PAPERS

IN RELATION TO THE "ALIEN LABOUR ACT, 1897."

By Command

JAMES BAKER,

Provincial Secretary.

Provincial Secretary's Office,
April 14th, 1898.

From the Lieutenant-Governor to the Honourable the Minister of Justice, Ottawa.

VICTORIA, 25th March, 1898.

Bill No. 1, entitled the "Alien Labour Act, 1897," was, by my predecessor, reserved for the signification of the Governor-General. May I ask what, if any, action was or will be taken on it?

My Executive would like to know.

(Signed) THOS. R. MCINNES.

OTTAWA, ONT., March 26th, 1898.

His Honour T. R. McInnes,
Victoria, B. C.

By Order in Council, 15th December last, this Government declined to take any action with regard to British Columbia "Alien Labour Act, 1897," Report will be communicated immediately.

(Signed) E. L. NEWCOME,
Deputy Minister Justice.

2,937.

Extract from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 15th December, 1897.

The Committee of the Privy Council have had under consideration the annexed Report dated 15th October, 1897, from the Minister of Justice, upon a Bill passed by the Legislative Assembly of the Province of British Columbia at the last sittings of the Legislature (1897), intituled "An Act relating to the employment of Chinese or Japanese persons on works carried on under franchises granted by private Acts," which said bill has been reserved for the pleasure of Your Excellency in Council by His Honour the Lieutenant-Governor of British Columbia.

The Minister, for the reasons stated in the said report, is not prepared to recommend that the said Bill should come into effect by reason of any action on the part of Your Excellency's Government.

The Committee concurring, submit the said Report for Your Excellency's approval.

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

(Annex "a" to P. C. 2,937, 15th December, 1897.)

OTTAWA, 15th October, 1897.

To His Excellency the Governor-General in Council.

The undersigned has had under consideration a reserved Bill passed by the Legislative Assembly of the Province of British Columbia at the last sittings of the Legislature (1897), intituled "An Act relating to the employment of Chinese or Japanese persons on works carried on under franchises granted by private Acts," and also the report of His Honour the Lieutenant-Governor of the Province to the Honourable the Secretary of State, in which His Honour reports that he has thought it advisable to reserve the Bill for the pleasure of Your Excellency in Council, because its provisions appear to His Honour to be exceptional, and he is in doubt whether they come within the competence of the Local Legislature. His Honour further states that sections 4 and 5 of the Bill appear to affect the standing of aliens in the Province after becoming British subjects, and that should he be correct in his conclusions, legislation of this character, should it become law, might seriously interfere with international relations and Federal interests.

There has also been referred to the undersigned in connection with the Bill, a copy of a communication addressed to Your Excellency by His Imperial Japanese Majesty's Consul-General for Canada, in which the Consul-General states that he has been instructed by his Government to protest against Your Excellency giving assent to the clauses of this Bill containing the word "Japanese," upon the ground that the Bill, so far as it concerns the Japanese, is the most unjust and unfriendly measure ever taken against a nation friendly to Great Britain and Her Dependencies. The Consul-General also refers to the Treaty between Great Britain and Japan and some matters connected with the passage of the Bill through the House of Assembly.

The first clause of the Bill provides that it may be cited as the "Alien Labour Act, 1897." The Bill proceeds to provide in effect that, in case of any Act passed thereafter granting to any person or body corporate the right of constructing certain works therein mentioned, or the right to carry on any trade, business, occupation, or calling, or granting to any person or body corporate any property, rights, or privileges whatsoever, no Chinese or Japanese person shall be employed in connection with or in relation to any of the works, rights, trade, business, occupation or property so authorised, and in the event of such employment that the person by whom such Chinese or Japanese person shall be employed, shall be liable to a penalty. The word "Chinese" is defined to mean any native of the Chinese Empire or its dependencies, not born of British parents, and to include any person of the Chinese race; and similarly the term "Japanese" is defined to mean any native of the Japanese Empire or its dependencies not born of British parents, and to include any person of the Japanese race.

The undersigned observes that by section 4 of the "Coal Mines Regulation Amendment Act, 1890," of British Columbia, it was enacted in effect that no Chinaman should be employed in or allowed to be, for the purpose of employment in any mine to which the amended Act applies, below ground. The validity of that Act has recently been considered by the Supreme Court of British Columbia, under a reference from the Executive Council of that Province, and the Court has pronounced judgment, declaring the enactment constitutional. The undersigned is informed that an appeal is now pending to the Supreme Court of Canada from the said judgment, the appeal being entitled in the cause of the Union Colliery Company of British Columbia, Limited Liability, appellants, against the Attorney-General for British Columbia, and others, respondents.

The judgment of the Supreme Court of British Columbia, in so far as it is applicable to the enactment under consideration, is favourable to its validity. That judgment is however under appeal and the undersigned considers also that there are reasons affecting the authority of the Legislature to enact the present measure which may not apply to the "Coal Mines Regulation Amendment Act, 1890."

The Legislature, in adopting a short title for the Bill in question, has considered "Alien Labour Act, 1897," to be an appropriate and comprehensive description, and the Bill, if allowed to go into operation, would affect principally the right to employment of Chinese or Japanese, who are aliens. The main intention appears to be to disqualify Chinese and Japanese aliens from employment. The legislation may, therefore, aptly be regarded as affect-

ing aliens, but the subject of naturalization and aliens has been referred to the exclusive legislative authority of the Parliament of Canada, and the undersigned apprehends that, unless the measure in question can be more appropriately classed under the category of property and civil rights, or some one or more of the other enumerations contained in section 92 of "The British North America Act," it may be regarded as included in the subjects belonging to the exclusive authority of the Dominion. The undersigned does not, however, consider it necessary at present to determine whether section 92 contains any better fitting classification, because the doubt which must exist in such an enquiry constitutes sufficient reason for Your Excellency declining to take any action with regard to this Bill, which, if assented to by Your Excellency, would operate, if at all, by reason of the authority of the Provincial Legislature under section 92.

There are other considerations referred to by the Lieutenant-Governor and by the Consul-General affecting the propriety of the legislation, assuming it to be *intra vires*.

It is stated that the Bill, should it become law, might seriously interfere with international relations and Federal interests, and that the measure is unfair and unfriendly and will tend to disagreement between residents of the Province.

For the reasons already stated, the undersigned is not prepared to recommend that the Bill should come into effect by reason of any action on the part of Your Excellency's Government.

Respectfully submitted,

(Signed) O. MOWAT,
Minister of Justice.

VICTORIA, B. C.:
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