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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 Frances Pulp and Power Co.* v. *Manitoba Free Press Co.* (*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 Taschereau 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—5 200 12/46 D.L. G. 338

Confidential

Privy Council Appeal No. 58 of 1946 5TH PROOF

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 2 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;

[ ]

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

(*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.

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

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

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

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.

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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

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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. 8018—5 12, 4, 6, 12, 8, 25, 12 12/46 D.L. G. 338

VOLUME IV, No. 12 DEC. 24, 1945

STATUTORY ORDERS AND REGULATIONS, 1945

(Formerly Canadian War Orders and Regulations)

Published under authority of Order in Council P.C. 10793 of 26th November, 1942, as amended by Order in Council P.C. 7225 of 3rd December, 1945

STATUTORY ORDERS AND REGULATIONS DIVISION
PRIVY COUNCIL OFFICE

OTTAWA
EDMOND CLOUTIER
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1945

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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

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Statutory Orders and Regulations 1945 Vol. *IV*, No. 11 of December 17, 1945, page 346, Administrator's Order No. A-1820, Used Typewriters and Used Office Machinery—In Section 6 the Line

"(1) Demonstrator office machine..... %"

should read

"(1) Demonstrator office machine..... 85%".

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PART 1

Orders in Council

Order in Council amending P.C. 946, 5th February, 1943, *re* Japanese

P.C. 5793

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 18th day of December, 1945.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas it is deemed advisable by reason of the war for the peace, order and welfare of Canada to amend, as hereinafter provided, the regulations established by Order in Council P.C. 946 of February 5, 1943, providing for the placement, control and maintenance of persons of the Japanese race in Canada;

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Labour, and under the authority of the War Measures Act, is pleased to amend the said regulations and they are hereby further amended by deleting the words "from residing in any place in Canada" in paragraph (viii) of subsection one of section three thereof and substituting therefor the words "from residing in any place or area in Canada".

A. D. P. HEENEY,
Clerk of the Privy Council.

Order in Council amending the Royal Canadian Air Force (Air Force Act Amendment) Order No. 1, 1943

P.C. 7328

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 13th day of December, 1945.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas "The Royal Canadian Air Force (Air Force Act Amendment) Order No. 1, 1943" (Order in Council P.C. 6190 of August 26, 1943, as amended by Order in Council P.C. 9379 dated 7th December, 1943, and Order in Council P.C. 7524 dated 28th September, 1944) effected certain modifications, adaptations and exceptions to the Air Force Act in force in the United Kingdom on the 1st day of May, 1943, for the purposes of its application to the Royal Canadian Air Force under Section 11 of The Royal Canadian Air Force Act;

And whereas the amendment to "The Royal Canadian Air Force (Air Force Act Amendment) Order No. 1, 1943" made by Order in Council P.C. 7524 dated 28th September, 1944, introduced in the scale of punishments that may be awarded by courts-martial to airmen the new punishment of "discharge from His Majesty's service";

And whereas the Minister of National Defence for Air reports that, in the adaptation of Section 44 of the Air Force Act to the Royal Canadian Air Force,

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it is desirable to provide that an airman when sentenced by a court-martial to detention may, in addition thereto, be sentenced to the new punishment of discharge from His Majesty's service;

That, in the adaptation of Section 179A of the Air Force Act to the Royal Canadian Air Force by the said "The Royal Canadian Air Force (Air Force Act Amendment) Order No. 1, 1943", certain modifications were introduced as (*aa*) and (*aaa*) to sub-section (2) of Section 179A providing for the convening of general courts-martial for the trial of certain members of His Majesty's naval and military forces;

That the Judge Advocate General has pointed out that the above modifications might unnecessarily complicate such trials and has requested that such modifications be revoked; and

That it is desirable to effect the foregoing modifications, adaptations or exceptions to the Air Force Act in its application to the Royal Canadian Air Force by further amending "The Royal Canadian Air Force (Air Force Act Amendment) Order No. 1, 1943";

Therefore His Excellency the Governor General in Council, on the recommendation of the Minister of National Defence for Air, and under and by virtue of the War Measures Act (Chapter 206, Revised Statutes of Canada, 1927), and notwithstanding any act, law, regulation or prerogative to the contrary, is pleased to order and it is hereby ordered as follows:—

1. The modifications, adaptations and exceptions made to Section 44 of the Air Force Act by "The Royal Canadian Air Force (Air Force Act Amendment) Order No. 1, 1943" set out in the second column of the Table thereto are hereby revoked and the modifications, adaptations and exceptions to the said Section 44 of the Air Force Act in the second column of Table "A" to this Order are substituted therefor.

2. The modifications, adaptations and exceptions made to Section 179A of the Air Force Act by "The Royal Canadian Air Force (Air Force Act Amendment) Order No. 1, 1943" set out in the second column of the Table thereto are hereby revoked and the modifications, adaptations and exceptions to the said Section 179A of the Air Force Act in the second column of Table "B" to this Order are substituted therefor.

3. "The Royal Canadian Air Force (Air Force Act Amendment) Order No. 1, 1943" is hereby further amended accordingly as and from the date hereof.

A. D. P. HEENEY,
Clerk of the Privy Council.

Order in Council providing for extension of the time during which the railways may not offer inducements to travel by way of reduced fares

P.C. 7329

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 13th day of December, 1945.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas Order in Council P.C. 2557 of March 30, 1943, removed inducements to travel in the form of certain reduced fares offered by the Railways, and established a test period terminating on August 15, 1943, to ascertain the effect on passenger travel of the removal of such inducements;

And whereas by various Orders in Council, the last being P.C. 6526 of October 16, 1945, the operation of the said Order in Council P.C. 2557 was extended to January 15, 1946;

And whereas it is deemed expedient further to extend the period during which the said reduced fares shall not be sold or offered for sale;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, concurred in by the Minister of Finance and pursuant to the powers conferred by the War Measures Act, is pleased to amend Order in Council P.C. 2557 of March 30, 1943, and it is hereby further amended by providing that the period from April 15, 1943, to January 15, 1946, during which any of the reduced fares for travel in Canada mentioned in the said Order in Council shall not be sold or offered for sale as provided therein, may be extended from and after January 15, 1946, from month to month by Order of the Minister of Transport, subject to termination at any time by thirty days' notice given by the said Minister to the Railway Association of Canada.

A. D. P. HEENEY,
Clerk of the Privy Council.

Order in Council revoking authorization to set up Red Cross Enquiry Bureau, Ottawa

P.C. 7332

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 13th day of December, 1945.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas by Order in Council P.C. 17, dated the 5th day of January, 1942, the Canadian Red Cross Society, a Society incorporated by Act of Parliament, being chapter 68 of the Statutes of Canada, 1909, was authorized to set up an Enquiry Bureau in the City of Ottawa to be known as the Red Cross Enquiry Bureau having functions and duties as therein set forth;

And whereas the Minister of National War Services reports that by reason of the unconditional surrender of Germany and Japan, the services of the Red Cross Enquiry Bureau are now no longer required and it is deemed expedient to terminate the operation thereof;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of National War Services, is pleased to revoke Order in Council P.C. 17, dated the 5th day of January, 1942, authorizing the Canadian Red Cross Society to set up an Enquiry Bureau in the City of Ottawa to be known as the Red Cross Enquiry Bureau and it is hereby revoked and cancelled accordingly.

A. D. P. HEENEY,
Clerk of the Privy Council.

Order in Council *re* deportation of Japanese.

P.C. 7355

AT THE GOVERNMENT HOUSE AT OTTAWA

SATURDAY, the 15th day of December, 1945.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

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 by reason of the war, for the security, defence, peace, order and welfare of Canada, that provision be made accordingly;

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Labour, concurred in by the Secretary of State for External Affairs, and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, is pleased to make and doth hereby make the following Order,—

ORDER

1. In this Order, unless the context otherwise requires:—

(*a*) "deportation" means the removal pursuant to the authority of this Order of any person from any place in Canada to a place outside Canada;

(*b*) "deported" means removed or sent from Canada pursuant to the authority of this Order;

(*c*) "Minister" means the Minister of Labour;

(*d*) "request for repatriation" means a written request or statement of desire, to be repatriated or sent to Japan.

2. (1) Every person of sixteen years of age or over, other than a Canadian national, who is a national of Japan resident in Canada and who,

(*a*) has, since the date of declaration of war by the Government of Canada against Japan, on December 8, 1941, made a request for repatriation; or

(*b*) has been in detention at any place in virtue of an order made pursuant to the provisions of the Defence of Canada Regulations or of Order in Council P.C. 946, of the 5th day of February, 1943, as amended by P.C. 5637, of the 16th day of August, 1945, and was so detained as at midnight of September 1, 1945;

may be deported to Japan.

(2) Every naturalized British subject of the Japanese race of sixteen years of age or over resident in Canada who has made a request for repatriation may be deported to Japan: Provided that such person has not revoked in writing such request prior to midnight the first day of September, 1945.

(3) Every natural born British subject of the Japanese race of sixteen years of age or over resident in Canada who has made a request for repatriation may be deported to Japan; Provided that such person has not revoked in writing such request prior to the making by the Minister of an order for deportation.

(4) The wife and children under sixteen 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.

3. Subject to the provisions of section 2 of this Order, a request for repatriation shall be deemed final and irrevocable for the purpose of this Order or any action taken thereunder.

4. The Minister may

(*a*) make orders for the deportation of any persons subject to deportation;

(*b*) take such measures as he deems advisable to provide or arrange for the deportation of such persons, and for their transportation, detention, discipline, feeding, shelter, health or welfare, pending their deportation;

(*c*) make such orders, rules or regulations as he deems necessary for the purpose of carrying out the provisions of this Order;

(*d*) subject to the approval of the Governor in Council, employ such officers and other employees as are necessary to assist him in carrying out this Order and fix their remuneration;

(*e*) authorize from time to time any person to exercise on his behalf any power vested in him under paragraph (*b*) of this section.

5. An order for deportation made by the Minister shall be in force and effect from the date of the order.

6. (1) Any person for whom an order for deportation is made or who, having made a request for repatriation, is proceeding to Japan without the issue of such an order, shall be entitled, in so far as circumstances at the time permit

(*a*) at or immediately prior to the time of his deportation from Canada, to purchase suitable foreign exchange to the extent of any money in his possession or standing to his credit in Canada or advanced to him by the Minister pursuant to section seven and to take such foreign exchange out of Canada with him;

(*b*) to deposit any money in his possession or standing to his credit in Canada with the Custodian of Enemy Property, who shall provide such person with a receipt therefor and purchase foreign exchange therewith, and transfer the same, less transfer charges, to such person whenever reasonably possible following upon his deportation;

(*c*) at the time of his deportation to take with him such other personal property belonging to him as may be authorized by the Minister;

and the Foreign Exchange Control Board shall do such things and issue such permits as may be required to implement these provisions.

(2) Where real or personal property of a person who has been deported to Japan or who, having made a request for repatriation, has proceeded to Japan without the issue of an order for deportation, has not been sold or otherwise disposed of prior to departure such real and personal property shall, as of the date of deportation of such person, be vested in the Custodian of Enemy Property, who shall sell the same as soon as in his opinion it is reasonably practicable to do so, and in the meantime he may take such measures as he deems proper for the care, maintenance and safeguarding of such property, and the net proceeds realized from such sale, after the deduction of reasonable charges of handling shall be placed to the credit of such person and dealt with as provided in paragraph (*b*) of subsection (1) of this section.

7. (1) The Minister may at or immediately prior to the time of departure advance to or for a person who is being deported to Japan or who, having made a request for repatriation, is proceeding to Japan without the issue of an order for deportation, an amount in suitable foreign exchange equivalent to the following:—

(*a*) Where such person is sixteen years of age or over and does not possess at least two hundred dollars, the difference between the amount he possesses and two hundred dollars which shall be paid to such person;

(*b*) Where such person has one or more dependents under sixteen years of age and does not possess at least two hundred dollars together with a further amount computed on the basis of fifty dollars for each such dependent, the difference between the amount he possesses and the total of two hundred dollars and the amount so computed, to be paid to such person.

(2) Any amount advanced as provided for in subsection (1) of this section shall be recoverable from the person to whom it is paid, from any money to the credit of such person with the Custodian of Enemy Property.

8. (1) The Minister may make arrangements with any department or agency of the Government of Canada to assist him in carrying out the provisions of this Order.

(2) The Department of National Defence shall provide any military guard personnel which may be required in carrying out the provisions of this Order.

(3) The Commissioner of the Royal Canadian Mounted Police shall give all assistance which may be required of him by the Minister in the carrying out of the provisions of this Order.

9. Any person for whom an order for deportation is made and who is detained pending deportation or who is placed under restraint in the course of deportation by virtue of any order or measure made or taken under Section 4 of this Order shall, while so detained or restrained, be deemed to be in legal custody.

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This is an important judgment, since the question at issue was the legality of Canadian Orders-in-Council providing, inter alia, for deportation of persons of Japanese race who were British subjects and Canadian ~~citizens~~ nationals, either by birth or by naturalisation, and for such persons, if naturalised, to lose their status as British subject or Canadian national on deportation. This was decided in the affirmative.

It has of course for long been the practice in Canada, as in other Dominions, to deport British subjects who are not Canadian citizens, but there has never before been any suggestion that any Dominion might deport its own citizens. In the United Kingdom, the practice has been not to deport any British subject.* This is, I believe, based upon the provision in Magna Carta that no freeman shall be exiled except by lawful judgment of his Peers or by the law of the land and the general policy followed by the U.K. Government of treating all British subjects alike. It may be that, when the proposed new citizenship legislation has come into force in this country, there will be a change of policy and that power will be taken to deport British subjects who are not "citizens of the U.K. ~~and or~~ Colonies", but there can be no question of power to deport British subjects who are such citizens.

* apart from the special provisions of the Prevention of Violence (Temporary Provisions) Act, 1939, cwd

All this, however, has reference to the normal peacetime position and it can undoubtedly be argued that the circumstances of war may make a departure from these general principles necessary and desirable. There was in fact a suggestion in 1940, as a measure of precaution in view of the possibility of a German invasion, that Sir Oswald Mosley and other members of the British Union of

(PW 19/42)

/Fascists

10. Any person who resists or obstructs or attempts to resist or obstruct any peace officer or other person from carrying out his duties with respect to any order made pursuant to the provisions of this Order shall be guilty of an offence against this Order.

11. Any person who contravenes or omits to comply with any of the provisions of this Order or any order made or given pursuant thereto is guilty of an offence and liable upon summary conviction to a fine not exceeding Five Hundred Dollars or to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.

12. Every document purporting to be or to contain or to be a copy of an order, certificate or authority made or given by the Minister in pursuance of the provisions of this Order and purporting to be signed by the Minister shall be received as evidence of such order, certificate or authority without proof of the signature or of the official character of the person appearing to have signed the same and without further proof thereof.

General

13. The costs involved in the administration of this Order shall be paid from the amounts allotted from the War Appropriation to the Department of Labour for Japanese administration.

A. D. P. HEENEY,
Clerk of the Privy Council.

Order in Council revoking naturalization of persons deported in pursuance of Order in Council P.C. 7355, 15th December, 1945

P.C. 7356

AT THE GOVERNMENT HOUSE AT OTTAWA

SATURDAY, the 15th day of December, 1945.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas by Order in Council P.C. 7355 of 15th December, 1945, provision is made for the deportation of persons who, during the course of the war, have requested to be removed or sent to an enemy country or otherwise manifested their sympathy with or support of the enemy powers and have by such actions shown themselves to be unfit for permanent residence in Canada;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Secretary of State (concurred in by the Secretary of State for External Affairs) and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, is pleased to order and doth hereby order as follows:—

1. Any person who, being a British subject by naturalization under the Naturalization Act, Chapter 138, R.S.C. 1927, is deported from Canada under the provisions of Order in Council P.C. 7355 of 15th December, 1945, shall, as and from the date upon which he leaves Canada in the course of such deportation, cease to be either a British subject or a Canadian national.

2. The Secretary of State shall publish in the *Canada Gazette* the names of all persons who have ceased to be British subjects or Canadian nationals by virtue of this Order.

A. D. P. HEENEY,
Clerk of the Privy Council.

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1946

Order in Council *re* Commission to inquire into conduct during the war of persons of the Japanese race, etc.

P.C. 7357

AT THE GOVERNMENT HOUSE AT OTTAWA

SATURDAY, the 15th day of December, 1945.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL;

Whereas during the war particular measures with regard to persons of the Japanese race in Canada were made necessary by reason of their concentration along the Pacific coast of Canada;

And whereas experience during the war in the administration of Order in Council P.C. 946 of February 5, 1943, providing for the control of persons of the Japanese race has indicated the desirability of determining whether the conduct of such Japanese persons in time of war was such as to make the deportation of any of them desirable in the national interest;

And whereas it is deemed advisable to make provision for the appointment of a Commission to institute the investigation referred to above;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Prime Minister, and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, is pleased to order and doth hereby order as follows:—

1. A Commission consisting of three persons shall be appointed to make inquiry concerning the activities, loyalty and the extent of co-operation with the Government of Canada during the war of Japanese nationals and naturalized persons of the Japanese race in Canada in cases where their names are referred to the Commission by the Minister of Labour for investigation with a view to recommending whether in the circumstances of any such case such person should be deported.

2. Notwithstanding anything contained in the provisions of Order in Council P.C. 7355 of the 15th day of December, 1945, the Commission may, at the request of the Minister of Labour, inquire into the case of any naturalized British subject of the Japanese race who has made a request for repatriation and which request is final under the said Order in Council and may make such recommendations with respect to such case as it deems advisable.

3. The Commission shall report to the Governor in Council.

4. Any person of the Japanese race who is recommended by the Commission for deportation shall be deemed to be a person subject to deportation under the provisions of Order in Council P.C. 7355 of the 15th day of December, 1945, and the provisions thereof shall apply, *mutatis mutandis*, to such person.

5. Where any person is recommended for deportation pursuant to this Order he shall, as and from the date on which he leaves Canada in the course of such deportation, cease to be either a British subject or a Canadian national.

6. The Commission shall, for the purpose of all inquiries and investigations made pursuant to this Order, have all the powers and authority of Commissioners appointed under Part One of the Inquiries Act.

7. The Commission is authorized to engage the services of such clerks, reporters, assistants and counsel as they deem advisable to aid and assist in the performance of their duties.

8. The Commissioners shall be paid such remuneration, allowances and expenses as the Governor in Council may fix.

9. All expenses incurred in connection with the inquiries and investigation of the Commission pursuant to this Order, including the remuneration, allowances and expenses of the commissioners, shall be paid from amounts allowed from the War Appropriation to the Department of Labour for such purpose.

A. D. P. HEENEY,
Clerk of the Privy Council.

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PART II

Miscellaneous Administrative Orders

DEPARTMENT OF NATIONAL REVENUE

WM No. 19
Supplement No. 62
MEMORANDUM
CUSTOMS DIVISION

OTTAWA, 1st December, 1945.

To Collectors of Customs and Excise, and others concerned:

Trading with the Enemy

List of Specified Persons, Revision No. 62

Herewith is furnished for your information and guidance a Proclamation amending the List of Specified Persons published with Memorandum WM No. 19.

D. SIM,
Deputy Minister of National Revenue, Customs and Excise.

WM No. 29
Second Revision
Supplement No. 1
MEMORANDUM
CUSTOMS DIVISION

OTTAWA, 30th November, 1945.

To Collectors of Customs and Excise, and others concerned:

Licensing of Imports of Wool

The import control on raw wool is revoked.
Memorandum WM No. 29, Second Revision, is cancelled.

P. L. YOUNG,
Assistant Deputy Minister of National Revenue for Customs.

(P.C. 7095, 27/11/45—Authority, War Measures Act.)

WM No. 88
Supplement No. 1
MEMORANDUM
CUSTOMS DIVISION

OTTAWA, 30th November, 1945.

To Collectors of Customs and Excise, and others concerned:

Prohibited Imports

The import control on woollen yarns and fabrics is revoked.
Memorandum WM No. 88 is cancelled.

P. L. YOUNG,
Assistant Deputy Minister of National Revenue for Customs.

(P.C. 7095, 27/11/45—Authority, War Measures Act.)

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WM No. 102
Supplement No. 4—Revised
MEMORANDUM
CUSTOMS DIVISION

OTTAWA, 11th December, 1945.

To Collectors of Customs and Excise, and others concerned:

Prohibited Imports

The Minister of National Revenue has authorized the issuance of General Permit No. G-2403 for the importation of the clothing wearing apparel and articles made from cotton and other textile fibres enumerated in Memorandum WM No. 102, from the following countries:—

The United Kingdom and all other countries and territories of the British Empire.
All countries in Europe.
All countries in South and Central America, including Mexico.

This general permit is issued in a single copy which is retained in the Department, the number of which is to be endorsed on all relative import documents.

D. SIM,
Deputy Minister National Revenue, Customs and Excise.

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PART III

Wartime Prices and Trade Board

(Finance)

Board Orders

WARTIME PRICES AND TRADE BOARD

Order No. 585

Respecting the Distribution and Use of Print Paper Within Canada

Under powers given to the Board by Order in Council P.C. 8528, dated November 1, 1941, and amendments, the Board hereby orders as follows:—

1. Board Order No. 223, as amended, which restricted the distribution and use of print paper for the printing of newspapers, magazines and other periodicals, is revoked.

2. This Order comes into force on December 31, 1945.

Made at Ottawa this 17th day of December, 1945.

D. GORDON,
Chairman.

WARTIME PRICES AND TRADE BOARD

Order No. 586

Respecting Publications other than Newspapers, Magazines and other Periodicals

Under powers given to the Board by Order in Council P.C. 8528, dated November 1, 1941, and amendments, the Board hereby orders as follows:—

1. Board Order No. 295, as amended, which restricted the distribution and use of print paper for the printing of publications other than newspapers, magazines and other periodicals, is revoked.

2. This Order comes into force on December 31, 1945.

Made at Ottawa this 17th day of December, 1945.

D. GORDON,
Chairman.

WARTIME PRICES AND TRADE BOARD

Order No. 587

Emergency Housing Accommodation provided by the Municipal Corporation of the City of Toronto

The Municipal Corporation of the City of Toronto has made arrangements for the public welfare of its citizens and particularly for families suffering acute hardship through want of shelter, by taking over premises not previously utilized for multiple-housing and converting them to that purpose. It is the intention and expectation of the municipality that the accommodations thus provided will afford temporary shelter to their homeless families until other accommodations can be secured.

In view of the temporary and emergent nature of these projects and the anticipated turnover of tenants which may necessitate frequent re-allocation of space to accommodate families of varying sizes, it is desirable and expedient that the municipality be enabled to fix its own rentals for this type of emergency shelter and be enabled to terminate any lease made therefor in accordance with the rental arrangement made with the homeless family.

Now, therefore, pursuant to authority conferred by The Wartime Leasehold Regulations, being Order in Council P.C. 9029, dated November 21, 1941, as amended, the Board hereby orders as follows:—

1. For the purposes of this Order, the definition of any expression contained in Order No. 294 of the Board shall extend and apply to the same expression wherever used in this Order.

2. From and after October 29, 1945, the provisions of The Wartime Leasehold Regulations, being Order in Council P.C. 9029, dated November 21, 1941, as amended, and any Order of the Board made pursuant thereto, shall cease to apply to any housing accommodation situate in premises known as the Malton Staff House, in the Township of Toronto Gore and County of Peel, so long as the municipal Corporation of the City of Toronto is the landlord thereof.

3. This Order shall come into force on the 15th day of December, 1945.

Made at Ottawa, this 15th day of December, 1945.

M. W. McCUTCHEON,
Deputy Chairman.

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Administrators' Orders

WARTIME PRICES AND TRADE BOARD

ADMINISTRATOR'S ORDER No. A-1807

Wholesale Markups—Beans, Rice, Popping Corn, Macaroni, Honey and Maple Products

Under powers given by the Wartime Prices and Trade Board to the Co-Ordinator, Foods Administration, it is hereby ordered as follows:

Effective Date

1. This Order comes into force on November 19th, 1945.

Beans

2. Subsection (2) of Section 4 of Administrator's Order No. A-865, as amended, is hereby amended by inserting at the beginning thereof the words "Except as provided in subsection (3) of this Section,".

3. Section 4 of said Order No. A-865 is hereby further amended by adding the following thereto as subsection (3):

"(3) Except as otherwise authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price at which a wholesale distributor may sell any Eastern White beans or Yellow Eye beans to another wholesale distributor, to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the beans at such warehouse or to any person who buys the beans in carload lots shall be the sum of the following:

(*a*) an amount equal to the maximum price, as fixed by this Order, at which the beans may be sold to him by the processor thereof; and

(*b*) the actual charges paid by him for transporting the beans to the city, town or village in which his place of business is situated."

4. Section 5 of said Order No. A-865 is hereby revoked and the following is substituted therefor:

"5. The maximum prices fixed by Section 4 include delivery when the buyer's place of business is situated within the city, town or village in which the wholesale distributor has his place of business or is within the wholesale distributor's customary free delivery zone. In all other cases such prices are f.o.b. the wholesale distributor's place of business."

Rice

4. Section 4 of Administrator's Order No. A-201, as amended, is hereby revoked and the following substituted therefor:

"4. (1) Except as provided in subsection (2) of this Section, the maximum price at which any wholesaler may sell or offer for sale any such rice shall include a markup (percentage on laid-down cost) no greater than the markup used by him in pricing such or substantially similar rice during the basic period from September 15 to October 11, 1941, both inclusive, but not in any event exceeding ten per cent of his selling price.

(2) Except as otherwise authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price at which a wholesaler may sell or offer for sale any such rice to another wholesaler, to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the rice at such warehouse or to any person who buys the rice in carload lots shall be the sum of the following:

(*a*) an amount equal to the maximum price as fixed by this Order, at which such rice may be sold to him by Mount Royal Rice Mills Limited or Canada Rice Mills Limited, whichever company was the processor of the rice; and

(*b*) the actual charges paid by him for transporting the rice to the city, town or village in which his place of business is situated.

(3) The maximum prices fixed by this Section include delivery when the buyer's place of business is situated within the city, town or village in which the wholesale distributor has his place of business or is within the wholesale distributor's customary free delivery zone. In all other cases such prices are f.o.b. the wholesale distributor's place of business."

Popping Corn

5. (1) Section 5 of Administrator's Order No. A-1703 is hereby revoked and the following is substituted therefor:

"5. (1) The maximum price at which a shipper may sell any popping corn shall be as follows:

(*a*) on sales to a wholesale distributor, to a processor, to a retailer, who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the popping corn at such warehouse or to any person who buys the popping corn in carload lots, 10 cents per pound of popping corn;

(*b*) on sales to any buyer of a class not named in clause (*a*) preceding, 11½ cents per pound of popping corn;

(2) The maximum prices fixed by subsection (1) are f.o.b. the seller's shipping point."

(2) Administrator's Order No. A-1703 is hereby further amended by inserting at the beginning of Section 6 thereof the words "Except as provided in Section 7".

(3) Said Order No. A-1703 is hereby further amended by revoking clauses (*c*) and (*d*) of Section 6 thereof and substituting therefor the following:

"(*c*) if he sells the popping corn in lots of 50 pounds or less, an amount equal to one cent per pound for each pound sold;

(*d*) a markup not exceeding 12½ per cent of his selling price exclusive of any amount included therein under clause (*c*) preceding."

6. Said Order No. A-1703 is hereby further amended by revoking Section 8 thereof, by renumbering Section 7 thereof as Section 8 thereof and by substituting as Section 7 thereof the following:

"7. Except as otherwise authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price at which a wholesale distributor may sell any popping corn to another wholesale distributor, to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the popping corn at such warehouse or to any person who buys the popping corn in carload lots shall be the sum of the following:

(*a*) 10 cents per pound of popping corn;

(*b*) the actual cost, at not more than the less than carload lot freight rate paid by him for transporting the popping corn from his supplier's shipping point or from the port of entry into Canada, as the case may be, to the city, town or village in which his place of business is situated, if his supplier is not required by this Order to deliver free to him."

Macaroni

7. Subsection (1) of Section 8 of Administrator's Order No. A-1451 is hereby amended by inserting at the beginning thereof the following words "Except as provided in subsection (2) of this Section," and by striking out the words "to a retailer" where they appear in said subsection (1).

8. Subsection (2) of Section 8 of said Order No. A-1451 is hereby renumbered as subsection (3) of said Section 8 and the following is substituted as subsection (2) thereof:

"(2) Except as otherwise authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price at which a wholesale distributor may sell any style and grade of macaroni to another wholesale distributor, to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the macaroni at such warehouse or to any person who buys the macaroni in carload lots shall be the sum of the following:

(*a*) an amount equal to the maximum price, as fixed by this Order, at which the macaroni may be sold to him by the manufacturer thereof;

(*b*) sales tax if not included in such maximum price;

(*c*) (i) if his supplier was not the manufacturer of the macaroni, the actual cost, at not more than the less than carload lot freight rate, paid by him for the transportation of the macaroni to the city, town or village in which he has his place of business; or

(ii) if his supplier was the manufacturer of the macaroni and is not required to deliver free to him by this Order, the actual cost, at not more than the less than carload lot freight rate paid by him for the transportation of the macaroni from the nearest city or town in Area No. 1 or 2 named in Section 7, as the case may be, to the city, town or village in which he has his place of business."

9. Section 9 of said Order No. A-1451 is hereby revoked and the following is substituted therefor:

"9. If a wholesale distributor sells any macaroni product to another wholesale distributor, the seller must show on the sales invoice furnished by him to the buyer, the maximum price at which the manufacturer thereof may sell such macaroni product to the seller."

Honey

10. Section 13 of Administrator's Order No. A-1641 is hereby amended by inserting at the beginning thereof the words "Except as provided in subsection (2) of this Section," and by adding as subsection (2) thereof, the following:

"(2) Except as otherwise authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price at which a wholesale distributor may sell any domestic honey to another wholesale distributor, to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the honey at such warehouse or to a person who buys the honey in carload lots shall be the sum of the following:

(*a*) according to the zone in which the honey was produced, the kind of honey and the size and kind of containers, the maximum price, as fixed by this Order, at which a packer may sell the same to a wholesale distributor in the zone in which the buyer's place of business is situated;

(*b*) the actual amount at not more than the less than carload lot freight rate, paid by him for the transportation of the honey from his supplier's shipping point to the city, town or village in which he has his place of business."

11. Section 14 of said Order No. A-1641 is hereby revoked and the following substituted therefor:

"*Maximum Prices—Sales of Imported Honey by Wholesale Distributors*

14. The maximum price at which a wholesale distributor may sell any imported honey to any person shall, according to the kind of honey and the size and kind of container, be an amount equal to the maximum price, as fixed by this Order, at which he may sell to that person honey produced in the zone in which he has his place of business and purchased by him from a packer in the city, town or village in which he has his place of business."

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Maple Products

12. Section 16 of Administrator's Order No. A-1521 is hereby amended by adding as subsection (2) thereof the following:

"(2) Except as otherwise authorized in writing by the Administrator of Distributive Trades, on application to him, the maximum price at which a wholesale distributor may sell any maple syrup, maple sugar or maple butter packed as set forth in Section 12, 13 or 14, as the case may be, to another wholesale distributor, to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the maple product at such warehouse or to any person who buys in carload lots shall be the sum of the following f.o.b. his shipping point:

(*a*) an amount equal to the maximum price as fixed by Section 8, 9 or 10, as the case may be, at which a processor may sell that maple product; and

(*b*) the cost of transporting the maple product by freight to his place of business from the shipping point of the primary producer or processor who sold it to him."

Dated at Ottawa, this 15th day of November, 1945.

K. W. TAYLOR,
Co-Ordinator, Foods Administration.

APPROVED:

M. W. McCUTCHEON,
Deputy Chairman, Wartime Prices and Trade Board.

WARTIME PRICES AND TRADE BOARD

ADMINISTRATOR'S ORDER No. A-1808

Jam, Jelly and Marmalade, Evaporated Apples and Canned Vegetables Produced by Home Canners

Under powers given by the Wartime Prices and Trade Board to the Administrator of Processed Fruits and Vegetables, it is hereby ordered as follows:

1. This Order comes into force on November 19, 1945.

Jam, Jelly and Marmalade

2. Section 4 of Administrator's Order No. A-787, as amended by Administrator's Order No. A-1729, is hereby revoked and the following is substituted therefor:

"4. (1) Except as provided in subsection (2) of this Section, the maximum price at which a wholesale distributor may sell any jam, jelly or marmalade to any class of customer, shall be the sum of the following:

(*a*) the actual price paid by him for the product but not in any event exceeding the lawful maximum price that may be charged him by his supplier;

(*b*) sales tax and transportation charges, at not more than the railway freight rate, to his warehouse from the manufacturer's factory, actually paid by him and not included in such price; and

(*c*) a markup in respect of the product of a particular manufacturer, not greater than the lawful percentage markup customarily used by such wholesaler in pricing that product to the same class of buyer during the basic period from September 15, 1941, to October 11, 1941, both inclusive, and, if that product was not sold by him during such basic period, not greater than the lawful percentage markup customarily used by him in pricing a similar product to the same class of buyer during such basic period; provided, however, that in no case shall the markup exceed ten per cent (10%) of the wholesaler's selling price.

(2) Except as may otherwise be authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price at which a wholesale distributor may sell any jam, jelly or marmalade

(*a*) to another wholesale distributor; or

(*b*) to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the jam, jelly or marmalade at such warehouse; or

(*c*) to any person who buys the jam, jelly or marmalade in carload lots,

shall be an amount equal to the lawful maximum price at which the same may be sold to him by the manufacturer thereof PLUS sales tax and transportation charges, at not more than the railway freight rate, to his warehouse from the manufacturer's factory, if such tax and charges are not included in such maximum price.

(3) If a sale of jam, jelly or marmalade by a wholesale distributor is to a buyer whose place of business is within the city, town or village in which the wholesale distributor has his place of business or is within the wholesale distributor's customary free delivery zone, delivery shall be free to that buyer. In all other cases such maximum prices are f.o.b. the wholesale distributor's place of business.

(4) If a wholesale distributor sells any marmalade to another wholesale distributor, the seller must show on the sales invoice furnished by him to the buyer, the lawful maximum price at which the manufacturer of such marmalade may sell those goods to the seller."

Evaporated Apples

3. Subsection (1) of Section 4 of Administrator's Order No. A-1403 as amended, is hereby amended by adding at the beginning thereof the following words: "Except as provided in subsection (2) of this Section,".

4. Subsection (2) of Section 4 of said Order No. A-1403 is hereby revoked and the following substituted therefor:

"(2) Except as may otherwise be authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price at which a wholesale distributor may sell or offer to sell any evaporated apples to which this Order applies,

(*a*) to another wholesale distributor; or

(*b*) to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the evaporated apples at such warehouse; or

(*c*) to any person who buys the evaporated apples in carload lots,

shall be an amount equal to the maximum price as fixed by this Order at which the same may be sold him by the processor thereof PLUS the actual transportation charges, not exceeding the less than carload lot freight rate, of transporting the apples from the processor's plant to the city, town or village in which he has his place of business and which are not included in such maximum price."

5. Section 5 of said Order No. A-1403 is hereby revoked and the following is substituted therefor:

"5. The maximum prices fixed by Section 4 include delivery when the buyer's place of business is situated within the city, town or village in which the wholesale distributor has his place of business or is within the wholesale distributor's customary free delivery zone. In all other cases such prices are f.o.b. the wholesale distributor's place of business."

Canned Vegetables Produced by Home Canners

6. Subsection (1) of Section 7 of Administrator's Order No. A-1227 as amended, is hereby renumbered as Section 7 and said Section 7 as renumbered, is amended by inserting at the beginning thereof the following words: "Except as provided in Section 8."

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12. If a sale of canned fish by a wholesale distributor is to a buyer whose place of business is within the limits of a city, town or village in which the wholesale distributor has his place of business or is within the wholesale distributor's customary free delivery zone, delivery shall be free to that buyer. In all other cases the maximum prices fixed by Sections 10 and 11 are f.o.b. the wholesale distributor's place of business."

Dated at Ottawa, this 15th day of November, 1945.

A. N. McLEAN,
Administrator of Fish and Fish Products.

APPROVED:

M. W. McCUTCHEON,
Deputy Chairman, Wartime Prices and Trade Board.

WARTIME PRICES AND TRADE BOARD

ADMINISTRATOR'S ORDER No. A-1810

Maximum Prices for Sales by Wholesale Distributors and Retailers of Candy and Biscuits

Under powers given by the Wartime Prices and Trade Board to the Administrator of Distributive Trades, it is hereby ordered as follows:

1. This Order comes into force on November 19, 1945.

2. Sections 4, 5 and 6 of Administrator's Order No. A-1671 are hereby revoked and the following are substituted therefor:

"*Sales by Wholesale Distributors to Buyers Other Than Those Named in Section 5*

4. (1) Except as provided by Section 5, the maximum price at which a wholesale distributor may sell any candy or biscuits shall be the sum of the following f.o.b. his place of business:

(*a*) the actual price paid by him for the goods but not exceeding the maximum price that may be charged him by the manufacturer of the goods;

(*b*) if his supplier is not required to deliver free to him and if he took delivery of the goods at a point which is not situated within the limits of the city, town or village in which his place of business is situated, the actual amount, not exceeding the common carrier freight rate, paid by him in transporting the goods from such receiving point to such city, town or village; and

(*c*) subject to subsection (2) of this Section, a percentage markup on his lawful cost (i.e. the amounts referred to in clauses (*a*) and (*b*) preceding) less excise tax, if any, not exceeding the lawful markup (percentage of cost) customarily obtained by him on sales of the same goods of the same manufacturer during the basic period from September 15 to October 11, 1941, both inclusive, or if such goods were not sold by him during the said basic period, not exceeding the lawful markup (percentage of cost) customarily obtained by him on sales of substantially similar goods during the said basic period; provided, however, in no event shall the markup exceed 25 per cent of the sum of the amounts referred to in clauses (*a*) and (*b*) preceding, excluding excise tax, if any, included therein.

(2) If a wholesale distributor purchases any candy or biscuits from a manufacturer on the basis of a trade discount from the manufacturer's list price for sales to the retail trade and such discount is less than the markup referred to in clause (*c*) of subsection (1) of this Section, such wholesale distributor shall not include in his selling price of those goods a markup which is in excess of the amount of such trade discount.

5. *Sales by Wholesale Distributors to Certain Named Buyers*

Except as may otherwise be authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price f.o.b. his place of business at which a wholesale distributor may sell any candy or biscuits

(*a*) to another wholesale distributor;

(*b*) to a retailer who operates a central warehouse separate from his retail outlet or outlets, and takes delivery of the candy or biscuits at such warehouse; or

(*c*) to any person who buys candy or biscuits in carload lots,

shall be an amount equal to the lawful maximum price at which the manufacturer of such candy or biscuits may sell those goods to him, plus actual transportation charges, at not more than the railway freight rate, to the city, town or village in which his place of business is situated, if such transportation charges are not included in such maximum price.

6. If a wholesale distributor sells any candy or biscuits to another wholesale distributor, the seller must show on the sales invoice furnished by him to the buyer, the lawful maximum price at which the manufacturer of such candy or biscuits may sell those goods to the seller."

Dated at Ottawa, this 15th day of November, 1945.

J. H. THOMSON,
Administrator of Distributive Trades.

APPROVED:

M. W. McCUTHCHEON,
Deputy Chairman, Wartime Prices and Trade Board.

WARTIME PRICES AND TRADE BOARD

ADMINISTRATOR'S ORDER No. A-1811

Dried Fruits, Dried Dates and Canned Citrus Fruit Juice

Under powers given by the Wartime Prices and Trade Board to the Administrator of Imported Grocery Items, it is hereby ordered as follows:

1. This Order comes into force on November 19, 1945.

Dried Fruits

2. Section 3 of Administrator's Order No. A-553 is hereby revoked and the following is substituted therefor:

"3. (1) Except as provided in subsection (3) of this Section, the maximum price at which any person other than a first distributor may sell or offer to sell at wholesale any variety and grade of dried fruits except cluster raisins, in bulk or otherwise, shall be the sum of the following:—

(*a*) the actual price paid by such person to the first distributor from whom he purchased such dried fruit plus such transportation charges, bank charges, foreign exchange, customs duty, sales tax, excise tax, marine and war risk insurance (if any) and cleaning charges (if any) as are not borne by such first distributor and are not included in such actual price; and

(*b*) a markup not exceeding such person's markup that was included in his highest lawful selling price of dried fruits of the same or similar variety and grade during the basic period from September 15 to October 11, 1941, and not in any event exceeding

(i) twelve per cent of such person's lawful selling price of such dried fruits when sold by him in bulk, or

(ii) ten per cent of such person's lawful selling price of such dried fruits when packed in a container in which such fruits are customarily sold to consumers.

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(2) Except as provided in subsection (3) of this Section, the maximum price at which any person other than a first distributor may sell or offer to sell at wholesale any cluster raisins in bulk or otherwise shall be the sum of the following:—

(*a*) the actual price paid by such person to the first distributor from whom he purchased such raisins, plus such transportation charges, bank charges, foreign exchange, customs duty, sales tax, excise tax and marine and war risk insurance (if any) as are not borne by such first distributor and are not included in such actual price; and

(*b*) a markup not exceeding such person's markup that was included in his highest lawful selling price of cluster raisins of the same or similar variety and grade, during the said basic period and not in any event exceeding 12 per cent of such person's lawful selling price of such cluster raisins.

(3) Except as may otherwise be authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price at which any person other than a first distributor may sell or offer to sell at wholesale any dried fruits

(*a*) to any person who sells the dried fruits at wholesale;

(*b*) to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the dried fruits at such warehouse; or

(*c*) to any person who buys the dried fruits in carload lots,

shall be an amount equal to the maximum price as fixed by this Order at which the dried fruits may be sold to the seller by the first distributor thereof PLUS such transportation charges, bank charges, foreign exchange, customs duty, sales tax, excise tax, marine and war risk insurance (if any) and cleaning charges (if any) as are not borne by such first distributor and are not included in such maximum price.

(4) The maximum prices fixed by this Section include delivery when the buyer's place of business is situated within the city, town or village in which the wholesale distributor has his place of business or is within the wholesale distributor's customary free delivery zone. In all other cases such prices are f.o.b. the wholesale distributor's place of business.

(5) If a person other than a first distributor sells at wholesale any dried fruits to any other person who sells the dried fruits at wholesale, the seller must show on the sales invoice furnished by him to the buyer, the maximum price at which the first distributor thereof may sell such dried fruits to the seller."

Dried Dates

3. Section 5 of Administrator's Order No. A-1500, as amended, is hereby renumbered as subsection (1) of Section 5 and said subsection (1) as renumbered, is amended by inserting at the beginning thereof the following words: "Except as provided in subsection (2) of this Order,".

4. Section 5 of said Order No. A-1500 is hereby further amended by adding the following thereto as subsections (2) and (3):

"(2) Except as may otherwise be authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price f.o.b. his place of business at which a person other than a first distributor may sell at wholesale any dried dates except factory packaged dried dates

(*a*) to any person who sells the dried dates at wholesale;

(*b*) to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the dried dates at such warehouse; or

(*c*) to any person who buys the dried dates in carload lots,

shall be an amount equal to the maximum price as fixed by this Order at which the dried dates may be sold to the seller by the first distributor thereof plus transportation charges, at not more than the common carrier freight rate, of transporting the dried dates to the city, town or village, in which his place of business is situated.

(3) If a person other than a first distributor sells at wholesale any dried dates to another person who sells the same at wholesale, the seller must show on the sales invoice furnished by him to the buyer, the maximum price at which the first distributor thereof may sell such dried dates to the seller."

5. Section 10 of Administrator's Order No. A-1500, as amended, is hereby renumbered as subsection (1) of Section 10 and said subsection (1) as renumbered, is amended by inserting at the beginning thereof the following words: "Except as provided in subsection (2) of this Section,".

6. Section 10 of said Order No. A-1500 is hereby further amended by adding the following thereto as subsections (2) and (3):

"(2) Except as may otherwise be authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price f.o.b. his place of business at which a person other than a processor may sell at wholesale any factory packaged dried dates

(*a*) to any person who sells the factory packaged dried dates at wholesale;

(*b*) to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of the factory packaged dried dates at such warehouse; or

(*c*) to any person who buys the factory packaged dried dates in carload lots,

shall be an amount equal to the maximum price as fixed by this Order at which the factory packaged dried dates may be sold to the seller by the processor thereof PLUS transportation charges, at not more than the common carrier freight rate, of transportating the factory packaged dried dates to the city, town or village in which his place of business is situated.

(3) If a person other than a processor sells at wholesale any factory packaged dried dates to another person who sells the same at wholesale, the seller must show on the sales invoice furnished by him to the buyer, the maximum price at which the processor thereof may sell such dried dates to the seller."

7. Section 13 of said Order No. A-1500 is hereby revoked.

Canned Citrus Fruit Juice

8. Section 8 of Administrator's Order No. A-1643 is hereby amended by inserting at the beginning thereof the following words: "Except as provided in Section 9,".

9. Section 9 of said Order No. A-1643 is hereby revoked and the following is substituted therefor:

"9. Except as may otherwise be authorized in writing by the Administrator of Distributive Trades, upon application to him, the maximum price at which a wholesale distributor may sell any canned citrus fruit juice

(*a*) to another wholesale distributor;

(*b*) to a retailer who operates a central warehouse separate from his retail outlet or outlets and takes delivery of canned citrus fruit juice at such warehouse; or

(*c*) to any person who buys the canned citrus fruit juice in carload lots,

shall be an amount equal to the maximum price as fixed by this Order at which the Cannet Citrus Fruit Juice may be sold to the seller by the first distributor thereof plus actual transportation charges, at not more than the common carrier freight rate of transporting the canned citrus fruit juice to the city, town or village in which his place of business is siuated."

10. Section 10 of said Order No. A-1643 is hereby revoked and the following is substituted therefor:

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"10 (1) The maximum prices fixed by Sections 8 and 9 include delivery when the buyer's place of business is situated within the city, town or village in which the wholesale distributor has his place of business or is within the the wholesale distributor's customary free delivery zone. In all other cases such prices are f.o.b. the wholesale distributor's place of business.

(2) If a wholesale distributor sells any canned citrus fruit juice to another wholesale distributor, the seller must show on the sales invoice furnished by him to the buyer, the maximum price at which the first distributor thereof may sell such canned citrus fruit juice to the seller."

Dated at Ottawa, this 15th day of November, 1945.

A. S. MAY,
Administrator of Imported Grocery Items.

APPROVED:

M. W. McCUTCHEON,
Deputy Chairman, Wartime Prices and Trade Board.

WARTIME PRICES AND TRADE BOARD

ADMINISTRATOR'S ORDER No. A-1829

Maximum Prices of Sausage

Under powers given by the Wartime Prices and Trade Board to the Administrator of Meat and Meat Products, it is hereby ordered as follows:

1. This Order comes into force on December 15, 1945.

2. Subsection (1) of Section 2 of Administrator's Order No. A-1755 is hereby amended by revoking clauses (*b*), (*c*), (*e*), (*i*) and (*j*) thereof and substituting therefor the following:

"(*b*) "pork sausage" means fresh sausage, stuffed in the cleaned intestines of sheep, lambs or hogs, containing no animal products other than flesh or fat obtained from the carcass of a hog from which the tongue, heart, liver, lungs, kidneys and other viscera have been removed;

(*c*) "commercial sausage" means any fresh sausage stuffed in the cleaned intestines of sheep, lambs or hogs, other than pork sausage;

(*e*) "wiener" or "frankfurter" means sausage stuffed in the cleaned intestines of sheep, lambs or hogs or in artificial casings of a similar size, and which has been smoked or cooked or both smoked and cooked;

(*i*) "pork sausage meat" means sausage conforming to the definition of pork sausage except that it is not stuffed in the cleaned intestines of sheep, lambs or hogs;

(*j*) "commercial sausage meat" means sausage conforming to the definition of commercial sausage except that it is not stuffed in the cleaned intestines of sheep, lambs or hogs;".

Dated at Ottawa this 13th day of December, 1945.

F. S. GRISDALE,
Administrator of Meat and Meat Products.

APPROVED:

M. W. McCUTCHEON,
Deputy Chairman, Wartime Prices and Trade Board.

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WARTIME PRICES AND TRADE BOARD

ADMINISTRATOR'S ORDER No. A-1830

Maximum Prices of Cheddar Cheese

Under powers given by the Wartime Prices and Trade Board to the Administrator of Dairy Products, it is hereby ordered as follows:

1. This Order comes into force on December 15, 1945.

2. Section 5 of Administrator's Order No. A-1591, as amended, is hereby further amended by adding as paragraphs (iv) and (v) thereof, the following:

"(iv) an amount for colouring by him not exceeding $\frac{1}{10}$ of a cent per pound;

(v) if the cheese is one of the following styles:

Daisy Cheese (20 to 22 lbs. individually boxed), $\frac{3}{4}$ of a cent per pound;

Stilton and oblong blocks (10 to 12 lbs. individual cheese), $1\frac{1}{2}$ cents per pound."

Dated at Ottawa this 13th day of December, 1945.

K. H. Olive,
Administrator of Dairy Products.

APPROVED:

M. W. McCUTCHEON,
Deputy Chairman, Wartime Prices and Trade Board.

WARTIME PRICES AND TRADE BOARD

ADMINISTRATOR'S ORDER No. A-1831

Respecting the Packaging of Tobacco Products

Under powers given by the Wartime Prices and Trade Board to the Administrator of Tobacco, it is hereby ordered as follows:

1. Administrator's Order No. A-513, as amended, which restricted the packaging of tobacco products, is revoked.

2. This Order comes into force on December 15, 1945.

Dated at Ottawa this 13th day of December, 1945.

D. SIM,
Administrator of Tobacco.

APPROVED:

D. GORDON,
Chairman, Wartime Prices and Trade Board.

WARTIME PRICES AND TRADE BOARD

ADMINISTRATOR'S ORDER No. A-1832

Maximum Prices of Barbecued Chicken

Under powers given by the Wartime Prices and Trade Board to the Administrator of Meat and Meat Products, it is hereby ordered as follows:

1. This Order comes into force on December 17, 1945.

2. For the purposes of this Order

(*a*) "chicken" includes fowl;

(*b*) "cuts" includes half carcasses, quarter carcasses and other parts of a carcass.

3. (1) The maximum price at which any person may sell or offer to sell any barbecued chicken in whole carcasses or in cuts shall be $1.10 per pound.

(2) The maximum price fixed by subsection (1) of this Section applies to sales of barbecued chicken without dressing or stuffing. No person shall sell or offer to sell any barbecued chicken with dressing or stuffing unless the maximum price at which he may sell the same has been fixed upon application in writing to the Administrator of Meat and Meat Products.

4. Every person who sells any barbecued chicken shall, upon the request of the buyer, furnish him with a sales slip or invoice showing the date of sale, the seller's name and address, the quantity sold and the price charged.

Dated at Ottawa, this 15th day of December, 1945.

F. S. GRISDALE,
Administrator of Meat and Meat Products.

APPROVED:

M. W. McCUTCHEON,
Deputy Chairman, Wartime Prices and Trade Board.

WARTIME PRICES AND TRADE BOARD

ADMINISTRATOR'S ORDER No. A-1834

Controlling the Production for sale of Canned Beans with or without Pork or Tomato Sauce

The production of canned beans packed in metal containers was restricted by Administrator's Order No. A-1153. That Order has been replaced by Administrator's Order No. A-1833 which removes the limitation on the quantity of metal containers that can be used to pack canned beans. However, in view of the short supply of dried beans, it is considered necessary to restrict the quantity of canned beans that may be packed for consumption within Canada in order to ensure that adequate supplies of dried beans will be available for essential purposes.

Therefore under powers given by the Wartime Prices and Trade Board to the Administrator of Processed Fruits and Vegetables, it is hereby ordered as follows:—

1. This Order comes into force on December 19, 1945.

2. For the purposes of this Order "canned beans" means dried beans processed and packed in metal containers for sale with or without pork, tomato sauce or any other ingredient.

3. Unless otherwise authorized in writing by the Deputy Administrator of Processed Fruits and Vegetables, no person shall during the twelve month period ending on March 31, 1946, and during each twelve month period thereafter, process and pack for sale within Canada or sell or supply within Canada, a greater quantity of canned beans than fifty per cent (50%) of the total quantity, by weight, of canned beans that he processed and packed for sale within Canada during the calendar year of 1941.

Dated at Ottawa, this 18th day of December, 1945.

F. D. MATHERS,
Administrator of Processed Fruits and Vegetables.

APPROVED:

D. GORDON,
Chairman, Wartime Prices and Trade Board.

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Fuelwood Order

WARTIME PRICES AND TRADE BOARD

FUELWOOD ORDER No. 112

Fuelwood on Vancouver Island in Areas not Covered by Fuelwood Order No. 90

Under powers given by the Board to the Timber Administrator, it is hereby ordered as follows:—

Effective Date.

1. This Order comes into force on December 5, 1945, and fixes maximum prices on, and otherwise regulates, sales of fuelwood on Vancouver Island in areas not covered by Fuelwood Order No. 90.

Definitions.

2. For the purposes of this Order,

(*a*) "bushwood" means wood cut for fuel from trees standing or fallen and which is not a by-product of a lumber mill operation;

(*b*) "cord" is a quantity measurement consisting of 128 cubic feet of fuelwood when properly piled. However, a cord of loosely packed fuelwood, 16 inches in length and under, must contain 168 cubic feet;

(*c*) "imported millwood or sawdust" means millwood or sawdust produced outside the area in which it is sold and delivered and which area is described in a Schedule to this Order;

(*d*) "fuelwood" includes millwood, bushwood, sawdust and hog fuel;

(*e*) "green" referring to millwood or bushwood means not seasoned dry;

(*f*) "millrun" referring to millwood means unsorted millwood including slabs, edgings and inside wood as it comes direct from the mill. Only inside wood from planer mills may be sorted from fuelwood sold by mills as "millrun";

(*g*) "piled" shall mean the placing of wood neatly in a pile, in which the pieces of wood are placed parallel with each other;

(*h*) "seasoned dry" referring to millwood or bushwood means millwood and bushwood that has been stacked or piled and stored for at least ninety days between March 15 and August 15 in any year and also includes millwood which has been kiln dried;

(*i*) "stacked" as used herein shall mean the placing of wood in a random stack, without order or arrangement;

(*j*) "sell" includes "offer to sell";

(*k*) "unit" is a quantity measurement of sawdust or hog fuel containing 200 cubic feet so loaded that settling on transportation will not reduce the measurement under the full capacity of the container and the number of cubic feet of sawdust or hog fuel delivered in the seller's container when so loaded to capacity shall not be deemed to be greater than the inside capacity of such container in cubic feet.

Sale and Delivery.

3. (1) All sales of millwood and bushwood must be by cord measurement and of sawdust and hog fuel by unit measurement.

(2) No person shall deliver millwood or bushwood 16 inches in length or under on a basis of 168 cubic feet to the cord in a box container unless the container is filled

This is an important judgment, since the question at issue was the legality of Canadian Orders-in-Council providing, inter alia, for deportation of persons of Japanese race who were British subjects and Canadian ~~citizens~~ nationals, either by birth or by naturalisation, and for such persons, if naturalised, to lose their status as British subject or Canadian national on deportation. This was decided in the affirmative.

It has of course for long been the practice in Canada, as in other Dominions, to deport British subjects who are not Canadian citizens, but there has never before been any suggestion that any Dominion might deport its own citizens. In the United Kingdom, the practice has been not to deport any British subject*. This is, I believe, based upon the provision in Magna Carta that no freeman shall be exiled except by lawful judgment of his Peers or by the law of the land and the general policy followed by the U.K. Government of treating British subjects alike. It may be that, when the proposed new citizenship legislation has come into force in this country, there will be a change of policy and that power will be taken to deport British subjects who are not "citizens of the U.K. and Colonies", but there can be no question of power to deport British subjects who are such citizens.

All this, however, has reference to the normal peacetime position and it can undoubtedly be argued that the circumstances of war may make a departure from these general principles necessary and desirable. There was in fact a suggestion in 1940, as a measure of precaution in view of the possibility of a German invasion, that Sir Oswald Mosley and other members of the British Union of

/Fascists

* apart from the special provisions of the Prevention of Violence (Temporary Provisions) Act, 1939, cont'd

(PW 19/42)

with millwood or bushwood up to the limit of its capacity when levelled off at the top, or if the container is divided into compartments, each compartment delivered, is so filled.

(3) No person shall deliver sawdust or hog fuel except:

(*a*) in sacks containing 4 cubic feet each; or

(*b*) in a box container, in which case the container must be filled with sawdust or hog fuel up to the limit of its capacity when levelled off at the top, or if the container is divided into compartments, each compartment delivered, must be so filled.

(4) Every seller who delivers fuelwood in a box container shall constantly have painted on at least one side of each such container in legible letters of not less than six inches in height the name and address of the owner of the vehicle and

(*a*) if the container is used for the delivery of bushwood or millwood, the capacity of the container expressed in cords of 168 cubic feet and fractions of such a cord, and if the container is divided into compartments, the capacity of each compartment; and

(*b*) if the container is used for the delivery of sawdust or hog fuel, the capacity of the container expressed in units of 200 cubic feet and fractions of such a unit, and if the container is divided into compartments, the capacity of each compartment.

Maximum Prices—Delivered.

4. (1) The maximum price per cord at which any person may sell bushwood or millwood of a kind and length named in this Order, delivered to the premises of the consumer in the municipalities or areas described in the Schedules hereto, is that set forth for the kind, length and quantity in the Schedule in which the municipality or area is described.

(2) The maximum price per unit at which any person may sell any sawdust of a kind or quantity named in this Order and delivered to the premises of the consumer in the municipalities or areas described in the Schedules hereto, is that set forth for the kind and quantity of sawdust in the Schedule in which the municipality or area is described.

Maximum Prices—Not Delivered.

5. When a consumer provides transportation for millwood, bushwood or sawdust from the seller's yard or place of storage, the maximum price at which any person may sell such millwood, bushwood or sawdust in areas or municipalities described in this Order is as fixed by Section 4 of this Order LESS the cost of delivery.

Administrator to Fix Prices of Unnamed Fuelwood.

6. Fuelwood of a kind or length not named in a Schedule of this Order shall not be sold until the price has been fixed upon application made to the Timber Administrator.

Invoices.

7. (*a*) Every person who sells or delivers fuelwood shall prepare an invoice in duplicate for each such sale or delivery, showing therein:

(i) the name and address of the seller and purchaser;

(ii) the kind and quantity and length of each kind of fuelwood sold;

(iii) the price per cord or per unit and the total price charged;

(iv) the date of delivery;

(v) the amount of any service charge made pursuant to this Order or otherwise authorized;

(vi) if the wood is bushwood or millwood, the length thereof and whether the wood is seasoned dry or green.

(*b*) One copy of each invoice shall be delivered to the purchaser at the time of the delivery of the fuelwood and one copy shall be kept on file by the seller for inspection by any authorized representative of the Board.

Advertisement.

8. (1) A person selling fuelwood must keep a copy of his authorized prices on display at his place of business in a position where they can be readily examined by customers.

(2) A copy of the authorized prices must be displayed within 14 days after the effective date of this Order.

(3) Two copies of the dealer's authorized price list, signed by the dealer, must be sent to the Regional Wood Fuel Officer, 623 Vancouver Block, 736 Granville Street, Vancouver, within 14 days after the effective date of this Order.

(4) Any change in prices authorized by the Administrator must be put on display within 14 days after the effective date of the change.

(5) Any advertisement offering fuelwood for sale must contain the full name and address of the seller.

Splitting and Sawing Charges.

9. (1) The maximum price which any person may charge or be paid for the service of splitting fuelwood into cookstove sizes shall be at the rate of One Dollar and Fifty Cents ($1.50) per cord.

(2) The maximum price which any person may charge or be paid for the service of sawing fuelwood shall be as follows:
From lengths of 4 feet—

(i) into 2 lengths at rate of $1.00 per cord;

(ii) into 3 lengths at rate of $1.50 per cord;

(iii) into 4 or more lengths at rate of $2.00 per cord.

Dated at Ottawa, this 20th day of November, 1945.

BERNARD E. HARRISON,
Deputy Timber Administrator.

APPROVED:

D. GORDON,
Chairman, Wartime Prices and Trade Board.

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1946

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SCHEDULE "A"

TO FUELWOOD ORDER No. 112

Maximum prices of fuelwood delivered to the premises of the consumer in Saanich Municipality, including the Indian Reserve therein and the islands of James and Sidney, but excluding that part of Saanich Municipality lying north and east of a line beginning at the northwest corner of the municipality of Oak Bay and the Junction of the Gordon Head Road and Ruby Road, thence west on Ruby Road to Cedar Hill Road, thence north on Cedar Hill Road to Mount Douglas Crossroad; thence west on Mount Douglas Crossroad to Cumberland Street; thence south on Cumberland Street to Willow Street; thence west on Willow Street to Burden Street; thence north on Burden Street to Lucas Street; thence west on Lucas Street to Quadra Street; thence north on Quadra Street to Lilly Street; thence west on Lilly Street to a point connecting with Judah Street; thence west on Judah Street to Cary Road; thence north on Cary Road to Roy Road; thence west on Roy Road to Wilkinson Road; thence south on Wilkinson Road to Portage Inlet, all in the province of British Columbia.

PART I—SAWDUST

Kind	Delivered in bags and placed in the purchaser's storage place on his premises	Delivered in bulk to the buyer's premises
Douglas Fir	$6 50	$5 50
Other than Fir	5 75	4 75

PART II—MILLWOOD OTHER THAN IMPORTED

Kind	Price per cord not over 4 feet in length	
	Green	Seasoned Dry
Douglas Fir Mixed Millwood	$5 50	$7 50
Any other kind	5 00	7 00
Kindling—any kind	6 00	7 75

PART III—IMPORTED MILLWOOD

Kind	Price per cord not over 4 feet in length	
	Green	Seasoned Dry
Douglas Fir	$6 50	$8 50
Any other kind	6 00	8 00

PART IV—BUSHWOOD

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Softwood—all kinds including Fir, Hemlock, Spruce and Balsam, but excluding Cedar	12″ to 16″	$12 00	$13 00
	Over 16″ to 48″	9 00	10 00
Hardwood—all kinds including Birch, Alder, Maple and Oak	12″ to 16″	13 00	14 00
	Over 16″ to 48″	10 00	11 00

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SCHEDULE "B"

TO FUELWOOD ORDER No. 112

Maximum prices for fuelwood delivered to the premises of the consumer in the District of North Saanich on Vancouver Island in the Province of British Columbia.

PART I—SAWDUST

Kind	Price per Unit	
	Delivered in bags and placed in the buyer's storage place on his premises	Delivered in bulk to the buyer's premises
Douglas Fir	$7 00	$6 00
Other than Fir	6 25	5 25

PART II—MILLWOOD OTHER THAN IMPORTED

Kind	Price per cord not over 4 feet in length	
	Green	Seasoned Dry
Douglas Fir Mixed Millwood	$6 00	$8 00
Any other Kind	5 50	7 50
Kindling	6 50	8 25

PART III—IMPORTED MILLWOOD

Kind	Price per cord not over 4 feet in length	
	Green	Seasoned Dry
Douglas Fir	$7 00	$9 00
Any other Kind	6 50	8 50

PART IV—BUSHWOOD

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Softwood—all kinds including Fir, Hemlock, Spruce and Balsam, but excluding Cedar	12″ to 16″	$12 50	$13 50
	Over 16″ to 48″	9 50	10 50
Hardwood—all kinds including Birch, Alder, Maple and Oak	12″ to 16″	13 50	14 50
	Over 16″ to 48″	10 50	11 50

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SCHEDULE "C"

TO FUELWOOD ORDER No. 112

Maximum prices for fuelwood delivered to the premises of the consumer in the "Unorganized Territory" west of Municipalities of Victoria, Esquimalt and Saanich, which includes the District of Highland, Esquimalt, Metchosin, Sooke, Otter and Coldstream, all in the Province of British Columbia.

PART I—SAWDUST

Kind	Price per Unit	
	Delivered in bags and placed in the buyer's storage place on his premises	Delivered in bulk to the buyer's premises
Douglas Fir	$5 50	$4 50
Any other Kind	4 75	3 75

PART II—MILLWOOD

Kind	Price per cord not over 4 feet in length	
	Green	Seasoned Dry
Douglas Fir Mixed Millwood	$5 50	$7 50
Other than Douglas Fir Mixed Millwood	5 00	7 00
Kindling	5 00	6 75

PART III—BUSHWOOD

Kind	Length	Price per cord	
		Green	Seasoned Dry
Softwood—all kinds including Fir, Hemlock, Spruce and Balsam, but excluding Cedar	12″ to 16″	$12 00	$13 00
	Over 16″ to 48″	9 00	10 00
Hardwood—all kinds including Birch, Alder, Maple and Oak	12″ to 16″	13 00	14 00
	Over 16″ to 48″	10 00	11 00

SCHEDULE "D"

TO FUELWOOD ORDER No. 112

Maximum Prices for Fuelwood Delivered to the Premises of the Consumer in the City of Duncan, Vancouver Island, in the Province of British Columbia

PART I—SAWDUST

Kind	Price per Unit	
	Delivered in bags and placed in the buyer's storage place on his premises	Delivered in bulk to the buyer's premises
Local—		
Douglas Fir	$5 00	$4 00
Other than Fir	4 25	3 25
Imported—		
Produced 10 miles outside the boundaries of the City of Duncan.		
Douglas Fir	$6 00	$5 00
Other than Fir	5 25	4 25

PART II—MILLWOOD OTHER THAN IMPORTED

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Douglas Fir Millrun	12″ to 16″	$5 00	$6 25
Other than Fir	12″ to 16″	4 25	5 50
Douglas Fir Millrun	over 16″ to 48″	4 00	5 25
Other than Fir	over 16″ to 48″	3 25	4 50

PART III—IMPORTED MILLWOOD

The maximum price for which any person may sell millwood in the City of Duncan produced 10 miles beyond the limits of said City shall not be in excess of the highest price he may sell such millwood pursuant to the provisions of the Wartime Prices and Trade Regulations.

PART IV—BUSHWOOD

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Softwood—all kinds including Fir, Hemlock, Spruce and Balsam, but excluding Cedar	12″ to 16″	$8 00	$9 00
	over 16″ to 48″	7 00	8 00
Hardwood—all kinds including Birch, Alder, Maple and Oak	12″ to 16″	9 00	10 00
	over 16″ to 48″	8 00	9 00

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SCHEDULE "E"

TO FUELWOOD ORDER No. 112

MAXIMUM PRICES FOR FUELWOOD DELIVERED TO THE PREMISES OF THE CONSUMER IN THE "LADYSMITH AND CHEMAINUS AREA" IN THE PROVINCE OF BRITISH COLUMBIA

"Ladysmith and Chemainus Area" means that portion of the County of Nanaimo, commencing at a point on Stuart Channel south-east of Chemainus Bay, said point being the south-east corner of Section 15 (fifteen), Range 7 (seven), Chemainus District; thence due west to a point due south of the south-west corner of Bright District; thence due north to said south-west corner and continuing due north along the west boundaries of Bright and Cranberry Districts to the north-west corner of Section 2 (two), Range 1 (one), Cranberry District; thence due east to the shore line; thence following the shore line in a southerly, westerly, and southerly direction to the point of commencement, and shall include all of the site of the Mayo sawmill near Cassidy, B.C.

PART I—SAWDUST

Kind	Price per Unit	
	Delivered in bags and placed in the buyer's bin or storage place on his premises	Delivered in bulk to the buyer's premises
Douglas Fir	5 50	$4 50
Other than Fir	4 75	3 75

PART II—MILLWOOD OTHER THAN IMPORTED

Kind	Price per Cord not over 4 feet in length	
	Green	Seasoned Dry
Douglas Fir Mixed Millrun	$4 75	$6 75
Any other kind	4 00	6 00
Kindling, any kind	5 00	6 00

PART III—IMPORTED MILLWOOD

The maximum price at which any person may sell millwood within the Ladysmith and Chemainus Area which has been produced outside the said area shall not be in excess of the price at which he may sell such millwood pursuant to the Provisions of the Wartime Prices and Trade Regulations.

PART IV—BUSHWOOD

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Softwood—all kinds including Fir, Hemlock, Spruce and Balsam, but excluding Cedar	12″ to 16″	$8 00	$9 00
	over 16″ to 48″	7 00	8 00
Hardwood—all kinds, including Birch, Alder, Maple and Oak	12″ to 16″	9 00	10 00
	over 16″ to 48″	8 00	9 00

SCHEDULE "F"

TO FUELWOOD ORDER No. 112

MAXIMUM PRICES FOR FUELWOOD DELIVERED TO THE CONSUMER'S PREMISES IN THE "NANAIMO AREA" IN THE PROVINCE OF BRITISH COLUMBIA

"Nanaimo Area" means that area bounded as follows: commencing on the shore line of Nanaimo Harbour at Chelsea Street, Newcastle Reserve; thence westerly along Chelsea Street to Waddington Road, Newcastle Reserve; thence southerly along Waddington Road to Townsite Road, Newcastle Reserve; thence in a westerly direction along Townsite Road to the Island Highway running northerly out of Nanaimo City; thence in a southerly direction along the Island Highway to the intersection of Wakesiah Avenue, Five Acres, thence southerly along Wakesiah Avenue to Eighth Street, Five Acres; thence easterly along Eighth Street to the Esquimalt and Nanaimo Railway; thence in a southerly direction along the Esquimalt and Nanaimo Railway to the northerly bank of Chase River, thence in an easterly direction along the northerly bank of Chase River to Nanaimo Harbour, and continuing along the shore line of Nanaimo Harbour in a northerly direction to the point of commencement, and shall exclude all of the site of the Mayo sawmill near Cassidy, B.C.

PART I—SAWDUST

Kind	Price per Unit	
	Delivered in bags and placed in the buyer's bin or storage place on his premises	Delivered in bulk to the buyer's premises
LOCAL—Douglas Fir	$5 50	$4 50
Other than Fir	4 75	3 75
IMPORTED—Douglas Fir		5 00

PART II—MILLWOOD OTHER THAN IMPORTED

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Douglas Fir mixed millrun	12″ to 16″	$4 50	$6 50
Other than Douglas Fir mixed millrun	12″ to 16″	4 00	6 00
Douglas Fir mixed millrun	over 16″ to 48″	3 50	5 50
Other than Douglas Fir mixed millrun	over 16″ to 48″	3 00	5 00

PART III—IMPORTED MILLWOOD

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Douglas Fir mixed millrun	12″ to 16″	$5 50	$7 50
Other than Douglas Fir mixed millrun	12″ to 16″	5 00	7 00
Douglas Fir mixed millrun	over 16″ to 48″	4 50	6 50
Other than Douglas Fir mixed millrun	over 16″ to 48″	4 00	6 00

PART IV—BUSHWOOD

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Softwood—all kinds including Fir, Hemlock, Spruce and Balsam, but excluding Cedar	12″ to 16″	$9 00	$10 00
	over 16″ to 48″	8 00	9 00
Hardwood—all kinds including Birch, Alder, Maple and Oak	12″ to 16″	10 00	11 00
	over 16″ to 48″	9 00	10 00

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SCHEDULE "G"

TO FUELWOOD ORDER No. 112

MAXIMUM PRICES FOR FUELWOOD DELIVERED TO THE CONSUMER'S PREMISES IN THE "COURTENAY, CUMBERLAND, ROYSTON AND COMOX AREA" IN THE PROVINCE OF BRITISH COLUMBIA

"Courtenay, Cumberland, Royston and Comox Area" means the area bounded on the south by the Tren River from the sea to the Beaufort Range; bounded on the west by the Beaufort Range; bounded on the north by Bridges Cross Road, and continuing in a straight line east to the sea and west to the Beaufort Range; bounded on the east from that point where Bridges Cross Road runs into the sea, and following the coast-line in a south-easterly direction to the point of commencement at the mouth of the Tren River.

PART I—SAWDUST

Kind	Price per Unit	
	Delivered in bags and placed in the buyer's bin or storage place on his premises	Delivered in bulk to the buyer's premises
Douglas Fir	$6 00	$5 00
Other than Fir	5 00	4 00
IMPORTED—Douglas Fir		6 00

PART II—MILLWOOD OTHER THAN IMPORTED

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Millrun, 85% Douglas Fir	12" to 16"	$5 00	$7 00
Millrun, other than Douglas Fir	12" to 16"	4 50	6 50
Millrun, 85% Douglas Fir	over 16" to 48"	4 00	6 00
Millrun, other than Douglas Fir	over 16" to 48"	3 50	5 50

PART III—IMPORTED MILLWOOD

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Millrun—85% Douglas Fir	12" to 16"	$6 00	$8 00
Millrun—other than Douglas Fir	12" to 16"	5 50	7 50
Millrun—85% Douglas Fir	over 16" to 48"	5 00	7 00
Millrun—other than Douglas Fir	over 16" to 48"	4 50	6 50

PART IV—BUSHWOOD

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Softwood—all kinds including Fir, Hemlock, Spruce, and Balsam, but excluding Cedar	12" to 16"	$9 00	$10 00
	2 ft.	8 00	9 00
	3 ft.	7 50	8 50
	4 ft.	7 00	8 00
Hardwood—all kinds including Birch, Alder, Maple and Oak	12" to 16"	10 00	11 00
	2 ft.	9 00	10 00
	3 ft.	8 50	9 50
	4 ft.	8 00	9 00

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1946

SCHEDULE "H"

TO FUELWOOD ORDER No. 112

MAXIMUM SELLING PRICES FOR FUELWOOD DELIVERED TO THE CONSUMER'S PREMISES IN THE "ALBERNI AND PORT ALBERNI AREA" IN THE PROVINCE OF BRITISH COLUMBIA

"Alberni and Port Alberni Area" means the City of Alberni and the City of Port Alberni, as defined by City By-Laws.

PART I—SAWDUST

Kind	Price per Unit	
	Delivered in bags and placed in the buyer's bin or storage place on his premises	Delivered in bulk to the buyer's premises
LOCAL—Douglas Fir	$4 00	$3 00
IMPORTED—Douglas Fir	5 50	4 50

PART II—MILLWOOD OTHER THAN IMPORTED

Kind	Length	Price per Cord	
		Green	Seasoned Dry
85% Douglas Fir planer blocks and inside wood	12" to 16"	$5 00	$7 00
Douglas Fir millrun	12" to 16"	4 00	6 00
Other than Douglas Fir planer blocks and inside wood	12" to 16"	4 50	6 50
Other than Douglas Fir millrun	12" to 16"	3 50	5 50
85% Douglas Fir planer blocks and inside wood	over 16" to 48"	4 00	6 00
Douglas Fir millrun	" 16" to 48"	3 00	5 00
Other than Douglas Fir planer blocks and inside wood	" 16" to 48"	3 50	5 50
Other than Douglas Fir millrun	" 16" to 48"	2 50	4 50

PART III—IMPORTED MILLWOOD

The maximum price at which a person may sell millwood within the Alberni and Port Alberni Area which has been produced outside the said area shall not be in excess of the price at which he may sell such millwood pursuant to the Provisions of the Wartime Prices and Trade Regulations.

PART IV—BUSHWOOD

Kind	Length	Price per Cord	
		Green	Seasoned Dry
Softwood—all kinds including Fir, Hemlock, Spruce, and Balsam, but excluding Cedar	12" to 16"	$8 00	$9 00
	over 16" to 48"	7 00	8 00
Hardwood—all kinds including Birch, Alder, Maple and Oak	12" to 16"	9 00	10 00
	over 16" to 48"	8 00	9 00

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1946

34

2A

Fascists might be removed for internment to some of the Dominions or Colonies. It was then considered that removal to the Dominions would require special legislation, though removal to Colonies could be effected by Defence Regulation, but this was based on the view that detention in a Dominion would be inconsistent with the provisions of the Emergency Powers (Defence) Act and Regulation 18B, which appeared to contemplete that any person detained should remain under the custody of the Home Secretary, and not upon any doubts as to the legality of sending British subjects overseas. (It was eventually decided not to proceed with the proposal)

It may also be observed that, in the case of British subjects, the Canadian Order-in-Council applied only to persons who had made a request for repatriation. The position was therefore somewhat analogous to that which existed in this country during the 18th and early 19th Centuries with regard to transportation. Section 11 of the Habeas Corpus Act provided that no resident of England, Wales or Berwick-upon-Tweed should be sent ~~personally~~ prisoner into any place beyond the seas, but Section 13 provided that, if any person convicted of felony should in open court pray to be transported beyond the seas and the court should think fit to leave him in prison for that purpose, he might be so transported.

I am not sure what was the precise ground for the contention that the Canadian Orders-in-Council were invalid as being repugnant to the British ~~Commonwealth~~ Nationality and Status and Aliens Act. There is no specific provision in that Act prohibiting the deportation of a British subject, and indeed Section 26 provides that nothing in the Act shall prevent the legislature or government of any British possession from treating differently different classes of British subjects. This was, I believe, primarily intended to enable Dominions to discriminate against Asiatic British subjects in the matter of immigration, but I should have thought that it could

could equally be regarded as validating Dominion legislation providing for the deportation of a particular class of British subject, i.e. those of Japanese race. As regards the provisions of the Canadian Orders-in-Council depriving naturalised British subjects of their status, I suppose that the argument would be that the United Kingdom Act does not permit the ~~deportation~~ deprivation of a naturalised British subject of his nationality, except by the revocation of his naturalisation certificate in accordance with the provisions of the Act. Even so, however, I should have thought that Section 26 might be cited as authorising legislation permitting special action of this nature. In the circumstances, having regard to the very special position, I do not think that this case could be regarded (as apparently it has been in some quarters) as a precedent for drastic action by other members of the British Commonwealth with regard to the deportation of their own citizens, e.g. Indians in the Union of South Africa.

CWD

19.12.46.

The vital point about this, to the non-legal mind, is the fact that the Order applies only to those who have applied for repatriation + their dependants. This wd. seem to make it a very poor analogy for any type of deportation that is likely to assume major importance

14/1/47

Circ. for Feb if final copy
given P.C. Judgment not rec'd

CRP 14/1

16

TD.

H. 2 P.C.O. P.C. Appeal No 58 of 1946 24.12.46

COPY OF MINUTES ON G 691/1/19 (ais reqd re G 691/1/19)

This is an important judgment concerning the validity of Orders in Council made under the Canada War Measures Act.

Main points. "Deportation" is not a word which is mis-used when applied to persons, not aliens. Whether or not the word is in its application to be confined to aliens or not remains open as a matter of construction of the particular Statutes in which it appears.

The Colonial Laws Validity Act 1865 affords no grounds for questioning the validity of the Orders.

To over-rule either the considered decision of Parliament to confer the power or the decision of Governor-in-Council to exercise them would be contrary to principles laid down.

The words "of Japanese race" are not so vague as to be incapable of application to ascertained persons.

Draft despatch herewith, which is on the usual lines.

Mr. Roberts-Wray to see, and Sir C. Dixon.

(Intd) J.H.S.C.
31/12

Mr. Dale too should see.

The decision that an Order made under an Act of Parliament is a law made by Parliament is very surprising - and important.

(Intd.) K.O.R.W.
16/1/47

Put by
ewd
21/1/47
at once

Org reqd as G 691/1/19

2 5

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 evidence 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 enumerated, that is to say:—

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

(*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 1, 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, R.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.

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 Dominion 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

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 Frances Pulp and Power Co.* v. *Manitoba Free Press Co.* [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

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

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 the 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.

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 Frances Pulp and Power Co.* v. *Manitoba Free Press Co.* (*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 Taschereau 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.

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