

Privy Council Appeal No. 39 of 1919.

Li Hong Mi - - - - - *Appellant*

v.

The Attorney-General of Hong Kong and others - - - *Respondents*

FROM

THE SUPREME COURT OF HONG KONG.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 17TH FEBRUARY, 1920.

Present at the Hearing :

VISCOUNT HALDANE.

LORD BUCKMASTER.

LORD DUNEDIN.

LORD ATKINSON.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal from a judgment of the Supreme Court of Hong Kong, dismissing an action brought by the appellant for a declaration that a deportation order made against him by the Governor of the Colony in Council was invalid, and for damages. The claim for damages has not been pressed, and the only question before the Board is that as to the validity of the order.

This order was made under the powers conferred by the Deportation Ordinance 1917, passed by the Governor of Hong Kong in Legislative Council. Although Hong Kong is a Crown Colony and the provisions of the Ordinance affect materially the rights of British subjects as they would be under the Common Law of England, there is no doubt as to the validity of these provisions and the Ordinance enacting them. Under Letters Patent the Crown had conferred on the Governor power, with the consent of his Legislative Council, to make laws for the peace, order and good government of the Colony. It is clear that under a grant from the Crown of such powers the Government of the

Colony can legislate freely, even to the extent of altering the common law and such statutes of the Imperial Parliament as have not been made applicable to the Colony by express words or necessary intendment. This is laid down by the Colonial Laws Validity Act, 1865, which provides, by s. 3, that no Colonial Law shall be inoperative on the ground of repugnancy to the law of England, unless repugnant to a statute so made applicable, or to some order or regulation made under it.

The real question on the appeal is whether the order made against the appellant conformed to the procedure directed by the Ordinance itself. If it cannot be shown to have been in conformity with these provisions, interpreted with the strictness which is required where the liberty of a British subject is concerned, the deportation cannot be justified. Their Lordships have therefore in the first place to turn to the language of the Ordinance, and then to consider how it was applied to the facts in the case.

The Ordinance, which was passed on the 12th October, 1917 followed on previous Ordinances directed to the same general purpose, the exclusion and removal from the Colony of undesirable persons. It is not surprising that for the mixed and varying population of Hong Kong power to effect this purpose should have been thought desirable. The legislation discriminates between foreign and British subjects, but it covers in different forms both classes. Under Section 3, the Governor in Council may summarily issue a deportation order against any person who commits the offence of being in the Colony in breach of a previous deportation order, whether he be a British subject or not. In the case of anyone who, in the opinion of the Governor in Council, is not a British subject, and who has been convicted of an offence in the Colony, he also may be summarily deported, and so may any one not being, in the opinion of the Governor in Council, a British subject, and being in the Colony during the continuance of any proclamation issued under the Peace Preservation Ordinance, 1886, whom the Governor in Council thinks it desirable in the public interest to deport. The procedure prescribed for the classes of case to which Section 4 of the Ordinance relates, are not to apply to cases falling under Section 3, the deportations under which are obviously intended to fall within the administrative powers of the Government, and not to be matters requiring, as under Section 4, a semi-judicial procedure.

Section 4 is different in its character. It provides for the issue of a deportation order if, after an enquiry to be made in a prescribed fashion, the Governor in Council is of opinion that such an order should issue. When the Governor thinks that there are reasonable grounds for enquiry as to whether any person should be deported, he may issue a warrant for his arrest and detention for not more than six days. As soon as conveniently may be after the arrest, the Secretary for Chinese Affairs, or one of the other officers specified, is to interview the person so arrested,

and is to ask him certain prescribed questions, and to record his answers, to be signed by him if he is willing to do so. The report of the answers is to be transmitted to the Colonial Secretary of the Colony. The only one of the questions prescribed that is material for the present purpose is the fourth. It is in a form that begins by setting out what is alleged against the person arrested, and it goes on to ask him whether he has anything to say in answer to the charge, or any reason to give why he should not be deported. When the answer to this question is transmitted with the other answers to the Colonial Secretary, it is to be accompanied by the reports on which the allegations, the subject of this fourth question, were based. By Section 7, the deportation order is to state the grounds on which it is made, and the period during which it is to apply. By Section 13, the decision of the Governor in Council, as to whether any person is liable to deportation, is to be final and conclusive for all purposes. It is obvious, however, that this provision can only apply if the terms of the Ordinance have been complied with. By Section 14, a report is to be made to the Imperial Secretary of State on the making of any deportation order against a British subject.

Sub-section 14 of Section 4 is important, for it provides that the provisions of Section 4 are not to apply at all in the case of a British subject, unless he is (a) a person who in the opinion of the Governor in Council has been guilty of "any criminal offence, or of any other misconduct, connected with the preparation, commencement, prosecution, defence or maintenance of any legal proceeding, or the sharing in the proceeds thereof, or the settlement or compromise thereof, or the obtaining a preparation of evidence in anticipation thereof or in relation thereto." There are two other subheads (b) and (c) in the sub-section, which relate to and include offences committed by British Subjects in relation to bankruptcy and analogous matters, and to the registration of documents, but neither of these sub-heads is material in the present case.

The appellant, who was a natural born British subject, had been employed as Government interpreter in the Police and Supreme Courts for many years. He subsequently entered the service of solicitors practising in the Colony. On the 2nd November, 1917, the Governor made an order for his arrest and detention for six days. On the 21st December, the appellant brought the action out of which this appeal arises. On the 15th January, 1918, the Governor in Council made an order under Section 4 (sub-section 11) of the Ordinance prohibiting the appellant from being within the Colony for the space of fifteen years. The grounds on which this order was made were stated in accordance with Form 7, as required by Section 4 (7), to be that the appellant had made a practice of champerty, the institution of fraudulent claims, the preparation of false evidence, the improper exploitation of litigants, and the

dishonest conduct of litigation and of the proceedings incidental thereto; and that he had been guilty of the following misconduct:—

“(a) Champerty, the institution of a fraudulent claim, and the preparation of false evidence, in connection with O.J. Action No. 247 of 1913, *Un Tak-kwong v. Un Ting Tsun*.

“(b) Champerty and the improper exploitation of litigants in connection with O.J. Action No. 105 of 1912. *Ho Chiu-lam v. Ho Ngok-Lau*.”

The statement of claim in the action was delivered on the 7th March, 1918.

The charges which formed the allegations on which Question 4, already referred to was based, included a further charge as to misappropriation of money collected for costs in another action, but this proved to be unfounded and was not pressed.

The question raised in these proceedings, and the only question on which their Lordships have entertained doubt, is whether it was competent to introduce as one of the charges, and as a ground for the order of deportation, the sweeping allegation that the appellant had made a general practice of champerty, and the other kinds of misconduct charged. It is true that this is followed by two specific instances of champerty and other misconduct, and if these had been given as examples of the general charge, their Lordships do not doubt that upon the explanation proffered being held insufficient, a deportation order could have been pronounced. But it is impossible so to treat this charge; for not only is the general allegation expressed as cumulative to the two particular cases charged in distinction from them as a separate head of charge, and numbered as distinct from the other charges, but in the order itself it is introduced as a separate and distinct ground. If, therefore, by the provisions of the Ordinance a charge is inadmissible in such a form as a ground for making the order, the order itself is vitiated, because it is impossible to say how far the introduction of an inadmissible reason may not have affected the minds of the Governor and his Council. An order which might have been incapable of review the two specific charges, assuming the Governor in Council to have been satisfied that they cannot stand if it even may have been based on a ground which is not a legitimate one on which to proceed in depriving a British subject of his freedom of action. The importance of this consideration is not diminished by the circumstance that the reports made by the Secretary for Chinese Affairs to the Colonial Secretary in accordance with Form 3 have not been produced.

Their Lordships have arrived at the conclusion, notwithstanding the reasons to the contrary contained in the careful judgments of the learned Judges in Hong Kong, that the provisions of the Ordinance do not warrant the making of an Order based upon such a general charge as that under consideration. The Secretary for Chinese Affairs on the 5th November, 1917, interviewed the appellant under Section 4 (6) of the Ordinance

and put to him questions purporting to be in accordance with Form 2 as prescribed. The nature of these questions has been already stated. The appellant objected to the proceedings, denying the truth of the allegations made, specifically as to those numbered 2, and distributed under sub-heads (a) (b) and (c).

Their Lordships are of opinion that it was not competent to make against the appellant, who was a British subject, or to question him in accordance with it, the merely general allegation affecting his character, that he had made a practice of champerty and the other acts of misconduct mentioned. The Ordinance prescribes by Section 4 (14A) as already stated that, in the case of a British subject, its provisions are not to apply unless in the opinion of the Governor in Council, he comes within the category of, *inter alia*, a person who has been guilty of:—

“ Any criminal offence, or of any other misconduct connected with the preparation, commencement, prosecution, defence or maintenance of any legal proceeding, or the sharing in the proceeds thereof, or the settlement or compromise thereof, or the obtaining or preparation of evidence in anticipation thereof or in relation thereto.”

Their Lordships are of opinion that these words describe only a person who has been guilty of a specific offence or specific misconduct on some particular occasion, and cannot be satisfied by showing that there is a person who is merely reputed, however justly, to possess the character of having made a general practice of the sort of misconduct referred to. This being so, for the reason already given, the decision come to by the Governor in Council cannot stand. For it affects the liberty of a British subject in a fashion which the Ordinance, construed strictly as it must be, does not warrant.

Their Lordships will therefore humbly advise His Majesty that the provisions of the Ordinance have not been complied with, and that the judgment of the Supreme Court of Hong Kong, dismissing the action, must be set aside and that a declaration should be made simply that the Order of the Governor in Council of the 15th January, 1918, was invalid. As the contest is one between the subject and the Crown, there will be no order as to costs.

In the Privy Council.

LI HONG MI

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THE ATTORNEY-GENERAL OF HONG KONG
AND OTHERS.

DELIVERED BY VISCOUNT HALDANE.

Printed by Harrison & Sons, St. Martin's Lane, W.C.
1920.