

in default of immediate payment, be liable to distress and sale of his goods; and if sufficient funds are not found, to imprisonment with or without hard labor, for a period not exceeding two months or less than one month.

The 9th section makes the allegation of the offense in the prosecution sufficient proof of the offence, unless the defendant prove the contrary; and the 10th section gives power to any justice of the peace, in a summary manner, to hear and determine the information in any locality where the accused shall be found.

The 11th, 12th, 13th, and 14th sections provide for the employer demanding his quarterly license of the Chinese person employed, and enact that the Chinese person who neglects, refuses, or is unable to take out the quarterly license, shall be liable at the instance of the collector, to perform labor on the public roads and works, in lieu thereof, at the rate of fifty cents a day, the cost of food, five per cent. of the wages of the overseer, five per cent. on the amount of the quarterly license for cost of wear and tear of tools, to be added to the quarterly sum of ten dollars, and to be deemed payable by every Chinese person performing such labor, in addition to the amount of the quarterly license; and such labor to be continuous until an amount of work equivalent to the whole sum due by him has been performed, the labor to last from 7 a.m. to 6 p.m., with one hour allowed at mid-day for food; and in case of failure, refusal, or neglect to perform the labor aforesaid, to be liable for each day's default, to perform two days' labor instead of one, or in default thereof, to be imprisoned with hard labor for any term not exceeding six months on conviction in a summary way before a justice of the peace; and if any person shall obstruct others in the performance of their duties or do anything calculated to obstruct the due performance of the labor, he shall, on conviction, before a justice of the peace, be imprisoned with hard labor for a period not exceeding six months, the overseer being required to prosecute in such cases.

The 8th, 11th, 12th, 13th and 14th sections, just mentioned, do not come into force until one month after the passage of the Act, namely, on the 2nd October, 1878, but they are necessary to be considered in determining the intent, character and effect of the Act as a whole, in the light of the authorities and principles hereinafter referred to. This is one of twelve applications now before the court on behalf of different merchants and employers of Chinese labor, whose goods have been seized, and the decision of which, until reversed, will govern the remainder, as well as the present. The question is of more than ordinary importance, as it tests the constitutionality of the power assumed by the Local Legislature to pass such an Act.

On behalf of the plaintiff it is contended:

- 1st. That the Act is *ultra vires* as dealing with trade and commerce;
- 2nd. As an interference with aliens;
- 3rd. As interfering with the powers and duties of the Dominion Government in performing the obligations of Canada as a part of the British Empire, arising under treaties between Great Britain and China.

The province of British Columbia is a part of the Dominion of Canada, possessing powers strictly defined by the "British North America Act, 1867," the federal compact by which the provinces are united. No power of legislation whatever pertains to them, other than as embraced in that compact. If the legislation of the Local Legislature be not within and sustained by that compact, it is not and has not the force of law. The assent of the Governor General cannot make an Act constitutional which does not come within the powers conceded to the province by the British North America Act, 1867. It becomes, therefore, necessary to consider that Act with the greatest care, to see how far its provisions bear upon the question before us, keeping in mind that it is an Imperial Act, passed by the consent and at the request of the provinces themselves, in order that their relative rights should not be liable to fluctuation, abrogation, or curtailment at the instance of any predominant party or conflicting interest in the Dominion. It is the solemn guarantee of the highest power in the British Empire that the rights thereby conferred shall not be diverted. If the Local Parliament could interfere with the distribution of legislative powers, the Dominion Parliament could do the same, and thus in the