

P A P E R S

Relating to the disallowance of certain Acts of the Legislature of British Columbia.

By Command.

JNO. ROBSON,

*Provincial Secretary's Office,
4th December, 1883.*

Provincial Secretary.

Copy of a Report of a Committee of the Honourable the Executive Council, approved by His Honour the Lieutenant-Governor on the 26th November, 1883.

The Committee of Council has had under consideration an Order of his Excellency the Governor-General in Council, dated the 12th day of May, 1883, disallowing an Act of the Provincial Legislature intituled "An Act to consolidate and amend the laws relating to Gold and other minerals, excepting Coal," passed 21st April, 1882, and the report of the Honourable the Minister of Justice upon which such disallowance is based.

The Committee has to express regret that in the matter of this disallowance the course prescribed in the Order of His Excellency the Governor-General in Council, dated the 9th day of June, 1868, (No. 18 Sessional Papers, 1869) was not followed.

The memorandum then adopted for the regulation of principles and courses of procedure regulating disallowance, reads: "In deciding whether any Acts of a Provincial Legislature should be disallowed or sanctioned, the Government must not only consider whether it affects the interests of the whole Dominion or not; but also, whether it be unconstitutional, whether it exceeds the jurisdiction conferred on Local Legislatures, and, in cases where the jurisdiction is concurrent, whether it clashes with the legislation of the General Parliament.

"As it is of importance that the course of local legislation should be interfered with as little as possible, and the power of disallowance exercised with great caution, and only in cases where the law and the general interests of the Dominion imperatively demand it, the undersigned recommends that the following course be pursued.

"That on receipt by Your Excellency of the Acts passed in any Province, they be referred to the Minister of Justice for report, and that he, with all convenient speed, do report as to those Acts which he considers free from objection of any kind; and if such report be approved by Your Excellency in Council, that such approval be forthwith communicated to the Provincial Government. That he make a separate report or separate reports on those Acts which he may consider:—

- "1. As being altogether illegal or unconstitutional;
- "2. As being illegal or unconstitutional in part;
- "3. In cases of concurrent jurisdiction with the legislation of the General Parliament;
- "4. As affecting the interests of the Dominion generally;

"And that in such report or reports he gives his reasons for his opinions.

"That where a measure is considered only partially defective, or where objectionable, as being prejudicial to the general interests of the Dominion, or as clashing with its legislation, communication should be had with the Provincial Government with respect to such measure, and that in such case, the Act should not be disallowed if the general interests permit such a course, until the Local Government has an opportunity of considering and discussing the objections taken, and the Local Legislature has also an opportunity of remedying the defects found to exist."

The Act in question was wholly and peremptorily disallowed on the 12th day of May, 1883, without any previous intimation, and without giving the Provincial Legislature any opportunity of removing the objectionable matter, one result being that a Provincial Act has been obliterated, most of the provisions of which are undoubtedly constitutional.

Another mischief arising from not following the above recited Order in Council is, that an Act of the Provincial Legislature, passed in its last session, in amendment of the one disallowed, the provisions of which amending Act, entirely foreign to the subject matter of disallowance, were regarded as highly essential in the interests of the mining community, has become nugatory.

Turning to the subject matter of disallowance, the Committee observe that the power of appointing Gold Commissioners by the Lieutenant-Governor in Council, and the constitution of a Mining Court to be presided over by a Gold Commissioner, are in substance mere repetition of Legislative enactment dated before the union of British Columbia with Canada, and that while the Act has been disallowed by reason of the re-enactment of these provisions, the original sections are allowed to remain unrepealed by Canada. The advisability of the disallowance may therefore fairly be questioned.

The tendency of Provincial legislation has, however, been to merge the Mining Court in the County Court in those parts of the Province where a County Court is held (British Columbia Statutes No. 14, 1873, and sections 19 and 20 of the disallowed Act); and the Committee, with a view of furthering such legislation, is desirous of the appointment of County Court Judges, as provided for in the County Court Act of 1883.

It is absolutely necessary to provide for the determination of mining disputes, and since the Dominion Government has taken the view that the appointment of Judges of the Mining Court should be made by the Dominion, the Committee urges the speedy appointment of County Court Judges under the County Court Act of 1883, so that the Mining Court may be merged in the County Court.

In the meantime, and until the County Court Judges shall be appointed, the Committee begs to express the opinion that consistently with the claim on the part of the Dominion Government to appoint the Gold Commissioners who preside in the Mining Courts, the Dominion should pay them; and for the information of the Dominion Government, the Committee states that the present number of such Gold Commissioners is four.

The Committee respectfully advise that a copy of this report, if approved, be transmitted to the Honourable the Secretary of State for Canada.

(Signed) JNO. ROBSON,
Clerk Executive Council.

[For Order in Council disallowing the above Act, see page 491, Sessional Papers of British Columbia, 1883].

The Secretary of State for Canada to His Honour the Lieutenant-Governor.

OTTAWA, 28th June, 1883.

SIR,—In reference to your despatch of the 30th April last, and to the copy of resolutions therein enclosed, passed at a public meeting, held in the City of Victoria, on the 23rd of that month, I have the honour to transmit to you herewith for the information of your Government, a copy of an Order of His Excellency the Governor-General in Council, relative to the Act of the Legislature of the Province of British Columbia passed during its last session, entitled "An Act to Incorporate the Columbia and Kootenay Railway and Transportation Company."

I have, &c.,

(Signed) J. A. CHAPLEAU.

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 14th June, 1883.

On a Report dated 18th May, 1883, from the Minister of Railways and Canals, submitting that the Bill of the Legislative Assembly of the Province of British Columbia, for the incorporation of a company to be called the "Columbia and Kootenay Railway and Transportation Company," the objects of which are set forth to be the running and navigating a line of steamers from a point on Kootenay River where the Southern Boundary line of British Columbia intersects the said River, and through and throughout the Kootenay Lake and its navigable tributaries, and of constructing and operating a line of Railway from the outlet of

Kootenay Lake to the Columbia River, and of running a line of steamers on said River from a point where it intersects the Southern Boundary Line of British Columbia to the head of navigation. Further, the said Bill contemplates the grant of a subsidy in land by the Provincial Government in aid of the scheme.

The Minister further submits, that under date the 28th of April last, a public meeting was held in the City Hall, Victoria, at which resolutions were adopted protesting against the passage of the Bill incorporating this company, and urging that the assent of His Honour the Lieutenant-Governor should be withheld until the matter has been considered by the Government of the Dominion, and that the objections urged in the said resolutions, a copy of which has been transmitted to Ottawa, state that the Bill would give the company the control of the trade of the most valuable portions of the Province, that it is unfair to the Canadian Pacific Railway Company, that the Local Government is without definite information as to the value and character of the lands proposed to be given, that a mischievous monopoly would be established, that it would deprive the mining and agricultural classes of rights defined by the laws of the Province, that it would convey to three Americans 750,000 acres of the best land in the Province free of taxes, and finally, that a great majority of the people of the Province are opposed to the Act. The Minister represents that the Chief Engineer of Railways, in a report dated the 16th inst., has expressed himself as fully concurring in the views put forward in the said resolutions and has stated it as his opinion that the granting of the powers and privileges and of the tracts of land applied for would be most injudicious.

He draws attention to the fact that the company consists almost wholly of American capitalists, and observes that notwithstanding the representations made that the proposed railway will connect by steamer with the Canadian Pacific Railway, and thus bring traffic to that road and to the Canadian seaboard, provision is made for communication with the Southern Boundary and that the road under consideration would in all probability eventually become a feeder to the Northern Pacific Railway.

That meanwhile, the scheme, if carried out, would inflict injustice on our own people by placing the furnishing of supplies to the Canadian Pacific Railway, while under construction, wholly in the hands of American traders and farmers, who would thus obtain a control of the trade of the South-eastern portion of the Province which it would be hard to recover from them.

The Chief Engineer therefore considers that the carrying out of the scheme would entail consequences prejudicial to the interests of the people of British Columbia, the extent of which it is at present impossible to estimate.

The Minister desires to express his entire concurrence in the view of this matter taken by the Chief Engineer as above stated, and to submit the question for consideration.

The Committee recommends that advantage be taken of the intended visit of Sir Alexander Campbell to British Columbia, to authorize him to make full enquiry into this subject, to confer with the Government of the Province, and to report thereon with all convenient speed.

(Signed) JNO. J. MCGEE.

Copy of a Report of a Committee of the Honourable the Executive Council, approved by His Honour the Lieutenant-Governor on the 28th July, 1883.

The Committee of Council have under consideration a report of a Committee of the Honourable the Privy Council of Canada, approved by His Excellency the Governor-General on the 14th day of June, 1883, relative to an Act of the Provincial Legislature, intituled "An Act to Incorporate the Columbia and Kootenay Railway and Transportation Company."

In this report it is to be observed that the Honourable Minister of Railways expresses his entire concurrence in the view of the matter taken by the Chief Engineer; that the view of the matter taken by the Chief Engineer is to the effect following:—He endorses the principles put forward in certain resolutions passed at a public meeting held in the City of Victoria, and has stated it as his opinion, that the granting of the powers and privileges and of the tracts of land applied for would be most injudicious. The resolutions are referred to as protesting against the passage of the Bill and urging that the assent of His Honour the Lieutenant-Governor should be withheld until the matter has been considered by the Government of the Dominion; that the Bill would give the Company the control of the trade of the most valuable portions of the Province; that it is unfair to the Canada Pacific Railway

Company; that the Local Government is without definite information as to the value and character of the lands proposed to be given; that a mischievous monopoly would be established; that it would deprive the mining and agricultural classes of rights defined by the laws of the Province; that it would convey to three Americans, 750,000 acres of the best land in the Province free of taxes; and finally, that a great majority of the people of the Province are opposed to the Act.

The Committee do not propose to deal with these resolutions further than by saying that they are incorrect in fact and erroneous in conclusion, but they desire to express the greatest surprise and regret that the statements of a public meeting, of the origin, character, and object of which the Dominion Government knows nothing, should be accepted by the Minister of Railways and the Dominion Government in preference to deliberate conclusions of the recognized and constitutional exponent of the people—the Legislative Assembly.

The views urged in the resolutions were calmly and deliberately debated for several days in that Assembly; a large majority of that House—amongst whom were the Leaders of the Opposition and the Mainland Members—dissented from those views, and after a severe revision of the Bill, passed it, as being calculated to develop a large country, which, without being opened up, would remain—as it ever has been—a mere wilderness.

It must be conceded that if the measures passed by the Constitutional Government of the Province, and within their undoubted legislative powers, are to be dissented from by the Dominion Government on the authority of an irresponsible meeting, it will be useless hereafter to return representatives at the polls, and the Provincial Legislature may as well adjourn *sine die*.

The Committee cannot refrain from observing that since the union of this Province with Canada, no document has passed from the one Government to the other more calculated to destroy the harmonious feelings which should at all times exist between the Province and the Dominion than the document now under consideration.

It is a direct reflection on the people of this Province and their representatives, and without doubt—whatever may be the fate of the Bill—will be so regarded by all classes.

The Committee of the Honourable the Privy Council of Canada has reviewed an Act of the Legislature of British Columbia in a manner and upon grounds not in any way within its province.

The provisions of the British North America Act have been disregarded, and the legislative authority constitutionally conferred upon British Columbia as a Province, by that Statute, has been entirely ignored.

It will be looked upon as another illustration of a disposition on the part of the Federal Government (imputed already by many) to check the material progress of this Province, and to so deal with British Columbia as if between the Dominion and the Province the relation of guardian and ward alone existed.

The Committee find it impracticable to discuss with the Dominion Government the merits of the Act, when its consideration is approached by a report so calculated to exasperate and humiliate the Province.

They will, however, be prepared, at the proper time, to urge, and at all times to maintain, that the Act is one which the Province has the undoubted right to pass; and they do not in the meantime feel called upon to discuss or justify the action of the Legislature of the Province in enacting a measure which was so clearly within its legislative control.

The Committee advise that a copy of this minute be forwarded to the Honourable the Secretary of State for Canada.

(Signed) JNO. ROBSON,
Clerk Executive Council.

The Secretary of State for Canada to His Honour the Lieutenant-Governor.

OTTAWA, 2nd November, 1883.

SIR,—I have honour to state for the information of your Government, that His Excellency the Governor-General has had under consideration in Council the Act (Chap. 25) passed at the last Session of the Legislature of British Columbia, intituled "An Act to incorporate the Columbia and Kootenay Railway and Transportation Company," with reference to which I

would observe that the objects which this Company have in view, and the powers given to them which are material to the consideration of the Act, are defined in the 9th, 10th and 12th Sections of the Act.

These sections are as follows :—

Section 9. "The Company shall acquire, build, equip and maintain a line of steamers and other vessels, for the purpose of carrying freight and passengers to and fro from that point on Kootenay River where the Southern Boundary Line of British Columbia intersects the said river, thence down the said river and Kootenay Lake, and through and throughout said lake and its navigable tributaries."

10. "The Company shall lay out, construct, acquire, build, equip, maintain and work a continuous line of railway from the outlet of Kootenay Lake, through the Selkirk Range of mountains to a point on the Columbia River as near as practicable to the junction of the Kootenay with the Columbia River in British Columbia, and such railway shall be built either upon the broad or narrow gauge, and be known as 'the Columbia and Kootenay Railway.'"

12. "The Company shall acquire, build, equip, maintain, run and navigate a line of steamers, suitable for passengers and freight traffic, and other vessels, upon the Columbia River to and fro, from the point on the Columbia River where the Columbia and Kootenay Railway from Kootenay Lake terminates, to the point on the west bank of the Columbia River where the Canada Pacific Railway shall strike the said river and cross the same near the Eagle Pass—or in the event of the Canadian Pacific Railway not crossing the Columbia River to the point where a waggon road or railway from Shuswap Lake to the Columbia River may terminate therein." Certain objections having been taken in British Columbia to the undertaking which is the subject matter of the Act, the Honourable the Minister of Justice was, by an Order of the Governor-General in Council of the 14th June last, authorized to make enquiries into the subject during his then approaching visit to British Columbia, and to confer with the Government of that Province, and report on the matter with all convenient speed.

In accordance with the terms of such Order in Council, careful consideration was given by the Minister of Justice, not only to the statements made in favour of the undertaking by the promoters and those friendly to it, but also to the statements of those opposed to the undertaking, that its completion would tend to divert the trade of British Columbia to the United States.

I may now state that, so far as the construction of the proposed line of railway is concerned, no exception can be taken to the undertaking in itself, or to the power of the Legislature to give the Company authority for its completion—the railway being wholly within the Province, and not touching any point within fifteen miles of the Boundary between the Province and the United States.

But in regard to the power given to the Company to establish a line of steamships, two questions have arisen for consideration :—

(1.) Will the Company by means of the line of steamships divert trade from Canadian railways and territory to United States railways and territory? and

(2.) Does the Act authorize the Company to establish a line of steamships between the Province of British Columbia and a foreign country? With regard to this phase of the question, your Government having expressed their willingness to ask the Legislature to amend the Act so as to make it clear that the Company has not been granted power to establish a line of ships between the Province and the United States, I would request they be invited to ask the Legislature to amend the Act in question, by providing that nothing therein contained shall authorize the Company to establish a line of steamships between the Province of British Columbia and any British or foreign country, pending which action on the part of the Legislature of British Columbia further action on the part of this Government will be deferred.

I have, &c.,

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

The Secretary of State for Canada to His Honour the Lieutenant-Governor.

OTTAWA, 2nd November, 1883.

SIR,—I have the honour to transmit to you herewith, for the information of your Government, a copy of an Order of His Excellency the Governor-General in Council, dated the 17th ultimo, signifying, for the reasons set forth in the report of the Honourable the Minister of

Justice accompanying the said Order, His Excellency's disallowance of two Acts of the Legislature of the Province of British Columbia, passed during the Session of that Body held during the present year, and severally intituled "An Act to incorporate the Fraser River Railway Company" and "An Act to incorporate the New Westminster Southern Railway Company," together with the certificate of His Excellency as to the date of their receipt appended to the Order in Council,

I have, &c.,

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

DEPARTMENT OF JUSTICE,
OTTAWA, 25th September, 1883.

To His Excellency the Governor-General in Council:

The undersigned begs leave to report that he has had under consideration the following Acts passed by the Legislature of the Province of British Columbia, namely—46 Vic., 1883, chap. 26, an Act intituled "An Act to incorporate the Fraser River Railway Company," and chap. 27, intituled "An Act to incorporate the New Westminster Southern Railway Company."

The 9th section of the Act incorporating the Fraser River Railway Company is as follows:

"9. The Company may lay out, construct, acquire, equip, maintain and work a continuous line of Railway, with double or single track of iron or steel, and uniform gauge of four feet eight and one-half inches, from the 49th parallel North latitude, at a point between Semiahmoo Bay and the eastern line of Township 22, New Westminster District, to some point on the Canadian Pacific Railway, between the eastern line of Township 27, New Westminster District, and the western terminus of the Canadian Pacific Railway, and from that point, or some point west of that point on the said Canadian Pacific Railway, to the City of New Westminster."

The 10th section of the Act incorporating the New Westminster Southern Railway Company is as follows:—

"10. The Company and their agents or servants shall have full power under this Act to construct a Railway with double or single tracks of four feet eight and one-half inches gauge, from some point near the 49th parallel of North latitude between Semiahmoo Bay and Township 16, in the district of New Westminster, to the City of New Westminster, and to some point on Burrard Inlet, and to construct all necessary bridges over rivers crossing the said line between the above points, but so as not to impede navigation."

By reference to the Report of the Chief Engineer of Government Railways, dated June 2nd, 1883, with maps A and B annexed to this Report, the area within which the two companies may construct railways will be seen. Each company is given power to construct a railway from the boundary of the Province to points within the Province. It is possible that the undertakings come within exception (a) of the 10th paragraph of the 92nd section of "The British North America Act, 1867," by which local works and undertakings of the following class, namely—"Lines of steam and other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province," are declared not to be within the legislative authority of the Legislatures of the Provinces.

However, it is unnecessary to consider whether these Acts are, or are not, within the legislative authority of the Province of British Columbia, for it is clear from them that the objects which the corporations have in view are contrary to the Legislation of Parliament and to the settled policy of the country. There can be no doubt that in case these railways are constructed they will divert trade from Canada to the United States, and from the Canadian system of railways to the United States system of railways.

The policy of the Government, in this behalf confirmed by Parliament, was given expression to in the following clause of the contract between the Government of Canada and the Canadian Pacific Railway Company, dated October 21st, 1880:—

"15. For twenty years from the date hereof no line of railway shall be authorized by the Dominion Parliament to be constructed South of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway, except such line as shall run south-west or to the westward of south-west; nor to within fifteen miles of latitude 49. And in the establishment of any new Province in the North-west Territories, provision shall be made for continuing such prohibition, after such establishment, till the expiration of the said period."

For these reasons, which the undersigned has had occasion previously to state more fully than it is now necessary to do, he respectfully recommends that the said Acts, chap. 26, "An Act to incorporate the Fraser River Railway Company," and chap. 27, "An Act to incorporate the New Westminster Southern Railway Company," be disallowed.

(Signed) A. CAMPBELL,
Minister of Justice.

CANADIAN PACIFIC RAILWAY,
OFFICE OF THE ENGINEER-IN-CHIEF,
OTTAWA, June 21st, 1883.

SIR,—A letter from the Secretary of State under cover No. 31,663, containing copies of three Railway Acts passed by the Local Legislature of British Columbia having been referred to me, I have the honour to report.

The Acts referred to are as follows :—

1. The Fraser River Railway Company.
2. The Columbia and Kootenay River Railway and Transportation Company.
3. The New Westminster Southern Railway Company. No. 2 has already been reported upon by me, a copy of which report I now attach.

No. 1. The tinted portions on the map attached marked A, show the area within which the Fraser River Railway may be constructed under the charter, starting from any point on the International Boundary to any point on the Canadian Pacific Railway within the limits so coloured. It also allows a line to be constructed from the terminus of the Canadian Pacific to New Westminster.

No. 3. The tinted portion on the map attached marked B, shows the area within which the New Westminster Southern Railway may be constructed under their charter, starting from any point on the International Boundary, within the limits so coloured, to New Westminster, and from New Westminster to any point on Burrard Inlet.

[Maps A and B here referred to are filed in the Lieutenant-Governor's office].

Both these railways starting from the International Boundary, appear not to be in accordance with the Canadian Pacific Railway Act, 44 Vic., ch. 1., cl. 15. They also appear to come within the exceptions contained in the 10th paragraph of the 92nd section of the British North America Act, inasmuch as both run to the United States Boundary, from whence a connection with the Northern Pacific or other lines, although not now existing, could very speedily be effected.

With such connections these lines might be detrimental to Canadian interests, by diverting traffic from the Canadian Pacific Railway and from Canadian ports to those of the United States.

To those portions of the charters by which New Westminster is connected with Port Moody or any other point on Burrard Inlet, I can see no objection.

I have, &c.,
(Signed) COLLINGWOOD SCHREIBER.

Copy of a Report of a Committee of the Honourable the Privy Council approved by His Excellency the Governor-General in Council, on the 17th October, 1883.

The Committee of the Privy Council have had under consideration a report, herewith, dated the 25th September, 1883, from the Minister of Justice, in which it is recommended, for the reasons therein set forth, that the following Acts passed by the Legislature of British Columbia, 46 Vic. (1883), viz. Chap. 26, "An Act to Incorporate the Fraser River Railway Company" and Chap. 27, "An Act to Incorporate the New Westminster Southern Railway Company," be disallowed.

The Committee advise that the said Acts 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.

GOVERNMENT HOUSE, OTTAWA,
Wednesday, 17th day of October, 1883.

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 12th day of May, 1883, pass the undermentioned Acts which have been transmitted, entitled as follows :—

“An Act to Incorporate the Fraser River Railway Company,” and “An Act to Incorporate the New Westminster Southern Railway Company.”

And whereas the said Acts have been laid before the Governor-General in Council, together with a report from the Minister of Justice recommending that the said Acts shall be disallowed. His Excellency the Governor-General has therefore this day been pleased, by and with the advice of the Queen's Privy Council for Canada, to declare his disallowance of the said Acts, and the same are 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 Queen's Privy Council, Canada.

I, Sir John Douglas Sutherland Campbell (commonly called the Marquis of Lorne), Governor-General of Canada, do hereby certify that the undermentioned Acts passed by the Legislature of the Province of British Columbia, on the 12th day of May, A.D. 1883, intituled “An Act to Incorporate the Fraser River Railway Company,” and “An Act to Incorporate the New Westminster Southern Railway Company,” were received by me on the 5th day of June, A.D. 1883.

Given under my hand and seal this 17th day of October, A. D. 1883.

(Signed) LORNE.