

applicable to such persons under sections 37 or 38 of this Act.

By section 22 it is provided: 'where there is no board of inquiry at a port of entry or at a neighbouring port to which a person detained under this Act could conveniently be conveyed, or to which a case for decision could conveniently be referred, then the officer in charge shall exercise the powers and discharge the duties of a board of inquiry and shall follow as near as may be the procedure of such board as regards hearing an appeal and all other matters over which it has jurisdiction.'

These men each had some cash, and in addition bank drafts (one had an express order) each for \$25, readily convertible into cash and which were converted into cash subsequently to the date of examination by the officer in charge, Mr. Barnstead. The fact of their having the requisite amount of money is not disputed. No contention was made before me on this point. It was expressly conceded and correctly conceded. What is contended is this, that this money was not absolutely the immigrant's. It appears that these three men are experienced steel plate engravers or process workers, and that they have obtained steady employment with Grip, Limited, of Toronto, under written contract to pay them each \$20 per week. They are on their way to Toronto to enter that employ. It also appears that the employer has supplied each with this sum of \$25, no doubt as an advance or loan to be paid out of their wages when they reach Toronto. It is not to be returned to the employer but worked out. Mr. Barnstead thinks apparently that this fact prevents them from being considered the absolute owners of the \$25. In this he is in my opinion wrong. The fact that it was advanced 'to enable them to comply with the requirements of the Order in Council' does not render this money any the less their own. I suppose many of these people who come to this country as immigrants have to borrow money to come, and among other things to enable them to comply with this provision. This was the money of the immigrant—not that of the employer at Toronto who advanced it. There is no pretence that this money was put in their possession and produced by them merely to evade the provision.

Then it may be construed by the statute under which the regulation is made. They 'possessed in their own right this money.' The regulation can go no higher than the statute. If it means more than that there is an excess of jurisdiction. Now, I am referred to the 23rd section of the Immigration Act restricting the power of the court to review, quash, revise, restrain or otherwise interfere with the order of the officer in charge. In my opinion the order of the officer in charge was not made or given under the authority and in accordance with the provisions of the Act relating to the detention or deportation of any rejected immigrants.'

Hon. members will remember that that provision of the Act sets forth that the courts shall not interfere where the proceedings have been taken according to the provisions of the Act. (Reading):

In the first place, he has not proceeded in accordance with the Act, but all provisions of that kind are subject to this condition, that the tribunal must have jurisdiction.

In a case in which I think the officer in charge was so obviously wrong I feel justified in being technical. This is the order of an inferior court.

On the face of this order—

He was speaking of the order of deportation—

—there is nothing to show that Mr. Barnstead had jurisdiction, namely, that there was not a board of inquiry here or at a neighbouring court of entry under section 22. And it is not until that appears that Mr. Barnstead has jurisdiction.

There is no presumption in favour of the inferior tribunal. Then section 17 requires the decision of the board rejecting the immigrant to be in writing and this section also required a record of the proceedings to be kept. How is the minister to dispose of the appeal unless he has these things. And by section 22 the officer in charge is to follow as nearly as may be the procedure which a board is required to follow. In my opinion the three persons detained should be discharged.

(Sgd.) Wallace Graham,
J. S. C.

Halifax, March 29, 1913.

So that these men were released by legal process. As hon. gentlemen will notice, the judge takes the position that all the requirements of the Act were not complied with by the officers; therefore the officer had no jurisdiction, and the procedure was not according to the provisions of the Act. He held that the officer had no jurisdiction, but that he, the judge, had power to release those who were imprisoned. He also held that the money belonged to each individual immigrant even under the circumstances.

Sir WILFRID LAURIER: As I heard the opinion of Mr. Justice Graham, he held that it had not been shown that a board of inquiry had not been established, and consequently that the officer had no jurisdiction.

Mr. CROTHERS: There was no evidence that there had been any board. But he finds that, within the meaning of the Act, on the money loaned, an immigrant had a perfect right to come through. He points out the difference between lending a man money and giving it to him for a few minutes or an hour and then getting it back from him. If the judge is right that this money was simply a loan and that, while it was in the possession of the immigrants it was their own money within the meaning of the regulations and that therefore these men could not be deported, we could not deport the men that are in Toronto now. I do not know what evidence was adduced before the clerk of