AN ADMINISTRATIVE HISTORY OF THE SUPREME COURT OF BRITISH COLUMBIA WITH PARTICULAR REFERENCE TO THE VANCOUVER REGISTRY: ITS CIVIL RECORDS, THEIR COMPOSITION, AND THEIR SELECTION FOR PRESERVATION

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Abstract

Legal history is social history, family history, women's history, economic history, business history, and constitutional history; in fact it is a growth industry. Records from the civil division of the British Columbia Supreme Court furnish the best possible primary sources, the evidence for local studies in these fields.

This thesis is put forward as a practical guide both for scholars who wish to search records from the Vancouver Supreme Court Registry and for archivists who need a conceptual framework for appraising civil court records. It traces the origins and common law traditions of the court, describes court administration and the rules for civil procedure, tabulates the kinds of record kept by the civil division, and works out for archivists a practical means of selection.

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CHAPTER I

Introduction

In order to demonstrate the value of civil records for historical research this thesis examines the documents received and generated by the Supreme Court of British Columbia at the Vancouver registry. It describes the court system and the record-keeping practices of the registry so as to bring the records into proper perspective and help make them accessible to scholars.

Accordingly, this the first chapter provides an historical overview, gives an explanation of the court structure today, the levels of court, and places the Supreme Court of British Columbia in the hierarchy of the judicial system. The second chapter chronicles the history and jurisdictions of the court primarily from 1858 to 1960, emphasizing the evolution of the Vancouver registry. The whole, somewhat complicated chronicle required a search of the statutes, the sessional papers, and the debates of the legislative assembly to get at the basic facts. Historian Hamar Foster, writing in 1984, says, "whereas some work has been done on the judicial system prior to 1871, virtually none has been done in the 30 years following Confederation."[1] The colonial period has certainly been well covered, but there are no ready secondary sources for the Canadian period that followed. The third chapter explains the administration of the court: the part played by the registrar and his staff, the people with whom the documents are filed, who empanel the jury, make up the court lists, monitor and record the progress of a cause and search records on request. It explains how the records are kept before and during trial, and the record scheduling procedures. Information for this chapter was assembled through the assistance of past and present court registry staff.

There follows, in Chapter Four, an examination of individual case files taken from the personal actions, probate, bankruptcy and divorce sections of the Supreme Court, which are stored in the Court Records Centre at Vancouver. Individuals came to the civil courts of their own accord. Through the case file we know with immediacy what brought them and how they were served. The civil case files are unsurpassed in giving life to the social conditions and widely differing personalities of the past. The fifth chapter offers a practical means of selecting files for permanent preservation and draws conclusions. The thesis discusses records in the B.C. Supreme Court only, and does not, except incidentally, refer to civil business under other jurisdictions.

To use the records effectively, one requires a knowledge of the structure and procedures of the courts and the common law. The common law system is adversarial. Audi alteram partem requires that each side present a case. The manner of pleading and the rules of evidence are set out by statute and are printed in the Rules of Court.[2] There is an element of technicality in the system due to a belief that it is the process that protects. Thus, lawyers speak of "due process". The judge decides between the litigants and is not an investigator as he is in the French system; he decides only the questions that counsel raise in argument. The higher courts are courts of record: they are bound by their own decisions, stare decisis, and follow precedent. Notable court decisions are published, and go to make up case law. Besides the adversarial system, the characteristics of the common law tradition are public trials, the institution of the jury, the right to a speedy trial, the right of appeal to a higher court, and an independent judiciary with the power to grant orders and enforce judgments.

A researcher must also understand the hierarchy of the courts in order to ascertain what sorts of records may be found in each and, indeed, where they may be found. The Supreme Court of Canada, the Federal Court of Canada (formerly the Exchequer Court, the Admiralty Court, and the Immigration Court) and the Court Martial Appeal Court are all federally administered. Their extant records belong to the Government of Canada and may be transferred either to the Government record centre in Hull or to the Public Archives of Canada in Ottawa.

The archivist should note that the most important civil cases (as well as all divorces prior to 1968) were tried either in Vancouver or in Victoria, not in the judicial districts where the disputes may have originated, except for mining cases diverted to the County Courts after 1957 (see Chapter II) and those cases held over in the district for the assizes.

Ownership of the obsolete records of provincially administered courts is shared by the municipalities and the province. Of those extant from the Vancouver registry a few are in the Vancouver City Archives, the rest are on deposit at the Court Services Record Centres or the Provincial Archives of British Columbia.

In provincially administered courts, judges fall into two categories: those federally appointed who sit in County Court, Supreme Court, and the Court of Appeal, and those provincially appointed judges who sit in Provincial Court, formerly called Magistrate's Court. (Since 1974 there have been no magistrates.)

The old Magistrates Courts had jurisdiction over petty crime, juvenile delinquency, and small claims. But the new Provincial Courts have expanded their operations, especially in criminal matters. They are now the busiest courts in the province. Since, in the beginning, they were established to deal with the less serious offences, they were not authorized to hold jury trials. And so most criminal jury trials are heard in County Court. Still, over ninety per cent of criminal cases are heard in Provincial Courts. Jurisdictions in criminal areas are determined by express provisions in the Criminal Code - a federal statute. But the cases are not always allocated to any level of court. A drug case today, for instance, may be heard in Provincial Court, County Court, or Supreme Court with little regard for the seriousness of the drug offence.

Provincial Courts now have exclusive jurisdiction in juvenile and family matters. There are then three divisions within the Provincial Court system: Criminal, Family, and Small Claims. Family Court judges are specialists in family matters and do not hear criminal trials.

County courts have the authority to try most criminal cases. Those beyond their jurisdiction are homicide, high treason, intimidating parliament, mutiny, sedition, piracy, alarming Her Majesty, and bribing judicial officials. In civil cases, County Courts are restricted by the amount of damages sought. The limit today is about twenty-five thousand dollars. According to federal law, divorces are granted only by a Supreme Court judge, but since 1968 a County Court judge can by provincial law be authorized to sit as a local judge of the Supreme Court and hear divorce cases. Also, by provincial law, a County Court judge may be authorized to hear probate and bankruptcy cases.

The Supreme Court of British Columbia has been established as a court of unlimited jurisdiction and can try any case. One Supreme Court justice resides in Victoria, all others (thirty-one in 1985) reside in Vancouver, hear cases at the Vancouver Law Courts and go on circuit twice a year, spring and fall, to hold Assize Court in the other thirteen judicial districts of the province. The Chief Justice of the Supreme Court organizes the schedule of cases and assigns the several judges to the various cases in the Supreme Court. The chief justice traditionally assigned a balance, to ensure that not all one type of case was tried by any one judge. There are no specialists in the Supreme Court.

Today in British Columbia, all the Appeal Court justices (thirteen) reside in Vancouver and the appeals are heard in Vancouver. Appeal from the B.C. Court of Appeal may be made to the Supreme Court of Canada, which will hear a case only if a special point of law is in question or if the issue is one of public interest. Until 1949, appeals in civil cases could be made to the Lord Justices of the Privy Council in London. Bound copies of these appeal books, an important reference, are in the Law Library at U.B.C.

The archivist should also be aware of the records generated by "bureaucratic" law. Regulatory boards, administrative agencies and tribunals have been used increasingly to divert litigants from the courts, and many disputes are settled by their officers. For instance, landlord-tenant differences have been adjudicated by the Rentalsman, and employer-employee conflicts by the Labour Relations Board. Some of these regulating boards are subject to judicial review and some are not. Their powers, procedures and rules of evidence vary. Thus, the Rentalsman could take submissions over the telephone and the Workers' Compensation Board will accept anonymous information, such as, an unsigned letter from a party who saw his "disabled" neighbour climb a fence. This study, however, covers only records whose provenance is the British Columbia Supreme Court.

The foregoing outline of all the courts operating in Vancouver is to place in context aspects of the Supreme Court now to be examined in detail.

Notes to Chapter I

[1]Hamar Foster, "Law Enforcement in Nineteenth-Century British Columbia," B.C. Studies 63 (Autumn 1984), p. 25.

[2]Information on the court structure is taken from Perry Millar and Carl Barr, Judicial Administration in Canada (Kingston and Montreal: McGill-Queen's University Press, 1981).

CHAPTER II

The Civil Jurisdiction of the Supreme Court

What follows is a look at the growth of the British Columbia Supreme Court from the days of a single itinerant colonial judge resident in Langley or New Westminster, to a Supreme Court centred at last in Vancouver with, in 1960, fourteen Justices. A subordinate aim of this chronicle is to draw attention to the particular characteristics of the British Columbia judicature which made it unlike the courts in the American West and unlike the earlier colonial/Canadian courts that functioned in the Maritimes and in Central Canada.

For when Upper Canada was severed from the Old Province of Quebec (because the new American settlers, inheritors of the common law, could not accept the French legal system) the courts they established were decentralized and informal[1], as in the United States. Quite otherwise was the situation in British Columbia where the court was centralized and strictly formal; British Columbia's version was not an eighteenth century court like Ontario's, set up to accommodate men displaced by the American Revolution, but a mid-nineteenth century court that combined at its inception the Common Law, Chancery and Ecclesiastical Courts into one Supreme Court (anticipating by fifteen years similar reforms in England).

In the West the granting of civil jurisdiction was consequent on the commercial activity of the region (first, the fur trade, then the gold rush). British Columbia's colonial system was constituted at the outset to allow for economic growth. The first court, then, was more English than its counterpart in Ontario, and essentially energetic, progressive, mercantile, and Victorian.

Before embarking upon a history of the British Columbia Supreme Court, we must first recognize that acts to secure law and order, throughout the western territories as a whole, were in place before the colonies of Vancouver Island and British Columbia were actually established. This contrasts sharply with the Western United States where settlers, far from an enforceable and clear authority, behaved wildly or took the law into their own hands.

By an act of the British Parliament in 1803[2], fur traders venturing into Indian territory were under the jurisdiction of the Colonial Courts of Upper and Lower Canada; any traders accused of crimes were to be sent east to the Canadian courts for trial. But the act applied to criminal offences only. As the traders in Indian territory became more numerous and organized themselves into companies, disputes resulting from commercial competition became more frequent, and what was urgently needed was civil law that would deal with business, with licences, debts, creditors, contracts, obligation, property and inheritance. Accordingly, in 1820 an act was proclaimed "for regulating the fur trade and establishing criminal and civil jurisdiction within certain parts of North America":[3]

that is, in the territories beyond Upper and Lower Canada and outside of the civil government of the United States. The act provided for a Justice of the Peace at each fur-trader fort "for persons appointed under the Great Seal to sit and hold Court of Record for the trial of criminal offences and misdemeanors and also of civil causes."[4] These courts were what we would call lower or inferior courts. Serious crimes, punishable by capital punishment or transportation, and civil actions exceeding £22 had still to be sent to Upper Canada for trial.

In 1821 the Hudson's Bay Company merged with the Northwest Company, moved into the "Oregon Territory" and established headquarters at Fort Vancouver on the Columbia River. This company had a licence from Great Britain for a monopoly of trade west of the Rockies. However, the disputed "Oregon Territory" was granted to the United States, and in 1843 James Douglas, Chief Factor of the Hudson's Bay Company, established a new trading fort on Vancouver Island, Fort Victoria, which in 1849, when the colony was proclaimed, had only thirty colonists! According to Blackstone, English settlers locating in a country where there is no settled system of jurisprudence, carry the common law with them. These thirty colonists then were under the common law as well as the aforementioned Acts of George III and George IV. Nevertheless, the British Government immediately passed, on July 28, 1849, An Act to Provide for the Administration of Justice in Vancouver's Island, which repealed the old acts requiring superior court trials to be sent to the Canadas and gave the colony on the Pacific the power to set up the machinery of English Common Law: a hierarchy of courts, including a supreme court of unlimited jurisdiction with the right of appeal in all civil cases to the Privy Council in England (whereas the final disposition of criminal cases remained within the colony). The act gave the court equitable and ecclesiastical jurisdiction well before the Judicature Acts of 1873-75 (U.K.) merged the administration of law, equity and ecclesiastical courts in England. It declared:

> The said Supreme Court shall have cognizance of pleas, jurisdiction in all civil cases arising within the said colony, with jurisdiction over Her (Majesty's) subjects and all other persons whomsoever residing and being within the said colony, and shall have all such equitable jurisdiction and all such powers for enforcing and giving effect to the same as the High Court of Chancery hath in England . . . . The Court shall have power to appoint and control guardians of infants and their estates and committees of persons and estates of idiots, lunatics . . . and shall have exclusive jurisdiction in all questions relating to testatory or intestatory matters, and to the validity of wills of personal property as fully as any Ecclesiastical Court hath in England and shall have powers to grant probate of wills, letters of administration . . . and jurisdiction to apply, judge and determine upon and according to the laws now or hereafter in force within Her Majesty' said colony . . . and jurisdiction and authority to review the proceedings of all inferior courts of civil justice within Her Majesty's said colony, and if necessary, to set aside or correct the same . . . .[5]

And so the court's authority began in 1849, when Governor Blanshard, establishing a lower court to settle disputes among a few colonial coal miners and the Vancouver Island Indians, appointed Dr. J.S. Helmcken as Justice of the Peace at Fort Rupert.

By 1858 the island had a white population of 774, and two major centres, Victoria and Nanaimo. On the vast mainland, "New Caledonia", there were only a few whites, all associated with the fur trade. But when gold was discovered in the Fraser River in the spring of 1858, people poured into the colony. It is said that twenty-five thousand disembarked at Victoria before the year's end. James Douglas, who succeeded Blanshard as Governor, had no legal authority over the mainland where most of the immigrants were headed. The mainland, or "New Caledonia", was promptly proclaimed the "Colony of British Columbia" and Sir Edward Bulwer-Lytton, the colonial secretary, appointed six officials to administer the affairs of the colony among them an inspector of police, an attorney-general and as Chief Justice, an energetic London lawyer who had had first-hand experience fortifying the business law of an expansionist economy in England.

Matthew Begbie arrived in Victoria November 16, 1858. Travelling to Fort Langley he read out proclamations from Bulwer-Lytton, one indemnifying colonial officials for any acts done before they had legitimate authority in British Columbia, and the other proclaiming the law of England to be the law of British Columbia.[6] Six months later, he proclaimed the institution of the Supreme Court of British Columbia, a court having jurisdiction in all cases civil or criminal in the colony and observing the forms and procedures of the common law of England. Adherence to the English Law Act, incidentally, remained a characteristic of British Columbia's courts for at least a hundred and twenty-five years.

In December 1859, Begbie issued the general rules and orders of court for the colony and ordered that the court should sit four times a year at Langley. He also set down the regulations admitting barristers since individuals before the law ought to have recourse to a competent defender or advocate. His regulations were less strict than those in the Colony of Vancouver Island in that he would (in theory) allow Americans to be admitted to the bar. His letter to Douglas, 29 December, 1858, with its notion of public law expressed a theme to which justices of the Supreme Court of British Columbia would keep returning:

> To render a court of justice useful it is more important that the suitors should be satisfied than that substantial justice should be done. Substantial justice might be and often is done by a strong despotism; it might and would be just as often as not, the result, if the decision were left to chance. But neither a despotism nor the hazard of dice would be a satisfactory tribunal at the present day. Absence of counsel merely inconvenient in civil cases often operates with extreme cruelty in criminal cases, notwithstanding the utmost anxiety of the Judge.[7]

During the first eleven years, Begbie was the only judge for the colony and proclaimed and maintained the majesty of the law throughout the whole territory; the bulk of the cases decided by him were civil and, during the gold rush period, most of these concerned the ownership of mineral claims. Arthur Bushby, the irrepressible young Englishman who was his court registrar and went on circuit with him, wrote in his diary, "There are heaps of civil cases here [Yale] - Hicks recorded the same piece of land to three different persons within one week."[8]

Begbie's biographer, David Williams, writes that the colonial officials dreaded Californian consequences, and that the great accomplishment of the gold mining period was the imposition of a settled, uniform, acceptable and accepted civil law. Disputes and claim jumping questions would be settled before matters deteriorated and before violence and crimes resulted. The free enterprise spirit had flourished in the California mining camps, where each camp decided its own rules. These American camp committees excluded Chinese from staking claims and often blacks and Indians too. Here Begbie wrote the rules for prospectors. Very soon after his arrival, Begbie drafted two essential pieces of legislation: the Aliens' Act of 1859 and the Gold Fields Act of 1859. The Aliens' Act gave incomers the right to deal in land, and granted them an easy means of naturalization. The Gold Fields Act gave details of the rules governing land registration. The act addressed time limitations on working a claim, uses of water (for sluice mining), ditching, improvements, abandonment, mechanisms for transferring claims, creek boundaries, and procedures to follow when a creek changes course. Gold Commissioners were assigned to each area to enforce the mining regulations, and the peace was maintained.[9] For as Judge Begbie wrote to Douglas, the miners had come to British Columbia to make money and not to fight each other.[10]

The two colonies, Vancouver Island and British Columbia, were united in 1866. Judge Begbie, keeping his residence in New Westminster, was chief justice of the mainland until he moved to Victoria in 1870. From then until his death in 1894, he was chief justice of the province. In 1870, the legislature appointed a second Supreme Court justice, Henry Pering Pellew Crease. Now both judges resided in Victoria and went out on circuit for the assizes.

The court system had been financed within the Colony principally from excise duties and registry fees. When the colony became a province of Canada in 1871, British Columbia's economy was depressed, gold mining activities had slowed down and, with only nine thousand citizens, the tax base was meagre. Under the terms of confederation, the Dominion Government appointed and paid the salaries of the Supreme Court and County Court judges, while the provincial governments appointed and paid for the support staff -- the registrars, sheriffs, court officials, reporters, ushers and janitors. And the province had also to build the courthouses - a heavy load.

After confederation, in 1872, the Dominion Government appointed a third judge to the B.C. Supreme Court, John Hamilton Gray, a former speaker of the New Brunswick legislature, one of the "Fathers of Confederation", and a member of the first Canadian Parliament.[11] The judges were all well qualified. Matthew Begbie had a degree from Cambridge in mathematics and classics, was a successful lawyer in Chancery and a specialist in the law of partnership. Crease, like Begbie, was a graduate of Cambridge and a member of the English bar. Both were men of unfailing industry with a genuine zest for public service. They attended to all the details of the courts, went on circuit (their supervising assizes were almost an arm of government), and did whatever else was essential for the orderly administration of justice. Indeed, Begbie, writing to Sir John A. Macdonald in Ottawa, declared, "I never consented to become a district judge, much less a county court judge or Gold Commissioner, though I have not hesitated to act in these capacities when I saw any necessity."[12]

There were three Supreme Court judges, and the only appeal from their decisions even after Confederation was the Privy Council in London. To make high court appeals easier, the provincial legislature passed the "Judicature Act of 1879"[13] authorizing an appeal procedure to the "Full Court" in Victoria. The Full Court comprised three judges of the Supreme Court sitting together and receiving further evidence on questions of fact or law; that is, the act provided for a re-trial, not just an appeal on a question of law. Appeal to the Supreme Court from the Small Debt Court, on the other hand, was merely on a question of law.

The main incentive for Confederation had been the promise of a transcontinental railway. By 1885, the CPR had completed its line to the Pacific Coast, unexpectedly extending it fifteen miles so that Vancouver, not Port Moody, became the terminus. "Within weeks of its incorporation (1886)", Margaret Ormsby writes, "the city had 800 business establishments and a population of 2000."[14] The first government building on Burrard Inlet, the Custom House, had two log cells, so it was designated a court house. The City of Vancouver's policeman, Jonathan Miller, lived there and also served as Clerk of the Court.

In June 1886, the Maple Tree Square fire destroyed the town, but not the "Court House". Judge Begbie held the fall assizes there after the fire. No Supreme Court records were kept there; it did not have the offices or court registry to file documents.

When the city was incorporated the five clearly defined judicial districts in the province were: Victoria, Nanaimo, Yale, Cariboo and New Westminster, each with a resident county court judge and court registry. Vancouver was part of the New Westminster Judicial District. It had its own magistrate's court to deal with police charges, by-law infractions and small debt cases, but no county court registry or land registry.

From its founding, the city's development was hampered by the lack of a civil court. The Provincial Legislature had granted the sum of $5,000 for a court house; however, that was not sufficient. In 1889, the aldermen petitioned Victoria for $1,500 more. They needed the extra money because the initial grant did not extend to

> . . . [a] registry office, and other suitable necessary offices for the officials required in connection with the said court house and registry office . . . There is no Land Registry office in the said city of Vancouver, and in consequence the citizens and public continually are put to great

> inconvenience and expense, by having to go to New Westminster to register all their conveyances of Real and Personal Estates, and search the titles to the same.[15]

It was a taxing journey thirty miles south to New Westminster. By then Vancouver was thriving, having a growing population of 11,000 persons, 2,700 buildings, three chartered banks, and a need for a place to conduct ordinary civil business. But the aldermen's hopes were disappointed.

The unaugmented court house at Cambie and Hastings (now the site of Victory Square) was opened in October 1890. A.E. Beck was registrar of the County Court, clerk of the peace and registrar of birth, deaths and marriages. The Inns of Court Building housing the legal profession was next door to it on Hamilton Street. Still Vancouver remained part of the Judicial District of New Westminster, even though the city had surpassed New Westminster in population and was only slightly smaller than Victoria.[16]

Lawyers, now organized into the Vancouver Bar Association, joined the aldermen, businessmen and Vancouver MLA's in pressing the legislature for a superior court judge. The legislature at last gave way and passed the Supreme Court Act Amendment Act of 1892[17] creating the Vancouver Judicial District. The Act defined in detail geographical boundaries of the District and provided that "the registry for the Judicial District of Vancouver be the City of Vancouver." But such was not to be, and the case of Vancouver's Supreme Court Judge provides a lesson in the unreliability of statutes as evidence in historical reconstructions. For to have a judicial district there must be a resident judge.

On the Supreme Court bench were Begbie, Crease, J.F. McCreight, Montague William Tyrwhitt-Drake, and George Walkem (replacing Alexander Robertson). Both McCreight and the late Alexander Robertson had been briefly resident in the interior with unhappy and, in the case of Robertson, tragic results. The arrangement known as "districting", which sent a Supreme Court judge to reside in an assigned judicial district, was a testing experience for the provincial attorney-general. It is true that Begbie had resided in New Westminster for twelve years. He was exceptional; the others were reluctant to leave Victoria. Theoretically, the judges were to decide the placement among themselves, but they would not send one of their own to the Cariboo or Kootenays away from the pleasant amenities of Victoria, the protocol of Government House, balls, garden parties and regattas. Vancouver was just as remote spiritually.

The provincial cabinet did not have the courage to pick out one judge and send him off. The Attorney-General, Theodore Davie, wrote to the Minister of Justice in Ottawa giving the reasons for requiring a second registry on the mainland:

> . . . the amount of legal business transacted in Vancouver was equal to if not greater than that transacted in New Westminster, and is constantly increasing, and great inconvenience has been occasioned not only to members of the Bar but also to every business man who had occasion to resort to the courts by the necessity of attending Westminster for every petty matter which might arise in the course of an action.

Davie added,

> It appeared to me that before it would be possible to advise the proclamation of the Act it would be necessary for you to take the matter into consideration, in view of the fact that unless there is some understanding as to who shall perform the judicial duties within the new District [Vancouver] any attempted creation of the District would be futile . . .[18]

He asked the minister to assign a judge to the district. The reply from the Canadian deputy asked that Davie "kindly point out any machinery giving the Government the power to assign judges to districts" and that he knew not how under existing federal legislation the matter could be remedied. In Davie's conciliatory reply to the deputy, he said that the carrying out of the act "seems to be a matter of arrangement between the judges themselves, but, failing such an arrangement, it seems to me that the Dominion Government can usefully intervene,"[19] and he referred to the "Thrasher Case."[20] Davie wrote, "The Districting of the Judges at that time, as it has always done, gave much trouble so that the Dominion Government intervened then and should now."[21] The situation was so difficult for Davie that he went to Ottawa to discuss the question with the Minister himself.[22] A note from Davie to Sir John Thompson, the deputy, affirmed his compromise with the minister: the New Westminster County Court Judge Bole's jurisdiction as a local judge of the Supreme Court had been enlarged to allow him to sit in Vancouver.[23]

Since Judge Bole's time would be taken up discharging his duties in New Westminster it is not surprising that such an arrangement did not satisfy the people of Vancouver. Motions put to the legislature by Vancouver MLA's in 1894, 1895, and 1896 demanding a resident judge all passed.[24] Four Supreme Court Judges resided in Victoria, but none in Vancouver, in spite of the volume of legal business transacted there. When Mr. Justice Pellew Crease retired in 1896, Vancouver MLA's broached the matter in the legislature once again. Member Williams said that doubts existed as to the efficacy of the House's legislation: the Legislature should request the Dominion Government (as Davie had done four years earlier) that any judge appointed to fill the vacancy "should be compelled to reside at the City of Vancouver, or in the immediate neighbourhood thereof."[25] However, Angus John McColl (later Chief Justice) when appointed, stayed in Victoria.

The Provincial Cabinet seems to have backed away from the 1892 Act which made provision for a Vancouver registry. "A Petition from the Vancouver Bar Association" tabled in March 1901 makes the request again that "one of the judges assigned to the mainland should reside in the City of Vancouver, and it is expedient that a section to so provide be re-inserted in the S.C. Act."[26] But there was still no action. When Tyrwhitte-Drake retired in 1904, Lyman Duff was elevated to the bench. In his biography of Duff, Williams writes that Duff was "expected to reside in Vancouver, but though he may have commuted between Vancouver and Victoria for several months, he kept his home in

Victoria."[27]

Finally, in the fall of 1904, when the court had been enlarged to five, Aulay MacAulay Morrison, the Liberal MP for New Westminster, who already lived in Vancouver, became the first resident Supreme Court Judge for a city which was in the midst of one of its greatest growth periods[28] as an important seaport, with a railway line to Seattle,[29] and as a main supplier for the hinterland.

Much of the legislation passed during this time was to ease the industrial and commercial development of the province. The discovery of the Sullivan Mine at Kimberly in 1892 prompted railway acts and railroad building to Nakusp, Slocan and on Vancouver Island. The development of mining was facilitated by an Act for the Promotion of the Mining Industry (1894),[30] which created a Government Bureau of Mines. In 1895, because of the general prosperity, and in order to accommodate increased litigation, the monetary level for suits in the county courts was raised to a thousand dollars.[31] For many years there had been too much legal business on hold, awaiting the assizes because the large damages sought meant the case had to be tried in the higher court. What was needed in 1895 was a resident Supreme Court Judge at Vancouver. Raising the financial jurisdiction of the County Court did little to rectify the situation.

As has been noted, an appeal from a decision of the Supreme Court to the Full Court had been authorized in 1879.[32] For eighteen years the court had sat only in Victoria. To make it more accessible, the legislature ruled[33] that the Full Court would hold sittings in Vancouver and New Westminster, and that in Vancouver it would hold five sittings a year. In the "Away Courts" (Vancouver and New Westminster), two judges would make a quorum, an unusual allowance since the Appeal Court was constituted to sit with an odd number so that a majority opinion could emerge. If the two appeal judges were unable to concur in a decision, the appeal would stand dismissed and go to Victoria. The plaintiff had the option, of course, of appealing directly to the Full Court at Victoria and thus avoiding the possible expense of two appeal trials. The legislation was but a half-hearted accommodation to mainland business. The next administration would alter it.

The Klondike Gold Rush in 1898 had had little effect on Vancouver; the gold rush traffic was from Seattle to Skagway. Quite otherwise was the New Westminster fire of 1898. The fire destroyed the whole business section of the city, including G.W. Grant's Court House (see Chapter III) and, as a consequence of the disaster, Vancouver was given precedence over New Westminster. Section 14 of the 1899 Act[34] declared that the Full Court was to sit in Victoria and Vancouver (at the Victory Square Court House) and that the New Westminster registry writs would appeal to Vancouver, Nanaimo registry writs to Victoria, and other registries throughout the province to whichever city was preferable. Three judges now constituted a Full Court, in Vancouver as well as in Victoria.

At the turn of the century, Vancouver was the chief metropolitan area of the province, with all the attendant business: insurance companies, real estate, trust companies, banks, ship chandleries, iron works, heavy equipment manufacturers, engineering firms, wholesale groceries, canneries, manufacturers of mining equipment, registrars of joint stock companies, construction companies, and architects. There was expansion throughout the province in railway building, industrial development and mining.[35] Richard McBride was premier and minister of mines. The increased revenues from business enabled the government to spend money on the judicial system.

The McBride administration made a major re-organization of the court system, which included an attempt at decentralization, when it passed the Supreme Court Act of 1904.[36] The court terms for the quarterly division of the year were abolished (Hilary, Michaelmas, etc.). Instead, one resident judge had to sit each day for the trial of civil causes for as long as they lasted.

The Act added to the Supreme Court's jurisdiction the deciding of constitutional questions referred to it by the Lieutenant-Governor in Council. As in other cases, decisions had to be made in open court with reasonable notice to interested persons. Dissenting opinions of the court and reasons for judgment in constitutional matters were to be published in the B.C. Gazette.[37] There was a right of appeal in constitutional questions.

Now the Act divided the province into seven judicial districts: Victoria, Nanaimo, Vancouver, New Westminster, Yale, Cariboo, and Kootenay. One of the judges (Mr. Justice MacAulay Morrison) would reside in Vancouver, one in Nelson, and three in Victoria.[38] It reiterated that the Superior Court judges would take circuits for four assizes per year. The Act also provided for the appointment of county court judges as local justices of the Supreme Court of B.C., except in the Victoria or Vancouver judicial districts.[39] The wording suggests that New Westminster District was now formally conceded to be less important than Vancouver. It reasserted that the Full Court had the power to hear appeals, whether final or interlocutory judgments, orders, or decrees both from the Supreme Court and from the County Court. Any three judges of the Supreme Court constituted a quorum of the full Court, except when the case concerned a person held in custody; then two judges might hear the case immediately for "speedy trial".

The act set out a wide range of diverse items: some concerning the administration of the courts (see Chapter III), some pertaining to property and credit. Railway promoters had effectively lobbied the legislature for concessions, and obtained them. The constructing of lines was not to be restrained "unless irreparable damage [would] ensue."[40] And even then, instead of allowing an injunction to stop the railway work, the judge might order the company to pay into the court enough money "to compensate the applicant for the injunction against all loss, damage and costs which may be maintained by him by reason of the works or other acts complained of."[41] Railway building and expansion was the priority.[42]

As the province developed to keep up with the growth of litigation, the County Court Act of 1905 increased the counties to nine and extended the judges' jurisdiction.[43] They heard cases involving sums under one thousand dollars and had equitable jurisdiction in matters regarding creditors, trusts, foreclosures, liens, performance, cancelling agreement of sale, purchase of lease, maintenance or advancement of infants, dissolution or winding-up of any partnership, suits relative to water rights, appointing receivers, granting injunctions, interim orders, sale of real estate, the Intestate Estate Act, and relief against fraud or mistake. The records of these transactions were filed and kept in the local county court registries. Their jurisdiction in probate was bounded by the territorial limits of each court, not by monetary limits, and a copy of every will proved was filed in the registry of the County Court while the will itself and orders granting letters of administration were sent to the registry of the Supreme Court at Victoria. The Act ended the policy of Supreme Court judges presiding over both levels of court at the assizes, an expedient the justices from Begbie on had disliked.

There had also been a curious amendment to the Supreme Court Act in 1905, which stated that the wearing or use of the customary official wig was prohibited in any court in the province.[44] Richard McBride, the "people's Dick", had backed a motion in the legislature banning the wigs. Although many of the judges and barristers objected, Mr. Chief Justice Hunter enforced the ruling, perhaps because Justice Martin was so keen on the more formal apparel. Hunter and Martin detested each other, only communicating by written messages through the registrar. Nevertheless, Martin continued to wear his wig when he sat in Admiralty, a federally administered court beyond Hunter's jurisdiction.[45]

The Court House in Vancouver, designed by Francis Rattenbury (see Chapter III), was begun in 1906. The city with a population of 50,000 had long outgrown the Hastings Street court: plans for a new court house had been submitted by Rattenbury to the Public Works Committee of the Legislature ten years earlier, in 1896, awaiting a time when revenues would allow a start.

The Vancouver Stock Exchange had been incorporated in 1907. There was now a boom on. The city was burgeoning, with docks, warehouses, firms of chartered accountants and architects, contractors, hydraulic engineers, financial brokers, loan agents, electrical engineers, steel and wire companies and manufacturers of mining equipment of all sorts. The justices were busy at the Rattenbury Court House with matters concerning land conveyancing, contracts, negligence, performance bonds, payment of debts, and fraud. Meanwhile, the Law Society had been urging the attorney general's office for a second superior court of record. Enabling legislation passed in 1907 authorized a Court of Appeal[46] (replacing the Full Court) to consist of the chief justice and three other justices to have the same powers as those vested in the Supreme Court, and to have the same rules of court. The Act allowed for four sittings a year and special sittings as needed. The Court Appeal was not in fact constituted until November 30, 1909, when the provincial Liberal leader, James Alexander Macdonald, was named Chief Justice of the Court of Appeal, a position he held until March 1937, twenty-eight years.

The Superior Court justices tended to be long lived and long in office, providing continuity. Sir Matthew Begbie served for thirty-six years, Crease for twenty-six, Hunter twenty-seven, Denis Murphy thirty-two, and Archer Martin from 1898 to 1940, forty-two years, each of the last three as Chief Justice of British Columbia.

In 1910, the legislature passed an Act to provide for the establishing of Juvenile Courts,[47] an off-shoot of urbanization, for in three years the city's numbers had more than doubled. It became necessary to enlarge the new Rattenbury Court House, and the Hornby Street Annex, designed by Thomas Hooper, was added in 1912.[48]

Other measures were taken to cope with legal work. Grounds for admission to the legal profession were extended. Before women had the vote and before World War I opened up appointments for women, Mabel Penery French, a qualified barrister from New Brunswick, was admitted to the bar of British Columbia after the passing of a special act, an Act to remove the Disability of Women as far as relates to the Study and Practice of the Law.[49]

Some industrial disputes were diverted from the courts as a result of the Workers' Compensation Act of 1917. This Act suited both the employer and the employee, since workers could scarcely afford legal fees on the one hand, and on the other, a worker's successful action could ruin a company. The Act was written after consultation with representatives of the employers' group, organized labour, insurance companies, and the medical profession. The employers assumed the costs of the compensation board, and the claims were taken out of the courts.

Further, still more legal business was delegated to county court judges, when by the Supreme Court Act of 1918, they were designated local judges of the Supreme Court with regard to the Administration Act, the Bill of Sale Act, and the Companies Act.[50] In post-World War I days, there was little revenue for the court. The province was short of money. It had taken over the finances of the Pacific Great Eastern Railway, and the automobile was requiring new roads, expensive in the mountainous terrain; but more significant, with the war over there was an industrial slowdown. Army veterans discharged in Vancouver found there were not enough jobs to go round. There was widespread industrial unrest. Socialist parties were growing. In sympathy with the general strike in Winnipeg, workers in Vancouver left the shipyards, factories, streetcars and printing houses. For nearly a month Vancouver had no major newspaper. The Supreme Court's jurisdiction was increased to administer the War Relief Act of 1920.[51]

The economic downturn continued to take its toll. Bill went unpaid. By the Supreme Court Act of 1922 judgment debtors could be jailed up to forty days for failure to pay the sum ordered or at least installments of the sum.[52] To help relieve the load on the superior court, the County Court Act was again amended to increase that court's monetary jurisdiction to $2,500, and to allow it concurrent jurisdiction with the Supreme Court in all questions relating to testacy and intestacy.[53] Jury trials in civil causes were at this time common. The Jury Act of 1922[54] defined "person" to mean someone of either sex and women ever since have been well represented on juries (the one exception to the otherwise male dominated law).

In the mid-twenties the economy recovered. Indeed, 1926 was the most prosperous year in the province's history.[55] The mines, fisheries, hydro-electric business and shipping flourished. The stock exchange was very busy and the courts were busy too. Vancouver was the third largest city in Canada. An Act regulating Notaries Public showed the growing need for legal officers.[56]

In 1929 there were eighty-three millionaires in Vancouver! Then came the great depression. As the bad times took hold, the legislature passed the Companies Act of 1929, an Act that ran to 150 pages, defining and setting out in great detail definitions of shares, promoters, liabilities, debentures, mortgages and securities,[57] definitions needed for liquidation, winding-up, and bankruptcy.

A government change in Victoria led to the passing of a good deal of social legislation between 1933 and 1939. The Conservatives had been replaced by the Liberals under T.D. Pattullo. Furthermore, Tolmie's Conservative party had been so discredited that the Cooperative Commonwealth Federation became the official opposition. The depression having taken its toll in Vancouver, the legislature passed an Act in 1935 granting the city of Vancouver powers and conditions under which it could sell land for taxes.[58] Statutes of B.C. for 1936 contain such legislation as the Health Insurance Act, Male Minimum Wage Act and Education of Dependent Children Act. The emphasis was on transactions with working people.

The Court of Appeal Act 1938 gave that court jurisdiction to hear appeals from divorce and matrimonial causes,[59] but this act cannot have come into force. Begbie had ruled in 1891 that the province could not confer jurisdiction to hear appeals from divorce decrees,[60] and his ruling stood. Williams writes of this, "Begbie's opinion, often referred to, remained law until 1965 . . . ."[61] While there were few divorces during Begbie's tenure and during the early part of the century, divorce cases rose sharply after World War I and have continued to rise.

When the colony proclaimed the laws of England as the laws of British Columbia, that included the Matrimonial Causes Act of 1857 (U.K.), which had taken divorce petitions from the ecclesiastical courts and/or parliament and placed them before the Upper Courts. The English divorce act defined three categories of marriage break-up: annulment, judicial separation, and divorce. Divorce petitions were granted on grounds of adultery added to a second offence such as desertion or cruelty. This was changed in 1925 when the Divorce Act (Canada)[62] allowed the grounds of adultery only. As the divorce rate grew, so grew the movement to broaden the grounds for divorce. But the Court Rules Practice Act of 1941-2 referring to the Divorce Rules repeated that those of 1925 were valid and binding.[63]

As would be expected, civil litigation slackened during the Second World War, lesser troubles fading in face of the war effort and full employment. Many notable future judges, men like Sherwood Lett, T.G. Norris, D.R. Verchere and J.C. Bouck served overseas with distinction. The judicature at home was strong for it included the acknowledged four great judges of the post-colonial period: Denis Murphy, James Coady, J.O. Wilson, and Cornelius O'Halloran. Coady, a graduate of St. Francis Xavier, had come west to teach school at Vernon. Murphy, O'Halloran and Wilson were all born and raised in small communities in the interior (Murphy and O'Halloran in the Cariboo, Wilson in the Kootenays). O'Halloran and Coady were Roman Catholics, Wilson, Anglican. Reputedly, over the years, they were all greatly respected by their brother judges, who would freely refer to them while deliberating over their own judgments.

Post-war, the Supreme Court was increased from six justices to seven with the appointment of J.V. Clyne[64] to the bench. Two years later the court was increased to eight with the appointment of Herbert W. Davey. Davey never attended university but, like Wilson, learned his law by practice, having articled with a Victoria law firm after graduating from high school. He sat on the Court of Appeal from 1954 to 1973 and served as Chief Justice of British Columbia from 1967 to 1972. These men's careers illustrate again the English nature of the court: the justices appointed from the ranks of the bar rather than from the law faculties of universities.

The growth and development of the fifties brought more and more litigation to the civil division of the Supreme Court and thence to the Court of Appeal. Vancouver had been for some time the main centre of litigation and the 1955 Court of Appeal Act split that court into two divisions to sit either in Vancouver or Victoria or both.[65] In 1957 long industrial cases going to appeal and delaying court work resulted in the increase to seven (from five) justices of appeal.[66] Correspondingly the number of Supreme Court justices had more than doubled in a span of ten years; there were six in 1949 and fourteen in 1959.

Indeed the fifties had seen another tremendous growth in the province, starting with the Kemano and Kitimat projects. In 1953 the transmountain oil pipeline was under way, and in 1956 the building of the West Coast Transmission natural gas pipeline to Vancouver. The forest industry was flourishing. The P.G.E. railway had completed its link between Squamish and Vancouver and between Prince George and Dawson Creek. Texaco had been exploring for oil and gas in the Peace River. Japan wanted minerals in great quantities. This was the first movement of capital in a big way into the province since the McBride years. W.A.C. Bennett's government built Peace River Hydro and expropriated the B.C. Electric: the resultant suit was the longest case heard in the civil division of the Supreme Court of British Columbia, when Mr. Justice Sherwood Lett handed down his decision in July, 1963.

Competitive enterprise generates litigation. Nowhere is this truer in B.C. than in the mining industry. Both the Mineral Property Taxation Act 1957 and an Act to Amend the Mineral Act 1957 (Bill 91) had great impact in the mining industry.[67] To keep up with mining cases, the County Court was granted concurrent jurisdiction with the Supreme Court within the territorial limits of the county courts in all personal actions arising out of the business of mining (other than coal mining); that is, in the actions relating to supplies, trespass, mineral claims, foreclosures, liens on mineral claims or mining properties, performance, mining partnerships, and suits relating to water rights. In such cases, a plaintiff could file his suits in the district County Court for speedy trial, always allowing that any defendant who objected to being heard in the county court might apply to a judge of the Supreme Court in Chambers for an order to transfer the action to the Supreme Court.[68] Mining disputes kept both levels of court busy.

Problems of family law, divorce and matrimonial cases were accelerating; the B.C. Supreme Court Act 1960 changed the procedures. Henceforth, divorce and matrimonial causes would be commenced by a writ of summons instead of a petition and the practice and procedure would be the same as for other actions so commenced in the court (see Chapter III).[69] By 1965 the provinces could empower county court judges to hear divorce cases.

The period 1858 to 1960 can be taken as a unit; for, allowing that cases varied in reaction to legislation and the times, the procedures and goals of the court were virtually unaltered: the influence of the Bible and the Mosaic law evident. The civil business of the Supreme Court, whether in guardianship, probate, bankruptcy, divorce or private wrongs in tort, contract, and property ebbed and flowed with the commercial and industrial development of the province. While the assizes and the county courts heard the same kinds of cases (the documents filed at their respective registries), the more important ones were tried at the centralized Supreme Court sitting in Victoria or, latterly, Vancouver.

The background and dynamic of each of the colonies in Canada was different; each in turn differed from its American counterpart. In order to do accurate studies on local applications of the common law there must be a careful examination of significant numbers of records.

Notes for Chapter II

[1]R.C. Risk, "The Law and the Economy in Mid-Nineteenth Century Ontario: A Perspective". in Essays in the History of Canadian Law, ed. D.H. Flaherty, 2 vols. (Toronto: University of Toronto Press, 1981, vol. 1, p. 91.

[2]43 George III, c. 38 (U.K.).

[3]Acts 1 and 2, George IV, c. 66 (U.K.), cited in Farir.

[4]Ibid.

[5]12 and 13 Victoria. c. 48 (U.K.), cited in Farr.

[6]Proclamations and Ordinances of British Columbia, 1858-1864 No. 7, 20.

[7]Provincial Archives of British Columbia (hereafter PABC). Begbie Colonial Correspondence 1858-1859, file 142 A.

[8]Dorothy Blakey Smith, ed., "Diary of Arthur Thomas Bushby", British Columbia Historical Quarterly Vol. XXI, (1957-58):149.

[9]David Williams, ". . . The Man for a New Country" (Sidney: Grays Publishing Ltd., 1977), pp. 64-66.

[10]PABC. Begbie Colonial Correspondence 1858-1859, file 142B.

[11]Gray was the author of Confederation: The Political and Parliamentary History of Canada from the Conference at Quebec in October, 1864, to the Admission of British Columbia in July 1971.

[12]Williams, The Man, p. 171.

[13]Statutes of British Columbia 1879 (hereafter SBC). c. 12, s. 5,6,7.

[14]Margaret Ormsby, British Columbia: A History. (Vancouver: Macmillan of Canada, 1958), p. 297.

[15]Vancouver Archives. City Clerk's Series 1. Special Committee Files. Correspondence Outward 1889, files 1513, 1514.

[16]In 1891, the population of the three cities was very close: New Westminster 17,886; Vancouver 18,229; Victoria 18,538.

[17]Statutes of British Columbia 1892, c. 12, s. 3 (f).

[18]Attorney-General's Correspondence July-November 1892, reprinted in the B.C. Sessional Papers 1894, pp. 1195, 1196.

[19]Ibid.

[20]In the "Thrasher Case" (1882) 1 BCR are found the facts of the terms of the Judicature Act 1879 (B.C.), i.e., that the legislature had the power to make the Rules of Court and assign judges to districts, not the judiciary.

[21]British Columbia Sessional Papers, p. 1196.

[22]Ibid.

[23]County Court Judges were designated local judges of the Supreme Court to attend to certain interlocutory matters and Chambers matters. A question was asked in the legislature about Judge Bole's authority to hear criminal cases in Vancouver. The Journal of Legislative Debates, 1984-95, p. 10

[24]The Journal of Legislative Debates, 1894-95, p. 10.

[25]Op. Cit. 1896, pp. 113, 125. The members from Kootenay wanted the new judge there.

[26]Journal of the Legislative Debates, 1901, app. lxxvii, 92.

[27]David R. Williams, Duff: A Life in the Law. Vancouver: University of British Columbia Press, 1984), p. 56.

[28]G.W. Taylor, Builders of British Columbia: An Industrial History (Victoria: Morriss Publishing, 1982), p. 20.

[29]Before 1892 one went from Seattle to Victoria by boat, and then on to Vancouver.

[30]SBC 1894 c. 12 s. 32.

[31]SBC 1895 c. 11 s. 2.

[32]SBC 1896 c. 11 s. 5. Civil appeals from County Court decisions where the amount concerned exceeded $100 could be made to the Full Court instead of the Supreme Court.

[33]SBC 1897 c. 12 s. 5

[34]SBC 1899 c. 20 s. 14.

[35]Henry Boam, British Columbia: Its History, People, Commerce, Industries and Resources (London: Sells Ltd., 1912), pp. 168-178.

[36]SBC 1903-4 c. 15.

[37]SBC 1903-4 c. 15 s. 3.

[38]SBC 1903-4 c. 15 s. 11-18.

[39]SBC 1903-4 c. 15 s. 26.

[40]SBC 1903-4 c. 15 s. 20 (22).

[41]SBC 1903-4 c. 15 s. 20 (23).

[42]The construction of two new branches of the CNR, the Canadian Northern and the Grand Trunk Pacific, added to the prosperity of the province.

[43]SBC 1905 c. 14 s. 3.

[44]SBC 1905 c. 20 s. 112.

[45]Alfred Watts, "Wigs", The Advocate, Vol. 4, July 1984, 405-406.

[46]SBC 1907 c. 10 s. 2.

[47]SBC 1910 c. 10 s. 2.

[48]The Vancouver City Council of 1981 preserved one of these courtrooms of Hooper's for posterity. Less sublime than Rattenbury's, it is now part of the Art Gallery Complex.

[49]SBC 1912 c. 18 s. 1.

[50]SBC 1918 c. 21 s. 2.

[51]SBC 1922 c. 16 s. 2.

[52] SBC 1922 c. 38 s. 2.

[53]SBC 1922 c. 38 s. 2.

[54]SBC 1922 c. 38 s. 2.

[55]Ormsby, p. 426.

[56]SBC 1926-27 c. 49.

[57]SBC 1929 c. 11.

[58]SBC 1935 c. 51 s. 4 (c).

[59]SBC 1938 c. 11 s. 2.

[60]Scott v Scott (1891) 4 BCR, p. 136. Cited in Williams.

[61]Williams, p. 166.

[62]SC. 1925 c. 41.

[63]SBC c. 56 s. 4.

[64]SBC 1950 c. 14 s. 2.

[65]SBC 1955 c. 14 s. 2.

[66]SBC 1957 c. 15 s. 3.

[67]According to Mr. Elliot (B.C. Chamber of Mines), the Deputy Minister of Mines, J. Walker, a geologist, made changes that greatly annoyed the mining industry. For instance, finding fault with the survey posts that had up till then been the manner of marking a claim, he demanded a re-survey of the lands. As well as the mineral rights, the claimers had owned the timber used for working claims. He ruled they had no right to the timber, which was managed by forest licences.

[68]SBC, 1957 c. 15 s. 4.

[69]SBC Supreme Court Act, 1960 c. 11 s. 3.

CHAPTER III

Record-Keeping Practices of the Supreme Court

Until the nineteenth century, the records of the common law courts were kept permanently so that precedent could be followed and the old records exhibited to demonstrate the law's consistency, or if new precedents were set, the circumstances that led to the new rulings.

The Supreme Court was a court of record from its inception. The County Court in British Columbia became a court of record in 1885, the Family Court in 1943. The Coroner's Court, like the Supreme Court was always a court of record. Giffard Halsbury, the nineteenth century jurist, makes a distinction between courts of record and courts not of record: "The former have the power to fine or imprison . . . and in the case of civil trials, to hear and determine actions in which debt, damages or value of the property claimed is forty shillings, or above."[1]

The King's court held at Westminster and later at assizes in the counties was one "where the king asserts that his own word as to all that has taken place in his presence is incontestable. This privilege he communicates to his own special court; his testimony as to all that is done before it is conclusive."[2] Thus Sir Edward Coke, the common law defender of Stuart England says, "It is called a record, for it recordeth or beareth witness to the truth . . . it hath this sovereign privilege that it is proved by no other but by itself."[3] The formal records are infallible and permanent. Halsbury writes, in this regard, "a record is a writing on Parchment."[4] The deliberations of the other Courts, such as Admiralty, Star Chamber and the Ecclesiastical Courts, were not on parchment and presumably did not have to be retained.

But the records of the high court came to be considered as "a part or a ground of the law of England."[5] They formed the precedents of the law and in an age before printing had to be permanently kept; hence the need for parchment.

The people preferred the King's court because it seemed to be more objective, and free from the influence of local personalities. Writs were often fictitiously framed within a formula to make sure the action would qualify for trial before the King's Court, the upper court.[6] But the grounds for bringing concerns to the upper court have expanded over the centuries.

In the civil division of the Upper Court or Supreme Court of British Columbia there are (a) civil causes or personal actions in torts (wrongs), contract, property, and civil rights (2) bankruptcy (3) probate (4) divorce (5) guardianship and procedures conferring status.

A personal action, Smith v. Brown arises out of the transgressing of a basic principle or right rooted in the common law. The basic plaints in such causes have their origins in the Middle Ages and can briefly be explained as follows:

novel disseisin - I have been evicted from my customary or lawful tenements.
assumpsit - You undertook to mend my dyke, now the field is flooded.
morte d'ancestor - This was family property, I should be in possession of it.
debt - I lent him a sum and he is forgetting about it.
deceit - Everything looked good enough on the surface but the wheat underneath was mouldy.

To start an action, the writ is issued from the registry to the defendant summoning him in the Queen's name to appear and answer the allegation. The defendant files his answer; for example, "The plaintiff let the sack of wheat lie outside in the rain as this affidavit of his neighbour shows."

In civil courts what are not "causes" are "matters". Most matters are filed as bills of petition supported by the proper affidavits. A "matter" might be called "In re Smith":
bankruptcy - I have lost all means of paying my business debts and simply cannot be hounded any further.
probate - When I die my personal and real property is to be disposed of according to my instructions and these are the executors I elect to administer my terms.
lunacy - The subject is non compos mentis and cannot look after his own affairs, nor is he capable of finding an attorney to look after his business. The court will have to appoint a

person to do so.

<u>custody of infants</u> - I make application to be guardian of this unprotected infant.

<u>divorce</u> - We have been joined in holy matrimony but can no longer endure the bond.

These plaints and matters are tried in open court; the trial is supported by documents filed in the registry, which are kept as a record.

Lord Denning states:

> The record must contain at least the document which initiated the proceedings, the pleadings, if any, and the adjudication, but not the evidence, nor the reasons unless [the court] chooses to incorporate them.[7]

Documents initiating proceedings in the civil division are, then, either writs or petitions. In British Columbia, there has not been the complication of different kinds of writ or "form of action" (trespass against the peace, trespass on the case), as there had been in Ontario. In both the colony and the province, a common writ has always been used. The "one schedule form" is referred to in the B.C. Supreme Court Rules of 1880, "Personal actions whether of debt, damages, personal chattel, contract, tort, taking or detention, ejection, or in any matter ecclesiastical, all such personal actions shall be commenced by a writ of summons in accordance with the one schedule form copied from the 1852 English Act . . ."(the act which Begbie had invoked in 1858) and "every such writ of summons . . . shall contain a true and succinct statement of the plaintiff's cause or cause of action . . . ." Further, "particulars of the plaintiff's demand shall be endorsed in the writ."[9] And so this manner of filing a writ was used to start civil causes in the Supreme Court of British Columbia.

For hundreds of years justices of the King's Court went out on assize together with a clerk (an officer of the Court) who drafted the writs, and who made up and kept the records. J.S. Cockburn writes, "As early as 1285, before the assize system itself had reached a finished form - it was laid down that itinerant assize justices should be accompanied by the clerks responsible for enrolling pleas."[10] To make the clerk accountable for his records, he was made an associate justice of assize. Cockburn says that by the fourteenth century clerks were usually barristers, younger sons of the gentry, given to service, who considered the position of clerk of the assize a desirable one, and not merely a stepping stone to higher office. Their duties were to collect the fees, write the records, read the commission at the opening of assizes, make up the records during trial, keep the cause books, the gaol book (noting the pleas and the disposal of the cases), keep the hanging book, and draft writs of the peace.[11]

It was this practice that Judge Begbie followed when he instituted the Supreme Court of the colony of British Columbia. In his first year Begbie held his court at Langley and went on circuit to the interior with his clerk of assize Thomas Bushby,[12] who carried the court volumes: the Cash Book, the

Cause Book, the Gaol Book and other necessary documents.[13]

The next year Begbie moved his court to New Westminster, the capital of the mainland colony from 1859 to 1866. A building, one and a half stories, constructed of board with a canvas ceiling, housed the accommodation of Chief Inspector of Police, Charles Brew. It had a courtroom, a jury room, and a little office space, but was clearly not adequate for Begbie's court. He wrote to Colonel Moody, in charge of Public Works, on March 4, 1861:

> Dear Sir,
>
> I have the honour again to address you in respect to the continued absence of any accommodation for a judge and registrar of the Supreme Court.
>
> There is not yet (to my knowledge) any place in this colony where I have a right to place the seal of the records of my court for shelter, or to go to write a letter, or to attend to any matters at Chambers.
>
> . . . What is now principally wanted is some accommodation equivalent to judge's chambers and registrar's office at home with table, shelves, etc.[14]

The two, Begbie and his clerk, soon got their offices at New Westminster, equivalent to those "at home". Begbie was fortunate in having Bushby as registrar. Bushby was the sort of "younger son" English gentleman who filled such posts - eager, honourable, and, important on the long circuits, companionable.

The formal records of the superior court are, as has been stated, infallible and permanent. Williams noted Begbie's insistence on high standards for registrars: once when the

Colonial Secretary put forward the name of an unsuitable character, one in Begbie's words, "not fit to be an officer of the Queen's Court", Begbie threatened to resign if the man was appointed.[15] The attorney-general (Crease) drafted an accommodating statute following the incident, stating "The judge shall appoint, remove, and replace persons to act as District Registrars,"[16] and not the Colonial Secretary. The replacement, C.E. Pooley, he respected. He ensured that Pooley had a good horse for the circuits and left him his books and manuscripts when he died.[17] After the Colony became a Canadian Province, Bushby thought registrars should be federal officers and so, like judges, unaffected by provincial patronage. But the organization and administration remained provincial. Here Begbie did not get his way.

Court procedure is complex, and civil procedure more complicated than criminal procedure. Begbie had been a Chancery barrister and, like Dickens, had earned extra money as a shorthand reporter at the law courts. Dickens, with his own flair for making a court an ass, described a scene like many Begbie would have been party to:

> On such an afternoon, some score of members of the High Court of Chancery bar ought to be - as here they are - mistily tripping one another up on slippery precedents, groping knee-deep in technicalities, running their goat hair and horse-hair warded heads against walls of words . . . ranged in line in a long matted well (but you might look in vain for truth at the bottom of it), between the registrar's red table and the silk gowns, with bills, cross-bills, answers, rejoinders, injunctions, affidavits, issues, reference to masters, masters' reports, mountains of costly nonsense piled before

them.[18]

Begbie, although not hidebound by regulations, had respect for the technicalities and forms. Forms and procedures "protect external and enduring principles."[19] The B.C. Reports give many examples of his manner and method, his modus operandi, and his style. Here is one:

In re A Gway, ex parte Chin Su, is a case concerning an application for guardianship of a fifteen year old girl. A Gway argues that Chin Su's father (deceased) wanted her to foster Chin Su instead of the family Chin Su had chosen. A Gway had produced as evidence an affidavit, translated from Chin Su's language.

> This is not admissible. I am told that the contents were translated to her before she swore to their truth. That is not at all the proper method, she being quite unacquainted with the English language. The affidavit should be written in Chinese and read to or by her, and sworn so; then a sworn translation of that will be used in the application to me. Obviously by the inverse method now proposed the deponent may be made to swear to matters she never intended, and it would be very difficult to maintain an indictment for perjury in case of false statements. The application may be renewed.[20]

It is important an archivist understands such situations because the administration of the law was not unreasonably technical in British Columbia. A slight misnomer in a writ (John X Brown instead of John Y Brown) did not vitiate the writ, but "variation between allegations in the affidavit and the endorsement is fatal"[21] (e.g., different dates). But again, the 1904 act states, "no appeal shall be defeated by reason of the existence of any irregularity or the taking of any preliminary objection relating to a matter of procedure."[22] This rule may be in reaction to the load of technical cases, a third of reported cases, concerning procedure and "forms of action" in the nineteenth-century Ontario law courts, delaying the business of the Ontario courts.[23]

Civil procedure is a provincial responsibility and the legislature appoints justices to revise the rules periodically. Justice Tyrwitt-Drake wrote to the attorney-general about the 1888 rules.

> Sir:
>
> I have the honour to report that the rules of court are complete, with the exception of the index, which is a tedious task, and which could not be commenced until the rules were finished. I shall press the matter on with the utmost expedition, but cannot get it finished by the 14th.
>
> 6. Sept. 1888 M.W. Tyrwitt-Drake[24]

Some of the judges and lawyers were angry over "innovations" proposed by the rules, such as that affidavits were to be filed at the same time as the writ. The Sessional Papers for that year reprinted the written objections of the Law Society. Of interest is, "Objection #3 - the rules in the main are copied from the English Rules of 1883 and the Ontario Rules of 1888, which supposes the existence of a competent staff of court officers such as do not exist in the province."[25]

This is probably a genuine complaint and not just lawyer's pique. Throughout the early years of the court, Begbie, his successors, and the legal profession, had appealed to the provincial government to increase registry staff. For instance, in 1889 there were at the New Westminster Registry, only the registrar of the county court and a clerk-deputy; while at Victoria there was a registrar of the Supreme Court, a deputy registrar of the Supreme and County Court, an usher and a shorthand reporter. (The shorthand reporter incidentally received more than twice the salary paid to the "clerk-deputy" in New Westminster.)[26] Certainly the fact of being short-staffed was part of the problem.

Gouge, writing on court procedure, seems to assume the court registry staff was not competent, for he writes, "Crease mentions 'the disorganized state of the early records of the mainland colony'."[27] But Crease's reference is to land conveyancing not to court officers in the registry, and here, according to the Law Reports, is what he said, "In the early days, i.e., at and before 1858 and subsequently, the land titles of the colony were in a most confused and chaotic state."[28] Bushby had noted in his diary the large number of land title suits Begbie and he had on their first circuit and pointed to the dishonesty of the land agent, Hicks. Crease goes on, "the mainland pre-emptive laws allowed every conceivable form of squatting under the suggestive name of 'occupation'."[29] The reality was that, "the population was scanty, scattered and the land itself of little value."[30] But once the Torrens Land Act (1870) had been passed, giving indefeasible title, the difficulties ceased. Crease said, "there have been no suits since. In eighteen years working of that act no litigation as to a registered title has taken place."[31] The Land Registry offices were much better staffed than the County Court registry at New Westminster.[32] But it is not the state of the court records that Crease criticized.

As this study has investigated the origins of the Vancouver Supreme Court registry, its further development now deserves attention. The Vancouver Court House (at Victory Square) begun in 1890, had its official opening and first assize November 17, 1892. It was a formal affair,[33] the Vancouver lawyers attending in full court attire. The sheriff,[34] presented Mr. Justice McCreight with "the usual pair of white gloves as he had to report a blank docket,"[35] a sign there were no crimes to try. There were, as we could expect, many civil ones pending: County Court Judge Bole, giving the main address, touched on case load - nine hundred cases on the list for Vancouver in 1892 in which $147,000 was involved.[36] And Vancouver was the junior court.

In 1893 the Victoria Court registry had eight employees, New Westminster four, Vancouver three.[37] The probate divisions were very busy and could not keep up with the work. The following year ten clerks for copying wills joined the Victoria office, where original wills were regularly forwarded from registries throughout the province. New Westminster took on three new clerks and Vancouver one.[38] Court staffing remained at this level until 1898 when two additional clerks were engaged at the Vancouver registry[39] to meet the rush of business caused by the New Westminster fire (see Chapter II). For, dating from the fire of September, 1898, New Westminster registry writs had to be processed at the Vancouver registry[40]. Until a new courthouse could be planned and constructed, the New Westminster staff had been reduced to a part-time registrar and janitor.

Many Supreme Court records were lost in the New Westminster fire of 1898. The Columbian newspaper reported that the papers were "smoldering inside the vault" but by the use of chemical grenades and a "perfect system of organized assistance" ninety-five percent of the Land Registry papers were saved.[41] The fire prompted measures to protect the material in future. In 1899 the legislature passed an act which made Victoria the centre for storing Supreme Court records, "an act to provide for setting aside certain vault accommodation in the Parliament Building for the use of the Supreme Court."

> Sec. 1 A vault or portion of vault shall be placed under exclusive control of the District Registrar of such court for Victoria.
>
> Sec. 2 The Lieutenant-Governor in Council may direct that any documents, books, or papers which under any law, usage or custom are deposited or kept in any Registry of the Supreme Court shall be deposited and kept in said vault or portion of a vault.[42]

The manoeuvre was in vain. A note in the Inventory of the Attorney-General's Department at the Provincial Archives of British Columbia concerning the correspondence 1872-1937 reveals that a fire on June 10, 1939 burned all the letterbooks of 1872-1917 and that additional documents were destroyed by flooding in the basement of the main Parliament Building.[43]

Fortunately, the practice of sending Supreme Court files from Vancouver to Victoria was reversed by the 1904 Act which declared:

> Each registry shall be the proper place for the deposit and safe keeping of all records, books, and documents connected with any proceedings in the court commenced and pending in such Registry and for any books, papers or documents directed by any law or Rule of Court to be deposited therein; and the District Registrar appointed to such Registry shall have charge of, and be responsible for the books, records, and documents so deposited.[44]

The District Registrar was now responsible for the books, records, and documents deposited in the registry. Before the fire, the prestige of the office of registrar had suffered when two men were dismissed in 1896 for embezzlement of trust funds: James C. Prevost, who had been registrar of the Supreme Court at Victoria since 1885 and the chief registrar of the province at the time of the Law Society's written complaint to the legislature, and W.H. Fielding of New Westminster who, as Supreme Court registrar for the judicial district, had been present at the ceremony opening the Vancouver Court House in 1892. Mr. Prevost would seem to have been especially clever or devious. The amount of his defalcation was $22,596.14; Mr. Fielding's, $1,416.27.[45] An act was quickly passed to appoint an accountant, "as an officer of the Supreme Court to have charge of all funds paid into court."[46] Begbie in the early days had acted as accountant, checking the fee book at the assizes. Cash books at the Provincial Archives of British

Columbia show his certified correction of sums.[47]

Brian Halsey Tyrwitt-Drake took over Prevost's position. He was the son of the Supreme Court judge, born in Victoria but sent to school at Charterhouse in England. He had articled with a Victoria lawyer and practiced for five years before his appointment as registrar. Tyrwitt-Drake was a gentleman in the classic style. He belonged to a Victoria regiment, was Church of England, a member of the cricket club, yacht club, golf and tennis club, an oarsman and a football player.[48] The Law Society presented him with a set of binoculars when he went "to the front" in 1916.[49]

The registrar is a person of status. It would appear that Judge Cameron, the first colonial judge of the Supreme Court of Vancouver Island, acted as his own registrar, and indeed reckoned his role as registrar to be worth as much as his judicial one, for a copy of the bill of costs shows in 1854:

> Judge's Fee estimated at £5.00
> Registrar's Do. estimated at ..... £5.00[50]

By 1904 the registrars of Victoria and Vancouver received the same remuneration, and after 1907 the Vancouver registry had the largest staff in the province. The Rattenbury Court House, which began doing business in 1908, had its formal opening in 1911. The opening became an occasion for civic pride, the ceremonial scene re-created in all illustrated histories of Vancouver: the Governor-General (HRH the Duke of Connaught), military bands, bunting, flags, crowds of people. A Cordova

Street grocer had a display of the Union Jack made of apples, blue plums and eggs.[51] Built of stone and granite with Grecian columns, sculptured lions "couchant", and an arresting central entrance, the Georgia Street Court House was designed in the neoclassical style displaying a magnificent interior of marble, carved cabinet wood and ornate stained glass, and having large balconied galleries in the major courts; all proclaimed and facilitated a public system of law.[52]

Business at the Vancouver Court House grew. The year of its completion an annex was added on Robson Street. And in spite of the depletion in the ranks of the civil service during World War I, the Vancouver Registry had a staff of twenty-six (Victoria a staff of 10.5). The registrar received the same salary as a County Court judge.[53]

The registrar has both administrative and judicial duties. He is empowered to swear oaths, take affidavits, and examine witnesses under oath. He may take questions for inquiry referred to him by the judge and his orders are enforced in the same way as a judgment of the court. Thus we will see in divorce files a registrar's interim order for maintenance payments to a wife, while the case is pending (see Chapter IV).

In the nineteenth century, the registrar drafted the writs and other documents that now a lawyer drafts for his client. But the registrar issues these documents. He taxes the costs; that is, he goes over, if asked, the lawyer's bill to his client, and appeal from the registrar's decision on those costs is to the judge. He sees that

> minutes of proceedings are kept, a note of all plaints and summonses, and of all orders, and of all judgments and execution and return thereto, and of all fines and of all other proceedings of the court, to be fairly entered from time to time in a book belonging to the court, which shall be kept at the office of the court, and such entries of the said book, or a copy thereof bearing the seal of the court and purporting to be signed and certified as a true copy by the Registrar of the Court, shall at all times be admitted in all courts and places whatsoever as evidence of such entries and of the proceeding referred to by such entry or entries and of the regularity of such proceeding, without any further proof.[54]

He has the authority of a constable during the holding of court and he swears in the new clerks. Registrars give long service. A.G. Smith was District Registrar at Vancouver from 1916 to 1926, J.F. Mather from 1926-1945; Louis Mendez, 1945 to 1960.

The deputy registrar has the same powers as the registrar.[55] He does most of the routine work of the registrar. He may not be a lawyer; some have been promoted from chief clerk. For some deputy registrars that are lawyers it is a stepping-stone; they take on the position for the experience and then go into private practice.

At the Vancouver registry, the chain of command then is registrar, deputy registrar, chief clerk, and senior clerks, documentation clerks and junior clerks. The chief clerk attended to personnel, interviewed new applicants (male)[56] for clerks' positions, and dealt with staff problems when they arose. He sorted the correspondence, directing the letters to the sections - cashier, divorce, and especially probate because requests for copies of wills made up a major part of the correspondence. Sometimes as many as twenty copies were requested and then he, the chief clerk (as late as 1945) would read the will aloud, the several clerks copying as in a medieval scriptorium. Some of those copying were World War I veterans serving as junior clerks. Poorly paid, one drove a taxi in his off-hours to make ends meet.

There were six senior clerks each heading a section: Appeal Court;[57] Criminal Court; Cashier; Chambers; Civil and Divorce; Probate and Bankruptcy. The procedures were strictly regulated.

The documentation clerk(s) at the counter would take the writ from the solicitor or the plaintiff and assign it a number. There was a stamping machine whereby writ followed writ serially numbered. The cashier, upon payment of the fee, would put the original writ and one copy under seal (that is, with a hand-pressed seal). Thus the writ was "issued". One sealed copy was kept in the file (Brown v Smith). The original went to the lawyer who, having made the number of copies he needed (if 20 defendants, 20 copies) served each defendant a copy and showed him the original.

Non-litigious documents may be deposited at the registry for safe-keeping. Regulations under the Bill of Sale Act required the bill of sale to be filed, as well as chattel mortgages, the collateral in the financing of loans, and the assignment of debts. These were registered at the cashier's wicket. The cashier also registered city by-laws and registered partnerships.

The fee schedule set down the cost of each transaction at the registry. Today in the civil division the plaintiff pays a flat fee of $50.00 to start an action and to cover all subsequent document-processing fees.

Nowadays the chambers section is very busy. During 1983-84 there were 40,000 chamber applications in the Vancouver registry. One judge each week is assigned to chambers on a rota system: generally he considers uncontested matters - guardianship, family maintenance, estate, injunctions, adjournments, substitute service (permission to publish a summons). The judge tries to answer everyone applying on the list for that day, if not then the next day. A court clerk sits with the judge taking notes of proceedings on a big sheet, 15" x 8". At the end of the chambers session, 4 o'clock, the clerk will write up the results in the cause book, find the action such as Smith v Scott and make a note of the change in trial date, or note the volume number of an order. The Chamber sheets are kept in a large folder in the registry and are bound every three months. Some Chamber orders might get into the Law Reports.

The details of the case are in the case file - the writ, statement of claim, statement of defence, counterclaim, reply, third party proceedings, exhibits, transcript of examination for discovery, notice of trial, judgment, garnishee or other court orders to enforce the judgment. The action file gets a number taken from the writ and a name. Both the name and number have been entered in an index. The action or case file (except adoptions or juvenile matters) is open to be seen by anybody on request, without explanation, and the searches are not noted. However, one cannot look at the exhibits that are in a sealed envelope in the file without a judge's authorization.

In the civil division the record volumes (cause books, or plaint books as they are sometimes called) were kept on shelves in the registry. They contain information of each case in summary. Every document issued is noted in the cause book and every process to do with the action: the names of the litigants, the nature of the cause, the lawyers' names, a change of lawyer, the date of trial, the judge's name; any order is noted and any effect, the judgment, the taxing of costs, the appeal. Public searches are not in the cause book, nor subpoenas.

There were separate cause books for divorce petitions starting in the 1950s, red ones, when divorce became separated from other civil actions. Both were large, heavy volumes about two feet wide by two and a half feet long. In 1974, they were replaced by a system of automated index cards that, with the press of a button, move to face the clerk. This system has speeded up searches since, previously, only one clerk at a time, naturally, could consult a record volume. Pointing to the new "pending card" system, one clerk remarked that nobody ever lost a cause book.

The trial itself is well documented by the court clerk, by the official stenographer, and by the judge in his bench book. The "minute sheet", which the clerk has with him in the courtroom, monitors the progress for he writes down each event, the names of witnesses sworn, examined by counsel, cross examined, exceptions of counsel; all are recorded with the times noted. Each judge has a minute book which covers all the trials he hears. The minute sheets are filed in this book or folder under the plaintiff's name, year, action number; as the case continues the days are counted - Brown v Scott #4 (day four).

The official stenographer reports, in the main, the evidence, the oral testimony, the rulings, the exceptions, and the judge's charge to the jury. By statute he:

> shall report examinations for discovery, the viva voce evidence given at the trial and all rulings of the judge during the trial, and all exceptions by counsel, and if the case be tried by a jury the summing up of the judge and the exceptions of counsel, but it shall not be necessary to report the addresses of counsel to the judge or jury.[57]

A fair copy may be made, certified by the judge, and filed separately as a record in the case. A transcript of a case can be very expensive and all or part of one only survives as a court record if the matter goes to appeal. It is the litigant, or more likely his attorney, who requires a copy. The stenographer's logs and paper tapes (untranscribed) are destroyed after five years in accordance with the record schedules.[58] (See Appendix B)

Judges make their own notes in their record books or "bench books" of the evidence, marking the salient points, commenting on the reliability of witnesses, noting their own deliberations of the cases at their leisure outside the courtroom. These provide good source material for researchers.

The judgments and orders of the court are recorded in a judgment book. An official in the registry checks the order against the clerk's record and sends the original and three copies to the judge for initialling. One is put into the judgment book, one into the action file and one is given to each lawyer. Both parties' names are listed as entries in the index. The cause book tells what volume number the order is in. Judgment books are open to search; creditors or banks needing to know the financial position of a certain litigant will peruse the judgment book. As the court judgment is paid, corresponding memoranda are entered in the book.

Reasons for judgment are kept in the judge's file. A copy also is reserved for the judges' library, and one goes to the publishers of Law Reports. Such reports can be lengthy. Thus, Sherwood Lett's reasons for judgment in the B.C. Electric expropriation case (1961) ran to 309 pages.

The record-keeping practices at the Vancouver registry have been on the whole good, although one chief clerk of the 1960s complained that, in the past, adoptions had been interfiled with orders. However, the clerks in the main have been conscientious, and the inefficient or lazy ones were "chased pretty thoroughly by the chief clerk or their section heads." When asked if they were more careful with important cases than with smaller ones, a former clerk answered:

> The big corporation cases demanded more work from the clerk than the minor ones but the latter were more interesting and gave the clerk an opportunity to observe and see other sides of a case. The big actions were usually very technical and boring. The lawyers were Q.C.'s and there was great money at stake. It was preferred that the same clerk remain on the case throughout its term, but this was not always possible and this allows for mistakes, as different clerks do not take the same interest in some other clerk's trial and may forget or overlook making a certain entry in the cause book. Herein lies the interest for the clerk in seeing a case through.[59]

The retired court clerk added, "There is no chief clerk any more, no cause book. The old system was perfect."

The archivist should keep such views in mind; the manner of record-keeping had not changed since the time of Begbie whose court was typical of all the high courts here right up to 1977. Evidence supports the contention that the Supreme Court records were conscientiously filed and kept, the common law records permanent and infallible.

At the Rattenbury Court House an accumulation of records (including ones from the Cambie Street Court House) had been stored in huge underground vaults, vaults that extended well under Georgia Street, until released by the judges' move to the Robson Street Law Courts. In accordance with the provincial government's records management project two court records centres, one at Vancouver, the other at Victoria, were established. Inactive records from all the judicial districts go to one of these repositories.

For active records, today's government record managers prefer the filing by type system to the case file system.

Notes for Chapter III

[1]H.S. Giffard Halsbury, The Laws of England (London: Butterworth Press, 1912), pp. 346-347.

[2]W.S. Holdsworth, The History of English Law (Cambridge: Cambridge University Press, 17 vols. 1903-72), Vol. V, No. 2, p. 157.

[3]Holdsworth, Vol. V, n. 5, p. 158 quoting Sir Edward Coke, Second Institute.

[4]Halsbury, Laws, p. 348.

[5]Holdsworth, History, p. 159.

[6]Williams, The Man, p. 304.

[7]R V. Northumberland. Stroud's Judicial Dictionary (London: Sweet & Maxwell Ltd., 1974) s.v. "record".

[8]See Milson, The Foundation of the Common Law (Cambridge: Cambridge University Press, 1970).

[9]Jesse F. Gouge, "Civil Procedure in the Superior Courts: the B.C. Illustration 1849-1880" U.B.C. Law Review (1979), 13, pp. 338-379.

[10]J.S. Cockburn, "Seventeenth-Century Clerks of Assizes - Some Anonymous Members of the Legal Profession", The American Journal of Legal History 13 (1964), p. 316.

[11]Ibid. p. 317.

[12]Postmaster General of the United Colony (when there was a deficit he made it up himself) County Court Judge at New Westminster in 1867. Legislative Council of B.C. 1868-1870. He had been first rector's warden at Holy Trinity Church, 1860. After his death in 1875 the congregation dedicated a stained glass window at Holy Trinity Church, with the inscription "The Memory of the Just is Blessed." The Church and window were destroyed by the fire of 1899.

[13]Smith, Dorothy Blakey, ed. "Journal of Arthur Thomas Bushby, 1855-59", BCHQ Vol. XXI (1957-58):83-198. In his journal Bushby gives a most lively and diverting account of his circuits and adventures.

[14]Cited in The Court House of New Westminster, Heritage Preservation Foundation of New Westminster. Cloverdale, B.C. D.W. Friesen & Sons Ltd. n.d., p. 16.

[15]Williams, p. 60.

[16]The Laws of B.C. revised - colonial 1865, sec. 2.

[17]Williams, p. 278.

[18]Charles Dickens, Bleak House (London: Oxford University Press, 1962), p. 2.

[19]S.M. Wexler, Materials on Legal Institutions (Vancouver: U.B.C. Faculty of Law, 1975).

[20]In Re Gway. 2 B.C. Reports, p. 343.

[21]Baker v Dalby (1894) 3 BCR, p. 289. Cited in J. Kaworsky and H.A. Stephens, British Columbia Practice (Vancouver: Commercial Stationers, 1968).

[22]Supreme Court Act 1903-04 c.2 s. 94.

[23]R. C. Risk, "The Law and the Economy in Mid-Nineteenth Century Ontario: A Perspective" in Essays in the History of Canadian Law, ed. D. Flaherty, Vol. 1 (Toronto: The Osgoode Society, 1981), p. 94.

[24]B.C. Sessional Papers, 1888, p. 237.

[25]B.C. Sessional Papers, 1888, p. 237.

[26]Estimates. B.C. Sessional Papers, 1890, p. 335.

[27]Gouge, op. cit., p. 340.

[28]In Re Shotbolt (1888), 1 BCR, p. 343.

[29]Shotbolt, p. 343.

[30]Shotbolt, p. 345.

[31]Shotbolt, p. 345.

[32]Estimates. B.C. Sessional Papers, 1890, p. 335.

[33]An account written for the "News Advertiser" by L.G. McPhilips K.C. was reprinted in The Advocate, Vol. 1-2, 1943-44, pp. 189-191.

[34]B.C. Sessional Papers 1892 have sheriffs at Victoria, New Westminster, Cariboo, and Yale but not Vancouver.

[35]McPhillips, p. 189.

[36]Ibid.

[37]B.C. Sessional Papers, 56 Victoria, p. 579.

[38]B.C. Sessional Papers, 57 Victoria 1874, Vol. 1, p. 749.

[39]B.C. Sessional Papers, 61 Victoria 1898.

[40]S.B.C., 1899 c. 20 s. 7.

[41]The Columbian Sept. 21, 1898. Cited in The Court House of New Westminster, op. cit., p. 25.

[42]S.B.C. 1899 c. 21.

[43]Inventory Attorney-General's Department, PABC.

[44]SBC 1963-4 c. 15 s. 34.

[45]Debates of the Legislative Assembly, 59 Victoria 1899, p. 15.

[46]B.C. Statutes 1899 c. 21.

[47]Provincial Archives of British Columbia, Cash Books, 1866-1871.

[48]Scholefield, British Columbia Biographies Vol. 11, (Vancouver: Clarke Publishing Co., 1914), S.V., p. 1081.

[49]Alfred Watts, Q.C. Lex Liborum Rex: History of the Law Society of British Columbia 1865-1973. West Vancouver, 1973, p. 19.

[50]"Unauthorized Admiralty Court", Lionel H. Laing, Washington Historical Quarterly, Vol. XXVI, p. 13.

[51]Information from Judges' Library, Vancouver Law Courts.

[52]The building, recycled to become the home of the Vancouver Art Gallery (Oct. 1983) was completely gutted to accommodate an art collection valued then at five million dollars.

[53]At Vancouver
Registrar, Supreme and County Court 12 mos. @ $310
Deputy Registrar $178
2 Clerks ea 102

6 Clerks ea	96
Clerk	92
10 Clerks	40
2 Junior Clerks	80
Junior Clerk	65
Stenographer	65
Stenographer	60

[54]SBC, 1903-4 c. 15 s. 30.

[55]SBC 1903-4 c. 15 s. 31.

[56]The first woman court clerk at the Supreme Court in Vancouver was Sandra Hanson, appointed in 1971, from the Kamloops registry.

[57]The Appeal Court since 1982 has had its own registry, with Jennifer Jordan its first registrar.

[58]SBC 1903-4 c. 15 s. 74.

[59]Interview by the author with Hugh Crisp Fuller, retired court clerk, Vancouver, February, 1984.

CHAPTER IV

Illustrative British Columbia Case Files in Bankruptcy, Divorce, Tort, and Probate

The focus of this study now shifts to an examination of case files which were taken from series stored at the Court Records Centre, Vancouver (see Appendix C): Bankruptcy files from the 1930s and 1940s, Divorce from the 1940s, Civil Causes, 1950s, and microfilmed Probate rolls from the 1950s. For illustration, the best method of describing the file contents seems to be simply the anecdotal one. Let us take it as an archival display of wares.

At the Vancouver registry, the documents were kept in the case file or dossier system, a system convenient for both litigants and historians. In contrast, in jurisdictions where the organization of material is by type - writs with writs, appearances with appearances, affidavits with affidavits - it is difficult, if not impossible, decades after the event, to assemble the parts and reconstruct the case. But the type system has administrative advantages. For one thing, it makes it possible to dispose easily of a bulk of records (praecipes, for instance) that are of no value.

A typical case file is likely to contain the following types of document.

1. Writ of Summons

The writ of summons begins a civil action. Like other court communications, it is printed in elaborate calligraphic lettering.

> Elizabeth the Second, By Grace of God of the United Kingdom, Canada, and her other Realms, Head of the Commonwealth, Defender of the Faith
>
> To: (name)
>
> (address)
>
> We command you that, within eight days of . . .

The order is made still more impressive by being emblazoned with court seals and coloured law stamps. On the back of the writ is the plaintiff's claim: "suffered from personal injuries." Indeed the writ alone supplies a good deal of information. It supplies the registry number, the date filed, the plaintiff's solicitor(s), the type of case, and the court where the writ was filed.

Bankruptcy cases begin with a petition, not a writ. Divorce actions, too, until 1960 began with a petition.

2. Affidavits

These are the written declarations drafted under oath. A lawyer will sign an affidavit that John Doe is the person referred to in the will.

3. Appearance

In medieval times a case could not be tried in the defendant's absence and he would make attempts to dodge the summons as today a defendant might try to avoid being served a summons, hoping if not to stop, at least to delay proceedings. Hence the appearance, the document stating someone will appear to answer the allegation, was instituted. It has the date, the name of the action, the name of the defendant's solicitor and his address.

Essoins, excuses for non-appearance, are in the clerk's notes in the Chamber's file.

4. Statement of Claim

The statement of claim is more detailed than the writ of summons and must be filed within a fixed term after the delivery of appearance. It gives the particulars that allow a defendant to frame his defence.

5. Statement of Defence

The statement of defence has to be filed within a fixed term or the defendant will lose by default. The statement of defence is sometimes accompanied by a counter-claim. Until 1970 each allegation in the statement of claim had to be specifically denied. Now the new rules allow for a general denial of the claim. Commonly, pleadings terminate with the statement of defence.

B.C. Court statistics for 1970 show that thirty-seven per cent of all the writs filed had no appearance entered. For the rest, fifty-six per cent of the cases became dormant at some time between the filing of the writ and the trial.[1]

If the action continues, papers in the dossier accumulate - amendments to the pleadings, requests for particulars, counter-claims, replies, rejoinders, surrejoinders, rebuttals, surrebuttals, change of solicitor, third party pleadings, examination for discovery, pre-trial conference, application for a jury trial, trial date, trial results, costs, notice of taxation of costs, garnishee orders, appeal from garnishee order, and so on. For Divorce, Bankruptcy, Civil, and Probate Series the unit is the file and not the individual papers. The file, it is said, contains the material (documents and exhibits) which enables a neutral person to follow the matter under deliberation.

Bankruptcies

There is a good deal of historical data in the early bankruptcy files. In a box of 1931 bankruptcies, four files in a row were interesting.

The cover provides the identifying information

1. In the Supreme Court of British Columbia. In Bankruptcy 50/31

   In the matter of the Bankruptcy Act

   and

   In the matter of the Estate of George John Gerrard, Junior; Authorized Assignor

Mr. Gerrard is a moving-picture projectionist at the Capitol Theatre, Vancouver, earning a salary of $75 a week. He has six children and an invalid wife. Before September 1930 he had been a supervising projectionist with Famous Players, earning $155 a week, and travelled "all through British Columbia, installing the talkies, which occupied anywhere from 3 weeks to 6 weeks in each town." Converting the "theatres" in British Columbia to sound occupied a little over two years. "In the meantime I started to build this house. The extent that I intended to build was $6,000, City Hall can verify." His account, ten pages of viva voce transcript, deserves to be published. He tells his story with all the freshness of the vernacular, as he recalls with a happy heart his prosperity before events brought him to the bankruptcy court. It is oral history of a high order. In addition to the transcript, the file contains other documents required by the Bankruptcy Act, and the affidavit of a chartered accountant with the claims of creditors and lists of assets and liabilities, running to seven pages.

2. The next one in the box, Bankruptcy 40/31, is a petition by the Mackinnon Canning Company. The proceedings were not finalized until 1938 so that one wonders why winding up the company has taken seven years. Of interest are the minutes of the meeting of the company directors. There is a long list of the company's ninety-five creditors, including the Anglo-Canadian Warehouse, Alexander Grocery, American Can Co., Canada

Box Co., Eastman Advertising, Sunday Growers Lulu Island, Piggly Wiggly - names still familiar to present day Vancouverites.

3. Bankruptcy 39/31, the third one in the box, was Janet Pendleton, "trading as Orpheum Hosiery" who, to the question "What is the cause of your insolvency?" answers "High rent and depressed business conditions." What is of interest is that her hosiery supplies come from companies in Ontario, but she has a business loan from the First National Bank, Everett, Washington.

4. Bankruptcy 38/31 is a petition of Perfect Ladies, a business established in 1926 with assets of $10,000 by Mrs. Sabo and her first husband. The examination of Mr. Sabo and his bookkeeper Vila Papp reveals a pair of incompetent rogues (See Appendix D). The petition is dropped when their testimony is shown to be a tissue of lies. Mrs. Sabo's civil action against Mr. Sabo referred to in the questioning would provide the ending to the story. The local newspapers may have reported the shenanigans too.

Of bankruptcy files spot checked from the forties and fifties nearly all were interesting. In Bankruptcy 13/40, for instance, Lucky Jim Lead and Zinc Company (N.P.C.), old ghost towns are brought to life. The file contains a copy of the report of assets and liabilities; the trustee's statement of receipts and disbursements; auctioneer's commission and expenses; preferential creditors for wages and rent; contingent or other liabilities; and the final disposition. There is excellent documentation of the operations of this company through the 1930s, and the file would provide a good model for students wishing to observe procedure in a company bankruptcy. The transcript of discovery, just thirty-one questions, demonstrates the businesslike approach: Question 31, "What is the cause of your insolvency?" Reply: "No cash to pay debts."

Divorces

Petitions for divorce come from all social classes and the records before 1968 can be painfully explicit. In all these case files, the investigator finds and reads everything, in reverse order to that in which they were filed - the final document first, as the most recently added, and the petition last, as the first paper filed. Thus the appeal from the divorce settlement will come to hand before the decree, which is before the affidavits; the answer before the summons and petition. As in a Pinter play, the ironies work out in an affecting, often disturbing manner.

All divorce files will provide the basic facts of the union: the place of marriage, date of marriage, the number of children and often their education, the family's standard and style of living, the type of house, household expenses, their savings, assets, investments, and income. The dossier may contain both ordinary facts and also information that would be unobtainable were it not for the divorce action. Thus, psychiatric reports, medical reports, or reports of the Director of Venereal Disease, which in all other circumstances are strictly confidential, become part of the public record when filed as evidence in a divorce action. It is this kind of fact the archivist must keep in mind when advising a researcher as to procedure.

A divorce file may also turn up unexpected miscellaneous information about the times. Thus a fuel dealer responding to a petition for increased maintenance explains why he cannot comply: in the eight month period ending August 31, A.D. 1958 his business had lost $5,318.58. The loss was caused by the decline of sawdust burning heaters, the previous mild winter, and sawmills cutting timber which did not produce burnable sawdust.

All the divorce files perused at the Court Records Centre had social interest. Let us look at two of them, D & M 585-48 and D & M 585-49.

1. H v H

There is a sticker on the file.

Action no.	585/49
Supreme Court	
Date of Trial	
Trial Judge	Manson
Judgement	
Exhibit no. 1 to	
	(e.g. adjourned to 17/10/49)
Remarks	

The petitioner in this action is uncharacteristically a man[2], and his petition "That your Petitioner, then a bachelor, was lawfully married at the city of Regina . . ." begins the action. There follows (each marked with 585/49) an affidavit of service with exhibit D, "a photographic representation of the person whom I served"; the death certificate, (exhibit no. 5), of the co-respondent; the marriage certificate, (ex. 2); a sealed envelope containing other exhibits; the affidavit of service to the co-respondent, the registrar's certificate "re pleadings and proceedings", the petition for divorce (ex. A), the affidavit of petition, "I, A.H., window dresser . . ."; the statement of defence, "I, C.H., make oath and swear . . ."; chamber summons for costs; appointment to tax costs; bill of costs; the order to confirm the registrar's recommendation for interim alimony; details of the husband's finances: weekly salary, bank account, bonds and securities, property; the petition for maintenance; the respondent's answer. In all there are fifty-three pages in the file.

A picture of their life emerges. The petitioner is a window dresser at the Army and Navy and is paid $89 a week. He owns a Mercury automobile valued at $1750.00 and says he is the sole owner of a $5000 house. (His wife had claimed part ownership.) He had moved some time before from the family home, letting it to his daughter and son-in-law who, instead of paying rent, were to provide room and board for his wife. In his petition, he accuses his wife of an adultery that took place in a Cordova Street hotel. She has denied it in her defence. The death certificate shows the alleged co-respondent died a few weeks later in a Cordova Street hotel. The petitioner has assumed the cost of the divorce and paid $248 into court as surety.

While the divorce action is pending, his wife petitioned for interim alimony. The registrar hears her petition and, ordering the husband to provide for her, states that she "is in serious need of personal clothing." The husband answers that he has been paying his wife $20 a month "pursuant to an order of the Family Court" and that he has purchased various articles of clothing for her. The registrar orders him to provide $72.00 credit at the Army and Navy for clothing, to continue room and board for her, and to pay $50.00 a month on the 9th of each month until trial. His wife, who may have been reduced to prostitution, is found guilty of adultery. He is granted his divorce, but the maintenance payments stand. It is the kind of detail which makes the archivist feel it is important that social documents be preserved in a form which ensures they remain social documents and not mere historical statistics. For the trial judge is the severe and chilly Mr. Justice Manson, one of the less respected World War II Supreme Court justices.

2. R v R

Case file D & M 585/48 seems to illustrate the X-factor in divorce which Neil Fleishman defines as a psychological flaw in a woman who sets out to marry and destroy a "family man."[3] As is typical in such cases, according to Fleishman, the man being sued cannot go to court to contest the divorce or the terms: he maintains that any contact with her is too upsetting. In this case, the man's wife does, in fact, ruin him, pursuing him until at last he is too ill to work. He, a physician, had agreed to pay $500 a month in 1948 and the first document in the file is a Chambers order reducing the amount of maintenance to $300 in 1950, $200 in 1955; and then, on Christmas Eve 1962, to $50. What had happened? At the time of the divorce settlement he had paid over seemingly all he owed to his former wife - a house in Shaughnessy, the car, as well as other assets. Even his inheritance, for much of his property, the lawyer states, had been derived from the estate of his father and mother, was surrendered to her, and he was sent a notice to produce his insurance policies, annuities, bonds, and any Dominion of Canada bonds he might have. In her petition for increased maintenance, his wife itemizes her domestic expenses, food, housekeeping, utilities, fuel, laundry, cleaners, and car expenses. There had been adolescent children at the time of the divorce but by 1955 she had no one to support but herself. She had an income and substantial capital for her maintenance on a high standard, with domestic help. Yet he still had to pay the taxes on the home property and was ordered to pay for the fuel oil that heated her home. Meanwhile he had re-married (his receptionist-bookkeeper) and had his new wife to support. As a result of the maintenance hearing, the details of his practice are revealed - his charity cases (before universal medicare), the special fees he received for treatments then current and later discarded, the diminishing amounts he earned as an anaesthetist ($200 to $250 a month in 1948; and in 1955, one month when his health was poor, he earned only $40.00). Also he "lost practice through some statements that my former wife made about my ability and conduct."

His finances were closely examined because his former wife heard he had bought a piano and radio to furnish his apartment. The transcript of the cross-examination runs to a heavy one hundred and seventy-four legal size pages. Indeed, the deputy registrar, getting impatient with her lawyer, says half-way through, "This is dragging out and dragging out." Nevertheless they go through his bank statements, business accounts, income tax records, life insurance premiums, and even the matter of "holiday money" (paid for from his health insurance policy when his second wife's health had broken under the strain.)

There are ninety-two documents in the file and the whole file is nearly three hundred pages. The last paper we come upon is the lawyer's very first letter on behalf of the defeated Respondent and Intervener, the one answering the original petition, "We have filed appearance and answer herein but do not intend to appear or defend."

These are examples of the sense of social ambience that can be derived from the dry formality of two divorce files, using no more than the same registry number but a different year, 585/48 and 585/49. The narrative line in both divorce files was easy to follow. D. & M. 585/49, the window dresser's case, was a much thinner file: there were no transcripts but the story, coming starkly through the exhibits, affidavits, petitions, reports and orders, had great impact.

Civil Files

Civil causes seem on the surface the least interesting, and by the 1950s there are a lot of them. Often a notice of discontinuance is the first document to meet the eye on opening the dossier.

For example,

1. 1140-59 Lance Egan vs. Robert Gillies, assault and battery claiming damages for personal injuries; to wit, abrasions and nervousness.

There is some interest in the particulars of loss and damages - lost wages, hospital and doctor's charges, and a new suit. Harry Rankin acted for the plaintiff.

2. 1093-59 was the case of Kelvin Securities Ltd. vs. Arnold Davis and Alex Petersen. There was an endorsement of the writ, statement of claim, statement of defence, notice of trial. The plaintiff sought damages for trespass and conversion. He owned a truck with a T9 Pioneer Frontal Log Loader, which he stored at 100 Mile House. Davis, a sheriff, had it seized and sold. There is some interest in this since the action involved an official, the sheriff, and we can infer that there was some kind of dishonesty in respect to the bids. However, the case did not come to trial: it was settled out of court. Perhaps the

sheriff was charged in criminal court.

3. The next file was 1094-59, O. E. Wells vs. J. Slack and C. Slack. J. Slack was a trucker owing house mortgage money to O. E. Wells. The file contained only an appearance, writ, and statement of claim.

Civil actions range from long technical cases that tie up the courts for months and generate mountains of paper to personal actions lodged in the heat of the moment, that are not pursued.

In the box examined there were sixty-six case files, only three of which had gone to trial. While conceding there are worthwhile studies to be done on why some cases are abandoned and at what stage, it is difficult to justify storing all these dossiers. The lawyers' files would furnish more substance, especially in a case like the one involving the sheriff. Such information furnished by the other discontinued cases would perhaps be better got from the Cause Books. (See Chapter V.)

Probate

There are geographic jurisdictions which limit matters in any court registry; that is, a bankruptcy petition of a company doing business solely in British Columbia will be filed in the B.C. Supreme Court registry at Vancouver or Victoria; and so too for divorce petitions and torts. But probate files cross provincial boundaries and frequently extend to other countries. They may contain material filed in other registries, when the court attempts to prove a will, to identify property, or to locate and satisfy legatees. Hence, through the inventories we can compare the attitudes to money matters, as well as to worth, of a Californian and a British Columbian.

Probate inventories will set out the value and kinds of personal property typically held by all sorts and conditions of men and women, their obligations, their schedule of debts and their areas of investment. Each file, besides the date and place of testator's death, will ordinarily give his residence, occupation, immediate family, extended family, and friendships. There is one inventory for property and one for beneficiaries. "Inventory X" categorizes the estate as follows:

(1) Real estate
(2) Moneys secured by mortgage or agreement of sale
(3) Cash and gross amount of life insurance with names of beneficiaries
(4) Book debts and promissory notes, etc., including interest to date of death
(5) Securities for money, bonds, stocks, and shares
(6) Other property
    Household goods and furniture
    Pictures, plate and jewellery
    Farming implement
    Horses
    Horned cattle
    Sheep, swine, and other domestic animals and birds
    Farm produce of all kinds
    Stock-in-trade, including good-will of business
    Other personal property not before mentioned
(7) Details of debts and liabilities for which allowance may be made under section 4 g "Probate Fees Act"
(8) Schedule of debts - name and address of creditors, nature of claim, amount of debt, reasons for non-payment of debts not paid.

"Inventory Y" lists

(1) names of the beneficiaries
(2) relationship to the deceased
(3) date of birth of life tenants and annuities
(4) share of property passing (e.g. one-third)
(5) value of property passing

1. Probate 61327 - 56 is a file of forty-four pages. Marie Didovich, an American citizen, resident of Los Angeles, California held the mortgage on a house in Vancouver; accordingly the Los Angeles probate dossier inventorying the estate (valued at $40,020.54) had to be filed in the British Columbia Supreme Court registry. The estate was divided evenly between her sister (the executor), who lived in San Pedro and her deceased brother's daughter, who lived in Italy and India. (The niece's letters re the estate, incidentally, were written in good colloquial English.) The probate was complicated by the sister's dying before the courts had resolved the matter. The sister's interests went to her husband in Mexico. There is correspondence attempting (unsuccessfully) to evoke a response from him.

Here are some noteworthy facts gleaned from the file of the kind we would expect an archivist to deduce. First, the original will had been deposited in the Los Angeles Supreme Court registry for safekeeping. In 1956, in British Columbia the will is drawn up and kept by the solicitor, who sends a notice to the Department of Vital Statistics. Some Canadian courts, those in Ontario, for instance, do still keep original wills. Secondly, there was a caveat in the will intending to forestall litigation that seemed by its phrasing common form.

> . . . if [anyone] shall contest this will, I hereby bequeath to such person or persons the sum of One Dollar ($1) only, and all other bequests, devices, and interests . . . shall be forfeited.

Thirdly, the inventory lists her jewellery, "2 gold vest pocket watches," and shows that she patriotically bought United States War Bonds during World War II, twelve bonds between 1942 and 1945. She had sizable savings accounts in a number of neighbourhood banks, exhibiting the legendary penchant for Americans to hedge against bank failures. Fourthly, in the document the sister signed applying for letters of administration, a fact also exhibiting a characteristic American sentiment:

> I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully perform, according to law, the duties of administratrix of the Estate of Maria Didovich, aka Marie Didovich, aka Mary Didovich aka M. Didovich, deceased.

2. Probate 61318 - 56 is a file of twelve pages. John Hamilton Shairp was a boat builder and resident of Vananda, B.C. The bulk of his estate consisted of the family home, recreational property on Texada Island, and a savings account. These three were held in joint title with his wife. The gross value of the estate $4099.24 (representing his half) passed to his widow. Funerals and burials were an expensive charge on an estate. Mr. Shairp's Ford Coupe was valued at twenty-five

dollars. His funeral costs were $353.00.

3. Probate 61319 - 56 is a file of twelve pages. William Coles Gunn had his will drawn up at the age of thirty-seven when he was living temporarily in California, at which time he made his wife sole beneficiary. The gross value of his estate is $8,067.36. His assets at the time of death were mainly in real estate. His wife owned half the house and they had joint bank accounts. There were a few details of the funeral arrangements, which cost $572.00.

4. Probate 61323 - 56; twenty pages. Pete Beko, according to his forthright will, Pete "also known under the name of Pero Beko, Restauranteur and Fisherman," leaves an estate of $16,170.93 gross. To ensure the terms are carried out he writes, "I hereby appoint my good friends Theodore Lucich and Janko Guratovich both cooks and both of the city of Vancouver . . . to be Executors and Trustees of this my will."[4] He had died at Campbell River.

From the probate inventory we learn that Pete Beko was an enterprising man. He was an investor. His share of "boat profits" from the Canadian Fishing Co. was $1,000. He acquired mining stock in three different companies worth $2,340. He owned two pieces of real estate in Vancouver: one valued at $4,800 in which he had an equity of $2,000, the other, valued at $10,752.76, he owned outright.

He had two small bank accounts, one in Vancouver; the other was in Kemano, the site of a power development in the early 1950s. Perhaps he had been a cook in the Kemano construction camp. Working long hours in this isolated place was a way for a single man to make his stake.

Mr. Beko was a native of Yugoslavia; he bequeathed his property in four equal parts "share and share alike" to his mother, sister, and two brothers in Yugoslavia. And so his new world riches went back to a village in Yugoslavia where all his family had lived.

Probate files, while giving some sense of personality, are according to form; they are generally homogeneous and lend themselves to quantitative analysis. The fact that probate files are permanently preserved means, too, that quantifiers will have a continuous series to tabulate changing patterns and discern trends. Crime historian J. A. Sharpe calculated for his study using quantitative analysis that he needed a run of at least sixty years.[5] The Provincial Archives of British Columbia has Vancouver registry probate files on rolls of microfilm from 1893 to 1946. The years 1947 to 1966, microfilmed, are stored at the Court Records Centre in Vancouver and are open to search.

Social historians should find all these records, which have been cited from the civil division, usable. Indeed, in view of the wealth of possibilities selecting case files for archival preservation poses considerable difficulty.

Notes for Chapter IV

[1] Perry Millar and Carl Baar, Judicial Administration in Canada (Kingston and Montreal: McGill-Queen's University Press, 1981), n. 27, p. 229.

[2] Divorce lawyer Neil Fleishman states that ninety per cent of his clients are women.

[3] Neil Fleishman, The X-Factor (New York: Vantage Press, 1986).

[4] The solicitor handling the estate was J. J. Volrich, mayor of Vancouver, 1977-1980.

[5] J. A. Sharpe, Crime in Seventeenth-Century England: A County Study (Cambridge: Cambridge University Press, 1983), p. 8.

CHAPTER V

Appraisal of Court Records, and their Archival Use

The court administration through its record scheduling (see Appendix B) has a decided policy of systematic selective retention for indexes and appeal books, both volumes the most obvious choice for permanent preservation. The choice of which case files to preserve is not so clear cut.

The Grigg Report in 1954 avoided altogether discussing processes for the appraisal of court records: "In view of the complexity of the subject we have felt unable to make an authoritative submission on legal records."[2] That study fell to the Denning Committee (1966),[1] whose Report was, in essence, a comprehensive record schedule for all levels and jurisdictions of court in the United Kingdom. While furnishing food for thought, it is not a satisfactory guide for archivists for several reasons.

Denning recommended that specimens of historical, social, economic or procedural interest be selected by the registrars and preserved. He made a case for selective sampling, in effect, a collection of "plums" and thought random sampling, to be advantageous only for homogeneous sets of material, such as bankruptcy files. As for the ordinary run of civil cases, once the proceedings had come to an end, he recommended that the papers should be destroyed. Cases of any importance, he reasoned, were written up in the Law Reports, and his report called for the retention of the case papers of those civil actions that were noted in the Law Reports,[3] a debatable point. We can see what Lord Denning means. The law reports reprint at most no more than the gist of the arguments of counsel and the reasoning and rulings of the judges, whereas the files have the documents and exhibits that provide the evidence for the arguments and the judgment. However, Denning's policy would result in a duplication of information, for the evidence can be inferred from the argument, and the argument can be reconstructed from the documents. In any case, for the period under discussion, the law reports have their shortcomings as references in legal history. Publication of the B.C. Reports was suspended from 1949 to well after 1960 because of complaints of the Law Society.[4] It was deemed sufficient to publish notable cases in The Weekly Western Reports, where they contended for space with cases from Manitoba, Saskatchewan, and Alberta. B.C. cases were not fully reported, although brief case notes have been published in the Advocate, the professional journal of the Law Society since 1949. Denning's report reflects administrative and legal rather than scholarly values, and administrative and scholarly values do not always coincide. Researchers usually need examples of the mundane and ordinary; while some may seek out certain kinds of evidence to support their own theories. However, the archivist abiding by the principle of impartiality must stand between administrative "interest" and academic "pressure".[5]

A landmark study in the appraisal of inactive records was prepared by the Massachusetts Judicial Records Committee under the chairmanship of F.M.S. Hindus.[6] Indeed, there are points to note; however, the situation in Massachusetts is not really analogous to ours. For instance, the common law and equity courts had been combined in B.C. *ab initio* when Begbie announced the 1859 Proclamation constituting the Supreme Court. Furthermore, Hindus would have a far greater backlog of records than could be found in British Columbia. And though, perhaps, in some instances, the several record series may not have been adequately identified, our Supreme Court registries had their distinct sections: Criminal, Civil and Divorce, Probate and Bankruptcy (see Chapter III), an orderly record system, each file clearly marked with registry number and year. But, in the Hindus operation it seems that the records initially had to be stratified by separating the civil cases from the criminal cases!

Hindus next stratified the civil files by decades, taking a proportionately larger sample for the early years in order to make an allowance for increased litigation as the century advanced. For his project he wanted a combination of both random and specially selected case files; the specially selected ones were stratified by the evenly spaced years. The files selected randomly were chosen according to the registry numbers generated by a computer, and theoretically could fall in any year or even all in one year.

For the files selected by decade, the ten year span might seem to be too long to catch the considerable changes in British Columbia during the first hundred years. There is, for instance, a marked contrast in life in 1915 with that of 1925, 1935, 1945 and 1955, and it seems unlikely that randomly selected files would clarify the differences.

To analyse his strata, Hindus codified his cases according to three broad categories: tort, contract, and property. Like Lord Denning, he was doubtful that there can be much of general interest in most common and general categories of tort (ones like Rankin's case cited above) and of contract (the mortgage case cited). He rated trustee, deceit, libel, workmen's compensation, and conversion of property (the log-loader case cited above) higher.

A more important difference between the Massachusetts situation and ours is that the B.C. Supreme Court records cannot be divided conveniently into contrasting counties (one urban, one regional). The records are not organized that way. Although in B.C. the judges on circuit certainly do hear Supreme Court cases in each judicial district at the assizes, and although county court judges act as local justices of the Supreme Court in specified matters (see Chapter II), the papers of those trials will be filed in the originating county court registries. The British Columbia Supreme Court system is a centralized one. In fact all the major civil cases, with the exception of mining, regardless of their geographic origins in the province, were tried either in Vancouver or Victoria (see

Chapter II).

The old court record-keepers regarded the cause book as the most valuable record. Indeed Lord Denning set down the "green books", the high court cause books, for permanent preservation. Every document and happening, every process (except searches and subpoenas) are recorded there in brief by the clerks. The Hindus Committee, however, regarded these books of little value, because the entries "give no true sense of the case."[7] Granted a narrative cannot be fashioned from the entries as is possible with a case file, they nevertheless are valuable to those whose investigations require data from a very large numbers of cases.

It is the cause book that gives researchers an idea of the type of actions filed in the Supreme Court registry; they show how the type of action varies from period to period. Searchers will be able to monitor the progress of the action, find at what stage the case was abandoned, or, when suits come to trial, observe the outcome. The entries will surely show inter alia that large companies can pursue a case that many other persons cannot. From these, researchers may assemble data for identifying plaintiffs who typically give up a suit, those who simply do not have the money or the nerve to keep going in a grievance against a powerful defendant like a hospital board or an insurance company. On the other hand, the data may identify that rare person who is an "habitual" litigant.

Using just the case files, Hindus had hoped to collate his sampled or selected files from all the sections into subgroups such as "women", "technology", "public corporations", and "business". But he found that his technique did not produce numbers large enough to be of any use to quantifiers. For subgrouping he could have used the cause books. Entries like "Jones v. B.C. Hydro - damages to fence", for instance, would go into the "public corporations" subgroup.

J.A. Sharpe felt he needed four pieces of information to complete his quantifying of criminal cases: the indictment, presentment, recognizance, and deposition.[8] The elements in a civil action for a similar study are accordingly the style of cause, the statement of claim, the statement of defence, and the outcome, or judgment -- all stages noted in the cause books.

These record books are certainly large and cumbersome, so it is understandable that in many jurisdictions record administrators have set them down for disposal. However, if the pages are legible and in reasonable condition they are just the sort of records most suitable for filming, because they have been kept in registers or record volumes in numerical or chronological sequence.

As for case files, certainly the most valuable are in the divorce section. According to Lord Denning, who discounted other series of case files: "We consider it desirable that a sufficient periodic sample of complete case files in matrimonial actions be preserved to provide adequate material for social and similar research."[9] The Hindus Committee agrees and would keep <u>all</u> divorce cases.[10]

In British Columbia the divorce numbers between 1900 and 1945 will not be great; it may be possible that all of them could be retained to preserve the integrity of the series. Certainly very large samples from 1945 up to 1968 should be kept. The bulk of material will fall between 1968 (when the grounds for divorce were broadened) and 1986. For that period the files may be selected on the same basis as other civil cases. Divorce files should not be extensive after 1986, since the 1986 "no-fault" Divorce Act will presumably result in decrees being granted in uncontested divorces virtually by request. It was the adversarial element in divorce that accounted for much of the documentation.

Bankruptcy, Probate and Divorce files have been discussed. For selecting the ordinary civil cases we should modify the Hindus technique. First, let us have a team take two three-year spans: 1948-1951 and 1958-1961[11] and go through every file saving some intact, discarding the "non-starters", and stripping others (whether discontinued or decided) for statement of claim, statement of defence, examination for discovery, substantive affidavits, counter-claim, and judgment. Save as many of these documents as are in the file, the most usable being the statement of claim, the discovery materials, and the judgment. When once the team has a perspective on the series, the members can come to a decision on the disposition of the very long and technical corporation/industrial cases. For the rest of the bulk, take a stratified sample every <u>five</u> years and random samples from the universe of records using registry numbers that are computer generated. The randomly selected files should then be kept intact, even if they are technical cases. This method should result in a balanced archive, redressing the pitfalls of conscious selections.

NOTES FOR CHAPTER V

[1]Report of the Committee on Legal Records (Denning Report) (London: HMSO, 1966. Cmd. 3084)

[2]Report of the Committee on Departmental Records (Grigg Report) (London: HMSO, 1954. Cmd. 9163), p. 94.

[3]Denning, p. 19.

[4]See Alfred Watts, History of the Law Society, p. 49 ff.

[5]Felix Hull, "The Appraisal of Documents: Problems and Pitfalls". Society of Archivists, (April 1980), p. 289.

[6]Hindus, M.S., T.M. Hammett and B.M. Hobson. The Files of the Massachusetts Supreme Court, 1859-1959: An Analysis and Plan for Action. (Boston: G.K. Hall & Co., 1979).

[7]Hindus, p. 37.

[8]Sharp, pp. 9-12.

[9]Report of the Committee on Legal Records (1966), p. 27.

[10]Hindus, p. 83.

[11]For a choice of years see Chapter II.

CHAPTER VI

Conclusion

We have been looking primarily at the period 1858 to 1960, a period of relative stability. From then on society became more unsettled. Thus the Task Force on Corrections Service, February 28, 1973, reported that criminal offences in British Columbia had doubled between 1962 and 1970.[1] The records of actions increase in the civil registries proportionately. As the Latin proverb says, lis litens generat, strife begets strife.

The Supreme Court of British Columbia Act of 1960 altered the proceedings for divorce hearings, and in 1968, the new federal divorce act brought a flood of divorce suits to the Supreme Court. As a result the number of divorces granted by the Supreme Court trebled between 1959 and 1969, that is, from 1420 decrees to 4229.[2]

Judeo-Christian ethics had been unquestioned by the pioneering generations. The men on the bench of the Supreme Court of British Columbia from 1858 to 1960 were without exception Christian. And the justices (predominantly Anglican or Roman Catholic, rarely Presbyterian or United Church) were active Christians, holding office in their local churches, teaching Sunday school, or working with boys clubs. The value system seemed as secure to the administrators of the 1950s as it had to James Douglas, who, with full confidence in 1859, had printed on the claims forms for miners going out into the lonely hills:

> It is enjoined that all persons in the gold fields maintain a due and proper observance of Sundays.[3]

The divorce lawyer Neil Fleishman speaking of his attorney father said:

> For my father, the basic requisite for the profession was a thorough grounding in the total culture of our Western World and in what he saw as the cornerstone of that culture, the Bible. I remember as a teen-ager in the terrible thirties being taken to hear the great evangelical preachers, one every Sunday, without fail. The word of God was the word of Law, he felt.[4]

Writing in 1973, he added:

> In the last 5 years the question of ministers of the gospel never came up in court - 25 years ago? it was commonplace for couples to mention having seen their pastor or their priest. Nowadays, even practicing R.C.'s simply do not mention having discussed these matters with their priest.[5]

Does rising litigation in the civil division point to divisions in society? On the whole, civil records have been neglected by scholars, who wrongly felt that criminal cases are more important. David Kelley writes:

> No category of human action has been studied in as much depth, or from as many angles as crime.[6]

So we can understand why criminal records have been considered by archivists like Michael Hindus to be more valuable than civil ones. Yet Kelley maintains that all this intensive study has elicited only three undisputed facts: that young men are disproportionately responsible for crimes of violence and property, that criminals exhibit a disrespect for authority, and that they have a diminished capacity for empathy.[7]

Can we not conclude that civil cases give a better profile of society than do criminal ones? Certainly in British Columbia the crimes that have come before the higher courts are often more a study for psychology than for either law or history. From 1858 to 1958 the facts of murder and sexual abuse[8] are painfully similar, more alike indeed than the circumstances of divorce, the values of personal property, and relationships between employer and employee. Civil law is the branch of law that most commonly affects most people. If criminal records document history from below, civil ones document the history of community because all segments of society, all ethnic groups, both men and women, write wills, and all social classes petition for divorce, seek guardianship, file for bankruptcy, and begin an action for private wrongs. Only civil records can provide researchers with the evidence. Despite the logic of this view, the ordinary civil causes are not noticed by the media. The journalists, like the chroniclers of old, relate local sensations: a doctor's negligence trial or the libelling of a celebrity. They neglect the commonplace, which is the reality of history.

Criminal records may show the connection between theft and economic conditions, arson and protest, assault and social instability. But civil records are better indicators of economic conditions, social stability, and public sentiment than criminal records. Thus J.A. Sharpe cites rising litigation in English courts of the early seventeenth-century as an indication of "the generally hostile human relationships of the period."[9] At the end of the century, a more settled period, those wronged, he said, preferred a public apology rather than a court action and pecuniary damages.

R.C. Risk states that in Ontario cases in the mid-nineteenth century civil courts were dramatically different from cases coming before judges a hundred years later.[10] So, too, researchers will find that in British Columbia typical cases in the early days had to do with land conveyancing, mining licenses, timber licenses, leasing and rights of way, railway settlements, enforcing contracts, collecting debts. At the turn of the century, as legislators passed the laws necessary for industrialization and the development of the regions, cases arising out of incorporation, insurance, financing, performance, rights of way for the telegraph and for ever more railway companies came to the fore. This period gave way to one of social legislation, laws regulating standards in industry, employer-employee contracts and public health. Government intervention grew; persons disputing expropriation and marketing-board regulations took their cases to court. During the 1930s, the building industry faltered, timber markets collapsed, salmon canneries failed, and personal and company bankruptcies increased. After World War II divorces rose sharply and have continued to rise. In recent times, the B.C. Supreme Court hears environmental issues and lifestyle questions; it makes decisions on collective rights and corporate liabilities. What would one of our nineteenth-century justices have thought of a man's suing a tobacco company over his poor health? Probably he would have considered the suitor a fool and his case frivolous and vexatious. And so it goes.

Sybille Bedford writes:

> The law, the working of the law, the daily application of the law to people and situations, is an essential element in a country's life. It runs through everything: it is part of the pattern like the architecture.[11]

Here is a complementary thought from Risk:

> Our understanding of history cannot be complete without some understanding of its legal elements. The study of legal history requires knowledge of legal doctrines, structure, and procedure.[12]

The raw materials exist. Such primary sources as court documents and the published law reports can be studied over time because common law records were customarily kept for very long periods. The reasons were administrative: to ensure the law's consistency by reference to precedent; to document the status in partnership, adoption, divorce, insolvency, and inheritance; and to ensure that orders of the court in the paying of damages, maintenance, or fines were carried through.

The scholar is fortunate in having, at hand, case files, probate rolls, bench books and cause books preserved from the B.C. Supreme Court registries through which he can discover the legal elements and personalities and discern the patterns of the past.

NOTES FOR CHAPTER VI

[1]Perry Millar and Carl Baar, Judicial Administration in Canada (Kingston and Montreal: McGill-Queen's University Press, 1981), p. 78.

[2]Statistics Canada Information.

[3]1858 Papers Relating to British Columbia: 19.

[4]Fleishman, Neil, Counsel for the Damned (Vancouver: S.J. Douglas, 1983), p. 30.

[5]Ibid. p. 157.

[6]Kelley, David, "Stalking the Criminal Mind", Harpers (August 1985), p. 55.

[7]Ibid.

[8]See R v Iman Din, XV BCR pp. 476-491 (1910).

[9]J.A. Sharpe, "Such Disputes Betwixt Neighbours" in Disputes and Settlements, ed. John Bossy (Cambridge: Cambridge University Press, 1983), p. 170.

[10]R.C. Risk, "Mid-Nineteenth Century Ontario", p. 92.

[11]Sybille Bedford, The Faces of Justice (London: Collins, 1961), p. 83.

[12]R.C. Risk, "A Prospectus of Canadian Legal History", Dalhousie Law Journal (1973):228.

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APPENDICES

APPENDIX A

CHIEF JUSTICES OF BRITISH COLUMBIA

NAME	FROM	TO
Sir Matthew Baillie Begbie	March 29, 1870	June 11, 1894
Theodore Davie	February 23, 1895	March 7, 1898
Angus John McColl	August 23, 1898	January 16, 1902
Gordon Hunter (Also Chief Justice of the Supreme Court of British Columbia throughout his incumbency.)	March 4, 1902	March 15, 1929
James Alexander Macdonald (Also Chief Justice of Appeal from November 30, 1909 to March 15, 1929).	March 16, 1929	April 1, 1937
Archer Martin	April 2, 1937	May 6, 1940
Malcolm Archibald MacDonald	May 15, 1940	October 13, 1941
David Alexander McDonald	January 5, 1942	April 10, 1944
Gordon McGregor Sloan	October 3, 1944	December 31, 1957
Alexander Campbell DesBrisay	May 12, 1958	June 27, 1963
Sherwood Lett	August 1, 1963	July 24, 1964
Henry Irvine Bird	August 20, 1964	January 8, 1967
Herbert William Davey	May 12, 1967	September 30, 1972
John Lauchlan Farris	February 8, 1973	December 31, 1978
Nathaniel Theodore Nemetz	January 1, 1979	

THE COURT OF APPEAL FOR THE PROVINCE OF BRITISH COLUMBIA

JUSTICES OF APPEAL

NAME	FROM	TO
Paulus Aemilius Irving	November 30, 1909	April 9, 1916
Archer Martin	November 30, 1909	April 1, 1937
Chief Justice of British Columbia	April 2, 1937	May 6, 1940
William Alfred Galliher	November 30, 1909	May 1, 1933
Albert Edward McPhillips	September 20, 1913	January 24, 1938
David MacEwan Eberts	May 1, 1917	May 20, 1924
Malcolm Archibald MacDonald	May 27, 1924	May 14, 1940
Chief Justice of British Columbia	May 15, 1940	October 13, 1941
William Garland McQuarrie	September 6, 1933	May 30, 1943
Gordon McGregor Sloan	April 2, 1937	October 2, 1944
Chief Justice of British Columbia	October 3, 1944	December 31, 1957
Cornelius Hawkins O'Halloran	January 29, 1938	September 9, 1963
David Alexander McDonald	September 11, 1940	January 4, 1942
Chief Justice of British Columbia	January 5, 1942	April 10, 1944
Alexander Ingram Fisher	January 13, 1942	December 10, 1943
Harold Bruce Robertson	July 5, 1943	September 17, 1955
Sidney Alexander Smith	March 18, 1944	September 18, 1960
Henry Irvine Bird	October 3, 1944	August 19, 1964
Chief Justice of British Columbia	August 20, 1964	January 8, 1967
Herbert William Davey	September 1, 1954	October 15, 1973
Chief Justice of British Columbia	May 12, 1967	September 30, 1972

THE COURT OF APPEAL FOR THE PROVINCE OF BRITISH COLUMBIA

JUSTICES OF APPEAL

NAME	FROM	TO
Herbert Willian Davey	September 1, 1954	October 15, 1973
Chief Justice of British Columbia	May 12, 1967	September 30, 1972
James Moses Coady	September 1, 1955	March 1, 1961
Frederick Anderson Sheppard	October 14, 1955	November 10, 1965
Thomas Grantham Norris	January 16, 1961	September 13, 1968
Charles William Tysoe	March 15, 1961	February 1, 1973
John Owen Wilson	January 22, 1962	July 31, 1963
Chief Justice of the Supreme Court	August 1, 1963	November 6, 1973
Norman William Whittaker	August 1, 1963	November 6, 1973
Arthur Edward Lord	October 18, 1963	December 31, 1967
Harry Joseph Sullivan	May 20, 1964	August 4, 1965
Ernest Bolton Bull	November 5, 1964	August 23, 1982
Hugh Alan MacLean	November 23, 1964	September 15, 1978
Meredith Milner McFarlane	September 1, 1965	April 27, 1983
Angelo Ernest Branca	January 15, 1966	March 21, 1978

CHIEF JUSTICES OF THE SUPREME COURT OF BRITISH COLUMBIA

NAME	FROM	TO
Gordon Hunter (Also Chief Justice of British Columbia during his incumbency.)	March 4, 1902	March 15, 1929
Aulay MacAulay Morrison	April 9, 1929	February 27, 1942
Wendell Burpee Farris	May 6, 1942	June 17, 1955
Sherwood Lett	September 1, 1955	July 31, 1963
John Owen Wilson	August 1, 1963	November 6, 1973
Nathaniel Theodore Nemetz	November 7, 1973	December 31, 1978
Allan McEachern	January 1, 1979	

THE SUPREME COURT OF BRITISH COLUMBIA

PUISNE JUDGES

NAME	FROM	TO
Sir Henry Pering Pellew Crease	March 11, 1870	January 21, 1896
John Hamilton Gray	July 3, 1872	June 5, 1889
John Foster McCreight	November 26, 1880	December 17, 1897
Alexander Rocke Robertson	November 26, 1880	December 1, 1881
George Anthony Walkem	May 23, 1882	December 1, 1903
Montague William Tyrwhitt-Drake	August 14, 1889	August 14, 1904
Angus John McColl	October 13, 1896	August 22, 1898
Chief Justice of British Columbia	August 23, 1898	January 16, 1902
Paulus Aemilius Irving	December 16, 1897	November 29, 1909
Archer Martin	September 12, 1898	November 29, 1909
Chief Justice of British Columbia	April 2, 1937	May 6, 1940
Lyman Poore Duff	February 26, 1904	September 26, 1906
Aulay MacAulay Morrison	September 28, 1904	April 8, 1929
Chief Justice of the Supreme Court	April 9, 1929	February 27, 1942
William Henry Pope Clement	December 7, 1906	May 3, 1922
Francis Brooke Gregory	November 30, 1909	April 1, 1933
Denis Murphy	November 30, 1909	December 1, 1941
William Alexander MacDonald	September 24, 1913	January 1, 1934
Alexander Ingram Fisher	April 9, 1929	January 13, 1942
Harold Bruce Robertson	September 6, 1933	July 4, 1943

THE SUPREME COURT OF BRITISH COLUMBIA

PUISNE JUDGES

NAME	FROM	TO
Frederick George Tanner Lucas	December 3, 1934	September 24, 1935
Alexander Malcolm Manson	November 27, 1935	February 28, 1961
Sidney Alexander Smith	September 26, 1940	March 17, 1944
James Moses Coady	January 5, 1942	August 31, 1955
Joseph Nealon Ellis	January 16, 1942	September 28, 1942
Henry Irvine Bird	January 15, 1942	October 2, 1944
Chief Justice of British Columbia	August 20, 1964	January 8, 1967
Arthur Douglas MacFarlane	July 5, 1943	March 1, 1961
John Owen Wilson	March 18, 1944	January 21, 1962
Chief Justice of British Columbia	August 1, 1963	November 6, 1973
Andrew Miller Harper	October 3, 1944	September 9, 1947
Herbert Spencer Wood	September 15, 1947	January 1, 1957
Norman William Whittaker	September 13, 1947	July 31, 1963
John Valentine Clyne	July 10, 1950	December 31, 1957
Herbert William Davey	March 5, 1953	August 31, 1954
Chief Justice of British Columbia	May 12, 1967	September 30, 1972
Harold Walker McInnes	September 1, 1954	August 11, 1966
Arthur Edward Lord	October 8, 1955	October 17, 1963
Harry Joseph Sullivan	February 9, 1956	May 19, 1964
Thomas Wilfred Brown	June 14, 1956	March 31, 1970
John Graham Ruttan	June 14, 1956	Narch 31, 1970

THE SUPREME COURT OF BRITISH COLUMBIA

PUISNE JUDGES

NAME	FROM	TO
Hugh Alan MacLean	February 1, 1957	November 22, 1964
Franklin Kay Collins	January 28, 1958	December 31, 1966
Thomas Grantham Norris	July 21, 1959	January 15, 1961
David Robertson Verchere	July 9, 1959	March 3, 1981
James Gordon Armstrong Hutcheson	January 16, 1961	Seotenber 14m 1965
Robert Alexander Burnie Wootton	March 1, 1961	March 1, 1976
Frederick Craig Munroe	March 1, 1961	March 29, 1983
John Somerset Aikens	February 1, 1962	May 31, 1978
Victor Leonard Dryer	August 1, 1963	December 25, 1983
Nathaniel Theodore Nemetz	October 18, 1963	February 15, 1968
Chief Justice of the Supreme Court	November 7, 1973	December 31, 1978
Chief Justice of British Columbia	January 1, 1979	December 21, 1978
Angelo Ernest Branca	October 18, 1963	January 14, 1966

APPENDIX B

RECORDS RETENTION AND DISPOSAL SCHEDULE: 78/01 COURT JURISDICTION: Appeal Court

SUBJECT GROUP	SUBJECT	DESCRIPTION	RETENTION PERIOD AND REMARKS					
			A	D	M	Micro Ret.	Total Years	Remarks
BOOKS	Index and Record Books		7	33	No		40	Sel. Ret. By Arch.
	Appeal Books and Factums		7	33	Yes		40	Sel. Ret. By Arch.
APPEALS	Judgements, orders, decrees, and reasons therefor.		7	3	Yes	30	40	Sel. Ret. By Arch.
	General	Correspondence, vouchers, receipts, cancelled cheques, etc.	7		No		7	or 2 yrs. since last gov't audit
	Court Recorders	Log Books and tapes of court proceedings	5		No		5	or 2 yrs. if transcribed
	Judge's Bench	Personal property of Judge	10		No		10	transfer with permission of Judge. - transfer to Arch.

RECORDS RETENTION AND DISPOSAL SCHEDULE: 78/01 COURT JURISDICTION: Supreme and County Court

SUBJECT GROUP	SUBJECT	DESCRIPTION	RETENTION PERIOD AND REMARKS					
			A	D	M	Micro Ret.	Total Years	Remarks
CIVIL	Writs, summons, petitions, other originating & subsequent materials	Includes exhibits, correspondence (other than partnership, probate, adoptions, bankruptcy, or lunacy) where action, cause concluded or terminated by dismissal, discontinuance, court order, and no appeal pending, excluding judgments, orders, decrees, reasons therefor and transcripts	7	3	No		10	
	Judgments, orders, decrees, reasons therefor, and transcripts		7	3	Yes	30	40	Sel. Ret. By Prov. Archives
	Other writs, orders, decrees, and reasons therefor.	Where cause not concluded but no proceedings filed. No other steps (no judgment, etc.)	7	3	Yes	30	40	Sel. Ret. By Arch.

RECORDS RETENTION AND DISPOSAL SCHEDULE: 78/01 COURT JURISDICTION: Supreme and County Court

SUBJECT GROUP	SUBJECT	DESCRIPTION	RETENTION PERIOD AND REMARKS					
			A	D	M	Micro Ret.	Total Years	Remarks
	Partnership, probate (other than wills), adoption, lunacy, and bankruptcy		7	3	Yes	30	40	Transfer Archives
	Wills	(Probated) After Probate	1	9	Yes	30	40	Transfer Archives
	General Correspondence, receipts, cheques, etc.		7		No		7	or 2 yrs. since last gov't audit
	Bills of Sale - Chattel Mortgages		7	3	No		10	
	Court Recorders	Log books & tapes of court proceedings	5		No			or 2 yr. transc.
	Judge's Bench Books	Personal property of Judge		10				Archive Sel. rep.
CRIMINAL	Proceedings in all criminal matters, including charges, indictments, warrants, summons, etc.	Where no appeal pending, no bench warrant outstanding, no stay of proceedings entered, no probation order outstanding and excludes judgments, orders, reasons therefor, decrees, etc.	7	3	No		10	

RECORDS RETENTION AND DISPOSAL SCHEDULE: 78/01 COURT JURISDICTION: Supreme and County Court

SUBJECT GROUP	SUBJECT	DESCRIPTION	RETENTION PERIOD AND REMARKS					
			A	D	M	Micro Ret.	Total Years	Remarks
	Judgments, orders, reasons therefor, decrees record books, transcripts and certificates of conviction, N.B. (information and indictments on which final disposition is recorded, considered same as a conviction order)		7	3	Yes	30	40	Sel. Ret.
	General Correspondence	Returns of fines, jury lists, requisitions, calendars, vouchers, receipts, cancelled cheques, cheque stubs	7		No		7	or 2 yrs. since last gov't audit
	Court Recorders	Log books & tapes of court proceedings	5		No			or 2 yrs. if transcribed
	Judge's Bench	Personal property of Judge		10			10	Archives Se. Ret. with pension of judge

APPENDIX C

SELECTED SERIES FROM THE BULK LISTING SHEET, VANCOUVER, CRC, 1984

Temporary Box No.	Type of File	Year	Sequence	Record Centre Box No.
1-7	Supreme Court Judge Record Books			Pallet Storage
1-13	Supreme Court Chamber Lists	1965-74		Pallet Storage
14-23	Supreme Court Chamber Lists	1974-78		Pallet Storage
1-6	Supreme Court Record Books	1951-67		Pallet Storage
1-3	Supreme Court Divorce Record Books	1954-63		Pallet Storage
4-5	Supreme Court Divorce Record Books	1964-67		Pallet Storage
1-18	Supreme Court Judgments Divorce	1969-75		Microfilm
1-6	Partnership Books		Vol. 1-18	P.A.B.C.
7-8	Partnership Books		Vol. 19-24	P.A.B.C.
1	Divorce Clearance		04691-08201	06.06.00.1
1-25	Supreme Court Chamber Lists	1920-63		Pallet Storage
1-9	Supreme Court Judge's Record Books		1-28	Pallet Storage
1-8	Supreme Court Judge's Record Books	1964	1-346	01.02.00.1 - 01.04.00.2
581	Supreme Court Judge's Record Books	1961	2811(Pt.1)	04.12.07.6
582 (oversize)	Supreme Court Judge's Record Books	1961	2811(Pt.2)	04.12.08.1
591 (oversize)	Supreme Court Judge's Record Books	1966	3201	04.12.09.4
645	Railway Men's Acts & Oaths	1916-41 1942-55	01-62 375-713	04.19.08.4
646	Railway Men's Acts & Miscellaneous	1953-69	641-1062	04.19.08.5
647	Supreme Court Act Oversize	1958	911	04.19.08.6

SELECTED SERIES FROM THE BULK LISTING SHEET, VANCOUVER, CRC, 1984

Temporary Box No.	Type of File	Year	Sequence	Record Centre Box No.
652	Supreme Court Act	1920-63 1920-29	Misc. Assessment Appeals Creditors' Relief Act	04.19.09.5 04.19.09.6
653	Supreme Court Act	1927-56	Supreme and County Court	04.19.09.6
694	Supreme & County Court Creditors' Relief Act	1957-60		04.19.10.1
694	Supreme & County Court Creditors' Relief Act	1962 1968	1-4 1-2	04.19.10.1 04.19.10.1
695	Supreme Court Oversize	1961-62	1056-2530	04.19.10.2
696	Divorce	1968	1-25	04.19.10.3
717	Divorce	1968	740-769	04.20.03.6
720	Divorce	1968	840-869	04.20.04.3
721	Divorce & Matrimony 5936	1968	00001-00030	04.20.04.4
722	Divorce & Matrimony 5936	1968	00031-00060	04.20.04.5
732	Divorce & Matrimony 5936	1968	00287-00316	04.20.06.3
742	Divorce & Matrimony 5936	1968	00567-00590	04.20.08.1
752	Divorce & Matrimony 5936	1968	00870-00904	04.20.09.5
762	Divorce & Matrimony 5936	1968	01171-01206	04.21.01.3
772	Divorce & Matrimony 5936	1968	01448-01480	04.21.02.6
775	Official Receiver	1923	1-13	Pallet Storage
775	Official Receiver	1924	1-30	Pallet Storage

SELECTED SERIES FROM THE BULK LISTING SHEET, VANCOUVER, CRC, 1984

Temporary Box No.	Type of File	Year	Sequence	Record Centre Box No.
775	Official Receiver	1925	1-53	Pallet Storage
775	Official Receiver	1926	1-46	Pallet Storage
776	Official Receiver	1927	1-52	Pallet Storage
777	Official Receiver	to 1943		Pallet Storage
779	Official Receiver	1944-46		Pallet Storage
780 to 798	Bankruptcy	1920-31		Pallet Storage
799	Bankruptcy	1931		Pallet Storage
800	Bankruptcy	1931	21-50	Pallet Storage
801	Bankruptcy	1932	1-29	Pallet Storage
802	Bankruptcy	1932	30-51	Pallet Storage
803	Bankruptcy	1932	52-70	Pallet Storage
804	Bankruptcy	1932	68 only	Pallet Storage
805-817	Bankruptcy	1933-48		Pallet Storage
818	Bankruptcy	1948	6-22	Pallet Storage
819 to 828	Bankruptcy	1948-56	23-41	Pallet Storage
829	Official Receiver	1946,1948	77-11,1-30	Pallet Storage
830-837	Official Receiver	to 1959		Pallet Storage
838-839	M.P.R. Act	1942-48		Pallet Storage
840-848	Trustee files of W.A. Schramm	1963-67		Pallet Storage
849-850	Trustee files of W.A. Schramm, Misc. Check-books	1963-67		Pallet Storage

SELECTED SERIES FROM THE BULK LISTING SHEET, VANCOUVER, CRC, 1984

Temporary Box No.	Type of File	Year	Sequence	Record Centre Box No.
849-850	Trustee files of W.A. Schramm, Misc. Correspondence	1963-67		Pallet Storage
851	Trustee files of W.A. Schramm, Misc. Correspondence	1963	103/63 103/63	Pallet Storage
852	Trustee files of W.A. Schramm, Misc. Correspondence and to Corporate Seals			Pallet Storage
853	Trustee files of W.A. Schramm, Misc. Files and Correspondence			Pallet Storage
854	Trustee files of W.A. Schramm, Misc. Bankrupt Files			Pallet Storage
855-875	Trustee files of W.A. Schramm, Bankrupt Files			Pallet Storage
876-881	Trustee files of W.A. Schramm, Bankrupt Files			Pallet Storage
882	Notice of Motion Chandlers Files and Partnership Act Files	1976-77		Pallet Storage
885	Supreme Court 1954 Extradition Act Files & Partnership Act	1960-61		Pallet Storage
H-17	Supreme Court	1941	Deposit Date 1985	13.06.10.6
H-34	Record Book Justice Bird			13.07.01.7
H-35	Record Book Justice Manson			13.08.01.1
H-36	Record Book Justice Bird			13.07.02.8

SELECTED SERIES FROM THE BULK LISTING SHEET, VANCOUVER, CRC, 1984

Temporary Box No.	Type of File	Year	Sequence	Record Centre Box No.
H-37	Record Book Justice Bird			13.07.03.7
H-37	Record Book Justice Sergent 3 Chamber Books			13.07.03.1
H-38	Record Book Justice Sergent 2 Chamber Books			13.07.03.2
H-42	Record Book DesBrisay C.J.			13.07.03.6
H-43	Record Book J. Hutchens	Volume 1 of Chamber Book		13.07.03.7
H-44	Record Book Lett C.J.			13.07.04.8
H-45	Record Book Lett C.J.			13.07.04.8
H-46	Record Book Lett C.J.			13.07.04.2
H-47	Record Book Whittaker			13.07.04.3
H-49	Record Book Manson			13.07.04.4
H-50	Record Book Sullivan One Chamber; One Divorce			13.07.04.5
H-52	Record Book Hunter C.J. Bench Book	1912-21		13.07.04.7
H-53	Record Book MacLean Volume 1-6			13.07.04.8
H-58	Record Book Brown Volume 10, 19-22			13.07.05.5
H-60	Record Book Whittaker			13.07.05.7
H-61	Record Book Collins			13.07.05.8
H-63	Record Book Lett C.J.			13.07.06.3
H-67	Record Book Coady			13.07.06.7
H-67	Record Book Coady			13.07.06.8

SELECTED SERIES FROM THE BULK LISTING SHEET, VANCOUVER, CRC, 1984

Temporary Box No.	Type of File	Year	Sequence	Record Centre Box No.
H-68	Record Book Smith			13.07.07.1
H-69	Record Book Lord			13.07.07.2
H-70	Record Book Lord Chamber Book			13.07.07.3
H-71,72	Record Book Ellis, Fake, Shultz			13.07.07.4
H-74	Record Book MacDonald			13.08.01.4
H-75	Record Book Hunter			13.08.01.5
H-78	Record Book Nemitz C.J. Chamber Book			13.07.07.7
H-79	Record Book Nemitz C.J. Chamber Book			13.07.08.1
H-80 to 84	Record Book Gregory			13.07.08.2
H-85	Record Book Gregory Volume 26-27 Chamber Book			13.07.08.7
H-86	Record Book Gregory			13.07.09.1
H-90	Record Book Innes			13.08.01.9
H-92	Record Book Clement			13.07.09.5
H-93	Record Book Collins Chamber Book			13.07.09.6
H-94	Record Book MacDonald			13.07.09.7
H-95	Record Book Sebenisky			13.07.09.8
H-96	Bench Books Smith			13.07.10.1
H-97	Bench Books Hunter			13.07.10.2
H-99-104	Bench Books Wilson C.J.			13.07.10.4
H-105-108	Bench Books Wilson C.J. Civil Chambers Book			13.08.02.2
H-109	Bench Books Wilson C.J. and Lord C.J.			13.08.02.6

SELECTED SERIES FROM THE BULK LISTING SHEET, VANCOUVER, CRC, 1984

Temporary Box No.	Type of File	Year	Sequence	Record Centre Box No.
H-114	Bench Books McIntyre			13.08.03.4
H-119	Bench Books White, Green			13.08.04.1
H-121	Bench Books Manson, Volume 1-8			13.08.04.3
H-122	Bench Books Norris, Admiralty & Chambers			13.08.04.4
H-123	Bench Books Morrison			13.08.04.5
H-124	Files Wilson			13.08.04.6
H-125	Bench Books Howay, Grant			13.08.04.7
H-127				13.08.01.8
H-128	Supreme Court	1946-53	2876,2418	13.08.05.1
H-129	Supreme Court			13.08.05.2
H-135	Supreme Court	1959-60		13.08.05.7
1-1	Divorce	1946 deposit date 1979		10.07.03.2
1-2	Divorce	1950		10.07.03.3
1-3	Divorce	1952		10.07.03.4
1-4	Divorce	1955		10.07.03.5
1-5	Divorce	1956		10.07.03.6
1-6	Divorce	1956		10.07.03.1
1-7	Divorce	1956		10.07.04.2
1	Supreme Court Act	1965		18.8.3.7
6	Supreme Court Act	1965		18.8.4.5
23	Supreme Court Act	1965		18.8.7.4

SELECTED SERIES FROM THE BULK LISTING SHEET, VANCOUVER, CRC, 1984

Temporary Box No.	Type of File	Year	Sequence	Record Centre Box No.
44	Supreme Court Act	1967		18.7.1.1
8	Supreme Court Act	1961		17.3.4.1
46	Supreme Court Act	1961		17.3.8.8
51	Supreme Court Act	1961		17.3.9.5
130	Supreme Court Act	1962		17.04.09.4
151	Supreme Court Act	1962		17.05.02.1
229	Supreme Court Act	1963		17.06.01.7
280	Supreme Court Act oversize	1963		17.06.08.2
1	Bench Books Justice Aikins	1962		01.04.08.1
6	Bench Books Justice Aikins	1970		01.04.08.6
F-141	Supreme Court	1959		05.11.01.2
F 158	Supreme Court	1959		05.11.04.1
E 66	Supreme Court	1955		08.22.01.6
1	Partnership	1926		17.6.8.8
12	Partnership			17.6.10.4
34	Mechanics Liens	1905-08		17.7.3.1
35	Mechanics Liens	1912		17.7.3.2
36	Mechanics Liens	1912		17.7.3.3
38	Mechanics Liens	1919-22		17.7.3.5
39	Mechanics Liens	1919-22		17.7.3.6
40-48	Mechanics Liens			17.7.3.6 to 13.7.4.7

APPENDIX D

In the matter of "Perfect Ladies". Excerpts from the examination for discovery.

The examination of Vila Papp, 2nd September, 1931.

Mr. Sugarman asks Miss Papp about her salary.

Q. $20 a week?

A. No, a month. I did not get paid. I took a $250.00 chattel mortgage for my wages and gave $500.00 cash to the company as a loan.

Q. Where did you get the money for the loan?

A. I brought the money from the old country, from Budapest. I gave it to Mr. Sabo as I got it. Mrs. Sabo wouldn't let me work in the store anymore. I did the books at home. The chattel mortgage I sold to Mr. Sabo and got his property at Steelhead.

Q. A farm?

A. No, a forest, 40 acres

Q. When did this happen?

A. I don't remember

Q. Just about the time a receiver was put into the business?

A. No. It was before the receiver.

Q. Ever any cash?

A. Yes, this year after the fire. I got it in April or March, $30.00. It was money from the old country, cash in envelopes, from people I had sold things to, furniture, etc.

Q. How was it? English money?

A. No, dollars

Q. What money was taken in by the fire sale?

A. I don't remember

Q. Where did you get this; Auction sale, $2,318.75?

A. From the Auction book.

Q. All one sum?

A. It would be too much to write in all of those.

Q. Did you deposit any of that money in the bank account?

A. I guess I did.

Q. Where is the record of the deposits in the bank account?

A. We have not got them here.

Q. The old book was in the place where the fire was?

A. . . . books, shelves [were in the] fire

Q. It was November 1929 when Mr. Nettle resigned or was fired?

A. I don't know

Q. Did you take the 1929 books out of the safe?

A. . . . nothing to do with me

Q. They are very important right now

A. I don't know why

Q. Mr. Nettle was Mrs. Sabo's friend and he was the bookkeeper in 1929

A. . . . [no answer]

Q. And there is not a record left of the business done in 1929 is there?

A. . . . [no answer]

Q. Will you get a copy [of your bank book] for me?

A. I will but I haven't got it

Mr. Sugarman: Then we will excuse you until [this afternoon]

The continuation of examination of Vila Papp, 2nd September, 1931.

Q. Now, deposit December 19, $1,500, who did you get that from?

A. Mr. Sabo

Q. Cheque, December 23, $503.70. You have that Mr. Sabo, I want it for a moment - payable Royal Bank

Q. And you got a mortgage for how much money?

A. $750.00

....

Q. Why did Mr. Sabo give you $1,500?

A. That and the $800 he just put into my account because of a quarrel with Mrs. Sabo. Mrs. Sabo fired her first husband twice - thought he will lose everything. I came over on Mr. Sabo's responsibility here and if he lost his store he cannot support me.

Q. Why should he support you?

A. Because I was working for him.

Examination of Alexander Sabo, 2nd September, 1931

Q. How long have you been the only director?

A. Since January 1930

Q. Do you have all your books?

A. Except for cheques re. Mrs. Sabo's action

Q. All the bank books?

A. I have not turned over the bank book of the Royal Bank

Q. What about the records of the business before 1930?

A. Nothing

Q. Is it not the fact that you kept your books in the safe?

A. The new ones

Q. As a matter of fact, this fire just took place on the table in the back of the workshop?

A. Yes, the table was burned and some cases burned and damaged.

Q. But is it not the fact that there were about fifteen dresses on the mezzanine floor?

A. I don't know