Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Union Colliery Company of British Columbia, Limited, and others, Appellants, v. John Bryden, on behalf of himself and the other shareholders of the said Colliery Company, and the Attorney General of British Columbia (Intervenant), Respondents; from the Supreme Court of British Columbia; delivered 28th July 1899.

Present at the Hearing:

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.
SIR EDWARD FRY.

[*Delivered by Lord Watson.*]

The Appellant Company carries on the business of mining coal, by means of underground mines in lands belonging to the Company, situated near to the town of Union in British Columbia. The Company have hitherto employed, and still continue to employ, Chinamen in the working of these underground mines.

By Section 4 of the "Coal Mines Regulation "Act, 1890, it is expressly enacted that, no boy "under the age of twelve years, and no woman "or girl of any age, *and no Chinaman*, shall be "employed in or allowed to be for the purpose of "employment in any mine to which the Act "applies, below ground."

By the Act of 1890, the words "and no Chinaman" were added to the 4th Section of the

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then existing Coal Mines Regulation Act, which was chapter 84 of the Consolidated Statutes of 1888, and now, as amended, is Chapter 138 of the Revised Statutes of British Columbia 1897. It is sufficiently plain, and it is not matter of dispute, that the provisions of the Act of 1890 were made to apply, and, so far as competently enacted, do apply to the underground workings carried on by the Appellant Company.

The present action was instituted, in the Supreme Court of British Columbia, by the Respondent, John Bryden, against the Appellant Company, of which he is a shareholder. It concludes (1) for a declaration that the Company had and has no right to employ Chinamen in certain positions of trust and responsibility, or as labourers in their mines below ground, and that such employment was and is unlawful, and (2) for an injunction restraining the Company from employing Chinamen in any such position of trust and responsibility, or as labourers below ground, and from using the funds of the Company in paying the wages of the said Chinamen. The Respondent averred in his statement of claim that the employment of Chinamen in positions of trust and responsibility, and as labourers underground, was a source of danger and injury to other persons working in the mines, which involved the liability of the Company for damages, and was also injurious and destructive to the mines. He also pleaded that the employment of Chinamen, in these capacities, was contrary to the statute law of the Province.

The Appellant Company, by their statement of defence, denied that there was any risk of injury arising either to other workmen in their mines, or to the mines, from the employment of Chinamen as underground miners. They pleaded that, in so far as they related to adult Chinamen, the

enactments of Section 4 of the Coal Mines Regulation Act were void, as being *ultra vires* of the Legislature of the Province of British Columbia.

The case was tried in the Superior Court before Mr. Justice Drake, without a jury. In the course of the trial, the Respondent, the Attorney-General for the Province of British Columbia, who appears to have suspected that this suit was collusive, appeared by Counsel, and he has since, in the character of *Intervenant*, been a party to the litigation. It appeared from the evidence that the Appellant Company, in working some of their underground seams of coal, employed no workmen except Chinamen who were of full age, and that, in those parts of their workings, where miners other than Chinamen were employed, no Chinamen occupied a position of trust or responsibility, such as were alleged in the statement of claim. The consequence was, that in the subsequent conduct of the litigation, the Courts below, and their Lordships in this Appeal, have only been invited to consider the conclusions of the action, in so far as these bear upon the legality of employing Chinese labour, in violation of the express enactments of Section 4 of the Revised Statute No. 138 of 1897. In other words, the controversy has been limited to the single question, whether the enactments of Section 4, in regard to which the Appellant Company has stated the plea of *ultra vires*, were within the competency of the British Columbian Legislature.

In considering the issue to which the case has thus been narrowed, the evidence led by the parties appears to their Lordships to be of no relevancy. It is chiefly directed to the character, whether reasonable, or unreasonable, of the legislation which has been impugned by the Appellant Company. But the question raised directly concerns the legislative authority of the Legislature of British Columbia, which depends upon the construction of

Sections 91 and 92 of the British North America Act 1867. These clauses distribute all subjects of legislation between the Parliament of the Dominion and the several Legislatures of the Provinces. In assigning legislative power to the one or the other of these Parliaments, it is not made a statutory condition, that the exercise of such power shall be, in the opinion of a Court of Law, discreet. In so far as they possess legislative jurisdiction, the discretion committed to the Parliaments, whether of the Dominion or of the Provinces, is unfettered. It is the proper function of a Court of Law to determine, what are the limits of the jurisdiction committed to them; but, when that point has been settled, courts of law have no right whatever to enquire whether their jurisdiction has been exercised wisely or not. There are various considerations discussed in the judgments of the Courts below, which, in the opinion of their Lordships, have as little relevancy to the question which they had to decide, as the evidence upon which these considerations are founded.

There can be no doubt that, if Section 92 of the Act of 1867 had stood alone, and had not been qualified by the provisions of the clause which precedes it, the Provincial Legislature of British Columbia would have had ample jurisdiction to enact Section 4 of the Coal Mines Regulation Act. The subject-matter of that enactment would clearly have been included in Section 92 (10) which extends to provincial undertakings such as the coal mines of the Appellant Company. It would also have been included in Section 92 (13), which embraces "Property and Civil Rights in the Province."

But Section 91 (25) extends the exclusive legislative authority of the Parliament of Canada to "naturalization and aliens". Section 91 concludes with a proviso to the effect

that "any matter coming within any of the "classes of subjects enumerated in this section "shall not be deemed to come within the class "of matters of a local or private nature "comprised in the enumeration of the classes of "subjects by this Act assigned exclusively to the "Legislatures of the Provinces."

Section 4 of the Provincial Act prohibits Chinamen who are of full age from employment in underground coal-workings. Every alien, when naturalized in Canada becomes, *ipso facto*, a Canadian subject of the Queen; and his children are not aliens, requiring to be naturalized, but are natural-born Canadians. It can hardly have been intended to give the Dominion Parliament the exclusive right to legislate for the latter class of persons resident in Canada; but Section 91 (25) might possibly be construed as conferring that power in the case of naturalized aliens after naturalization. The subject of "naturalization" seems *primâ facie* to include the power of enacting what shall be the consequences of naturalization, or, in other words, what shall be the rights and privileges pertaining to residents in Canada, after they have been naturalized. It does not appear to their Lordships to be necessary, in the present case, to consider the precise meaning which the term "naturalization" was intended to bear, as it occurs in Section 91 (25). But it seems clear, that the expression "aliens," occurring in that clause, refers to, and at least includes, all aliens who have not yet been naturalized; and the words, "no Chinaman," as they are used in Section 4 of the Provincial Act, were probably meant to denote, and they certainly include every adult Chinaman who has not been naturalized.

Mr. Justice Drake, before whom the case was tried, and, on appeal, the learned Judges of the Full Court, were of opinion that the enactments

of Section 4 of the Mines Regulation Act, so far as challenged, were within the legislative jurisdiction of the Parliament of the Province. They accordingly gave the Plaintiff a declaration to the effect that the Appellant Company has no power to employ Chinamen, or to allow Chinamen to be, for the purpose of employment, in any mine of the Company in British Columbia below ground, and that the employment by the Company of Chinamen, in their coal mines below ground at Union, was unlawful, as being contrary to Section 4 of the Coal Mines Regulation Act. They also, in terms of that declaration, granted an injunction restraining the Appellant Company, its contractors, servants, workmen, and agents, from employing Chinamen, or allowing Chinamen to be for the purpose of employment, in the coal mines of the Company at Union, contrary to the provisions of Section 4.

The provisions of which the validity has been thus affirmed by the Courts below, are capable of being viewed in two different aspects, according to one of which they appear to fall within the subjects assigned to the Provincial Parliament by Section 92 of the British North America Act, 1867, whilst, according to the other, they clearly belong to the class of subjects exclusively assigned to the Legislature of the Dominion by Section 91 (25). They may be regarded as merely establishing a regulation applicable to the working of under-ground coal mines; and, if that were an exhaustive description of the substance of the enactments, it would be difficult to dispute that they were within the competency of the Provincial Legislature, by virtue either of Section 92 (10) or Section 92 (13). But the leading feature of the enactments consists in this: that they have, and can have, no application, except to Chinamen, who are aliens or naturalized subjects, and that

they establish no rule or regulation, except that these aliens or naturalized subjects shall not work, or be allowed to work, in underground coal mines within the Province of British Columbia.

Their Lordships see no reason to doubt that, by virtue of Section 91 (25), the Legislature of the Dominion is invested with exclusive authority in all matters which directly concern the rights, privileges and disabilities of the class of Chinamen who are resident in the provinces of Canada. They are also of opinion, that the whole pith and substance of the enactments of Section 4 of the Coal Mines Regulation Act, in so far as objected to by the Appellant Company, consists in establishing a statutory prohibition which affects aliens or naturalized subjects, and therefore trench upon the exclusive authority of the Parliament of Canada. The learned Judges who delivered opinions in the Full Court noticed the fact, that the Dominion Legislature had passed a "Naturalization Act, "No. 113 of the Revised Statutes of Canada "1886," by which a partial control was exercised over the rights of aliens. Mr. Justice Walkem appears to regard that fact as favourable to the right of the Provincial Parliament to legislate for the exclusion of aliens, being Chinamen, from underground coal mines. The abstinence of the Dominion Parliament from legislating, to the full limit of its powers, could not have the effect of transferring to any Provincial Legislature, the legislative power which had been assigned to the Dominion by Section 91 of the Act of 1867.

Their Lordships will therefore humbly advise Her Majesty to reverse the judgment appealed from; to find and declare that the provisions of Section 4 of the British Columbia Coal Mines Regulation Act, 1890, which are now embodied in Chapter 138, of the Revised Statutes of British Columbia 1897, were, in so far as they relate to Chinamen *ultrà vires* of the Provincial Legis-

lature, and therefore illegal; and to order that the Plaintiffs do pay to the Defendant Company the costs incurred by them in both Courts below, as the same shall be taxed. The Respondents, other than the Intervenant, must pay to the Appellant Company their costs of this Appeal.