corresponding right to be admitted (s. 28(2)(*b*)).

[1] (1958), 16 D.L.R. (2d) 450.

The prohibited classes are numerous. Section 5 contains twenty subdivisions, a number of which in turn contain the descriptions of several classes. In addition to these the Governor General in Council has authority under s. 61 of the Act to prescribe additional prohibited classes.

The vital question in the case of a would-be immigrant is whether in fact he comes within any prohibited class.

Assuming for the purposes of construction that s. 28 of the *Immigration Regulations,* Part I, is valid, it contemplates that a person in a foreign country who wishes to immigrate to Canada shall obtain an immigrant visa from a visa officer which by s. 2(*h*) of the Regulations is defined as meaning:

> (i) an immigration officer stationed on duty outside of Canada and authorized by the Minister to issue visas or letters of pre-examination for the purpose of section 28, and
>
> (ii) in a country where no such immigration officer is stationed
>
> (A) a diplomatic or consular officer of Canada, or
>
> (B) a diplomatic or consular officer of the United Kingdom if there is no diplomatic or consular officer of Canada in the country, . . .

The regulations are silent as to what are the duties of the visa officer but it may, I think, be assumed that he would make some sort of inquiry as to whether the applicant for the visa came within any of the prohibited classes so as to prevent a person setting out on the journey to Canada when it appeared probable that he could not be admitted. This section of the Regulations does not create a disability to admission to Canada in the nature of an additional prohibited class, rather it envisages a preliminary inquiry as to whether the applicant falls within any of the prohibited classes already created. It is procedural rather than substantive; and, in my opinion, the general words of ss. 5(*t*) and 7(3) of the Act must be construed as rendering s. 28 inapplicable to an applicant who is in fact at the time of seeking admission lawfully present in Canada. To hold that in the case of such a person a preliminary inquiry must be held in the foreign country whence he came would be contrary to the maxim, *lex neminem cogit ad vana seu inutilia,* which this Court has held may be of assistance in construing a statutory provision; vide *The Queen v. Crawford*[1].

[1] [1960] S.C.R. 527 at 539.

1963

ESPAILLAT-RODRIGUEZ v. THE QUEEN

Cartwright J.

If the Special Inquiry Officer finds it necessary to make inquiries or obtain evidence in the country whence the applicant came, the regulations give him ample powers to adjourn the hearing.

Turning to s. 29 of the Regulations its purpose is similarly to prevent a would-be immigrant setting out for Canada if he falls within classes (*a*), (*b*), (*c*) or (*s*) of s. 5 of the Act and in so far as it contemplates a medical certificate obtained in the country whence the applicant came it also is, in my opinion, inapplicable to the case of a person who has for some time prior to making application for admission been lawfully present in Canada. This is not to say that the appellant does not have to obtain a medical certificate to establish that he does not fall within any of the classes mentioned. In the case before us there is uncontradicted sworn testimony that the applicant is in perfect health and that he asked to be informed to whom he could submit himself for an examination. To deny him this information and a reasonable time in which to obtain a certificate would, in my opinion, be to deny him the sort of hearing to which under the Act and the common law he was entitled.

The view that the provisions of ss. 28 and 29 of the Regulations deal with preliminary matters is strengthened by the wording of s. 30:

> The passing of any test or medical examination outside of Canada or the issue of a visa, letter of pre-examination or medical certificate as provided for in these Regulations is not conclusive of any matter that is relevant in determining the admissibility of any person to Canada.

For the above reasons it is my opinion that the Special Inquiry Officer erred in his interpretation and application of the Act and of the Regulations and that he should have proceeded to inquire and decide whether the appellant was in fact a member of any prohibited class and should have given the appellant an opportunity to obtain a medical certificate shewing that he did not fall within any of the classes (*a*), (*b*), (*c*) and (*s*) of s. 5 of the Act. It follows from this that the deportation order which he made was not made in accordance with the provisions of the Act.

Since in reaching this conclusion I have assumed, without deciding, that ss. 28 and 29 of the Regulations Part I are *intra vires* of the Governor General in Council, I do

not find it necessary to decide the question of their validity and express no final opinion upon it.

However, since the judgments in the Courts below and the reasons of the majority in this Court are founded, in part at least, upon the view that s. 28(1) of the Regulations, Part I, is valid and is applicable to the appellant in the circumstances of this case, I venture to suggest that the reasons of the Court of Appeal in *Ex parte Mannira, supra,* do not provide an adequate answer to the argument of counsel for the appellant based on the decision of this Court in *Attorney General of Canada v. Brent*[1].

If, as a matter of construction, s. 28(1) of the Regulations, Part I, casts upon the visa officer the duty of issuing a non-immigrant visa whenever an applicant therefor establishes that he is not a member of any prohibited class then, for the reasons given above, it is not, in my opinion, applicable in the particular circumstances of the case at bar. If, on the other hand, this section of the Regulations casts no such duty on the visa officer it results that it is committed to his uncontrolled individual judgment to grant or withhold the visa as he sees fit and the delegation of authority to him is even wider than that which in the *Brent* case, this Court held to be *ultra vires* of the Governor in Council.

I would allow the appeal with costs throughout, set aside the orders of the Court of Appeal and of McRuer C.J.H.C. and direct that an order be made quashing the deportation order made by the Special Inquiry Officer on July 17, 1962.

Appeal dismissed with costs, Cartwright J. *dissenting.*

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[1] [1956] S.C.R. 318, 2 D.L.R. (2d) 503.