REPORT

Of a Committee of the Honourable the Privy Council of Canada, respecting the Acts of the Province of British Columbia, passed during the Session of 1879.

By Command.

GEO. A. WALKEM,
Attorney-General.

Copy of a Report of a Committee of the Honourable the Privy Council approved by His Excellency the Governor-General in Council, on the 15th May, 1880.

On a Report, dated 8th May, 1880, from the Hon. the Minister of Justice, upon two Acts passed by the Legislature of the Province of British Columbia in the year 1879, received by the Hon. the Secretary of State on the 2nd day of July, 1879, as follows:—

Chap. 12. "An Act to amend the practice and procedure of the Supreme Court of British Columbia, and for purposes relating to the better administration of justice."

Chap. 13. "Judicial District Act, 1879."

On the recommendation of the Hon. the Minister of Justice, the Committee advise that the above two Acts be left to their operation.

Certified.
(Signed) J. O. COTE,
Clerk Privy Council.

DEPARTMENT OF JUSTICE,
Ottawa, 8th May, 1880.

I have the honour to report upon two Acts passed by the Legislature of British Columbia in the year 1879, received by the Secretary of State on the 2nd day of July, 1879, as follows:—

Chap. 12. "An Act to amend the practice and procedure of the Supreme Court of British Columbia, and for other purposes relating to the better administration of justice."

A very strong protest against this Act, by reason of the provisions of the 17th section, has been received from the three Judges of the Supreme Court of British Columbia.

The 17th section empowers the Lieutenant-Governor, by Order in Council, to make rules, to be styled "Rules of Court," for carrying the Act into force, for regulating the sittings of the Court, &c., for pleading, practice, and procedure, duties of officers, rights of counsel, &c.

The Judges, in effect, contend that they are by this section placed more under the control of the Local Government than they should be, claiming that they are Dominion officers and that their independence as Judges may be interfered with by the powers given the Lieutenant-Governor in Council under the 17th section of the Act.

With the exception of the 14th section, to which reference will be made below, the Judges do not make any other objection to the Act, and from the correspondence transmitted it appears that, with the exception of the 14th and 17th sections, the Act was substantially framed by the Judges themselves.

The legislative authority over the administration of justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those Courts which is vested in the Provincial Legislatures, seems clearly to authorize the making of the provisions contained in the 17th section, and unless there be grave reason to the contrary course which has been adopted by this Government heretofore in dealing with Provincial legislation, would seem to require that provisions so clearly within the

powers of the Local Legislature should be left to their operation, notwithstanding that they, or some of them, may not accord with the views which will be entertained respecting the expediency of such provisions.

Had the Provincial Legislature seen fit to confer on the Judges themselves the power of making the Rules of Court, as has been done in England, in Ontario and other Provinces, and as was done by the Parliament of Canada when establishing Supreme and Exchequer Courts, such a course would, I think, have been more satisfactory.

The Attorney-General of British Columbia has, however, made a report setting out the reasons why power was given to the Governor in Council, instead of Judges, to make the Rules of Court. A copy of this report was transmitted by the Lieutenant-Governor to this Government.

The 14th section is as follows:—"Courts of Assize and Nisi Prius, or of Oyer and "Terminer and General Gaol Delivery, may be held with or without commissions, at "such times and places as the Lieutenant-Governor may direct; and when no such commis-"sions are issued, the said Courts, or either of them, shall be presided over by the Chief "Justice or one of the other Judges of the said Supreme Court, either of whom, as the "case may be, may, in civil proceedings, reserve the giving of his final decision on "questions raised at the trial, and his decision, whenever given, shall be considered as if "given at the time of the trial."

The Judges are of opinion that so far as this section assumes to change the present practice of holding Courts for the trial of criminal cases, it is beyond the powers of the Provincial Legislature, as affecting procedure in criminal matters.

In the case of the Queen v. Arner, reported in 42, Q. B. Reports of Ontario, page 391. Mr Justice—now Chief Justice—Adam Wilson, expresses opinions which go far to show that the provisions of the section now under consideration are within the competency of a Provincial Legislature. The matter is by no means so clear as to warrant me in recommending the disallowance of the Act.

On the whole, therefore, I recommend that the Act be left to its operation.

Chap. 13. "Judicial District Act, 1879."

This Act has also been protested against by the Judges.

Their protest is against three Acts which they declare should be taken as one piece of legislation, namely,—

The "Better Administration of Justice Act, 1878,"

The "Judicature Act, 1879" (being Chap. 12, above referred to), and

The "Judicial District Act, 1879."

Their protest is dated in Victoria, B.C., 29th April, 1879, and was not, of course, received here until the month of May, 1879.

The "Better Administration of Justice Act, 1878," was left to its operation by Order in Council, dated 17th March, 2879, therefore the protest, so far as it refers to that Act, cannot now be considered.

The "Judicial District Act, 1879," seems to be a necessary adjunct to the "Better Administration of Justice, 1878," and as the policy of that Act has been adopted by the Parliament of Canada and provision has been made for the salaries of two additional Judges provided for by that Act, no other course seems open than to leave the Act now under consideration to its operation, and I recommend accordingly.

(Signed) JAS. MACDONALD,
Minister of Justice.

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 15th May, 1880.

On a Report, dated 8th May, 1880, from the Honourable the Minister of Justice, upon the Statutes passed by the Legislature of the Province of British Columbia in the year 1879, received by the Honourable the Secretary of State on the 2nd day of July, 1879.

The Committee advise that the Statutes mentioned in said Report be left to their operation as therein recommended.

Certified,
(Signed) J. O. COTE,
Clerk, Privy Council.

DEPARTMENT OF JUSTICE,
Ottawa, 8th May, 1880.

I have the honour to report upon the Statutes passed by the Legislature of the Province of British Columbia in the year 1879, received by the Honourable the Secretary of State on the 2nd day of July, 1879, as follows:—

Chap. 1. "An Act to further amend the 'Bills of Sale Ordinance, 1870.'"
This Act requires no special observation. I recommend that it be left to its operation.

Chap. 2. "An Act to enable the Lieutenant-Governor in Council to grant Charters for the erection of Toll Bridges."

It appears from a communication sent to the Honourable the Minister of the Interior, from certain inhabitants at Victoria, B. C., that certain persons had applied to the Lieutenant-Governor in Council for a charter giving them authority to build a bridge over a part of the Victoria Harbour, and a strong protest was made against the building of any such bridge.

The Premier of British Columbia, the Hon. G. A. Walkem, while here, in February last, informed me that his Government had done nothing toward granting the application, and that as the waters of the harbour, where the bridge was proposed to be built, were navigable, he did not claim for his Government the power to authorize the erection of the bridge.

It will be observed that the Act is expressly confined to such bridges as are under the control of the Legislature of British Columbia. The Statute does not even assume to empower the Provincial Government to authorize the construction of a bridge which might interfere with navigation; and it is quite clear that express words in the Statute assuming to give such authority would be of no effect, as any person attempting to obstruct by a bridge or otherwise, without the authority of the Parliament of Canada, the navigation of any river, harbour, bay, arm of the sea, or other navigable water, could be prevented by injunction from causing the obstruction, and in certain events the obstruction, if erected, might, as any other nuisance, be abated by the public without process of law.

I recommend that the Act be left to its operation.

Chap. 3. "An Act to protect Winter Stock Ranges."
This Act will be reported upon on a future occasion.

Chap. 4. "An Act to repeal the 'Cemetery Ordinance, 1870.'"
Chap. 5. "The Cemetery Act, 1879."
Chap. 6. "An Act to provide for the management of certain Cemeteries in the Province of British Columbia."
Chap. 7. "An Act for the protection and relief of the Nanaimo Fire Brigade."
Chap. 8. "An Act to amend the 'Constitution Amendment Act, 1878.'"
I recommend that these Acts be left to their operation.

Chap. 9. "An Act respecting Coroners."

I recommend that this Act be left to its operation, as Acts of a similar nature in other Provinces have not been interfered with.

I desire to point out, however, that the right of a Provincial Legislature to legislate respecting Coroners has, in certain respects, been questioned, as entrenching upon the subject of criminal law and criminal procedure.

Chap. 10. "An Act respecting the costs of Arbitrations."
Chap. 11. "An Act respecting the costs of levying Distresses for Rents and Penalties."
I recommend that these Acts be left to their operation.

Chap. 12 and chap. 13. These Acts have been reported on separately.

Chap. 14. "An Act to amend the 'Sumass Dyking Act, 1878.'"
I recommend that this Act be left to its operation.

Chap. 15. "An Act respecting the 'Sumass Dyking Act, 1878.'"
This will be reported upon hereafter.

Chap. 16. "An Act respecting the Fees of Sheriffs, Justices of the Peace, and Constables, and for other purposes."

Chap. 17. "An Act to amend the 'Fence Ordinance, 1869.'"

Chap. 18. "An Act to amend the 'British Columbia Line Fences and Water Courses Act, 1876.'"

Chap. 19. "An Act to provide for the proper management of Gaols."

Chap. 20. "An Act respecting the Graving Dock at Esquimalt."

Chap. 21. "An Act to amend the 'Land Act, 1875.'"

Chap. 22. "An Act to amend Section 4 of the 'Land Registry Ordinance, 1870.'"

I recommend that these Acts be left to their operation.

Chap. 23. "An Act to amend the 'Licences Ordinance, 1867.'"

This Act will be reported upon at another time.

Chap. 24. "An Act to establish Liens in favour of Mechanics and others."

Chap. 25. "An Act to cancel certain Debentures issued under the authority of the British Columbia Loan Acts, 1874 and 1876, and to repeal the 'British Columbia Loan Act, 1876.'"

Chap. 26. "An Act respecting the Magistracy."

Chap. 27. "An Act to authorize the Lieutenant-Governor to execute Marriage Licences, and for other purposes relating to Marriages."

Chap. 28. "An Act to amend the 'Municipality Act, 1872.'"

Chap. 29. "An Act respecting the Civil Service, the collection and management of the Revenue, and the duties and liability of the Auditor and Accountants."

I recommend that these Acts be left to their operation.

Chap. 30. "The Public School Act, 1879."

Section 25 of this Act is clearly beyond the power of the Legislature to pass, as it expressly assumes to make a person wilfully making a false declaration of his right to vote at the election of the school trustees guilty of a misdemeanour. The provisions of the section were evidently overlooked when passing through the House.

I recommend that the attention of the Lieutenant-Governor be called thereto, with a request that his Government will, in due time, promote the repeal of this section. Meantime, I recommend that the Act be left to its operation.

Chap. 31. "An Act respecting Law Stamps."

Chap. 32. "An Act respecting the printing and distributing of the Statutes, Journals, and Sessional Papers of the Legislative Assembly."

Chap. 33. "An Act for granting certain sums of money required for defraying the expenses of Civil Government for the eighteen months ending 30th June, 1880, and for other purposes."

Chap. 34. "An Act to amend the 'Assessment Act, 1876,' and the 'Assessment Amendment Act, 1877.'"

Chap. 35. "An Act to amend Sections 9 and 13 of the 'Assessment Amendment Act, 1878,' and Section 1 of the 'School Tax Act, 1878.'"

Chap. 36. "An Act to repeal Section 6 of the 'School Tax Act, 1876.'"

Chap. 37. "An Act respecting the collection of School Tax and Mining Licences."

I recommend that these several Acts be left to their operation.

(Signed) JAS. MACDONALD,
Minister of Justice.