RETURN

To an Address presented to His Honour the Lieutenant-Governor, asking him to cause to be laid before the House copies of all correspondence, memorials and papers between the County Court Judges of this Province and the Provincial Government, or any member thereof, and between the Dominion Government, or any member thereof, and the Provincial Government, or any member thereof, relative to the discontinuance of the salary as Stipendiary Magistrates heretofore paid by the Province to each of the said County Court Judges.

By Command.

C. A. SEMLIN,
Provincial Secretary.

Provincial Secretary's Office,
18th January, 1900.

NEW WESTMINSTER, 28th November, 1898.

To His Excellency
The Governor-General in Council, Ottawa.

MAY IT PLEASE YOUR EXCELLENCY:—We, the undersigned Judges of the County Courts of British Columbia, have the honour to call Your Excellency's attention to the fact that the Provincial Government, through the Honourable the Attorney-General, have notified us that the salary of $500 a year each heretofore paid to us by that Government will cease after the 30th November, 1898.

We may be permitted to respectfully call Your Excellency's attention to the circumstances under which we were appointed. In 1889, after considerable discussion between the Honourable Edgar Dewdney, representing the Dominion Government, and the Honourable John Robson, representing the Government of British Columbia, it was finally arranged that each County Court Judge should, on appointment, receive $2,400 per annum as salary from the Dominion Government, the Provincial Government to supplement that salary by $500 per annum in consideration of each Judge acting also as Stipendiary Magistrate, for, as the Honourable Mr. Robson pointed out at the time, $2,900 thus made up was the lowest salary at which it would be possible to secure the services of competent men (*vide* Sessional Papers of B. C., 1889, p. 164). This was only in pursuance of a similar policy adopted when Judge Harrison, of Cariboo, was appointed for that District in 1884.

We beg most respectfully to direct Your Excellency's attention to the fact that even the $2,900 thus made up is far from being an adequate payment for the services rendered, having regard to the jurisdiction we possess, which is larger than that exercised by the County Court in Great Britain or in any other Canadian Province, extending, as it does, to $1,000 in contract or tort, $1,000 by way of counter-claim, $2,500 in equitable matters, and to any amount by consent, and in mining matters; and besides this we have discharged many of the duties (some of us all the duties) of a Supreme Court Judge without receiving any extra salary therefor.

We venture to express the hope that such steps will be taken to repair the very serious injury inflicted upon us by the proposed action of the Provincial Government, and to secure us the full amount of salary agreed upon, so that we will not in future be exposed to similar proceedings.

We have the honour to be
Your Excellency's obedient servants,

(Signed) E. HARRISON,
" W. NORMAN BOLE,
" CLEMENT F. CORNWALL,
" WM. WARD SPINKS,
" J. A. FORIN.

Copy circular enclosed.

ATTORNEY-GENERAL'S OFFICE,
VICTORIA, B. C., October 31st, 1898.

His Honour Judge ——

SIR,—The Government have decided to discontinue the salary received by you from them. Your salary will be paid for the month of November next, but on and after the 30th of that month it will be discontinued.

I have, &c.,
(Signed) JOSEPH MARTIN,
Attorney-General.

The undersigned has the honour to report, with reference to the memorial sent to His Excellency the Governor-General in Council by the County Court Judges of this Province, dated the 28th day of November last, a copy of which has been transmitted to His Honour the Lieutenant-Governor by the Secretary of State, as follows:—

It is understood that some claim is made by the County Court Judges that there was some kind of a bargain or arrangement between the Dominion Government and the Provincial Government at the time that County Court Judges were first appointed in this Province, by which it was agreed that the Provincial Government should supplement the salaries of those Judges. A reference to the correspondence will show that no such arrangement was either made or proposed. It was pointed out at the time by the Provincial Government that the salaries which the Dominion Government proposed to pay were not adequate for this Province. The Dominion Government, however, insisted that they could not make any discrimination between the Provinces, and would not agree to appoint such Judges except at the same salary as was paid in other parts of Canada. Thereupon the Provincial Government suggested that they would supplement the salaries in order to obtain the services of competent men. This was an entirely voluntary statement on the part of the Provincial Government, and was not asked for in any way by the Dominion Government. There was, therefore, no bargain or arrangement of any kind whatever.

There appears to be no reason why, in the interests of this Province, the grants heretofore made to these Judges should be continued. For this reason the undersigned some time ago recommended that the said grants should be discontinued, and said recommendation was duly put in force.

The undersigned would suggest that if the memorial of the County Court Judges, which is not at all clearly expressed, is intended to be an application to the Dominion Government for an increase of salary, there appears to be no reason why the Provincial Government should express any opinion upon the subject.

Dated this 11th day of February, 1899.

JOSEPH MARTIN,
Attorney-General.

Approved the 11th day of February, 1899.

ROBERT E. MCKECHNIE,
Presiding Member, Executive Council.

OTTAWA, 15th June, 1899.

SIR,—We refer to previous correspondence respecting the salaries of County Court Judges in the Province of British Columbia, I have now the honour to transmit to you, herewith, a Minute of the Privy Council, approved by His Excellency the Governor-General, on the 13th instant, embodying the views of his Government upon the subject.

I have at the same time to observe, that for the reasons mentioned in the said Minute, there can be no doubt that an arrangement was concluded and acted upon with respect to the appointment and salaries of the County Court Judges which, in good faith, should be carried out, and to request that the salaries withheld be restored.

I have, &c.,
(Signed) R. W. SCOTT,
Secretary of State.

His Honour the Lieutenant-Governor of
British Columbia, Victoria, B. C.

1207.

Extract from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 13th June, 1899.

On a Report, dated 1st June, 1899, from the Minister of Justice, stating that by a memorial dated 28th November, 1898, the County Court Judges of British Columbia represented to Your Excellency that the Provincial Government had intimated to them that the salary of $500 a year, theretofore paid to each of them by the Province, would cease after 30th November, 1898.

They called attention to the fact that in 1889, after a considerable discussion between Mr. Dewdney, representing the Dominion Government, and Mr. Robson, representing the Provincial Government, it was arranged that each County Court Judge should, on appointment, receive a salary of $2,400 per annum from the Dominion Government, and that the Government of the Province should supplement that salary by $500 in consideration of each Judge acting also as Stipendiary Magistrate, and they pointed out that Mr. Robson, on behalf of the Province, had stated at the time that $2,900 was the lowest salary at which it would be possible to secure the services of competent men. The Judges stated further that a salary of $2,400 per annum was far from being adequate for the services rendered, having regard to the jurisdiction which they possessed, and they expressed the hope that steps would be taken to repair the loss which would be inflicted upon them by the proposed action of the Province, and to secure the full amount of their salary as agreed upon.

The Minister observes that, in pursuance of the Minute of Council approved 23rd January, 1899, this memorandum was communicated to the Lieutenant-Governor of British Columbia for his report. On 16th February, 1899, the Lieutenant-Governor transmitted to the Secretary of State an approved report of the Attorney-General of the Province upon the memorial of the County Court Judges.

The Minister submits herewith copy of the said report of the Attorney-General, from which it appears that the Government of the Province understand that a claim is made by the County Court Judges that an arrangement exists between Your Excellency's Government and the Provincial Government by which the latter Government ought to supplement the salaries of the Judges. It is stated, however, that no such arrangement has been made or proposed, and this is sought to be established by reference to the correspondence, by which, it is stated, the Provincial Government pointed out that the salaries which the Dominion Government proposed to pay were not adequate for the Province of British Columbia; that the Dominion Government, however, insisted that they could not discriminate between the Provinces, and would not agree to appoint County Court Judges for British Columbia except at the same salary as was paid in the other parts of Canada, that thereupon the Provincial Government suggested that they would supplement the salaries in order to obtain the services of competent men, but that this was an entirely voluntary statement on the part of the Province and not asked for in any way by the Dominion. It is not denied that the Judges were appointed upon and in view of the alleged statements in this correspondence.

The Minister further states that, he fails to apprehend, even upon the effects of the correspondence as stated by the Attorney-General, how it can be said that there was no bargain or arrangement of any kind whatever. The ground which seems to be particularly emphasized by the Attorney-General is that the proposal of the Provincial Government to supplement the Judges' salaries for the purpose of obtaining the services of competent men was a voluntary proposal, but the statemeent of that ground is merely an affirmation of a fact which is essential to the validity of any contract or arrangement. It is assumed, or must be established in proper cases, when two parties, whether they be governments or individuals, have entered into an arrangement by which they are afterwards to be bound, that each party acted voluntarily, or as a free agent. In the present case, of course, it has never been suggested that the Government of the Province made the proposal, which was accepted by the Dominion Government, and upon the faith of which the Judges accepted appointment to office, otherwise than in the exercise of a free and sound judgment as to what was expedient in the general interest of the Province. The ground urged by the Attorney-General for the purpose of escaping from the obligation which, in the opinion of the Minister, the arrangement in question imposed upon the Government of the Province, might be urged with equal force with regard to any imaginable contract between individuals which a Court of Justice might be called upon to enforce. Offers or proposals which the law recognizes are, and must always be, voluntary. For that reason

they may freely be withdrawn previous to acceptance, but once the proposal has been accepted and acted upon, as the proposal of the Province has been in this case, it would be, the Minister apprehends, impossible, upon legal or other reasons, to base a valid claim for relief upon the ground that the offer, which resulted in the contract, had been made voluntarily.

The Minister further observes that, the Attorney-General states that there appears to be no reason why, in the interest of the Province, the payments heretofore made to the Judges should be continued. If, in the opinion of the present Provincial Government, competent Judges for the County Courts may now be secured at a salary of $2,400, this remark of the Attorney-General may hold so far as the future is concerned, but as to the present Judges, good faith requires that the payments should be continued. They accepted office upon the assurance that they would receive an allowance of $500 per annum from the Province in addition to the salary paid by the Dominion, and, as it appears, in the opinion of the Provincial Government of the time, it was necessary to give that assurance in order to obtain competent men for the office.

The Minister further submits that there can be no doubt as to the meaning and object of the memorial addressed to your Excellency by the County Court Judges. They state the circumstances fairly and complain that they are now deprived of an allowance from the Province which they have hitherto received, and which they were entitled to expect would be continued, having regard to the circumstances attendant upon their appointment to office. While the Judges would doubtless be satisfied to have their previous salary maintained, from whatever source the moneys were paid, it is clear from the correspondence to which they refer that the obligation does not rest with Your Excellency to supply the allowance which is being withheld by the Province.

They seek, properly enough under the circumstances, the friendly offices of Your Excellency for the purpose of having the agreement between the Dominion and the Province carried out; but there is, in the opinion of the Minister, no room for misapprehending the claim set up by the memorial that the Government of the Province should continue to make the payments as heretofore.

Turning now to the evidence in support of the arrangement between the two Governments other than that which appears upon the Attorney-General's report, it appears that in 1883 Sir Alexander Campbell, then Minister of Justice, was authorised by the Government of Canada to visit British Columbia and make arrangements relative to the various points then remaining unsettled between the Governments; that in pursuance of such authority he visited the Province and had negotiations with the Provincial Government. One of the subjects engaging the attention of Sir Alexander Campbell and the Provincial Government at the time was that of County Court jurisdiction, and it was arranged that an officer should be appointed, who should be at the same time County Court Judge and Stipendiary Magistrate for Cariboo and Lillooet, the Dominion Government paying his salary as Judge, and the Province paying his salary as Stipendiary Magistrate. With his report of 25th September, 1883, to His Excellency the Marquis of Lorne, then Governor-General of Canada, Sir Alexander Campbell submitted a memorandum dated 20th August, 1883, embodying the agreement between the two Governments. This agreement is signed by Sir Alexander Campbell and by Mr. Smithe, then Premier of the Province, and states upon the subject of the Judiciary as follows:—

"A County Court Judge shall be appointed by the Dominion Government for the District "of Cariboo and Lillooet, at a salary of twenty-four hundred dollars, and he shall receive from "the Local Government the appointment of Stipendiary Magistrate, at a salary of five hun-"dred dollars, legislative authority for this arrangement, if necessary, and for the payment of "the Judge, to be sought for." Then follows a statement that the agreement includes all matters as to which there is any dispute or difference between the two Governments, and when carried into effect will constitute a full settlement of all existing claims on either side or by either Government. (*See* Sessional Papers of Canada 1885, Vol. XVIII., No. 161, pages 25 to 28.)

Mr. Harrison was accordingly appointed by the Dominion Government Judge of the County Court of Cariboo on 25th April, 1884, and he was also appointed by the Provincial Government a Justice of the Peace and Stipendiary Magistrate for the Province on 8th May, 1884. He was paid by the Dominion as County Court Judge a salary of $2,400, and by the Province, out of moneys specially voted for the purpose, an additional salary of $500.

The Minister further states that, in the Sessional Papers of British Columbia, 1889, pages 161 to 165, will be found the report of Mr. Dewdney, then Minister of the Interior, to the Governor-General in Council, dated 10th December, 1888, referring to the mission of Mr. Robson, then Provincial Secretary of British Columbia, who held conferences with Mr. Dewdney in relation to various matters requiring adjustment between the Government of the Dominion and the Government of British Columbia with respect to which Mr. Robson was empowered by his Government to arrange a basis of settlement. Upon the subject of County Court Judges, Mr. Dewdney reports as follows:—

The Government of British Columbia asks that four "County Court Judges may be "appointed for the districts of Kamloops, New Westminster, Nanaimo, and Victoria, respect-"ively, the Provincial Government to supplement the salary by $500 per annum, in considera-"tion of each Judge acting also as Stipendiary Magistrate. In this connection, Mr. Robson "offers the suggestion that the Dominion Government should not pay less than $2,400 per "annum to each of these Judges, that sum, together with the amount to be paid by the "Provincial Government, being the lowest salary at which that Government consider it would "be possible to secure the services of competent men.

"Under the arrangement made between the late Minister of the Interior and Mr. Robson, "two Judges were to be appointed, but the necessary legislation not having been enacted at "the last Session of the Dominion Parliament, the Provincial Government has taken this "opportunity to urge an increase in the number. The undersigned states that he has consulted "with the Minister of Justice upon this point, who is of opinion that it might be advisable to "make provision for an additional appointment at Nanaimo. Should this opinion be concurred "in, the undersigned recommends that Mr. Robson be informed accordingly, and that the "salaries must be on the same terms as in other parts of Canada."

The Minister further states that this Report was duly approved by the Governor-General on the 16th December, 1888, and Judges were subsequently appointed pursuant to the arrangement as so stated and confirmed.

Judge Harrison was transferred to Nanaimo on 3rd August, 1889; Mr. Bole was appointed County Court Judge for New Westminster on 19th September, 1889; Mr. Spinks for Yale and Mr. Cornwall for Cariboo on the same date, and Mr. Forin was appointed County Court Judge for Kootenay on 22nd November, 1896. Judges Bole, Spinks, and Cornwall were appointed, by the Government of British Columbia, Stipendiary Magistrates for the Province in 1889, and received salaries from the Dominion and from the Province in accordance with the agreement. Judge Forin also was appointed Stipendiary Magistrate by the Provincial Government at the time of his receiving his Dominion appointment as County Court Judge, and he also received salary from both sources. The Commissions of these gentlemen as Stipendiary Magistrates still remain in force, although the Provincial salary has been withheld.

The Minister further observes that there can be no doubt, therefore, that an arrangement was concluded and acted upon with respect to the appointment and salaries of the County Court Judges, which in honour and good faith should be respected and upheld; and, inasmuch as the Dominion Government of the time was a party to that arrangement, he, the Minister, considers that Your Excellency's Government ought to urge upon the Provincial Government, as strongly as possible, the propriety of continuing the payments in question.

The Minister therefore recommends that a copy of this Minute, if approved, be transmitted to the Lieutenant-Governor of British Columbia, for the information of his Government, with a request that, for the reasons herein stated, the salaries withheld be restored.

The Committee submit the above recommendation for Your Excellency's approval.

JOHN J. MCGEE,
Clerk of the Privy Council.

His Honour
The Lieutenant-Governor of British Columbia.

NANAIMO, B.C., 10th November, 1899.

SIR,—I have the honour, in view of the correspondence which has taken place between the Dominion and Provincial Governments with reference to the non-payment of the County Court Judges' salaries, to place before you the following facts:—

I was appointed Judge of the County Court of Nanaimo in April, 1884, and Stipendiary Magistrate for the whole Province by the Provincial Government, 8th May, 1884.

The supplementary $500 was voted in advance of these appointments. (Provincial Supply Bill with Estimates for 1884-1885, and Supplementary Estimates, April to June, 1884.)

These appointments were made in consequence of negotiations between the Provincial and Dominion Governments. (Dominion Sessional Papers, 1885, No. 161, pp. 26-28.)

Judges Cornwall, Bole, and Spinks were appointed Judges of the County Courts of Cariboo, New Westminster, and Yale, respectively, and I was appointed Judge of the County Court of Nanaimo, in 1889.

They were also appointed Stipendiary Magistrates for the whole Province in the same year, 1889.

The supplementary salaries for the appointments of 1889 were voted in advance by the Provincial Legislature as "Additional to Dominion." (B. C. Supply Bill and Estimates, 1889; B. C. Sessional Papers, 1889; Dominion Supply Bill, 1889.)

The then County Court Judges were also constituted Local Judges of the Supreme Court (B. C. Statutes, c. 8, 1891), and afterwards received Commissions as such from the Governor-General (mine is dated 7th December, 1891), and have acted as such, but have never received any fee or emolument for so doing.

The Nanaimo Judicial District was constituted by the Provincial authorities, and by Provincial Order in Council it was provided that I should have, in Supreme Court business, all the powers and authorities of a Judge of the Supreme Court.

My Commission has never been cancelled, and the Order in Council has never been revoked, and from the time it was passed I have tried Supreme Court cases and exercised all the powers and authorities referred to, and continue to do so—but no pay.

The $500 has, ever since my appointment, been paid, until withheld last year.

The Commissions as Stipendiary Magistrates are still uncancelled.

I repeatedly acted as Stipendiary Magistrate, and at the request of the Provincial Government, in different parts of the Province.

Until last year, 1898, the County Court Judges had, for years previously, been included in the Commission of Assize and Oyer and Terminer and General Gaol Delivery, and I had tried criminal cases at different Assizes under this Commission in New Westminster, Nanaimo and Victoria.

At the end of September, 1898, I was requested by the Chief Justice to try a murder case at the Victoria Assizes, and went there to do so, but without any previous notification a fresh Commission was issued and the County Court Judges were not included.

In 1898 the Legislature of British Columbia voted the specific $500 until June of this year, 1899, but in October last year, 1898, I received the following from the Provincial Attorney-General:—

"*His Honour Judge Harrison.*

"SIR,—The salary paid you by the Provincial Government will be discontinued after November 30th.

"I have, etc.,
"JOS. MARTIN."

In November, 1898, the County Court Judges memorialized the Governor-General in Council. Subsequently I was notified that my Commission as a Justice of the Peace had been cancelled by the Provincial Government.

In April, 1899, I was informed by the Deputy Minister of Justice "that the Provincial "Government deny any arrangement was made between the Dominion and Provincial Govern-"ments, by which the latter should supplement the Judges' salaries, though it is stated in the "Provincial Despatch that the Provincial Government suggested that they would supplement "the salaries in order to obtain the services of competent men, but that this was an entirely "voluntary statement and does not control."

In June, 1899, the Minister of Justice wrote the Provincial Government urging the payment, by them, of what they had arranged with the Dominion Government to pay.

A former Premier and Attorney-General of British Columbia had in view taking a County Court Judgeship, and more than one Judge of the Supreme Court, before his appointment as Supreme Court Judge, desired the appointment of County Court Judge. Is it to be supposed that they ever imagined that if they received it the supplementary salary of $500 would be withheld?

If $2,400 only were to be paid to County Court Judges in British Columbia they would not be paid as much as in Ontario.

There are no fees here—there are there. Some County Court Judges in Ontario, Nova Scotia, New Brunswick and Prince Edward Island receive $3,000, besides fees.

In British Columbia County Court Judges are precluded by Statute from practising.

The County Courts of Ontario have jurisdiction in contested cases up to $200 only, and have four terms a year, and sit semi-annually for the trial of issues of fact and assessment of damages.

It is true that a County Court Judge there holds Division Courts—our Small Debts Courts—but that Court is a purely Provincial Court and held as a Provincial appointee, and it is not compulsory for him to do so under his Commission as a County Court Judge.

Here there are in reality no Counties or County organization.

Nor were Judges Cornwall, Bole, Spinks or myself appointed for Counties.

We were all appointed Judges of a Court of large jurisdiction, both as to area and subject-matter.

We were appointed Local Judges of the Supreme Court, and some of us with unlimited jurisdiction as to subject-matter.

We have unlimited jurisdiction in mining cases and as to mechanics' liens.

We are the Appellate Courts from the Small Debts Courts—Division Courts.

There is an appeal from the County Courts here to the Supreme Court of Canada.

The Provincial Government have withheld what was voted us by the Legislature until June, 1899.

They should pay because they agreed to, and because they objected, and rightly should now object, to payment by fees, except where absolutely unavoidable.

I have, etc.,

E. HARRISON.

The Hon. A. Henderson,
Attorney-General, Victoria.

VICTORIA, B. C.:
Printed by RICHARD WOLFENDEN, Printer to the Queen's Most Excellent Majesty.
1900