1961

*Mar. 9, 10
Mar. 27

IRENE REBRIN ..... APPELLANT;

AND

PHILLIP W. BIRD AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Immigration—Validity of deportation order—Whether provisions of an Act for the Recognition and Protection of Human Rights and Fundamental Freedoms, 1960 (Can.), c. 44, infringed—Immigration Act, R.S.C. 1952, c. 325, ss. 36(1), 61, 63—Immigration Regulation 13.

The appellant, a "stateless" person born in Peking, China, of "White Russian" parents, obtained a six-months' non-immigrant visa in Brazil for admission to Canada and, following her arrival in this country, applied to an Immigration Officer "for permission to work in Canada". The latter reported to a Special Inquiry Officer that he was of the opinion that it would be contrary to the provisions of the *Immigration Act* to grant the appellant admission to Canada by reason of her coming under the prohibited class of s. 5(t) of the Act, in that she could not or did not fulfil or comply with the conditions or requirements of s. 20 of the Immigration Regulations. An inquiry was held before the Special Inquiry Officer who found that the appellant might not come into or remain in Canada as of right and ordered her detention and deportation. An appeal from this order to the Minister of Citizenship and Immigration was dismissed. The appellant applied in the Supreme Court of British Columbia for a writ of *habeas corpus* with *certiorari* in aid. This motion was dismissed; an appeal to the Court of Appeal was also dismissed but the latter granted leave to appeal to this Court.

Held: The appeal should be dismissed.

The Acting Minister of Citizenship and Immigration was vested with power under the provisions of ss. 61 and 63 of the *Immigration Act* and clause 13 of the Immigration Regulations to prescribe the form of deportation order that was used by the Special Inquiry Officer. The form was one that had been in use for some time, but the words at the end through which lines had been drawn were so deleted because the Acting Minister, pursuant to s. 63 of the Act and the Regulations and Amendments thereto, had prescribed a new form of deportation order,—the only difference between the old and new forms being the omission of the deleted words. The submission that paragraphs 2 and 3 of regulation 13 indicated that the order should have used all the words in subs. (1) of s. 36 of the Act was rejected, as those paragraphs apply to circumstances that did not exist in this case.

There was no infringement of *An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms* as the appellant had not been deprived of her liberty except by due process of law. The contention that matters irrelevant to a proper determination of whether the appellant should be deported had been considered at all levels failed.

---

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

APPEAL from a judgment of the Court of Appeal for British Columbia[1], dismissing an appeal from a judgment of Norris J. Appeal dismissed.

A. E. Branca, Q.C., for the appellant.

W. R. Jackett, Q.C., and *N. A. Chalmers,* for the respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—By leave of the Court of Appeal for British Columbia Irene Rebrin appeals from a judgment of that Court[1] dismissing an appeal from the judgment of Norris J. who had dismissed the appellant's motion for a writ of *habeas corpus* with *certiorari* in aid. All of the points taken in the Courts below on behalf of the appellant were abandoned before us except two.

Miss Rebrin, who describes herself as a "stateless" person, was born in Peking, China, of "White Russian" parents. About 1948 she and her parents were given permission to leave China provided they left their assets there. This they did and a United Nations Refugee Certificate was issued to her in China, and, together with her parents, she travelled to Brazil whither her brother had already escaped from China. At the invitation of a friend whom she had met while in China, she came to Canada as a tourist or visitor on July 5, 1958, presumably having been permitted entry under s. 7(1)(*c*) of the *Immigration Act,* R.S.C. 1952, c. 325, which authorizes "tourists or visitors" to be allowed to enter and remain in Canada as non-immigrants. Before leaving Brazil the appellant had obtained a six-months' non-immigrant visa under subs. (4) of para. 18 of the Immigration Regulations. She secured employment at the University of Toronto in the autumn of 1958. In the summer of 1959 she was employed by the Canadian Pacific Railway Company as a cashier at the Banff Springs Hotel; in the autumn of 1959 she was a member of the staff of the Department of Slavonic Languages at the University of British Columbia where she lectured in the Russian language. She was requested to resume her teaching at the summer school at the University during 1960 and to return to her teaching

[1] (1960), 32 W.W.R. 400, 24 D.L.R. (2d) 593.

1961

REBRIN v. BIRD AND MIN. OF CITIZENSHIP & IMMIGRATION

Kerwin C.J.

duties again in the autumn of 1960. At the time of the hearing of this appeal, we were advised that she is at present continuing her work at the University. Since coming to Canada and taking up employment she has been self-supporting, living in West Vancouver.

In August 1958, the appellant applied to an Immigration Officer "for permission to work in Canada" and, having thus ceased to be in the "particular class in which he was admitted as a non-immigrant", that is, the class of "tourist or visitor"—she was, by virtue of subs. (3) of s. 7 of the *Immigration Act* "deemed to be a person seeking admission to Canada". The text of this subsection 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.

She was therefore properly treated by the Immigration Officer as though she had appeared before him under subs. (1) of s. 20 of the *Immigration Act* "for examination as to whether he is or is not admissible to Canada or is a person who may come into Canada as of right".

On November 19, 1958, the Immigration Officer reported to Special Inquiry Officer Clifford Ireland as follows:

> I have examined Irene Rebrin, a person seeking to come into Canada and in accordance with Section 23 of the Immigration Act, I hereby report I am of the opinion it would be contrary to the provisions of the Immigration Act to grant admission to or otherwise let the said Irene Rebrin come into Canada by reason of her coming under the prohibited class of Section 5 paragraph (t) thereof in that she cannot or does not fulfil or comply with the conditions or requirements of Section 20 of the Regulations of the Immigration Act.

On January 22, 1959, pursuant to subs. (2) of s. 24 of the Act, an inquiry was held at Toronto before Mr. Ireland, at which Miss Rebrin was present together with her counsel, who was permitted to ask such questions as he desired of Miss Rebrin who was the only person who testified. At the conclusion of this inquiry Mr. Ireland rendered the following decision:

> Miss Irene Rebrin, on the basis of the evidence adduced at this Inquiry, I have reached the decision that you may not come into or remain in Canada as of right and that:—
>
> (1) you are not a Canadian citizen;

(2) you are not a person having Canadian domicile;

(3) you are a member of the prohibited class described under paragraph (t) of Section 5 of the Immigration Act in that you cannot or do not fulfil or comply with the conditions or requirements of this Act or the Regulations by reason of the fact that:

(a) you cannot or do not fulfil or comply with the conditions or requirements of Section 20 of the Regulations of the Immigration Act.

I hereby order you to be detained and to be deported.

The formal deportation order made by Mr. Ireland and made part of the return in these proceedings is as follows:

(Seal)

CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
DEPORTATION ORDER AGAINST

Miss Irene Rebrin

6 Lowther Avenue, Toronto, Ontario (Formerly of Brazil, South America) under section 28 of The Immigration Act.

On the basis of the evidence adduced at an inquiry held at 175 Bedford Road, Toronto, Ontario on 22nd of January 1959 I have reached the decision that you may not come into or remain in Canada as of right and that (1) you are not a Canadian citizen; (2) you are not a person having Canadian domicile; (3) you are a member of the prohibited class described under paragraph (t) of Section 5 of the Immigration Act in that you cannot or do not fulfil or comply with the conditions or requirements of this Act or the Regulations by reason of the fact that (a) you cannot or do not fulfil or comply with the conditions or requirements of Section 20 of the Regulations of the Immigration Act.

I hereby order you to be detained and to be deported ~~to the place whence you came to Canada,~~ C.I. ~~or to the country of which you are a national or citizen, or to the country of your birth, or to such country as may be approved by the minister.~~

"C. Ireland"

Date Jan. 22, 1959 .....

Special Inquiry Officer.

Service Hereof Acknowledged by
..... "Irene Rebrin" .....

This form has been prescribed by the Minister of Citizenship and Immigration.

1961

REBRIN v. BIRD AND MIN. OF CITIZENSHIP & IMMIGRATION

Kerwin C.J.

From this order Miss Rebrin appealed to the Minister of Citizenship and Immigration by notice dated January 22, 1959, and pending the disposition of the appeal she was conditionally released in accordance with s. 18 of the Act on her own recognizance in the sum of $200. On January 22, 1960, E. P. Beasley, Chief of the Admissions' Division of the Department of Citizenship and Immigration wrote Miss Rebrin that he had been directed to inform her that her appeal from the deportation order of January 22, 1959, had been duly considered and dismissed.

The first question raised on behalf of the appellant is that the deportation order of Special Inquiry Officer Ireland is invalid because it failed to comply with subs. (1) of s. 36 of the Act since, as put in the appellant's factum and elaborated by counsel, "it does not set out the place to which the appellant is to be deported". This subsection reads as follows:

> 36. (1) Subject to subsection (2), a person against whom a deportation order has been issued shall be deported to the place whence he came to Canada or to the country of which he is a national or citizen or to the country of his birth or to such country as may be approved by the Minister under this Act.

Subsection (2) does not affect the questions in dispute. The printed form used by Mr. Ireland was one that had been in use for some time but the words at the end through which lines have been drawn were so deleted because, on October 28, 1957, the Acting Minister of Citizenship and Immigration for Canada, pursuant to s. 63 of the Act and the Regulations and Amendments thereto, had prescribed a new form of deportation order,—the only difference between the old and new forms being the omission of the deleted words. Section 63 of the Act is as follows:

> 63. The Minister may
>
> (*a*) prescribe such forms and notices as he deems necessary for the carrying out of this Act and the regulations;
>
> (*b*) designate ports of entry and immigrant stations for the purposes of this Act; and
>
> (*c*) prescribe and arrange for the procurement of suitable uniforms and insignia to be worn by immigration officers.

Under s. 61 of the Act power is given to the Governor in Council to make regulations for carrying into effect the purposes and provisions of the Act. Regulations were duly promulgated, Clause 13 of which reads:

Deportation Orders

13. (1) A deportation order in the form prescribed by the Minister shall be executed in duplicate and one duplicate original shall be served upon the person ordered deported by remitting such duplicate original to him personally whenever practicable and in other instances, by forwarding it by registered mail to his last known address.

(2) A copy of the deportation order shall be forwarded to the transportation company that is obligated to remove or to pay the costs of deportation of the person ordered deported and such copy may form part of a notice in the form prescribed by the Minister.

(3) A transportation company may request once only in each case that deportation be made to a country other than that designated in the deportation order or other order made by the Minister, Director or a Special Inquiry Officer.

The Acting Minister of Citizenship and Immigration was thus vested with power to prescribe the form that Mr. Ireland used. Paragraphs 2 and 3 of regulation 13 were relied upon by counsel for the appellant as indicating that the deportation order should have used all the words in subs. (1) of s. 36 of the Act, but we are unable to agree as they apply to circumstances that do not exist in this case. The appellant fails on her first point.

The only remaining point involves a submission that the provisions of *"An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms"*, c. 44 of the Statutes of 1960, were infringed. There was no infringement as the appellant has not been deprived of her liberty except by due process of law. Involved in this second submission is the contention that matters irrelevant to a proper determination of whether the appellant should be deported had been considered at all levels. Nothing was put forward which indicated Mr. Ireland considered any such matters, but reference was made to certain correspondence between the appellant or persons on her behalf on the one hand, and the Minister of Citizenship and Immigration on the other, and also to certain statements made in the House of Commons by the Prime Minister and by the Minister. In view of the liberty of an individual or her liability to deportation being at stake, no objection was raised by counsel on behalf

1961

REBRIN v. BIRD AND MIN. OF CITIZENSHIP & IMMIGRATION

Kerwin C.J.

of the respondents to the reading of these statements, but there is nothing in them or in the correspondence to warrant the suggestion that matters irrelevant to the proper determination of the appeal to the Minister were considered.

By subs. (2) of s. 31 of the Act "All appeals from deportation orders shall be reviewed and decided upon by the Minister" except where the Minister directs that the matter should be dealt with by an Immigration Appeal Board and by subs. (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". One of the letters sent on Miss Rebrin's behalf was clearly a request to the Minister to take steps to permit the appellant to remain in Canada notwithstanding the probable validity of the deportation order. We agree with the submission on behalf of the respondents that the material discloses nothing from which any inference may be drawn that in disposing of the appellant's appeal from the deportation order the Minister was in any way acting upon any evidence or information against the appellant which had not been brought to the attention of Miss Rebrin and which she had not had an opportunity to answer. The statement of the Minister in the House of Commons distinguished between the dismissal of such appeal and the review made of the case "to see whether the strict application of the law should be waived by the exercise of the discretion vested in the Minister under The Immigration Act". That discretion arises under s. 8 of the Act whereby the Minister has power to issue a written permit for the appellant to remain in Canada for a specified time, not exceeding twelve months, and also power to extend or cancel such permit.

The appeal is dismissed.

Appeal dismissed.

Solicitor for the appellant: G. H. Dowding, Vancouver.

Solicitors for the respondents: Tysoe, Harper, Gilmour, Grey, De Vooght & Levis, Vancouver.