

Canada v. Malsufuro

In re Saddjiro Malsufuro et al.

[1908] B.C.J. No. 24

13 B.C.R. 417

British Columbia
County Court of Vancouver

Grant Co. Ct. J.

Heard: March 19, 1908.
Judgment: March 25, 1908.

Counsel:

Haney, and Schultz, for the applicants.
Lucas, contra.

1 GRANT CO. CT. J.:-- Each of the above named applicants, through his solicitor, in accordance with the provisions of section 17 of the above Act, filed with the Clerk of the County Court of the County of Vancouver a written notice of intention to present at the March sitting a certificate shewing length of residence in Canada, the taking of the oaths of residence and allegiance, and of his being of good character, and their names were duly posted by the clerk as required by subsection 2 of section 17.

2 Before the opening of the Court at which said certificates would be presented, objections to the naturalization of said aliens were filed by Edward Alexander Lucas, a British subject, with the clerk, on the following grounds:

1. That the applicants are subjects of the Emperor of Japan, and are not free to swear allegiance to any foreign sovereign.
2. That the applicants do not intend to reside permanently in Canada.
3. That the applicants do not bear true allegiance to His Majesty, King Edward VII.
4. That the applicants have no conception of the nature of the oaths of residence and allegiance taken by them. [13 BCR Page418]
5. That the said oaths of allegiance and residence as taken by the said applicants are not binding upon them.

6. That the applicants are making these applications for the purpose of entitling them to certain privileges granted only to British subjects and have no intention of becoming bona fide British subjects or of serving His Majesty the King.

3 Upon the opening of the Court when the said certificates were presented and the particulars thereof were openly announced the said objector through Mr. F.G.T. Lucas, his counsel, offered the same objections to the naturalization of said aliens and asked that a day be fixed for the cross-examination of said aliens upon their oaths of residence and allegiance.

4 This Court, as far as the purposes of naturalization were concerned closed its sittings for the month of March on the 9th of March when counsel for the objector again urged his objections to the naturalization of said aliens and asked for their cross-examination upon their said affidavits and for a hearing in a summary way of the matters of the said objections, and a day for same being set, counsel for the said aliens and objector were heard and the hearing in a summary way further adjourned for judgment upon the objection of counsel for the aliens that the Court has no jurisdiction in the matter; (a.) That the application is not a proper one; (b.) That the objections filed are not within the Act; (c) That if so they are not properly before the Court; (d.) That the objections as stated are not a proper subject for cross-examination; (e.) That the objector is not properly before the Court.

5 As to the objections of counsel for the aliens to the jurisdiction of the Court and the nature and scope of the objections, the answer is found in the Act itself. Section 18, in part, says:

"At any time after the filing of any notice (that is of intention to present the certificate aforesaid) and previous to the sittings of the Court any person objecting to the naturalization of the alien may file in the office of the clerk an opposition in which he shall state the grounds of his objections."

6 By section 19, sub-section 2:

"Where no opposition has been filed to the naturalization of an applicant, and no objection thereto is offered during the sittings, the Court, on the last day of the sittings shall direct that the certificate of the applicant be filed of record in the Court."

7 And by section 22: [13 BCR Page419]

"The alien shall after the filing of such certificate be entitled to a certificate of naturalization duly authenticated under the seal of the Court."

8 By sub-section 3 of section 19:

"If such opposition has been filed or objection offered the Court shall hear and determine the same in a summary way, and shall make such direction or order in the premises as the justice of the case requires."

9 From the plain reading of the above sections, when objections are filed before, or taken during, the sitting of the Court, the Court shall hear and determine the same in a summary manner. To hear and determine the matter means to decide it upon the merits: *In re Madden* (1871), 31 U.C.Q.B. 333. It is optional with "any person" whether or not he will file an opposition or take an objection to the naturalization of an alien, but having taken or filed his objection to the naturalization of an alien,

the Court must deal with the same upon the merits and make such direction or order in the premises as the justice of the case requires.

10 On the argument it was contended by counsel for the applicants that the objections were really an appeal from the justice of the peace or notary public in granting the certificate presented to the Court and that *In re Webster* (1870), 7 C.L.J. 39, was an authority that the Court could not go behind the said certificate and inquire whether the evidence upon which it was granted was sufficient; that it must be presumed that the official who granted it saw that the provisions of the Act had been complied with. While *In re Webster* seems to have been followed as an authority as to the weight to be attached to the certificates presented on the part of the applicant, counsel for the objector contends that the amendments to the Naturalization Act passed in 1903 and now being Chapter 77, R.S.C. 1906, especially sections 17, 18 and 19 have changed the law as it existed when the decision in *In re Webster* was rendered and that as the law now stands the judge not only has the right but should go behind the certificate of the justice or notary if necessary, to get at the real facts of the matter so as to be able to give the order which the justice of the case requires. By the Act of 1868 under which *In re Webster* was decided instead of the provisions now contained in sections 17, 18 and 19 aforesaid, it was enacted as part of section 5 thereof: [13 BCR Page420]

"And if during such general sitting the facts mentioned in such certificate are not controverted, or any other valid objection made to the naturalization of such alien, such Court, on the last day of such general sitting shall direct that each certificate be filed of record in the said Court, and thereupon such alien shall be thereby admitted and confirmed in all the rights and privileges of British birth."

11 The effect of the decision in *In re Webster* was to make the judges little more than ministerial officers in carrying out the decrees of the justices of the peace and notaries as to who should become naturalized British subjects, and as might have been expected the most glaring irregularities occurred in obtaining the certificates of naturalization. These irregularities were brought to the attention of the Dominion Government in 1902 in the report of the Royal Commission on Chinese and Japanese Immigration where the following appears at page 357:

"It is certain that many who were naturalized never resided in Canada for one full year; some of them may have resided here during the fishing season only for a part of three years and yet hundreds of these men who had not complied with the law were granted naturalization papers and received their licence to fish."

12 With a knowledge of the gross irregularities as to the granting of naturalization papers in accordance with the decision in *In, re Webster* the Naturalization Act of 1903 was passed. In sections 17, 18 and 19 is found for the first time in any Canadian Naturalization Act provision for filing with the clerk of the Court notice of intention to apply for naturalization papers, for posting up of a list of the names of the said applicants, for filing an opposition to the granting of naturalization to an alien, and for the Court hearing and determining the same in a summary way and making such directions as the justice of the case may require.

13 It is permissible in the interpretation of the statute to look at the circumstances under which an amendment of the law is made in order to understand the objects aimed at by the Legislature: see Lord Halsbury in *Eastman Photographic Materials Company v. Comptroller-General of Patents, Designs and Trade Marks* (1898), A.C. 571 at p. 576; *Thesiger, L.J., in Yewens v. Noakes* (1880), 6

Q.B.D. 530 at p. 535; and to consider whether the statute was intended to alter the law or leave it as it was before. I cannot express myself more clearly than in the [13 BCR Page421] words of Cozens-Hardy, L.J., in *In re A Debtor* (1903), 1 K.B. 705 at p. 710:

"As a matter of common sense, I ask, was the section intended to alter the law, or to leave it exactly as it stood before? The only answer must be that it was intended to alter the law."

14 To what purpose was the law to be amended? I should say to remedy the mischief or defect in the law as it was at that time being administered; that is, to prevent as far as possible the fraudulent naturalization of aliens. It is laid down in the judgment of the Court in *Shaw v. Great Western Railway Co.* (1894), 1 Q. B. 373, that there is a presumption that statutes passed to amend the law are directed against defects which have come into notice about the time when those statutes were passed. I think that when we consider the Act as it stood when *In re Webster* was decided, the frauds or irregularities perpetrated under it when administered in accordance with that decision, as shewn by the report of the Royal Commission and the recommendations made to said Commission of "giving to the judge to whom the J.P. or notary's certificate is presented the power to take such measures to satisfy himself that the facts stated in the certificate are true," and the Act as it now stands with the new provisions contained in sections 17, 18 and 19, the presumption is not only legitimate but irresistible that Parliament intended to change the scope of the judge's duty as circumscribed in the decision in *In re Webster* and to give the judge the power to take such measures as might be necessary to satisfy himself that the facts stated in the certificate presented to the Court are true and to inquire into the claims and fitness of the applicant to become a British subject.

15 I therefore order that the certificates of the notary in these matters be not now filed and that the said applicants appear before this Court for cross-examination on their oaths of residence and allegiance taken herein and for examination on such other matters relating to the claim for naturalization as to the judge may appear necessary.

Order accordingly.

