

DOMINION LAW REPORTS

Re LEWIS.
Re HABEAS CORPUS.

ALTA.
S. C.

Alberta Supreme Court, Appellate Division, *Harvey, C.J., Stuart, Beck, Simmons and Hyndman, J.J.A.* June 28, 1918.

CONSTITUTIONAL LAW (§1D-82)—DELEGATED AUTHORITY—OPEN TO REVIEW BY COURTS—INVALID IF NOT WITHIN POWERS CONFERRED—ORDERS IN COUNCIL—HABEAS CORPUS.

Orders and regulations made by virtue of a delegated authority from a legislature are open to review by the courts and are invalid if they do not come within the powers conferred by the legislative enactment, or are inconsistent with the direct enactments of the legislature which conferred the delegated power.

Order in Council passed April 20, 1918, cancelling exemptions granted under the Military Service Act, 1917, held to be *ultra vires*.

[Review of legislation.]

[See annotation on Habeas Corpus, 13 D.L.R. 722.]

APPLICATION by way of habeas corpus for the discharge of the applicant from military custody and service. Application granted. Statement.

A. Macleod Sinclair, for the applicant; James Muir, K.C., for the Minister of Justice.

HARVEY, C.J. (dissenting):—The applicant is 21 years of age and, being unmarried, is a member of Class I, under the Military Service Act, 1917, called for service in the present war. He applied for exemption in accordance with the provisions of the said Act and was granted exemption by the tribunal until he ceased to be employed as a farmer and received a certificate of such exemption from the registrar under the said Act, dated February 15, 1918. On May 8, while still engaged as a farmer, he was notified by the registrar to report for active service. He complied with the notice and was then put in uniform and placed in a military camp, where he alleges he is now detained against his will. Harvey, C.J.

The detention is sought to be justified by virtue of an order-in-council of the Governor-General cancelling all exemptions such as that held by the applicant.

The validity of this order in council is questioned.

It is necessary, therefore, to consider its authority.

The order-in-council purports to be made "under and in virtue of the powers conferred on the Governor in Council by the War Measures Act, 1914, and otherwise."