IN THE MATTER OF THE DOMINION FRANCHISE ACT 1934 and THE DOMINION ELECTIONS ACT 1934

and

IN THE MATTER OF THE DISQUALIFICATION OF CERTAIN PERSONS IN THE PROVINCE OF BRITISH COLUMBIA FROM BEING REGISTERED AND VOTING UNDER THE SAID ACTS

B R I E F

Submitted on behalf of the Japanese Canadian Citizens' League representing British-Born Subjects of the Japanese Race Residing in the Province of British Columbia.

T. G. NORRIS, K.C.

Vancouver, British Columbia,

May 12th, 1936.

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STATEMENT OF SUBMISSION

This submission has reference to the provisions of the Dominion Franchise Act, 1934, under which British Subjects of the Japanese race are disqualified from voting in British Columbia at elections under the Dominion Elections Act and are incapable of being registered as electors in that Province. The relevant provisions of the Dominion Franchise Act are as follows:

4.(1) Save as hereinafter provided every person, man or woman, shall be entitled to be registered as an elector on the list of electors for the polling division in which he or she resides at the time of the preparation of the list of electors therefor if he or she

(a) is of the full age of twenty-one years; and
(b) is a British subject by birth or naturalization; and
(c) has been ordinarily resident in Canada for at least twelve months, and in the electoral district wherein he or she seeks registration as an elector for three months of that period, immediately preceding the date of his or her application to be so registered:

Provided that the following persons are disqualified from voting at an election and incapable of being registered as electors and shall not be so registered, that is to say . . . . . .

(XI) subject to subsection two of this section, every person who is disqualified by reason of race from voting at an election of a member of the Legislative Assembly of the province in which he or she resides and who did not serve in the military, naval or air forces of Canada in the war of 1914-1918;

Subsection two of the Section refers to Indians only. It will be seen that as a result of the provisions of Clause (XI) the disqualifications which exist under the Provincial Elections Act of British Columbia and prevent British subjects of the Japanese race from voting in British Columbia at Provincial elections, are applied to deprive them of the vote in that Province at Dominion Elections. The relevant provisions of the Provincial Elections Act of British Columbia are as follows:-

2.(1) In this Act unless the context otherwise requires -
"Japanese" means any native of the Japanese Empire or its dependencies not born of British parents and shall include any person of the Japanese race naturalized or not.

4. Every person who is not disqualified by this Act or by any other law in force in the Province, and who:-
(a) Is of the full age of twenty-one years; and
(b) Is entitled within the Province to the privileges pf a natural-born British subject; and
(c) Has resided in the Province for six months, and in the electoral district in which he seeks registration as a voter for one month of that period immediately preceding the date of his making application under this Act to be registered as a voter, -
shall be entitled to be registered as a voter, and being duly registered as a voter under this Act shall be entitled to vote at any election.

5. The following persons shall be disqualified from voting at any election, and shall not make application to have their names inserted in any list of voters:-
(a) Every Chinaman, Japanese, Hindu, or Indian, provided, however, that the provisions of this paragraph shall not disqualify or render incompetent to vote any Japanese who served in the Naval, Military, or Air Force of Canada in the Great War of 1914-1918, and who produce a discharge from such Naval, Military, or Air Force to the Registrar upon the making of the voters' list and to the Deputy Returning Officer at the time of polling.
(b) Every person disqualified from voting under the provisions of section 6:
(c) Every person disqualified from voting under the provisions of this Act relating to bribery or personation:
(d) Every person convicted of treason or any indictable offence, unless he has secured a free or conditional pardon for the offence, or has undergone the sentence imposed for the offence:
(e) Every person admitted to the Provincial Home, so long as he is an inmate of the same.

No other Province in Canada has similar legislation restricting the right of British subjects of the Japanese race to vote so that in British Columbia alone this disqualification in respect of the franchise in Provincial elections and by reference in respect of the franchise in Dominion elections exists. The result is that for any Dominion election naturalized or British born Japanese are prevented from being registered and voting in British Columbia while at the same time in the adjoining Province of Alberta and in all the other Provinces of Canada other naturalized or British born Japanese possessing no greater qualifications than the British Columbia Japanese are permitted to be registered and, for the same election, to exercise the franchise.

How ill-digested is the Provincial Legislation with reference to the disqualification which has been accepted for the purposes of the Dominion Act will be understood when it is realized that, because of the broad wording of the definition of "Japanese" in the Provincial Elections Act, children born in Japan of American or European (other than British) parents are disqualified even although they have become British subjects.

It is submitted that the provisions of Clause (XI) should be repealed for the following reasons:-

1. That the present Provincial disqualification of Japanese on the ground of race is the result of a misconception of the intention of the original legislation.

2. That the considerations which have prompted the maintenance of the legislation no longer exist.

3. That the provisions of the clause - applicable as they are to one part of Canada only - tend to create sectionalism contrary to the intention of the Federationists who brought about the union of

the Provinces under the British North America Act, that the Federal Parliament should represent the people of Canada without discrimination as to race between Provinces.

4. That the provisions of the clause tend to the creation and maintenance of an economic minority - a minority which, if deprived of the franchise, will not be assimilated into the life of Canada and living under a sense of oppression, will eventually become a source of difficulty.

5. That the provisions of the clause tend to create and aggravate international ill-feeling.

6. That the provisions of the clause are unconstitutional and contrary to law.

PARTICULARS OF CITIZENS OF THE JAPANESE RACE AFFECTED BY THE LEGISLATION.

Of the 19,960 Japanese in the Province, there are about 3,500 naturalized Japanese and 10,965 Canadian-born Japanese. Of these latter approximately 1210 are of voting age. At the present time therefore there are 4,710 people of the Japanese race, all British subjects, who are forbidden the right to vote. Of the Canadian-born Japanese approximately 4,598 are resident in the urban districts and 6,367 in the rural districts. Figures as to the distribution of the naturalized Japanese are not available.

HISTORY OF THE LEGISLATION

In considering the matter of the Japanese Franchise it is of importance to review the history of the disqualifying legislation and particularly of the Provincial Legislation.

History of the Provincial Legislation. At the date of Confederation and for some time after the entry of British Columbia into the Union in 1871, there existed no provisions in the legislation of British

Columbia excluding Orientals from the franchise. At that time and until the year 1885 there were no Japanese in the Province, but there were a number of Chinese - most of whom were engaged in placer mining - as laborers - as laundrymen and restaurant-keepers. These Chinese were of the laboring class - uneducated, speaking little or no English and holding themselves apart from the Colony life save insofar as their employment brought them into contact with the citizens. They were by nature, because of their lack of education and because of their very low social order, totally unfitted to discharge the duties of citizenship. In fact they were not interested in anything save in obtaining the means of livelihood. In the year 1875 under the Qualification and Registration of Voters Act No. 2 of that year passed on the 22nd day of April, it was provided that the names of Chinese and Indians on the Voters' lists should be struck out and that any Returning Officer who permitted any member of these excluded classes to vote would be subject to a penalty. It is interesting to note that in the Voters' List for the Colony of British Columbia of August 1st, 1874, there were a large number of Chinese on the list for the Lillooet Polling Division. These were for the most part persons engaged in placer mining on the Fraser River and presumably it was as a result of the inclusion of these names on the list that the Statute of 1875 was passed.

It was not until the year 1895 that the provision which excluded Chinese or Indians from voting was extended to include Japanese. At this time there were approximately 1,500 Japanese in the Province. Since 1895 the British Columbia Statutes have contained similar provisions with regard to the Japanese - amended so as to make it clear that all persons of the Japanese race whether naturalized

or not are disqualified from voting.

History of the Dominion Legislation

The history of the Provincial Legislation has been dealt with. It is now of advantage to consider the history of the Federal Legislation.

Prior to the year 1920 the Voters' Lists used for elections under the Dominion Elections Act were those which were ordinarily in use for the purpose of Provincial elections. These lists of course would not include the names of Japanese. In 1906 the Dominion Elections Act, Section 10, provided as follows:-

> 10. The qualifications necessary to entitle any person to vote at a Dominion election in any province shall, except as herein otherwise provided, be those established by the laws of that province, as necessary to entitle such person to vote in the same part of the province at a provincial election.

This Section however was qualified by Section 11 which read as follows:-

> 11. No person possessed of the qualifications generally required by the provincial law to entitle him to vote at a provincial election shall be disqualified from voting at a Dominion election merely by reason of any provision of the provincial law disqualifying from having his name on the list or from voting,
>
> (d) any one belonging to any other class of persons who, although possessed of the qualifications generally required by the provincial law, are, by such law, declared to be disqualified by reason of their belonging to such class.

It will be seen therefore that after 1906 and, indeed until the year 1919 - subject to the provisions of emergency war legislation - the Provincial disqualifications did not at law exist in respect of Dominion elections although as a matter of practice, as the Provincial lists were generally used, the Japanese were thereby excluded from the exercise of the franchise. In 1917 Sections 5 to 30 of the Dominion Elections Act 1906 were suspended by the Wartime Election Act and it was provided by Section 32 as follows:-

> 32.(1) The qualifications necessary to enable any male person to vote at a Dominion election in any

province shall, except as by this Act otherwise provided, be those established by the laws of that province as necessary to entitle such male person to vote in the same part of the province at a provincial election.

This provision had the effect of nullifying the provisions of Section 11(d) of the Dominion Elections Act of 1906. The measure was purely a wartime emergency measure and was enacted because of the necessity of ensuring that enemy aliens or those aliens who might later become enemies, should not have a voice in the affairs of the Country. At the first Session of the Federal Parliament in 1919 the Dominion By-Elections Act was passed under which no disqualification in respect of race was provided. Apparently pressure was immediately brought to bear upon Parliament and in the second Session of the Parliament of the same year the following provision was inserted:-

1. Notwithstanding anything contained in The Dominion By-Elections Act, 1919, where by the laws of any province in Canada a person is disqualified from voting for a member of the Legislative Assembly of such province by reason of the provisions of any law of such province in respect of race, such person shall not be qualified to vote in such province under the provisions of The Dominion By-Elections Act, 1919.

In 1920 the Dominion Elections Act was re-enacted and by that Act all previous Election Acts were repealed including the Wartime Elections Act. Section 29 of that Act set out the qualification of electors as follows:

29. (1) Save as in this Act, otherwise provided, every person, male, or female, shall be qualified to vote at the election of a member, who, not being an Indian ordinarily resident on an Indian reservation, -

(a) is a British subject by birth or naturalization; and,
(b) is of the full age of twenty-one years; and,
(c) has ordinarily resided in Canada for at least twelve months and in the electoral district wherein such person seeks to vote for at least two months immediately preceding the issue of the writ of election.
(d) provided however, that any Indian who has served in the Naval, Military or Air Forces of Canada in the late war shall be qualified to vote, unless such Indian is otherwise disqualified under paragraphs (a), (b) and (c) of this section.

and for the first time in Section 30, being the disqualification section, the following provision is found:

> 30. (1) The respective persons hereunder mentioned shall for the time specified as to each such person be disqualified and incompetent to vote at an election:-
>
> (g) Persons who, by the laws of any province in Canada, are disqualified from voting for a member of the Legislative Assembly of such province in respect of race, shall not be qualified to vote in such province under the provisions of this Act: Provided however, that the provisions of this paragraph shall not disqualify or render incompetent to vote any person who has served in the Naval, Military or Air Forces of Canada in the late war and who produces a discharge from such Naval, Military or Air Forces to the registrar upon the making of the voters' lists and to the deputy returning officer at the time of polling.

It will be seen therefore, that, except for the war-time legislation, in the Dominion By-Elections Act of 1919 (Second Session) and in the Dominion Elections Act of 1920 are contained the first provisions which have the effect of excluding on the grounds of race the Japanese in British Columbia from voting in Dominion Elections. The provisions of the 1920 Statute as to race disqualification are substantially the same as those in effect today as contained in the Dominion Franchise Act of 1934.

1. <u>The present Provincial disqualification of Japanese on ground of race is the result of a misconception of the intention of the original legislation</u>.

Although in the first Provincial Statute disqualifying the Chinese - the Qualification and Registration of Voters' Act No. 2 of 1875 - they were named by race, the exclusion was not really based on a race distinction but on the ground of lack of sufficient education and knowledge to permit them to exercise the franchise. The population of the Colony was at that time very small and as it was a matter of common knowledge that <u>all</u> Chinese in the Colony at that time were clearly unfitted - on grounds of lack of education and low social standing - to exercise the

franchise, the disqualification was applied to them as a class and it is not unnatural that they should have been named by race without definition of the real grounds of exclusion. It was an example of rough and ready frontier legislation. The Chinese had held themselves aloof from the public affairs of the country and the presumption is that there was no wish on their part to exercise the franchise but that their names were included on the Voters' List of 1874 as a political move of the candidates standing or hoping to stand for election. As the Chinese and Indians had been excluded nominally by race, when Japanese came to this Province in number some twenty years later, the original intention of the legislation - that is that the exclusion was applied to the classes of persons who were unfit to exercise the franchise - although they were named by race - was lost sight of and it came to be thought that the matter was in essence a race question. It was natural therefore - in the light of this mistaken view - that for the sake of consistency the Japanese should be joined in the disqualification. The Reports of the debates in the Provincial Legislature as published in the British Columbia Press in January and February 1895 show that there was no debate on the merits of the amendment. The use of the race classification to define fitness for the franchise - useful enough though it may have been in 1875 when the persons of the race affected were all unfitted according to proper tests of fitness - can no longer be justified in the light of the fact that the reasons for the definition are no longer applicable. Yet the classification is stubbornly maintained in the face of all considerations of reason and justice. It has become a weapon of industrial expediency and an instrument of race oppression.

2. <u>The considerations which have prompted the maintenance of the Legislation no longer exist</u>.

In 1895 when the disqualification was applied to the Japanese, the awakening of Japan as a modern nation was not complete - at least the effects of the awakening had not reached foreign countries and it was not realized that the Japanese Nation was becoming a great cultural and economic force whose representatives would shortly thereafter take such an honorable and prominent part in world affairs. Since 1895 the Japanese as a race have made tremendous strides and the few representatives of the race who were in British Columbia in the year 1895 - respectable and law-abiding as they undoubtedly were - cannot be compared to the numbers of highly educated, progressive Japanese citizens who take such an active part in industrial and business life in British Columbia at the present time. The Japanese who have come to Canada and the native-born Japanese are not of the lower class which usually is the vanguard of immigration from any country and which in the younger and less populous days of the Province was more marked and more noticeable because of its racial characteristics. To-day the Japanese in British Columbia challenge comparison with citizens of any other race. They are mainly engaged in the pursuits of agriculture, fishing and lumbering. There is in the City of Vancouver a substantial colony of highly respected business men, who have maintained standards of business ethics which it is safe to say are considerably higher than the standards maintained by the people of the white race of Canada. In the co-operative associations in the Interior of the Province and of the Lower Mainland of the Fraser Valley, Japanese have taken a very prominent part side by side with our white citizens.

They have been in the forefront of every movement tending to the betterment of agricultural conditions.

In 1919 and 1920 when the provincial race disqualification was adopted by the Dominion Parliament there was no true race question before the Country. The legislation was panic legislation caused by the fear of persons residing in British Columbia that, because of post-war depression there would not be sufficient employment for British Citizens of the white race. The pressure which was brought to bear to have this legislation passed was instituted largely by the labour people and especially by the Trades Unions. It was not legislation for the general welfare of Canada but legislation passed at the behest of a small class or group of citizens who feared that their means of livelihood was in danger and who in the blind panic of unreason gave no time to the careful consideration of the cause of and the logical remedies for their difficulties but centered their attack on the group least likely to make effective resistance. Illogical in the attack, they were equally illogical in the weapon which they chose. It is unnecessary to stress the fact that legislation to protect a class engaged in industry can find no justification if the protection afforded is based merely on the grounds of race and that the franchise should be granted or withheld - not because of race qua race - but on the basis of fitness for citizenship. Had there been real justification for legislation of this sort to protect industry it would have been applied as well to naturalized foreigners and native-born Canadians of Central European descent, of which there were large numbers in the Country. In 1919 and 1920 there were approximately 15,000 Japanese 39,000 Chinese and 1,000 Hindus in the Province of British Columbia - a small minority.

Even if it can be argued that an economic difficulty may be solved by the application of a political restriction based on race, the economic situation which gave rise to the difficulty does not exist to-day. How the feeling of the labour interests on the question of the Japanese franchise has changed since 1920 is evidenced by the fact that in 1931 - eleven years after the enactment of the panic legislation of the post-war years - the Trades and Labour Congress of Canada at its 47th Convention held in Vancouver in September 1931, after a discussion of the question of the claim of Canadian-born Japanese to the franchise, adopted the report of its Resolutions Committee on a resolution submitted by the Vancouver and Vicinity Camp and Mill Workers' Federal Union No. 31, which Committee recommended that the following resolution be passed:-

> "Resolved that the Trades and Labour Congress of Canada in Convention assembled in the City of Vancouver, request the Government of the Province of British Columbia to amend the Provincial Elections Act at the next Session of the British Columbia Legislature to ensure that every native-born Canadian shall receive equality of treatment and the full rights of citizenship under the Provincial Franchise Act."

The resolution submitted to the Congress did not deal with the case of the naturalized Japanese but as the principle underlying the granting of the franchise to naturalized Japanese is the same as that contained in the resolution the broader matter would have had the support of the Congress had the resolution been so framed. To-day Japanese are freely admitted into the Labour Unions.

3. <u>The provisions of Clause (XI) - applicable as they are to one part of Canada only - tend to create sectionalism contrary to the intention of the Federationists who brought about the union of the Provinces under the British North America Act, that the Federal Parliament should represent the people of Canada without</u>

discrimination as to race between Provinces.

Were the disqualification aimed at Orientals in Canada as a whole on the ground of race, the discrimination and oppression would be serious enough but where British subjects of one Province are singled out for disqualification in elections while British subjects of the same race and possessing no higher or different qualifications are given the franchise in other Provinces for the same elections, it becomes clear that not only does the legislation impinge upon all the principles of natural justice - to say nothing of legal requirements - but it is a blow at the principles of Confederation. On this head the matter is not open to argument. The mere statement of the facts speaks for itself.

The intention of the Federationists is made clear if reference be had to the Parliamentary Debates on Confederation. At page 99 the Honourable George Brown, the great Liberal leader, said in speaking of the union of the Provinces:-

> "The proposal now before us is to throw down all barriers between the Provinces to make all citizens of one, citizens of the whole."

Could it have been more clearly stated that there was to be no discrimination as between citizens of the different Provinces? On the general question of race discrimination and especially in considering the terms of the British North America Act, nothing could be more striking than the statement at page 143 of the Honourable Thomas D'Arcy McGee - he who at one time considered himself an alien and an enemy of the British Crown:-

> "I venture in the first place to observe that there seems to be a good deal of exaggeration on the subject of race occasionally introduced both on the one side and in the other in this section of the country ..... this theory of race is sometimes carried to an anti-christian and unphilosophical

excess. Whose words are those,"God hath made of one blood all the nations that dwell on the face of the earth"? Is not that the true theory of race?"

Once the principle of such legislation is admitted, there is no end to the distinctions which might be made in Dominion Franchise legislation as between the Provinces - as between Catholics and Protestants, French Canadians and citizens of British stock, and so on. The race disqualification in British Columbia is a purely local matter similar to the female disqualification in the Province of Quebec. There is no more reason that the Dominion Statute should adopt the British Columbia disqualification than that it should adopt the disqualification contained in the Quebec Statute. It is submitted that Parliament having, in the case of Quebec, recognized that for the purposes of the Dominion Franchise, distinctions should not be made between Provinces, should apply the same principle in the case of British Columbia.

4. <u>The provisions of the clause tend to the creation and maintenance of an economic minority - a minority which, if deprived of the franchise, will not be assimilated into the life of Canada and living under a sense of oppression, will eventually become a source of difficulty</u>.

It has been argued that our citizens of the Japanese race are not assimilable. That, of course, is no argument for denying the franchise to people whom we have admitted to citizenship. But, if it were, there is sufficient answer to it. The Japanese race is a race by assimilation - Mongols, Tartars, Ancient Greeks and other Caucasians have united to make the race. Centuries of isolation and freedom from war gave to the Japanese an opportunity - to be envied by us - to promote the arts - to study the finer things of life and to develop a culture which can, if we

permit it, form a valuable contribution to our national life. Their international progress was delayed for a length of time -- perhaps they are the better for that delay. But the days of insular life in Japan are gone and the peoples of the Western world have abandoned the view that the Japanese are a semi-civilized race. To-day the nation is a leader among nations in everything that makes for greatness. The views of its statesmen on international affairs are listened to as representing the views of a great Power. The Japanese are seeking internationalism just as all other progressive nations of the world are seeking it. The initiative and industry of its business leaders and its people generally have been such that the nation takes its place in the world commerce as the most serious competitor of the old-time industrial nations. As with Great Britain, its business has been built up upon the honourable traditions of the past which tend to bring within the bounds of good ethics the practice of sharp competition and aggressive industry.

In addition to the right to vote in Provincial and Dominion elections, the British Citizens of Japanese race in British Columbia have been denied many other rights. They may not be:

1. Elected to the Provincial Legislature.
2. Elected to Municipal office.
3. Elected as school trustees.
4. Selected for jury service.
5. Lawyers.
6. Druggists.
7. Hand loggers
8. Employed in the public service save as specialists.
9. Employed on public works.
10. Employed by any buyer of crown timber for logging such timber.

De facto they are excluded from the public service as specialists and from holding municipal office. As a result of these discriminations there arises an unconscious, almost natural discrimination against the Japanese in their every-day life and as a result they find it much more difficult to find employment with white people.

The discrimination in respect of all the foregoing matters tends to keep the Japanese as a race apart and to prevent assimilation. In spite of all this they have adapted themselves to our laws and to our community life. in a manner which would be greatly to the credit of our children were they faced with similar difficulties.

The Japanese are naturally law-abiding. Reference to crime statistics will show that the cases of serious crime in which Japanese are involved are few and far between. Where they have had the opportunity of entering into business organizations with white citizens - notably in connection with co-operative organizations for the marketing of farm products, their contribution has been a valuable one. They are known throughout British Columbia as good co-operators. In the Okanagan Valley one of the most active directors of the largest co-operative fruit growers' organizations has been a Japanese. His opinions and his counsel - always dispassionate - the result of careful study and consideration - have always been given weight above the more prejudiced views of some of his fellow-directors. He was responsible for initiating the representations which were made to the Provincial Government for the enactment of the Sales on Consignment Act - an Act which is a safeguard to producers against improper practices on the part of those who handled their products. He, with other Japanese throughout the Interior of British Columbia and in the Fraser Valley, sometimes at considerable

cost to themselves, have at all times supported the united efforts of the white producers to obtain reasonable measures of market control. Where the Japanese have been given an opportunity of co-operating with white citizens in other lines of industry, a similar story can be told.

A Province-wide survey was conducted last year by Canadian-born university students of the Japanese race for the purpose of ascertaining the facts regarding the position of Canadian-born Japanese in the Province. The data obtained is quite reliable and proves to be very interesting on the question of assimilability. The report of the survey can be made available for the Committee if it is required. Among many other things, it shows that of 2106 Canadian-born Japanese with whom contact was made, constituting a fair cross-section - there being only 1210 of voting age in the Province - .9% were in the professional occupations, 4.6% in clerical occupations, 1.3% in skilled labor, 33.6% in semi-skilled labor and 59.6% in unskilled labor - all of such occupations (except those from which Japanese were by law debarred) being in detail the normal occupations of citizens of this country. Approximately 50% of the Canadian-born Japanese are Christians. Over 50% read English only. Over 75% expressed an intention of remaining in Canada. Over 70% of all those between five and nineteen years of age were attending our schools, high schools and universities. The survey clearly shows a determination to become assimilated into Canadian life in spite of all the obstacles which have been placed in the way.

In the universities of this country among the leading students are members of the Japanese race. There have been educated in the City of Vancouver, in the Public Schools and in the University, students who have been forced to go to the United States for employment. Some of them have

obtained important positions in the public institutions of that country. Through local intolerance and oppression Canada has lost the valuable contribution which they could give to the life and work of this Country - the return for the education which they have received here. Some of the brightest pupils in our schools are Japanese children who speak our language as our children speak it - who have even adopted the slang of our youth. They do not speak the Japanese language and do not learn it in their homes. In some cases when it is desired that they shall understand it, special classes are held by Japanese teachers to give them a smattering of the language of their forefathers, but strange as it may seem, although they often lead the way in the subjects generally taught in our schools and universities, they are not ready pupils in the Japanese language. It is generally considered that Rugby football is essentially a British game - that baseball is essentially an American one. There recently visited the Province of British Columbia a Japanese Rugby football fifteen which put to shame teams composed of Canadian and British players. In the schools and in the City baseball leagues Japanese teams and Japanese players on other teams are most proficient. Throughout Canada recently there travelled a young Japanese actress whose rendering in Italian of her part in an American opera was outstanding. In international affairs, in the sciences - in business and in public life, the Japanese are taking a leading part. How can the people of Canada refuse those of them who have become our citizens the franchise merely on the ground of race when illiterate subnormals of the Caucasian race are granted the privilege? One has only to sit in a Naturalization Court for an hour or so while Japanese and Central Europeans

are appearing before the Naturalization Judge to realize the tragic mistake which is being made in making any distinction against members of the former race.

It is difficult to understand what is meant by the term "assimilable" as it is used by those who oppose the Japanese franchise. How can it be said that a race is not assimilable, the members of which enter into Canadiam business life as the members of the Japanese race have done - adapting themselves to Canadian customs and Canadian ways of living as they have done - speaking the language of this country, wearing the clothes of this country, eating the food of this country - whose children, except for physical characteristics, are indistinguishable from Canadian children? Can their loyalty to Canada, its customs and its traditions, be disregarded? It may safely be said that they are more assimilable into the general life of Canada and more desirable as citizens than those Central Europeans who are so freely admitted to the country and to the privileges of the franchise. It is Canada which places obstacles in the way of assimilation. The granting of the franchise will assist economic assimilation - breaking down any peculiar racial characteristics which still exist - and will open the way to the reception of the race into our national life by the other races in Canada to whose detriment it is said the granting of the Japanese franchise will work. The exception in the British Columbia franchise disqualification in favour of Japanese who served with the Canadian forces during the war is testimony to their "assimilability" in times of stress. These men offered, and in many cases, gave their lives, although they had been denied the right of the franchise and many other civil rights as well, including in many cases the privilege of naturalization.

If the matter be carefully analyzed it will be seen that the only obstacle which is left - the only ground on which the racial objection may be raised - is that the people of the Japanese race have different racial physical characteristics from those of the white race. All the other racial characteristics have, in the case of the Canadian-born Japanese and the older naturalized Japanese, almost entirely disappeared, and in a short time will be gone.

At the present time we have in British Columbia some 1,210 Canadian-born Japanese of voting age. At the ordinary rate of birth we will have in 20 years perhaps 12,000 Japanese who could exercise the franchise. Sooner or later we must take one of two courses. We must either drive all people of the Japanese race from our borders or we must make every effort to assimilate them by granting them civil and political rights as to our own people. It is unthinkable that the former course should ever be adopted because these people are now our citizens. The present refusal of the franchise on the grounds of race is comparable only to the policy of Hitler with regard to the Jews. Does enlightened Canada really want a "blood purge"? The course we have entered upon is no more rational than that of Hitler and its cost to Canada will in the long run be greater than that which Germany will bear. Year by year the longer we keep the Japanese from the vote we are building up and strengthening in its isolation a minority group - forcing it by our own action into a position in opposition to the institutions of the country which oppressed them. If, in spite of all their good intentions - their evidence of good citizenship - we continue to oppress them, we consolidate them, not under a bond of true Canadian spirit - not through loyalty to Canada - but

by the bond of common suffering under oppression and with the result that we make Ishmaelites of them. The minority, if given the franchise, would gradually be assimilated into our political life. Its members would become supporters of our various political parties holding varying political views in common with our Caucasian citizens, but healthy views, because the tie between them would be not the bond of a common burden of oppression, but the bond of common interests, common rights and common privileges as citizens of Canada. If we permit the present situation to carry along and develop through the years we will find that, because of the sheer strength of its numbers, we will be forced to recognize this economic minority - possibly at a time when it has become many thousands strong. We will then grant the franchise, but too late, and there will have been formed a force of consolidated opinion born of years of oppression and therefore extremist in its tendency - which because of its gathered strength will strike our political life with a heavy shock.

5. <u>The provisions of Clause (XI) tend to create and aggravate international ill-feeling</u>.

The Japanese are a proud race. They are also a sensitive race. They are proud of their traditions, of their culture and of their present-day progress - industrially and in international affairs. How can we hope to maintain their goodwill when in the Province of British Columbia, which lies nearest to them, we treat their people as outcasts, classing them with our semi-civilized Indians for whom we find it necessary to provide reserves and whom we treat, in all our dealings with them, as children. Any nation less sensitive and with less cause for pride than the Japanese would naturally resent such treatment.

The future of Canada, and of British Columbia in particular, lies on the Pacific. A natural market for our products over the cheaper water-haul is to be found in Japan and in the Japanese spheres of influence. Can we expect that international good feeling will be promoted when we go to such lengths to discriminate against, and in fact oppress a class of our citizens of the race of the dominating power on the Pacific, merely because their racial physical characteristics are different from ours? If we do not accord these people fair treatment, will we not create a situation similar to that created in Germany after the Great War - the repercussions of which are now being felt? If we do not do all in our power to create friendship in an international way, will we not build up against us a strong national feeling not only among the people of the Japanese race in this country, but - rather more important from an international viewpoint - among their people across the Pacific whose lot is naturally and economically laid with ours?

What in the past has been the attitude of the Japanese people towards us? In the remodelling of their institutions they have to a large extent benefitted by our experience and remodelled them on ours. They have been proud of the fact that their country has much in common with Great Britain. Like our Mother-Country, they are an island power. They have modelled their navy on ours. Their system of Government is a limited monarchy like ours. In the past in international affairs they have, speaking generally, ranged themselves beside us. In our days of trouble we have been glad of their support. The citizens of British Columbia especially were indeed grateful, in the uncertain days of August and September 1914, for the Japanese warships on the Pacific which, stationed at Esquimalt, afforded

practically the only protection from the raiding German cruisers. To-day, unprotected as we are on the Pacific, we are forced to rely on Japanese friendship and- if war should come - on the hope that the might of Japanese arms will be on our side.

Yet for forty years we have in the matter of the franchise treated, and continue to treat the Japanese in British Columbia as we would treat savages or degenerates. It speaks well for the patience of their nation that the slightest vestige of friendly feeling remains.

It is interesting to compare our legislation with regard to the franchise with the Japanese Legislation. Attached hereto is a translation from the Japanese Election Act referring to the election of members of Parliament. It will be seen from this that there is no provision discriminating against citizens, whether by birth or naturalization, on the ground of race. Attached also is a translation of the Nationality Law No. 66 of March 1899 as revised in March 1916 and in July 1924. From this it will be seen that the only restrictions imposed on naturalized persons or the children of naturalized persons acquiring Japanese nationality, are that they may not become Ministers of State, Privy Councillors, general or flag officers in the army or navy, Envoys, officials in the Imperial Household, Presidents of certain High Courts or Boards, or Members of the Imperial Diet. These restrictions may be removed by the Minister of the Interior subject to Imperial sanction after five years' residence in Japan. The general requirements as to naturalization are very similar to those in this country. It can be seen therefore that we who pride ourselves on the British principle of "no taxation without representation" find that in the practice of the principle we are lagging sadly behind a

race to the members of which we forbid the franchise in British Columbia. Most civilized countries do not exclude citizens from the franchise on the grounds of race. The exceptions are Canada - and there only in British Columbia - and South Africa. The franchise is in some cases withheld on the ground of sex, poverty, crime or something of that sort, matters which go to the root of fitness for political rights and is not based on race distinction. Are conditions in British Columbia so vastly different from the rest of Canada and of the United States and the greater part of the rest of the world that race is to be the test of qualification to vote? Can we expect that in times of differences between nations, Japan, chafing under a feeling of injustice at our hands, will turn to us and away from those who treat her people fairly?

At the session of the Legislature of British Columbia held this year a resolution was introduced:-

> "That this House views with alarm any suggestion of extending the franchise to Orientals and desires to go on record as being unalterably opposed thereto."

The feeling that the patience of the Japanese has been sorely tried in this matter, and that the disqualification based on race cannot be justified was evidenced by the words of Mr. Speaker in ruling the resolution out of order when he said:-

> "I also think that in introducing the word "Orientals" in the resolution that this tends towards casting opprobrious reflections upon citizens of other countries with whom we are in friendly relation, and is liable to give annoyance."

On a division the Speaker's ruling was upheld.

6. That the provisions of Clause (XI) are unconstitutional and contrary to the law.

The broad question of policy has been dealt with, and it is submitted that the Parliament of Canada, charged with the duty of legislating without discrimination for all citizens under its jurisdiction, should be quick to remedy the wrong. There will doubtless be those however, who will wish to pursue the matter further and to consider the legal position of British subjects of the Japanese race with regard to the franchise in the light of the provisions of the British North America Act. Indeed the submissions already made naturally lead to a consideration of the provisions of that Act on the question of conflicting jurisdictions and of the power of Parliament to adopt the laws of one Province in such a way that citizens of equal standing are not accorded equal treatment in different parts of Canada in the matter of the franchise. It will be shown that the disqualification as enacted by Clause (XI) of Section 4 of the Dominion Franchise Act is unconstitutional and contrary to law for the following reasons:

(a) Because the disqualifications provided for in Clause (XI) are contrary to the provisions of Term 10 of the terms of Union referred to in Her Majesty's Order-in-Council of May 16th, 1871.

(b) Because there is no provision in the British North America Act which gives power to the Dominion Parliament to enact Clause (XI).

(c) Because it cannot be held that Clause (XI) of the Dominion Franchise Act is justified under the peace, order and good government provisions of Section 91 of the British North America Act for the reasons that:

(1) It falls under Head 13 (property and civil rights in the Province) and Head 16 (matters of a merely local or private nature in the Province).

(2) The question of race as affecting the franchise - a local matter as appears from the very wording of Clause (XI) - has not attained a magnitude that seriously affects the body politic of the Dominion.

(d) Because even if it be held that the Parliament of Canada has the right to pass a law varying the qualifications for the franchise in different Provinces of Canada, the provisions of Clause (XI) do not constitute proper legislation in this respect but are an attempted delegation to the Provinces of the power to legislate in respect of Dominion matters - they are in effect an abdication of the powers of Parliament.

In dealing with the constitutionality of the legislation, two principles as laid down by decisions of the Judicial Committee of the Privy Council must be borne in mind. The first is that laid down in Citizens Insurance Company of Canada vs. Parsons, 7 A.C. 96, and Union Colliery Company of British Columbia vs. Bryden 1899, A.C. 580, and summarized in the decision of the Judicial Committee in In Re Reciprocal Insurance Legislation 1924, 2 W.W.R. 397 at 403 -

> "It has been formally laid down in judgments of this Board that, in such an enquiry the Courts must ascertain the 'true nature and character' of the enactment, its 'pith and substance', and it is the result of this investigation, not the form alone, which the statute may have assumed under the hand of the draftsman, that will determine within which of the categories of subject-matters mentioned in Secs. 91 and 92 the legislation falls."

The second principle is that referred to in Toronto Electric Commissioners vs. Snider, 1925 1 W.W.R., 785 at 790, Viscount Haldane:-

> "The Dominion Parliament has, under the initial words of Sec. 91, a general power to make laws for Canada. But these laws are not to relate to the classes of subjects assigned to the provinces by sec. 92, unless their enactment falls under heads specifically assigned to the Dominion Parliament by the enumeration in sec. 91. When there is a question as to which legislative authority has the power to pass an Act, the first question must therefore be whether the subject falls within Sec. 92. Even if it does, the further question must be answered, whether it falls also under an enumerated head in Sec. 91. If so, the Dominion has the paramount power of legislating in relation to it. If the subject falls within neither of the sets of enumerated heads, then the Dominion may have power to legislate under the general words at the beginning of Sec. 91".

On these main propositions of law the argument hereinafter made is based.

It is submitted therefore that Clause (XI) is unconstitutional and contrary to law -

(a) <u>Because the disqualifications provided for in the clause are contrary to the provisions of Term 10 of the Terms of Union referred to in Her Majesty's Order-in-Council of May 16th, 1871</u>.

The Order-in-Council referred to is the Imperial Order-in-Council under which British Columbia entered Confederation. It was provided by that Order-in-Council that British Columbia should be admitted upon the terms set forth in the Addresses from the House of Parliament of Canada and from the Legislative Council of British Columbia. Those Terms are commonly known as the Terms of Union.

Term 10 of the Terms of Union reads as follows:

> "10. The provisions of the "British North America Act, 1867," shall (except those parts thereof which are in terms made, or by reasonable intendment may be held to be specifically applicable to and only affect one and not the whole of the Provinces now comprising the Dominion, and except so far as the same may be varied by this Minute) be

> applicable to British Columbia, in the same way and to the like intent as they apply to the other Provinces of the Dominion, and as if the Colony of British Columbia had been one of the Provinces originally united by the said Act."

It will be shown later that there are no provisions of the British North America Act which give the Dominion Parliament power to pass a franchise law. Even if such power existed in the Dominion Parliament, Term 10 provides that such provisions shall "be applicable to British Columbia in the same way and to the like intent as they apply to the other Provinces of the Dominion and as if the Colony of British Columbia had been one of the Provinces originally united by the said Act".

Section 41 of the British North America Act reads as follows:-

> 41. Until the Parliament of Canada otherwise provides, all laws in force in the several Provinces at the Union relative to the following matters or any of them namely:- The qualifications and disqualifications of persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces; the Voters at Elections of such Members; the oaths to be taken by Voters; the Returning Officers, their powers and duties; the proceedings at Elections; the periods during which Elections may be continued; the trial of Controverted Elections, and proceedings incident thereto; the vacating of seats of Members, and the execution of new Writs in case of seats vacated otherwise than by dissolution, - shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces: Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British Subject, aged Twenty-one years or upwards, being a house[illegible]older, shall have a vote.

Under another head it will be shown that this Section gives Parliament no substantive power to enact franchise laws - the power of Parliament under the Section being merely one of repeal. The only words in Section 41 which give the Parliament of Canada any power are the words "until the Parliament of Canada

otherwise provides." It is submitted that there is nothing in those words which "in terms or by reasonable intendment may be held to be specially applicable to and only affect one and not the whole of the Provinces", and even if they could be held to give Parliament a power to pass a new franchise law, such a law as affecting the citizens of British Columbia must be one which does not discriminate against a class of those citizens as the provisions of Clause (XI) of Section 4 of the Franchise Act do. The Terms of Union themselves - the "minute" referred to in Term 10 - do not vary the provisions of the British North America Act insofar as they affect the qualifications for the franchise in British Columbia. The exception provided for in Term 10 refers to "parts thereof which --- may be specially applicable to and only affect one and not the whole of the Provinces now comprising the Dominion", viz: the Provinces of Ontario, Quebec, Prince Edward Island, Nova Scotia and New Brunswick, but not British Columbia as it was not one of the Provinces then comprising the Dominion.

It is submitted therefore that the franchise disqualification in Clause (XI) is bad because, not being of general application, it is contrary to the provisions of Term 10 referred to.

(b) Because there is no provision in the British North America Act which gives power to the Dominion Parliament to enact Clause (XI).

The only Section of the British North America Act which in terms deals with the franchise is Section 41. For convenience it is again quoted at this point.

> 41. Until the Parliament of Canada otherwise provides, all laws in force in the several Provinces at the Union relative to the following matters or any of them, namely: The qualifications and disqualifications of

persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces; the Voters at Elections of such Members; the oaths to be taken by Voters; the Returning Officers, their powers and duties; the proceedings at Elections; the periods during which Elections may be continued; the trial of Controverted Elections, and proceedings incident thereto; the vacating of seats of Members, and the execution of new Writs in case of seats vacated otherwise than by dissolution, - shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces: Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to persons qualified by law of the Province of Canada to vote, every male British Subject, aged Twenty-one years or upwards, being a householder, shall have a vote.

The purpose of the Section is to provide for the setting up of the first Parliament and succeeding Parliaments under the laws in force at the time of Union in the Provinces until the Parliament of Canada shall say that those laws were no longer in force.

It is submitted -

(1) That the words "until the Parliament of Canada otherwise provides" do not give any substantive power to the Parliament of Canada to pass election laws. The words are words of limitation only. If Parliament has the power of passing franchise laws, that power must be given under some other Section of the Act. The limitation conveyed by the words can be invoked only in aid of capacity conferred independently under Section 91 or some other part of the Act and no such capacity is independently conferred. As franchise is a matter of civil rights once the laws in force at the Union are repealed as applying to Dominion elections, then the power of the Dominion Parliament is expended and reference must be made to Section 92 where the power to legislate as to the right to vote is given to the Provincial Legislature under Head 13 of the Act.

(2) That the provision in Section 41 is only that the laws in force in the Provinces "at the Union" shall apply. If it can be argued that the Section does substantively give Parliament a power to pass franchise laws, then the laws must be substantive franchise laws, and not a mere adoption of subsequent Provincial franchise laws.

(3) That even if Section 41, with or without the assistance of the peace, order and good government provisions of Section 91, gives Parliament power to pass franchise laws, no power is given to pass franchise laws for Federal elections in the respective Provinces which are varying as between Provinces nor to extend the restriction in existence at the time of Union. It is clear from the section that any such law must be of general application. If the law is not to be one of a local or private nature or relating to property and civil rights in the Province, it may be passed by Parliament only as of <u>general</u> application.

See L'Union St. Jacques de Montreal v. Belisle

L.R. 6 P.C. 31 at 36 -

"But the onus is on the Respondent to shew that this, being of itself of a local or private nature, does also come within one or more of the classes of subjects specially enumerated in the 91st section.

Now it has not been alleged that it comes within any other class of the subjects so enumerated except the 21st. "Bankruptcy and Insolvency;" and the question therefore is, whether this is a matter coming under that class 21, of bankruptcy and insolvency? Their Lordships observe that the scheme of enumeration in that section is, to mention various categories of general subjects which may be dealt with by legislation. There is no indication in any instance of anything being contemplated, except what may be properly described as general legislation; such legislation as is well expressed by Mr. Justice Caron when he speaks of the general laws governing Faillite, bankruptcy and insolvency, all of which are well known legal terms expressing systems of legislation with which the subjects of this country, and probably of most other civilized countries, are perfectly familiar."

This legislation cannot be supported under the Head 25 of Sec. 91 as having to do with aliens, as it affects British Subjects. Those who are excluded - children of Japanese parents born in British Columbia and naturalized Japanese - are not aliens.

See Cunningham vs. Tomey Homma 1903 A.C. 151 at 156.

(c) Because it cannot be held that Clause (XI) of the Dominion Franchise Act is justified under the peace, order and good government provisions of Section 91 of the British North America Act for the reasons that -

(1) It falls under Head 13 (property and civil rights in the Province) and Head 16 (matters of a merely local or private nature in the Province)

(2) The question of race as affecting the franchise - a local matter as appears from the very wording of Clause (XI) - has not attained a magnitude that seriously affects the body politic of the Dominion.

As to (1):-

The right to vote and the right to be placed on the voters' list are civil rights within the Province or matters of a purely local and private nature in the Province. In Valin vs. Langlois 3 S.C.R. 1 at p.84, Mr. Justice Gwynne says:-

> "The right to offer oneself as a candidate - the right to be placed on the voters' list - the right to vote - the right in fact to enjoy political rights are all admitted in one of the judgments to which I refer to be civil rights and so I presume the wrongful assertion of or the interference with the rightful exercise of any of these rights is a civil wrong.
> If the right to offer oneself as a candidate be a civil right the right of a qualified candidate to exclude a disqualified one must be equally so and so must likewise be the right to exclude a person from voting who has not the legal qualification or having it has corruptly sold it."

See also Citizens Insurance Company vs. Parsons 7 A.C. 96 at 110:-

> "The words are sufficiently large to embrace in their fair and ordinary meaning rights arising from contract and such rights as are not included in express terms in any of the enumerated clauses of subjects in Section 91."

As the right to be placed on the voters' list and the right to vote are normally civil rights, they are none the less civil rights in the Province because the elections in respect of which the rights are to be exercised are Dominion elections. In this connection the words of Lord Macnaghten, in Attorney-General of Manitoba vs. Manitoba License Holders Association 1902 A.C. 73 at 79 are apt:

> "Matters which are 'substantially of local or of private interest' in a Province - matters which are of a local or private nature 'from a provincial point of view' to use expressions to be found in the judgment - are not excluded from the category of 'matters of a merely local or private nature' because legislation dealing with them, however carefully it may be framed, may or must have an effect outside the limits of the Province."

The civil right when exercised is exercised <u>in the Province</u>. It confers benefits upon the citizens <u>of the Province</u>. If withheld it imposes a restriction upon them. It is true that the Act relates to the franchise in respect of Federal elections but the pith and substance of the legislation is civil rights. Moreover Clause (XI) is ultra vires because in terms it bases the Dominion disqualification on a purely local Provincial disqualification, viz. a disqualification according to Provincial laws on the ground of race - a disqualification which may exist from time to time in one or more of the Provinces and not in others - and thereby brings that part of the Act within the category of civil rights and matters of a purely local or private nature in the Province or Provinces in respect of which the disqualification exists.

In Citizens Insurance Co. vs. Parsons 4 S.C.R. 215

at 310 Taschereau J. said -

> "The Federal Parliament cannot extend its own jurisdiction by a territorial extension of its laws and legislate on subjects constitutionally provincial by enacting them for the whole Dominion and a Provincial Legislature cannot extend its jurisdiction over matters constitutionally Federal by a territorial limitation of its laws and legislate on matters left to the Provincial power by enacting them for the Province only as for instance, incorporate a bank for the Province."

Similarly, the Parliament of Canada cannot under colour of general legislation deal with those things which are Provincial matters.

That which is attempted by the Federal Parliament in Clause (XI) is -

(a) Legislation on subjects constitutionally provincial - matters of civil rights and of a local and private nature in the Province - by a territorial extension of its laws - by enacting them for the whole Dominion.

(b) Merely colourable legislation for the Dominion - an attempt to do indirectly that which the Dominion cannot do directly.

As to (2):-

The question of race as affecting the franchise - a local matter as appears from the very wording of Clause (XI) has not attained a magnitude that seriously affects the body politic of the Dominion. As the legislation cannot be enacted under the provisions of Section 41 for the reasons already stated and as it does not fall under any of the enumerated heads of Section 91, it is proper to consider whether it falls under the peace, order and good government provisions in that section.

Clause (XI) does not recognize any existing national emergency with regard to the question of race.

From the reference in the clause to local Provincial disqualifications - which may exist in one Province and not in the others, it is clear that it is not a national emergency which is in contemplation. Apart entirely from the facts, the language of the clause itself makes it clear that it is not anticipated that the body politic of the Dominion will be affected if citizens of races disqualified by Provincial legislation are given the franchise in Dominion elections. Lord Herschell during the argument on the Liquor Prohibition Appeal 1895 (Attorney General for Ontario vs. Attorney General for the Dominion 1896 A.C. 348) in the printed report at pages 149 and 150 -

> "But to legislate in a matter which is a local matter in one Province only and merely say we thought it would be for the benefit of all Canada that Ontario should be made a very sober place would be to my mind legislation about which there would be a good deal of question."

In this case Lord Watson said at pages 360 and 361:

> "These enactments appear to their Lordships to indicate that the exercise of legislative power by the Parliament of Canada, in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92. To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by s.91, would, in their Lordships' opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces. If it were once conceded that the Parliament of Canada has authority to make laws applicable to the whole Dominion, in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order and good government of the Dominion, there is hardly a subject enumerated in s.92 upon which it might not legislate, to the exclusion of the provincial legislatures.

.....

"Their Lordships do not doubt that some matters, in their origin local and provincial, might attain such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation or abolition in the interest of the Dominion. But great caution must be observed in distinguishing between that which is local and provincial, and therefore within the jurisdiction of the provincial legislatures, and that which has ceased to be merely local or provincial, and has become matter of national concern, in such sense as to bring it within the jurisdiction of the Parliament of Canada."

In the Board of Commerce case 1922 1 W.W.R. 20,

at page 24, Viscount Haldane said -

"No doubt the initial words of sec. 91 of the B.N.A. Act, confer on the Parliament of Canada power to deal with subjects which concern the Dominion generally, provided that they are not withheld from the powers of that Parliament to legislate, by any of the express heads in sec. 92, untrammelled by the enumeration of special heads in sec. 91. It may well be that the subjects of undue combination and hoarding are matters in which the Dominion has a great practical interest. In special circumstances, such as those of a great war, such an interest might conceivably become of such paramount and over-riding importance as to amount to what lies outside the heads in sec. 92, and is not covered by them. The decision in Russell vs. Reg., 7 App. Cas. 829, 51 L.J.P.C. 77, appears to recognize this as constitutionally possible even in time of peace, but it is quite another matter to say that under normal circumstances general Canadian policy can justify interferences, on such a scale as the statutes in controversy involve, with the property and civil rights of the inhabitants of the provinces. It is to the Legislatures of the provinces that the regulation and restriction of their civil rights have in general been exclusively confided, and as to these the Provincial Legislatures possess quasi-sovereign authority. It can, therefore, be only under necessity in highly exceptional circumstances, such as cannot be assumed to exist in the present case, that the liberty of the inhabitants of the provinces may be restricted by the Parliament of Canada, and that the Dominion can intervene in the interests of Canada as a whole in questions such as the present one. For, normally, the subject-matter to be dealt with in the case would be one falling within sec. 92."

In Toronto Electric Commissioners vs. Snider 1925

1 W.W.R. 785 at 795 Viscount Haldane said -

"It appears to their Lordships that it is not now open to them to treat Russell v. Reg. as having

established the general principle that the mere fact that Dominion legislation is for the general advantage of Canada or is such that it will meet a mere want which is felt throughout the Dominion, renders it competent if it cannot be brought within the heads enumerated specifically in sec. 91. Unless this is so, if the subject-matter falls within any of the enumerated heads in sec. 92, such legislation belongs exclusively to provincial competency. No doubt there may be cases arising out of some extraordinary peril to the national life of Canada, as a whole, such as the cases arising out of a war, where legislation is required of an order that passes beyond the heads of exclusive provincial competency. Such cases may be dealt with under the words at the commencement of sec. 91, conferring general powers in relation to peace, order, and good government, simply because such cases are not otherwise provided for. But instances of this, as was pointed out in the judgment in Fort Frances Pulp & Paper Co. v. Man. Free Press Co. (1923) A.C. 695, 93 L.J. P.C. 101, are highly exceptional."

(d) Because even if it be held that the Parliament of Canada has the right to pass a law varying the qualifications for the franchise in different Provinces of Canada, the provisions of Clause (XI) do not constitute proper legislation in this respect but are an attempted delegation to the Provinces of of the power to legislate in respect of Dominion matters - they are in effect an abdication of the powers of Parliament.

In Clause (XI) Parliament has in effect said that whenever any Province in the proper exercise of its own jurisdiction dealing with civil rights says that a person shall by reason of race be disqualified from voting at a Provincial election, he shall thereby be disqualified from voting at a Dominion election. On this point for the sake of argument it is assumed that the Dominion has jurisdiction to pass a law restricting the right to vote in any particular Province. Upon that assumption, it is submitted that if the Parliament of Canada does pass such a law, it must do so in express terms and

may not delegate the legislative powers as it has done. The test is set out in Russell vs. The Queen 7 A.C. 829 at 835. After stating that it had been argued by the appellants' Counsel that Parliament could not delegate its powers and that it had done so, Sir Montague E. Smith said "the short answer to this objection is that the Act does not delegate any legislative powers whatever. It contains within itself the whole legislation on the matters with which it deals."

The objection to Clause (XI) under this head is that stated by Haultain C.J. in Rex vs. Zaslavsky 1935 2 W.W.R. 34. Section 2 of the Live Stock and Live Stock Products Act was under consideration. That section reads as follows:-

"If and in so far as any provision of an Act of the Parliament of Canada intituled the Live Stock and Live Stock Products Act, and the amendments thereof and the regulations thereunder heretofore enacted or made, is within the legislative authority of the province and outside that of the Dominion of Canada, such provision shall have the force of law in Saskatchewan, and, unless otherwise enacted by the Legislature of Saskatchewan, shall be and remain in full force and effect therein to all intents and purposes whatsoever, until the same is repealed by the Dominion Parliament, or revoked by the Governor General in Council, as the case may be."

At page 40 of the report Chief Justice Haultain summarized the law as follows:-

"It is argued that the intention of the legislature in enacting Section 2 was to enact by reference certain or rather uncertain provisions of the Federal Act and Regulations which might be found to be within the exclusive jurisdiction of the Provincial Legislature. In my opinion the section does not admit of that construction. When the Provincial Legislature says that Federal Legislation and Regulations made thereunder which are ultra vires of Parliament shall have the force of law in Saskatchewan, there is no suggestion of legislation by incorporation or reference. It is simply in my opinion an attempt ex post facto to give jurisdiction to Parliament which it does not possess. Further, if it had been the intention of the legislation to incorporate the provisions of the Federal Act and regulations by reference why and by what power could those provisions and regulations

so incorporated have been subject to repeal by the Dominion Parliament. In both instances there has been an attempt to enlarge the jurisdiction of Parliament or to surrender jurisdiction belonging exclusively to the Province.

> 'The Dominion cannot give jurisdiction or leave jurisdiction with the Province. The Provincial Parliament cannot give legislative jurisdiction to the Dominion Parliament. If they have it - either one or the other of them - they have it by virtue of the Act of 1867. I think we must get rid of the idea that either one or other can enlarge the jurisdiction of the other or surrender jurisdiction.'

Per Lord Watson in the course of the argument in C.P.R. vs. Notre Dame de Bonsecours Parish 1899 A.C. 367 as cited in Lefroy's Canada's Federal System page 70. It might be further pointed out that by a well established rule of construction 'where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second'. Per Brett L.J. in Clarke vs. Bradlaugh 1881 8 Q.B.D. 63 at 69. This rule would apply a fortiori to legislation by one legislative body incorporating the enactments of another legislative body by reference."

See also -

(a) Citizens Insurance Company vs. Parsons 4 S.C.R. 215 Taschereau J. at 317 and Gwynne J. at 348.

(b) St. Catharines' Milling and Lumber Co. vs. The Queen 13 S.C.R. 577 at 637.

From the foregoing submission it should be clear that on every ground British subjects of the Japanese race in British Columbia should no longer be refused the franchise. The refusal cannot be supported in law. On the ground of reason their request is justified. We should be glad to meet it as being expedient from our point of view. Their history in this country testifies as to their assimilability. "Lack of assimilability" has become a meaningless catch-cry.

There is in the employment of the University of Wisconsin a Canadian-born Japanese, S.Ichiye Hayakawa by name. He has written an article for the April 1936 number of the Dalhousie Review entitled "The Japanese Canadian - An Experiment in Citizenship". Sufficient copies of the complete article for the Committee are not available but it will be of benefit to quote the following extract:

" Few as they are, a group of Japanese-Canadian students managed to organize a small, monthly, six-page newspaper expressing their views., It was started in the spring of 1932, and carried on for a little over a year. From this publication (somewhat hopefully called The New Age), and from a couple of even shorter-lived ventures which these young people started, we are able to glean interesting statements of their attitude, and estimate the breadth and limitations of their views. None of these publications are mature, nor even particularly well-edited. Nevertheless, interspersed among the jejunities of school-boy "kidding," and triumphant accounts of the exploits of the Asahi baseball team, are evidences of serious thinking.

Their practical recommendations are, on the whole, pretty well agreed upon: we are Canadians, they say again and again, - let us be thoroughly Canadian. Christianity is recommended in preference to Buddhism. Proficiency, and even grace, in the use of the English language are strenuously demanded. (They manage to achieve the former, and although their English is far from flawless, they do not commit many more errors per page than some notable Americans one could name). The relinquishing of such Japanese habits and ways of life as might seem strange or offensive to delicate British Columbian sensibilities is strongly urged. Most important of all, The New Age advises, for the sake of more thorough Canadianization, the abandoning of dual nationality on the part of any who might still possess it. Unimportant as dual nationality may be in actuality (it means only that when one is in Japan, the Japanese government will regard him as a subject), the Japanese-Canadians are well aware of the kind of issue that can be made of it by their enemies. I shall let the Japanese-Canadian speak for himself. The following is quoted from a high-school girl's essay; under the circumstances, I make no apologies for her naivetes of expression;

'We, who claim this Golden West as our birth-place, must strive to become the kind of people Canada really wants -men and women who will live, work and die for Canada, people who will dedicate their whole lives to Canada and to God ... Education! It will be the key to success in the future. It will take the place of wealth in years to come. Therefore, if we are to become a part of this great Dominion, we must start on an unceasing quest for knowledge. It is everywhere! In each delicate, pink-tipped daisy, in the gurgling rush of the streams, in the lucid notes of a bird, Nature is the Universal Teacher. In schools, from printed pages ..... we garner learning. In loving homes, we are taught the meanings of peace, sympathy, and understanding. Here is our opportunity to grasp the best of both the mother-country and our adopted land! ..... We respect Japan: we love Canada. The sunset glories of Canadian skies, the spiritual loveliness of snow-clad mountains, the precious friendships formed in Canada - the great heritage that is ours - are more dearer (sic) than the wealth of Pluto's mines, aye, more dearer (sic) than we can ever express. Therefore, with the inherent constancy of our race, yet with an optimistic joy in our future way, we pledge allegiance and undying love to the land that gave us birth.'

(And who will say that she is not Canadian to the last spurt of her untidy Wordsworthianism, which is practically identical with that of some leading bards of the Canadian Authors' Association?)

Unlike some other immigrant groups in Canada, and more especially in the United States, the Japanese-Canadians are not turning their backs completely upon the traditions of their fathers in those frenzied endeavours to be indistinguishable from their neighbors which constitute one of the greatest tragedies and wastes resulting from the melting-pot ideal. (How many of the second-generation Germans, Poles, Russians, Italians and Finns possess that inestimable gift of a dual culture?)

Some of the older people (as older people always do) may bemoanwhat they feel to be the complete disappearance of traditional virtues; others of the older generation, however, advocate a complete separation from Japanese ideals, even urging the abolition of the Japanese language schools which most Japanese-Canadian children attend after their regular school hours. But the young people themselves are not too sure as to the wisdom of the latter advice. Every issue of The New Age contains articles on aspects of Japanese culture; and not every contributor forgets, in his plea for better Canadianism, that better Canadianism for a race as civilized as his own means not only conforming to Canadian culture, but enriching it with his own special talents and inheritance, which no other race can supply. "There are many points in eastern civilization," writes one high-school boy, "which excel those in Western civilization and these the Canadian-born Japanese should retain. It is our duty to introduce these ideas to western lands." "We must contribute to Canada the best of our oriental ideals - simplicity, contentment, courtesy and filial piety," says another high-school girl. "Ours is the heritage of a venerable two-thousand year-old dynasty," exults a college student, "which claims a deep and satisfying philosophy, an unusual artistic genius, cardinal virtues of loyalty and filial piety, and a Samurai tradition. And these can be our golden gifts to the enrichment of western culture." Regarding himself thus, the young Japanese-Canadian quite excitedly discovers himself to be a sharer in the Canadian pioneer tradition, facing social hardships with stout Japanese heart, even as earlier pioneers in British Columbia faced physical hardships with stout Scotch and English hearts. So confident does he become of his Canadianism at this point that he undertakes, as final contribution, to help to Canadianize his parents, "binding them more closely to the Canadian soil!"

That a contribution of such merit was written by a Canadian-born Japanese -- one of the class of those on whose behalf this submissiom is made -- expatriated because of our failure to remove the obstacles which prevented his obtaining advancement here -- is evidence of the loss to

our educational life which our folly has caused us. Its contents answer better than I can the charge of "lack of assimilibility". Let those who raise that cry learn that the writer of the article is, in the University of Wisconsin, a Professor and a Professor of English no less, and having read the article let them consider whether it is not time that we were honest with ourselves and that, before it is too late, having considered the matter fairly, we admit our mistake and no longer maintain those provisions in our Statute which have been the cause of much injustice and for the future can only be a potent source of trouble.

For the reasons stated it is respectfully submitted that Clause (XI) of Section 4 of the Dominion Franchise Act S.C. 1934 and Amending Acts should be repealed.

Dated at Vancouver, B.C. this 12th day of May, 1936.

T. G. NORRIS,
on behalf of the Japanese Canadian
Citizens' League.

ELECTION ACT OF JAPAN

Election of Members of Parliament. Act. No. 82,

June 1926; Amended by Act. No. 49, June 34.

Chapter 11.

FRANCHISE AND ELIGIBILITY FOR ELECTION

Section 5. Japanese subject who is more than 25 years old and male has the franchise.
Japanese subject who is more than 30 years old and male is eligible for election as member of Parliament.

Section 6. Franchise and eligibility are not granted to -
(1) A person adjudged incompetent or quasi-incompetent.
(2) A bankrupt who is not yet rehabilitated.
(3) A person who, because of poverty, was and is a public charge.
(4) A person who has no certain domicile.
(5) A person convicted of crime and sentenced to more than 6 years' penal service or imprisonment.
(6) A person sentenced to less than 6 years penal service by paragraphs of Criminal Law, Second Volume, Chapters 1, 111, IX, XVI, XXI, XXV, XXXVI, XXXIX, who finished the sentence or probation term but a period equal to twice the time he spent in prison has not elapsed since his release. If the period composed of twice the time of his term should be less than five years, the time before he regains the franchise and eligibility will be at least five years.
(7) A person sentenced to less than 6 years imprisonment or 6 years penal service because of crimes other than stipulated in (6) and has not yet finished his probation term.

Section 7. The Family Head in the Peerage has no franchise, nor has he eligibility for election.
A person in active service of Army or Navy has neither franchise nor eligibility for election.

Section 8. Government and Municipal Officials who are in charge of the election business have no eligibility for election in the respective election section.

Section 9. Officials in active service of the Imperial Household; Judges of Japan proper, Chosen Government, Taiwan Government, Kwantung Government, South Sea Territory Government; Procurator of Japan proper, Chosen Government, Taiwan Government, Kwantung Government, South Sea Territory Government; Judges of Army Court and Navy Court; President of the Court of Administrative Litigation; Judge of the Court of Administrative Litigation; Auditors; Tax Collectors; Police Officers; None of the afore-mentioned have eligibility for election.

Section 10. Government officials and treated officials cannot be members of Parliament and at the same time hold their official posts unless they are:

(1) Minister of State,
(2) Chief Secretary of the Cabinet,
(3) Director of the Bureau of Legislation.
(4) Parliamentary Vice-Minister of any Department,
(5) Parliamentary Councillor of any Department,
(6) Secretary of the Prime Minister,
(7) Special Secretary of any Department.

Section 11. Members of the Legislature of Hokkaido and other prefectures (Fu or Ken) cannot be members of Parliament.

Chapter 111.

THE VOTERS' LIST

Section 12. 17. There is no paragraph in this Chapter discriminating against any naturalized citizens.

Law concerning the constitution of the Cho (small town) and Son (village); Amended by Act. No.46, July, 1935.

Section 7. A Japanese subject who is more than 25 years old, male, and resident for 2 years in the respective Cho or Son is recognized as a legitimate citizen of the Cho or Son, except those persons belonging to one of the following classes:-
(1) - (7) (The same as Section 6 of the Election Act for the member of Parliament, Act. No.49, June 1934)
The condition of 2 years residence can be cancelled by the authority of Cho or Son.

Section 12. All legitimate citizens of Cho or Son have the franchise for the election of the members of the Assembly of their Cho or Son.

Section 15. A legitimate citizen who has the franchise also has eligibility for election to the Assembly.

. . . . . .

Law concerning the constitution of Fu or Ken (corresponding to the Province of Canada): Amended by Act. No. 44, July, 1935.

Section 6. The legitimate citizen of Cho or Son in the respective Fu or Ken has the franchise and eligibility for election in the respective Fu or Ken.

NATIONALITY LAW

LAW NO. 66, OF MARCH 1899.

AS REVISED BY LAW NO.27, OF MARCH 1916, AND BY LAW NO.19, OF JULY, 1924, EFFECTIVE FROM DECEMBER 1, 1924 (#1)

(Translation)

ARTICLE 1. A child is regarded as a Japanese if its father is at the time of its birth a Japanese. The same applies if the father who died before the child's birth was at the time of his death a Japanese.

ARTICLE 2. If the father loses his nationality, either by divorce or by dissolution of adoption, before the child's birth, the provisions of the preceding article apply retroactively from the commencement of conception.

The provisions of the preceding paragraph do not apply in cases where both the father and the mother have left the family except when the mother in such cases returns to the family before the child's birth.

ARTICLE 3. In cases where the father cannot be ascertained, or has no nationality, if the mother is a Japanese the child is regarded as a Japanese.

ARTICLE 4. If neither the father nor the mother of a child born in Japan can be ascertained, or if they have no nationality, the child is regarded as a Japanese.

ARTICLE 5. An alien acquires Japanese nationality in the following cases:

(1) By becoming the wife of a Japanese.

(2) By becoming the nyufu (#2) of a Japanese woman.

(3) By acknowledgment by his or her father or mother who is a Japanese.

(4) By adoption by a Japanese.

(5) By becoming naturalized.

ARTICLE 6. For an alien to acquire Japanese nationality by acknowledgment the following conditions must be fulfilled:

(#1) Text from Br.Parl.Papers, Misc.No.2 (1927), Cmd.2852P. 39.
(#2) Man who marries female head of family and becomes a member thereof.

(1) He or she must be a minor by the law of his or her country.

(2) She must not be the wife of an alien.

(3) The parent, whether father or mother, who has first made acknowledgment, must be a Japanese.

(4) If the father and mother have made acknowledgment simultaneously, the father must be a Japanese.

ARTICLE 7. An alien may become naturalized with the permission of the Minister of the Interior.

The Minister of the Interior cannot permit naturalization, except in the case of persons fulfilling the following conditions:

(1) Having had a domicile in Japan for five or more years consecutively,

(2) Being of full twenty years of age or more, and having legal capacity by the law of his or her country.

(3) Being of good character.

(4) Having sufficient property, or ability, to secure an independent livelihood.

(5) Having no nationality, or when he or she would lose his or her nationality in consequence of the acquisition of Japanese nationality.

ARTICLE 8. The wife of an alien cannot become naturalized except in conjunction with her husband.

ARTICLE 9. The aliens mentioned below, if they are actually in possession of a domicile in Japan, may become naturalized, although they may not have satisfied condition number 1 of paragraph 2 of Article 7:

(1) Those whose fathers or mothers were Japanese.

(2) Those whose wives were Japanese.

(3) Those born in Japan.

(4) Those who have had places of residence in Japan for ten years or more, consecutively.

The persons mentioned in numbers 1 to 3, inclusive, of the preceding paragraph, cannot become naturalized unless they have possessed places of residence in Japan for three years or more, consecutively, but if the father or the mother, of a person mentioned in number 3 were born in Japan, this rule does not apply.

ARTICLE 10. In cases where the father, or the mother, of an alien is a Japanese, if the alien in question is in actual possession of a domicile in Japan, he or she may become naturalized, although he or she may not have satisfied the conditions mentioned in numbers 1, 2 and 4 of paragraph 2 of Article 7.

ARTICLE 11. Notwithstanding the provisions of paragraph 2 of Article 7, the Minister of the Interior may, subject to the imperial sanction, permit the naturalization of an alien who has rendered specially meritorious services to Japan.

ARTICLE 12. Naturalization must be notified in the "Official Gazette".

Naturalization cannot be set up against a third party who has acted in good faith, until after such notification has taken place.

ARTICLE 13. The wife of a person who acquires Japanese nationality acquires Japanese nationality in

conjunction with her husband.

The provisions of the preceding paragraph do not apply when the law of the wife's country contains provisions which are contrary thereto.

ARTICLE 14. If the wife of a person who has acquired Japanese nationality has not acquired Japanese nationality in accordance with the provisions of the preceding article, she may become naturalized although she may not have fulfilled the conditions of paragraph 2 of Article 7.

ARTICLE 15. The child of a person who acquires Japanese nationality acquires Japanese nationality in conjunction with its father or its mother, if it is a minor according to the law of its own country.

The provisions of the preceding paragraph do not apply when the law of the child's country contains provisions which are contrary thereto.

ARTICLE 16. A naturalized person, a person who, being the child of a naturalized person, has acquired Japanese nationality, or a person who has been adopted by, or has become the nyfu of a Japanese, does not possess the following rights:

(1) The right to become a Minister of State.

(2) The right to become the President or the Vice President or a member of the Privy Council.

(3) The right to become an official of chokunin rank in the Imperial household.

(4) The right to become an Envoy Extraordinary and Minister Plenipotentiary.

(5) The right to become a General Officer in the Army or an Officer of flag rank in the Navy.

(6) The right to become President of the Supreme Court, President of the Board of Audit, or

President of the Court of Administrative Jurisdiction.

(7) The right to become a member of the Imperial Diet.

ARTICLE 17. The restrictions laid down in the preceding article may in the case of a person who has become naturalized in accordance with the provisions of Article 11, after five years have elapsed from the date of his acquiring Japanese nationality, and in the case of other persons after ten years have elapsed, be removed by the Minister of the Interior, subject to the Imperial sanction.

ARTICLE 18. A Japanese who, on becoming the wife of an alien, has acquired her husband's nationality, loses Japanese nationality.

ARTICLE 19. A person who has acquired Japanese nationality by marriage, or by adoption, loses Japanese nationality by divorce of the dissolution of adoption only when he or she thereby recovers his or her foreign nationality.

ARTICLE 20. A person who acquires foreign nationality voluntarily loses Japanese nationality.

Section 2 of Article 20. A Japanese who, by reason of having been born in a foreign country designated by Imperial Ordinance, (#1), has acquired the nationality of that country, and who does not as laid down by order express his intention of retaining Japanese nationality, loses his Japanese nationality retroactively from his birth.

Persons who have retained Japanese nationality in accordance with the provisions of the preceding paragraph, or Japanese subjects who, by reason of having been born in a designated foreign country before its designation in accordance with the provisions of the preceding paragraph, have acquired the nationality of that country, may when

they are in possession of the nationality of the country concerned and in possession of a domicile in that country, renounce Japanese nationality if they desire to do so.

Persons who shall have renounced their nationality in accordance with the provisions of the preceding paragraph lose Japanese nationality.

Section 3 of Article 20. Japanese subjects who, by reason of having been born in a foreign country other than the foreign countries indicated in Paragraph 1 of the preceding article, have acquired the nationality of that country, may, when they possess a domicile in that country, effect renunciation of Japanese nationality by obtaining the sanction of the Minister of the Interior.

The provisions of paragraph 3 of the preceding article shall apply, mutatis mutandis, to persons who shall have renounced in accordance with the provisions of the preceding paragraph.

(#1) Imperial Ordinance No.262 of November 17, 1924, designates the following countries as coming within the meaning of this paragraph: United States, Argentina, Brazil, Canada, Chile, Peru.

ARTICLE 21. If the wife and child of a person who loses Japanese nationality acquire the said person's new nationality, they lose Japanese nationality.

ARTICLE 22. The provisions of the preceding article do not apply to the wife and child of a person who loses Japanese nationality by divorce, or by the dissolution of adoption. But cases in which the wife is not divorced when the dissolution of the husband's adoption takes place, or in which the child leaves the family together with the father, do not come under this rule.

ARTICLE 23. If a child who is a Japanese acquires foreign nationality by acknowledgment, he or she loses Japanese nationality. But this rule does not apply to a

person who has become the wife, the nyufu, or the adopted child of a Japanese.

ARTICLE 24. Notwithstanding the provisions of Article 19, Article 20, and the preceding three articles, a male of full seventeen years of age or upwards does not lose Japanese nationality, unless he has completed active service in the army or navy, or unless he is under no obligation to serve.

A person who actually occupies an official post, civil or military, does not lose Japanese nationality notwithstanding the provisions of the preceding eight articles until after he or she has lost such official post.

ARTICLE 25. A person who has lost Japanese nationality by marriage and who is domiciled in Japan after the dissolution of the marriage, may, with the permission of the Minister of the Interior, recover Japanese nationality.

ARTICLE 26. If a person who has lost Japanese nationality in accordance with the provisions of Article 20 to Article 21 inclusive is domiciled in Japan, he or she may, with the permission of the Minister of the Interior, recover Japanese nationality. But this rule does not apply to cases in which the persons mentioned in Article 16 have lost Japanese nationality.

ARTICLE 27. The provisions of Articles 13 to 15 inclusive apply mutatis mutandis to cases coming under the preceding two articles.

Section 2 of Article 27. The procedure relative to the renunciation and recovery of nationality shall be determined by Order.

REGULATIONS (ORDINANCE NO.26) OF NOVEMBER 17 1924

(Translation)

ARTICLE 1. Those desiring to become naturalized in accordance with the provisions of Clause 1, Article 7 of the Nationality Law shall transmit a petition, together with documents setting forth the facts necessary in fulfilling the process of naturalization to the Minister of the Interior, through the authorities having jurisdiction over his place of domicile, and shall obtain the permission therefor of the Minister of the Interior.

ARTICLE 2. Those desiring to preserve their nationality in accordance with the provisions of Clause 1 of Article 20 (2) of the Nationality Law, and being those who are required to submit a report by birth by clause 1 or clause 2 of Article 72 (#1) of the Census Domicile Law, shall file a report to that effect, together with a report of birth, within the period set forth in Article 69 of the Census Domicile Law.

Those unable to file a statement preserving their nationality within the period specified above, due to an Act of God or other unavoidable cause, the period within which the report may be made shall be calculated from the moment on which the Act of God or other cause shall have occurred.

In the case of those born at sea, the report mentioned in paragraph 1 shall, in accordance with the provisions of paragraph 2 or 3 of Article 75 (#2) of the Census Domicile Law, be accompanied by a certified copy of the ship's daily log which is required to be filed by the Master.

(#1) Providing for the registration of legitimate and illegitimate children.
(#2) Providing for the registration and reports of births at sea.

ARTICLE 3. Those desiring to divest themselves of Japanese nationality in accordance with the provisions of Article 20 (2) of the Nationality Law, shall file a report with the Minister of the Interior through the Japanese Embassy or Legation of the country in which they reside.

The report referred to in the previous paragraph shall be made in the case of those less than fifteen years of age by their legal representative. In the case of those not of age and more than fifteen years of age, or of legal incompetents, the report shall be filed only with the consent of their legal representatives.

Whenever the report mentioned in the preceding paragraphs is to be made by a stepfather, stepmother, or guardian, or whenever the consent of such persons is required, the consent of the family council shall also be obtained.

ARTICLE 4. The report mentioned in the preceding article shall be accompanied by the following documents:

(1) Certified copy of census domicile.

(2) A certificate of birth issued or authenticated by an official of the country of birth.

(3) Whenever the consent of third parties is required by paragraphs 2 or 3 of the preceding article, their consent in written form.

ARTICLE 5. Those desiring to divest themselves of Japanese nationality in accordance with the provisions of Clause 1 of Article 20 (2) of the Nationality Law shall in accordance with the provisions of Articles 3 and 4, seek to obtain the permission of the Minister of the Interior.

ARTICLE 6. The consent to the divestment of Japanese nationality shall become effective thirty days after the day following the date of the certificate of consent.

ARTICLE 7. Whenever the Minister of the Interior shall receive a report of the divestment of Japanese

nationality, or whenever his consent is given for the divestment of Japanese nationality, the Minister of the Interior shall make it public.

ARTICLE 8. Those desiring to recover their Japanese nationality in accordance with the provisions of Article 25 or 26 of the Nationality Law, shall seek to obtain the consent of the Minister of the Interior in accordance with the provisions of Article 1 above.

Whenever the petition for the consent referred to in the preceding paragraph is required of one less than fifteen years of age, who has lost his nationality in accordance with Article 20 (2) or (3) of the Nationality Law, the request shall be made by his father; if the father is unable to make this request, then by the mother; and if she is unable also, then by a grandfather, and if either one be unable to do so, then by a grandmother.

SUPPLEMENTARY PROVISIONS

This Ordinance shall become effective on December 1, 1924.

Ordinance No. 8 of the Department of the Interior is hereby revoked.

Applications for the divestment of Japanese nationality made in accordance with the provisions of Ordinance No. 8 before the date on which this Ordinance shall become effective, shall, in the case of those Japanese who have acquired foreign nationality by reason of birth in any foreign country specified in Imperial Ordinance No. 262 of 1924, be regarded as applications for the divestment of Japanese nationality required by this ordinance; and they shall be regarded as having been made on the date on which this ordinance shall become effective.

LAND LAW FOR FOREIGNERS

(Law No.42, April 1, 1925)

ARTICLE 1. To foreigners or foreign corporations of a country which puts prohibition, conditions or restrictions on obtaining the rights of land by Japanese or Japanese corporations, the same or similar prohibitions, conditions or restrictions for obtaining the rights of land in Japan can be put on by Imperial decision.

ARTICLE 2. A Japanese corporation or a foreign corporation of which more than half of the members, shareholders or officers in charge of the business, or more than half of the capital or vote of decision of which belongs to foreigners or a foreign corporation, are to be deemed to belong to the same country as that of the foreigner or foreign corporation in accordance with the regulation determined by Imperial Ordinance, and in such cases the preceding Article applies.

The counting of the capital investment or vote is stipulated by Imperial Ordinance.

ARTICLE 3. One part of a foreign country which has special legislative power concerning land is deemed as a country so far as the application of this law is concerned.

ARTICLE 4. In certain regions necessary for national defence prohibitions, conditions or restrictions on obtaining the right of land by foreigners or foreign corporations may be put on by Imperial Ordinance.

ARTICLE 5. To Japanese corporations of which more than half the members, shareholders or officers in charge of business, or of which more than half of the capital or vote of decision belongs to foreigners or a foreign corporation, the preceding Article is applied.

The second clause of Article 2 applies mutatis mutandis to the counting of the capital and vote mentioned in the

preceding clause.

ARTICLE 6. A person who becomes unable to possess the rights of land by this law must transfer the rights within one year.

In case there is no transference the necessary procedure for disposing of the rights of property is decided by Imperial Ordinance.

The preceding two clauses apply to cases where the successor of the person who possesses the rights, or any other person who should succeed to his or her rights, becomes unable to claim his or her respective rights by this Law. The time limit of the first clause however, is prolonged here to three years.

The added time limit of the first and preceding clause cannot be longer than three years.

ARTICLE 7. The date of enforcement of this Law will be decided by Imperial Ordinance.

(It was put into force on Nov. 10, 1926 by Imperial Ordinance No. 332, 1926)

ORDINANCE CONCERNING THE ENFORCEMENT OF THE LAND LAW FOR FOREIGNERS.

(Imperial Ordinance No. 334, Nov.3, 1936)

ARTICLE 1. According to the second clause of Article 4 of the Land Law for Foreigners, the regions which appear in the attached list are notified to be regarded as necessary for national defence.

ARTICLE 2. Foreigners, foreign corporations or Japanese corporations as mentioned in Article 5 of the Land Law for Foreigners must have permission from the Minister of the Navy or Army, by way of prefectural authority (Sackarin Government in Sackarin) if they wish to obtain land ownership, superficies or emphyteusis in the regions notified in the attached list as necessary for national defence.

ARTICLE 3. When a Japanese or a Japanese corporation which possesses land ownership, superficies or emphyteusis in a region notified in the attached list as necessary for national defence becomes a foreigner or a corporation as mentioned in Article 5 of the Land Law for Foreigners, respectively, they must ask for the permit within six months in accordance with the preceding Article.

In the case of the preceding clause the time limit of the first clause of Article 6 of the Land Law for Foreigners is counted from the end of the time allowed for request of permit or from the time when the permit was rejected.

ARTICLE 4. The first clause of the preceding Article applies mutatis mutandis when a foreigner, foreign corporation or Japanese corporation as mentioned in Article 5 of the Land Law for Foreigners makes legal succession or otherwise inclusive succession of the land ownership, superficies or emphyteusis in a region notified in the attached list.

In the case of the preceding clause the reckoning of the time limit of the third clause of Article 6 of the Land Law for Foreigners, the second clause of the preceding Article applies mutatis mutandis.

ARTICLE 5. According to the stipulation of the second clause of Article 5 of the Land Law for Foreigners, concerning the valuation of foreign capital or the count of the majority vote, it is deemed that the unregistered shares of a joint-stock company or a joint-stock limited partnership belong to a foreigner.

ARTICLE 6. A joint stock limited partnership of which more than half of the unlimited liability or of voting stock of the shareholders belongs to foreigners or a foreign corporation is the type of incorporation mentioned in Article 5 of the Land Law for Foreigners.

ARTICLE 7. If there were no transference of land ownership, superficies or emphyteusis in accordance with Article 6 of the Land Law for Foreigners the above-mentioned rights of land must be sold by auction under the Auction Act.

ARTICLE 8. The auction is executed at the request of the owner, interested persons, or by proper authority.

ARTICLE 9. If a foreigner, a foreign corporation or a Japanese corporation as of Article 5 of the Land Law for Foreigners who had owned the land which was auctioned, has buildings on that land it is deemed that the purchaser of the auctioned property will grant the above-mentioned foreigner, foreign corporation or Japanese corporation the right of lease in order to permit them to own the building.

In this case the rent or other conditions of lease are settled by Court in accordance with the desire of the interested parties.

ARTICLE 10. If a foreigner, a foreign corporation or

a Japanese corporation as of Article 5 of the Land Law for Foreigners wishes to register the acquirement of land ownership, superficies or emphyteusis in the regions mentioned in the attached list, he or they must present documents which certify that he or they is or are qualified to enjoy the respective right.

ARTICLE 11. Omit (Process of registration to begin the auction.)

This Ordinance was put into force on October 10, 1926.

IMPERIAL ORDINANCE No. 262

Nov. 17, 1924.

According to the regulation of the first sub-section of section (1) Article 20 of the Law of Nationality the countries nominated as such are:

1. United States of America
2. Argentine
3. Brazil
4. Canada
5. Chile
6. Peru

This Ordinance was put into effect December 1, 1924.

CENSUS DOMICILE LAW

Article 69. Notification of birth must be made within 14 days. Notification must contain information as follows:

(1) Name of child, and sex.

(2) Legitimate or illegitimate, recognized illegitimate.

(3) Date and place of birth.

(4) Name, registered census domicile and profession of father and mother.

(5) Name and registered domicile of the head of the family to which the child should belong.

(6) If the child is to establish a family, intention to that effect, reason and place.

(7) If child born to person not having Japanese nationality, that fact to be recorded.

Article 72. Notification of the birth of a legal child must be made by father. If the father cannot do so, or in case of Clause 1 and proviso of Clause 2 of Article 734 of the Civil Code it must be made by the mother. The notification of the recognized illegal child must be made by the father and the notification of the not-recognized illegal child must be made by the mother.

If in the cases of the preceding 2 clauses the proper person cannot notify, the following persons must notify in the order mentioned:

(1) Family head, or

(2) Inmate of the same house, or

(3) Doctor or nurse in attendance at birth, or

(4) Any other person assisting at birth.

THE CIVIL CODE

Book 1
Chapter 1.

Section 1. Enjoyment of Private Rights.

Art. 2. Except in cases where it is forbidden by laws, ordinances, or treaties, aliens enjoy private rights.

Chapter 11.
The Head and Members of a House.

Section 1. General Provisions.

Art. 733. A child enters the house of his father.

A child whose father is unknown enters the house of its mother.

A child whose father and mother are both unknown establishes its own house.

Art. 734. If before the birth of a child its father has left the house because of divorce or dissolution of adoption, the provisions of par. 1 of the preceding Article apply retroactively as from the beginning of the pregnancy.

The provisions of the preceding paragraph do not apply when the father and mother have both left the house, unless the mother has returned to the house before the birth of the child.