PAPERS

Relating to the Acts passed by the Legislature of the Province of British Columbia during the Session of 1896.

By Command.

JAMES BAKER,

Provincial Secretary.

Provincial Secretary's Office,
10th December, 1896.

3986

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 2nd December, 1896.

Extract from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 27th November, 1896.

The Committee of the Privy Council have had under consideration a Report, dated 20th October, 1896, from the Minister of Justice, stating that he has examined the Acts passed by the Legislature of the Province of British Columbia, in the fifty-ninth year of Her Majesty's reign (1896), and which were received by the Secretary of State of Canada, on the 8th July, 1896, and he is of opinion that they may be left to their operation without any observations, with the exception of chapters 10, 21, 37, 50 and 55, upon which he (the Minister of Justice) has made a separate report.

The Committee, concurring in the report of the Minister of Justice, advise that the said Statutes be left to their operation, with the exception of chapters ten (10,) twenty-one (21), thirty-seven (37), fifty (50), and fifty-five (55), and that a certified copy of this Minute be forwarded to the Lieutenant-Governor of the Province of British Columbia for the information of his Government.

All which is respectfully submitted for Your Excellency's approval.

JOHN J. MCGEE,
Clerk of the Privy Council.

His Honour the Lieutenant-Governor
of the Province of British Columbia.

OTTAWA, 3rd December, 1896.

SIR,—I have the honour to transmit to you herewith, for the information of your Government, a certified copy of a Minute of the Privy Council, approved by His Excellency on the 30th November last, together with the Report of the Minister of Justice therein referred to, respecting chapters 10, 21, 37, 50 and 55 of the Acts passed by the Legislature of your Province in the 59th year of Her Majesty's reign (1896), and which are left to their operation.

I have, &c.,

(Signed) JOSEPH POPE,
Under Secretary of State.

His Honour the Lieutenant-Governor
of British Columbia, Victoria, B. C.

4049

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 2nd December, 1896.

Extract from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 30th November, 1896.

The Committee of the Privy Council have had under consideration a Report, hereto annexed, dated 27th November, 1896, from the Minister of Justice, upon the undermentioned Acts passed by the Legislature of the Province of British Columbia, in the 59th year of Her Majesty's Reign (1896), as follows:—

Chapter 10.—"An Act respecting Co-operative Associations;"

Chapter 21.—"An Act to preserve the Forests from destruction by Fire;"

Chapter 37.—"The Municipal Clauses Act;"

Chapter 50.—"An Act to incorporate the Alberni Water, Electric and Telephone Company, Limited;"

Chapter 55.—"An Act to amend 'An Act to incorporate the Consolidated Railway and Light Company,' and to consolidate certain Acts relating thereto, and to change the name thereof to the Consolidated Railway Company;"

which Acts were received by the Secretary of State of Canada on the 8th of July, 1896.

The Committee, concurring in the Report of the Minister of Justice, advise that the said Statutes be left to their operation, and that a certified copy of this Minute and of the Report thereto attached be transmitted to the Lieutenant-Governor of the Province of British Columbia, for the information of his Government.

All which is respectfully submitted for Your Excellency's approval.

JOHN J. MCGEE,
Clerk of the Privy Council.

His Honour the Lieutenant-Governor,
Province of British Columbia.

(Annex "A" to P. C. 4049, 30th November, 1896.)

DEPARTMENT OF JUSTICE, CANADA,
OTTAWA, 27th November, 1896.

LEGISLATION.

To His Excellency the Governor-General in Council:

The undersigned has the honour to report upon the following Acts of the Province of British Columbia, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on the 17th April last, and received by the Secretary of State for Canada on the 8th July last:—

Chapter 10.—"An Act respecting Co-operative Associations."

Section 17 provides, among other things, that if any person obtains possession by false representation or imposition of any property, moneys, securities, books, papers, or other effects of an association he shall be liable, on conviction, to a penalty not exceeding one hundred dollars and costs, and in default of payment imprisonment.

This legislation appears to affect the subject of Criminal law, and the offence stated has been declared criminal by the Criminal Code 1892, and punishment has been thereby prescribed for such an offence. The objection, however, is not of sufficient importance to call for the exercise of the power of disallowing the Act which contains it, but the undersigned recommends that the provision be considered by the Provincial Legislature with a view to its repeal.

Chapter 21.—"An Act to preserve the Forests from destruction by Fire."

Section 6 provides that all locomotive engines used on any railway which passes through any fire district shall be provided with the most approved and efficient means to prevent the

escape of fire from the furnaces of such engines, and that the smoke-stack of each engine shall be provided with a bonnet or screen of a certain description.

Section 7 provides that it shall be the duty of every engine-driver in charge of such locomotive engines passing over a railway within the limits of any fire district to see that such appliances are properly used and applied; and section 8 enacts a penalty for neglect or refusal to comply with the provisions above mentioned.

The undersigned observes that, while these requirements are undoubtedly applicable to railways within the legislative authority of the Province, it is doubtful, or more than doubtful, whether they can have effect as to railways to which the Railway Act of Canada applies.

Chapter 37.—"The Municipal Clauses Act."

In recommending that this Act be left to its operation, the undersigned would observe that some of the powers to make by-laws which the Act purports to confer upon Municipal Councils are expressed in terms so general as to include authority which a Provincial Legislature could not confer. For instance, power is given to make by-laws with respect to the following matters, among others:—

(21.) The prevention of cruelty to animals;

(69.) For regulating, with a view of preventing the spread of infectious or contagious diseases, the entry or departure of boats or vessels, and the landing of passengers and cargoes from such boats or vessels, or from railway carriages or cars, and the receiving of passengers or cargoes on board of the same;

(75.) For preventing the posting of indecent placards, writings or pictures, or the writings of indecent words, or the making of indecent pictures or drawings on walls, fences, trees, or rocks, in streets or public places;

(76.) For preventing vice, drunkenness, swearing, obscene, blasphemous or grossly insulting language and other immorality and indecency.

It is doubtless open to the municipality in the execution of the powers granted by these clauses to make by-laws which would not be *ultra vires*, and the undersigned does not consider it necessary to do more than point out that the authority cannot legally be so acted upon as to affect subjects which belong to Dominion legislation under section 91 of "The British North America Act."

Chapter 50.—"An Act to incorporate the Alberni Water, Electric and Telephone Company, Limited."

Section 8 authorises the Company to appropriate and use the waters of Stamp and Sproat Rivers.

Chapter 55.—"An Act to amend 'An Act to incorporate the Consolidated Railway and Light Company,' and to consolidate certain Acts relating thereto, and to change the name thereof to the 'Consolidated Railway Company.'"

Section 42 empowers the Company to take and divert the water of Seymour Creek and Capilano River.

The undersigned, in his Report of even date herewith upon section 2 of chapter 73, and section 6 of chapter 74 of the Statutes of the Province of Quebec, 1895, states as follows:—

"It has been pointed out on several occasions by preceding Ministers of Justice in their reports upon the legislation of the various Provinces, that provisions similar to the above are objectionable, in so far as they relate to rivers which are claimed on behalf of the Dominion to have become the property of the Dominion under 'The British North America Act.'

"The Supreme Court of Canada has recently given its decission upon certain questions referred to that Court for determination by Your Excellency in Council. Some of these questions involve the inquiry as to the legislative authority of the Dominion and the Provinces respectively with regard to rivers and navigable waters. Your Excellency's Government intend to have these questions submitted to the Judicial Committee of Her Majesty's Privy Council upon appeal, and pending their final determination there, the undersigned considers that it would be improper to disallow either of the Statutes containing these questionable provisions."

The Statutes containing the sections now in question should, for the reasons thus stated, likewise be left to such operation as they may legally have.

Section 59 of chapter 55 purports to cover ground which had previously been occupied by provisions of the Criminal Code 1892, and the constitutionality of the section is on that account open to objection or to question.

Notwithstanding these objections or questions, the undersigned is of opinion that the Acts containing the sections mentioned in this Report should not be disallowed, and recommends that a copy of the Report, if approved, be transmitted to the Lieutenant-Governor of the Province for the information of His Government.

Respectfully submittted,

(Signed) O. MOWAT,
Minister of Justice.

VICTORIA, B. C.:
Printed by RICHARD WOLFENDEN, Printer to the Queen's Most Excellent Majesty
1897.