

RG117
vol. 2
file 14

October 21, 1942.

MEMO
TO: MR. R. P. ALEXANDER
FROM: MR. EDGAR T. READ

Re: Legal Opinions

Would you be kind enough to let me have,
as soon as possible, copies of all Legal Opinions
submitted to you on Evacuee matters by Mr. Sheppard.

ETR:MA

Edgar T. Read
Edgar T. Read,
General Manager.

NONE!
RMG

Oct. 22. 1942

qler.

Warrick, as you requested.

E. T. R.

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LOCKE, LANE, GUILD & SHEPPARD

703 Rogers Building,

Vancouver, B.C.

October 1st, 1942.

Office of the Custodian,
912 Royal Bank Building,
Vancouver, B. C.

Dear Sir:

Attention Mr. Wright.

Re: Japanese Property.

We have your enquiry of the 30th ult. as to the jurisdiction of the Custodian in respect to property of a Japanese infant. Your instructions state that the father transferred this land to the infant by way of gift, notwithstanding that, a conveyance would be effective in vesting the land in the infant (17 Halsbury, page 620) and although the infant may repudiate the gift on reaching maturity yet the gift remains effective in the meanwhile. Therefore, the intervention of the Custodian must be on the basis that these lands are the lawful property of the infant. We are of the opinion that the infancy of one of the Japanese race is immaterial. The definition of a person of the Japanese race P.C. 2483 includes:-

- (1) Any person of that race, and
- (2) Who is required to leave the protected area of the Province of British Columbia.

The infant is of that race and has been required to leave by the B. C. Security Commission therefore he comes within this definition. By reason of the infant coming within that definition Regulation 12, P.C. 2483 applies and you have the same jurisdiction as if the infant were an adult. We can see no reason whatsoever for appointing a guardian. A guardian is required where it is necessary to exercise powers or to enforce rights vested in an infant, but that is not the case here for the reason that under Regulation 12 (P.C. 2483) the property and control and management are vested in the Custodian not in the infant upon the Japanese infant being evacuated. It, therefore, follows that you would proceed with the control and management of this property to the same extent as if he were an infant sui juris.

Yours truly,

LOCKE, LANE, GUILD & SHEPPARD,

Per: FAS

FAS/XB

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OFFICE OF THE CUSTODIAN
JAPANESE SECTION
RECEIVED
SEP 4 1942

MEMORANDUM

TO: Mr. G.W. McPherson

FROM: Mr. K.W. Wright

2nd September, 1942.

In accordance with your instructions I have obtained the opinion of Mr. F.A. Sheppard, K.C., relative to the necessity of advertising for creditors. He advises as follows:-

Re: Advertising for Creditors

You have enquired of us whether it is advisable for the Custodian to advertise for creditors after having taken possession or having effected a sale of the property of an internee. We are of the opinion that it is not so necessary. The Bulk Sales Act would not apply in that the Secretary of State of Canada is not engaged in business within the meaning of the Act but in this instance is vested with the assets of the Act but in this Therefore, any advertising would appear to be a matter of policy. There have been general notices issued to the public advising them to submit their claims to the Office of the Custodian, and we do not see how a particular advertisement could give any information which has not been generally given. For these reasons we are of the opinion that it is not necessary to advertise for creditors."

Feb 24

EDW:PM

LOCKE, LAKE, GUILD & SHEPPARD
Barristers & Solicitors
703 Rogers Building,
Vancouver, B. C.

August 1st, 1942

The Office of the Custodian,
Royal Bank Bldg.,
Vancouver, B. C.

Dear Sir:

Attention Mr. Wright

We have your instructions that in several instances a Japanese has built upon the land of another, the registered owner, on the terms that the Japanese would have the right to occupy the house so long as he made some monthly or periodical payment in kind, such as a fish or a loaf, and that when the Japanese left the house it was to be the property of the third person, the owner of the land. You have inquired as to the interest of the Custodian under such circumstances. In our opinion the Japanese had no interest in the land to which the Custodian could succeed; it could not be a freehold interest because there was no obligation, or intention of conveying any interest in any part of the land to the Japanese. On the contrary the intention was that the house should remain part of the land and at some time revert to the owner. It could not be a lease as it is for an indefinite term and not made definite at the inception. These facts therefore exclude a necessary interest in the land such as estate or leasehold interest. It follows that the Japanese had a bare licence, that is a licence to occupy the land, no doubt with his family but subject to the two limitations expressed:-

1. Periodic payments
2. The ceasing of the licence, when the Japanese left.

The Japanese has left, therefore his licence is terminated. In such event there appears to be no right to which you could have succeeded. It might be otherwise if there was a perpetual licence, such as in Stratton v. Wellington Corporation, 1894 - 83 L. J. P. C. 105, but this licence could not be perpetual or irrevocable by reason of the limitation provided in the express terms.

Yours truly,

LOCKE, LAKE, GUILD & SHEPPARD

Per - "F. A. S."

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1. Periodic payments
2. The cesser of the licence, when the Japanese left.

The Japanese has left, therefore his licence is terminated. In such event there appears to be no right to which you could have succeeded. It might be otherwise if there was a perpetual licence, such as in *Plimmer v. Wellington Corporation*, 1884 - 53 L.J.P.C. 105, but this licence could not be perpetual or irrevocable by reason of the limitation provided in the express terms.

Yours truly,

LOCKE, LANE, GUILD & SHEPPARD

Per: "P.A.B."

*See copy of
in Sheppard
and Lane
JLL*

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