

CIVIL LAW INVOKED BY INTERNED ALIEN

Counsel for Bukowinian Asks Writ of Habeas Corpus for Client

CROWN OPPOSES DEMAND

Ontario Judgment Cited as Precedent—Plaintiff's Char- acter Questioned—Case Under Advisement

Questions involving the powers of the military authorities to intern aliens whom they think are dangerous or liable to be dangerous, to the safety of Canada were raised before Mr. Justice MacLennan in the Practice Court yesterday afternoon, when a writ of habeas corpus was asked in the case of an interned Austrian, calling on Major W. E. Date, provincial provost marshal, to show cause why the man should be interned.

Mr. Donat Brodeur represented the plaintiff, one Mihai Gusetu, a native of Bukowina, Austria, while the Crown was represented by Mr. E. Fabre Surveyer, K.C., who had a hand in drawing up the federal law passed at the emergency session of Parliament last summer, when the act which Major Date is seeking to enforce was passed.

Mr. Brodeur contended that his client was entitled to the protection of the habeas corpus, claiming that he was a peaceful citizen, had been living in Canada for twelve years, had been a caretaker in a hall in Montreal for one year, and that his internment had come about in connection with the fact that there was owing to him \$575 in wages from his employers, for which he had entered action. Mr. Brodeur also pleaded that while Bukowina was an Austrian province, the people there, like his client, were really Roumanians, and that they were favorable to the Allied cause, as was Roumania. He contended that the habeas corpus had not been suspended in Canada; that his client was not a prisoner of war, not having been captured on a battlefield, but merely happening to have been living here when war broke out. He concluded that the man could be liberated without any injustice to the country, and without any danger. He further contended that there was pressure being used to keep the man interned, as he (Mr. Brodeur), in acting for some of these aliens, had always found the federal authorities very generous, and willing to allow men their liberty when reason was shown.

Mr. Surveyer pointed out the serious results involved in the present application.

"This present case is of vast importance," he said, "because if the petitioner in this case is entitled to a habeas corpus—if the officers of the Government are obliged to show cause for keeping him—there is not one prisoner here, or in any of the internment camps of Canada, who cannot make a similar demand."

PRECEDENT IN TORONTO.

So far there had been only two such applications, one in Winnipeg, the other in Toronto, and Mr. Surveyer dealt at length with the Toronto case, where an Austrian had applied before Chief Justice Meredith, of the Common Pleas Division, High Court of Justice, for a writ of habeas corpus, and had been refused. In that case, too, the applicant had been a British subject, or a naturalized citizen, but in the case of Gusetu there was no such claim; furthermore, the man had not even obtained the ordinary certificate issued by the registrar enabling aliens to continue their peaceful occupations under certain conditions.

In the Toronto case, said Mr. Surveyer, and he relied on this judgment largely, Judge Meredith had remarked that in extraordinary times extraordinary measures were needed. The purpose of the legislation passed by the Federal Government, thought Judge Meredith, had been intended in the nature of a blanket law, allowing the ministers to do what could be done ordinarily by Parliament for the safety of the country. It had been intended to delegate all possible powers. The prohibition in the law went so far even as to prohibit trial. His Lordship had found. It was immaterial what the judge might think of the wisdom or unwisdom of the law, continued the Meredith judgment, or the administration of that law, as long as it was in good faith. In time of war it was necessary to be careful not to hamper the officers of the Government. Judge Meredith also stated that in time of war the benefit of the doubt, as in ordinary times, could not be given to the prisoner, even though private individuals might suffer, for private wrongs could be righted after the war, but defeat could only bring misery.

Following the presentation of this precedent, Mr. Surveyer contended that the petitioner was a prisoner of war, and he referred to the case in England where some German prisoners, civilians, had tried to escape from an internment camp and had been shot. The verdict had been that they were prisoners of war trying to escape.

RIGHT OF SUBJECT ONLY.

Mr. Surveyer then touched on the habeas corpus itself, and contended that it had always been held to be a means for the benefit of the subject, not of aliens, though perhaps used in that way. The writ was one, quoted he, where the King would inquire into the causes why one of his subjects was being deprived of his liberty, but such a case was not before the court at present. Furthermore, he contended that the habeas corpus was suspended whenever there was a state of war, not necessarily by declaration, but in effect.

His Lordship—"This being done under the legislation of last August, I am being asked to pass upon the actions of officers carrying out the law."

Mr. Surveyer touched on the two organizations working to enforce the law, namely, that of Colonel Sherwood, under whom Major Date acted, and that of the registrar, under the minister of justice directly.

Since Mr. Brodeur had gone into personal questions regarding the petitioner in the case, Mr. Surveyer did likewise, and denied the good character given the man by his counsel, stating that he had a bad record, having been fined in the Recorder's Court. It was evident also, said he, that he must during the last year have been getting money from some source, for he had lived, and managed to drink considerably, although he had not been paid \$575 of his salary. The

money must have come from somewhere.

Mr. Brodeur objected to these statements and denied them, saying that there were no such matters before the court.

His Lordship remarked that the record was sufficient for him, and took the case under advisement, judgment to come during the week.