

end the weaker must fall before the stronger, and British Columbia, with its sparse and limited population, be powerless.

The 91st section specifies in detail, by sub-divisions, the subjects on which the Dominion Parliament shall have exclusive legislation; the 92nd section those on which the Provincial Parliaments shall have exclusive legislation. When either party goes beyond the list so defined, the Act becomes *ultra vires*, and it is the duty of that court before which the question is raised so to declare it.

The 91st section, by sub-division 2, gives to the Dominion Parliament the regulation of trade and commerce, and, by sub-division 25, that of naturalization and aliens, extending to all matters coming within either of those classes of subjects. It is plain, therefore, the Local Legislature can legally pass no Act interfering with the regulation of either the one or the other.

Then, does this local Act interfere with the regulation of trade, or commerce, naturalization, or aliens? By its preamble, it professes to prevent the evasion by the Chinese of the payment of the taxes upon real and personal property, on income, on unoccupied land, and the separate tax for the maintenance of the school system, and declaring it advisable that all should contribute to the general revenue, enacts the provisions above set forth as a more simple method for the better collection of provincial taxes from Chinese.

A preamble is really no substantial part of the Act. It is simply the professed light by which it is alleged the Act should be read; but in determining the objects of the act, we must look not at the preamble, but really at its enacting clauses. They may directly conflict with the preamble, and it has been contended that the object of this Act is not so much to prevent the evasion of the payment of taxes by the Chinese, as to prevent their living or carrying on business in this country.

What is the effect of those enacting clauses?

In arriving at a conclusion, I have been materially assisted by a leading decision in the Supreme Court of the State of California, (*Lee Sing vs. Washburn*, 20 California Reports, 534), in which the facts and points raised are almost identical with those in the case now before this Court, except that in the California case the Act of the Legislature boldly and openly avowed its object, viz. to protect free white labor against competition with Chinese coolie-labor, and discourage the immigration of the Chinese into the State of California. The suit there was an appeal from the decision of an inferior tribunal, which had sustained, under an Act of the California Legislature under the above title, the enforcement of a monthly capitation tax of \$2.50 on each person, male and female, of the Mongolian race, of the age of eighteen years and upwards, residing in the state, except such as had taken, or should take out licenses to work in the mines, or to prosecute some kind of business, which tax should be known as the Chinese police tax; and exempting also all Mongolians exclusively engaged in the production and manufacture of sugar, rice, coffee and tea. The plaintiff Lee Sing, after refusal, paid the \$2.50, on the seizure of his property by the collector, immediately re-demanded the sum, and brought suit for its recovery. The case was most elaborately and ably argued on appeal, the Attorney-General of the state appearing for the collector to sustain the tax. The point was distinctly taken, that it was an interference with trade and commerce, which could be regulated alone by the general government, and as distinctly met, that it was not an interference, but more a matter of police regulation, and that even if it did interfere with trade and commerce, the state had concurrent jurisdiction, and in matters of taxation relative to its own internal affairs, of which this was one, an absolute and inherent right to legislate. The position of the Attorney-General on behalf of his state, was strengthened by the well known doctrine of state rights, that at the time of the Union, being sovereign and independent states they had only parted with what they distinctly gave, and that, therefore, all powers not absolutely expressed as parted with remained in the state, a position which cannot be contended for on the part of the provinces of the Dominion, the differences in this respect in their constitutions being, as put forth in a work published in Toronto on this subject in 1872: "In the United States all