

Vancouver Province, December 1, 1913.

LETS DOWN BARS FOR HINDUS TO ENTER

Chief Justice Gives Written
Judgment Which Is Very
Sweeping.

Says Orders-in-Council Are
Ultra Vires of the
Statute.

Nothing Now to Prevent Hindus
Coming Here in
Shiploads.

Decision Is Upon Case of
Bhagwan Singh and His
Friends.

That the orders-in-council hitherto restraining Hindus from entering the province, except under very special circumstances, are ultra vires, and that Hindus can not be excluded except on the grounds of idiocy, disease, crime or mendicancy, is the effect of a sweeping written judgment given by Chief Justice Hunter in the case of Bhagwan Singh. Bhagwan Singh is the Sikh priest who was forcibly deported by Immigration Inspector Reid and his men over a week ago, and in which further proceedings are threatened. Bhagwan Singh is said to be a graduate of a university and one of the most highly educated of Hindu religious teachers. Mr. J. E. Bird argued the case for the Hindu, and Mr. W. B. A. Ritchie, K. C., for the immigration department.

Counsel for Bhagwan Singh dwelt on the fact that the order in council on which his client was sought to be deported, was not an order in council made in good faith, in that it prescribed that a native of India must come into this country "upon their tickets purchased in this country or purchased in Canada." He argued that this was clearly shown by affidavits filed on the application, and Mr. Justice Murphy in a previous case had stated that this portion of the order in council could not be characterized as anything but a trick, and that it was beneath the dignity of Parliament to resort to such methods in dealing with fellow British subjects.

On this point the chief justice said he had nothing to do with the question of whether it was beneath the dignity of Parliament to resort to such tricks, he had to administer the law as he found it and the argument advanced by Mr. Bird on this point could not be sustained, but that on other points the order-in-council was bad.

A Wide Application.

Section 37 of the Immigration Act says that as a condition of landing in Canada, "immigrants must possess in their own right money to the prescribed amount according to their race, occupation, etc." On this point his lordship points out that the order-in-council uses the words: "No immigrant of Asiatic origin shall be permitted to land in Canada unless, etc." whereas, "Asiatic race" and not Asiatic origin is contemplated in the section of the act on which the order-in-council is based. He points out that under this order, the sons of British officers and British residents in India could be excluded from entering Canada, as they are of Asiatic origin though not of Asiatic race.

His lordship further points out that the act only requires persons to possess money "in their own right," whereas the order in council requires that they have it in "actual and personal possession," and that a person may have money in their own right in deposit with any bank in Canada, without being in actual and personal possession of enough to satisfy the terms of the order in council.

As to the other order in council referring to natives or citizens coming by a continuous journey from India, and which had been previously declared ultra vires by Mr. Justice Morrison in the case of In re Rahim, the learned chief justice concurs, as the order in council refers to "natives or citizens," whereas the statute merely says "a native or naturalized citizen." His lordship says he assumes the Legislature had some manifest intention when it amended the Act in 1908 to insert the word "naturalized" to give it larger classification. His lordship holds that the word native is to be used as an adjective qualifying the word citizen.

Text of Judgment.

The following is the text of the written statement of Chief Justice Hunter. It was received here today from Victoria. As can be seen, it goes much further than his oral judgment:

"As to four of the Hindus, their counsel, Mr. Bird, abandoned proceedings, so that the question now concerns the other thirty-five. The main dispute was to the validity as to the orders in council known as P. C. Nos. 926 and 920, passed on May 9, 1910.

"At the outset, Mr. Bird vehemently urged that Parliament knew that it was impossible for Hindus to come to a Canadian port by a continuous journey and that it had employed a subterfuge to place a ban on Hindus as a race and that therefore the court ought to be astute, if possible, to defeat the alleged injustice. As to this it seems necessary once more to point out that in dealing with acts of Parliament the court is not concerned with questions of expediency or good faith, but only with their validity and interpretation.

"To consider the two orders-in-council as to No. 926 it is objected that the expression "Asiatic origin" is used wherever the statute uses Asiatic race. It is obvious that the word "origin" includes more than the word "race." A person born in India of British parents, domiciled there,

would be of Asiatic origin, but not of Asiatic race.

"The prohibition in the order-in-council therefore exceeds that contained in the statute itself and is accordingly ultra vires. Again the order-in-council requires the immigrant to have \$200 in his own right in actual or personal possession, whereas the statute does not require that the money shall be in actual and personal possession. If an immigrant had the money in his own right in a Victoria bank at the time of his arrival, he would satisfy the requirements of the statute, but not those of the order-in-council. The order-in-council is, therefore, bad on this account. Other objections were also urged, but it is unnecessary to deal with them.

"As to the order-in-council number 920, this order-in-council has already been declared invalid by Mr. Justice Morrison in Rahim's case, 16 B. C. R., 471, on the ground that it omitted the qualifying word "naturalized" before the word "citizen," in conformity with the amending act, and no doubt, as he says, the fact of the change in the statute, and I might add that this amending was assented to only four days before the order-in-council was passed.

"Mr. Taylor, however, urged that the order-in-council might be upheld in part, so far as regards the requirements by the natives. The difficulty is that the word "native" is used as a noun in the order-in-council and would therefore include persons of British race born in India, which it is difficult to suppose Parliament intended, whereas in the statute it is used as an adjective qualifying the word "citizen," and it is obvious that the expression, "native," includes more than the expression, "native citizens."

"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 misrepresentation, but the order for deportation does not state that this was the reason for detention. The only reason so-called, assigned, which could have any bearing on this matter is given in section 23. This section gives a number of sub-sections defining certain 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 so intended, that when a person is ordered to be deported out of the country, the reasons 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 applied 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."