

RETURN

To an Address of the Legislative Assembly, for copies of correspondence between the Government of British Columbia and the Government at Ottawa, relative to the four Acts of last Session which were reserved for the pleasure of His Excellency the Governor-General.

By Command,
JOHN ASH,
Provincial Secretary.

PROVINCIAL SECRETARY'S OFFICE,
7th January, 1873.

Lieutenant-Governor Trutch to the Honorable J. Howe, Secretary of State.

No. 60.

11th May, 1872.

SIR,—I have the honor to transmit herewith enclosed, for such action as His Excellency the Governor-General may be pleased to take in reference thereto, four Bills the titles of which are set forth in the Schedule hereto annexed, which were passed by the Legislative Assembly during its recent Session, but have been reserved by me for the signification of the Governor-General's pleasure in regard thereto. A copy of the Report of the Honorable the Attorney General on each of these Bills is also enclosed herewith.

I have, &c.,
(Signed) JOSEPH W. TRUTCH.

SCHEDULE OF BILLS TRANSMITTED IN DESPATCH No. 60.

- A Bill entitled "An Act to amend the Military and Naval Settlers' Act, 1863."
- A Bill entitled "An Act to amend the Qualification and Registration of Voters Act, 1871."
- A Bill entitled "An Act to impose a Wild Land Tax."
- A Bill entitled "The Legitimacy Act, 1872."

The Attorney General to the Lieutenant-Governor.

ATTORNEY GENERAL'S OFFICE.
6th April, 1872.

SIR,—I have the honor to report, for the information of the Governor-General, upon an Act passed during the present Session, intituled "An Act to amend the Military and Naval Settlers' Act, 1863."

This Act extends the time for the presentation by the applicant for a free grant of land, of the certificate from the General Commanding-in-Chief in England, or from the office of the Lords Commissioners of the Admiralty, showing that the settlement of such person in a British Colony has been sanctioned, and showing also the rank and length of service of such person, as mentioned in the principal Act, from 1 year to 3 years; and also extends the proviso that no location ticket shall be granted or free grant made unless the particular land to be included therein shall have been claimed, to within 3 years, instead of 2 years, as in the principal Act.

The Act was passed with a view to encourage the settlement in British Columbia of Military and Naval Officers, and, as it is perhaps in conflict with the 11th Section of the Terms of Union with Canada, I would respectfully suggest that His Excellency should reserve his assent.

I have, &c.,
(Signed) J. F. MCCREIGHT,
Attorney General.

The Attorney General to the Lieutenant-Governor.

ATTORNEY GENERAL'S OFFICE,
3rd April, 1872.

SIR,—I had the honor to report to you, on the 6th of April instant, that I did not consider that an Act intituled "The Military and Naval Settlers' Amendment Act, 1872," was a measure to which, in conformity with the law, could your assent be given, and I think inspection of its provisions will fully bear out this statement.

The object of this Act is to give enlarged facilities to the acquirement of land in British Columbia by Military and Naval settlers, having regard to the 6th and 10th Sections of the principal Act, which is No. 43 of the Revised Statutes, 1871.

It seems unnecessary to enquire whether the operation of the last mentioned Act is temporarily suspended by the 11th Section of the Terms of Union with Canada, because it seems very evident that any proposed enlargement of its provisions is plainly inconsistent with these terms, and therefore must be treated as illegal.

The right of pre-emption therein referred to must, of course, mean that which is prescribed by the "Land Ordinance, 1870."

I have, &c.,
(Signed) J. F. McCREIGHT,
Attorney General.

The Attorney General to the Lieutenant-Governor.

ATTORNEY GENERAL'S OFFICE,
8th April, 1872.

SIR,—I have the honor to report for the information of His Excellency the Governor-General, upon an Act passed during the present Session of the Legislature, intituled "An Act to render legitimate, children born out of lawful wedlock, whose parents now are or may hereafter under certain restrictions be married."

This Act seems to be beyond the jurisdiction of the Provincial Legislature; see Section 91, Sub-section 24, of the British North America Act, 1867. I would therefore respectfully suggest that Your Excellency reserve the same for the consideration of the Governor-General.

I have, &c.,
(Signed) J. F. McCREIGHT,
Attorney General.

The Attorney General to the Lieutenant-Governor.

ATTORNEY GENERAL'S OFFICE,
8th May, 1872

SIR,—I had the honor briefly to report, on a former occasion, that I considered that the "Legitimacy Act, 1872," which passed the Legislative Assembly during the last Session, was "measure which should be reserved for the consideration of His Excellency the Governor-General.

The object of the Act is to legitimate children born out of wedlock; firstly, whose parents, either prior to the intended passage of the Act have intermarried; or secondly, who shall hereafter marry before the 1st July, A. D. 1873.

To deal with the former provision it is submitted that it seeks to give a retrospective effect to marriages, by granting to illegitimate children the same status as if their parents had married antecedently to the birth of such offspring.

A question at once arises under the 91st Section of the British North America Act, 1867, and Sub-section 26, whether such legislation does not solely belong to the Parliament of Canada, the jurisdiction of the Provincial Legislature being restricted to the "solemnization of marriage in the Province," and the present not being a matter "coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces."

Having regard to the inconvenience which has occurred through marriages being celebrated with various rites in different parts of the United Kingdom, the policy of allowing each Province to legislate as to the solemnities of a marriage may with great respect be doubted. However the

Imperial Legislature seems to have fully attended to the distinction, which has been clearly pointed out by our Courts, between the mere celebration of a marriage and the consequences or incidents which follow upon such celebration, and to have advisedly withdrawn the latter subject from Provincial legislation.

If this Act is allowed to pass, it is perhaps difficult to see why it may not be followed by Provincial legislation on the subject of "Marriage and Divorce." If the Local Legislature is able to enact that past concubinage if followed by marriage shall be deemed for certain purposes at least to have been marriage, why not also enact that a former marriage shall henceforth under circumstances be deemed to be concubinage.

Again, the provision in the first section, legitimating children whose parents shall, prior to the 1st July, 1873, be lawfully intermarried, seems in another point of view to deal with the subject of "marriage."

It seems to hold out an inducement to persons living in a state of concubinage to continue therein till that date approaches, and if the Provincial Legislature have power to fix that as the period within which marriages shall have a retrospective effect, they may likewise, and probably will, hereafter claim that right to extend that period, and thereby permanently introduce a doctrine into British Columbia which is "repugnant to the settled principles and policy" of the laws of England, and with that which it is believed prevails generally in the Dominion.

A further difficulty will arise if the Act passes, from the well established doctrine "that according to the law of England, a bastard child whose putative father was English at its birth could not be legitimated by the father afterwards acquiring a foreign domicile and marrying the mother in a country by the law of which a subsequent marriage would have legitimated the child.

It seems plain that beyond British Columbia, at least wherever the law of England prevails, such children will continue illegitimate. But it is difficult to suppose that the British North America Act contemplates legislation which will have the effect of enabling an individual to inherit in one Province and disqualify him therefrom in another.

In the case of a title the absurd result might follow, that the elder illegitimate child could hold it in British Columbia, which the younger, but legitimate, brother might at the same time enjoy elsewhere.

It may be added that it is also difficult to suppose that the Imperial Legislature intended to sanction the making of a law in British Columbia, whilst the law of England would refuse to recognise its validity beyond the limits of the Province.

The second section of the Act seems to be defective in saving only those rights, &c., "which have been acquired," prior to the passing of the Act. An illegitimate child who was not contemplated as the object of the bounty of a testator, or of a settler of property by deed, &c., may under this section take an interest, to the exclusion of the intended grantee.

I have, &c.,
(Signed) J. F. McCREIGHT,
Attorney General.

The Attorney General to the Lieutenant-Governor.

ATTORNEY GENERAL'S OFFICE,
8th April, 1872.

SIR,—I have the honor to report, for the information of His Excellency the Governor General, upon an Act passed during the present Session of the Legislature, intituled. "An Act to impose a tax on Wild Lands."

This Act imposes a Tax of four cents per acre on unimproved land in the Province.

It is perhaps doubtful whether it may not be considered that it may apply to the land hereafter appropriated for Railway purposes under the 11th Section of the Terms of Union, and I would suggest that it should be reserved for the consideration of the Governor-General.

I have &c.,
(Signed) J. F. McCREIGHT,
Attorney General.

The Attorney General to the Lieutenant-Governor.

ATTORNEY GENERAL'S OFFICE,
30th April 1872.

SIR,—I had the honor to report on a former occasion, for His Excellency's information, that I considered that an Act passed by the Legislative Assembly during the last Session, intituled "The Land Tax Act, 1872," was a measure which in my opinion should be reserved for the consideration of the Governor-General, and I will now state briefly the reasons upon which that report was founded.

The 1st Section purports to impose an annual tax of 4 cents per acre upon all land in the Province, except as therein and in the 30th Section is excepted.

The Land hereafter to be appropriated in furtherance of the construction of the Pacific Railway (see Terms of Union with Canada Section 11) will no doubt, until such appropriation takes place, be exempted by Sub-section (a) of Section 1 from taxation, but it seems that after such "20 miles on each side of the said line" or any portion thereof shall have been transferred to a Company, as a consideration for constructing the Railway, the serious difficulty would arise of such Company taking the land subject to the annual payment of 4 cents per acre.

Perhaps it would be more correct to state that they would fully take into account the impost, as well as the possibility of others of a similar character, before making any such contract, and their terms would be *pro tanto* the less favorable to Canada.

The Legislature of British Columbia having agreed to the grant referred to in that Section, cannot now derogate therefrom; and as the Terms of Union are equivalent to an Act of the Imperial Legislature, any attempt so to do appears to be not merely improper but altogether futile.

I have, &c.,
(Signed) J. F. MCCREIGHT,
Attorney General.

The Attorney General to the Lieutenant-Governor.

ATTORNEY GENERAL'S OFFICE,
17th April, 1872.

SIR,—I have the honor to report to you on an Act intituled "An Act to amend the Qualification and Registration of Voters Act, 1871."

This Act, whilst extending the franchise in this Province to every male of the age of 21 years, who is entitled within the Province to the privileges of a natural-born British subject (although without any property qualification, subject to certain provisos which are immaterial to this enquiry), by the concluding clause enacts "that nothing herein contained shall be deemed "to apply to Chinese or Indians," and thereby purports to exclude from the exercise of the electoral franchise not only Chinamen but the aboriginals of the Province.

Under the Qualification and Registration of Voters Act, 1871 (No 156 of the Revised Statutes, 1871), as might have been expected, all persons who had the Qualification therein described (see Section 3 of that Act) were enabled to be registered as Voters, independently of any question of nationality, race, or color, and the above mentioned restriction seems to be objectionable; firstly, as being contrary to the instructions usually furnished to Governors of Colonies,—see Section XV, Sub-divisions 6 and 9 (which I presume are still applicable); and secondly, as being beyond the jurisdiction of the Provincial Legislature,—see British North America Act, 1867, Section 91, Sub-section 24.

By Section XV., Sub-division 6, of such instructions, the Governor of a Colony is forbidden to assent to "any Bill, the provisions of which shall appear inconsistent with obligations imposed "on us by Treaty."

It is believed that the legislation attempted by this Act, as regards Chinese, contravenes the clause of the Instructions, and it is submitted that it is likewise clearly contrary to Sub-section 9, which similarly provides against any Bill being assented to "whereby persons not of "European birth or descent may be subjected or made liable to any disabilities or restrictions "to which persons of European birth or descent are not also subjected or made liable."

But the British North America Act, 1867, seems to afford a still more formidable objection. Not only does the Provincial Act in question purport to legislate on the subject of Indians, but it attempts to deprive them of the exercise of the franchise, regardless of the qualifications therefor, which in other respects they may possess, whilst the now existing law, as might be expected, gives them completely the same status as that enjoyed by other British Subjects.

When it is added that the Indian population of the Province is supposed to amount to 50,000 souls, affording, as may be presumed, a proportion of one-fifth or 10,000 of the full age of 21 years, the grave nature of the question becomes very evident, and reasons of policy, as well as of law, seem alike to condemn the measure.

I have, &c.,

J. F. MCCREIGHT,
Attorney-General.

The Honorable J. Howe to Lieutenant-Governor Trutch.

No. 84.

29th May, 1872.

SIR,—I have the honor to acknowledge the receipt this day of your Despatch No. 60, of the 11th instant, covering copies of four Bills passed by the Legislative Assembly of British Columbia during its recent Session, but by you reserved for the signification of the pleasure thereon of His Excellency the Governor-General, together with a copy of the Report of your Attorney-General on each of the said Bills.

I have, &c.,

(Signed) JOSEPH HOWE.

His Excellency the Lieutenant-Governor, &c.,
British Columbia.

The Honorable J. Howe to Lieutenant-Governor Trutch.

No. 109.

OTTAWA, 7th October, 1872.

SIR,—Referring to your Despatch No. 60, of the 11th May last, I have the honor to transmit to you, for the information of your Government, a copy of an Order of the Governor-General in Council, on the subject of a certain Act passed by the Legislature of British Columbia at its last Session, and reserved by you for the signification of His Excellency's pleasure thereon, intituled "An Act to amend the Military and Naval Settlers' Act, 1863," to which Act His Excellency, for reasons set forth in the said Order in Council, withholds his assent.

I have also the honor to enclose for the information of your Government, a copy of an Order of the Governor-General in Council on the subject of a certain other Act passed by the Legislature of British Columbia at its last Session, and reserved by you for the signification of His Excellency's pleasure thereon, intituled "An Act to amend the Qualification and Registration of Voters Act, 1871," to which Act His Excellency has been pleased to grant his assent.

I have, &c.,

(Signed) J. A. MEREDITH,
Under Secretary.

His Honor Lieutenant-Governor Trutch,
British Columbia.

Copy of a Report of a Committee of the Honorable the Privy Council approved by His Excellency the Governor-General in Council on the 30th September, 1872.

Upon a Despatch (No. 60 and dated 11th May last) from the Lieutenant-Governor of British Columbia, transmitting certain Bills passed by the Legislative Assembly of that Province, during its then recent Session, which had been reserved for the signification of the pleasure of the Governor-General, and transmitting, also, a copy of the Report of the Attorney-General, the Deputy of the Minister of Justice reports as follows:—

"An Act to amend the 'Military and Naval Settlers Act, 1863.'

"The object of this Act is to enlarge the facilities for the acquirement of land in British Columbia by Military and Naval settlers, having regard to certain provisions of number 43, of the Revised Statutes of 1871, which it is proposed to amend and extend in its operation.

"He is of opinion that the operation of this Act would be in conflict with the 11th Section of the Terms of Union of British Columbia with Canada, and he recommends therefore that "the assent of the Governor-General be withheld therefrom."

The Honorable the Minister of Justice having reported his concurrence in the above recommendation, the Committee advise that the above Act be not assented to.

Certified,
(Signed) W. A. HIMSWORTH, C. P. C.

Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor-General in Council on the 30th September, 1872.

The Committee have had under consideration the annexed Report, dated 18th September, 1872, from the Hon. the Minister of Justice upon a Bill, intituled "An Act to amend the Qualification and Registration of Voters Act, 1871," passed by the Legislative Assembly of British Columbia, and which has been reserved for the signification of the pleasure of the Governor-General, and they respectfully advise that the said Bill be assented to, and the recommendation of the Minister of Justice acted upon.

Certified,
(Signed) W. A. HIMSWORTH, C. P. C.

DEPARTMENT OF JUSTICE, OTTAWA,
September 18th, 1872.

Upon a Despatch (numbered 60, and dated the 11th May last) from the Lieutenant-Governor of British Columbia, transmitting certain Bills, passed by the Legislative Assembly of that Province, during its then recent Session, which had been reserved for the signification of the pleasure of the Governor-General, and transmitting also, a copy of the Report of the Attorney General, the undersigned has the honor to report as follows:—

Act to amend the Qualification and Registration of Voters Act, 1871.—

The Report of Mr. Attorney-General McCreight recommended the reservation of the Act upon the ground that the 13th Clause precluded the exercise of the Electoral franchise, in respect to the Legislative Assembly, by Chinese and Indians, and he was of the opinion that the same was in contravention of the instruction, furnished by Governors of Colonies, and also of the "British North America Act, 1867" Section 91, Sub-section 24.

Upon the first point, the undersigned is of opinion that the Imperial instructions issued to Governors of Colonies, and which accompanied their Commissions direct from the Queen, are not applicable to the cases of Lieutenant-Governors of Provinces of Canada, who receive their Commissions from the Governor-General, under the Great Seal of Canada, and to whom instructions are to be communicated, by the terms of those Commissions, from the Governor-General of Canada in Council or through any member of the Council.

Every deference would of course be paid to the terms of instructions which have been given by the Imperial Government to Governors of Colonies, and the view entertained by Mr. Attorney-General McCreight, of reserving the Bill under the circumstances, has been exercised with much discretion.

It may however be observed, that there is no instruction of such a nature in the Commission or Royal instructions to the Governor-General since the year 1867.

Upon the second point, as to the jurisdiction of the Legislature of British Columbia, as it has been exercised in this instance, the undersigned has the honor to state, that he is of the opinion that "The British North America Act, 1867," Section 91, Sub-section 24, which places within the exclusive Legislative authority of the Parliament of Canada, "Indians, and Land reserved for Indians," has reference to legislation connected with Indians generally, and to lands reserved for them.

The Order of the Queen in Council under which British Columbia was admitted into the Union, is (Section 13) as follows:—

"The charge of the Indians and the Trusteeship, and the management of the Lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union."

But by Section 10 of that Order in Council, the provisions of "The British North America Act, 1867," shall, except, &c., "be applicable to British Columbia, in the same way, and to the like extent, as they apply to the other Provinces of the Dominion, and as if the Colony of British Columbia had been one of the Provinces originally united by the said Act;" and by

Section 14, "the Constitution of the Executive authority, and of the Legislature of British Columbia, shall, subject to the provisions of 'The British North America Act, 1867,' continue "as existing at the time of the Union, until altered under the authority of the said Act," &c.

Now it is by "The British North America Act, 1867," Section 92, enacted that in each Province the Legislature may exclusively make laws in relation to, amongst other classes, the following, viz:—The amendment from time to time, "notwithstanding anything in the Act, of "the constitution of the Province, except as regards the office of Lieutenant-Governor."

This, it is apprehended, confers upon each Province the right of legislating as to its franchise.

It may be mentioned that this right has been exercised by the Province of Ontario, in respect to the right of Indians to vote in the District of Algoma at Elections of Members of the Legislative Assembly of that Province, by 33 Vic., Cap. 25, Section 24, which excepts from the right of franchise—

"Indians belonging to Tribes, and Indians in receipt of Government aid or bounty."

Under these circumstances, the undersigned is of opinion that the Legislature of British Columbia have authority to legislate, in their own discretion, as to the parties by whom the right of franchise, in respect of the Legislative Assembly, may be exercised.

The undersigned has, therefore, the honor to Report that, in his opinion, this Act may receive the assent of the Governor-General.

The undersigned recommends, however, that the attention of the Lieutenant-Governor of British Columbia be called to the 10th Section of the Act, which provides a substituted Section for Section 3 of the Act which it proposes to amend.

By this Section it is provided who shall have the right to vote at the Elections of Members of the Legislative Assembly, and amongst other requisites, is one that the voter shall be entitled to the privilege of a natural-born British subject, &c. But it is provided, "that no natural-born "British subject, who has renounced or sworn his allegiance to any Foreign State, or become the "Citizen of any Foreign State, shall be entitled to be registered under the provisions of the Act, until "he shall have taken the Oath of Allegiance to Her Majesty, before some Judge of the Supreme "or County Court, Magistrate, or Justice of the Peace in this Province, which oath such Judge, "Magistrate, or Justice of the Peace, is hereby authorised to administer, &c."

Upon the principle before suggested, that it is within the Legislative authority of the Province to regulate by whom the franchise shall be exercised, it is within their authority to provide, if they so desire, that Aliens shall not have the right to vote; but if this proviso be intended to have the effect of naturalizing as a British Subject, any person who has renounced his allegiance, or sworn allegiance to, or become the Citizen of any Foreign State, &c., it is recommended that the Legislature of British Columbia be invited to repeal the proviso—as the subject of the naturalization of Aliens is one which, by the "The British North America Act, 1867," Section 91, Sub-section 25, is left exclusively to the Legislative jurisdiction of the Parliament of Canada, and Acts have been passed accordingly, 31 Vic., Cap. 66, and 34 Vic., Cap 22. And reference may further be had on this subject to the Acts of the Imperial Parliament of the 33 Vic., Caps. 14 and 102, as amended further by an Act of 1872, in respect to the modes by which British Nationality may, under certain circumstances, be resumed.

(Signed) H. BERNARD,
D. M. J.

I concur in this Report.

(Signed) JOHN A. MACDONALD,
M. J.

The Honorable J. Howe to Lieutenant-Governor Trutch.

OTTAWA,
October 16th, 1872.

SIR,—With further reference to your Despatch No. 60, of the 11th May, last, I have the honor to transmit to you, herewith, for the information of your Government, a copy of an Order of His Excellency the Governor-General in Council, on the Bill passed by the Legislative Assembly of the Province of British Columbia during its recent Session, intitled "An Act to impose a Wild Land Tax," and reserved by you for the signification of His Excellency's pleasure thereon, to which Bill His Excellency, for reasons set forth in the Order in Council, withholds his assent.

I have at the same time, in terms of the Order in Council, to request that you will have the goodness to urge upon your Government, the expediency of exempting Railway lands, such as

those referred to by the Minister of Justice in his Report (an extract of which is embodied in the Order in Council), in any Act that may henceforth be passed imposing a Land Tax.

I have also to suggest, to prevent the possibility of a doubt, that Sub-section (a.) of the Act referred to in the Order in Council, should, in any new Act, be amended by exempting lands, *now or at any time hereafter*, vested in or held in trust for Her Majesty.

I have, &c.,
(Signed) E. A. MEREDITH,
Under Secretary.

Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor-General in Council on the 12th October, 1872.

Upon a Despatch (No. 60, and dated 11th May, last) from the Lieutenant-Governor of British Columbia, transmitting certain Bills passed by the Legislative Assembly of that Province during its then recent Session, which had been reserved for the signification of the pleasure of the Governor-General, and transmitting also a copy of a Report of the Attorney-General,

The Honorable the Minister of Justice, to whom the above mentioned Despatch and Report were referred, reports with respect to a Bill intituled "An Act to impose a Wild Land Tax," as follows:—

"That this Act imposes a Tax of four cents per acre upon all Land, with certain exceptions.

"That by Sub-section (a.) of the first Clause of this Bill, Land vested in, or held in trust for Her Majesty, or for the public uses of the Province, are exempted from the Tax.

"Although under this exemption the Lands to be conveyed in trust by the Government of British Columbia to that of the Dominion, under the 11th Section of the Terms of Union between British Columbia and Canada, will be free from the Tax; it is clear that whenever these Lands are conveyed to any Company, incorporated for the purpose of the construction of the Pacific Railway, the exemption will cease.

"Now, the imposition of so heavy a Tax as four cents an acre upon this large tract of Wild Land, will render it practically valueless.

"The Government of Canada are taking active steps to endeavour to induce capitalists to engage in the great undertaking of constructing a Railway to connect the two Oceans.

"The chief inducement to such capitalists, is the promise of a large grant of Land in aid of the enterprise, and the imposition of such a Tax upon these Railway Lands, would greatly diminish the prospect of a Company being formed.

"The Attorney-General of British Columbia seems to agree with the undersigned in this opinion.

"Under these circumstances, therefore, the undersigned begs respectfully to recommend that the assent of Your Excellency be withheld from this Bill.

"He also begs leave to suggest that the Lieutenant-Governor of British Columbia be instructed to press upon his Government the expediency of exempting these Railway Lands in any Act that may hereafter be passed imposing a Land Tax.

"He would further suggest, to prevent the possibility of a doubt, that Sub-section (a.) above referred to, should, in any new Act, be amended by exempting Lands *now, or at any time hereafter*, vested in or held in trust for Her Majesty."

The Committee concur in this foregoing Report of the Minister of Justice, and submit the same for Your Excellency's approval.

Certified,
(Signed) W. A. AIMSWORTH,
Clerk, P. C.