MATTHEW BAILLIE BEGBIE

JUDGE OF BRITISH COLUMBIA

1858 - 1866
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by

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CHAPTER I.

THE GOLD RUSH.

No record of the formative years of British Columbia can be complete without an account of the work of Matthew Baillie Begbie. As Judge of the mainland colony it was his task to establish and maintain the law in the turbulent days of the gold rush. At first there were no roads, no towns or villages, no courthouses and no jails. He was obliged to travel as best he could, on horseback or by waggon, sometimes on foot, passing along precipices and toiling through mountain gorges. At night he was fortunate to find shelter in a magistrate’s cabin. More often than not he slept in a small Hudson’s Bay Company tent that by day had to serve as chambers. His was a vast circuit and one that grew in length as in the successive seasons the miners pushed up the canons to fabulous Cariboo. There were between twenty-five and thirty thousand of these adventurers in the first rush in the spring of 1858, and among them a lawless element of gamblers, claim-jumpers and gunmen who were accustomed to scoff at the law and deride its officers. From April, through the long summer, James Douglas, Governor of the Colony of Vancouver Island, held white man and Indian alike under the rule of law. After the territory had become a
colony on November 19 he was able to delegate these duties to Judge Begbie, who had arrived from England on the sixteenth of the same month. It was not long before the miners came to entertain a healthy respect for the giant Judge and for the redcoats and bluejackets whom he could call to his aid if the need should arise. Fearless and incorruptible, he made his name a terror to evildoers, and rather than face his stern, impartial justice in the Queen's court they abstained from violence or fled the colony, never to return.

A talented man, Judge Begbie served the colony in many capacities beyond the line of his official duties, becoming, as it were, Governor Douglas' first lieutenant in the field. In addition to the part he played in framing the law, he made maps, supervised the sale of town lots and made reports on any subject that the Governor asked him to investigate. When the colony became more peaceable and settled and more government servants were at the Governor's disposal, the Judge was relieved of these duties and was able to devote his time to the civil litigation that began to increase in volume as the miners reached Cariboo. In the early days he had been law maker and law giver and not infrequently served as counsel for the defense and prosecution at the same time. Such conditions were peculiarly suited to his disposition, which was autocratic, and to his methods which, to say the least, were highly personal in nature. But when barristers appeared in the colony and began to plead in complicated cases the Judge continued to act as a law unto himself and,
as there was no Court of Appeal nearer than London, he generally had his way. As a result the colony was in an uproar during the assizes, mass meetings of protest were held and on one occasion a petition was sent to the Governor demanding the Judge’s dismissal. But Judge Begbie was as tough and as tenacious as his bitterest enemies. When they annoyed him he gave them a tongue lashing they never forgot. If they went too far and he considered that his contemptuous disregard would be taken as an acknowledgment of guilt, he would clap them in jail. He survived storm after storm, saw governors and governments come and go and died in 1894 at the age of seventy-five, Chief Justice of the Province of British Columbia.

It is not unnatural that a legend should survive a man of such unusual qualities. The Begbie legend, which is still to be encountered in most parts of the province, has many rich facets. In the interior older residents point to trees from which they say Judge Begbie hanged a California gunman with his own hands. Such stories form the basis of the legend of the Hanging Judge. Those who have grown up in the native son tradition denounce him as an arrogant Englishman, a bully and an ignoramus unfit to administer the law to the peaceful, respectable miners from California. Anecdotes of his grim humor and sharp repartee are still related in clubs and offices, and elderly newspapermen mimic his shrill denunciations, for like Bismarck, his great stature was offset by a high pitched voice. In such wise
the legends of the Tyrant Judge and the Eccentric Judge have come into being. In the older and still stately homes of Victoria are the survivors of a generation that knew him in his later years. He lingers in their memory as a dear friend and a great gentleman. They point with pride to the chair in which he always sat or to the piano where he played and sang for their entertainment. As their cultivated voices take up the story of "dear Sir Matthew" it is almost possible to see him striding down the drive in his great black hat and cape, with half a dozen spaniels frisking at his heels.

As Judge Begbie often remarked to his friend, Peter O'Reilly, it is impossible to find people who are all of a piece. The most incongruous traits exist in the same person. We have all been surprised to find at one time or another that a person whom we know to be unbearably proud is also capable of deep humility. The stern and ruthless are sometimes kind and generous. The Judge himself possessed many characteristics that were seemingly irreconcilable. In the courts he appeared, and was, an autocrat of autocrats yet he was also by nature a man capable of genuine humility. It is small wonder then, that a legend should develop from the life and work of a man possessing as he did so many qualities of an unusual order. It is also no matter for surprise that the Begbie legends give a distorted picture of the man, for in each case they are founded on one of many seemingly conflicting characteristics. In criminal trials he was stern, and did, on occasion, sentence men to death but actually such occasions were very rare and he had
more than an ordinary aversion for taking human life.

There is no written evidence in existence to show that he ever hanged a man, or that he ever witnessed an execution. To administer justice so summarily would have been in flagrant disregard of the law, which provided that the supreme penalty should be exacted only with the Governor's consent.

He was, indeed, tyrannical in his treatment of juries and counsel and he was accustomed to give wrongdoers a searing calling down when he thought they merited it, yet his servants were devoted to him and years elapsed without any unfortunate courtroom scenes.

It is not as a handsome and irascible eccentric, however, that Judge Begbie merits a place in the history of British Columbia. As the sole Judge of the Supreme Court of British Columbia up till 1866 he deserves consideration as an important executive officer, and is entitled to a place in the records of our past, however small the place may be. But it is the part he played in the first days of the gold rush that makes him one of the leading figures in provincial and even national history. Not that the Judge achieved what he did alone, for that is another legend.

The ground had been broken by Governor Douglas before he

he arrived and he had, besides, soldiers and sailors at his call, not to mention certain geographic conditions that may be argued to have weighed heavily in the favor of law and order. He must be regarded, therefore, as Governor Douglas' able lieutenant, a strong executive arm that stretched over the wilderness to bring all men, red and white alike, within the framework of government and law.

It has been said that they played their parts on a small stage. This is true, in the sense that the northwest coast was remote and that the problems of the tiny colony were trivial in comparison with those of more populous areas. But if the events of the time are set within the context of continental movements and rivalries it becomes apparent that the policies of Lytton and Douglas were momentous and that Judge Begbie played an important secondary role in the unfolding of our national destiny.

Nearly a century has elapsed since the hazardous days of the gold rush and with the passage of time the existence of British Columbia has been taken for granted. The boundary is commonly accepted as a natural frontier completing the inevitable division of the continent between the two North American nations. Yet it requires only a glance at the map to see that the line of demarcation between British Columbia and the bordering American states has no geographic or

logical justification. Indeed, the whole boundary from the Atlantic to the Pacific, with the possible exception of the area of the Great Lakes, is arbitrary, and marks the triumph of economic and historic forces over geography.

This emergence of political sectionalism at the expense of continental unity has been the outcome of the interaction of a complex of forces that came into being as the frontiers of expansion moved westward. The American frontier, thrust forward by growing population pressure, was drawn steadily westward as the continent yielded its treasures of land, mine and forest. By the middle of the nineteenth century the richest and most accessible part of the continent had been won. Iowa and California were already states, Minnesota and Oregon had been organized as territories. Railways were pushed forward and it was not long before Nebraska and Kansas sprang into being, soon to be fed, along with the rest of the prairie region, by the Union Pacific.

Thus by 1850 there had been little to deflect the frontier from its westward course. The area north of the Great Lakes had noting to compare with the fertile lands of the middle west. The Laurentian Shield, the Ontario Peninsula and the prairies could not compete with Texas and California. Had these lands been attractive there is no doubt that the American government would have secured them when the boundary was first determined or subsequently by

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diplomatic action and threats of force as in the case of Maine, Oregon and Alaska.

After 1850 the situation rapidly changed and a period critical for the future, if not the existence, of Canada ensued. By this time the frontier had reached the Pacific and the whole of the American west was occupied. At the same time population pressure actually increased and its force would soon be directed against the forty-ninth parallel which, in the west, was little more than a line of demarcation between the land that the Americans had occupied and that which they had not wanted for the time being. There was thus ample reason why these vacant territories should become increasingly attractive to landless adventurers who were not insensitive to the demands of manifest destiny.

The Americans had outflanked the frontier of Canadian settlement, which in 1850 had not passed beyond the Great Lakes. At the same time the American mining frontier was moving northward in a sharp pincer movement toward the western limits of the great fur empire of the Hudson Bay Company.


5. With the possible exception of the Red River Colony, which by reason of its affiliations with the Hudson’s Bay Company, was a population settlement only in a restricted sense.

This vast preserve, extending from the Great Lakes to the shores of the Pacific, had remained vacant while the floods of American settlement were pouring irresistibly to the western coast. There had never been in Canada population pressure requisite to overcome the barriers of the Hudson's Bay Company's privilege and to push settlement over the wastes of the Canadian Shield in the wake of the fur frontier. Such a movement had to wait for many years till steel could span these areas like a giant causeway to the Pacific. In the meantime, for a period of more than twenty years, the fate of the future dominion hung in the balance. The loss of Oregon was an example of the irresistible force of American expansion and served as a warning that a similar infiltration might have similar results if steps were not taken either to forstall such a movement or to contain it within a framework of effective authority.

Like so many elements in the American culture pattern the frontier was essentially dynamic and spontaneous. It passed beyond the reach of constituted government and disappeared into the wilderness where the settlers established their own government and drew up their own law. Having thus established a sort of sovereignty of occupation they called on Congress to take over the country. In Oregon the pioneers lost no time in establishing a provisional government and asserted their sovereign rights with fierce patriotism. In the international crisis that followed effective occupation and settlement won the day.
Of these dangerous possibilities the British Government was painfully aware. The threat was debated at great length in both houses, where it was finally decided that a colony should be established on Vancouver Island to form a barrier against further American migration. As none of the members was willing that the mother country should foot the bill it was finally agreed that the Hudson's Bay Company was best fitted to undertake the task. After long negotiations an arrangement was made, and on January 13, 1849, the colony was established under terms that were to cost the government nothing and that would enable the Company, opposed to settlement yet fearful of American occupation, to make an adjustment to the situation in terms most satisfactory to itself.

The precautions taken by the British government were justified by subsequent events. The incursion of Americans which they had foreseen with some alarm was soon to come, though the attraction which drew them northward was not land but gold. This mineral, which was to play so large a part in the next two decades, had been discovered as early as 1833 on the shores of Okanagan Lake by David Douglas, the celebrated botanist, but the first strike to attract miners was made on the Queen Charlotte Islands in 1850. After this discovery had been investigated by the Hudson Bay Company news soon spread to the goldfields of California. Two ships left Puget Sound and six sailed from San Francisco with adventurers eager for a new bonanza.

Although the gold soon petered out, the event is of
special significance, for it put the policy of 1849 to the test and served as a dress rehearsal for the drama of 1858. As we have seen, the British government had created the colony of Vancouver Island to serve as a barrier to American expansion. Here, on the southern rim of British territory was an organized government which, enjoying an authority and prestige that the company never possessed, could establish an administration in any part of the British Pacific possessions where the home government deemed it necessary. Thus, when news of the departure of American miners for British territory arrived, machinery was ready for action that had not been possible in Oregon. Although the rush proved a fiasco, James Douglas, who had succeeded the unhappy Blanshard just as the excitement was beginning, was able to act directly as an officer of the Crown. In this capacity he carried far more authority than he would have as a servant of a private company, and was, at the same time, able to learn what steps to take in such an emergency and the precise attitude of the home authorities on various points of procedure and policy.

Douglas, indeed, feared the worst. He had spent sixteen years in Oregon where he had witnessed the arrival of the American settlers and the pattern of events which ensued. In the light of these experiences he was determined to adopt extreme measures and if necessary, back them with force. He had heard of the lawlessness rife in California and sought naval aid from Admiral Moresby to protect not only British
sovereignty but also, which was at least equally dear to him, 7 Hudson Bay interests and property along the coast. The British government declined to permit exclusion of foreign miners but made Douglas Lieutenant-Governor of the Queen Charlotte Islands and instructed him to issue licenses on terms similar to those employed in Australia.

By the time Douglas had acted on his instructions the gold fever had died out. The miners had found only a few rich pockets and these were located in widely separated areas. To Douglas' great relief the Americans departed southward and once again the northern area was in the exclusive hands of the fur trader. But the home authorities had established precedents of policy and Douglas had had an opportunity to learn their attitude. He was thus in a position to make suitable provisions in the event of a similar occurrence.

The excitement over this strike had not long subsided before rumors and reports of similar discoveries on the mainland began to circulate. In all probability gold had been found first by the Indians, as it had on the Queen Charlotte Islands, and carried to the Hudson Bay Company officials for purposes of trade. According to Rickard the company agent at Kamloops had obtained dust from the natives as early as 1852 and there is evidence to show that the

7. Douglas to Moresby, January 29, 1852, Correspondence relative to the Discovery of Gold at Queen Charlotte's Island, p.6.
metal was brought to other posts in the interior. It is thus very likely that the discovery at Colvile in 1855 did not surprise Douglas greatly, though the richness of the strike as described by Angus McDonald, the agent in charge of that fort, led him to write a full report to Labouchere on April 16, 1856, in which he expressed the belief that similar deposits might be found in other parts of the country. For the time being these discoveries led to no widespread activity, but through 1857 Douglas' letters and despatches contained frequent references to gold. A letter to Donald McLean at Kamloops on February 10 of the same year included instructions to that agent to encourage Indians to prospect and to bring their dust and nuggets to the fort. Douglas apparently hoped still that the company could maintain a monopoly and so prevent an influx of the American adventurers whom he feared so much. By the end of the year, however, he was not so sanguine, for in December he informed the British government that he anticipated an inrush of miners in the following spring. Though he had no authority to represent the Crown on the mainland, he issued a proclamation and regulations similar to those that he had issued for the Queen Charlotte Islands.

Ironically enough, it was the Hudson Bay Company's own ship, the Otter, which started the rush. The purser

had brought with him some of the dust collected by the
Thompson River Indians with instructions to have it melted
into a bar at the San Francisco mint. The story was soon
out and so began the spectacular gold rush of 1858 and perhaps
one of the most critical periods in Canadian history.

During the spring and summer of 1858 between 25,000
and 30,000 men poured into British territory. Most of them
came by sea from California and landed at Victoria or Esqui-
malt, while others disembarked at Puget Sound, whence they
hoped to make their way to the diggings by overland route.
The majority of the miners were American citizens, though a
considerable sprinkling of other nationalities gave a strong
cosmopolitan coloring to the movement. These men had one
end in view, and that was the rapid acquisition of a fortune.
Most of them were law abiding and from past experience knew
that their own interests would be served best under the rule
of law. There were, however, certain tendencies inherent in
the situation that might lead only too easily to the loss of
the territory to the United States.

There was, first of all, the danger of an Indian rising.
The natives naturally resented the incursion of large numbers
of whitemen into their ancestral domains. They had come
to trust the Hudson Bay servants, partly from the benefits
to be derived from trade but chiefly because the company
servants were just and had a profound knowledge of the
Indian character. The Americans, on the other hand, they
hated and mistrusted, for word soon reached the northern
tribes of the bloody wars that had followed the American frontier as it moved west and turned northward toward the Fraser.

There was also considerable danger from lawlessness. Though a distinct minority, the gunmen, gamblers and rowdies might get the upper hand of the law as they had done in California and initiate a reign of terror. This, of course, would have led to a struggle between the Vigilantes and the Law and Order faction with all its attendant anarchy.

Either of these possibilities, playing on the jingo sentiments and autonomous tendencies of the American frontiersmen could have only one outcome. The miners would organize themselves and call on their mother country for help. Britain would be powerless to act and there can be no doubt as to the reaction of the American Government. Whether willing or unwilling to intervene, they would have been compelled by public opinion to sweep aside the flimsy barrier of the international boundary and extend the border of the Republic to the "fifty-four forty" of Polk's election war cry. Had this happened, as it might easily have done, there can be no doubt that the rest of the country west of the Lakes would have fallen into American hands. How long the older centres, the Canadas and the Maritimes, could have held out would have been a question for manifest destiny alone to decide.

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From these considerations it is apparent that James Douglas was called upon to act at a time as critical as any in the history of Canada, and to him must be given the larger share of the credit for saving the Pacific coast for Britain and making possible the creation of the Dominion of to-day. It is true that he was torn by two loyalties and that in trying to serve both he exceeded his authority and laid himself open to charges of being too partial to the interests of private monopoly. But it must be remembered that he served imperial interests faithfully and well. As Governor of the Colony of Vancouver Island he held a key position as provided in the policy of 1849; he was the man on the spot who was to take charge and prevent a second Champoeg. This he did, and his success gives him a place in our national history.

As Douglas had anticipated, the first signs of trouble came from the Indians. During the previous year, 1857, the natives had asserted and maintained a monopoly of the diggings. They had not resorted to violence, but by pressure of superior numbers shouldered the whites away from the bars and kept them for themselves. Governor Douglas knew, however, that this state of affairs could not continue and that when the rush came a serious outbreak would be almost certain to take place.

In the May of 1858, before the American immigration reached its peak, he paid a hurried visit to the canon, where he found ample justification for his fears. At Hill's
Bar the natives and miners were on the verge of conflict. Having fought with the Indians in California, Oregon, Idaho and Montana the American miners as a class had not established a creditable record. As a rule they were high-handed and aggressive, displaying none of the tact and psychological insight of the Canadian fur trader. Douglas told the miners plainly that the law he meant to enforce was to protect redman and whiteman alike. Then, with the characteristic skill of the Hudson Bay trader he distributed gifts among the natives and took their chief into government service.

Although order was restored he was not optimistic about the future. News had reached him that the Indians of Oregon had defeated United States troops and he knew that this would be an incentive to further aggression as the increasing number of whites poured up the river. As he feared, a series of small affrays culminated in a pitched battle at China Bar, where a relief party under an American miner, Captain Snyder, found Ned Stout and four others making a last ditch stand behind a rude barricade. Douglas hastened to the scene with a party of sappers and marines. He found to his relief that things had quietened down, but, seeing the latent hostility, took steps to assure the miners of his protection and the Indians that their rights would be respected. He distributed gifts to the latter and granted them a section of the river for their exclusive use. To cut at one of the roots of the trouble he issued a proclamation forbidding the sale of liquor to the Indians.
The miners had been arranging their own affairs in popular assemblies known as "miners' meetings". They set up their own mining regulations and issued proclamations forbidding the sale of intoxicants and arms to Indians. Governor Douglas saw in these meetings the seeds of an autonomous movement that might lead, as it had in Oregon, to a provisional government and finally, annexation. He therefore strongly disapproved of the steps taken by Snyder and Graham in sending an armed force to the scene of the trouble. He upbraided the miners and made it clear to them that armed force must in the future be the sole prerogative of the Governor.

Douglas' action ended the possibility of war between the natives and the miners for the time being. The Indians accepted his assurances, were impressed with his prompt arrival with troops and bowed to the inevitability of white occupation. The miners understood that they were dealing with an unusually strong man who would not tolerate any attempts on their part to set up their own government. As autumn drew near many of them left for the south, decreasing the pressure on the Indians and giving Douglas a breathing spell in which to tighten his grip on the ground he had won.

Perhaps the most dangerous phase was over, for up to September the Governor had been obliged to hold his own almost unaided. Very soon a mainland colony would be established with himself as governor. His previous acts would be validated and he would have troops and officials to aid him. But at the same time the miners were to press up the
canon and pass far into the wastes of Caribo. Others were
to infiltrate the Columbia basin, areas so remote that
Douglas, occupied with the task of governing two separate
colonies, would be powerless to keep order in the vast inter-
ior without the aid of a lieutenant who shared in some
measure his own remarkable qualities.
CHAPTER II.

MATTHEW BAILLIE BEGBIE.

When it came to appointing a man to act as Judge in the new colony Sir Edward Bulwer Lytton recognized at once that his choice must be governed by the special circumstances prevailing in that remote possession. From Douglas’ despatches it was apparent that courage, integrity and great powers of endurance would be highly necessary qualifications. To control the Indians and keep order among the miners would demand the fortitude and physical presence of a McLoughlin or a Douglas. In the goldfields, where threats and bribes were a common resort and where there were unusual opportunities to use official information for gain, the judge must be a man of impeccable character. As the country was a wilderness, travel meant long journeys under the most trying conditions of climate and terrain. Professional qualifications alone, no matter how high, would not suffice to carry a man over these immense distances in the face of every hardship and danger, nor would they dissuade California toughs from resorting to gun and bowie. As Lytton said, the judge must be a man who could, if necessary, truss a murderer up
and hang him from the nearest tree. In order to find a man in the legal profession who could meet these requirements Lytton sought the advice of Sir Hugh Cairns, the Solicitor-General in the second Derby Administration, who recommended a struggling young barrister with whom he had read law at Lincoln's Inn fifteen years before, a Mr. Begbie, whose unusual personal qualities and love of travel and adventure admirably fitted him for the position.

There can be no doubt that Begbie created a favorable impression at his first interview. He was six feet five in height, well proportioned and courtly in demeanor. His hair and beard were dark, for he was only thirty-nine, and served to bring out the contrast of his luminous grey eyes. His high pitched voice came as a surprise on first acquaintance, but its effect was not lasting, we are told, because of his great personal charm.

Born in the tropics in 1819, he was the son of Colonel Thomas Stirling Begbie, 44th Foot, a veteran of the Peninsular War. His mother was the daughter of General Baillie.

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This lecture was delivered by Judge Begbie at Richfield. He is reported to have stated definitely that he had been born in the tropics. There is no further evidence to support the alleged statement or to show in what port of the tropics his birthplace was located. As a rule he is said to have been born in Edinburgh or England.
an officer who served with distinction in the Napoleonic campaigns. On this side of the family he was related to the celebrated physician, Dr. Matthew Baillie, after whom he was probably named. The Stirlings, with whom the Begbies appear to have intermarried were also a military family. The best known member of the Begbie family is the late Harold Begbie who became famous as the "Gentleman with a Duster". Before winning notoriety as a political writer Begbie wrote, in addition to a large number of novels, several religious works and a biography of General Booth. The son of a Suffolk parson, Harold Begbie reminds us of the judge, who was a good churchman and a devout Christian. It seems that most of the Begbie family were either soldiers or clergymen, a fact that brings them within the tradition that has produced its Gordons, Havelocks and Montgomeries.

In later years Begbie said that he had accepted the position gladly and that he had never regretted doing so. Its chief attraction appears to have been the opportunities for travel and adventure that it afforded him. He once told an audience at Richfield that he could scarcely remember a time when he had not been travelling from one place to another and that his earliest recollection of childhood was of being on board a Dutch vessel bound for Antwerp. From early manhood he made it a practice to travel abroad every year, his rambles taking him to most of the countries of

Europe and even to Turkey. According to Beanlands the judge, an extremely modest man, was inclined to deprecate his experiences, but on occasion regaled his friends with tales that were worthy of publication.

There were, in addition, monetary considerations that made the offer attractive to a man in Begbie's position. He had not succeeded in gaining a footing in his profession and had secured employment as a reporter for the Law Times and later, because of his efficiency, as special shorthand clerk to the Lord Chancellor. To a man doing work of this kind a judgship at £600 per annum must have been irresistible. If it is true that his brother, Thomas Stirling Begbie, had supplanted him in a lady's affections, sentiment as well as interest played a part in his acceptance.

He had gone into law not because it attracted him greatly but because it seemed about the best thing to do when he failed to win a lucrative appointment in his college, Peterhouse, Cambridge. For reasons for which he was entirely to blame he disappointed and surprised his tutors by taking what was considered for him a mediocre degree when he graduated in 1841. A marked aversion for taking life ruled out the services and he had at the same

14. A.B., op. cit., p. 610
15. He read law in London at Lincoln's Inn between 1841 and 1844. He took his M.A. and was called to the Bar in 1844.
time such strong views about ritual and such a sense of his unworthiness that it was not possible for him to enter the church. It seems that he never cared greatly for law. His great aptitude was for logic and mathematics, subjects which call for analysis and the deduction of principles. Law, on the other hand, was based on precedents and statutes. It teemed with quids and quidities that seemed to Begbie's type of mind a hopeless jumble of nonsense. He always insisted that it was a waste of time to read statutes and precedents as they were both confusing and confused. He may, of course, have been rationalizing his own personal distaste for the subject.

He was, none the less, an extremely able man. Indeed it may be said that he was brilliant. One of his most intimate friends, Canon Beanlands, describes him as something of a genius, relating that at the age of three young Begbie neglected his toys to sit in a corner poring over Sandford and Merton. He was naturally the despair of his first teacher, a sergeant in his father's regiment, who was soon obliged to inform Colonel Begbie that he could teach the young prodigy no more. At this time the Colonel inherited a comfortable estate from a maternal relative which enabled him to settle his wife and family on the island of Guernsey. The boy's mathematical ability was already so apparent that his parents sent him to study under a brilliant eccentric who had been Senior Wrangler at Cambridge. The lad's progress was so rapid that at the age of fourteen he
competed for and won a senior scholarship at Elizabeth College. As he was too young to avail himself of this opportunity he attended Guernsey College where he won a scholarship for Peterhouse, Cambridge. He had not been long at the university before he was marked as a coming man who would emerge as Senior Wrangler and win a life fellowship.

Although he had set his heart on this honor Begbie failed to come near the high place everybody expected him to take. In mathematics he came out a wrangler it is true, but he stood too far down the list to be given the fellowship. In classics he took a second, narrowly missing a first. His undoing, of course, had been his versatility and love of life. He was an all round athlete, a singer and violinist, he drew well and above all, he was a bon vivant who became the life of many a charmed circle. He rowed for his college and is said to have stroked the university eight. He played fives and tennis and went in for dramatics. He belonged to a number of clubs and societies. Of these he often spoke with pleasure, especially of a small club he founded himself. To qualify all members had to be taller than he. On one occasion Begbie and his friends went up to London and carried off a giant advertising sign, seven feet high, and installed it in their rooms as an emblem of the club. In the summers, when more serious students were doing their reading, Begbie was off to the continent where he travelled through France, Belgium, Holland, Switzerland, Germany, Spain and Italy. On these journeys he spent a great deal of time in picking
up languages and in making sketches of people and places that
caught his fancy.

It was at Cambridge that he learned shorthand, probably
for amusement, for he loved to beguile his time with puzzles,
conundrums, cards and tricks in mental arithmetic. The late
Miss O'Reilly liked to relate how the Judge used to confound
her father by computing the quantity of coal in the heaps
on the Hudson Bay wharf. Perhaps it was his love of the
complex that led him to choose the particular system of short-
hand that he used in his notebooks and court records. He
could not have selected a more difficult or more cumbersome
one. The first Pitman system had been published in 1835,
when Begbie was a lad of sixteen, and though it was by
modern standards extremely clumsy, it surpassed the Gurney
system which the Judge used in simplicity and utility.

16. It required a great deal of time to find out that
Judge Begbie used the Gurney system. None of the short-
hand experts in Victoria could recognize the script,
let alone read it. At the time when the present writer
was about to give up the investigation he recalled
that Charles Dickens had been a court reporter and that
he was only seven years older than Begbie. It seemed
to be a reasonable hypothesis that both men used the
same system. When copies of Gurney were obtained from
the Library the of Congress and the Philadelphia Public
Library the assumption proved to be correct. As the
system is extremely difficult to read and as the Judge
used his own modifications and short cuts, transcript-
ton and editing the notebooks will take a full two
years' work. It is said that Thomas Begbie carried
away the Judge's private papers, and with them, perhaps,
intimate records in shorthand.
Two battered notebooks which he apparently carried with him on his journeys through Caribo are preserved in the Provincial Archives. They are written entirely in shorthand and have, up to the present, proved undecipherable. Sample transcriptions taken from separate pages contain nothing of significance. This and Beanlands' comment that "he was no diarist" lead one to conclude that they will not reveal much of the Judge's inner life.

Apart from the notebooks the only personal document that has survived Begbie is his will. It is a long document highly technical in its language and forms are obviously arranged so that his beneficiaries should be saved expense and inconvenience in obtaining their legacies. It has often been said of him that he was extremely considerate and there could be no better evidence of this than the fact that on his death bed - for his last illness was long and very painful - he should be so considerate of others. Two of his bequests throw some light on a side of his life that he never allowed to become public. It is still said of him that he was kind to the unfortunate, often helping them with anonymous gifts of money, or when anonymity was not possible, by other devious ways. He made one bequest to a C.F. Moore, an obscure person, it seems, who had suffered a great deal from ill fortune. The Judge left him the interest on $4,000 and the use of one of his houses rent free for life. Another clause in the will made provision for a distant relative who had been residing in James Bay for some years.
It is said that he supported this woman, Mary Helen Baillie, and the phrase, "according to my previous arrangement with her" suggests that he had assumed some responsibility for her in the past. He willed her $25 a month for life.

The will was made on March 14, 1894, but as the long Victoria spring passed into summer it became apparent to the dying man that he had overestimated the value of his estate and that it was necessary to make certain adjustments. Accordingly he drew up a codicil on June 9 which modified some of his bequests, and included a number of small legacies for friendship's sake. To the clergymen with whom he had dined on Saturday nights he left $100 each and a case of claret or sauterne "at their choice". To O'Reilly he left two cases "at his choice". He did not forget his housekeeper and gardener, each of whom received $300.

Another phrase, "to Ben Evans, my old friend, I give $100," underlines a long and peculiar friendship that caused amusement in Victoria. Evans was officially the court usher but is remembered today as an unofficial philosopher and friend of the Judge. An ex-poacher from the West of England, he almost invariably accompanied him on his rambles over the Saanich peninsula, carrying his gun and encouraging him in breaking regulations.

Begbie was impeccable in his relations with women and after the manner of bachelors who follow the celibate way of life, formed lasting friendships with the wives and daughters of his friends. One lady has said of him, "he was
always kind, most considerate and had the most charming way of doing little things for us". It is pleasant to realize that after fifty years there are people still living who can describe his virtues without exaggeration, for the last request in the codicil confirms the lady's statement; "I wish Mrs. Crease and Mrs. Drake to have a dozen potted plants and a dozen roses of their choice."

In religious matters as in the case of his generosity the Judge was very reticent. He was a good churchman and a letter to Colonel Moody discloses that he had strong views on doctrine. He was, it appears, impatient of forms and ritual and seemed to favor the evangelical movement in the Church of England. There are hints about him here and there that suggest that he was not many generation's removed from the more moderate of Cromwell's followers. While he drank wine in moderation he never took spirits. He wore black a great deal, was able to quote scriptures at great length, and chose many of his friends among the clergy. His bitter denunciations of excess and crime at the end of criminal trials had a puritan twang to them. Though autocratic and arrogant in manner he had the inner uncertainty and humility that is not uncommon in the puritan type. It is not surprising that his careful instructions for his funeral, both in the will and the codicil, bespeak a certain humility of spirit. He allowed only $200 for expenses and directed that

his grave be marked by a wooden cross bearing his name, dates and the inscription, "Lord, be merciful to me a sinner". A devoted gardener and lover of flowers, he requested that no wreaths of any kind be put on his grave.

The Judge’s religious convictions did not permit him to view the world as a vale of tears and life as a period for sober preparation for another existence. As an Anglican he saw no harm in pleasure and had no fear of happiness. It is true, of course, that his social life in Victoria seems highly artificial at times, that his pleasures were too carefully arranged, but that is not uncommon with those who have no home life and must choose between long grey evenings alone and the social whirl.

When the long and tiresome circuits were over Begbie went home to Victoria for a well deserved rest. Of his first home, reputed to have been at the corner of Moss and Fort Streets, nothing is known to-day. It is the house in which he died in 1894 which lingers happily in the memory of the older Victorians. In those days it was located on the north-eastern limits of the city, a district which became fashionable at the turn of the century but which is now a motley of second-rate apartment buildings and rather seedy middle class dwellings. It was a bungalow of moderate proportions, standing in spacious grounds on the slight elevation where Collinson and Cook Streets now intersect. In the distance were the sea and the Olympic Mountains of which he had an unimpeded view across the Fairfield marshes.
It was here that he and Ben Evans shot duck in violation of the city by-laws.

The Judge was an enthusiastic gardener and employed a man full time to attend to his lawns and flower beds. There were two grass tennis courts and a stretch of lawn that he had planted with seeds that he had collected in the interior. There were fruit trees, holly for Christmas, as he said, and the finest display of roses in the city.

Best remembered are the tennis parties. Clad in spotless white and wearing a black velvet jacket, Sir Matthew conducted the ritual of what came to be known as "Tuesday Tennis." With decorum and considerable tact he appointed partners and arranged the games. As a rule he partnered the weaker player in the first set and then, having found an equally chivalrous substitute, conducted his guests about the garden on little conversational tours to the various points of interest. When cherries were in season he arranged with his Chinese servant to pick a quantity of them and to arrange them on the branches of a nearby bush so that they would be within the reach of all who wanted them.

There were, also, social occasions in which the ladies had no part. These were the Saturday night dinner parties. As a rule the Judge invited a number of clergymen for early dinner and a couple of hours conversation over the port.

He appears to have controlled the conversation much as he directed the tennis, drawing out each of the guests on his particular subject. Jenns was an enthusiastic amateur astronomer and all of them appear to have been interested in literature and history. The Judge, having a good memory, quoted at great length and without error from his favorite poets, Horace, Milton and Shakespeare. He had no use for contemporary poetry, saying that it had no depth, and passed scathing remarks about Charles Dickens whom he considered to represent the worst features of democracy.

At nine, or thereabouts, the clergymen departed, to make way for lay friends and old companions of the upper country like Peter O'Reilly. The rest of the evening was spent at cards. The Judge excelled at whist, which was then as popular as bridge to-day. According to Lady Dufferin he was considered the best player in British Columbia. She gave a charming sketch of Begbie in her journal, describing an occasion when he played very poorly indeed;

Chief Justice Sir Matthew Begbie dined with us. He is a very big man, very amusing, and the whist-player of British Columbia; however on this occasion D. and I beat him thoroughly. His mind was, I


20. Dufferin and Ava, Harriot Georgina, Marchioness of, My Canadian journal, 1872 – 8; extracts from my Letters home while Lord Dufferin was Governor-General, London, John Murray, 1891, p. 254.
suppose, distracted, for I found afterwards that he had planned to serenade us, and had arranged for some young ladies to come up at 9:30 to sing with him at our windows; so he was all the time listening for the sound of wheels, while he was attending to the trumps with his eyes. At last D., who had just gone away to do some business, heard voices in the garden, and with well-feigned astonishment rushed in to tell me. We brought the singers in and gave them tea.

August 1876 Thursday, 17th.

On Sunday mornings Sir Matthew attended service at St. John's, then located on the present site of the Hudson's Bay store. As his legs were too long to afford him comfort in the choir stalls, he sat in a special chair at the end nearest the lectern, and when he rose to read the lesson people wondered whether his body would ever stop going up. He read beautifully, despite his high thin voice, without accent or trace of affectation. In singing, however, he was not so successful. He had been trained in Italy and as he grew older it became his conceit that choir and congregation depended on him for leadership. But the organist, whom the others followed, poured forth his praises at a more rapid tempo, with the result that the Judges song followed the rest like a reedy echo.

After morning service it was part of his social ritual to go to the O'Reillys for lunch, where he talked at great length about Ireland, horses and the old days of the gold rush. He appears to have been on the best of terms with most of the prominent families of the day, partly, as the late Miss O'Reilly said, because he infused so much life
into any party he attended. He was much sought after for weddings and dances. There is a photograph in the Provincial Archives of a wedding group, taken after the marriage of James Douglas's daughter, Martha. Sir Matthew, clad in his customary black, looms head and shoulders above the rest of the party and with his white hair and beard looks like Zeus himself on a friendly visit.

His memory lives on to this day at Pentrelew, the residence of the Crease family. Pentrelew is a long, two-storied building set in spacious grounds on Fort Street, at the southern boundary of the old Dunsmuir estate. It is one of the last outposts of the colonial period. It is English in atmosphere and suggests the world that Jane Austen described and Tennyson knew. The drawing room is not much changed since Sir Matthew's day and a fire burns in the same grate where he stretched and warmed his long legs on winter evenings. As a rule he announced his arrival by beating on the door with his fists and calling out in a torrent of Chinook. For many years, says Miss Crease, he spoke of England as if it "were just outside the door", but towards the end of his life began to speak of British Columbia as home. Though he would never have admitted it, Judge Begbie had become a Canadian.
CHAPTER III.

THE ESTABLISHMENT OF LAW AND
THE PRESERVATION OF ORDER.

Sir Edward Bulwer Lytton gave no specific instructions to the young court reporter, Matthew Baillie Begbie, whom he had appointed Judge of the Colony of British Columbia. He did, it is true, make it clear that he must at all costs preserve order among the American miners, and he informed him that he must assist Governor Douglas in any department of government where he could be of use, but he wisely left it to the men on the spot to shape their policies in the light of local conditions. The new Judge was thus confronted with two great tasks, those of creating a Judiciary and of making that system supreme. It was an immense undertaking, and one that must be started without delay. Accordingly he set out for the distant Pacific colony as soon as he had received his commission from the Queen on September 2, 1858, arriving in time to participate in the impressive ceremonies that marked its transition from fur kingdom to gold colony.

British Columbia had been created by the Act of August 2, 1858, commonly known as the British Columbia Act, but it was

21. 21 & 22 Victoria, c. 99.
not until November 19 of the same year that the new colony was formally ushered into existence. Judge Begbie, without whom the ceremony could not properly take place, arrived in Victoria from San Francisco on Tuesday, November 16, and embarked with Governor Douglas and his suite for the mainland on the following Wednesday. The official party, consisting of the Governor, Rear-Admiral Baynes, officer commanding the naval forces of the Pacific Station, His Honor, Judge Cameron, Chief Justice of Vancouver Island, and other officials were carried by H.M.S. Satellite to Point Roberts. Here they spent the night and on the following day were conveyed by the Hudson's Bay Company's ship Otter to the company's steamship, Beaver, which awaited them at the mouth of the Fraser River. Both vessels then proceeded to Old Fort Langley where a detachment of Royal Engineers under the command of Captain Parsons disembarked. The party then continued to New Fort Langley, where the official ceremony was to take place on the following day.

Although Friday broke grey and rain fell heavily during the day, the occasion lacked none of the pomp and color that had characterized the journey of the Governor and his aides from Victoria. There were detachments of bluejackets and sappers to form a guard of honor. A salute of eighteen guns boomed one by one from the Beaver. In the hall of the main building of the fort, naval and military uniforms and the robes of the judges lent color and solemnity to the ceremony, symbolizing the fact that the Queen's servants were to bring order and progress to the wilderness.

The ceremony began with Douglas' address to Begbie. At
the end of his speech he administered the oaths of office and allegiance and delivered to him the Queen's commission as Judge in the Colony of British Columbia. Judge Begbie then administered similar oaths to Douglas and read aloud his Governor's commission. Taking the commission, Governor Douglas proceeded to read the proclamations upon which the authority and functions of his government were to be established. First, he read a proclamation revoking the Hudson's Bay Company's license to exclusive trade with the Indians, so far as the new colony was concerned. He then proclaimed three other laws. The first was the Act of August 2, 1858, which created the Colony of British Columbia and made provision for its law and government, and the second was a proclamation validating the acts of Douglas and his officials before the proclamation of this act. The third was a proclamation declaring that English law was in force in the colony as provided for in the Act of August 2, 1858, and that the acts of 1803 and 1822, which had placed the western territories under the law and jurisdiction of Upper Canada, should cease to have force in, and be applicable to, the Colony of British Columbia.

On November 21 Governor Douglas left the fort to resume work on the pressing problems that confronted him as Governor of two colonies. Another salute of guns marked his departure, an observance fitting the man and the situation, for James Douglas was an autocrat by disposition and he was to rule the

22. 43 George III, c. 138, and 1 & 2 George IV, c. 66.
gold colony in the grand manner of the old colonial governors. Following the letter rather than the spirit of the Act of 1853, he appointed Colonel Moody and Judge Begbie as members of the Executive Council for British Columbia with which he was to work throughout his tenure of office. This Council was created in March, 1859, and was essentially advisory in function. Colonel Moody, who in addition to commanding the Royal Engineers, held a dormant commission as Lieutenant-Governor of British Columbia and acted as Chief Commissioner of Lands and Works. In this formative period Moody's position was of the first importance. He had charge of the armed force which was to defend the colony should the need arise. In the event of serious disorders among the miners he was to take charge of the situation if it proved too great for the colonial police to control. Under his charge the Engineers made surveys and built roads. As Chief Commissioner of Lands and Works Moody had control of the sale of lands. There are no minutes of the council meetings, but in the light of Douglas' dislike and disapproval of Moody it is not likely that he carried much weight in the meetings. Judge Begbie, by virtue of his position, acted in an advisory capacity in the matter of legislation. As he

23. Lytton to Douglas, November 1, 1858, Enclosure, Instructions to Colonel Moody, British Columbia Papers, Pt.1, p.74.

Lytton went to great pains to explain that there could be nothing more harmful to a community than the confounding of the duties of soldiers with the functions of the police.

served as Attorney-General up to March, 1859, when G.H. Cary was appointed to that position, it is to be presumed that he actually promulgated the first laws of the colony. It is also probable that Begbie continued to give advice on all impending enactments. From his correspondence it appears that he frequently discussed legislation with Governor Douglas and the Colonial Secretary, W.A.G. Young, but unfortunately seldom committed his views to paper.

Unlike Colonel Moody, Judge Begbie seems to have had a warm regard for Governor Douglas. Both men were autocratic and arbitrary and had little use for representative institutions. They must have been drawn together by bonds of mutual sympathy when pilloried by the colonial press. While the Governor endured the slings of Amor de Cosmos on Vancouver Island, Judge Begbie suffered a hail of arrows from John Robson, the trenchant editor of the mainland British Columbian. Douglas was deeply grateful to Begbie for the firm manner in which he administered the law and for the many services that he performed. Yet Begbie, with all his faults was not the kind of man to ingratiate himself, and he revealed at the famous farewell banquet to Douglas that he had almost invariably disagreed with him. Mutual respect and common sympathies were sufficiently great to enable them to work in har-

25. The Act and the Proclamation of 1858 declared English law to be in force, but the latter made provision for the proclamation of laws required by local conditions.

mony together. In a private report to the Colonial Office Governor Douglas was able to commend Begbie in the highest terms:

Able, active, energetic and highly talented, Mr. Begbie is a most valuable public servant. I feel greatly indebted to him for the zealous discharge of his official duties and for many services beyond the strict line of official duty. It would be impossible I think to find a person better qualified for the position he fills and for that of Chief Justice when the appointment is made.

Such praise could not have been written without a certain amount of good will as a foundation. The report is undated, but is believed by Dr. W.N. Sage to have been written in 1863. As antagonism to Judge Begbie was very strong at that time it is not unreasonable to conclude that this "Confidential Report on Officers" was in part an attempt on the part of Governor Douglas to put in a good word for the "Tyrant Judge of British Columbia."

The first of Judge Begbie's "services beyond the strict line of official duty" was his journey into the interior from Yale in March, 1859. It is sometimes referred to as his first circuit in British Columbia, and such it was, for he was accompanied by Arthur Thomas Bushby, his clerk and registrar,

27. Sage, op. cit., p.301.
28. Ibid., p.302.
29. This was an epithet commonly employed by Robson in his long and bitter attack on the Judge. Robson had ample reason, personal and otherwise, for his abusive editorials, v. infra, Ch. IV and V, passim.
and Charles Nicol, the high sheriff. The chief purpose of the mission, however, was to estimate the resources and describe the terrain of the hinterland. The Judge was admirably fitted for the undertaking. He was strong, athletic and suited by nature and training for a scientific reconnaissance of this kind. His diaries contain numerous calculations of latitude and longitude, meteorological records and descriptions of topographical features. The long report which he submitted enabled Douglas to form a very clear picture of the southern portion of the Fraser basin. In the Judge's opinion the American population had submitted readily to British authority, - a tribute to Douglas' work in the previous summer. He considered the land wealthy both in minerals and in agricultural possibilities but made it clear that the latter could not be realized until a satisfactory system of land tenure had been worked out and a proper system of communications had been established.

It was Judge Begbie's scientific interests that brought him into collision with Colonel Moody and his Engineers. We find him performing duties that were definitely those of the Department of Lands and Works, and it seems that this was more than the professional and regimental pride of the Royal Engineers could endure. A letter written to Douglas in March, 1859


This report is to be found in the British Columbia Papers, Pt.III, p.24 ff. It was subsequently published in the Journal of the Royal Geographical Society in 1861. The precision of Begbie's descriptions and the logic of his conclusions reveal a natural capacity for scientific work.
shows him making arrangements for a ferry and laying out the town lots at Fort Hope. At the same time he wrote to Moody, requesting him, very courteously, to be good enough to appoint Magistrate Nicol as a surveyor. When the Judge, acting on instructions from Governor Douglas, drew maps and submitted them to the Department of Lands and Works, the Colonel icily requested him to send them to the Governor in future, going on to say that Douglas would in turn direct them to his office.  

Up to that time the Judge had begun his official communications to Moody with the informal and friendly "My dear Colonel" and closed them with "Please remember me to Parsons and the others!" Thereafter he wrote with arctic formality. Begbie has left us a glimpse of himself on the road, making observations and recording them with a touch of malicious satisfaction. In a rather personal letter to Young, whom he liked, Begbie wrote:

I have a pocket sextant, which answers very well—my observations at Cayoosh and Lytton agreed with the scientific gentlemen within less than a mile.

As it is more than likely that he rallied the officers on the accuracy of their calculations, one can understand Lieutenant

32. Moody to Begbie, December 31, 1861, Department of Lands and Works, Letter Book.
33. Begbie to Young, August 26, 1861, Begbie Letters.

Prior to his appointment as Colonial Secretary, Young had served on the Boundary Commission. In his confidential report to the Colonial Office Douglas praised Young as highly as he did Begbie. See Sage, op. cit., p. 301.
Palmer's feelings when he wrote to Moody from his camp in the Cariboo:

He has no right to be mapping when there are R.E.'s in the country.

Palmer was eager to put the "Arch Enemy" as he called him, out of business, for ten days later he wrote:

I trust to be able on my return to sketch for you a really fair map of the Cariboo district, a map that will be of value to miners and others, and thus Messrs. Begbie, Epurn & Co. will, I sincerely hope, be played out.

Judge Begbie performed these services while riding circuit. In the early days it was his custom to stay several days in the various centres. As a rule court business consumed only a part of the time at his disposal, the rest of which he devoted to the special tasks that Governor Douglas asked him to perform. He became a familiar figure in the settlements and on the trails of the interior, talking to all, seeing all and remembering all. When a shooting affray occurred and there were no constables nearby the miners seized the guilty parties and held them, knowing that Judge Begbie would hurry to the spot. His presence in the country became a guarantee of law

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34. Palmer to Moody, August 17, 1862, Palmer Letters.
35. Ibid., August 27, 1862.
36. He was gradually relieved of these responsibilities as more officials were appointed.
37. Speedy Trial of Prisoners Act, April 23, 1860, British Columbia Proclamations, 1860. This enabled Begbie to hold court on the spot without delay for commission. It is said that he conducted such trials in the open.
and order, as Lytton had foreseen. He was not unlike the itinerant Justices of Henry I's and Henry II's day, carrying the royal writ to the remote ends of the domain.

In addition to court duties and the special services mentioned above, Judge Begbie was also busy in establishing the Civil and Criminal Judiciary. Prior to his inauguration as Governor, James Douglas had appointed magistrates, justices of the peace, police officers and a collector of customs. He had, indeed, actually established a rude court of law at Fort Hope to try William King for the murder of William Eaton. Whether or not this act, generally conceded to be illegal, was validated by the Proclamation of November 19 is a fine point of law. His appointments, however, were validated, and it remained for him, with the assistance of Judge Begbie, to round out the work he had started in the fateful spring and summer of 1858. Douglas had already sent Lytton a plan for a judiciary which had been drawn up by George Pearkes, crown solicitor of Vancouver Island. Lytton approved the plan but suggested that it should be submitted to Judge Begbie on his arrival and that he should consider its efficacy in the light of local conditions.

38. Douglas to Lytton, October 12, 1858, British Columbia Papers, Pt.2, p.10.


41. Lytton to Douglas, December 30, 1858, op. cit., p.74.
The Pearkes plan made provision for a Supreme Court under a Chief Justice and two puisne Judges. Judge Begbie, however, had been commissioned as a puisne Judge with the understanding that he would later be elevated to the Chief Justiceship, the promotion to be governed not only by the nature of the services rendered but also by the conditions prevailing in the colony. Chiefly for financial reasons and partly because Judge Begbie objected, the authorities never appointed additional puisne Judges to the Supreme Court during the colonial period. Judge Begbie did not become Chief Justice until the eve of confederation. This meant that there was never during the period before 1871 a Court of Appeal nearer than London, a fact that caused increasing dissatisfaction as time went on.

In addition to the Supreme Court there were also the County Courts for petty cases and the Gold Commissioner's Court, the latter being a special innovation arising from local conditions. Magistrates presided in County Court and came to enjoy the title of Judge, a purely courtesy title and one not to be confused with the rank of a puisne Judge. It is thus that Peter O'Reilly and other magistrates are referred to to-day as Judges. In a similar manner Gold Commissioners are given the same title. From the point of view of the importance of the work they did and the scope of their jurisdiction

42. Begbie to Seymour, March 11, 1865, Begbie Letters. Ibid., April 11, 1865.


For details v. infra., Ch. VI.
the latter enjoyed and deserved a great deal of prestige. Some of them served in the capacity of magistrate as well as that of gold commissioner, and this in its turn led to an even wider confusion of terms, since either a magistrate or a gold commissioner came to be referred to by all three titles, judge, magistrate and gold commissioner.

Another detail that sometimes leads to a little confusion is the fact that there was, actually, only one commissioner, the rest being known technically as assistant-commissioners. The commissioner had charge of, and was responsible for, all mining matters. He supervised the assistants in their various districts and had the power, subject to the Governor's consent, to employ or discharge these men. All mining cases were heard in the Gold Commissioner's Court whence appeal could be made to the Supreme Court.

Ancillary to the Gold Commissioner and his court was the Mining Board, a body of miners appointed by the local commissioner. Its relation and function was not unlike that of the Grand Jury. The members reported all grievances and needs, providing the raw material out of which mining legislation was finally made. These bodies were established in 1862, ceased to function in 1864 and came to life again in 1866. Their usefulness was seriously limited by the fact that too many parties were involved in the framing of mining laws. The miners, who knew little of the law, submitted their views to the lawyers, who knew little about mining. To make matters worse the miners made their recommendations in the distant interior while the Governor, Attorney-General and the other
officials came to their decisions at the coast. There was no adequate liaison between the two bodies because the gold commissioners were overburdened with work and could not make the long journey from the mines when required to do so.

The machinery for settling miners' disputes had similar flaws, attributable to human frailties that could not be foreseen nor subsequently overcome by remedial legislation. Many of the disputes arose from what is known technically as "unlawful encroachment", or in the language of the mining camps, "claim-jumping". In such cases there was almost invariably an appeal from the decision of the Gold Commissioner's Court. If the injured party, the plaintiff, lost the case, he naturally sought justice by appeal in the Supreme Court. If the plaintiff won, the defendant was frequently willing to fight the case again the higher court, because Judge Begbie's decisions and conduct of mining litigation were so unusual that men were willing to take very good odds that the decision against them would either be modified or reversed. This then, resulted in long and ruinous cases that became so numerous that injured parties began to wonder whether or not it would be cheaper to cut their losses from the "jump" by staying out of court. Another evil arising from such cases, and one for which the Judge was not greatly responsible, was the use of injunctions. When a suit was filed the counsel for plaintiff secured an order from the court forbidding operations of any kind on the disputed ground. This order, or injunction, literally locked up the claim until the end of the case. As Judge Begbie had an immense circuit and an increasing number
of cases to hear each year, rich claims were sometimes frozen for an entire season. It was, furthermore, not an uncommon occurrence that difficulties in the Supreme Court resulted in the case being taken into Chancery. This meant another delay, with the injunction still in force.

With the exception of the trouble that occurred at Lilloet over the arrest of the Cranford brothers the County Courts were comparatively free of strife and confusion. 44 Magistrates Perrier and Whannell were fatuous and Whannell, indeed, was something of a rogue. They were soon discharged, however, and the rest of the magistracy established a record for industry and efficiency. Elwyn, who had invested money in a valuable claim, resigned as soon as Governor Douglas made it clear that he could not permit responsible government servants to have any part in such activities. He had proved himself an able man and it was to be regretted that the government did not pay him sufficient to keep him in the service. Most of the magistrates were recruited from the upper middle class in the British Isles and had come to the Colony not so much to make a quick fortune as to make a career and a home for themselves in the new world. Judge Begbie, who was both loyal and generous to his colleagues, paid them a well earned tribute in his

44. Wright vs. Cranford. This case was heard at Lilloet in the Supreme Court before Judge Begbie, October 15 - 16, 1862. v. infra, Ch. V., passim. Magistrate Elliott made serious mistakes in issuing the warrants for their arrest.

45. Barkley to Douglas, Melbourne, May 31, 1859, British Columbia Papers, Pt.II.

46. v. infra, Ch.IV., passim.
illuminating report to Young in January, 1863: 47

I think His Excellency & the public have every reason to be satisfied with the services rendered. Those services could not be rendered without a degree of exertion and personal hardships undergone, whch. perhaps a bare sense of simple duty would not always require, and, whch., certainly are not elicited by any extraordinary remuneration or immediate reward: and which can therefore only be attributed to an anxious desire in every officer to do his very utmost in his department, to the sacrifice of his ease and comfort & very often of his health.

There were never more than seven of these local judges in the Colony and when it is remembered that most of them served as Assistant Gold Commissioners as well, the truth of Judge Begbie's statement that they were inspired by a high sense of duty becomes very apparent.

The magistrates were supported by a regular police force of fifteen constables under Chief Inspector Brew,- a ludicrously small number in view of the size of the territory and the nature of the population. It was, of course, extremely difficult to obtain men suitable for this work, particularly in the first two or three years of the gold rush. The salaries were pitifully small and could not compete with the lure of the mines. In the report cited above Judge Begbie made strong representations to Secretary Young to urge the necessity for higher wages. It gives a vivid picture of living conditions in Cariboo at that time. He described the rate of pay as "inexplicably inadequate" and went on to show that a constable's pay of twenty-five pounds a month scarcely sufficed to keep

47. Begbie to Young, Received January 19, 1863, Begbie Letters.
body and soul together. Up to September, 1862, meals had cost ten shillings, but after that they had been reduced to eight shillings. This meant that to eat three meals a day at the first rate would cost forty-five pounds a month and at the second, thirty-six pounds a month. Boarding houses, those offering the cheapest rates, charged about twenty-four pounds a month. The salary thus provided little more than subsistence at the reduced prices. As Begbie wrote:

The pay of a constable is £25 a month - not enough therefore to provide him with two meals a day, without allowing anything for clothes (wh. I need not remark are extremely expensive and rapidly worn out) tobacco an occasional stimulant or any of the other extras wh. a rough mountain life justifies and almost demands.

In spite of the poor wage offered for what the Judge called the "most thankless duties involving great personal fatigue exposure and responsibility," Chief Inspector Brew managed to build up a force of efficient constables. These were drawn from the ranks of a certain class of Englishmen who, like the magistrates, had come in quest of a career and a home. Judge Begbie describes them as men:

... who have hitherto filled superior stations in life: some of them even having held field officers commissions in Her Majesty's army - and most of them are provided with some small means of their own.

48. Begbie to Young, loc. cit.

49. Loc. cit.
It was well for the constables that they had some means of their own, for Judge Begbie's kind words gained them little more than official appreciation.

On the occasions that called for a larger number of police than were available special constables were sworn in for a period of days or weeks as conditions might require. Ned McGowan's posse of roughnecks who carried off the indignant Whannell were special constables - officially. In the Grouse Creek affair the Gold Commissioner enrolled about twenty or thirty of these men. In Begbie's opinion specials were rarely as efficient as the regulars because of a lack of knowledge and experience. They were, however, paid nearly twice as much.

One of the greatest difficulties and perhaps one of the greatest dangers of the day was the transportation of dust and nuggets to the coast. In 1861, Governor Douglas with the assistance of Captain Gossett established the Gold Escort. This imposing and romantic body was composed of Royal Engineers, fully armed and mounted, under the command of Thomas Elwyn, who later became a Magistrate and Gold Commissioner. Elwyn offered his personal guarantee for the safety of the precious cargo, but when the government would not give similar assurances of safe delivery miners manifested reliance in the private concerns that took up the work. Thus the organization failed and others had a similar fate, bringing a loss to the government of some $80,000.

50. Begbie to Young, loc. cit.
The Indians gave little trouble after the summer of 1858, when Douglas' prompt action and just measures prevented serious disorder. In most cases individual Indian troubles arose from consumption of liquor and when white men became involved with Indian women. As early as 1861 Indian constables were employed with jurisdiction over Indian affairs. These men, when carefully selected, acquitted themselves well, showing great pride in their office, which was designated by a baton. When four Haidas were murdered by a group of Chemainus Indians native constables from Nanaimo arrested the murderers in the face of the whole Chemainus tribe and conducted them to Nanaimo to stand trial. In 1863, when Indian troubles broke out on the Gulf Islands, native constables were sent to apprehend the wrongdoers who would, it is said, have escaped had it not been for the skill and courage of the Indian officers. It seems that the authorities encouraged the Indians by giving them small rewards for good service. Judge Begbie, who was generally very well disposed to natives and inclined to be lenient with them in court, favored cash rewards. Of one constable he wrote:

The native special displayed so much tact & perseverance that I ordered him a special reward of $10 - as it is very useful to encourage this description of service.

While the Judge does not seem to have exerted much more

51. Begbie to Ball, Acting Colonial Secretary, September 3, 1866, Begbie Letters.
than a friendly influence in matters concerning the magistracy and the police of the colony, he played an important part, which has been severely criticized, in the formation of the British Columbia Bar. His acceptance of some lawyers and rejection of others led finally to a storm of protest in the British Columbian, and finally to petitions to Governor Douglas and the Duke of Newcastle, Secretary of State for the Colonies. Throughout the controversy Begbie never deigned to acknowledge public criticism, and all his letters to the Governor were written with proper judicial detachment. Yet there were personal feelings and prejudices involved, for the issue came to a climax when he refused to admit George A. Walkem, an ambitious lawyer from Upper Canada with whom he had had a violent quarrel in the Cranford case.

The British Columbia Act of August 2, 1858, made only general provisions for the judiciary. There were no specific enactments as there had been in the case of Vancouver Island in 1849. Governor Douglas and Judge Begbie were thus to some extent free to adopt any line of action that circumstances of a local nature seemed to require. It soon became necessary for the Judge to submit for the Governor's approval some

52. At Lilloet on October 15, 1862, in Wright vs. Cranford.

George A. Walkem was born in Ireland but came to Canada at the age of nine. He was educated in Quebec and qualified to practise in both Upper and Lower Canada. It is generally believed that standards in Upper Canada were high and that Walkem was an able lawyer. When refused admittance by Judge Begbie Walkem rode circuit, giving advice, sub rosa, as the Judge said, and conducting cases from the public benches. This led to an undignified row in the Lilloet court. The two Cranford cases reveal Begbie's ignorance of law and his bullying methods.
definite provisions for the employment of counsel and attorneys in the courts of the colony. Writing to Douglas on December 15, 1858, he pointed out that absence of counsel made it necessary for him to act as adviser as well as judge, and that such circumstances made him despair of giving satisfaction to the suitors and of maintaining the desirable high character of a British Court of Law. There were, he went on, persons giving advice sub rosa, a situation which he considered harmful and which could be brought to an end by calling properly licensed practitioners into existence.

The immediate problem was to decide what regulations should be made to obtain immediately the best available talent. There is no doubt that Judge Begbie's preference was for English barristers, but as there were none in the colony at the time he was compelled to make a temporary arrangement. In the letter mentioned above he wrote:

Now here, there being no English barristers or attorneys, it seems to be expedient to take the best that can be got.

He accordingly drew up an Order of Court on December 27, 1858, which made provision for temporary and permanent rolls. Permanent enrollment was open to barristers, attorneys and solicitors who were entitled to practise at the bar in England, Scotland, or Ireland and to those who should be instructed in


54. Loc. cit.
British Columbia and Vancouver Island. Temporary license would be granted for a period of six months after the Order of Court to those qualified to practise in any part of the British Empire outside of the United Kingdom and to barristers qualified to plead in the Supreme Court of the United States.

To the Judge's consternation barristers could not be found who were qualified to avail themselves of either the temporary or the permanent rolls. The former provision expired on June 30, 1859, and was not renewed. Nearly three years later, on December 13, 1861, he wrote to James Douglas and informed him that apart from the Attorney-General there was only one barrister qualified to practise in the colony. Begbie made it clear that he had no desire to change the existing rule - that only barristers from the British Isles could practise - and expressed the hope that "... a sufficient number of duly educated practitioners may arrive from the mother country." He had, no doubt, been prejudiced, or had his prejudices strengthened by the unqualified practitioners who were now beginning to haunt the courts as he rode circuit. Most of these men were from Upper Canada, where, ironically enough, they had not made a footing in their chosen profession, and like the Judge himself, had come to British Columbia to make a new start. As a rule they did not succeed in disposing him very favorably to candidates from that colony unless they were men of marked ability and integrity.

A Canadian who did win the Judge's approval was a Mr. Barnston, an Upper Canadian barrister who had come to British Columbia in 1858. He practised at first on a temporary
roll and was later given permanent status. This occurred in June, 1860, when the absence of qualified counsel was begin­ning to be felt acutely. But even then, Judge Begbie made it clear that while there was no power to control him in making this decision he would not do so without the approval of the Governor.

Although Barnston proved himself to be a man of integ­rity and of tolerable ability, his admittance led to the up­roar over George A. Walkem. By the end of 1862 a number of barristers from the British Isles had been admitted and the litigants in the colony were able to obtain counsel. There was also a number of Canadians who wished to be enrolled but were, under the Order of Court of December 27, 1858, not eligible. Thus, when on September 30, 1862, Governor Douglas forwarded Walkem's petition, Judge Begbie was able to state that it was not within his power to comply with the prayer of Mr. Walkem. He pointed out that the temporary roll for those barristers who were not qualified to practise at the English bar had expired on June 30, 1859, and that the present rules for admission, which had been sanctioned by the Governor and the Secretary of State for the Colonies, bound his hands "almost as effectually as if they had originally been issued as instructions for my conduct by Her Majesty in Council". Remembering Barnston, the Judge continued:

56. Begbie to Young, November 29, 1862, Begbie Letters.
I say "almost" as effectually for in one instance about 18 months ago I certainly infringed them, in the case of Mr. Barnston a gentleman from Canada resident in these Colonies since 1858. But that case was immediately communicated to His Excellency together with a statement of its peculiar circumstances.

There was at that time only one Gentleman practising in the Colony which caused a necessary and most marked inequality in all cases and suits where one side and only one side could obtain any legal opinion or assistance there was positively a greater amount of apparent unfairness than where no professional assistance whatever could be obtained by either side.

I therefore, in view of the public convenience to which alone all regulations on such a subject are to be referred, admitted Mr. Barnston to practise on a temporary roll, immediately announcing to His Excellency the fact of such temporary admission and also Mr. Barnston's application to be fully admitted.

Upon this latter application all action was deferred for some months.

At the end of this time in the absence of all objection and Mr. Barnston having shown at least a tolerable acquaintance with the duties of his profession and there being still only one Barrister resident in the Colony he was enrolled as an ordinary Barrister.

But I felt that even under such circumstances every apology and explanation were imperatively required from me for departing from the rules which I had voluntarily undertaken to observe - a departure which in my opinion nothing but an urgent necessity could excuse.

At the present day however no such urgent necessity appears to exist.

There have been during the present Assizes here no less than six gentlemen in Court every day, and two others have transacted business here during the last week, all entitled to conduct legal proceedings, three of these habitually reside in this Colony and go the circuits.

Litigation is I am happy to say not so rife as to be beyond the physical capacity of these gentlemen to conduct but rather the contrary.

Such was Judge Begbie's explanation why he had enrolled one
Canadian barrister and refused to do the same for another. In closing he made two revealing remarks. He states, as if to underline the fact that admission of Canadians was no longer necessary, that more English barristers were about to set up in practice. Significant of his opinion of Walkem are the last two paragraphs:

I make no allusions whatever to the character or moral qualifications of any of the applicants as I conceive the question to be definitely settled so far as I am concerned on the above general considerations.

I have only to suggest that such inquiry should in all cases be made as to the antecedents of all gentleman admitted to practice, under any rules.

His dislike of Walkem was well known after the Cranford case and it was also well known that he looked with great disfavor on some of Walkem's convivial habits. Although the latter seems to have enjoyed a certain amount of popularity as shown by the fact that a petition was signed on his behalf and sent to the Governor on February 14, 1863, there were others who considered him a scoundrel. Moberly, for example, in a private letter to Attorney-General Crease expressed an opinion with which Judge Begbie might have concurred, but would not have committed to the written word:

Do not on any account trust or place the slightest


58. Moberly to Crease, October 19, 1864, Moberly Letters.
confidence in anything Walkem may say or do - he is a contemptible underhanded scoundrel. He'll be a curse in the House - This I will explain to you when I get down, I put you on your guard because he pretends to be my very best friend. Avail yourself of this hint very quickly but keep it to yourself.

Walkem's cause and that of the Canadian barristers was taken up by John Robson in the British Columbian. In a series of outspoken editorials in January and February of 1863 Robson denounced Begbie as a tyrant, an incompetent and as a man who deliberately excluded Canadian barristers from practice in order that a clique of English lawyers might grow rich at the expense of the public.

In the meantime Governor Douglas forwarded the petition and all the correspondence relative to Walkem's application for admittance to the bar to the Secretary of State for the Colonies who suggested that it might be as well to admit Mr. Walkem. This letter was forwarded to Judge Begbie on April 30, 1863, accompanied by a despatch from Governor Douglas requesting him to consider the case of Walkem as being similar to that of Barnston in 1861. Begbie, however, would not give in. In a letter to Douglas written in answer to this request he refused to admit Walkem on the grounds that it was not within his power to do so. He declared also that the Secretary of State lacked a proper understanding of the question, and rather than suggesting that Walkem be admitted was really asking for more information. As for the petition, the Judge went on, with an oblique thrust at Walkem, nothing was easier in the two Colonies than to secure the public sympathy for notorious and convicted criminals. With a more direct thrust
he pointed out that special legislation should be passed, an undertaking that was the responsibility of the government and not of the judiciary, especially since admission of this candidate was not acceptable to the members of the bench and the bar.

Douglas, it appears, had made up his mind that Walkem and Canadian barristers should be admitted, and accordingly requested Judge Begbie to make out an Order of Court permitting lawyers from any part of the Queen's Dominions to plead at the British Columbia bar. On June 18, 1863, the British Columbia Government passed the Legal Professions Act which as Judge Begbie suggested in his letter of May 11, was the only means of making admission of Canadians and others who were not qualified to plead at the English bar admissible in British Columbia.

The way was now clear for Judge Begbie to enroll any Canadian barristers who made application and could satisfy him that they were properly qualified. Walkem's petition had been in his hands since early October, 1862. He was qualified to practise in the courts of both Upper and Lower Canada. Begbie, however, still delayed his admission and did not enroll him till November 21, five months after the passage of the Act. On that very day he received a communication from the Governor, dated October 1, with enclosures from the Duke of Newcastle

60. British Columbia Proclamations, 1863.
asking what steps had been taken to admit Mr. Walkem. It is open to question whether Begbie admitted Walkem after reading the enclosures from His Grace. There is no official letter of the Judge's in the Provincial Archives answering Douglas. There is, however, an unfinished and unsigned letter in his handwriting that suggests that he was very angry. Perhaps, if he had enrolled Walkem before reading the enclosures from the Colonial Office he would not have given indications of bad temper. The fragment reads as follows:

With reference to your despatch of the 1 Octr. with enclosures from his Grace the Duke of Newcastle requesting information as to the steps taken in the matter of the admission of Mr. Geo. A. Walkem to practise in the Supreme Court of British Columbia I have to inform you that Mr. Geo. A. Walkem was this day admitted to practise and duly enrolled accordingly.

As His Grace the Duke of Newcastle appears to take a personal interest in this matter and as it may possibly relieve the anxieties of

It seems that the Judge changed his mind just as the tide of his sarcasm began to rise, realizing that he could not go as far as his anger prompted him. Some time later, when Walkem was riding circuit as a fully accredited barrister, Judge Begbie sat watching him from the kitchen window of a friend's house at Yale. To his delight the barrister had great difficulty in mounting his horse, and when finally he did so he pitched headlong into a thorn bush on the other side. Begbie yelled with delight and rushed out to help his fallen colleague.

Wymond Walkem relates in his reminiscences that Judge Begbie had refused to admit his brother from personal pique arising from the Cranford case. In that particular instance the Judge had been technically correct. Walkem, who was not at the time enrolled, had undertaken to take part in the defence of the Cranford brothers at Lilloet. This he was entitled to do so long as he did not assume the prerogatives of accredited counsel. When the trial opened he unwisely took his seat in the special place set aside for barristers. Judge Begbie at once ordered him to sit elsewhere. Walkem objected, unwisely, perhaps, but with a certain amount of justification. As the Judge did not permit people to oppose his will in court he shouted at Walkem, and of course a noisy scene ensued.

There were, however, other important factors involved. By admitting Barnston he showed that he was not blindly prejudiced against Canadian counsel. He preferred, however, to have English barristers practising at the British Columbia bar. He seems to have considered them better trained and, on the whole, men of higher integrity. At that time the peculiar conditions prevailing in the goldfields doubly justified his insistence on the highest professional standards. The miners were litigious by inclination and their occupation lent itself to dispute. They were thus natural prey for dishonest lawyers who, infesting mining communities, would encourage litigation for the fees they could get out of it, some of them going so far as to conspire to bring action on false charges with a view to

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sharing the proceeds in the event of winning the case. Technically known as champerty, this practice would have eaten into the prosperity of the community and dragged the courts into the gutter. Fearing this in particular and low standards in general, Judge Begbie, an abstemious and upright man, could not look favorably on a toosop from Upper Canada. Like those of everybody else, his judgments were compounded of prejudices, guesses and a modicum of sense.

The bulk of Judge Begbie's correspondence is concerned with the problems described above. It is thus the only existing record of his service to British Columbia in laying down the structure of the law. His despatches do not give a complete account of this important work because so much policy was determined by consultation with the Governor and his officials. In the same manner the Judge kept in touch with the magistrates, gold commissioners and police as he rode through the country. He heard their complaints, considered their problems and carried their suggestions to the government. In a special sense he was the government on horseback, for he represented both the legislative and executive functions of the crown.

His other great contribution to British Columbia, and indeed, to the Dominion, was the part he played in preserving law and order. Unfortunately his achievements in this regard have passed into legend, with the result that posterity pictures him as a ruthless man who, by a long series of hangings, cowed the entire mining population into submission to the British flag. Such a portrait is distorted, for he was by no
means unaided in his work, he sentenced very few men to death, and an overwhelming proportion of the population was law abiding. There were, however, a number of gunmen and rowdies in the country who might very well have turned the colony upside down had they been permitted to disregard the law. Disorder begets anarchy and when anarchy prevails the peaceful citizens seek aid wherever it can be obtained. As the bulk of the miners were American the necessary aid would have been forthcoming with the inevitable results already described. Such a calamity did not come to pass because Governor Douglas and Judge Begbie succeeded in establishing the law and preserving order. With Douglas to support him and with armed forces at his call Judge Begbie established a respect for law that won him the praises of his worst enemies.

The Judge had not been in the colony three months before an event occurred which, though trivial in itself, was to put the forces of law and order to a test and reveal the conditions with which the authorities had to deal. Early in January, 1859, news came to Colonel Moody at Derby, and later, to Governor Douglas at Victoria, that a very serious outbreak of disorder had taken place at Yale. Without waiting for instructions from the Governor, Moody set out for Yale with Captain Grant and a company of twenty sappers. In the meantime Douglas had received an extraordinary letter from Captain Whannell, the magistrate at Yale, who declared that he had been set upon by a band of armed ruffians under the leadership of the notorious Ned McGowan. These men, he continued, had entered his court during session, seized him, his jailer and
two prisoners and carried them off to Hill's Bar. In conclusion he wrote:

The town and the district are in a state bordering on anarchy; my own and the lives of the citizens are in imminent peril...An effective blow must at once be struck on the operations of these outlaws, else I tremble for the welfare of the Colony.

Douglas feared an outbreak of the kind described by Whannell as much as anything that could befall the colony. He remembered McGowan's arrival in Victoria seven months before at the head of a gang of American adventurers, many of whom had taken part in Walker's raid on Nicaragua. McGowan, whom everybody knew to be wanted by the Vigilantes of San Francisco, had fired a salvo of guns as his ship entered the harbor. The Governor thus saw, in what he believed to be an insurrection led by this man, a challenge to British authority which, if not answered, would culminate in another Champoeg.

Douglas at once secured aid from the Boundary Commission and from H.M.S. Satellite. This force, consisting of a hundred marines and bluejackets complete with a small cannon, was despatched to Langley whence it was to proceed up river on orders from Colonel Moody.

Lieutenant Mayne, who had been sent in advance by canoe, caught up with Moody at Hope, where he was about to embark with Judge Begbie for Yale. The three arrived on a Saturday to find no signs of disorder or of an insurrection. On the

following day Colonel Moody held divine service in the courthouse for a large congregation of miners.

The events that had led to the despatch of a hundred sailors and marines proved to be nothing more dangerous than a clash between two fatuous magistrates. On Christmas Day, 1858, a Hill's Bar miner had assaulted a negro named Dickson. The miner, a man named Farrel, fled with an accomplice to Hill's Bar. Magistrate Whannell of Yale issued a warrant for their arrest and sent it to Magistrate Perrier of Hill's Bar, requesting him to seize the men and send them to him to face trial. Perrier, who had hear Farrel's story, refused to do so. Instead, he issued a warrant for the unfortunate negro, whom the over-zealous Whannell had clapped in jail pending the trial of Farrel, and sent Constable Hickson down to Yale to arrest Dickson. Hickson, it appears, was overbearing, and so enraged the sensitive magistrate of Yale that he imprisoned him for contempt of court. Perrier was also sensitive about the honor of his court, and regarding the arrest of his constable as an act of contempt sent a posse of men to rescue Hickson and to arrest his brother magistrate, the jailer and the negro. Though armed, Whannell was obliged to give in to superior numbers. He was arraigned before Perrier and fined fifty dollars for contempt of court.

While these serio-comic events were taking place, the miners of Yale and Hill's Bar began to hold indignation

64. McGowan led the posse, a fact that gave the whole affair such a bad odor.
meetings to champion the cause of their respective magistrates. It is not unreasonable to assume that a violent outbreak might have taken place had it not been for the rapid intervention of the authorities. The Yale miners were adherents of the San Francisco Vigilance Committee, while those of Hill's Bar had been partisans of the Law and Order faction, really an aggregation of the lawless element. Judge Begbie said of them with truth that the lives of their leaders would not be worth "an hour's purchase in any street in San Francisco". These men naturally regarded the miners of Yale as dangerous enemies and were likely to shoot it out with them at the least provocation. The danger of this latent antagonism became clear when Judge Begbie suspended the Hill's Bar magistrate, Perrier, from the rolls. Shortly after hearing this McGowan happened to meet Dr. Fifer, a former member of the Vigilance Committee. Words ensued and McGowan attacked the doctor on the street, only a few yards from where Moody and Begbie were quartered.

Colonel Moody was alarmed. He at once sent orders to the Royal Engineers to march from Hope to Yale and to the marines and sailors to proceed from Langley. By the next morning the Engineers had reached Yale. Deeming this show of force sufficient, Moody sent word that only the marines need continue on their way. McGowan, who had never encountered anything like this before, surrendered himself, apologized to Moody and paid a fine imposed by Judge Begbie.

Ned McGowan's War, as the incidents described above have come to be known in the history of British Columbia, thus ended peacefully enough. As a fitting Gilbertian finale Ned and his friends entertained the various officers and officials at luncheon.

With the passage of time, however, the events just described have become significant for the student of the period. Viewed in retrospect they afford an answer to many of the basic questions concerning the preservation of law and order. It is clear from the first that Governor Douglas was keenly aware of the larger issues involved and that he was both willing and able to use overwhelming force and to go to any expense to make the Queen's law supreme. The Royal Engineers, who left the colony in 1863, were always at Judge Begbie's back, as it were, during the critical period. After their departure it was a continued source of strength that naval forces could be marched into the interior in the event of serious trouble. It is sometimes argued that the nature of the country lent itself as a deterrent to crime. The criminal, it is said, had only one place of egress, and that was through the mouth of the Fraser, where Inspector Brew and his constables kept a sharp eye open for such men.

What criminal in the interior could hope to

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66. British Columbian, June 27, 1861, p.1. Contains an excerpt from "Harper" for May of the same year, stating that Captain Wright of the Enterprise charged six or seven thousand dollars for transporting troops.

make his way through an almost endless wilderness without succumbing to violence or starvation? This is an attractive argument, but one with which Judge Begbie would not agree, for he considered escape easy and that the country lent itself to crime for that reason. Whatever the role of geography, it is clear that the chief factor in the maintenance of law, as the affair at Yale shows, was the desire and will for order that animated Governor Douglas and his officials, and the overwhelming armed power they had at their disposal in the event of trouble too serious for the gallant but pitifully small police force.

The McGowan incident thus forms the basis of an interesting comparison of conditions in British and American territory. The majority of the miners in British Columbia was Americans and nearly all of them had come from the goldfields of California. They belonged to the same mining frontier and so no distinction can be made between the groups north and south of the border in terms of social and cultural differences. The majority of the men in the American west cherished law and order as much as their compatriots who had pushed north into British Columbia. Yet in the United States lawlessness was the common order and the mining areas were torn with feud and faction. Good and bad elements struggled for control which for various reasons the state and federal authorities had failed to maintain.

68. Begbie to Douglas, November 30, 1861, Begbie Letters.
Similar tendencies emerged briefly at Yale and Hill's Bar. The local authorities, Perrier and Whannell, proved to be insufficient for the offices they held. As in the United States when authority proved weak a lawless faction began to assert itself, to be opposed by another, which, in the name of law and order, was ready to embroil the community in what amounted to little better than gang warfare. But unlike the authorities in the United States, those in British Columbia were willing and able to suppress Law and Order and Vigilance Committees alike, whether they appeared at Yale and Hill's Bar or anywhere else. Nor could there be found in the American West a body of local magistrates and police so resolute and so devoted to duty as those in British Columbia. As for Judge Begbie, both friend and foe agreed that he was the personification of the Queen's law.

It is apparent from such considerations that Judge Begbie occupies a somewhat less prominent place in history than that accorded to him in legend. He did not work alone, maintaining order singlehanded as Douglas had done in the summer of 1858. With Governor Douglas to support him, and a small but efficient body of law officers at his side, he was the strong arm of a well constituted system of government and law which, autocratic as it was, served to keep the colony British when it might easily have become American.

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He rode up and down the country, year by year, holding court and laying down a system of government and law. It was he with whom the American miners first came in contact. In criminal matters they found him fearless, just, and on the whole, merciful. While it is true that he failed to establish a record for impartiality and sound judgment in the civil courts it is not possible to find a word of adverse criticism of his criminal trials. His methods were rough and ready but they never put the accused at an unfair disadvantage.

Wherever he held court, whether it was in the official government buildings, in a barn or astride his horse in the open air he managed to create the impressive atmosphere of an English court of law. He carried his robes with him and was always clad appropriately to the court over which he happened to preside. In criminal cases, and especially in murder trials, he endeavored to have a chaplain in attendance.

In the early days desperados sometimes sent him letters threatening his life should he pass sentence on one of their friends. On some occasions he read these communications to the assembled court, inviting the sender to proceed with the assassination. It is related that once while seated on the upper floor of an hotel verandah he overheard a group of ruffians of this kind laying plans to shoot him as he rode out of town.

70. A story is told of his calling on one of these anonymous letter writers and giving him a friendly but firm lecture on the benefits of good behavior.

After listening for some time he went to his room and returned with a pail of slops which he emptied over their heads to show his contempt for them.

He had not ridden circuit many times before news spread through the country that Governor Douglas' Judge had an iron hand. Lawbreakers learned to expect a stiff sentence if apprehended. Many of them sustained a shock when he added a flogging to the penalty. Begbie believed that a judicious use of the whip was efficacious in the case of habitual criminals, deterred some and induced others to leave the country. Shortly after the McGowan incident he expressed his views on the matter to Douglas:

He (Mr. Brew) objects very much to flogging. My idea is that if a man insists upon behaving like a brute, after fair warning, & wont' (sic) quit the Colony; treat him like a brute & flog him.

The Spring Assizes at Hope and Yale in 1861 saw some sharp sentences for theft. A John Burke appeared on a charge of stealing two pairs of blankets. When found guilty Judge Begbie gave him nine months hard labor, and two Chinese, who had stolen a pistol, he gave two years with hard labor. It is not surprising therefore that prisoners awaiting trial grew apprehensive as the assizes drew near. A number of criminals broke out of Lilloet jail when they heard of his approach. They knew they were guilty and they knew what to

Contrary to popular belief he was more inclined to leniency than severity when on those almost rare occasions it was his duty to pass sentence on a prisoner for murder. He had a horror of taking human life and the prospect of condemning a fellow being to death touched his conscience deeply. His habit of having a chaplain in court on such occasions was not prompted by a love of pomp. He was the kind of man who felt the need of spiritual support almost as much as the prisoner. On more than one case he passed sentence of death and subsequently expressed approval of commutation. After sentencing the Indian, Quahook, to death he wrote to the Governor suggesting that he modify the punishment:

... the Indians and the murdered man had been getting drunk together: and ... in this there was some misunderstanding about a female. I am quite aware that if 2 men engage in a burglary or any other crime, & one kill the other, even by accident, it is murder: but surely, when it is the seducer, and the far more guilty party as to the original crime who is killed it wod, not be irrational to modify the punishment of the murderer.

On another occasion, when he had sentenced an Indian to death for murder, Magistrate Ball interceded on his behalf, stating that the prisoner had saved a white man's life some three years before. Governor Douglas granted a reprieve and the prisoner was held in jail at Lytton. Begbie wrote to the Governor

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73. Begbie to Young, June --, 1862, Begbie Letters.
74. Begbie to Douglas, April 7, 1860, Begbie Letters.
asking for commutation. Though he made an attempt to put his recommendation on a legal basis his real motive was humanitarian:

I am not at all convinced that his execution is necessary, although I am sure that it would have been just, but after so long a reprieve I cannot but think that the sentence ought to be commuted to penal servitude for a term of years. It is scarcely right to keep a poor fellow on the tenterhooks for so long & hang him at last.

Unfortunately his addresses to juries, generally uttered in righteous indignation, gave him a reputation on more than one occasion for a love of imposing the supreme penalty. In those days the jurors were frequently Americans, many of whom were as lawless as the accused. To Begbie's indignation they sometimes brought in verdicts of not guilty and manslaughter when the evidence pointed very clearly to premeditated murder. When this happened he denounced the jury and the accused in the hottest language, sometimes expressing regret that he could not hang the lot of them. When the gunman, Gilchrist, was proved beyond shadow of doubt to be guilty of deliberate murder, his compatriots gave a verdict of manslaughter. The Judge is reported by Wymond Walkem to have addressed them thus:

75. Begbie to Douglas, April 20, 1861, Begbie Letters.

76. In the early days there were seldom enough British subjects to constitute a jury. It is believed that the Judge swore in Americans on such occasions without asking too many questions. The practice was legalized by the Jurors Act, 1860. See British Columbia Statutes, 1860.

77. Walkem, W., op. cit., p.28.
Prisoner, it is far from a pleasant duty for me, to sentence you only to imprisonment for life. Your crime was unmitigated, diabolical murder. You deserve to be hanged. Had the jury performed their duty I might now have the painful satisfaction of condemning you to death, and you, gentlemen, are a pack of Dalles horse thieves, and, permit me to say, it would give me great pleasure to see you hanged, each and every one of you, for declaring a murderer guilty only of manslaughter.

This case is now famous, and though everybody is agreed that Gilchrist deserved to be hanged and that Judge Begbie was justified in making his blistering address, his remarks have given the lasting impression that he would hang prisoners very gladly and without any consideration of mitigating circumstances, as the jury claimed there were in the case of Gilchrist. Yet the truth is that the Judge was satisfied with their verdict and perhaps glad that he did not have to impose the death sentence. In his account of the trial to Douglas he wrote:

This would have been of course 'death by misadventure' in California - in England Gilchrist would probably have been hung - in British Columbia it is not perhaps an altogether unsatisfactory result that Gilchrist was convicted of manslaughter & sentenced to penal servitude for life, while his 'friends' (who are well known to the police, and to me) have left the colony and are not, I think, likely to return.

Perhaps the secret of his achievement in maintaining order is to be explained by the fact that the criminal's friends left the country. They believed Begbie was a "hanging judge."

78. Begbie to Young, January --, 1863, Begbie Letters.
There was, indeed, a remarkable absence of crime throughout the colonial period. Year by year Judge Begbie was able to report that the amount of crime in British Columbia was very small in proportion to the population. He modestly gave the credit to others and never, by any means, made reference to his own part in the achievement. In his first official communication on crime he wrote:

There have been but 3 murders committed since I first began to hold courts in British Columbia. They were all committed by Indians: in every case the Indians were drunk.

Some nineteen months later good order continued to prevail. In a long despatch which accompanied calendars of the courts held since the previous June the Judge expressed his satisfaction with the state of affairs and went on to give his reasons for the continued peace and good order. As this is the only communication in which he wrote at any great length on the matter it deserves careful attention:

It is a continued subject of thankfulness that the amount of crime still remains very small in comparison with what might have been anticipated from the amount of population, the extent and difficulty of the country over which the population is scattered, the habits naturally induced by the unsettled and exciting life of a miner, and from the impunity which criminals might hope for, looking to the state of communications and the state of the Country generally, the proximity of a long open Frontier accessible by unfrequented passes, and the

79. Begbie to Douglas, April 7, 1860, Begbie Letters.
80. Begbie to Douglas, November 30, 1861, Begbie Letters.
necessarily distant and scanty Police force.

It is clear however that the inhabitants almost universally respect, and obey the laws, and voluntarily prefer good order and peaceful industry, to the violence and bloodshed to which other Gold mining regions have been subjected: and with such dispositions the police force scanty and scattered as it is, appears to have been hitherto sufficient not only to restrain from crime those who might otherwise have committed deeds of violence, but in general to bring to Justice the few persons who have actually been guilty.

The exceptions where criminals have evaded Justice during the past year, are I think only 3 in number, one accused of murder which from what I have learnt, would probably amount to no more than manslaughter, another with shooting with intent to murder; the third for larceny.

In these three cases, too, the result proves the general apprehension of criminals, that the officers of Justice are not to be trifled with for there is hardly a doubt but that all these 3 persons quitted the Colony with such speed that pursuit was useless, and the community here are not likely to be troubled with them again.

I am happy to say that the criminal records of the past year do not appear to contain any other particular which calls for especial remark.

Fourteen months later the Judge reported that good order continued to prevail:

I think that notwithstanding certain occurrences the security of life & property in the remoter districts of the Colony is not otherwise than satisfactory and will probably contrast favourably with the state of any other country of similar extent in the world.

A more disinterested observer, Cheadle, noted in his journal

81. Begbie to Young, Received January 19, 1863, Begbie Letters.
in the following August: 82

Order famously kept in Cariboo:...only 2 murders this year.

Some two months later Cheadle passed the Judge near Clinton and apparently impressed by his achievements, if not his appearance, jotted down a similar comment:

Passed Judge Begbie on horseback. Everybody praises his just severity as the salvation of Cariboo and terror of rowdies.

Even the British Columbian, which had been such a bitter opponent of Begbie, wrote with great satisfaction of the good order prevailing in the Kootenay. At the beginning of the rush to that district in the summer of 1864 there were probably a thousand men on Wild Horse Creek. Magistrate O'Reilly had only five constables at his disposal to deal with a threat of disorder, but when word circulated that Judge Begbie was on his way through the mountains with a party of Marines all became quiet as if by magic. John Robson wrote of the prevailing good order:

On arriving at Kootenay Judge Begbie found an empty jail and a clear docket - not a single

83. Ibid., p.243.
84. "Paucity of Crime", British Columbian, November 18, 1865, p.3.
case, either civil or criminal, awaiting adjudication...In a colony like this, where the outlawed of surrounding countries is supposed to concen-
trate, the paucity of crime is something very remarkable.

Unhappily for Judge Begbie this was one of the few, if not the only occasion, on which John Robson was able to write about him without abuse and contempt. Begbie was ac-
cused of participating in speculation in mines and in land, an activity strictly forbidden to all officials by the Governor himself. At the same time that storms were brewing over these matters the Judge was causing an uproar in Cariboo. As we have seen, he had had little experience in England and had never come to know the law very well. His rough and ready methods had served very well in the early days, but as the Cariboo developed he was not equal to the tasks imposed upon him as a judge in the complicated litigation arising from dis-
putes between mining companies. He had, through his early experiences become a law unto himself, and he proved unwilling or unable to change. He had been a success in the Canyon, but he was to prove a failure in Cariboo.
CHAPTER IV.

HIS HONOUR'S HONOUR

During the colonial period rumor of corruption in high places spread through the two colonies. These reports almost invariably adverted to the participation on the part of government officials in speculation in mines and in land. While there was no law existing that forbade government servants to own property or invest money in local enterprises Governor Douglas very properly circularized all officials forbidding them to make use of their authority and information for profit speculation and investment.

In the matter of land, where speculation appears to have been rife, the existing laws made it possible for officials to secure by pre-emption or by outright purchase large parcels in areas where there were signs of an influx of settlers or where there was likelihood of a town developing. Under the Proclamation of January 4, 1860, generally known as the Pre-emption Act, British subjects and aliens who took the oath of allegiance could pre-empt land at a cheap rate and under attractive terms. The pre-emptor was required to enter

85. v. infra., p.32, n.
86. Pre-emption Act, January 4, 1860, British Columbia Proclamations, 1858 - 1865.
into possession and record his claim to any quantity not exceeding 160 acres with the nearest magistrate. The recording fee was eight shillings. After continuous occupation and the improvement of the property to the value of ten shillings an acre the pre-emptor could apply to the local magistrate for a Certificate of Improvements. This entitled him to complete payment for the property at a rate not exceeding ten shillings an acre and so secure a Crown Grant or clear title. The pre-emptor could, after the Certificate of Improvements had been granted, transfer his interests to a purchaser who would complete the payments to the Crown. The pre-emptor was also permitted to acquire adjoining land.

In the Proclamation of January 20, 1860, provision was made for the sale of suburban lots and surveyed country lands by auction, and when unsold by auction, by private sale at the price of ten shillings an acre and the balance payable at the expiration of two years. As a result of this enactment large areas were bought as soon as the Royal Engineers had completed the surveys.

This legislation, of course, had been passed with a view to establishing farming communities in the colony and as such was a wise provision on the part of the authorities. Unfortunately, however, it did not prove to be sufficiently ironclad to prevent speculation. In the matter of pre-emptions there was a number of loopholes of which the shrewd and unscrupulous among the miners and government officials took advantage. When, for instance, it became apparent that the development of a new mining area would be followed by an
influx of population and the growth of a town to serve as a distributing centre for the new diggings, speculators would pre-empt land, secure Certificates of Improvements from easy-going magistrates, and sell it as an entire block or in even more profitable quantities as town lots. Officials seldom enquired too closely into the matter of improvements and pre-emptions were not always recorded at the office of the nearest magistrate. The informality of recording is illustrated by a pre-emption claim at Lac La Hache. As the local magistrate was absent two claimants appeared before Judge Begbie, who was holding court at Bridge Creek, and submitted their claims. These were, as usual, written on blank paper, and the Judge scribbled an endorsement on them. He took no steps to see that they were recorded with the local magistrate. One of the applicants took this step on his own volition, but the other did not. The latter subsequently obtained a Certificate of Improvements from a magistrate at Clinton who, it seems, was satisfied with Begbie's endorsement and accepted the petitioner's word for the validity of the improvements. Sixteen years later, in 1878, the same man submitted these rough documents, of which the government had no record, and obtained his Crown Grant.

Under these conditions it was easy to obtain land and a government ruling in 1861 definitely restricted local magistrates in the exercise of discretionary powers when claims

87. Laing, F.W., Colonial Farm Settlers on the Mainland of British Columbia, 1858 - 1871, Victoria, Provincial Archives, 1939, p.10.
were made. In a letter dated April 3, 1861, to T.C. Brew, the magistrate at New Westminster who had succeeded Spaulding, the Colonial Secretary wrote:

It appears to His Excellency...that Mr. Spaulding, when acting as recording officer...was in the habit of refusing to record pre-emption claims by reason of land being already recorded or occupied, or for some other reason; whereas it is the duty of the recording officer to accept any record which may be tendered to him, even though at the time he may be privately of the opinion that the document is valueless, because every applicant has the right to form his own opinion and to make his own claim and to support his own right as he legally may and he is not to be prevented from asserting those rights by any one's private opinion.

This ruling, which was embodied in a circular letter on April 20, 1860, opened the way for speculation. It was now possible to pre-empt land in any place where the government was about to make reservations for a townsite, the magistrates being powerless to refuse such petitions. At first sight the ruling appears to have been something of a blunder. Governor Douglas, however, did not have the activities of private speculators in mind when he directed Secretary Young to issue these instructions. Having learned that government officials were up to their ears in speculation, he decided to render such activities impossible in the future. To prevent magistrates from refusing to record pre-emptions on land they themselves desired he issued the circular cited above. That the

88. Laing, op. cit., p.10.
89. Ibid., p.11.
instructions opened the way for the public to speculate was an oversight. His second step was direct and final. He instructed Young to write directly to the officials involved, ordering them to abstain from such activities and admonishing them severely.

Governor Douglas' investigations revealed that while magistrates were not seriously implicated in land speculation either by pre-emption or by the manipulation of the sale of surveyed lands, higher officials were deeply involved. There is no evidence to show that Judge Begbie was guilty, but Douglas discovered that Colonel Moody, through the advantages he enjoyed as Chief Commissioner of Lands and Works, had secured in the New Westminster district alone nearly 2,000 acres. The Governor's views on the matter and a strong prohibition were expressed in a circular letter dated April 5, 1861. In addition Secretary Young wrote a strong letter to Moody on the same date. A similar communication was sent to George Hunter Cary, the Attorney-General. It summarized his activities and contained a sharp rebuke for his cupidity. So far as Cary was concerned, Governor Douglas' admonition had a salutary effect. He made no further acquisitions and allowed his various claims to lapse. Colonel Moody, however, seems

90. Laing, op. cit., p.11.
91. Ibid., p.12.
92. Loc. cit.
to have disregarded the Governor’s instructions and to have continued to purchase land up to the time of his departure for England in 1863.

Similar rumors of speculation in mining claims on the part of government servants began to circulate through the colony. When the tide of public indignation had risen to a considerable height the Daily British Colonist came out with a strong but not immoderate article on the subject. It made no accusations or allegations but pointed out that public servants, including members of the judiciary, should be prohibited from speculation of this kind in the interest of good government and the dignity of the law. Nine days later, on October 30, 1862, the Colonial Secretary, acting on instructions from the Governor, sent a circular to all government officials stating that the practice must stop and that all public servants owning mining property must either relinquish it or resign.

In the meantime Magistrate Elwyn had read the article in the Colonist of October 21, and on the same day that Secretary Young had sent out the circulars wrote to him from Lilloet, stating that he owned a share in a claim at Williams Creek and that rather than give it up he was prepared to resign if

93. Laing, op. cit., p.11
95. Colonial Secretary’s Letter Book, No.4., October 30, 1862, p.332.
Governor Douglas wished him to do so. Judge Begbie also received a circular, but his answer to Young was not couched in the mild and complaisant terms employed by Elwyn. He asked whether the circular was addressed to him specifically. His closing words were a preliminary rumble of the volcanic indignation that was to follow in a later despatch:

I am at a loss to know whether I am to consider the circular...as being addressed to myself. I am unwilling to assume it to be so intended, as I shoid, in that case, with whatever pain, feel compelled to answer it at greater length than by the mere acknowledgment of its receipt.

On the same day, November 5, Young wrote to ask the Judge outright whether or not he had an interest in a mining claim in Cariboo. Before an answer was forthcoming to this pointed question he received Begbie's letter of November 5 and wrote a cool but sharp reply. After explaining the nature of the circular he gave the Judge's knuckles a rap:

His Excelly. does not quite comprehend your observation as to your unwillingness to assume that it has any reference to you, and as to the pain it would cause you to reply to that Circular at greater length than by a mere acknowledgment.

The Judge's indignation knew no bounds when he received

96. Elwyn to Young, October 30, 1862, Elwyn Letters.
97. Begbie to Young, November 5, 1862, Begbie Letters.
99. Ibid., p.344, no.353.
Young's letter of November 5. After the usual curt official acknowledgments he gave reign to his feelings:

I entirely deny the right of any man (except in a suit properly instituted) to have any answer from me at all concerning my own private property - either in or out of this colony - and I reserve to myself the entire right of answering or refusing to answer any questions of the above character for the future. On the present occasion however I feel at liberty to inform you that I do not hold and have never yet held any mining claim or any part of any mining claim in the Cariboo district or elsewhere in this Colony or in Vancouver Island either in my own right or as trustee for any other person.

He had, however, given some cause for gossip, as he was compelled to admit in the next paragraph:

Where reports are, as in the present instance, entirely harmless and indifferent, it is often difficult to assign any foundation for them. But if the report to wh. you allude be the same wh. has often been talked of in my presence, it may (if I may hazard a guess) have very naturally arisen from the circumstance that in September last while at Williams Creek, I advanced some money to a Mr. H.P. Walker, to enable him to complete the purchase money for an interest in a mining claim there, wh. he purchased accordingly. In some sense it is perfectly true therefore, even that I am interested in that claim; for it certainly is a contingency, that if that claim turns out to be unremunerative I shall not be repaid my advance so soon, perhaps not at all, as wod. be the case if it should turn out to be rich. But upon that claim specifically I have no mortgage, no lien, nor any declaration of trust relating to the whole or any part of the claim.

In closing he lapsed from the legalities of the above and gave

100. Begbie to Young, November 19, 1862, Begbie Letters.
101. From a man named Travis. Walker was a barrister.
expression to his anger once more:

The enumeration of these details appears to me so impertinent that I shd. not know in what terms to apologize for communicating them in a public despatch, were it not that they really seemed to be inquired after in your despatch of the 5th instant.

Governor Douglas accepted this letter as an unqualified contradiction to the charges made, and intimated his deep satisfaction in the matter. Rumors, he said, were being sedulously spread in London as well as in British Columbia and he was glad to be in a position to forward a denial to the home authorities should they require it. He pointed out, however, that where private interests were reported to be conflicting with public duties it was the duty of the Executive to pursue the fullest enquiries.

Elwyn was loth to resign, and before doing so pointed out to Young that the miners' complaint that it was impossible to obtain justice while members of the judiciary were mixed up in mining claims had, so far as he was concerned, no foundation in fact. Of over one hundred and twenty mining disputes settled in his court during the season of 1862 only two had been appealed, and in each case his decision had been confirmed in the Supreme Court by Judge Begbie. He felt compelled to bow to the Governor's wishes, however, and rather than give up his


103. Elwyn to Douglas, December 9, 1862, Elwyn Letters.
interests, tendered his resignation in the same mail. 104

While Judge Begbie's explanation and Elwyn's resignation gave satisfaction to Governor Douglas they did not greatly allay public dissatisfaction and suspicion. There were, indeed, not a few in the colony who continued to be critical and antagonistic. The reform element in the two colonies, led by DeCosmos and Robson, regarded all official misdemeanors as the inevitable result of arbitrary government. In British Columbia, which was governed largely from Vancouver Island by a governor and officials whom many colonists regarded as despots, Judge Begbie came to be a symbol of all that was bad in arbitrary rule. He had already fallen foul of juries and barristers and was at the time of the dispute about to be described, up to his ears in the Cranford trials. His conduct in these cases brought discredit to him as a Judge and to the judiciary of which he was the head. He was handsome, courtly and physically impressive, and he was probably the best educated man in the colony. These qualities, which won respect in some, engendered a sense of inferiority in others which in its turn begot antagonism and malice. He was opinionated and ironic in conversation, and when angered his sarcasm cut like a whip. It is not surprising that people were ready to believe the worst of him and anxious for a chance to malign him.

Such an attack came only a week after the Judge had written to deny participation in the mining venture in Cariboo. On November 26 an anonymous letter appeared in the

104. Elwyn to Young, December 9, 1862, Elwyn Letters.
British Columbian hinting broadly that Judge Begbie had accepted a bribe to secure grant of a Certificate of Improvements on a pre-emption at Cottonwood. It was a long letter, bearing the date November 7, 1862, and the letter A as the signature of the anonymous correspondent. A reference to the evils of gambling lends support to the view that the writer was the Rev. Arthur Browning, a Methodist minister, who had no use, it appears, for the tolerance accorded to gaming by the Governor and the Judiciary. Beginning with references to Elwyn and his constables, and to Begbie's loan to Walker to enable him to purchase a share in Travis' claim, A then brought out a new allegation, based on information he had recently acquired at Williams Lake, to the effect that Begbie had received a gift of twenty acres in return for using his influence to obtain a Certificate of Improvements. The letter ran as follows:

To the Editor of the British Columbian.

Sir. - There is an old proverb about closing the stable door, &c., its verification may be seen in the late circular issued by the Government. I knew, the magistrates knew, the public knew, that a Constable in Elwyn's office was working two claims during his tenure of office, and that he only held his position while the success of those claims was doubtful. Others in that office hold not one claim but many; and it is said that the virtuous Elwyn will look upon this circular as a most precious vehicle of resignation.

That the Chief Justice signed the cheque assuring Travis of his pay is well known, and as there

105. British Columbian, November 26, 1862, p.3.

are more ways of killing a cat &c., why it is just possible that His Honor may have received dividends without purchasing a certificate.

What is the difference between a good mining claim and a desirable pre-emption claim.

If Judge Begbie could accept twenty acres of land from Dud Moreland, and if the said Moreland could, on appeal to the said Judge procure a certificate of improvement in opposition to the will of the resident Magistrate, why he, the said Judge, can hold a claim of twenty, and feel no qualms of conscience withal. The fact is, sir, that much of the action of official residents in Cariboo was a burlesque on the majesty of British law. Constables whose poverty was conspicuous previous to their entering Cariboo, could, on a merely nominal salary, venture on an outlay of risk from which prudent men of means would have shrank.

The superiors of these men so far as discountenancing set the example of venality. Thus officers and officials became creatures of interest and the instruments of all who had prospects to offer in exchange. I blame not the needy for this, but the Government who appointed and sustained them.

There are men in this Colony, and in the magisterial corps too, above reproach. It is the interest of every executive to appoint such men with salaries approximating at least to their necessities. Let the officers of these be men of character also, and let us hear no more of needy spendthrifts being placed in positions of responsibility merely to "make a raise". I cannot close this without advertsing to the most abortive efforts of the Chief Justice and the magisterial corps of Cariboo in the matter of gambling. The chink, chink of the gambling table - the curses of its devotees - nay, even the dead victim of its fury told with startling vividness its horrors. Yet no hand arrested its course, no official power denounced its presence. It may be proper, it is surely easy, to scathe a poor wretch on whom the verdict of "guilty" has just fallen; but it would cause us to see in our Chief Justice a nearer approach to the fearless dignity of the British Bench did he arrest the vitality of crime by the destruction of its cause.

A.

New Westminster, Nov. 7th, 1862.

As his letter to Young, denying participation in mining
ventures indicates, Judge Begbie was very sensitive about his personal honor. He had already had much to endure in the way of sharp criticism from the *British Columbian*, and he was now stung beyond endurance. On the Monday following A's letter, December 1, he called the editor, John Robson, a future Premier of the Province of British Columbia, to court, and on the following day sentenced him to prison for contempt of court.

There is difference of opinion to this day as to whether Judge Begbie was guilty of accepting a bribe from Dud Moreland and his associates. The question is also asked whether he was involved in illegal speculation in land. As no less a person than the late Judge Howay considered Begbie to be seriously implicated, it is well to examine in detail the various events that had led up to A's famous letter.

Just south of the mountains where the rich strikes were made in 1862 there lay an open prairie land, bounded by Lightning Creek and the Cottonwood River. At the junction of these streams the forest was scanty, the soil good, feed plentiful and the area as a whole made an excellent point of departure into the mountains to the north. The place was soon to be known as Cottonwood. Some few miles to the east, on Lightning Creek, where the new road intersected that stream, was another spot which gave promise of becoming a farming and distributing centre. Known as Vanwinkle it served as a stopping place for government officials on their journeys to the mines. Writing from this place on July 15, 1862, Magis-

trate O'Reilly informed Secretary Young that a number of
speculators had taken land, without even trying to pre-empt
it, and were already parcelling it and selling town lots.
He went on to say that he had put a stop to this practice
and ordered them to take out proper pre-emption claims.
This the speculators had done without a murmur. 108

Further along the Creek, at Cottonwood, similar
activities were taking place. In the files of the Provincial
Department of Lands there is a Pre-emption Record for July
23, 1862, showing that on that date D.C. Moreland and
James C. Wade had duly pre-empted 160 acres. The record
indicates that a Certificate of Improvements had been
obtained but no date is evident. None of the records shows
the name of the official who granted the pre-emption or the
Certificate of improvements. This parcel is officially
recorded as Lot 437. The adjoining parcel of 160 acres,
Lot 438, was pre-empted by George M. Cox two days later,
on July 25. The following notation is written on the
record: "This claim was previously recorded by him June
14th, 1862." The record states further that a Certificate
of Improvement had been granted, but no date is given nor
is the name of the recording magistrate.

108. O'Reilly to Young, July 15, 1862, O'Reilly Letters.
109. British Columbia, Department of Lands, Land
Pre-emption Records, Cariboo District, Cottonwood and
Lightning Creek Area, Lots 437, 438, F.r. 169, 170.
For a copy of the actual records see Laing, op.cit.,
p.331. Mr. Laing does not give the chain of titles
that follow these records in the Departmental files.
News of this speculation soon reached the coast, for on July 30, the British Columbian printed an article on the subject. Apart from two questionable statements the report was accurate and very properly insisted that the government should take steps to prevent sharp practice of this kind. Describing the value of the land as a potential townsite the article continued,

Three shrewd Americans seeing all this have, we are informed, pre-empted three sections of 160 acres each, in such a manner as to comprise all that would be available for the purposes above indicated; and, having laid a portion of it off in town lots, are actually selling them at $250 a piece! Now, while we cannot but admire the shrewd enterprise thus evinced by these persons, we are not blind to the impropriety of permitting this sort of thing to be carried on for very obvious reasons. In the first place, these men, being foreigners, can acquire no rights to the soil, and cannot, of course, give titles with the lots, to those who are green enough to purchase from them; so that the business of selling such lots is, under these circumstances, simply a swindle. But apart from that, it would be the duty of Government to step in and lay out a town, securing to the revenue the proceeds, provided that a town is likely to spring up there. We are informed that parties have been warned off, and given to understand that unless they purchased lots they cannot be allowed upon the ground. The authorities would do well to give this subject immediate attention.

By August Magistrate O'Reilly had moved down to Cottonwood from Vanwinkle. In a letter to Young on the first of that month he reported that Moreland, Wade and Cox had pre-


111. The records give no evidence that Moreland sold any whatsoever. These men pre-empted two parcels, not three.
empted land there and that there was every sign that a town would soon be established. The letter contains no comments on the legality of these pre-emptions, and no request is made for information or instructions on the matter. He had met Judge Begbie there, and may very well have discussed the matter with him, and not agreeing with the Judge's views on the question, may have sent this letter to obtain official comment and to clear himself should the government take steps in the matter.

Two weeks later, on August 15, he wrote again, saying that Judge Begbie was still laid up with rheumatism at Cotton-wood. He stated that Begbie was highly pleased with the work Cox had done on the road to Quesnel. Cox, it appears, had secured a contract from O'Reilly to repair the road on August 1. On August 16, Magistrate O'Reilly wrote again to Young, sending an application from Moreland, Cox and Wade for a contract to build a bridge across the Swift River at its junction with Lightning Creek. This bridge, of course, would bring the Quesnel road right onto Cox' pre-emption. The application was made on July 23, the day that Moreland and Wade made their pre-emption claim, and two days before Cox made his. It would appear that these three Americans were working together in a very close partnership.

112. O'Reilly to Young, August 1, 1862, O'Reilly Letters.

113. O'Reilly to Young, August 15, 16, 1862, O'Reilly Letters.

The Swift River and Lightning Creek combine to form the Cottonwood. The former is often known as the latter.
and as we shall see from remarks of Dud Moreland's, they probably held the two pre-emptions jointly with Moreland as thief partner.

In the meantime Lieutenant Palmer of the Royal Engineers was journeying to Cottonwood to take stock of the situation there. He had broken his barometer on the way up country and was anxious to conceal this from Judge Begbie, who was bound to use the information to dispute his calculations. Palmer's antagonism to the Judge is reflected in his letter to Moody from Alexandria on August 17:

In Cariboo we shall doubtless meet with a great deal of adventure & recognize acquaintances up to their elbows in mud. I am so sorry Col, about the Barometer. I did my best to preserve it & gloried in its usefulness. If I meet the "Arch Enemy" I musn't let him know I am reduced to boiling water. He must be shut up and my altitude whatever altitude it may be thrust well down his throat. Happily his Latitude of Alexandria is 6 miles out, his longitude probably 18 ... I'm spiteful, but I can't help it. He has no business to be mapping when there are R.C.'s in the country.

Palmer travelled northward and made his headquarters at what he called "Van Winkle City". His letter from that place on August 27, addressed to Moody, indicates that he had no specific instructions as to his actions at Cottonwood, but it may be inferred that he had general orders to reserve

114. It is possible that they took the oath of allegiance to the Queen to make their pre-emptions valid.

any land that he thought might be required for a townsite:

I trust to be able on my return to sketch for you a really fair map of the Cariboo district, a map that will be of value to miners & others, and thus Messrs. Begbie, Epurn & Co. will I sincerely hope, be "played out"... I omitted to mention that Cottonwood is the name given to the junction of Lightning Creek with Swift River, the spot I have reserved as a townsite and where a small mining settlement and store depot has already sprung up -- of course the whole of the land is already pre-empted and Master Begbie has his finger in the pie, but I can't help that.

I have also to tell you that O'Reilly (sic) fully coincides with me in considering that the mouth of Lightning Creek possesses many advantages as a townsite... I trust you will therefore approve the responsibility I have assumed in reserving for the Govt. a portion of the land in this neighbourhood suitable for a town, & in posting a Public Notice to this effect, a copy of which accompanies this letter.

It is apparent from this communication that O'Reilly, who was a firm friend of Begbie's and Lieutenant Palmer, who was not, were both in agreement that the area was suited by nature and circumstance for a townsite and should be reserved for the government without delay. Palmer had also heard, and apparently believed, that Judge Begbie was involved in illegal speculation in land. What conversation he had with O'Reilly about this we can not ascertain from the sources available at this time. Magistrate O'Reilly kept a careful diary throughout his life but unfortunately his descendants do not wish to disclose its contents.

As the resident Magistrate in the district it was O'Reilly to whom the Cottonwood pre-emptors made their claims and whom, according to A's letter, Judge Begbie had requested to register pre-emptions against his better judgment. A letter written from Vanwinkle on September 2 explains his part in the transaction. Evidently uneasy about the situation, particularly after Palmer had reserved the land in question, he decided to make his position clear to Governor Douglas. He had, it appears, visited Williams Lake on August 30, where he learned that Cox was about to apply to the Supreme Court through Mr. H.P. Walker for a mandamus to compel him, O'Reilly, to grant a Certificate of Improvements. He went on to describe the circumstances under which he had refused to grant this to Cox. According to O'Reilly, Cox had made application to him to pre-empt land at Cottonwood on July 25. At that time, O'Reilly said, no improvements had been made, so he pointed out to Cox that in all probability the land would be required by the government and that an officer of the Royal Engineers was then on his way to Cottonwood to make what reservations he considered necessary. Cox lost no time, for as O'Reilly stated, he commenced to improve the land that very day, July 25, and on the following day, two hours before the arrival of Lieutenant Palmer, sent him certificates signed by two witnesses.

117. O'Reilly to Young, September 2, 1862, O'Reilly Letters.
declaring that he had improved the land to the extent of ten shillings an acre. On the next day, July 27, Cox appeared in person and applied for a Certificate of Improvement. This, O'Reilly stated, he refused to grant, because, not wishing to throw obstacles in the way of the government, he did not care to take such a step without authority from the Governor. At this point Cox secured the mandamus and when O'Reilly appeared in court Judge Begby ruled that the complainant was entitled to the Certificate and ordered O'Reilly to issue it. Magistrate O'Reilly carefully enclosed a copy of the mandamus.

Two other people were in Williams Lake at the time of Cox' application. One was the mysterious A, and the other was Dud Moreland. Before the court opened A and Moreland met and stopped for a chat. During the conversation, which, of course, led to the anonymous letter, Moreland spoke of the transactions as if he, and not Cox and Wade, were the pre-emptor, the applicant for the Certificate of Improvements and the complainant in the forthcoming mandamus. It is to be concluded that Moreland, Cox and Wade were in very close association, with Moreland as chief. Such an arrangement is the only possible basis for the statements made by Moreland to A and in a subsequent letter to the press.

Of all the contemporary sources, Begbie's Court Record Book is the most barren of data. Whereas most Judges wrote exhaustive notes and comments on the cases they were hearing, Begbie scribbled a few abbreviated sentences that could have
little meaning to anybody but himself. His notes for December 1, 1862, the day on which Robson was arraigned for contempt of court, were very brief indeed, and on the following day, when he sentenced the editor to jail, there is no entry at all. From Begbie's brief headings and Robson's editorials it is possible to piece together the general tenor of his remarks on that occasion when he won the title of "Tyrant Judge."

Although the court was to sit at ten o'clock, Judge Begbie did not make his entry till eleven-thirty. Upon taking his seat he said he felt compelled to take notice of what he considered to be a gross contempt of court. He had read in the past, on many occasions, improper articles dealing with his conduct, but he had chosen to disregard them as they were frequently so incorrect that they did not deserve notice. The statements contained in the letter signed by A, however, constituted a direct innuendo that he accepted twenty acres as an inducement to give a false judgment in mandamus, and so constituted a direct contempt of court that could not be permitted to pass. This innuendo, he continued, was entirely false. He had not accepted a gift of land and there was not a shadow of foundation to the motives alleged.

Begbie went on to explain the events which had given rise to what he considered a scandalous report. He had been taken ill at Cottonwood and as he was unable to travel, wished to erect a small house for shelter and warmth. He applied to Cox for a piece of land. Cox offered him a site in his own garden or any other site that he might select at any price he cared to pay. As might be expected, Begbie chose a piece of land a short distance from the garden and offered Cox ten shillings an acre. As the latter was a pre-emptor and had therefore no right to sell, the Judge gave him his note for the sum, and registered his own claim to pre-empt the twenty acres. At this point John Robson's account closes, although he stated that the Judge went on to explain at great length the law in the matter of his ordering O'Reilly to grant the Certificate of Improvement to Cox.

Judge Begbie closed his address by stating that John Robson, in publishing A's communication, was guilty of a gross contempt of court, and ordered him to appear the next day to show cause why he should not be committed to prison. On the following day the editor made his appearance and stated that A was not at the time accessible. He was thus only in a position to say that if the implied charge were untrue, he regretted its publication. This qualified apology brought an outburst of rage from the Judge. He informed Robson that he had given the statement his emphatic contradiction the day before and that a qualified apology
aggravated the form of the offense. When the editor declined to make any further statement Begbie turned to a police officer and ordered him to lock the editor up.

Robson went to jail amidst the cheers of the large crowd that had assembled outside the courthouse. He knew that his incarceration would be regarded by a large section of the population of the two colonies as an act of intolerable tyranny and that at the price of a painless martyrdom he had become the recognized champion of civil liberty.

That night between 400 and 500 people attended a public meeting to protest Judge Begbie’s action. Councillor Ramage of New Westminster took the chair, resolutions were passed and arrangements made for the preparation of a memorial to be sent to the Secretary of State in London. At the close of the meeting the citizens marched to the jail to cheer the imprisoned editor.

Robson, who had been permitted to take writing materials with him to prison, wrote his famous editorial entitled A Voice From the Dungeon, which appeared in print on the following Saturday. He addressed his readers as follows:

Fellow colonists! We greet you from our dungeon. Startled by the wild shrieks of a dying maniac on the one hand, and the clanking of the murderer's

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chains on the other, while the foul and scant atmosphere of our cell, loaded with noxious effluvia from the filthy dens occupied by lunatics, renders life almost intolerable, our readers will overlook any incoherency or want of connected thought in our writings.

Describing himself as the victim of a deadly blow that had been struck at liberty, he went on to say that his own fate was the fate of an obscure individual, and implored his readers not to endanger their own freedom by attempting to liberate him. The cause was the thing. As for himself, Robson continued, he was sustained by the thought that, like Garibaldi, he too, was lying in jail, suffering for the cause of human liberty. He felt, too, a kinship with Spartacus and Epictetus, for in closing he wrote:

... The Press of British Columbia is virtually enslaved. There are two ways of being enslaved - that of Spartacus and that of Epictetus. The one breaks his chains; the other shows his soul. When the fettered writer cannot have recourse to the first method, the second remains for him. Accept -- all of you -- our deep feelings of grateful emotion, and, having truth and liberty inscribed upon your banner, Heaven will smile upon your path and crown with glorious success your war against oppression and wrong.

This article appeared, it is needless to say, on the front page. When Robson's readers turned to page three they must have been conscious of a sense of anti-climax when they saw the following:

Liberated. Since writing the article on our first page we have been discharged from custody. Further particulars in our next.

It was not a change of heart on the part of Judge Begbie, however, that effected Robson's release. It was a
change of mind on the part of the martyred editor himself. Whether the "noxious effluvia" was too much for him or whether he felt that liberty and his own interests could be better served outside the prison walls is not certain. On Friday, December 5, he requested to be taken before Judge Begbie, and on arriving at court presented him a written statement. Upon reading this Judge Begbie ordered Robson's release.

The document that Robson had written appeared in print as a part of a bold editorial in the next issue of the British Columbian. Strictly speaking, it was a limited or qualified apology. Robson, it will be noticed, confined himself to saying that he regretted publishing the innuendo that Judge Begbie had accepted the land as a gift. He made no apology for the other imputations in the letter, and as we shall see, continued in a series of articles to question Judge Begbie's part in the transaction at Cottonwood. His apology was as follows:

May it please Your Lordship

The communication signed A, which appeared in the British Columbian newspaper of the 24th ult. was published in the ordinary course of business, and was only cursorily glanced over by me before it was handed to the compositor, and I was not aware that anything it contained could be construed into a contempt of Court, otherwise it would not have been inserted in that paper.

Your Lordship stated on the Bench that you paid ten shillings per acre for the land which the communication implied you accepted as a gift; consequently the communication contained a statement not warranted by facts; and I have to express my regret, and offer my apology for allowing such statement to be published in the said "British Columbian" newspaper. 

John Robson then reviewed the case in very strong terms. He stated that the transaction did not stand in any better odor so far as Judge Begbie was concerned than it had since he "rendered the dirt more palpable by provoking public criticism." What, he asked, had been the object of Cox and his partners in offering such generous terms and accepting so low a price when they were refusing to sell other lots because they anticipated a great increase in values? And again, if the press were not to be permitted to criticize Judge Begbie's speculations, no matter how deserving they were of stricture, to what extremes of corruption could His Lordship not go?

On December 15 another letter from A. appeared in the paper. A. who had been following events very closely, wrote to validate some of his statements with additional information. According to this letter, he had met Dud Moreland at Williams Lake early in September. Moreland complained to A of an article in the Colonist which had accused him of parcelling out his land at Cottonwood into

town lots and of selling them at high prices. He denied that he had done this and said that the only land that he had disposed of was the twenty acres he had given Judge Begbie. At this point A. asked Moreland whether this land was for government use and Moreland replied that it was not. A. then inquired whether this was the land for which O'Reilly had refused to grant a Certificate of Improvements. Moreland said that it was from the same parcel and that he intended to sue Mr. O'Reilly for obstructing him in this manner.

Since the pre-emption records, O'Reilly's letter and Begbie's order of court instructing O'Reilly to grant the Certificate of Improvements all bear Cox' name, Moreland's statement is confusing. A correspondent writing under the nom de plume Libertas declared that Moreland had sold the land to Cox and Wade, presumably at the time Judge Begbie acquired the twenty acres, and so referred to the land as his either from habit or because the other two men had not completed their payment. The records of the Department of Lands show that no such transfer was made. It may be supposed that Moreland was a senior partner or associate in the enterprise and so had acquired the habit of referring to the property as his and to Cox and Wade's actions as his. As another alternative it may be suggested that he was the

123. Daily British Colonist, July 27, 1862, p.3.
Kind of man given to speaking in the first person.

Reassured by A's second letter, Robson resumed the attack. On December 27 he wrote an article demanding that a Chief Justice be appointed. He considered that the volume of litigation and the vast extent of Judge Begbie's circuit was too great a task for one man, and that in cases of crime and debt the accused were held too long in jail pending trial. Robson urged also, and with good sense, that with the appointment of a Chief Justice a Court of Appeal should be established, not only because such a court was a necessary part of any judicial system but also because it would serve as a check on Judge Begbie, in whose competence and justice few people longer had any confidence.

The demand for a Court of Appeal was a shrewd stroke. Quite apart from Judge Begbie's shortcomings it was, as Robson pointed out, very necessary. It would scarcely be possible to have the Judge dismissed, but if another Judge were appointed as Chief Justice, Begbie would be both humiliated and limited in his powers. Robson was ready for a campaign to attain this end and as a preliminary stroke he announced that he would soon publish "... the first chapter of the Cranford wrongs, including an account of the celebrated trials, Wright vs. Cranford at Lilloet, and Cranford vs. Wright at New Westminster."

Robson, however, was soon to have more ammunition from Cottonwood at his disposal. On January 17, 1863 the *Daily British Colonist* published a letter from Dud Moreland which purported to exonerate Judge Begbie, but which actually made matters worse for him. Moreland, who seemed to be quite unaware that so much of the case hung on whether or not Begbie had accepted the twenty acres as a gift, declared outright that he had given him the land and that he had a perfect right to give Judge Begbie or any other person any part of his property whenever he saw fit to do so.

Moreland’s letter was something of a bombshell, for it flatly contradicted Judge Begbie’s statement in court that he had paid Cox ten shillings an acre for the land. So far as Robson and his supporters were concerned it was proof positive that the Judge had accepted a bribe to secure a Certificate of Improvements and that he had taken part in illegal speculation. On January 26, 1863, A wrote a triumphant letter to declare that he had been right and that Robson had played a “manly and consistent course in the Begbie imbroglio.” In the issue that contained A’s letter Robson declared that Judge Begbie’s position was darker than ever. He closed the article as follows:

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... and we may safely leave to the public the task of drawing their own inferences as to which has the strongest inducement to depart from the truth, the giver or the receiver, as well as to decide whether "A" was not justified after all in writing, and we in publishing, that sentence which it suited His Lordship's purpose to construe into contempt of court! Judge Begbie may truly exclaim "Save me from my friends" if they all are as indiscreet as his Cottonwood admirer. Verily this ugly cloud grows blacker and blacker.

This editorial contained strong words, imputations that could be construed as libellous. Perhaps Robson was deliberately challenging Judge Begbie to take action. The Judge, however, remained silent, and so did most of his friends. Two people, who could scarcely claim more than acquaintance, took up cudgels for him. The first was an Irishman, Felix O'Byrne, who, writing under the name, Philo-Junius, embarked on a series of letters beginning March 12, 1863.

While he did Begbie no harm as Moreland had done, O'Byrne was carried away by his own verbosity and failed to contribute anything to the Judge's defense save abuse. He described Robson's article of February 28 as being "the emanation of a morbid mind, inspired by chaotic effusion of the head, rancorous malignity of the heart, and the most fetid pruriency of the imagination." Begbie's other champion the Rev. Mr. Pringle, the Anglican clergyman at Hope wrote a long but temperate letter to the British Columbian which appeared in the issue of April 29, 1863. Pringle chid Robson for his style of writing and suggested that it would

have served the honor of all concerned better if he had sent a memorial to the authorities in London. Pringle, too, had no arguments to offer save that it was impossible to believe that Judge Begbie would stoop to the practices alleged.

Robson fell on both contributors, abused them roundly and declared that O'Byrne was a hireling of Begbie. In a later issue Robson reported that he was among the Fenians who in June, 1866, were reported to be gathering to attack British Columbia. He published with considerable glee news of O'Byrne's being arraigned by the American authorities on charges of embezzlement.

Such are the available facts of the Cottonwood land deal and the famous contempt of court case. Had Judge Begbie accepted twenty acres of land as a bribe to secure a Certificate of Improvements? Providing that he purchased the land at ten shillings an acre and recorded his own pre-emption claim, was he involved in speculation? If he was

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129. *British Columbian*, April 29, 1863, p.3.
130. "Philo Junius and His Master", *op.cit.* April 4, 1863, p.3.
131. "Will They Come?", *op.cit.*, June 23, 1866, p.2.
innocent of both charges, was he justified in putting John Robson in jail?

So far as the direct evidence is concerned there is his word against that of A and Moreland. But as A based his accusation on a conversation with the latter it is really a matter of Moreland's word against that of the Judge. Since Moreland made several statements that were incorrect it might be concluded that he meant "sold" and not "gave" in his letter to the Colonist. Judge Begbie was, with the exception of his loan to Walker and the incidents under consideration, free of any taint so far as his personal integrity was concerned. Those living to-day declare him the soul of honor and laugh at the notion of his accepting a bribe. In the second place, Governor Douglas appears to have been satisfied that the Judge was not involved, for there is not correspondence on the matter. Had he entertained any doubts Douglas would have made an investigation as he had done when he received reports that Begbie had bought a share in Travis' claim at Williams Creek. Douglas had not hesitated to reprimand Cary and Moody for their speculations in land. It is not likely that he would have overlooked similar lapses on the part of Judge Begbie.

There are good grounds for belief that the Judge acquired the land for special personal uses. He rode one of the largest circuits in the British Empire, for the area under his jurisdiction extended from the Pacific coast to the Rockies and from the international boundary to the northern
creeks of Cariboo. He travelled over this vast area in all seasons, through snow and rain and in the scorching heat of the interior summers. J.T. Scott, in a letter to the British Columbian, gives us a glimpse of the Judge on circuit in late October:

... The next morning I was up in good season, and as Antler Creek was only 25 miles distant, after a hurried breakfast I was again on the road. On going up the Snow-shoe Mountain I met with Judge Begbie and suite, toiling their way over the snow-capped peaks of Cariboo.

The Judge's own account of his life in the interior, while less colorful, gives a more realistic picture of his hardships:

North of Quesnelle River the two Commissioners during the past season fixed their respective headquarters at Williams Creek and at Van Winkle, these being the principle clusters of stores and miners in the Cariboo district. At Williams Creek a log house was built by Mr. Elwyn; which being divided across the middle gave accommodation for writing in the one half, a space of about 12 ft. by 16 ft. -- and on the other half, of equal size but possessing the inestimable luxury of a fireplace, Mr. Elwyn, his secretary; and 3 Constables had bunks piled upon each other, in which each man could spread his blankets separately. At Van Winkle, Mr. O'Reilly had not found the means of providing himself with any such luxury - and the whole of the business of the district had to be conducted in a tent, which was


134. Begbie to Young, Received January 19, 1863, Begbie Letters.
the sole protection against the weather for him, and the books and records of the district. The climate in the Cariboo is at times exceedingly wet, as in all high mountainous regions — and it is not unusual to have torrents of rain for a week together almost without intermission. The tent being the same as my own, (a single tent 15 ell size, of the Hudson's Bay Co.) I suppose withstands the weather no better than my own — and although it answers very well in tolerable weather or even for a few days of rain, and where the camp is changed from time to time, I find that my tent becomes occasionally covered with mildew in the inside, while it is impossible to keep books & c dry, and all writing, & recording is carried on at the greatest inconvenience. Besides, the ground being constantly cold & damp, and there being no opportunity of approaching a fire without going out into the heavy rain, all cooking or drying any articles of apparel becomes extremely irksome: and all officers who have to remain for any length of time in that district ought to be provided at least with one room having a fireplace where they may at least be sure to meet a dry place to lie on, and the means of warming themselves and drying their clothes, keeping their books &c and placing a table so as to be able to write.

It is thus not a matter for surprise that Judge Begbie contracted rheumatism. He was laid up with it at Cottonwood, it will be recalled, in the summer of 1862, and as he stated in court, obtained land from Cox to build suitable living quarters. Since living conditions were so harsh and the government was not disposed to provide proper quarters for its officers, it is probable that Judge Begbie decided to set up quarters for himself, at his own expense.

135. v. supra., pp. 101 - 102
This explanation occurred to the editor of the Daily British Colonist, but he was not prepared to accept it on the grounds that twenty acres was a large piece of land on which to build a house. But Judge Begbie had special requirements. When he rode circuit in the autumn of 1861 he had a train of twelve horses, three of which were his own. He would naturally want pasturage, space for a barn and corrals, and perhaps a field for hay. In that case twenty acres would not be an excessive quantity of land.

Another part of the case against him is the charge that he compelled Magistrate O'Reilly to grant Cox a Certificate of Improvements. His critics took this as evidence of a bargain between him and the Cottonwood partners. In return for a gift of twenty acres he was to obtain the papers that O'Reilly had very properly refused to grant to Cox. Begbie, however, explained the law to Magistrate O'Reilly when he acceded to Cox's petition in mandamus, and although there is no record of his interpretation it is possible to deduce it from his correspondence and the existing laws. It will be recalled that under the Governor's ruling in his Circular of April 20, 1860, a magistrate


could not refuse to record a pre-emption claim. 138 O'Reilly had been, therefore, technically wrong in stating his objection to Cox' claim. He had also refused to grant a Certificate of Improvements because, as he stated at the time, the land was shortly to be reserved for the government. If Cox, as O'Reilly believed, had commenced to make his improvements just twenty four hours before making application for his Certificate, it is hard to conceive that he was able to increase the value of his land to the extent of £80 in that time. How, in explaining the law to O'Reilly, did Judge Begbie justify this claim? It will be recalled that Cox presented two testimonials to certify that he had made the requisite improvements. Judge Begbie may have considered them valid or he may have ruled that they must be accepted without question, in the spirit of the Circular of 1860. He was fond of broad interpretations of this kind. Believing that the law was made for man, and that statutes were confusing, he preferred to consider a problem in law from common sense and personal knowledge of the case. He approved of Cox' work on the roads and probably decided that he was worthy of a grant. As for the objection so

138. v. supra. p. 83

139. It is reported that he stated in open court that the statutes were muddled and that he seldom looked into them.
frequently made that the Cottonwood partners were Americans and therefore not eligible to hold land, it may be pointed out that by the Aliens Act of 1859 the means of naturalization were simple.

There remains one more question, that of the justice of his imprisoning John Robson. There can be no doubt that the publication to which Judge Begbie took exception contained matter that constituted a libel and as such could be construed as a contempt of court. To have instituted proceedings for libel would have been more fair, but where, or in what courts could such charges be heard? As it was, Judge Begbie's act was arbitrary and, since he gave John Robson only a day in which to prepare his defense, it might be described in the editor's own words, unjust and tyrannous.

The foregoing is not a defense of Judge Begbie. It is, rather, an interpretation of certain events made in the light of his habits of mind and methods of procedure. On the whole it seems that the evidence for him is somewhat stronger than that brought against him. But when circumstantial evidence is involved and important data is not available, there is in this case as in all others, a certain residue of uncertainty. One fact alone may be taken as the last word. There is no evidence to show that he ever owned a foot of land at Cottonwood. There is no record of his pre-emption claim, no sign that he secured a Certificate of Improvements or obtained a Crown Grant. His name never
appears in the chain of titles that extends from 1862 to 1901. By whatever means he obtained his twenty acres, he allowed them to lapse, and probably destroyed his own record of pre-emption.
As gold mining remained the chief basis of the colonial economy up to the time of the union in 1866 it is not surprising that the bulk of the civil litigation of the day arose from that industry. There were, on the whole, two causes of dispute. The best known, of course, was the frequent conflict that developed over rights to certain claims. As a rule the point of issue in cases of this kind was encroachment and breach of contract. Such disputes were not easy to settle. They presented difficult points of law and it was hard to establish the validity of the evidence given. The second cause of litigation was to be found not in the mines themselves but in the ancillary field of transport. In those days both colonies depended on the United States for most of their consumption goods, which were routed from San Francisco to Victoria and New Westminster and transported from Douglas to the goldfields by waggon and mule train.

It sometimes happened that packers failed to deliver goods at their destination by the time specified in their contract, or lost and damaged them in transit. On some
occasions certain consignments were held up, while others were hurried through. The mines closed for the winter and as that season approached prices naturally declined. There was, as a result, always the risk that through late delivery a merchant might be left with a large stock of goods on his hands or be compelled to sell at greatly reduced prices. On some occasions business men sold at cost and even below cost in order to obtain funds to meet their bills. When this happened the merchants blamed the packers and refused to pay their carrying charges. The transport companies sued for debt.

At the time of the famous Cottonwood scandal a dispute of this kind arose between the carrying company of G.B. Wright and the Cranford brothers, who had come to the Colony in the spring of that year to engage in business in the goldfields. The younger of the brothers, Robert Cranford, arrived from San Francisco with some forty tons of merchandise which he intended to sell at Williams Creek. Shortly afterward, at some time between April 15 and 20, his brother, John P. Cranford, arrived in Victoria. He stated at the time that he intended to set up in business as a commission merchant and that he was in no way associated with his brother Robert. He also brought a cargo of merchandise with him from San Francisco.

In the meantime Robert Cranford had entered into negotiations with Gus Wright to have his goods carried to Lilloet, whence they were to be transported to Williams
Creek by another company. John Cranford also discussed the question with G.B. Wright and appears to have secured an understanding, on behalf of his brother, as to the term of credit to be allowed. On April 25, 1862, Robert Cranford and G.B. Wright entered into an agreement that was satisfactory to both parties. Wright agreed to carry the goods to Lilloet at nine cents a pound, payable sixty days after delivery. He also undertook, in the event of a drop in freight charges, to lower his own rates accordingly. Wright assured Cranford that it would take twelve days at the longest to carry his goods to Lilloet and that it would require another thirty days to convey them from that place to Williams Creek. All goods were to be marked to Robert Cranford, care of G.B. Wright and Company. Wright entered a memorandum of agreement in his pocket-book, and Robert Cranford left for the interior, apparently well satisfied with the arrangements he had made, and confident that the term of credit would afford him ample time to sell enough goods to pay his freight bills when they came due.

Robert Cranford arrived at Lilloet on May 5, 1862, and supposing that his merchandise would begin to arrive within the next week, made arrangements with the Haskell Company to carry it to Williams Creek. After waiting two weeks Haskell was obliged to inform Cranford that he could afford to wait no longer, as he had another cargo offered.

140. British Columbian, December 27, 1862, p.3
He generously released the latter from any charge for the delay.

The first consignment of goods arrived on May 28, to be followed at intervals by other cargoes, all of which, the Cranfords insisted, were seriously late. Some of the goods were perishable, particularly bacon, which goes rancid very quickly if exposed too long to the heat of the interior summer.

It was charged that Wright had failed to deliver more than a ton of the goods consigned to him. This was brought out in the second case, that of Cranford vs. Wright, and served as ground for a sharp exchange between Judge Begbie and counsel for the plaintiffs. The point was never pressed, however, but was used, as we shall see, as reason for non-payment on the freight charges for the earlier consignments.

The essential fact in both cases was the late delivery of goods and Cranford’s refusal to pay the charges. In general, the goods were consigned between April 30 and June 28 and should have been delivered between May 12 and July 10 according to Wright’s assurances. According to the Cranfords they were not delivered until dates between May 28 and September 10. In particular, few of the goods reached Lilloet in less than thirty days, while nearly the whole of them was detained much longer. About a third of the whole consignment was detained between sixty and seventy-five days.

The Cranfords also claimed that between June 18 and 20 over 52,000 lbs. were consigned to Wright and that all of this
save 600 lbs. was at Douglas between June 20 and 25, yet none reached Lilloet in less than thirty-three days, while nearly half was delayed from sixty to seventy-five days. The goods delivered after August 25 -- over 23,000 lbs. -- could not be forwarded to Williams Creek because of the lateness of the season. Goods delivered at Lilloet after July 23 could not be delivered at Williams Creek before prices had fallen so low as barely to cover costs.

Robert Cranford spent the season at Lilloet, as he claimed, watching Wright's own merchandise going up to the goldfields while his own remained at Douglas. As he was suffering from rheumatism he sent his brother, John P. Cranford, up to Williams Creek to sell his merchandise. Wright had turned a deaf ear to Robert Cranford's complaints, but in August, demanded payment. Cranford answered that his bill for damaged and lost goods would more than cover the costs of freight to date. On, September 4 he wrote to Wright, informing that he had, by delaying delivery of his goods, precluded the possibility of his being able to pay the bill.

On September 8, Wright appeared before Magistrate Elliott in the County Court at Lilloet and informed him that he wished to take proceedings against the Cranford brothers for debt. According to the procedure of the day Wright made a sworn declaration or affidavit that R. and J.

141. British Columbian, December 27, 1862, p.3.
Cranford were indebted to him for the sum of £1719 15s. 3d. for goods sold and delivered to them. Magistrate Elliott then made out a writ to the police authorities ordering them to take the Cranfords into custody. This order, or *capias ad respondendum*, to use the technical term, was valid so long as the affidavit was properly sworn and declared. To accompany the *capias*, which only provided for the arrest of the debtors, Magistrate Elliott made out an Order of Court commanding them to appear for trial, specifying the time and place of the hearing. He made this out from the Supreme Court.

Robert Cranford was apprehended at Lilloet on the same day, September 8, and was held in prison for eighty-four days. His brother, John Cranford, was arrested at Williams Creek on September 27, and was held in custody for a period of sixty-six days.

The Cranfords secured the advice and services of Mr. Walkem who at that time was not a member of the bar of British Columbia, although, as we have seen, he was qualified to plead in both Upper and Lower Canada. The trial was held in the Supreme Court at Lilloet on October 15 and 16 before Judge Begbie. When the court sat Mr. Walkem took his seat in the place allocated to counsel. Judge Begbie immediately ordered him to retire to a proper place. A hot exchange of

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142. It has never been clear whether Elliott made out the order at this time, or on some subsequent occasion.
words ensued and it is to be inferred from the contemporary accounts that he was able to conduct the defence only under certain restrictions.

The defence sought to show that John Cranford was not a partner and was therefore liable for his brother's alleged debts. In support of this contention the defendants outlined the circumstances under which Robert Cranford had entered into a contract with Wright. The contractor had come to Robert Cranford's office in Victoria on April 25 and stated that he was willing to make an agreement based on the terms discussed in previous conversations with the two brothers. According to testimony, Wright sat down at Cranford's desk and, taking out his pocket-book, said, "What is the style of your firm?" Robert Cranford testified, and his brother supported him, that he answered, "R. Cranford, Junior. I am the only person concerned in the business." Wright then wrote the memorandum of agreement as follows:

April 25.

Agreed with R. Cranford, Jr., to carry goods for him from Douglas to Lilloet at 9 cts., per lb., during the ensuing season, payable sixty days after delivery, and a proviso, if freights fall, rates to be less.

Then, according to the evidence of the defendants, Wright got up, read the contract aloud and asked Robert Cranford if

143. British Columbian, December 31, 1862, p.3.
144. Loc. cit.
it were satisfactory. Robert Cranford replied "yes".

On the following morning, October 16, Wright was asked to produce his pocket-book. When read to the jury and submitted to the court for inspection, however, the terms were different from those described on the previous day by the defendant. The phrase "& Brother", written in a different colored ink, had been squeezed into the margin, and a "t" added "him" to make "them". The "e" in this pronoun was obviously changed from "i" and the dot remained above the letter. Judge Begbie examined the book, declared that the changes had been made and said that he supposed that since the book belonged to Mr. Wright he could do what he liked with it. He also suggested that the different colors of the ink was circumstantial in nature, and therefore of little significance. Turning to Wright, the Judge said he was sure that the plaintiff could give a satisfactory explanation.

In answer to Judge Begbie's question, Wright admitted that he had changed the entry, saying that he had done so on the day that it was issued. The Judge pointed out to the Jury that Wright's admission of making this change was to be considered in his favor rather than against him. At this point the Cranfords, regarding the Judge's comment as highly prejudicial to their case, hastened to produce evidence to show that Wright had not made the change on April 25 but at a much later date. They produced a number of bills, invoices and letters from the plaintiff addressed
to Robert Cranford. Among these there was a receipt for $130, dated April 30, made out in Wright's handwriting. In addition the defendants called for Wright's day book and showed that up to August 27 all entries had been made out to Robert Cranford.

Wright's bookkeeper testified that he had been instructed to change the entry to R. and J. Cranford after that date. Both brothers denied that they had ever received, at any time, one single communication from Wright that was made out to them jointly. They maintained, on the other hand, that the plaintiff had changed the contract and the day book on September 8, the day that he had sworn the affidavit. In proof of this charge, which was strictly conjecture, Robert Cranford stated that on that day a man named Brady walked into his store and asked him his brother's name. When he told him John, Brady walked across the street and went into Wright's office. When John Cranford was arrested at Williams Creek the writ was made out "John" Cranford, not "J.P." Cranford and not "John P." Cranford.

These arguments closed the first plea of the defence -- that John Cranford was not a partner and had therefore been subjected to illegal arrest. The second point that they sought to establish was that Robert Cranford did not owe Wright the sum specified in the writ, and that when damaged and lost goods were duly assessed it would be found that plaintiff, and not the defendant, was the debtor. Robert Dranford proceeded to show that Wright had disregarded the
terms of the contract in assessing his liability. He had
been given a written contract stating that the freight was
to be "payable sixty days after delivery". Since the writ
was issued on September 8 he was therefore liable for freight
delivered at Lilloet on or before July 10. To meet that
account he had a bill of $4,000 against the defendant for
lost and damaged goods.

In rebuttal Wright testified that John Cranford had
rescinded the contract, and that the term of credit was
thus no longer operative. When pressed for witnesses or
tangible written evidence he was compelled to admit that he
had neither at his disposal. Robert Cranford, probably
after consultation with Walkem, enumerated a series of
reasons why Wright's statement was false. He stated that
he had received no notice, written or verbal, to the effect
that the agreement had been terminated. Freights had
risen during the season, yet Wright, no longer bound by
the contract, as he claimed, had not undertaken to charge
more. Nor had he informed his employees of any change.

It must be admitted that when it came time to charge
the jury at the end of the case Judge Begbie's task was not
an easy one. Some of the evidence was circumstantial. In
other instances witnesses were not able to substantiate
their testimony with tangible evidence. As to the claim
that the contract had been rescinded, neither party was able
to do more than produce declarations on oath. The Cranfords
could only testify that they had not received bills and
other commercial papers addressed to them jointly. John Robson, who had quite recently been thrown into jail by Judge Begbie, charged that he was biased in favor of the plaintiff. He had, indeed, pointed out to the jury that Wright's admission that he had changed the terms of the contract was to be taken as a point in his favor. Truth in court is to be commended but it can sometimes persuade a jury that the speaker is a shameless rascal. When Wright admitted that he had altered a contract the jurors might easily have jumped to the conclusion that he was capable of any duplicity. In those days the packer was roundly cursed by miners and business men and perhaps the Judge was just in giving the scale a tilt. Similarly it was incumbent upon him to instruct the jury that some of the Cranford's evidence was circumstantial.

What laid Judge Begbie open to criticism was not partiality so much as lack of experience and knowledge. He embarked on interpretations of law that a man of more extensive experience would either have avoided or expressed with proper qualifications. His last charge to the jury is a point in case. He thought, and perhaps rightly, that the jury must weigh the question of John Cranford's liability. In order to aid them he proceeded to explain the law on the matter. John Cranford, he explained, had been employed by his brother to attend the store at Williams Creek, and after

145. *British Columbian*, December 31, 1862, p.3.
being appointed to that position had shown great zeal and energy in the discharge of his duties. This, argued the Judge, gave the impression that he might be a partner. He could in this way unconsciously have made himself a co-contractee. It was therefore the duty of the jury to assess John Cranford's liability from this point of view.

In other words, Judge Begbie had raised a difficult point in the law of contract. He was justified in doing so, but it may be asked whether he explained it adequately. To leave the jury with the impression that a man is liable as a co-contractee because of his industry and application was not just. The explanation given was not complete and was based on evidence as circumstantial as any that he had ruled out in the case of the Cranfords.

The jury returned a verdict in the favor of Wright. They found that John Cranford was a partner, that the contract had been rescinded and that the two brothers owed Wright $9,500.

Although the Cranfords made application for a new trial Judge Begbie refused to consider the petition and ordered that they be committed to prison where, according to the law of those days, they were to remain until they settled with Wright or proved themselves to be bankrupt.

When their application for another trial failed they sought to have their arrest set aside on the grounds that it had been illegal. In his appeal to the jury Robert Cranford had made this plea, but, it appears, did not make
the most of his case. After they had been in jail some time
the Cranford brothers made application for release in the
Supreme Court. They had already pled that the affidavit
was false. When Wright made it out he had declared that the
Cranfords owed him the specified sum of money for goods
sold and delivered. Before they were able to develop their
argument Judge Begbie interrupted, stating that men sometimes
make sheaves of affidavits, often without reading them. It
was clear to all that Mr. Wright meant freight charges, and
to question the affidavit was to impute a false oath to the
plaintiff without any justification.

In the Supreme Court they offered a more extensive
case for release. According to English law, which was also
the law of the Colony, a capias could be issued for the
arrest of a debtor only under special conditions. These
conditions were that a creditor must take oath that the
debtor intended to abscond, or that he had absconded.
The affidavit sworn by Wright neither mentioned nor under-
took to suggest intent on the part of the Cranfords to
abscond. Judge Begbie interrupted once again, this time to
contradict counsel. He stated flatly that the affidavit
alleged indebtedness, and that was all that was necessary
to give the capias validity.

In further support of the motion for release of the
prisoners counsel for the Cranfords alleged that under the

146. British Columbian, January 7, 1863, p.3.
British Columbian Small Debts Act, 1859, Magistrate Elliott had no justification for issuing the capias. He argued that since the Act clearly stated that the amount recoverable before any County Court Judge could not exceed £50 and that this officer could issue a capias for a debt of £20 and upwards, Magistrate Elliott was not empowered to make out a writ for the sum Wright had specified. Judge Begbie would not consider this argument. He explained that the Act was drawn up on the principle that it was desirable and expedient to afford a speedy method of recovering small debts up to £50. The issuing of a capias was a speedy method and therefore County Court Judges were entitled to issue such writs for large debts.

As a final argument Robert Cranford testified that when he had been arrested he asked the Sheriff to produce the necessary Order of Court. This the Sheriff would not, or could not do, and the document was not forthcoming till the opening of the trial at Lilloet on October 15. Upon examining the order counsel found that Magistrate Elliott had issued it out of the Supreme Court, a court in which he had no jurisdiction and no authority to issue writs. Judge Begbie, however, overruled the objection, stating that Elliott's procedure had been correct.

147 Judge Elliott, or Magistrate Elliott was Deputy Registrar of the Supreme Court at the time. Begbie did not consider that this office entitled him to make out the writ, however. He ruled that he could do so as a Judge of the County Court.
The legality of the Cranford's arrest and imprisonment was thus fully sustained. The Judge had rejected every argument against it, and by so doing had created a precedent for procedure in future cases of the kind. The Cranford brothers went back to prison but were later released from custody when they signified their intention of taking proceedings against Wright for breach of contract. At the beginning of the assize the Cranfords had occasion to appear before the Judge to make certain arrangements for the impending litigation. He informed them that their arrest and imprisonment had been a mistake.

What reasons Judge Begbie had for reversing his judgment in this matter was not apparent. It does not matter greatly whether he was compelled to admit that it was the affidavit, the capias or the order of court that was at fault, or whether he saw that the entire procedure had been wrong. What is significant is that he, a highly intelligent and able man, could make such serious mistakes. This, and other blunders, all point to the fact that he was not well versed in law and procedure.

The second Cranford case, which opened in New Westminster on December 6 and lasted through eleven, stormy days, was even more revealing than the trial at Lillooet. While the Judge's lack of experience and knowledge were only too apparent it also became clear that his irascibility and

148. British Columbian, December 20, 1862, p.3.
arbitrary temperament unfitted him for the exercise of his judicial duties. As the case progressed Judge Begbie's irritation mounted to bad temper, which at the end of the trial became downright rage. In this state of mind he lost the last semblances of the impartiality and dignity of his office and was guilty of a most disgraceful and arbitrary act.

The Cranfords restricted their charge to breach of contract and did not sue for the goods which they had previously alleged to have been damaged and lost. But after the manner of counsel, Ring, and his junior, McCreight, who were appearing for the plaintiffs, sought to implant certain ideas in the minds of the jurymen that were prejudicial to the character of the defendant. McCreight, who opened the case, pointed out that while he disavowed any attempt to charge larceny, he suggested that the jury would infer grave misconduct on the part of Mr. Wright. At this point Judge Begbie very properly interrupted, saying that he could not permit such imputations to be cast on the defendant. He went on, in a manner rather dictatorial, to say that counsel's imputations were disgraceful and that they would recoil on his own head. McCreight, rightly or wrongly, fired back. He said that he had no fear that disgrace would attach to him and that he did not require to be taught his duty. Begbie is reported to have become very angry at this retort. Counsel had been rude, whatever the justification may have been, but the Judge was unwise and wrong in permitting
himself to lose his temper. It is said that he turned to Ring and asked him to withdraw the case from his junior. Ring refused, saying that the statements made by his learned friend had his entire concurrence and approbation. Begbie let the matter go. A Judge, no matter how great the provocation, should not lose his temper and so permit himself to make threats which he was not prepared to make good. 149

During the proceedings tempers grew hotter and tongues grew sharper. Judge Begbie was rude to Ring and McCreight and to the jury as well. He appears to have had pleasant words for Wright's counsel, Walker and Cary, and so exposed himself to John Robson's charges of partiality. When Ring rose to dispute a point that Walker had just made the Judge would not listen to him and said, "Sit down, Mr. Ring." Mr. Walker has forgotten more than you ever knew". When Cary objected that counsel for the plaintiff was prejudicing the minds of the Jury, Begbie agreed with him that a great mischief had been done. Speaking of the general ability of jurors in instances of this kind to keep an open mind, he is reported to have said, "True, Mr. Cary, we are supposed


150. Robson, who appears to have overlooked nothing in preparing his bitter attack, failed to mention that Walker was the barrister to whom Begbie lent money to invest in Travis' claim. See Chapter IV.

151. British Columbian, January 21, 1863, p.3.
to know these things, as we are educated, and are able to keep them in abeyance till we hear the opposite before forming a conclusion, but the jury are not so; they hear the statement and draw the conclusion at once!"

At the end of the plaintiff's case Judge Begbie indicated his intention of declaring non-suit, which meant, in other words, that he was awarding the case to Wright. What prompted him to take this extraordinary step it is hard to say. To many it must have meant partiality. It might have been the result of sheer bad temper. It is very likely that he was convinced that the Cranfords had no case against Wright and that in order to terminate the strife it would be best to settle the matter at once.

Whatever the Judge's motives were, Ring rose to contest his decision. He proved to be the stronger man in the contest and after a long and bitter engagement forced the Judge to concede the point. It was on this occasion, in all probability, that Begbie said to Ring, "Really, Mr. Ring, it must surely be after dinner with you." It seems that the barrister would not be put down, for the Judge is

152. British Columbian, January 10, 1863, p.3.
153. Daily British Colonist, December 29, 1862, p.3.
154. Ibid., December 29, 1862, p.3.
155. British Columbian, January 21, 1863, p.3.
reported to have said in great exasperation, "I do not know how to stop you, unless I order you to be removed out of Court." The newspapers reported that during the case Begbie apologized to Ring in open court and that the barrister said that he could not accept it unless he tendered the same regrets to his junior. Whether this transpired on the occasion described above is not certain, but as the event is one of the two most intense scenes of the whole trial, there is some likelihood that this was the occasion. Whenever the apology was made, McCreight did not give Judge Begbie an opportunity to make it. He jumped to his feet and declared that he had never in his whole life had to endure so many insults and that he found it inexpressibly irksome to have anything to do in a court where the Judge presided. He would not dare to use the language outside the court that he had used in it!

When all the evidence had been heard and the time came for Judge Begbie to sum up and charge the jury he announced that he would not read his notes on the case. After a few remarks he charged the jury that they must find

156. Loc. cit.
158. Loc. cit.
159. British Columbian, January 10, 1863, p.3.
whether the contract had been rescinded. If it had not, then they must assess what was reasonable time for the transportation of goods from Douglas to Lilloet. This being done, it remained to estimate the value of the goods when they should have arrived, and the value when they did arrive. The difference between these values must be the damages.

Ring and McCreight were dissatisfied with the summing up because in their opinion Judge Begbie had omitted much of the evidence that they considered favorable to their clients. Wright had testified that he had made the changes in the contract at the time it was first drawn up. To refute this point counsel called Mr. Walkem to prove that he had said the opposite at the Lilloet hearing and that he was therefore guilty of perjury. The Judge refused to consider Walkem's evidence as relevant and declared that if Ring proved Wright the biggest liar in the world he would not prove his case. Apart from the question whether Judge Begbie was right or wrong in taking this position, the fact remains that he gave every appearance of favoring the defendant.

After the jury had been confined for nearly thirty hours Judge Begbie called them back into court. The foreman stated that they had not been able to come to an

160. British Columbian, January 21, 1863, p.3.
161. Loc. cit.
agreement. It appears that eight had decided in favor of the Cranfords, while the remaining four were either uncertain or definitely in favor of Wright. Those who were for the plaintiff pointed out that the bill of particulars had not been sent in in time, and if they could return to the jury room they would come to a unanimous decision. One of the minority is said to have called out that he would never agree. 

As Judge Begbie had refused earlier in the trial to permit the decision to be made by a majority vote, it was now his duty to explain the law to the jurymen and to answer any question they might ask him. Ring rose to his feet and asked the Judge to do this. Begbie, however, appears to have been in a state of great excitement. He refused Ring's request, and dismissed the jury.

Ring rose again, but this time addressed himself to Mr. Matthew, the Registrar of the Supreme Court. When the Registrar, in answer to the indignant barrister's question, answered that he had the rolls in his possession, Ring asked him to strike his name off. McCreight jumped up and made the same request. After some hot words with the Judge, the pair walked out of court.

As in the case of the imprisonment of John Robson, a large public meeting was called. On this occasion the citizens presented a complimentary address to the two
counsels expressing admiration for their courageous stand against the tyrant Judge. Both barristers made short speeches, and a Mr. Grieve, one of the jurymen, gave his version of what had gone on in the jury room.

To many people Judge Begbie's apparent partiality to Wright and his tyrannical behavior were a repetition of what they believed to be his unsavory dealings at Cottonwood and his arbitrary treatment of John Robson. Yet there is some evidence to show that the Judge himself had suffered at Wright's hands and had no reason to favor the man. Writing to Douglas a year before the Cranfords entered into their ill-starred contract with the packer Begbie stated:

I paid 10c. per pound for packing some things—they were delivered piecemeal at Cayoosh, some not till the eleventh day from Douglas: some stolen--some broken. This was by the largest and perhaps the best packers on the line; Wright and Nelson. What is the use of a wagon road for such a set? They will squabble and fight to the end of the chapter.

Barring bribery, and this is impossible to believe, what were the Judge's motives? It may be answered from the testimony of many people who knew him that they were good motives. It was his character and methods that led him into such confusion. We have seen from the first Cranford trial that he did not know law and procedure. We also

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163. *British Columbian*, December 20, 1862, p.3.
know that he scorned law books, that he would not learn the law. In the early days he had been the law. He made it, dispensed it and sometimes acted as defense and prosecution. He made up his mind what the verdict should be and secured that verdict. But 1862 was not 1858. Barristers were appearing in the colony, jurymen were no longer awe-stricken horse thieves from the Dalles, and litigation was becoming more technical. But the Judge would not, or could not change his ways. It is thus very likely that he had made up his mind that the Cranfords had no case against Wright, and was bound to bring the trial to that conclusion. In flagrant disregard or ignorance of the law he sought to declare non-suit at the end of the plaintiff's evidence. When proved wrong, he, Judge of the Supreme Court, made an apology that the indignant counsel would not accept. At the end of the trial, as a crowning disgrace, he dismissed the jury, leaving the unfortunate Cranfords saddled with heavy costs amounting to £1,810.

The Cranford brothers were sent back to prison, this time, it is to be presumed, on another affidavit and writ. They determined to take the case to the Supreme Court of Vancouver Island, not as a court of appeal, but possibly on the grounds that the original contract had been drawn up in that Colony with a Victoria firm. Accordingly they were released from prison and departed to make preparations for another suit. The case never reached the court, however,

165. British Columbian, April 4, 1863, p.3.
and the Daily British Colonist of April 15, 1863, reported that the dispute had been amicably settled to the satisfaction of friends of both parties.

After that time Robert Cranford disappears from sight. His older brother, John, seems to have prospered, for his name appeared as a member of the board of directors of the British Columbian Coal Mining Company. Despite his misfortunes he was able to take an optimistic view of life as the following notice from the British Columbian indicates.

Victoria...... Mr. J.P. Cranford delivered a lecture at the Institute on Thursday evening to a large audience. The text was "Latent Christianity in Modern Governments." The local papers describe the lecture as being very able, and enthusiastically received.

Whatever the feelings of the Cranford brothers may have been, John Robson neither forgave nor forgot. During the ensuing years he recorded and criticized every questionable act of Judge Begbie. In the spring of 1866 two suits were entered against Peter O'Reilly, and in each case the Judge intervened on behalf of the defendant, who, as it was well known, was a close friend of his. In the case of Eddy vs. O'Reilly, heard in New Westminster at the end of

166. Daily British Colonist, April 15, 1863, p.3.
168. Ibid., April 29, 1865, p.3.
March, 1866, Judge Begbie told the jury that the evidence of the defendant was entitled to more consideration than that of the three witnesses for the plaintiff. The jurors, however, refused to be influenced by the Judge's instructions and found a verdict in favor of Eddy. Begbie forthwith set the verdict aside, thereby giving the decision to his friend. Shortly afterward, when the assizes opened at Lilloet in April of the same year, Judge Begbie took an even stronger stand on behalf of O'Reilly. In the course of the trial he told the jury that if they found the verdict for the plaintiff, Walden, he would set it aside. To make sure that they would not disregard his instructions as the jurors had done at New Westminster he dismissed the case before they could arrive at a verdict.

Here again, are instances of the Judge's arbitrary methods, and, incidentally, of his habit of appearing to be partial to one of the disputants. John Robson, in a restrained and dignified article entitled A Court of Appeal Wanted, pointed out that Judge Begbie may have been perfectly right in his assessment of the evidence and his prerogative as Judge permitted him to weigh the evidence for the benefit

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170. Ibid., May 23, 1866, p.3.
171. Ibid., May 19, 1866, p.1.
of the jurors. But to assume the prerogatives of the jury was not only illegal but tyrannous, and as Robson pointed out with a certain amount of truth, would lead to the surrender of the right to trial by jury.

There was, of course, a deal of public indignation about these cases and the issues they involved, but as nobody but the unfortunate plaintiffs or defendants actually suffered directly, the public took no active steps to secure redress or reform. It was Judge Begbie's decisions and procedure in mining disputes that brought about active measures to secure his dismissal, or, as an alternative, the establishment of a Court of Appeal. As we have already seen, the mining laws were never adequate to the needs of the miners, and the machinery for settling their disputes created dissatisfaction rather than allaying it. The right of appeal from the Gold Commissioner's Court to the Supreme Court brought the cases before Judge Begbie in the Supreme Court. In such litigation his decisions and methods created a storm of protest even greater than that which had followed the Cranford cases. In addition to reversing the decisions of juries and other arbitrary acts, he sometimes took the case into Chancery, a long and expensive process. Some of his decisions in this court created great dissatisfaction. In the famous Borealis v. Watson case he actually reversed the decision he had made in the Supreme Court.

What made this litigation especially serious for some of the parties involved was the process of injunctions which led to the cessation of mining activities on the disputed claim. Important and valuable properties would sometimes lay fallow throughout an entire season because, in many cases, boundary disputes had never been satisfactorily dealt with or had been appealed from the Gold Courts. The growth of the evil was noted by John Robson who printed the following despatch from Cariboo in the summer of 1865:

Owing to a dispute respecting titles and boundaries Judge Begbie has placed an injunction upon the three well known rich claims, Aurora, Sawmill, and Watson, the case to be tried at the fall assizes here, if not settled meanwhile. Thus three of the richest claims are locked up, probably for the season.

During the next season the Aurora company again entered into litigation, the outcome of which led to a petition for Judge Begbie's dismissal. The pattern of his behavior did not differ greatly from that in other cases, and as Walkem wrote in a letter to Crease, he gave every indication of making his decision before the case came into court:

There is a great row brewing on the Creek & Cox is really the cause of it in a great measure. He at least foments it and Begbie's judgments in the Borealis as well as some other suits have given rise to it. The fact is that no man feels safe in a civil action. The judge's feeling and

173. British Columbian, August 5, 1865, p.3.
174. Walkem to Crease, June 10, 1866, Walkem Letters.
prejudices before the Trial & his acquaintance with one of the parties & the facts gleaned & too willingly listened to by himself are all canvassed before the jury is ever dreamt of. This certainly is a deplorable state of things, and the miners are about to take very decisive steps to stop it.

Whether Cox is meant by Walkem to foment trouble by his decisions is not clear. It would be nearer the truth to conclude that the foment came from the right of miners to appeal to the Supreme Court than from any particular activities of Magistrate Cox, who was, indeed, very popular with the miners and was widely praised for his stand in the Aurora dispute. Walkem's description of Judge Begbie's methods is only too clear, and his words were well borne out in the famous Aurora case.

In the spring of 1866 the Aurora Company notified a neighboring company, the Davis Mining Company, to appear at Clinton to answer an application that would then be made, on Friday, May 25, 1866, for an injunction to restrain them from working a certain piece of ground. The Aurora Company sent one of its employes, a Mr. Hazeltine, to Bridge Creek, where he met Judge Begbie on his way north to the assizes. He obtained from the Judge, without any difficulty, it appears, an order to Magistrate Cox, as Deputy Registrar of the Supreme Court, to issue an injunction and to attach the seal of the Court thereto, as the seals of the Registrar were in the

175. Daily British Colonist, June 11, 1866, p.2. British Columbian, June 13, 1866, p.3.
waggons, which had broken down, and were some miles behind. Hazeltine took the order to Mr. H.P. Walker, who presented it to Magistrate Cox in the Court House at Richfield and requested him to attach the seal of the Court to the injunction. Cox said he had considered the matter very carefully and had come to the conclusion that he could not acquiesce. He read Walker a statement that he had written the night before, setting forth reasons for his refusal. It ran as follows:

I hold no commission as Deputy Registrar of the Supreme Court, nor never did hold one; I have acted as such for the accommodation of the public and the Supreme Court; and it is not later than the Express before last I remarked, with reference to cases against the Sheriff, that all my acts done as Deputy Registrar of the Supreme Court must have been illegal. I entertain as high respect and esteem for Mr. Begbie, as Mr. Begbie, and also as Supreme Court Judge of the Colony as any man in it; but finding now that it is attempted to drag me into this disagreeable quarrel and act contrary to my own ruling and conscience, I would, if I actually did at this moment, hold a commission as Deputy Registrar of the Supreme Court, resign the post at once. There are Court seals in the Record Office, which are at Mr. Walker's disposal; but they will not be issued as seals out of the Supreme Court by me as Deputy Registrar of the same.

The cause of the Aurora Company and few supporters, for most of the mining community regarded its suit against the Davis Company as a deliberate attempt to secure ground for which it had no claim. Magistrate Cox had taken a similar position in what he called "this disagreeable trouble".

176. British Columbian, June 9, 1866, p.3.
Without choosing or naming sides he had made his feelings very clear.

Walker obtained the injunction from the Registrar when he arrived at Richfield, and the case was heard before Judge Begbie and a special jury in the Supreme Court on June 9, 1866. The jury, which consisted of seven men, had been selected with great care. Forty eight free miners had been summoned. Five of these were challenged by counsel and seven drawn by lot from the remaining forty-three. It was close on midnight when the jury agreed on the verdict, which was that the 130 feet in dispute should be equally divided between the two companies.

The decision, which many had feared might go to the Aurora Company, gave widespread satisfaction. The editor of the Cariboo Sentinel wrote an enthusiastic account of the trial and the jury's decision. John Robson echoed his sentiments, but with qualifications, stating that he was not yet ready to discuss the conduct of the Judge in the case. He quoted the Sentinel as follows:

We must say we look upon this trial as a concession to the public sentiment, a fact that must cause much satisfaction to those who are likely to bring forward questions in our courts of law, as many

178. British Columbian, June 27, 1866, p.2.
179. Ibid., June 20, 1866, p.3.
180. Ibid., June 27, 1866, p.2.
litigants prefer suffering an immediate loss rather than incur the risk of running the gauntlet of the whole course from the Gold Commissioner to Chancery.

The court assembled on Monday, June 11, to wind up the case. Resplendent in wig and robes, Judge Begbie summoned the appellant and respondent before him and told them that he could not accept the verdict. He would, however, rather than take the case into Chancery, settle the matter if the parties to the suit would appoint him sole arbitrator! Counsel for the Aurora Company accepted the offer at once. The Davis Company's representatives asked for an adjournment to the next day. When the court met on Tuesday morning counsel for the Davis Company stated that his clients refused to enter into any such agreement.

The Davis Company, in the meantime, conceived that they might not serve their interests by refusing the Judge's arbitration and on June 14 informed him that they would be pleased to put their case in his hands. Five days later, on Tuesday, June 19, the Judge summoned the parties to court to hear his adjudication, which was in favor of the Aurora Company. He stated bluntly that he could not agree with the finding of the jury, and that if jury after jury were to find such a verdict it could not be permitted to stand.

181. British Columbian, June 27, 1866, p.2.

On the evening of the following Saturday, June 23, between 500 and 600 miners from the surrounding creeks assembled in front of the Richfield Courthouse to protest Judge Begbie's administration of the law. The resolutions passed were as follows:

1. That in the opinion of this meeting the administration of the mining laws by Mr. Justice Begbie in the Supreme Court is partial, dictatorial and arbitrary, in setting aside the verdict of the juries, and calculated to create a feeling of distrust in those who have to seek redress in a Court of Justice.

2. That this meeting pledges itself to support the Government in carrying out the laws in their integrity and begs for an impartial administration of justice; to this end we desire the establishment of a Court of Appeal, or the immediate removal of Mr. Justice Begbie, whose acts in setting aside the law have destroyed confidence, and are driving labor, capital and enterprise out of the Colony.

3. That a committee of two persons be appointed to wait upon His Excellency the Administrator of the Government, with the foregoing resolutions, and earnestly impress upon him the immediate necessity of carrying out the wishes of the people.

Two miners, John McLaren and Frank Laumeister, were appointed to carry the resolutions to the Administrator. Expenses of the journey were to be defrayed by popular subscription. Judging by the enthusiasm of the meeting, there is no doubt that the fund was easily raised. When this arrangement had

been made three cheers were given for Judge Cox, the Victoria Chronicle, the British Columbian, the Daily British Colonist, the Cariboo Sentinel, the Chairman, the Secretary, and the Queen. After three groans for Judge Begbie the meeting adjourned.
CHAPTER VI.

CHIEF JUSTICE OF BRITISH COLUMBIA.

The Administrator of the Government, Mr. Birch, received McLaren and Laumeister with every courtesy, gave full attention to their complaints and accepted their petition. Two days later, on July 5, the Administrator gave the deputation an official reply. Studiously avoiding comment on the miners' proposal that Judge Begbie should be removed from office, Birch dealt with the alternative resolution, that a Court of Appeal should be established. He declared that the subject had been under consideration for some time and that no one was more anxious for the projected change than Mr. Begbie. The Government had gone as far as making provision in the estimates for a second Judge, but was delaying the appointment because of the projected union of the two Colonies. He stated that with the amalgamation of the Courts of the Colonies a Court of Appeal would be immediately established.

Knowing that part of the trouble in Cariboo was due to dissatisfaction with the existing mining laws, Birch

184. British Columbian, July 18, 1866, p.2.
suggested that the Mining Board should be brought back into service and urged the miners to elect such a body without any further delay. He said nothing of the possibility of limiting the right of appeal from the decisions of the 185
Gold Commissioner's Court.

The Administrator's statement that Judge Begbie was strongly in favor of a Court of Appeal met with flat contradiction from John Robson, who asserted that everybody in the Colony knew that the Judge was bitterly opposed 186 to the measure. Begbie appears to have avoided direct discussion of the topic in his correspondence. There is an interesting letter written to the Governor on April 11, 1865 in which he attempted to undermine the project by

185. The Gold Mining Ordinance, 1865, (B.C. Proclamations, 1865) was amended April 2, 1867, to limit appeals to the Supreme Court from the Gold Commissioner's Court from decisions there on points of fact. It was a telling commentary that legislation had to be enacted to save litigants from the hands of a Judge of the Supreme Court. Unfortunately this change came too late to save a large number of miners from expensive, and sometimes disastrous, litigation.


In this article John Robson was skeptical about the projected union and feared that the Court of Appeal issue would drag on without settlement.
stating that there was no necessity for a second judge. There was, he said, no inconvenience felt by suitors, although he felt that an increase in litigation was a contingency that should not be overlooked. Should that arise, he recommended an extension of the powers of County Court magistrates to include limited authority in the Supreme Court. He stated that this would provide means of dealing with additional cases in various parts of the Colony at one time, whereas the appointment of another judge would not achieve that end. If, for instance, Judge Begbie argued, he were serving in Cariboo and his colleague in Kootenay, the litigants in New Westminster would be no better off than before. If he were to go to the coast, then the opening of the courts in Cariboo would be held up. It was an ingenious argument, couched in practical terms. In the entire despatch there is no mention of a Court of Appeal. Without an additional judge no such body could exist.

It was natural that Judge Begbie should have certain reservations about a Court of Appeal. He was fully aware of the antagonism to him in both Colonies. The miners’ petition drawn up in Richfield on June 23, 1866, made it very clear that a large section of the community wished to get rid of him, and failing this, to subordinate him to a judge in higher authority. Should the two judicatures

187. Begbie to Seymour, April 11, 1865, Begbie Letters.
be amalgamated in the coming union, his own status put him at a distinct disadvantage. When Sir Edward Bulwer Lytton appointed him he made him Judge of the Supreme Court, and wrote to Douglas on August 14, 1858, stating that in the event of the Colony growing in importance and the Judge proving himself competent, he should be promoted to the status of Chief Justice. The promotion was never made, for reasons that can not be determined. Judge Begbie made no representations concerning the matter until some time in 1866, when he was informed by Governor Seymour that the entire question was under consideration as a result of the coming union. When the Colony of Vancouver Island was furnished with a Supreme Court in 1856 the judge was given the title and status of Chief Justice. The first Judge, David Cameron, a linen draper with a judicial frame of mind, retired in 1865. His successor, Chief Justice Needham, came to enjoy great popularity in the island colony, and there was both hope and fear there and on the mainland about his future status. Judge Begbie thus


189. v. infra, p.156, n.

190. Chief Justice Cameron was Douglas' brother-in-law. Although he had no training in law he seems to have given satisfaction as a Judge.
found himself confronted with a rival, eminently more popular than he, and enjoying a higher status.

The union of the two Colonies was proclaimed on November 19, 1866, and to the consternation of the various interested individuals and factions the Act of Union made no express declaration concerning the Supreme Court of Vancouver Island. The authorities concerned were thus confronted with a problem that involved both constitutional and personal issues. Was it to be inferred from the act that the Island Court was to continue or that it was abrogated, thus bringing that territory under the jurisdiction of the Supreme Court of British Columbia? If it were abrogated, there would be the thorny question of the status of Judges Begbie and Needham. It could be argued that abrogation had abolished Chief Justice Needham's office. On the other hand a case might be made to show that his office derived from the Queen's commission and not from the Order in Council of 1856 which had established the Supreme Court of Vancouver Island. If this were true, Needham would continue as a Chief Justice after his court had been dissolved. In the event of abrogation, there could be no doubt that Needham would be offered a judgeship in the Supreme Court of British Columbia. One Judge would not suffice for the vast area included in the union and Needham was both able and popular. If he accepted such an offer, would he do so on conditions that subordinated him to Judge Begbie?
Begbie was greatly concerned over the matter and drew up two memoranda, one for the Earl of Carnarvon and the other for Governor Seymour. Writing at great length he set forth his own interpretation of the problems involved and made a plea that he should not be superseded. In the memorandum for Carnarvon he pointed out that the Act abrogated the Executive and Legislature of the Colony of Vancouver Island. He then went on to show that the Judicature, being an organ or mouthpiece of the Executive, ceased to exist with the abrogation of the Executive. In the same way he considered that the Chief Justiceship of the Colony of Vancouver Island suffered the same fate as the Court. The commission of Chief Justice Needham was effective during Her Majesty's pleasure, and since the consent of the Crown must be taken to be given for all the logical consequences of the Act of Union, then, like the Courts, the Chief Justiceship itself ceased to exist.


Memorandum as to the jurisdiction of the Court (Vancouver Island) in a letter to His Excellency (private & confidential) March 22, 1866, Begbie Letter Book.

Having demolished the court and office of his rival, Judge Begbie proceeded to advance his claims to the Chief Justiceship. He made out, with one exception, a very fair account of his services and achievements as "chief judge of the Supreme court in British Columbia", asking to know why he should, after being promised promotion, be superseded. He described accurately the hardships and difficulties of his work. Pointing to the criminal statistics, he showed the absence of crime and recalled that there had been only four or five highway robberies since his first circuit in 1859. He did not claim that this was his own achievement, but gave generous credit to the police and magistrates, arguing that the statistics showed no unfitness in him to be a judge. His third claim is remarkable and it is to be regretted that John Robson never had an opportunity to review it in his editorials. The Judge's statement deserves quotation:

Thirdly, as to the civil side of the court, I shall only say, that though many cases of great value have passed through my hands, there has never been a single appeal from any decision of mine. I have not indeed heard of one case in which any counsel has given an opinion that an appeal could be successful and I therefore claim that the results on the civil side of the court are as favourable as on the civil side.

No doubt John Robson would have pointed to the Cranford brothers who had entertained the idea of pleading their case in the courts of Vancouver Island and to the Davis Mining Company who did, in a sense, carry their cause to a court of appeal, although Judge Begbie constituted that court in his capacity of sole arbitrator. There was, of
course, no other court than the Privy Council in London, to which appeals could be carried. Ring, Walkem, McCreight and others must often have pondered this with regret.

In closing, Judge Begbie ventured to suggest that had it not been for the accident of "nomenclature" precedence would have been accorded him as a matter of course. He could not see, he wrote, why, in view of his achievements, which would compare favorably with results anywhere in the Empire, he should be superseded. He pointed out also, that while Needham was competent, he was his junior at the English bar and on the colonial bench.

When Judge Begbie heard that a compromise was to be effected, he prepared a memorandum for Governor Seymour, in which he stated his very strong objections to the plan. The arrangement of which he disapproved was designed to satisfy Judge Needham as well as himself and to appease the people of Vancouver Island. There were to be two separate judiciaries, one for the Island and one for the mainland. The Supreme Court of Vancouver Island and the Chief Justic­eship of that court were to be considered as having subsisted since the Order in Council of 1856. In addition, Judge Begbie was to have the jurisdiction of a puisne judge on Vancouver Island and Judge Needham was to serve in a similar capacity on the mainland.

Begbie's arguments against the arrangement show that he was out to be Chief Justice of British Columbia, in a single judiciary. He was not willing to accept a compromise.
His first claim was that the legislative limits and judicial limits in a colony coincide, and since the authority of the Government of British Columbia embraced both the mainland and the Island, he could not see why the authority of the judiciary of the Colony did not do the same. His second objection to the proposal was that he could not conceive of any legal means whereby he could be made a puisne judge on Vancouver Island. The courts of that island derived from the Order in Council of 1856, which was an instrument of the late, and now extinct, Government of Vancouver Island. In other words, the Supreme Court of Vancouver Island would exist without authorization and control by any government. Under the Order in Council appointments were to be made by letters patent under the public seal of the Colony. How, asked Judge Begbie, could he be appointed puisne judge by the letters patent and under the public seal of an extinct colony?

The position of Judge Needham in the controversy is not clear. In the memorandum to Governor Seymour, Judge Begbie stated that he understood that Needham's views about the Supreme Court of Vancouver Island and his position of Chief Justice in that court coincided with his own opinion. W.K. Lamb, however, offers the opposite view, that Judge Needham contended that his court continued unimpaired by the Act of Union.

In the meantime feeling had been running high on the mainland and in Victoria. The followers of John Robson hoped that however the matter were settled, Judge Begbie would be placed in a subordinate position. In Victoria, public alarm that the Island would come under the jurisdiction of Judge Begbie found expression in an editorial in the Colonist:

Judge Needham (sic) will, of course, resign before consenting to be the subordinate of Judge Begbie, of British Columbia, and if the latter is elevated to the Chief Justiceship of the United Colonies, with the other preferments that it is rumored will follow, His Excellency will raise a storm of indignation throughout the length and breadth (sic) of the two Colonies. We have succeeded in obtaining a sound, able and popular man to administer our laws, the revenue of the Colony is pledged to pay for that privilege, and the people will not be content to accept an inferior article for their money. A petition to His Excellency is talked of, and Governor Seymour will have an opportunity to yield to the popular will.

The petition to which the writer referred had already been submitted to Seymour on November 18, a day before the union had been declared. It contained only one prayer, and that was that Needham should be made Chief Justice of the United Colonies. After some two weeks had passed the Governor replied to the committee on December 4. He could not comply with the prayer of the petition, he said,

because to do so would invade the rights of Judge Begbie.

Seymour's letter, which appeared in the Colonist on December 5, deserves careful attention, as it reveals the impartial attitude and desire for compromise that characterized his position throughout the controversy. He wrote in part:

It is very beneficial for a community when such confidence is placed in the integrity, honor and ability of its principal judge, and I must say that I have had no wish in any way to interfere with the administration of Justice or the local position of Mr. Needham.

To appoint that gentleman, however qualified, to the position of Chief Justice of the United Colony, would interfere with the position, and possibly invade the rights of another Judicial officer who has done good and valuable service on the neighbouring mainland for several years antecedent to the arrival among us of the one you desire to be placed in the more prominent position.

Mr. Begbie proceeded to the more restricted British Columbia with the well grounded expectation that he was at a future date to be the Chief Justice, of that portion at least, of the territory comprised within the ancient limits of the Colony. Numerous petitions would, I doubt not, were it thought necessary, testify to the public confidence in Mr. Begbie. Under these circumstances the claims of the two gentlemen appear to me to be about equal, with slight balance, perhaps, in favor of Mr. Begbie, on account of the superior length of his service.

Entertaining this opinion, I proposed that these two gentlemen should, for the present at all events, be Judges of the Supreme Court of British Columbia. The one retaining his precedence in the Courts of the Island, the other in those of the mainland. The salaries to remain untouched. This proposal, which appeared unobjectionable in Downing Street, does not, I regret to say, satisfy your wishes nor the expectations of one, at least, of the candidates.

194. Daily British Colonist and Victoria Chronicle, December 5, 1866, p.3.
Seymour's impartiality is all the more to his credit when we are afforded a glimpse of his private attitude to Judge Begbie. Among the Begbie Letters there is one written to the Colonial Secretary in April, 1865, requesting an extra allowance for travelling expenses. Such requests were not uncommon on the part of the Judge, but it must be remembered that he made such petitions on behalf of his fellow officers of the law more frequently than he did for himself. On the back of the communication are to be found scribbled comments to the Colonial Secretary in Seymour's hand writing. Each of the notations bears the initial "F.S." and a date, presumably to denote the time when the comment was inscribed:

21 April 1865: Judge's travelling expenses. There is something very disgusting in all this. Have you got his letter to me on the subject in reply to my note? F.S.

18 April 1865: To the Col. Secy. Think it would be well for me to send for the Judge and explain matters. I confess that I feel rather disgusted with his way of going on. You might allude to the carriage of beans and bacon at the public expense. I feel sick of the man. You might ask O'Reilly as to the number of horses employed to bring provisions in to the Creek for the Judge. F.S.

195. Begbie to Young, April , 1865, Begbie Letters.
To the Col. Sec.
23 April 1865:

Judge's travelling expenses.

I hope I have nothing more to say to this shabby affair.

F.S.

Governor Seymour had made it clear to the people that they might expect a compromise settlement of the controversy, but seventeen long months were to elapse before this partial solution was put into effect. This came about when the Courts Declaratory Ordinance of May 1, 1868, continued the powers and jurisdiction of the two Courts, and the Supreme Courts Ordinance, 1869, settled the question of the status of the two Judges. Under the provisions of the latter Judge Begbie was styled "The Chief Justice of the Mainland of British Columbia," while Needham became "The Chief Justice of Vancouver Island." Each enjoyed precedence over the other in his own jurisdiction. The personal nature of the settlement and the fact that such an arrangement should not continue is apparent in the provisions that the Courts should be merged when a vacancy occurred by reason of the death, resignation or other causes of either Needham or Begbie. In March, 1870, Chief Justice Needham resigned to become Chief Justice of Trinidad, and at long last Judge Begbie became Chief Justice of British Columbia.

Governors came and went, the Colony passed into Confederation and became a province of the Dominion, but
Matthew Baillie Begbie went on, and in time became something of an institution. He had a lot to live down, but with the passage of the years the realities of his complex life and character gave place to the Begbie legends. People forgot that he had been a court reporter living on the fringe of Bohemian circles in London before his appointment, and that his rough methods of dealing with rowdies in 1858 and 1859 were not adequate to the complicated litigation that developed after 1862. In that year he had been charged with illegal speculation in a mining claim and complicity in a rather shady land deal. He threw an honest editor into jail for an indiscretion, and conducted two civil cases in a most incompetent manner, showing himself to be both tyrannous and ignorant in his decisions. In the year 1862 two barristers asked to have their names removed from the rolls and refused in open court to accept his apology. After that year a rising tide of protest against his incompetence and arbitrary methods grew till a petition was signed for his dismissal. Yet in spite of the adage about the evil that men do, these shortcomings have been almost forgotten.

It seems that he changed some of his ways after the Union of the Colonies in 1866. While he entertained the belief, as we have seen, that his civil administration was of a high character, the contemporary records show little, if any, criticism of the kind that dogged his steps in the
middle 'sixties'. He must, after those years, have modified his conduct and methods. There was the fear of being superseded to serve as a check, and after 1871 there were the Superior Court and the Dominion authorities to keep him in his place.

As the Province grew and prospered his tasks became less arduous, and he was able to spend more time in his Victoria, which he declared to friends to be the most beautiful town in the world. The pioneers looked back on the past with satisfaction and remembering that the Judge had shared their hardships and adventures, came to regard him as one of themselves. Such associations led them to take a pride in the eccentric giant, and stories of his courage, wit and eccentricity grew slowly into legend. He had always enjoyed gossiping, and on his rambles with Ben Evans, the Judge stopped in the clearings and at the farmhouses to chat and exchange stories of the old days.

Reports of his secret giving and goodness of heart began to leak out. A reporter named Oscar Bass who used to distribute his anonymous gifts, later rose to be Deputy Attorney-General. In time, as he progressed in the world, he broke his promises and related acts of generosity that an earlier generation would not have believed of the tyrant judge.

He never quite lost his faculty for rendering decisions unacceptable to the entire community. In 1885, when there was a great deal of opposition to the influx of
Chinese labor into the Victoria district, he was perhaps the only resident who did not object to them. He extolled their virtues and proved to his own satisfaction, at least, by the most devious arguments, that they would not affect the local labor market, and refused to hear a word against them.

In 1874 he left for England on a year's furlough. The Colonist printed an editorial recalling his great services to the Colony in the early days. As this was his only positive achievement, the editorial writer was not able to extol the rest of the Judge's activities in positive terms, but concluded the article with a generous tribute.

...we should be wanting in a sense of duty were we to refrain from expressing what we know to be the opinion of the whole country to a fearless and faithful public servant and an able and honest Judge.

He had, indeed, been fearless and honest, as his old enemy, McCreight admitted. McCreight, indeed, held him to be impartial. This was more than thirty years after the Cranford case, and the honest Irishman had come to realize that what he had once considered partiality was more a defect of judgment than of character.

The Queen, it appears, had heard good words of the Chief Justice, and conferred a knighthood on him during

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197. Ibid., October 10, 1874, p.3.
his year's holiday in England in 1875. The journey across had been rough and the vessel was nearly wrecked. But the Chief Justice was an old traveller and survived the ordeal. On his return in December, 1875, people said he looked ten years younger. When news circulated that he was back in Victoria, the town band serenaded him and friends gathered about to bid him welcome.

It had been his custom on Sundays to take lunch with the O'Reilly's, who had built a home at the Gorge. As Sir Matthew's Chinese cook could never make rice pudding to his taste, Mrs. O'Reilly generally served this dish for dessert according to the Judge's recipe. For nearly eleven years he never failed to enjoy his rice pudding. In 1893, however, his appetite waned, and by the end of the year he began to show the unmistakable signs of cancer.

He refused an operation and rejected drugs, saying that he could not endure the thought of dulling his mind. It was hard, he found, to keep his mind clear as the cancer spread. The pain became very severe, and he told Miss Agnes McKay, the daughter of his old friend, Joseph McKay, that it blotted out the present and all memory of the past. As the summer of 1894 drew on he took to his bed. In June Peter O'Reilly began to sit with him at night. On the night of June 10, Sir Matthew said, "You must leave me alone to-night, O'Reilly. I must make my peace with God."

In the morning he was dead.
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