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LETT, SHERWOOD "LEGAL DISABILITIES of the JAPANESE (INCLUDING SECOND GENERATION) IN BRITISH COLUMBIA [1934] FOLDER NO. 8

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CLUB OF THE UNIVERSITY OF BRITISH COLUMBIA

VOL. I. NO. I

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# LEGAL DISABILITIES OF THE JAPANESE (INCLUDING THE SECOND GENERATION) IN BRITISH COLUMBIA

by

SHERWOOD LETT

DECEMBER, 1934

ISSUED BY
AUTHORITY OF THE COMMITTEE FOR PUBLICATIONS

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## FOREWORD

To further the activities in realizing the three-fold objects of the Japanese Students' Club of the University of British Columbia, it has been decided to undertake publication projects. The present paper is the first of these ventures. It is our hope that the enterprise be but the initiation of a series of bulletins dealing with many problems including that of the Second Generations and with studies done by the members of this organization in all fields of knowledge.

This paper is an outgrowth from the excellent notes taken by the recording-secretary, Mr. Shinobu Higashi, of the address delivered by Mr. Sherwood Lett at the home of Mr. and Mrs. E. Kagetsu on November 27, 1934. We cannot assure our reader that this reproduction of the speech is accurate word for word. In fact the paper embodies some of the discussions which ensued after the lecture.

In this connection, few passing words regarding the author of this paper seem to be desirable. Mr. Lett is one of the active and prominent lawyers of Vancouver. However, his field of activity does not lie merely within the compass of barrister and solicitor. Being a member of the Alma Mater Society and one of the earliest Rhodes Scholar from our University, he is closely attached to various activities in the University circle. He is a member of the executive of the Japan Society of Vancouver to mention only two among many other offices he holds in the local and international affairs. Therefore, from whatever angle we view the Oriental question in British Columbia, Mr. Lett is one of the best fitted persons to speak upon this question. To the Japanese Students' Club it has been a great privilege to have been able to invite Mr. Lett and request him to address its members.

We know that the topic "The Legal Disabilities of the Japanese (including the Second Generations) in British Columbia" will be of great interest and of great inspiration to many of its readers.

Knowledge of this vital problem that concerns not only the Japanese population but also the white population of this province has been found to be deplorably meagre. One encounters on all hands misunderstandings and ill-will between Japanese-Canadians and other

Canadians because of this deficient knowledge. On the part of the Caucasian peoples one meets with vicious prejudice founded on a few personal experiences and ignorance surfeited by propagandistic statements; and on the part of the ordinary Japanese-Canadian, with the fact that sometimes he has not even a faintest inkling as to his own status, the discriminations heaped upon him, and the problem in perspective. Consequently, whenever he is interrogated upon this question, in many cases he returns answers that augment the bias of the white Canadians, and often the most offending replies.

With this in mind, the Japanese Students' Club has endeavored in the past towards educating the people of this province to a fair understanding of this great problem. But the scope of our activities has been restricted by the limitation imposed upon the students' time and by distances separating the Japanese people in British Columbia. To overcome these difficulties we have resorted to the most potent of means -- the publications. If the results of this project attains but a small proportion of that success which we wish from it, our work will be well repayed.

In closing we wish to express our appreciation to Mr. Sherwood Lett, the speaker, to Mr. and Mrs. Kagetsu for the use of their home for the meeting, to Mr. S. Higashi and Mr. T. Komiyama who recorded the speech, and to the kind typist, Miss Takako Saisho, who has made this work possible.

COMMITTEE FOR PUBLICATIONS.

December 21, 1934,
Vancouver, B. C.

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# THE LEGAL DISABILITIES OF THE JAPANESE ( INCLUDING THE SECOND GENERATION) IN BRITISH COLUMBIA

by

SHERWOOD LETT

The present paper was prepared from the viewpoint of Provincial legislation --- not from the Dominion aspect; and matters concerning immigration and naturalization have been omitted.

There are three classes of restrictions imposed upon the Japanese in B. C.:

1. Statutory or legal restrictions: deliberately determined restrictions by the statutes.
2. Regulatory restrictions: not law but regulations and rules of certain bodies.
3. Customary restrictions: devermined by customs and conventions

## P A R T  I

## STATUTORY RESTRICTIONS

1. Oriental Order-in-Council Act was created in 1921. This will be discussed later on.
2. Provincial Elector Act of 1924. This is the Statute which is under great discussion at present. This act is the most important with regards to the status and restrictions imposed on the so-called Second Generation Japarese.

SECTION I of this Act states that the following persons are disqualified to vote at any elections and that no applications must be made by these peoples to be included on the voters' list:

Chinese
Japanese
Hindu
Indian

I. The Definition of Japanese in the above clause: Japanese are natives of the Japanese Empire -- any people of Japanese origin whether naturalized or not.
The statute therefore does not base restriction on nationality, for second generations are British subjects; but is based on racial origin.

II. Chinese are defined in the similar way.
III. Hindus are people not of the Anglo-Saxon race, whether they are British subject or not. The Hindus have the right to vote in India; but in British Columbia they have no franchise.

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3. Amendment of 1931 was brought about because of Veteran's representation. According to this amendment any person irrespective of race, who has served either in the Canadian Navy, Airforce, or Army in the Great War is entitled to vote.

4. Municipal Elections Act of 1924 concerns with the election of municipal bodies:
No Chinese, Japanese, other Asiatics or Indians is entitled to vote for the mayor, reeve, councilman, school trustees etc. This is not a new act since it was first put into force in 1896. The original clause was framed to exempt only Japanese and Chinese from the voting. In 1908, the phrase "other Asiatics" was added. No definition of Japanese, Chinese, or Asiatics appears in this act. In direct application they refer to the Provincial Election Act to interpret these terms.

Note --- Vancouver received a Special Charter in 1921.

Sub-section No. 8 of the section 8 in the above Act says:

No Chinese, Japanese or Hindu is entitled to vote for mayor, alderman, police commissioners, school trustees, money by-laws, or water-rates act -- but is allowed to vote in case of dyking acts.

Sub-section No. 9 of the same section states that corporations may vote through an agent. This is a means to pierce the said law. A landowner can make his land into a corporation, and can appoint a second generation, i.e., a British subject, over 18 to vote for him. This, however, has never been tried.

5. Constitution Act of B. C.:
No one may become a member of the Legislative Assembly of this Province unless he is on the voters' list. This clause applies also in the Municipal Election Act.

Note -- This Act in a way is a blessing. Under the Jury Act a second generation cannot serve on jury service since man must be on voters' list. Serving on the jury service is not always pleasant and is often most inconvenient.

6. Civil Service Act states that no person can take examinations or compete for a position in the civil services except he be a British subject or a naturalized Canadian. This does not in any way restrict

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the second generation. But hitherto there has been no precedent of a Japanese being employed in the capacity of a state employee.

OBLIGATORY CLAUSES

1. Taxation Act.
2. Income Tax Act.

In these Japanese and other Asiatics are not exempted.

SUMMARY:

Six statutes definitely restrict the Second Generations in power, status, or in privileges.

Two statutes definitely impose obligations upon the Second Generation.

NOTES:

Discriminations like these are not followed in any other province but British Columbia. The principle "Taxation without Representation" is not embodied in the B.N.A. Act; it is just one of the many British principles which are found, yet which are not constitutional. This British spirit of fairplay is a mere convention and is a great key-note in the British political structure. However, legally speaking there is nothing to sustain this phrase "Taxation without Representation".

REGULATORY RESTRICTIONS

1. Legal Profession's Act:

There is no legality restricting the Chinese or Japanese from the legal profession. But the power to fix different regulations for governing examinations, articling of students, etc., to the Law Society is vested in this body. Thus there is no law against the admission of the Japanese into the legal profession, but rules to discriminate them. The Second Generation Japanese cannot article himself as a law student in B. C., because his name is not on the voters' list.

Note: In England, the solicitor's position is open to Hindus, Japanese, Chinese, South Africans or any other race possible. In this case the brain's power of the candiate counts the most.

There was a Chinese law student who studied in London, returned to B. C., was admitted to the bar; but was

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immediately put into a lot of trouble, and at present he is not practising.

CONVENTIONAL OR CUSTOMARY RESTRICTIONS

1. Chartered Accountants' Act:
There is no act or regulation against the Second Generation from becoming a chartered accountant; but the custom does not allow the Chinese, Japanese, Hindus, or Indians to be articled as the student of that profession. The only way to obtain such a position is to go out of this Province to Alberta (for example) and become a chartered accountant there, and then return to B. C.

2. Provincial Police Act:
Again there is no act or regulation against Japanese. Every British subject is allowed to become a policeman. Yet hitherto no Japanese has become a provincial police.

3. Sheriffs' Act:
There is no restriction nor technical obstacle. To become a sheriff is but a matter of swearing an oath of Allegiance. Hitherto, however, there has been no Japanese sheriff.

4. Chiropractors' Act:
There is no restriction.

5. Medical Profession's Act:
There are at present 6 or 7 Japanese physicians practising. Recently restrictions have been removed for the Japanese nurses from being employed in the hospitals.

6. Barbers' Act:
7. Architectural Profession's Act:
8. Dental Profession's Act:
9. Land Surveyors' Act:
10. Professional Engineers' Act:
11. Hair Dressers' Act: etc.

In the last six acts named there is no restrictions whatever.

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# P A R T  I I

## ORIENTAL ORDER-IN-COUNCIL ACT OF 1921

This Act is the result of certain litigations in fact a long line of legal suits. Two points or questions are involved in this Act.

1. Employment:
   (1) Public contracts contain certain restrictions; with the employment of Orientals, the lease may become forfeited.
   (2) In 1899, John Bryden brought action against the Union Colliery Co., for employing Chinese underground in mines since this was contrary to the Coal Miners' Act. The case was appealed till it reached the Privy Council in London. The case was framed about the question whether the Province could create such an Act, i.e., the validity of the Coal Miners' Act restricting Chinese from employment in mines. The Privy Council declared the Act ultra vires. The Provincial Government had encroached upon the power of the Federal Government, and consequently the Provincial Government could not have passed such an Act.
   As a matter of fact, recently after this decision there was a bad explosion in one of the British Columbia mines. The rumour was circulated that some Chinese labourer had matches. Whether this is true or false, several mines have discontinued to employ Chinese underground.
   (3) In 1913, Canada ratified the Japanese Treaty between Japan and England. In Article I of this treaty it is stated that Japanese subjects and British subjects can freely travel and settle in the lands of the respective nation, i.e., There were:
      a. equality for national subjects,
      b. equality in commerce,
      c. equality in professions and trades. This is what is known as the "Most Favoured Nation's Clause". Business under this Act could be carried out freely; but nothing is said of voting.
   (4) In 1926, "In regards to Japanese Treaty Act" Clause says no discrimination is possible in Provincial Acts with regard to leases.
   (5) In 1921, the Oriental Order-in-Council was passed saying that the validity of leases remains. This was enacted according to the "Orders-in-Council Act of 1902". Everyone thought that this would be the end of the trouble. In the same year a violent movement against the employment of Chinese and

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Japanese arose. Flaming words like the Yellow Peril, the Yellow Menace were flaunted about the Province.

The Provincial Government cancelled the leases of Brookes, Bidlake & Co., for employing Japanese on its timber resources. The Company naturally brought action against the Province saying that restriction on the employment of Japanese on timber resources is ultra vires. In 1923, it reached the Privy Council and the judgment was passed that since the Company had accepted the lease as it stood and since the terms on the lease were violated the Provincial action was legitimate. The Provincial Government was pleased and passed that the Oriental cannot be employed on timber workings of companies having the leases; and naturally Japanese were thrown out of employment. The Governor-General vetoed the Act passed by the Provincial Government. The case immediately went back to court and the litigation became one between the Attorney-General of British Columbia against the Attorney-General of Canada. In 1924, the Privy Council went to the root of the matter and for a long time deliberated on the effects of this legislation upon the Japanese Treaty. They declared that the Provincial Act was invalid because the Japanese Treaty had been violated. Although the Act was invalid because of difficulty back in 1902 and 1903, the leases issued under the Act are valid. But new leases must omit the clauses restricting the employment of Japanese.

The Judges in the Privy Council deserve most high credit for they came to a fair and just conclusion. The Judges further warned legislators to bear in mind when creating further laws the effects on the Japanese Treaty and to understand the spirit of this Treaty.

This decision of the Privy Council of 1924, consequently was the last act based on groundless prejudices against the Japanese.

II.. Votes:

In 1896, started the exclusion of the Japanese from the voters' list.

In 1901, a naturalized Japanese, Tommy Honma, claimed the right to be put upon the voters' list. Eventually the case was appealed to the Privy Council. The defence claimed that Tommy Honma could not go on the voters' list. This event

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occurred 12 years before the Japanese Treaty. The counsel for Honma claimed that the law exempting him from the voters' list was ultra vires and that he was merely claiming the natural rights belonging to a British subject.

The common knowledge at that time was that Honma had no possibility of winning his case even before going to court. The lawyers had agreed upon the decision beforehand. At any rate there was dissension amongst the camp of the Japanese. Consequently the Privy Council passed the judgment that since in the Act concerning privileges of the naturalized foreigners the franchise was not stipulated, Tommy Honma could not be put on the voters' list. As a result the franchise question to this day has rested upon this decision.

It is well to note that the "Most Favoured Nation Clause" in the Japanese Treaty deals only with British and Japanese nationals and promises protections for the subjects of the Japanese Emperor and the subjects of the British King. The Second Generation Japanese in Canada, i.e., the British subjects, are not entitled to the benefits given to Japanese subjects in the Treaty. There is no practice in Japan of giving the rights to vote to nationals of other countries.

## P A R T  I I I

### RESTRICTION AGAINST FOREIGNERS (INCLUDING SECOND GENERATIONS) IN JAPAN

Foreigners -- A Definition.

According to the Japanese law, foreigners are nationalsof other countries and their children except those who have taken out naturalization papers.

1. The foreigners can buy territory and land in Japan except in certain restricted zones like in naval and defence zones and public parks.
2. Professions from which foreigners are excluded are:

| | |
|---|---|
| lawyers, | government offices, |
| notary publics, | soldiers, |
| mine operators, | sailors, |
| ship or aircraft pilots, | fishermen, |
| stock brokers, | ship owners. |

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3. Foreigners can operate business and are taxed as in Canada. However, they cannot hold bonds of the Yokohama Specie Bank, the Japanese Government Banks, the South Manchurian Railway, etc., i.e., in any concern in which the government has some interest.

## P A R T  I V

## DISCUSSION

Comparisons of the legal status between the Foreigners in the Two Countries:

There is no difference whatever in comparing the First Generations in Canada and Japan.

But in Japan there are two degrees of nationality. A Second Generation foreigners, if he desires, can get full Japanese nationality. Of course, there is a great deal of red tape; but after obtaining this full nationality he is entitled to vote and participate in the various elections except that he cannot hold any civil office.

Lines of Endeavour opening to the Second Generations in British Columbia:

| | |
|---|---|
| Physicians | Land Surveyors |
| Dentists | Professional Engineers |
| Chiropractors | Bankers |
| Barbers | Miners |
| Hair Dressers | Ship and Air-pilots |
| Architects | |

Only in the legal profession and a few others are the Japanese Second Generations restricted. There are obstacles for everyone. In a long run it becomes a matter of respective brain power. Therefore do not take discriminations much to heart.

There are 5653 Oriental children in the Public Schools of the Province. Of these 4560 are the Japanese. In 1933-34 there were 2058 Japanese children in Vancouver alone.

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The problem is to the University students -- the leaders of tomorrow -- to figure out what can be done for these rising citizens of Canada. Show them what lines of work are open to them and show them how they must exist in this country for the good of the country. This must be done without arousing anger or antagonism on the part of the white Canadians.

There is a case of the Japanese boy in the Kitsilano Boys' Band who on a trip to Victoria was excluded from swimming in the Crystal Pool just because of a difference in color. This is what is known as color-bar and is bewildering to the rising Second Generations. The Children cannot see this discrimination; neither can the First Generation explain this to their children. The task lies to you group of young men to show these rising children the way that lies ahead of them and enable them to get a living and to be of service to their country, Can da!

What lies beneath this race prejudice? I do not know. Perhaps it is fears or self-interest. But times are changing, the people are changing, no more are politicians talking of race peril. I remember some years ago when I was still a youth, Hon. H. H. Stevens coming all the way to Nova Scotia and New Brunswick to tell the people that millions and millions of yellow men are overrunning the fair Province of British Columbia. The tendency of the age is towards fair play, and such an era of tolerance will eventually come.

Educated people like you have a decided advantage in striving for the solution of this problem. It is a problem with a historical background and consequently both the historical side of the question and legal side must be carefully taken into consideration in order to make progress possible.

This solution lies to you students. Do not approach or go after the question in a prejudiced way. Nothing can be done if once the people of this Province are antagonized.

Editors' Note: This address was delivered in little over an hour.

COMMITTEE FOR PUBLICATIONS (1934-35):

Teiji Kato
Rigenda Sumida
Takakazu George Tamaki

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