
RETURN

To an Address of the Legislative Assembly for copies of the following papers referring to an "Act to prevent the immigration of Chinese," 47 Vic., chap. 3, 1884, and an "Act to prevent the immigration of Chinese," 48 Vic., chap. 13, 1885:—Copies of the Attorney-General's report to His Honour the Lieutenant-Governor; copies of all Orders in Council, letters or telegrams received or sent by any member of the Government; the amount of revenue received under either of the above Acts.

JNO. ROBSON,

Provincial Secretary.

*Provincial Secretary's Office,
3rd February, 1886.*

Copy of the Attorney-General's Report (18th February, 1884) to His Honour the Lieutenant-Governor, on the "Chinese Immigration Act, 1884."

Bill No. 15.—An Act to prevent the Immigration of Chinese.

This Bill, after reciting the section in the British North America Act empowering the Provincial Legislature to pass laws relative to immigration, and that it is expedient to prevent the immigration into this Province of Chinese, imposes on each Chinese coming into this Province a payment of fifty dollars, and goes on to provide for the collection thereof.

Copy of the Attorney-General's Report, dated 9th March, 1885, to His Honour the Lieutenant-Governor, on the "Chinese Immigration Act, 1885."

Bill No. 21.—An Act to prevent the Immigration of Chinese.

This is a Bill framed under the provisions of Sec. 95 of "The British North America Act, 1867," having for its object the prevention of the immigration of Chinese into this Province. This Bill re-enacts all the sections of the Act intituled "An Act to prevent the Immigration of Chinese," assented to by Your Honour on the 18th February, 1884, and disallowed by His Excellency the Governor-General.

In order to make the Bill unobjectionable, the following clause was added:—

"7. Notwithstanding anything in this Act contained, it shall be lawful for the Provincial Secretary, upon proof to his satisfaction that any Chinese who, at any time within one year prior to the passing of this Act, had been a stated resident of the Province, but who at the time of such passage was temporarily absent, to issue a certificate to such Chinese, exempting him from the provisions of this Act."

The Secretary of State to the Lieutenant-Governor.

OTTAWA, 9th April, 1884.

SIR,—I have the honour to transmit to you, herewith, for the information of your Government, a copy of a Report of a Committee of the Honourable the Privy Council, duly approved by His Excellency the Governor-General, covering a report of the Honourable the Minister of Justice, recommending, for the reasons therein given, that the Act passed by the

Legislature of the Province of British Columbia, 47 Vic. (1884), chapter 15, and intituled "An Act to prevent the immigration of Chinese," be disallowed.

I also enclose an order of His Excellency the Governor-General, declaring His Excellency's disallowance of the said Act, to which is appended the certificate of His Excellency as to the date of the receipt of the Act in question.

I have, &c.,
(Signed) J. A. CHAPLEAU,
Secretary of State

[ENCLOSURE.]

I, Henry Charles Keith Petty Fitzmaurice, Marquis of Lansdowne, Governor-General of Canada, do hereby certify that the undermentioned Act passed by the Legislature of the Province of British Columbia, on the 18th day of February, 1884, intituled "An Act to prevent the immigration of Chinese," was received by me on the 7th day of March, 1884.

Given under my hand and seal this 8th day of April, 1884.

[L. s.] (Signed) LANSDOWNE.

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 8th April, 1884.

The Committee of the Privy Council have had under consideration a Report, hereunto annexed, dated 7th April, 1884, from the Minister of Justice, in which it is recommended, for the reasons therein set forth, that the following Act passed by the Legislature of British Columbia, 47 Vic. (1884), viz., chapter 15, "An Act to prevent the immigration of Chinese," should be disallowed.

The Committee advise that the said Act be disallowed accordingly, and that a copy of this Report be forwarded to the Lieutenant-Governor of British Columbia, for the information of his Government.

(Signed) JOHN J. MCGEE.

[ENCLOSURES.]

GOVERNMENT HOUSE, OTTAWA,
Tuesday, 8th day of April, 1884.

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 18th day of February, 1884, pass the Act, No. 15, intituled "An Act to prevent the immigration of Chinese;" and whereas the said Act has been laid before the Governor-General in Council, together with a Report from the Minister of Justice, recommending that the said Act should be disallowed; His Excellency the Governor-General has thereupon this day been pleased, by and with the advice of the Queen's Privy Council for Canada, to declare his disallowance of the said Act, and the same is 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) JOHN J. MCGEE
Clerk Privy Council.

DEPARTMENT OF JUSTICE,
OTTAWA, April 7th, 1884.

To His Excellency the Governor-General in Council:—

The undersigned has had under consideration an Act passed during the last session of the Legislature of British Columbia, No. 15, intituled "An Act to prevent the immigration of Chinese."

The 2nd section makes it unlawful for any Chinese to come into the Province of British Columbia, or any part thereof, and imposes a penalty upon those Chinamen who do so, and provides that they may be arrested without warrant.

By the 3rd section it is provided that any one who brings, or assists in bringing, into British Columbia any Chinese, or who in any way assists any Chinese in coming into British Columbia, is liable to a penalty of \$200, and in default of payment, to imprisonment for six months, for each Chinaman so brought in or assisted.

By the 4th section it is provided that offenders against the 3rd section may be arrested without warrant by any constable and brought before any Justice of the Peace, to be dealt with according to law.

The preamble to the Act is as follows:—

“Whereas by ‘The British North America Act, 1867,’ section 95, it is enacted as follows:—

“‘In each Province the Legislature may make laws in relation to agriculture in the Province, and to immigration into the Province, and it is hereby declared that the Parliament of Canada may, from time to time, make laws in relation to agriculture in all or any of the Provinces, and to immigration into any or all of the Provinces; and any law of the Legislature of a Province, relative to agriculture or to immigration, shall have effect in and for the Province, as long and as far only as it is not repugnant to any Act of the Parliament of Canada.’

“And whereas it is expedient to prevent the immigration of Chinese into British Columbia.”

Having reference to the condition of Canada at the time of the union of the Provinces, the undersigned is of opinion that the authority given by the 95th section of the British North America Act is an authority to regulate and promote immigration into the Province, and not an authority to prohibit immigration. A law which prevents the people of any country from coming into a Province cannot be said to be of a local or private nature. On the contrary, it is one involving Dominion, and possibly Imperial, interests. But without coming at present to a definite conclusion as to whether the Act in question is one within the legislative authority of Parliament or of the Legislature, the undersigned is clearly of opinion that it is an Act that ought not to be put into operation without due consideration, and without correspondence with the Imperial authorities. If the Legislature had followed the same course with respect to this Act that it followed with respect to an Act, number fourteen, intituled “An Act to regulate the Chinese population of British Columbia,” and provided that it should not come into force until one year after its passage, time would have been given for necessary consideration and correspondence; but by the 8th section of the Act under consideration it came into operation on the 31st March last.

As the Act clearly discriminates against the Chinese, and as it imposes great penalties upon Chinamen coming into British Columbia, and upon those who assist Chinamen to come into British Columbia, and as at least great doubts must be entertained as to the authority of the Legislature to pass the Act, the undersigned respectfully recommends that it be disallowed.

(Signed) A. CAMPBELL,
Minister of Justice.

[TELEGRAM.]

OTTAWA, 30th March, 1885.

To His Honour the Lieutenant-Governor:—

British Columbia Act of eighteen hundred and eighty-five, entitled “Act to prevent immigration of Chinese,” disallowed by Order in Council of twenty-eighth inst. Take necessary steps to prevent enforcement of Act. Documents mailed.

(Signed) J. A. CHAPLEAU,
Secretary of State.

The Secretary of State to the Lieutenant-Governor.

OTTAWA, 31st March, 1885.

SIR,—I have the honour to transmit to you, herewith, for the information of your Government, a copy of a report of a Committee of the Honourable the Privy Council, duly approved by His Excellency the Governor-General, covering a report of the Honourable the Minister of Justice, recommending, for the reasons therein set forth, that the Act No. 21, passed by the

Legislature of the Province of British Columbia on the 9th day of March, 1885, and intituled "An Act to prevent the Immigration of Chinese," be disallowed. I also enclose an order of His Excellency the Governor-General in Council, declaring His Excellency's disallowance of the said Act, to which is appended the certificate of His Excellency as to the date of the receipt of the Act in question.

I have, &c.,
(Signed) J. A. CHAPLEAU,
Secretary of State.

[ENCLOSURE.]

GOVERNMENT HOUSE, OTTAWA,
Saturday, 28th day of March, 1885.

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 9th day of March, 1885, pass the Act No. 21, intituled "An Act to prevent the Immigration of Chinese."

And whereas the said Act has been laid before the Governor-General in Council, together with a report from the Minister of Justice recommending that the said Act should be disallowed; His Excellency the Governor-General has thereupon this day been pleased, by and with the advice of the Queen's Privy Council for Canada, to declare his disallowance of the said Act, and the same is 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) JOHN J. MCGEE,
Clerk Queen's Privy Council, Canada.

[ENCLOSURE.]

I, Sir Henry Charles Keith Petty Fitzmaurice, Marquis of Lansdowne, Governor-General of Canada, do hereby certify that the undermentioned Act, passed by the Legislature of British Columbia on the 9th day of March, 1885, intituled "An Act to prevent the immigration of Chinese," was received by me on the 23rd day of March, 1885.

Given under my hand and seal this 28th day of March, 1885.

[L. s.] (Signed) LANSDOWNE.

Certified Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 27th March, 1885.

The Committee of the Privy Council have had under consideration a Report hereunto annexed, dated 26th March, 1885, from the Minister of Justice, in which it is recommended, for the reasons herein set forth, that the following Act, No. 21, passed by the Legislature of British Columbia, viz.:—"An Act to prevent the immigration of Chinese" (1885) should be disallowed. The Committee advice that the said Act be disallowed accordingly, and that a copy of this Report be forwarded to the Lieutenant-Governor of British Columbia for the information of his Government.

(Signed) JOHN J. MCGEE,
Clerk of Privy Council.

[ENCLOSURE.]

DEPARTMENT OF JUSTICE, CANADA,
OTTAWA, March 26th, 1885.

To His Excellency the Governor-General in Council:—

The undersigned has the honour to report upon an Act passed by the Legislature of British Columbia intituled "An Act to prevent the immigration of Chinese," which came into force on the 9th instant, and of which an authenticated copy was received by the Secretary of State on the 23rd instant.

This Act contains the same provisions as those contained in an Act of the same Legislature passed in the Session of 1884, Chapter 3, and intituled "An Act to prevent the immigration of Chinese," which was disallowed by Order in Council of His Excellency on the 8th day of April last.

On the 3rd instant, the Speaker of the British Columbia Assembly telegraphed His Excellency expressing the regret of the Legislature at the disallowance of the Chinese Immigration Act of last Session, enlarging upon the evils attending the immigration of Chinese into the Province, and requesting that some restrictive legislation be passed to prevent the Province from being completely overrun by Chinese. It is true that the Act of the Session of 1884 was not disallowed distinctly on the ground of its unconstitutionality, there being other grounds which were thought sufficient, and which rendered it unnecessary to express a definite opinion respecting the powers of the Legislature to pass the Act.

With respect to the request for restrictive legislation, that is a question which can be more conveniently answered when His Excellency in Council comes to consider what action is to be taken with respect to the report of the Commission on Chinese Immigration.

The Act under consideration purports to be passed in the exercise of the power conferred upon the Legislature by the 95th section of "The British North America Act, 1867," to make laws in relation to agriculture in the Province, and to immigration into the Province, so far as such laws are not repugnant to any Act of the Parliament of Canada upon the same subject.

The Act of 1884 was disallowed for the following reasons:—

1. That the power given by the 95th section of the British North America Act was a power to promote rather than prevent immigration.
2. That the Act was not one of a local or private nature, but one involving Dominion and, possibly Imperial, interests.
3. That at least time should be given for the consideration of the Act, and for correspondence with the Imperial authorities, which was not possible, as the Act was brought into operation at once.
4. That the authority of the Legislature to pass the Act was, at least, doubtful. By reference to a despatch from the Right Honourable the Principal Secretary of State for the Colonies to His Excellency under date 31st May last, it will be seen that there is no objection to the Act on account of any Imperial interests involved.

By the 1st section of the Act it is provided that it shall be unlawful for any Chinese to come into the Province of British Columbia, or any part thereof, and that any Chinese who comes into British Columbia shall forfeit and pay the sum of \$50, to be recovered in a summary way before a Justice of the Peace, and in default of payment the defendant shall suffer imprisonment with hard labour for any period not exceeding six months.

By the 3rd section a penalty of two hundred dollars, and in default of payment imprisonment for any period not exceeding six months is imposed upon any master of a ship, officer or other person who brings, or assists in bringing in, any Chinese into British Columbia, or who in any way assists any Chinese in coming into British Columbia.

The Act contains two sections which were not in the Act of 1884, and which are as follows:—

"7. Notwithstanding anything in this Act contained it shall be lawful for the Provincial Secretary upon proof to his satisfaction that any Chinese who at any time within one year prior to the passing of this Act had been a stated resident of the Province, but who, at the time of such passage, was temporarily absent, to issue a certificate to such Chinese exempting him from the provisions of this Act.

"8. It shall be lawful to impose a fee not exceeding five dollars for every certificate to be granted under the provisions of this Act, which fee shall form part of the Provincial Revenue."

In his report to the Lieutenant-Governor the Attorney-General of British Columbia states that these sections were added to make the Bill unobjectionable. While these provisions make the Act more favourable to Chinese who now have a residence in British Columbia, they do not in any way remove the principal objection to the Act. By "The British North America Act, 1867," (sec. 91, sub-sec. 2) it is provided that the exclusive legislative authority of the Parliament of Canada extends to the regulation of trade and commerce.

The corresponding section of the Constitution of the United States (sec. 8, sub-sec. 3) provides that Congress shall have power to regulate commerce with foreign nations, and among the several States and with the Indian tribes.

In Storey's Commentaries on the Constitution of the United States, Vol. 2, sec. 1,061, it is stated that "Commerce undoubtedly is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations and parts of nations, in all its branches, and it is regulated by prescribing rules for carrying on that intercourse."

In Section 1,064 it is laid down that "it may, therefore, be safely affirmed that the terms of the Constitution have at all times been understood to include a power over navigation, as well as trade, over intercourse as well as traffic, and that in the practice of other countries, and especially in our own, there has been no diversity of judgment or opinion. During our whole colonial history, this was acted upon by the British Parliament as an uncontested doctrine."

"That Government regulated not merely our traffic with foreign nations, but our navigation and intercourse as unquestioned functions of the power to regulate commerce."

In section 1,065 it is stated:—"This power the constitution extends to commerce with foreign nations, and among the several States, and with the Indian tribes. In regard to foreign nations it is universally admitted that the words comprehend every species of commercial intercourse. No sort of trade or intercourse can be carried on between this country and any other to which they do not so extend. Commerce as used in the Constitution is a unit, every part of which is indicated by the term."

This view is sustained by the decision of the Supreme Court of the United States in the Passenger Cases, 7 Howard's Supreme Court Reports, and by other decisions of that court.

The undersigned being of opinion that the Act is an interference with the power of Parliament to regulate trade and commerce, and that it is a case in which the ordinary tribunals can afford no adequate remedy for, or protection against, the injuries which will result from allowing the Act to go into operation, feels himself obliged to recommend its disallowance.

The undersigned therefore recommends that the said Act intituled "An Act to prevent the Immigration of Chinese" be disallowed.

All of which is respectfully submitted.

(Signed A. CAMPBELL,
Minister of Justice.

Amount of revenue received under "An Act to prevent the immigration of Chinese," 48 Vic., chap. 13, 1885, one hundred and thirty (\$130) dollars.
