
RETURN

To an Address of the Legislative Assembly for a Return of all correspondence with the Dominion Government, respecting the Acts of last Session, since the same were forwarded to the Dominion Government for their information.

By Command.

A. C. ELLIOTT,

*Attorney-General's Office,
19th March, 1877.*

Attorney-General.

The Secretary of State to the Lieutenant-Governor

OTTAWA, 8th November, 1876.

SIR,—I have the honour to transmit to you herewith, for the information of your Government, a copy of an Order of His Excellency the Governor-General in Council, and of the Report of the Honourable the Minister of Justice, therein referred to, on the subject of certain Acts passed by the Legislature of the Province of British Columbia, in the first Session of the second Legislature of that Province, 39th Vic. (1876.)

I have, etc.,

(Signed)

R. W. SCOTT.

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 4th November, 1876.

The Committee of Council have had under consideration the Report, hereunto annexed, from the Honourable the Minister of Justice, having reference to Acts of the Legislature of British Columbia, passed in the first Session of the second Legislature, 39 Vic. (1876), and they respectfully submit their concurrence therein, and advise that a copy thereof and of this Minute be transmitted for the information of the Government of British Columbia.

I have, etc.,

(Signed)

W. A. HIMSWORTH,
Clerk, Privy Council.

DEPARTMENT OF JUSTICE,

OTTAWA, 11th October, 1876.

With reference to the Acts of the Legislature of British Columbia, passed in the first Session of the second Legislature, 39th Victoria, (1876), the undersigned begs to report as follows:—

He recommends that the following Acts be left to their operation, namely:—

- Ch. 4. "An Act to amend the Election Regulation Act, 1871."
- Ch. 6. "An Act for the Management of Public Parks."
- Ch. 7. "An Act to impose, levy and collect Tolls on Goods carried over the Trail from Telegraph Creek to the Mines in the District of Cassiar."
- Ch. 9. "An Act respecting the Methodist Church of Canada."
- Ch. 10. "An Act to repeal the 'Road Ordinance, 1869,' and amendments."
- Ch. 13. "An Act to authorize the issue of Debentures for short temporary loans."
- Ch. 14. "An Act respecting Boundary Fences and Water Courses."
- Ch. 15. "An Act respecting Breeding Stock."
- Ch. 16. "An Act to provide for the better protection of Cattle Ranges."
- Ch. 17. "An Act for giving to the parties to civil causes in the Supreme Court the option of having such causes tried by a Judge or Jury."
- Ch. 18. "An Act to amend and explain the 'Execution against Land Act, 1874.'"
- Ch. 19. "An Act to provide for the service of legal process on foreign companies carrying on business in British Columbia."
- Ch. 20. "An Act to make debts and choses in action assignable at law."
- Ch. 21. "An Act respecting voluntary conveyances."
- Ch. 22. "An Act to make provision as to the Investment of Trust Funds, and appointment and powers of Trustees and Executors."
- Ch. 23. "An Act respecting the challenging and number of jurors in civil cases."
- Ch. 25. "An Act to amend the 'Land Act, 1875.'"
- Ch. 26. "An Act to amend the 'Gold Mining Amendment Act, 1873.'"
- Ch. 27. "An Act to provide for the maintenance of Public Schools in the Province of British Columbia."
- Ch. 28. "An Act for granting certain sums of money required for defraying the expenses of Civil Government for the year 1876, and for making good certain sums expended in the Public Service in 1875, and for other purposes."
- Ch. 29. "An Act to amend the 'Victoria and Esquimalt Railway Act, 1873.'"

With reference to—

Ch. 1. "An Act to amend the 'Municipality Act, 1872,' and amendments thereto." This Act contains several provisions with reference to licences with respect to which the power of local Legislatures is in controversy.

The undersigned recommends that the course hitherto pursued should be continued and the Act left to its operation.

Ch. 2. "An Act to amend and consolidate the Public School Acts."

Section 43 both by the character of the Acts with which it deals and by the term which it applies to these Acts, namely: "offences," appears to trench upon the Criminal Law, and the undersigned recommends that the attention of the Lieutenant-Governor should be called to this section with a view to its amendment.

Ch. 3. "An Act to provide for the maintenance of the waggon road from Yale to Cariboo."

This Act repeals the "Tolls Exemption Ordinance, 1865," "Tolls Exemption Ordinance, 1865, Amendment Act," the "Tolls Exemption Act, 1871," the "Thompson Bridge Act, 1864," and the "Thompson Bridge Ordinance, 1868."

It establishes a toll of half a cent for every pound avoirdupois of goods, merchandize, stores, productions and chattels, other than those hereinafter excepted, which shall respectively be carried over or across the Alexandra suspension bridge or the Fraser River, within a distance of ten miles from the bridge, or carried from Clinton in the direction of Cariboo.

The 3rd Section exempts from tolls goods, merchandize, stores, productions or chattels, passing over the bridge from the direction of Cariboo towards Yale. It exempts also mining machinery, farming implements, wheat, peas, oats, barley, and

grain of all kinds, hay, roots, vegetables, and other agricultural produce, the growth of the Province; and all flour and meal manufactured in the Province from wheat, beans, peas, oats, barley and grain of all kinds grown in the Province; and all cattle, and all articles and things coming in the direction of the seaboard from the interior of the Province, whether intended for export or for home consumption, for the purpose of manufacture in the Province, or any other purpose whatsoever.

The repealed Ordinance, 1865, exempted from Road and Ferry Tolls in British Columbia, on the ground that it was expedient to exempt agricultural produce of home growth from road tolls, all agricultural produce in an unprepared state, the growth of the Colony.

The repealed Ordinance of 1871, extended the exemption to flour and meal manufactured from grain of all kinds, the growth of the Colony.

The repealed Exemption Ordinance of 1871, recited that it was desirable to encourage the transmission of articles of export from the interior of the colony, and exempted all articles and things coming in the direction of the seaboard from the interior, whether intended for export or home consumption, or for any other purpose, from liability to tolls.

It is obvious, therefore, that the Act now under consideration is in furtherance of a policy which had been pursued in British Columbia for several years; but the undersigned feels it his duty to call the attention of Council to this legislation, which in effect places upon the consumers of imported goods the chief burden of maintaining the public roads, which are established as well for the transport of articles of home production. The undersigned does not recommend the disallowance of this Act, but he must point out that its principle might be so extended as to render it necessary to consider the question whether such legislation does not trench on the regulation of trade and commerce.

Ch. 5. "An Act to make better provision for the qualification and registration of voters."

Sec. 13 appears to trench upon the criminal law, and the undersigned recommends that the attention of the Lieutenant-Governor be called to it.

Ch. 8. "An Act to assess, levy and collect Taxes on property in British Columbia."

The British Columbia Assembly passed in its Session of 1872, an Act to impose a wild land tax, which was reserved.

Upon that Act the following observations were made by the then Minister of Justice, viz.:—

35TH VICTORIA, 1872.

"This Act imposes a tax of four cents per acre on all land, with certain exceptions."

By sub-section A, of the first clause of this Bill, lands vested in, or held in trust for Her Majesty, or for the public uses of the Province, are exempted from the tax; although, under this exception, the lands to be conveyed, in trust, by the Government of British Columbia to that of the Dominion under the 11th Section of the Terms of Union between British Columbia and the Dominion, will be free from the tax, it is clear that whenever these lands are conveyed to any company incorporated for the construction of the Pacific Railway, the exemption will cease.

Now the imposition of so heavy a tax as four cents an acre upon this large tract of wild land, will render it practically valueless.

The Government of Canada are taking active steps to endeavour to induce capitalists to engage in the great undertaking of constructing a railway to connect the two oceans.

The chief inducement to such capitalists is the promise of a large grant of land in aid of the enterprise, and the imposition of such a tax upon these railway lands would greatly diminish the prospect of a company being formed.

35TH VICTORIA.

The Attorney General of British Columbia seems to agree with the undersigned in this opinion. Under the circumstances, therefore, the undersigned begs respectfully to recommend that the assent of Your Excellency be withheld from this Bill. He also

begs to suggest that the Lieutenant-Governor of British Columbia be instructed to press upon his Government the expediency of exempting these railway lands in any Act that may be hereafter passed imposing a land tax.

He would further suggest, to prevent the possibility of a doubt, that sub-section A. above referred to, should in any new Act be amended by exempting lands *now or at any time hereafter* vested in, or held in trust for Her Majesty.

The Act was not assented to.

In 1873, the British Columbia Legislature passed an Act to impose a wild land tax, by which an annual land tax of one cent upon the value per acre was assessed and levied upon all land, save as therein exempted. The first exemption is "land now, or at any time hereafter, vested in or held in trust for Her Majesty, or for the public uses of the Province."

This Act was left to its operation.

It is by the Act now in consideration repealed, and the following provisions are enacted:—

Sec. 8.—"All land and personal property and income in the Province of British Columbia shall be liable to taxation, subject to the following exemptions, that is to say:—

(1.) "All property now or hereafter to be vested in, or held in trust for Her Majesty, or now or hereafter to be held as Dominion railway lands, and all lands to be conveyed to the Dominion Government under the 11th Section of the Terms of Union, or otherwise, or held by Her Majesty, or vested in any Public Body or Body Corporate, Officer or Person, in trust for Her Majesty, or for the public uses of the Province: and also all property vested in, or held by Her Majesty, or any other person or Body Corporate, in trust or for the use of any tribe or body of Indians, and either unoccupied or occupied by some person in an official capacity."

Sec. 9.—"There shall be assessed, levied and collected from every person, and paid to Her Majesty, her heirs and successors, the sums following," that is to say:—

"One third of one per cent. on the assessed value of real estate."

Sec. 10.—"In addition to the tax hereby imposed on real estate, an annual tax of five cents per acre shall be levied upon all unoccupied land in the Province; provided that no such tax shall be levied or collected in respect of the following land:—

(2.) "Land now, or at any time hereafter, vested in, or held in trust for, Her Majesty, or for the public uses of the Province."

(3.) "Land held for the benefit of any tribe or body of Indians."

The words "unoccupied land" mean land on which there shall not be existing improvements to the amount of \$5 per acre on each parcel of land.

It will be observed that the exemption from the fixed tax of five cents on unoccupied land is not as extensive as the exemption from the tax on the assessed value, and it might be argued to include lands "held as Dominion Railway lands, or to be conveyed to the Dominion Government under the 11th section of the Terms of Union," which are exempted from the operation of the 8th section.

The undersigned presumes that this cannot have been intended, and he suggests that the attention of the Lieutenant-Governor be called to this difficulty with a view to the amendment of the Section before the period arrives for determining whether the Act should be disallowed.

Section 38 appears to trench upon the criminal law and this fact should be suggested to the Lieutenant-Governor.

Section 13, Schedule B.—These provisions trench on the subject of census and statistics, but Provincial legislation of a similar character has been repeatedly left to its operation, and the undersigned cannot recommend interference with this Act on that ground.

CH. 2. "AN ACT TO AMEND THE LICENSES ORDINANCE, 1867."

The "Licenses Ordinance, 1867," prohibited the carrying on of various descriptions of business, save under licenses for which various sums were payable.

The Act now under consideration provides that certain licenses must be taken out in addition to the licenses required to be taken out by the persons following the several trades, occupations, professions or business mentioned and set forth in Schedule A. of the "License Act, 1867."

The continuing validity of that Ordinance is thus asserted, though the question whether it be wholly valid depends upon the question as to the regulation of trade to which the undersigned has referred as in controversy.

But the new Act raises an additional and very serious question. It requires that there shall be paid by way of license the following sums that is to say,

(p.) "By every person following the occupation of a commercial traveller, who is "not a permanent resident of the Province, and is engaged in the business of selling "merchandise or of soliciting orders therefor by sample or otherwise, the sum of two "hundred dollars in advance every year."

(q.) "By every person not being a permanent resident in British Columbia, and "not being a commercial traveller, who trades or sells any goods whatsoever in the "Province, one hundred and fifty dollars in advance every year. Provided that in the "Electoral District of Kootenay the sum of one per cent. only shall be paid by any person engaged in the business of packing on the gross value of the cargo."

(r.) "By every person engaged in peddling or hawking any goods whatsoever, in "any part of British Columbia, not being farming produce of home growth or home "manufacture of any description, or fish or game, one hundred and fifty dollars in advance every year."

It further requires that these sums shall be paid in addition to any sums that may be imposed and collected by any Municipality under any by-law passed for the same purposes.

Looking to the three sections it seems sufficiently obvious that they are directed to, and will have the effect of, laying a duty or charge upon the sale, chiefly if not exclusively, of imported goods when effected by persons not permanent residents of the Province.

Section "r" expressly imposes a tax of \$150 on persons engaged in peddling or hawking any goods not being farming produce of home growth, or home manufacture, or fish, or game.

Section "q" imposes a tax of \$150 on every person not a permanent resident in the Province, who trades or sells any goods whatsoever in the Province. This section is not in terms confined to imported goods, but it is obvious that its practical application would be chiefly to these goods.

In the District of Kootenay one per cent. on the gross value of the cargo is substituted for the fixed tax.

Section "p" imposes a tax on every person following the occupation of a commercial traveller, not a permanent resident in the Province, engaged in the business of selling merchandise or of soliciting orders by sample or otherwise, and this tax obviously, both from the description of the person and of the business, and from the circumstances of the country, applies to imported goods when sold by particular persons. The unequal and discriminating character of these taxes and their injurious effect in the regulation of trade and commerce are very obvious.

The Act further recognises the power of Municipalities to pass by-laws for the imposition of taxes to an indefinite amount for the same purposes.

Besides the express provision of the "British North America Act" vesting exclusively in Canada the regulation of trade and commerce, it is to be observed that that Act vests in that Parliament the legislation on duties, customs and excise, and the funds produced thereby.

It also provides that "all articles of the growth, produce or manufacture of any one "of the Provinces shall, from and after the Union, be admitted free into each of the "other Provinces."

The local Act now under consideration appears to the undersigned by reason of its peculiar provisions, both as to the classes of persons and the description of trade subjected to taxation, to involve an attempt to regulate trade and commerce in excess of the powers of a local Legislature, opposed to the spirit of the union Act, in violation of sound principles of taxation and of mischievous tendency, and he recommends that the attention of the Lieutenant-Governor be called to it with a view to ascertaining whether the local Government will agree that it should not be enforced until the next session of the Legislature, and that legislation will then be promoted for its repeal, otherwise it should be disallowed.

CH. 12. "AN ACT TO FURTHER AMEND THE LICENSES ORDINANCE, 1867."

This Act enacts that in addition to the sums required to be paid by way of license in the Act recited, there shall be paid by every drover, driving or bringing cattle, horses, sheep or hogs into the Province, a license of \$150 every six months, in advance.

The observations made with reference to Chapter 11 apply to this Act, and the undersigned recommends that the same course be pursued with reference to it.

CH. 24. "AN ACT TO AMEND THE POWER OF ATTORNEY ACT, 1875."

This Act amends the 7th Section of the recited Act by substituting for hard labour for the term of two years any term not exceeding eighteen months.

The recited Act was one upon which the undersigned on the 5th January, 1876, reported, pointing out that this section trenched upon the provisions of the criminal law and suggesting that the attention of the Government of British Columbia should be invited to this difficulty with a view to their considering whether the Act should not be amended as to its disallowance.

In answer to a subsequent application made to the Government of British Columbia as to their views the Lieutenant-Governor stated that the Act would be immediately amended to remove the objection taken to this section, and upon this assurance of the Government of British Columbia the undersigned recommended that the Act should be left to its operation which was accordingly done.

It is, however, to be observed that notwithstanding the alteration of the penalty of two years with or without hard labour to eighteen months with or without hard labour, the section is still an invasion of the criminal law, and the undersigned recommends that the attention of the Lieutenant-Governor should be called to the propriety of inviting its amendment.

(Signed) EDWARD BLAKE.