ORDER IN COUNCIL

Relating to the Appointment of County Court Judges in British Columbia.

By Command.

JNO. ROBSON,

Provincial Secretary.

Provincial Secretary's Office,
5th December, 1883.

Copy of a Report of a Committee of the Honourable the Executive Council, approved by His Honour the Lieutenant-Governor on the 9th April, 1883.

The Committee of Council have had under consideration the "County Courts Act, 1883," and the necessity of resident Judges being upon the Mainland.

The people of that portion of the Province, by themselves and their representatives, justly complain of their being left without any judicial system.

Disputes remain unsettled to the disquietude of the community; debtors defy their creditors, and administration of the estates of deceased persons does not take place except through applications made at Victoria at undue expense.

In Cariboo (Cariboo County Court) no County Court has been held since October, 1882.

At Clinton (Cariboo County Court) only one County Court has been held since July, 1881.

At Lillooet (Cariboo County Court) no County Court has been held since July, 1881.

At Kamloops (Yale County Court) only one County Court since November, 1881, and

At Lytton (Yale County Court) only one County Court since June, 1881.

Important localities, such as Spence's Bridge, Ashcroft and Nicola Valley (Yale County Court) are also left without a County Court.

Such a state of things is felt by the Mainland to be intolerable.

It has been questioned whether a Supreme Court Judge can be compelled to hold the County Court.

It is questionable whether a Judge of the Supreme Court while in one of the judicial districts say, for example, Cariboo, can enforce a decree or order made by him as a Judge of the Supreme Court, when the Seal of the Supreme Court is in Victoria.

It is also doubtful whether the Supreme Court can sit at two or more places at the one time.

The system of districting the Judges of the Supreme Court has practically broken down, and the Judges do not reside in their districts. The Act providing for districting the Judges did not provide for making District Courts.

In any event, their presence in Victoria is required periodically for appellate business.

Owing to the great distances between some of the districts and Victoria, and the impracticability of travelling during the winter season, these districts, while their Judges are absent on appellate duty, must of necessity be left without Courts for an undue length of time.

It is of doubtful policy to disintegrate a Court which is the supreme tribunal of the Province, which in many respects answers to the Court of Queen's Bench, and exercises both original and appellate jurisdiction.

The County Court system is eminently adapted to the requirements of the Mainland, and for that matter of the Province.

The County Courts Act of this Session, to which the Lieutenant-Governor's assent has been given (and a copy of which is enclosed), gives a wide legal and equitable jurisdiction. It also gives probate jurisdiction. By the Mineral Act of 1882 (sec. 19), full jurisdiction is also given in mining cases.

County Court Judges appointed under the Act at this Session would, by its terms and also by 45 Vict., cap. 12 (Canada), have to reside within their districts.

The terms of Union and the British North America Act, entitle the Province to the Supreme and County Court Judges.

At present the Supreme Court Judges hold County Courts in Vancouver Island, and the towns of New Westminster and Yale (County Court New Westminster), not by virtue of the "Better Administration of Justice Act, 1878," but under section 9 of the "County Court Ordinance, 1867," which authorizes them, if they think fit, to act as Judges of County Courts.

While this continues to be the case there would appear to be no occasion to appoint County Court Judges for the districts comprising the localities last indicated, but on principle, although the Committee do not press it, it would be well to carry out the Act in its entirety.

At New Westminster and the town of Yale (New Westminster County Court), although County Courts are occasionally held, the continued presence is needed of a Judge possessing the more extended and ample jurisdiction given by the present Act.

As for the upper country, the appointment of two Judges, one for the County Court of Cariboo and another for the County Court of Yale, is urgent.

The Provincial Superior Court Act, 45 Vic., c. 3, will be repealed this Session.

The Committee conceive that the appointment under the County Court Act of this Session of three County Judges, one for the County Court of Cariboo, one for the County Court of Yale, and one for the County Court of New Westminster, as established by that Act, would meet all the requirements of the Mainland, as far as resident Judges are concerned, and would provide for the disposal of all ordinary civil business upon the Mainland.

The Committee earnestly request the Dominion Government to make the appointments as soon as possible, and

That a copy of this Minute of Council, with a copy of the Act, be forwarded to the Honourable the Secretary of State for Canada, and that a telegram be sent to the Right Honourable Sir John A. Macdonald, asking that provision for the salaries of three County Court Judges be made; and that the Dominion Government be further requested to inform this Government by telegram of their willingness to make the appointments, so that the County Courts Act of 1883 may be put in force by proclamation.

The Committee recommend that this Minute be approved.

(Signed) JNO. ROBSON,
Clerk Executive Council.