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HIGH COMMISSIONER FOR CANADA

SUBJECT: JAPAN - TREATMENT OF JAPANESE IN CANADA.

LATEST ITEM		HOW DISPOSED OF	BY
From or To	Dated		

Next Number

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AR23/16.

A.R.
Entered.

OFFICE OF THE PRIME MINISTER
CANADA

Ottawa, May 13, 1947.

Norman Robertson, Esq.,
High Commissioner for Canada
in the United Kingdom,
Canada House,
London, S.W.1, England.

Dear Norman:

You might be interested to see the enclosed report which has just been published by the Department of Labour on the re-establishment of Japanese in Canada between 1944 and 1946. I think there are some other matters that might have been put in the report, and a few things that might have been dealt with rather differently, but, on the whole, it should be a helpful document.

The Cabinet last week agreed on terms of reference for a one-man commission to be set up to hear claims by Japanese for compensation with regard to property losses. The terms finally decided on empower the Commissioner to hear claims "that by reason of the failure of the Custodian to exercise reasonable care in the management or disposition of the real and personal property vested in the Custodian..... the amount received by him (the Japanese) for such property was less than the market value thereof at the time of the evacuation of the owner". No compensation is to be made in respect of any loss that arose while the property was in the custody of a person other than the Custodian. I think the above definition is not as clear as it might be and there may be some difficulty in interpretation. On the other hand, I suppose it may give a certain amount of flexibility that could provide a compensating advantage. The general ~~project~~ is not as broad as that adopted in the United States where a corresponding commission can hear claims in respect of any loss that is reasonably attributable to the evacuation.

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As you will have seen from Hansard, there was quite a debate on the Japanese policy when the Orders in Council under the War Measures Act were being considered for inclusion in the schedule to the Continuation of Transitional Measures Act. The government met with some criticism on both sides, but the burden of the attack was and is mainly that all discriminatory regulations should be removed. In actual fact the only ones now remaining are restrictions on movement and settlement within British Columbia and prohibition on the acquisition of fishing licenses for the coast. If the Commission to handle compensation is reasonably successful, I think the government will have come out of an embarrassing and difficult problem as well as could have been expected.

On the immigration front the Prime Minister's statement of May 1st seems to have taken virtually all the sting out of the criticisms that were being levelled. It reassured the British Columbia Members, who were getting a bit frightened with regard to Chinese immigration, and, while not announcing any astronomic figures, it, in large part, met the views of those who feel that our immigration should be more active. I think perhaps its greatest strength was that it was moderate and reasonable and, as a result, rather difficult to pull apart.

Yours sincerely,

Gordon.

(R. G. Robertson)
Secretary.

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OFFICE OF THE PRIME MINISTER
CANADA

Ottawa, January 29, 1947.

AIR MAIL

Personal

N. A. Robertson, Esq.,
High Commissioner for Canada,
Canada House,
London, England.

Dear Norman:

I thought you might wish to see what is almost the end of the road on the Japanese policy. The consistency of the policy is a bit more apparent in the announcement than in the record.

As you can imagine, there was a very long and arduous debate in Cabinet, before the matter was decided. Surprisingly enough, the chief resistance to the new liberalism did not come from whence it might have been expected. The main argument in favour of carrying through the policy of deportation came from rather closer to our departmental home.

The Prime Minister's announcement has been pretty well received in British Columbia, it seems. The way had been prepared somewhat by a conversion of the Vancouver Sun. The Toronto Star and the Montreal Star are still not satisfied and have attacked the government vigorously for retaining travel restrictions and for not clearing the status of the people who left voluntarily. The Globe and Mail has issued some words along the same line, but with a rather more hollow ring.

I think it is perfectly clear that the line now taken is the least that the government can get away with at the forthcoming session. My own guess is that the travel controls may also have to be thrown

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overboard, when the proposal is raised of continuing them for another period under the new transitional powers legislation.

You will have heard that the government has decided to repeal the Chinese Immigration Act. The Chinese Ambassador has welcomed this as a "first step". We have now moved from Chinese racial discrimination to the broader Asiatic race line. The next step will, I think, require a quota system before it can be taken. Some slight changes in admissible categories under the Immigration Act will probably be made shortly, and perhaps something positive re D.P.'s, but I doubt if things will go much beyond this at the present session.

With best wishes to yourself and Jettie,

Yours sincerely,

Gordon

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Prime Minister's Office

Press Release January 24, 1947

The Prime Minister, Mr. Mackenzie King, announced today that the government has decided that it is unnecessary to continue in force orders in council permitting as an emergency measure the deportation from Canada of persons of Japanese origin. Assistance will, however, be continued for voluntary departure from Canada.

In making his announcement, the Prime Minister issued the following statement:

The decision of the government respecting certain orders in council relating to persons of Japanese origin in Canada marks the substantial completion of a program contained in the statement I made in the House of Commons on August 4, 1944. At that time I indicated the following "tentative measures" which the government proposed to put into effect:

(a) Separation of the loyal from the disloyal among the persons of Japanese origin in Canada, and the removal from Canada of those who were disloyal;

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(b) Provisions to enable those loyal to Canada to remain and be treated "fairly and justly"; and

(c) Settlement throughout Canada, rather than exclusively in British Columbia, of persons of Japanese origin remaining in the country.

Under the provisions for assisted movement from Canada which the government put into effect, the separation of those whose continued presence would be undesirable in Canada has been accomplished on a voluntary basis. Nearly 4,000 persons of Japanese origin have now left Canada and returned to Japan. Among these were the Japanese whose deportation would have been necessary had they not gone voluntarily. Accordingly the provisions of the Order in Council (P.C. 7355 of December 15, 1945) permitting deportation as an emergency measure have been repealed. In view of the government's decision it is no longer necessary to continue the authority given by the Order in Council (P.C. 7357 of December 15, 1945) authorizing the establishment of a special commission to investigate the loyalty of persons of Japanese origin. That order, therefore, has also been repealed.

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The government is retaining the authority to provide free passage and financial assistance to persons of Japanese origin wishing to move to Japan on a voluntary basis. The Order in Council (P.C. 7356 of December 15, 1945) respecting the revocation of the Canadian status of naturalized persons of Japanese origin who leave Canada, has also been repealed. This repeal will not, of course, restore the Canadian status of persons who have already lost such status.

With respect to the property of persons of Japanese origin who were removed from the Pacific coast, and whose property was sold by the Custodian, the government is of the opinion that the sales were made at a fair price. In all cases a complete appraisal was made before disposition. The total of the prices secured is greater in aggregate than the total appraisal value. To ensure, however, the fair treatment promised in 1944, the government is prepared in cases where it can be shown that a sale was made at less than a fair market value to remedy the injustice.

Of 20,558 persons of Japanese origin now in Canada, there are fewer than 1700 who have not as yet settled in new homes and employment. Of these

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1700, a large proportion are aged persons, invalids, or persons otherwise unemployable. These persons are still in government relocation centres.

In 1941, out of a total population of 23,149 persons of Japanese origin, 22,096 resided in British Columbia; only 1,153 resided in all the rest of Canada. On December 31, 1946, the total had decreased to 20,558. Of this number only 6,776 were in British Columbia; while 13,782 now live in other parts of Canada. Since 1941 the population of British Columbia of Japanese origin has declined by 15,320 - or approxirately two-thirds. In addition, the pre-war concentration on the coast has been eliminated.

To assist in the resettlement of persons of Japanese origin the government provided free transportation to new locations in Canada, gave financial assistance in resettlement, and, through the Department of Labour, assisted in securing suitable employment outside British Columbia.

To ensure the success of the resettlement, the government has decided to continue the restrictions on movement which are at present in effect. The provision respecting fishing licences which applies

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to persons of Japanese origin will also be continued. All other Orders in Council and special controls respecting persons of Japanese origin, other than those necessary to complete the administration of assets already vested in the Custodian, have been revoked.

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From DOMINION

To EXTERNAL

Dated 3rd December, 1946.

37

Your telegram No. 2071 of December 2nd Appeal to Privy Council regarding Orders in Council concerning Japanese: Judgment delivered yesterday ruling that none of the Orders ultra vires and Appeal dismissed accordingly. Am sending you copies by airbag today. Solicitors are communicating directly with Justice.

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Message received in :
~~Ex. Chair~~
~~Govt. Code~~
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Cypher

Tel. No.

2071

Copy No. 1

File No. 35

From SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA

To HIGH COMMISSIONER FOR CANADA, LONDON.

Dated 2nd December 1946

Received 2nd December 1946

Distribution :—

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No. 2071. Understand that decision Privy Council regarding Order-in-Council concerning Japan has been handed down to-day. Please try to secure copy and send forward by air mail as soon as possible.

SECRETARY OF STATE FOR EXTERNAL AFFAIRS.

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AR. We know nothing of this —
— if you don't — query Miss Martin. HH.

New Westminster Diocesan Committee.

(In connection with the British Columbia and Yukon Church Aid Society).

The Diocese of New Westminster consists of districts covering an area of 30,000 square miles in the extreme south of British Columbia and on the western coast opposite to Vancouver Island. The Committee helps Pioneer Missions among the white population. Missions to the Oriental and Indian peoples in B.C., and gives educational assistance to ordination candidates.

Bishop : THE RIGHT REV. SIR FRANCIS HEATHCOTE, BART. D.D.

Chairman : The Rev. R. S. MARSDEN, 8, North Hill, N.6.
(formerly priest-in-charge of S. John's, North Vancouver).

Bishop's Commissary in England & Secretary to the Committee : Rev. J. A. B. MERCIER, Rector of Yate.

Hon. Treasurer : R. A. WOODS, Esq., Bank of England, E.C.

Bankers : Messrs. DRUMMOND'S BRANCH of the ROYAL BANK OF SCOTLAND, 49, Charing Cross, S.W. 1.

YATE RECTORY,
BRISTOL.

Aug. 20 1942

Sir,

I acknowledge with thanks the receipt, through Miss Martin? of the Trade Department, of a copy of a despatch from the Department of External Affairs, Ottawa?, dated July 3. 1942 in response to some enquiries which I made regarding Japanese in B.C.

Yours faithfully
J.A.B. Mercier

S. M. Johnson Esq.
High Commissioners Office
Canada House
London S.W. 1

25102 H.C.O. 21 AUG 42

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MEMORANDUM

To: Mr. Johnson.

Thank you very much indeed for the trouble you have taken in this matter. By your kind permission I am today sending a copy to Mr. Mercier of the despatch from the Department of External Affairs.

Oh. J. Martin.

17th August 1942

CANADIAN GOVERNMENT TRADE COMMISSIONER
CANADA HOUSE,
TRAFALGAR SQ.,
LONDON, S.W.1.

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First copies in a fortnight's time.
Might be a few minor errors in this copy.

5TH PROOF

~~Confidential~~

Privy Council Appeal No. 58 *of* 1946

The Co-operative Committee on Japanese Canadians and another - - - - - - - - - *Appellants*

v.

The Attorney-General of Canada and another - - *Respondents*

FROM

THE SUPREME COURT OF CANADA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2nd December , 1946

Present at the Hearing:

VISCOUNT SIMON
LORD WRIGHT
LORD PORTER
LORD UTHWATT
SIR LYMAN DUFF

[*Delivered by* LORD WRIGHT]

These are appeals by special leave brought by the Co-operative Committee on Japanese Canadians and the A-G of Saskatchewan from the opinion certified on the 20th February, 1946, by the Supreme Court of Canada upon a reference ordered by the Governor General in Council under Section 55 of the Supreme Court Act, Revised Statutes of Canada 1927, cap 35. The question referred for hearing and consideration was as follows:

"Are the Orders-in-Council dated the 15th December, 1945, being P.C. 7355, 7356, 7357 *ultra vires* of the Governor-in-Council either in whole or in part and if so in what particular or particulars, and to what extent?"

The recitals to the Orders-in-Council which it is sought to impeach show that they purport to have been made under the authority of The War Measures Act. That Act was first passed by the Parliament of Canada in 1914 and is now chap. 206 of The Revised Statutes of Canada 1927. Section 2 provides that the issue of a proclamation by His Majesty or under the authority of the Governor-in-Council shall be conclusive that war, invasion or insurrection real or apprehended exists and of its continuance until by the issue of a further proclamation it is declared that war, invasion or insurrection no longer exists. The proclamation first called for by this section was duly made but no proclamation that the war no longer existed has been made.

The relevant sections of this Act are as follow:—

"3. The Governor-in-Council may do and authorize such acts and things and make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection, deem necessary or advisable for the security, defence, peace, order and welfare of Canada; and for greater certainty but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor-in-Council shall extend to all matters coming within the classes of subjects hereinafter mentioned, that is to say:—

(*a*) Censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;

[ ]

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(*b*) Arrest, detention, exclusion and deportation;

(*c*) Control of the harbours, ports and territorial waters of Canada and the movement of vessels;

(*d*) Transportation by land, air or water and the control of the transport of persons and things;

(*e*) Trading, exportation, importation, production and manufacture;

(*f*) Appropriation, control, forfeiture and disposition of property and of the use thereof.

(2) All orders and regulations made under this section shall have the force of law. . . ."

" 6. The provisions of the three sections last preceding, shall only be in force during war, invasion or insurrection, real or apprehended."

The three Orders-in-Council were all made on the 15th December, 1945.

The preamble to the first Order (P.C. 7355) contains the following recitals:—

Whereas during the course of the war with Japan certain Japanese Nationals manifested their sympathy with or support of Japan by making requests for repatriation to Japan and otherwise;

And whereas other persons of the Japanese race have requested or may request that they be sent to Japan;

And whereas it is deemed desirable that provisions be made to deport the classes of persons referred to above;

And whereas it is considered necessary for the security defence peace order and welfare of Canada that provision be made accordingly.

The first Order (Section 2, subsections 2, 3 and 4) then authorizes the Minister of Labour to make orders for deportation " to Japan " of the following persons.

(1) Every person of 16 years of age or over, other than a Canadian national, who is a national of Japan resident in Canada and who had since the 8th December, 1941 (the date of the declaration of war by the Dominion against Japan) made a request for repatriation or who had been detained under certain regulations and was so detained on 1st September, 1945.

(2) Every naturalized British Subject of the Japanese Race of 16 years of age or over resident in Canada who had made request for repatriation provided that such request had not been revoked in writing before midnight on 1st September, 1945.

(3) Natural born British Subjects of the Japanese Race of 16 years of age or over resident in Canada, who made a request for repatriation and did not revoke it in writing before the Minister had made an Order for " deportation."

Subsection 4 of Section 2 provided as follows:—

(4) The wife and children under 16 years of age of any person for whom the Minister makes an order for deportation to Japan may be included in such order and deported with such person.

The remaining provisions of this Order are of an ancillary or administrative nature.

The second Order (P.C. 7356) provides that any person being a British Subject by naturalization under the Naturalization Act, cap. 138, A.S.C. 1927, who is deported from Canada under the provisions of P.C. 7355, 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.

The third Order (P.C. 7357) provides for the appointment of a Commission to make inquiry concerning the activities, loyalties and extent of co-operation with the government of Canada during the war, of Japanese Nationals and naturalized persons of the Japanese race in cases where their names are referred to the Commission by the Minister of Labour for

investigation with a view to recommendation whether in the circumstances of any such case, such persons should be deported. The Commission was also at the request of the Minister of Labour to inquire into the case of any naturalized British Subject of the Japanese Race who had made a request for repatriation, and make recommendations. It was then provided that any person of the Japanese Race who was recommended by the Commission for deportation, should be deemed to be a person subject to deportation under the provisions of P.C. 7355, and as and from the date upon which he left Canada in the course of deportation, he should cease to be either a British Subject or a Canadian National.

There is one further Act of the Parliament of the Dominion to which it is necessary to refer—the National Emergency Transitional Powers Act 1945. This Act was assented to on the 18th December, 1945. It was to come into force on the 1st January, 1946, and on and after that day the war against Germany and Japan was for the purposes of the War Measures Act to be deemed no longer to exist. The Act was to continue in force until the 31st December, 1946, or if Parliament were not then sitting until a date determined by the sitting of Parliament.

The Act recites the War Measures Act and the continuance of a national emergency arising out of the war since the unconditional surrender of Germany and Japan, and the necessity that the Governor-in-Council should exercise certain transitional powers during the continuation of the exceptional conditions brought about by the war and the necessity that certain acts and things done and authorized, and certain orders and regulations made under the War Measures Act be continued in force, and that it was essential that the Governor-in-Council be authorized to do and authorize such further acts, and make such further orders and regulations as he might deem necessary or advisable by reason of the emergency and for the purpose of discontinuance in an orderly manner as the emergency permits, of measures adopted during and by reason of the emergency.

By Section 2 of the Act the Governor-in-Council was given power to make orders and regulations as he might, by reason of the continued existence of the National emergency, arising out of the war against Germany and Japan, deem necessary or advisable for certain purposes set out therein. Those purposes do not include arrest, detention, deportation, or exclusion but do include under subsection (e)

"Continuing or discontinuing in an orderly manner as the emergency permits, measures adopted during and by reason of the war." Subsection 3 of Section 2 provides for every Order-in-Council passed under the Act, being laid before Parliament and being annulled upon resolution of the Senate or the House of Commons. Section 4 provides as follows:

"Without prejudice to any other power conferred by this Act, the Governor-in-Council may order that the Orders and regulations lawfully made under the War Measures Act or pursuant to authority created under the said Act in force immediately before the day this Act comes into force, shall while this Act is in force, continue in full force and effect subject to amendment or revocation under this Act."

On 28th December, 1945 the Governor-in-Council passed Order-in-Council P.C. 7414, pursuant to Section 4 of the National Emergency Transitional Powers Act, 1945 providing that all orders and regulations lawfully made under the War Measures Act or pursuant to authority created under the said Act in force immediately before the day the National Emergency Transitional Powers Act, 1945, should come into force, should, while the latter Act is in force, continue in full force and effect subject to amendment or revocation under the latter Act.

The result of this legislation is that the Orders-in-Council are now in force, if at all, by virtue of the Transitional Act.

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In connection with the question raised by this case, three Acts of the Imperial Parliament are relevant.

The first of these is the Colonial Laws Validity Act, 1865:

Sections 2 and 3 of that Act run as follows:—

"2. Any Colonial Law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the Colony to which such law may relate or repugnant to any Order or Regulation made under Authority of such Act of Parliament, or having in the Colony the force and effect of such Act, shall be read subject to such Act, Order, or Regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

3. No Colonial Law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, Order or Regulation as aforesaid."

The second is the Statute of Westminster passed in the year 1931 which was duly adopted by the Parliament of Canada. Section 2 of that Act is in the following terms:—

"2.—(1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion."

The third Act is the British Nationality and Status of Aliens Act, 1914. Part I of that Act relates to Natural Born British Subjects. Part II relates to the Naturalization of Aliens and Section 9 provides that Part II shall not nor shall any certificate of naturalization granted thereunder have effect within any of the Dominions specified in the Schedule (which includes Canada) unless the legislature of the Dominions adopts Part II. The Act of the Imperial Parliament was subsequently amended. The Parliament of Canada by the Naturalization Act, 1914 did not in terms "adopt" the Imperial Act of 1914, but passed almost identical legislation. In 1915 the Parliament of Canada amended the Naturalization Act so as to introduce the amendments that had been made by the Parliament of Great Britain in Part II of the British Nationality and Status of Aliens Act, 1914. That Act of 1915 contained a recital to the effect that the Dominion had adopted Part II of the British Act.

It is convenient at this stage to deal with the question raised as to the effect of this legislation of the Dominion on this topic.

The contention of the Appellants was that the Parliament of Canada did "adopt" Part II of The Imperial Act in the sense in which that word was used in the Imperial Act and that in consequence Part II formed part of the law of the United Kingdom extending to the Dominion. The contention of the Respondents was that the Canadian Statutes are only parallel legislation. In arriving at a conclusion as to the advice their Lordships think it right to tender to His Majesty they find it unnecessary to express an opinion as to the correctness or otherwise of the contention of the Appellants. Their Lordships will assume that the Appellants are right in their contention, but they do not express any opinion one way or another upon it.

There was a considerable diversity of opinion between the members of the Supreme Court on some of the points which fell for decision under the reference. In one important respect at least—the invalidity of sub-section (4) of Section 2 of P.C. 7355—the views of the majority of the Court

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were adverse to the respondents. No cross appeal was lodged. This in the circumstances was only the absence of a formality. A determination upon the legal effect of the orders as a whole is necessary in order to arrive at a conclusion upon the matters in respect of which the appellants appealed. The whole matter was fully debated before their Lordships and their Lordships accordingly propose to deal with the orders in their entirety.

Their Lordships now turn to the question at issue.

Upon certain general matters of principle there is not since the decision in *Fort Francis Pulp and Power Co.* v. *Manitoba Free Press* [1923] A.C. 695, any room for dispute. Under the British North America Act property and civil rights in the several provinces are committed to the Provincial Legislatures, but the Parliament of the Dominion in a sufficiently great emergency such as that arising out of war has power to deal adequately with that emergency for the safety of the Dominion as a whole. The interests of the Dominion are to be protected and it rests with the Parliament of the Dominion to protect them. What those interests are the Parliament of the Dominion must be left with considerable freedom to judge.

Again if it be clear that an emergency has not arisen or no longer exists, there can be no justification for the exercise or continued exercise of the exceptional powers. The rule of law as to the distribution of powers between the Parliaments of the Dominion and the Parliaments of the provinces comes into play. But very clear evidence that an emergency has not arisen or that the emergency no longer exists is required to justify the judiciary even though the question is one of *ultra vires*, in overruling the decision of the Parliament of the Dominion that exceptional measures were required or were still required.

To this may be added as a corollary that it is not pertinent to the judiciary to consider the wisdom or the propriety of the particular policy which is embodied in the emergency legislation. Determination of the policy to be followed is exclusively a matter for the Parliament of the Dominion and those to whom it has delegated its powers.

Lastly it should be observed that the judiciary are not concerned when considering a question of *ultra vires* with the question whether the Executive will in fact be able to carry into effective operation the emergency provisions which the Parliament of the Dominion either directly or indirectly has made.

It is unnecessary therefore for their Lordships to take into review or even to recount the particular circumstances obtaining within the Dominion that led to the Orders in question or the arrangements made with a view to their execution.

The validity of the War Measures Act was not attacked before their Lordships and consistently with the principles stated was not open to attack. The validity of the Orders was challenged on many grounds. Their Lordships have considered not only the points put forward on behalf of the Appellants but whether the orders were susceptible of criticism for reasons not put forward. Their Lordships are satisfied that all possible grounds of criticism were in one form or another included in the grounds on which the Appellants relied.

For the validity of the orders it is necessary *First* that upon the true construction of the War Measures Act, they fall within the ambit of the powers duly conferred by the Act on the Governor General in Council *Second* that, assuming the orders were within the terms of the War Measures Act, they were not for some reason in law invalid.

The points taken were first that the War Measures Act did not on its true construction authorise orders for deportation to be made as respects British subjects or Canadian Nationals and that it should in certain respects receive a limited construction: second that if the Act

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purported on its construction to authorise the making of such orders, yet the orders made would be contrary to the Imperial Statute British Nationality and Status of Aliens Act and therefore to that extent invalid: third that the provision contained in para. 2 (4) of P.C. 7355 (relating to the wives and children of persons in respect of whom an order for deportation had been made) was for a specific reason invalid: fourth that in any event the order made under the National Emergency Transitional Powers Act continuing the former orders of the Governor-in-Council was invalid.

The first point raises questions of construction with which their Lordships must now deal.

The language of the War Measures Act is in general terms but it was argued that certain limitations were as a matter of construction of the Act to be implied and that to the extent to which any order purporting to be made under the Act fell outside its proper ambit, the order would of necessity be invalid.

The first suggested limitation was based on the Colonial Laws Validity Act, 1865. At the date when the War Measures Act came into force legislation made by the Parliament was in its effect subject to the provisions as to repugnancy contained in the Act of 1865 and it was argued that the War Measures Act should be construed as confined in its possible ambit to the making of orders which would consistently with the Colonial Laws Validity Act, 1865, then be valid as law within the Dominion. If that was so the orders were not authorised by the War Measures Act in so far as they were repugnant to the British Nationality and Status of Aliens Act, 1914-18, which was an Act of the Imperial Parliament and in the appellants' contention extended to the Dominion as part of the law of the United Kingdom.

Their Lordships are unable to accept this contention. The effect of the Colonial Laws Validity Act, 1865, was only that Canadian legislation repugnant to the statutory law of the United Kingdom applying to the Dominion was inoperative. The only conclusion to be drawn from a consideration of the Colonial Laws Validity Act is that the War Measures Act did not on its true construction confer a power beyond the extent to which it might at the date of its use be validly exercised. The statutory law of the United Kingdom is not static and in their Lordships' opinion there is no justification for the imputation that the Parliament of Canada legislated upon the footing that it is static. The effectiveness of legislation of the Parliament of the Dominion at the date when those delegated powers are exercised, not the limitation on that legislation at the date when the War Measures Act was passed, is, so far as the Act of 1865 is concerned, the relevant matter.

Secondly, it was argued that, as a matter of construction, the War Measures Act did not authorise the making of orders having an extra territorial operation. This point was relevant by reason that the orders in question in terms authorised "deportation."

This point may be shortly disposed of. Extra-territorial constraint is incident to the exercise of the power of deportation (*A.G. for Canada* v. *Cain* [1906] A.C. 542) and was, therefore in contemplation. Any lingering doubts as to the validity in law of an Act which for its effectiveness requires extra-territorial application were, it may be added, set at rest by the Canadian Statute the Extra-Territorial Act, 1933.

Thirdly, it was argued that the War Measures Act should be construed as authorising only such orders as are consistent with the accepted principles of International Law and that the forcible removal to a foreign country of British subjects was contrary to the accepted rules of International Law. The Act therefore as a matter of construction did not, it was said, purport to authorise orders providing for such removal.

It may be true that in construing legislation some weight ought in an appropriate case to be given to a consideration of the accepted principles of International Law (cf. *Croft* v. *Dunphy* [1933] A.C. 156), but the nature of the legislation in any particular case has to be considered

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in determining to what extent, if at all, it is right on a question of construction to advert to those principles. In their Lordships' view those principles find no place in the construction of the War Measures Act. The Act is directed to the exercise by the Governor-in-Council of powers vested in the Parliament of the Dominion at a time when war, invasion or insurrection or their apprehension exists. The accepted rules of International Law applicable in times of peace can hardly have been in contemplation and the inference cannot be drawn that the Parliament of the Dominion impliedly imposed the limitation suggested.

The next question of construction arising under the Act has more substance. It was said that there was inherent in the word "deportation" as part of its meaning the necessity that the person to be deported was—as respects the state exercising the power—an alien. The express power given to expel persons from Canada was therefore limited to aliens i.e., persons who were not Canadian Nationals. It was not permissible to treat as authorised by the general power a power to make orders for deportation in relation to a class of persons impliedly excluded from deportation by the terms of the specific power. There was therefore an implied prohibition against the deportation of Canadian Nationals.

Upon this argument it may be conceded that commonly it is only aliens who are made liable to deportation and that in consequence, where reference is made to deportation, there is often imported the suggestion that aliens are under immediate consideration.

The dictionaries as might be expected do not altogether agree as to the meaning of deportation but the New English Dictionary gives as its definition "The action of carrying away: forcible removal especially into exile; transportation."

As a matter of language their Lordships take the view that "deportation" is not a word which is mis-used when applied to persons not aliens. Whether or not the word "deportation" is in its application to be confined to aliens or not remains therefore open as a matter of construction of the particular statute in which it is found.

In the present case the Act is directed to dealing with emergencies: throughout it is in sweeping terms; and the word is found in the combination "arrest, detention, exclusion and deportation." As regard the first three of these words nationality is obviously not a relevant consideration. The general nature of the Act and the collocation in which the word is found establish in their Lordships' view that in this statute the word "deportation" is used in a general sense and as an action applicable to all persons irrespective of nationality. This being in their Lordships' judgment the true construction of the Act, it must apply to all persons who are at the time subject to the laws of Canada. They may be so subject by the mere fact of being in Canada, whether they are aliens or British subjects or Canadian Nationals. Nationality *per se* is not a relevant consideration. An order relating to deportation would not be unauthorised by reason that it related to Canadian Nationals or British subjects.

Even if this were not the case the same result may be reached by another route. The general power given to the Governor-in-Council in the opening part of Section 3 of the Act is not in this statute limited by reference to the acts particularly enumerated and their Lordships see no reason for differing from the view expressed by Rinfret C.J.C. that the order was justifiable under that general power (See *King Emperor* v. *Sibnath Banerji* [1945] L.R. 72 I.A. 247).

There remains one further question of construction of The War Measures Act, namely, whether it authorised the making of an order which provided that deported persons should cease to be either British subjects or Canadian Nationals. That matter must be considered in light of views which their Lordships have already expressed as to the construction of the Act. They see no reason for excluding from the scope of the matters covered by the general power contained in Section 3 a power to take from persons who have in fact under an order for deportation left Canada their status under the Law of Canada as British subjects and Canadian Nationals.

AR 23/16

The result is that upon its true construction The War Measures Act authorised the making of orders for deportation of any person whatever be his nationality and the deprivation so far as the law of Canada was concerned of his status under that law as a British subject or Canadian National.

The next question is whether The Colonial Laws Validity Act, 1865 applies to the Orders of the Governor-in-Council. If it does, then in so far as they are repugnant to The British Nationality and Status of Aliens Act (which their Lordships are assuming to be an Act of the Imperial Parliament extending to Canada) they are invalid unless the provisions of the Statute of Westminster can be relied upon.

The contention of the Appellants was that the orders, though law made after the date of the Statute of Westminster, were not law made after that date by the Parliament of the Dominion. The activities of Parliament in the matter in question had, it was said, ceased in 1927. The orders were not of its making. The passing by the Parliament of The National Emergency Transitional Powers Act, 1945 was for the purpose in hand immaterial, for the reason that Section 4 empowered the Governor-in-Council to order the continuance only of orders and regulations "lawfully" made under the War Measures Act.

Their Lordships agree that in considering this particular matter the National Emergency Transitional Powers Act, 1945 cannot be prayed in aid of the validity of the orders, but in their opinion the orders in question were made "after the passing of this Act (i.e., the Statute of Westminster) by the Parliament of the Dominion" as that phrase is used in the Statute of Westminster. This again is a question of construction.

Both in sub-sections 1 and 2 of Section (2) of the Statute of Westminster the matter which is dealt with is "law", and that is a general term which includes not only statutes but also orders and regulations made under statutes. Undoubtedly the law as embodied in an order or regulation is made at the date when the power conferred by the Parliament of the Dominion is exercised.

Is it made after that date by the Parliament of the Dominion? That Parliament is the only legislative authority for the Dominion as a whole and it has chosen to make the law through machinery set up and continued by it for that purpose. The Governor-in-Council has no independent status as a law making body. The legislative activity of Parliament is still present at the time when the orders are made and these orders are "law". In their Lordships' opinion they are law made by the Parliament at the date of their promulgation. A contrary conclusion would in their Lordships' view place an artificial and narrow construction on wide terms used in an Act of Parliament the subject matter of which demands that a liberal construction should be put upon the language used.

In the result therefore the Colonial Laws Validity Act, 1865, affords no ground for questioning the validity of the orders.

The next matter arises on sub-para. (4) of para. (2) of P.C. 7355. Under that provision an order for deportation may be made as respects the wives and children (not over the age of 16 years) of persons with respect to whom an order for deportation has been made.

The case sought to be made runs as follows:

The recitals in the order relate only to the desirability of making provision for the deportation of persons referred to in sub-paras. 1, 2 and 3 of para. (2) of the order. In the case of the classes of persons referred to in sub-paras. 1, 2 and 3 (leaving aside detainees) request for repatriation was at some stage necessary; a request was considered by the Governor-in-Council to be a substantive matter, but no such request is required as respects the persons mentioned in sub-para. 4 and the only apparent reason for subjecting them to liability for deportation is that an order for deportation has been made as respects the husband or father. The order therefore not only does not show that by reason of the

existence of real or apprehended war it was thought necessary for the security, peace, order, defence or welfare of Canada to make provision for their deportation but, when considered in substance, shows that these matters were not taken into consideration. A deportation of the family consequential on the deportation of the father might indeed be thought desirable on grounds other than those requisite for a due execution of the powers given and, it is contended, it is apparent that it is grounds not set out in the statute which alone have here been taken into consideration.

The incompleteness of the recital is in their Lordships' view of no moment. It is the substance of the matter that has to be considered. Their Lordships do not doubt the proposition that an exercise of the power for an unauthorised purpose would be invalid and the only question is whether there is apparent any matter which justifies the judiciary in coming to the conclusion that the power was in fact exercised for an unauthorised purpose. In their Lordships' opinion there is not. The first three sub-paragraphs of paragraph 2 no doubt deal with the matter which primarily engaged the attention of the Governor-in-Council, but it is not in their Lordships' view a proper inference from the terms of those sub-paragraphs that the Governor-in-Council did not also deem it necessary or advisable for the security defence peace order and welfare of Canada that the wives and children under 16 of deportees should against their will also be liable to deportation. The making of a deportation order as respects the husband or father might create a situation with which, with a view to forwarding this specified purpose, it was proper to deal. Beyond that it is not necessary to go.

The last matter of substance arises on the National Emergency Transitional Powers Act, 1946.

It was contended by the Appellants that at the date of the passing of this Act there did not exist any such emergency as justified the Parliament of Canada in empowering the Governor-in-Council to continue the orders in question. The emergency which had dictated their making—namely active hostilities—had come to an end.

A new emergency justifying exceptional measures may indeed have arisen. But it was by no means the case that measures taken to deal with the emergency which led to the Proclamation bringing the War Measures Act into force were demanded by the emergency which faced the Parliament of Canada when passing the Transitional Act. The order under the Act continuing the orders in question was therefore *prima facie* invalid.

This contention found no favour in the Supreme Court of Canada and their Lordships do not accept it. The Preamble to the Transitional Act states clearly the view of the Parliament of the Dominion as to the necessity of imposing the powers which were exercised. The argument under consideration invites their Lordships on speculative grounds alone to overrule either the considered decision of Parliament to confer the powers or the decision of the Governor-in-Council to exercise it. So to do would be contrary to the principles laid down in *Fort Francis Pulp and Power Co.* v. *Manitoba Free Press* (*ubi supra*) and accepted by their Lordships earlier in this opinion.

One remaining matter relied upon by the Appellants should be mentioned. First it was said that the words " of the Japanese race " were so vague as to be incapable of application to ascertained persons. It is sufficient to say that in their Lordships' opinion they are not. All that can be said is that questions may arise as to the true construction of the phrase and as to its applicability to any particular person But difficulties of construction do not affect the validity of the Orders.

In the result their Lordships find themselves in agreement with the conclusion at which Rinfret C.J.C. and Kerwin and Tachereau J.J. arrived and for the reasons they have expressed will humbly advise His Majesty that none of the Orders-in-Council is in any respect *ultra vires* and that the Appeal should be dismissed. There will be no order as to costs.

(52065) Wt. 8013—5 12, 4, 6, 12, 8, 25 11/46 D.L. G. 338

AR 23/16

AR 23/16

In the Privy Council

THE CO-OPERATIVE COMMITTEE ON JAPANESE CANADIANS AND ANOTHER

v.

THE ATTORNEY-GENERAL OF CANADA AND ANOTHER

DELIVERED BY LORD WRIGHT

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1946

DEPARTMENT OF
EXTERNAL AFFAIRS
CANADA

A71/60.

Ottawa, July 3, 1942

NO. 427

HIGH COMMISSIONER FOR CANADA
18 AUG. 1942
A. R.

Sir,

I have the honour to refer to your despatch No. A.99 of June 19th in which you transmitted an enquiry from the Reverend J.A.B. Mercier about the treatment of Japanese in British Columbia. It has been the policy of the Canadian Government to remove all persons of Japanese racial origin from a protected area west of the Cascade Mountains and the following information which has been obtained from the British Columbia Security Commission concerns those persons who are being evacuated from this area.

In the work camps a distinction is made between Japanese nationals and Canadians of Japanese racial origin (whether Canadian nationality has been acquired by birth or naturalization) by assigning to each group certain areas in the camps. There is, however, no distinction as regards pay or food.

In the early stages of the movement it was found necessary to separate some of the men from the other members of their families. The working Japanese may be many miles from their dependents who are looked after in large centres in different parts of the interior of British Columbia. Recently

The High Commissioner for Canada in the
United Kingdom,
Canada House,
London, S.W.1.

AR 23
3/16

however this policy has been changed and a plan is being put into operation for re-uniting these Japanese families irrespective of whether they are Canadian or Japanese by nationality.

The responsibility for the education of the children lies with the Security Commission which has completed satisfactory arrangements with the different educational departments of the provinces to which Japanese children have been transferred. Under these arrangements they will continue their education in the ordinary manner in the public schools of the provinces.

The Japanese are not forbidden to obtain private employment in certain areas provided that they do not work for less than the standard rate of wage. While working on government projects or government-assisted projects the Japanese are partially self-supporting. Each worker has to assign $20.00 monthly for the maintenance of his wife and family. In addition the British Columbia Security Commission allows the wife $5.00 per month for the first child and $4.00 per month for each of the next four children.

If the husband is unable to work the Commission assumes full responsibility for his support allowing him the usual scale of relief paid to white people who are indigent in the locality in question.

AR 23/16

This report is obviously incomplete in that it does not describe the arrangements made with regard to the property of alien enemies and with regard to property which Canadians of Japanese racial origin have been compelled to relinquish in one way or another (e.g. fishing boats, berry farms, etc.). It is, however, probably sufficient for the purposes of the Reverand Mr. Mercier.

I have the honour to be,

Sir,

Your obedient servant,

for Secretary of State for
External Affairs.

AR 23/116

a71/40

No. A.99. 19th June, 1942.

Sir,

I have the honour to inform you that an enquiry has been received from the Reverend J.A.B. Mercier about the treatment of the Japanese in British Columbia. The Reverend J.A.B. Mercier is the Secretary of the New Westminster Diocesan Committee and, as part of his duties, publishes a pamphlet about conditions in New Westminster. He would like to know what policy the Canadian Government is following with regard to Japanese in the coastal areas of British Columbia. In particular he asks whether any distinction is made between Japanese born in Canada, Japanese naturalized in Canada and other Japanese.

2. Among the other questions he asks are whether the removal of Japanese means the breaking up of families, whether the Japanese who are removed are compelled to work upon Government work or whether they are free to take any employment which they may be able to obtain in the areas to which they are removed and what provision is made for the education of children.

3. Perhaps some general statement has been published in the Press or made in Parliament which would enable me to answer these questions. If such a statement has been made, I should be glad if you would send me a copy of it. If not, would it be too much trouble to let me have a short summary of the policy now being followed by the Government with regard to the Japanese in the coastal areas of British Columbia.

I have the honour to be,
Sir,
Your obedient Servant,

(Signed) D. M. JOHNSON.

(for) High Commissioner.

The Right Honourable
The Secretary of State for External Affairs,
Ottawa, Ont.,
Canada.

AR 23/116

MEMORANDUM

To: Mr. Johnson.

I have had some correspondence with my uncle, the Rev. J. A. B. Mercier, Bishop's Commissary in England and Secretary to the New Westminster Diocesan Committee (I attach his letter-head) who has to print an occasional leaflet about the diocese of New Westminster, and wishes to obtain some information about what is happening to the Japanese in British Columbia. He is specifically interested in the fate of those Japanese who belong to the Anglican Community, but the questions he now asks seem to call for official attention, and I would be most grateful for any information you can send him. I had better quote from his latest letter:

> "I understand from your letter that Japanese born in Canada and living there are British subjects, and that consequently they are not Japanese Nationals and presumably they get Canadian franchise.
>
> "I do not gather that the removal of Japanese necessarily means the breaking up of families, but that as a first step to security the men were removed from coastal areas. Are they set to work compulsorily upon Government work or are they free to take any employment which they can get in any non-protected areas? I understand the general feeling of people in British Columbia about the Japanese, but I wonder whether it would really be of economic advantage to British Columbia if the province was rid of Japanese. Is there enough labour for fishing and canning?".

In a previous letter he also raised this question of the removal of children with their parents, and asked what is likely to be done to provide for their education. I realise that some of these points cannot readily be answered from Canada House, but in view of the fact that he wishes to publish such information as he can obtain, it is no doubt better that he should receive a reply from official sources. As you know, I have already sent him copies of the three Press Notices which are on your file.

15th June 1942

O. M. J. Martin.

AR 23/116

New Westminster Diocesan Committee.

(In connection with the British Columbia and Yukon Church Aid Society).

The Diocese of New Westminster consists of districts covering an area of 30,000 square miles in the extreme south of British Columbia and on the western coast opposite to Vancouver Island. The Committee helps Pioneer Missions among the white population, Missions to the Oriental and Indian peoples in B.C., and gives educational assistance to ordination candidates.

Bishop : THE RIGHT REV. SIR FRANCIS HEATHCOTE, BART. D.D.

Chairman : The Rev. R. S. MARSDEN, 8, North Hill, N.6.
(formerly priest-in-charge of S. John's, North Vancouver).

Bishop's Commissary in England & Secretary to the Committee : Rev. J. A. B. MERCIER, Rector of Yate.

Hon. Treasurer : R. A. WOODS, Esq., Bank of England, E.C.

Bankers : Messrs. DRUMMOND'S BRANCH of the ROYAL BANK OF SCOTLAND, 49, Charing Cross, S.W. 1.

YATE RECTORY,
BRISTOL.
June 13 1942

AR 23/116

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& living there are British subjects
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of Japs necessarily means the

AR 23/116

Colonial Office,
Downing Street,
London S.W.1.
4-3-1942.

Dear Mr Ignatieff

I am extremely obliged to you for your courtesy and help in sending me a copy of the record of the Conference held in January last regarding the Japanese problem in British Columbia.

It is interesting and informative and I am, personally, impressed with the thorough way in which the difficulties of the problem were tackled and settled.

Yours sincerely,

S. J. Cole

G. IGNATIEFF. Esq.

AR 231/116

The War Office,

Curzon Street House,
Curzon Street,
W.1.

Your reference .....

23rd February, 1942.

Dear Ignatieff

I have your letter of the 21st February enclosing Minutes of the Conference held on the Japanese Problem in British Columbia, for which I thank you.

Yours Sincerely

E.C. Gepp

G.Ignatieff Esq.,
Office of the
High Commissioner for Canada,
Canada House,
London,
S.W.1.

AR 23/116

23rd February, 1942.

Dear Colonel Cole,

I am enclosing herewith, for your information, record of a Conference held in January last regarding the Japanese problem in British Columbia.

This paper it will be noted, contains an outline of the problem arising out of the concentration of a considerable number of Japanese nationals in British Columbia, and the policy which has been adopted by the Canadian Government in respect of Japanese nationals, under the present emergency.

Yours sincerely,

(Signed) C. JOHNSTONE

Lt.-Col. J.S. Cole,
Colonial Office,
S.W.1.

AR 23/116

21st February, 1942.

Dear General Gepp,

I am enclosing herewith, for your information, record of a Conference held in January last regarding the Japanese problem in British Columbia.

This paper, it will be noted, contains an outline of the problem arising out of the concentration of a considerable number of Japanese nationals in British Columbia, and the policy which has been adopted by the Canadian Government in respect of Japanese nationals, under the present emergency.

Yours sincerely,

(Signed) G. IGNATIEFF

Major-General E.C.Gepp,
The War Office,
Curzon Street House,
W.1.

AR 23
91/316

21st February, 1942.

Dear Mr. Roberts,

I am enclosing herewith, for your information, record of a Conference held in January last regarding the Japanese problem in British Columbia.

This paper, it will be noted, contains an outline of the problem arising out of the concentration of a considerable number of Japanese nationals in British Columbia, and the policy which has been adopted by the Canadian Government in respect of Japanese nationals, under the present emergency.

Yours sincerely,

(Signed) G. IGNATIEFF

W.St.C.H. Roberts, Esq.,C.M.G.,
Foreign Office.

AR 23
911/16

21st February, 1942.

Dear Mr. Head,

I am enclosing herewith, for your information, record of a Conference held in January last regarding the Japanese problem in British Columbia.

This paper, it will be noted, contains an outline of the problem arising out of the concentration of a considerable number of Japanese nationals in British Columbia, and the policy which has been adopted by the Canadian Government in respect of Japanese nationals, under the present emergency.

Yours sincerely,

(Signed) G. IGNATIEFF.

W.G. Head, Esq., M.B.E.,
Dominions Office,
S.W.1.

AR 23/116