

## **Homma (Re)**

### **In re The Provincial Elections Act and In re Tomey Homma, a Japanese**

[1900] B.C.J. No. 56

7 B.C.R. 368

British Columbia  
County Court of Vancouver

**McColl C.J.**

Heard: November 28, 1900.  
Judgment: November 30, 1900.

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**1 McCOLL C.J.**-- The sole question presented for determination is whether it was within the power of the Legislature to provide (section 8) that no Japanese is entitled to have his name placed on the Register of Voters or to vote at any election.

**2** By section 3 the expression "Japanese" is defined to mean any native of the Japanese Empire or its dependencies not born of British parents, and to include any person of the Japanese race, naturalized or not.

**3** Mr. Harris, for the appellant, relied on the Union Colliery Company of British Columbia, Limited v. Bryden (1899), A.C. 580.

**4** Mr. Wilson, for the respondent, contended that the enactment is within sub-section 1 of section 92 of the B.N.A. Act, giving to the Legislature exclusive jurisdiction as regards "the amendment from time to time, notwithstanding anything in the Act, of the constitution of the Province, except in respect of the office of Lieutenant-Governor." He argued that the matter was peculiarly one of purely [7 BCR Page372] local concern and clearly could not, from any point of view, be regarded as falling within the Dominion authority. But whatever may be thought of the existing Naturalization Act in so far as it relates to British Columbia, the residence within the Province of large numbers of persons, British subjects in name, but doomed to perpetual exclusion from any part in the passage of legislation affecting their property and civil rights would surely not be to the advantage of Canada, and might even become a source of national danger.

**5** Apart from decisions binding upon me, I would have considered that the authority of the Dominion Parliament becomes exhausted with the naturalization and that the person naturalized passes under the jurisdiction of the Provincial Legislature to the same extent as if born a British subject, and that the only restraint upon the Legislature in matters of this kind is the liability of any Act to be

disallowed. But this view did not prevail with the Judicial Committee in the case mentioned, the effect of which, as I understand it, is that the Provincial Legislature has no power to pass any legislation whatever which does not, in terms at least, apply alike to born and naturalized subjects of Her Majesty, however its results may varyingly affect different classes or persons. The appeal is allowed with costs.

Appeal allowed with costs.

