Aho (Re)

Re Fukuichi Aho

[1909] B.C.J. No. 72

9 W.L.R. 652

British Columbia
County Court of Vancouver

Grant Co. Ct. J.

January 11, 1909.

---

1 **GRANT CO. CT. J.**:-- At the opening of the Court on Monday 4th January, 1909, application was made to this Court for certificates of naturalisation for the above named persons, and at the time of the application a certificate of a notary public, in form B. in the schedule to the Act, was read, certifying that the person on whose behalf the certificate had been given had taken the oaths of residence and allegiance required by the Act, and farther that the official giving the certificate had reason to believe and did believe that the application for naturalisation, within the period of 3 years preceding the day of taking the oath of residence, had been a resident of Canada, and that the applicant was a person of good character, and that there existed to his knowledge no reason why the applicant should not be granted all the rights of a natural-born British subject. Upon certificate B. being read in open Court, I asked the counsel for the applicants what evidence there was before the notary public upon which certificate B. had been granted, as, under sec. 15 of the Naturalisation Act, it was certainly contemplated that evidence should be produced before the official granting certificate B., as to the length of residence of the applicant within Canada, of the intention to reside in Canada when naturalised, and also that the applicant was of good character. Mr. H.E.A. Robertson, counsel for one of the applicants, took the ground that, in the face of certificate B., the Court was powerless to make any such inquiry, and as a matter of course should make the order for the issuance of the certificate of naturalisation; that its functions were merely ministerial and not judicial.

2 As the matter is one of very considerable importance, I have thought fit to look very carefully into the matter in order to ascertain what is or may be required of any alien who seeks the privileges of naturalisation. By sec. 13 of the Act it is provided that any alien who has resided in Canada for a term of not less than 3 years, and intends when naturalised to reside in Canada, or serve under the government of Canada, may take and subscribe the oaths of residence and allegiance in form A. and apply for a certificate in form B.

3 It will be observed that the alien cannot under the Act take the said oaths or apply for a certificate in form B. before he has resided at least 3 years in Canada, and intends when naturalised to re-

main therein. Section 14 states that the oaths may be taken before a Judge of a court of record, a commissioner authorised to administer oaths, a justice of the peace, a notary public, or a stipendiary or police magistrate, the first named official being the only one necessarily learned in the law.

4 By sec. 15 the alien, on his application for certificate in form B., shall adduce, in support of such application, such evidence of his residence and intention to reside as the person before whom he takes the oaths aforesaid requires, and such person, on being satisfied with such evidence, and that the alien is of good character, shall grant the certificate in form B.

5 To epitomise - the alien must have lived in Canada at least 3 years with intention to remain, before he can legally take the oaths of residence and allegiance or make the application for a certificate in form B.; and when he applies to any of the persons authorised by the Act to take such oaths, he shall adduce, to such person applied to, evidence of residence in Canada for at least 3 years and intention to reside in Canada when naturalised. When this evidence is adduced, and the official is satisfied with its truthfulness, and also that the alien is a person of good character, he shall then grant the alien a certificate in form B.; but until there is evidence before the official shewing the requisite period of residence, intention to reside in Canada, and good character of alien, there is no authority given said official to grant the certificate in form B.; and the granting of the same without such evidence savours very strongly of an attempt to mislead the Court.

6 The construction put upon sec. 19 of the Act by Mr. Robertson would work no hardship if all the persons administering said oaths and granting certificates in form B. insisted upon the production of proper evidence of residence, intention, and character before the taking of the oaths or the granting of certificate, for then the safeguard of careful scrutiny would be thrown around society - but, with that safeguard wholly eliminated, the form B. presented under sec. 19 becomes an entirely different document from that provided for by sec. 15, and as such is not such a certificate as the Court should consider without the allegations therein being verified.

7 That the spirit and intention of sec. 15 of the Naturalisation Act has been entirely lost sight of by many of the persons taking the oaths and granting certificate in form B. is abundantly proved by the evidence taken before the Royal Commission on Chinese and Japanese Immigration in 1902, as see pp. 351 to 354 of the report thereof; and that the same laxity or disregard as to the requirements of said section still prevails is evidenced by the admissions of several members of the Bar on the presentation of their own certificates in form B., some of whom excused themselves on the very flimsy ground that "these certificates had always been accepted as a matter of course." Mr. Robertson, in his argument, says in effect: "It may be all true as to the provisions of sec. 15 of the Act being ignored by the persons granting the certificate in form B., and the same may be granted without and evidence of residence, intention, or character, but that is none of the Court's business; all the Court has got to do, notwithstanding the admissions of failure to observe the requirements of the section, is to accept that as genuine of which there is no evidence, or an admission to the contrary, and to complete the farce by having the act verified by the seal of the Court." To this argument I fail to subscribe. I take it that there is inherent jurisdiction in this Court to protect itself from being imposed upon, as I submit it has been for years by many who have sought and obtained naturalisation without complying with the conditions required by the Act; and that such a state of affairs was only made possible by the thoughtlessness of persons granting certificates in form B., in the absence of the evidence on which the same should have been granted.

8 An alien seeking naturalisation in England must present to one of the principal Secretaries of State a memorial praying for a grant of a certificate of naturalisation, which memorial shall state

name, age, address, calling, period of residence, and intention to reside, which facts must be verified by affidavit of the applicant, and also by a declaration made in like manner by 4 householders who are natural-born British subjects, who shall also vouch for the respectability of the applicant; and in most of the States of the United States of America, before a certificate of naturalisation can be obtained, the applicant must, besides his own sworn statement, produce to the Court a sworn statement of at least 2 credible witnesses, who must be citizens of the State, that he has resided in the State for the required period and is a person of good character.

9 It will thus be seen that if the spirit of our Act is strictly observed, it is not more rigorous than similar Acts of the countries above named; and I do not think I am going too far to hold that before any of the officials who are authorised to take the oaths or grant the certificate in form B. should do so, he should have before him evidence of at least 2 credible natural-born Canadian subjects, shewing the time the alien has been a resident in Canada, that he is a person of good character, and intends when naturalised to remain in Canada, and that the evidence of such witnesses should be taken down in writing and filed with the clerk of the Court before which the certificate is to be read on or before the opening of the Court at which the certificate is to be read, and this is what I shall require hereafter in all cases. If those having applications now before the Court have not the evidence upon which the certificates were granted, the evidence may be supplied at any time within 2 months.