RETURN

To an Address of the Legislative Assembly, for a copy of the Report of the Minister of Justice on the disallowance of the "Cariboo Road Tolls Act, 1878."

By Command.

T. BASIL HUMPHREYS,
Provincial Secretary.

The Under Secretary of State to the Lieutenant-Governor.

OTTAWA, 8th October, 1879.

SIR,—I am directed to transmit to you herewith, for the information of your Government, copy of an Order in Council, dated 2nd instant, disallowing an Act of the Legislature of British Columbia passed on 2nd September, 1878, entitled "An Act to amend the Cariboo Waggon Road Tolls Act, 1876;" and also to transmit to you copy of a second Order in Council, dated 2nd instant, on the subject above alluded to, and of the report of the Minister of Justice referred to in the latter Order in Council.

I have, etc.,
(Signed) E. J. LANGEVIN,
Under Secretary of State.

GOVERNMENT HOUSE, OTTAWA,
Thursday, 2nd day of October, 1879.

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

Whereas the Lieutenant-Governor of the Province of British Columbia, with the Legislative Assembly of that Province, did on the 2nd day of September, 1878, pass an Act, which has been transmitted, intituled as follows, viz: "An Act to amend the Cariboo Waggon Road Tolls Act, 1876;" and whereas the said Act has been laid before the Governor-General in Council, together with a report from the Minister of Justice setting forth that he is of opinion that it was not competent for the Legislature of the Province of British Columbia to pass such Act, and therefore recommending that the said Act should not receive the confirmation of the Governor-General:

His Excellency the Governor-General has thereupon this day been pleased, by and with the advice of His Privy Council, to declare his disallowance of the said Act, and the same is hereby disallowed accordingly.

Whereof the Lieutenant-Governor of the Province of British Columbia, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(Signed) W. A. HIMSWORTH,
Clerk Privy Council.

I, Sir John Douglas Sutherland Campbell, commonly called the Marquis of Lorne, Governor-General of Canada, do hereby certify that the Act passed by the Legislature of British Columbia the 2nd day of September, 1878, entitled "An Act to amend the "Cariboo Waggon Road Tolls Act, 1876," was received by me on the 5th day of October, 1878.

Given under my hand and seal this 2nd day of October, 1879.

(Signed) LORNE.

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 2nd October, 1879.

On the recommendation of the Honourable the Minister of Justice, and for the reasons set forth in his report dated 24th September, 1879, the Committee advise that the Act passed by the Legislature of the Province of British Columbia in the year 1878, intituled "An Act to amend the Cariboo Waggon Road Tolls Act, 1876," be disallowed, and that a copy of this Minute, when approved, and of the Report of the Minister of Justice above alluded to, be transmitted to the Lieutenant-Governor of British Columbia.

Certified.

(Signed) W. A. HIMSWORTH,
Clerk Privy Council, Canada.

DEPARTMENT OF JUSTICE,
Ottawa, 24th September 1879.

I have now the honour to report upon the Act passed by the Legislature of British Columbia in the year 1878, intituled "An Act to amend the Cariboo Waggon Road Tolls "Act, 1876."

The Act is as follows:—

"Section 2 of the 'Cariboo Waggon Road Tolls Act, 1876,' shall be and the same is "hereby repealed, and in lieu thereof the following shall be substituted:—

"There shall be levied and paid from and after the passing of this Act unto and to "the use of Her Majesty, Her heirs and successors, from all persons whomsoever, by "way of toll, the sums following, that is to say:—For every pound avoirdupois of "goods, merchandise, stores, productions, and chattels, other than those hereinafter "excepted, which shall respectively be carried from Yale in the direction of Cariboo, "the sum of one cent.

"2. Provided that all plant and material used in the construction of the Canadian "Pacific Railway shall be exempted from such toll, under and subject to such regula-"lations as the Lieutenant-Governor in Council may prescribe.

"3. This Act may be cited as the 'Cariboo Waggon Road Tolls Amendment Act, "1878."

Section 2 of the "Cariboo Waggon Road Tolls Act, 1876," repealed by the Act now under consideration, is as follows:—

"There shall be levied and paid, from and after the 15th day of May next, unto "and to the use of Her Majesty, Her heirs and successors, from all persons whomso-"ever, by way of toll, the sums following, that is to say:—

"For every pound avoirdupois of goods, merchandise, stores, productions, and "chattels, other than those hereinafter excepted, which shall respectively be "carried over or across the Alexandra Suspension Bridge, or over or across "the Fraser River within a distance of ten miles above and ten miles below "the said bridge, the sum of half a cent.

"For every pound avoirdupois of goods, merchandise, stores, productions and chat-"tels, other than those hereinafter excepted, which shall respectively be carried "from Clinton in the direction of Cariboo, the sum of half a cent."

And Section 3 of that Act, which has not been repealed, is as follows:—

"Provided that no tolls shall be demanded of or from, or paid by any person, in "respect of any goods, merchandise, stores, productions, or chattels passing or carried

" over or across the said bridge, coming down from the direction of Cariboo towards " Yale. Provided, also, that such tolls shall not be demanded of or from or paid by any " person in respect of mining machinery, farming implements, wheat, beans, peas, " 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 this 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 home consumption, for " the purposes of manufacture in the Province or any other purpose whatsoever."

The Minister of Justice (Mr. Blake) in reporting upon the Act passed in 1876, after referring to its provisions and to the provisions of the Acts repealed by it, makes use of the following language:—

" It is obvious, therefore, that the Act now under consideration is in furtherance of " a policy which has been pursued in British Columbia for several years, but the under- " signed feels it his duty to call the attention of the 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."

It will be observed that the section repealed imposes a tax upon such goods only as were carried over or across the Alexandra Suspension Bridge, or over or across the Fraser River within a certain distance of that bridge, or which are carried to Clinton in the direction of Cariboo, the toll being but one half cent per pound; whereas the Act now under consideration imposes a toll of one cent per pound upon goods carried from Yale in the direction of Cariboo.

I have the honour to submit that the question raised by the Minister of Justice in his report upon the Act of 1876—namely, whether this Act does not trench upon the regulation of trade and commerce to an injurious degree—should now be considered by Council.

Should Council determine that the Act should not be disallowed by reason of being an interference with the regulation of trade and commerce, another serious question with reference thereto should be considered.

It will be observed that the Act exempts only the plant and material used in the construction of the Canadian Pacific Railway, under and subject to such regulations as the Lieutenant-Governor in Council may prescribe.

Contractors' supplies, &c., &c., are not exempt.

When the Bill was first introduced it did not contain the exemption clause now in it; and on the 9th August, 1878, Mr. John Robson, Paymaster and Purveyor of the Canadian Pacific Railway Survey, addressed to the Hon. G. A. Walkem, Attorney-General of British Columbia, the following communication:—

" CANADIAN PACIFIC RAILWAY SURVEY, WESTERN DIVISION,
" Victoria, B.C., August 9th, 1878.

" DEAR SIR,—In looking over the Cariboo Waggon Road Tolls Amendment Act, " 1878" (which I saw for the first time to-day), and construing it with the principal Act, " it appears to me that its provisions are likely seriously to affect the Railway interests " of the country.

" According to the railway policy of the Dominion Government, the work of con- " struction will be commenced at Yale next summer and continued upwards thence " through the cañons of the Fraser. It appears to me railway materials and supplies, " machinery and appliances essential to railway construction passing out of Yale to any " point beyond the toll-gate would be liable to the toll imposed by the above recited " Act.

" When it is mentioned that work, and the heaviest part of the work, is intended " to be commenced almost immediately beyond the toll-gate, it must be seen at once " that such an impost meeting railway construction at the very threshold cannot fail

"seriously to operate against it, if indeed it would not render such work practically "impossible.

"Respectfully submitting the matter to your consideration, I beg to request that "should the assumption that the toll in question would apply to railway material, &c., "be correct, you will be good enough to have a provision inserted in the Act exempting "such railway material, &c.

"I have, &c.,
(Signed) "JOHN ROBSON,
"*Paymaster C.P.R.S.*"

To which the following reply was received:—

"AUGUST 11, 1878.

"In reply to your letter of the 9th inst., representing the inconvenience of applying "the 'Road Tolls Act' to railway plant or material passing the Yale toll-gate, I have "to assure you that whenever construction is commenced the Government will afford "every facility for its being carried on expeditiously, and, as far as they are concerned, "as cheaply as possible. Arrangements just to Dominion and Province can then be "made."

On the 13th August Mr. Robson addressed to Mr. Walkem the following communication:—

"I have the honour to acknowledge the receipt of your letter of Sunday last, replying "to mine of the 9th instant, and I regret that its contents do not appear to be "altogether satisfactory.

"It is known to be the intention of the Dominion Government to place a section of "that portion of the Canada Pacific Railway lying within British Columbia under con- "tract as soon as possible after Parliament meets next February; and with that view "it is proposed to seek tenders for the same before the present year is out. Should "the Act under discussion become law meanwhile, it is obvious that it must exert a "most serious influence upon the tenders, inasmuch as intending contractors would "undoubtedly make allowance for the toll in question in estimating the value of the "work; and it seems scarcely necessary to point out that a toll of one cent a pound on "all the railway plant and supplies necessary for such heavy works as are contemplated "must amount to something enormous; nor does it seem to be just, seeing only a very "short portion indeed of the road in respect of which it is proposed to levy the toll will "be used in transporting such material.

"I beg, therefore, most respectfully to submit that however willing your Govern- "ment might be to meet the Dominion Government in a fair and liberal spirit, whenever "construction is commenced, the remedy would come too late, as the tenders would "have been sent in and the contract awarded at the greatly increased price; or, what "is far more likely to happen, the tenders would be rejected on account of undue "appreciation in price thus occasioned, and instead of the Province "making a haul" "out of the Dominion, its interests and revenues would suffer on account of consequent "delay in railway construction.

"I would, therefore, respectfully but most earnestly repeat the suggestion that a "provision be yet inserted in the Act referred to exempting material and supplies used "in railway construction.

"I have, &c.,
(Signed) "JOHN ROBSON,
"*Paymaster and Purveyor C.P.R.S.*"

On the 17th August copies of the correspondence with Mr. Walkem was sent by Mr. Robson to the Department of Public Works, and on the 4th September Mr. Robson wrote to the Department of Public Works as follows:—

"Adverting to my letter of the 17th ultimo, referring to a Bill passed through the "Provincial Legislature, and enclosing correspondence between the Hon. Mr. Walkem "and myself there anent, I have further to report that the point contended for was "subsequently conceded, and the Bill sent back to the House for insertion of exemption "clause. I now beg to point out what appears to me objectionable features of the "amended Bill, a copy of which is enclosed herewith.

"1. The exemption is only partial,—not including supplies employed and consumed "on railway construction, a toll of twenty dollars a ton on which seems not only "enormous but unjust when it is considered that railway works to the value of several "millions will have to be constructed almost within the shadow of the toll-gate. It "seems impossible to doubt that such an impost will exert a serious influence upon the "tenders for the work.

"2. It will be observed that the modicum of relief given in the Act is made con- "tingent on a revocable Order in Council,—rather insecure ground, it is to be appre- "hended, for contractors to go upon in tendering for the work. There seems reason to "fear that the measure under consideration is calculated to operate very prejudicially "as against railway construction in the particular locality referred to by causing the "tenders now invited to be much higher than they would otherwise be; and it may "therefore be matter for consideration whether the Dominion Government would not "be justified in disallowing the Act in question."

And on the 18th October, 1878, Mr. Robson wrote as follows:—

"I have the honour to acknowledge your letter of the 28th ult., and to report "thereon as follows:—

"The fact that the words '*and supplies*' had been erased from the exemption clause "when it came before the Legislature, taken in connection with the further fact that "the point was fully discussed in the House and a decision arrived at *not* to exempt "supplies, affords the most conclusive evidence that the words used in the Act referred "to are not intended to cover supplies of all descriptions.

"A reference to files of the Victoria newspapers will sufficiently establish the above "mentioned facts."

In my opinion, supplies, articles of food, &c., for the use of those engaged in the construction of the Canadian Pacific Railway do not come within the exemption clause of the Act.

I have the honour to recommend that for the two reasons above referred to, namely:—

(1.) The interference with the regulations of trade and commerce, and

(2.) The possible imposition of unfair charges upon the Dominion exchequer, the said Act passed by the Legislature of British Columbia, and entitled "An Act to amend the Cariboo Waggon Road Tolls Act, 1876," be disallowed.

(Signed) JAMES MCDONALD,
Minister of Justice.