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16, 1953

IN THE PRIVY COUNCIL

No.39 of 1952

ON APPEAL FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO

B E T W E E N :

MAURICE ROY MUSSON AND
VIVIAN MARJORIE MUSSON

Appellants

- and -

THELMO L. RODRIGUEZ

Respondent

UNIVERSITY OF LONDON
W.C.1.
-5 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

CASE FOR THE APPELLANTS

14385

RECORD

pp. 27-48
pp. 21-22

1. This is an Appeal in forma pauperis from a Judgment of the Supreme Court of Trinidad and Tobago dated 25th April 1952, dismissing an Appeal from a Magistrate's Order made in the Port-of-Spain Police Court on the 27th March, 1952, under the Immigration (Restriction) Ordinance, Chapter 20 No.2, (hereinafter called the Immigration Ordinance), directing that the Appellants should be removed from the said Colony and detained in custody in the meanwhile.

pp. 21-22

- 2. The said Order was made on the ground that the Appellants were "prohibited immigrants" within the meaning of the Immigration Ordinance.
- 3. The material provisions of the Immigration Ordinance are set forth in the Annexure hereto.
- 4. By Section 4 (1) of the Immigration Ordinance (as amended in 1943) the term "prohibited immigrant" covers among others:-

"(h) Any person who from information or advice which in the opinion of the Governor-in-Council is reliable information or advice is deemed by the Governor - in-Council to be an undesirable inhabitant of or visitor to the Colony;"

Section 16 provides inter alia that an immigration officer shall cause a prohibited immigrant found within the Colony to be removed therefrom "in the manner hereinafter provided". Section 19 provides inter alia that whenever a prohibited immigrant is ordered to leave the Colony the immigration officer may cause him to be arrested and brought before a Magistrate who may take various courses, one of which is to order the immigrant to be detained in custody until an opportunity occurs for him to leave the Colony. Under Section 23 if any person is held to be a prohibited immigrant a Magistrate's Court may on the application of an immigration officer

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order the immigrant to be removed from the Colony and in the meantime to be detained in custody, but this power is subject to a detailed proviso which grants special protection to British subjects, the general nature of which is that the Court may not entertain an application for such an order in the case of a British subject unless it is made within two years of his arrival in the Colony.

pp.55-56 5. On the 15th January 1952 each of the Appellants, who were both then lawfully within the Colony, was served with a notice from the Deputy Chief Immigration Officer in the following form:

"You are hereby notified that you have been deemed by the Governor-in-Council under Sec. 4(1) (h) of the Immigration (Restriction) Ordinance Ch.20 No.2, to be an undesirable visitor to the Colony and therefore a Prohibited Immigrant. You are hereby required to leave and depart from this Colony on or before 14th February 1952.

"On your failure to comply with the above notification, proceedings will be taken to have a removal order made against you.

(Sgd) G. LIDDLIELOW

Deputy Chief Immigration Officer"

p.58
p.59
11.1-20
p.69,
1.25-p.70

The date by which their departure was demanded was later extended to 25th February, 1952, and finally (by the Magistrate) to 1st March 1952.

6. There appears to be no power for any immigration officer to give to the Appellants in the circumstances of this case any such order as was purported to be given by the said Notice.

p.1-p2.
1.15
p.3,1.16-
p.4,1.17-

7. On the 26th February 1952, the Respondent, who is an immigration officer of the Colony, swore information before the Justice of the Peace that each of the Appellants "being a prohibited immigrant, and having been ordered to leave the Colony by the 25th instant, did fail to leave the Colony as so ordered as aforesaid.

"Contrary to Section 19 Ch.20 No.2", and applied thereon for warrants for their arrest.

8. The said section 19 does not create any offence whatever.

p.68.11-
14.
33.p.69,
11.1-20.

9. The Justice of the Peace before whom this information was sworn granted warrants dated the said 26th February 1952, directing that each of the Appellants should be brought before a Magistrate to answer the "complaint" that he or she "is a prohibited immigrant and is within the Colony in contravention of the Immigration (Restriction

RECORD

tions) Ordinance", no such offence is known to the law of the Colony.

p.2,11.26-31.p.4.
11.24-29 10. On the 27th February, 1952, the Appellants were arrested under the said warrants and brought before a Magistrate. They were then charged with the non-existing "offence" above mentioned, and were admitted to bail.

p.3,11.1-5
p.4,11.30-34. p.5.
11.19-20 11. The cases against the Appellants were heard- being taken together by consent- on the 1st,8th,15th,21st, 24th and 27th March, 1952, the Solicitor General appearing for the now Respondent as prosecutor. The prosecution rested its case upon the allegation that the Appellants were "prohibited immigrants" under the said Section 4(1) (h) and it was not at any time suggested that they were prohibited immigrants by reason of any other provision or provisions of the Immigration Ordinance.

p.5,1.26-
p.6,1.28. 12. The only evidence directed to the question whether the Appellants had been deemed by the Governor in Council to be "undesirable visitors to the Colony and therefore prohibited immigrants"- to quote the language of the notices set out in paragraph 5 above- was that of One Harold Leacock, Assistant Clerk of the Executive Council, who stated that he was present at a meeting of the Executive Council on the 8th January 1952 at which, he said, it was decided that the Appellants be deemed prohibited immigrants. The witness said that he was not in a position to say whether they were declared or deemed prohibited immigrants; nor did he say whether they were classified as "visitors" or "inhabitants". He stated that he was sure the words used by the Executive Council were "prohibited immigrant".

p.6,11.12-14.
p.6,11.18-19. 13. Evidence was called by the Respondent to prove that the notices set out in paragraph 5, above, were sent from the Immigration Office and served upon the Appellants; but there was no evidence that any other notice of any kind, purporting to inform them that the Governor-in-Council had taken any action or made any decision under the said Section 4 (1) (h), or at all, was given to the Appellants or either of them by any authority or person.

p.10,1.24.
p.28,11.39-41.
p.10,1.32. 14. The case for the Respondent was closed on the said 1st March 1952 and the Appellants by their Counsel thereupon submitted that there was no case for them to answer. At the close of the said submission the hearing was adjourned to 8th March 1952.

p.44,11.18-22.
p.11,11.6-43 15. At the commencement of the adjourned hearing on the 8th March 1952 the Respondent applied for and was granted leave to re-open the case and to call the Attorney-General of the Colony, who gave evidence to the effect that at the meeting of the Governor-in-Council, on 8th January, 1952, the Governor deemed the Appellants to be undesirable inhabitants of and/or visitors to (sic) the Colony under the said section 4 (1)(h) and ordered that they should leave the Colony on or before the 14th February 1952. The Attorney General said that he took

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the notice set out above in Paragraph 5 above to be an Order in Council that the Appellants were prohibited immigrants. The Attorney General further stated in evidence that he did not know that the Appellants were British subjects.

p.16,1.15- 16. The Appellants by their Counsel objected to the ad-
p.17, 1.3. mission of the evidence of the Attorney General and further submitted that in any event the alleged order of the Governor-in-Council had not been proved, and that neither the evidence of the said Harold Leacock nor that of the Attorney General was admissible for the purpose of proving the alleged order. The said objection and submission were overruled.

17. The Magistrate then invited the Solicitor General to apply for leave to amend the information by adding in each case the words "and hereby applies for an order for the removal of the said immigrant in accordance with Section 23 (1) of the Chap.20 No.2". The Solicitor General p.11,1.40- did so apply, and the Magistrate granted leave. The Ap-
p.12,1.8. pellants objected to the said amendment on the ground
p.12,11.1- that it had the effect of instituting fresh proceedings
7. against them, and asked that the information be dismissed. The said objection was overruled.

18. The Appellants submit that the effect of the Magistrate's order was to attempt (after the prosecution's case had been closed) to change void prosecutions for a criminal "offence" unknown to the law into an application to the Magistrate in non-criminal jurisdiction to order their removal from the Colony.

19. After the information had been amended as above
p.12,11.9- stated the Magistrate gave the Respondent leave to put in
15. as evidence a copy of an alleged Order of the Governor-in-Council, said to have been made on 8th January, 1952, notwithstanding that there was no evidence that any such
p.12,11. Order had been served on the Appellants. The Appel-
12-14. lants objected that such Order should not be admitted at that stage, on the grounds that (i) the case for the prosecution had already been closed and (ii) the alleged Order had never been served on them; but the said objection was overruled. The Respondent's case was then
p.12,11. closed for the second time, subject to the said Order
16-20 being put in later, and the Appellants were then called upon to show cause why an Order for removal should not be made.

p.12.1.24-20. The Appellant Maurice Roy Musson thereupon gave
p.15,1.10 evidence in chief on behalf of both the Appellants, and the hearing was then adjourned to 15th March 1952 for production of the said alleged Order and for the cross-examination of the Appellant Maurice Roy Musson.

21. At the adjourned hearing on 15th March 1952 the
p.15,1.14 Solicitor General, in purported pursuance of the leave granted on 8th March, tendered in evidence not a copy of any Order but a document which purported to be part of an

RECORD

p.15,11.15-19. Executive Council Minute dated 8th January 1952. The Appellant objected to the admission of the said document, but the said objection was overruled and the document admitted. The said alleged Order of the Governor-in-Council was never put in, and so far as the Appellants can ascertain never existed.

p.15,11.21-22. The Appellant Maurice Roy Musson was then cross-examined and the case for the Appellants was closed.
33.

p.20-23. On the 27th March 1952 the Magistrate delivered
p.21,1.18. a reserved judgment, expressing himself as satisfied
p.20,11.3-7 that the Appellants" were deemed by the Governor in Executive Council on the 8th January last under Section 4(1) (h) of the Ordinance to be undesirable inhabitants of and/or visitors to the Colony....." and he made an
p.21,1.21- Order for them to be removed from the Colony and to be
p.22,1.8. detained in custody in the meanwhile. He does not appear to have considered the question whether the Appellants were British subjects or not, or how long they had been in the Colony.

pp.25-26. 24. The Appellants appealed from the said Orders, and their Appeals were heard- again being taken together by consent- on the 16th, 17th and 18th April, 1952, before Sir Cecil Furness-Smith, C.J. and Vincent Brown and Duke,

p.27,11.14-J.J. A preliminary objection taken by the Respondent,
p.27,1.16. that no appeal lies from a removal order made by a magistrate under the said Ordinance, was decided by a majority (Sir Cecil Furness-Smith, C.J., and Duke, J.) in
p.37,11.39-45 the Appellants' favour. The appeal itself was also decided (against the Appellants) by a majority (Sir Cecil
p.34,11.33-34, p.35, 11.33-36 Furness-Smith, C.J., and Vincent-Brown, J.).

25. The Appellants submit that the judgment of the Supreme Court was wrong and ought to be set aside for the following amongst other

REASONS

1. BECAUSE the proceedings were defective ab initio, and should have been dismissed by the Magistrate.
2. BECAUSE there was at no time any evidence that either of the Appellants was deemed by the Governor-in-Council to be either an "undesirable inhabitant" or an "undesirable visitor".
3. BECAUSE the Magistrate should not have allowed the Respondent's case to be re-opened, or further evidence called.
4. BECAUSE the whole of the evidence whereby the Respondent sought to prove that the Appellants were prohibited immigrants was inadmissible.
5. BECAUSE the Magistrate should not have permitted the Respondent to turn a baseless criminal prosecution

into non-criminal proceedings of a different nature after the Respondent's case had been closed.

6. BECAUSE the Appellants are British subjects and by virtue of the British Nationality Act 1948 they became citizens of the United Kingdom and Colonies and as such were and are entitled to be and remain in the Colony without let or hindrance, and the provisions of the Immigration Ordinance are (in so far as they may purport to affect British subjects who are citizens of the United Kingdom and Colonies) repugnant to the provisions of the said Act and therefore void and inoperative by virtue of the Colonial Laws Validity Act 1865.

7. BECAUSE, if the Governor-in-Council intended or desired that the Appellants should be deported, any proceedings or other steps taken against them ought not to have been taken under the Immigration Ordinance but should have been taken under the Deportation (British Subjects) Ordinance Chapter 20 No.3, the material provisions of which are also set out in the Annexure hereto. Alternatively, if it was within the discretion of the Governor-in-Council, to proceed either under the Immigration Ordinance or under Chapter 20 No.3, the Governor-in-Council could not validly exercise his discretion without being informed that the Appellants were British subjects before exercising such discretion; and the evidence before the Magistrate shows that the Governor-in-Council was not so informed.

D. N. PRITT.

RALPH MILLNER.

A N N E X U R E

CHAPTER 20 No.2.

IMMIGRATION (RESTRICTION)

AN ORDINANCE TO IMPOSE RESTRICTIONS ON IMMIGRATION.

[2nd June, 1936]

Short
Title

1. This Ordinance may be cited as the Immigration
(Restriction) Ordinance.

Defini-
tions

2. (1) In this Ordinance, unless the context other-
wise requires -

.....

" immigrant" means a person who enters the
Colony from a place outside the Colony, whether
for the first or at any subsequent time;

.....

(2) For the purposes of this Ordinance a person
shall be deemed to belong to the Colony if he is a
British subject and -

(a) was born in the Colony or of parents who at
the time of his birth were domiciled or ordinarily
resident in the Colony; or

(b) is domiciled in the Colony; or

(c) has been ordinarily resident in the Col-
ony continuously for a period of seven years
or more and since the completion of such period
of residence has not been ordinarily resident
in any other part of His Majesty's dominions
or any territory under His Majesty's protection,
continuously for a period of seven years or more;
or

(d) obtained the status of a British subject
by reason of the grant by the Governor of a cer-
tificate of naturalization under the British
Nationality and Status of Aliens Act, 1914, or
the Local Naturalization Ordinance; or

(e) is a dependant of a person to whom any of
the foregoing paragraphs applies

(3) For the purposes of this Ordinance a person

shall be deemed to belong to a particular place outside the Colony if he is a national of the Country or State of which that place forms part or of which it is a dependency and -

(a) was born in that place.....etc

Appoint-
ment of
immigra-
tion of-
ficers

3. (1) The Governor may appoint a Chief Immigration Officer and also immigration officers for all or any specified parts of the Colony for the purpose of carrying out the provisions of this Ordinance.

.....

Enumerat-
ion of
prohibited
immigrants

4. (1) The following persons (not being persons deemed to belong to the Colony as defined by subsection (2) of section (2), are prohibited immigrants:

.....

x

(h) any person who from information or advice which in the opinion of the Governor-in-Council is reliable information or advice is deemed by the Governor-in-Council to be as undesirable inhabitant of or visitor to the Colony"

.....

No ap-
peal ag-
ainst de-
cision of
Governor

(3) No appeal shall lie against the decision of the Governor in Council in regard to any of the persons mentioned in paragraphs (g), (h) and (i) of subsection (1) of this section unless such appeal be directed to identity only of the person affected by the decision.

.....

Who are
not pro-
hibited
immig-
rants

6. The following persons or classes of persons shall not be prohibited immigrants for the purposes of this Ordinance:

- (a) persons who belong to the Colony as defined by subsection (2) of Section 2;
- (b) persons in the service of the Government of the Colony;
- (c) members of His Majesty's regular naval, military or air forces;
- (d) persons who are duly accredited to the Colony

^xThis sub-para (h) is printed as amended by the Immigration (Restriction) (Amendment) Ordinance, 1943, No.26.

by or under the authority of His Majesty or the Government of any foreign state, and the staff of any such persons;

(e) the dependants of the persons enumerated in the previous paragraphs of this section;

(f) any other persons or class of persons to whom this section may be applied by regulation.

.....

Immigration officer may postpone decision and grant temporary permit. 10. (1) An immigration officer may for the purpose of making further inquiry postpone deciding whether a person is a prohibited immigrant for a period not exceeding sixty days.

(2) An immigration officer may grant a permit for an immigrant to disembark without prejudice to the question whether he is a prohibited immigrant.

(3) Immigration officers may grant permits for prohibited immigrants to remain in the Colony for temporary purposes in accordance with the provisions of this Ordinance.

.....

Permits for prohibited immigrants to reside in the Colony 12. The Governor, or by his direction any immigration officer, may grant a permit for a prohibited immigrant to enter and remain in the Colony subject to such conditions as to duration and place of residence, occupation, security to be furnished, or any other matter or thing, whether similar to those before enumerated or not, as the Governor may think expedient.

.....

Prohibition of entry by prohibited immigrant 16. Except as otherwise specially provided by this Ordinance no prohibited immigrant shall enter the Colony, and an immigration officer shall cause a prohibited immigrant entering or found within the Colony (having entered after the commencement of this Ordinance) to be removed therefrom in the manner hereinafter provided

Orders for prohibited immigrants to leave the colony 17. An immigration officer who decides that a person is a prohibited immigrant may in his discretion: (a) if the immigrant arrived by sea, order him to leave the Colony and proceed immediately in the same vessel in which he arrived; (b) order him to leave the Colony within sixty days of his entering the Colony and, if the immigration officer thinks fit, by a specified vessel; or (c) cause him to be arrested and brought before a Magistrate's court with a view to an order being made for his removal.

Appeal against detention or restriction of prohibited immigrant 18. (1) Whenever leave to enter the Colony is withheld by an immigration officer or whenever any person is detained, restricted or arrested as a prohibited immigrant, notice of that fact and the grounds of refusal, of prohibition, restriction or arrest shall be given by the officer to such person in the prescribed form. If such notice is given within seven days of the arrival of any immigrant the immigration officer giving such notice shall also inform, if known, the master of local agent or owner of the vessel by which the immigrant arrived that such notice has been given.

(2) Every immigrant to whom such notice has been given may appeal to the nearest Magistrate's court. Notice of the appeal must be given to the Magistrate's court and to the immigration officer within seven days of the decision appealed against. An appeal shall lie from the decision of the Magistrate's court to the Full Court. No fee shall be charged for the hearing of any appeal.

(3) Whenever an appeal to the Full Court is entered at the instance of the immigrant, the Magistrate or a Judge of the Supreme Court may, on the application of an immigration officer, require the immigrant to give the prescribed security within a time to be fixed by the Magistrate or the Judge, and on the failure of the immigrant to give such security the notice of appeal shall no longer be affective and the appeal shall be deemed to have been withdrawn.

(4) Pending the hearing of an appeal to the Magistrate's court no warrant shall be issued or enforced for the removal as a prohibited immigrant of the person so appealing, but should it be held on the hearing of any such appeal that the immigrant to whom notice has been given under subsection (1) of this section is a prohibited immigrant and should no appeal to the Full Court from such decision be entered within one week of the date of such decision, or on failure to give security as required by the preceding subsection, the Magistrate shall issue a warrant for the removal of the prohibited immigrant. In like manner should it be held on appeal to the Full Court that the appellant is a prohibited immigrant a Judge shall issue a warrant for the removal of the prohibited immigrant

Temporary permits pending appeal

19. (1) Whenever -

(a) a prohibited immigrant has delivered notice of appeal,

(b) a prohibited immigrant is ordered to leave the Colony,

(c) an immigration officer postpones deciding whether a person is a prohibited immigrant, or

(d) security is required to be given in respect of an immigrant,

the immigration officer may grant a permit for the immigrant to remain in the Colony for so long as the immigration officer considers necessary

(2) In lieu of granting the permit or on revocation or expiration of the permit, the immigration officer may cause the immigrant to be arrested and brought before a Magistrate who may either order the permit to be granted, restored, or renewed and the immigrant to be released, or order the immigrant to be detained in custody until the matter is disposed of or until an opportunity occurs for him to leave the Colony, as the case may require

.....

x

23. (1) If any person is held to be a prohibited immigrant then, subject to the provisions of this Ordinance and the terms of any permit granted thereunder, any Magistrate may, on the application of an immigration officer or of any person deputed in writing by the Chief Immigration Officer for the purpose of making such application, order the immigrant to be removed from the Colony and in the meantime to be detained in custody: Provided that no application for such order shall be entertained in the case of a British subject (not being a person who entered the Colony in contravention of subsection (1) of Section 8 or who, on entering the Colony, contravened or failed to comply with subsections (2) or (3) of Section 8) unless the application is made -

- (a) if he entered the Colony in accordance with a permit granted under section 11, within 2 years after the date on which such immigrant should have presented himself in person to the immigration officer for examination;
- (b) if he entered the Colony in accordance with a permit granted under sections 12 or 13, within 2 years after expiry of such permit;
- (c) in any case in which an appeal has been made to the Magistrate's Court or the Full Court, against a decision that he is a prohibited immigrant, within 2 years after the determination of the appeal;
- (d) if he entered the Colony in accordance with a permit granted under section 19 pending decision of an immigration officer as to whether he is or is not a prohibited immigrant within two years after the decision of the immigration officer that he is a prohibited immigrant;
- (e) in other cases, within 2 years of his arrival in the Colony

CHAPTER 20. NO.3.

DEPORTATION (BRITISH SUBJECTS)

AN ORDINANCE TO REGULATE THE DEPORTATION OF UNDESIRABLE BRITISH SUBJECTS AND FOR SIMILAR PURPOSES.

[June 2nd, 1936]

Short Title

1. This Ordinance may be cited as the Deportation (British Subjects) Ordinance.

.....

3. [Power to make deportation orders in respect of immigrant British subjects who do not belong to the Colony]

4. [Power to make restriction orders in respect of British subjects]

5. [Power to make security orders in respect of British subjects]

.....

Immigra-
tion (Re-
striction)
Ordinance
not to be
restricted

21. Nothing in this Ordinance contained shall be taken to restrict in any manner the operation of the Immigration (Restriction) Ordinance, or the powers conferred on the Governor, a Magistrate, or an immigration officer by that Ordinance.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME
COURT OF TRINIDAD AND TOBAGO

B E T W E E N :

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Appellants

- and -

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CASE FOR THE APPELLANTS

HY. S. L. POLAK & CO.
20/21, Took's Court,
Cursitor Street,
London, E.C.4.
Solicitors for the Appellants.