

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE FULL COURT.

534

RE KONDO et al } JUDGMENT OF
 } THE HONOURABLE MR JUSTICE CLEMENT.

Counsel for the appellants in these three cases frankly admits that he cannot ask this Court to reverse the finding of fact by my brother Morrison, viz: that the three Japanese in question were not suffering from disease within the statute; and he rests his case solely upon the contention that the learned Judge had no right to enquire into the truth of the facts set forth in the return to the writ of Habeas Corpus, viz: that they were so suffering. The short answer to this contention is that sec.3 of the Habeas Corpus Act of George III expressly provides that "it shall be lawful for the Justice or Baron before whom such writ is returnable to proceed to examine into the truth of the facts set forth in such return by affidavit or by affirmation..... and "to do therein as to justice shall appertain." The fact necessary to warrant deportation under the statute in question is that the person to be deported should be suffering from disease as therein mentioned; not that some particular official should have found him to be so suffering. The Parliament of Canada has not yet gone to that length.

The appeals should be dismissed with costs.

Victoria, B. C.

21st January, 1907.

SUBSTITUTE COURT

APPEAL COURT

RE KODOLU 21.97

JUDGMENT

STRENGTH 1.

COMMERCIAL BANK OF NEW ZEALAND

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S U P R E M E C O U R T
F U L L C O U R T .

RE KONDO et al

J U D G M E N T .

C L E M E N T , J .

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VICTORIA
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