

[HIGH COURT OF AUSTRALIA.]

THE KING

AGAINST

WILSON AND ANOTHER;

EX PARTE KISCH.

H. C. OF A. *Immigration—Prohibited immigrant—Dictation test—“An European language”—*
1934. *Scottish Gaelic—Immigration Restriction Act 1901 (No. 17 of 1901), sec. 3 (a)*—*
Immigration Restriction Amendment Act 1905 (No. 17 of 1905), secs. 4, 5—*
SYDNEY, *Immigration Act 1901-1933 (No. 17 of 1901—No. 37 of 1933), secs. 5, 7.*

Dec. 17, 18,
19.

Rich, Starke,
Dixon, Evatt
and McTiernan
JJ.

The expression “an European language” in sec. 3 (a) of the *Immigration Restriction Act 1901*, means a standard form of speech recognized as the received and ordinary means of communication among the inhabitants of an European community for all purposes of the social body.

Held, by Rich, Dixon, Evatt and McTiernan JJ. (Starke J. dissenting), that Scottish Gaelic is not such a language.

* The *Immigration Restriction Act 1901* provides:—By sec. 3: “The immigration into the Commonwealth of the persons described in any of the following paragraphs of this section (hereinafter called ‘prohibited immigrants’) is prohibited, namely:—(a) Any person who when asked to do so by an officer fails to write out at dictation and sign in the presence of the officer a passage of fifty words in length in an European language directed by the officer.”

The *Immigration Restriction Amendment Act 1905* provides:—By sec. 4:—“Section three of the Principal Act is amended—(a) by omitting the whole of paragraph (a), and inserting in lieu thereof the following paragraph:—“(a) Any person who fails to pass the dictation test: that is to say, who, when an officer dictates to him not less

than fifty words in any prescribed language, fails to write them out in that language in the presence of the officer.

No regulation prescribing any language or languages shall have any force until it has been laid before both Houses of the Parliament for thirty days and, before or after the expiration of such thirty days, both Houses of the Parliament by a resolution, of which notice has been given, have agreed to such regulation.” By sec. 5: “Until a regulation prescribing any language or languages under section three of the Principal Act as amended by this Act shall come into force, any language authorized by section three of the Principal Act before the commencement of this Act shall be deemed to be a prescribed language within the meaning of that section as so amended.”

ORDER NISI for prohibition.

Upon an information, laid under sec. 7 of the *Immigration Act* 1901-1933, by Richard William Wilson, an officer of the Customs Department, Egon Erwin Kisch was charged before a magistrate that he was "an immigrant who has entered the Commonwealth within five years before failing to pass the dictation test, and that within five years after he had entered the Commonwealth, namely, on 16th November 1934, he was required at Sydney aforesaid to pass the dictation test within the meaning of the *Immigration Act* 1901-1933, and on such last-mentioned date was found within the Commonwealth in contravention of the *Immigration Act* 1901-1933, contrary to the Act in such case made and provided."

Kisch, a national of Czechoslovakia, travelled from Europe to Sydney by the s.s. *Strathaird*. On 16th November 1934 a rule absolute was made by *Evatt J.* for a writ of habeas corpus directed to the master of the *Strathaird* for the purpose of procuring Kisch's release from that vessel (see *R. v. Carter; Ex parte Kisch* (1)). Subsequently to those proceedings Kisch, who a few days previously had met with an injury to one of his legs, was on the same day carried on a chair, by stewards employed on the vessel, from the vessel and placed on the roadway at Circular Quay West, Sydney. He was there told by the informant that he was to be conveyed to the Central Police Station, where he would be required to write out a passage of not less than fifty words in the Gaelic language, and that if he failed to do so he would be charged with being a prohibited immigrant found within the Commonwealth. At the police station he was again told that he would be required to write out a passage of not less than fifty words in the Gaelic language, and that if he failed to do so he would be charged with being a prohibited immigrant found within the Commonwealth. He was told that a passage consisting of seventy words would first be read to him, and that on the second reading of the passage he would be required to write it out on the paper supplied to him for that purpose. After making an attempt to write what was read to him by a police constable, he declined to proceed. In evidence the police constable who administered the dictation test said that the Gaelic so read was Scottish

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Gaelic. The police constable and another witness tendered in support of the information, both of whom were born in the north of Scotland and lived there during their youth, said that Scottish Gaelic was then and still is spoken by about one-third of the people resident in the northern and western parts of Scotland, and in the western islands. They admitted that they did not now have a complete knowledge of Gaelic. Census figures put in evidence showed that in 1891, the population of Scotland was 3,721,000, and that the speakers of Gaelic only, numbered 43,000; that in 1931 the population was 4,588,000, and speakers of Gaelic only, 6,000. In 1891 bi-linguists, Gaelic and English languages, numbered 210,000; in 1931, they numbered 129,000. By far the greater number of persons shown throughout that period as being speakers of Gaelic were residents of the northern and western parts of Scotland, and of the western islands. It was shown that as compared with 1891 there was at the time of the census in 1931, a decrease in the population of Argyleshire of 22,355; in the population of Inverness-shire of 51.5 per cent; and in the population of Ross and Cromarty of 55.4 per cent; and that there was also a pronounced decrease in the population of the western islands.

The magistrate found the information proved, convicted the defendant, and sentenced him to be imprisoned with hard labour for a period of six months.

Kisch obtained a rule nisi from the High Court for a writ of prohibition calling upon the informant and the magistrate to show cause why they should not be restrained from further proceeding upon the conviction, upon the grounds, *inter alia*, (a) that the evidence disclosed no offence; (b) that the conviction was bad and contrary to law; (c) that there was no evidence or no sufficient evidence to support the conviction; (d) that the magistrate was in error in holding that the words read to the defendant were in an European language within the meaning of sec. 3 (a) of the *Immigration Restriction Act 1901*; (e) that according to the evidence the police constable who administered the dictation test could only speak some words in the northern sub-dialect of the Scotch dialect of the ancient Gaelic language; and (f) that there was no evidence that the form of speech was a form of speech officially recognized

by the Government of the United Kingdom, or by the Government of the Commonwealth, or by any Government of Europe.

The matter now came on for hearing.

Piddington K.C. The history of the legislation dealing with immigration is shown in the *Australian Encyclopædia* (1926), vol. i., pp. 653 *et seqq.* The expression "an European language" in sec. 3 (a) of the *Immigration Restriction Act* 1901 does not mean a pan-European language, nor does it mean "any" language that is spoken in any part of Europe. The forms of speech are many and varied, e.g., standard dialect, patois, jargon, argot, and "pidgin" English. The difference between languages and dialects is universally recognized. A dialect is a form of speech used, usually, by the people of a comparatively small district as opposed to that used by the nation as a whole, or by the people of a country defined by political boundaries. In any country, using the word country in its ordinary sense, there is, usually, only one language, but many dialects (*Max Müller on the Science of Language*, 9th ed. (1877), vol. i., pp. 52, 53; *Chambers Encyclopædia*, (1908), vol. 3, p. 786; (1924), vol. 3, p. 792). The expression "an European language" means a standard or received national language of any country in Europe however small or however large; the language which in any such country is used in its commercial, diplomatic, political and governmental activities. In any country there is only one standard language (*Encyclopædia Britannica*, 11th ed. (1911), vol. xvi., p. 179). The standard language of the United Kingdom, of which Scotland forms part, is the English language. What constitutes a language is shown in *Graff on Language and Languages* (1932), pp. 321 *et seqq.* Scottish Gaelic is a dialect only of the Gaelic language, and is itself composed of various dialects (*Encyclopædia Britannica*, 11th ed. (1910), vol. v., p. 617). Scottish Gaelic differs from the Gaelic spoken and used in Ireland. In the Irish Free State official recognition is given to the English language. Gaelic, whether Scottish or Irish, is not a language; it is a form of speech used slightly in undefined districts of the United Kingdom. Gaelic is not a "living" language, therefore it is not "an European language" within the meaning of the section. The dictation test was not

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properly administered (*Potter v. Minahan* (1)). Only when about to be examined was the applicant informed that the test was to be in Scottish Gaelic ; prior thereto, he had, on two occasions, been informed that the test was to be in Gaelic. This fact rendered the test illegal. The officer who administers a dictation test under the Act should himself be competent to conduct that test. The evidence indicates that the officer concerned here did not have a reasonable knowledge of Scottish Gaelic or Gaelic. There is not any evidence that the passage read was either of those two forms of speech. The facts do not support the charge that the applicant contravened the provisions of sec. 7 of the *Immigration Act*. The information is open to the objection that either it alleges two offences, or it contains no allegation which brings the applicant within the ambit of sec. 7. There are not any averments which relieve the prosecution of proof. The allegations are not averments ; they are what the informant proposes to contend (*Ah You v. Gleeson* (2)). There is not any evidence that the applicant entered, or was found within, the Commonwealth in contravention or evasion of the Act. Questions for consideration are : What is meant by the word “ found ” ? ; does the fact of failing to pass a dictation test result automatically in a person being “ found ” within the Commonwealth in contravention of the Act ? The facts show that the applicant’s entry into the Commonwealth was not made voluntarily (*Chia Gee v. Martin* (3)).

[STARKE J. He came into the territorial waters of the Commonwealth of his own volition.]

It was after the involuntary entry that he was alleged to be a “ prohibited immigrant ” found within the Commonwealth in contravention or evasion of the Act. The provision in sec. 5 of the Act relating to dictation tests is not a proper exercise of the immigration power. The punitive provision is invalid.

H. E. Manning K.C., A.-G. for New South Wales, and *Watt* K.C. (with them *A. R. Taylor*), for the respondents, were requested to first address the Court on the question of the language. The officer who administered the test stated in evidence that he was familiar

(1) (1908) 7 C.L.R. 277.

(2) (1930) 43 C.L.R. 589.

(3) (1905) 3 C.L.R. 649, at pp. 653, 654.

with the language used for that purpose. He and others testified that to their knowledge it is a language known as Scottish Gaelic, and that it is still used in parts of Scotland. It has not been suggested that Scottish Gaelic is not an "European" language. In construing the expression "an European language" the Court is not required to examine the matter philologically or lexicographically. It is a matter in relation to the immigration power of the Commonwealth, and it is by the language only that the Court should be guided. The function of the Court in examining a matter of this nature is as shown in *R. v. Macfarlane; Ex parte O'Flanagan and O'Kelly* (1). The question whether the test was administered in a language which is "an European language" is largely one of degree. This position stands out: (a) Scottish Gaelic is a language of European origin; (b) it has a locality, that is, in Scotland; (c) that it is in existence and has been continually in existence from the time it was first spoken until now; (d) that it is spoken by a substantial number of people; (e) it is a language which forms part of the curriculum of the Edinburgh University; and (f) statutory recognition as a language was accorded to it in England in 1931. There is not any essential difference between a dialect and a language (*Chambers Encyclopædia*, (1924), vol. 3, p. 792). The words "language" and "dialect" as used in philological works are interchangeable terms, because at some stage in historical times all languages were more or less dialects (see *Encyclopædia Britannica*, 11th ed. (1910), vol. v., p. 612; *Skene's Celtic Scotland*, (1877), vol. II., pp. 463, 464; *Chambers Encyclopædia* (1908), vol. 5, p. 50). By not defining the expression "an European language" the Legislature retained the right to apply an arbitrary test. The statutory provision was designed, primarily, for the exclusion from the Commonwealth of Asiatics, the underlying motive being the preservation of a "white" Australia. The question whether Scottish Gaelic is "an European language" must be determined as at the date of the passing of the Act. Its more restricted use since that date is not disproportionate to the decrease in the population of the districts where it was, and is, in use. Having regard to the large number of persons who have, during many years

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(1) (1923) 32 C.L.R. 518, at p. 553.

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past, emigrated from Scotland, and to other circumstances, census figures and other statistics compiled in respect to this matter are apt to be misleading. The Act should be construed according to the popular application of the English language. So construed Scottish Gaelic is "an European language." It is a language which is European in origin, had, and has, a settled habitation in a part of Europe ; and is used as their mother tongue by the people of that part despite the various influences brought against it. It is a "living" language.

The following judgments were delivered :—

RICH J. This is an appeal from a Court of Petty Sessions exercising Federal jurisdiction. The appellant was convicted upon an information laid under sec. 7 of the *Immigration Act* 1901-1932 charging him that being a prohibited immigrant he was found within the Commonwealth in contravention of the Act. To establish that he was a prohibited immigrant the information relied on sec. 5, and alleged facts to bring him within sub-sec. 2 of that section, namely, that he was an immigrant, and that within 5 years after he had entered the Commonwealth he was required to pass the dictation test and failed to do so. The dictation test is defined by sec. 3 (a) which provides that the immigration of a person is prohibited who fails to pass the dictation test, that is to say, who, when an officer or person duly authorized dictates to him not less than fifty words in any prescribed language, fails to write them out in that language in the presence of the officer or authorized person. No regulation has been made prescribing a language. But by sec. 5 of the *Immigration Restriction Act* 1905 it is provided that until a regulation is made prescribing a language, any language authorized by sec. 3 of the Act of 1901 shall be deemed a prescribed language. That section authorizes the officer to require the immigrant to write out at dictation a passage of 50 words in length in an European language. In the present case, as the appellant landed from the ship in which he had come from Europe, he was met by an officer who took him to a police station for the purpose of administering the dictation test. The officer there read to the appellant a piece of Scottish Gaelic. The officer, who had learned to speak Scottish Gaelic as a child in

northern Scotland but had not used it in adult life, had apparently a very poor vocabulary and a fading recollection of the manner in which it was spoken. The appellant who knew little or nothing of Gaelic, after making some attempt to write what was read, declined to go on. The first question raised upon this appeal is whether Scottish Gaelic is a language authorized by sec. 3 (a) of the *Immigration Act* 1901. In that provision it is noticeable that a "passage" is to be read in the European language for the immigrant to write out. It is apparent that the language must be one in which written expression is usual or common. Further, the provision seems to be intended to present the appearance of imposing a standard of education in some language of a kind which desirable immigrants into this country should know. Beyond this the context gives little help. If the provision were addressed to philologists, the expression "European language" might be taken to include any systematic form of utterance for the communication of ideas habitually used by people who in historical times have dwelt in Europe. If it possessed this meaning, it would include all the innumerable variations of speech which occur in recognizable forms going by gradations from anything which could be distinguished as a definite dialect up to completely separate languages. But the provision is not addressed to philologists. It is dealing with the practical subject of immigration from abroad, particularly from other nations. It ostensibly provides a test against illiteracy and against ignorance of European speech. I think it would be unreasonable to hold that every distinguishable form of speech which has a home in Europe can be resorted to for the purpose of asking the immigrant to write at dictation a passage of fifty words in length in an European language. The expression "an European language" means a standard form of speech recognized as the received and ordinary means of communication among the inhabitants in an European community for all the purposes of the social body. Scottish Gaelic is not such a language. Census figures show that it is the speech of a rapidly diminishing number of people dwelling in the remoter highlands of Scotland, and the western islands. It is not the recognized speech of a community organized politically, socially or on any other basis. There are very few indeed who now use it as their only tongue and

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not many, comparatively speaking, who speak it in addition to English. No doubt it is a division of the Celtic branch of the Indo-European languages. It may excite the interest of scholars, and perhaps the enthusiasm of the descendants of the Gauls, but in ordinary practical affairs it plays no greater part than a local dialect might. I do not think it is within the fair meaning of sec. 3 (a) of the Act of 1901. As this ground is enough to dispose of the appeal, it is unnecessary to go into the other objections which have been raised.

The appeal should, in my opinion, be allowed.

STARKE J. In my opinion, Gaelic is a European language within the meaning of the section. It is necessary to bear in mind the golden rule of construction, that we should give words their grammatical and ordinary sense, unless the context limits that sense, or unless there is something in the Act in which they occur inconsistent with it. The only context here is found in the title of the *Immigration Restriction Act 1901-1910*. It is "an Act to place certain restrictions on Immigration and to provide for the removal from the Commonwealth of prohibited Immigrants." The words suggest that an European language must be a language of European origin, as distinguished from Asiatic, or any other; and also that it must be a language spoken and used in Europe—which, of course, includes the British Isles.

There is no doubt, from a philological point of view, that Gaelic would be regarded as a European language. But I do not think that is a test, or any reason for saying that it is within the meaning of the *Immigration Restriction Act*. I look to the origin and the use of a language in European countries. Gaelic is one of the forms of language—in fact one of the oldest forms of language—that have been used by the people of the British Isles on both sides of the Irish Sea; it is much older than English. Irish Gaelic, or Erse, is to-day an official language of the Irish Free State. Scottish Gaelic is the language of a very considerable part of Scotland—the Highlands and the isles of Scotland. Irish Gaelic and Scottish Gaelic are derived from the same source and are variants—or perhaps we may say dialects—of the same language. It is quite true that English, for

political, social, and business purposes, has largely supplanted them. But Scottish Gaelic is nevertheless a language used by a large number of people closely associated together in Scotland. In 1901, when the *Immigration Restriction Act* was first passed, nearly a quarter of a million people in Scotland spoke this language, and of these about thirty thousand persons spoke no other. If at that time Gaelic was a European language—as I think it was—how has it ceased to fall within that description? It is still a living tongue written and spoken in Scotland. It also has a definite form and considerable literary value. The scriptures have been translated into this tongue, and there are several hundred other publications in which it is employed. Chairs or lectureships have, I understand, been endowed in the Scottish universities for the study of the language. It is used as a means of instruction, both for spiritual and temporal purposes, in the Gaelic speaking parts of Scotland. It is also used by the people of those parts as an ordinary method of communication between themselves for all the purposes of their daily lives.

The decision of this Court sets up no rule or definition by which anyone can know what is a European language; its standard is indefinite, and apparently the reasoning by which the conclusion is reached that Gaelic is not a European language is inconsistent and contradictory.

DIXON J. I have found this case a matter of difficulty. In my view it depends upon the interpretation of the short phrase “an European language.” The expression occurs in association with words which throw some, but not a great deal of, light upon its meaning. These words show that it must be a language which is commonly expressed in written form embodying passages of literature, for a passage must be read in it. From the substance of the enactment and its subject matter more assistance may be obtained. These show that the language resorted to is to be taken, ostensibly at least, as a test of fitness of the person to whom the dictation test is administered to take his place in an organized British community. The difficulty of determining with what connotation the expression is used in the *Immigration Restriction Act* will be understood by those

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familiar with the extraordinary diversity of closely related forms of speech. The problem whether a differentiation between two such forms of speech is so great as to constitute separate languages must be one of degree. Does every identifiable form of speech prevalent in any locality of Europe constitute a European language within the meaning of the provision ? I am very much alive to the difficulty of attaching a definite meaning to these words which will be satisfactory and which will accord with the probable intention of the Legislature. No doubt the Legislature did not itself sufficiently advert to the many uncertainties involved in the expression it used. I have come to the conclusion, although not without some hesitation and doubt, that Scotch Gaelic does not fulfil the requirements of the definition which I would attach to the words. It appears to me that the objects which the Legislature had in view would not be furthered by attaching to that expression a meaning which is arrived at by disintegrating the phrase into its component words and asking oneself, first—is it a language ? and then, is it European ? Indeed each of these questions by itself has difficulties of its own. For instance, when a form of speech ceases to be a dialect and becomes a language is a question only of degree. It depends more on the proper use of the terms “dialect” and “language” than on any logical distinction. Again, whether a language is European probably depends upon the place of its origin, but what is the place of origin of a language involves a question of the history of language, as well as a question of the meaning with which the term “origin” is used. The rules of interpretation require us to take expressions in their context, and to construe them with proper regard to the subject matter with which the instrument deals and the objects it seeks to achieve, so as to arrive at the meaning attached to them by those who use them. To ascertain this meaning the compound expression must be taken and not its disintegrated parts. I am disposed to think that it means here to convey that a test is provided for immigrants depending upon a proper familiarity with some form of speech which in some politically organized European community is regarded as the common means of communication for all purposes, either throughout the whole body or throughout a complete society, if the political organization is composed of more than one community

of people. The provision means to supply that test as one which might properly be laid down by the Legislature for intending immigrants, however afterwards it might be applied in administration.

Adopting such a test, it appears to me that the Gaelic language has been shown to be at the present time an ancient form of speech spoken by a remnant of people inhabiting the remoter portion of the British Isles. Scottish Gaelic has also been shown to be quite a distinct form of speech from Irish Gaelic and other Celtic forms, and to have a separate identity which would make it not proper to treat it as merely a dialectical form of a general speech which is spoken on both sides of the Irish Sea. The remnant of people who speak this language is fast diminishing. If it were relevant to ascertain what the Legislature would have thought about Scotch Gaelic, if, in 1901, it had adverted to the question we have to decide, it might be right to look at the figures of the census of 1901 showing how many spoke it. But I do not think the date of 1901 is the period to be looked to for the purpose of inquiring whether Scotch Gaelic is now a language which properly answers the meaning we have assigned to the expression "an European language" in the *Immigration Restriction Act*. What are the attributes which the expression connotes, depends upon the general meaning which, of course, it possessed in 1901. But whether a particular form of speech possesses those attributes depends upon the facts and circumstances now affecting that form of speech. The figures show that, whilst it may be true that the areas of the country in which it is spoken have not been diminished so that it cannot be said that English, as an invader of the territory, has driven it back into narrower confines, yet within those areas there are very few people indeed who use that speech as their sole means of communication with their fellows. The inference appears to me to be very strong that in a modern community it has not been found a practicable medium for carrying on the affairs of daily life. People, who might otherwise have been able to preserve it, are called upon to mix in a society which either will not or cannot use it as a common means of communication. It is a speech which probably contains a vocabulary ill-fitted to deal with modern conditions. It is spoken by a people who appear to lead somewhat special lives, and do not move about and mix in the general life of

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the whole community in Great Britain. In the Law Courts it is not a recognized form of speech, nor is it for any official purposes, though, of course, its existence is officially acknowledged as a fact. All these circumstances lead me to think that we cannot treat the matter philologically, and, because so treated it is a language, hold that the dictation test may be administered in it. The matter must be treated practically. Although it is quite untrue philologically to say that it is a dialect of some other standard speech, yet it is correct that in the British community it takes the same place and serves the same practical purpose as one of the more highly differentiated and persistent dialects spoken in the various English counties might take. It appears to me, therefore, that this speech spoken by so few people can be described as a European language only philologically, and that in the ordinary course of discussion of such a matter as educational tests for immigration it would not be understood as answering the meaning of the expression "an European language."

I do not think it is necessary to consider the other questions which have been raised. Upon the ground I have stated, I think the appeal should be allowed.

EVATT J. I agree with what my brothers *Rich* and *Dixon* have said as to the question whether the dictation test was applied in "an European language." It seems to me that the Legislature intended to describe one of the recognized or standard languages of modern Europe, and did not intend to include such languages as Scottish Gaelic.

There is no satisfactory definition of a European language of to-day which includes a form of speech not used to-day *in common* by a European nation, people, or race. The official census figures referred to by Mr. *Piddington* show clearly that Scottish Gaelic is no longer a speech used *in common* by the people of Scotland, or by the Scottish nation or race.

Two striking facts are shown by such census figures. First, in 1931, only 6,716 out of 4,588,000 residents of Scotland spoke *Gaelic only*, i.e., less than one person in 600. Such a percentage is so small as to be negligible. Second, those who speak *Gaelic only* seem to be restricted to the people of the Western Isles. In 1891, 43,000 out of

159,899 islanders, i.e., about 27 per cent, spoke Gaelic only, but, in 1931, 6,716 out of 124,796, i.e., only about five per cent, spoke Gaelic only. These two facts reinforce the conclusion that the only language spoken in Scotland to-day which answers the statutory description is the English language itself. The fact is that, as a result of the policy adopted in the past by British Governments, Scottish Gaelic has been successfully deprived of effective *general* currency in any part of the United Kingdom.

I was also impressed by Mr. *Piddington's* argument as to the international aspect of the question. It cannot be denied that, in the *Immigration Act* dictation test, the Australian Parliament represented to the Governments and nationals of all other countries that exclusion from Australia would be the result of an elementary dictation test limited to those languages which the Governments of the world would immediately recognize as an accepted or standard language of modern Europe. Scottish Gaelic is not such a language.

It is not correct to assert that the various Governments would readily understand the test to be illusory. No doubt, by selection of one language as against others, an immigration official might be enabled to cause the immigrant to fail in the test. But it was postulated that every language within the choice of the officer would have to be a "European language."

In the result, therefore, it becomes unnecessary to deal with the constitutional question which was argued, or with the interpretation of sec. 7 (1) of the *Immigration Act*, especially in its relation to sec. 5 (2), or with the application of sec. 7 (1) to the facts of this case.

McTIERNAN J. The case is not free from difficulty. I agree with the definition of the term "an European language" as used in the *Immigration Acts*, which has been stated by my brothers *Rich* and *Dixon*. It would not be useful to formulate that definition in another set of words. There is not, in my opinion, sufficient proof that Scottish Gaelic answers that description.

The appeal should be allowed.

Appeal allowed.

Solicitors for the applicant, *C. Jollie Smith & Co.*

Solicitor for the respondents, *W. H. Sharwood*, Commonwealth Crown Solicitor.

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