

D. C. Ross, for the applicant.

J. C. Mitchell, the Immigration officer, opposed the motion.

MIDDLETON, J., in a written judgment, said that the applicant was an Austro-Hungarian, and so an alien enemy. It seemed that at the outbreak of the war he was in the United States of America, for he said that in 1915 he applied for naturalisation in St. Louis, and then declared his intention of becoming a citizen of the United States. After that, he came to Canada, he did not say when or how, and registered as an alien enemy. In violation of the law, he left Canada without an exeat, and on his return was prosecuted and fined. On the 13th December, 1917, he was arrested by the Immigration officer, and under his warrant placed in the gaol at Welland, where he was when the application was made.

Owing to the war, the applicant will not be deported to Hungary, but he may be interned as an alien enemy, or he may be sent back to the United States, if that country is ready to assume his custody. In the meantime, the officer was awaiting instructions from Ottawa.

The application for the writ should be refused:—

(1) Because the applicant is an alien enemy, and cannot without the King's protection sue in this Court.

(2) Because he is not within the proclamation of the 2nd September, 1914, extending protection to alien enemies then residing in Canada.

(3) Because, had he been within the protection of the proclamation, he lost his right by his violation of the terms upon which protection was granted.

(4) Because, under the Immigration Act, 9 & 10 Edw. VII. (D.) ch. 27, sec. 23, the Court is forbidden to interfere with what is done by Immigration officers looking to the deportation of aliens who have not acquired a Canadian domicile in the sense defined.

(5) Because, under the War Measures Act, 1914, 5 Geo. V. ch. 2, sec. 11, the Court has no right to deal with the application without the consent of the Minister of Justice being first obtained.

Reference to *Sylvester's Case* (1702), 7 Mod. 150.

*Motion refused.*