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Supreme Court of Canada

Cour suprême du Canada

START OF FILE

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Supreme Court of Canada | Cour suprême du Canada

INVENTORY OF FILE CONTENTS

INVENTAIRE DES DOCUMENTS

Casefile No.: 6003

Nº de Dossier: _____

Date Initiated: 1932

Date du dossier: _____

Short Style of Cause: IN MATTER OF IMMIGRATION ACT; MUNETAKA SAMEJIMA V. THE KING

Intitulé: _____

MOST COMMONLY OCCURRING COURT DOCUMENTS:

DOCUMENTS COURANTS:

A) Application for Leave

- ✓ Notice of Motion on Application for leave
- Application for leave to Appeal
- Respondent's memorandum of Argument
- Discontinuance
- Minute Sheet
- ✓ Order Granting Leave to Appeal/Formal Judgment
- Bill of Costs taxed

A) Requête en autorisation

- Avis de requête en autorisation de pourvoi
- Requête en autorisation de pourvoi
- Mémoire de l'intimé
- Désistement
- Feuille des minutes
- Ordonnance/jugement
- Taxation des dépens

B) Appeal

- ✓ Notice of Appeal
- ✓ Case Book
- Discontinuance
- ✓ Appellant's Factum
- Inscription
- ✓ Respondent's Factum
- Intervener's Factum
- Minute Sheet
- ✓ Formal Judgment/Oral Judgment
- ✓ Reasons for Judgment
- ✓ Taxation Documents

B) Pourvoi

- Avis de pourvoi
- Dossier imprimé sur appel
- Désistement
- Mémoire de l'appelant
- Inscription
- Mémoire de l'intimé
- Mémoire de l'intervenant
- Feuille des minutes
- Jugement/jugement oral
- Motifs de jugement
- Taxation des dépens

FILED
FEB 8 1932
CANADA

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93

IN THE SUPREME COURT OF CANADA

IN THE MATTER OF "THE IMMIGRATION ACT, Chapter 93,
R.S.C. 1927, and AMENDING ACTS

AND
IN THE MATTER OF MUNETAKA SAMEJIMA.

MUNETAKA SAMEJIMA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent:

TAKE NOTICE that a motion will be made before the Registrar at his Chambers in the Supreme Court Building in the City of Ottawa, on Thursday, the third day of March, 1932, at ten o'clock in the forenoon for an order affirming the jurisdiction of the Supreme Court of Canada to hear the Appellant's appeal.

AND TAKE NOTICE that in support of the said application will be read the affidavit of Cornelius Hawkins O'Halloran, the exhibits therein referred to, and such further and other material as Counsel may advise.

DATED at Ottawa this 27th day of February, A. D. 1932.

MacCraken Fleming & Schroeder,
Trusts Building, Ottawa, Ontario,
Agents at Ottawa for
Appellant's Solicitors.

TO:
W. Stuart Edwards, K.C.,
Deputy Minister of Justice, Ottawa,
Agent at Ottawa for John L. Clay,
Respondent's Solicitor.





3rd March. 1932

Ch: Schroeder for Motion
Ekv. Chisholm Contra:
adjourned for purpose of obtaining
Copies of reasons for Judgt of C of A:
14th inst: Copies of reasons for
Judgt of the four Judges of the Court
of Appeal. produced:

The proceedings for or upon the writ
of habeas Corpus in matters
do not arise out of a Criminal
Charge, and are therefore not within
the exception contained in Section
36 of the Supreme Court Act.
Sections 39. 40 and 41 do not
affect appeals in Cases of Habeas
Corpus: since the enactment of
Section 42.

I do not think that the Judgment
or Order of the Court of Appeal was made
in the Exercise of Judicial discretion.
I would therefore grant the application
for an Order affirming the jurisdiction
with costs in the appeal.

J. F. Smellie
Registrar.

IN THE SUPREME COURT OF CANADA

MUNETAKA SAKELTKA

APPELLANT

AND

HIS MAJESTY THE KING

RESPONDENT:

NOTICE OF MOTION

Service hereof
admitted this 24th
day of February
A.D. 1932

Dep. Minister
of Justice

Copy received
Feb. 24th 1932
E. Wiseall

MACCRAKEN FLEMING & SCHROEDER
AGENTS AT OTTAWA FOR SOLICITORS
FOR APPELLANT.

IN THE SUPREME COURT OF CANADA.

IN THE MATTER OF "THE IMMIGRATION ACT, CHAPTER 93, R.S.C. 1927, and AMENDING ACTS;
and

IN THE MATTER OF MUNETAKA SAMEJIMA.

BEFORE the Registrar in Chambers) Thursday, the third day of March, A. D. 1932.

MUNETAKA SAMEJIMA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent:

UPON THE APPLICATION of the above-named Appellant, and upon hearing read the affidavit of Cornelius Hawkins O'Halloran and the exhibits therein referred to, and upon hearing what was alleged by Counsel for all parties.

IT IS ORDERED, ADJUDGED AND DECLARED that the Supreme Court of Canada has jurisdiction to hear and determine the appeal of the above-named Appellant from the Judgment of the Court of Appeal for the Province of British Columbia, bearing date the 29th day of January, 1932, in a certain cause in which the said Munetaka Samejima was Appellant and His Majesty the King was Respondent.

AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

246
Mar 14

Registrar.

IN THE SUPREME COURT OF CANADA

MUNETAKA SAMEJIMA

APPELLANT

AND

HIS MAJESTY THE KING

RESPONDENT

O R D E R

MACCRAKEN FLEMING & SCHROEDER

AGENTS AT OTTAWA FOR APPELLANTS'

SOLICITORS

Supreme Court of Canada

IN THE ~~COURT OF APPEAL FOR BRITISH COLUMBIA~~

IN THE MATTER OF THE IMMIGRATION ACT, Chapter 93, R.S.C. 1927 and Amending Acts

and

IN THE MATTER OF MUNETAKA SAMEJIMA

HIS MAJESTY THE KING

Respondent

and

MUNETAKA SAMEJIMA

Appellant

TAKE NOTICE that if it shall be held that Section 23 of the Immigration Act, being Chapter 93 of the Revised Statutes of Canada, 1927, and amending Acts, takes away the right of a Court or Judge thereof by habeas corpus to review, quash, reverse, restrain, or otherwise interfere with any proceeding, decision or order of the Minister or of any Board of Inquiry or officer in charge, had, made or given under the authority or in accordance with the provisions of the said Immigration Act, relating to the detention or deportation of any rejected immigrant, passenger or other person upon any ground whatsoever, unless such person is a Canadian citizen or has Canadian domicile, notice is hereby given pursuant to the Constitutional Questions Determination Act, Revised Statutes of British Columbia, 1924, Chapter 46, that Munetaka Samejima, the above-named Appellant intends to raise the question of the constitutionality or the constitutional validity of Section 23 of the said Immigration Act, upon the hearing of his appeal to the Supreme Court of Canada from the judgment of the Court of Appeal for British Columbia, pronounced the 29th day of January,





1932, dismissing by an equally divided Court his appeal from the order of the Honourable Mr. Justice Gregory, made the 30th day of October, 1931, setting aside and quashing the writ of habeas corpus obtained by the said Appellant on the 30th day of September, 1931.

AND TAKE NOTICE that it is proposed to argue inter alia -

(a) That Section 23 of the said Immigration Act does not take away the right to review, quash, reverse, restrain or otherwise interfere as therein mentioned by habeas corpus.

(b) That if it is held that said Section 23 does purport to take away the right to habeas corpus, then such Section is ultra vires the Parliament of Canada, in that -

1. It is an invasion of civil rights specifically assigned to the Provinces under Section 92, subsection 13 of the British North America Act.
2. That the right to habeas corpus is part of the common and statutory law of England, introduced into and made part of the law of the Province of British Columbia, prior to Confederation, under and by virtue of the English Law Act, being Chapter 80, Revised Statutes of British Columbia, 1924.
3. That the right to habeas corpus in civil matters is within the sole authority of the Province under and by virtue of the British North America Act aforesaid, and that said Section 23 of the Immigration Act is ultra vires the Parliament of Canada, in so far as it purports to take away or suspend the right to habeas corpus in civil matters.

4. That said Section 23 of the Immigration Act aforesaid is not an exercise of powers vested in the Parliament of Canada, within the meaning of subsection 25 of Section 91, of the British North America Act, or otherwise under the said Act.

DATED at Victoria, British Columbia, this 23rd day of February, 1932.

O'Halloran & Harvey

603-606 Central Building,
View Street, Victoria,
British Columbia, Solicitors
for the above-named Appellant,
Munetaka Samejima.

To the Honourable the Attorney General for Canada

And to the Honourable the Attorney General for
British Columbia.

Supreme Court

IN THE ~~COURT OF APPEAL FOR BRITISH COLUMBIA~~

of Canada

IN THE MATTER OF THE IMMIGRATION ACT, Chapter 93, R.S.C. 1927 and Amending Acts

and

IN THE MATTER OF MUNETAKA SANEJIMA

HIS MAJESTY THE KING

Respondent

and

MUNETAKA SANEJIMA

Appellant

N O T I C E

O'HALLORAN & HARVEY,
Barristers, etc.,
Victoria, B.C.

Copy received
Feb 29th 1932
E Harvey

IN THE SUPREME COURT OF CANADA

IN THE COURT OF APPEAL FOR BRITISH COLUMBIA

IN THE MATTER OF THE IMMIGRATION ACT, Chapter 93, R.S.C. 1927 and Amending Acts

and

IN THE MATTER OF MUNETAKA SAMEJIMA

HIS MAJESTY THE KING

Respondent

and

MUNETAKA SAMEJIMA

Appellant.

I, Cornelius Hawkins O'Halloran, of 603-606 Central Building, in the City of Victoria, in the Province of British Columbia, Barrister and Solicitor, make oath and say as follows:

1. That I am a member of the firm of O'Halloran & Harvey, 603-606 Central Building, in the City of Victoria, Province aforesaid, Solicitors for Munetaka Samejima, the above-named Appellant, and have knowledge of the matters hereinafter deposed to.

2. The said Munetaka Samejima is the Appellant herein to the Supreme Court of Canada from the judgment of the Court of Appeal for British Columbia, pronounced the 29th day of January, 1932, dismissing on an equally divided Court, an appeal taken to the said Court by the said Munetaka Samejima from the order of the Honourable Mr. Justice Murphy of the Supreme Court of British Columbia of the 30th October, 1931, quashing the writ of habeas corpus obtained by the Appellant herein on the 30th day of September, 1931.

10 CENTS 10 TEN X TEN CANADA LAW STAMP TWENTY 0029362 10 CENTS 10

FILED FEB 8 1932 SUPREME COURT CANADA

3. Notice of appeal from the Court of Appeal for British Columbia to the Supreme Court of Canada was duly filed in the Registry of the Court of Appeal at the City of Victoria, Province of British Columbia, on the 16th day of February, 1932, and true copies thereof were on the said 16th day of February, 1932 served upon R. Roff, Esquire, Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria, and upon John L. Clay, Esquire, of the City of Victoria aforesaid, Solicitor for the Respondent herein; and now produced and shown to me and marked as Exhibit "A" hereto is a true copy of such Notice of Appeal.

4. Now produced and shown to me and marked as Exhibit "B" hereto, and being pages 1 to 52 thereof, both inclusive, is a true copy of all the proceedings herein as contained in the Appeal Book used before the Court of Appeal for British Columbia upon the hearing of the said appeal by the said Court.

5. The facts in this appeal are -

(a) On the 29th day of September, 1928 the Appellant was duly admitted to Canada from Japan at the Port of Vancouver, in the Province of British Columbia. (see page 5 et seq Exhibit "B" hereto).

(b) On the 28th day of April, 1931 the Appellant was detained by the Immigration Department of Canada, and on the 29th day of April, 1931 a Board of Inquiry constituted under the provisions of the Immigration Act, Chapter 93, R.S.C. 1927, ordered his deportation under the provisions of Section 33, Subsection (7) of the Immigration Act aforesaid, on the ground that he had entered Canada by misrepresentation (see pages 8 and 14, Exhibit "B" hereto).

(c) On the 8th July, 1931 the Honourable Mr. Justice Fisher of the Supreme Court of British Columbia quashed the aforesaid deportation order upon habeas corpus proceedings (see page 27, Exhibit "B" hereto).

(d) On the 23rd September, 1931 the Appellant was again detained by the Immigration authorities aforesaid, and without any further hearing or order by a Board of Inquiry or other lawful authority, was held for deportation under an alleged amended deportation order of the 29th April, 1931 (see pages 9, 11 and 28 of Exhibit "B" hereto).

(e) On the 30th day of October, 1931 the Honourable Mr. Justice Murphy of the Supreme Court of British Columbia dismissed the Appellant's application for discharge under habeas corpus proceedings (see page 45 Exhibit "B" hereto).

(f) On the 29th day of January, 1932 the Court of Appeal for British Columbia, on an equally divided Court, dismissed the appeal from the aforesaid order of the Honourable Mr. Justice Murphy; and now produced and shown to me and marked Exhibit "C" hereto is a true copy of the order of the said Court of Appeal.

SWORN before me at the City of Victoria, in the Province of British Columbia, this 19th day of February, 1932.

F. W. Hall Corran

F. W. Whitaker

A Commissioner for taking affidavits within British Columbia.

IN THE SUPREME COURT OF CANADA

IN THE COURT OF APPEAL FOR BRITISH COLUMBIA

IN THE MATTER OF THE IMMIGRATION ACT, Chapter 93, R.S.C. 1927 and Amending Acts

and

IN THE MATTER OF MUNETAKA SAMEJIMA

HIS MAJESTY THE KING

RESPONDENT

AND

MUNETAKA SAMEJIMA

APPELLANT

::::::::::::::::::::::::::::::::::::

AFFIDAVIT OF C.H.O'HALLORAN

::::::::::::::::::::::::::::::::::::

Service hereof admitted this 29th day of Feb. 1932

Dep. Minister of Justice

O'HALLORAN & HARVEY,
Barristers, etc.
Victoria, B.C.

Copy received Feb 29th 1932

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6003

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA

IN THE MATTER OF THE IMMIGRATION ACT,
Chapter 93, R.S.C., 1927, and Amending Acts.

AND

IN THE MATTER OF MUNETAKA SAMEJIMA

MUNETAKA SAMEJIMA
(Appellant)

AND

HIS MAJESTY THE KING
(Respondent)

APPEAL CASE

O'HALLORAN & HARVEY,
Victoria, B.C.,
Solicitors for Appellant.

C. H. O'HALLORAN, Esq.,
Counsel for Appellant.

MESSRS. MacCRAKEN, FLEMING & SCHROEDER,
Ottawa,
Agents for Appellant.

JOHN L. CLAY, Esq.,
Solicitor for Respondent.

JOHN L. CLAY, Esq.,
Counsel for Respondent.

W. J. EDWARDS, Esq., K.C.,
Ottawa,
Agent for Respondent.

Victoria, B.C.
Diggon's Limited
1932

SUPREME COURT OF CANADA
FILED
MAR
29
1932

Approved
March 21st 1932
J. L. Clay
Solr for
Respt

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA

IN THE MATTER OF THE IMMIGRATION ACT,
Chapter 93, R.S.C., 1927, and Amending Acts.

AND

IN THE MATTER OF MUNETAKA SAMEJIMA

MUNETAKA SAMEJIMA
(Appellant)

AND

HIS MAJESTY THE KING
(Respondent)

APPEAL CASE

O'HALLORAN & HARVEY,
Victoria, B.C.,
Solicitors for Appellant.

C. H. O'HALLORAN, Esq.,
Counsel for Appellant.

MESSRS. MacCRAKEN, FLEMING & SCHROEDER,
Ottawa,
Agents for Appellant.

JOHN L. CLAY, Esq.,
Solicitor for Respondent.

JOHN L. CLAY, Esq.,
Counsel for Respondent.

W. J. EDWARDS, Esq., K.C.,
Ottawa,
Agent for Respondent.

Victoria, B.C.
Diggon's Limited
1932

INDEX TO CASE

Exhibit No. or Mark	DESCRIPTION	Date	Page
	PART I.—PLEADINGS, ETC.		
	Order for Issuance of Writ of Habeas Corpus	30th September, 1931	1
	Writ of Habeas Corpus	30th September, 1931	2
	Notice of Return Date of Writ of Habeas Corpus	30th September, 1931	3
	Return to Writ of Habeas Corpus	23rd October, 1931	3
	Applicant's Notice of Appeal to Court of Appeal of British Columbia	5th November, 1931	5
	Notice of Appeal to Supreme Court of Canada	16th February, 1932	9
	Notice to Honourable Attorney General of Canada and Honourable Attorney General of British Columbia	23rd February, 1932	10
	Order affirming jurisdiction	3rd March, 1932	11
	Solicitor's Certificate of Case	19th March, 1932	48
	Registrar's Certificate as to settlement of Case	21st March, 1932	48
	PART II.—APPLICANT'S EVIDENCE		
	Affidavit of Munetaka Samejima	25th September, 1931	12
	Affidavit of Kikujiro Ishii	25th September, 1931	18
	Affidavit of Cornelius Hawkins O'Halloran	29th September, 1931	21
	Affidavit of Jentaro Ueno	30th September, 1931	22
	PART III.—EXHIBITS		
	Exhibits to affidavit of Munetaka Samejima		
"A"	Order for deportation of Applicant	29th April, 1931	25
"B"	Evidence before Board of Enquiry	29th April, 1931	28
	Decision of Board of Enquiry	29th April, 1931	33
	Order of Deputy Minister of Immigration and Colonization under Section 42, Immigration Act	28th January, 1931	34
"C"	Order of the Honourable Mr. Justice Fisher quashing deportation order of 29th April, 1931	8th July, 1931	36
"D"	Amended		
"E"	Return t		
	Exhibit kins O		
"A"	Passport		
	PART REAS		
	Order of quashin		
	Reasons Murphy		
	Formal J British		
	Reasons f the Chie Court of		
	Reasons f Mr. Justi		
	Reasons f Mr. Justi peal		
	Reasons fo Mr. Justi of Appea		

Exhibit No. or Mark	DESCRIPTION	Date	Page
"D"	Amended order of deportation	29th April, 1931	27
"E"	Return to writ of habeas corpus	25th June, 1931	35
	Exhibit to affidavit of Cornelius Hawkins O'Halloran		
"A"	Passport of Munetaka Samejima	15th September, 1928	24
	PART IV.—JUDGMENTS AND REASONS FOR JUDGMENT		
	Order of Honourable Mr. Justice Murphy quashing writ of habeas corpus	30th October, 1931	37
	Reasons of Honourable Mr. Justice Murphy	30th October, 1931	38
	Formal Judgment Court of Appeal of British Columbia dismissing appeal	29th January, 1932	38
	Reasons for Judgment The Honourable the Chief Justice of British Columbia Court of Appeal	29th January, 1932	39
	Reasons for Judgment The Honourable Mr. Justice Martin, Court of Appeal	29th January, 1932	40
	Reasons for Judgment The Honourable Mr. Justice McPhillips, Court of Appeal	29th January, 1932	42
	Reasons for Judgment The Honourable Mr. Justice M. A. Macdonald, Court of Appeal	29th January, 1932	47

Page
1
2
3
3
5
9
10
11
48
48
12
18
21
22
25
28
33
34
36

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA

IN THE MATTER OF THE IMMIGRATION ACT,
Chapter 93, R.S.C., 1927, and Amending Acts.

AND

IN THE MATTER OF MUNETAKA SAMEJIMA

MUNETAKA SAMEJIMA
(Appellant)

AND

HIS MAJESTY THE KING
(Respondent)

APPEAL CASE

ORDER FOR ISSUANCE WRIT OF HABEAS CORPUS

In Chambers Before the Honourable the Chief Justice, Wednesday, the 30th day of September, A.D. 1931.

Upon the Application of Mr. C. H. O'Halloran on behalf of Munetaka Samejima that a Writ of *Habeas Corpus* issue *ex parte* in the first instance, And Upon Reading the affidavit of Jentaro Ueno, sworn herein the 30th day of September, 1931, and duly filed; and the affidavit of Kikujuro Ishii, sworn herein the 25th day of September, 1931, and the affidavit of Munetaka Samejima, sworn herein the 25th day of September, 1931, and the affidavit of Cornelius Hawkins O'Halloran, sworn herein the 29th day of September, 1931, and duly filed with the exhibits thereto.

It Is Ordered that a Writ of *Habeas Corpus* issue directed to R. Roff, Esquire, Dominion Immigration Agent at the Port of Victoria, in the Province of British Columbia, the Immigration Officer having in charge the said

Munetaka Samejima, or other Immigration Officer at the Port of Victoria aforesaid having in charge the said Munetaka Samejima, to have the body of Munetaka Samejima before a Judge in Chambers of the Supreme Court of British Columbia, at the Law Courts, Bastion Square, Victoria, British Columbia, forthwith to undergo and receive all and singular such matters and things as our said Judge shall then and there consider of and concerning him in this behalf.

(Sgd.) AULAY MORRISON, C. J. S. C.

WRIT OF HABEAS CORPUS

GEORGE the V, by the grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To R. Roff, Esquire,

Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria, Victoria, B.C., or other Immigration Officer at the Port of Victoria aforesaid having in custody Munetaka Samejima.

GREETING:

WE COMMAND YOU that you have before a Judge of the Supreme Court in Chambers at Victoria, immediately after the receipt of this Our Writ, the body of Munetaka Samejima, being taken and detained under your custody as is said, together with the day and cause of him being taken and detained by whatsoever name he may be called therein, to undergo and receive all and singular such matters and things as a Judge of the said Court shall then and there consider of concerning him in this behalf.

AND have you there then this Our Writ.

WITNESS The Honourable Aulay MacAulay Morrison, Chief Justice of the Supreme Court of British Columbia, this 30th day of September, in the year of our Lord one thousand and nine hundred and thirty-one.

ISSUED pursuant to the Order of the Honourable The Chief Justice, made herein the 30th day of September, 1931.

THIS WRIT is issued by Cornelius Hawkins O'Halloran, of the firm of O'Halloran & Harvey, Solicitors for the said Munetaka Samejima, and whose address for service is 508-510 Central Building, 620 View Street, in the City of Victoria, Province of British Columbia; and the address of the said Munetaka Samejima is Immigration Building, Port of Victoria, British Columbia.

NOTICE OF RETURN DAY OF WRIT OF HABEAS CORPUS

WHEREAS the Honourable The Chief Justice has granted a writ of *habeas corpus*, directed to R. Roff, Esquire, Dominion Immigration Agent, and Officer in control of Immigration at the Port of Victoria, Victoria, British Columbia, commanding him to have the body of Munetaka Samejima before a Judge of the said Court immediately to undergo and receive all and singular such matters and things as the said Judge shall then and there consider of concerning him in this behalf.

NOW TAKE NOTICE that you are hereby required to have the body of the said Munetaka Samejima before a Judge of the said Court as aforesaid on Monday the 5th day of October, 1931, at the hour of 10.30 o'clock in the forenoon, to make a return to the said writ, or in default thereof, the said Court will then, or so soon after as Counsel may be heard, move for an attachment against you for your contempt in not obeying the said writ.

DATED at Victoria, British Columbia, this 30th day of September, 1931.

(Sgd.) O'HALLORAN & HARVEY,
508-510 Central Building,
620 View Street,
Victoria, British Columbia,
Solicitors for the Applicant.

To R. ROFF, Esquire,

Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria, Immigration Building, Victoria, B.C., or other Immigration Officer at the Port of Victoria having in custody Munetaka Samejima.

RETURN TO WRIT OF HABEAS CORPUS

UNDER and by virtue of the Writ of *Habeas Corpus* issued herein pursuant to the order of the Honourable the Chief Justice on the 30th day of September, 1931, and directed to me, R. Roff, Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria, British Columbia, do hereby return to a Judge of the Supreme Court in Chambers at Victoria, B.C., that Munetaka Samejima is a person detained for the purpose of deportation from Canada under my charge and in my custody as Dominion Immigration Agent at the Port of Victoria aforesaid, under and by virtue of an order for deportation, a true copy of which is hereto annexed, the said order being made under and by virtue and pursuant to the provisions of the Immigration Act, and that the said Munetaka Samejima was ordered deported at the Board of Enquiry at the Port of Victoria on the 29th day of April, 1931, in accordance with the provisions of the Immigration Act, and

by virtue of the said order of deportation, and that the said Munetaka Samejima is detained by me by virtue of the said order of deportation and for no other cause or reason whatsoever.

The body of the said Munetaka Samejima is produced.

Dated at Victoria, B.C., this 23rd day of October, 1931.

R. Roff,

Dominion Immigration Agent
at Victoria, British Columbia.

Order for Deportation Annexed to Return

Amended Order — Form B. I. & C. 91

ORDER FOR DEPORTATION

The Immigration Act, Section 33

To Canadian Pacific Steamships Ltd. (Transportation Company) and to Munetaka Samejima (Person rejected—name in full) of Chemainus, V.I., B.C. (last place of residence). Port of Entry, Vancouver, Province of B.C..

This is to Certify that the rejected person above named, a person who entered Canada at Vancouver, B.C., ex Ss. "Empress of Asia" (ship or train) from Yokohama, Japan, which arrived at the said port on September 29th, 1928, at — o'clock — M., has this day been examined by the Board of Inquiry at this Port, and has been rejected for the following reasons: Whereas the said Munetaka Samejima, having been found not to be a Canadian citizen or a person having Canadian domicile, and a complaint having been received under Section 40 of the Immigration Act to the effect that the said Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, namely: Section 33, sub-section 7, in that the said Munetaka Samejima did enter Canada by misrepresentation in that, at the time of his entry he represented that he was to be employed as a domestic servant, which occupation he has not followed, and that he is in Canada contrary to the provisions of the Immigration Act, being Chapter 93, R.S.C. 1927, and amendments thereto, and effected entry contrary to the provisions of Section 33, sub-section 7, of the said Act.

(Here state reason in full.)

And the said rejected person is hereby ordered to be deported to the place from whence he came to Canada. Such conveyance shall be by the first

available ship or train of the Transportation Company which brought the said rejected person to Canada.

Dated at Victoria, B.C., this 29th day of April, 1931.

"J. A. ANDERSON,"

Immigration Officer in Charge or
Chairman of the Board of Inquiry.

INFORMATION FOR TICKET AGENT

Ticket No.....Issue..... Form.....

From..... To.....

ENDORSEMENT ON BACK OF DEPORTATION ORDER

NOTICE TO PERSON ORDERED TO BE DEPORTED

If you claim to be a Canadian citizen or to have acquired Canadian domicile you have the right to consult counsel and appeal to the courts against deportation.

In all other cases you may appeal to the Minister of Immigration and Colonization against any decision of the Board of Inquiry, or Officer in Charge, whereby you are ordered to be deported, unless such decision is based upon a certificate of the Examining Medical Officer that you are affected with a loathsome disease, or a disease which may become dangerous to the public health. The formal notice of appeal will be supplied to you by the Immigration Officer in charge upon request.

It is unlawful for persons rejected or deported to return to Canada without the consent of the Minister and persons entering or remaining in or returning to Canada after such rejection or deportation are subject to arrest and detention and on summary conviction to a fine or imprisonment, or both, and to deportation.

THE DEPARTMENT OF IMMIGRATION
AND COLONIZATION, CANADA.

APPLICANTS' NOTICE OF APPEAL TO THE COURT OF APPEAL

TAKE NOTICE that Munetaka Samejima, the above-named Appellant, intends to appeal and does hereby appeal to the Court of Appeal for British Columbia from the order of the Honourable Mr. Justice Murphy, made herein the 30th day of October, 1931.

Notice of Appeal to Court of Appeal

AND FURTHER TAKE NOTICE that the Court of Appeal will be moved at the Court House, in the City of Victoria, Province of British Columbia, on Tuesday the Fifth day of January, 1932, at the hour of eleven o'clock in the forenoon, or so soon thereafter as Counsel may be heard, by Counsel on behalf of the above-named Appellant for an order reversing and setting aside the said order with costs, and for an order directing the discharge of the Appellant under the writ of *Habeas Corpus* herein, and that the alleged amended deportation order of the 29th day of April, 1931, be quashed, and for such order as to the Court of Appeal may seem meet, upon the following grounds:

1. The Learned Judge erred in not holding:-

(a) That the alleged amended deportation order of the 29th April, 1931, was a nullity.

(b) That no such amended deportation order was ever made.

(c) In the alternative that no such amended deportation order was made or given under the authority and in accordance with the provisions of the Immigration Act, being Chapter 93, Revised Statutes of Canada, 1927.

2. The original deportation order of the 29th day of April, 1931, having been quashed by an order of the Supreme Court of British Columbia of the 8th July, 1931, and the Appellant thereon discharged from custody under and by virtue of a writ of *Habeas Corpus* issued on the 18th June, 1931, the Learned Judge erred in not holding that the Appellant could not be arrested again under the alleged amended deportation order, after his discharge by the said Court.

3. The Learned Judge erred in not holding that the matter was *res judicata* in that the order of the Supreme Court of British Columbia of the 8th July, 1931, quashed the original deportation order of the 29th April, 1931.

4. The Learned Judge erred in not holding that there was no jurisdiction, or in the alternative, no power in the Board of Inquiry to make the alleged or any deportation order, in that:-

(a) No order of the Minister or the Deputy Minister was made or produced to the said Board of Inquiry in accordance with Section 42 of the Immigration Act aforesaid; and such order is a condition precedent to any authority to the said Board to investigate and make a deportation order.

(b) In the alternative, that the alleged order of the Deputy Minister was no order in that it did not comply with the requirements of Section 21 of the Canada Evidence Act, Chapter 59, R.S.C., 1927.

5. The Learned Judge erred in not holding that there was no jurisdiction, or in the alternative, no power in the Board of Inquiry to make the alleged or any deportation order, in that:-

(a) No written complaint within the meaning of Sections 40 and 42 of the Immigration Act aforesaid or at all, was produced to the said Board of Inquiry.

(b) That the authority of the said Board of Inquiry is limited to an investigation of the facts alleged in a complaint within the meaning of Sections 40 and 42 of the Immigration Act aforesaid, and that there was no written complaint produced to the said Board, and no investigation of facts accordingly within the meaning of the said Section.

(c) That the Board of Inquiry embarked upon an investigation without knowledge of any facts alleged in a complaint as required by said Section 42.

(d) The matters set out in sub-paragraphs (a), (b) and (c) hereof are condition precedents to any authority to the said Board to investigate and make a deportation order.

6. The Learned Judge erred in not holding that the Appellant was not informed of what breach of the Immigration Act he was charged with, or what complaint had been made against him.

7. The Learned Judge erred in not holding that there was no jurisdiction, or in the alternative, no power in the Board of Inquiry to deport the appellant under the provisions of Section 33 (7) of the Immigration Act, in that:-

(a) Upon a complaint under Section 40 being received and an order of the Minister or Deputy Minister under Section 42 being made, the authority of the Board of Inquiry is limited to proceed as provided by Section 42 of the said Immigration Act.

(b) Section 33 of the said Immigration Act applies only to passengers or other persons seeking to enter Canada, and not to the Appellant.

(c) Before a deportation order could be made under Section 33 (7) the Learned Judge should have found that the Appellant had been arrested as a person suspected of having been convicted of an offence within the meaning of the said Section 33 (7).

(d) No examination is provided for under Section 33 for a person other than a passenger or other person as to whose right to enter or land in Canada there is any doubt.

8. The Learned Judge erred in not holding that the Board of Inquiry had no jurisdiction, or in the alternative, no power to make the alleged or any deportation order in that:-

(a) The only jurisdiction or authority of the Board to act at all is under Section 42 of the said Act.

(b) There is no power or jurisdiction vested in the Board of Inquiry to make a deportation order under Section 42 aforesaid, such power being limited to finding that a person belongs to any of the prohibited or undesirable classes therein mentioned.

9. The Learned Judge erred in not holding that there was no deportation order made or given under the authority and in accordance with the provisions of the Immigration Act aforesaid.

10. The Learned Judge erred in holding that he could take cognizance of no question other than that raised in paragraph two hereof, and should have found that he could investigate the whole of the necessary conditions supporting the alleged deportation order, and that the Board of Inquiry is in no sense a Court, but acts solely under executive powers.

11. The Learned Judge erred in not holding that:-

(a) The Board of Inquiry is not a Judicial Tribunal but a statutory body, whose authority depends upon the observance of all the Statute law and without which it has no authority.

(b) The Board of Inquiry interfered with the liberty of the appellant by an alleged order made without Statutory authority and contrary to Statutory authority.

(c) The alleged order of the Board of Inquiry should be quashed unless the legality thereof could be supported by the said Board before a Court of Justice.

12. The Learned Judge should have found that there was no misrepresentation by the Appellant within the meaning of Section 33 (7) or otherwise, in that:-

(a) There was no evidence before the Board of Inquiry or the Learned Judge showing that the Appellant had not acted *bona fide*.

(b) There was no evidence before the Board of Inquiry or the Learned Judge disclosing misrepresentation on the part of the Appellant.

(c) If there was any mis-statement by the Appellant as to his occupation or intentions, such mis-statement was not a failure to fulfil, meet or comply with the conditions and requirements of the Immigration Act aforesaid, or any regulations thereunder, or in the alternative, if there was any such failure, such failure was not sufficient in law to authorize his deportation, and further in the alternative, the same does not constitute misrepresentation within the meaning of Section 33 (7).

13. The Learned Judge erred in not holding that the misrepresentation in Section 33 (7) is confined to a misrepresentation which has resulted in a

conviction, or in the alternative, which would be sufficient to convict within the meaning of said sub-section.

14. In the alternative, the Learned Judge should have held that the provisions in respect to Canadian domicile and domicile under the said Immigration Act are ultra vires the Parliament of Canada, in that domicile is a matter of civil rights solely within the jurisdiction of the Provinces of Canada, and that accordingly on the evidence the Appellant has Canadian domicile.

15. The Learned Judge should have quashed the deportation order.

16. Upon such further or other grounds as to this Court may seem just.

Dated at Victoria, British Columbia, this 5th day of November, 1931.

(Sgd.) O'HALLORAN & HARVEY,
508-510 Central Building,
Victoria, British Columbia,
Solicitors for Munetaka Samejima.

To R. ROFF, Esq.
Dominion Immigration Agent and Officer in Control of Immigration at the Port of Victoria, Victoria, B.C.
And to HIS MAJESTY THE KING.
And to the Solicitor, J. L. CLAY, Esquire, Victoria, B.C.

NOTICE OF APPEAL TO THE SUPREME COURT OF CANADA

TAKE NOTICE that Munetaka Samejima, the above-named Appellant, hereby appeals to the Supreme Court of Canada from the judgment pronounced in this cause by this Court on the 29th day of January, 1932, whereby the said Court dismissed the appeal of the Appellant Munetaka Samejima from the order of the Honourable Mr. Justice Murphy made herein the 30th day of October, 1931, setting aside and quashing the writ of *habeas corpus* obtained by the Appellant on the 30th day of September, 1931.

Dated at Victoria, British Columbia, this 16th day of February, 1932.

(Sgd.) O'HALLORAN & HARVEY,
603-606 Central Building, View Street,
Victoria, British Columbia,
Solicitors for the Appellant
Munetaka Samejima.

To R. ROFF, Esquire,
Dominion Immigration Agent and Officer in Control of Immigration at the Port of Victoria, Victoria, B.C.
And to HIS MAJESTY THE KING
And to the Solicitor for the Respondent, JOHN L. CLAY, Esq., 1405 Douglas Street, Victoria, B.C.

NOTICE TO ATTORNEY GENERAL OF CANADA AND TO ATTORNEY GENERAL OF BRITISH COLUMBIA

TAKE NOTICE that if it shall be held that Section 23 of the Immigration Act, being Chapter 93 of the Revised Statutes of Canada, 1927, and amending Acts, takes away the right of a Court or Judge thereof by *habeas curpus* to review, quash, reverse, restrain, or otherwise interfere with any proceeding, decision or order of the Minister or of any Board of Inquiry or officer in charge, had, made or given under the authority or in accordance with the provisions of the said Immigration Act, relating to the detention or deportation of any rejected immigrant, passenger or other person upon any ground whatsoever, unless such person is a Canadian citizen or has Canadian domicile, notice is hereby given pursuant to the Constitutional Questions Determination Act, Revised Statutes of British Columbia, 1924, Chapter 46, that Munetaka Samejima, the above-named Appellant, intends to raise the question of the constitutionality or the constitutional validity of Section 23 of the said Immigration Act, upon the hearing of his appeal to the Supreme Court of Canada from the judgment of the Court of Appeal for British Columbia, pronounced the 29th day of January, 1932, dismissing by an equally divided Court his appeal from the order of the Honourable Mr. Justice Gregory, made the 30th day of October, 1931, setting aside and quashing the writ of *habeas corpus* obtained by the said Appellant on the 30th day of September, 1931.

AND TAKE NOTICE that it is proposed to argue *inter alia*—

(a) That Section 23 of the said Immigration Act does not take away the right to review, quash, reverse, restrain or otherwise interfere as therein mentioned by *habeas corpus*.

(b) That if it is held that said Section 23 does purport to take away the right to *habeas corpus*, then such Section is *ultra vires* the Parliament of Canada, in that—

1. It is an invasion of civil rights specifically assigned to the Provinces under Section 92, subsection 13 of the British North America Act.

2. That the right to *habeas corpus* is part of the common and statutory law of England, introduced into and made part of the law of the Province of British Columbia, prior to Confederation, under and by virtue of the English Law Act, being Chapter 80, Revised Statutes of British Columbia, 1914.

3. That the right to *habeas corpus* in civil matters is within the sole authority of the Province under and by virtue of the British North America Act aforesaid, and that said Section 23 of the Immigration Act is *ultra vires* the Parliament of Canada, in so far as it purports to take away or suspend the right to *habeas corpus* in civil matters.

4. That said Section 23 of the Immigration Act aforesaid is not an exercise of powers vested in the Parliament of Canada, within the meaning of subsection 25 of Section 91, of the British North America Act, or otherwise under the said Act.

DATED at Victoria, British Columbia, this 23rd day of February, 1932.

(Sgd.) O'HALLORAN & HARVEY,
603-606 Central Building, View Street,
Victoria, British Columbia,
Solicitors for the Above-named
Appellant, Munetaka Samejima.

To the Honourable the Attorney General for Canada

And to the Honourable the Attorney General for British Columbia.

ORDER AFFIRMING JURISDICTION

3rd March, 1932

UPON the application of the above named Appellant and upon hearing read the affidavit of Cornelius Hawkins O'Halloran and the exhibits therein referred to and upon hearing what was alleged by Counsel for all parties:

IT IS ORDERED ADJUDGED AND DECLARED that the Supreme Court of Canada has purisdiction to hear and determine the appeal of the above named Appellant from the Judgment of the Court of Appeal for the Province of British Columbia bearing date the twenty-ninth day of January, 1932, in a certain cause in which the said Munetaka Samejima was Appellant and His Majesty the King was Respondent.

AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

(Sgd.) J. F. SMELLIE,
Registrar.

PART II
APPLICANT'S EVIDENCE

AFFIDAVIT OF MUNETAKA SAMEJIMA

Sworn September 25th, 1931.

I, Munetaka Samejima, of Chemainus, in the Province of British Columbia, at present at the Immigration Building at the Port of Victoria in the City of Victoria, Province of British Columbia, Domestic Servant, make oath and say:

1. That I entered Canada at the Port of Vancouver, in the City of Vancouver, Province of British Columbia, on the 29th day of September, 1928, from Japan, where I had previously resided at 52 Chiko Machi, Kagoshima City.

2. That at the time I entered Canada as aforesaid I carried with me a Japanese passport No. 101,205, in my name, describing me as aged twenty-four years, proceeding to Canada as a domestic servant. The said passport was issued on the 15th day of September, 1928, and bears the *visa* of the British Consul General at Kobe, No. 1408, dated the 17th day of September, 1928, and is also stamped by the Canadian Immigration and Colonization office at the City of Vancouver aforesaid, under date of the 29th September, 1928.

3. The circumstances relating to my entry into Canada are as follows:

(a) I had a number of relatives in the Province of British Columbia, namely, a brother Takeji Samejima, at Chemainus, an uncle Kiichi Aiboshi of 25 Victoria Crescent, Nanaimo, and a cousin Hisashi Aiboshi, resident in Duncan, and I was desirous of joining them in British Columbia, and residing permanently in the Province of British Columbia.

(b) I was a fully competent domestic servant for a Japanese household, although I am not trained for service in a Canadian household.

(c) My uncle Kiichi Aiboshi, of the City of Nanaimo aforesaid, wrote me advising that a Japanese merchant of Nanaimo, Jentaro Ueno, needed a domestic servant in his household, and accordingly I wrote my said uncle to tell me what was necessary for me to come to Canada and get a position of that kind as a domestic servant in a Japanese household.

(d) After some correspondence with him, I finally obtained a certificate from the Mayor of Kagoshima, the city in which I lived, concerning my good conduct, and obtained also a medical certificate as to my good health, and a further certificate as to my family record, and all these certificates were duly forwarded to my uncle in British Columbia.

(e) In due course I received a certificate from the Japanese Consul at the City of Vancouver, Province aforesaid, that Jentaro Ueno aforesaid was qualified to apply for the entry of a Japanese domestic servant, and with this Consular's certificate I made application to the Minister of Foreign Affairs for Japan, accompanied by the above-mentioned certificates, and in due course a passport was issued by the Japanese Government, to enable me to proceed to British Columbia, and this was duly approved by the British Consul General at Kobe, Japan, aforesaid.

(f) I accordingly came to British Columbia on board the Empress of Asia, arriving at the City of Vancouver aforesaid, on the 29th September, 1928, with the purpose and intention of living permanently in the Province of British Columbia, and not returning to Japan, except perhaps for an occasional visit.

4. Upon arrival as aforesaid in the City of Vancouver, I went to the City of Nanaimo, to find Mr. Jentaro Ueno, but found that his store was closed up, and that he was no longer living in the said City of Nanaimo. I then went back to Vancouver, and stayed with my brother there for some two weeks. During this time I found that Jentaro Ueno, by reason of financial reverses, could not employ me as a domestic servant, and I tried for two weeks in the City of Vancouver, through my own personal enquiries and the enquiries of my brother and friends of his, to get work as a domestic servant in a Japanese family, but could not obtain any such work. I was then forced of necessity to take up any work that I could get, and I went to Woodfibre as an ordinary labourer, where I worked for five months. I worked at Hillcrest, near the City of Duncan, for seven months thereafter, and then worked at the shoemaking business with my cousin in Duncan, where I did practically all the domestic work for my said cousin. The shoemaking business not bringing in enough money, and not being able to obtain any other employment as a domestic servant, I had to take any work I could get, and went to work in the mills at Chemainus, at which place I was arrested by the Immigration Officials.

5. The first notification I had of anything wrong was when I was called to the office of the lumber mill where a Provincial Police Officer asked me questions concerning my arrival in Canada, and what I had done since, when I answered him truthfully as above.

6. Later on an Immigration Officer came up and asked me more or less the same questions, and also if I intended to work for Jentaro Ueno when I came to Canada. I told him that such was my intention, but that Jentaro Ueno having gotten into financial difficulties, he could not employ me, and I could not find any other domestic work, and had to do any work I could get, in order to live. He then took me to Victoria, to the Immigration Shed. This occurred on the 28th April, 1931.

7. When I was examined at the Immigration Office and asked if I wanted a lawyer, I said, "No," because I did not anticipate getting into any trouble of this nature, or being deported to Japan, more particularly as when the Immigration Officer took me to Victoria the previous day, he told me that I might return to Chemainus next day.

8. I came to British Columbia *bona fide,* and with no intention whatsoever of evading the Canadian Immigration laws, and swear positively that I was not guilty of misrepresentation or statement of any untruth to the Immigration Officers at the time of my entry into Canada, or at any time since.

9. That I did not know that Jentaro Ueno would not be able to employ me as a domestic servant until I actually arrived in the City of Nanaimo and tried to find his place of business and house in that City.

10. That I did not make any report to the Immigration Office because I was not familiar with the Canadian Immigration laws and did not speak English. At no time have I knowingly committed a breach of any Immigration law.

11. Now produced and shown to me and marked as Exhibit "A" hereto is a notice under date of the 29th April, 1931, served upon me by J. A. Anderson, who sat as Chairman on my examination on the 29th day of April, 1931, at Victoria.

12. At the conclusion of my examination at Victoria on the 29th April, 1931, the Immigration Officers examined me and ordered me deported in the words following:

DECISION OF THE BOARD

"Mr. Jones: Whereas the said Munetaka Samejima, having been found not to be a Canadian citizen or a person having Canadian domicile, and a complaint having been received under Section 40 of the Immigration Act to the effect that the said Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, namely Section 33, subsection 7, in that he entered Canada by misrepresentation; therefore, pursuant to the provisions of Section 33, sub-section 7 of the Immigration Act, I move that the said Munetaka Samejima be deported.

"Mr. Speed: I second the motion.

"Chairman: Mr. Samejima, a motion has been duly moved and seconded and I declare it carried unanimously that you be deported under the provisions of Section 33, sub-section 7 of the Immigration Act. You have the right to appeal to the Minister of Immigration and Colonization. Do you wish to appeal?

"A. I am going to appeal "Appeal entered."

13. Now produced and shown to me and marked Exhibit "B" to this my affidavit, is a certified copy of the evidence taken at my hearing before the Board of Inquiry at the Port of Victoria, B.C., on the 29th day of May, 1931, upon which evidence I was ordered deported.

14. Following the decision to deport me, I launched an appeal to the Honourable the Minister of Immigration and Colonization on the 11th day of May, 1931, and in due course I was advised by letter from the said Department of Immigration and Colonization of the 11th June, 1931, that my said appeal was dismissed.

15. On the 18th day of June, 1931, my Counsel, Mr. C. H. O'Halloran, of the City of Victoria, obtained a writ of *habeas corpus* on my behalf, and a motion for my discharge thereunder came on for hearing at the City of Victoria, Province aforesaid, on the 24th and 29th days of June, 1931, before the Honourable Mr. Justice Fisher, who reserved judgment until the 8th July, 1931, when he ordered that I be discharged from custody and that the order of the Board of Inquiry made on the 29th day of April, 1931, for my deportation be quashed.

16. Now produced and shown to me and marked Exhibit "C" hereto is the original of the said Order of the Honourable Mr. Justice Fisher of the 8th July, 1931.

17. I was discharged from custody pursuant to the said order, but on Wednesday the 23rd September, 1931, at the City of Duncan, in the said Province, I was re-arrested and brought to Victoria, and am now detained at the Immigration Building at the City of Victoria aforesaid for deportation, pursuant to an amended order for deportation handed me at the time of my arrest, and which is now produced and shown to me and marked as Exhibit "D" to this my affidavit.

18. That at the time of the application for writ of *habeas corpus* as above mentioned I swore an affidavit reciting all the facts set out in paragraphs 1 to 14 hereof, and alleged that the Immigration authorities in arresting me and in ordering my deportation had acted without jurisdiction, or in the alternative, in excess of their jurisdiction, in that:-

(a) The said authorities had no jurisdiction to proceed against me under subsection 7 of Section 33 of the Immigration Act aforesaid on the order of the Deputy Minister of Colonization and Immigration.

(b) That the complaint in writing referred to in the order of the Deputy Minister was not produced at my hearing before the Immigration authorities, and I had no notice of what offence under subsection 7 of Section 33 of the Immigration Act aforesaid I was charged with committing.

(c) It was not stated to me that I had entered Canada by misrepresentation.

(d) The said Immigration authorities acted without jurisdiction in proceeding with my hearing upon an order referring to a written complaint, particulars of which written complaint were not before the said Board of Inquiry, and the said Board of Inquiry dealt with my case without knowledge of the actual complaint against me.

(e) No misrepresentation was disclosed upon my examination before the Board of Inquiry.

(f) No misrepresentation by me was proven against me before the said Board of Inquiry, and the said Board exceeded their jurisdiction in finding me guilty of misrepresentation.

(g) The said Board of Inquiry had no jurisdiction to take my evidence without placing me upon oath, and as disclosed in the said evidence.

(h) There was no order of the Deputy Minister, or in the alternative, no warrant of the Deputy Minister before the said Board, and the said Board had no jurisdiction to examine me in the manner they did and order my deportation, and in the alternative, the said order of the Deputy Minister was not proven, or in the alternative was not proven as required by the Canada Evidence Act, Chapter 59, R.S.C., 1927, and Amending Acts.

(i) The said Board of Inquiry in finding me guilty of misrepresentation did not establish *mens rea* on my part.

(j) The said Board had no jurisdiction to find me guilty of misrepresentation without establishing guilty knowledge on my part.

(k) The said Board of Inquiry had no jurisdiction to order me deported for misrepresentation under Subsection 7 of Section 33 of the Immigration Act, without my being first summarily convicted.

(l) The Board had no jurisdiction to deport me, a person having a British Columbia domicile.

(m) In the alternative, the provisions respecting Canadian domicile and domicile in the said Immigration Act are *ultra vires* the Parliament of Canada, in that domicile is a matter of civil rights solely within the jurisdiction of the Provinces of Canada.

(n) Upon such other grounds as to this Court may seem just.

19. Now produced and shown to me and marked as Exhibit "E" hereto is the return of the Dominion Immigration agent at Victoria, B.C., dated the 25th day of June, 1931, to the writ of *habeas corpus* issued herein on the 18th day of June, 1931, together with a true copy of the order for my deportation of the 29th April, 1931, therein referred to.

20. That I am held for deportation pursuant to what purports to be an amended order as set out in Exhibit "D" hereto and dated the 29th April, 1931.

21. Since my re-arrest as set out in paragraph 17 hereof, I have not been subjected to any examination by any Immigration official or by any Board of Inquiry, and no order for my deportation has been made by any Board of Inquiry since the date of my re-arrest as aforesaid.

22. I am now detained at the Immigration Buildings at the City of Victoria aforesaid, pursuant to the alleged amended order Exhibit "D" hereto, referred to aforesaid, and am advised by my Solicitors, Messrs. O'Halloran & Harvey, of the City of Victoria aforesaid, and verily believe that the said Immigration authorities have acted without jurisdiction, or in the alternative, in excess of their jurisdiction, or in the alternative, without power, and contrary to their Statutory duties and powers in causing me to be re-arrested and held for deportation as aforesaid:-

(a) For the causes set out in Paragraph 18 hereof.

(b) The aforesaid amended order of the 29th April, 1931, is a nullity.

(c) That there is no order or authority, or in the alternative, no lawful order or authority, for my being held in detention and deportation.

(d) That there was no authority to amend the deportation order quashed by the aforesaid order of the 8th July, 1931.

(e) That the alleged amended order of deportation purports to have been made on the 29th April, 1931, whereas I was discharged from the custody of the Dominion Immigration authorities by the aforesaid order of the 8th July, 1931.

(ee) That there was no amended order made by the Board of "C. G. W." Enquiry.

(f) That I am being placed in jeopardy a second time upon a charge or for a cause which was dismissed by the Supreme Court of British Columbia, on the 8th day of July, 1931, and there is now no jurisdiction to re-arrest me and deport me under the alleged order.

(g) That there was no authority in the Immigration authorities either by Statute or by Order-in-Council to cause my apprehension on the 28th day of April, 1931, or the 23rd day of September, 1931, and in the alternative, if the said arrests or deportation orders were made pursuant to any Order-in-Council, such Order-in-Council is *ultra vires*.

(h) Upon such other grounds as to this Court may seem just.

23. I am illegally detained and liable to immediate deportation, and it is necessary for the liberty of my person and the safe-guarding of my legal rights that a writ of *habeas corpus* do issue to R. Roff, Esquire, Dominion Immigration Agent at the Port of Victoria, City of Victoria aforesaid, or to whatever person or official of the said Dominion Immigration Department is

now in charge at the Dominion Immigration Buildings, at the City of Victoria aforesaid, in whose custody I am now detained.

SWORN at the City of Victoria, Province of British Columbia, on the 25th day of September, 1931, by the above-named Munetaka Samejima, through the interpretation of Bumpei Kuwabara of the City of Victoria, in the Province of British Columbia, he having first sworn that he had truly and faithfully interpreted the contents of the above affidavit, and would truly and faithfully interpret the oath about to be administered to the said Munetaka Samejima, to him the said Munetaka Samejima.

(Sgd.) MUNETAKA SAMEJIMA

CLEVE G. WHITE
A Commissioner for Taking Affidavits
Within British Columbia

AFFIDAVIT OF KIKUJIRO ISHII

Sworn 25th September, 1931

I, Kikujiro Ishii, of 130 Gore Avenue, in the City of Vancouver, in the Province of British Columbia, Broker, make oath and say:-

1. That I am fifty-seven years of age, and that prior to several months ago I was a merchant and had resided in the City of Victoria, Province of British Columbia, for forty years and upwards, and was a Senior Member of the Japanese Community, and for many years past have held office as head of the Victoria Japanese Association.

2. That I am personally acquainted with Munetaka Samejima, who arrived in British Columbia on the 29th day of September, 1928, from Japan, and who has now been ordered to be deported by the Canadian Immigration authorities on the ground that he has entered Canada by misrepresentation.

3. That I am personally acquainted with Jentaro Ueno, formerly of the City of Nanaimo, now of Chemainus, in the said Province, and to my per-

sonal knowledge the said Jentaro Ueno was engaged in business as a merchant at the City of Nanaimo, aforesaid, in Japanese fancy goods, and subsequently as a fish merchant and retail tobacco and candy merchant, for upwards of twenty-five years, until the month of September, 1928. During such twenty-five year period I was identified on many occasions with the said Ueno in business transactions, both directly and indirectly.

4. To my personal knowledge the said Jentaro Ueno, in the latter part of the year 1926, applied to the Japanese Consul at the City of Vancouver, for a permit for the entry into Canada of Munetaka Samejima as a domestic servant, to be employed by the said Jentaro Ueno as a domestic servant in his home at the City of Nanaimo aforesaid, and in due course, the said Jentaro Ueno obtained a duly certified permit from the Japanese Consul in the month of March, 1928, and which permit was duly mailed to Munetaka Samejima in Japan.

5. In the meantime the said Jentaro Ueno found it necessary to go to Japan with his wife and child, leaving his business in charge of a friend.

6. On his return from Japan to Canada in the month of September, 1928, the said Jentaro Ueno found that through the inexperience of the person that he had left in charge of his business, such business had not been properly managed, and had proved a failure.

7. I am speaking from personal knowledge in that the day he arrived in Victoria on his way back from Japan, the said Jentaro Ueno called at my store in the City of Victoria, and from my said store telephoned his own store in the City of Nanaimo, by long distance, and learned that the business had been sold that very day. I well remember the surprise and consternation experienced by my friend that day, and I had no doubt in believing from his conduct, entirely apart from his statements to me at that time, and which I verily believe, that the failure of his business was wholly unexpected.

8. To my personal knowledge the financial circumstances of the said Jentaro Ueno at the time he went to Japan were such as to enable him to employ a domestic servant.

9. I verily believe that neither the said Munetaka Samejima nor the said Jentaro Ueno were guilty of misrepresentation in respect to the entry of Munetaka Samejima into Canada, as the said Jentaro Ueno did not discover his adverse financial situation until he arrived in Victoria in the month of September, 1928, and then it was too late for him to advise the said Munetaka Samejima not to come to Canada, as the latter was already on his way across the Pacific.

10. The course taken by the said Jentaro Ueno in applying for a Japanese domestic servant was quite in accord with the law and practice and custom prevailing between the Japanese Government and the Government of

Canada at the time the said application was made in the year 1926. By reason of the extensive enquiries made both in Canada and Japan before the Japanese Consul in Vancouver would issue a permit for the entry of a Japanese domestic servant into Canada, a period of one and a half to two years would ordinarily elapse before an application was in order to be made for a passport to the Japanese Government in Japan.

11. As head of the Victoria Japanese Community I have authority to say that I do not believe that the said Munetaka Samejima will at any time become a public charge if allowed to remain in Canada, as he is a strong and healthy young man, and has always proved satisfactory in the work he has been engaged.

12. I am further advised by the uncle of the applicant, Kiichi Aiboshi, of the City of Nanaimo aforesaid and verily believe, that he is willing now to take the said young man into his employ as a domestic servant if he should be permitted to remain in Canada.

13. Owing to the unexpected financial reverses suffered by Jentaro Ueno and the inability of Munetaka Samejima to obtain domestic work without great delay, the said Munetaka Samejima was compelled either to take up another occupation than that of domestic servant or else to become a charge upon his friends after his money had been spent. I feel justified in deposing as well that if there had been any intent to deceive the Immigration authorities Munetaka Samejima could have taken ostensible employment as a domestic servant in some Japanese household, and thus technically have carried out the requirement that he would be employed as a domestic servant. Such a course, however, was repugnant to the members of the Japanese Community, and also repugnant to Munetaka Samejima himself, who I find to be a straightforward, honest young man, and I cannot find after investigation of all the circumstances since his arrival in Canada, that he has been guilty of untruth, deception or misrepresentation in any way. He has stated the facts as they occurred, and has not allowed an unforseen occurrence such as the loss by Jentaro Ueno of his money and business, to interfere with his telling the truth.

14. The relatives of the said Munetaka Samejima in British Columbia are well able to take care of him and lend him assistance financially if such was ever required, and thus prevent him becoming a charge upon any community in which he may live, or upon the Government of British Columbia, or upon the Government of Canada.

15. As Head of the Victoria Japanese Community, I am desirous that the Japanese in British Columbia and any Japanese entering British Co-

lumbia from Japan shall conduct themselves in such a way as to preserve the good relations prevailing between Canada and Japan.

SWORN before me at the City of Vancouver, in the Province of British Columbia, this 25th day of September, 1931.

(Sgd.) "K. ISHII"

"D. DONAGHY"
A Commissioner for Taking Affidavits
Within British Columbia

AFFIDAVIT OF CORNELIUS HAWKINS O'HALLORAN

Sworn September 29th, 1931

I, Cornelius Hawkins O'Halloran, of 508-510 Central Building, in the City of Victoria, Province of British Columbia, Barrister and Solicitor, make oath and say as follows:

1. I am a member of the firm of O'Halloran & Harvey, of 508-510 Central Building, in the City of Victoria, Province aforesaid, and have personal knowledge of the matters hereinafter deposed to.

2. I am the Solicitor for Munetaka Samejima on his application for a writ of *habeas corpus* and acted for him in similar proceedings, resulting in the order of the Honourable Mr. Justice Fisher of the 8th July, 1931, referred to in paragraphs 15 and 16 of the affidavit of the said applicant, sworn herein the 25th day of September, 1931.

3. Now produced and shown to me and marked Exhibit "A" hereto is the passport of the applicant referred to in paragraph 2 of the said affidavit of the said applicant, sworn the 25th day of September, 1931, as delivered to me by the said applicant.

4. A true copy of the order of the Honourable Mr. Justice Fisher of the 8th July, 1931, referred to in the affidavit of the said applicant was duly served by my office on Mr. J. L. Clay, the Solicitor for the Dominion Immigration Agent at the port of Victoria, on the 14th day of August, 1931.

5. Respecting the grounds for the application for the said writ of *habeas corpus* set out in paragraph 22 of the aforesaid affidavit of the applicant, it is alleged that all alleged grounds for the deportation of the said applicant were fully disposed of by the aforesaid order of the 8th July, 1931,

and the Board of Inquiry is now estopped from making the amended order herein or proceeding thereunder.

SWORN before me at the City of Victoria, in the Province of British Columbia, this 29th day of September, 1931.

(Sgd.) C. H. O'HALLORAN

J. R. McILLREE
A Commissioner for Taking Affidavits
Within British Columbia

AFFIDAVIT OF JENTARO UENO

Sworn September 30th, 1931

I, Jentaro Ueno, of Chemainus, in the Province of British Columbia, make oath and say:

1. That in the month of March, 1928, I was a merchant resident in the City of Nanaimo, Province of British Columbia, and had carried on business in the City of Nanaimo aforesaid, in Japanese fancy goods and subsequently as a fish merchant and in the retail tobacco and candy business for twenty-five years previously.

2. In the month of March, 1926, I duly applied to the Japanese Consul at the City of Vancouver, Province aforesaid, for a permit for the entry into Canada of Munetaka Samejima as a domestic servant, to be employed by me, my financial position and my family conditions justifying my employment of a domestic servant.

3. The Japanese Consul in Vancouver, in accordance with the practice in force at that time, required me to obtain from Japan a certificate from the Mayor of Kagoshima, the City in which the said Munetaka Samejima was resident, a certificate of his good conduct, and also a medical certificate of his health, and also his family record. All this information was forwarded to the Japanese Consul in due course, and the Japanese Consul at Vancouver duly investigated the statements made in my application to him, and being convinced of the truth of the statements made in my application, forthwith issued a certificate accordingly, which I had forwarded to the said Munetaka Samejima in Japan, to enable him to present the same to the Japanese Foreign Office and obtain his passport to enter Canada.

4. In the meantime I found it necessary to go to Japan with my wife, who was ill, and my child, returning to Canada in the early part of the month of September, 1928. Immediately I arrived in Victoria I went to the premises of my friend Mr. Kikujiro Ishii and telephoned my store in Nanaimo long

distance and then learned to my great sy sold out my business. Upon going to in charge of the store had that very daeen sold out by the people with whom Nanaimo I found that my business, which I had conducted for so many years, was no longer in existence, and had burprise that the people that I had left I had left it in charge. I suffered a heavy financial loss thereby, and had immediately to obtain employment, and I am now working in the mill at Chemainus.

5. About ten days after I arrived back in Canada in September, 1928, Munetaka Samejima arrived in Vancouver, and I immediately let it be known that by reason of my financial condition I could not now employ him as a domestic servant, or in any capacity.

6. The said Munetaka Samejima, on his entry into Canada on September 29th, 1928, stated that he was going to enter my employ as a domestic servant.

7. I am not guilty of any misrepresentation to the Canadian Immigration authorities, as I acted *bona fide* throughout, and were it not for the collapse of my business the said Munetaka Samejima would have entered my employ as a domestic servant, and he would have experienced no difficulty.

8. The said Munetaka Samejima entered Canada without any misrepresentation to the Canadian Immigration authorities as to the object of his entry into Canada, as he could not have entered Canada without the passport from the Japanese Government, and he could not have obtained the passport from the Japanese Government unless the Japanese Consul in Vancouver had certified as to the correctness and the *bona fides* of my application for a domestic servant, after full and proper investigation.

9. I did not know until my arrival in Canada in September, 1928, that my financial condition was such that I could not employ a domestic servant, and I did not in any way notify the said Munetaka Samejima, and even if I had tried to do so, it was too late for me to do so, as I found out later that he was on his way to Canada across the Pacific.

SWORN before me at the City of Victoria, in the Province of British Columbia, this 30th day of September, 1931.

(Sdg.) JENTARO UENO

A. J. HELMCKEN
A Commissioner for Taking Affidavits
Within the Province of
British Columbia

PART III
EXHIBITS

EXHIBIT "A" TO AFFIDAVIT OF CORNELIUS HAWKINS O'HALLORAN

Sworn 29th September, 1931

PASSPORT OF MUNETAKA SAMEJIMA
PASSPORT OF JAPAN No. 101205

No. 101205 This passport contains 32 pages.

Translation

IMPERIAL JAPANESE GOVERNMENT PASSPORT

The undersigned, His Imperial Japanese Majesty's Minister of State for Foreign Affairs, requests all the Authorities concerned, both Civil and Military, to permit Mr. Munetaka Sameshima, age 24 years, a Japanese subject, proceeding to British Canada as domestic servant to pass freely and without hindrance, and in case of need to afford him every possible aid and protection.

September 15, 1928

The day of the month of the year of Taisho (19....).

L.S.

BARON GIICHI TANAKA.

DESCRIPTION

Permanent residence: Kagoshima-ken.

Family relationship: First son of Mr. Itaro, head of family.

Occupation: Commerce.

Height: 1.65 m.

Physical peculiarities:

Height and physical peculiarities of each other person included in this passport:

Signature of Bearer:

(Photograph of Munetaka Samejima)

(Imperial Passport)

(Japanese Government)

Passport of
Munetaka Samejima

BRITISH VISA

BRITISH CONSULATE-GENERAL
KOBE, JAPAN

Date Sept. 17, 1928.

No. 1408.

Valid for travel in the undermentioned countries of the British Empire within one year from the above date: Canada.

P. W. WELSH,
For H. B. M., Vice-Consul.

7s 6d
Consulate
Service

BRITISH CONSULATE GENERAL,
Kobe.

IMMIGRATION AND COLONIZATION

DIVISION COMMISSIONER
Sept. 29, 1928
Vancouver, B.C.

IMPERIAL CONSULATE OF JAPAN

Oct. 8, 1928
Vancouver, B.C.

EXHIBIT "A" TO AFFIDAVIIT OF M. SAMEJIMA
Sworn 25th September, 1931

ORDER FOR DEPORTATION
Dated 29th April, 1931

Form B.1 & C.91.

CANADA
ORDER FOR DEPORTATION
The Immigration Act, Section 33

To Canadian Pacific Steamships Ltd. (Transportation Company) and to Munetaka Samejima (person rejected—Name in full) of Chemainus, V.I., B.C. (Last place of residence):

Port of entry, Vancouver, Province of B.C.

THIS IS TO CERTIFY that the rejected person above named, a person who entered Canada at B.C. ex "Empress of Asia" (ship or train) from Yokohama, Japan, which arrived at the said Port on September 29th, 1928,

Exhibit "A" to Affidavit
M. Samejima

at o'clock M., has this day been examined by the Board of Inquiry at this Port, and has been rejected for the folowing reasons: In that he is in Canada contrary to the provisions of the Immigration Act and effected entry contrary to the provisions of Section 33, subsection (7) of said Act.

(Here state reason in full)

And the said rejected person is hereby ordered to be deported to the place from whence he came to Canada. Such conveyance shall be by the first available ship or train of the Transportation Company which brought the said rejected person to Canada.

Dated at Victoria, B.C., this 29th day of April, 1931.

J. A. ANDERSON
Chairman of the Board of Inquiry

(See Over)

INFORMATION FOR TICKET AGENT

Issue..... Ticket No.....

From..... To.....

Form.....

ENDORSEMENT ON BACK OF ABOVE ORDER FOR DEPORTATION

NOTICE TO PERSON ORDERED TO BE DEPORTED

If you claim to be a Canadian citizen or to have acquired Canadian domicile you have the right to consult counsel and appeal to the courts against deportation.

In all other cases you may appeal to the Minister of Immigration and Colonization against any decision of the Board of Inquiry, or Officer in Charge, whereby you are ordered to be deported, unless such decision is based upon a certificate of the Examining Medical Officer that you are affected with a loathsome disease, or a disease which may become dangerous to the public health. The formal notice of appeal will be supplied to you by the Immigration Officer in charge upon request.

It is unlawful for persons rejected or deported to return to Canada without the consent of the Minister and persons entering or remaining in or returning to Canada after such rejection or deportation are subject to arrest and detention and on summary conviction to a fine or imprisonment or both, and to deportation.

THE DEPARTMENT OF IMMIGRATION AND COLONIZATION,
CANADA.

Exhibit "D" to Affidavit
M. Samejima

AMENDED ORDER FOR DEPORTATION

Dated 29th of April, 1931

EXHIBIT "D" TO AFFIDAVIT OF M. SAMEJIMA

AMENDED ORDER — Sworn 25th Sept., 1931 — Form C. 91.

CANADA

ORDER FOR DEPORTATION

The Immigration Act, Section 33

To Canadian Pacific Steamships Ltd. (Transportation Company) and to Munetaka Samejima (Person rejected—Name in full) of Chemainus, V.I., B.C. (Last place of residence).

Port of Entry, Vancouver, Province of B.C.

THIS IS TO CERTIFY that the rejected person above named, a person who entered Canada at Vancouver, B.C., ex Ss. "Empress of Asia" (Ship or Train) from Yokohama, Japan, which arrived at the said Port on September 29th, 1928, at o'clock M., has this day been examined by the Board of Inquiry at this Port, and has been rejected for the following reasons:

Whereas the said Munetaka Samejima, having been found not to be a Canadian citizen or a person having Canadian domicile, and a complaint having been received under Section 40 of the Immigration Act to the effect that the said Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, namely:- Section 33, sub-section 7, in that the said Munetaka Samejima did enter Canada by misrepresentation in that, at the time of his entry he represented that he was to be employed as a domestic servant, which occupation he has not followed, and that he is in Canada contrary to the provisions of the Immigration Act, being Chapter 93, R.S.C. 1927, and amendments thereto, and effected entry contrary to the provisions of Section 33, sub-section 7, of the said Act.

(Here state reasons in full.)

And the said rejected person is hereby ordered to be deported to the place from whence he came to Canada. Such conveyance shall be by the first available ship or train of the Transportation Company which brought the said rejected person to Canada.

Dated at Victoria, B.C., this 29th day of April, 1931.

J. A. ANDERSON,
Or Chairman of the Board of Inquiry.

(See Over)

INFORMATION FOR TICKET AGENT

Issue..... Ticket No.....

From..... To.....

Form.....

ENDORSEMENT ON BACK OF ABOVE AMENDED ORDER FOR DEPORTATION

NOTICE TO PERSON ORDERED TO BE DEPORTED

If you claim to be a Canadian citizen or to have acquired Canadian domicile you have the right to consult counsel and appeal to the courts against deportation.

In all other cases you may appeal to the Minister of Immigration and Colonization against any decision of the Board of Inquiry, or Officer in Charge, whereby you are ordered to be deported, unless such decision is based upon a certificate of the Examining Medical Officer that you are affected with a loathsome disease, or a disease which may become dangerous to the public health. The formal notice of appeal will be supplied to you by the Immigration Officer in charge upon request.

It is unlawful for persons rejected or deported to return to Canada without the consent of the Minister and person entering or remaining in or returning to Canada after such rejection or deportation are subject to arrest and detention and on summary conviction to a fine or imprisonment or both, and to deportation.

THE DEPARTMENT OF IMMIGRATION AND COLONIZATION, CANADA

EXHIBIT "B" TO AFFIDAVIT OF M. SAMEJIMA

Sworn 25th September, 1931

EVIDENCE BEFORE BOARD OF INQUIRY AT PORT OF VICTORIA, B.C.

April 29th, 1931

SITTING No. 530

Port of Victoria, B.C.

A meeting of the Board of Inquiry was held in the Dominion Immigration Building on the 29th day of April, 1931, at 10.55 A.M.

PRESENT: J. A. Anderson, Chairman; J. W. Speed, Secretary; A. H. C. Jones, Member (each having been nominated by the Minister to Act on Boards of Inquiry at the Port of Victoria, B.C.) H. G. Parkinson, Stenographer.

Exhibit "B" to Affidavit
M. Samejima

IN THE MATTER of the application or right of MUNETAKA SAMEJIMA to be and remain in Canada.

CHAIRMAN: Mr. Samejima, you are now to be examined as to your right to remain in Canada. You have the right to be represented by counsel. Do you wish to secure counsel?

A. No, I am not going to have a lawyer.

APPLICANT DULY SWORN

Q. What is your full name? A. Munetaka Samejima.

CHAIRMAN: This Board is being held on the authority of a Warrant issued by the Deputy Minister of Immigration and Colonization dated at Ottawa the 28th of January, 1931, on a written complaint being received to the effect that Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, and he effected entry contrary to the provisions of Section 33, sub-section 7 of the said Act.

EXHIBIT "A"—Minister's Warrant, dated Ottawa, 28th Jan., 1931.

Q. How old are you? A. 27.
Q. Give the date and place of your birth.
A. Bansei Chio Kawanabe, Gori, Kagoshima Ken, Japan. September 16th, 27 years ago.
Q. Of what race are you? A. Japanese.
Q. Of what country do you claim citizenship?
A. Citizen of Japan.
Q. Are you in possession of a passport? A. Yes, I have.
Q. Is this your passport? (Indicating) A. Yes.

CHAIRMAN: This is a Japanese passport 101205 in favour of Munetaka Samejima, age 24 years, a Japanese subject proceeding to British Canada, as a domestic servant issued on September 15th, 1928. It bears the *visa* of the British Consul General at Kobe No. 1408 dated September 17th, 1928. It is also stamped by the Canadian Immigration and Colonization Office September 29th, 1928, Vancouver, B.C.

Q. What is your last place of residence in Japan?
A. 52 Chiku Machi, Kagoshima City.
Q. What is your religious denomination? A. Buddhist.
Q. Are you married or single? A. I am single.
Q. Mr. Samejima, our Department records show that you arrived at the Port of Vancouver, B.C., on the Ss. "Empress of Asia" September 29th, 1928. Your name appears on sheet 15, line 14 of the ship's manifest, destined to employer Z. Uyeno, Box 27, Nanaimo, B.C. Occupation on the manifest, labourer in your own country and intended occupation in Canada, domestic servant. That is correct? A. Yes.

Q. When you arrived you were coming to assured employment in Canada, were you not? A. No.

Q. The ship's manifest shows in column 16 that your fare was paid by your employer.

A. My fare was paid by my uncle. My uncle was staying with my employer, Mr. Uyeno.

Q. Your uncle paid your fare for the employer?

A. Uncle paid my fare. My uncle sent the money to me.

Q. Your uncle was living with your employer?

A. My uncle sent the money to me; my uncle has a shoe store nearby Mr. Uyeno.

Q. What is your uncle's name? A. Kiichi Aiboshi.

Q. What is your uncle's occupation? A. Shoemaker.

Q. What is your employer's name? A. Uyeno.

Q. And when you arrived in Canada you were destined to your employer, Mr. Uyeno, were you not? A. Yes, I went to Nanaimo.

Q. You were destined to Mr. Uyeno, your employer? A. Yes.

Q. What business was your employer engaged in at that time?

A. My employer was not in any business when I landed at Nanaimo.

Q. What was he doing for a living?

A. He was working in a sawmill in Chemainus.

Q. And what particular kind of work were you doing when you arrived?

A. I worked at the paper mill at Wood Fibre.

Q. Did you go direct to the paper mills at Wood Fibre after your landing in Canada?

A. After arriving at Vancouver I went to Nanaimo and I find no employer there because Mr. Uyeno's store was closed.

Q. How long did you stay in Nanaimo? A. About two weeks.

Q. Then where did you go? A. Then I returned to Vancouver.

Q. What were you doing in Vancouver?

A. Well, I was not doing anything in Vancouver.

Q. Who were you staying with in Vancouver?

A. Hisashi Aiboshi, 224 Main St., Vancouver; he is my cousin.

Q. When you got back to Vancouver, did you report to the Canadian Immigration Office and report to them that your employer was closed up and could not employ you as a domestic? A. No. I didn't.

Q. You know that you were permitted to land in Canada for the purpose of being employed as a domestic servant and that you were going to work for Mr. Uyeno; why did you not report that this man was not in a position to employ you when you found he was closed up?

A. I didn't know that I should report to the Immigration what to do.

Q. How long did you remain in Vancouver? A. About two weeks.

Q. Where did you go from there? A. Then I went to Wood Fibre.

Q. How long were you employed at the paper mill at Wood Fibre and in what capacity were you employed?

A. I work in the sawmill about five months.
Q. Labourer, or what were you doing? A. Labourer.
Q. Where did you go from Wood Fibre after five months?
A. Hillcrest, I worked as a labourer on a logging train.
Q. How long did you work in Hillcrest? A. About eight months.
Q. Then where did you go? A. Then I went to Duncan.
Q. Where were you employed in Duncan?
A. Well I was not employed but I help my cousin to start a shoe store.
Q. What is your cousin's name?
A. Hisashi Aiboshi; he went to Duncan and open a shoe store.
Q. I understand you to say that you helped your cousin to open a shoe store, but you didn't receive any salary or wages for working for him?
A. No, didn't receive any; just help him out.
Q. How long did you remain in Duncan helping him out?
A. About two months.
Q. Then where did you go? A. Chemainus.
Q. Have you been working in the mill in Chemainus?
A. I work in the mill.
Q. And you have been there ever since? A. Yes.
Q. You are still employed in the mill in Chemainus? A. Yes.
Q. What are you doing there?
A. I work in the lumber yard piling lumber.
Q. What wages are you in receipt of? A. 32 cents an hour.
Q. How much money have you in your possession now?
A. I have $20.00 here.
Q. Have you any money in the bank? A. About $100.
Q. Can you read? A. Read and write Japanese.
Q. Was this your first arrival in Canada? A. Yes.
Q. Give me the names and addresses of all your relatives in Canada at the present time.
A. Brother: Takeji Samejima, Box 146, Chemainus, B.C. Uncle: Kiichi Aiboshi, 25 Victoria Crescent, Nanaimo, B.C. Cousin: Hisashi Aiboshi. Box 154, Duncan, B.C.
Q. Have you ever lived in the United States?
A. No, I have never lived in the States.
Q. Have you ever applied for permission to enter the United States?
A. No.
Q. Have you any relatives or friends in the United States. A. No.

By Mr. Jones:

Q. Who got you the job at Wood Fibre?
A. My friends in Wood Fibre—Seichi Tobo, Ichiji Matsusaki.
Q. Did you write him for a job?
A. I met Mr. Tobo in Vancouver and he heard there was some job in Wood Fibre. Then I went over to Wood Fibre.
Q. What did you ask Mr. Tobo for?

A. I ask him if there was any job at Wood Fibre.
Q. Did you ever have any experience in Japan as a domestic servant?
A. I have been working in a store.
Q. What as? A. At domestic work in the house.
Q. Why didn't you apply to Mr. Tobo for a domestic servant's job?
A. I ask for any job.
Q. When you got this passport in Japan, when you applied for it, you stated you were going as a domestic servant, did you not? A. Yes.
Q. And when you were questioned by the Immigration Officer, did you not state that you were going to be a domestic servant?
A. I told the officer at Vancouver I was going to be a domestic servant.
Q. After you arrived you made no attempt to be a domestic servant?
A. I tried several times to have domestic work in Vancouver but could not find any.
Q. You have never been in domestic servant work in Canada?
A. No, I have not.
Q. Then you realize that you have entered Canada by misrepresentation, do you?
A. No, I don't know that. Because I try to get work but I could not help it.
Q. But the fact that you have not taken domestic work shows you entered Canada by misrepresentation?
A. I don't know.

By Mr. Speed:

Q. What is your father's name?
A. Father, Itaro Samejima; mother, Ito Samejima; 142 Banseichio, Kagoshimo City.
Q. What is his occupation? A. He is a merchant.
Q. What kind? A. Fish merchant.
Q. Does he keep a store? A. No, he does not keep a store.
Q. He is a buyer and seller of fish? A. Yes.
Q. Has your father ever lived in this country? A. No.
Q. Have you any relatives in Japan?
A. Sister, Hatsuye Samejima, age 22, at Sumichio, Kagoshima.
Brother, Kioichi Samejima, age 19, at Sumiyoshi Chio, Kagoshima.
Sister, Misae Samejima, age 16, at 142 Bansei Chio, Kagoshima.
Brother, Yoneji Samejima, age 13, at 142 Bansei Chio, Kagoshima.
Sister, Sumino Samejima, age 10, at 142 Bansei Chio, Kagoshima.
Q. What prompted you, when you started for Canada, to state you were going to be a domestic servant? A. My uncle in Nanaimo; he told me.
Q. Did he give you any reason why you should state you were a domestic servant?
A. My intention to come to Canada as a domestic servant for Mr. Uyeno, but on arrival here Mr. Uyeno closed his store.

By Mr. Jones:
Q. What kind of a store? A. Fish market in Nanaimo.

By Chairman:
Q. On your arrival in Canada, were you accompanied by any of your relatives from Japan? A. I came with my uncle.
Q. Anyone else?
A. Uncle, Kiichi Aiboshi, uncle's wife and one child.
Q. Did your uncle then instruct you to say you were coming here as a domestic servant? A. Yes.
Q. Your uncle was a previous resident of Canada from 1918 to 1928, so of course knew the regulations. Was there any other passenger aboard that boat, Japanese, that you knew?
A. No, I don't know any other passenger.
Q. Do you not know Mr. Mutsueda?
A. I don't know—I have forgotten all the names.
Q. When you were at Wood Fibre, did you meet Mr. Matsuoka?
A. No.

Chairman: I am just asking because these names appear on the manifest here of the vessel, destined to Wood Fibre, and may have had something to do with his getting a job there.

Q. When you applied for this passport in Japan, who gave you the necessary information to make the application?
A. The Japanese Consul certificate issued in Vancouver was sent to me in Japan so I took that paper to the Japanese Government and made application to have this passport.
Q. Did your uncle, Mr. Aiboshi, assist you in any way in Japan?
A. No, he didn't do anything.
Q. Did he give you any money to pay your fare, your passage?
A. Just gave me money.
Q. Did he instruct you on the way over what to tell the Immigration Officer when you arrived here?
A. No, he never told me anything about it.
Q. Who told you to say, or to state, that you were coming here as a domestic servant when apparently you have never followed that occupation?
A. My uncle in Nanaimo told me to come as a domestic servant for Mr. Uyeno.
Q. Is he the same man that came across with you on the boat? A. Yes.
Q. And he it was who told you to say you were coming to work as a domestic servant for Mr. Uyeno at Nanaimo?
A. Yes; I understand I am coming to work as a domestic servant for Mr. Uyeno.

Decision of the Board

Mr. Jones: Whereas the said Munetaka Samejima, having been found not to be a Canadian citizen or a person having Canadian domicile, and a

Exhibit "B" to Affidavit
M. Samejima

complaint having been received under Section 40 of the Immigration Act to the effect that the said Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, namely Section 33, sub-section 7, in that he entered Canada by misrepresentation: therefore, pursuant to the provisions of Section 33, sub-section 7 of the Immigration Act, I move that the said Munetaka Samejima be deported.

MR. SPEED: I second the motion.

CHAIRMAN: Mr. Samejima, a motion has been duly moved and seconded and I declare it carried unanimously that you be deported under the provisions of Section 33, sub-section 7 of the Immigration Act. You have the right to appeal to the Minister of Immigration and Colonization. Do you wish to appeal? A. I am going to appeal.

APPEAL ENTERED.

I hereby certify the foregoing to be a true and accurate transcript of the evidence adduced at this examination.

HILDA G. PARKINSON,
Stenographer.

J. A. ANDERSON,
Chairman.

J. W. SPEED,
Secretary.

EXHIBIT "A" OF EVIDENCE BEFORE BOARD OF INQUIRY - MINISTER'S WARRANT

Dated Ottawa, 28th January, 1931, and Attached to Above
Recited Evidence Before Board of Enquiry

COPY

Exhibit "A"
April 29, 1931
I. & C. 210.

372277

Order of the Minister of
IMMIGRATION AND COLONIZATION
Section 42, Immigration Act

To any Constable, Peace Officer or Immigration Officer in Canada:

Whereas under the provisions of Section Forty of the Immigration Act, a written complaint has been received to the effect that *Munetaka Samejima is in Canada contrary to the provisians of the Immigration Act and effected entry contrary to the provisions of Section* 33, *ss.* (7) *of said Act.*

I do hereby order that the said MUNETAKA SAMEJIMA be taken into custody and detained for examination and an investigation of the facts alleged

in the said complaint, the examination to be made by a Board of Inquiry or an officer acting as such.

Dated at Ottawa this 28th day of January, 1931.

(Sgd.) W. J. EGAN,
Deputy Minister of Immigration
and Colonization.

EXHIBIT "E" TO AFFIDAVIT OF M. SAMEJIMA

Sworn 25th September, 1931

RETURN TO WRIT OF HABEAS CORPUS

Dated 25th June, 1931.

Under and by virtue of the Writ of *Habeas Corpus* issued herein pursuant to the Order of the Honourable Mr. Justice Gregory on the 18th day of June, 1931, and directed to me, R. Roff, Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria, British Columbia, do hereby return to a Judge of the Supreme Court in Chambers at Victoria, B.C., that Munetaka Samejima is a person detained for the purpose of deportation from Canada under my charge and in my custody as Dominion Immigration Agent at the Port of Victoria aforesaid, under and by virtue of an order for deportation, true copy of which is hereto annexed, the said Order being made under and by virtue and pursuant to the provisions of the Immigration Act, and that the said Munetaka Samejima was ordered deported at the Board of Enquiry at the Port of Victoria on the 29th day of April, 1931, in accordance with the provisions of the Immigration Act, and by virtue of the said order of deportation, and that the said Munetaka Samejima is detained by me by virtue of the said order of deportation and for no other cause or reason whatsoever.

The body of the said Munetaka Samejima is produced.

Dated at Victoria, British Columbia, this 25th day of June, A.D. 1931.

R. ROFF,
Dominion Immigration Agent at
Victoria, British Columbia.

For order of deportation above referred to see P. 25 hereof.

EXHIBIT "C" TO AFFIDAVIT OF M. SAMEJIMA

Sworn 25th September, 1931

ORDER OF THE SUPREME COURT OF BRITISH COLUMBIA

Made 8th July, 1931

BEFORE THE HONOURABLE MR. JUSTICE FISHER

Wednesday, the 8th day of July, 1931

Upon reading the Writ of *Habeas Corpus* herein under date of the 18th day of June, 1931, and the Order of the Honourable Mr. Justice Gregory, made herein the 18th day of June, 1931, and the notice of the return of the said writ dated the 18th day of June, 1931, and the affidavits of Munetaka Samejima, Jentaro Ueno and Kikijuro Ishii, sworn herein respectively the 18th day of June, the 16th day of June and the 17th day of June, 1931, with exhibits thereto respectively, and the affidavit of Robert Oliver Dunsmuir Harvey, sworn herein the 22nd day of June, 1931, with the exhibits thereto, and duly filed; and the application for the discharge of the said Munetaka Samejima under and by virtue of the said writ of *Habeas Corpus* coming on for hearing on the 24th day of June, 1931, and duly adjourned until the 29th day of June, 1931, and upon reading the return of R. Roff, Esquire, Dominion Immigration Agent at Victoria, British Columbia, to the writ of *Habeas Corpus* herein; and upon hearing Mr. C. H. O'Halloran of Counsel for the said Munetaka Samejima, and Mr. J. L. Clay of Counsel for the Crown (Dominion), and judgment being duly reserved until this day:

This Court Doth Order that Munetaka Samejima be discharged from the custody of R. Roff, Esquire, Dominion Immigration Agent at Victoria, and that the Order of the Board of Inquiry at the Port of Victoria made on the 29th day of April, 1931, for the deportation of Munetaka Samejima be and the same is hereby quashed.

And This Court Doth Further Order that the costs of and incidental to the writ of *Habeas Corpus* herein and of the application for discharge thereunder be paid by the Crown (Dominion) to Munetaka Samejima forthwith upon taxation thereof.

Checked by H. C. S.
Approved Aug. 6th, 1931.

John L. Clay.
A. I. F., J.

BY THE COURT:

B. H. Tyrwhitt Drake,
Registrar.

PART IV
JUDGMENT AND REASONS FOR JUDGMENT

ORDER OF THE SUPREME COURT OF BRITISH COLUMBIA
Made 30th October, 1931

BEFORE THE HONOURABLE MR. JUSTICE MURPHY

Friday, the 30th day of October, 1931

UPON the application of Munetaka Samejima, and UPON READING the Writ of *Habeas Corpus,* dated herein the 30th day of September, 1931, and the Order of the Honourable the Chief Justice, dated herein the 30th day of September, 1931, and the Notice of the Return of the said Writ, dated the 30th day of September, 1931, and the Affidavits of Munetaka Samejima and Kikujiro Ishii, sworn herein the 25th day of September, 1931, the Affidavit of Cornelius Hawkins O'Halloran, sworn herein the 29th day of September, 1931, the Affidavit of Jentaro Ueno sworn herein the 30th day of September, 1931, together with the exhibits referred to in the said Affidavits, all of which said Affidavits are duly filed, AND UPON READING the Return of R. Roff, Esquire, Dominion Immigration Agent at Victoria, British Columbia, to the said Writ of *Habeas Corpus,* and the application for the discharge of the said Munetaka Samejima, under and by virtue of the said Writ of *Habeas Corpus,* coming on for hearing on the 5th day of October, 1931, and duly adjourned until the 26th day of October, 1931, AND UPON HEARING Mr. C. H. O'Halloran, of Counsel for the said Munetaka Samejima, and Mr. John L. Clay, of Counsel for R. Roff, Esquire, Dominion Immigration Agent at Victoria, British Columbia, and the Department of Immigration, and Judgment being duly reserved until this late;

THIS COURT DOTH ORDER that the application of the said Munetaka Samejima be and the same is hereby dismissed and the said Writ of *Habeas Corpus* be and the same is hereby quashed.

AND THIS COURT DOTH FURTHER ORDER that the costs of the said R. Roff, Dominion Immigration Agent at Victoria, British Columbia, and the Department of Immigration, of and incidental to these proceedings, be paid by the said Munetaka Samejima forthwith after taxation thereof.

Checked by H. C. S.

Approved C. H. O'H.
2-11-31.
D. M., J., per A. I. F., J.

BY THE COURT:

B. H. TYRWHITT DRAKE,
Registrar.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE MURPHY QUASHING WRIT OF HABEAS CORPUS

Of the various points raised before me in support of this application I think the Court can only take cognizance of one, namely, that the applicant has already been discharged in this same matter by having succeeded in a *habeas corpus* application.

The claim upon which he obtained his release was that the warrant was deficient inasmuch as it did not set out with sufficient particularity the breach of the Immigration Act of which he had been found guilty. It appears, however, from the case of *Rex v. Brixton Prison*, 23 Cox, page 192, where the accused has been set at liberty by the Court merely upon the ground of error in procedure, a new warrant can be issued and he held under it. As in my opinion the warrant under which the applicant is now held is a valid document the application is dismissed.

(sgd.) D. Murphy, J.

Victoria, B.C., 30th October, 1931.

FORMAL JUDGMENT COURT OF APPEAL DISMISSING APPEAL

Before:

The Honourable Chief Justice Macdonald.
The Honourable Mr. Justice Martin.
The Honourable Mr. Justice McPhillips.
The Honourable Mr. Justice Macdonald.

Friday, the 29th day of January, A.D., 1932.

This Appeal coming on for hearing on the 27th, 28th and 29th days of January, 1932, And Upon Hearing Mr. C. H. O'Halloran, of Counsel for the Appellant, and Mr. John L. Clay, of Counsel for the Respondent, And Upon Reading the Appeal Book herein And Upon Hearing what was alleged by counsel aforesaid:

This Court Doth Order and Adjudge that the said Appeal be and the same is hereby dismissed.

And This Court Doth Further Order and Adjudge that the Appellant do pay to the Respondent its costs of this Appeal forthwith after taxation thereof.

Approved
C. H. O'H.
O. B.
D. R.
J. A. M.
C. J. B. C.

BY THE COURT:
(Seal) B. H. Tyrwhitt Drake,
Registrar.

REASONS FOR JUDGMENT OF THE HONOURABLE THE CHIEF JUSTICE OF BRITISH COLUMBIA

I would dismiss the appeal.

The first thing to be considered in the case is the jurisdiction of the Board of Enquiry. That jurisdiction is given by the Immigration Act. The Board, therefore, entered upon its duties with jurisdiction to decide whether this man was properly in Canada, or whether he was not.

Having made an enquiry and come to the conclusion that he should not remain in Canada—Section 23 of the Immigration Act says that no Court, and no judge or officer thereof, shall have jurisdiction to interfere with that order, either to quash it or review it, except for two reasons, one by reason of citizenship, and the other of domicile—neither of which are involved in this case, because this man had neither citizenship nor domicile.

But the Court has given another reason. If the Board had no jurisdiction, then the Court had a right to set the judgment aside.

In this case I think the Board had entire jurisdiction in the matter. How they proceeded is not a matter of interest at all. They may have been absolutely wrong in finding that he ought to be deported; they may have gone right in the teeth of the evidence, but nevertheless the Parliament of Canada has said, on no ground whatever is it to be interfered with. So there is no question in my mind that the Board's Order was properly made and could not be interfered with by Mr. Justice Fisher, or any other Court, and therefore Mr. Justice Fisher's Order was a nullity.

There are two courses open to the Crown. The Crown might say, we will treat Mr. Justice Fisher's Order as a nullity, keep the person where he is and deport him; or if we want to get rid of that Order, move by way of appeal to set it aside. The Court would have power to review the Order of the Judge, but not the Order of the Board.

They let the man go, and they afterwards amended the Order by adding a few words which did not go to the jurisdiction at all, and they re-arrested him on another warrant. That was unnecessary; they could do that at any time under the original order and have held him for deportation. Therefore what they did was futile. There was no right to amend. They should have stood upon that Order, and in fact they have done so, since it is in effect. They are right now in standing upon that Order. They have the right to detain him for deportation.

With that view of the case, and that seems to be the only possible view to take in view of the sections of the Immigration Act, the Appeal cannot succeed.

Jan. 29, 1932.

(Sgd.) J. A. Macdonald, C. J. B.C.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE MARTIN—COURT OF APPEAL

In my opinion this appeal should be allowed, with all deference to contrary views.

This Court has already decided unanimously in the case of *Low Hong Hing* (1926) 37 B.C.R. 295, on the corresponding sec. 38 (now 37) of the Chinese Immigration Act, cap. 95, R.S.C., which is identical in relevant essentials with sec. 23 of the Immigration Act, cap. 93, now under consideration, that in the proper construction of the language of Parliament employed therein, the jurisdiction of the Court to review, quash, or otherwise interfere with the proceedings of the Board of Inquiry still remains in two cases at least, in addition to those expressly conferred where the person detained has Canadian citizenship or domicile, viz., first, where the Board has acted without jurisdiction; and second, where what has been wrongly done in the exercise of its jurisdiction amounts to a violation of the "essential requirements of justice." I shall not refer further to that case, it speaks for itself and is a judgment of this Court and binding upon us.

In the exercise of that jurisdiction, Mr. Justice Fisher, sitting as the Supreme Court of British Columbia, set aside the order of deportation complained of, *i.e.*, "reviewed and quashed" it, to use the words of the Statute, and so employed in the order of the Court over which he presided and given under its seal as set out on p. 27 of the Appeal Book, wherein it was declared that the present appellant be discharged from the custody of the Immigration authorities, "and the Order for (his) deportation be and the same is hereby quashed."

No appeal was taken from that judgment and it was pronounced under circumstances in which the Court could properly have had jurisdiction and as there is nothing on its face to show any want of jurisdiction it must be presumed that it existed, and so it is improper for this Court to interfere with it or go behind it while it stands as a valid judgment, for we cannot now assume the functions of a Court of Appeal over it—even in the case of inferior Courts, *The Colonial Bank of Australasia v. Willan* (1874) L.R. 5 P.C. 417; *R. v. Bolton* (1841) 1 Q.B. 66, and *The King v. Commanding Officer of Morn Hill Camp* (1917) 1 K.B. 176, wherein it was said, p. 180, that the same principles apply in *habeas corpus* as in *certiorari*.

When the matter came before Mr. Justice Murphy, on the second application for *habeas corpus* after the second arrest, he very properly did not, as his reasons show, essay to base his judgment and his consequent order upon the ground that Mr. Justice Fisher's said order was invalid upon the facts before him, but took another ground which was properly open to him to take, viz., he thought that even though there had been a second arrest of this appellant upon an amended order of deportation, nevertheless that amended order could be justified by the decision of the King's Bench Division in England,

in *Rex v. The Governor of Brixton Prison exparte Stallman,* (1912) 3 K.B. 424; 13 Cox 192.

Now if that case had been on a par with the present one, I would, even though it is not binding on us, have little to say, under its particular circumstances, but, as was pointed out by Mr. O'Halloran, for the appellant, it contains in fact and law fundamental distinctions, and when it is thoroughly understood it is not an authority in support of the decision now appealed from but is against it. We find, for example, Mr. Justice Phillimore saying, at page 449, that though there may be a re-arrest (in proper circumstances) on an extradition warrant yet if one is made even on a valid warrant, then the case of the arrestee must also be "fully investigated before his committal" thereupon. And, again, the charge in the original British warrant upon which the applicant was re-arrested was the same as that upon which he was arrested and liberated in India and because there had not been in law a real decision in India of the charge upon the merits it was held that the original charge could be proceeded with in England.

Now the primary complaint in the present case is that the original order of the Board has been accepted and acted upon by itself as unsound and insufficient to support a re-arrest, and so it improperly assumed jurisdiction to amend its proceedings by setting out, for the first time, a definite charge against the appellant and arresting him thereunder: that was the whole and sole reason for the amended order, because the first order for release was defective, as Mr. Justice Murphy says, owing to the fact that the particular breach of the Immigration Act was not set out as is required. But the Board having illegally amended its proceedings and re-framed the charge so as to formulate it particularly and properly for the first time against this person, and arrested him thereunder, proceeded to deport him without giving him an opportunity to shew cause against that very grave punitive proceeding.

My mind is shocked by such a miscarriage of justice, and I am sure that if anything of the kind had been before the King's Bench Division in the *Brixton Prison case* they would have given it no sanction whatever, and I feel it is our duty to do likewise herein.

I therefore put my decision on two grounds: first, that under the circumstances the Order of Mr. Justice Fisher was a proper order to make, and we are not justified in interfering with it; and, second, that even if the proceedings upon the Board's amended Order could be invoked at all they contain the incurable defect that after the re-arrest there was no re-investigation of the accused on the definite charge that was for the first time then laid against him but, on the contrary, he was in effect condemned upon that amended charge without being given any opportunity to meet it and sentenced to deportation in his absence. It is a coincidence but it was upon that very ground (violation of natural justice) that the applicant in the *Brixton case* had been liberated from his arrest on the first warrant in India, by the High Court of Justice there, in that he had not been given an opportunity to

present evidence to meet the charge against him: in other words, no real trial of the charge had been held.

With respect to the suggestion that the Board can now, at the eleventh hour, abandon its amending proceedings and the arrest thereunder by amended Order and fall back upon the first order and justify the second arrest thereunder, there are two complete answers to it, *viz.*, first, the original order is defective as aforesaid; and, second, even if it were not, the return of the Immigration Agent, Roff, dated 23rd October, 1931, to the writ of *habeas corpus* upon which the deportee is now detained by him shows, as it states specifically, that this detention is solely

> "under and by virtue of an order of deportation a true copy of which is hereto annexed . . . and that the said Munetaka Samejima is detained by me by virtue of the said order of deportation and for no other cause whatsoever."

Now the "order annexed" is the amended and not the original order, and therefore the Immigration Agent has elected to justify and bring up the body in accordance with his return and no other return is before us or can be relied upon by the said Agent or even considered by us.

As the case in this Court of *Re Munshi Singh* (1914) 20 B.C. 243 has been cited and misconceived I refer to it only to say that it clearly supports, if support were needed, our later consistent decision in *Low Hong's* case *supra* as appears by the judgments of four members of the Court at pp. 258, 263, 269 and 277. For example, at p. 258 the learned Chief Justice gave some illustrations of cases wherein this same sec. 23 does not take away the remedial jurisdiction of the Court, viz.:-

> "Had the Board of Inquiry acted without jurisdiction, or upon orders in council made without authority, or upon a statute which was unconstitutional, no doubt the Court could and would interfere to prevent what in that case would be an illegal detention."

In my opinion it is apparent *ex facie* that the "essential requirements of justice" have been violated in this case by the proceedings of the Board and an unfounded jurisdiction exercised, and therefore the appeal should be allowed and the deportee set at liberty forthwith.

Victoria, B.C., 29th Jan, 1932. (Sgd.) "Archer Martin, J. A."

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE McPHILLIPS—COURT OF APPEAL

I would dismiss the appeal, and I am in agreement with my learned brother the Chief Justice, upon the facts and the law.

There could be no misconception from the start, of the question to be enquired into. The evidence is complete, that the authorities had the suspicion

that Munetaka Samejima came into Canada by misrepresentation. That is the threshold of the matter. I cannot agree that there was any failure of the statutory tribunal to proceed in due course, and nothing was done which was against natural justice. Munetaka Samejima was held, the claim being that he came here making the misrepresentation that he was going to be a domestic servant, with a named person, and that was false; there was nothing to support the truthfulness of that statement.

The case of *Munshi Singh,* (1914), 20 B.C.R., page 243, is a decision of this Court which determined that no court had jurisdiction to review or reverse any decision of any Board of Inquiry, unless the case was one who possessed Canadian citizenship or Canadian domicile,—section 23 inhibiting it where the case was not one of Canadian citizenship or Canadian domicile.

I go to page 263 (in *Munshi Singh, supra*) where Mr. Justice Irving made use of this language:

> "Section 23 (that is the section we are considering) to which our attention is particularly invited, deals with two classes of persons, namely, Canadian citizens and persons having a Canadian domicile—that is one class; the other class is any rejected immigrant, passenger or other person, not being a Canadian citizen or having a Canadian domicile. With respect to the first class, in my opinion, the rights of the civil courts to intervene has not been taken away. In such cases the courts have a right to interfere by *certiorari.* With reference to the second class, the jurisdiction of the court to review, quash, reverse, restrain or otherwise interfere, I shall not say has been taken away, *but does not exist.* The right of *certiorari* in the second class is limited to want of jurisdiction or excess of jurisdiction or fraud. In cases where the right of *certiorari* is taken away by statute, the courts can, nevertheless, inquire as to the facts which go to the jurisdiction—that is facts collateral to the matters they are to determine; but as to the merits of the case, the tribunal appointed is the sole judge."

> "A person may apply to a civil court to determine whether he falls within one class or the other, but once it is established that he is a rejected immigrant or passenger, under the authority and in accordance with the Act, and is not a Canadian citizen or has not Canadian domicile, then the civil court has no jurisdiction to investigate the correctness of the decision."

Now that is this case; and I am surprised that the learned Judge gave the judgment he did; there must have been some oversight. There was no authority, with great respect, for the learned Judge upon a *habeas corpus* proceeding to set aside anything,— which he presumed to do, *i.e.,* set aside the Board's order for deportation. His whole duty was to apprise himself as to whether or not a person is illegally detained. Now when the matter came before the learned Judge, how impossible it was for him to say that he was

not rightfully held, when, in the face of sec. 23 he could not enter into the subject matter at all,—or, in the language of my late brother Irving:

> "With reference to the second class, the jurisdiction of the court to review, quash, reverse, restrain or otherwise interfere, I shall not say has been taken away, but *does not exist.*"

Notwithstanding, the learned Judge made the order quashing the Board of Inquiry's decision. That can only be an order made without jurisdiction, a nullity, and one that this Court has no power, even the right, to consider—Parliament is the highest court in the land.

Now with respect to the *Low Hong Hing* case, referred to by my learned brother Martin, with great respect I do not think it can have any bearing upon the matter we have now before us. In the first place, it is upon a different statute, and I am reminded of what Lord Parmoor once said in the Privy Council, that the decisions upon other statutes are not very helpful, and I do not think that any decision based upon the Chinese Immigration Act can be at all helpful to us in this matter. We have here a section which is so clear and precise that there can be no question of a doubt about its meaning. It reads:

> "No Court, and no judge or officer thereof shall have jurisdiction to interfere with that order."—

unless such person is a Canadian citizen or has Canadian domicile. Can there be any question of doubt as to the meaning of this? The appellant in this case had ample notice of his rights given to him, and when we turn to the proceedings, at page 28-29 of the Appeal Book we find this—This is the Board's finding, and this notice is appended:

> "If you claim to be a Canadian citizen or to have acquired Canadian domicile you have the right to consult counsel and appeal to the courts against deportation."

But the appellant did not come within either class. Now that was a plain intimation to the appellant of the situation of things. It is not advanced at this Bar—I asked Mr. O'Halloran precisely whether or not his client, the appellant, was a Canadian citizen or had achieved Canadian domicile. The learned Counsel was not able to say that his client came within either class, *i.e.*, Canadian citizen or Canadian domicile. Well then, the appellant also was apprised and had notice of this:

> "In all other cases (and here was one of these cases not having Canadian citizenship or domicile) you may appeal to the Minister of Immigration and Colonization against any decision of the Board of Inquiry, or Officer in Charge, whereby you are ordered to be deported, unless such decision is based upon a certificate of the Examining Medical Officer that you are affected with a loathsome disease, or a disease which may become dangerous to the public health. The formal notice of appeal will be supplied to you by the Immigration Officer in charge upon request."

Where was there any failure to give the appellant every opportunity, as in a court of justice, to make out his case and to take his proceedings? The utmost care has been taken, as I see it, by the National Government in all the proceedings that took place.

I could go on in detail and go through this material to show that there was not a thing left undone to rightly proceed and rightly enquire into the whole matter.

Then, a question comes up as to compliance with Form C of the Act, *i.e.,* that the order was not properly filled up. I have as to this this observation to make; the Board it is true did not state in their first order the reasons in full, but there is no question about what their reasons were; they were orally stated to the appellant, as the proceedings show, and all that was done later on was to fill in a blank space that which had been omitted, *i.e.,* any court may at any time, so could this statutory tribunal, set forth the order actually pronounced. Now if it were necessary,—and my learned brother the Chief Justice has indicated the non-necessity for it,—but if it were necessary that there should be any amendment, I am of opinion that the amendment could rightfully be made, and made with legal warrant, because, after all, the filling in of the reasons for rejection can very well in a case of this character be said to be merely directory, and their absence not fatal.

In Section 33, sub-section 5 of the Act:

> "An order for deportation by a Board of Inquiry or officer in charge *may be made* in the Form C in schedule to this Act, and a copy of the said order shall forthwith be delivered to such passenger or other person, and a copy of the said order shall at the same time be served upon the master or owner of the ship or upon the local agent or other official of the transportation company by which such person was brought to Canada; and such person shall thereupon be deported by such company, subject to any appeal which may have been entered on his behalf under this Act."

Now can it be said with any truth or with any force that the appellant did not know why he was to be deported? Why the whole enquiry was on this question of misrepresentation throughout, and it was pointed out how he said that he came in for his stated purpose, and he intimated that he was going into service in that certain capacity, which he never carried out. We have the word *misrepresentation,* it has no magical meaning. Misrepresentation is an English word not surrounded by the perplexities that arise in some specific legal terms. He made a statement to the Government officer at the time of his entry that was false and has been proved to have been false; that was the gravamen of the charge, and that was what was enquired into. And the evidence is clear to demonstration that the appellant made no sufficient answer to the charge.

The only appeal was to the minister, and when you look at the proceedings, the appellant was so advised by the Chairman of the Board, *i.e.,* that he

had a right of appeal to the Minister; and he could as well have said, as it would have been truthful: "You *not* being a Canadian citizen and *not* having a Canadian domicile are not now even without any opportunity for relief." But in effect the Chairman had said this: "This order may be reversed by the Minister; you have the right of an appeal to the Minister." And the appellant then and there said: "I intend to appeal." Can there be any question about his knowledge what he was going to appeal about—all exhibited to him, stated to him, and he did appeal to the Minister, one of the Cabinet of the Government of Canada, and his appeal was denied.

So that under the statute law of this country this appellant has been treated fairly, in conformity with the law, and in accordance with natural justice throughout. He had a fair hearing, a proper enquiry, every opportunity was afforded to him to make out his case, and he exhausted his right of appeal. It would certainly be an anomaly if this Court, the highest Court of the Province, should solemnly give the judgment that they did in the case I have referred to (*Munshi Singh, supra*), that it would be possible for a judge in the court below to absolutely disregard it and give a judgment not in conformity with it, when the decision of the Court of Appeal was based upon a statutory inhibition contained in the Dominion Immigration Act, (sec. 23 c. 93). That is what occurred here. I feel confident, though, that some misunderstanding has taken place as to this Court's decision. It is true that since the amending provisions in the Court of Appeal Act allowing appeals in *habeas corpus* proceedings, it has been decided that in accordance with a view I always maintained,—the decision is one of the Privy Council, that an application may be made to any judge, and even if the applicant has appealed and failed, and the learned judge below would have had the right to hear the application and grant the applicant his liberty, as Mr. Justice Fisher did, were it not in a case where there was express statutory inhibition, and therefore a nullity. Here the appeal is from Mr. Justice Murphy, the appellant being again apprehended, under the Board's order for deportation, and that learned Judge refused him his liberty. And we have been hearing a case on appeal from a learned judge who did not proceed in the same manner as Mr. Justice Fisher. This appeal is from an order made by Mr. Justice Murphy, and Mr. Justice Murphy had these authorities that I have referred to placed before him, and Mr. Justice Murphy refused to release the appellant. It is not difficult to know upon what ground he came to that conclusion, but I should think he could well come to it on the ground of the merits themselves; and secondly he could also come to the conclusion naturally in view of our decision (*Munshi Singh, supra*) that I have referred to that he had no authority whatever to intervene in the matter, there being in this case the statutory inhibition.

So that I would conclude by saying that the appellant was, in accordance with British and Canadian justice, apprised of his misrepresentation complained of by the Crown, made upon his entry into Canada, and the Board of Enquiry held that he was wrongfully in Canada, he having every oppor-

tunity to meet the case that was outlined to him, and he attempted, I suppose as well as he could, to meet it. The Board, exercising its jurisdiction, found against him and made an order for deportation. If he had been a Canadian citizen or had Canadian domicile, he would have had recourse to the ordinary courts of the land, but not being that, he was apprised that he would have an appeal to the Minister, and that appeal he took, as referred to above. That appeal was a further examination of all the proceedings and all the evidence adduced, and the Minister determined that the order of the Board was right in the premises.

Now that is the history of this case, and it would be indeed deplorable if all the machinery that has been provided in Canada could be treated as provisions of naught, after fair, open and complete investigation, with not one supportable contention that there was any miscarriage of justice in one particular.

Victoria, B.C., January, 1932. (Sgd.) A. E. McPhillips, J. A."

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M. A. MACDONALD—COURT OF APPEAL

I have little to add to the views outlined by my brother Martin, beyond expressing concurrence. I think there is no doubt that under certain circumstances, outlined in the cases, and indicated by the section of the Act under review, it was open to Mr. Justice Fisher to review the decision of the Board of Enquiry. Whether or not he reached the proper conclusion is not material. If error crept in it could only be corrected by an appeal to this Court, and the time for doing so has expired. His order quashing the first order of deportation must therefore be regarded as final.

Having reached that conclusion further difficulties, if any, disappear. The so-called amended order was made without the observance of statutory prerequisites and without any further enquiry taking place. The first enquiry cannot be resorted to as a basis for the amended order. That being so, an essential principle of justice, viz., an enquiry before sentence, was not observed.

I would allow the appeal.

Jan. 29, 1932. (Sgd.) "M. A. Macdonald, J. A."

CASE CERTIFIED BY SOLICITOR

I, Cornelius Hawkins O'Halloran, a Member of the firm of O'Halloran & Harvey, of 603-606 Central Building, in the City of Victoria, Province of British Columbia, Solicitors for Appellant Munetaka Samejima, hereby certify that I have personally compared the annexed printed case on appeal to the Supreme Court of Canada with the originals and that the same is a true and correct reproduction of such originals.

Dated at Victoria, British Columbia, this 19th day of March, 1932.

(Sgd.) C. H. O'HALLORAN,
of the firm of O'Halloran & Harvey,
603-606 Central Building, Victoria,
British Columbia,
Solicitors for the Appellant.

CERTIFICATE AS TO SETTLEMENT OF CASE AND AS TO REASONS FOR JUDGMENT

I, the undersigned, Registrar of the Court of Appeal at the City of Victoria, in the Province of British Columbia, do hereby certify that the foregoing printed document from page 1 to page 49 inclusive, is the case stated by the parties pursuant to Section 68 of the Supreme Court Act, and the Rules of the Supreme Court of Canada, in an appeal to the said Supreme Court of Canada, in a certain case pending in the Supreme Court of British Columbia and the Court of Appeal of British Columbia between Munetaka Samejima (Applicant), Appellant, and His Majesty the King (Respondent) Respondent.

AND I DO FURTHER CERTIFY that I have applied to the Judges of the Court of Appeal for their opinions or reasons for judgment in this case, and the only reasons delivered to me are those of:

THE HONOURABLE THE CHIEF JUSTICE OF BRITISH COLUMBIA,

THE HONOURABLE MR. JUSTICE MARTIN,

THE HONOURABLE MR. JUSTICE MCPHILLIPS, and

THE HONOURABLE MR. JUSTICE M. A. MACDONALD,

all of said reasons being set forth in the foregoing case.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the seal of the said The Court of Appeal this 21st day of March, A.D. 1932.

B. H. Tewhitt Drake

(Sgd.) B. H. TEWHITT DRAKE,
Registrar Court of Appeal of
British Columbia.

Seal,
Court of Appeal,
British Columbia.

IN 50 VICTORIA

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In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA

IN THE MATTER OF THE IMMIGRATION ACT,
Chapter 93, R.S.C., 1927, and Amending Acts.

AND

IN THE MATTER OF MUNETAKA SAMEJIMA

MUNETAKA SAMEJIMA
(Appellant)

AND

HIS MAJESTY THE KING
(Respondent)

APPELLANT'S FACTUM

O'HALLORAN & HARVEY,
Victoria, B.C.,
Solicitors for Appellant.

C. H. O'HALLORAN, Esq.,
Counsel for Appellant.

MESSRS. MacCRAKEN, FLEMING & SCHROEDER,
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Diggon's Limited
1932

10.50 VICTORIA

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA

IN THE MATTER OF THE IMMIGRATION ACT,
Chapter 93, R.S.C., 1927, and Amending Acts.

AND

IN THE MATTER OF MUNETAKA SAMEJIMA

MUNETAKA SAMEJIMA
(Appellant)

AND

HIS MAJESTY THE KING
(Respondent)

APPELLANT'S FACTUM

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INDEX

Page

PART I.

Statement of Facts and Proceedings 1

PART II.

Assignment of Error 3

PART III.

Relevant Provisions of Immigration Act, Chapter 93, R.S.C. 1927 and Amending Act 6

PART IV.—ARGUMENT

Respondent's Return to Writ shows illegal detention 12

Court of Appeal had no Jurisdiction to disregard quashing order 13

There was no authority to re-arrest Appellant 16

Board of Inquiry had no jurisdiction to deport Appellant 16

Misrepresentation must relate to an essential for admission to Canada 18

It is the duty of the Court to investigate conditions precedent to the Board of Inquiry's power to deport 19

Appellant's detention is a violation of justice and Court may interfere 23

Habeas Corpus is not taken away by Section 23 of the Immigration Act 24

The Court has power to interfere with deportation order 25

Deportation order cannot extend or restrict cause of arrest set out in Minister's warrant 30

Second arrest of Appellant upon the same warrant and the same charge was illegal 31

If Section 23 of the Immigration Act takes away *habeas corpus*, it is *ultra vires* the Parliament of Canada 33

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APPELLANT'S FACTUM

Part I.
STATEMENT OF FACTS AND PROCEEDINGS

29th September, 1928. Appellant duly admitted to Canada at the Port of Vancouver (Case page 12, pars. 1 and 2).

28th January, 1931. Minister's Warrant to arrest appellant (Case page 34).

28th April, 1931. Appellant arrested by Immigration authorities (Case page 13, pars. 5 and 6).

29th April, 1931. Investigation by Board of Inquiry at Victoria, B.C. (Case page 13, pars. 5 and 6, and page 28 et seq.), where deportation order made.

11th June, 1931. Appellant's appeal to Minister dismissed (Case page 15, par. 14).

18th June, 1931. Writ of *habeas corpus* granted (Case page 15, par. 15).
25th June, 1931. Return of Immigration Agent to writ of *habeas corpus* (Case page 35).

8th July, 1931. Order of Supreme Court of British Columbia discharging Appellant from custody and quashing deportation order (Case page 36) and see in *re Munetaka Samejima*—1931, 44 B.C. Reports, page 317.

23rd September, 1931. Appellant re-arrested by Immigration authorities and held for immediate deportation (Case page 17, par. 23) without any investigation by Board of Inquiry (Case page 15, par. 17, and page 17, par. 21) allegedly under authority of an amended deportation order dated 29th April, 1931 (Case page 27) although—

(a) The deportation order of the 29th April, 1931, which the amended order purported to amend was quashed by an order of the Supreme Court of British Columbia of the 8th July, 1931 (Case page 36).

(b) No amended order for deportation had ever been made by the Board of Inquiry (Case page 17, par. 21).

30th September, 1931. Second writ of *habeas corpus* issued (Case pages 1 and 2).

23rd October, 1931. Return of Immigration Agent to writ of *habeas corpus* setting out that Appellant "is detained by me by virtue of the above order of deportation (amended order of deportation annexed to return) and for no other cause or reason whatsoever" (Case pages 3 to 5).

30th October, 1931. Order of Supreme Court of British Columbia quashing writ of *habeas corpus* (Case page 37) and reasons for judgment thereof (Case page 38).

5th November, 1931. Notice of Appeal given to Court of Appeal for British Columbia (Case page 9).

29th January, 1932. Court of Appeal pronounced judgment dismissing appeal on an equally divided Court (Case page 38) and reasons for judgment Chief Justice of British Columbia (Case page 39), Martin, J. A. (Case page 40), McPhillips, J. A. (Case page 42), and M. A. Macdonald, J. A. (Case page 47).

Upon Notice of Appeal being given to the Supreme Court of Canada thereupon, pursuant to Section 9 of the Constitutional Questions Determination Act, Revised Statutes of B.C., 1924, Chapter 46, notice was duly served

on the Attorney-General of Canada and on the Attorney-General of British Columbia (Case page 10).

This Section 9 reads as follows:

(1) Where in any cause, matter, or other proceeding the constitutional validity of any Act of the Parliament of Canada or of the Legislature of British Columbia comes into question. the same shall not be adjudicated to be invalid until after notice thereof has been served upon the Attorney-General of Canada and the Attorney-General of British Columbia, or at their offices respectively.

(2) The notice in such case shall be intituled in the cause; shall state what the Act or Section of an Act is which is in question, and the day on which the case or the said question is to be argued; and shall give such other particulars as are necessary to shew the constitutional point proposed to be argued.

(3) The notice shall, in the case of the Attorney-General of Canada, be served ten days, and in the case of the Attorney-General of British Columbia be served six days, before the day of the argument, unless the Court of Appeal or a Judge authorizes a shorter notice.

(4) Upon every such question the Attorney-General of Canada and the Attorney-General of British Columbia shall be entitled as of right to be heard. either in person or by counsel, notwithstanding that the Crown is not a party to the action or proceeding.

The Respondent took exception to the jurisdiction of the Court to entertain the proceedings by reason of Section 23 of the Immigration Act, R.S.C. 1927 (Page 7 hereof), both before the Honourable Mr. Justice Murphy and before the Court of Appeal for British Columbia, and upon the appeal before the latter Court moved to quash the appeal for lack of jurisdiction to entertain the appeal by reason of Section 23 of the Immigration Act aforesaid.

Part II.

ASSIGNMENT OF ERROR

The error assigned is that the Court of Appeal for British Columbia:

1. Without jurisdiction set aside, disregarded or treated as a nullity a final order of the Supreme Court of British Columbia of the 8th July, 1931 (Case page 36) from which no appeal had been taken.

2. Held that the Appellant was detained under the original order of deportation of the 29th April, 1931, when,

Assignment of Error

(a) The Return to the Writ of *Habeas Corpus* shows that the Appellant was held under the amended order of deportation and for no other reason whatsoever (Case page 4. lines one to three).

(b) The Respondent acknowledged the validity of the order of the Supreme Court of British Columbia of the 8th July, 1931, by liberating the Appellant from custody and subsequently purporting to amend the deportation order of the 29th April, 1931, in an effort to cure the defects for which the said order was quashed by the order of the Supreme Court of British Columbia, of the 8th July, 1931.

3. Held that the original order of deportation of the 29th April, 1931, was still in effect although it had been quashed by final order of the Supreme Court of British Columbia.

4. Held that the Appellant could be deported without a hearing by the Board of Inquiry.

5. Should have held that a deportation order could not be made without an inquiry after arrest.

6. Should have held that there was no authority for the re-arrest of the Appellant on the 23rd September, 1931.

7. Held that Section 23 of the Immigration Act (Page 7 hereof) prohibited the Court interfering by *habeas corpus* to restrain the Immigration authorities from deporting the Appellant, although such deportation was being carried out contrary to the provisions of the Immigration Act aforesaid.

8. Held that the re-arrest and holding of the Appellant for immediate deportation was not a violation of the essentials of justice and an abuse of power.

9. Should have held that the order of the Supreme Court of British Columbia of the 8th July, 1931 (Case page 36) was—

(a) Final and conclusive and could not be set aside except on an appeal therefrom to the Court of Appeal.

(b) An order of a superior Court which had jurisdiction in certain cases to interfere despite Section 23 of the Immigration Act aforesaid (Page 7 hereof).

(c) An order of a superior Court and that no lack of jurisdiction could be inferred or presumed.

10. Should have held that there was no jurisdiction in the Board of Inquiry to make any order in respect to the Appellant in that "the facts

Assignment of Error

alleged in the complaint" were not before it for investigation as required by Section 42 of the Immigration Act aforesaid (Page 10 hereof).

11. Should have held that there was no jurisdiction in the Board of Inquiry to make a deportation order before arrest.

12. Should have held that there was no jurisdiction in the Board of Inquiry to deport the Appellant under Section 33 (7) of the Immigration Act aforesaid (Page 8 hereof), in that the warrant of the Minister having been received, there was no jurisdiction to make any order except under Section 42 of the Immigration Act aforesaid (Page 10 hereof).

13. In the alternative, erred in not holding that there was no jurisdiction to deport unless the Appellant was convicted of an "offence" under Section 33 sub. (7) of the Immigration Act aforesaid (Page 8 hereof).

14. Erred in not holding that the Appellant should be discharged in that he was arrested a second time under the same warrant of the Minister on identically the same charge (Case page 34).

15. Erred in holding that the Appellant was re-arrested on a new warrant (Case pages 38 and 39).

16. Erred in holding that the Board of Inquiry entered on its duties with jurisdiction to decide whether the Appellant was properly in Canada.

17. Erred in holding that the order of the 8th July, 1931, was contrary to the decision in *re Munshi Singh,* 1914, 20 B.C. page 243.

18. Held that violation of the essentials of justice was not sufficient to enable the Court to interfere under Section 23 of the Immigration Act aforesaid (Page 7 hereof).

19. Should have held that neither the order nor amended order of deportation was an order of the Board of Inquiry "had, made or given under the authority and in accordance with the provisions of this Act" under and by virtue of Section 23 of the Immigration Act aforesaid (Page 7 hereof).

20. Should have held that Section 23 of the Immigration Act aforesaid (Page 7 hereof) did not restrain the Court from investigating whether there was in fact misrepresentation by the Appellant and whether or not the Board of Inquiry had observed all the Statutory prerequisites to enable the said Board of Inquiry to make a deportation order.

21. Should have held that there was no jurisdiction in the Board of

Assignment of Error

Inquiry to deport the Appellant under the order or amended order for deportation.

22. Should have held that Section 23 of the Immigration Act aforesaid (Page 7 hereof) does not take away the right of the Court to interfere by way of *habeas corpus*.

23. Should have held that if Section 23 of the Immigration Act aforesaid Page 7 hereof) does take away the right to *habeas corpus*, then such Section 23 is *ultra vires* the Parliament of Canada.

Part III.

RELEVANT PROVISIONS OF THE IMMIGRATION ACT

Chapter 93, R.S.C. 1927, and Amending Acts

For convenient reference, the relevant provisions of the Immigration Act are here set forth:

APPOINTMENT, POWERS AND PROCEDURE OF BOARDS OF INQUIRY

13. The Minister may nominate at any port of entry any number of officers to act as Boards of Inquiry and any three officers so nominated shall constitute a Board of Inquiry.

14. A Board of Inquiry shall have authority to determine whether an immigrant, passenger or other person seeking to enter or land in Canada or detained for any cause under this Act, shall be allowed to enter, land or remain in Canada or shall be rejected and deported.

15. The hearing of all cases brought before a Board of Inquiry shall be separate and apart from the public, but in the presence of the immigrant, passenger or other person concerned whenever practicable, and such immigrant passenger or other person shall have the right to be represented by counsel whenever any evidence or testimony touching the case is received by the Board, and a summary record of proceedings and of evidence and testimony taken shall be kept by the Board.

2. The Board, and any member thereof, may, at discretion, administer oaths and take evidence under oath or by affirmation in any form which they deem binding upon the person being examined.

16. In all such cases, a Board of Inquiry may at the hearing, receive and base its decision upon any evidence, considered credible or trustworthy by

such Board in the circumstances of each case; and in all cases where the question of the right to enter or land in Canada under this Act is raised the burden of proof shall rest upon the immigrant, passenger or other person claiming such right.

17. The Board of Inquiry shall appoint its own chairman and secretary to keep the record of its proceedings, and in all cases and questions before it the decision, in writing, of a majority of the Board shall prevail.

18. There shall be no appeal from the decision of such Board of Inquiry as to the rejection and deportation of immigrants, passengers or other persons seeking to land in Canada, when such decision is based upon a certificate of the examining medical officer to the effect that such immigrants, passengers or other persons are afflicted with any loathsome disease, or with a disease which may become dangerous to the public health, or that they come within any of the following prohibited classes, namely, idiots, imbeciles, feeble-minded persons, epileptics and insane persons: Provided always that Canadian citizens and persons who have Canadian domicile shall be permitted to land in Canada as a matter of right.

19. In all cases other than provided for in the last preceding section an appeal may be taken to the Minister against the decision of any such Board of Inquiry or Officer in charge by the immigrant, passenger or other person concerned in the case, if the appellant forthwith serves written notice of such appeal, which notice may be in the form "D" in the schedule to this Act, upon the officer in charge or the officer in whose custody the appellant may be.

2. In case of the appeal being dismissed by the Minister, the appellant shall forthwith be deported.

JURISDICTION OF COURTS IN CASES OF REJECTION AND DEPORTATION

23. No court, and no judge or officer thereof, shall have jurisdiction to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or order of the Minister or of any Board of Inquiry, or officer in charge had, made or given under the authority and in accordance with the provisions of this Act relating to the detention or deportation of any rejected immigrant, passenger or other person, upon any ground whatsoever, unless such person is a Canadian citizen or has Canadian domicile.

LANDING OF PASSENGERS

33. Every passenger or other person seeking to enter or land in Canada shall first appear before and make application to an immigration officer at a port of entry for permission to enter or land in Canada and shall be detained

for examination, which shall be conducted forthwith on shipboard, or on train, or at some other place designated for that purpose.

2. Every passenger or other person seeking to enter or land in Canada shall answer truly all questions put to him by any officer when examined under the authority of this Act; and any person not truly answering such questions shall be guilty of an offence and liable on conviction to a fine of not more than one hundred dollars or to a term of imprisonment not exceeding two months or to both fine and imprisonment, and if found not to be a Canadian citizen or not to have Canadian domicile, such offence shall in itself be sufficient cause for deportation whenever so ordered by a Board of Inquiry or officer in charge, subject however to such right of appeal as he may have to the Minister.

3. Every passenger or other person so examined shall be immediately landed unless the examinating officer has reason to believe that the landing of such passenger or other person would be contrary to any provision of this Act.

4. Every passenger or other person as to whose right to enter or land the examining officer has any doubt shall be detained for further examination by an officer in charge, or by a Board of Inquiry and such examination shall forthwith be conducted separate and apart from the public, and upon the conclusion thereof such passenger or other person shall be immediately allowed to enter, land, or shall be rejected and kept in custody pending his deportation.

5. An order for deportation by a Board of Inquiry or officer in charge may be made in the form "C" in the schedule to this Act (P. 11 hereof), and a copy of the said order shall forthwith be delivered to such passenger or other person, and a copy of the said order shall at the same time be served upon the master or owner of the ship or upon the local agent or other official of the transportation company by which such person was brought to Canada; and such person shall thereupon be deported by such company subject to any appeal which may have been entered on his behalf under this Act.

6. It shall be a violation of this Act for any person to enter Canada except at a port of entry.

7. Any person who enters Canada except at a port of entry, or who at a port of entry eludes examination by an officer, or Board of Inquiry, or who enters Canada by force or misrepresentation or stealth or otherwise contrary to any provision of this Act, or who escapes from custody of an officer or from an immigrant station when detained for any cause under this Act, shall be guilty of an offence under this Act, and liable on conviction to a fine of not more than two hundred dollars or to a term of imprisonment not exceeding three months or to both fine and imprisonment, and any person suspected of an offence under this section may be arrested and detained with-

out a warrant by any officer for examination as provided under this section, and if found not to be a Canadian citizen, or not to have Canadian domicile, such entry shall in itself be sufficient cause for deportation whenever so ordered by a Board of Inquiry or officer in charge subject to any appeal which may have been entered under the provisions of this Act relating thereto.

DEPORTATION OF PROHIBITED AND UNDESIRABLE CLASSES

40. Whenever any person, other than a Canadian citizen or person having Canadian domicile, shall be found an inmate of or connected with the management of a house of prostitution or practising prostitution, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute or who manages or is employed by, in, or in connection with any house of prostitution, or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute or who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose, or who has been convicted of a criminal offence in Canada or who admits the commission prior to landing or entry to Canada, of a crime involving moral turpitude, or has become a professional beggar or a public charge or practices polygamy, or has become an inmate of a penitentiary, goal, reformatory, prison, asylum or hospital for the insane or the mentally deficient, or an inmate of a public charitable institution, or enters or remains in Canada contrary to any provision of this Act, it shall be the duty of any officer cognizant thereof, and the duty of the clerk, secretary or other official of any municipality in Canada wherein such person may be, to forthwith send a written complaint thereof to the Minister, giving full particulars.

41. Whenever any person other than a Canadian citizen advocates in Canada the overthrow by force or violence of the government of Great Britain or Canada, or other British dominion, colony, possession or dependency, or the overthrow by force or violence of constituted law and authority, or the assassination of any official of the Government of Great Britain or Canada or other British dominion, colony, possession or dependency, or of any foreign government, or shall by word or act create or attempt to create riot or public disorder in Canada, or shall by common repute belong to or be suspected of belonging to any secret society or organization which extorts money from, or in any way attempts to control, any resident of Canada by force or threat of bodily harm, or by blackmail; such person for the purposes of this Act shall be considered and classed as an undesirable immigrant, and it shall be the duty of any officer becoming cognizant thereof, and the duty of the clerk, secretary or other official of any municipality in Canada wherein such person may be, to forthwith send a written complaint thereof to the Minister, giving full particulars.

42. Upon receiving a complaint from any officer, or from any clerk or secretary or other official of a municipality against any person alleged to belong to any prohibited or undesirable class, the Minister or the Deputy Minister may order such person to be taken into custody and detained at an immigrant station for examination and an investigation of the facts alleged in the said complaint to be made by a Board of Inquiry or by an officer acting as such.

2. Such Board of Inquiry or officer shall have the same powers and privileges, and shall follow the same procedure, as if the person against whom complaint is made were being examined upon application to enter or land in Canada and such person shall have the same rights and privileges as he would have if seeking to enter or land in Canada.

3. If upon investigation of the facts such Board of Inquiry or examining officer is satisfied that such person belongs to any of the prohibited or undesirable classes mentioned in the two last preceding sections of this Act, such person shall be deported forthwith, subject, however, to such right of appeal as he may have to the Minister.

4. The Governor in Council may, at any time, order any such person found by a Board of Inquiry or examining officer to belong to any of the undesirable classes referred to in this Act to leave Canada within a specified period; such order may be in the form "E" in the schedule to this Act, and shall be in force as soon as it is served upon such person, or is left for him by any officer at the last-known place of abode or address of such person.

FORM "C"

ORDER FOR DEPORTATION

CANADA

The Immigration Act, Section 33

To .....
(transportation company)

and to .....
(person rejected)

Port of Entry.....

Province of .....

This is to certify that.....
(name in full)

of .....
(last place of residence)

a person seeking to enter Canada at this port, ex.....
(ship or train)

from .....which arrived at this port on

..... at .....o'clock has this day been examined by the Board of Inquiry (or officer in charge) at this port, and has been rejected for the following reasons.....

.....

.....
(here state reasons in full)

And the said.....is hereby ordered to be deported to the place from whence he came to Canada. Such conveyance shall be by the first available ship or train of the transportation company which brought the said.....to Canada.

Dated at.....this.....day of.....19.....

Chairman of the Board of Inquiry
(or Immigration Officer in Charge)

PART IV.

ARGUMENT

RESPONDENT'S RETURN TO WRIT SHEWS ILLEGAL DETENTION

1. The Respondent in its Return to the Writ of *Habeas Corpus* maintained that it held the Appellant for deportation by virtue of the amended order of deportation "and for no other cause or reason whatsoever" (Case page 4, lines 1 to 3).

The Learned Chief Justice of British Columbia held that the amending order could not be made (Case page 39, line 33), and Martin, J.A. (Case page 41, lines 19 and 20 and line 33 et seq), and M. A. Macdonald, J.A. (Case page 47), both held that the amended order was not properly made and the appellant could not be detained thereunder. The majority of the Court having so held, therefore the Return to the Writ of *Habeas Corpus* shows that the Appellant was illegally detained and the appeal should be allowed and the Appellant discharged from custody on that ground alone.

RESPONDENT ACCEPTED QUASHING ORDER AS FINAL

2. The Learned Chief Justice of British Columbia held that there were two courses open to the Crown,—either to treat Mr. Justice Fisher's order as a nullity and deport the Appellant, or to move by way of appeal to set it aside (Case page 39, lines 24 to 27), and McPhillips, J.A., held it was a nullity (Case page 44, lines 8 and 9).

If this argument is pursued logically, it is apparent that the Respondent took neither of these courses, but liberated the Appellant under the order of Fisher, J., and then purported to amend the quashed order. This course of conduct was an unequivocal election to treat the order of Fisher, J., as a binding final order, and the Respondent cannot thereafter be heard to say that the order of Fisher, J., was a nullity.

In *Scarf v. Jardine,* 1882, 51 L.J., Q.B., page 612—Lord Blackburn said at page 621—

"The principle, I take it, running through all the cases as to what is an election, is this: that where a party in his own mind has thought that he would choose one of two remedies, even though he has written it down on a memorandum or has indicated it in some other way, that alone will not bind him; but so soon as he has not only determined to follow one of his remedies, but has communicated it to the other side in such a way as to lead the opposite party to believe that he has made that choice, he has completed his election and can go no further; and whether he intended

it or not, if he has done an unequivocal act—I mean an act which would be justifiable if he had elected one way, and would not be justifiable if he had elected the other way—the fact of his having done that unequivocal act to the knowledge of the persons concerned is an election."

THE COURT OF APPEAL HAD NO JURISDICTION TO DISREGARD QUASHING ORDER

3. The quashing order of the 8th July, 1931, was a final order of the Supreme Court of British Columbia from which no appeal had been taken. The Court of Appeal had no jurisdiction to review same or treat it as a nullity —otherwise no judgment of the Supreme Court of British Columbia may be regarded as final. As Martin, J.A., said (Case page 40, lines 18 to 35): 10

"In the exercise of that jurisdiction, Mr. Justice Fisher, sitting as the Supreme Court of British Columbia, set aside the order of deportation complained of, *i.e.*, "reviewed and quashed" it, to use the words of the Statute, and so employed in the order of the Court over which he presided and given under its seal as set out on p. 27 of the Appeal Book, wherein it was declared that the present appellant be discharged from the custody of the Immigration authorities, "and the Order for (his) deportation be and the same is hereby quashed." (Case page 36, lines 26 and 27.)

"No appeal was taken from that judgment and it was pronounced under circumstances in which the Court could properly have had jurisdiction and as there is nothing on its face to show any want of jurisdiction it must be presumed that it existed, and so it is improper for this Court to interfere with it or go behind it while it stands as a valid judgment, for we cannot now assume the function of a Court of Appeal over it—even in the case of inferior Courts, *The Colonial Bank of Australasia v. Willan* (1874) L.R. 5 P.C. 417; *R. v. Bolton* (1841) 1 Q.B. 66, and *The King v. Commanding Officer of Morn Hill Camp* (1917) 1 K.B. 176, wherein it was said, p. 180, that the same principles apply in *habeas corpus* as in *certiorari*." 20 30

and M. A. Macdonald, J.A., said (Case page 47, lines 19 to 25):

"I think there is no doubt that under certain circumstances, outlined in the cases, and indicated by the section of the Act under review, it was open to Mr. Justice Fisher to review the decision of the Board of Enquiry. Whether or not he reached the proper conclusion is not material. If error crept in it could only be corrected by an appeal to this Court, and the time for doing so has expired. His order quashing the first order of deportation must therefore be regarded as final."

To ascertain whether the order of Fisher, J., was made with or without 40

jurisdiction would entail a complete review of the case before him, which could not be done except by way of appeal.

The Learned Chief Justice of British Columbia (Case page 39, lines 22 and 23) and McPhillips, J.A. (Case page 44, lines 7 and 8) found that the order of Fisher, J., was a nullity but such judgment was not reviewable by nor on review by the Court of Appeal (as it had not been appealed and the time therefor had expired), and such judgment not being on review, the said Court had no means of coming to a conclusion that Fisher, J., had not acted with jurisdiction, the more particularly as in re *Munshi Singh* 1914—20 B.C. 243, at pp. 263, 269 and 277 and in re *Low Hong Hing* 1926—37 B.C.R. 295 the Court of Appeal were unanimously of the opinion that there are at least five grounds on which the Court could interfere; and under which Fisher, J., could have made the order; and therefore:

(a) It cannot be presumed that Fisher, J., had no jurisdiction.

(b) No want of jurisdiction appearing on the face of the order, it must be presumed to be made with jurisdiction, and must be regarded as final and conclusive—

Halsbury, Volume 9, paragraph 7, page 12:

"The judgment of a Superior Court unreversed is conclusive as to all relevant matters thereby decided."

(c) The Supreme Court of British Columbia being a Court of superior jurisdiction, nothing can be inferred to oust its jurisdiction.

In re *English v. Mulholland*—1882—9 Pr. 145 Cameron, J., states at page 149 that nothing "can be inferred to oust a Court of jurisdiction where in any aspect of the case it can have jurisdiction."

In *Peacock v. Bell and Kendall*—1667, 85 E.R. 84—1 Saunders, p., 73 and at p. 74 it is stated, approved by Baron Parke in *Cosset v. Howard* —1847—10 Q.B. 411 at pp. 453-4—

"That nothing shall be intended to be out of the jurisdiction of a superior Court but that which specially appears to be so; and on the contrary nothing shall be intended to be within the jurisdiction of an inferior Court, but that which is so expressly alleged."

(d) Even if the quashing order of the Supreme Court of British Columbia were beyond its jurisdiction the only remedy was by way of appeal.

In *Halsbury*—Vol. 9 par. 14—p. 15 it is stated:

"An excessive exercise of jurisdiction in the case of the High Court itself can be challenged by appeal to the Court of Appeal; and in the case of the Court of Appeal by appeal to the House of Lords."

4. The deportation order of the 29th April, 1931, was quashed by a final order of the Supreme Court of British Columbia. In making the said order Fisher, J., had before him the decision of the Board of Inquiry as well as the deportation order—

See in re *Munetaka Same jima*—1931—44 B.C.R. page 317 and particularly page 320 thereof, where he states:

"Counsel on behalf of the Department of Immigration has called my attention to what is called the decision of the Board (Case bot. p. 33 and top p. 34), as though that would constitute sufficient compliance with the requirements, but it should be noted that it is only the recital that goes any further than the order of deportation (Case bot. p. 25 and top p. 26) and it only does so by purporting to recite a complaint (Case top p. 34) received under section 40 of the Immigration Act (see page 9 hereof) which requires "full particulars" to be given. It should be noted, however, that this complaint is set out in the warrant (Case bot. p. 34 and top p. 35) issued by the Deputy Minister of Immigration and Colonization on the authority of which the Board of Inquiry was held and which was issued under section 42 (p. 10 hereof) upon the written complaint being received. A perusal of the warrant (Case p. 34) shews that the complaint is recited there as being in exactly the same terms as the order (Case p. 25) is, so that this would not seem to be any more definite. In any case, however my view would be that it is the order itself, under which the applicant is held in custody, that must be considered, and after carefully considering such order I have come to the conclusion that the reason required by form "C" is not sufficiently given, and following the decision in *Rex v. Lantalum; ex parte Offman, supra* (1921—62—D.L.R. 223), I hold that the order of deportation is defective and not one given or made in accordance with the provisions of the Act, and the applicant is entitled to be discharged from custody. Order accordingly."

Even if this decision were wrong in law (which the Appellant denies, supported as it is by decisions of the Appeal Division of the Supreme Court of New Brunswick in *Rex v. Lantalum*—1921—62 D.L.R.223, the Supreme Court of Nova Scotia in *re Walsh*—1913—13 D.L.R. 288, and *Rex v. Barnstead* 1920, 55 D.L.R. 287 and the Supreme Court of British Columbia. In re *Thirty-nine Hindoos*—1913-18 B.C.R. 506, it was a valid and final judgment of a Court of Superior Jurisdiction, which could be challenged only by an appeal to the Court of Appeal—which course the respondent did not take.

THERE WAS NO AUTHORITY TO RE-ARREST APPELLANT

5. There was no authority for the re-arrest of the Appellant on the 23rd September, 1931, as—

(a) The Board of Inquiry did not make the so-called amended order (Case page 17, paragraph 21), which was served upon him at the time as the authority for his deportation (Case page 17, paragraph 17).

(b) The Board of Inquiry could not make the so-called amended order (Factum pages 12 to 15).

(c) There was no sitting nor hearing of the Board of Inquiry subsequent to the date of such arrest (Case page 17, par. 21). Under Section 17 of the Immigration Act (Factum page 7) the Chairman cannot act separately from the Board. There must be a proper meeting of the Board and the decision of the Board must be in writing.

(d) A quashed order cannot be amended.

BOARD OF INQUIRY HAD NO JURISDICTION TO DEPORT APPELLANT

6. There was no jurisdiction in the Board of Inquiry to deport the Appellant without an enquiry into the facts alleged in the complaint referred to in the warrant from the Minister—

(a) The jurisdiction of the Board as set out in Section 42 of the Immigration Act (Factum page 10, line 5) is limited to "an investigation of facts alleged in the said complaint"; *e.g.*, "a complaint from any officer . . . etc., against any person alleged to belong to any prohibited or undesirable class."

Subsection (3) of Section 42 (Factum page 10) emphasizes this restriction, limiting the jurisdiction of the Board of Inquiry to deport "if upon investigation of the facts (*e.g.*, facts alleged in the complaint above mentioned) the Board is satisfied that such person belongs to any of the prohibited or undesirable classes."

(b) The deportation order is made under Section 33 (Case page 4, line 12). The decision of the Board (Case page 34, lines 9 and 10) cites the decision of the Chairman: "I declare it carried unanimously that you be deported under the provisions of Section 33, subsection (7) of the Immigration Act."

Subsection (7) of Section 33 (Factum page 8) enables a person to be detained "for examination," only.

Rex v. Brixton Prison, ex parte Stallman 1912—3 K.B. 424 and 23 Cox page 192, cited by Murphy, J., in his reasons for judgment (Case page 38) is clearly an authority in Appellant's favour that an enquiry must precede any order for deportation.

7. The Board of Inquiry has jurisdiction only to investigate the "facts alleged in the complaint." See Section 42 (Factum page 10, line 5), but—

(a) Neither the complaint nor the facts, if any, alleged in such complaint are set out in the Minister's warrant (Case page 34) nor by the Board of Inquiry (Case page 29).

The Minister's warrant (Case page 34) simply recites "Whereas under the provisions of Section 40 of the Immigration Act a written complaint has been received to the effect that Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, and effected entry contrary to the provisions of Section 33 subsection (7) of said Act," but the said warrant does not state the facts referred to in the said complaint."

Before the Board of Inquiry (case page 29) the Chairman states "This Board is being held on the authority of a warrant issued by the Deputy Minister of Immigration and Colonization, dated at Ottawa the 28th day of January, 1931, on a written complaint being received to the effect that Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, and he effected entry contrary to the provisions of Section 33 Subsection (7) of the said Act."

(b) There is nowhere a statement "of the facts alleged in the said complaint."

These facts not being cited, the Board had no jurisdiction to investigate at all.

8. A deportation order can be made only after arrest. See Section 42 subsection (1) of the Immigration Act (Factum page 10) also Section 33 Subsection (7) (Factum page 8).

Here the deportation order was made on the 29th day of April, 1931, whereas the arrest took place on the23rd September, 1931. There was therefore no jurisdiction to deport.

9. The deportation order is made under Section 33 Subsection (7) (Case page 34, lines 9 and 10). Whereas in the case of a warrant received from the Minister, the only jurisdiction in the Board to deport is given by Section 42 (p. 10 hereof). Therefore there is no jurisdiction to deport under Section 33 (7) (p. 8 hereof).

10. The jurisdiction of the Board of Inquiry under Section 42 Subsection 3 (Factum page 10) is limited to deportation in a case where a person is found to belong to the prohibited or undesirable classes. For Section 33 Subsection (7) to apply (p. 8 hereof) the Board of Inquiry must find that the Appellant was convicted of an "offence."

(a) The words "suspected of an offence" (Factum page 8, last line) must by the preceding context be read as "suspected of having been convicted of an offence" as the "offence" cannot exist unless something takes place before, such as conviction, which renders it an "offence." If this were not the statutory meaning, the phraseology really should be "suspected of having entered Canada contrary to this Section." 10

(b) Section 33 (2) (Factum p. 8) corroborates this interpretation.

MISREPRESENTATION MUST RELATE TO AN ESSENTIAL FOR ADMISSION TO CANADA

11. The offence alleged by the Crown is that the Appellant was guilty of misrepresentation when he entered Canada, the alleged misrepresentation being that he described himself as a domestic servant and did not thereafter follow that avocation.

The misrepresentation set out in Subsection (7) of Section 33 of the Immigration Act (Factum page 8) must of necessity be misrepresentation of a fact necessary to gain admission to Canada. 20

(a) The Appellant's statement (Case pages 12 to 14) corroborated by two witnesses (Case pages 18 and 22) shows that he entered Canada *bona fide* and that he was not employed as a domestic servant through a combination of circumstances over which he had no control, and which do not impute any dishonesty or evasion to him.

(b) There is nothing in the Immigration Act which empowers a Board of Inquiry to deport for an irrelevant mis-statement or representation. He might have made a mis-statement as to his occupation or to many irrelevent circumstances, but unless it is shown that without the misstatement or representation he would not have been admitted to Canada, then it is not a misrepresentation in fact or in law. 30

(c) The onus is on the Crown to show misrepresentation, and this it has not done.

(d) The misrepresentation in Section 33 sub. (7) of the Immigration Act aforesaid must be of a criminal nature as a person guilty thereof is liable to both fine and imprisonment.

Naden v. R., 1926 A.C., 482 at p. 489, 1926, 95 L.J., P.C. page 114. Viscount Cave at page 117 in discussing what is a criminal case, stated the test to be that the offence was one against the public law, and for which a sentence of imprisonment could be imposed. Therefore, the doctrine of *mens rea* applies.

See *Rex v. Lee Duck*, 1919, 27 B.C. 482; *Rex v. Young*, 1917, 24 B.C. 482;*Rex v. Cappan*, 1920, 32 Can. Criminal Cases, 267; *Rex v. Wong Chun Quong*, 1923, 32 B.C. p. 108.

IT IS THE DUTY OF THE COURT TO INVESTIGATE CONDITIONS PRECEDENT TO THE BOARD OF INQUIRY'S POWER TO DEPORT

12. It is not for the Board of Inquiry to determine what constitutes misrepresentation, their jurisdiction being limited to ascertain whether the Appellant entered Canada contrary to any provision of the Immigration Act as provided in Section 40 (Factum page 9, line 23).

(a) Section 23 does not take away the right of the Court to inquire if the Board had jurisdiction to make the deportation order. There are certain conditions precedent to any authority to deport, and their existence must be investigated by the Court when called on.

See *Rex v. Nat Bell Liquors, Limited* — 1922, A.C. 128, 1922, 91, L.J.P.C., page 146, at page 159—reading as follows:

"Where the charge laid before the magistrate, as stated in the information, does not amount in law to the offence over which the statute gives him jurisdiction, his finding the party guilty by his conviction in the very terms of the statute would not avail to give him jurisdiction; the conviction would be bad on the face of the proceedings, all being returned before us. Or if, the charge being really insufficient, he had mis-stated it in drawing up the proceedings, so that they would appear to be regular, it would be clearly competent to the defendant to shew to us by affidavits what the real charge was, and, that appearing to have been insufficient, we should quash the conviction. . . . But, as in this latter case we cannot get at the want of jurisdiction but by affidavits, of necessity we must receive them. It will be observed, however, that here we received them, not to shew that the magistrate has come to a wrong conclusion, but that he never ought to have begun the inquiry."

and also page 162, as follows:

"If a statute says that a tribunal shall have jurisdiction if certain facts exist, the tribunal has jurisdiction to inquire into the existence of these facts as well as into the questions to be heard, but while its decision is final,

if jurisdiction is established, the decision that its jurisdiction is established is open to examination on *certiorari* by a superior Court."

and also p. 162—

"Now it is a general rule, that no Court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends; and however its decision may be final on all particulars making up together that subject-matter which, if true, is within its jurisdiction, and, however necessary in many cases it may be for it to make a preliminary inquiry, whether some collateral matter be or be not within the limits, yet, upon this preliminary question, its decision must always be open to inquiry in the Superior Court."

also re *Eshugbayi v. Nigeria Government,* 1931—100 L.J., P.C. 152, at page 156—

"He (the applicant) says that these are three conditions precedent to any authority to make an order of withdrawal (namely (1) as to whether Appellant was a native chief and held office (2) whether he was removed or deposed (3) whether there was any native law and custom which required him to leave the area) and their existence can and must be investigated by the Court whenever the validity of the order or deportation order founded on it is the subject of a contest in judicial proceedings."

and later on p. 156—

"Counsel for the government maintained that the Court had no power to enter upon an investigation as to any of these points; the order of the Governor must be taken as equivalent to the order of a Court of competent jurisdiction, determining within its powers all matters necessary to give jurisdiction."

See bottom page 157 and page 158—

"The Solicitor General on behalf of the Respondents, threw over the suggestion that the conditions (above mentioned) were not cognizable by the Courts. He admitted that they were, but contended that on the inquiry by the Courts the evidence of the Governor was conclusive that the facts were as stated."

and middle p. 157—

"Their Lordships are satisfied that the opinion which has prevailed that the Courts cannot investigate the whole of the necessary conditions is erroneous. The Governor acting under the Deportations Ordinance acts solely under executive powers, and in no sense as a Court. As the executive he can only act in pursuance of the powers give to him by law. In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British Subject except on the

condition that he can support the legality of his action before a Court of Justice, and it is the tradition of British justice that Judges should not shrink from deciding such issues in the face of the executive. The analogy of the powers of the English Home Secretary to deport aliens was invoked in this case. The analogy seems very close. Their Lordships entertain no doubt that under the legislation in question if the Home Secretary deported a British Subject in the belief that he was an alien the subject would have the right to question the validity of any detention under such order by proceedings in *habeas corpus* and it would be the duty of the Courts to investigate the issue of alien or not."

Lord Atkin referred to *Brixton Prison re Sarno,* 1917, 86, L.J., K.B. 62, and continues on p. 157—"Their Lordships agree with the opinion of Low, J. (in the *Brixton case*) that had the matter been in dispute (re alien or not) the Court would have had to decide it."

The above authorities indicate that the Board of Inquiry has no power to determine the conditions precedent to its jurisdiction to make a deportation order. This is always a question for the Courts, as above stated and succinctly expressed in an article in the October 1931, Law Quarterly Review by D. M. Gordon, Esq., at page 286—

"Public policy requires that even the blunders of judicial tribunals acting within their provinces shall be respected, and corrected only in a formal manner, and be binding until corrected. Public policy does not require such respect for non-judicial bodies. For judicial tribunals have a duty to interpret the law before they can observe it. Other bodies have only to observe it, and they have the judicial tribunals for interpreters."

(b) The Appellant contends that the Board of Inquiry had no jurisdiction to deport the Appellant because the following conditions precedent thereto did not exist, and their existence or non-existence must be enquired into by the Court when called on, and therefore the appeal should be allowed as the Supreme Court of British Columbia and the Court of Appeal for the said Province refused to inquire into their existence or non-existence.

(1) The Minister's warrant (Case page 34) did not state "the facts alleged in the complaint."

(2) The Board of Inquiry could not "investigate the facts alleged in the complaint," as neither the complaint nor the facts alleged therein were before it (Case p. 29, lines 9 to 15). All that was before the Board was the Minister's warrant which did not state "the facts alleged in the complaint."

Being a Board with limited statutory powers and a body of inferior

jurisdiction, its lack of jurisdiction to even embark on the inquiry is apparent on the face of the proceedings.

Section 42 of the Immigration Act (page 10 hereof).
Peacock v. Bell and Kendall—1167—1 Saund., p. 73 at p. 74 (page 14 hereof).

Rex v. Nat Bell Liquors Ltd.—1922—91, L.J.P.C. 146 at pp. 157 and 162 (page 19 hereof).

(3) The deportation order was made before the arrest.

(4) The warrant from the Minister being received under Section 42, there is no jurisdiction to deport under Section 33 (7).

(5) No enquiry was held after the arrest as required by Section 42 of the Immigration Act aforesaid, but the Appellant was arrested and held for immediate deportation without lawful authority.

(6) The Appellant was arrested a second time under the same warrant of the Minister (Case p. 34).

(7) There was no misrepresentation by the Appellant within the meaning of Section 33 (7) of the Immigration Act aforesaid.

(8) The Appellant did not enter nor remain in Canada contrary to law.

(9) The Appellant was not guilty of any "offence" within the meaning of Section 33 (7) of the Immigration Act aforesaid.

(c) The Board of Inquiry is not a Court—
See re *Jeu Jang How*—1919, 27 B.C.R. page 294, at page 297, Macdonald, C.J.

"I think it right, however, to say that in my opinion no Court of justice could on the evidence adduced before the Board, have made the order which the Board of Inquiry constrained itself to make."

See re *Lee Chow Ying*—1928—39 B.C.R. page 322—Hunter, C.J. —page 323.

"The controller is not a Court. The ordinary meaning of the word "Court" is that in civil cases the tribunal has power to entertain and decide disputes *inter partes*, and to enforce its judgments, and in criminal cases has power to mete out penalties."

The Board of Inquiry has no greater power than the Controller under the Chinese Immigration Act. Under sub-section (4) of Section 42 of the Immigration Act (p. 10 hereof). The Governor-in-Council may override the decision of the Board of Inquiry.

(d) Here there is an attempt by the Board of Inquiry to be both Judge and prosecutor—

See *Rex v. Chin Sack,* 1927—39 B.C.R. page 223—Macdonald, C.J.A., page 226.

APPELLANT'S DETENTION IS A VIOLATION OF JUSTICE AND COURT MAY INTERFERE

13. This detention for deportation is a violation of justice and an abuse of power, and the Court may interfere notwithstanding Section 23 of the Immigration Act aforesaid.

(a) There has been a violation of justice in that—

(1) The deportation order was made before the arrest of the appellant.

(2) The Appellant is held for deportation under an alleged amended order that was never made by the Board of Inquiry.

(3) The deportation order has been made without an inquiry by the Board, and without giving the Appellant the right of appeal to the Minister.

(4) No investigation "of the facts alleged in the complaint" was ever made, as no complaint was ever produced nor the facts therein ever stated by the Minister to the Board of Inquiry as required by Section 42 of the Immigration Act (p. 10 hereof).

(5) The Appellant has not committed any breach of the Immigration Act.

(6) To represent himself as a domestic servant was not a misrepresentation within the meaning of Section 33 subsection (7) of the Immigration Act (p. 8 hereof), unless it is shown he could not have entered Canada without this representation.

(7) The original order for deportation was quashed and therefore could not be amended.

(8) The appellant was arrested a second time under the same warrant of the Minister (Case p. 34.

(b) That the Court will interfere where there is a violation of justice---see re *Low Hong Hing*—1926, 37, B.C.R. page 295, Martin, J.A., at page 302 and pages 303 and 304, and re abuse of power see *Rex v. Brixton Prison* re Sarno, 1917, 86, L.J., K.B., page 62—

Low, J.. page 66—

"I wish before parting with this case, to protect myself from appearing to assent to some of the arguments used before us. I do not agree that it is for the executive to come here and simply say, "The man is in custody and therefore the right of the High Court to interfere does not apply, because the custody is at the moment technically legal." I say that that answer of the Crown will not do if this Court is satisfied that what is really in contemplation is the exercise of an abuse of power. The arm of the law would have grown very short and the power of the Court very feeble if that were the case."

Approved by Judicial Committee in *Eshugbayi v. Nigeria Government,* 1931, 100 L.J., P.C., 152.

HABEAS CORPUS IS NOT TAKEN AWAY BY SECTION 23

14. Section 23 of the Immigration Act aforesaid (p. 7 hereof) does not take away the right to *habeas corpus;* to do so would require unequivocal language.

Re *Henry K. Thaw,* No. 2, 1913, 13 D.L.R. page 712, page 715, quoting Clarke's Criminal law of Canada, page 555—

"It is the duty of a Judge hearing an application for discharge under a writ of *habeas corpus*, when a prisoner is restrained of his liberty under a Statute to discharge him unless satisfied by unequivocal words in the Statute that the imprisonment is warranted by Statute."

Re *Harry K. Thaw,* No. 3, 1913, 13 D.L.R., page 715, bottom page 719 and top of page 720, Archambault, C.J.—

"I cannot admit that an Act of the importance of the *Habeas Corpus* Act can be amended, and the rights of the subject intended to be preserved under it can be curtailed by a casual expression found in a subsequent Statute. To amend an existing Act there must be a clear and precise enactment. Such amendment cannot be interpreted as resulting from mere implication or inference."

Broom's Legal Maxims, 8th Edition, page 127—

"The Judges will bend and conform their legal reason to the words of the Act, and will rather construe them literally than strain their meaning beyond the obvious intention of Parliament"—

and at page 436—

"The principle, remarked Lord Abinger, adopted by Lord Tenterden (see *Proctor v. Mainwaring,* 1819—3 B. and Ald. 145) that a penal law ought to be construed strictly is not only a sound one, but the only one consistent with our free institutions. The interpretation of Statutes has always in modern times been highly favourable to the personal liberty of the subject and I hope will always remain so" (*Henderson v. Sherborne,* 1837—2 M. and W. 236; *Fletcher v. Calthorp,* 1845, 6 Q.B. 887, cited and adopted in *Murray v. Reg.,* 1845, 7 Q.B. 707).

THE COURT HAS POWER TO INTERFERE WITH DEPORTATION ORDER

15. The words in Section 23 of the Immigration Act (page 7 hereof) "had, made or given under the authority and in accordance with the provisions of this Act" indicate in clear language that non-observance of the Statutory provisions enables the Court to set aside a deportation order.

(a) *Rex v. Lantalum*—1921, 62 D.L.R. page 223—a decision of the Appeal Division of the New Brunswick Supreme Court, reversing the judgment of the Chief Justice of New Brunswick.

Grimmer, J., page 238—

"This matter, involving, as it does, the liberty of the person, requires to my mind that all the provisions of the statute which are invoked in its support and in support of the position which is taken in this case by the Board of Inquiry should be strictly performed. While the provisions of sec. 23 are very large, very conclusive, as far as the words themselves are concerned, yet, as reference has been made, they contain words which clearly point out to me at all events, that the decision which is arrived at by the officer or Board which made the inquiry into the matter must absolutely be made, had, or given under the authority and in accordance with the provisions of the Act relating to the detention or deportation of a subject whose deportation may be inquired into, and I am of the opinion that the form of the order which has been referred to, is as much a portion of the statute as any of the individual sections thereof."

and further on page 238—

"I am also of the opinion that the words "upon any ground whatso-

ever" which are contained in this Section, and upon which the Chief Justice, so far as I am able to gather, largely based the conclusion he arrived at, namely, that he was prohibited from ordering the discharge which he felt ought to be made under the form of the order if it were not for these words, are confined entirely within the limitation of the other words in the Section "Had, made or given in accordance with the provisions of the Act," and are not wider in their significance than the provisions referred to.

Crocket, J., page 246—

"With regard to the merits I fully concur in the judgment of the Chief Justice that the order for deportation, under which Offman was and is held, was defective in not stating in full, as required by form "B" in the schedule to the Immigration Act the reasons for rejection. With all respects, however, I am unable to agree with his conclusion that he was precluded by the terms of sec. 23 of the Immigration Act from ordering the discharge of the applicant notwithstanding the defective order under which he was detained. The prohibition of that section, applies in my judgment only to proceedings, decisions or orders "had, made or given under the authority and in accordance with the provisions of this Act." The order in question having omitted to state the reasons for rejection, which the Act clearly requires to be stated in full, is not an order, which was made or given in accordance with the provisions of the Act, and does not therefore fall within the prohibition of Section 23. See judgment of Hunter, C.J., of British Columbia in re *Thirty-Nine Hindus* (in re *Narain Singh* (1913) 15 D.L.R. 191, 18, B.C.R. 506. Also judgment of Graham, J., of the Supreme Court of Nova Scotia in re *Walsh* (1913) 13 D.L.R. 288, 22 Can. Cr. Cas. 60, and of Russell, J., of the same Court in *Rex v. Barnstead* (1920) 55 D.L.R. 287, 35 Can. Cr. Cas. 179, all of which dealt with defective orders of deportation and held that being defective, they did not come within the prohibition of Section 23."

In re *Narain Singh,* 1913, 18 B. C.R. page 506, Hunter, C.J., stated at page 510—

"Reference was also made to section 23, which purports to limit the jurisdiction of the Court to interfere with deportation proceedings. It is, however, specifically enacted, that such restriction applies only to proceedings "had under the authority and in accordance with the provisions of this Act." and it would, indeed, be strange to find that the doors of the Court were shut against any person of any nationality, no matter what the act complained of might be."

(b) In the *Munshi Singh* case, 1914,, 20 B.C.R. page 244, no question of the observance of statutory requirements was involved; Martin, J.A., at page 269 stating—

"The Board was properly constituted when it entered upon its duties and finally made an order within the Statute on the face of it, and no objection is taken to the regularity of these proceedings, but simply to the fact that it did not properly weigh the evidence before it and hold it to be insufficient."

This point is emphasized in the Judgment of Crocket, J., in re *Rex v. Lantalum supra,* 1921, 62, D.L.R. page 223, where at page 246 he distinguishes *Rex v. Schoppelrei* (1919) 31 Canadian Criminal Cases 255, and states at page 247—

"It will be noted that this quotation from the concluding lines of the judgment, 31 Can. Cr. Cas. at p. 257, omits the words "Had, made or given under the authority and in accordance with the provisions of this Act," which appear in the section referred to and undoubtedly qualify the words, "any proceeding, decision or order." This omission obviously is due to the fact that the omitted words had no bearing upon the case, with which the Court was dealing, for the reason that the order of deportation there in question was an order, in which there was no defect and which was made in accordance with the provisions of the Act. The attention of the Court was not directed to these words which were wholly irrelevant in that case for the reasons stated, but which are all essential for the decision of the question here involved."

The point involved here was not involved in *Rex v. Munshi Singh supra* and *Rex v. Schoppelrei;* and therefore those decisions are not in point here.

In Halsbury, Vol. 18, paragraph 535 on page 210, it is stated:

"Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that is unnecessary for the purpose in hand (usually termed *dicta*) have no binding authority on another Court, though they may have some merely persuasive efficacy." (*Attorney General v. Windsor* (Dean & Canons) 1860, 8 H.L. cases page 369).

(c) The words "had, made or given under the authority and in accordance with the provisions of this Act" must be read in their grammatical sense, and are to be strictly construed, since the liberty of the subject is involved.

It is noteworthy that these words are not contained in the similar Section of the Chinese Immigration Act, Chapter 95, R.S.C. 1927 (re-ferred to in the reasons for judgment of Martin, J.A., and McPhillips, J.A.), which reads as follows:

"37. No court and no judge or officer thereof shall have jurisdiction

to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or order of the Minister or of any controller relating to the status, condition, origin, descent, detention or deportation of any immigrant, passenger or other person upon any ground whatsoever, unless such person is a Canadian citizen, or has acquired Canadian domicile."

(d) The deportation order and the decision of the Board of Inquiry complained of were not had, made or given under the authority and in accordance with the provisions of the Immigration Act, in that—

(1) No statement of "the facts alleged in the complaint" was set out in the Minister's warrant, nor otherwise produced before the Board of Inquiry (Pages 16 and 17 hereof) as required by Section 42, sub. (1) (Page 10 hereof).

(2(No such statement of "facts" being produced the Board of Inquiry could not legally investigate.

(3) The deportation order was made under Section 33, sub. (7) (Page 8 hereof), whereas when a Minister's warrant is received, the only authority to investigate and deport is under Section 42 of the Immigration Act (Page 10 hereof).

(4) On the Appellant's re-arrest an inquiry should have been entered into as required by Section 42 (Page 10 hereof) and Section 33, sub. (7) (Page 8 hereof).

(5) If the amended order is relied on, it was not made by the Board of Inquiry in accordance with Section 17 of the Immigration Act (Page 7 hereof).

(6) Whether the original or amended order of deportation is relied on, both were made prior to the second arrest. There is no provision in the Immigration Act enabling a deportation order to be made before arrest. On the other hand, every relevant Section requires, both directly and indirectly, that a deportation order can only be made following an arrest and inquiry.

(7) A deportation order cannot be made under Section 33, sub. (7) of the Immigration Act (Page 8 hereof) unless the Appellant has been convicted of an "offence."

(8) No misrepresentation by the Appellant was shown as required by Section 33, sub. (7) (Page 8 hereof).

(e) The words "had, made or given under the authority and in accordance with the provisions of this Act" limit the power of the Board of Inquiry to make a deportation order only if all the statutory requirements are complied with. The statement of the Learned Chief Justice of British Columbia (Case page 39, lines 17 and 18) "how it (Board of Inquiry) proceeded is not a matter of interest at all," is not in accord with the authorities, even if the specific words above mentioned were not contained in the Statute.

Even in the performance of a judicial duty the Court will compel an officer or public body to act judicially and will not accept for the exercise of a discretion, reasons given which are nugatory or illusory, for that would be no exercise of discretion.

See the language of Lord Esher, M.R., in *The Queen v. The Vestry of St. Pancras,* 1890, 24 Q.B.D. page 371, at pages 375-6.

"If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

Also Lindley, L.J., in *The Queen v. The Bishop of London,* 1890, 24 Q.B.D. 213, at the bottom of page 240; and Lopez, L.J., in the same case at page 243; and Lord Ellenborough, C.J., in *The King v. the Archbishop of Canterbury,* 1812, 15 East 117, page 139 and 104 E.R. 789.

"It (the Act of Parliament) virtually requires him to exercise his conscience duly informed upon the subject, to do which he must duly, impartially and effectually inquire, examine, deliberate and decide. If the Court have reason to think that anything is defectively done in this respect, it will interpose its authoritative admonition."

Here, the Supreme Court of British Columbia, having reason to think that something was defectively done by the Board of Inquiry, interposed its authoritative admonition by quashing the deportation order and discharging the Appellant.

See also Lord Halsbury in the House of Lords, in *Sharpe v. Wakefield,* 1891, 60 L.J., Magistrates' cases, page 73, at page 76—

"An extensive power is confided to the Justices in their capacity as Justices to be exercised judicially, and discretion means when it is said that something is to be done within the discretion of the authorities, that that something is to be done according to the rules of reason and justice, and not to private opinion."

DEPORTATION ORDER CANNOT EXTEND OR RESTRICT THE CAUSE OF ARREST SET OUT IN THE MINISTER'S WARRANT

16. The Minister's warrant (Case p. 34) under which the Appellant was arrested on both occasions recites that a complaint has been made that the Appellant entered Canada "contrary to the provisions of Sec. 33 (7) of said Act," and is therefore insufficient.

(a) Sec. 33 (7) of the Immigration Act (Page 8 hereof) refers to at least seven different acts which may be grounds for deportation, and the warrant is therefore insufficient.

As the late Chief Justice of British Columbia said in *re Narain Singh,* 1913, 18 B.C.R. 506 at p. 510—

"The Court having concluded that the persons detained were entitled to their discharge on these grounds, it was then urged by Mr. Taylor that they were also held because of misrepresentations. But the order for deportation does not state that this was a reason for detention. The only reason, so-called, assigned, which could have any bearing on the matter, is given as "section 33." This section contains a number of subsections prohibiting different acts, and I do not think it is a proper compliance with the Act to refer generally to the section in this way as a reason for deportation Common justice requires, and I think Parliament intended, that when a person is ordered to be deported out of the country, the reason for so doing should be clearly stated, in order that he might at least know what was the reason, and, in any event, a reason stated in such a fashion would not constitute a good return to a writ of *habeas corpus.*"

and also in re *Wong Shee,* 1922, 31 B.C. 145, where Martin, J.A., says at pp. 149-150:

"At one time during the argument I was not satisfied that the "reason" required by form "B" (Order for Deportation) was sufficiently given in the order in question, wherein it is stated to be that the applicant belongs to the labouring classes," without stating whether the class was of skilled or unskilled labour as set out in the order in council of June 9th, 1919, defining prohibited "classes or occupations." But upon further consideration I find myself unable to say that it is not, on the facts, a practical and sufficient, although not the most precise, definition of the applicant's disqualifications."

and in re *Munetaka Samejima,* 1931, 44 B.C. 317, Fisher, J., says, bottom p. 319—

"As was said in the *Narain Singh* case of section 33, so I think it may be said of subsection 7, that it prohibits different acts, and in my opinion it may also be said that the subsection creates several quite distinct offences with respect to entry."

(b) The original order for deportation (Case p. 26, lines 3 and 4) couched in the same language as the Minister's warrant (Case p. 34) is therefore insufficient, and was so held by Fisher, J. The so-called amended order for deportation (Case p. 4) particularizes by limiting the charge to misrepresentation with particulars thereof.

But there is no jurisdiction in the Board to extend or limit the cause of arrest and investigation as contained in the Minister's warrant. If it was desired to follow this course, a new warrant for arrest should have been obtained.

THE SECOND ARREST OF APPELLANT UPON THE SAME WARRANT AND THE SAME CHARGE WAS ILLEGAL

17. The Appellant was arrested a second time upon the same order or warrant of the Minister for his arrest (Case page 34) and upon the same charge that "he is in Canada contrary to the provisions of the Immigration Act and effected entry contrary to the provisions of Section 33 Subsection (7) of the said Act." Therefore the second arrest is illegal and he should have been discharged from custody.

(a) In *Attorney General of Hong Kong v. Kwok-a-Sing*, 1873, 42 L.J., P.C., page 64—

In considering the Sixth Section of 31 Car. Chapter 2 providing "that no person set at large upon any *habeas corpus* shall be again imprisoned or committed for the same offence by any person other than by the legal process of the Court having jurisdiction of the same," it is said at page 72—

"They do not say, however, that the Section may not also apply to cases where a prisoner is discharged unconditionally upon the ground that the warrant on which he is detained shows no valid cause for his detention."

The warrant of the Minister for Appellant's second arrest (Case page 34) was identically the same warrant as for his first arrest, and this warrant was held of no effect by Fisher, J., in re *Munetaka Samejima*, 44 B.C., page 317 at page 320. following *Rex v. Lantalum*, 1921, 62 D.L.R. page 223 and cases therein cited.

Therefore the warrant of the Minister for the arrest (Case page 34) "Shows no valid cause for his detention" within the meaning of *Attorney General of Hong Kong v. Kwok-a-Sing*.

(b) In *Attorney General of Hong Kong v. Kwok-a-Sing*, in further consideration of the Section of the *Habeas Corpus* Act above recited, it is stated at page 72—

"They think, however, it can only apply when the second arrest is substantially for the same cause as the first, so that the return to the second writ of *habeas corpus* raises for the opinion of the Court the same question that refers to the validity of the grounds of detention as the first."

In this case the second arrest is not only "substantially for the same cause," but is for identically the same cause, in as much as the warrant of the Minister under which he was arrested on the first occasion is the only authority for his arrest on the second occasion.

In considering the *Attorney General of Hong Kong v. Kwok-a-Sing* case it is to be remembered that the first charge against Kwok-a-Sing was murder on the high seas from which he was discharged on *habeas corpus* proceedings, and he was afterwards re-arrested upon a charge of piracy, and therefore it could not be said that murder and piracy were substantially the same charge.

(c) *Rex v. Brixton Prison in re Stallman*, 1912, 3 K.B. 424, 82, L.J., K.B. page 8—is in the Appellant's favour. The arrest in India which was set aside in *habeas corpus* proceedings was upon a different warrant from that upon which he was arrested in England.

Murphy, J., in his reasons for judgment (Case page 38) holds that where the accused has been set at liberty by the Court merely on the ground of error in procedure, a new warrant can be issued, and he held under it. The Learned Chief Justice of British Columbia (Case p. 39, lines 30 and 31) likewise states a new warrant was issued.

That was the case in *Rex v. Brixton Prison* in re Stallman, but is not the case here in that—

(1) No new warrant of the Minister was issued, but the second arrest was made upon the same warrant of the Minister upon which the first arrest was made.

(2) If the Learned Chief Justice and Murphy, J., intended to say "deportation order" instead of "warrant," then no new deportation order was made (for the reasons set out in pages 12 to 31 hereof), such as would have been the case if an inquiry had taken place after the

second arrest, enabling the Appellant to present his grounds against deportation with subsequent right of appeal to the Minister.

(d) *Rex v. Brixton Prison in re Stallman supra,* requires an inquiry after arrest. Phillimore, J., stating at top page 22 that although a person may be re-arrested on certain circumstances, yet in such circumstances he is to be committed for extradition "after a full investigation before the Magistrate."

IF SECTION 23 OF THE IMMIGRATION ACT TAKES AWAY HABEAS CORPUS, IT IS ULTRA VIRES

18. If it is held that Section 23 takes away the right to *habeas corpus,* then Section 23 is *ultra vires* the Parliament of Canada.

(a) The *habeas corpus* proceedings herein are civil and not criminal proceedings. See *Rex v. Jeu Jang How,* 1919, 59 S.C.R., page 175, Mr. Justice Anglin stating at page 181:

"I am satisfied that the proceedings for the writ of *habeas corpus* do not arise out of a criminal charge. The respondent could not have been convicted on the proceeding before the Board of Inquiry of any criminal offence."

(b) The right to *habeas corpus* in civil matters is a Provincial matter.

In re *Wong Shee,* 1922, 31 B.C.R., page 145, Macdonald, C.J., top of page 148, states:

"The power to legislate in relation to civil rights was assigned to the Province, the right to liberty where a person is detained not for a crime or supposed crime, but as in this case, to test whether or not the person has fulfilled the conditions necessary to her admission into Canada, is a civil right. The right to the writ of *habeas corpus* is not given by Dominion Statute but is part of the common and statutory law of England introduced into and made part of the law of this Province."

See also re *Pong Fook Wing,* 1923, 33 B.C.R., page 47, Martin, J.A., at page 50; *Rex v. Loo Len,* 1923, 33 B.C.R., page 213, Macdonald, C.J., page 215—

"We have in this Province the common law in relation to *habeas corpus* supplemented by the *Habeas Corpus* Act, 2 Car. 2, Cap. 2 and 56 Geo. 3, Cap. 100. We have no local legislation affecting *habeas corpus,* except Section 6 of the Court of Appeal Act and Chapter 21 of the Act of 1920."

The *English Law Act,* Chapter 80, R.S.B.C. 1924 and amending Acts, reads as follows:

1. This Act may be cited as the "English Law Act."

2. The Civil and Criminal Laws of England, as the same existed on the nineteenth day of November, 1858, and so far as the same are not from local circumstances inapplicable, shall be in force in all parts of the Province; but the said laws shall be held to be modified and altered by all legislation having the force of law in the Province, or in any former Colony comprised within the geographical limits thereof.

Perlman v. Piche and Attorney General of Canada (Intervenant) 1918, 41 D.L.R. page 147—Page 154—top:

"*Habeas corpus* in criminal matters is therefore within the Federal jurisdiction; in civil matters it is within the Provincial jurisdiction."

(c) The issue involved here is not an immigration matter within the meaning of Section 91 (25) (Naturalization and aliens) nor Section 95 (Immigration) of the British North America Act, but the issue is the Appellant's civil right to remain in Canada after having been duly admitted to Canada, as was stated by the Learned Chief Justice of British Columbia in *Rex v. Chin Sack* , 1927, 39 B.C., page 223, at page 226:

"It is not the right to enter that is now in question; it is the right to remain in Canada, a civil right which he may be deprised of on cancellation of his certificate by a Judge."

In delivering the judgment of the Judicial Committee in *Cunningham v. Tomey Homma,* 1903 A.C. page 151, wherein *Union Colliery Company of British Columbia v. Bryden,* 1899, A.C. page 580, was considered and distinguished, Lord Halsbury, L.C., says at page 156—

"Could it be suggested that the Province of British Columbia could not exclude an alien from the franchise in that Province? Yet, if the mere mention of alienage in the enactment could make the law *ultra vires,* such a construction of sect. 91, sub-sect. 25, would involve that absurdity. The truth is, that the language of that section does not purport to deal with the consequences of either alienage or naturalization. It, undoubtedly, reserves these subjects for the exclusive jurisdiction of the Dominion—that is to say, it is for the Dominion to determine what shall constitute either the one or the other, but the question as to what consequences shall follow from either is not touched. The right of protection and the obligations of allegiance are necessarily involved in the nationality conferred by naturalization; but the privileges attached to it, where these depend upon residence, are quite independent of nationality."

Therefore the consequences of alienage are the Province's sole possession legislatively, as if the consequences of alienage and naturalization do not fall under Section 91 (25) (Naturalization and aliens) they would fall mainly under Section 92 (13)—"Property and civil rights in the Province."

See also *Quong-Wing v. The King* (1914) 49 S.C.R., Page 440—Davies, J., states at page 447—

> "Reading the Union Colliery Case, therefore, as explained in this later case (*Cunningham v. Tomey Homma*) and accepting their Lordships' interpretation of subsec. 25 of sect. 91, that 'its language does not purport to deal with the consequences of either alienage or naturalization' and that, while it exclusively reserves these subjects to the jurisdiction of the Dominion, in so far as to determine what shall constitute either alienage or naturalization, it does not touch the question of what consequences shall follow from either, I am relieved from the difficulty I would otherwise feel."

and Duff, J., page 468—

> "It should not be forgotten that the very eminent judges (Lord Halsbury, Lord Macnaghten, Lord Davey, Lord Robertson and Lord Lindley), constituting the Board which heard the appeal in Cunningham's case, had that case before them for something like six months after it had been very fully argued by Mr. Blake against the Provincial view; and, in delivering the considered judgment of the Board, Lord Halsbury, as we have seen, examines and sums up the effect of the decision in Bryden's case, which the courts in British Columbia had believed themselves to be following in passing upon Cunningham's case. In these circumstances, whatever might otherwise have been one's view of their Lordships' judgment in Bryden's case, we should not be entitled to adopt and act upon a view as to the construction of item 25 of sect. 91 (British North America Act), which was distinctly and categorically rejected in the later judgment."

and see a review of the law as to naturalization and aliens by R. M. Willes Chitty, Esq., as contained in 63 S.C.R. page 27 of Notes and Annotations, and particularly at page 37 thereof.

Therefore:

(1) The Appellant's right to *habeas corpus* is governed by the common and statutory law of England in force in British Columbia since 1858, and cannot be taken away by a Dominion Statute.

(2) This being a civil and not a criminal proceeding, the attempt to take away the right to *habeas corpus* by Dominion Statute is an inva-

sion of the Appellant's civil rights within the meaning of Section 91 (13) of the British North America Act.

(3) The issue involved here is not an immigration matter within the meaning of Sections 91 (25) (Naturalization and aliens) or 95 (Immigration) of the British North America Act, but is the Appellant's civil right to remain in Canada after being duly admitted to Canada, and falls under Section 92 (13) (Property and civil rights in the Province).

Victoria, B.C., 29th March, 1932.

C. H. O'HALLORAN,

Counsel for the Appellant.

In the Supreme Court of Canada

On Appeal from the Court of Appeal for British Columbia

IN THE MATTER OF THE IMMIGRATION ACT, CHAPTER 93, R.S.C., 1927, AND AMENDING ACTS

AND

IN THE MATTER OF MUNETAKA SAMEJIMA

MUNETAKA SAMEJIMA

APPELLANT

AND

HIS MAJESTY THE KING

RESPONDENT

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OTTAWA
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RESPONDENT

PART 1

STATEMENT OF FACTS

This is an appeal from the judgment of the Court of Appeal for the Province of British Columbia, dated the 29th day of January, A.D. 1932, dismissing the appeal of the above mentioned Appellant from the judgment of the Honourable Mr. Justice Murphy pronounced herein the 30th day of October, A.D. 1931, dismissing the application of the above named Appellant for a Writ of Habeas Corpus.

The Appellant is a Japanese subject and entered Canada at the Port of Van-
20 couver, British Columbia, on the 29th day of September, 1928. At the time of his entry he produced a Japanese passport Number 101,205, dated September 15, 1928, which said passport bears the vise of the British Consul-General at Kobe. (A.C. pages 24-25.) The passport states that the Appellant is proceeding to British Canada as a domestic servant. The Appellant says that after being landed in Canada, he proceeded to the City of Nanaimo, British Columbia, but on arriving there he was advised that his intended employer, Jentaro Ueno, had lost his business and was not financially able to employ him as a domestic. (A.C. page 30, line 16.) He says he stayed in the City of Nanaimo for about two weeks, and then returned to Van-

couver, and lived with his cousin Hisashi Aiboshi, 224 Main Street, Vancouver, for approximately two weeks, when he went to Wood Fibre, British Columbia, where he was employed as a labourer in a saw mill for about five months. (A.C. page 30.) On leaving Wood Fibre, he went to Hillcrest, Vancouver Island, British Columbia, where he was employed for eight months as a labourer on a logging train. (A.C. page 31, lines 4 and 5.) After leaving Hillcrest the Appellant went to Duncan, British Columbia, where he lived with his cousin and assisted him in his shoe store business. (A.C. page 31.) The Appellant lived with his cousin at Duncan, B.C., for about two months, and then moved to Chemainus, Vancouver Island, British Columbia, where he was employed as a labourer piling lumber in a saw mill, up until the date of his arrest. (A.C. page 31.)

A complaint having been made to the Minister of Immigration, pursuant to the provisions of Section 40 of the Immigration Act, the Deputy Minister issued a warrant for his arrest, pursuant to Section 42 of the Immigration Act, on the 28th day of January, 1931. (A.C. pages 34 and 35.) The Appellant was subsequently arrested and examined before a properly constituted Board of Inquiry, pursuant to the provisions of the Immigration Act, and on the 29th day of April, 1931, the said Board of Inquiry ordered his deportation on the ground that the Appellant was in Canada contrary to the provisions of the Immigration Act, namely Section 33, Subsection 7, in that he entered Canada by misrepresentation. (A.C. pages 33 and 34.) The Appellant thereupon launched an appeal to the Minister of Immigration, pursuant to the provisions of Section 19 of the Immigration Act, and on the 30th day of May, 1931, the said Appeal was dismissed, and the Appellant held for deportation. The Appellant thereupon applied to the Supreme Court of British Columbia for a Writ of Habeas Corpus, which application was heard by the Honourable Mr. Justice Fisher on the 8th day of July, 1931. *See Volume 44, B.C.R. Page 317.* The Learned Judge held that the reasons for deportation of the Appellant were not sufficiently given in the Order of the Board of Inquiry which was made part of the Return to the Writ, and consequently ordered his discharge. The Immigration Agent at Victoria subsequently re-drew the Deportation Order in accordance with the finding of the Board of Inquiry, and re-arrested the Appellant and held him for deportation under this second Order. (A.C. pages 4 and 5.) The Appellant thereupon applied for a second Writ of Habeas Corpus. The second application came on for hearing before the Honourable Mr. Justice Murphy on the 26th day of October, 1931, and on the 30th day of October, 1931, the said Honourable Mr. Justice Murphy rendered his judgment dismissing the application of the Appellant and quashing the Writ of Habeas Corpus. (A.C. page 38.) The Appellant thereupon gave Notice of Appeal to the Court of Appeal for the Province of British Columbia, which Appeal came on for hearing before the Honourable the Chief Justice, the Honourable Mr. Justice Martin, the Honourable Mr. Justice

McPhillips, and the Honourable Mr. Justice M. A. Macdonald, on the 27th, 28th and 29th days of January, 1932, and on an equal division of the Court the Appeal was dismissed. It is from this judgment that the Appellant is appealing to this Court.

PART 2

STATEMENT OF POINTS IN ISSUE

The points in issue are:—

(*a*) was the Court entitled to review the proceedings by *habeas corpus?*

(*b*) if so should Mr. Justice Murphy have quashed the writ?

PART 3

ARGUMENT

As far as the finding of the Board of Inquiry is concerned as to whether or not the Appellant entered Canada by misrepresentation, the Respondent submits that a perusal of the evidence of the Appellant before the Board of Inquiry fully warrants the finding of the Board. However, it should also be pointed out that the question as to whether or not there was any misrepresentation on the part of the Appellant is a matter for the Board of Inquiry alone to determine, and no Court has power to interfere with the finding of the Board. The Court examines the evidence to ascertain not whether the tribunal reached the proper conclusion on the evidence, but whether there was any evidence upon which the tribunal could possibly find as it did. *Rex vs. Nat Bell Liquors* (1922), 2 Appeal Cases, Page 128. Furthermore, a conviction, regular in its form, is conclusive of all the facts stated in it, not excepting those necessary to give the Justice jurisdiction, and it is from the facts stated in the conviction that the facts of the case are to be collected. *Rex vs. Nat Bell Liquors* (Supra).

It is also submitted on behalf of the Respondent that in view of the provisions of Section 23 of the Immigration Act, being Chapter 93, R.S.C. 1927, inasmuch as the Appellant is not a Canadian citizen, or has not Canadian domicile, no Court, and no judge or officer thereof, has jurisdiction to review, quash, reverse, restrain or otherwise interfere with the decision of the Board of Inquiry. Said Section 23 reads as follows:—

"23. No Court, and no judge or officer thereof, shall have jurisdiction to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or order of the Minister or of any Board of Inquiry, or officer in

charge, had, made or given under the authority and in accordance with the provisions of this Act relating to the detention or deportation of any rejected immigrant, passenger or other person, *upon any ground whatsoever, unless such person is a Canadian citizen or has Canadian domicile.*"

This Section of the Act has been considered by the Court of Appeal for the Province of British Columbia in a number of cases, the leading case of which is in re *Munshi Singh* (1914) 20 B.C.R. Page 243. In this case the Court determined that no Court had jurisdiction to review or reverse any decision of any Board of Inquiry unless the immigrant possessed Canadian citizenship or domicile. Consequently, in view of this Section, the Honourable Mr. Justice Fisher had no jurisdiction to make the Order that he purported to make. As the same was made without jurisdiction the same is a nullity. In any event he had no jurisdiction to order the discharge of the Appellant.

It is also submitted that inasmuch as these proceedings are civil rather than criminal proceedings, *vide Rex vs. Jan Jang How* (1919) 59 S.C.R. Page 175, there is no statutory prohibition on a second arrest after the prisoner has once been discharged on Writ of Habeas Corpus. In support of this contention reference is made to the Habeas Corpus Act, 31 Charles II, Chapter 2. *See Chitty's Statute, Volume 5, Page 199,* the preamble of which states that this Act applies solely to criminal and supposed criminal offences. Under Section 5 of the said Act, a second arrest for the same offence is prohibited. The right to habeas corpus was extended to civil process by 56 George III, Chapter 100. *See Chitty's Statute, Volume 5, Page 205.* There is no prohibition to a second arrest contained in this Act as there is in 31 Charles II, Chapter 2. The question of a second arrest has been considered in several criminal cases, and the Respondent submits that in view of the above cited statutory provisions the decisions hereinafter referred to on this question in criminal proceedings are doubly applicable to the case at bar. A second arrest after the prisoner had been discharged on habeas corpus proceedings was held valid in the case of *Rex vs. Governor of Brixton Prison ex parte Stallman,* 23 Cox's Criminal Cases, at Page 192. This was a criminal case in connection with extradition proceedings, and quoting from the judgment of Lord Alverstone, at page 208:—

"Therefore, what we have to consider is the ground upon which the present applicant is now sought to be detained, and upon the ground that the Court here has jurisdiction and power to deal with the applicant notwithstanding the fact that he had succeeded in showing that the procedure in India was such that he could no longer be detained there. I am clearly of the opinion that the objection taken that there had been a previous decision in India ordering his release is no answer to these proceedings."

And further on Lord Alverstone states, at page 208:—

"In my opinion it would defeat the whole objects of the treaty if an untried criminal in the strict sense of the word could be allowed to be acquitted or discharged merely because there had been some intermediate discharge without dealing with the case finally on the merits."

And quoting from the judgment of Filmore, J., in the same case, at Pages 211 and 212:—

"But if the second arrest is for the same offence while the discharge in the first case was because the warrant was bad or the return to the writ was bad, then it would be lawful to re-arrest for the same offence with a proper warrant and one making a different return."

A second arrest was also held valid in the case of *Attorney-General for Hong Kong vs. Kwok-a-Sing*, 12 Cox's Criminal Cases, Page 565.

A person discharged on the application by way of certiorari may be again tried and convicted on the same charge where the former conviction has been quashed on a mere technicality. *Rex vs. Young Kee*, (1917) Volume 2, W.W.R. 654.

The principle of res judicata does not apply so as to render unlawful a subsequent arrest and imprisonment under proceedings which are legal and sufficient, and which remove the illegalities or supply the defects for which the discharge in the habeas corpus proceedings was granted. *Corpus Juris*, Volume 29, Page 178.

In addition to a number of American cases cited in support of this principle there are two Canadian Cases, *Arscott vs. Lilley*, 11 Ontario, 159; *Ex Parte Steitz*, 8 Quebec, Q. B. 392.

If the Petitioner is discharged because the proceeding is not according to law, that is, because of some irregularities, such a determination is not res judicata, and does not prevent subsequent proceedings. *Ferris Extraordinary Remedies, Page 77.*

Irrespective of any rule or order, any Court has a general or inherent jurisdiction to alter the record of its order in such a way as to carry out its own meaning. *Lowery vs. Lees*, 7 Appeal Cases, 19, at Page 35, where Lord Penzance says:—

"Every Court has the power to vary its own orders which are drawn up mechanically in the Registry or in the office of the Court; to vary them in such a way as to carry out its own meaning, and where language has been used which is doubtful, to make it plain. I think that power is inherent in every Court."

With regard to the notice to the Attorney-General of Canada and the Attorney-General of British Columbia, which is printed in the Appeal Case at Page 10, it

should be pointed out that this notice is dated the 23rd day of February, 1932, almost a month after the hearing of the Appeal to the Court of Appeal for the Province of British Columbia. Counsel for the Appellant was precluded from advancing any argument before the Court of Appeal as to the constitutionality of the Immigration Act on the grounds that neither the Attorney-General of Canada nor the Attorney-General for the Province of British Columbia, has been given the necessary notice and were not represented at the hearing.

10 SEP 50 VICTORIA

1

In the Supreme Court of Canada

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AND

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MUNETAKA SAMEJIMA,

APPELLANT;

AND

HIS MAJESTY THE KING,

RESPONDENT.

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In the Supreme Court of British Columbia

IN THE MATTER OF THE IMMIGRATION ACT

AND

IN THE MATTER OF MUNETAKA SAMEJIMA

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE FISHER

This is an application on behalf of one Munetaka Samejima for his discharge under habeas corpus proceedings. On the return to the writ the Immigration Officer in charge states that the said Munetaka Samejima is a person detained for the purpose of deportation from Canada under and by virtue of an order for deportation dated at Victoria, B.C., the 29th day of April, 1931, and reading in part as follows:—

> "This is to certify that the rejected person above named (being the said Munetaka Samejima) a person who entered Canada at Vancouver, B.C., from Yokohama, Japan.....on September 29, 1928, has this day been examined by the Board of Inquiry at this Port, and has been rejected for the following reasons: In that he is in Canada contrary to the Provisions of the Immigration Act and effected entry contrary to the provisions of Section 33, subsection (7) of said Act."

The order purports to be made under section 33 of the Immigration Act and it is submitted on behalf of the applicant that it was not "had, made or given under the authority and in accordance with the provisions of this Act," that it does not therefore fall within the prohibition of section 23 of the Act, and the applicant is therefore entitled on these proceedings to be discharged from custody. Reliance is placed upon the case of *Rex v. Lantalum; ex parte Offman* (1921) 62 D.L.R. 223, and the case of *In Re Narain Singh* (1913) 18 B.C. 506. In the Offman case it was held that an order of deportation made under section 33 of the Immigration Act, form "B" (similar to present form "C") is defective, if, in the reasons for granting the order, reference is made to an Order in Council instead of the reasons

for rejection being stated in full as required by the Act, and an intended immigrant in the custody of the Immigration authorities is entitled on habeas corpus proceedings to be discharged from custody. Grimmer, J., at page 238, says:—

"This matter, involving as it does, the liberty of the person requires to my mind that all the provisions of the statute which are invoked in its support and in support of the position which is taken in this case by the Board of Inquiry should be strictly performed. While the provisions of sec. 23 are very large, very conclusive, as far as the words themselves are concerned, yet as reference has been made, they contain words which clearly point out to me at all events, that the decision which is arrived at by the officer or Board which made the inquiry into the matter must absolutely be made, had, or given under the authority and in accordance with the provisions of the Act relating to the detention or deportation of a subject whose deportation may be inquired into, and I am of the opinion that the form of the order which has been referred to, is as much a portion of the statute as any of the individual sections thereof. I am therefore of the opinion that when a person is ordered to be deported out of the country, the reasons for the deportation should be clearly stated in the order, and it is not a compliance therewith merely to refer under the instructions "Here state reasons in full" to the minutes of the Order in Council which provides the reason upon which the Board of Inquiry or immigration officer in charge may found or base its or his decision that the person or immigrant should be deported, and as, in this case, the order which made the deportation possible only used as the reason therefor the letters and figures "P.C. 23," it is in my opinion not in accordance with the provisions of the Act under which the order is made."

At page 246 Crocket, J., says:—

"With regard to the merits I fully concur in the judgment of the Chief Justice that the order for deportation, under which Offman was and is held, was defective in not stating in full, as required by Form B in the schedule to the Immigration Act the reasons for rejection. With all respect, however, I am unable to agree with his conclusion that he was precluded by the terms of sec. 23 of the Immigration Act from ordering the discharge of the applicant notwithstanding the defective order under which he was detained. The prohibition of that section, applies in my judgment only to proceedings, decisions or orders "Had, made or given under the authority and in accordance with the provisions of this Act." The order in question, having omitted to state the reasons for rejection, which the Act clearly requires to be stated in full, is not an order, which was made or given in accordance with the provisions of the Act, and does not therefore fall within the prohibition of sec. 23."

In the Narain Singh case at page 510-11, Hunter C.J.B.C., says as follows:—

"The Court having concluded that the persons detained were entitled to their discharge on these grounds, it was then urged by Mr. Taylor that they were also held because of misrepresentations. But the order for deportation does not state that this was a reason for detention. The only reason, so called, assigned, which could have any bearing on the matter, is given as "section 33." This section contains a number of subsections prohibiting different acts, and I do not think it is a proper compliance with the Act to refer generally to the section in this way as a reason for deportation. Common Justice requires, and I think Parliament intended, that when a person is ordered to be deported out of the country, the reason for so doing should be clearly stated, in order that he might at least know what was the reason, and, in any event, a reason stated in such a fashion would not constitute a good return to a writ of habeas corpus.

"Reference was also made to section 23, which purports to limit the jurisdiction of the court to interfere with deportation proceedings. It is, however, specifically enacted, that such restriction applies only to proceedings "had under the authority and in accordance with the provisions of this Act," and it would, indeed, be strange to find that the doors of the Court were shut against any person of any nationality, no matter what the act complained of might be."

In the present case it may be noted that in the order for deportation the only reason given is that "he (i.e., Munetaka Samejima) is in Canada contrary to the provisions of the Immigration Act and effected entry contrary to the provisions of section 33, subsection 7 of said Act." As was said in the Narain Singh case of section 33, so I think it may be said of subsection 7, that it prohibits different acts, and in my opinion it may also be said that the subsection creates several quite distinct offences with respect to entry. In this connection reference might be made to *In re Wong Shee* (1922) 31 B.C. 145, where at page 149-150 Martin J.A. says:—

"At one time during the argument I was not satisfied that the 'reason' required by Form B (Order for Deportation) was sufficiently given in the order in question, wherein it is stated to be that the applicant "Belongs to the labouring classes," without stating whether the class was of skilled or unskilled labour as set out in the Order in Council of June 9, 1919, defining prohibited "classes or occupations." But upon further consideration I find myself unable to say that it is not, on the facts, a practical and sufficient, although not the most precise, definition of the applicant's disqualifications."

Counsel on behalf of the Department of Immigration has called my attention to what is called the decision of the Board, as though that would constitute sufficient compliance with the requirements, but it should be noted that it is only the recital

that goes any further than the order of deportation and it only does so by purporting to recite a complaint received under section 40 of the Immigration Act which requires "full particulars" to be given. It should be noted, however, that this complaint is set out in the Warrant issued by the Deputy Minister of Immigration and Colonization on the authority of which the Board of Inquiry was held and which was issued under section 42 upon the written complaint being received. A perusal of the Warrant shows that the complaint as recited there was being in exactly the same terms as the Order is, so that this would not seem to be any more definite. In any case, however, my view would be that it is the order itself, under which the applicant is held in custody, that must be considered, and after carefully considering such order I have come to the conclusion that the reason required by Form C is not sufficiently given, and following the decision in *Rex v. Lantalum; ex parte Offman,* supra, I hold that the order of deportation is defective and not one given or made in accordance with the provisions of the Act, and the applicant is entitled to be discharged from custody.

Order accordingly.

(Sgd.) A. I. FISHER,
J.

July 8th, 1931.

11.50 VICTORIA

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IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

IN THE MATTER OF THE IMMIGRATION ACT, CHAPTER 93, R.S.C., 1927, and AMENDING ACTS,

AND

IN THE MATTER OF MUNETAKA SAMEJIMA

MUNETAKA SAMEJIMA,

Appellant;

and

HIS MAJESTY THE KING,

Respondent.

MEMORANDA OF ADDITIONAL AUTHORITIES CITED BY APPELLANT'S COUNSEL DURING ARGUMENT AND NOT CONTAINED IN APPELLANT'S FACTUM, AND DIRECTED TO BE FILED.

O'HALLORAN & HARVEY, Victoria, B.C.,
Solicitors for Appellant.
C. H. O'HALLORAN, ESQ.,
Counsel for Appellant.
MESSRS MACCRAKEN FLEMING & SCHROEDER, Ottawa.
Agents for Appellant.
JOHN L. CLAY, ESQ.,
Solicitor for Respondent.
W. N. TILLEY, ESQ., K.C.,
Counsel for Respondent.
W. S. EDWARDS, ESQ., K.C., Ottawa.
Agent for Respondent.

Page 12 (Factum) Re Pappas -1921-29 British Columbia Reports- at top of page 319- Add at the end of paragraph one:

"The respondent is bound by its return- if it was desired to amend the deportation order, it should be done before the return-it cannot be done after.

Page 14 (Factum) Add at the end of sub-paragraph (c) :
"The Judgment of the Court is Res Judicata as to questions of jurisdiction as well as to all objections." See Strong J. in re Sproule 1886, 12 C.S.C. Reports at top of page 205.

Page 15 (Factum) Add before paragraph four, at top of page:

" In re Sproule-1886-12 S. Can. Reports at page 140-has emphasized the finality of a Judgment of a Superior Court.
Applicant had been convicted of murder in British Columbia, applied to Henry J. of Supreme Court of Canada and obtained an order for his discharge on writ of habeas corpus-on appeal to Supreme Court of Canada reversed.

Henry J. at page 160-said "On principle I can see no difference between a judgment of an inferior and one of a superior court, when the question of jurisdiction is raised, nor can I see why, if the record of the former can be shown to be erroneous or false as touching the matter of jurisdiction, the other cannot be; for without jurisdiction the acts of one must be void as well as those of the other, and therefore the rule in the one case should be the same as the other.

In the full court reversing this
Ritchie, C. J. page 193- "The difficulty in this case has arisen from a misapprehension of what can, and what cannot be done under a writ of habeas corpus, but more especially from not duly appreciating the distinction between the validity and force of records of Courts of inferior and of Courts of superior jurisdiction, but treating records of superior and inferior courts as being of the same force and effect.

and top of page 194- " I certainly did not expect to hear it contended that the record of a superior court was not to be treated as absolute verity so long as it stood unreversed "-quotes Coke on Littleton-
Strong J. top of page 205.

Page 24 (Factum) Add at end of sub-paragraph (b) ;

1869-1--Best & Smith's Q. B. Reports at page 117-
Regina V. Russell-Cockburn, L. J. -re interfering with Court of Quarter Sessions:

"It may be that something may happen in the course of a case which is inconsistent with what has been called natural, but what I prefer to call rational justice-such as the refusal to hear a party and then this court will interfere; but unless something of this sort appears, we should not enter into the merits of the case."

Page 24 (Factum) - Add at the bottom of page:

Crepps v. Durden et al - Smith's Leading cases, 11th Edition, 1903, - Note at pages 676 and 677-

"An appeal, like a conviction, is the creature of the Statute law and never lies unless it is given by express terms".

"The rule with regard to certiorari is the very reverse - It always lies unless expressly taken away, and it requires very strong words to do so, for even where a statute gave an appeal to the sessions, and directed that it should be finally determined there, and no other court should intermeddle with the causes of appeal it was held that a certiorari lay after appeal"

Rex vs Reece, 1 W. Bl. 231 - 96 - E. R. 127.

Motion for certiorari to remove convictions before a Justice on the statute of 22 Car. 2 (c) against Conventicles (the defendants being Methodists) and also the proceedings on the appeal to the Quarter Sessions pursuant to the directions of the statute, which orders such appeal to be final and that no other Court shall interpose .

Lord Mansfield C.J. - "There is no colour that these negative words should take away the jurisdiction of this Court to issue writs of certiorari. They will perhaps take away the writ of error that has been mentioned. But this Court has an inherent power to issue certioraris, in order to keep all inferior Courts within due bounds, unless expressly forbid so to do by the words of the law. If the Justices have done right below, you may show it, and quash the certiorari. But if there be the least doubt, this Court will grant the writ."

The Habeas Corpus Act, being 56 George III. Chapter 100 -1816- relates to civil matters only, and contains following provisions not in the Statute of 1679 (which relates to criminal matters)

Section 3 - "Altho the return to any writ of Habeas Corpus shall be good and sufficient in law, it shall be lawful for the Justice ..... before whom such writ may be returnable, to proceed to examine into the truth of the facts set forth in such return by affidavit or affirmation ..... and to do therein as to Justice shall appertain";
and continuing, that if the Justice is in doubt as to the truth of the return, he shall bail applicant and adjourn hearing to following term.

(6th line from end of section) - "And thereupon it shall be lawful for the said Court to proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit or affirmation and to order and determine touching the discharging, bailing or remanding the party"

Section 4 - "That the like proceeding may be had in the court for controverting the truth of the return to any such writ of habeas corpus, awarded as aforesaid, altho such writ shall be awarded by the said Court itself, or be returnable therein"

DATED at Ottawa, Ontario, this twenty-seventh day of April, 1932.

C. H. O'HALLORAN,
Counsel for the Appellant.

VICTORIA
DEC 29 1931
REGISTRY

VICTORIA
DEC 29 1931

10.50 a.m.

COURT OF APPEAL.

ON APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE MURPHY, made the 30th day of October, 1931.

IN THE MATTER OF THE IMMIGRATION ACT, Chapter 93, R. S. C. 1927 and Amending Acts

and

IN THE MATTER OF MUNETAKA SAMEJIMA

HIS MAJESTY THE KING

Respondent.

-and-

MUNETAKA SAMEJIMA

Appellant.

APPEAL BOOK.

Messrs. O'HALLORAN & HARVEY,
Solicitors for the Appellant.

C. H. O'HALLORAN, Esquire,
Counsel for the Appellant.

JOHN L. CLAY, Esquire,
Solicitor for the Respondent.

JOHN L. CLAY, Esquire,
Counsel for the Respondent.

Exhibit "B"

Entered vol 4 fol 350
Date 3-2-32
By H.C.S

Victoria
Feb 3-1932
Registry

COURT OF APPEAL.

IN THE MATTER OF THE IMMIGRATION ACT,
Chapter 93, R. S. C. 1927 and Amending Acts

and

IN THE MATTER OF MUNETAKA SAMEJIMA

HIS MAJESTY THE KING — Respondent

- and -

MUNETAKA SAMEJIMA — Appellant.

Law
1/10
Stamps

BEFORE THE HONOURABLE CHIEF JUSTICE MACDONALD
THE HONOURABLE MR. JUSTICE MARTIN
THE HONOURABLE MR. JUSTICE MCPHILLIPS
THE HONOURABLE MR. JUSTICE MACDONALD.

Friday, the 29th day of January, A. D., 1932.

This Appeal coming on for hearing on the 27th, 28th and 29th days of January, 1932, AND UPON HEARING Mr. C. H. O'Halloran, of Counsel for the Appellant, and Mr. John L. Clay, of Counsel for the Respondent, AND UPON READING the Appeal Book herein AND UPON HEARING what was alleged by counsel aforesaid:

THIS COURT DOTH ORDER AND ADJUDGE that the said Appeal be and the same is hereby dismissed.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Appellant do pay to the Respondent its costs of this Appeal forthwith after taxation thereof.

Approved
21 "H" SB
DR
Jan
C.J.B.C.

BY THE COURT.

B. Hayward Litt Drake
Registrar.

This is the paper writing marked "C"
referred to in the affidavit of C. H. O'Halloran
Sworn before me this 19 day of February 1932.
A COMMISSIONER, &C
A Commissioner for Taking Affidavits
within the Province of British Columbia.

COURT OF APPEAL

IN THE MATTER OF THE
IMMIGRATION ACT, Chapter
93, R.S.C. 1927, and
Amending Acts

- and -

IN THE MATTER OF MUNETAKA
SAMEJIMA

HIS MAJESTY THE KING,
Respondent

- and -

MUNETAKA SAMEJIMA,
Appellant.

Rec'd 3 July 15

O R D E R

JOHN L. CLAY,
Barrister, Solicitor, Etc.,
Victoria, B. C.

,B.C).
405

And re ...

Court of appeal
This is the paper writing marked "A" referred to in the affidavit of A. Stallevo
Sworn before me this 19th day of February, 1932.
A Commissioner for taking Affidavits within the Province of British Columbia.

Exhibit "A"

IN THE COURT OF APPEAL FOR BRITISH COLUMBIA

IN THE MATTER OF THE IMMIGRATION ACT, Chapter 93, R.S.C. 1927 and Amending acts

and

IN THE MATTER OF MUNETAKA SAMEJIMA

S.S. 10a

HIS MAJESTY THE KING

Respondent

and

MUNETAKA SAMEJIMA

Appellant.

Victoria 16. Feby, 1932

NOTICE OF APPEAL TO THE SUPREME COURT OF CANADA

TAKE NOTICE that Munetaka Samejima, the above-named Appellant, hereby appeals to the Supreme Court of Canada from the judgment pronounced in this cause by this Court on the 29th day of January, 1932 whereby the said Court dismissed the appeal of the Appellant Munetaka Samejima from the order of the Honourable Mr. Justice Murphy made herein the 30th day of October, 1931, setting aside and quashing the writ of habeas corpus obtained by the Appellant on the 30th day of September, 1931.

Dated at Victoria, British Columbia, this 16th day of February, 1932.

O'Sullivan Stacey

603-606 Central Building,
View Street, Victoria,
British Columbia, Solicitors
for the Appellant Munetaka
Samejima.

To R.Roff, Esquire,
Dominion Immigration Agent and Officer in Control of
Immigration at the Port of Victoria, Victoria, B.C.
And to His Majesty the King (Douglas Street, Victoria, B.C).
And to the Solicitor for the Respondent, John L.Clay, Esq. 1405

IN THE COURT OF APPEAL FOR
BRITISH COLUMBIA

IN THE MATTER OF THE IMMIGRATION
ACT, Chapter 93, R.S.C. 1927
and Amending Acts

and

IN THE MATTER OF MUNETAKA
SAMEJIMA

HIS MAJESTY THE KING

Respondent

and

MUNETAKA SAMEJIMA

Appellant

NOTICE OF APPEAL TO THE SUPREME
COURT OF CANADA

O'HALLORAN & HARVEY,
Barristers,etc.,
Victoria,B.C.

Service of a true copy
admitted this
16th February 1932
for
F. Kelly
D.C. for dept.
of Immigration

Jan.29, 1932.

M.A.Macdonald, J.A.

THE KING

v.

MUNETAKA SAMEJIMA

ORAL REASONS FOR JUDGMENT.

M.A.MACDONALD, J.A.:

I have little to add to the views outlined by my brother Martin, beyond expressing concurrence. I think there is no doubt that under certain circumstances, outlined in the cases, and indicated by the section of the Act under review, it was open to Mr. Justice Fisher to review the decision of the Board of Enquiry. Whether or not he reached the proper conclusion is not material. If error crept in it could only be corrected by an appeal to this Court, and the time for doing sohas expired. His order quashing the first order of deportation must therefore be regarded as final.

Having reached that conclusion further difficulties, if any, disappear. The so-called amended order was made without the observance of statutory prerequisites and without any further enquiry taking place. The first enquiry cannot be resorted to as a basis for the amended order. That being so, an essential principle of justice, viz., an enquiry before sentence, was not observed.

I would allow the appeal.

M.A.M.
J.A.

McPHILLIPS, J.A. (Oral).

I would dismiss the appeal, and I am in agreement with my learned brother the Chief Justice, upon the facts and the law.

There could be no misconception from the start, of the question to be enquired into. The evidence is complete, that the authorities had the suspicion that Munetaka Samejima came into Canada by misrepresentation. That is the threshold of the matter. I cannot agree that there was any failure of the statutory tribunal to proceed in due course, and nothing was done which was against natural justice. Munetaka Samejima was held, the claim being that he came here making the misrepresentation that he was going to be a domestic servant, with a named person, and that was false; there was nothing to support the truthfulness of that statement.

The case of Munshi Singh, (1914), 20 B.C.R. page 243, is a decision of this Court which determined that no court had jurisdiction to review or reverse any decision of any Board of Inquiry, unless the case was one who possessed Canadian citizenship or Canadian domicile,-- section 23 inhibiting it where the case was not one of Canadian citizenship or Canadian domicile.

I go to page 263 (in Munshi Singh, supra) where Mr. Justice Irving made use of this language:

> "Section 23 (that is the section we are considering) to which our attention is particularly invited, deals with two classes of persons, namely, Canadian citizens and persons having a Canadian domicile--that is one class; the other class is any rejected immigrant, passenger or other person, not being aCanadian citizen or having a Canadian domicile. With respect to the first class, in my opinion, the rights of the civil courts to intervene has not been taken away. In such cases the courts have a right to interfere by certiorari. With reference to the second class, the jurisdiction of the court to review, quash, reverse, restrain or otherwise interfere, I shall not say has

been taken away, but does not exist. The right of certiorari in the second class is limited to want of jurisdiction or excess of jurisdiction or fraud. In cases where the right of certiorari is taken away by statute, the courts can, nevertheless, inquire as to the facts which go to the jurisdiction--that is facts collateral to the matters they are to determine; but as to the merits of the case, the tribunal appointed is the sole judge."

> "A person may apply to a civil court to determine whether he falls within one class or the other, but once it is established that he is a rejected immigrant or passenger, under the authority and in accordance with the Act, and is not a Canadian citizen or has not Canadian domicile, then the civil court has no jurisdiction to investigate the correctness of the decision."

Now that is this case; and I am surprised that the learned Judge gave the judgment he did; there must have been some oversight. There was no authority, with great respect, for the learned Judge upon a habeas corpus proceeding to set aside anything,--which he presumed to do, i.e. , set aside the Board's order for deportation. His whole duty was to apprise himself as to whether or not a person is illegally detained. Now when the matter came before the learned Judge, how impossible it was for him to say that he was not rightfully held? when, in the face of sec. 23 he could not enter into the subject matter at all,-- or, in the language of my late brother Irving:

> "With reference to the second class, the jurisdiction of the court to review, quash, reverse, restrain or otherwise interfere, I shall not say has been taken away, but does not exist."

Notwithstanding, the learned Judge made the order quashing the Board of Inquiry's decision. That can only be an order made without jurisdiction, a nullity, and one that this Court has no power, even to right, to consider--Parliament is the highest court in the land.

Now with respect to the Low Hong Hing case, referred to by my learned brother Martin, with great respect I do not

think it can have any bearing upon the matter we have now before us. In the first place, it is upon a different statute, and I am reminded of what Lord Parmoor once said in the Privy Council, that the decisions upon other statutes are not very helpful, and I do not think that any decision based upon the Chinese Immigration Act can be at all helpful to us in this matter. We have here a section which is so clear and precise that there can be no question of a doubt about its meaning. It reads:

> "No Court, and no judge or officer thereof shall have jurisdiction to interfere with that order."--

unless such person is a Canadian citizen or has Canadian domicile. Can there be any question of doubt as to the meaning of this? The appellant in this case had ample notice of his rights given to him, and when we turn to the proceedings, at page 28-29 of the Appeal Book we find this--This is the Board's finding, and this notice is appended:

> "If you claim to be a Canadian citizen or to have acquired Canadian domicile you have the right to consult counsel and appeal to the courts against deportation."

But the appellant did not come within either class. Now that was a plain intimation to the appellant of the situation of things. It is not advanced at this Bar--I asked Mr. O'Halloran precisely whether or not his client, the appellant, was a Canadian citizen or had achieved Canadian domicile. The learned Counsel was not able to say that his client came within either class, i.e., Canadian citizen or Canadian domicile. Well then, the appellant also was apprised and had notice of this:

> "In all other cases (and here was one of these cases not having Canadian citizenship or domicile) you may appeal to the Minister of Immigration and Colonization against any decision of the Board of Inquiry, or Officer in Charge, whereby you are ordered to be deported, unless such decision is based upon a certificate of the Examining Medical Officer that you are affected with a loathsome disease, or a disease

which may become dangerous to the public health. The formal notice of appeal will be supplied to you by the Immigration Officer in charge upon request."

Where was there any failure to give the appellant every opportunity, as in a court of justice, to make out his case and to take his proceedings? The utmost care has been taken, as I see it, by the National Government in all the proceedings that took place.

I could go on in detail and go through this material to show that there was not a thing left undone to rightly proceed and rightly enquire into the whole matter.

Then, a question comes up as to compliance with Form C of the Act, i.e., that the order was not properly filled up. I have as to this this observation to make; the Board it is true did not state in their first order the reasons in full, but there is no question about what their reasons were; they were orally stated to the appellant, as the proceedings show, and all that was done later on was to fill in a blank space that which had been omitted, i.e., any court may at any time, so could this statutory tribunal, set forth the order actually pronounced. Now if it were necessary,--and my learned brother the Chief Justice has indicated the non-necessity for it,--but if it were necessary that there should be any amendment, I am of opinion that the amendment could rightfully be made, and made with legal warrant, because, after all, the filling in of the reasons for rejection can very well in a case of this character be said to be merely directory, and their absence not fatal.

In Section 33, sub-section 5 of the Act:

"An order for deportation by a Board of Inquiry or offier in charge <u>may be made</u> in the Form C in schedule to this Act, and a copy of the said order

shall forthwith be delivered to such passenger or other person, and a copy of the said order shall at the same time be served upon the master or owner of the ship or upon the local agent or other official of the transportation company by which such person was brought to Canada; and such person shall thereupon be deported by such company, subject to any appeal which may have been entered on his behalf under this Act."

Now can it be said with any truth or with any force that the appellant did not know why he was to be deported? Why the whole enquiry was on this question of misrepresentation throughout, and it was pointed out how he said that he came in for his stated purpose, and he intimated that he was going into service in that certain capacity, which he never carried out. We have the word misrepresentation, it has no magical meaning. Misrepresentation is an English word not surrounded by the perplexities that arise in some specific legal terms. He made a statement of the Government officer at the time of his entry that was false and has been proved to have been false; that was the gravamen of the charge, and that was what was enquired into. And the evidence is clear to demonstration that the appellant made no sufficient answer to the charge.

The only appeal was to the minister, and when you look at the proceedings, the appellant was so advised by the Chairman of the Board, i. e., that he had a right of appeal to the Minister; and he could as well have said, as it would have been truthful: "You not being a Canadian citizen and not having a Canadian domicile are not now even without any opportunity for relief." But in effect the Chairman had said this: "This order may be reversed by the Minister; you have the right of an appeal to the Minister. And the appellant then and there said: "I intend to appeal." Can there be any question about his knowing what he was going to appeal about--all exhibited to him, stated to

him, and he did appeal to the Minister, one of the Cabinet of the Government of Canada, and his appeal was denied.

So that under the statute law of this country this appellant has been treated fairly, in conformity with the law, and in accordance with natural justice throughout. He had a fair hearing, a proper enquiry, every opportunity was afforded to him to make out his case, and he exhausted his right of appeal. It would certainly be an anomaly if this Court, the highest Court of the Province, should solemnly give the judgment that they did in the case I have referred to (Munshi Singh, supra), that it would be possible for a judge in the court below to absolutely disregard it and give a judgment not in conformity with it, when the decision of the Court of Appeal was based upon a statutory inhibition contained in the Dominion Immigration Act, (sec. 23 c.). That is what occurred here. I feel confident, though, that some misunderstanding has taken place as to this Court's decision. It is true that since the amending provisions in the Court of Appeal Act allowing appeals in habeas corpus proceedings, it has been decided that in accordance with a view I always maintained,--the decision is one of the Privy Council, that an application may be made to any judge, and even if the applicant has appealed and failed, and the learned judge below would have had the right to hear the application and grant the applicant his liberty, as Mr. Justice Fisher did, were it not in a case where there was express statutory inhibition, and therefore a nullity. Here the appeal is from Mr. Justice Murphy, the appellant being again apprehended, under the Board's order for deportation, and that learned Judge refused

him his liberty. And we have been hearing a case on appeal from a learned judge who did not proceed in the same manner as Mr. Justice Fisher. This appeal is from an order made by Mr. Justice Murphy, and Mr. Justice Murphy had these authorities that I have referred to placed before him, and Mr. Justice Murphy refused to release the appellant. It is not difficult to know upon what ground he came to that conclusion, but I should think he could well come to it on the ground of the merits themselves; and secondly he could also come to the conclusion naturally in view of our decision (Munshi Singh, supra) that I have referred to that he had no authority whatever to intervene in the matter, there being in this case the statutory inhibition.

So that I would conclude by saying that the appellant was, in accordance with British and Canadian justice, apprised of his misrepresentation complained of by the Crown, made upon his entry into Canada, and the Board of Enquiry held that he was wrongfully in Canada, he having every opportunity to meet the case that was outlined to him, and he attempted, I suppose as well as he could, to meet it. The Board, exercising its jurisdiction, found against him and made an order for deportation. If he had been a Canadian citizen or had Canadian domicile, he would have had recourse to the ordinary courts of the land, but not being that, he was apprised that he would have an appeal to the Minister, and that appeal he took, as referred to above. That appeal was a further examination of all the proceedings and all the evidence adduced, and the Minister determined that the order of the Board was right in the premises.

Now that is the history of this case, and it would be indeed deplorable if all the machinery that has been provided in Canada could be treated as provisions of naught, after fair, open and complete investigation, with not one supportable contention that there was any miscarriage of justice in one particular.

The Court that heard the appeal was constituted as follows:

The learned Chief Justice of the Court of Appeal, J.A. Macdonald, C.J.B.C., Mr. Justice Archer Martin, Mr. Justice Albert McPhillips, Mr. Justice M.A. Macdonald.

The Court was evenly divided in opinion; the Chief Justice and Mr. Justice McPhillips would dismiss the appeal; and Mr. Justice Martin and Mr. Justice M.A. Macdonald would allow the appeal. In the result, the Board's deportation order was declared valid, and the appellant subject to deportation thereunder. That is, the appeal stood dismissed.

COURT OF APPEAL

THE KING

v.

MUNETAKA SAMEJIMA

JUDGMENT OF THE HONOURABLE

MR. JUSTICE MARTIN

Victoria, B.C. 29th Jan,,1932.

ORAL REASONS FOR JUDGMENT

MARTIN J.A.

In my opinion this appeal should be allowed, with all deference to contrary views.

This Court has already decided unanimously in the case of Low Hong Hing (1926) 37 B.C.R. 295, on the corresponding sec.38 (now 37) of the Chinese Immigration Act, cap. 95, R. S.C., which is identical in relevant essentials with sec. 23 of the Immigration Act, cap. 93, now under consideration, that in the proper construction of the language of Parliament employed therein, the jurisdiction of the Court to review, quash, or otherwise interfere with the proceedings of the Board of Inquiry still remains in two cases at least, in addition to those expressly conferred where the person detained has Canadian citizenship or domicile, viz., first, where the Board has acted without jurisdiction; and second, where what has been wrongly done in the exercise of its jurisdiction amounts to a violation of the "essential requirements of justice". I shall not refer further to that case, it speaks for itself and is a judgment of this Court and binding upon us.

In the exercise of that jurisdiction, Mr. Justice Fisher, sitting as the Supreme Court of British Columbia, set aside the order of deportation complained

of, i.e., "reviewed and quashed" it, to use the words of the Statute, and so employed in the order of the Court over which he presided and given under its seal as set out on p. 27 of the Appeal Book, wherein it was declared that the present appellant be discharged from the custody of the Immigration authorities, "and the Order for (his) deportation be and the same is hereby quashed."

No appeal was taken from that judgment and it was pronounced under circumstances in which the Court could properly have had jurisdiction and as there is nothing on its face to show any want of jurisdiction it must be presumed that it existed, and so it is improper for this Court to interfere with it or go behind it while it stands as a valid judgment, for we cannot now assume the functions of a Court of Appeal over it - even in the case of inferior Courts, The Colonial Bank of Australasia v. Willan (1874) L.R. 5 P.C. 417; R. v. Bolton (1841) 1 Q.B. 66, and The King v. Commanding Officer of Morn Hill Camp (1917) 1 K.B. 176, wherein it was said, p. 180, that the same principles apply in habeas corpus as in certiorari.

When the matter came before Mr. Justice Murphy, on the second application for habeas corpus after the second arrest, he very properly did not, as his reasons show, essay to base his judgment and his consequent order upon the ground that Mr. Justice Fisher's said order was invalid upon the facts before him, but took another ground which was properly open to him to take, viz., he thought that even though there had been a second arrest of this appellant upon an amended order of deportation, nevertheless that amended order could be justified by the decision of the King's Bench Division in England, in Rex v. The Governor of Brixton Prison exparte Stallman, (1912) 3 K.B. 424; 13 Cox 192.

Now if that case had been on a par with the present one, I would, even though it is not binding on us, have little to say, under its particular circumstances, but, as was pointed out by Mr. O'Halloran, for the appellant, it contains in fact and law fundamental distinctions, and when it is thoroughly understood it is not an authority in support of the decision now appealed from but is against it. We find, for example, Mr. Justice Phillimore saying, at page 449, that though there may be a re-arrest (in proper circumstances) on an extradition warrant yet if one is made even on a valid warrant, then the case of the arrestee must also be "fully investigated before his committal" thereupon. And, again, the charge in the original British warrant upon which the applicant was re-arrested was the same as that upon which he was arrested and liberated in India and because there had not been in law a real decision in India of the charge upon the merits it was held that the original charge could be proceeded with in England.

Now the primary complaint in the present case is that the original order of the Board has been accepted and acted upon by itself as unsound and insufficient to support a re-arrest, and so it improperly assumed jurisdiction to amend it's proceedings by setting out, for the first time, a definite charge against the appellant and arresting him thereunder: that was the whole and sole reason for the amended order, because the first order for release was defective, as Mr. Justice Murphy says, owing to the fact that the particular breach of the Immigration Act was not set out as is required. But the Board having illegally amended its proceedings and re-framed the charge so as to formulate it particularly and properly for the first time against this person, and arrested him thereunder, proceeded to deport him without giving him an opportunity to shew cause against that very grave punitive proceeding.

My mind is shocked by such a miscarriage of justice, and I am sure that if anything of the kind had been before the King's Bench Division in the Brixton Prison case they would have given it no sanction whatever, and I feel it is our duty to do likewise herein.

I therefore put my decision on two grounds: first, that under the circumstances the Order of Mr. Justice Fisher was a proper order to make, and we are not justified in interfering with it; and, second, that even if the proceedings upon the Board's amended Order could be invoked at all they contain the incurable defect that after the re-arrest there was no re-investigation of the accused on the definite charge that was for the first time then laid against him but, on the contrary, he was in effect condemned upon that amended charge without being given any opportunity to meet it and sentenced to deportation in his absence. It is a co-incidence but it was upon that very ground (violation of natural justice) that the applicant in the Brixton case had been liberated from his arrest on the first warrant in India, by the High Court of Justice there, in that he had not been given an opportunity to present evidence to meet the charge against him: in other words, no real trial of the charge had been held.

With respect to the suggestion that the Board can now, at the eleventh hour, abandon its amending proceedings and the arrest thereunder by amended Order and fall back upon the first order and justify the second arrest thereunder, there are two complete answers to it, viz., first, the original order is defective as aforesaid; and, second, even if it were not, the return of the Immigration Agent, Roff, dated 23rd October 1931, to the writ of habeas corpus upon which the deportee is now detained by him shows, as it states specifically, that this detention is solely

> under and by virtue of an order of deportation a true copy of which is hereto annexed...and that the said Munetaka Samejima is detained by me by virtue of the said order of deportation and for no other cause whatsoever.

Now the "order annexed" is the amended and not the original order, and therefore the Immigration Agent has elected to justify and bring up the body in accordance with his return and no other return is before us or can be relied upon by the said Agent or even considered by us.

As the case in this Court of Re Munshi Singh (1914)

20 B.C. 243 has been cited and misconceived I refer to it only to say that it clearly supports, if support were needed, our later consistent decision in Low Hong's case supra as appears by the judgments of four members of the Court at pp. 258, 263, 269 and 277. For example, at p. 258 the learned Chief Justice gave some illustrations of cases wherein this same sec. 23 does not take away the remedial jurisdiction of the Court, viz:-

> Had the board of Inquiry acted without jurisdiction, or upon orders in council made without authority, or upon a statute which was unconstitutional, no doubt the Court could and would interfere to prevent what in that case would be an illegal detention.

In my opinion it is apparent ex facie that the "essential requirements of justice" have been violated in this case by the proceedings of the Board and an unfounded jurisdiction exercised, and therefore the appeal should be allowed and the deportee set at liberty forthwith.

Revised

A.M.

J.A.

E Howell
120

Jan.29.1932

ORAL REASONS FOR JUDGMENT

MACDONALD, C.J.B.C.

I would dismiss the appeal.

The first thing to be considered in the case is the jurisdiction of the Board of Enquiry. That jurisdiction is given by the Immigration Act. The Board, therefore, entered upon its duties with jurisdiction to decide whether this man was properly in Canada, or whether he was not.

Having made an enquiry and come to the conclusion that he should not remain in Canada - Section 23 of the Immigration Act says that:

> "No Court, and no judge or officer thereof, shall have jurisdiction to interfere with that order, either to quash it or review it, except for two reasons, one by reason of citizenship, and the other of domicile." - neither of which are involved in this case, because this man had neither citizenship nor domicile.

But the Court has given another reason. If the Board had no jurisdiction, then the Court had a right to set the judgment aside.

In this case I think the Board had entire jurisdiction in the matter. How they proceeded is not a matter of interest at all. They may have been absolutely wrong in finding that he ought to be deported; they may have gone right in the teeth of the evidence, but nevertheless the Parliament of Canada has said, on no ground whatever is it to be interfered with. So there is no question in my mind that the Board's Order was properly made and could not be interfered with by Mr. Justice Fisher, or any other Court, and therefore Mr. Justice Fisher's Order was a nullity.

There are two courses open to the Crown. The Crown might say, we will treat Mr. Justice Fisher's Order as a nullity, keep the person where he is and deport him; or if we want to get rid of that Order, move by way of appeal to set it aside. The Court would have power to review the Order of the Judge, but not the Order of the Board.

They let the man go, and they afterwards amended the Order by adding a few words which did not go to the jurisdiction at all, and they re-arrested him on another warrant. That was unnecessary; they could do that at any time under the original order and have held him for deportation. Therefore what they did was futile. There was no right to amend. They should have stood upon that Order, and in fact they have done so, since it is in effect. They are right now in standing upon that Order. They have the right to detain him for deportation.

With that view of the case, and that seems to be the only possible view to take in view of the sections of the Immigration Act, the Appeal cannot succeed.

COURT OF APPEAL.

ON APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE MURPHY, made the 30th day of October, 1931.

IN THE MATTER OF THE IMMIGRATION ACT, Chapter 93, R. S. C. 1927 and Amending Acts

and

IN THE MATTER OF MUNETAKA SAMEJIMA

HIS MAJESTY THE KING

Respondent,

-and-

MUNETAKA SAMEJIMA

Appellant.

APPEAL BOOK.

Court of Appeal.
"M. Samejima 2"
This is the paper writing marked "B" referred to in the affidavit of ... A. W. Fuller
Sworn before me this 19th day of January 1932
A. M. Whittaker
A COMMISSIONER, &c.
A Commissioner for taking Affidavits within the Province of British Columbia.

Messrs. O'HALLORAN & HARVEY,
Solicitors for the Appellant.

C. H. O'HALLORAN, Esquire,
Counsel for the Appellant.

JOHN L. CLAY, Esquire,
Solicitor for the Respondent.

JOHN L. CLAY, Esquire,
Counsel for the Respondent.

Approved
Dec 28 - 1931
John L. Clay
Sol. for Respondent

B. B. Symonds Solicitor Drake Esq

I N D E X

	DOCUMENTS:	DATE	PAGE
1.	Order for Issuance of Writ of Habeas Corpus.	Sept.30th,1931.	1.
2.	Order for Bail.	Sept.30th,1931.	2.
3.	Writ of Habeas Corpus.	Sept.30th,1931.	3.
4.	Notice of Writ of Habeas Corpus.	Sept.30th,1931.	4.
5.	Affidavit of Munetaka Samejima.	Sept.25th,1931.	5.
	Exhibits thereto:-		
	Ex. "A". Order for Deportation	April 29th,1931.	14.
	Ex. "B". Evidence before Board of Inquiry.	April 29th,1931.	16.
	Ex. "C". Order Quashing Deportation Order.	July 8th,1931.	27.
	Ex. "D". Amended Order for Deportation.	April 29th,1931.	28.
	Ex. "E". Return to Writ of Habeas Corpus of 18th June,1931.	June 25th, 1931.	30.
6.	Affidavit of Kikujiro Ishii.	Sept. 25th,1931.	31.
7.	Affidavit of Jentaro Ueno.	Sept. 30th,1931.	35.
8.	Affidavit of R.O.D. Harvey	Sept. 30th,1931.	37.
9.	Affidavit of C.H. O'Halloran	Sept. 29th,1931.	39.
	Exhibit thereto:-		
	Ex."A". Passport of Munetaka Samejima.	Sept. 15th,1928.	40.
10.	Return to Writ of Habeas Corpus.	Oct. 23rd,1931.	42.
11.	Order Quashing Writ of Habeas Corpus.	Oct. 30th,1931.	45.
12.	Reasons for Judgment of The Honourable Mr. Justice Murphy	Oct. 30th,1931.	46.
13.	Notice of Appeal.	Nov. 5th, 1931.	47.

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ORDER of the Honourable The Chief Justice, made September 30th, 1931.

IN CHAMBERS

BEFORE THE HONOURABLE THE CHIEF JUSTICE

Wednesday, the 30th day of September, A.D. 1931.

Upon the application of Mr. C.H. O'Halloran on behalf of Munetaka Samejima that a Writ of Habeas Corpus issue ex parte in the first instance, AND UPON READING the affidavit of Jentaro Ueno, sworn herein the 30th day of September, 1931, and duly filed; and the affidavit of Kikujuro Ishii, sworn herein the 25th day of September, 1931, and the affidavit of Munetaka Samejima, sworn herein the 25th day of September, 1931, and the affidavit of Cornelius Hawkins O'Halloran, sworn herein the 29th day of September, 1931, and duly filed with the exhibits thereto.

IT IS ORDERED that a Writ of Habeas Corpus issue directed to R. Roff, Esquire, Dominion Immigration Agent at the Port of Victoria, in the Province of British Columbia, the Immigration Officer having in charge the said Munetaka Samejima, or other Immigration Officer at the Port of Victoria aforesaid having in charge the said Munetaka Samejima, to have the body of Munetaka Samejima before a Judge in Chambers of the Supreme Court of British Columbia, at the Law Courts, Bastion Square, Victoria, British Columbia, forthwith to undergo and receive all and singular such matters and things as our said Judge shall then and there consider of and concerning him in this behalf.

Aulay Morrison, J.

ORDER of the Honourable Mr. Justice Morrison
of 30th September, 1931.

IN CHAMBERS

BEFORE THE HONOURABLE THE CHIEF JUSTICE

Wednesday, the 30th day of September, 1931.

UPON hearing Mr. C.H.O'Halloran of Counsel for Munetaka Samejima, the above-named Applicant, that he be admitted to bail:

IT IS ORDERED that the said Munetaka Samejima be admitted to bail upon the Deposit of Five hundred dollars ($500.00) cash bail with the Dominion Immigration Agent, Immigration Building, Victoria, B.C., conditioned that the said Munetaka Samejima surrenders himself into the custody of the said Dominion Immigration Agent at the Port of Victoria aforesaid upon the return, on the 5th day of October, 1931, before a Judge of the Supreme Court of British Columbia, or any adjournment thereof, of the Writ of Habeas Corpus directed to be issued herein.

LIBERTY TO APPLY.

AULAY MORRISON, J.

WRIT OF HABEAS CORPUS.

GEORGE the V, by the grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To R. Roff, Esquire,
Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria, Victoria, B.C. or other Immigration Officer at the Port of Victoria aforesaid having in custody Munetaka Samejima.

GREETING:

WE COMMAND YOU that you have before a Judge of the Supreme Court in Chambers at Victoria, immediately after the receipt of this Our Writ, the body of Munetaka Samejima, being taken and detained under your custody as is said, together with the day and cause of him being taken and detained by whatsoever name he may be called therein, to undergo and receive all and singular such matters and things as a Judge of the said Court shall then and there consider of concerning him in this behalf.

AND have you there then this Our Writ.

WITNESS The Honourable Aulay MacAulay Morrison, Chief Justice of the Supreme Court of British Columbia, this 30th day of September, in the year of our Lord one thousand nine hundred and thirty-one.

ISSUED pursuant to the Order of the Honourable The Chief Justice, made herein the 30th day of September, 1931.

THIS WRIT is issued by Cornelius Hawkins O'Halloran, of the firm of O'Halloran & Harvey, Solicitors for the said Munetaka Samejima, and whose address for service is 508-510 Central Building, 620 View Street, in the City of Victoria, Province of British Columbia; and the address of the said Munetaka Samejima is Immigration Building, Port of Victoria, British Columbia.

WHEREAS the Honourable The Chief Justice has granted a writ of habeas corpus, directed to R. Roff, Esquire, Dominion Immigration Agent, and Officer in control of Immigration at the Port of Victoria, Victoria, British Columbia, commanding him to have the body of Munetaka Samejima before a Judge of the said Court immediately to undergo and receive all and singular such matters and things as the said Judge shall then and there consider of concerning him in this behalf.

NOW TAKE NOTICE that you are hereby required to have the body of the said Munetaka Samejima before a Judge of the said Court as aforesaid on Monday the 5th day of October, 1931, at the hour of 10.30 o'clock in the forenoon, to make a return to the said writ, or in default thereof, the said Court will then, or so soon after as Counsel may be heard, move for an attachment against you for your contempt in not obeying the said writ.

DATED at Victoria, British Columbia, this 30th day of September, 1931.

O'Halloran & Harvey

508-510 Central Building, 620 View Street, Victoria, British Columbia, Solicitors for the Applicant.

To R. Roff, Esquire,
Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria,
Immigration Building,
Victoria, B.C.
or other Immigration Officer at the Port of Victoria having in custody Munetaka Samejima.

AFFIDAVIT of Munetaka Samejima,
sworn September 25th, 1931.

I, Munetaka Samejima, of Chemainus, in the Province of British Columbia, at present at the Immigration Building at the Port of Victoria in the City of Victoria, Province of British Columbia, Domestic Servant, make oath and say:

1. That I entered Canada at the Port of Vancouver, in the City of Vancouver, Province of British Columbia, on the 29th day of September, 1928, from Japan, where I had previously resided at 52 Chiko Machi, Kagoshima City.

2. That at the time I entered Canada as aforesaid I carried with me a Japanese passport No. 101,205, in my name, describing me as aged twenty-four years, proceeding to Canada as a domestic servant. The said passport was issued on the 15th day of September, 1928 and bears the visa of the British Consul General at Kobe, No. 1408 dated the 17th day of September, 1928, and is also stamped by the Canadian Immigration and Colonization office at the City of Vancouver aforesaid, under date of the 29th September, 1928.

3. The circumstances relating to my entry into Canada are as follows:

(a) I had a number of relatives in the Province of British Columbia, namely, a brother Takeji Samejima, at Chemainus, an uncle Kiichi Aiboshi of 25 Victoria Crescent, Nanaimo, and a cousin Hisashi Aiboshi, resident in Duncan, and I was desirous of joining them in British Columbia, and residing permanently in the Province of British Columbia.

(b) I was a fully competent domestic servant for a Japanese household, although I am not trained for service in a Canadian household.

(c) My uncle Kiichi Aiboshi, of the City of Nanaimo aforesaid, wrote me advising that a Japanese merchant of Nanaimo, Jentaro Ueno, needed a domestic servant in his household, and accordingly I wrote my said uncle to tell me what was necessary for me to come to Canada and get a position of that

kind as a domestic servant in a Japanese household.

(d) After some correspondence with him, I finally obtained a certificate from the Mayor of Kagoshima, the City in which I lived, concerning my good conduct, and obtained also a medical certificate as to my good health, and a further certificate as to my family record, and all these certificates were duly forwarded to my uncle in British Columbia.

(e) In due course I received a certificate from the Japanese Consul at the City of Vancouver, Province aforesaid, that Jentaro Ueno aforesaid was qualified to apply for the entry of a Japanese domestic servant, and with this Consular's certificate I made application to the Minister of Foreign Affairs for Japan, accompanied by the above-mentioned certificates, and in due course a passport was issued by the Japanese Government, to enable me to proceed to British Columbia, and this was duly approved by the British Consul General at Kobe, Japan, aforesaid.

(f) I accordingly came to British Columbia on board the Empress of Asia, arriving at the City of Vancouver aforesaid, on the 29th September, 1928, with the purpose and intention of living permanently in the Province of British Columbia, and not returning to Japan, except perhaps for an occasional visit.

4. Upon arrival as aforesaid in the City of Vancouver, I went to the City of Nanaimo, to find Mr. Jentaro Ueno, but found that his store was closed up, and that he was no longer living in the said City of Nanaimo. I then went back to Vancouver, and stayed with my brother there for some two weeks. During this time I found that Jentaro Ueno, by reason of financial reverses, could not employ me as a domestic servant, and I tried for two weeks in the City of

Vancouver, through my own personal enquiries and the enquiries of my brother and friends of his, to get work as a domestic servant in a Japanese family, but could not obtain any such work. I was then forced of necessity to take up any work that I could get, and I went to Woodfibre as an ordinary labourer, where I worked for five months. I worked at Hillcrest, near the City of Duncan, for seven months thereafter, and then worked at the shoemaking business with my cousin in Duncan, where I did practically all the domestic work for my said cousin. The shoemaking business not bringing in enough money, and not being able to obtain any other employment as a domestic servant, I had to take any work I could get, and went to work in the mills at Chemainus, at which place I was arrested by the Immigration Officials.

5. The first notification I had of anything wrong was when I was called to the office of the lumber mill where a Provincial Police Officer asked me questions concerning my arrival in Canada, and what I had done since, when I answered him truthfully as above.

6. Later on an Immigration Officer came up and asked me more or less the same questions, and also if I intended to work for Jentaro Ueno when I came to Canada. I told him that such was my intention, but that Jentaro Ueno having gotten into financial difficulties, he could not employ me, and I could not find any other domestic work, and had to do any work I could get, in order to live. He then took me to Victoria, to the Immigration Shed. This occurred on the 28th April, 1931.

7. When I was examined at the Immigration Office and asked if I wanted a lawyer, I said, "No", because I did not anticipate getting into any trouble of this nature, or being deported to Japan, more particularly as when the Immigration Officer took me to Victoria the previous day, he told me that I might return to Chemainus next day.

8. I came to British Columbia bona fide, and with no intention whatsoever of evading the Canadian Immigration laws, and swear positively that I was not guilty of misrepresentation or statement of any untruth to the Immigration officers at the time of my entry into Canada, or at any time since.

9. That I did not know that Jentaro Ueno would not be able to employ me as a domestic servant until I actually arrived in the City of Nanaimo and tried to find his place of business and house in that City.

10. That I did not make any report to the Immigration office because I was not familiar with the Canadian Immigration laws and did not speak English. At no time have I knowingly committed a breach of any Immigration law.

11. Now produced and shown to me and marked as Exhibit "A" hereto is a notice under date of the 29th April, 1931, served upon me by J.A. Anderson, who sat as Chairman on my examination on the 29th day of April, 1931, at Victoria.

12. At the conclusion of my examination at Victoria on the 29th April, 1931, the Immigration officers examined me and ordered me deported in the words following:

" Decision of the Board.

Mr. Jones: Whereas the said Munetaka Samejima, having been found not to be a Canadian citizen or a person having Canadian domicile, and a complaint having been received under Section 40 of the Immigration Act to the effect that the said Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, namely Section 33, sub-section 7, in that he entered Canada by misrepresentation; therefore, pursuant to the provisions of Section 33, sub-section 7 of the Immigration Act, I move that the said Munetaka Samejima be deported.

Mr. Speed: I second the motion.

Chairman: Mr. Samejima, a motion has been duly moved and seconded and I declare it carried unanimously that you be deported under the provisions of Section 33, sub-section 7 of the Immigration Act. You have the right to appeal to the Minister of Immigration and Colonization. Do you wish to appeal?
A. I am going to appeal.

Appeal Entered."

13. Now produced and shown to me and marked Exhibit "B" to this my affidavit, is a certified copy of the evidence taken at my hearing before the Board of Inquiry at the Port of Victoria, B.C. on the 29th day of April, 1931, upon which evidence I was Ordered deported.

14. Following the decision to deport me, I launched an appeal to the Honourable the Minister of Immigration and Colonization at Ottawa, on the 11th day of May, 1931, and in due course I was advised by letter from the said Department of Immigration and Colonization of the 11th June, 1931, that my said appeal was dismissed.

15. On the 18th day of June, 1931 my Counsel Mr. C.H. O'Halloran of the City of Victoria, obtained a writ of habeas corpus on my behalf, and a motion for my discharge thereunder came on for hearing at the City of Victoria, Province aforesaid on the 24th and 29th days of June 1931, before the Honourable Mr. Justice Fisher, who reserved judgment until the 8th July, 1931, when he ordered that I be discharged from custody and that the order of the Board of Inquiry made on the 29th day of April, 1931 for my deportation be quashed.

16. Now produced and shown to me and marked as Exhibit "C" hereto is the original of the said Order of the Honourable Mr. Justice Fisher of the 8th July, 1931.

17. I was discharged from custody pursuant to the said order, but on Wednesday the 23rd September, 1931, at the City of Duncan, in the said Province, I was re-arrested and brought to Victoria, and am now detained at the Immigration Building at the City of Victoria aforesaid for deportation, pursuant to an amended order for deportation handed me at the time of my arrest, and which is now produced and shown to me and marked as Exhibit "D" to this my affidavit.

18. That at the time of the application for writ of habeas corpus as above mentioned I swore an affidavit reciting all the facts set out in paragraphs 1 to 14 hereof, and alleged that the Immigration authorities in arresting me and in order-

ing my deportation had acted without jurisdiction, or in the alternative, in excess of their jurisdiction, in that -

(a) The said authorities had no jurisdiction to proceed against me under subsection 7 of Section 33 of the Immigration Act aforesaid on the order of the Deputy Minister of Colonization and Immigration.

(b) That the complaint in writing referred to in the order of the Deputy Minister was not produced at my hearing before the Immigration authorities, and I had no notice of what offence under subsection 7 of Section 33 of the Immigration Act aforesaid I was charged with committing

(c) It was not stated to me that I had entered Canada by misrepresentation.

(d) The said Immigration authorities acted without jurisdiction in proceeding with my hearing upon an order referring to a written complaint, particulars of which written complaint were not before the said Board of Inquiry, and the said Board of Inquiry dealt with my case without knowledge of the actual complaint against me.

(e) No misrepresentation was disclosed upon my examination before the Board of Inquiry.

(f) No misrepresentation by me was proven against me before the said Board of Inquiry, and the said Board exceeded their jurisdiction in finding me guilty of misrepresentation.

(g) The said Board of Inquiry had no jurisdiction to take my evidence without placing me upon oath, and as disclosed in the said evidence.

(h) There was no order of the Deputy Minister, or in the alternative, no warrant of the Deputy Minister before the said Board, and the said Board had no jurisdiction to examine me in the manner they did and order my deportation, and in the alternative, the said order of the Deputy Minister was not proven, or in the alternative was not proven as required by the Canada Evidence Act, Chapter 59, R.S.C. 1927 and Amending Acts.

(i) The said Board of Inquiry in finding me guilty of misrepresentation did not establish mens rea on my part.

(j) The said Board had no jurisdiction to find me guilty of misrepresentation without establishing guilty knowledge on my part.

(k) The said Board of Inquiry had no jurisdiction to order me deported for misrepresentation under Subsection 7 of Section 33 of the Immigration Act, without my being first summarily convicted.

(l) The Board had no jurisdiction to deport me, a person having a British Columbia domicile.

(m) In the alternative, the provisions respecting Canadian domicile and domicile in the said Immigration Act are ultra vires the Parliament of Canada, in that domicile is a matter of civil rights solely within the jurisdiction of the Provinces of Canada.

(n) Upon such other grounds as to this Court may seem just.

19. Now produced and shown to me and marked as Exhibit "E" hereto is the return of the Dominion Immigration agent at Victoria, B.C., dated the 25th day of June, 1931, to the writ of habeas corpus issued herein on the 18th day of June, 1931, together with a true copy of the order for my deportation of the 29th April, 1931, therein referred to.

20. That I am held for deportation pursuant to what purports to be an amended order as set out in Exhibit "D" hereto and dated the 29th April, 1931.

21. Since my re-arrest as set out in paragraph 17 hereof, I have not been subjected to any examination by any immigration official or by any Board of Inquiry, and no order for my deportation has been made by any Board of Inquiry since the date of my re-arrest as aforesaid.

AFFIDAVIT OF Munetaka Samejima,
sworn September 25th, 1931.

22. I am now detained at the Immigration Buildings at the City of Victoria aforesaid, pursuant to the alleged amended order Exhibit "D" hereto, referred to aforesaid, and am advised by my Solicitors, Messrs. O'Halloran & Harvey of the City of Victoria aforesaid, and verily believe that the said Immigration authorities have acted without jurisdiction, or in the alternative, in excess of their jurisdiction,or in the alternative, without power, and contrary to their Statutory duties and powers in causing me to be re-arrested and held for deportation as aforesaid -

(a) For the causes set out in Paragraph 18 hereof.

(b) The aforesaid amended order of the 29th April,1931 is a nullity.

(c) That there is no order or authority, or in the alternative, no lawful order or authority, formy being held in detention and deportation.

(d) That there was no authority to amend the deportation order quashed by the aforesaid order of the 8th July, 1931.

(e) That the alleged amended order of deportation purports to have been made on the 29th April, 1931, whereas I was discharged from the custody of the Dominion Immigration authorities by the aforesaid order of the 8th July, 1931.

(ee)That there was no amended order made by the Board of "C.G.W" Enquiry.

(f) That I am being placed in jeopardy a second time upon a charge or for a cause which was dismissed by the Supreme Court of British Columbia, on the 8th day of July, 1931, and there is now no jurisdiction to re-arrest me and deport me under the alleged order.

(g) That there was no authority in the Immigration authorities either by Statute or by Order-in-Council to cause my apprehension on the 28th day of April,1931, or the 23rd day of September, 1931, and in the alternative, if the said arrests or deportation orders were made pursuant to any Order-in-Council, such Order-in-Council is ultra vires.

(h) Upon such other grounds as to this Court may seem just.

23. I am illegally detained and liable to immediate deportation, and it is necessary for the liberty of my person and the safe-guarding of my legal rights that a writ of habeas corpus do issue to R.Roff, Esquire, Dominion Immigration Agent at the Port of Victoria, City of Victoria aforesaid , or to whatever person or official of the said Dominion Immigration Department is now in charge at the Dominion Immigration Buildings, at the City of Victoria aforesaid, in whose custody I am now detained.

SWORN at the City of Victoria,Province of British Columbia, on the 25th day of September,1931, by the above-named Munetaka Samejima, through the interpretation of Bumpei Kuwabara of the City of Victoria, in the Province of British Columbia, he having first sworn that he had truly and faithfully interpreted the contents of the above affidavit, and would truly and faithfully interpret the oath about to be administered to the said Munetaka Samejima, to him the said Munetaka Samejima

MUNETAKA SAMEJIMA

CLEEVE G. WHITE

A Commissioner for taking affidavits
within British Columbia.

Exhibit"A"to affidavit of M.Samejima
sworn 25th September, 1931.

14.

ORDER FOR DEPORTATION, dated 29th April,1931.

Form B.I & C.91

Canada
ORDER FOR DEPORTATION

A

The Immigration Act, Section 33

To Canadian Pacific Steamships Ltd.
(Transportation Company)
and to Munetaka Samejima
(Person rejected,--Name in full)
of Chemainus, V.I., B.C.
(Last place of residence)

Port of entry Vancouver Province of B.C.

THIS IS TO CERTIFY that the rejected person above named, a person who entered B.C. Canada at ~~this~~ Port ex "Empress of Asia" from Yokohama, Japan which arrived at ~~this~~ Port on the said (Ship or Train) September 29th 1928 at - o'clock - M. has this day been examined by the Board of Inquiry ~~at this~~ Port, and has been rejected for the following reasons: In that he is in Canada contrary to the provisions of the Immigration Act and effected entry contrary to the provisions of Section 33, subsection (7) of said Act.
(Here state reason in full)

And the said rejected person is hereby ordered to be deported to the place from whence he came to Canada. Such conveyance shall be by the first available ship or train of the Transportation Company which brought the said rejected person to Canada.

Dated at Victoria, B.C., this 29th day of April,1931.

J.A. ANDERSON

~~Immigration Officer in Charge~~
Chairman of the Board of Inquiry
(see Over)

INFORMATION FOR TICKET AGENT

ISSUE. . . . . TICKET NO. . . . . FORM . . . .

From . . . . . To . . . . . .

Exhibit A to affidavit of M.Samejima,
sworn 25th September, 1931. 15.

ORDER FOR DEPORTATION, dated 29th April, 1931

Endorsement on back

NOTICE TO PERSON ORDERED TO BE DEPORTED

If you claim to be a Canadian citizen or to have acquired Canadian domicile you have the right to consult counsel and appeal to the courts against deportation.

In all other cases you may appeal to the Minister of Immigration and Colonization against any decision of the Board of Inquiry, or Officer in Charge, whereby you are ordered to be deported, unless such decision is based upon a certificate of the Examining Medical Officer that you are affected with a loathsome disease, or a disease which may become dangerous to the public health. The formal notice of appeal will be supplied to you by the Immigration Officer in charge upon request.

It is unlawful for persons rejected or deported to return to Canada without the consent of the Minister and persons entering or remaining in or returning to Canada after such rejection or deportation are subject to arrest and detention and on summary conviction to a fine or imprisonment or both, and to deportation.

The Department of Immigration and Colonization
Canada.

Exhibit B to affidavit of M Samejima, sworn 25th September, 1931.

EVIDENCE before Board of Inquiry, at Port of Victoria, B.C., April 29th, 1931.

16.

"B"

1. Sitting No. 530. Port of Victoria, B. C.

A meeting of the Board of Inquiry was held in the Dominion Immigration Building on the 29th day of April, 1931, at 10.55 A.M.

Present: J. A. Anderson ..... Chairman
J. W. Speed ..... Secretary
A.H.C. Jones ..... Member

(Each having been nominated by the Minister to Act on Boards of Inquiry at the port of Victoria, B.C.)

10. H. G. Parkinson ..... Stenographer.

IN THE MATTER of the application or right of MUNETAKA SAMEJIMA to be and remain in Canada.

Chairman: Mr. Samejima, you are now to be examined as to your right to remain in Canada. You have the right to be represented by counsel. Do you wish to secure counsel ?

A. No, I am not going to have a lawyer.

20. Applicant duly sworn.

Q. What is your full name ?

A. Munetaka Samejima.

Chairman: This Board is being held on the authority of a Warrant issued by the Deputy Minister of Immigration and Colonization dated at Ottawa the 28th of January, 1931, on a written complaint being received to the effect that Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, and he effected entry contrary to the provisions of Section 33, sub-section

30. 7 of the said Act.

Exhibit "A" -- Minister's Warrant, dated Ottawa, 28th Jan. 1931.

Q. How old are you ?

A. 27.

Q. Give the date and place of your birth.

1. A. Bansei Chio Kawanabe, Gori, Kagoshima Ken, Japan.
September 16th, 27 years ago.

Q. Of what race are you ?

A. Japanese.

Q. Of what country do you claim citizenship ?

A. Citizen of Japan.

Q. Are you in possession of a passport ?

A. Yes, I have.

Q. Is this your passport ? (Indicating)

10. A. Yes.

Chairman: This is a Japanese passport 101205 in favour of Munetake Samejima, age 24 years, a Japanese subject proceeding to British Canada, as a domestic servant issued on September 15th, 1928. It bears the visa of the British Consul General at Kobe No. 1408 dated September 17th, 1928. It is also stamped by the Canadian Immigration and Colonization Office September 29th, 1928 Vancouver, B.C.

Q. What is your last place of residence in Japan ?

20. A. 52 Chiku Machi, Kagoshima City.

Q. What is your religious denomination ?

A. Buddhist.

Q. Are you married or single ?

A. I am single.

Q. Mr. Samejima, our Department records show that you arrived at the port of Vancouver, B.C. on the s.s. "Empress of Asia" September 29th, 1928. Your name appears on sheet 15, line 14 of the ship's manifest, destined to employer Z. Uyeno, Box 27, Nanaimo, B. C.

30. Occupation on the manifest, labourer in your own country and intended occupation in Canada, domestic servant. That is correct ?

A. Yes.

Q. When you arrived you were coming to assured employment in Canada, were you not ?

A.No.

Q.The ship's manifest shows in column 16 that your fare was paid by your employer.

A. My fare was paid by my uncle. My uncle was staying with my employer, Mr. Uyeno.

Q. Your uncle paid your fare for the employer?

A. Uncle paid my fare. My uncle sent the money to me.

Q. Your uncle was living with your employer?

A. My uncle sent the money to me; my uncle has a shoe store nearby Mr. Uyeno.

Q. What is your uncle's name?

A. Kiichi Aiboshi

Q. What is your uncle's occupation?

A. Shoe maker

Q. What is your employer's name?

A. Uyeno.

Q. And when you arrived in Canada you were destined to your employer, Mr. Uyeno, were you not?

A. Yes, I went to Nanaimo.

Q. You weredestined to Mr. Uyeno, your employer.

A. Yes.

Q. What business was your employer engaged in at that time.

A. My employer was not in any business when I landed at Nanaimo.

Q. What was he doing for a living?

A. He was working in a sawmill in Chemainus.

Q. And what particular kind of work were you doing when you arrived?

A. I worked at the paper mill at Wood Fibre.

Q. Did you go direct to the paper mills at Wood Fibre after your landing in Canada?

A. After arriving at Vancouver I went to Nanaimo and I find no employer there because Mr. Uyeno's store was closed.

Q. How long did you stay in Nanaimo?

A. About two weeks.

Q. Then where did you go?

A. Then I returned to Vancouver

Q. What were you doing in Vancouver?

A. Well, I was not doing anything in Vancouver.

Q. Who were you staying with in Vancouver?

A. Hisashi Aiboshi, 224 Main St., Vancouver; he is my cousin.

Q. When you got back to Vancouver, did you report to the Canadian Immigration Office and report to them that your employer was closed up and could not employ you as a domestic?

A. No, I didn't.

Q. You know that you were permitted to land in Canada for the purpose of being employed as a domestic servant and that you were going to work for Mr. Uyeno; why did you not report that this man was not in a position to employ you when you found he was closed up?

A. I didn't know that I should report to the Immigration what to do.

Q. How long did you remain in Vancouver?

A. About two weeks.

Q. Where did you go from there?

A. Then I went to Wood Fibre.

Q. How long were you employed at the paper mill at Wood Fibre and in what capacity were you employed?

A. I work in the sawmill about five months.

Q. Labourer, or what were you doing?

A. Labourer.

Q. Where did you go from Wood Fibre after five months?

A. Hillcrest, I worked as a labourer on a logging train.

Q. How long did you work in Hillcrest?

A. About eight months.

Q. Then where did you go?

A. Then I went to Duncan.

Q. Where were you employed in Duncan?

A. Well I was not employed but I help my cousin to start a

shoe store.

Q. What is your cousin's name ?

A. Hissashi Aiboshi; he went to Duncan and open a shoe store.

Q. I understand you to say that you helped your cousin to open a shoe store, but you didn't receive any salary or wages for working for him ?

A. No, didn't receive any; just help him out.

Q. How long did you remain in Duncan helping him out ?

A. About two months.

Q. Then where did you go ?

A. Chemainus.

Q. Have you been working in the mill in Chemainus ?

A. I work in the mill.

Q. And you have been there ever since ?

A. Yes.

Q. You are still employed in the mill in Chemainus ?

A. Yes.

Q. What are you doing there ?

A. I work in the lumber yard piling lumber.

Q. What wages are you in receipt of ?

A. 32 cents an hour.

Q. How much money have you in your possession now ?

A. I have $20.00 here.

Q. Have you any money in the bank ?

A. About $100.

Q. Can you read ?

A. Read and write Japanese.

Q. Was this your first arrival in Canada ?

A. Yes.

Q. Give me the names and address of all your relatives in Canada at the present time.

A. Brother: Takeji Samejima, box 146, Chemainus, B. C.
Uncle: Kiichi Aiboshi, 25 Victoria Crescent, Nanaimo, B.C.
Cousin: Hisashi Aiboshi, Box 154, Duncan, B.C.

Q. Have you ever lived in the United States ?

A. No, I have never lived in the States.

Q. Have you ever applied for permission to enter the United States ?

A. No.

Q. Have you any relatives or friends in the United States ?

A. No.

By Mr. Jones:

Q. Who got you the job at Wood Fibre ?

A. My friends in Wood Fibre - Seichi Tobo, Ichiji Matsusaki.

Q. Did you write him for a job ?

A. I met Mr. Tobo in Vancouver and he heard there was some job in Wood Fibre. Then I went over to Wood Fibre.

Q. What did you ask Mr. Tobo for ?

A. I ask him if there was any job at Wood Fibre.

Q. Did you ever have any experience in Japan as a domestic servant ?

A. I have been working in a store.

Q. What as ?

A. At domestic work in the house.

Q. Why didn't you apply to Mr. Tobo for a domestic servant's job ?

A. I ask for any job.

Q. When you got this passport in Japan, when you applied for it, you stated you were going as a domestic servant, did you not ?

A. Yes.

Q. And when you were questioned by the Immigration Officer, did you not state that you were going to be a domestic servant ?

A. I told the officer at Vancouver I was going to be a domestic servant.

Q. After you arrived you made no attempt to be a domestic servant.

A. I tried several times to have domestic work in Vancouver but could not find any.

Q. You have never been in domestic servant work in Canada ?

A. No, I have not.

Q. Then you realize that you have entered Canada by misrepresentation do you ?

A. No, I don't know that. Because I try to get work but I could not help it.

Q. But the fact that you have not taken domestic work shows you entered Canada by misrepresentation ?

A. I don't know.

By Mr. Speed:

Q. What is your father's name ?

A. Father, Itaro Samejima; mother, Ito Samejima; 142 Banseichio, Kagoshima City.

Q. What is his occupation ?

A. He is a merchant.

Q. What kind.?

A. Fish merchant.

Q. Does he keep a store ?

A. No; he does not keep a store.

Q. He is a buyer and seller of fish ?

A. Yes.

Q. Has your father ever lived in this country ?

A. No.

Q. Have you any relatives in Japan ?

A. Sister, Hatsuye Samejima, age 22, at Sumichio, Kagoshima.
Brother, Kioichi " " 19, " Sumiyoshi Chio, "
Sister, Misae " " 16, " 142 Bansei Chio, "
Brother, Yoneji " " 13, " " " " "
Sister, Sumino " " 10, " " " " "

Q. What prompted you, when you started for Canada, to state you were going to be a domestic servant ?

A. My uncle in Nanaimo, he told me.

Q. Did he give you any reason why you should state you were a domestic servant ?

A. My intention to come to Canada as a domestic servant for Mr. Uyeno, but on arrival here Mr. Uyeno closed his store.

1. By Mr. Jones:

Q. What kind of a store ?

A. Fish market in Nanaimo.

By Chairman:

Q. On your arrival in Canada, were you accompanied by any of your relatives from Japan ?

A. I came with my uncle.

Q. Anyone else ?

A. Uncle, Kiichi Aiboshi, uncle's wife and one child.

10. Q. Did your uncle then instruct you to say you were coming here as a domestic servant ?

A. Yes.

Q. Your uncle was a previous resident of Canada from 1918 to 1928, so of course knew the regulations. Was there any other passenger aboard that boat, Japanese, that you knew ?

A. No, I don't know any other passenger.

Q. Do you not know Mr. Mutsueda ?

A. I don't know - I have forgotten all the names.

20. Q. When you were at Wood Fibre, did you meet Mr. Mutsuoka ?

A. No.

Chairman: I am just asking because these names appear on the manifest here of the vessel, destined to Wood Fibre, and may have had something to do with his getting a job there.

Q. When you applied for this passport in Japan, who gave you the necessary information to make the application ?

A. The Japanese Consul certificate issued in Vancouver was sent to me in Japan so I took that paper to the

30. Japanese Government and made application to have this passport.

Q. Did your uncle, Mr. Aiboshi, assist you in any way in Japan ?

A. No, he didn't do anything.

Q. Did he give you any money to pay for your fare, your passage ?

A. Just gave me the money.

Q. Did he instruct you on the way over what to tell the Immigration Officer when you arrived here ?

A. No, he never told me anything about it.

Q. Who told you to say, or to state, that you were coming here as a domestic servant when apparently you have never followed that occupation?

A. My uncle in Nanaimo told me to come as a domestic servant for Mr. Uyeno.

Q. Is he the same man that came across with you on the boat ?

A. Yes.

Q. And he it was who told you to say you were coming to work as a domestic servant for Mr. Uyeno at Nanaimo ?

A. Yes; I understand I am coming to work as a domestic servant for Mr. Uyeno.

Decision of the Board.

Mr. Jones: Whereas the said Munetaka Samejima, having been found not to be a Canadian citizen or a person having Canadian domicile, and a complaint having been received under Section 40 of the Immigration Act to the effect that the said Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, namely Section 33, sub-section 7, in that he entered Canada by misrepresentation: therefore, pursuant to the provisions of Section 33, sub-section 7 of the Immigration Act, I move that the said Munetaka Samejima be deported.

Mr. Speed: I second the motion.

Chairman: Mr. Samejima, a motion has been duly moved and seconded and I declare it carried unanimously that you be deported under the provisions of Section 33, sub-section 7 of the Immigration Act. You have the right to appeal to the Minister of Immigration and Colonization. Do you wish to appeal ?

A. I am going to appeal.

Appeal Entered.

J. A. Anderson

Chairman.

J.W. Speed.

Secretary.

I hereby certify the foregoing to be a true and accurate transcript of the evidence adduced at this examination.

Hilda G. Parkinson.

Stenographer.

Exhibit B. to affidavit of M. Samejima.
EXHIBIT "A", of Evidence before Board of Inquiry - Minister's Warrant, dated Ottawa, 28th January, 1931.

26

1. COPY

Exhibit "A".
April 29/31.

I. & C. 210.

372277.

Order of the Minister of
IMMIGRATION AND COLONIZATION.

Section 42, Immigration Act.

To any Constable, Peace Officer or Immigration Officer in
10. Canada.

Whereas under the provisions of section ... Forty ... of the Immigration Act, a written complaint has been received to the effect that Munetaka Samejima, is in Canada contrary to the provisions of the Immigration Act and effected entry contrary to the provisions of Section 33, ss. (7) of said Act.

I do hereby order that the said Munetaka Samejima, be taken into custody and detained for examination and an investigation of the facts alleged in the said complaint, the examination to be made by a Board of Inquiry or an officer acting as such.

20. Dated at Ottawa,
this 28th day of January,
1931

sgd. W.J. Egan,
Deputy Minister of Immigration and Colonization.

30.

Exhibit C to affidavit of M.Samejima 27
sworn 25th September, 1931.

ORDER OF THE HONOURABLE Mr.JUSTICE FISHER
MADE 8th July,1931.

BEFORE THE HONOURABLE Mr. JUSTICE FISHER

Wednesday, the 8th day of July,1931.

UPON reading the Writ of Habeas Corpus herein under date of the 18th day of June, 1931, and the Order of the Honourable Mr. Justice Gregory, made herein the 18th day of June, 1931, and the notice of the return of the said writ dated the 18th day of June, 1931, and the affidavits of Munetaka Samejima, Jentaro Ueno and Kikijuro Ishii, sworn herein respectively the 18th day of June, the 16th day of June, and the 17th day of June, 1931, with the exhibits thereto respectively, and the affidavit of Robert Oliver Dunsmuir Harvey, sworn herein the 22nd day of June, 1931, with the exhibits thereto, and duly filed; and the application for the discharge of the said Munetaka Samejima under and by virtue of the said writ of Habeas Corpus coming on for hearing on the 24th day of June, 1931, and duly adjourned until the 29th day of June,1931, and upon reading the return of R.Roff Esquire, Dominion Immigration Agent at Victoria, British Columbia, to the writ of Habeas Corpus herein; and upon hearing Mr. C.H.O'Halloran of Counsel for the said Munetaka Samejima, and Mr. J.L. Clay of Counsel for the Crown (Dominion), and judgment being duly reserved until this day:

THIS COURT DOTH ORDER that Munetaka Samejima be discharged from the custody of R.Roff, Esquire, Dominion Immigration Agent at Victoria, and that the Order of the Board of Inquiry at the Port of Victoria made on the 29th day of April, 1931, for the deportation of Munetaka Samejima be and the same is hereby quashed.

AND THIS COURT DOTH FURTHER ORDER that the costs of and incidental to the writ of Habeas Corpus herein and of the application for discharge thereunder be paid by the Crown (Dominion) to Munetaka Samejima forthwith upon taxation thereof.

BY THE COURT:

"B.H.Tyrwhitt Drake"

REGISTRAR.

Checked
by H.C.S.

Approved
Aug.6th,1931
John L.Clay
A.I.F.
J.

AMENDED ORDER FOR DEPORTATION, dated
29th of April, 1931.

78

Exhibit D, to affidavit of M.Samejima,
sworn 25th Sept.1931. Form xxxx C. 91.

1. Amended Order

Canada

ORDER FOR DEPORTATION

The Immigration Act, Section 33.

To Canadian Pacific Steamships Ltd.
(Transportation Company)
and to Munetaka Samejima
(Person rejected, - Name in full)
of Chemainus, V.I., B.C.
(Last place of residence)
Port of Entry Vancouver Province of B.C.

10. THIS IS TO CERTIFY that the rejected person above named, a person who entered Vancouver, B.C. ~~xxxkingxtxxxxxxx~~ Canada at ~~this~~ Port ex s.s. "Empress of Asia" (Ship or Train)

from Yokohama, Japan
the said
which arrived at ~~this~~ Port on September 29th, 1928

at ---- o'clock - M. has this day been examined by the Board of Inquiry (~~xxxxffixxxrxixxxhxxrgx~~)at this Port, and has been rejected for the following reasons: Whereas the said Munetaka Samejima, having been found not to be a Canadian citizen or a person having Canadian domicile, and a complaint having been received under Section 40 of the Immigration Act to the effect that the said

20. Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, namely:- Section 33, sub-section 7, in that the said Munetaka Samejima did enter Canada by misrepresentation in that, at the time of his entry he represented that he was to be employed as a domestic servant, which occupation he has not followed, and that he is in Canada contrary to the provisions of the Immigration Act, being Chapter 93, R.S.C. 1927, and amendments thereto, and effected entry contrary to the provisions of Section 33, sub-section 7, of the said Act.

(Here state reasons in full).

30. And the said rejected person is hereby ordered to be deported to the place from whence he came to Canada. Such conveyance shall be by the first available ship or train of the Transportation Company which brought the said rejected person to Canada.

Dated at Victoria, B.C., this 29th day of April, 1931.

J. A. ANDERSON
~~Immigrationxofficerxinxxhargx~~
or Chairman of the Board of Inquiry
(See Over)

INFORMATION FOR TICKET AGENT

Issue ..... Ticket No. ..... Form .....
From ..... To. .....

AMENDED ORDER FOR DEPORTATION, dated
29th of April, 1931.

Exhibit D to affidavit of M.Samejima 29.

1. Endorsement on back.

NOTICE TO PERSON ORDERED TO BE DEPORTED

If you claim to be a Canadian citizen or to have acquired Canadian domicile you have the right to consult counsel and appeal to the courts against deportation.

In all other cases you may appeal to the Minister of Immigration and Colonization against any decision of the Board of Inquiry, or
10. Officer in Charge, whereby you are ordered to be deported, unless such decision is based upon a certificate of the Examining Medical Officer that you are affected with a loathsome disease, or a disease which may become dangerous to the public health. The formal notice of appeal will be supplied to you by the Immigration Officer in charge upon request.

It is unlawful for person rejected or deported to return to Canada, without the consent of the Minister and person entering or remaining in or returning to Canada after such rejection or deportation are subject to arrest and detention and on summary
20. conviction to a fine or imprisonment or both, and to deportation.

THE DEPARTMENT OF IMMIGRATION AND COLONIZATION

CANADA.

30.

30.
E.

Exhibit E to affidavit of M.Samejima
sworn 25th September, 1931.

RETURN TO WRIT OF HABEAS CORPUS DATED
25th June,1931.

Under and by virtue of the Writ of Habeas Corpus issued herein pursuant to the Order of the Honourable Mr. Justice Gregory on the 18th day of June, 1931, and directed to me, R. Roff, Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria, British Columbia, do hereby return to a Judge of the Supreme Court in Chambers at Victoria, B.C. that Munetaka Samejima is a person detained for the purpose of deportation from Canada under my charge and in my custody as Dominion Immigration Agent at the Port of Victoria aforesaid, under and by virtue of an order for deportation, a true copy of which is hereto annexed, the said Order being made under and by virtue and pursuant to the provisions of the Immigration Act, and that the said Munetaka Samejima was ordered deported at the Board of Enquiry at the Port of Victoria on the 29th day of April, 1931, in accordance with the provisions of the Immigration Act, and by virtue of the said order of deportation, and that the said Munetaka Samejima is detained by me by virtue of the said order of deportation and for no other cause or reason whatsoever.

The body of the said Munetaka Samejima is produced.

DATED at Victoria, British Columbia, this 25th day of June, A.D. 1931.

R. ROFF
DOMINION IMMIGRATION AGENT AT
VICTORIA, BRITISH COLUMBIA

For order of deportation attached to this return see page 14 of the Appeal Book.

AFFIDAVIT OF KIKUJIRO ISHII
sworn 25th September,1931.

I, Kikujiro Ishii, of 130 Gore Avenue, in the City of Vancouver, in the Province of British Columbia, Broker, make oath and say:

1. That I am fifty-seven years of age, and that prior to several months ago I was a merchant and had resided in the City of Victoria, Province of British Columbia, for forty years and upwards, and was a Senior Member of the Japanese Community, and for many years past have held office as head of the Victoria Japanese Association.
2. That I am personally acquainted with Munetaka Samejima, who arrived in British Columbia, on the 29th day of September,1928, from Japan, and who has now been ordered to be deported by the Canadian Immigration authorities on the ground that he has entered Canada by misrepresentation.
3. That I am personally acquainted with Jentaro Ueno, formerly of the City of Nanaimo, now of Chemainus, in the said Province, and to my personal knowledge the said Jentaro Ueno was engaged in business as a merchant at the City of Nanaimo, aforesaid, in Japanese fancy goods, and subsequently as a fish merchant and retail tobacco and candy merchant, for upwards of twenty-five years, until the month of September,1928. During such twenty-five year period I was identified on many occasions with the said Ueno in business transactions, both directly and indirectly.
4. To my personal knowledge the said Jentaro Ueno, in the latter part of the year 1926, applied to the Japanese Consul at the City of Vancouver, for a permit for the entry into Canada of Munetaka Samejima as a domestic servant, to be employed by the said Jentaro Ueno as a domestic servant in his home at the City of Nanaimo aforesaid, and in due course, the said Jentaro Ueno obtained a duly certified permit from the Japanese Consul in the month of March, 1928, and which permit was duly mailed to Munetaka Samejima in Japan.

5. In the meantime the said Jentaro Ueno found it necessary to go to Japan with his wife and child, leaving his business in charge of a friend.

6. On his return from Japan to Canada in the month of September, 1928, the said Jentaro Ueno found that through the inexperience of the person that he had left in charge of his business, such business had not been properly managed, and had proved a failure.

7. I am speaking from personal knowledge in that the day he arrived in Victoria on his way back from Japan, the said Jentaro Ueno called at my store in the City of Victoria, and from my said store telephoned his own store in the City of Nanaimo, by long distance, and learned that the business had been sold that very day. I well remember the surprise and consternation experienced by my friend that day, and I had no doubt in believing from his conduct, entirely apart from his statements to me at that time, and which I verily believe, that the failure of his business was wholly unexpected.

8. To my personal knowledge the financial circumstances of the said Jentaro Ueno at the time he went to Japan were such as to enable him to employ a domestic servant.

9. I verily believe that neither the said Munetaka Samejima nor the said Jentaro Ueno were guilty of misrepresentation in respect to the entry of Munetaka Samejima into Canada, as the said Jentaro Ueno did not discover his adverse financial situation until he arrived in Victoria in the month of September, 1928, and then it was too late for him to advise the said Munetaka Samejima not to come to Canada, as the latter was already on his way across the Pacific.

10. The course taken by the said Jentaro Ueno in applying for a Japanese domestic servant was quite in accord with the law and practice and custom prevailing between the Japanese Government and the Government of Canada at the time the said application was made in the year 1926. By reason of the extensive enquiries made both in Canada and Japan before the Japanese Consul in Vancouver would issue a permit for the entry of a Japanese domestic servant into Canada, a period of one and a half to two years would ordinarily elapse before an application was in order to be made for a passport to the Japanese Government in Japan.

11. As head of the Victoria Japanese Community I have authority to say that I do not believe that the said Munetaka Samejima will at any time become a public charge if allowed to remain in Canada, as he is a strong and healthy young man, and has always proved satisfactory in the work he has been engaged.

12. I am further advised by the uncle of the applicant Kiichi Aiboshi of the City of Nanaimo aforesaid and verily believe, that he is willing now to take the said young man into his employ as a domestic servant if he should be permitted to remain in Canada.

13. Owing to the unexpected financial reverses suffered by Jentaro Ueno and the inability of Munetaka Samejima to obtain domestic work without great delay, the said Munetaka Samejima was compelled either to take up another occupation than that of domestic servant or else to become a charge upon his friends after his money had been spent. I feel justified in deposing as well that if there had been any intent to deceive the Immigration authorities Munetaka Samejima could have taken ostensible employment as a domestic servant in some Japanese household, and thus technically have carried out the requirement that he would be employed as a domestic servant. Such a course, however, was repugnant to the members of the Japanese Community, and also repugnant to Munetaka Samejima himself, who I find to be a

straightforward, honest young man, and I cannot find after investigation of all the circumstances since his arrival in Canada, that he has been guilty of untruth, deception or misrepresentation in any way. He has stated the facts as they occurred, and has not allowed an unforeseen occurrence such as the loss by Jentaro Ueno of his money and business, to interfere with his telling the truth.

14. The relatives of the said Munetaka Samejima in British Columbia are well able to take care of him and lend him assistance financially if such was every required, and thus prevent him becoming a charge upon any community in which he may live, or upon the Government of British Columbia, or upon the Government of Canada.

15. As Head of the Victoria Japanese Community, I am desirous that the Japanese in British Columbia and any Japanese entering British Columbia from Japan shall conduct themselves in such a way as to preserve the good relations prevailing between Canada and Japan.

SWORN before me at the City of Vancouver, in the Province of British Columbia, this 25th day of September, 1931)

"K.ISHII"

"D. DONAGHY"

A Commissioner for taking affidavits within British Columbia.

35.

Affidavit of Jentaro Ueno, sworn
September 30th, 1931.

1.

I, Jentaro Ueno, of Chemainus, in the Province of British Columbia, make oath and say:

1. That in the year of March, 1928 I was a merchant resident in the City of Nanaimo, Province of British Columbia, and had carried on business in the City of Nanaimo aforesaid, in Japanese fancy goods and subsequently as a fish merchant and in the retail tobacco and candy business for twenty-five years previously.

2. In the month of March, 1926 I duly applied to the Japanese Consul at the City of Vancouver, Province aforesaid, for a permit for the entry into Canada of Munetaka Samejima as a domestic servant, to be employed by me, my financial position and my family conditions justifying my employment of a domestic servant.

3. The Japanese Consul in Vancouver in accordance with the practice in force at that time, required me to obtain from Japan a certificate from the Mayor of Kagoshima, the City in which the said Munetaka Samejima was resident, a certificate of his good conduct, and also a medical certificate of his health, and also his family record. All this information was forwarded to the Japanese Consul in due course, and the Japanese Consul at Vancouver duly investigated the statements made in my application to him, and being convinced of the truth of the statements made in my application, forthwith issued a certificate accordingly, which I had forwarded to the said Munetaka Samejima in Japan, to enable him to present the same to the Japanese Foreign Office and obtain his passport to enter Canada.

4. In the meantime I found it necessary to go to Japan with my wife, who was ill, and my child, returning to Canada in the early part of the month of September, 1928. Immediately I arrived in Victoria I went to the premises of my friend Mr. Kikujiro Ishii and telephonedmy store in Nanaimo long distance and then learned to my great surprise that the people that I had left in charge of the store had that very day sold out my business. Upon going to Nanaimo I found that my business

which I had conducted for so many years, was no longer in existence, and had been sold out by the people with whom I had left it in charge. I suffered a heavy financial loss thereby, and had immediately to obtain employment, and I am now working in the mill at Chemainus.

5. About ten days after I arrived back in Canada in September, 1928, Munetaka Samejima arrived in Vancouver, and I immediately let it be known that by reason of my financial condition I could not now employ him as a domestic servant, or in any capacity.

6. The said Munetaka Samejima on his entry into Canada on September 29th, 1928 stated that he was going to enter my employ as a domestic servant.

7. I am not guilty of any misrepresentation to the Canadian Immigration authorities, as I acted bona fide throughout, and were it not for the collapse of my business the said Munetaka Samejima would have entered my employ as a domestic servant, and he would have experienced no difficulty.

8. The said Munetaka Samejima entered Canada without any misrepresentation to the Canadian Immigration authorities as to the object of his entry into Canada, as he could not have entered Canada without the passport from the Japanese Government, and he could not have obtained the passport from the Japanese Government unless the Japanese Consul in Vancouver had certified as to the correctness and the bona fides of my application for a domestic servant, after full and proper investigation.

9. I did not know until my arrival in Canada in September, 1928 that my financial condition was such that I could not employ a domestic servant, and I did not in any way notify the said Munetaka Samejima, and even if I had tried to do so, it was too late for me to do so, as I found out later that he was on his way to Canada across the Pacific.

SWORN before me at City of Chemainus) A.J.H.
Victoria, in the Province of)
British Columbia, this 30th) Jentaro Ueno.
day of September, 1931.)

A. J. Helmcken.

A Commissioner for taking affidavits within the Province of British Columbia.

37.

Affidavit of R.O.D. Harvey, sworn 30th September, 1931.

I, ROBERT OLIVER DUNSMUIR HARVEY, of 508-510 Central Building, in the City of Victoria, Province of British Columbia, Barrister-at-law and Solicitor, make oath and say:

1. That I did on Wednesday, the 30th day of September, 1931, personally serve R. Roff, Esquire, Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria, Victoria, B.C., with a Writ of Habeas Corpus issued out of and under the seal of this Honourable Court directed to the said R. Roff, Esquire, Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria, Victoria, B.C., commanding him to have the body of Munetaka Samejima before a Judge of the Supreme Court in Chambers in the City of Victoria aforesaid, immediately to undergo and receive all and singular such matters and things as a Judge of the said Court shall then and there consider of and concerning him in this behalf, by delivering the said Writ of Habeas Corpus to the said R. Roff, Esquire, Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria, Victoria, B.C., personally at the Immigration Building, in the City and County of Victoria aforesaid.

2. That now produced and shown to me and marked Exhibit "A" hereto is a true copy of the Writ of Habeas Corpus so served as aforesaid.

3. At the same time and place I did also personally serve the said R. Roff, Esquire, with true copies of the respective affidavits of Cornelius Hawkins O'Halloran, sworn herein the 29th day of September, 1931; Jentaro Ueno, sworn herein the 30th day of September, 1931. of Kikujiro Ishii, sworn herein the 25th day of September1931,and Munetaka Samejima, sworn herein the 25th day of September,1931,true copies whereof are now produced and shown to me and marked respectively, as Exhibits "B", "C", "D" and "E" hereto.

4. That at the same time and place aforesaid I did also personally serve R.Roff, Esquire, with true copies of the Order of the Honourable the Chief Justice of the Supreme Court of British Columbia,

made herein the 30th day of September, 1931, directing the issuance of a Writ of Habeas Corpus herein, and of Notice of the said Writ of habeas Corpus, and of the hearing thereof on the 5th day of October, 1931, before a Judge in Chambers of the Supreme Court of British Columbia, and dated the 30th day of September, 1931, and true copies whereof are now produced and shown to me and marked Exhibits "F" and "G" hereto.

SWORN before me at the City of Victoria, in the Province of British Columbia, this 30th day of September, 1931) ROBERT D. HARVEY

H.W.R. MOORE

A Commissioner for taking affidavits within British Columbia.

Affidavit of Cornelius Hawkins O'Halloran, sworn September 29th, 1931. 39.

I, Cornelius Hawkins O'Halloran, of 508-510 Central Building, in the City of Victoria, Province of British Columbia, Barrister and Solicitor, make oath and say as follows:

1. I am a member of the firm of O'Halloran & Harvey, of 508-510 Central Building, in the City of Victoria, Province aforesaid, and have personal knowledge of the matters hereinafter deposed to.

2. I am the Solicitor for Munetaka Samejima on his application for a writ of habeas corpus and acted for him in similar proceedings, resulting in the order of the Honourable Mr. Justice Fisher of the 8th July, 1931, referred to in paragraphs 15 and 16 of the affidavit of the said applicant, sworn herein the 25th day of September, 1931.

3. Now produced and shown to me and marked Exhibit "A" hereto is the passport of the applicant referred to in paragraph 2 of the said affidavit of the said applicant, sworn the 25th day of September, 1931, as delivered to me by the said applicant.

4. A true copy of the order of the Honourable Mr. Justice Fisher of the 8th July, 1931, referred to in the affidavit of the said applicant was duly served by my office on Mr. J.L. Clay, the Solicitor for the Dominion Immigration Agent at the port of Victoria, on the 14th day of August, 1931.

5. Respecting the grounds for the application for the said writ of habeas corpus set out in paragraph 22 of the aforesaid affidavit of the applicant, it is alleged that all alleged grounds for the deportation of the said applicant were fully disposed of by the aforesaid order of the 8th July, 1931, and the Board of Inquiry is now estopped from making the amended order herein or proceeding thereunder.

SWORN before me at the City of Victoria, in the Province of British Columbia, this 29th day of September, 1931.

C. H. O'Halloran.

J. R. McIllree

A Commissioner for taking affidavits within British Columbia.

40

Exhibit "A" to affidavit of Cornelius Hawkins O'Halloran - sworn 29th Sept.1931.
PASSPORT OF MUNETAKA SAMEJIMA

PASSPORT OF JAPAN

No.101205

No.101205

This passport contains 32 pages

Translation
IMPERIAL JAPANESE GOVERNMENT
Passport

The undersigned, His Imperial Japanese Majesty's Minister of State for Foreign Affairs, requests all the Authorities concerned, both Civil and Military, to permit

Mr. Munetaka Sameshima

age 24 years

a Japanese subject, proceeding to British Canada as domestic servant to pass freely and without hindrance, and in case of need to afford him every possible aid and protection

Sep. 15 1928

The day of the month of the year of Taisho (19..)

L.S. Baron Giichi Tanaka

DESCRIPTION

Permanent resident: Ragoshima-ker

Family relationship: 1st son of Mr. Itaro

Head of family

Occupation: Commerce

Height: 1.65 m.

Physical peculiarities:

Height and physical peculiarities of each other person included in this passport:

Signature of Bearer:

PHOTOGRAPH

of
Munetaka
Samejima

(Imperial Passport)
(Japanese Government)

Exhibit "A" to affidavit of Cornelius Hawkins O'Halloran - sworn 29th Sept.1931. -contd.

41

PASSPORT OF MUNETAKA SAMEJIMA, contd....

BRITISH VISA

BRITISH CONSULATE-GENERAL,

Kobe, Japan

No. 1408. Date Sept. 17.1928

Valid for travel in the undermentioned countries of the British Empire within one year from the above date:

Canada

P.W. WELSH

for H.B.M. Vice-Consul.

7s 6d
Consulate
Service

BRITISH CONSULATE GENERAL,
Kobe

IMMIGRATION AND COLONIZATION

Division Commissioner

Sep 29 1928

Vancouver, B.C.

IMPERIAL CONSULATE OF JAPAN

Oct 8 1928

Vancouver, B.C.

42.

RETURN TO WRIT OF HABEAS CORPUS, made 23rd October, 1931.

UNDER and by virtue of the Writ of Habeas Corpus issued herein pursuant to the order of the Honourable the Chief Justice on the 30th day of September, 1931, and directed to me, R.Roff, Dominion Immigration Agent and Officer in control of Immigration at the Port of Victoria, British Columbia, do hereby return to a Judge of the Supreme Court in Chambers at Victoria,B.C. that Munetaka Samejima is a person detained for the purpose of deportation from Canada under my charge and in my custody as Dominion Immigration Agent at the Port of Victoria aforesaid, under and by virtue of an order for deportation, a true copy of which is hereto annexed, the said order being made under and by virtue and pursuant to the provisions of theImmigration Act, and that the said Munetaka Samejima was ordered deported at the Board of Enquiry at the Port of Victoria on the 29th day of April, 1931, in accordance with the provisions of the Immigration Act, and by virtue of the said order of deportation, and that the said Munetaka Samejima is detained by me by virtue of the said order of deportation and for no other cause or reason whatsoever.

The body of the said Munetaka Samejima is produced.

Dated at Victoria,B.C., this 23rd day of October, 1931.

R. ROFF

DOMINION IMMIGRATION AGENT

AT VICTORIA, BRITISH COLUMBIA.

43.

ORDER FOR DEPORTATION dated 29th April, 1931.

Form B. I & C.91

ORDER FOR DEPORTATION

THE IMMIGRATION ACT, Section 33

To Canadian Pacific Steamships Ltd.
(Transportation Company)
and to Munetaka Samejima
(Person rejected,--Name in full)
of Chemainus, V.I., B.C.
(Last place of resident)
Port of Entry Vancouver Province of B.C.

THIS IS TO CERTIFY that the rejected person above named, a person who entered ~~seeking to enter~~ Canada at Vancouver, B.C. ex S.S. "Empress of Asia" ~~this Port~~ (Ship or Train)

from Yokohoma, Japan
which arrived at the said Port on September 29th, 1928

at -- o'clock - M. has this day been examined by the Board of Inquiry (~~Immigration Officer in charge~~) at this Port, and has been rejected for the following reasons: Whereas the said Munetaka Samejima, having been found not to be a Canadian citizen or a person having Canadian domicile, and a complaint having been received under Section 40 of the Immigration Act to the effect that the said Munetaka Samejima is in Canada contrary to the provisions of the Immigration Act, namely: Section 33, sub-section 7, in that the said Munetaka Samejima did enter Canada by misrepresentation in that, at the time of his entry he represented that he was to be employed as a domestic servant, which occupation he has not followed, and that he is in Canada contrary to the provisions of the Immigration Act, being Chapter 93, R.S.C. 1927, and amendments thereto, and effected entry contrary to the provisions of Section 33, sub-section 7 of the said Act.

(here state reason in full.)

And the said rejected person is hereby ordered to be deported to the place from whence he came to Canada. Such conveyance shall be by the first available ship or train of the Transportation Company which brought the said rejected person to Canada.

Dated at Victoria, B.C. this 29th day of April, 1931,

"J.A.ANDERSON"
~~Immigration Officer in charge~~
or Chairman of the Board of Inquiry

(see Over)

INFORMATION FOR TICKET AGENT.

TICKET NO. . . . . FORM . . . .

ISSUE . . . . . TO . . . . . .
FROM . . . . . .

ORDER FOR DEPORTATION dated 29th April,1931.

ENDORSEMENT ON BACK

NOTICE TO PERSON ORDERED TO BE DEPORTED

If you claim to be a Canadian citizen or to have acquired Canadian domicile you have the right to consult counsel and appeal to the courts against deportation.

In all other cases you may appeal to the Minister of Immigration and Colonization against any decision of the Board of Inquiry, or officer in Charge, whereby you are ordered to be deported, unless such decision is based upon a certificate of the Examining Medical Officer that you are affected with a loathsome disease, or a disease which may become dangerous to the public health. The formal notice of appeal will be supplied to you by the Immigration Officer in charge upon request.

It is unlawful for persons rejected or deported to return to Canada without the consent of the Minister and persons entering or remaining in or returning to Canada after such rejection or deportation are subject to arrest and detention and on summary conviction to a fine or imprisonment or both, and to deportation.

The Department of Immigration and
Colonization Canada.

ORDER of the Honourable Mr. Justice Murphy
made 30th October, 1931.

BEFORE THE HONOURABLE)
) FRIDAY, the 30th day of October, 1931.
Mr. JUSTICE MURPHY)

UPON the application of Munetaka Samejima, and UPON READING the Writ of Habeas Corpus, dated herein the 30th day of September, 1931, and the Order of the Honourable the Chief Justice, dated herein the 30th day of September, 1931, and the

Notice of the Return of the said Writ, dated the 30th day of September, 1931, and the Affidavits of Munetaka Samejima and Kikujiro Ishii, sworn herein the 25th day of September, 1931,

the Affidavit of Cornelius Hawkins O'Halloran, sworn herein the 29th day of September, 1931, the Affidavit of Jentaro Ueno sworn herein the 30th day of September, 1931, together with the exhibits referred to in the said Affidavits, all of which said Affidavits are duly filed, AND UPON READING the Return of R. Roff, Esquire, Dominion Immigration Agent at Victoria, British Columbia, to the said Writ of Habeas Corpus, and the application for the discharge of the said Munetaka Samejima, under and by virtue of the said Writ of Habeas Corpus, coming on for hearing on the 5th day of October, 1931, and duly adjourned until the 26th day of October, 1931, AND UPON HEARING Mr. C.H.O'Halloran, of Counsel for the said Munetaka Samejima, and Mr. John L.Clay, of Counsel for R.Roff, Esquire, Dominion Immigration Agent at Victoria, British Columbia, and the Department of Immigration, and Judgment being duly reserved until this date ;

THIS COURT DOTH ORDER that the application of the said Munetaka Samejima be and the same is hereby dismissed and the said Writ of Habeas Corpus be and the same is hereby quashed.

AND THIS COURT DOTH FURTHER ORDER that the costs of the said R. Roff, Dominion Immigration Agent at Victoria, British Columbia, and the Department of Immigration, of and incidental to these proceedings, be paid by the said Munetaka Samejima forthwith after taxation thereof.

BY THE COURT.
B.H.TYRWHITT DRAKE
REGISTRAR

Checked by
H.C.S.
Approved C.H.O'H.
2/11/31 D.M.J per A.I.F.J.

JUDGMENT OF THE HONOURABLE MR.
JUSTICE MURPHY - 30th October, 1931.

Of the various points raised before me in support of this application I think the Court can only take cognizance of one, namely, that the applicant has already been discharged in this same matter by having succeeded in a habeas corpus application.

The claim upon which he obtained his release was that the warrant was deficient inasmuch as it did not set out with sufficient particularity the breach of the Immigration Act of which he had been found guilty. It appears, however, from the case of Rex v. Brixton Prison, 23 Cox, page 192, where the accused has been set at liberty by the Court merely upon the ground of error in procedure, a new warrant can be issued and he held under it. As in my opinion the warrant under which the applicant is now held is a valid document the application is dismissed.

(sgd.) D. Murphy,
J.

Victoria, B.C.,
30th October, 1931.

NOTICE OF APPEAL

TAKE NOTICE that Munetaka Samejima, the above-named Appellant, intends to appeal and does hereby appeal to the Court of Appeal for British Columbia from the order of the Honourable Mr. Justice Murphy, made herein the 30th day of October, 1931.

AND FURTHER TAKE NOTICE that the Court of Appeal will be moved at the Court House, in the City of Victoria, Province of British Columbia, on Tuesday the Fifth day of January, 1932, at the hour of eleven o'clock in the forenoon, or so soon thereafter as Counsel may be heard, by Counsel on behalf of the above-named Appellant for an order reversing and setting aside the said order with costs, and for an order directing the discharge of the Appellant under the writ of Habeas Corpus herein, and that the alleged amended deportation order of the 29th day of April,1931 be quashed, and for such order as to the Court of Appeal may seem meet, upon the following grounds:

1. The Learned Judge erred in not holding -
   (a) That the alleged amended deportation order of the 29th April, 1931 was a nullity.
   (b) That no such amended deportation order was ever made.
   (c) In the alternative that no such amended deportation order was made or given under the authority and in accordance with the provisions of the Immigration Act, being Chapter 93, Revised Statutes of Canada, 1927.

2. The original deportation order of the 29th day of April, 1931 having been quashed by an order of the Supreme Court of British Columbia of the 8th July, 1931 and the Appellant thereon discharged from custody under and by virtue of a writ of Habeas Corpus issued on the 18th June, 1931, the Learned Judge erred in not holding that the Appellant could not be arrested again under the alleged amended deportation

order, after his discharge by the said Court.

3. The Learned Judge erred in not holding that the matter was res judicata in that the order of the Supreme Court of British Columbia of the 8th July, 1931 quashed the original deportation order of the 29th April,1931.

4. The Learned Judge erred in not holding that there was no jurisdiction, or in the alternative, no power in the Board of Inquiry to make the alleged or any deportation order, in that -

(a) No order of the Minister or the Deputy Minister was made or produced to the said Board of Inquiry in accordance with Section 42 of the Immigration Act aforesaid; and such order is a condition precedent to any authority to the said Board to investigate and make a deportation order.

(b) In the alternative, that the alleged order of the Deputy Minister was no order in that it did not comply with the requirements of Section 21 of the Canada Evidence Act, Chapter 59, R.S.C. 1927.

5. The Learned Judge erred in not holding that there was no jurisdiction, or in the alternative, no power in the Board of Inquiry to make the alleged or any deportation order, in that -

(a) No written complaint within the meaning of Sections 40 and 42 of the Immigration Act aforesaid or at all, was produced to the said Board of Inquiry.

(b) That the authority of the said Board of Inquiry is limited to an investigation of the facts alleged in a complaint within the meaning of Sections 40 and 42 of the Immigration Act aforesaid, and that there was no written complaint produced to the said Board, and no investigation of facts accordingly within the meaning of the said Section.

(c) That the Board of Inquiry embarked upon an investigation without knowledge of any facts alleged in a complaint as required by Said Section 42.

(d) The matters set out in sub-paragraphs (a), (b) and (c) hereof are condition precedents to any authority to the said Board to investigate and make a deportation order.

6.The Learned judge erred in not holding that the Appellant was not informed of what breach of the Immigration Act he was charged with, or what complaint had been made against him.

7.The Learned Judge erred in not holding that there was no jurisdiction, or in the alternative, no power in the Board of Inquiry to deport the appellant under the provisions of Section 33 (7) of the Immigration Act, in that -

(a) Upon a complaint under Section 40 being received and an order of the Minister or Deputy Minister under Section 42 being made, the authority of the Board of Inquiry is limited to proceed as provided by Section 42 of the said Immigration Act.

(b) Section 33 of the said Immigration Act applies only to passengers or other persons seeking to enter Canada, and not to the Appellant.

(c) Before a deportation order could be made under Section 33 (7) the Learned Judge should have found that the Appellant had been arrested as a person suspected of having been convicted of an offence within the meaning of the said Section 33 (7).

(d) No examination is provided for under Section 33 for a person other than a passenger or other person as to whose right to enter or land in Canada there is any doubt.

NOTICE OF APPEAL contd...

8. The Learned Judge erred in not holding that the Board of Inquiry had no jurisdiction, or in the alternative, no power to make the alleged or any deportation order in that -

(a) The only jurisdiction or authority of the Board to act at all is under Section 42 of the said Act.

(b) There is no power or jurisdiction vested in the Board of Inquiry to make a deportation order under Section 42 aforesaid, such power being limited to finding that a person belongs to any of the prohibited or undesirable classes therein mentioned.

9. The Learned Judge erred in not holding that there was no deportation order made or given under the authority and in accordance with the provisions of the Immigration Act aforesaid.

10. The Learned Judge erred in holding that he could take cognizance of no question other than that raised in paragraph two hereof, and should have found that he could investigate the whole of the necessary conditions supporting the alleged deportation order, and that the Board of Inquiry is in no sense a Court, but acts solely under executive powers.

11. The Learned Judge erred in not holding that -

(a) The Board of Inquiry is not a Judicial Tribunal but a statutory body, whose authority depends upon the observance of all the Statute law and without which it has no authority.

(b) The Board of Inquiry interfered with the liberty of the appellant by an alleged order made without Statutory authority and contrary to Statutory authority.

(c) The alleged order of the Board of Inquiry should be quashed unless the legality thereof could be supported by the said Board before a Court of Justice.

NOTICE OF APPEAL, contd....

12. The Learned Judge should have found that there was no misrepresentation by the Appellant within the meaning of Section 33 (7) or otherwise, in that -

(a) There was no evidence before the Board of Inquiry or the Learned Judge showing that the Appellant had not acted bona fide.

(b) There was no evidence before the Board of Inquiry or the Learned Judge disclosing misrepresentation on the part of the Appellant.

(c) If there was any mis-statement by the Appellant as to his occupation or intentions, such mis-statement was not a failure to fulfil, meet or comply with the conditions and requirements of the Immigration Act aforesaid, or any regulations thereunder, or in the alternative, if there was any such failure, such failure was not sufficient in law to authorize his deportation, and further in the alternative, the same does not constitute misrepresentation within the meaning of Section 33 (7).

13. The Learned Judge erred in not holding that the misrepresentation in Section 33 (7) is confined to a misrepresentation which has resulted in a conviction, or in the alternative, which would be sufficient to convict within the meaning of said sub-section.

14. In the alternative, the Learned Judge should have held that the provisions in respect to Canadian domicile and domicile under the said Immigration Act are ultra vires the Parliament of Canada, in that domicile is a matter of civil rights solely within the jurisdiction of the Provinces of Canada, and that accordingly on the evidence the Appellant has Canadian domicile.

15. The Learned Judge should have quashed the deportation order.

16. Upon such further or other grounds as to this Court may seem just.

Dated at Victoria, British Columbia, this 5th day of November, 1931.

O'HALLORAN & HARVEY

508-510 Central Building, Victoria, British Columbia, Solicitors for Munetaka Samejima.

To R.Roff, Esq.,
Dominion Immigration Agent and
Officer in Control of Immigration
at the Port of Victoria,
Victoria,B.C.

And to His Majesty the King.

And to the Solicitor,
J.L.Clay, Esquire,
Victoria,B.C.

IN THE SUPREME COURT OF CANADA.

IN THE SUPREME COURT OF CANADA.

IN THE MATTER OF THE IMMIGRATION ACT,
Chapter 93, R.S.C.1927,and Amending Acts,

a n d

IN THE MATTER OF MUNETAKA SAMEJIMA.

MUNETAKA SAMEJIMA,
(Appellant)

and

HIS MAJESTY THE KING,
(Respondent)



TAKE NOTICE that this appeal will be heard at the next Session of the Court to be held at the City of Ottawa on Tuesday, the twenty-sixth day of April, 1932.

DATED at Ottawa this fourth day of April, A. D. 1932.

MacCRAKEN FLEMING & SCHROEDER,
Trusts Building,Ottawa,Ontario
Agents at Ottawa
for the Solicitors for Appellant.

TO
W. STUART EDWARDS, ESQ., K.C.,
Agent at Ottawa for the
Solicitor for the Respondent.



IN THE SUPREME COURT OF CANADA.

MUNETAKA SAMEJIMA

AND

HIS MAJESTY THE KING

NOTICE OF APPEAL

Service hereof admitted this
day of April, 1932.

Agents at Ottawa for the Solicitors for
the Respondent.

Copy received
April 6th 1932
E. Lemieux

MacCraken Fleming & Schroeder,
Agents at Ottawa for the
Solicitors for the Appellant

IN THE SUPREME COURT OF ONTARIO

IN THE MATTER OF THE IMMIGRATION ACT,
Chapter 93, R.S.C.1927, and Amending Acts,

and

IN THE MATTER OF MUNETAKA SAMEJIMA.

MUNETAKA SAMEJIMA,
(Appellant)

a n d

HIS MAJESTY THE KING,
(Respondent)



RECEIVED FROM MacCraken Fleming &
Schroeder, Trusts Building, Ottawa, Ontario, three
copies of the cases in appeal herein.

DATED at Ottawa this 31st day of March, A. D. 1932.

Agents at Ottawa for the
Solicitor for the Respondent.



IN THE SUPREME COURT OF CANADA

MUNETAKA SAMEJIMA

AND

HIS MAJESTY THE KING

R E C E I P T

MacCraken Fleming & Schroeder,
Agents at Ottawa for Solicitors
for Appellant.

IN THE SUPREME COURT OF CANADA.

IN THE MATTER OF THE IMMIGRATION ACT,
Chapter 93, R.S.C.1927,and Amending Acts,

a n d

IN THE MATTER OF MUNETAKA SAMEJIMA.

MUNETAKA SAMEJIMA,

(Appellant)

a n d

HIS MAJESTY THE KING,

(Respondent):





TAKE NOTICE that this appeal will be heard at the next Session of the Court to be held at the City of Ottawa on Tuesday, the twenty-sixth day of April, 1932.

AND TAKE NOTICE that if it shall be held that Section 23 of the Immigration Act, being Chapter 93 of the Revised Statutes of Canada, 1927, and Amending Acts, takes away the right of a court or judge thereof by habeas corpus to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or order of the Minister of any Board of Inquiry or officer in charge, had, made or given under the authority of or in accordance with the provisions of the said Immigration Act, relating to the detention or deportation of any rejected immigrant, passenger or other person, upon any ground whatsoever, unless such person is a Canadian citizen or has Canadian domicile, the above named appellant intends to raise the question of the constitutionality or constitutional validity of Section 23 of the said Immigration Act upon the hearing of this appeal from the Judgment of the Court of Appeal for British Columbia pronounced on the 29th. day of January, 1932, dismissing by an equally divided Court his appeal from the

Order of the Honourable Mr. Justice Gregory, made on the 30th day of October, 1931, setting aside and quashing the writ of habeas corpus obtained by the said Appellant on the 30th day of September, 1931.

AND TAKE NOTICE that it is proposed to argue inter alia

(a) That Section 23 of the said Immigration Act does not take away the right to review, quash, reverse, restrain or otherwise interfere as therein mentioned by habeas corpus.

(b) That if it is held that said Section 23 does purport to take away the right to habeas corpus, then such Section is ultra vires the Parliament of Canada in that -

1. It is an invasion of civil rights specifically assigned to the Provinces under Section 92, Sub-section 13 of the British North America Act.

2. That the right to habeas corpus is part of the common and statutory law of England, introduced into and made part of the law of the Province of British Columbia, prior to Confederation, under and by virtue of the English Law Act, being Chapter 80, Revised Statutes of British Columbia, 1924.

3. That the right to habeas corpus and civil matters is within the sole authority of the Province, under and by virtue of the British North America Act aforesaid, and that said Section 23 of the Immigration Act is ultra vires the Parliament of Canada, insofar as it purports to take away or suspend the right to habeas corpus and civil matters.

4. That said Section 23 of the Immigration Act aforesaid is not an exercise of the powers vested in the Parliament

of Canada within the meaning of Sub-section 25
of Section 91, of the British North America Act,
or otherwise under the said Act.

DATED at Ottawa this fourth day of April, A. D. 1932.

MacCraken, Fleming & Schroeder,
Trusts Building, Ottawa, Ontario
Agents at Ottawa for the
Solicitors for the Appellant.

TO

The Attorney General of Canada,

Ottawa, Ontario

IN THE SUPREME COURT OF CANADA.

MUNETAKA SAMEJIMA

VS

HIS MAJESTY THE KING

NOTICE OF APPEAL

SERVICE hereof admitted this

day of April, 1932.

For the Attorney General of Canada.

Copy received April 6th 1932 Ellard

MacCraken Fleming & Schroeder,

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IN THE SUPREME COURT OF CANADA.

.....

Wednesday, the 15th day of June, AD 1932.

~~On Appeal from the Court of Appeal for British Columbia~~

.....

IN THE MATTER OF THE IMMIGRATION ACT,
Chapter 93, R. S. C., 1927, and
Amending Acts.

- and -

IN THE MATTER OF MUNETAKA SAMEJIMA

.....

MUNETAKA SAMEJIMA

(Appellant)

- and -

HIS MAJESTY THE KING

(Respondent)

.....

~~the day of June, 1932.~~

PRESENT:

THE RIGHT HONOURABLE ~~THE CHIEF JUSTICE~~ Z. A. Anglin, C.J.C., P.C.

THE RIGHT HONOURABLE ~~MR. JUSTICE DUFF~~ Lyman Poore Duff J. P.C.

THE HONOURABLE ~~MR. JUSTICE LAMONT~~ John Henderson Lamont J.

THE HONOURABLE ~~MR. JUSTICE SMITH~~ Robert Smith J.

THE HONOURABLE ~~MR. JUSTICE CANNON~~ Lawrence A. D. Cannon J.

The appeal of the above-named Appellant from the judgment of the Court of Appeal for British Columbia, pronounced in the above cause on the 29th. day of January, AD 1932, affirming the judgment of the Honourable Mr. Justice Murphy of the Supreme Court of British Columbia, rendered in the said cause on the 30th. day of October, AD 1931, having come on to be heard before this Court on the 27th. day of April, 1932, in the presence of ~~Mr. C. H. O'Halloran~~, of Counsel as w.k for the Appellant ~~and Mr. W. N. Tilley, K.C., for Counsel~~ as for the Respondent, whereupon and upon hearing what was alleged by Counsel

aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment this Court did order and adjudge that the said appeal should be and the same was allowed, ~~and~~ that the said judgment of the Court of Appeal for British Columbia and the said judgment of the Honourable Mr. Justice Murphy of the Supreme Court of British Columbia should be and the same were reversed and set aside, ~~and that the writ of habeas corpus dated the 30th. day of September, 1931, should be and the same was restored,~~ and that the order of the Board of Inquiry at the Port of Victoria made on the 29th. day of April, 1931, for the deportation of the Appellant Munetaka Samejima should be and the same was set aside ~~quashed~~, ~~and that the Appellant Munetaka Sumejima be forthwith discharged from the custody of R. Roff, Esq., Dominion Immigration Agent at the Port of Victoria aforesaid.~~

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the Respondent should and do pay to the said Appellant the costs incurred by the said Appellant as well in the said Supreme Court of British Columbia, and in the said Court of Appeal for British Columbia, as in this Court.

IN THE SUPREME COURT OF CANADA.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

IN THE MATTER OF THE IMMIGRATION ACT, Chapter 93, R.S.C. 1927, and Amending Acts.

- and -

IN THE MATTER OF MUNETAKA SAMEJIMA

.....

MUNETAKE SAMEJIMA,
(Appellant)

- and -

HIS MAJESTY THE KING,
(Respondent)

.....

O R D E R.

.....

CANADA

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SAMEJIMA

v

THE KING

from, inter alia, "every judgment, order or decree [illegible]
Supreme Court or a judge thereof", no exception being made to
the generality of the jurisdiction thus conferred which would
exclude a right of appeal by the Crown against the order of a

Samejima v. The King

SUPREME COURT OF CANADA
JUN 21 1932

BEFORE:

THE RIGHT HONOURABLE THE CHIEF JUSTICE
THE RIGHT HONOURABLE MR. JUSTICE DUFF
THE HONOURABLE MR. JUSTICE LAMONT
THE HONOURABLE MR. JUSTICE SMITH
THE HONOURABLE MR. JUSTICE CANNON.

Anglin C. J. C. I have had the advantage of reading the carefully prepared opinion of my brother Lamont in this case and regret to find myself unable to agree with his conclusion. Unless, to employ a familiar saying, the crossing of every "t" and dotting of any "i" in all the proceedings taken in this matter is essential to the Crown's success, I do not see how this appeal can be maintained.

Two main questions are open for consideration, (a) whether the order of Fisher J. for the discharge of the appellant will sustain a claim of res judicata herein; and (b) whether, if that order does not stand in the way, or can be gone behind, the action of Murphy J. in refusing to discharge the appellant on habeas corpus was justified. As I read the judgment of Lamont J., that learned judge holds (a) that the order of Fisher J. amounts to res judicata in this matter; and (b) that that order cannot be gone behind or be ignored; and (c) that the order of Murphy J., refusing to discharge the appellant on habeas corpus after his re-arrest under the amended order of the Board, was nugatory, on the ground that Fisher J. had definitely set aside the original order of the Board and there was, therefore, nothing left to amend.

It is true that the Court of Appeal for British Columbia has a jurisdiction conferred on it by statute (R.S.B.C. 1924, c. 52, s. 6), so far as I am aware, peculiar to that province, whereby that court is obliged to entertain an appeal from, inter alia, "every judgment, order or decree made by the Supreme Court or a judge thereof", no exception being made to the generality of the jurisdiction thus conferred which would exclude a right of appeal by the Crown against the order of a

judge who has under habeas corpus discharged a person brought before him, [redacted]. The respondent maintains the right to ignore the order, treating it as made without jurisdiction, because of the presence in The Immigration Act of s. 23, and, instead of appealing therefrom, to proceed under the order of the Board, either as originally made, or as amended.

That it is competent for any court to amend its own order as issued so as to make it conform to the intention of the Court making it (especially where, as here, the Board, in announcing its decision, had declared in terms, in the presence of the appellant, the order it proposed to make, those terms corresponding with the amendment so made), is a proposition which scarcely requires authority to support it.

But, it is said that the power of the Board to amend ceased with the existence of its order, and that that order ceased to exist when Fisher J. made his order quashing it. We are thus driven back again to the question of the validity of the order made by Fisher J., i. e., not whether that order was proper on the merits, but whether that learned judge had jurisdiction to make it. Ordinarily, no doubt, this question of the validity of the order would have been raised on appeal from it, but it does not at all follow that that is the only manner in which the question of jurisdiction can be raised. On the contrary, if a party [redacted] affected by an order of the Board, or the Board itself, chooses to treat a subsequent order, purporting to set it aside, as a nullity, he or it may do so at his or its peril. Here, the Board adopted the latter course, by ignoring the order of Fisher J. and proceeding to amend its previous order so as to make it conform to the terms in which it had intended to pronounce such order,- terms which were announced at the conclusion of the hearing in the presence of the appellant.

Without at all questioning the propriety on the merits of the order of Fisher J., and confining my observations solely

to the jurisdiction of that learned judge, I am of the opinion that the order made by him contravened the prohibition of s. 23 of the Immigration Act and was, therefore, invalid and ultra vires, since it amounted to a "reviewing, quashing, reversing, restraining, or otherwise interfering with", ~~the~~ order of the Minister, or of the Board of Inquiry, the appellant being, admittedly, neither a Canadian citizen, nor a person having Canadian domicile. That being so, and the order of Fisher J. being, accordingly, invalid and ultra vires, the order of the Board remained effective. It clearly dealt with matter declared by s. 23 to be outside the authority of any "court or judge or officer thereof" ~~to enter upon the consideration of, or~~ to interfere with.

Moreover, this defect in the jurisdiction of the learned judge who made the order is obvious on the face of it. It, therefore, could, in my opinion, be taken advantage of by the respondent; and I agree with Murphy J. in his view that the order of Fisher J. was a nullity and that the order of the Board, which it purported to set aside, still stands and was validly amended by the Board so as to make it conform to the intention of the Board in making it.

I also agree with Murphy J. that, having before him such amended order of the Board, he had abundant ground for refusing to interfere with the provision therein contained for detention of the appellant for deportation,- it not being open to that learned judge, or on appeal from him to the Court of Appeal, or to us, to consider the credibility, or weight, or value of the testimony upon which the Board had proceeded, which was reviewable only by the Minister on appeal to him under ss. 18 and 19,- an appeal which was duly taken by the appellant and which proved unsuccessful.

It is satisfactory to have reached a conclusion which seems to me to be in conformity with the requirements of jus-

tice, ~~that~~ since the appellant was fully aware of the purpose of the inquiry of the Board and of the substance of the charge against him, i. e., that he had procured entrance into Canada by misrepresentation contrary to the provisions of s. 33(7) of The Immigration Act, which, I have no doubt at all, was stated as a basis of the inquiry into the complaint made to the Minister under s. 42(1) ~~The~~ In the absence of any formality in the complaint the presumption omnia rite esse acta, applies as can answers, 13 Hals. par. no. 538

It must be perfectly apparent to everyone reading the proceedings that this was so. For instance, at p. 32 of the case, we find the following in the course of the examination of the appellant by the Board:

> Q. Then you realize that you have entered Canada by misrepresentation, do you?
> A. No, I don't know that. Because I try to get work but I could not help it.
> Q. But the fact that you have not taken domestic work shows you entered Canada by misrepresentation?
> A. I don't know.

And, at the conclusion of the inquiry, we find the following:

> Chairman: Who told you to say, or to state, that you were coming here as a domestic servant when apparently you have never followed that occupation.
> A. My uncle in Nanaimo told me to come as a domestic servant for Mr. Uyeno.
> Q. Is he the same man that came across with you on the boat?
> A. Yes.
> Q. And he it was who told you to say you were coming to work as a domestic servant for Mr. Uyeno at Nanaimo?
> A. Yes; I understand I am coming to work as a domestic servant for Mr. Uyeno.

DECISION OF THE BOARD.

> Mr. Jones: Whereas the said Munetaka Samejima, having been found not to be a Canadian citizen or a person having Canadian domicile, and a complaint having been received under Section 40 of The Immigration Act to the effect that the said Munetaka Samejima is in Canada contrary to the provisions of The Immigration Act, namely Section 33, sub-section 7, in that he entered Canada by misrepresentation: therefore, pursuant to the provisions of Section 33, sub-section 7 of The Immigration Act, I move that the said Munetaka Samejima be deported.
>
> Mr. Speed: I second the motion.
>
> Chairman: Mr. Samejima, a motion has been duly moved and seconded and I declare it carried unanimously that you be deported under the provisions of Section 33, sub-section 7 of the Immigration Act. You have the right to appeal to the Minister of Immigration and Colonization. Do you wish to appeal?

A. I am going to appeal.

How a man can, after being so notified, contend before this Court that he had not been ~~told~~ informed of the substance of the charge against him, as the appellant does in his affidavit (par. 18(c)), I do not understand. To say that he had no notice that the substance of the accusation against him was obtaining entry into Canada by misrepresentation, to put it mildly, strikes me as dishonest. No injustice whatever on this score has been done to the appellant and to require that the circumstances of his entry should be again the subject of investigation after his re-arrest would seem to be a procedure that is entirely superfluous in view of the fact that the original order of the Board providing for his deportation still stands.

In conclusion, therefore, I am of the opinion that Murphy J. was right in declining to interfere, under s. 23 of The Immigration Act, with the detention of the appellant for deportation, that his order must be sustained and that this appeal, accordingly, should be dismissed with costs.

Samejima v. The King

Anglin C.J.C.

SUPREME COURT OF CANADA
JUN 15 1932

Samejima

v.

The King.

Duff, J.-

I concur with my brother Lamont.

The chief question I desire to discuss is the effect of section 23. The words, "had, made or given under "the authority and in accordance with the provisions of this "Act relating to the detention or deportation of any reject-"ed immigrant, passenger or other person, upon any ground "whatsoever, unless such person is a Canadian citizen or has "Canadian domicile," are an essential part of this section; and its disqualifying provisions obviously can only take effect where the conditions expressed in these words are fulfilled. In particular, the phrase "in accordance with the provisions of this Act" cannot be neglected; their meaning is plain. The "order" returned as justifying the detention must be "in accordance with the provisions of this Act". It must not, that is to say, be essentially an order made in disregard of some substantive condition laid down by the Act. This applies to the order of the Minister, as well as to the order

of the Board of Inquiry. The order of the Minister must be an order directing the investigation of facts alleged in a complaint made to him; and such facts, unless the enactment is to be reduced to the merest parade of words, must be alleged, of course, in such a manner as to make the allegation reasonably intelligible to the person against whom the investigation is directed. The jurisdiction of the Board, as an investigating body, is limited to the investigation of the facts alleged, a condition, again, implying intelligibility of allegation. Indeed, unless the person concerned is to have a reasonable opportunity of knowing the nature of the allegations, what is the purpose of requiring his presence? The deportation order must fully state the reasons for the decision, in respect of the allegations. The spirit, as well as the frame, of the whole statute, evinces the intention that these provisions are mandatory.

I gravely fear that too often the fact that these enactments are, in practice, most frequently brought to bear upon Orientals of a certain class, has led to the generation of an atmosphere which has obscured their true effect. They are,

it is needless to say, equally applicable to Scotsmen. I admit I am horrified at the thought that the personal liberty of a British subject should be exposed to the hugger-nugger which, under the name of legal proceedings, is exemplified by some of the records that have incidentally been brought to our attention.

Courts, of course, must often draw the distinction between that is merely irregular and what is of such a character that the law does not permit it in substance. I have no difficulty in giving a construction to section 23, which does not deprive British subjects, who are not Canadians, of all redress in respect of arbitrary and unauthorized acts committed under the pretence of exercising the powers of the Act.

I do not find it necessary to decide whether or not the deportation order was one which fell under the protection of section 23. It is sufficient for me that Mr. Justice Fisher had jurisdiction to decide that it did not; and that the learned judge having done so and set it aside, the chairman of the Board had no authority to issue another.

The appeal should be allowed.

Samejima

v.

The King.

Duff, J.

Munetaka Samejima

v.

His Majesty the King.

Coram: The Chief Justice and Duff, Lamont, Smith and Cannon JJ.

Lamont J.-

This is an appeal from the judgment of the Court of Appeal of British Columbia dismissing by an equal division of the court an appeal by the appellant from a judgment of Mr. Justice Murphy in which he refused the appellant's application, under a writ of habeas corpus, for his discharge from custody.

The appellant (a Japanese subject) entered Canada at the port of Vancouver on September 29th, 1928. His passport and the ship's manifest shewed that he was entering Canada for the purpose of being employed as a domestic servant by one J. Uneo of Nanaimo, B. C. He was permitted to land and, according to his story, he went directly to Nanaimo where he found that Uneo had failed in business, closed his store and, therefore, did not require a domestic servant. He says that although he tried he could not get work as a domestic servant, and had to take what he could get.

On January 28th, 1931, the Deputy Minister of Immigration and Colonization directed an order "To any constable, peace officer or immigration officer in Canada" in which he recited that a complaint had been received to the effect that Munetaka Samejima (the appellant) "was in Canada contrary to the provisions of the Immigration Act, and

had effected entrance contrary to the provisions of s. 33, s. s. 7 of the said Act," and he ordered that the appellant be taken into custody and detained for examination and an investigation into the facts alleged in the said complaint.

The examination was to be made by a Board of Inquiry or an officer acting as such. Neither the complaint itself nor a copy thereof was forwarded to the Board or served upon the appellant who was taken into custody and brought before the Board on April 29th, 1931. On being questioned he admitted that he had not worked as a domestic servant since he landed in Canada, giving as a reason his inability to obtain that kind of work. The Board found that he had entered Canada by misrepresentation, and a resolution for his deportation was passed. On the same day a deportation order was drawn up and served upon the appellant. The order read as follows:-

> THIS IS TO CERTIFY that the rejected person above named, a person who entered Canada at B. C. ex "Empress of Asia" from Yokohama, Japan, which arrived at the said Port on September 29th, 1928, at o'clock. M., has this day been examined by the Board of Inquiry at this Port, and has been rejected for the following reasons: In that he is in Canada contrary to the provisions of the Immigration Act and effected entry contrary to the provisions of Section 33, subsection (7) of said Act.
>
> And the said rejected person is hereby ordered to be deported to the place from whence he came to Canada .....
>
> Dated at Victoria, B. C., this 29th day of April, 1931.
>
> J. A. Anderson
> Chairman of the Board of Inquiry.

The appellant appealed to the Minister but his appeal was dismissed. He then obtained a writ of habeas

corpus, and an application for his discharge thereunder was made to Mr. Justice Fisher who, on July 8th, 1931, discharged him from custody and quashed the deportation order, on the ground that the order was not in accordance with the provisions of the Act; in that it did not specify with sufficient particularity the reason for his deportation. On September 23rd, 1931, the appellant was rearrested on what purported to be an order for his deportation signed by the Chairman of the Board of Inquiry, and bearing date April 29th, 1931, the date of the original order. This new order will hereafter be referred to as the "amended order". This amended order was in form sufficient to satisfy the requirements of the statute. After his rearrest the appellant was not again brought before the Board, or examined by it, or given an opportunity to offer a defence to this arrest. He, however, again sued out a writ of habeas corpus and applied to Mr. Justice Murphy to quash the amended order under which alone, according to the return made to the writ, the appellant was held in custody. Mr. Justice Murphy refused to set aside the order holding that although the first order was deficient the deficiency could be remedied by issuing a new order, and he held the new order valid. Whether or not he was right in so holding we have now to determine.

Ss. 40 and 41 of the Immigration Act (R. S. C. 1927, ch. 93) provides that where a person belonging to the prohibited or undesirable class, as specified therein, other than a Canadian citizen or person having a Canadian domicile,

is found in Canada

> it shall be the duty of any officer cognizant thereof and the duty of the clerk, secretary or other official of any municipality in Canada wherein such person may be, to forthwith send a written complaint thereof to the Minister giving full particulars.

Included in the prohibited class is a person who enters or remains in Canada contrary to any provision of the Act.

Then s. 42 reads:-

> Upon receiving a complaint from any officer, or from any clerk or secretary or other official of a municipality against any person alleged to belong to any prohibited or undesirable class, the Minister or the Deputy Minister may order such person to be taken into custody and detained at an immigrant station for examination and an investigation of the facts alleged in the said complaint to be made by a Board of Inquiry or by an officer acting as such.
>
> .....
>
> 3. If upon investigation of the facts such Board of Inquiry or examining officer is satisfied that such person belongs to any of the prohibited or undesirable classes mentioned in the two last preceding sections of this Act, such person shall be deported forthwith, subject, however, to such right of appeal as he may have to the Minister.

Counsel for the appellant contended that jurisdiction to order the arrest of the appellant under this section depended upon the ~~conditions~~ existence of the conditions precedent required by the statute, that is to say upon the receipt of a complaint from an officer under the Act or from a municipal official, and that in either case the complainant must give particulars of the act or omission which placed the immigrant in the prohibited or undesirable class; that there was no evidence that the complaint in this case had been re-

ceived from any person specified in the section; that the order of the Deputy Minister would indicate that no particulars other than those contained in his order had been given, and, therefore, no jurisdiction on the part of the Deputy Minister to order the appellant's arrest had been shewn, and jurisdiction would not be presumed. He further contended that as there was no jurisdiction to issue the order which set these proceedings in motion, every step taken subsequent to the order was invalid.

The objection here taken is, to my mind, a very serious one, for the jurisdiction of a Minister or his Deputy, under s. 42, to take an immigrant into custody is conditioned upon a complaint being received from one of the persons specified therein. Parliament has not authorized the exercise of this jurisdiction on the complaint of an unknown person who might be an enemy or competitor or business rival of the immigrant, desirous of harrassing him. It is given only on the complaint of an officer or official, whose official position it may have been thought would warrant the inference that the complaint would not be made without knowledge, nor inspired by any but proper motives. It is established law that jurisdiction on the part of an official will not be presumed. Where jurisdiction is conditioned upon the existence of certain things, their existence must be clearly established before jurisdiction can be exercised. Failure to establish the right to arrest would ordinarily vitiate all subsequent proceedings following directly as a result of the arrest. Whether this principle would apply to a second arrest I do not find it necessary to determine, for, assuming that it would not, the order in question must, in my opinion, be set ~~the order in question must in my opi~~

aside on another ground, namely, that the amended order itself was ~~[illegible]~~ wholly invalid.

S. 33 (5) provides that the order of deportation may be made in Form C in the schedule to the Act, which form requires the reasons for the rejection to be "stated in full", and a copy of the order to be forthwith delivered to the rejected person. The statute, therefore, contemplates that the order will shew the reason for the deportation. The only reason for the deportation of the appellant, as found by the Board of Inquiry, was that he had entered Canada by misrepresentation. That reason was not stated in the deportation order which formed the return made to the writ of habeas corpus before Mr. Justice Fisher. Because of the Board's failure to state in the order the particular offence found against the appellant Mr. Justice Fisher quashed the order and set the appellant at liberty. Had he jurisdiction to do so?

It was contended that s. 23 deprived him of any jurisdiction to interfere. That section reads:

> 23. No court, and no judge or officer thereof, shall have jurisdiction to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or order of the Minister or of any Board of Inquiry, or officer in charge, had, made or given under the authority and in accordance with the provisions of this Act relating to the detention or deportation of any rejected immigrant, passenger or other person, upon any ground whatsoever, unless such person is a Canadian citizen or has Canadian domicile.

It will be observed that the prohibition against interference by a court or judge applies only to "any proceeding, decision or order had, made or given under the authority and in accordance with the provisions of this Act". It fol-

lows, therefore, that if the proceeding, decision or order has not been had, made or given in accordance with the provisions of the Act, no restriction is placed upon interference therewith by the court, and the immigrant is at liberty to appeal to a court or a judge for any remedy to which he may be found entitled. In this case the original deportation order was not in accordance with the provisions of the Act. Mr. Justice Fisher had, therefore, jurisdiction to quash it, which he did, on July 8th, 1931. His order, having been made with jurisdiction, was a valid order and could only be reversed on appeal, if an appeal lay therefrom.

The Crown does not contend that the original order was valid, but it does contend that where a slip has been made in the drawing up of an order, a new order in proper form may be substituted. Up to a certain point I entirely agree with this contention. If the Board of Inquiry made a deportation order defective on its face, it could, in my opinion, recall it and substitute therefor an order in proper form, so long as the defective order had not been acted upon. Even after it has been served on the person in custody and constitutes the return made to a writ of habeas corpus, it may still, in my opinion, by leave of the court or judge, be amended, or another order substituted for it, so as to make it conform to the finding of the Board. Leonard Watson's Case, 112 E. R., 1389, at 1419; In re Clarke, 2 Q. B. 619; 114 E.R. 243. But after a deportation order which is not in accordance with the Act has been quashed by a court having jurisdiction, it cannot be amended for there is nothing to amend. The order

of the Board no longer exists - it is a thing of naught.

What was attempted to be done in this case was to amend the order of April 29th after it had been quashed by adding to it the reasons for the appellant's deportation so as to make it conform to the requirements of the statute. There is no evidence that the amended order ever was before the Board. The only order made by the Board of Inquiry of which we have any record is the one that was quashed by Mr. Justice Fisher.

In the statute ample provision is made for rectifying the situation which arose through the quashing of the original order, and all the Board of Inquiry had to do was to follow the statute. In s. 33 (7) which sets out the various offences constituting a cause for deportation, it is provided that

> any person suspected of an offence under this section may be arrested and detained, without a warrant, by any officer, for examination as provided under this section, and if found not to be a Canadian citizen or not to have a Canadian domicile

may be ordered to be deported. Every member of the Board of Inquiry is an officer under the Act.

After the Board's deportation order had been quashed, any member thereof could have caused the appellant to be re-arrested and held for examination, for, having, on April 29th, 1931, found that he entered Canada by misrepresentation, his presence at large thereafter would justify the suspicion that he was in Canada in violation of the Act. If, on re-examination, the Board still found that his entry into Canada had been secured by misrepresentation, a new deportation order could have been

made based upon the re-examination and, if it was in proper form, no court or judge would have jurisdiction to quash or reverse it. This re-examonation, however, would have entitled the appellant to meet the charge with such evidence as he might be able to put before the Board. How important that right would have been for the appellant is disclosed in his evidence. He says that when the Immigration officer came to Chemainus where he was working on April 28th, 1931, and took him to Victoria, that the officer told him that he might return to Chemainus next day, so, when he was taken before the Board of Inquiry for examination and was asked if he wanted a lawyer he answered "No", because he says he did not anticipate getting into any trouble. The record of his examination before the Board shews that the proceedings were opened by the Chairman stating to him that he was to be examined as to his right to remain in Canada, and did he wish to have counsel. The Chairman then referred to the complaint set out in the warrant of the Deputy Minister, in the language of the complaint. Up to that time the appellant had not been informed that he was to be charged with entering Canada by misrepresentation. Then he was questioned as to his age, place of birth, religion, relatives in Japan and in Canada, statements appearing in his passport, his object in coming to Canada, and his movements after he landed, and where and for whom he expected to work when he came here. To all of these questions the appellant answered apparently in a straightforward manner, informing the Board that his destination was Nanaimo and that he expected to work for Mr. J. Uneo as a domestic servant but, that when he got to Nanaimo he found that Mr. Uneo had failed in busi-

ness, his store closed and he himself was working in the mill; that after trying in vain for two weeks to get work as a domestic servant in Nanaimo, he went to Vancouver and tried there, but was equally unsuccessful, and he had to take whatever kind of work he could get. Then he was asked:-

> Q. When you got back to Vancouver, did you report to the Canadian Immigration Office and report to them that your employer was closed up and could not employ you as a domestic? A. No. I didn't.
> Q. You know that you were permitted to land in Canada for the purpose of being employed as a domestic servant and that you were going to work for Mr. Uyeno; why did you not report that this man was not in a position to employ you when you found he was closed up?
> A. I didn't know that I should report to the Immigration what to do.

He was then questioned as to his subsequent employment; the names and addresses of his employers; the rate of wages he received, etc.

Then, practically at the close of his examination, we have the following:-

> Q. And when you were questioned by the Immigration Officer, did you not state that you were going to be a domestic servant?
> A. I told the officer at Vancouver I was going to be a domestic servant.
> Q. After you arrived you made no attempt to be a domestic servant?
> A. I tried several times to have domestic work in Vancouver but could not find any.
> Q. You have never been in domestic servant work in Canada?
> A. No, I have not.
> Q. Then you realize that you have entered Canada by misrepresentation, do you?
> A. No. I don't know that. Because I try to get work but I could not help it.
> Q. But the fact that you have not taken domestic work shows you entered Canada by misrepresentation?
> A. I don't know.

This was the first time so far as the material

before us discloses that he was made aware that the charge against him was entering Canada by misrepresentation. Had he known that he had to face that charge he could have had the evidence before the Board of Inquiry which he subsequently placed before Mr. Justice Murphy on the habeas corpus proceedings, namely, that of Mr. J. Uneo, who had carried on business in Nanaimo for twenty-five years and who, in his affidavit, stated not only that the appellant was to be employed by him as a domestic servant, but that more than a year before the landing of the appellant, he (Uneo) had applied to the Japanese Consul at Vancouver for a permit for the appellant's entry into Canada as his domestic servant. This was corroborated by the affidavit of K. Ishii, the appellant's uncle, who for forty years had been a merchant in Victoria, B. C., and, for many years, held office as head of the Victoria Japanese Association, and who swore that he knew of his own personal knowledge that Mr. J. Uneo had, in the latter part of 1926, applied to the Japanese Consul for a permit for the entry of the appellant as Uneo's domestic servant. This evidence although tendered before Mr. Justice Murphy, could not be considered by the learned judge because he had no jurisdiction to revise the findings of fact made by the Board of Inquiry. If the evidence of these witnesses had been placed before the Board of Inquiry when the appellant was examined by them, it is possible that the Board might not have found as a fact that the appellant entered Canada by

misrepresentation. Had the appellant known that he had to meet the charge of misrepresentation before he announced that he did not want a lawyer, I think it highly probable that he would have had counsel and that the evidence of Uneo and Ishii would have been placed before the Board. I therefore find myself entirely in accord with the language used by Martin J. A., in the court below, where his lordship said:-

> even if the proceedings upon the Board's amended Order could be invoked at all they contain the incurable defect that after the re-arrest there was no re-investigation of the accused on the definite charge that was for the first time then laid against him.

The amended order, being simply an amendment of an order which had been quashed instead of a new order based upon a re-examination, had no validity whatever, and should also have been quashed.

For the Crown it was contended that, even if the order was invalid, Mr. Justice Murphy was right in refusing to set the appellant at liberty, and cited, among others, the case of Rex v. Governor of Brixton Prison, (1913) 23 Cox, 713. That was an entirely different case and, in my opinion, goes no further than to hold that it does not necessarily follow in every case where some irregularity is shewn to have taken place in the procedure under which a person has been placed in custody that he should be set at liberty. But it is only in cases where the court is satisfied that a prima facie case has been made

against such person, and that it is in the interests of justice that he should be tried for the offence charged, that he will be detained under an irregularcommitment. In the present case the commitment under which the appellant was held was not simply tainted with an irregularity in procedure, but was wholly bad.

The appeal should be allowed with costs; the order of the Board of Inquiry quashed, and the appellant discharged.

Samepima
v
The King

Samoa J.

Original

IN THE SUPREME COURT OF CANADA

On Appeal from the Court of
Appeal for British Columbia

—

IN THE MATTER OF THE IMMIGRATION ACT,
Chapter 93, R.S.C. 1927, and
Amending Acts.

and

IN THE MATTER OF MUNETAKA SAMEJIMA

—

MUNETAKA SAMEJIMA (Appellant)

and

HIS MAJESTY THE KING (Respondent)

APPELLANT'S COSTS OF APPEAL TO
THE SUPREME COURT OF CANADA

	Notice of Appeal	$4.00 ✓	
2.00	Notice of application to affirm jurisdiction	2.00	
	Fee On contested motion before Registrar in Chambers, including affidavits, to affirm jurisdiction when judgment reserved	25.00 ✓	
	Paid filing fees upon motion affidavit and order		2.60 ✓
	Fee on special case	25.00 ✓	
	For engrossing for printers copy of case as settled - 192 fols @ 10¢	19.20 ✓	
	For correcting and superintending printing of case - 192 fols @ .05¢	9.60 ✓	
	For engrossing for printers copy of Appellant's Factum - 140 fols @ 10¢	14.00 ✓	
	For correcting and superintending printing factum - 140 fols @ 05¢	7.00 ✓	
35.00	Motion before Chief Justice of British Columbia for extension of time for appeal	35.00	
	Carried forward	$140.80	2.60

$ 37.00

Brought forward	$140.80	$2.60
Fee on factum	~~200.00~~ 50.00	
Paid printer as per affidavit (Printing Case 139.92 Binding factum 129.50)		314.82
Paid filing case with Registrar		10.00
Paid search and inscribing appeal		.35
Paid postage and telegrams		
For attendance of Counsel to hear judgment	25.00	
For allowance to duly entered agent	40.00	
Allowance to cover all fees to attorney and Counsel for the hearing of the appeal	200.00	
Paid search for particulars to draft minutes		.35
Paid entry of judgment		10.00
Paid taxation and appointment		1.50
Allocatur		1.00
Postage and telegrams and Official Stenographer's charges and expressage on forwarding case and factum to Ottawa and Vancouver Agents' fees and other disbursements as set out in affidavit of disbursements (Postage & Telegrams 5.00: Express on Case: $4.57: on Factum 3.50)	~~61.85~~ 13.07	
Registrar's postage		
Paid certified copy of judgments	1.30	
Paid postage on letter of June 16th.....	~~.17~~	
Drawing Notice under the Constitutional Question Determination Act for service on the Attorney General for British Columbia.		
Attending to serve Attorney General.		
Drawing Notice to serve on the Attorney General of Canada.		
Attending to serve the Attorney General of Canada.		
Fiat for increased counsel fee.	200.00	
Fiat for increased fee a Factum	50.00.	
	$ 705.80	$ 354.99
	354.99	
	$ 1060.79	
	81.50	
	$ 979.29	

~~$81.50~~

Taxed and allowed at $979.29

J. F. Smellie

Registrar.

28th June. 1932

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE COURT OF
APPEAL FOR BRITISH COLUMBIA

IN THE MATTER OF THE IMMIGRATION
ACT, Chapter 93, R.S.C. 1927 and
Amending Acts

and

IN THE MATTER OF MUNETAKA
SANEJIMA

BETWEEN:

MUNETAKA SANEJIMA
(APPELLANT)

AND

HIS MAJESTY THE KING
(RESPONDENT

::::::::::::::::::::::::::::::::::::

APPELLANT'S COSTS OF APPEAL TO
THE SUPREME COURT OF
CANADA

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C. H. O'HALLORAN,
Barrister,etc.
Victoria,B.C.

Supreme Court of Canada | Cour suprême du Canada

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