

BHAGWAN SINGH CAN NOT RETURN IS DECLARATION

Judge Decides that When Case Came Up in Court a Material Fact Was Omitted — Written Judgment Is Handed Down.

Bhagwan Singh, the Hindu priest, over whose forcible deportation so much litigation has arisen, can not come back. By an important judgment delivered this morning Mr. Justice Morrison has swept away the ground of all the litigation by cancelling the order for habeas corpus granted by himself in October last, and upon which the return of Bhagwan Singh, and the attachment of Immigration Inspector Malcolm R. J. Reid was sought.

Bhagwan Singh was placed on board the outward bound Empress of Japan at Victoria on November 28. Little has since been heard from him. The crew of the incoming C. P. R. liner now in port say that Bhagwan Singh left the ship at Yokohama and did not return.

The full text of Mr. Justice Morrison's decision is as follows:

"On October 7 last, upon the application ex parte of Bhagwan Singh a writ of habeas corpus was ordered to be issued to Malcolm R. J. Reid, Dominion Government immigration superintendent and inspector for the port of Vancouver, directing him to have before a judge of this court presiding at chambers at Vancouver forthwith on receipt of the said writ, the body of the said Ghagwan Singh, alleged to be detained in the custody of the said Reid. At the time this application was made Bhagwan Singh was not in custody having been released on sufficient bail. This fact was not disclosed in the material read in support of the application, nor by Mr. Steers, who then appeared for the applicant. This order lay dormant until November 19, following. Bhagwan Singh in the meantime changed his solicitors. On November 19 the writ was issued, but not served on Reid, but by means of wireless messages the fact of its issuance appears to have been communicated to him whilst en route to Victoria.

"After arrival in Victoria whence Bhagwan Singh was taken for deportation to Hongkong pursuant to the provisions of the Immigration Act, he applied for and obtained an order for another writ of habeas corpus from my Brother Murphy there. This writ was issued and duly served upon Bhagwan Singh. Notwithstanding all this Bhagwan Singh was deported, and is now outside the jurisdiction. Application is now made to one upon motion served upon Mr. Reid requiring him to produce Bhagwan Singh before the court on Monday, Jan-

uary 5, 1914, and to make a return to the writ issued on November 19. This notice is dated December 1, 1913. On December 4 another notice of a similar character, dated December 4, was filed and in due course served on Mr. Reid requiring him to appear on January 9.

"From the material filed and submitted, I am of opinion that the order of October 7 was obtained by the suppression or omission of a material fact, viz: That Bhagwan Singh was not in custody at that time. 'The essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom.' Halsbury L. C., in Cox vs. Hakes, 15 A. C. 517; 10 Halsbury, p. 42; Barnardo vs. Ford 1892 A. C. 335.

"Then as to the subsequent course of the matter, I think the applicant has prejudiced his right to return, per Lord Watson in Barnard vs. Ford supra. As to the right to reverse an order obtained ex parte, see Hunter C. J., in Hardware Company vs. West Bank Trading Company, 16 B. C. R., p. 35. The incident referred to in the material filed, that I was interrupted in my sittings at the Vancouver Criminal Assize by a solicitor in the applicant's behalf for the purpose of instructing the registrar to forward a message to Mr. Reid that the writ had been issued, can not, I submit, in any way be taken as a confirmation of my previous order. I merely told the registrar that if a writ had in fact been issued I saw no reason why he should not state that fact in a telegram to whomsoever might be interested in that occurrence.

Considerable stress was laid in the affidavits filed on behalf of Bhagwan Singh upon the alleged contumely displayed by Mr. Reid when told of the proceedings leading to the issue of the writ, and which allegations are denied by him. As to that phase of this matter all I have to say is that Mr. Reid is a responsible officer of a great department of government, and doubtless the minister in charge of that department will take proper cognizance of the incident if founded on facts. Under all the circumstances I do not think I am called upon to display any undue sensitiveness concerning it. The dignity of the court in such cases usually takes care of itself. The order of October 7, 1913, upon which is based the writ of November 19, 1913, is therefore set aside."

Mr. A. H. MacNeill, K. C., appeared for Bhagwan Singh in the argument, and Mr. W. B. A. Ritchie for the immigration department.



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Malcolm R. J. Reid