

And then what becomes of the home as a castle if one may not eject an intruding neighbour because of the trespass involved in forcing him back upon his own land? The analogy is reasonably close.

It seems upon reflection questionable whether deportation in the case under consideration does, in any proper sense, involve assumption of extra territorial power on the one hand or trespass on the other. And even if the judgment be upheld upon the minor point of ultra vires, may there not be another side to the main question which would justify the view that a country that permits even unwittingly the passage of a person, be he contract labourer, malefactor or diseased, from its own territory into that of another country whose laws forbid his entrance, must be regarded as having impliedly agreed to the return of the offender to its own territory by the officers of the offended country.

In the former editorial referred to, the deportation law of the United States is charged with involving a breach of the extradition treaty because the malefactor may be forced back to the country whose law he has broken at the will and pleasure of one signatory to the compact who, jointly with another, pledged itself that no criminal should be transferred unless an extraditable offence had been committed. This argument seems to lose sight of the main object of extradition treaties which is to secure extraditions not to restrict them, and if pressed would hold one guilty of breach of contract who should do all that he had agreed and more. These treaties are agreements to hand over persons guilty of certain offences, not agreements not to hand over others, and they leave either party free to purge itself of noxious elements even not named in them.

The determination of the Privy Council will be awaited with interest, and to many it will seem meanwhile that no sufficient reason has as yet been adduced why the judgment of the High Court of Justice should not be over-ruled and the right of the Dominion to exercise within its jurisdiction powers that may produce effects outside sustained.

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