REPORT

OF THE

MINISTER OF JUSTICE ON CERTAIN ACTS PASSED IN THE YEAR 1900.

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Department of Justice,
Ottawa, 5th January, 1901.

To His Excellency the Governor-General in Council:

The undersigned has had under consideration the Statutes of the Legislative Assembly of British Columbia, passed in the sixty-fourth year of Her Majesty's reign (1900), and received by the Secretary of State for Canada on 17th September; and he is of opinion that these should be left to their operation without comment, with the exception of Chapter 1, intituled "An Act relating to Extra-Provincial Investment and Loan Societies," as to which the undersigned has submitted a separate report, and the Statutes hereinafter specially mentioned.

Chapter 11.—"An Act to regulate Immigration into British Columbia."

In the preamble of this Act, section 95 of "The British North America Act" is recited, and it is said to be expedient to regulate immigration into British Columbia.

Section 3 prohibits, in effect, immigration into British Columbia of any person to whom the Act applies, who, when asked to do so, shall fail himself to write out and sign in the characters of some European language an application to the Provincial Secretary in the form set out in the Schedule to the Act. The form of application is printed in the Schedule in the English language only.

Chapter 14.—"An Act relating to the Employment on Works carried on under Franchises granted by Private Acts."

Section 4 of this Act provides in substance that as to works to be constructed or performed under Provincial franchises conferred during or after the then present Session of the Provincial Legislature, no employer shall engage or employ any workman, who, when asked to do so by a duly authorised officer, shall fail to himself read in a language of Europe the Act now in question. And it is enacted that the employer shall be liable to a penalty, upon summary conviction, for employing any labourer not so qualified.

It is to be observed that the Act is not to apply to any person possessed of a certificate, signed by the Provincial Secretary, or any officer appointed by the Lieutenant-Governor in Council for the purposes of the Act, certifying that the person therein named is a fit and proper person to be employed as a workman under the provisions of the Act; but it appears that unless the employer or person employed holds such a certificate, the intention of the Act is that no workman shall be employed upon any of the works mentioned, unless he is able, upon demand, to read the Act in a European language. There would, of course, be no difficulty about this so far as a person qualified to read the English language is concerned, but to read it in any other language would involve a translation of it first into that tongue; and that might be a matter of considerable difficulty to a person quite able to read the Statute in his own language when translated. The Act contains no provision requiring any translation to be made by the Provincial authorities.

Chapter 18.—"An Act respecting Liquor Licences."

Under this Act Mongolians and Indians are excluded from those who may sign petitions for the granting of licences, and from those who are reckoned as inhabitants of the district or vicinity within which the licence is to be exercised.

Chapter 54.—"An Act to revise and consolidate the 'Vancouver Incorporation Act.'"

By section 7 of this Act it is enacted that no Chinaman, Japanese or Indian shall be entitled to vote at any municipal election for the election of Mayor or Aldermen.

Objection has been made to the four Acts above mentioned, in respect of their provisions particularly herein referred to, by His Imperial Japanese Majesty's Consul at Vancouver, B. C., upon the grounds set forth in his communications, copies of which were recently transmitted to the Lieutenant-Governor of British Columbia by Your Excellency's direction, and are attached to the Minute of Council of 9th October last. The reply of the Provincial Government has been referred to the undersigned, and a copy of the same is submitted herewith.

The undersigned observes that Chapter 11, being an Act respecting Immigration, is apparently intended to have effect only in so far as it is authorised by section 95 of "The British North America Act," and that the Provincial Statute would be superseded whenever Dominion legislation repugnant to it is enacted. The educational test imposed by the Act is not perhaps a very severe one, except in so far as it may in any case involve translation from English into another European language, but as Parliament has already legislated with regard to the subject of immigration, and has not seen fit to impose any educational requirement whatever, the present Act seems inconsistent with the general policy of the law, and the undersigned considers that in cases where foreign relations are involved, it is not at present desirable that the uniformity of the immigration laws should be interfered with by special Provincial legislation. It must be remarked also, that inasmuch as the Provincial Act empowers the Provincial Secretary, or any officer appointed by the Government of the Province for the purpose, to exempt any immigrant from the operation of the Act, the effect of the legislation virtually is to prohibit immigration of those not possessing the statutory qualifications, unless the Provincial authorities dispense therewith, which they may do for any cause deemed sufficient, thus really placing in the hands of the officers of the Provincial Government an absolute discretion to deal differently with different nationalities or with the same or different classes of individuals of the same nationality, thereby giving scope for discrimination, which Your Excellency's Government, although not responsible for the administration of the law, might be called upon to explain or justify.

The undersigned considers, therefore, that Parliament having undertaken to regulate immigration and not having required any educational attainments from intending immigrants; in view of the objections raised by the Japanese Consul, and other similar objections which may arise in the operation or administration of the Act, it would be inadvisable to leave this Act to its operation.

With regard to Chapter 14, above mentioned, it is alleged and not denied that it is obviously and solely directed against Asiatics, including Japanese, and no reason is stated in the Provincial reply as to the objects or purposes of the Act, or the reasons for requiring labourers to read it as a condition to their employment.

A Bill disqualifying Japanese and Chinese from employment upon similar works was passed by the British Columbia Legislature in 1897, and reserved by the Lieutenant-Governor, for the Governor-General's consideration. The Governor-General refused to sanction the measure. A similar Bill was at the following Session enacted by the Provincial Legislature and disallowed after correspondence between Your Excellency's Government and the Home Government. These facts are significant, and support to some extent the ground taken that the object of the present Act is to accomplish the same purpose indirectly, by requiring workmen to read this Act in a European language.

It seems to the undersigned, in view of the remonstrance of the Japanese Government, that the grounds upon which the former Statute was disallowed apply with practically the same force to the present one. This subject is also very clearly connected with that of immigration, and the undersigned is not at all satisfied, apart from the other considerations upon which he recommends disallowance, that Your Excellency's Government ought to leave in operation a Statute establishing such a difficult requirement of workmen, who to a very large extent must be drawn from the very class whose immigration into the country is provided for by the laws of the Dominion.

As to chapter 18, it is undoubtedly within the competence of a Provincial Legislature to regulate the sale of intoxicating liquors, and to define the evidence which must be produced by those applying for licences, and, although the undersigned has given careful consideration to the representations of the Japanese Consul upon the subject, he is unable to discover any reason why the Legislature of British Columbia ought not to be permitted to establish for the

purposes of this Act the procedure by which licences are to be sought or obtained. It seems to the undersigned that the Japanese residents of British Columbia may very well consider their interests in the matter of liquor licences properly safeguarded. It is difficult to see that any considerable privilege is withheld from Mongolians. The precise provisions which are said to discriminate against them are sections 22, 28 and 44, which have to be read in the light of the interpretation clauses which define the expressions "householders" and "inhabitants" as not including Mongolians.

Section 22 provides in effect that no hotel licence shall be granted in any locality unless a petition therefor, signed by at least two-thirds of the householders of the locality, shall be presented to the Board of Licence Commissioners, unless in any locality there are not at least three such householders, in which case the Commissioners may grant hotel licences without the presentation of petitions.

Section 28 requires that on every application for an hotel licence, the Inspector shall make a written report to the Commissioners, which shall contain among other things a statement of the number of householders within three miles, and the inhabitants within one mile of the premises sought to be licensed, not included in any municipality.

Section 44 establishes the fees which are to be taken by the Provincial Government for hotel licences, and those are made to depend upon the number of inhabitants in the locality.

Certainly no right or privilege of the Japanese residents of British Columbia can be prejudicially affected by the requirements that at least two-thirds of the other householders of any locality must have subscribed to a petition for a hotel licence before such licence can be granted in the locality. Still less can there be any prejudice from the Licence Commissioners receiving the information which is required to be furnished under section 28, and the amount of the fee which should be exacted from any hotel licences is so entirely in the judgment of the taxing authority that the undersigned cannot conceive any reason why the Japanese residents of the Province, who are not called upon to pay or contribute to the amount, except where they become voluntarily applicants for licence, should object to the amount of the fee as established by law, or the standard adopted by the Legislature for determining it.

Under section 92 of "The British North America Act," among subjects assigned to the exclusive jurisdiction of the Legislatures are "direct taxation within the Province in order to the raising of a revenue for Provincial purposes," shop, saloon, tavern and auctioneer and other licences in order to the raising of a revenue for Provincial, local or municipal purposes, "property and civil rights in the Province," and "generally all matters of a merely local or private nature in the Province."

It is indisputable that the legislation in question falls directly under or properly relates to one or other of these enumerations, and the undersigned does not consider that this Statute can be interfered with.

In like manner the establishment of municipal corporations is entirely a matter of local concern, and the method of constituting a municipal council, or the determination of the municipal franchise are not, in the opinion of the undersigned, except perhaps for very exceptional and unusual reasons, subjects of review by Your Excellency's Government. Such enactments are entirely local and domestic in their nature, and sufficiently justified, so far as the powers to be exercised by the Government of Canada are concerned, by the fact that the local Legislature has considered their provisions expedient or desirable. The undersigned apprehends that the withholding of the franchise in any municipality from any class of British subjects would not be made the ground for interference in the internal affairs of the community by Your Excellency's Government, and he presumes that foreigners would not expect to stand upon any higher ground.

While referring to the Vancouver Incorporation Act, the undersigned desires to call attention also to section 125 which enumerates, as a subject with regard to which the council may, from time to time, pass, alter and repeal by-laws, the regulation of trade licences, including the licensing and regulating of insurance companies, also the regulating and licensing of any person carrying on the business of a wholesale or retail merchant trader, and the licensing and regulating of other trades, businesses and employments.

These powers of regulation must be construed as intended for local purposes only, and not as embracing or in any wise affecting the larger subject of the regulation of trade and commerce generally, in respect to the particular trades therein enumerated, which is beyond the power of a Provincial Legislature and assigned to the exclusive jurisdiction of Parliament.

Chapter 47.—"An Act to incorporate the Grand Forks and Kettle River Railway Company."

This Act professes to authorise the Company to construct, maintain and operate a line of railway from a point on the Canadian side of the international boundary line at or near the City of Grand Forks, in the Osoyoos Division of Yale, District of British Columbia, thence to a point on the Canadian side of the international boundary line at or near Carson in the same Division.

Chapter 55.—"An Act to amend the Vancouver, Northern and Yukon Railway Company Act, 1899."

It is stated by section 2 that the Company may construct and operate a line of railway from the City of Vancouver and other points running northerly to the northern boundary of the Province.

The authority of the Legislature with regard to local works and undertakings is limited by the exception of "lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Provinces with any other or others of the Provinces or extending beyond the limits of the Province." In view of the fact that the works and undertakings with regard to which a Province may legislate must be local, and having regard to the exception quoted, it seems questionable to the undersigned whether it is competent to the Province to authorise the construction or operation of a railway to the boundary line of a Province or having its two termini upon the boundary. The undersigned does not, on that account, recommend the disallowance of these Statutes, but he commends the matter to the consideration of the Provincial Government and the Companies concerned, leaving the question to the determination of the Courts if necessary.

The undersigned, therefore, recommends that of the Acts referred to or specially mentioned in this Report, Chapter 11, "An Act to regulate immigration into British Columbia," and Chapter 14, "An Act relating to the employment on works carried on under franchises granted by private Acts," be disallowed, and that all the other Acts be left to their operation. He recommends further that a copy of this Report, if approved, be transmitted to the Lieutenant-Governor of British Columbia for the information of his Government, also that a copy of the Report, so far as it affects the objections of the Japanese Consul, be transmitted to him.

Respectfully submitted,

(Signed) DAVID MILLS,
Minister of Justice.

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