16, 1953.

In the Privy Council.

No. 39 of 1952.

ON APPEAL FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO

BETWEEN

MAURICE ROY MUSSON AND VIVIAN MARJORIE MUSSON ... ... APPELLANTS

AND

THELMO L. RODRIGUEZ ... ... RESPONDENT

CASE FOR THE RESPONDENT

RECORD

1.—This is an Appeal from a Judgment, dated the 25th April, 1952, of the Supreme Court of Trinidad and Tobago (Furness-Smith, C.J., and Vincent-Brown, J., Duke, J., dissenting), dismissing appeals by the Appellants from two orders, dated the 27th March, 1952, made by a Magistrate in the Port of Spain First Police Court that the Appellants be removed from the colony of Trinidad and Tobago under the Immigration (Restriction) Ordinance, 1936 (hereinafter called "the Immigration Ordinance"). pp. 27–48 pp. 21–22

2.—The legislation relevant to this appeal is set out in the Appendix to this Case.

3.—On the 15th January, 1952, the Respondent (who is an Immigration Officer) served on each of the Appellants a notice signed by the Deputy Chief Immigration Officer. These notices informed the Appellants that the Governor in Council had deemed them, under s. 4 (1) (h) of the Immigration Ordinance, to be undesirable visitors to the colony and therefore prohibited immigrants; the notices required them to leave the colony by the 14th February, 1952. On the 17th February, the Respondent served on each of the Appellants another notice, extending the time for their departure from the colony to the 25th February. pp. 55–56 pp. 58–59

RECORD

pp. 3-4

4.—On the 26th February, 1952, the Respondent made a complaint before a Justice of the Peace that the first Appellant, being a prohibited immigrant and having been ordered to leave the colony by the 25th February, had failed to do so, contrary to s. 19 of the Immigration

pp. 1-2

Ordinance. On the same date the Respondent made a similar complaint of the second Appellant. During the subsequent proceedings in the Police

p. 2, ll. 7-12; p. 4, ll. 5-10

Court the Magistrate gave leave for both these complaints to be amended so as to include applications for the removal of the Appellants in accordance with s. 23 (1) of the Immigration Ordinance.

5.—On the 1st March, both the Appellants were brought before a

p. 5, l. 24

Magistrate in the Port of Spain First Police Court, and pleaded "Not Guilty" to the complaints. Evidence was then given on behalf of the Respondent as follows:

p. 5, l. 25—p. 6, l. 9

(A) Harold Leacock, the Assistant Clerk of the Executive Council, said he was present at a meeting of the Council on the 8th January, 1952, at which it was decided that the Appellants be deemed prohibited immigrants, and be given up to the

p. 6, ll. 12-19

7th February (subsequently changed to the 14th February) to leave the colony. He was not sure whether the Appellants were declared or deemed prohibited immigrants, but was sure that the

p. 6, ll. 23-26

words "prohibited immigrant" were used. He produced the notices served on the Appellants on the 15th January.

p. 6, l. 31—p. 7, l. 20

(B) The Respondent described how he served notices on the Appellants, and subsequently got warrants for their arrest and

p. 7, ll. 24-26

arrested them. He knew that the Appellants were British subjects from birth.

pp. 8-10

(C) Gerald E. Chen, an Assistant Secretary in the office of the Colonial Secretary, said he had booked passages to the United Kingdom for both the Appellants in a steamer which had left the colony about the 27th February. He produced correspondence which had passed between the first Appellant and the Colonial Secretary.

p. 10, ll. 14-24

6.—The Respondent was recalled and gave evidence on a point not relevant to this appeal, and his case was then closed. Counsel for the

p. 10, ll. 25-32

Appellants having submitted that there was no evidence that they had been deemed prohibited immigrants, the proceedings were adjourned to the 8th March.

p. 11, ll. 5-21

7.—On the 8th March, Joseph Leon Matthew Perez, the Attorney-General of the colony, gave evidence for the Respondent. He said he was an official member of the Executive Council, and had attended a meeting of the Governor in Council on the 8th January, 1952. At that meeting the Governor deemed the Appellants to be undesirable inhabitants of, and/or visitors to, the colony under s. 4 (1) (h) of the Immigration Ordinance, and

RECORD

ordered that they leave the colony on or before the 14th February. He (the Attorney-General) gave the necessary instructions to the Deputy Chief Immigration Officer. Cross-examined, he said he took the notice served on the Appellants on the 15th January to be an order in Council that they were prohibited immigrants. He did not know they were British subjects. He was not prepared to give any reason why they were deemed undesirable as they were not entitled to know the reasons. p. 11, ll. 22–39

8.—The Solicitor-General, who appeared for the Respondent, then applied for leave to amend the information, as set out in paragraph 4 of this Case. Counsel for the Appellants objected, on the ground that it was not an amendment but the institution of new proceedings ; if the proceedings were wrong, the Court should dismiss the complaint. The Magistrate allowed the amendment to be made. The Solicitor-General asked leave to put in a copy of the order made by the Governor in Council on the 8th January. Counsel for the Appellants objected, but the Magistrate gave the leave, and the Respondent's case was then closed subject to the production of the order. The Magistrate called on the Appellants to shew cause why the order for removal should not be made. p. 11, l. 40—p. 12, l. 8 p. 12, ll. 9–18 p. 12, ll. 19–20

9.—The first Appellant gave evidence. He said he was a citizen of the United Kingdom and Colonies. He had come from London to British Guiana in 1947. He described how since that time he had carried on various occupations in British Guiana, Tobago, Trinidad and Grenada. He and the second Appellant had been deported from Grenada in February, 1951, and had been in Trinidad since then. He had been arrested and admitted to bail on the 27th February. Apart from the notices served on the 15th January and the 17th February, he had received no notice of any order made by the Governor in Council. p. 12, ll. 28–33 p. 13, ll. 1–48 p. 13, l. 48—p. 14, l. 39 p. 14, l. 39—p. 15, l. 9

10.—The hearing was resumed on the 15th March. The Solicitor-General then tendered in evidence a certified extract from the minutes of the meeting of the Executive Council held on the 8th January, 1952. An objection by Counsel for the Appellants was overruled, and the document was admitted. The minutes shewed that at that meeting the Executive Council advised that the Appellants be declared prohibited immigrants and be given up to the 7th February to leave the colony. This document having been admitted, the first Appellant concluded his evidence, and the case for the Appellants was closed. p. 15, ll. 20–33 p. 54 p. 15, ll. 20–33

11.—In his address to the Magistrate, Counsel for the Appellants submitted that there was no order of the Governor in Council. No evidence should have been heard about what the order was ; the order itself should have been produced. No one had deemed the Appellants to be undesirable, and there had been no authority to serve the notices on the 15th January. The Appellants were British subjects, and there was a special provision for deporting persons of that status. Under the British Nationality Act, 1948, the Appellants belonged to the United Kingdom and Colonies. pp. 16–18

RECORD

pp. 20–21

12.—The Magistrate reserved his decision, which he gave on the 27th March, 1952. He was satisfied that the Appellants were deemed undesirable inhabitants of, and/or visitors to, the colony by the Governor in Council on the 8th January, and this decision was conveyed to them by the notices served on the 15th January. A person receiving such a notice could, under s. 18 (2) of the Immigration Ordinance, appeal to a Magistrate's Court within seven days either on the ground that under s. 2 (2) he was deemed to belong to the colony or on any other legal ground. The Appellants did not appeal within the statutory period. On the 15th February their solicitor wrote to the Colonial Secretary asking in what respect they were deemed undesirable—the one ground which, under s. 4 (3), could not be challenged. Having failed to appeal, the Appellants were prohibited immigrants. The contention that under the British Nationality Act they belonged to the colony was not covered by s. 2 (2), and was out of time. Accordingly, the Magistrate ordered that the Appellants be removed from the colony, and be detained in custody meanwhile.

p. 19, ll. 19–47

13.—Counsel for the Appellants sought to give oral notice of appeal. The Solicitor-General had argued that there was no appeal from the Magistrate's decision, and the Magistrate refused to accept the notice of appeal.

pp. 23–26

14.—On the 27th March identical notices of appeal to the Supreme Court were lodged on behalf of both the Appellants. The grounds of appeal were that the Magistrate had no jurisdiction over the original complaint, and exceeded his jurisdiction in amending it; and he was wrong in admitting the evidence of Leacock and the Attorney-General, in admitting the extract from the minutes of the Executive Council and holding that it constituted an order of the Governor in Council, in holding that the Appellants were visitors to the colony, in holding that the notices served on the 15th January, 1952, were admissible and any valid deportation orders had been served on the Appellants or produced in evidence, in holding that the Deportation (British Subjects) Ordinance did not apply to the Appellants, and in failing to have regard to the British Nationality Act, 1948. The appeals were heard together on the 16th, 17th and 18th April, 1952, and were dismissed on the 25th April.

p. 36, ll. 1–3

p. 27, l. 14—p. 28, l. 16

p. 28, ll. 17–50

p. 29, ll. 7–49

15.—Furness-Smith, C.J., first gave his reasons for rejecting a preliminary objection taken by the Solicitor-General that an appeal did not lie from the Magistrate's orders. He then set out the material circumstances. Dealing with the procedural objections, the learned Chief Justice said that Leacock in his evidence was only giving his understanding of the effect of the decision of the Executive Council, and was inaccurate in expressing its terms. The same inaccuracy appeared in the extract from the minutes which had been wrongly admitted. The Attorney-General's evidence about the decision was unassailable. The effect of the decision was that the Appellants were undesirable, whether as inhabitants or as visitors did not matter. The Attorney-General said the decision was taken under s. 4 (1) (h) of the Immigration Ordinance, so

RECORD

the learned Chief Justice had no doubt it was based on information regarded by the Council as satisfactory. Section 19 of the Interpretation Ordinance was permissive, not mandatory, and the decision of the Executive Council had been properly communicated to the Appellants. It was clear from the evidence of the first Appellant himself that they were " visitors " within the meaning of the Immigration Ordinance at the time of this communication. It was said that the amendment had amounted to the substitution of a new charge ; but in fact its effect was only to indicate ıt order the Respondent wished to obtain. If the Appellants had been barrassed they could have had an adjournment, but they had not asked it. The Deportation (British Subjects) Ordinance had nothing to do h the case. If a person became liable to be removed as a prohibited nigrant, it made no difference whether he was a British subject or not. ne of the procedural objections was valid, and the learned Chief Justice ned to the arguments based on the British Nationality Act, 1948. The ıt argument ran thus : at common law any British subject was free to er or remain in any British territory ; the power of a colonial legislature restrict entry by British subjects sprang from the British Nationality d Status of Aliens Act, 1914, s. 26 (1), in which " different classes of British subjects " meant members of different states or colonies within e Empire ; the Act of 1948 repealed s. 26 of the Act of 1914, so the power a colonial legislature to restrict the entry of British subjects had sappeared. This argument was invalid, for two reasons : first, a colonial gislature had power under the Colonial Laws Validity Act, 1865, to erride the common law, and this was not affected by the Act of 1948 ; cond, the classes mentioned in s. 26 (1) of the Act of 1914 were not members different states, but classes determined by place of birth or naturalization. he second argument ran thus : the Act of 1948 conferred upon ertain British subjects the status of citizenship of the United Kingdom ıd Colonies, thus making them citizens of each individual colony ; tizenship of a country necessarily implied the right of unrestricted ıtry and residence within it ; so the restrictions contained in the mmigration Ordinance on persons who did not " belong to " Trinidad ere repugnant to the Act of 1948 and void. The design of that Act was o provide a common code defining the status of British subjects throughout he Commonwealth. The Commonwealth was divided into areas, of which he United Kingdom and Colonies formed one, simply for convenience n defining the qualifications for British nationality within each area. The vord " citizen " was intended to confer only rights of nationality, which vere different from rights of citizenship. It denoted membership of ı particular area simply for the purpose of determining nationality, and lid not confer on the Appellants any privilege reserved by the Immigration Ordinance for those belonging to the colony. The appeals should be lismissed with costs.

p. 29, l. 50—p. 30, l. 30

p. 30, l. 43—p. 31, l. 9

p. 31, ll. 10–26

p. 31, ll. 27–36

p. 31, l. 37—p. 32, l. 43

p. 32, l. 44—p. 34, l. 34

16.—Vincent-Brown, J., gave judgment accepting the Solicitor-General's preliminary objection and holding that the Appellants had no

pp. 34–35

RECORD

right of appeal to the Supreme Court. On the other questions argued he agreed with the Chief Justice.

p. 37, ll. 36–45

17.—Duke, J., dissented. He agreed with the Chief Justice that the Magistrate's orders were appealable. After setting out the relevant

pp. 38–40
p. 40, l. 36—p. 41, l. 36

statutory provisions relating to nationality and citizenship, the learned Judge said there was no imperial statute forbidding a colonial legislature to discriminate between different classes of British subjects. The argument that a citizen of the United Kingdom and Colonies had the right to enter and remain in any British colony would have had great weight if there had been political federation between the United Kingdom and the colonies, but there had been no such federation. The right of a British subject to enter any particular territory was a right at common law, which a colonial legislature could restrict. It was not mentioned in the Act of 1948. The learned Judge accordingly rejected the submission that the Appellants, being citizens of the United Kingdom and Colonies, could not be prohibited

p. 41, l. 37—p. 43, l. 25

immigrants. He then went on to the question whether it had been proved that the Appellants had been deemed to be undesirable inhabitants or visitors in accordance with s. 4 (1) (h) of the Immigration Ordinance, and

p. 43, l. 26—p. 44, l. 14

set out the relevant provisions and evidence. The statements in notices and letters of what the Governor in Council had done were not made of the writers' own knowledge; Leacock did not say that the Executive Council made its decision on information or advice which it thought reliable, did not say that anything was done by the Governor in Council, and did not say that the Council deemed the Appellants to be undesirable inhabitants or visitors. When the case for the Respondent was closed and Counsel for the Appellants submitted there was no evidence that they had become prohibited immigrants, the Magistrate ought to have ruled in favour of

p. 44, l. 23—p. 45, l. 22

that submission. The learned Judge then set out the evidence of the Attorney-General. The Attorney-General did not say that the Governor deemed the Appellants to be undesirable inhabitants or visitors on information which he thought reliable. Such evidence could properly be given only by a document showing that the Governor acted in accordance

p. 45, l. 23—p. 47, l. 18

with s. 4 (1) (h). After referring to the course of the intervening proceedings, the learned Judge set out the extract from the Council's minutes

p. 47, l. 19—p. 48, l. 34

which had been admitted in evidence. This minute shewed that the Executive Council advised that the Appellants be declared prohibited immigrants. It did not shew that the Council, acting on information which it thought reliable, advised that they be deemed undesirable inhabitants or visitors. Leacock, too, said the decision was that the Appellants be deemed or declared prohibited immigrants. Neither in his evidence nor in the minute was there any indication that the Governor did anything. No document signed by the Clerk to the Council had been produced showing that the Governor in Council, on information which he thought reliable, had deemed the Appellants to be undesirable visitors. If the Governor did so deem, it must clearly appear that he had made his decision in strict compliance with s. 4 (1) (h). That did not appear in the present case, and the appeals should be allowed with costs.

18.—The Respondent respectfully submits that the learned Judges in the Supreme Court were right in rejecting the arguments based on the Appellants' citizenship. Any right enjoyed by British subjects to enter and remain in British territory is a right at common law, and the legislature of Trinidad and Tobago is competent to modify or restrict such a right. Similarly, provisions of the Immigration Ordinance which discriminate between different classes of British subjects are not repugnant to any Act of Parliament extending to Trinidad and Tobago, and are good and valid legislation. Citizenship of the United Kingdom and Colonies as created by the British Nationality Act, 1948, is solely a qualification for British nationality. That Act does not confer upon such citizens any other right or privilege either in the United Kingdom or in any British colony.

19.—The Respondent respectfully submits that the learned Chief Justice and Vincent-Brown, J., were right in holding that the proceedings were regular and the Respondent's case was properly proved. The original complaints were valid exercises of the Respondent's power to have prohibited immigrants brought before a Magistrate, and conferred upon the Magistrate jurisdiction to deal with the Appellants. The amendment did not make any alteration in the case alleged against the Appellants, but merely indicated what relief the Respondent was seeking. It was therefore properly allowed, though the Appellants might have been entitled to an adjournment if they had asked for it. In order that a person may be a prohibited immigrant it is necessary only that the Governor in Council should have deemed him to be an undesirable inhabitant or visitor under s. 4 (1) (h) of the Immigration Ordinance. No formal order of the Governor is necessary. It was clear from the oral evidence given on behalf of the Respondent that the Governor, acting with the advice of the Executive Council, did deem the Appellants to be undesirable inhabitants or visitors, and the learned Chief Justice was right in presuming that this decision was made on information or advice which the Council regarded as satisfactory.

20.—The Respondent respectfully submits that the judgment of the Supreme Court of Trinidad and Tobago was right and ought to be affirmed, for the following (amongst other)

REASONS

1. BECAUSE the Immigration (Restriction) Ordinance is in every respect good and valid legislation;
2. BECAUSE the present proceedings were properly instituted against the Appellants;
3. BECAUSE the Magistrate was right in allowing the amendments to the Respondent's complaints to be made;
4. BECAUSE the Appellants were proved by admissible evidence to be prohibited immigrants within the meaning of the said Ordinance.

J. G. LE QUESNE.

APPENDIX

COLONIAL LAWS VALIDITY ACT, 1865.

2. Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

3. No colonial law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid.

BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914

26. (1) Nothing in this Act shall take away or abridge any power vested in, or exerciseable by, the Legislature or Government of any British Possession, or affect the operation of any law at present in force which has been passed in exercise of such a power, or prevent any such Legislature or Government from treating differently different classes of British subjects.

BRITISH NATIONALITY ACT, 1948

PART I

BRITISH NATIONALITY

1. (1) Every person who under this Act is a citizen of the United Kingdom and Colonies or who under any enactment for the time being in force in any country mentioned in subsection (3) of this section is a citizen of that country shall by virtue of that citizenship have the status of a British subject.

(2) Any person having the status aforesaid may be known either as a British subject or as a Commonwealth citizen; and accordingly in this Act and in any other enactment or instrument whatever, whether passed or made before or after the commencement of this Act, the expression " British subject " and the expression " Commonwealth citizen " shall have the same meaning.

(3) The following are the countries hereinbefore referred to, that is to say, Canada, Australia, New Zealand, the Union of South Africa, Newfoundland, India, Pakistan, Southern Rhodesia and Ceylon.

CHAPTER 20 No. 2

IMMIGRATION (RESTRICTION)

AN ORDINANCE TO IMPOSE RESTRICTIONS ON IMMIGRATION

[2nd June, 1936]

* * * *

2. (1) In this Ordinance, unless the context otherwise requires— Definitions

* * * *

" 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 Colony 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 certificate 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.

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. Appointment of immigration officers

* * * *

Enumeration 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 :

* * * *

*(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 "

* * * *

No appeal against decision 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 prohibited immigrants

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 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.

* * * *

---

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

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, detention, 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 or 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 effective 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, etc.

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.

* * * *

*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 ;

* This Section has been amended in 1941 and 1945.

(b) if he entered the Colony in accordance with a permit granted under Sections 12 or 13, within 2 years after the expiry of such permit ;

(c) in any case in which an appeal has been made to a 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.

29. In any proceedings under this Ordinance—

(a) the burden of proof that the person charged belongs to the Colony or that he is not likely to become a charge on public funds shall be upon that person ;

(b) a document purporting to be a removal order made under this Ordinance shall, until the contrary is proved, be presumed to be such an order ; and

(c) any order made under this Ordinance shall be presumed, until the contrary is proved, to have been validly made and to have been made on the date upon which it purports to have been made.

CHAPTER 20. No. 3

DEPORTATION (BRITISH SUBJECTS)

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

[June 2nd, 1936]

* * * *

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]

* * * *

Immigration (Restriction) 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.

INTERPRETATION ORDINANCE (Ch. 1 No. 2)

2. In this Ordinance and in all other laws, and in all public documents, enacted, made or issued before or after the commencement of this Ordinance, the following words and expressions shall have the meanings hereby assigned to them respectively unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly proved

* * * *

" Governor in Council " or " Governor in Executive Council " means the Governor acting with the advice of the Executive Council of the Colony, but not necessarily in accordance with such advice ;

* * * *

19. When power is given to the Governor to make any order or give any direction, it shall be sufficient, unless it is otherwise expressed, for such order or direction to be signified under the hand of the Colonial Secretary . . . .

In the Privy Council.

No. 39 of 1952.

ON APPEAL FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO.

BETWEEN

MAURICE ROY MUSSON AND VIVIAN MARJORIE MUSSON ... ... APPELLANTS

AND

THELMO L. RODRIGUEZ RESPONDENT.

CASE FOR THE RESPONDENT

BURCHELLS,
68 Victoria Street,
Westminster, S.W.1.
Solicitors for the Respondent.

GEO. BARBER & SON LTD., Printers, Furnival Street, Holborn, E.C.4,
A61118) Cursitor Street, Chancery Lane.