

150736

No. J.R. 150736

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Date MAY 14, 1946

FILE CHECKED FOR MPV
SEE BACK COVER
DOSSIER VERIFIE POUR DSUU
VOIR ENDOS DE LA CHEMISE

REGISTRY

Department of Justice

PERMANENT RETENTION
IN JUSTICE
CONSERVATION PERMANENTE
A LA JUSTICE

From DEPT. OF EXTERNAL AFFAIRS.

SUBJECT:

PASSPORTS OF DEPORTED JAPANESE.

Charged to D.W. MUNDELL.

REMARKS:

Blank lines for remarks.

CROSS REFERENCE:

153025

MPV / DSUU ON FILE / SUR DOSSIER
YES / OUI (✓) NO / NON ()


ABSTRACTOR / REDACTEUR: MS

DATE: 20.8.85

No. J.R. 150436

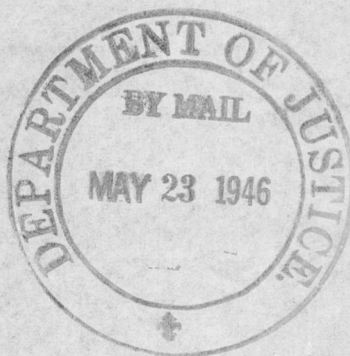
No. ~~JR~~ 150736

TIP-BACK
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CAN. PAT. NO. 361978



FILE-TEX STOCK
To Duplicate Order

No. Sp. 2718



May 23rd, 46.

BY HAND

The Acting Under Secretary of State
for External Affairs,
Ottawa.

150736 - Your file 3363-D-400
Re: Passports of deported Japanese

I acknowledge your letter of May 13th last inquiring whether on embarkation of persons of the Japanese race who proceed to Japan under Orders in Council P.C. 7355, 7356 and 7357 of December 15th, 1945, such persons will be required to surrender Canadian passports issued to them.

Order in Council P.C. 7356 of December 15th, 1945, provides "Any person who, being a British subject by naturalization under the Naturalization Act, chapter 138, R.S.C. 1927, is deported from Canada under the provisions of Order in Council P.C. 7355 of 15th December, 1945, shall, as and from the date upon which he leaves Canada in the course of such deportation, cease to be either a British subject or a Canadian national". I am of opinion that persons to whom this Order in Council applies should be required to surrender their passports as British subjects.

I am further of opinion that passports issued in Canada to other persons of the Japanese race whether natural-born British subjects or British subjects by naturalization elsewhere than in Canada may be required to surrender their passports upon leaving Canada. A passport would appear to be the property of His Majesty and not the property of the holder. The right to hold it may be duly cancelled on behalf of His Majesty.

F. P. Varcoe

Deputy Minister.

Ottawa, May 20, 1946.

MEMORANDUM FOR THE DEPUTY MINISTER:

150736

Re: Passports of deported Japanese

The Secretary of State for External Affairs requests your opinion whether the Japanese proceeding to Japan on May 28th should be required to surrender their passports to Canadian Authorities. I understand that this means those who have Canadian passports and it would, therefore, relate to naturalized Canadians and natural-born Canadians to whom passports have been issued.

I have not been able to find a great deal on the law relating to passports. It would appear that a passport is merely a document of identification requesting foreign countries and instructing officers of His Majesty in foreign countries to furnish aid and assistance to the person so identified. The documents so issued are issued for a fee.

In the case of Re Suwlasky, 1928 Reports of Bankruptcy and Companies Winding-up Cases, (U.K.) 1942 it would appear that it was held that a passport is the property of the Crown. This case is digested in the English and Empire Digest Supplement to have held as follows:

"A passport issued by the British Passport Office on behalf of the Secretary of State for Foreign Affairs to a person who afterwards becomes bankrupt is the property of the Crown and not the 'property' of the bankrupt within the Bankruptcy Act, 1914."

We have not been able to obtain this report from the Supreme Court Library owing to the confusion in which this Library is at the present time. It would not appear that a subject is entitled to the issue of a passport although I have not been able to find anything on this point.

In the Australian case The King v. Patterson 43, Argus Law Report, 144, (1937) it was held that the Minister had a discretion to refuse to issue a passport. That case, however, arose under the Passports Act, 1920 of the Australian Commonwealth. Evatt, J. indicated that in his view the Minister had a discretion under the statute to refuse passports and similarly to cancel them.

In the case of Rex. v. Brailsford, 1905, 2 K.B. 730 a criminal charge was laid against two individuals for conspiracy unlawfully to obtain a passport. The main technical question was whether this was an offence that could be prosecuted on indictment. There is some discussion of the nature of passports in the case. Lord Alverstone, C.J. states with reference to the nature of a passport "it is a document issued in the name of the Sovereign on the responsibility of the Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries, and it depends for its validity upon

the fact that the Foreign Office in an official document vouches for the respectability of the person named." (page 745.) Further at page 747 with reference to the nature of the offence he states "Assuming the matter to relate to the issue of a public document by a public department of State, and it is obtained by a false representation ... we are of opinion that it is injurious to the public and tends to bring about a public mischief."

Finally in the case of China Navigation Company v. Attorney General, 1932, 2 K.B. 197 the question arose whether the King was under a duty to furnish protection to his subjects abroad. In that case an English Shipping Company in China requested the King to furnish armed guards on board their ships as a protection against internal piracy. The guards were provided on terms that the company would pay for them. This action was for a declaration that the monies were illegally exacted. Scrutton L.J. held that the Crown is under no duty to afford military protection to British subjects in foreign parts. (page. 211.), and that there was no legally enforceable duty to protect British subjects' property from danger in foreign parts. (p. 213.). He did not decide the general question as to whether any duty exists. Lawrence and Slesser L.J.J. considered the relationship which arose out of allegiance. Lawrence says "Whatever may be the extent of the duty that the King owes as liege Lord or as defender of the realm - and I do not propose to attempt to define the limits of that duty - I am clearly of opinion that it does not extend to the provision of military guards ..." (223.). Slesser L.J. takes a similar view (ps. 243-247).

There can be no doubt that naturalized British subjects deported to Japan can be asked to surrender their passports inasmuch as they immediately upon leaving Canada cease to be British subjects. With reference to the natural-born British subjects it is submitted that the Crown may cancel the passports whether or not it owes an absolute duty of protection. It may be that it will still owe the duty of protection to some extent.

Attached is a draft letter.

D.W.M.

PLEASE ADDRESS
THE DEPUTY MINISTER OF JUSTICE
OTTAWA

OTTAWA May 20, 1946.

BY HAND

To: The Acting Under Secretary of State for External Affairs.

150736

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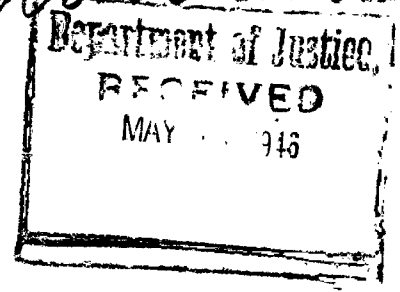
would appear to be

and not the property of the holder

Deputy Minister.

duly

W.A. Munnell



DEPARTMENT OF
EXTERNAL AFFAIRS
CANADA

REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

Ottawa, May 13, 1946.

Please refer to our
file 3363-D-40C.

URGENT

BY HAND

To: The Deputy Minister of Justice,
Department of Justice, Ottawa.

Re: Passports of deported Japanese.

Mr. Pammett of the Department of Labour has referred to this Department an enquiry concerning the deportation of Japanese, which involves the interpretation of Orders in Council 7355, 7356 and 7357 of December 15, 1945.

Mr. Pammett desires to know whether on embarkation on the 28th of this month, those proceeding to Japan should be required to surrender their passports to the Canadian authorities.

In view of the obvious urgency of this matter, I would be grateful for your opinion at your very earliest convenience.

J. W. H. [Signature]
Acting Under Secretary of State
for External Affairs.