
RETURN

To an Order of the House for a Return of a copy of the Judgment delivered by the Privy Council *In Re* Tomey Homma.

D. M. EBERTS,

Attorney-General's Department,

Attorney-General.

April 8th, 1903.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Collector of Voters for the Electoral District of Vancouver City and the Attorney-General for the Province of British Columbia v. Tomey Homma and the Attorney-General for the Dominion of Canada, from the Supreme Court of British Columbia, delivered the 17th December, 1902.

Present at the Hearing: The Lord Chancellor, Lord Macnaghten, Lord Davey, Lord Robertson and Lord Lindley.

(Delivered by the Lord Chancellor.)

In this case a naturalised Japanese claims to be placed upon the register of voters for the Electoral District of Vancouver City, and the objection which is made to his claim is that by the electoral law of the Province it is enacted that no Japanese, whether naturalised or not, shall have his name placed on the register of voters or shall be entitled to vote. Application was made to the proper officer to enter the applicant's name on the register, but he refused to do so upon the ground that the enactment in question prohibited its being done. This refusal was overruled by the Chief Justice sitting in the County Court, and the Appeal from his decision to the Supreme Court of British Columbia was disallowed. The present Appeal is from the decision of the Supreme Court.

There is no doubt that, if it is within the capacity of the Province to enact the electoral law, the claimant is disqualified by the express language of the Statute, but it is contended that the 91st and 92nd sections of the British North America Act have deprived the Province of the power of making any such provision as to disqualify a naturalised Japanese from electoral privileges. It is maintained that section 91 (25) enacts that the whole subject of naturalisation is reserved to the exclusive jurisdiction of the Dominion, while the Naturalisation Act of Canada enacts that a naturalised alien shall within Canada be entitled to all political and other rights, powers, and privileges to which a natural-born British subject is entitled in Canada. To this it is replied that by section 92 (1) the constitution of the Province and any amendment of it are placed under the exclusive control of the Provincial Legislature. The question which their Lordships have to determine is which of these two views is the right one, and in determining that question the policy or impolicy of such an enactment as that which excludes a particular race from the franchise is not a topic which their Lordships are entitled to consider.

The first observation which arises is that the enactment supposed to be *ultra vires* and to be impeached upon the ground of its dealing with alienage and naturalisation has not necessarily anything to do with either. A child of Japanese parentage born in Vancouver City is a natural-born subject of the King and would be equally excluded from the possession of the franchise. The extent to which naturalisation will confer privileges has varied both in this country and elsewhere. From the time of William III. down to Queen Victoria no naturalisation was permitted which did not exclude the alien naturalised from sitting in Parliament or in the Privy Council.

