

The Naturalization Act

R.S.C. 1906 c. 71

A. 15 Form B

Certificate of Notary

Re Fukuichi Aho

(1909) 9 W.L.R. 652

(B.C.)

Clerical errors

Re Cabulak, (1911)

19 W.L.R. 171 (alt.)

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Canadian Abidg. Aliens p. 83

Naturalization - Function of Courts - Procedure Before
Notary in Granting Certificate - Evidence Required.

"The function of the courts in naturalization cases is not merely ministerial. The court has inherent jurisdiction to protect itself from being imposed upon by applicants for naturalization. The naturalization Act, s. 15, which provides for the giving by a notary of a certificate in form 8. contemplates that evidence should be produced before the official granting the certificate and a notary has no authority to grant the certificate unless there is evidence before him shewing that the applicant has resided in Canada for the requisite period, that he intends to reside in Canada and that he is of good character

Re Fukuichi Aho, (1909) 9 W.L.R. 652 (B.C.)

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Kubodera

Chapter V - Claims & Property

Article 14

Subject to provisions of sub-paragraph (II) below,
2(I) — each of the Allied Powers shall have the
right to seize, retain, liquidate or otherwise
dispose of all property, rights and interests
of

- (a) Japan and Japanese nationals,
- (b) persons acting for or on behalf of Japan or
Japanese nationals, and
- (c) entities owned or controlled by Japan or
Japanese nationals,

which on the first coming into force of the
present Treaty were subject to its jurisdiction.

The property, rights and interests specified
in this sub-paragraph shall include
that now blocked, vested or in the possession
or under the control of enemy property authorities

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of allied Powers, which belonged to, or were held or managed on behalf of, any of the persons or entities mentioned in (a), (b) or (c) above at the time such assets came under the control of such authorities.

(II) Excepted from Subparagraph I -

- (i) property of Japanese natural persons resident in Canada & U.S. - except property subjected to restrictions during the war and not released from such restrictions as of ~~the date of the first~~ April 28, 1945
- (ii) all real property of Govt of Japan -
- (iii) property belonging to religious bodies or private charitable institutions and used exclusively for religious or charitable purposes.
- (iv) property etc. since Sept. 2/45
- (v) obligations of Japan or Japanese nationals, any right, title or interest in tangible property located in Japan, interests in enterprises organized under the laws of Japan, or any paper evidence thereof; provided that this exception shall apply only to obligations of Japan and its nationals expressed in Japanese currency.

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- (III) Property referred to in exceptions (i) through (v) shall be returned - subject to reasonable expenses. If property liquidated, proceeds shall be returned instead.
- (IV) The right to seize, retain, liquidate or otherwise dispose of property as provided in sub-para-(I) shall be exercised in accordance with the laws of the Allied Power concerned, and the owner shall have only such rights as may be given him by those laws. (including with the Enemy Regulations).

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Alien Enemy - Disposition of Property - Criminal Code.

Criminal Code s. 74(i) applied.

Not covered by Consolidated Orders Respecting Trading with the Enemy s. 3(3) - applies only to cases where a person has control of moneys and deals with them for the purpose of enabling the enemy to obtain them.

S. 19 - Consolidated Orders, not applicable because it was confined to the case of business being carried on in Canada for benefit of or under control of enemy subjects, here isolated transaction.

~~Jones~~ Janson v. Driefontein Consolidated Mines, Ltd.
[1902] A.C. 484, 71 L.J. K.B. 857,

11 News 317, 21 News 312;

McCormell v. Hector, 3 Bro. & P. 113, 21 News 329;

Porter v. Freudenberg, [1915] 1 K.B. 857, 84 L.J. K.B. 1001,

Daimler Co. v. Continental Tyre & Rubber Co. [1916] 2 A.C. 307,
85 L.J. K.B. 1333, 5 News 861

Lampel v. Berger (1917) 40 O.L.R. 165, 38 D.L.R. 47.

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The Canadian Aborigine - Vol 2 - pp. 59-60
Consolidated Orders Respecting Trading with the Enemy, 1916 - Vesting
Order - Legacy to Enemy Alien - Affidavit in Support of
Petition for Vesting Order.

G., deceased, in her lifetime a resident of the City of Montreal,
died in England on January 10, 1919, leaving a will executed
in Montreal, whereby she bequeathed certain monies to F.,
a native of Germany and an alien enemy domiciled in Germany.
The Secretary of State petitioned that the money be not paid to
the legatee but be vested in the Minister of Finance and
Receiver General as Custodian, and taken over under the
Consolidated Orders, 1916 (P.C. 1023). In support of the petition
there was filed, among other documents, the affidavit
of the Under-Secretary of State verifying the facts and
stating that in his opinion it was expedient for the
purpose of the said Orders that the legacy should be
vested in a Custodian and that he should be
empowered to give a discharge to the executor of
the estate upon payment to him. The petition was
based on ss. 23 and 28 (1) of the said Orders.
Order made accordingly. In re Consolidated Orders
Respecting Trading with the Enemy, 1916, (1920) 19 Ex C.R. 38.

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Also look up - reported in an Abridgment p. 61-62

Re Walker, (1919) 46 OLR 86, 49 DLR 415

enemy alien legate in the U.S.

W. a citizen of the U.S. died in 1916, left property in U.S. & Ontario, daughter was German subject by marriage - beneficiaries & trustees could allocate properties.

Secretary of State of Canada v. Alien Property Custodian for the United States etc. [1930] Ex C.R. 75,

[1930] 3 DLR 81, affirmed [1931] SCR 169,

[1931] 1 DLR 890 -

ownership of securities - note concerns disposal of assets after Treaty of Peace

Secretary of State of Canada v. Greenhills Ltd.

[1925] Ex C.R. 29.

Monies owing by defendant Co. to German subject resident in Germany in 1914 - Secretary of State obtained court order vesting debt in Minister of Finance as

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Court held that o/c passed for the purpose of carrying out the provisions of the Treaty of Versailles, was not retroactive; the vesting orders and directions which had been made were in full force & effect & unaltered by such o/c; payment might properly be made by defendant in the terms of the original tender.

In Re The War Measures Act, 1914, Synthetic Drug Co.,
Custodian Under The Treaty of Peace (Germany) Order 1920,
[1925] Ex CR 196

Regarding licenses for patents & royalties

In Re The Conveyancing Act; Custodian of Alien Enemy
Property v. Passavent, [1928] SCR 242
[1928] 3 DLR 5 - on appeal from the judgment of the
Court of Appeal of Ont. (1927) 32 OWN 402 - also
(1927) 32 OWN 230. - concerns debts owing enemy
The Custodian v. Blucher, [1927] SCR 420, [1927] 3 DLR 40,
varying [1926] Ex CR 77 - interest on dividends,
Re-subject had shares registered in name of German Bank.

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Baumfeld v Secretary of State of Canada [1927] Ex CR 86

definition of enemy - resident in England
deported to Germany - went to U.S. had property
in Canada

held - petitioner was not enemy

Spitz v. Secretary of State of Can. [1939] Ex CR 162

[1939] 2 DLR 546 referred to -

Ritcher v. R. [1943] Ex CR 64, [1943] 3 DLR 540

Enemy Aliens, Confiscation of Property, Protection of Custodian,
Petition of Right - Treaty of Peace (Germany) Order,

1920, P.C. 755 - Custodian not servant or
agent of the Crown - no petition of right, no
action against Crown - against Custodian - Money or
proceeds does not become part of the Cons. Rev. Fund.

Keller v Secretary of State of Can. [1939] Ex CR 221 - [1939] 4 DLR 145
action against Sec. of State, claim rejected by Custodian,
mandamus,
no jurisdiction in Exchequer Court.

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Braun v. Custodian [1944] Ex CR 30 - [1944] 3 DLR 412
affirmed [1944] SCR 339, [1944] 4 DLR 209

Bitter v. Secretary of State of Can [1944] Ex CR 61, [1944] 3 DLR 482

claim against the Custodian, Rules of Company shares -
obligations for purposes of Determining Dispute as to Ownership

Rothschild v. Custodian of Enemy Property [1945] 4 DLR 333
[1946] SCR 403, [1946] 3 DLR 81 - reverse Ex Ct. Ex Ct.

The Custodian derives his authority from the [war measures] Act and the Regulations [thereunder] - The position of the Custodian is not that of a trustee of property for an enemy alien: Re Münster, [1920] 1 Ch. 268 - The enemy is merely removed from control and beneficial ownership of the property during the war, and until the war is disposed of by His Majesty, on the conclusion of the peace, there is no beneficial owner of the property at all.

Bayer Co. v. Farbenfabriken [1944] OR 305, [1944] DLR 616
affirmed [1944] OR 488, [1944] 3 DLR 602 C.A.

Vote No. 696 - Finance - Contingencies & Miscellaneous

To authorize

- (a) the Custodian of Enemy Property to transfer to the Minister of Finance such property, including the proceeds and earnings of property, that is vested in the Custodian in respect of World War II, as the Governor in Council prescribes,
- (b) the Minister of Finance to hold, sell or otherwise administer property received by him from the Custodian under paragraph (a) or from other sources by way of reparations by former enemies (except Italy) in respect of World War II,
- (c) the Minister of Finance to establish a special account in the Consolidated Revenue Fund to be known as the War Claims Fund to which shall be credited all money received by him from the Custodian under paragraph (a) or from other sources by way of reparations by former enemies (except Italy) in respect of World War II, the proceeds of sale of property under paragraph (b), the earnings of property specified in paragraph (b) and amounts recovered from persons who have received overpayments in respect of claims arising out of World War II;

and, notwithstanding section 35 of the Financial Administration Act to provide for payments out of the War Claims Fund in the current and subsequent fiscal years, in accordance with regulations of the Governor in Council, to persons who claim compensation in respect of World War II, for the payment out of the War Claims Fund in the current and subsequent fiscal years of expenses incurred in investigating and reporting on claims of those persons and for the repayment out of the War Claims Fund to Vote 128 (miscellaneous minor and unpressured expenses) of all amounts that have been paid out of that Vote pursuant to the War Claims Strain Compensation Rules established by Order in Council, P.C. 667 of February 4, 1952 ...