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## PAPERS

Relating to the disallowance of certain Statutes passed by the Legislature of British Columbia in the Session of 1899.

By Command.

A. CAMPBELL REDDIE,

*Deputy Provincial Secretary.*

*Provincial Secretary's Office,*

*June, 1900.*

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DEPARTMENT OF SECRETARY OF STATE,

OTTAWA, 19th April, 1900.

SIR,—I have the honour to transmit to you herewith a Minute of the Privy Council dated the 14th instant, together with a Report of the Minister of Justice, attached thereto, respecting a petition signed by the Dominion Copper Company, Limited, and a number of other mining companies, praying that chapter 43 of the Statutes of British Columbia, 1899, entitled "An Act to amend the Master and Servant Act," be disallowed; and also relating to a petition signed by the War Eagle Consolidated Mining and Development Company, Limited, and a number of other mining companies, praying for the disallowance of chapter 49 of the Statutes of British Columbia, 1899, intituled "An Act to amend the Inspection of Metalliferous Mines Act."

I have, etc.,

(Signed)

JOSEPH POPE,

*Under Secretary of State.*

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

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No. 122.

*Extract from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 14th April, 1900.*

On a Report dated 7th April, 1900, from the Minister of Justice, stating that he has had under consideration a petition signed by the Dominion Copper Company, Limited, and a number of other mining companies, praying that chapter 43 of the Statutes of British Columbia, 1899, entitled "An Act to amend the Master and Servant Act," be disallowed.

The Minister observes that in his Report approved by Your Excellency on 14th December, 1899, he referred to this Statute as open to some objection, but did not recommend disallowance; and it seems clear to him, the Minister, that the Statute is entirely within Provincial legislative authority, and the remedy for the grievances complained of lies with the Legislature.

The Minister further states that another petition has been referred to him, signed by the War Eagle Consolidated Mining and Development Company, Limited, and a number of other mining companies, praying for the disallowance of chapter 49 of the Statutes of British Columbia, 1899, intituled "An Act to amend the Inspection of Metalliferous Mines Act."

The Minister submits that after attentively considering the grounds of the petition, he is of opinion that none of the reasons urged affect the validity of the Act, and as in the case of the Act previously referred to, the remedy is also in the hands of the Provincial authorities; and he recommends that neither of these Acts be disallowed.

The Committee concur in the said Report of the Minister of Justice, hereto annexed, and advise that neither of these Acts be disallowed, and that a certified copy of this Minute, with the annexed Report, be transmitted to the Lieutenant-Governor of the Province of British Columbia for the information of his Government, and to the solicitors of the petitioners.

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

(Signed) JOHN J. MCGEE,

*Clerk of the Privy Council.*

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

DEPARTMENT OF JUSTICE, CANADA,

OTTAWA, 7th April, 1900.

*To His Excellency the Governor-General in Council:*

The undersigned has had under consideration copy of a petition signed by the Dominion Copper Company, Limited, and a number of other mining companies, in which the petitioners pray that chapter 43 of the Statutes of British Columbia, 1899, entitled "An Act to amend the Master and Servant Act," be disallowed. The undersigned, in his Report of 14th November last, which was approved by Your Excellency on 14th December, referred to this Statute as open to some objection, but did not recommend disallowance. At that time the petition now in question had not been received. The petition states in effect that the petitioners have not, since the enactment of the eight-hour law hereinafter referred to, been able to employ labourers to work their mines in British Columbia upon profitable terms; that they made efforts to procure labourers in Eastern Canada, but found it impossible to make contracts with or bring miners into British Columbia from Eastern Canada, owing to the provisions of the Act in question, which would render their contracts void as against the labourers.

There is a question which the undersigned suggested in the report already referred to, as to whether the legislation complained of does not so far affect the regulation of trade and commerce as to be *ultra vires* of the Legislature. Apart from that question, it seems clear to the undersigned that the Statute is entirely within Provincial legislative authority, and the remedy for the grievances complained of lies with the Legislature.

Any question of *ultra vires* could be conveniently submitted for the determination of the Courts, and the undersigned considers that it would be better to leave the petitioners to apply to the Legislature or to bring the question before the Courts, if they be so advised, rather than in a case such as this to invoke the power of disallowance.

There has also been referred to the undersigned a petition addressed to Your Excellency in Council, signed by the War Eagle Consolidated Mining and Development Company, Limited, and a number of other mining companies, praying for the disallowance of chapter 49 of the Statutes of British Columbia, 1899, intituled "An Act to amend the Inspection of Metalliferous Mines Act."

Section 13 of the Inspection of Metalliferous Mines Act, Revised Statutes of British Columbia, 1897, chapter 134, provided that no boy under the age of sixteen years should be employed underground for more than fifty-four hours in any one week, or more than ten hours in any one day.

By section 4 of the Act now in question, the said section is repealed and another substituted, by which it is enacted that no person shall be employed underground in any metalliferous mine for more than eight hours in every twenty-four hours, and this is the provision which gives rise to the claim for disallowance, it being urged that the limitation of employment to eight hours per day is materially interfering with and injuriously affecting the mining business in British Columbia, and that the Act is unconstitutional for a number of reasons stated in the petition.

The undersigned has attentively considered these grounds, but he is of opinion that none of the reasons urged affect the validity of the Act. It is quite true that there are several decisions of State or United States Courts holding similar legislation unconstitutional, but these decisions have proceeded upon reasons which do not apply at all to the constitutional system of Canada. The undersigned considers that it was competent for the Provincial Legislature to limit the number of hours work to be allowed in mines within the Province, as a matter of property and civil rights, or of merely local or private nature, or as coming within some one of the other enumerations of Provincial authority.

As in the case, therefore, of the Act previously referred to, the remedy is also in the hands of the Provincial authorities, and the petitioners must, in the opinion of the undersigned, be left to their application before that body.

The undersigned therefore recommends that neither of these Acts be disallowed; that a copy of this Report, if approved, be transmitted to the Lieutenant-Governor of the Province for the information of his Government, and to the solicitors of the petitioners for their information.

Respectfully submitted,  
(Signed)      DAVID MILLS,  
*Minister of Justice.*

DEPARTMENT OF THE SECRETARY OF STATE,  
OTTAWA, 25th April, 1900.

SIR,—I have the honour to acquaint you that on the 24th April, 1900, His Excellency the Governor-General was pleased, by and with the advice of the Queen's Privy Council for Canada, to declare his disallowance of chapters 39, 44 and 46 of the session of the British Columbia Legislature of 1899, intituled, respectively:—"An Act respecting Liquor Licences"; "An Act to grant a Subsidy to a Railway from Midway to Penticton"; and "An Act to amend the Coal Mines Regulation Act," which Acts were assented to by you on the 27th day of February, 1899. I have further to inform you that His Excellency the Governor-General, by and with the advice of the Queen's Privy Council for Canada, has been pleased to declare his disallowance of chapter 50 of the same session of your Legislature, intituled "An Act to amend the Placer Mining Act," which Act was assented to by Your Honour on the 18th January, 1899. The Order in Council declaring the disallowance of these Acts is herewith enclosed, together with Lord Minto's certificate as to the date of their receipt by him.

I have, etc.,  
(Signed)      JOSEPH POPE,  
*Under Secretary of State.*

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

No. 1074.

*Extract from a Report of the Committee of the Honourable the Privy Council, approved by  
His Excellency on the 24th April, 1900.*

The Committee of the Privy Council have had under consideration the annexed Report, dated 12th April, 1900, from the Minister of Justice, upon certain Statutes of the Legislative Assembly of the Province of British Columbia, passed in the year 1899, being chapter No. 39, intituled "An Act respecting Liquor Licences"; chapter No. 44, "An Act to grant a Subsidy to a Railway from Midway to Penticton"; chapter No. 46, "An Act to amend the Coal Mines Regulation Act"; and also chapter No. 50, being "An Act to amend the Placer Mining Act."

The Committee concur in the opinions of the Minister of Justice, as set forth in the said annexed Report, and the recommendations therein contained that the above-mentioned Statutes be disallowed, and advise that the same be disallowed accordingly.

The Committee further advise that the Secretary of State be authorised to transmit a copy of this Minute and of the annexed Report to the Lieutenant-Governor of the Province of British Columbia.

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

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

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

DEPARTMENT OF JUSTICE, CANADA,  
OTTAWA, 12th April, 1900.

*To His Excellency the Governor-General in Council :*

The undersigned, referring to his Report of 14th November, 1899, approved by Your Excellency on 14th December, 1899, upon the Statutes of the Legislative Assembly of the Province of British Columbia passed in the year 1899, has the honour to state that in the said Report he called attention to the following Statutes, as affecting Japanese or their rights to employment in British Columbia, viz. :—

- Chapter 39—"An Act respecting Liquor Licences."  
 Chapter 44—"An Act to grant a Subsidy to a Railway from Midway to Penticton."  
 Chapter 46—"An Act to amend the 'Coal Mines Regulation Act.'"  
 Chapter 78—"An Act to Incorporate the Ashcroft Water, Electric and Improvement Company."  
 Chapter 79—"An Act to Incorporate the Atlin Short Line Railway and Navigation Company."  
 Chapter 80—"An Act to Incorporate the Atlin Southern Railway Company."  
 Chapter 81—"An Act to Incorporate the Big Bend Transportation Company, Limited."  
 Chapter 83—"An Act to Incorporate the Kamloops and Atlin Railway Company."  
 Chapter 84—"An Act to amend the 'Kitimaat Railway Act, 1898.'"  
 Chapter 85—"An Act to amend the 'Kootenay and North-West Railway Company's Act, 1898.'"  
 Chapter 86—"An Act to amend the 'North Star and Arrow Lake Railway Act, 1898.'"  
 Chapter 87—"An Act to Incorporate the Pine Creek Flume Company, Limited."  
 Chapter 88—"An Act to Incorporate the South Kootenay Railway Company"; and  
 Chapter 89—"An Act to Incorporate the Vancouver, Northern and Yukon Railway Company."

The undersigned, for reasons stated or referred to in the said Report, considered it undesirable that the provisions affecting Japanese contained in these Acts should remain in operation, and he recommended that the British Columbia Government should be asked to consider and state whether these clauses would be repealed within the time limited for disallowance. A copy of this Report, as approved, was duly transmitted to the Lieutenant-Governor of British Columbia, but no assurance has been received that any amendment will be made to any of these Statutes. The Legislature has also been dissolved; and as the time for disallowance will expire within a few days, it becomes necessary for Your Excellency to take further action, unless these enactments are to remain.

As in the case of the legislation of British Columbia for the year 1898, which was found objectionable upon the same ground, there are two classes of Statutes now in question.

Chapter 39—"An Act respecting Liquor Licences";  
 Chapter 44—"An Act to grant a Subsidy to a Railway from Midway to Penticton"; and  
 Chapter 46—"An Act to amend the "Coal Mines Regulation Act,"  
 are Acts of more or less general operation not dealing specially with private interests, and may be disallowed without inconvenience. The other Statutes above mentioned, however, are Acts of Incorporation of private companies, or Acts in amendment of such incorporating Acts. The section affecting Japanese has apparently been introduced into these Acts not at the instance of the companies, but in pursuance of the policy of the Provincial Government, and in these circumstances the undersigned considers it would be unjust and perhaps productive of great hardship if the charters of these companies, or the Acts upon which their powers depend, were disallowed. The reasons which on a previous occasion operated to save the private Acts from disallowance may similarly again avail. The undersigned reaches this conclusion the more readily because he is of opinion that the provisions in question are *ultra vires* of the Provincial Legislature as affecting aliens.

Inasmuch, however, as certain Statutes of British Columbia were disallowed in 1899 on account of provisions attempting to render illegal the employment of Japanese, and as certain other Statutes will, if this Report be approved, soon be disallowed for the same reason, the undersigned considers that by the time of another session of the Legislature it will be safe to hold that the views of Her Majesty's Government and of this Government with regard to anti-Japanese legislation are generally and sufficiently understood in British Columbia, and, therefore, it may well be considered, in case of this objectionable section appearing in future

Acts of Incorporation, or Acts affecting private companies, that these companies' Acts ought not to have exceptional treatment. The applicants may be held to have obtained the legislation at their own risk, and persons dealing with corporations incorporated by charters attempting to impose disabilities upon aliens may also be held to have acted with notice of the views entertained by Your Excellency's Government, and of the action which would probably be taken with respect to such measures.

For these reasons and the reasons stated in previous correspondence and reports, the undersigned recommends the disallowance of the said chapters 39, 44 and 46, and that the other chapters above mentioned be left to their operation.

The undersigned in the same report referred to chapter 50, "An Act to amend the Placer Mining Act." That Act has also been the subject of a special report of the undersigned, dated 12th January, 1900, approved by Your Excellency on 10th February.

By the last-mentioned report the undersigned set out the reasons on account of which he considered that the Statute was *ultra vires* and ought to be disallowed. This report, in pursuance of the recommendation of the undersigned, has been communicated to the Provincial authorities, and there has just been referred to the undersigned a despatch of the Lieutenant-Governor of British Columbia, dated 7th instant, transmitting copy of an approved Minute of the Executive Council of the Province, dated 6th instant, adopting the report of the Provincial Attorney-General upon the communication of Your Excellency's Government. The Attorney-General states in his report that he differs from the view of the undersigned as to the authority of the Legislature to pass the Statute in question, both so far as aliens are concerned and as to incorporated companies. He states, however, that at the recent session of the Legislative Assembly it was practically the unanimous opinion of the members that it was advisable to repeal the Placer Mining Amendment Act, 1899; that the present Government of the Province has announced as part of its policy an intention to introduce a measure to repeal the said Statute, and that it is altogether probable that the Statute will be repealed, no matter who may constitute the Government when the next session of the Legislative Assembly takes place. The Attorney-General suggests, however, the expediency of allowing the Statute to remain in force to afford an opportunity for a legal question to be submitted to the Court, and he concludes by stating that it is quite impossible for the Government to give any assurance that the Act will be repealed in time to obviate the necessity of the question of disallowance being decided by the Dominion Government.

As the Act is, in the opinion of the undersigned, clearly in excess of Provincial authority and ought not to remain in operation, and as the reply of the Government of British Columbia cannot be regarded as a satisfactory assurance that the Act will be repealed, the undersigned considers that, for the reasons stated above and in his previous report, the said chapter 50 ought to be disallowed, and he recommends accordingly.

The undersigned further recommends that a copy of this Report, if approved, be transmitted to the Lieutenant-Governor of British Columbia, for the information of his Government.

Respectfully submitted,

(Signed) DAVID MILLS,  
*Minister of Justice.*

1075.

AT THE GOVERNMENT HOUSE AT OTTAWA,

Tuesday, the 24th day of April, 1900.

PRESENT :

HIS EXCELLENCY IN COUNCIL.

Whereas the Lieutenant-Governor of the Province of British Columbia, with the Legislative Assembly of the said Province of British Columbia, did on the 27th day of February, 1899, pass certain Statutes which have been transmitted, numbered chapter No. 39, intituled "An Act respecting Liquor Licences"; chapter No. 44, intituled "An Act to grant a Subsidy to a Railway from Midway to Penticton"; chapter No. 46, intituled "An Act to amend the 'Coal Mines Regulation Act'"; and on the 18th day of January, 1899, chapter No. 50, intituled "An Act to amend the Placer Mining Act":

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And whereas the said Statutes have been laid before His Excellency the Governor-General in Council, together with a Report from the Minister of Justice recommending that the same be disallowed :

Now, therefore, His Excellency, by and with the advice of the Queen's Privy Council for Canada, has this day been pleased to declare his disallowance of the said Statutes, and the same are 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) JOHN J. MCGEE,  
*Clerk of the Privy Council.*

I, Sir Gilbert John Elliot Murray-Kynynmond, Earl of Minto, Governor-General of Canada, do hereby certify that the Statutes passed by the Legislative Assembly of the Province of British Columbia, and assented to by the Lieutenant-Governor of the said Province of British Columbia on 27th February, 1899, numbered chapter No. 30, intituled "An Act respecting Liquor Licences"; chapter No 44, intituled "An Act to grant a Subsidy to a Railway from Midway to Penticton"; chapter No. 46, intituled "An Act to amend the 'Coal Mines Regulation Act'"; and on the 18th January, 1899, chapter No. 50, intituled "An Act to amend the Placer Mining Act," were received by me on the 27th day of April, 1899.

Given under my hand and seal this 24th day of April, 1900.

[L. S.]

MINTO.

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VICTORIA, B. C. :

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