CHINESE LABOUR

Treas. Rossland Conservative Association

Has Our Parliament Power to Legislate?

..AND..

Having Passed Laws Can We Enforce Them?

The Laws of British Columbia Forbid the Employment of Chinese Below Ground in Coal Mines.

ELECTORS

The following Report of the Proceedings in "Attorney-General v. Wellington Colliery Co.," show that THE CONSERVATIVE PARTY are DETERMINED to ENFORCE THE LAWS without fear or favor, and that they are worthy of the confidence of

THE WORKINGMAN.

CHINESE LABOR.

There are laws on the Statute-book now forbidding the employment of Chinese below ground in coal mines. And, as the following report will show, the strenuous efforts which the Conservative administration have made in even the few months during which they have held office to carry these laws into effect and to vindicate the right of the Province to legislate on the Chinese question, is proof positive to all electors whose support they are now seeking that the Conservative Government are worthy of being trustees to protect the interests of the white miner and every laboring man.

As is well known, the chief offenders against the statutes relating to employment of Chinese below ground are the Wellington Colliery Company in the coal mines at Union, B.C.

The McBride Government took office last June. One of their first acts was to instruct the Inspector of Coal Mines to see that the regulations as to the exclusion of Chinamen from underground workings should be carried out. To the Inspector's notices to put the Chinamen out, the colliery company paid no attention whatever, but went gaily on working their coal properties with Celestials. Seeing this, the government at once took more strenuous measures. "We will fight the question through the highest courts in the land," said the company. "You will have to, or else obey the law," replied the government, and in July formal proceedings were commenced against the company, and a conviction obtained. The fine was paid, and—the Chinamen kept on! Seeing that the company had no intention of fairly testing the question, the government had one of two courses open to them, either to instruct a lawyer to camp at the pit mouth and lay daily informations against the company for every Chinaman employed, or to bring the matter to a head at once by an injunction against the company. The latter course being the quickest and most decisive way of settling the question once and for all, it was adopted, and the following report of proceedings shows conclusively the way in which the Conservative Government stand by their promises, and the untiring efforts and bona fide spirit with which they have endeavored to enforce the anti-Chinese legislation.

A writ was issued by the Attorney-General on September 15th, an application for an injunction made immediately, and on the following day the question was argued before Mr. Justice Irving in the Supreme Court, a report of which here follows in detail:

The Attorney-General, Hon. A. E. McPhillips, K. C., and D. M. Rogers, appeared for the government, the company being represented by A. P. Luxton. The case was opened by the Hon. the Attorney-General submitting the affidavit of Thomas Morgan in support of the motion, as follows:

I, Thomas Morgan, of the city of Nanaimo, in the province of British Columbia, Inspector of Coal Mines, make oath and say as follows:

1. I am one of the Inspectors of Coal Mines for the province of British Columbia, appointed by the Lieutenant-Governor in Council, under the provisions of the Coal Mines Regulation Act, on or about the first day of November, 1898, since which date I have up to the present time continuously discharged the duties of said office.

2. One of my duties as inspector as aforesaid is to investigate all accidents occurring in coal mines situate on Vancouver Island, and to ascertain as far as possible the causes of such accidents.

3. At the time I received the above-mentioned appointment I had had twenty-nine years experience as a miner in the coal mines at Nanaimo, in this province.

4. The defendant company at the preset time is operating three coal mines at Union aforesaid, known respectively as No. 4 Slope, No. 5 Shaft, and No. 6 Shaft.

5. The defendant company at the present time employs below ground in No. 4 Slope 95 white men and 92 Chinamen; in No. 5 Shaft, 36 white men and 86 Chinamen; in No. 6 Shaft, 6 white men and 43 Chinament.

6. The defendant company always employ below ground in No. 6 Shaft more Chinamen than white men.

7. On the 15th day of July, 1903, an explosion occurred in No. 6 Shaft, where a number of Chinamen were working, resulting in the death of 16 Chinamen and in serious injuries to 5 Chinamen. I made an investigation into the cause of the said explosion, but was unable to determine beyond a doubt how it occurred, but I am inclined to think it must be attributed to the negligence or ignorance of the said Chinese miners.

8. On the 17th day of April, 1879, an explosion of gas occurred in the Wellington Colliery by which 7 white men and four

Chinamen lost their lives. An inquest was held upon the bodies recovered, and the verdict of the coroner's jury was that the explosion was caused by a Chinaman passing towards the face of No. 10 level. If the accident was caused in this way, in my opinion, it was due to the gross ignorance or carelessness of the said Chinaman.

9. My experience gained as inspector and miner has led me to the firm conviction that the employment of Chinese below ground in coal mines endangers in a high degree the lives and limbs of the other miners employed in such mines. While many Chinese miners can speak some English, one never can be sure that, at the time of danger, they will clearly understand orders given to them, which need to be exactly carried out in order to avert a catastrophe.

10. My experience also is that Chinese miners, as a class, stubbornly adhere to their own ways of working in coal mines notwithstanding all efforts to convince them of their danger, of which I will give some examples:

(a) On the 9th of August, 1897, a Chinaman was killed in No. 4 slope. He had been directed to keep on the traveling road, but persisted in walking between the rails and was killed by the cars, as appears by the report of the then inspector of mines.

(b) On the 10th of November, 1902, a Chinaman named On How was killed in No. 5 shaft by a fall of rock. A post had been placed to keep the overhead rock from falling and, without any necessity for so doing, he stupidly knocked away the post and the rock at once fell on his head and killed him.

(c) On the 29th of June, 1900, William Armstrong, a fireman in No. 6 shaft, was attending to the reconstruction of two lengths of brattice, which had been knocked down by a shot in a stall, when a Chinaman named Wong Wing took his light to the return side of the brattice, on which side the gas had accumulated. The inevitable result was that an explosion of gas occurred, which burned the fireman and the Chinaman. This acident was directly owing to the gross ignorance or carelessness of the Chinaman.

(d) On the 27th of October, 1902, an explosion took place in shaft No. 5, under the following circumstances, which I ascertained by investigation on the spot as inspector as aforesaid: The fireman noticed that there was considerable gas in the portion of the mine in which he found a Chinaman using a naked light, although he was provided with a safety lamp. The fireman took the naked light from the Chinaman and instructed him not to use it there again on account of the presence of gas, and made him use his safety lamp. After the fireman left, the Chinaman put down his safety lamp and made use again of a naked light, with the result that the gas was ignited and the Chinaman was so severely injured by the explosion that he died within ten days.

11. On the fourth day of May, 1903, an Act of the Legislature of British Columbia further to amend the Coal Mines Regulation Act, came into force. By section 2 of said amending Act, Rule 34 of the Coal Mines Regulation Act has been re-enacted, so that it now provides, among other things that no Chinamen shall be employed below ground in a coal mine in this province.

12. On the 18th day of July, 1903, I duly notified the defendant company to discontinue employing Chinamen below ground in their said mines, but, notwithstanding said notice, the company persists in employing Chinamen below ground in said mines as set out in paragraph 5 of this affidavit.

13. On the 22nd day of July, 1903, an information was laid by me against F. D. Little, the manager of the mines of the defendant company at Union, charging him with employing or permitting to be employey below ground in said mines certain Chinamen contrary to the provisions of the Coal Mines Regulation Act. The said Little was, on the 24th day of July last, convicted and fined; but notwithstanding said conviction, the defendant company, since the date of said conviction, have persisted in employing from day to day in their mines at Union the number of Chinamen mentioned in paragraph 5 hereof.

14. In my opinion, based upon my experience as inspector and miner, unless the defendant company is restrained from employing Chinamen below ground in said mines, there is imminent danger of accident occurring which may cause the loss of many lives.

(Sgd.) THOMAS MORGAN.

Sworn at Victoria, British Columbia, this 15th day of September, A. D., 1903, before me.

(Sgd.) FRANK HIGGINS,
A Commissioner for taking affidavits within British Columbia.

Mr. Luxton—These papers only reached me late last night. On the affidavit itself I submit it is not a matter which should be brought on in vacation; it is not a matter that under the rules requires to be immediately or promptly heard. There is nothing shown in the affidavit why it could not equally as well have been brought on as soon as the vacation is over. There is no immediate danger threatened to anybody's property, or anything of that sort. It has been going on now as it has for a number of years; why then is it necessary a fortnight before the end of the vacation to apply to the court for an interlocutory 'njunction? I submit it is clearly not a case which should have been brought on in vacation. Also, there is a good deal of controversial matter in this affidavit of Mr. Morgan that is filed here, and absolutely no opportunity of getting any affidavit in answer to it.

His Lordship—There is only one statement of vital importance, namely, that Chinese are employed there. The rest of it is merely collateral matter which does not affect the merits of this case as far as I can understand it.

Mr. Luxton—I presume my friend will argue on the statements contained in the

different paragraphs of the affidavit; there are matters there that I think the company should have an opportunity of answering. In any event, it seems to me, my Lord, there is no such urgency shown as that the papers should be served after the offices are closed, as was done last evening, for a hearing at eleven o'clock the next morning.

The Hon. the Attorney-General—I will first meet my friend's argument as to inconvenience, and the rules with regard to vacation. I think, surely, if there is any merit in this application, which I submit there is, that any rule made with regard to convenience of the judiciary and the profession for vacation could not in any way affect the right of the Attorney-General coming here and raising a question of such moment as this. With respect to the want of knowledge and unpreparedness of my learned friend, all I can say is that your Lordship will observe that upon the material it is quite evident that his clients have had pressing notice, absolutely definite notice, in fact, proceedings in an inferior court bringing it to their knowledge that they are guilty of an infraction of the law of this province; so much so, that a stipendary magistrate sitting at Cumberland, where these mines are located, fines my learned friend's clients for an infraction of the law. And there can be no question that the question had been agitated, and that it is well within his clients knowledge that the Crown has been anxious to see that the law is maintained. And on the other hand, I submit to your Lordship this view, that if my learned friend's clients had shown any intention of fighting this matter out in an at all expeditious manner, they might have proceeded by way of certitorari to quash that conviction; but I understand from one of the learned counsel acting for the defendant company that he claimed it could be moved for in six months, and evidently the company don't propose to have the question settled until they are absolutely forced to do so.

Now as to the facts, Your Lordship, I summarize them in this way. I say that accidents have taken place for years past, —and I am within the affidavit evidence, —and, I submit, from the affidavit of Mr. Morgan, inspector of Mines, which are attributable to the employment of Chinese; one of only a little time ago, wherein on the fifteenth day of July an explosion occurred in No. 6 shaft, and the result was the death of sixteen Chinamen and serious injuries to five Chinamen—that is in paragraph seven. That being so, and the legislature having addressed its mind particularly to this subject, which it considered to be a grave one, it did in its wisdom pass an act by way of regulation in the session of 1903. The provision—which I submit to Your Lordship, was in the way of protection to life,—enacted that Chinamen, per se, should not be employed underground. You can find in the regulation itself also a clear and apt definition, if I may so, term it, that Chinamen are people as such who should not be put in a position of being enabled to injure the life or the limb of any person by being employed underground. I submit that it is not open to my learned friend to say that Chinamen are no more dangerous than other workmen underground The legislature has undertaken itself—and it is the paramount authority in this case—to say that Chinamen are not to be employed underground; palpably for the reason that they are dangerous workmen as such, from their very nationality they are dangerous workmen. Therefore, any analysis as to whether Chinamen as compared with white men are as good miners, or are not dangerous as such, is not a matter for investigation at all; I submit that it is concluded; because the legislature has undertaken, as the highest court, to state affirmatively and beyond all question that Chinamen, as such, shall not be employed underground because of the danger that ensues to life and limb.

His Lordship—You have an injunction from the highest court in the land now standing in the books forbidding these people from employing Chinamen underground. When you have got that, why do you come to this court for a further injunction?

The Hon. the Attorney-General—Because of the non-respect and non-observance of this defendant company of the law of the land.

His Lordship—But the highest court in the land has provided a remedy, and a penalty for refusal to obey their mandate; there may be a fine, imprisonment, and indictment.

The Hon. the Attorney-General—I don't know about the indictment.

His Lordship—Yes, indictment.

The Hon. the Attorney-General—I do not think we have any control over the criminal law; and if we have any legislation bearing on that, it would be ultra vires of the province of British Columbia, I submit.

His Lordship—The infringement of any provincial statute is an indictable offence, if I am not mistaken, by virtue of the express legislation of the Dominion. Why come to this court, when the highest court in the land is in order, and has provided penalties for infringement? And can you show me any case where this has been done?

The Hon. the Attorney-General—I think I can, Your Lordship. I submit, first, with regard to the section: "Nothing in this Act shall prevent any person from being indicted or liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by this Act, so that no person be punished twice for the same offence." That practically they are merely cumulative remedies.

His Lordship—Yes, they are cumulative remedies that the legislature had in its mind, summary conviction and indictment.

The Hon. the Attorney-General—But for instance, take the case of a railway company operating its railway in such a way

as to destroy life; naturally there would be the right to lay an information, an indictment, say for manslaughter, when an accident takes place occasioning the loss of life. But I submit to Your Lordship that, preceding the act which constitutes the crime, I in my capacity as Attorney-General of this province, have the right to come to this court and ask the court to see that the law is observed.

His Lordship—It is laid down in the case of the Emperor of Austria vs. Day, that this court, or a court, will not grant an injunction to enforce moral obligations, or to prevent people from breaking the criminal law.

The Hon. the Attorney-General—But I submit with all deference to Your Lordship, there is no evidence of any infraction of the criminal law, now, whatever.

His Lordship—They are employing Chinamen.

The Hon. the Attorney-General—But this is a law which is passed within the rights that exist in this province with regard to property and civil rights. We have passed a certain law or regulation, which we say must be observed; and I submit to your Lordship that when my learned friend's clients are entitled to mine coal in this province, they are only entitled to do so under the laws of this province; and if they transcend those laws, transgress them in any respect, I am entitled to come here in the public interest and ask that they should be compelled to live within those laws. The authority, I think, is clear. I will first give Your Lordship a reference in Kerr on Injunctions, Blackstone edition, star paging, 531: "Acts as illegal against the public. Companies incorporated for a special purpose exist for those purposes only for which they have been incorporated, and for no other purpose whatever." And a little lower down: "Although the Act may contain no prohibition in express terms against the company engaging in any business except to construct and maintain the railway, there is in every such Act an implied contract." And it goes on: "The suit should be instituted by the Attorney-General. A rival company is not qualified to represent the rights and interests of the public. To support an information, no substantial damage or definite injury to the public need be shown. It is enough that the company has not strictly followed, or is about to transgress, the powers which have been vested in it by the legislature, or is doing an act which is illegal and tends to the injury of the public; but the court will not, as a general rule, entertain jurisdiction, unless it is clear that the interest of the public calls for its interference. It is not enough that the act complained of may be ultra vires, and that it interests the public. It is only where some public mischief is done, or where, in respect of something intended for the public protection, there is misfeasance or non-feasance, that the Attorney-General ought to interfere."

In support of these propositions I first cite to Your Lordship the case of Cooper and Whittingham, in 15 Chancery Division, 1880, page 501. I read from the bottom of page 506, in the judgment of the Master of the Rolls, Jessel: "There was a point not insisted upon, but mentioned during the course of the argument. It was said that the seventeenth section of the Act created a new offence of importation and enacted a particular penalty," —as to which Your Lordship has observed rightly enough in this case, that there are provisions made for punishment by way of penalty and otherwise,—"and it was argued that where a new offence and a penalty for it had been created by statute, a person proceeding under the statute was confined to the recovery of the penalty, and that nothing else could be asked for. That is true as a general rule of law, but there are two exceptions. The first of the exceptions is the ancillary in equity by injunction to protect a right. That is a mode of preventing that being done which, if done, would be an offence." That is exactly what I say here. "Wherever an act is illegal and is threatened, the court will interfere and prevent the act being done"—and I have given evidence of that; it is not only threatened, but they continuously go on and employ these people—"and as regards the mode of granting an injunction the court will grant it either when the illegal act is threatened but has not been actually done, or when it has been done and seemingly is intended to be repeated."

His Lordship—They say to protect a right; do they say what kind of a right?

The Hon. the Attorney-General—Well, a right of the public. I do not see how any higher right could exist than this right. The Act says they shall not employ Chinamen. There is evidence that they not only employ Chinamen, but white men; and the protection to the white men is, that no Chinamen shall be employed underground.

The Court—That is not a protection to the public.

The Hon. the Attorney-General—What is the nature of the protection?

His Lordship—It is designed for the prevention of accident and the protection of those persons who go down to work there. But that is not protection to the public.

The Hon. the Attorney-General—I submit that protection to the public has always been construed to be—take for instance in the case of ditches, bridges, causeways, any structure over which the public go ——

His Lordship—Those are public highways, over which the public have rights, but the public have no right or concern in the working of this mine.

The Hon. the Attorney-General—The public have rights, My Lord, for the legislature, I submit, in its wisdom says that certain general laws shall be observed with respect to the carrying on of certain business. Otherwise, what right would there be, I submit, in the legislature to inter-

fere with those miners in carrying on their operations?

His Lordship—They can do anything they like, the legislature, they are all-powerful. But what you are doing is this, you are leaving behind the remedies that the legislature has provided for the protection of what you call the public, and you are coming here to the court and asking for something; and therefore you will have to satisfy me that this is an injury to the public. And this is not an injury to the public so far as I can see.

The Hon. the Attorney-General—I do not see that I am driven necessarily to that argument alone. But I say that this is a protection to the public, a portion of the public; I am not confined necessarily to the whole of the public, but to the public, great or small.

His Lordship—It is not a public matter at all; it does not concern the public.

The Hon. the Attorney-General—Upon that point I give Your Lordship the case of the Attorney-General on the relation of the Warwickshire County Council vs. The London & Northwestern Railway Company, Queen's Bench Division, 1899, page 72. The first of the head note is: "Upon an information filed by the Attorney-General to restrain a public body from exercising statutory powers in such a manner as to infringe an Act of Parliament, it is not necessary to prove that injury to the public will result from the acts complained of. Held, that, as the information was filed to enforce the express terms of an Act of Parliament, an injunction must be granted, although there was no evidence of any injury to the public" at all in this particular case.

His Lordship—No, it is not necessary that there should be any injury to the public, but it should be the public that it touches.

The Hon. the Attorney-General—Well, how far would this affect the public in this particular case? "An information was filed by the Attorney-General, on the relation of the Warwickshire City Council, against the defendants, the London & Northwestern Railway Company, for an injunction to restrain the defendants from allowing their trains to cross the Watling street at the level crossing adjoining Atherstone railway station at a speed greater than four miles an hour." The public were affected in the sense that more or less of them might pass in that neighborhood, I suppose, that was all. But in this particular case we have the express evidence of a great number of men being employed. It is public in the sense that the legislature has said that these people shall be entitled to carry on the mining of coal but they shall only carry it on within certain inhibitory provisions contained in the statute,—and for the protection of the public, I submit with all deference to Your Lordship; for the proctection of the miners. Surely somebody has to protect the miners in such a case as this. I have constituted myself, as I am compelled to, I submit, to protect the miners; I come here as the Attorney-General of the province to ask for the protection of those miners. Those miners could come here themselves, Your Lordship, I submit, and ask Your Lordship to restrain this company. I come here in equally as strong a position, if not stronger.

His Lordship—I think probably stronger. I do not think any court in the world would listen to an employee of a company asking for an injunction to restrain men from working their coal with Chinamen. And the reason of it is just what I have been trying to point out, it is not a public matter. The answer would be, if you do not like to incur the risk, if you do not want to go there, you need not; you have got no right there.

The Hon. the Attorney-General—I put this proposition to Your Lordship; we take the case of a miner employed by a mining company for a period of time, be it a year or less, as a miner; he has a contract with this defendant company, and he finds that in contravention of the law of the province he has his life endangered in carrying out his contract by their wrongful and illegal employment of Chinese. I submit to Your Lordship—although it is not my case—that there would be the right in that miner to move the court to restrain the company from carrying on their operations in such a way as that he could not safely carry out his contract.

His Lordship—He never would get an injunction. He would be told at once, if you have got any remedy damages is your remedy.

The Hon. the Attorney-General—Damages might be one remedy, Your Lordship, but I do not know that it would be the only remedy. However, as to that, as I submit, the position is this, that there is danger to life; not only danger to life of the other miners, but danger to life of these particular miners, these Chinamen themselves who are being employed. We have had the evidence of it. And surely, My Lord, there is a right in some one, and who better than the Attorney-General, to prevent the loss of life.

His Lordship—It is a case of moral obligation on the company; they must prevent loss of life; it is their duty; they are morally bound to prevent it. And it is laid down in the Emperor of Austria vs. Day that the court will not enforce a moral obligation by injunction.

The Hon. the Attorney-General—Pursuing what I have stated, as held in this case, we find Mr. Justice Bruce stating at page 75: "There are, no doubt, cases in which the object of the action has been to restrain a nuisance, and the courts have refused to act in the absence of evidence to prove that substantial injury has been caused by the acts complained of, or there has been some substantial interference with the rights of the public. But these cases differ altogether from an action such as the present, which is an information to enforce the express terms of an Act of Parliament. The legislature

having imposed certain conditions for the protection of the public, it is the duty of the court, on the application of the Attorney-General, on the relation of the local authority charged with the protection of the public rights in question, to enforce the provisions of the law." At page 76, also, the learned Judge refers to another case. "The whole of the cases on the subject are reviewed by Fry J. in the case Attorney-General vs. Shrewsbury (Kingsland) Bridge Company, and that learned judge arrived at the opinion that when a public company do acts, which are illegal, and tend in their nature to interfere with public rights, the Attorney-General is justified in interfering, though there is no evidence of actual injury to the public. In the present case I think there can be no doubt that the provision inserted in the Railways Clauses Act—and here it is the Coal Mines Regulation Act—respecting the speed at which trains should pass over the level crossing in question was intended for the protection of the public." As a matter of fact, My Lord, in the case of these particular mines you cannot really say what might be the extent of the injury to the public. They are situated right in the town of Cumberland, and an explosion might have a serious effect; its effect might be to destroy life to a very great extent indeed. "The defendants are committing an illegal act in disregarding that provision. They have no right to pass over the Watling street except on the terms imposed, and it is not for the court to disregard the terms which the legislature has formulated, or to treat them as superseded and inoperative. The court is bound, upon the application of the Attorney-General, acting upon the relation of the public body charged with the protection of the public rights on the road in question, to grant the injunction asked for." Now I draw Your Lordship's attention to the case of Bonner vs. Great Western Railway Company, in appeal, 24 Chancery Division 1883, at page 1: I refer particularly to page 8. It was a case of a railway company, as to the rights of that company, and as to the right of the Attorney-General to intervene. Lord Justice Baggallay says: "If a railway company are using their land, whether within their station arrangements or otherwise, for purposes not consistent with and not authorized by their Act of Parliament, then if the improper use of the land interferes with a right of an individual that individual may come on a case properly established to ask an injunction to restrain the railway company from such unlawful use of the land; and if there is the same unlawful use of the land, but the rights of private individuals are not interfered with, in such cases the Attorney-General may interpose and check the doing of acts which are ultra vires of the company." And I submit that in this case it is ultra vires of the power of this company to employ Chinese underground.

Then the case of the Mayor or Liverpool vs. Chorley Waterworks Co., 2 De Gex, MacNaughton & Gordon's Reports, in the year 1852; there we have the statement of Lord Justice Lord Carnworth, at page 860, which I submit is in point here: "For the purpose of the present argument, we will assume that, even within the limits of deviation, they are bound to convey the water by an open watercourse, and not by a covered channel, i.e., a tunnel or culvert. Still the question arises whether the acts of the defendants, departing in these respects from the strict parliamentary powers, are acts of which the plaintiffs have any right to complain, or demand the prevention, in the actual circumstances; for, though we accede to the general observation, that persons obtaining from the legislature, by Acts of Parliament, like those now before us, powers to interfere with rights of property for their own purposes (whether of a local nature or merely private) are bound strictly to adhere to the powers so conceded to them—to do not more than the legislature has sanctioned, and to proceed only in the mode which the legislature has pointed out—yet it does not follow, that any one of Her Majesty's subjects has a right to complain whenever parliamentary powers of this nature have not been strictly followed, or are intended to be transgressed. In such cases (we of course except any proceeding at the instance of the Attorney-General) a plaintiff seeking the assistance of a court equity, by way of injunction, is bound to show that he has an interest in preventing the defendants from doing what is in fact, or may well be called, a violation of their contract with the legislature." But there is an express admission of the power, as I submit, the Attorney-General has.

The next case I call Your Lordship's attention to is Ware vs. Regent's Canal Co., 3 De Gex & Jones's Reports of the year 1858; reported at page 212; and I particularly draw attention to the language of the Lord Chancellor at page 228—and this was on a point of excess of statutory power—on the question of the height of a bank; and it was a general statute which governed the construction of the road. He says at page 230: "On the contrary, the weight of the evidence inclines me to the opinion that the company have always kept the level of the water down to 35 feet 2½ inches, and thereby have confined their reservoir to the lands which have been assigned to them under their Act of Parliament. Now, upon the question whether I am to grant the injunction, I cannot avoid being influenced by the delay which has occurred in the institution of proceedings by the plaintiff, which though not amounting to absolute proof acquiescence, yet it is calculated to throw considerable doubt upon the reality of his alleged injury, and compels me to weigh the amount of inconvenience which he will sustain by my refusal of this particular remedy against the serious consequences which must result to the company from an order which will oblige them to

alter the state and condition of their works. The power which the court possesses of granting injunctions, whether interlocutory or perpetual (however salutary), should be very cautiously exercised, and only upon clear and satisfactory grounds, otherwise it may work the greatest injustice." At page 228, "Where there has been an excess of the powers given by an Act of Parliament, but no injury has been occasioned to any individual, or is imminent and of irreparable consequences, I apprehend that no one but the Attorney-General, on behalf of the public, has a right to apply to this court to check the exorbitance of the party in the exercise of the powers confided to him by the legislatures."

Then I submit to Your Lordship that this is the doing of an act which is illegal, and tends to the injury of the public. And I submit it does tend to the injury of the public. Because, the public, it seems to me, cannot be defined by any true criterion as to number, locality, nationality or otherwise. The public is something in the nature of being perhaps more than one person; if more than one person, or a number of persons are endangered, either as to their life or their property—whether it be property or civil rights—it is an injury to the public. And clearly the right of property or civil rights are something within the power of the provincial authority. The legislature has undertaken to protect life—and property in the person without life of course is valueless. To maintain life, to have labor in these mines, it seems to me that it is right that the province should exercise jurisdiction, and almost a parental, perhaps, care over the workers. I submit there is authority for that. And the legislature of course has brought its mind to bear upon that subject.

In the case of the Attorney-General vs. Shrewsbury, I have referred to, the case was, as stated by the head note: "When an illegal act is being permitted, which in its nature tends to the injury of the public (such as an interference with a public highway or a navigable stream), the Attorney-General can maintain an action on behalf of the public to restrain the commission of the act, without adducing any evidence of actual injury to the public, and in such a case an injunction will be granted with costs." Mr. Justice Fry, in a short judgment, puts the matter as clearly, I think, as can well be put—at page 754: "The question which has been mainly argued is this: Had the Attorney-General a right under the circumstances to intervene without showing substantial injury to the public? It appears to me that there is a conflict of authority on this point, or rather of some want of uniformity in the various authorities. But before considering the authorities, I will make this observation. This is clearly a case in which the defendant company without any power (for their powers had come to an end) thought fit to do certain acts which undoubtedly tended in their nature to interfere with public rights, and so tended to injure the public. The question is whether, under such circumstances, the Attorney-General is justified in interfering, though there is no evidence of actual injury to the public. In my judgment he is entitled to do so, and the court is bound to attend to his interference." So that I submit to Your Lordship that the question of whether there is going to be injury to the public does not dispose of the question. "One of the earliest cases on the subject is Attorney-General vs. Oxford, Worcester and Wolverhampton Railway Company. There, at the instance of the Attorney-General, the court restrained the opening of a railway not authorized by the Board of Trade, and Lord Romilly, M.R., said that 'the view he took of the case was this, that undoubtedly the Attorney-General might apply to the court in cases of nuisance. It was properly said on the other side that in all such cases the court required that the nuisance should be proved. But he was also of opinion that the Attorney-General, as parens patriae' (meaning thereby, I conceive, as the representative of the parens patriae), 'might apply to the court to restrain the execution of an illegal act of a public nature, provided it was established that the act was an illegal act and it affected the public generally.' Again, in Attorney-General vs. Cockermouth Local Board, Jessel, M.R., refused to grant an injunction on the bill, because he came to the conclusion that there was no evidence of any nuisance resulting to the plaintiffs from the defendants' acts. Nevertheless, at the instance of the Attorney-General, he granted an injunction to restrain the defendants from polluting the water of the river, because that was expressly prohibited by Act of Parliament. There, as in the present case, there was no evidence of any actual injury, but there was evidence that the defendants were doing certain illegal acts which tended in their nature to injure the public, and, accordingly injunction was granted with costs. In the more recent case of Attorney-General vs. Great Eastern Railway Company, the learned Lord Justices appeared to have differed somewhat in their opinions. If they had expressed any decided view affecting the present case, I need not say that I should have followed it. But having regard to that difference of opinion, it appears to me that that case furnishes no distinct guide to me. But, when I examined the judgment of Lord Justice James, who was the most adverse to the rights of the Attorney-General, I think that, even according to his view, the present action could be maintained, for, commenting on Attorney-General vs. Cockermouth Local Board, he said, "The Board were doing works which would or might probably poison a running stream, in direct violation of the law which prohibited them from committing a nuisance.' Just as there the acts which were restrained without proof or injury were acts which

in their nature tended to injure the public, so, in the present case, the acts which the Attorney-General sought to restrain were in their nature such as tended to injure the public. In coming, therefore, to the conclusion that this action can be maintained without proof of actual injury to the public, I think I am acting in accordance with the view of Lord Justice James. There is, moreover, the authority of Lord Hatherly in Attorney-General vs. Ely, Haddenham, and Sutton Railway Company. He said: 'The question is, whether what has been done has been done in accordance with the law; if not, the Attorney-General strictly represents the whole of the public in saying that the law shall be observed.'" And that is what I submit to Your Lordship I am entitled to say here, that I can represent there the whole of the public, in saying that the law shall be observed, notably the law with regard to the operation of these coal mines, and that no Chinamen shall be employed underground. And I am entitled to urge the language, and the full force of the judgment of Lord Justice Fry. The concluding words of the judgment are: "Here the law has been broken in a manner tending to injure the public, and, in my judgment, the relators are entitled to costs."

His Lordship—This affidavit of Mr. Morgan does not suggest any danger to the people above ground by the employment of Chinese underground; it does not suggest, as you mentioned just now in argument, that this mine is situated in the heart of Cumberland and that an explosion in the mine was likely to cause an eruption and send the whole town flying.

The Hon. the Attorney-General—But I submit to Your Lordship that, being here in my capacity as Attorney-General, it is not necessary for me to show in concrete terms an injury that is likely to ensue; all I am obliged to show is that there is an illegal act, a contravention of the law.

His Lordship—I think you must show that the public are affected. As long as your affidavit is confined to the question of employing Chinese below, the public are not affected. I have no doubt if you, as Attorney-General, were to come here and make an application that parties be restrained from blasting in the street here because it was likely to cause injury to the public, they could be restrained.

The Hon. the Attorney-General—This is the proposition I put to Your Lordship, on this suggested illustration of Your Lordship; if I were to show that the blasting out in the roadway here was being pursued illegally, in contravention of the terms of an Act of Parliament, I submit with all deference to Your Lordship that I could come here as Attorney-General and have it stopped without its being at all an incident that anybody might be injured.

His Lordship—You might, because it is a public highway and concerns the public. But you could not go to some man's sodawater plant, where there is just as much danger from explosion, and interfere, because the public would not be affected. And similarly, you cannot go down to this coal company's cellar and interfere there, where the public are not interested.

The Hon. the Attorney-General—If the sodawater factory had come within a general law of the province, that sodawater factory should be carried on under certain regulations, and if I show to Your Lordship that those regulations were flagrantly departed from, I submit again, that without it being at all an incident to the infraction of that general law that any one was injured, I could ask Your Lordship for injunction.

His Lordship—I do not think it could be granted, because the rights of the public are not interfered with.

The Hon. the Attorney-General—I submit to Your Lordship that the coal company have been by the general law of the province of British Columbia seized upon as being a public company. There are general statutes under which they must operate. They have been seized upon in the same way as railway companies—works of public utility; and they have been taken away from that private incidence which attaches to private ownership and private right of property; and they have been carried into a category, in which they are told, You shall carry on your works subject to these general laws, and unless you carry them on subject to these general laws you can be prohibited from carrying on those works. My learned friend's clients can only work their mines under the provisions of the law governing coal mines; otherwise, My Lord, we would be perfectly powerless as a legislature and government to carry out the laws of this province. Is it to be that we are to pass laws in our parliament, and declare certain things illegal, and these companies shall sit by and give no heed to those enactments? I submit they can only operate their coal mines in accordance with those laws, and I submit I could ask for an injunction, if I were so minded here, to restrain their operations in their mines altogether unless they lived up to the provisions of the law. I submit I could do so; that I could come here with some fair measure of justice and ask that the Wellington Colliery company stop operations unless they live up to the provisions of the law. Otherwise, what control have we of them? Can it be said for a moment that because of the fact of the legislature not having stated in concrete terms that if there is any infraction of these rules the courts of the province shall be entitled to issue writs of injunction to compel enforcement, that no writ can be issued? That is practically what my learned friend would present to Your Lordship. I submit that such a provision is not necessary, but the power is inherent in the court to compel a company to desist from doing that which is illegal under the laws of the province. Because these mines can only be operated

under those laws; they are subject to inspection; they are subject to all these regulations, and they must live within them. If such is not the case, then the legislature is powerless to govern and to guard the interests of the public in the carrying out of what is after all a very large and important industry in this province. I submit that when I come here and show that the act of this defendant company is illegal, whether there is going to be an injury to one, or to the public—that is not a matter which concludes me in this application—I am entitled to an injunction. I submit that the premise that I have to make out is, is it a legal or illegal act? And having established that it is an illegal act under the statute law of the province, then the injury is not a matter for inquiry; the observance of the law must be had.

Now, following out that, I refer to the case of Attorney-General vs. Ely, Haddenham and Sutton Railway Company, in 4 Chancery Appeals 1869, page 194; and particularly to the language of Lord Hatherley at page 199. There the application was to compel the observance of a clause of the Railway Clauses Act. Lord Hatherley: "The rights of those going to Grunty Fen cannot be destroyed on the plea of giving additional benefits to those going in another direction. As to the argument that the Attorney-General represents the whole public, he represents the whole public in this sense, that he asks that right might be done and the law observed. The law is not observed by giving advantages to persons going to Ely to the detriment of those going to Grunty Fen. The question is, whether what has been done has been done in accordance with the law; if not, the Attorney-General strictly represents the whole of the public in saying that the law shall be observed."

There is the other fact, too, Your Lordship—we have it in this evidence here that some 222 Chinamen are employed underground; that in itself must affect the public. If in the labor market there should be employment for 222 men who can fulfill the provisions of the law, why should they be deprived of that right? The employment of these 222 Chinamen means the non-employment of 222 white men who would not be hit against by this statute.

His Lordship—That is not a public matter.

The Hon. the Attorney-General—The colliery company flagrantly, as I submit, refused to comply with the general law. And, following out my reasoning, and as I submit, founded upon authority, I now refer to the case of Stevens ve. Chown, 1901, 1 Chancery Division, page 894; the head note is very short and very clear: "Where a staute provides a particular remedy for the infringement of a right of property thereby created or re-enacted, the jurisdiction of the High Court to protect that right by injunction is not excluded, unless the statute expressly so provides." Now it may be taken as admitted that this statute in question has no provision of exclusion of that kind; and as I submitted to Your Lordship, I claim that the power is in the court, an inherent power in the court, upon equitable principles; that power of injunction I submit exists. This case of Stevens vs. Chown was a case dealing with the Market Acts, which, after all, may be said to be dealing with business of a public character—it is treated by laws enacted by the Imperial Parliament; similarly, the coal mining regulations in this province. Now, Mr. Justice Farwell says, at page 902: "The Act in my opinion, provides for the substitution of a new market place in lieu of the old market place, and new tolls which extend to and include the old tolls, that is to say, there are not two sets of tolls, but the tolls allowed by the Act include the old tolls," and so on. Then he deals with Emperor of Austria v. Day, which your Lordship referred to, at page 904: "It was argued that unless an action at law would lie, the court would not have granted an injunction. I entirely dissent from that view, and I refer to the statement of the law in Emperor of Austria v. Day, as expressed by one of the greatest masters of equity, the late Lord Justice Turner. It was a case in which the Emperor of Austria sought to restrain the printing, the dissemination of notes issued by Kossuth, a Hungarian refugee, and made in imitation of notes circulating in Hungary. Turner, L. J., says: 'It is said that the acts proposed to be done are not the subject of equitable jurisdiction, or that if they are, the jurisdiction ought not to be exercised until a trial at law shall have been had. To neither of these propositions can I give my assent. I agree that the jurisdiction of this court in a case of this nature rests upon injury to property actual or prospective, and that this court has no jurisdiction to prevent the commission of acts which are merely criminal or merely illegal, and do not affect any rights of property, but I think there are here rights of property quite sufficient to found jurisdiction in this court: I do not agree to the proposition, that there is no remedy in this court, if there be no remedy at law, and still less do I agree to the proposition that this court is bound to send a matter of this description to be tried at law. The highest authority upon the jurisdiction of this court, Lord Redesdale, in his Treatise on Pleading, in enumerating the cases to which the jurisdiction of the court extends, mentions cases of this class: 'Where the principles of law by which the ordinary courts are guided give no right, but, upon the principles of universal justice, the interference of the judicial power is necessary to prevent a wrong, and the positive law is silent.' It is plain, therefore, that, in the opinion of Lord Redesdale, who was pre-eminently distinguished for his knowledge of the principles of this court, the jurisdiction of the court is not limited to cases in which there is a right of law. There is, indeed, a familiar instance in which the jurisdiction is not so limited—

the case of waste. To say that the jurisdiction of this court is limited only by the principles of universal justice would no doubt be going too far, and I must not be understood so to construe what Lord Redesdale has said. I take the passage to refer to cases in which there is what the law in principle acknowledges to be a wrong, but as to which it gives no remedy, as in the case of waste to which I have referred.'" Then Mr. Justice Farwell goes on and says: "Now, if I find that the statute enacts," and I adopt the learned judge's language, "either by way of new creation or by way of restatement of an ancient right, a right of property, that at once gives rise to the jurisdiction of the court to protect that right. If the Act goes on to provide a particular remedy for the infringement of that right of property so created, that does not exclude the jurisdiction of this court to protect the right of property, unless the Act in terms says so. There certainly is nothing in this Act to that effect."

Now I submit to your Lordship, the right to labor is the highest form and highest class of property; the property in the right to labor.

His Lordship—I do not think that is a property at all in any sense.

The Hon. the Attorney-General—Surely civil rights and property are to be protected by provincial legislation. One of the incidents, it seems to me, of the statutory authority which has been committed to the provincial legislature is to see that the public shall have the exercise of that right, which is a common law right, the right to labor. Surely they can safeguard it, and surround it with certain conditions and requirements. And if it is stated that Chinamen shall not be employed underground—it is aimed at that per se—it does not say that they shall not have other employment; but it says that they shall not have this particular class of employment—there is the right in others to object; and further, there is the right in the Attorney-General of the province to say, You are proceeding in an illegal manner, and you have been guilty of an illegal act. And it is in the right and power, I submit, of the Attorney-General to come to the court and ask that that law shall be observed. Now Mr. Justice Farwell goes on and says: "If authority is needed for that proposition, I think it is to be found in Attorney-General v. Aspinall. The basis of the decision was, that although there was a new right and a new remedy for the infringement of that right, the right did not consist in the remedy because a trust existed." Then he quotes Lord Cottenham upon the subject, at page 906: "A circumstance which proves that the right does not exist only in the remedy, but that the remedy, if applicable to this case, is afforded merely as another and additional means of enforcing the right. The jurisdiction of this Court cannot be taken away by another jurisdiction having cognizance given to it of the same matter." That reasoning appears to me to apply to the present case. Assume there have been none of these provisions for proceeding before magistrates, there would still have been a right of property in the market declared by the Act of Parliament and, I will assume, against my own view of the construction of the Act, created de novo. That is a right of property to which the ordinary incidents would attach, including the right to protect that property by proceedings in the Chancery Division or in the old Court of Chancery. That appears to me to be well established, and it is borne out by Cooper v. Whittingham. Jessel, M. R., possibly expressed himself rather more generally than he would have done had the case been fully argued; but that Cooper v. Whittingham, on the question of the general jurisdiction of the old Court of Chancery, is sound, apart from anything said on the Judicature Act, seems absolutely plain, and to have been so stated by Chitty J. in Hayward v. East London Waterworks Company." At page 907 Mr. Justice Farwell, using his own language, says: "The jurisdiction of the court which was stated to exist was in that case exercisable only ad interim, and fell within the second class of cases mentioned in Mitford on Pleading, namely, the jurisdiction of the court to keep matters in statu quo, or to prevent irremediable mischief pending the determination of the chief matter in question."

Then, on the question of practice familiar to your Lordship, I read from page 10 of Kerr on Injunctions, the statement of the law: "A man who comes to the court for an interlocutory injunction, is not required to make out a case which will entitle him at all events to relief at the hearing. It is enough if he can show that he has a fair question to raise as to the existence of the right which he alleges."

My learned friend may refer to the case of Brydon v. The Union Colliery Company; and I submit that case is immediately distinguishable.

His Lordship—That turned upon the particular facts of the case; as stated in the judgment of the Tommie Homma case, the Privy Council says in that case, the Union Colliery Company and Brydon, turned on the particular facts of the case suggested during the argument, namely, that the legislation was directed to the suppression of Chinese in British Columbia and not for the preservation of life in coal mines.

The Hon. the Attorney-General—It was the bald section of the Act, without reference to the code of regulations or anything of the kind, which were to be observed in coal mines. But now the legislature, in view of the opinion of their Lordships in the Privy Council, proceed in a new way to deal with this subject, and enact by way of regulation, in the way of protection as it is conceived on the part of the legislature—protection in the carrying on of these mines. The Lord Chancellor, in the particular case, used this language, dealing with that case: "That case depended upon totally different grounds. This Board, dealing with the particular facts

of that case came to the conclusion"—that is to be found in 19 Times Law Reports, at page 127; that is the Tommie Homma case. And I submit that that case goes a very long way to support the legislation of the province now. Because here are Japanese who have become naturalized British subjects, and one would naturally think that being British subjects that they would have all the rights and privileges of British subjects; and one right which it looks upon as most sacred, and jealously guarded and maintained by the public, is the right to exercise the franchise; and that right to exercise the franchise has been taken away from the Japanese. Now the legislature in its wisdom has undertaken to take away the right in the Chinese, as such, to labor underground in mines. They have undertaken to do it. They have done it by regulation. They have done it, as in the wisdom of the legislature they conceived, because there is danger to life and to limb if it is not done. And as I say, that point is concluded. Now, I think your Lordship will agree with me that there is the power in the legislature to take property even without compensation, from the individual. It would not perhaps be according to the moral law, nor would a legislature perhaps do it. But still, I think, amongst lawyers, it is admitted that there is paramount right in the legislature to take a man's property and not give him compensation for it. Therefore, if this goes to deprive him of a certain avenue of labor, in order to protect life, that is not anything that transcends the power of the legislature. If the legislature can take away the power from a man to vote, the legislature can take away from a man the power to labor in any particular way. It is not a total abolition of his right to labor, it says that he shall not labor underground in mines. And it is a matter of common knowledge that there is lots of other labor in this country for this class of people. But in this particular work the legislature has said they shall not be employed, and cannot be employed. And it is because of their being employed that I submit to your Lordship I am entitled to come here, and having proved that the Act is a contravention of the law—the employment of these men, and being an illegal act—that in itself gives me the right to move.

I would like also to cite the case of Attorney-General v. Ashton Recreation Grounds Co., 1903, 1 Chancery, 101; it is not in the library. Also Attorney-General vs. Great Eastern Railway Co., 11 Chancery Division, 449; I refer your Lordship particularly to page 484; there, Lord Justice James deals with the trangression of the statute law. This is the case of a railway company. "Of course, if such a company as that were allowed to embark in a gigantic coal business, it is easy to see that coal proprietors were not likely to be served on the line as they ought to be served, and there might arise other inconveniences. I am far from saying that a railway company ought to be permitted to carry on a trade of ironmasters, or colliery proprietors, or rolling stock manufacturers, not casually, not incidentally, not collaterally, in the bona fide conduct of their own property and business, but as really a distinct and separate trade. I can conceive that such a case might be propertly considered by the Atorney-General by this court, as a fraud on the legislature which has created and authorized the company only for what it professed and undertook to do; but, at all events, it must be something great, something substantial, to warrant such interference. It is not possible to define what is, for this purpose, great, what is substantial, any more than it is possible to define how much of smell or how much of noise amounts to a nuisance or what is or is not reasonably incident to a business. But generally speaking, it not practically difficult to ascertain when the line has been clearly transgressed, and in this case, speaking for myself, I should say that the facts do not show any ground of complaint on the part of the public, even if the agreement has been made out to be theoretically ultra vires. And it is, in my judgment, to be considered, for the purposes of this action, that there is no rea difference between a body of shareholders incorporated by special Act of Parliament for the purpose of making and working a railway, and a body of shareholders incorporated under the general law (now applicable to large associations) for the purpose of establishing and working any other industrial enterprise. So far as the first has compulsory powers it must not abuse them so far as it has statutory duties it cannot delegate them; so far as it is under any statutory prohibition or direction it must not violate the one or neglect the other." Now, I submit there is a statutory prohibition here. My learned friend's clients are disentitled under the general law of this province to employ Chinamen in their mines; and I submit to your Lordship they must live up to that statutory inhibition or prohibition; and they cannot flagrantly and defiantly carry on their operations contrary to the law. If they think the law is not within the power of this legislature, then it is a matter for agitation in the courts and for settlement in the courts; we have courts for that purpose. But there is not right to flagrantly disobey it. "But even in these cases it is only where some public mischief is done, or where, in respect of something intended for the public protection, there is misfeasance of nonfeasance, that the Atorney-General ought to interfere. If a particular land owner has cause of complaint, it is for him to appeal to the tribunals. If as between the company and its shareholders there is a wrongful application of the capital, or a wrongful incurring of liabilities, it is for the shareholders to complain; if as between the company and any persons outside the company, it is entering into contracts ultra vires, it is for such persons to take proper advice and guard themselves from risks which they are perfectly free to avoid. I

cannot myself see any principle on which the Attorney-General is to interfere with a railway company's contracts because they are ultra vires any more than he would on the like ground interfere with the contracts of any other incorporated joint stock company, carrying on any other industrial enterprise. That is quite right, it seems to me. "In neither case is it, in my judgment, for the Attorney-General to take up the complaint of a rival trader who says that the company is trading in something which it was not established or incorporated to trade in. I cannot think that it is for the Attorney-General to invoke the court, nor for the court so invoked, to interfere to prevent a gigantic" and so on. That is right, your Lordship; but if the Attorney-General of the Province is not to be entitled to come here and state to your Lordship what the law of the province is, and ask that it should be obeyed, who is entitled to come here? I submit again that the miner could come here. I think he could. I think the white miner engaged in this mine along with the Chinamen underground, could come here and say, I am subjected to a possible injury which is aimed at by the statute; and this company is compelling me, in this sense, that unless I lose my labor and my right to work there—unless I go away and lose my right to labor there for myself, I am subjected to a peril that the legislature says I shall not be subjected to. Our evidence shows that there are white men in this mine along with the Chinamen, and the statute says there shall not be Chinamen underground there. Now I submit that I am entitled to come here and lay before your Lordship, to prove as I submit I have proved, that this company is doing an illegal act in employing those Chinamen underground; they are subjecting these white miners to a peril which the statute says they shall not be subjected to. They are acting outside their powers; they are not living within their powers, they are transcending their statutory rights and they are carrying on industries which have been specially dealt with and specially legislated in reference to for the general protection of property and life. It is clear, my Lord, from the very language of the statute. What has the legislature in its mind? The protection of life and limb. Now, I submit to your Lordship the protection of life and limb must certainly be the life and limb of those people and that man underground; I submit that it must be the life and limb of the person also who is casually proceeding along the public highway in the neighborhood of those mines; I submit that the legislature seized upon the particular fact itself, and said that in these mines underground there shall not be employed a class of people who will jeopardize the life or limb of the fellow-workmen there.

This concluded Mr. McPhillips' argument.

His Lordship—I won't trouble you, Mr. Luxton. In the affidavit before me there is no statement as to where this mine is situated, beyond, at Union; there is nothing to show, nor is it suggested in the affidavit, that there is any danger to the public by reason of the proximity of a settlement to that mine that is being worked, or by reason of the mining operations being conducted so close to the surface as to become a nuisance or likely to injure people in the neighborhood. The case rests simply on this, that a statute prohibiting the employment of Chinese underground is being violated. And there is a suggestion contained in the affidavit that the lives of other people employed underground are endangered.

In granting injunctions, especially where there is a going concern, such as a colliery, the court has to proceed carefully. It is a very serious matter to interfere with any person's business. There are cases over and over again where the court has refused to grant an injunction against a colliery on that ground. In a sense, the public are interested in seeing that the thing is carried on. But that does not by any manner of means, make the system of carrying on the mine a matter of public concern. Now the Attorney-General contends that the system on which this mine is carried on is a matter of public concern. I am not able to see that it concerns the public in any way whatever. It is not a public question. Certainly it is not a question affecting the public or likely to affect the public to such an extent as to call for the allowance of an injunction—which is a very extraordinary remedy. This court does not grant an injunction for the purpose of enforcing moral obligations, nor for keeping people without the range of the criminal law. There usually must be some right—a right of property, or some right at any rate—infringed or likely to be infringed. The miner who is employed in that mine has no right to come here and ask for an injunction, because he has no right of property, he has no proprietary right which is being infringed. The Attorney-General is not entitled to obtain an injunction from this court, because there is no public right being infringed or likely to be infringed. The public are not concerned in this particular matter. To use the language that is referred to in some of the cases—the affidavit does not show that the public interests are so damnified as to warrant the issuing of an injunction in this case. The motion will be dismissed.

Not content with the decesion, it was decided to exhaust every remedy possible. The next regular sittings of the Full Court, at which an appeal from Judge Irving's decision could be argued, would not take place until November. Under instructions from the Attorney-General, Mr. D. M. Rogers applied to the Chief Justice on September 17th for a special sittings of the Full Court to be granted at once, in order to bring on the appeal without delay. The Judges found, however, that it would be impossible to hold such a sittings, as the Fall Assizes were commencing and the Judges were leaving at once for the different points throughout the Province where the Assizes are held.

The matter is not ended yet, by any

means. Every resident of British Columbia who is interested in this Chinese labor question will appreciate the diligence and earnestness which the Conservative Government has shown in bringing the matter to a head and endeavoring to assert the right of the Province to regulate its own labouring rights. And they can rest assured that, if the McBride Government are sustained, this question will not be allowed to rest, but will be fought out to the Court of last resort.