

## [HIGH COURT OF AUSTRALIA.]

THE KING v. LINDBERGH: EX PARTE JONG HING.

THE KING v. LINDBERGH: EX PARTE JONG NIE.

*Habeas Corpus—Immigration Restriction Act 1901 (No. 17 of 1901), sec. 3, sub-sec. (n)—Prohibited immigrant—Exceptions—Person formerly domiciled in colony.* H. C. OF A. 1905.

Two Chinese, who alleged that they had formerly resided for several years in Victoria, and had left that colony on a visit to China, were, on their return, prevented from landing in Melbourne by the Commonwealth officer appointed under the *Immigration Restriction Act 1901* to examine persons suspected of being prohibited immigrants. They were detained in custody on board the ship in which they had arrived, and, when the ship called at the port of Sydney on its return journey to China, applications were made on their behalf to the High Court for writs of *habeas corpus* directing the captain of the ship to bring the applicants before the Court to be dealt with according to law. The writs were directed to be issued, and on their return by the captain with the bodies of the applicants, no one appeared to oppose their discharge.

*Held*, that *prima facie* they were entitled to be at liberty, and that, as no one appeared to show cause why they should be kept in custody, the Court was bound to order their discharge.

*Habeas corpus.*

The applicants were two Chinese who had been brought from Hong Kong on board the s.s. *Tsinan*. They wished to land at Melbourne, but had been prevented from doing so by the officer appointed under the *Commonwealth Immigration Restriction Act 1901*. They claimed to be entitled to land, as coming within the exception in sub-sec. (n) of sec. 3 of that Act, which provides that "any person who satisfies an officer that he has formerly been domiciled in the Commonwealth or in any colony which has become a State" shall be excepted from the class of "prohibited immigrants." The officer refused to allow them to land on the ground that they were *prima facie* prohibited immigrants under sub-sec. (a), and had not satisfied him that they were persons who

SYDNEY,  
Sept. 21, 22.

Griffith C.J.,  
Barton and  
O'Connor JJ.

H. C. OF A. had formerly been domiciled in the Commonwealth or any colony.  
 1905. The respondent Charles Lindbergh, captain of the s.s. *Tsinan*, there-  
 { upon kept them in his custody on the ship and sailed with them  
 THE KING v. still on board on the return journey to Hong Kong. On the way  
 LINDBERG : the ship put in at the port of Sydney, and applications were made  
 EX PARTE to the High Court on behalf of the applicants, for writs of *habeas*  
 JONG HING. *corpus* directed to the respondent calling upon him to produce  
 THE KING v. the applicants to the Court and to show cause why they should  
 LINDBERG : not be discharged from custody.  
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Affidavits were filed on behalf of the applicants which were practically to the same effect in each case. From them it appeared that the applicants had arrived in the colony of Victoria in 1898, and had settled at or near Caulfield in that colony, where for several years they had carried on the occupation of market gardeners. About July, 1902, they returned to China for the purpose of visiting their relations there, and with the intention of returning to Victoria. They were delayed in China longer than they had originally expected, and did not return until September, 1905, when they both took passages on the s.s. *Tsinan* from Hong Kong to Melbourne. On reaching Melbourne they were identified by several of their countrymen resident in Melbourne and by a European who had known them well during their residence in Victoria previously. All of these persons made affidavits to the effect stated. The officer refused to allow them to land on the grounds already mentioned.

The applications were made separately.

*James*, for the applicant in each case. The officer should have been satisfied on the evidence that the applicants were domiciled in Victoria within the meaning of sub-sec. (n). Domiciled should be taken to mean residing permanently, in the popular sense: *Davies v. Western Australia* (1). The officer is bound to act reasonably in accordance with the evidence adduced. His conduct must be subject to control by the Court. [He referred to *United States v. Chung Fung Sun* (2); *Maxwell on Interpretation of Statutes*, 3rd ed., p. 172; *Lee v. Bude and Torrington Junction Railway Co.* (3).]

(1) 2 C.L.R., 29.

(2) 63 Fed. R., 261.

(3) L.R. 6 C.P., 576.



The Court directed that a writ of *habeas corpus* should issue in each case, returnable the following day. At 2.30 p.m. on the next day the respondent appeared in person with the bodies of the applicants, and returned the writs with an endorsement to the effect that, in obedience to the order of the Court, the bodies of the applicants were brought up to be further dealt with according to law. There was no appearance for the Commonwealth to show cause.

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*James*, for the applicants, moved that they should be discharged, as there had been no reason shown for keeping them in custody.

*Per curiam.* *Primá facie* every man is entitled to be at liberty, and therefore, unless some reason is shown why a person in custody should remain there, he ought to be discharged. The applicants have been brought up to be dealt with according to law, and no one appears to show cause why they should be kept in custody. We have therefore no alternative but to order their discharge.

*Orders accordingly.*

Solicitor for applicants: *H. Peden Steel.*

C. A. W.