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1920.
TERRY
v.
FEDERAL
COMMIS-
SIONER OF
TAXATION.

RICH J. I consider that the case under appeal is *à fortiori* to *Glenn v. Federal Commissioner of Land Tax* (1), the decision in which is binding upon me. I therefore concur.

STARKE J. I concur.

Questions answered : (1) *No* ; (2) *No* ; (3) *Yes*.

Solicitors for the appellants, *Snowden, Neave & Demaine*.

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

(1) 20 C.L.R., 490.

[HIGH COURT OF AUSTRALIA.]

MEYER PLAINTIFF ;

AGAINST

POYNTON AND ANOTHER DEFENDANTS.

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MELBOURNE,
June 4.
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Alien—Deportation—Order for deportation—Communication to alien—Naturalization—Revocation—Reasons of Governor-General—Ultra vires—Treaty of Peace—Effect on naturalization—Naturalization Act 1903-1917 (No. 11 of 1903—No. 25 of 1917), sec. 11—Aliens Restriction Order 1915 (Orders in Council of 27th May 1915 and 1st March 1916), par. 2J—The Constitution (63 & 64 Vict. c. 12), sec. 51 (XIX.).

Par. 2J of the *Aliens Restriction Order* 1915, which authorizes the Minister of Defence to “order the deportation of any alien,” does not require communication to the alien of an order made under it for the purpose of giving the order efficacy and effect.

Sec. 11 of the *Naturalization Act* 1903-1917 provides that, where “(b) the Governor-General is satisfied that it is desirable for any reason that a certificate of naturalization should be revoked,” he may revoke it.

Held, that a revocation of a certificate of naturalization need not state the reasons of the Governor-General.

Held, also, that sec. 11 is a law relating to naturalization, and is therefore within the power conferred upon the Parliament of the Commonwealth by sec. 51 (XIX.) of the Constitution.

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Art. 278 of the Treaty of Peace with Germany provides that*“ Germany undertakes to recognize any new nationality which has been or may be acquired by her nationals under the laws of the Allied and Associated Powers and in accordance with the decisions of the competent authorities of these Powers pursuant to naturalization laws or under treaty stipulations, and to regard such persons as having, in consequence of the acquisition of such new nationality, in all respects severed their allegiance to their country of origin.”

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Held, that that article does not affect the right given by sec. 11 of the *Naturalization Act* 1903-1917 to the Governor-General to revoke the certificate of naturalization of a natural-born German subject.

MOTION for interim injunctions.

An action was instituted in the High Court by Frederick William Meyer against the Honourable Alexander Poynton, Minister for Home and Territories, and the Honourable George Foster Pearce, Minister of Defence, by which the plaintiff claimed an injunction restraining the first named defendant from further proceeding in respect of the revocation of a certificate of naturalization granted to the plaintiff and from taking any step in pursuance of such revocation; and an injunction restraining the second named defendant, his agents, officers or servants, from exercising the powers conferred on him by the *Aliens Restriction Order* 1915 for the purpose of arresting the plaintiff and/or ordering his deportation from the Commonwealth or from detaining him or keeping him in detention or under arrest or interfering with his freedom or liberty in any manner.

A motion was now made by the plaintiff for interim injunctions in terms of the claim.

The material facts appear in the judgment hereunder.

Latham, for the plaintiff. The order contemplated by par. 2J of the *Aliens Restriction Order* 1915 is an order directed to the alien, and must be communicated to the alien in order to make it effective. The plaintiff is not an alien. Having become naturalized in 1909, he became a British subject by virtue of sec. 8 of the *Naturalization Act* 1903. There is no evidence that that naturalization was revoked, if it could be revoked. The only evidence is that the

H. C. OF A. Governor-General approved of the revocation. There is no evidence
 1920. that the Governor-General was satisfied that it was desirable for
 { some reason to revoke the certificate of naturalization, as is required
 MEYER by sec. 11 (b) of the *Naturalization Act* 1903-1917. Sec. 11 (b) is
 v. invalid: it is not within the power to legislate as to "naturaliza-
 POYNTON. tion and aliens" given by sec. 51 (xix.) of the Constitution. Natur-
 ——— alization is a process of making subjects. It may be that it is upon
 conditions, such as that in sec. 11 of the original Act, but apart from
 those conditions it does not include a process of taking away from
 a subject his character as a subject and making him an alien. Sec.
 11 (b) of the Act of 1903-1917 cannot apply to a person who at the
 time of the alteration of the law was already a naturalized British
 subject. The Treaty of Peace with Germany is binding in Aus-
 tralia (see *Walker v. Baird* (1); *Halsbury's Laws of England*, vol.
 vi., pp. 441-442). Sec. 75 (1.) of the Constitution regards treaties
 as being sources of legal rights and duties which may come within
 the jurisdiction of the High Court. In the Treaty the Common-
 wealth is placed on the same footing as other countries. Under
 art. 278 of the Treaty the Commonwealth is bound to regard the
 plaintiff as having altogether severed his allegiance to Germany,
 and as having acquired British nationality, when he was naturalized
 in 1909.

Owen Dixon, for the defendants. An order to deport under par.
 2J of the *Aliens Restriction Order* 1915 is an order that the alien shall
 be deported. It is not a command to the alien but a command to
 some other person. Therefore it need not be communicated to the
 alien to make it effective. Sec. 11 of the *Naturalization Act* 1903-
 1917 authorizes the Governor to revoke a certificate of naturalization.
 His reasons are immaterial. His approval of the revocation is
 equivalent to a revocation. [Counsel was not called on to argue
 the other points.]

STARKE J. The motion is dismissed. In order that the plaintiff
 should obtain an interim injunction, he must establish some *prima*
facie right. In the present case it has been suggested, upon several

grounds, that the deportation of the plaintiff is contrary to law. The first ground is that an order pursuant to the *Aliens Restriction Order* 1915, reg. 2J, has not been made because it was not communicated to the plaintiff. In point of fact an order was made by the Minister on 21st May which seems, according to information supplied to me from the Bar, to have been in the form of a ministerial minute upon the departmental file. On 4th June 1920, however, after this action was commenced, a formal order was drawn up by the Minister in the following terms:—"I, George Foster Pearce, Minister of Defence for the Commonwealth, in pursuance of the powers vested in me under the *War Precautions Act* and under any regulation or order made thereunder do hereby order the deportation of Frederick William Meyer of Sydney, New South Wales, an alien at present resident in the Commonwealth.—G. F. Pearce, Minister of State for Defence." At the present moment, therefore, an order does, in fact, exist which directs the deportation of the plaintiff, and the only question is whether that order must be communicated to the plaintiff. In my opinion the *Aliens Restriction Order* 1915 does not require communication of the order for the purpose of giving it efficacy and effect. The power is placed in the Minister to give a direction or to make what has been called a "decree" upon which the deportation may proceed. It may be, and probably is, true that the plaintiff would not be guilty of an offence if he remained within the territory of Australia without knowledge of the order, but the duty conferred upon the officers of the Government to convey him to a safe place and to put him on board a ship rests upon the fact that the Minister has made an order, and not upon its communication to the plaintiff. If I were in doubt on the point or thought that the matter was susceptible of reasonable argument, I should feel it my duty to give the plaintiff the benefit of a reference to the Full Court, but it is impossible for a single Justice to call in the aid of the Full Court on all occasions.

The next point is somewhat more technical. It is said that under sec. 11 (b) of the *Naturalization Act* 1903-1917 the Governor-General had not revoked the certificate of naturalization which had been issued to the plaintiff in the year 1909. The section provides that, where "(b) the Governor-General is satisfied that it is desirable

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for any reason that a certificate of naturalization should be revoked," the Governor-General may revoke it. One argument was that the revocation did not contain the reason of the Governor-General, and therefore was bad. But the Statute, by the words used, places the revocation of the certificate entirely in the discretion of the Governor-General, and his decision cannot, nor can his reasons for it, be canvassed in any Court of law. Another argument presented to me on this point is that proof of the revocation by the Governor-General of the naturalization certificate is wanting. The suggestion is that the Governor-General only approved of a revocation. The plaintiff himself, in par. 4 of his affidavit, has sworn that on 14th April 1920 the Governor-General revoked his certificate of naturalization, and that the revocation was notified in the *Government Gazette*. In addition to that, the *Government Gazette* of 29th April 1920, at p. 627, contains the following notification: "The Governor-General in Council has approved of the revocation under sec. 11 (b) of the *Naturalization Act* 1903-1917 of the certificate of naturalization granted to " the plaintiff; "date of revocation, 14th April 1920." That confirms the plaintiff's statement, and if there had been time the defendants would, no doubt, have produced the Order in Council. But I have no doubt on the facts that the Governor-General in Council has revoked the plaintiff's certificate of naturalization, and that he did so for reasons which satisfied him. The point is purely technical, and has been made possible by the Court allowing the plaintiff to bring on his motion at very short notice to the defendants. This was necessary for the protection of the plaintiff, because his deportation was about to be effected.

Two other points were referred to by Mr. *Latham*. One was based on the suggestion that the provision in sec. 11 (b) giving authority to the Governor-General to revoke a certificate of naturalization is unconstitutional. The *Judiciary Act* 1912 makes it undesirable for any single Justice to declare an Act of the Federal Parliament unconstitutional. Such a decision ought to be obtained in the Full Court, and if the matter appeared to me of any substance, or was even faintly arguable, I should be prepared to refer it to the Full Court. But the matter seems to me to be clear and without doubt. Under the *Naturalization Act* power is given to admit the nationals of other

Powers to Australian citizenship and thus confer upon them certain rights and privileges, and we reserve to ourselves, or rather to the Governor-General, the power to take away that citizenship and those rights and privileges in certain cases. It is said that depriving a person of citizenship so acquired is not a law relating to naturalization. I am quite unable to agree with the contention, or to consider that the point is susceptible of reasonable argument. It seems to me that if the power given by the *Naturalization Act* to admit to Australian citizenship is within the power to make laws with respect to naturalization, so must authority to withdraw that citizenship on specified conditions be also within that power.

The last point presented to me was based on the Treaty of Peace made between the Allies and the Associated Powers and the German Empire. Mr. *Latham* relied on art. 278. I need hardly say that the suggestion that the Executive Government of the Commonwealth can, without legislative sanction, make a treaty binding as a law upon the Courts and citizens of Australia is not a matter upon which I should, in this case, express any opinion. The *Treaty of Peace Act* 1919 and the regulations so far made under the Act were not and could not be relied upon. The article in question confers no rights whatever upon the plaintiff in this territory. It provides that "Germany undertakes to recognize any new nationality which has been or may be acquired by her nationals under the laws of the Allied and Associated Powers and in accordance with the decisions of the competent authorities of these Powers pursuant to naturalization laws or under treaty stipulations, and to regard such persons as having, in consequence of the acquisition of such new nationality, in all respects severed their allegiance to their country of origin." It is plain under the article that German nationals can claim no rights or privileges from the Allies or the Associated Powers which are contrary to the positive laws of those Powers. In Australia the *Naturalization Act* provides for the revocation of certificates of naturalization, and the Courts of Australia are bound by that law. The plaintiff is not an Australian citizen by force of Australian law, and the article confers no such status upon him. It is really designed to prevent Germany

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 1920. choose to incorporate amongst their nationals.
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 MEYER It appears to me that the motion is without warrant and the  
 v. argument without substance. The motion is therefore dismissed  
 POYNTON. with costs.  
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 Starke J.

Motion dismissed with costs.

Solicitor for the plaintiff, *W. J. P. Fitzgerald*, Sydney, by *Amess & Clarkson*.

Solicitor for the defendants, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

IN RE CARL HEINRICH SCHURR; EX PARTE THE PUBLIC TRUSTEE.

H. C. OF A. *Trading with the Enemy—Enemy subject—Property held by Public Trustee—Pay-*
 1920. *ment thereout of debts—Principal due under mortgage—Form of order—Costs—*
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 MELBOURNE, *Trading with the Enemy Act 1914-1916 (No. 9 of 1914—No. 20 of 1916), sec.*  
 9D (2).  
 June 10, 15.  
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 Starke J.

Where, under sec. 9D (2) of the *Trading with the Enemy Act 1914-1916*, the Public Trustee is authorized to pay out of the property paid to him in respect of an enemy subject a mortgage debt and interest due by him, the order should provide that the mortgagee should execute a proper discharge of the mortgage, and deliver up upon oath to the Public Trustee all titles and other documents relating to the land mortgaged.

The costs of a motion for an order under sec. 9D (2) of the Public Trustee and of the enemy subject were allowed out of the property in the hands of the Public Trustee.

Form of order stated.

MOTION.

This was an application under sec. 9D (2) of the *Trading with the Enemy Act 1914-1916* on behalf of Robert McKeeman Oakley, the Public Trustee, for an order authorizing him to pay out of the