

HINDUS ARE RELEASED ON HABEAS CORPUS ORDER

Judge Clement Does Not Call on Counsel for New Immigrants

WHAT WILL OTTAWA DO?

Governor-General Has Not Power to Delegate Duties to
Officials

The one hundred and forty-two Monteagle Hindus were released this afternoon on habeas corpus. They will leave the detention ahead before dark to-night.

“The Governor-General in Council cannot delegate his powers in immigration matters to any official even though that official, as in this case, be the Minister of the Interior. The discretion as to what immigrants shall be admitted or refused admission must be exercised solely by the Governor-General in Council, as I read the act.”

You could almost hear the now historic and now invalid order in Council of January 8 fall upon Registrar Pottenger’s desk as Mr. Justice Clement concluded his view of its invalidity.

Four counsel sat waiting to be heard in support of the contentions of one hundred and fifty-six detained Hindus, contentions which went the length of declaring that the order was not only defective but never should have been promulgated by Ottawa, and particularly against British subjects.

Counsel Have Easy Day

But Mr. D. G. Macdonell, K.C., for the Dominion Government could not get beyond the first point in the case, the validity of the order. It was therefore

THE DAILY PROVINCE

MARCH 24, 1908

p. 1

unnecessary to hear Mr. A.C.I Spyden Jack (?) and his associate counsel who appeared for the ten Hindus from Suva, nor Mr. D.G. Marshall, K.C., and Mr. J.A. Russell, K.C., who appeared for one hundred and forty-six from Hongkong.

Mr. Macdonell is now in communication with the Minister of the interior as to whether or not there shall be an appeal. This is, however, regarded as doubtful, while it is hinted that a new order, strictly within the limits of the Immigration Act, and not "delegating" any authority to any Minister or official, may be expected.

Only "Physical" Questions

Immediately the decision of the court was announced Immigration Officer Dr. Monro hurried to the corridor and instructed his waiting subordinate to at once release all the detained Hindus, while the doctor himself must needs give his official glad hand to every dusky denizen from the coral strand and ask no further question such as "Where did you come from?" and "Did you come by continuous journey and through tickets bought before you started?"

The doctor is in fact put back to his former official limits, the boundaries before this order was issued, which have to do merely with the physical and financial fitness of the anxious immigrants.

The Fatal Words

These were the fatal words in the order:

"Whenever, in the opinion of the Minister of the Interior, the conditions of the labor market in Canada are such as to make the application of the act desirable or whenever, in his opinion, other conditions exist which in a special degree render necessary, etc., the application of certain sections of the act."

"This," said the court "is delegating to others, not contemplated not permitted by the act, the authority and discretion which clearly the Governor-General in Council alone can exercise."

THE DAILY PROVINCE

MARCH 24, 1908

p. 1

"If this is Your Lordship's view," continued Mr. Macdonell, "there is no object in arguing the case, the other points, for the Hindus are all detained under the same order."

And the application for habeas corpus was immediately granted.

Bolha Singh and his dusky brethren who crowded the court and the corridor, revealed beautiful rows of pearly ...(illegible word) in smile that were audible.

May Claim Indemnity

It is not improbable that claims for indemnity for wrongful arrest and detention may be made by Bolha and his brothers. A flood of writs is expected.

"Will Your Lordship give a written decision?" asked Mr. Macdonell.

"Yes, I will give written reasons at an early date," the court returned.

When counsel for the Dominion Government entered court with his usual confidence and a large section of the law library, he had two section of the Immigration Act upon which he chiefly relied. One was section 10 to this effect:

"The Governor-General in Council may, upon the recommendation of Ministers, make such orders and regulations, not inconsistent with the Immigration Act, as are considered necessary or expedient for the carrying out of the act according to its true intent and meaning and for the better attainment of its objects."

Contained no Authority

The other, section 30, was to like effect, using the words, "The Governor-General in Council, by proclamation or order, may, whenever he considers it necessary, etc."

But, by its decision, the court holds that neither of these reveals any authority to delegate to the Minister of the Interior or any other Minister or official, the discretion as delegated by the order in Council of January 8.

THE DAILY PROVINCE

MARCH 24, 1908

p. 1

The federal order is now no more effective than the Natal Act, and should the Dominion Government appeal the decision to-day the Law Lords of the Judicial Committee of the Privy Council may have the spectacle of the Dominion and provincial powers seeking the rights which the provincial courts have thus denied them.

In Kondo vs. the C.P.R., heard two years ago, the court gave a decision similar to the judgement to-day.