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A CONSTITUTIONAL HISTORY

of

BRITISH COLUMBIA

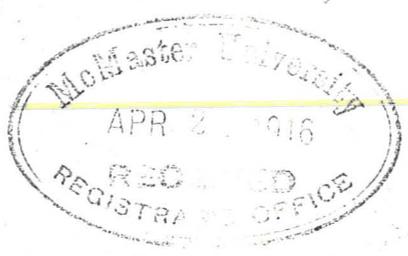
(A THESIS)

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CONTENTS

	Page
Preliminary -----	1
Crown Colony of Vancouver Island-----	7
Governor Plessard's Regime-----	16
James Douglas, Governor and Chief Factor-----	26
Colony of British Columbia-----	33
Colony of British Columbia(Continued)-----	47
A Legislative Council Established-----	55
Vancouver Island and British Columbia United--	68
Confederation Accomplished-----	78
Constitution of the Province of B. C.-----	91
The Judiciary-- Municipal and School Boards--	129
Recent Important Legislation-----	143

CONSTITUTIONAL HISTORY OF BRITISH COLUMBIA.

PRELIMINARY.

The Province of British Columbia occupies an unique position geographically among the world encircling possessions of Great Britain. It is as its inhabitants affectionately call it, "The Last Great West." Those marvellous countries of the Orient, with their teeming millions, are, with prodigious rapidity casting off the garb of ancient and mediaeval customs and are donning the regalia of twentieth-century, western civilization. Japan, within the last quarter of a century, has risen from the condition of an obscure and semi-barbarious nation to that of a great commercial and military power. Japan has shown us what can be done, and China, with her inexhaustible resources and her garnered wealth, the accumulations of untold centuries, will within the next generation astonish the world. If the Atlantic Ocean has hitherto been the world's "Sea of Commerce," ere long the great Pacific must be a close rival. The products of our factories, mines, forests, fisheries and of our great inland plains, will find a ready sale in the marts of the East, and we in turn will take their spices, fabrics, silks, rice, sugar, tea and precious jewels. Already three trans-continental railroads stretch their glistening steel from the Atlantic to our Western Coast, and here on the shores of sheltered fiords, great cities and towns will prosper with their miles of wharfs and their towering elevators and warehouses.

From Cape Horn to Singapore is one continuous coast line, twelve thousand miles in length and unbroken save for the narrow passage of Bering Strait and with the exception of Hong Kong, the coast line of British Columbia is the only territory in this great distance which flies a British flag. With the building of an empire in the west, with the awakening of the Orient, and with the blazing of new water-trails of commerce across the Pacific, Great Britain must have her sea-lions ready, and here we have the havens where coal, lumber and food supplies abound. Surely with the best harbours on the Pacific, with her land-locked bays, her great navigable rivers, her fringe of precipitiously shored islands, this Western link of the unbroken Canadian provincial chain, is of paramount importance to the British Empire politically as well as commercially.

But this vast mountain empire, a sister in the family of Britain's devoted daughters, is yet in the making. If by a flight of the imagination one could rise above the snow-clad peaks at the 49th parallel of latitude, and soar away above the mountain ranges to the 60th parallel, he would see in British Columbia a vast, *in*habited territory, seven hundred and fifty miles in length, four hundred and fifty miles in width, and whose area is as great as those combined of England, France, Belgium, Denmark, Greece, Ireland and Wales. He would see beneath him, as it were, a wonderful panorama of rugged snow-capped mountains, mighty rivers, great inland

lakes, stretches of dense forest, sheltered green valleys, dizzy gorges, foaming water-falls and waving meadows. He would see here and there in a sheltered valley a tiny village, or on the edge of a great plain, a settler's cabin, a trader's post, or an Indian's wigwam. This great area is practically uninhabited. Within the bounds of 350,000 square miles, dwell less than half a million people, and of these, more than two thirds are in its three largest cities, Vancouver, Victoria and New Westminster.

The history of this province is not a lengthy story. Canada herself, as compared with her mother, is, in age but a child, yet the Battle of the Plains of Abraham had decided the fate of America one hundred years before British Columbia had even been christened by her late devoted queen, and thirty-five years elapsed after the last gun had been fired in the War of 1812-14 before the Crown Colony of Vancouver Island was established.

In the fifteenth and sixteenth centuries while the French and English were charting the Atlantic Coasts, tracing the routes of rivers, and planting their fortresses deeper and deeper into the heart of the unexplored continent from the east, other nations were timorously feeling their way among the fringe of islands on the West. As early as 1493, one year after the discovery of a Western Continent by Columbus, Pope Alexander VI proclaimed his memorable ordinance which divided the undiscovered world between Spain and Portugal, and under this remarkable ordinance the whole of the after-

wards discovered western coast of the new continent was claimed by Spain. In 1513 Balboa sighted the Pacific from the Isthmus of Darien and in 1520 Magellan discovered the straits which bear his name. Following the subjection of Mexico by Cortez in 1520, the Spaniards made excursions northward, planting colonies in the Californias, but to that intrepid English mariner, Sir Francis Drake, belongs the honor of first reaching the Coast of Oregon at 48 degrees north latitude in 1~~8~~⁵78, and he named the whole country New Albion.

The Russians were meanwhile busy in the North. In 1741 Bering discovered the strait which separates the two continents, and was the first European to sight the shores of what is now Alaska, and in 1748 Baranoff came as a fur trader.

In the meantime, vague reports of these discoveries and of a probable passage by water to Hudson's Bay from the Pacific, had reached the English Court, and impelled the Admiralty to send a well equipped expedition. The result was the beginning of English supremacy on the North Pacific Coast. Captain Cooke reached Nootka Sound in 1778 and seven years later James Hanna arrived from China in quest of furs, and he was closely followed by Meares in 17~~8~~⁸⁷. The latter purchased from the Indian Chief Maquinna, a site for a trading post and there the next year built the first vessel launched on the Pacific Coast.

Jealous of their interests in the North Pacific, Spain determined to again enter this field. Choosing as their base of operations the Mexican seaport of San Blas, they fitted out expeditions and charted the entire coast as far north as Juan de Fuca Straits, and in 1772, Bodega y Quadra took formal possession of New Albion in the name of His Catholic Majesty, the King of Spain. In 1789 Martinez seized Meares' trading post at Nootka, and took three of his vessels to San Blas, but by the terms of the Nootka Convention, 1790, Spain relinquished her claims and in 1792 Captain George Vancouver, in the name of the English King, accepted from the Spaniards a formal apology together with the site at Nootka. This was the end of Spain's attempt to hold any of the territory now known as British Columbia.

While these coast discoveries were in progress, others of equal importance were being made overland by two great trading Companies, who were ever reaching farther and farther North and West. The Hudson's Bay Company had been reaping a golden harvest since 1670, and had touched the foot of the Rockies, but to the Canadian voyageurs and traders, the North-West Company, we owe the first trading post on the mainland of this province. The North-West Company began operations in 1783; ten years later Alexander MacKinzie reached tide-water at Burk Channel, overland from Montreal, and in 1808 Simon Fraser sailed out on the Gulf of Georgia from the river we call the Fraser.

The Hudson's Bay Company absorbed the North-West Company in 1821. They had bought out the American Company's interests at

Astoria in 1813, and they purchased those of the Russian American Trading Company in 1829. For twenty years, on the Island of Vancouver and for twenty-nine years on the mainland, from 1829, the history of this Company is the history of the Province. Their posts extended from the Arctic Circle to California. They controlled their monopoly and manipulated their affairs with a foresight and with an organization that has never been excelled. Their dealings with the savages were conducted with an acumen and with a justice that has won the admiration of the civilized world, and all with a singleness of aim which was profit. Settlements there were none, for civilization ruins both the savage as a trapper, and the fur trade. Such was the condition of affairs when the Oregon Treaty was signed and a little later the Colony of Vancouver Island established in 1849.

Chapter I.

Crown Colony of Vancouver Island.

Established 1849.

The Hudson's Bay Company held all the territories west of Hudson's Bay by the license of 1821 when it was formally united with the North West Company of Montreal. This license was renewed in 1838 for a period of 21 years. Various trading posts had been established at strategic points in New Caledonia and Oregon where the fur trade was carried on with the Indians, and where possible, the adjoining arable lands were cultivated and dairy farms established. The products of such were used to feed the employees and to furnish supplies to the Indians who traded their valuable furs ^{for} ~~to~~ them.

The most important post west of the Rockies was Fort Vancouver, "On the north bank of the Columbia some seven miles above the mouth of the Willamette and a few miles below the point named by Lieutenant Broughton in 1792. The old fort was built in 1825 and in 1830 it was pulled down and a new one was erected about a mile west of the original building. The place is now a United States military post, commonly known as Vancouver Barracks." (1)

The importance of the Fort can be judged from the Report of Naval Agent, W. A. Slocum to the Secretary of State of the United States, dated March 26, 1837. "Dr. McLoughlin had established a large farm which under his able administration produced quantities

of grain, vegetables, butter and cheese. Afterwards it was stocked with cattle, horses, sheep, goats and swine. In 1836 the farm consisted of three thousand (3000) acres, fenced into fields such as would have graced an estate of old England with dairies and cottages for the herdsmen and shepherds. In the same year there were harvested eight thousand (8000) bushels of Wheat, fifty-five hundred (5500) bushels of Barley, six thousand (6000) bushels of Oats, nine thousand (9000) bushels of Peas, fourteen thousand (14,000) bushels of Potatoes, besides large quantities of roots, pumpkins and other vegetables. For many years the London value of the yearly gathering of furs in the territory varied from five hundred thousand to one million dollars." (1)

Important commercially as it was, Fort Vancouver was not destined to long remain the chief trading centre of the Hudson's Bay Company, for the Oregon Boundary question was unsettled and was at this time a bone of contention between the United States and Great Britain. Settlers from various parts of the United States were taking up lands in Oregon and the Company foresaw that the 49th parallel of latitude would in the very near future become the established international boundary, and it was obvious that a new centre must be established. At first the Company considered the advisability of selecting Fort Langley which had been established in 1827, but this post was too far from the Coast. In 1842 the governor of the Company, Sir George Simpson, decided

to select a new site and early in the year James Douglas left Fort Vancouver on the schooner Cadboro for Nisqually. After examining and exploring every available spot on the Southern end of Vancouver Island, the site was selected at Camosack or Camosun. In 1845 this name was changed to Fort Albert and in 1846 it became Fort Victoria.

On March 1st, 1843, Douglas left Fort Vancouver with fifteen men and on March 15th, work began on the selected site. This was the beginning of the Capital City of the Coast Province. Following their custom, the Company lost no time in establishing a farm for the production of such food products as wheat, oats, potatoes, vegetables and dairy products. Trade was promoted with the natives and Victoria became the central trading post of the Hudson's Bay Company, west of the Rockies. Thus it remained until after the Oregon Treaty in 1846.

No sooner was the Oregon Treaty signed than Sir John H. Pelly, Governor of the Company, began negotiations with the Secretary of State for the Colonies, Earl Grey, for the acquisition of Vancouver Island, as ^{an} out-and-out possession of the Company. The arguments he used were to the effect that to prevent a repetition of the Oregon affair and the ultimate loss of this valuable island to the Crown, some means should be promptly employed to settle the Island with people from the British Isles. "After many conferences, proposals and counter-proposals, it was at last decided to grant Vancouver Island to the Hudson's Bay

Company, and by the Royal Proclamation of January 13th, 1849, the Island was ceded to that Corporation." (1)

The principal terms of the Royal Grant are herein produced verbatim.

"Whereas it would conduce greatly to the maintenance of peace, justice and good order, and the advancement of colonization and the promotion and encouragement of trade and commerce in, and also the protection and welfare of the native Indians residing within that portion of Our territories in North America, called Vancouver's Island, if such Island were colonized by settlers from the British dominions, and if the property in the land of such island were vested for the purpose of such colonization in the said Governor and Company of Adventurers of England trading into Hudson's Bay; but nevertheless, upon condition that the said Governor and Company should form on the said island a settlement or settlements, as hereinafter mentioned, for the purpose of colonizing the said island, and also should defray the entire expense of any civil and military establishments which may be required for the protection and government of such settlement or settlements (except, nevertheless, during the time of hostilities between Great Britain and any foreign European or American power):

"And further We do, by these presents, for Us, Our heirs and successors, make, create and constitute the said Governor and Company for the time being, and their successors, the true
(1) - British Columbia, Vol. 1. Howay & Scholefield.

and absolute lords and proprietors of the same territories, limits and places, and of all the other premises (saving always the faith, allegiance and sovereign dominion due to Us, Our heirs and successors for the same); to have, hold, and possess and enjoy the said territory, limits and places, and all and singular other the premises hereby granted as aforesaid, with their and every of their rights, members, royalties and appurtenances whatsoever to them, the said Governor and Company, and their successors for ever, to be holden of Us, Our heirs and successors, in free and common soccage, at the yearly rent of Seven shillings, payable to Us, and Our successors for ever, on the First day of January in every year:

"Provided always, and We declare, that this present grant is made to the intent that the said Governor and Company shall establish upon the said island a settlement or settlement of resident colonists, emigrants from Our United Kingdom of Great Britain and Ireland, or from other Our dominions and shall dispose of the land as may be necessary for the purposes of colonization; and to the intent that the said Company shall, with a view to the aforesaid purposes, dispose of all lands hereby granted to them at a reasonable price, except so much thereof as may be required for public purposes; and that all moneys which shall be received by the said Company for the purchase of such land, and also from all payments which may be made to them for or in respect of the coal or other minerals to be obtained in the said island, or the right

of searching for and getting the same, shall (after deduction of such sums by way of profits as shall not exceed a deduction of 10 per cent. from the gross amount received by the said Company from the sale of such land, and in respect of such coal or other minerals as aforesaid) be applied towards the colonization and improvement of the island; and that the Company shall reserve for the use of Us, Our heirs and successors, all such land as may be required for the formation of naval establishments, We Our heirs and successors, paying a reasonable price for the same; and the said Company shall, once in every two years at the least, certify under the seal of the said Governor and Company, to one of Our Principal Secretaries of State, what colonists shall have been from time to time settled in the said island, and what land shall be disposed of as aforesaid:

"And We further declare, that this present grant is made upon this condition, that if the said Governor and Company shall not, within the term of five years from the date of these presents, have established upon the said island a settlement of resident colonists, emigrants from the United Kingdom of Great Britain and Ireland, or from other Our Dominions; and it shall at any time after the expiration of such term of five years, be certified to Us, Our heirs and successors, to inquire into the condition of such island, that such settlement has not been established according to the intent of this Our grant, or that the provisions hereinbefore mentioned respecting the disposal of lands and minerals, have not been respectively fulfilled, it shall be lawful

for Us, Our heirs and successors, to revoke this present grant, and to enter upon and resume the said island and premises hereby granted, without prejudice nevertheless, to such dispositions as may have been made in the meantime by the said Governor and Company of any land in the said island for the actual purpose of colonization and settlement, and as shall have been certified as aforesaid to one of Our Principal Secretaries of State:

"And We hereby declare, that this present grant is and shall be deemed and taken to be made upon this further condition, that We, Our heirs and successors, shall have, and We accordingly reserve unto Us and them, full power, at the expiration of the said Governor and Company's grant or licence of or for the exclusive privilege of trading with the Indians, to re-purchase and take of or from the said Governor and Company the said Vancouver's Island and premises hereby granted, in consideration of payment being made by Us, Our heirs and successors, to the said Governor and Company, of the sum or sums of money theretofore laid out and expended by them in and upon the said islands and premises, and of the value of their establishments, property and effects then being thereon."

As has been hinted, the Grant was not made without considerable opposition on the part of certain members of the Home Government. It was pointed out that the Hudson's Bay Company was a commercial concern, which traded with the natives for profit and it was at

best but a huge monopoly, and it was decidedly to their interest financially, that the country remain a wilderness. To settle the districts with white agriculturalists would be fatal to the natives and fur bearing animals alike, and it was to these that the Company looked for their successful trade. "Mr. Gladstone spoke against the measure, believing the corporation unqualified for the undertaking. Likewise the public journals, as a rule, were against investing the company with these privileges and the Chamber of Commerce of Manchester sent up a remonstrance against the proposition." (1). It was further argued that the Company could not point to a single settlement (with the exception of the one at Red River, and this had been a pronounced failure) and that all their affairs had been conducted "in a spirit of absolutism wholly inconsistent with Imperial concerns, which throughout the vast British Empire were everywhere open and public." (2)

On the other hand it was maintained that the Company was well qualified to establish a settlement, if it so desired. Their officers knew the country well and were best capable of handling the natives. They had the money, the organization and the experience. To establish a strong British colony on Vancouver Island would be the best way of holding the vast western possessions as an asset of the Crown and who could better do it than this great corporation. It was pointed out that the Act provided ample safeguards in that the Company was willing to vest the appointment of governor in the

(1) - Bancroft Vol. XXXII.

(2) - Bancroft Vol. XXXII.

Crown and that they would retain but ten percent of the proceeds of the land sales for their expenses, the balance to be devoted to building roads and providing the machinery of government. It was agreed that, at the end of five years the Crown had the option of taking over the Colony if the Company had failed in promoting settlements, and this was an additional guarantee of their good faith. As stated above, the Grant was made January 13, 1849, and the Island of Vancouver passed into the hands of the Hudson's Bay Company.

CHAPTER 2.

Governor Blanshard's Regime.

March 10, 1850 - Sept. 1, 1851.

In the forty-third year of George III's reign, the British parliament passed an act extending the jurisdiction of the courts of the provinces of Canada over all the British possessions in the West so that all crimes committed in these territories were under the jurisdiction of the Canadian Courts. This Act was repeated in "An act to provide for the administration of justice in Vancouver's Island," which was passed July 28, 1849, as follows:

Whereas an Act was passed in the Forty-third Year of King George the Third, intituled "An Act for extending the Jurisdiction of the Courts of Justice in the Provinces of Lower and Upper Canada to the Trial and Punishment of Persons guilty of Crimes and Offences within certain Parts of North America adjoining to the said Provinces. And whereas by an Act passed in the Second Year of King George the Fourth, intituled "An Act for regulating the Fur Trade, and establishing Criminal and Civil Jurisdiction within certain Parts of North America," it was enacted, that from and after passing of that Act the Courts of Judicature then existing or which might be there after established in the Province of Upper Canada should have the same Civil Jurisdiction, Power and Authority, as well in the Cognizance of Suits as in the issuing Process, mesne and final, and in all other respects whatsoever, within the Indian Territories and other Parts of America not within the Limits of either of the Provinces of Lower or Upper Canada or of any Civil Government of the United States, as the said Courts had or were invested with

within the Limits of the said Provinces of Lower or Upper Canada respectively, and that all and every Contract, Agreement, Debt, Liability and Demand whatsoever made, entered into, incurred, or arising within the said Indian Territories and other Parts of America, and all and every Wrong and Injury to the Person or to Property, real or personal, committed or done within the same, should be and be deemed to be of the same nature, and be cognizable by the same Courts, Magistrates, or Justices of the Peace, and be tried in the same Manner, and subject to the same Consequences in all respects, as if the same had been made, entered into, incurred, arisen, committed, or done within the said Province of Upper Canada, and in the same Act are contained Provisions for giving Force, Authority, and Effect within the said Indian Territories and other Parts of America to the Process and Acts of the said Courts of Upper Canada; and it was thereby also enacted, that it should be lawful for His Majesty, if he should deem it convenient so to do, to issue a Commission or Commissions to any Person or Persons to be and act as Justices of the Peace within such Parts of America as aforesaid, as well within any Territories theretofore granted to the Company of Adventures of England trading to Hudson's Bay as within the Indian Territories of such other parts of America as aforesaid; and it was further enacted, that it should be lawful for His Majesty from Time to Time by any Commission under the

Great seal to authorize and empower any such persons as appointed Justices of the Peace as aforesaid to sit and hold Courts of Record for the Trial of Criminal Offences and Misdemeanours, and also of Civil Causes, and it should be lawful for His Majesty to order, direct, and authorize the Appointment of proper Officers to act in aid of such Courts and Justices within the Jurisdiction assigned to such Courts and Justices in any such Commission, provided that such Courts should be constituted as to the Number of Justices to preside therein, and as to such Places within the said Territories of the said Company, or any Indian Territories or other Parts of North America, and the Times and Manner of holding the same, as His Majesty should from Time to Time order and direct, but should not try any Offender upon any Charge or Indictment for any Felony made the Subject of Capital Punishment, or for any Offences or Passing Sentence affecting the Life of any Offender, or adjudge or cause any Offender to suffer Capital Punishment or Transportation, or take cognizance of or try any Civil Action or Suit in which the Cause of such Suit or Action should exceed in Value the Amount or Sum of Two Hundred Pounds, and in every Case of any Offence subjecting the Person committing the same to Capital Punishment or Transportation, the Court, or any Judge of any such Court, or any Justice or Justices of the Peace before whom any such Offender should be brought, should commit such Offender to safe Custody, and cause such Offender to be sent in such Custody for trial in the Court of the Province of Upper Canada; And whereas for the purpose of the Colonization of that Part of the said Indian Territories called Vancouver's Island, it is expedient that further

Provision should be made for the Administration of Justice therein; Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Proclamation of this Act in Vancouver's Island the said Act of the Forty-third year of King George the Third, and the said recited Provisions of the Second Year of King George the Fourth, and the Provisions contained in such Act for giving Force, Authority, and Effect within the said Indian Territories and other Parts of America to the Process and Acts of the said Courts of Upper Canada, shall cease to have Force in and to be applicable to Vancouver's Island aforesaid, and it shall be lawful for Her Majesty from Time to Time (and as well before as after such Proclamation) to make Provision for the Administration of Justice in the said Island, and for that Purpose to constitute such Court or Courts of Record and other Courts, with such Jurisdiction in Matters Civil and Criminal, and such equitable and ecclesiastical Jurisdiction, subject to such Limitations and Restrictions, and to appoint and remove or provide for the Appointment and Removal of such Judges, Justices, and such Ministerial and other Officers, for the Administration and Execution of Justice in the said island, as Her Majesty shall think fit and direct.

2. Provided always, and be it enacted That, when and so soon as a Local Legislature from Time to Time, by any Law or Ordinance made in the Manner and subject to the Conditions which may be by Law required in respect of Laws or Ordinances made by such Local Legislature, to make such Alterations as to such Legislature may

seem meet in the Constitution or Jurisdiction of the Courts which may be established in the said Island, and to make all such other Provisions as to such Local Legislature may seem meet for and concerning the Administration of Justice in the said Island.

3. Provided always, and be it enacted, That all Judgments given in any Civil Suit in the said Island shall be subject to the Regulations in and subject to which Appeals are now brought from the Civil Courts of Canada, and to such further or other Regulations as Her Majesty with the Advice of Her Privy Council shall from Time to Time appoint.

4. And be it enacted, That all such Islands adjacent to Vancouver's Island or to the Western Coast of North America, and forming part of the Dominions of Her Majesty, as are to the Southward of the Fifty-second Degree of North latitude, shall be deemed Part of Vancouver's Island for the Purposes of this Act.

5. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

Pursuant to the terms of the Grant, the Home Government lost no time in naming a Governor and Council to carry out the administration of Justice in the new Colony. The Governor of the Company, Sir John Pelly, took advantage of the opportunity to submit the names of available men and the following is the list he suggested: For Governor, "Mr. James Douglas, a Chief Factor of the Company, and a member of the board at Fort Vancouver for managing the Company's affairs of the country westward of the

Rocky Mountains." For Commissioners of the Peace: Rev. Robert Staines, chaplain at Fort Victoria, Peter Ogden, joint manager, west of the Rockies, James Douglas, a distinguished member of the Company, John Work, another Chief Factor, Archibald McKinley, later of the Indian Reserves Commission, Dr. Tolmie, manager of the Puget Sound Agricultural Company, Alexander Anderson, James M. Yale, John Todd, Dugald McTavish, Chief Factors, and Richard Grant, Donald Mason, George T. Allan and John Kennedy, all well-known Hudson's Bay Company's employees west of the mountains. The Commissioners were all appointed as suggested but for some unknown reason James Douglas was not made the first Governor. To Mr. Richard Blanshard belongs this honor.

The new Governor reached Victoria in H. M. S. Driver on March 10, 1850, and the next day he landed, and read his Commission in the presence of the employees of the Hudson's Bay Company, and the Captain of the "Driver". The presence of the new Governor meant practically nothing to the people of his realm. They were Hudson's Bay employees and knew no authority but that of their employers. There were not more than thirty families, all Hudson's Bay employees, and no residence had been prepared. The Governor returned to the "Driver", and during her stay, made a trip to Fort Rupert and Nanaimo, two small settlements which had been formed for the purpose of working the Coal Mines. After the departure of the "Driver", the Governor was given residence in the Company's Fort.

Governor Blanshard's position was not an enviable one. He was Her Majesty's representative sent across two oceans to govern a colony with no one to govern. Before leaving England, he had

been promised a grant of one thousand acres of land, but his promise had been made by the London Governor, and when he demanded his estate, he was informed by Douglas that the land was to be merely for the use of the Governor, and was not a gift in fee simple. No remuneration was attached to the office and the expense of living was very high. The Company did not want the Governor and they soon made it quite plain to him. He had expected that settlers would flock to the Colony but he was disappointed. The Company charged one pound (£1) per acre for the land, and the price was exorbitant. They reserved all the arable land in the vicinity of the Fort for their own use. The settlers did not come and there were no land sales. He found no public affairs to administer, no legislature, no seat of government, no judiciary. An extract from his first dispatch to Earl Grey, dated April 8, 1850, gives an idea of his difficulties.

"As no settlers have at present arrived, I have considered that it is unnecessary as yet to nominate a council, as my instructions direct, for a council chosen at present must be composed entirely of the officers of the Hudson's Bay Company, few, if any, of whom possess the qualification of landed property which is required to vote for Members of Assembly, and they would moreover be completely under the control of their superior officers; but as no immediate arrival of settlers is likely to take place and my instructions direct me to form a Council on my arrival, I should wish for a further direction on this point before I proceed to its formation."

On the 25th of June, 1849, a Bill was passed by the Home Government for the purpose of establishing courts of judicature on the island.

"In supporting in the house of lords the bill for the administration of justice on Vancouver Island, Earl Grey remarked that it was the object of the imperial government to reserve judicial power to the local legislature of the Island, with right of appeal from the courts so constituted to the privy council. No political power was given by the grant to the Hudson's Bay Company. The governor might be selected by the company, but their choice must be approved by the crown. It was not proposed to enter immediately upon legislation and taxation, but the governor might summon a legislative council whenever there were sufficient colonists to make it advisable. As an excuse for the grant in the first instance, he said that it was necessary that the rights of the crown should be defined at once, that regular authority should be planted there to prevent irregular occupation, and, if the government were to do all this, it would prove expensive. The result was that quite a little economical delay happened before English gold was spilt for Vancouver Island government or justice.

Justice under English law was first administered on Vancouver Island, then, by Richard Blanshard, the first governor. As there were no colonial funds, no means of paying a recorder or other administrator of justice, the Governor was obliged to act in that capacity." (1)

One or two official^s acts of the Governor show us that he was endeavoring to maintain justice as a representative of the Crown.

At the Collieries at Beaver Harbor, (Fort Rupert) there was some lawlessness and Blanchard appointed Dr. Helmcken magistrate. The new magistrate had lately arrived from England and the Governor thought that he would be less unbiased than any other employee of the Company. He seems to have repented of his choice and unhesitatingly accepted Dr. Helmcken's resignation some few months later. From what occurred at Fort Rupert while Dr. Helmcken was magistrate, goes to show us how indifferently the English criminal law was enforced on the Island at this time. Two employees of the Company deserted and the foreman induced the natives to find them. The two men were found and murdered by the savages, and instead of inflicting punishment on the one who really perpetrated the crime, the Indian villages were burned and several of the poor savages ruthlessly murdered much to the Governor's chagrin.

Another instance occurred which gives us some idea of the state of affairs at the time. It was the custom of the Company, and permitted under the Navigation Act, to permit the Chief Factor to sign the registers of out-going vessels. On one occasion it seems some irregularity occurred and the Captain of the Schooner "Cadboro" reported to the Governor. He was commanded to bring the register to him in the future, but shortly afterwards, Douglas disregarded the order. The Governor ordered Douglas to appear before him, which he did, but no punishment seems to have been inflicted and the matter was never finally settled, since Blanshard left the Island shortly afterwards.

The position of Blanshard as we have noticed, was unbearable.

He was a governor without subjects to govern. He was bearing his own expenses and was not receiving any remuneration. He had no magistrates or Council and not even a constable. The monopoly did not want him and they ignored his authority. On the pretext of ill-health he asked to be recalled and he received the welcome message to this effect in August. "As he deemed it necessary to leave the little authority he had swayed in official hands, on the 27th of August, Blanshard nominated a provisional council, subject to the confirmation of the Imperial Government, consisting of three members, James Douglas, James Cooper and John Todd, to whom he administered the usual oath. Then in the ship "Daphne", on the 1st of September 1851, he turned his back forever on what had proved to him a most "unfortunate isle". (1)

When it was learned that Blanshard had resigned, the few settlers and even some of the Company's employees petitioned that the Chief Factor was not the one to become governor. They argued that impartial decisions could not be expected from one who held the dual office and that for the good of the Colony, a council should be appointed to govern and thus give them some security from the powerful influence of the monopoly, but in vain. James Douglas was appointed Governor at a salary of Eight Hundred (£800) Pounds in addition to his income as Chief Factor, and he held the two positions until 1859.

(1) - Bancroft Vol. XXXII.

CHAPTER 3.

James Douglas, Governor and Chief Factor.

1851 - 1858.

The Hudson's Bay Company now occupied for a few years an impregnable position in the West. They had the exclusive right of the trade in the entire country from James Bay to the coast. They had the same right in Vancouver Island, and in addition held it under the Grant of 1849. The Chief Factor, James Douglas, was also governor, lawmaker, and practically absolute ruler there.

That the few settlers were dissatisfied that their governor should hold the dual position appears in their petition to the home government in 1853, asking that the grant should not be renewed in 1854; but the Company were too strongly entrenched and in 1854 the Grant was renewed for another five years. In 1859, however, the re-conveyance to the Crown was accomplished.

Constitutionally the history of the island colony between 1851 and 1856 is decidedly barren. The governor and his council made laws and traded with the Indians. In 1851, Roderick Fin^{la}lyson was added to the council and in 1854, John Work received a similar appointment.

Shortly after the renewal of the Grant in 1854, the English Government began to debate whether it was in their power to give to a governor and council, jurisdiction and law-making powers to any body of men to make laws for a colony of free Englishmen. When the Grant was made in 1849, the governor was directed to summon an assembly of freeholders, whose property qualifications consisted

in owning twenty acres of land, and a council whose appointments were to be made by him and sanctioned by the Crown. He was also permitted to govern the colony for a time with the aid of the council alone, in case there were not a sufficient number of qualified voters and property holders to form an assembly. Several years had now elapsed and the Colonial Secretary determined that the second body must be elected at once. According to the English constitution, the acts of the governors and councils were deemed illegal and no time must be lost now in making them legal by the ratification of the same by the elective assembly. It was indeed some surprise to Governor Douglas who was quite an absolute monarch up to this time in his little kingdom, when on February 28th, 1856, he received from Hon. Henry Labouchere the following dispatch: "Considering the small number of established colonists, you thought it advisable to act on the power apparently given to yourself to conduct the affairs of the Island with the advice of your council only, and to pass certain laws which you considered most required by the exigencies of the time. In doing so, you proceeded on a fair understanding of the authority conveyed to you, and Her Majesty's Government are fully satisfied with the course which you took.

"Nevertheless, it has been doubted by authorities conversant in the principles of colonial law, whether the Crown can legally convey authority to make laws in a settlement founded by Englishmen, even for a temporary and special purpose, to any legislature not elected wholly or in part, by the settlers themselves. If this be the case, the clause in your Commission on which you relied would

appear to be unwarranted and invalid.

"It appears to Her Majesty's Government, therefore, that steps should be taken at once for the establishment of the only legislature authorized by the present constitution of the Island. I have, accordingly, to instruct you to call together an Assembly in the terms of your Commission and Instructions.

"For this purpose it will be within your power, as provided by the ninth clause of your Instructions, to fix the number of representatives, and, if you should consider it essential, to divide the Colony into districts, and to establish separate places, although with so small a number of settlers you may find this inexpedient.

"I leave it to your local knowledge and discretion, with the advice of your Council, to suggest to the Assembly, when thus summoned, to pass such ^{sure} ~~meanings~~ as you may yourself deem most required, and in particular, such as may be necessary, in order to leave no doubt of the validity of proceedings already taken without the authority of Assembly.

"But it appears to me, that in a community containing so very limited a number of inhabitants, the maintenance of a constitution on the model of those considerable colonies, with a House of Representatives and a Council, may be inexpedient; and that a smaller and more select body will, for the present, and probably for some years to come, perform in a satisfactory manner the functions really required in the present stage of progress of the Island.

"Such a body, however, can be constituted only by enactment of the Legislature, authorized by the Commission, that is to say, of the Assembly and Council, together with yourself. It would be no unusual circumstance for a legislature thus constituted to surrender its powers into the hands of a single chamber. It has been successfully done in some of the smaller West India Islands.

"I leave it to yourself to consider, with the advice of the local authorities, the members and proper qualifications of the members of such a single Council; but in the event of your determining to introduce the elective principle into it, a certain proportion, not less than one third, should be nominated by the Crown. The power of assenting to, or negativing or suspending, for the assent of the Crown, the measures passed by such a Council, should be distinctly reserved to yourself. And it is very essential that a constitutional law of this description should contain a proviso, reserving the initiation of all money votes to the local government."

"An additional reason in favour of the course which I now prescribe (namely that of calling together the assembly, and then, if the legislature so created think proper, establishing a similar form of government) is to be found in the circumstance that the relations of the Hudson's Bay Company with the Crown must necessarily undergo revision before or in the year 1859. The position and future government of Vancouver's Island will then unavoidably pass under review, and if any difficulty should be experienced in carrying

into execution any present instruction, a convenient opportunity will be afforded for reconsidering them."

"I am aware that Her Majesty's Government are imposing on you a task of some difficulty as well as responsibility in giving you these instructions, especially as they have to be carried into execution with so small an amount of assistance as the present circumstance of your settlement afford. But I have every reason to rely on your abilities and public spirit; and you may, on your part, rely on the continuance of such assistance and support as Her Majesty's Government can render you, and on their making full allowance for the peculiarities of your position."

Governor Douglas laid the dispatch before his Council without delay and the matter was duly considered. From his reply to the Colonial Secretary, it is evident that he was not a little worried over the new turn things had taken and he laid emphasis on the fact that the number of qualified voters was even yet ridiculously low. However, he and his council had no other alternative but to obey the royal commands and they lost no time in taking steps to carry out the instructions. The property qualifications for voters were fixed at twenty acres of freehold, and for members of the assembly, three hundred acres. Landlords could vote by proxy through their agents and bailiffs. The number of voters was but 40 in the whole colony. The electoral divisions were four, as follows:

Victoria, to have three members; Esquimalt and Metchosin, two; Nanaimo, one; and Sooke, one. The elections followed and the first Legislative Council convened on the 12th of August, 1856, and after

listening to the governor's elaborate address and adjusting some property qualifications of the members, they ratified the laws heretofore made by the governor and council and set to work to provide a revenue to meet the necessary expenses of the government.

It will be remembered that ten per cent. of the land sales was allowed the company, and the other ninety per cent. was to be expended by the company in building roads, and making other necessary public improvements, and the Legislative Council was informed by the Governor that they could control only such revenue as they could raise by certain taxation, direct or indirect, as they might impose. Free Trade was the policy of the Home Government and it was the policy of the Island Colony as ordered by that body. When direct taxation was suggested, the colonists strongly objected, so the only means of raising a revenue was by imposing licenses on the hotels and wine vendors. The revenue from this source provided in 1853, 220 pounds, in 1854, 460 pounds, and in 1855, 340 pounds.

Turning to the judiciary, we repeat that during his regime, Governor Blanshard had acted as judge and general adjudicator for the petty misunderstandings of the colonists and the differences arising between the company and its employees. This policy was continued by Douglas until 1854 when David Cameron was appointed Judge of the Supreme Court of Civil Justice of Vancouver Island. As the new Judge was not a lawyer and was merely a clerk in the employ of the company, his appointment was strenuously opposed by a large number of the colonists. Being a brother-in-law of the Governor, the latter overruled all opposing arguments and Mr. Cameron

held the office, and when the Supreme Court of Civil Justice was established in 1856, he was appointed Chief Justice by Royal Warrant. From 1853 until 1860, the salary of the Chief Justice was £100 a year when the amount was increased by the Legislature to £800. The story of the growth of the constitution of the colony up to 1858 has now been told. British Columbia, as a geographical expression did not exist and the mainland was as yet Caledonia, a vast unexplored and an indefinitely defined wilderness where the Hudson's Bay Company held a monopoly in the fur-trade and where the courts of Canada had jurisdiction regarding criminal and civil cases. Vancouver Island had existed as a colony since 1849 with its governor and councils and judge, but it was at best a mere hamlet and trading post for the great company. Events now turn the eyes of the world upon the sleepy hamlet and great political and constitutional changes come to the island colony as well as to the vast unexplored mainland.

CHAPTER 4.

COLONY OF BRITISH COLUMBIA.

1858---1864.

Gold was discovered in the Queen Charlotte Islands in 1850, and during the next two years exaggerated reports were circulated in the American cities, which led to various prospecting expeditions from those cities at the South. Governor Douglas, ever with an eye to monopoly, viewed with disfavor and anxiety these encroachments, and asked permission of the Secretary of State for the Colonies to exclude the foreigners. His object was plain. In his dispatches he claimed that this stand was not for political reasons, but for the purpose of conserving the trade to Victoria--which, of course, meant the Hudson's Bay Company. The Secretary of State informed the Governor that it would be unwise as well as impossible, to prohibit American vessels from visiting the Islands, but that he could take a middle course, and impose licenses on those wishing to prospect for gold and carry on mining. In March 1853, he issued the following proclamation:-

PROCLAMATION

"By his Excellency, James Douglas, Esq., Governor of Vancouver's Island, and Lieutenant-Governor of Queen Charlotte's Island and its Dependencies, etc.

"WHEREAS, by law, all mines of gold, and all gold in its natural place of deposit within the Colony of Queen Charlotte's Island, whether on the lands of the Queen or of any of Her Majesty's subjects, belong to the Crown:

"And, whereas, information has been received by the Government that gold exists upon and in the soil of the colony, and that certain persons have commenced, or are about to commence, searching and digging for the same for their own use, without leave or other authority from Her Majesty: Now I, James Douglas, Esq., the Governor aforesaid, on behalf of Her Majesty, do hereby publicly notify and declare that all persons who shall take from any lands within the said colony any gold, metal, or ore containing gold, or who shall dig for and disturb the soil in search of such gold, metal, or ore, without having been duly authorized in that behalf by Her Majesty's Colonial Government, will be prosecuted both criminally and civilly, as the law allows. And I further notify and declare, that such regulations as may be found expedient will be prepared and published, setting forth the terms on which licenses will be issued for this purpose, on the payment of a reasonable fee.

"Given under my hand and seal at the Government office, Victoria, this 26th day of March, in the year of Our Lord One Thousand Eight Hundred and Fifty-three, and in the seventeenth year of Her Majesty's reign.

"By his Excellency's command,

JAMES DOUGLAS.

"Secretary." (1)

This was followed a few days later by the following regulations:

(1) - Queen Charlotte Island Papers.

"Government House, Victoria, April 7, 1853.

"With reference to the proclamation issued on March 26th, declaring the rights of the Crown in respect to gold found in its natural state of deposit within the Islands of Queen Charlotte, his Excellency the Lieutenant-Governor has been pleased to establish the following provisional regulations, under which licenses may be obtained to dig, search for, and remove the same:

1. From and after the first day of April no person will be permitted to dig, search for, or remove gold on or from any lands, public or private, without first taking out and paying for a license in the form annexed.

2. For the present, and pending further proof of the extent and productiveness of the gold deposits, the license fee has been fixed at 10s. per month, to be paid in advance: but it is to be understood that the rate is subject to future adjustment as circumstances may render expedient.

3. The licenses can be obtained at Victoria, Vancouver Island, until a commissioner is appointed by his Excellency the Lieutenant-Governor to carry those regulations into effect, and who will be authorized to receive the fee payable thereon.

4. Rules adjusting the extent and position of land to be covered by each license, and for the prevention of confusion, and the interference of one license with another, will be regulated by the said commissioner.

"JAMES DOUGLAS.

"By his Excellency's command,

"RICHARD GOLLEDGE."

Gold was not found in paying quantities on the islands, but the Governor had learned that any attempt to monopolize would be frustrated by the home government, and the flurry of 1853 was soon to be lost sight of in the deluge which was to follow.

Gold was discovered on the mainland in 1854 by James Houston, of Langley, near the junction of the Tranquille and Thompson Rivers. Soon hundreds of prospectors were at work and in 1857 the Couteau District was teeming with Americans. The Governor took matters into his own hands and issued proclamations, which were prototypes of the ones given above in connection with Queen Charlotte Islands' excitement. The Governor realized his position and felt undoubtedly that he was acting "ultra vires", as the following will show:-

"My authority for issuing that proclamation, seeing that it refers to certain districts of continental America, which are not, strictly speaking, within the jurisdiction of this Government may, perhaps, be called in question; but I trust that the motives which have influenced me on this occasion and the fact of my being invested with the authority over the premises of the Hudson's Bay Company, and the only authority commissioned by Her Majesty's Government within reach, will plead my excuse. Moreover, should Her Majesty's Government not deem it advisable to enforce the rights of the Crown, as set forth in the proclamation, it may be allowed to fall to the ground and to become a mere dead letter." (1)

Soon the country was swarming with miners, the majority of whom disregarded the license. It was soon seen that the Colonial Secretary held the same views as he had held on a previous occasion. He pointed out to Douglas that the Courts of Upper Canada still has jurisdiction over the mainland, under the Act of 1821, and that "while Her Majesty's Government are determined on preserving the rights, both of government and of commerce, which belong to this country, and while they have it in contemplation to furnish you with such a force as they may be able to detach for your assistance and support in the preservation of law and order, it is no part of their policy to exclude Americans and other foreigners from the gold fields. On the contrary, you are distinctly instructed to oppose no obstacle whatever to their resort thither for the purpose of digging in those fields, so long as they submit themselves, in common with the subjects of Her Majesty, to the recognition of Her authority, and conform to such rules of police as you may have thought proper to establish." (1)

While the Home Government upheld the Governor in his right to issue licenses and to act in the capacity of Her Majesty's representative, he soon found that he could go no further. In June 1858, Mr. Richard Hicks was appointed Revenue Officer in Yale; George Perrier, Justice of the Peace at Hill's Bar, and O. Travaillet, Revenue Officer at Lytton. A little later he issued a proclamation

forbidding the sale of liquor to the Indians, and appointed Robert T. Smith as Justice of the Peace, and W. H. Ladner as Chief Constable, and when later in the year William King was charged with murder of one of the prospectors at Cross Bar, the Governor appointed a commission to try the accused, who was convicted of manslaughter, but who made his escape later from the Victoria goal.

In the meantime "the license of exclusive trade with the Indians, granted in 1821, and renewed in 1838 for a further period of twenty-one years, would expire on May 30, 1859. The company, alive to its interests, began, some three or four years before that time, to enquire what course the Government intended to pursue in reference to a further renewal, urging strongly the necessity for an early decision. At the request of Mr. Labouchere, the Secretary of State for the Colonies, a Select Committee was appointed on February 4, 1857, to consider the state of those British possessions in North America which were under the administration of the Hudson's Bay Company, or over which they possessed a license to trade." (1)

The Parliamentary Committee found:-

1. That it would be advisable to terminate the connection between the Hudson's Bay Company and Vancouver Island as soon as conveniently possible.
2. That extension of the Colony should be made to include the mainland.
3. That all the proclamations, appointments, agreements and mining regulations issued and made by Douglas,

(1) - British Columbia, Vol. 2, Judge Howay.

prior to November 19, 1858, were invalid.

Acting upon these recommendations the Colonial Secretary, Sir E. Bulwer Lytton, introduced into the House of Commons, July 8, 1858, a bill to provide for the government of New Caledonia (named British Columbia by Queen Victoria, July 24, 1858) which is as follows:-

"Whereas divers of Her Majesty's subjects and others have, by the license and consent of Her Majesty, resorted to and settled on certain wild and unoccupied territories on the Northwest Coast of North America, commonly known by the designation of New Caledonia, and from and after the passing of this Act to be named British Columbia, and the Islands adjacent, for mining and other purposes; and it is desirable to make some temporary provision for the Civil Government of such territories, until permanent settlements shall be thereupon established, and the number of colonists increased: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, as follows:-

1. British Columbia shall, for the purposes of this Act, be held to comprise all such territories within the dominions of Her Majesty as are bounded to the South by the frontier of the United States of America, to the East by the main chain of the Rocky Mountains, to the North by Simpson's River and the Finlay branch of

the Peace River, and to the West by the Pacific Ocean, and shall include Queen Charlotte's Island and all the other Islands adjacent to the said territories, except as hereinafter excepted.

2. It shall be lawful for Her Majesty, by any order or orders to be by Her from time to time made, with the advice of Her Privy Council, to make, ordain and establish, and (subject to such conditions or restrictions as to Her shall seem meet) to authorize and empower such officer as She may from time to time appoint as Governor of British Columbia, to make provision for the administration of justice therein, and generally to make, ordain, and establish all such laws, institutions, and ordinances as may be necessary for the peace, order, and good government of Her Majesty's subjects and others therein; provided that all such Orders in Council, and all Laws and Ordinances so to be made as aforesaid, shall be laid before both Houses of Parliament as soon as conveniently may be after the making and enactment thereof respectively.

3. Provided always, that it shall be lawful for Her Majesty, so soon as She may deem it convenient, by any such Order in Council as aforesaid, to constitute or to authorize and empower such officer to constitute a Legislature to make laws for the peace, order, and good government of British Columbia, such Legislature to consist of the Governor and a Council, or Council and Assembly, to be composed of such and so many persons, and to be appointed or elected in

such manner and for such periods, and subject to such regulations as to Her Majesty may seem expedient.

4. And whereas an Act was passed in the forty-third year of King George the Third, intituled "An Act for extending the jurisdiction of the Courts of Justice in the Provinces of Lower and Upper Canada, to the trial and punishment of persons guilty of crimes and offences within the certain parts of North America adjoining to the said Provinces:" And whereas by an Act passed in the second year of King George the Fourth, intituled "An Act for regulating the fur trade and establishing a Criminal and Civil Jurisdiction within certain parts of North America," it was enacted that from and after the passing of that Act the Courts of Judicature then existing or which might be thereafter established in the Province of Upper Canada should have the same civil jurisdiction, power, and authority within the Indian territories and other parts of America, not within the limits of either of the Provinces of Lower or Upper Canada, or of any Civil Government of the United States, as the said Courts had or were invested with within the limits of the said Provinces of Lower or Upper Canada respectively, and that every contract, agreement, debt, liability, and demand made, entered into, incurred, or arising within the said Indian territories and other parts of America, and every wrong and injury to the person or to property committed or done within the same, should be and be deemed to be of the same nature, and be cognizable

and be tried in the same manner, and subject to the same consequences in all respects, as if the same had been made, entered into, incurred, arisen, committed, or done within the said Province of Upper Canada; and in the same Act are contained provisions for giving force, authority, and effect within the said Indian territories and other parts of America to the process and acts of the said Courts of Upper Canada; and it was thereby also enacted, that it should be lawful for His Majesty, if He should deem it convenient so to do, to issue a commission or commissions to any person or persons to be and act as Justice of the Peace within such parts of America as aforesaid, as well within any territories theretofore granted to the Company of Adventurers of England trading to Hudson's Bay, as within the Indian territories of such other parts of America as aforesaid; and it was further enacted that it should be lawful for His Majesty from time to time by any commission under the great seal to authorize and empower any such persons so appointed Justices of the Peace as aforesaid, to sit and hold Courts of Record for the trial of criminal offences and misdemeanours, and also of civil causes, and it should be lawful for His Majesty to order, direct, and authorize the appointment of proper officers to act in aid of such Courts and Justices within the jurisdiction assigned to such Courts and Justices in any such commission, provided that such Courts should not try any offender upon any charge or indictment

for any felony made the subject of capital punishment, or for any offence or passing sentence affecting the life of any offender, or adjudge or cause any offender to suffer capital punishment or transportation or take cognizance of or try any civil action or suit in which the cause of such suit or action should exceed in value the amount or sum of two hundred pounds, and in every case of any offence subjecting the person committing the same to capital punishment or transportation, the Court, or any Judge of any such Court, or any Justice or Justices of the Peace before whom any such offender should be brought, should commit such offender to safe custody, and cause such offender to be sent in such custody for trial in the Court of the Province of Upper Canada.

From and after the proclamation of this Act in British Columbia the said Act of the forty-third year of King George the Third, and the said recited provisions of the said Act of the second year of King George the Fourth, and the provisions contained in such Act for giving force, authority, and effect within the Indian territories and other parts of America to the process and acts of the said Courts of Upper Canada, shall cease to have force in and to be applicable to British Columbia.

5. Provided always, that all judgments given in any civil suit in British Columbia shall be subject to appeal to Her Majesty in Council, in the manner and subject to the regulations in and subject to which appeals are now brought from the Civil Courts of

Canada, and to such further or other regulations as Her Majesty, with the advice of Her Privy Council shall from time to time appoint.

6. No part of the Colony of Vancouver Island, as at present established, shall be comprised within British Columbia for the purpose of this Act; but it shall be lawful for Her Majesty, Her heirs and successors, on receiving at any time during the continuance of this Act, a joint Address from the two Houses of the Legislature of Vancouver Island, praying for the Incorporation of that Island with British Columbia by order to be made as aforesaid, with the advice of her Privy Council, to annex the said Island to British Columbia, subject to such conditions and regulations as to Her Majesty shall seem expedient; and thereupon and from the date of the publication of such order in the said Island, or such other date as may be fixed in such order, the provisions of this Act shall be held to apply to Vancouver Island.

7. In the construction of this Act the term "Governor" shall mean the person for the time being lawfully administering the Government of British Columbia.

8. This Act shall continue in force until the thirty-first day of December, One thousand eight hundred and sixty-two, and thenceforth to the end of the next Session of Parliament: Provided always, that the expiration of this Act shall not effect the bound-

aries hereby defined, or the right of appeal hereby given, or any act done or right or title acquired under or by virtue of this Act, nor shall the expiration of this Act revive the Acts or parts of Acts hereby repealed."

Before the Act was passed Sir E. B. Lytton had informed Douglas that he intended to appoint him Governor providing he severed his connection with the Hudson's Bay Company. This he did and he thus became the first Governor of the Colony of British Columbia. The Secretary of State for the Colonies informed the new Governor that he did not favor the tax on mining and that it should be replaced by an export duty on gold and suggested another method of raising a revenue, by placing duties on intoxicating liquors. He emphasized the fact that there must be no land jobbing, or any favors shown to the Company's employees, and above all that the Colony must be self-supporting. In order that matters might be started, without any prejudice, appointments were made as far as possible from the Old Land. Matthew B. Begbie was appointed Judge, W. O. Hamley, Collector of Customs, Charles Brew, Inspector of Police, and Colonel Moody, commanding officer of the Royal Engineers and Chief Commissioner of Land and Works. On November 19, 1858, (British Columbia's natal day) Douglas, in the presence of Chief Justice Cameron of Vancouver Island and the officials and Royal Engineers, who had already arrived, read the Proclamation at new Fort Langley. At the same time he confirmed all laws made

by him previous to this date and declared all the civil and criminal laws of England as they then existed, and so far as not from local circumstances inapplicable should until altered be in full force in the colony." (1)

British Columbia was thus started on its way with a Governor, Judge, Justices of the Peace, and other officers, and a well-defined boundary and constitution.

(1) - Victoria Gazette - Nov. 25, 1858.

CHAPTER 5.

Colony of British Columbia (continued)

1858 - 1864.

A Capital for the Colony must be chosen. At first Hope was thought to be the proper site but in September, 1858, Fort Langley was chosen. The site was surveyed and a sale of lots made, one selling as high as \$725.00. Colonel Moody was not favorable to this location and after the settlement of the "Ned McGowan War" which now followed, he induced the Governor to consent to another place on the Fraser, and this was the beginning of the City of New Westminster, so named by Queen Victoria in May 1859. On February 14, 1859, the Governor's proclamation announced the new site and the City was surveyed and clearing began. In July, 1860, New Westminster was proclaimed a municipality and thus holds the honor of being the first municipality of the Province.

In the meantime the prospectors were pushing northward, and gold was discovered in the districts beyond the confines of the present boundary, and with the rush which followed, some provision had to be made to provide law and government. In 1862, the new mining region was formed into the Stickeen Territories by an Order-in-Council with the following boundaries: On the west and south-west, Russian America (Alaska), on the south and south-east, the Colony of British Columbia, on the East, the 125th meridian of west longitude, and on the North, the 62nd parallel of north latitude. The Governor of British Columbia was made administrator of the new territory with power to appoint judges, sheriffs, and other officials, and the law of England existing January 1, 1862,

as far as applicable was declared in force while the Supreme Court of British Columbia was given jurisdiction in civil and criminal matters. The new territory, as a separate colony, existed until July 1863, when an act was passed whereby the territory was included in the Colony of British Columbia. The following is the Act:

WHEREAS it is desirable to amend and continue an Act in the twenty-first and Twenty-second Year of Her Majesty, chapter Ninety-nine, intituled, "An Act to provide for the Government of British Columbia": Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. The first section of the aforesaid Act is repealed.
2. The remaining sections of the said Act shall continue in force till the thirty-first day of December, One Thousand eight Hundred and sixty-three, and no longer, provided that the expiration of the said Act shall not invalidate any Order in Council or other Instrument issued under authority of the said Act, nor any act done or right or title acquired by virtue of the said Act, nor affect the right of appeal thereby given, nor revise any Acts or parts of Acts of Parliament thereby repealed.

3. British Columbia shall for the purpose of the said Act, and for all other purposes, be held to comprise all such territories within the Dominions of Her Majesty as are bounded to the South by the territories of the United States of America, to the west by the Pacific Ocean and the Frontier of the Russian Territories in North America, to the North by the sixtieth Parallel of North Latitude, and to the East, from the Boundary of the United States Northwards by the Rocky Mountains and the One Hundred and twentieth Meridian of West Longitude, and shall include Queen Charlotte's Island and all other Islands adjacent to the said Territories, except Vancouver's Island and the Islands adjacent thereto."

In the meantime, Governor Douglas and his officials governed the Colony without the aid of a Legislature or any voice of the people. In 1863, the Royal Engineers were disbanded and while many remained in the Colony, and as old residents some are living here to-day, Colonel Moody and the officers together with some twenty of the men returned in October 1863, to England.

Some attempt was made to establish a mint in the Colony and the necessary machinery, having been obtained in 1862, some \$10 and \$20 gold pieces were actually struck off, but they never went into circulation. As has been noted, the Colony was to be self-supporting and owing to the nature of the country, road building was a heavy drain on the slender purse of the Colony. The principal revenue was obtained by:

1. A tax of 21 shillings a month on each miner.
2. An ad valorem duty of 10 percent. on all goods entering

the Colony.

3. A tonnage tax of 12 shillings a ton on all goods leaving New Westminster.
4. Sale of lands and lots.
5. Licenses on salons and liquor dealers.

In 1864, when Douglas retired, the floating debts were £16,000, and the whole liabilities £128,750. The Cariboo road alone had cost \$1,250,000, so it can be seen that the finances of the Colony were already beginning to assume quite extensive proportions.

It is now necessary to note the growth and changes in the other part of Governor Douglas' charge, Vancouver Island, and thus give a more definite idea of the conditions which lead to the constitutional change in 1864.

As on the mainland the discovery of gold worked wondrous changes in the Island Colony, and, more especially in Victoria. In April, 1858, the "Commodore" landed a crowd of prospectors at the port and a sudden awakening took place. Scores of buildings sprang up and a tented city arose. Real Estate sold at fabulous prices, and speculation became rampant. When the submergence of the bars on the Fraser continued, however, the crowds became disheartened and the boom burst but was renewed in the early sixties when the Keithley and Antler Creek discoveries

were made. Between 1861 and 1862, no fewer than fifty-six brick buildings were built, besides hotels, a hospital, a theatre and a library. (1) The Victoria Gas Company began business in 1860, and water-works were laid in 1864. In 1862 the City was incorporated by an Act of the Legislative Assembly and was given full municipal powers common to British Cities, with a Mayor and six aldermen. In 1862, the population had increased to six thousand. In June, 1864, the Legislature passed a Bank Act which required public weekly reports of Assets and Liabilities of the Banks, and forbade the issuance of paper money after March 1, 1865, by any person or Banking House without having a charter authorizing the same. (2)

The subject of Free Trade vs Protection, was a constant issue both on the Island and the mainland. In January, 1860, the Governor issued a proclamation declaring, "That the Port of Victoria, including Esquimalt Harbour, is, and shall be until otherwise determined by proper authority, a Free Port of Entry and Clearance for ships and Goods, save and except the fees now levied thereon." Until the union of the two colonies on November 19, 1866, Victoria was a free port in the strictest sense of the term. With the exception of Hong Kong and Labuan it was the only place in the vast category of British depots for ocean commerce in

(1) - Macfie, Vancouver Island and B. C. page 78.

(2) - British Columbian-July 1864.

which no customs duties were leviable. (1)

Constitutionally, there was little change. Douglas loved power and his actions were as arbitrary as ever. Although there were two legislative bodies on the Island, the laws were mere proclamations of the Governor. The proclamation regarding Free Trade was clearly along the lines of a policy concerning revenue and even the land laws were but proclamations. The laws which made the price of land at first £1 per acre and afterwards 4s. 2d. were never touched in the legislatures, but were proclamations of the Governor.

"The root of these distinctions of authority lies in the grant of the Island to the Company and the strange arrangement whereby a private corporation was to finance the Colony and to administer the lands to recoup itself." (2)

The elections for the second Legislative Assembly were held in 1860, and the new body had 13 members, an increase of 6. In 1861, the revenue was £25,291 and in 1864 it rose to £385,869 and was exceeded by the expenditure by £107,000. During the sessions up to the last in 1863, the following acts were passed.

1. To enable evidence to be given on oath before committees of the House.
2. For preventing the disposal of intoxicating liquors to the Indians.

(1) - British Columbia - Vol. II. Judge Howay.

(2) - British Columbia - Vol. II. Judge Howay.

3. For providing a system of registration of land titles.
4. For licensing the sale of intoxicating liquors.
5. For enabling aliens to own real estate.
6. For the naturalization of aliens.
7. For the registration of bills of sale.
8. For regulating pawnbrokers.
9. For facilitating the collections of moneys due on bills of exchange and promissory notes.
10. For increasing the number of representatives of Victoria City from two to three members.

In 1859 the Crown re-conveyed the Colony to itself on the terms of the Grant in 1849. The Company at first claimed £225,000 as compensation for its expenditures, but this was finally adjusted to £57,500 and was paid in two instalments as follows: £25,000 in 1860, and £32,500 in 1862. The Company was still allowed the monopoly of dealing with the land in the Colony, but in 1867, the Crown finally took this from them with the exception of enormous reserves of several thousand acres of farm lands, the Fort property and certain lots in Victoria. "It must in justice be admitted that if the Company did not make a success of the Colony, it certainly did of its negotiations." (1)

"The judicial and magisterial officers of the colony of Vancouver Island in 1863, were: David Cameron, Chief Justice;

(1) - British Columbia, Vol. II. Judge Howay.

Thomas G. Williams, Registrar of the Supreme Court; Richard Woods, Clerk of the Writs; William B. Naylor, Sheriff; Augustus F. Pemberton, Stipendary Magistrate at Victoria; Horace Smith, Superintendent of Police; William H. Franklin, Magistrate at Nanaimo; Edward Stamp, Justice of the Peace at Barkley Sound; Commander J. W. Pike, R. N. and Lieutenant E. N. Verney, holding commissions as Justices of the Peace on the Coast Service.

Those occupying similar offices on the mainland at the same time were Matthew Baillie Begbie, Judge; Greville C. Mathew, Registrar of the Supreme Court; Chartres Brew, Chief Inspector of Police; Peter O'Reilly, High Sheriff and Magistrate at Williams Lake; J. B. Gaggin, Police Magistrate at Douglas; E. Howard Sanders, Police Magistrate at Yale; H. M. Ball, Magistrate at Lytton; William G. Cox, Magistrate at Kamloops; Andrew C. Elliott, Magistrate at Lillooet; Thomas Elwyn, Magistrate at Cariboo; and Philip Henry Nind, then absent on leave. It was the policy of the Government to change the residence of these magistrates from time to time. They will therefore be found in many different places." (1)

(1) - British Columbia, Vol. II. Judge Howay.

CHAPTER 6.

A LEGISLATIVE COUNCIL ESTABLISHED.

1863.

When the Colony of British Columbia was founded in the Act of 1858, which has been given in full in the previous chapter, the Secretary of State for the Colonies, Sir E. B. Lytton, empowered the Governor the right to legislate for the Colony, until such time as a sufficiently large and permanent population was established in the Colony, to enable the formation of a Legislative Council, by the votes of the people. Governor Douglas, on taking the reins of office, appointed in 1859 Colonel Moody, and Judge Begbie as his Executive Council, but both these gentlemen were already officials, the former, besides being the head of the Royal Engineers, with their various duties, was Chief Commissioner of Lands and Works, and also Lieutenant-Governor of the Colony, while the latter, besides his judicial capacity, was Attorney General. It was hardly compatible with the history of the English Constitution, to have officials of the Government comprising the Legislative body, and although the Home Authorities did not interfere, it was well understood that they were merely allowing things to remain as they were, until such times as it would be possible to have a proper Council established. Governor Douglas was averse to having any interference from representatives of the people. For years his rule had been absolute in his capacity of Chief Factor, with the clerks and employees of the Company, and even as Governor of Vancouver's

Island he had been pretty much the absolute ruler.

The miners and other settlers on the Mainland began to complain of the lack of a Representative Council, and at the same time they expressed a wish that the Governor and other officials should be residents of the Colony, which they were endeavoring to serve. In 1859 a complaint was filed with the Home Authorities objecting to the Governor, the Judge, the Colonial Secretary, the Attorney General and the Treasurer all residing in Victoria. They showed in their report that when business had to be transacted with any of these officials, a trip to Victoria was necessary, and this to them meant expense as well as delay. That the Secretary of State for the Colonies realized the justice of this complaint, is clearly seen in an extract from a letter addressed to Governor Douglas at this time: "This state of things must be put an end to at once, and the gentlemen in question must be warned that they must repair with the least practicable delay to the scene of their duties, or if they decline to do so, must resign their positions at once." (1) The matter was compromised for the time by the Treasurer, and a short time after, the Attorney General, taking up their residence in New Westminster, but the Governor and Colonial Secretary continued to live on the Island.

From 1860 to 1862, no fewer than four petitions were forwarded to the Home Authorities, and the burden of their complaints may be summarized as follows:-

(1) - B. C. Papers, pt. 3, page 101.

1. A governor was wanted who resided in the Colony as well as a demand for representative government.
2. That the Governor was stimulating the growth of Vancouver Island at the expense of the Colony, since he had imposed a duty of ten per cent on materials for ship-building entering the Colony, and they were allowed to enter the Island Colony free.
3. That the roads should not be built by the toll system, which was a detriment to the Colony, but should be carried on by means of loans.
4. That contracts were being let without tender.
5. That all goods should be allowed to leave New Westminster free of duty, instead of being subject to a fee of twelve shillings a ton.
6. Lack of a postal system.
7. No educational system.
8. The uncalled for Gold Escort, which had cost the Colony many thousand pounds, needlessly.
9. Taxation at the rate of £10 10s. for every male resident except Indians, without representation.
10. A governor with private interest in another Colony, and connected with the Hudson's Bay Company.

At the same time the people of the Island Colony were also complaining. As early as 1858, no fewer than one hundred and seven-

teen residents of Victoria had signed a petition asking "For the removal of the Governor and the appointment of an English gentleman, free and independent of any interest, save the public welfare." 1. Two delegates visited the old country. The one from the Island was Mr. Leonard McClure, the editor of the "Press," and the other was from British Columbia--the Hon. Malcolm Cameron, who was at the time in the Colony on a pleasure trip from England.

Although the delegates found some trouble in convincing the Home Government that there was a need for separate governors and governments in two neighboring colonies, whose combined population would not make a third-rate city, they were ultimately successful and the required division was granted. At the same time an act was passed extending the boundaries of British Columbia to include the Stickeen territory. In writing to the Governor in May 1863, the Duke of Newcastle says: "The power of nominating the members of the Legislative Council, which must be instituted, will in the first instance be invested in the Governor, but I wish it to be so exercised as to constitute a partially representative body, capable of making the wishes of the community felt and calculated to pave the way for a more formal, if not a larger introduction of the representative element."

The financial provision for the separate officials had to be made by the separate colonies, and the following were considered necessary:

1. Bancroft, B. C., page 586.

For Vancouver Island:-

Governor	£3000
Chief Justice	£ 800
Colonial Secretary	£ 600
Treasurer	£ 600
Surveyor General	£ 500
Attorney General	£ 300

For British Columbia:-

Governor, with residence	£3000
Chief Justice	£1200
Colonial Secretary	£ 800
Attorney General	£ 500
Treasurer	£ 750
Commissioner of Lands	£ 800
Collector of Customs	£ 650
Chief Inspector of Police	£ 500
Registrar of Deeds	£ 500

There was some difficulty in getting these estimates passed on the Island, and at first the Assembly refused to do so, but certain compromises were finally made. On the Mainland, Governor Douglas was, of course, the Government, and they were announced as a Proclamation in Sept. 1863. Arthur E. Kennedy was selected as the new Governor of Vancouver Island, and Frederick Seymour as that of British Columbia.

On June 11, 1863, an order-in-council was received from the

Secretary of State for the Colonies, the Duke of Newcastle, authorizing the formation of a Legislative Council for British Columbia, to be composed of not more than fifteen members, to be composed as follows:-

One third from the magistrates of the different parts of the Colony.

One third from the Government officials.

The Colonial Secretary.

The Attorney General.

The Treasurer.

Chief Commissioner of Lands.

The Collector of Customs.

The balance of the members, being one third of the council, was to be composed of persons elected in various parts of the Colony. The Duke of Newcastle wrote: "By what exact process this quasi-representation shall be accomplished, whether by ascertaining informally the sense of the residents of each locality or by bringing the question before different public meetings, or (as is done in Ceylon) by accepting the nominee of any corporate body or society, I leave to you to determine the period for which (subject to Her Majesty's pleasure, which involves a practical power of dissolution) the councillors shall be appointed. What I desire is this: that a system of virtual though imperfect representation shall be at once introduced which shall enable Her Majesty's Government to ascertain with some certainty the character, wants, and disposition of the

community, with a view to the more formal and complete establishment of a representative system as circumstances shall permit of it." 1.

Governor Douglas divided the Colony into five electoral districts as follows:-

New Westminster.

Hope, Yale and Lytton.

Douglas and Lillooet.

Cariboo East.

Cariboo West.

Each district was to elect one member. In New Westminster the franchise was restricted to British subjects residents for three months in the Colony, owners of real estate of £20 in value, or lessees paying £12 a year, or settlers holding pre-emptions for three months. The member's property qualification was to be the owner of real estate of not less than £500. In Douglas, Pemberton and Lillooet, the franchise was fixed by the people the same, but in the other districts every male resident over twenty-one years of age was allowed to vote.

"By a proclamation dated December 28, 1863, the Governor declared the constitution of the first Legislative Council of British Columbia to be: the Colonial Secretary, the Attorney-General, the Chief Commissioner of Lands and Works, and the Collector of Customs; Chartres Brew, Magistrate of New Westminster; Peter O'Reilly, Magistrate of Cariboo; Edward Howard Sanders, Magistrate of Yale;

1. Papers relative to Union, May 31, 1866.

Henry Maynard Ball, Magistrate of Lytton; and Philip Henry Hind, Magistrate of Douglas; Joshua Attwood Reynolds Homer elected for New Westminster; Robert Thompson Smith elected for Hope, Yale and Lytton; Henry Holbrook elected for Douglas-Lillooet, and James Orr elected for Cariboo East. The election for Cariboo West was not held until after the proclamation appeared." 1.

The first Legislative Council of British Columbia convened in the barracks, which had been the headquarters of the Royal Engineers, in historic Sapperton, New Westminster, Jan. 21, 1864, and after listening to the Governor's address the oaths of office were administered by Judge Begbie. During the session the following important measures were passed:

1. Authorized a loan of £100,000.
 2. Confirmed the Governor's proclamations issued since June 11, 1863.
 3. An Act dealing with the changes in the mining laws.
 4. The beginning of a postal system.
 5. The re-adjustment of the tariff in regard to material for ship-building.
 6. Registration of land titles.
 7. Legal rate of interest.
 8. Patents.
 9. Formation of mining companies.
 10. The relief of certain naval and military settlers.
 11. Inland navigation.
1. British Columbia--Vol. 2, Judge Howay.

12. Relating to issue of bank notes.

13. Supplementary estimates.

The new Governor, Frederick Seymour, had arrived April 20, 1864, and had taken the oath of office. He assented to the first eleven of the above acts, but reserved for future consideration the twelfth and thirteenth, pleading his lack of knowledge of local conditions, owing to his very recent arrival in the Colony. The supplementary estimates included some twenty items and involved an expenditure of £80,700. There were no funds at present available.

The new Governor dissolved the House and September 1864 elections were held in the five districts formerly outlined by Governor Douglas, and resulted as follows:-

New Westminster--J. A. R. Homer; Douglas-Lillooet--Henry Holbrook; Cariboo East--George A. Walkem; Hope-Yale-Lytton--C. F. Cornwall and in Cariboo West--Walter Moberly.

During the succeeding sessions in 1864, 1865 and 1866, much important legislation was placed on the Statute books of the young Colony and among the most important we mention the following "Acts";-

1. To amend the bankruptcy and insolvency laws.
2. To deal with the disposal of Crown Lands.
3. To fix tolls according to the probable damage to roads by the width of wagon tires.
4. To remodel the postal service.
5. To consolidate the mining laws.

6. To encourage the construction of a telegraph line in British Columbia.
7. To change the accounts to the decimal system.
8. To change the duty on gold of two shillings per ounce, upon unassayed, and one shilling, six pence, on assayed gold.
9. To revise the tariff.
10. To increase the Governor's salary from £3000 to £4000.
11. To repeal the Gold Export Duty.

While things were progressing fairly favorable in British Columbia, Governor Kennedy and his Government were having some difficulties on the Island.

It has been pointed out in a previous chapter that the Duke of Newcastle had fixed upon a proper salary for the Governor and officials, and had given directions to the House of Assembly to pass an act to this effect. This the Assembly refused to do. While they were delighted to have a separate governor, and one who was in no way connected with the Hudson's Bay Company, they at the same time pointed out that the total population was scarcely six thousand and that of the £35,000 total annual revenue, £27,000 was already exhausted in the yearly upkeep of the Government.

Governor Kennedy arrived March 25, 1864, and carried with him instructions from the Home Government to issue warrants for his own and the Colonial Secretary's salary, and this was the beginning of the trouble and disagreement which grew worse instead of better as

the months passed. No sooner had the new Governor arrived than the Colonists began to talk of sending a delegate to England to urge the recall of Governor Kennedy, and union with British Columbia.

In 1865 the free trade policy was abandoned and duties were levied on all horses and livestock entering the Colony.

In 1866 a deadlock occurred between the Governor and the House, The House demanded a return of the moneys derived from sales of Crown Lands in 1864--1865, but was refused on the ground that since they had refused to vote the civil list salaries, they had no rights in the Crown Lands. In 1865--1866, without authority, the Governor had borrowed \$80,000 from the Bank of British North America. The House called for an investigation regarding the expenditure of this money, and the Bank, becoming alarmed, refused further credit, and then the officials were unpaid for months, and no payments were made from the Government Treasury. The House saw that they must submit and so a bill was rushed through authorizing a loan of \$90,000.

Towards the end of July, Mr. Leonard McClure, one of the members for Victoria City, after observing that "The Governor has lately given a proof of his contempt for the House by refusing to allow a salaried officer to appear before a committee to give evidence, and, instead of following out the wellunderstood wishes of the people, he has taken up a hostile position against the

popular branch of the Legislature, and, after exercising the greatest forbearance, it now becomes a duty the House owes to its constituents to express its utter want of confidence in the Governor," moved a lengthy resolution. Its concluding clauses were:

"The House is reluctantly compelled, after much patience and forbearance, to declare that His Excellency, Governor Kennedy, is acting in a hostile manner to the best interests of the country.

"That he has declined and does persistently decline to impart to the Assembly necessary information on matters connected with the public departments and with the expenditure of the public money.

"That he obstructs the efforts of the Assembly to reduce the expenses of Government, which are far beyond the capacity of the inhabitants to bear.

"That he refuses to permit public officers to appear before a Select Committee of the Assembly to give evidence as to the working and management of their departments.

"That he endeavors by unjustifiable statements to place the Assembly in a false and undignified position before Her Majesty's Government.

"That His Excellency's management of the Crown lands has been most injurious to the immigrant and aboriginal population of the Colony.

"In view of these facts the House cannot, in justice to itself, to the Colony, and to Imperial interests, refrain from expressing its utter want of confidence in His Excellency, Governor Kennedy, and his official advisers, and the absolute necessity there is for

their removal, believing that so long as the present administration lasts the colony will continue to suffer by the gradual exodus of its population, and Imperial interests will continue to be affected in an injurious manner by the prejudice which the present Government has created against British institutions in the North Pacific." 1.

In the meantime, prompted by complaints from both colonies, the Home Government had decided to unite them under one government. The incidents leading to this final decision, and the terms of the Act of Union will be outlined in the next chapter.

1.--British Columbia--Vol. 2, Judge Howay.

CHAPTER 7.

Vancouver Island and British Columbia United.

1866.

When the two Governors took charge of their respective colonies in 1864, the financial burden of government began to be felt, and the more astute of the legislators in both Colonies foresaw that complete union was the only solution for the financial problem. The Duke of Newcastle had expressed himself strongly averse to the appointment of the two Governors in 1863, and no sooner had the Governors Kennedy and Seymour arrived than the Right Hon. Edward Cardwell, Secretary of State, sent each a dispatch asking him to ascertain at the earliest possible date just what the feelings were in his respective Colony, in respect to union, as this information was needed by the Home Government in determining the policy they were to adopt.

That the feeling on the mainland was at first not in favor of union is evident. Their population was increasing and all the gold fields, which were the magnet for drawing settlers from the south, were located in their colony. They were strongly averse to anything like the conditions which prevailed during Governor Douglas' regime, when their officials resided in Victoria, and when that city was made the rendezvous for the miners and where they expended the money they had made in the Mainland mines. Vancouver Island was kept a Free Trade Colony and British Columbia did not enjoy this privilege, and it was claimed that Governor Douglas was thus favoring the rival Colony at the expense of British Columbia. Then, too, the finances of the Mainland Colony were in a much healthier condition than were those of

the Island. At the first session of the Legislative Council, which was in session when Governor Seymour arrived, the following resolution was passed: "That in the opinion of this Council, representing as it does, the unanimous opinion of the people of this Colony, the union of British Columbia and Vancouver Island would be detrimental to the best interests of both Colonies, and that His Excellency, the Governor, be respectfully requested to forward a copy of this resolution to Her Majesty's Principal Secretary of State for the Colonies." 1.

When the second council convened in December, 1864, the Governor intimated that it might be better if one Governor ruled the two Colonies, but the new Legislative Council made it plain to the Governor that they did not deem it wise to change at the present, believing that they would be the losers. Thus matters stood in 1864, but events changed the minds of the legislators as we shall presently show. In the meantime, we must glance for a moment at the Island Colony and its new Governor.

The financial stringency seemed to be the chief influence working at the time on Vancouver Island. We have seen that the Legislative Assembly had flatly refused to vote the salary of the Governor even before Mr. Kennedy had arrived, and at the same time, they passed a resolution, "Asserting that an absolute separation of the Colonies would prove injurious to both, and that amalgamation was at present unadvisable, if not impossible, yet some sort of connection by which one Governor, one Colonial Secretary, one Surveyor General, and one Auditor-General, would act for both was necessary." 2.

1. - British Columbian, May 4, 1864.

2. - British Columbian, May 7, 1864.

In the following year, union was debated in the House and the members concluded that the greatest difficulty arose from the fact that the two Colonies had different trade policies, British Columbia, having a protective tariff and the Island, being a free trade Colony. During 1865, the financial depression was even more keenly felt. The mines in many cases did not prove successful and the population in many districts actually decreased. Then, too, many of the miners remained in New Westminster during the winter instead of being in Victoria as heretofore. Being a separate and in many respects an isolated Colony they could not draw from the revenue of the Mainland. In May, 1866, the Bank of British North America refused further advances and the machinery of government was at a stand still.

Governor Seymour was in Paris early in 1866, and from there he wrote a lengthy dispatch to the Home authorities which did much to hasten the union. After minutely describing the conditions in both Colonies, he took the stand that while union was not desired, or even desirable on the Mainland, it was quite necessary from the Imperial point of view. He drew up a plan of government and advised that while the Colony was not yet sufficiently settled to warrant a purely representative form of government, yet there should be a Legislative Council, similar to the one now on the Mainland. His advice was to make New Westminster the Capital, and to extend the protective system over the whole Colony. This dispatch of Governor Seymour had considerable influence with the Home Government and no doubt hastened the passage of the bill. As stated above, the

financial stringency on the Island did much to confirm the belief that they must have union or bankruptcy and they therefore pressed for the former. The following statement shows the particulars of the indebtedness of each Colony exclusive of current liabilities:

Vancouver Island.

Road and Harbor Act, 1862	\$194,000.
Temporary Loan, 1866	70,000.
Due Crown Fund Account	13,000.
Temporary Loan	8,000.
Due Imperial Government re Lighthouses	30,298.
Mail Steamer Subsidy	<u>15,000.</u>
	\$330,298.
Sinking Fund Investments	<u>36,600.</u>
Net Indebtedness	\$293,698.

British Columbia.

Road Loans	\$970,000.
Temporary Loans	<u>166,983.</u>
	\$1,136,983.
Sinking Fund Investments	<u>134,000.</u>
Net Indebtedness	\$1,002,983. (1)

The Bill for the union was passed July 30, 1866, and was assented to by the Crown, August 6, 1866. It provided for the union of Vancouver

(1) - British Columbia. Vol. II.-Judge Howay.

Island with the Colony of British Columbia, naming the whole united colony, British Columbia, and was to take effect as soon as the proclamation was made by the Governor of the present Colony of British Columbia. The Government was to consist of one Governor and one of each of the other officials and a Legislative Council, to consist of twenty-three members. The laws of each colony were to remain intact until altered by the enlarged Legislative body, but the revenue of customs in force in the mainland should apply to the whole colony. Thus Vancouver Island ceased to be a free trade colony.

The following is the act, as passed by the Home Government and the proclamation of Governor Seymour:

AN ACT FOR THE UNION OF THE COLONY OF VANCOUVER ISLAND WITH THE
COLONY OF BRITISH COLUMBIA.

(6th August, 1866)

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. This Act may be cited as "The British Columbia Act, 1866."
2. In this Act the term "Governor" means any officer for the time being lawfully administering the Government.
3. From and immediately after the Proclamation of this Act by the Governor of British Columbia, the Colony of Vancouver Island shall

be and the same is hereby united with the Colony of British Columbia, and thenceforth those two Colonies shall form and be one Colony, with the name of British Columbia (which Union is in this Act referred to as the Union.)

4. On the Union taking effect, the form of Government existing in Vancouver Island as a separate Colony shall cease, and the power and authority of the Executive Government and of the Legislature existing in British Columbia shall extend to and over Vancouver Island; but in order that provision may be made for the representation of Vancouver Island in the Legislature of British Columbia after the Union, the maximum number of Councillors in the Legislative Council of British Columbia after the Union shall, until it is otherwise provided by lawful authority, be twenty-three instead of fifteen.

5. After and notwithstanding the Union the Laws in force in the separate Colonies of British Columbia and Vancouver Island respectively at the time of the Union taking effect shall, until it is otherwise provided by lawful authority, remain in force as if this Act had not been passed or proclaimed; save only that the laws relative to the Revenue of Customs in force in British Columbia at the time of the Union taking effect shall, until it is otherwise provided by lawful authority, extend and apply to Vancouver Island; and until it is otherwise provided by lawful authority, the Governor of British Columbia shall have, in relation to the territory for the time being under this Government, all the powers and authorities for the time being vested, in relation to the United Kingdom, in the Commissioners of Her Majesty's Treasury or in the Commissioners of Customs, with respect to the appointment of Warehousing Ports, and the approval and appointment of warehouses or

places of security in such ports, and everything consequent thereon or relative thereto.

6. Nothing in this Act shall take away or restrict the authority of the Government of British Columbia, with the advice and consent of the Legislative Council thereof, to make laws for the peace, order, and good Government of British Columbia either before or after the Union; nor shall anything in this Act interfere with the exercise of any power that would have been exercisable by Her Majesty in Council if this Act had not been passed.

7. Until the Union, British Columbia shall comprise all such Territories within the Dominion of Her Majesty as are bounded to the South by the Territories of the United States of America, to the West by the Pacific Ocean and the Frontier of the Russian Territories in North America, to the North by the Sixtieth Parallel of North Latitude, and to the East from the Boundary of the United States Northwards by the Rocky Mountains and the one hundred and twentieth Meridian of West Longitude, and shall include Queen Charlotte's Island and all other Islands adjacent to the said Territories, except Vancouver Island and the Islands adjacent thereto.

8. After the Union, British Columbia shall comprise all the Territories and Islands aforesaid and Vancouver Island and the Islands adjacent thereto.

9. The Acts described in the Schedule to this Act are hereby repealed; but this repeal shall not invalidate any order in Council or other Instrument issued under the authority of those Acts or either of them, or any act done, right or title acquired by virtue of those

(75).

Acts or either of them, or of any such order of instrument.

SCHEDULE.

Acts Repealed

21 & 22 Vict., c. 99. - An Act to provide for the Government of British Columbia.

26 & 27 Vict., c. 83. - An Act to define the Boundaries of the Colony of British Columbia, and to continue an Act to provide for the Government of the said Colony.

Proclamation.

By Proclamation bearing date 17th November, 1866, and intituled "Union Proclamation, 1866", the above Act was proclaimed by His Excellency Frederick Seymour, Governor of the Colony of British Columbia.

As noted above the proclamation was read at noon, Monday, November 19th, 1866, by Sheriff Homer, at New Westminster and by Sheriff Adamson at Victoria. Some two hundred persons were present at Victoria to hear the proclamation and the ships of war at Esquimalt fired ~~salutes~~ ^{salutes}. The British Columbian, a New Westminster paper, of November 21, 1866, thus comments upon the ceremony at that place: "A small knot of people gathered round the Sheriff, it is true; but even these were drawn together more from a vague impression that the proclamation might cast some light upon the intended programme of the Government than from any interest in the Act of Union itself. Indeed, a stranger might have experienced some difficulty in deciding from the general deportment of the assemblage, whether the Sheriff was discharging the unusual duty of proclaiming the banns between two colonies or the less

pleasing one of reading a death warrant. Not a cheer was given, not a hat was raised; no smile of satisfaction lit up the public countenance, no congratulations were offered to either bride or bridegroom as the last words of the Sheriff-Parson were heard. The flag on the Hyack Engine House was run up as a signal to H. M. S. Sparrowhawk to fire a salute; but that was the act of the Government, not of the people. All this may appear strange to the distant reader; but to those acquainted with all the circumstances which this "marriage de convenance" has been brought about by the 'old folks' in opposition to the wishes of the principal party to it, all appears plain and proper. But now that the deed is done, it will be wisdom to 'let by-gones be by-gones,' and put forth our best efforts to make the match a happy one - to sink, as far as possible, all those local and party differences and jealousies which have sprung up during the eight years of our single bliss, and, looking upon the whole as one colony, which it is, and one united community, which it ought to be, seek to promote the best interests of British Columbia as a whole."

Governor Seymour's task was not an easy one. The old cry of Island vs. Mainland was not abated and he had on his hands a double supply of officials. To these officials, whose services must sooner or later be dispensed with, he promised a recommendation to the Secretary of State for positions in other colonies, but the majority of them were provided for in the Colony. The Act of Union had not mentioned the courts, and they remained separate. In 1869 an Act was passed whereby Chief Justice Begbie was continued as Chief Justice

(77).

of the Supreme Court on the Mainland, and Chief Justice Needham, who had in 1865 succeeded Chief Justice Cameron, was continued in that office as regarded the Island.

The new Council was chosen from members of the two old Councils and nine were chosen by the people, four from the Island and five from the Mainland, and the first Legislative Council of the United Colony of British Columbia met on January 24th, 1867 in the old Legislative Hall, New Westminster. Many members of the new House offered criticisms of the Act of Union, but soon larger issues were to attract their attention, for already in the East, the Canadian Provinces were beginning to weld the chain which shortly was to extend from the Atlantic to the Pacific.

CHAPTER 8.

CONFEDERATION ACCOMPLISHED.

1866 - 1871.

Governor Seymour as Governor of the United Colonies, had some serious problems to face. The old rivalry between the Island and the Mainland was yet a source of trouble, there was a double set of officials clamoring for positions, and the financial condition was desperate. In addition to these difficulties the Act of Union omitted all mention of the two courts, and the capital had to be chosen. Although economy at this time should have been the first consideration of the Governor, he hesitated to dismiss the unnecessary officials and what decrease in members was made was the result of amalgamation of offices, rather than abolition. The two courts were allowed to remain separate, and in 1869 an act was passed making Chief Justice Begbie the Head of the Supreme Court on the Mainland, and placing Chief Justice Needham in a similar position on the Island. Needham had succeeded Chief Justice Cameron in 1865, who retired with an annuity of £500.

The Act of Union had provided for a Legislative Council of twenty-three members, nine of whom were to be elected by the people, five from the Mainland and four from the Island. The elections followed and the first Legislative Council of the United Colony convened on January 24, 1867 in New Westminster. During this session several acts were passed among them the following:

1. To assimilate the laws of the two colonies.
2. To extend the island Bankruptcy Act and the Registration of Titles Act over the whole colony.
3. To extend the mainland laws regarding mining, postal, joint stock companies, trustees relief, game protection, sale of liquor, and Indian protection, over the whole colony.

In this, as in the following sessions, reference was made in the debates, to Confederation, but nothing definite was as yet accomplished. The choosing of a capital debates waxed warm, and on March 29th the following resolution was passed:

"The Council, having taken into consideration His Excellency, the Governor's message (No. 39), relating to the seat of government, as well as the numerously signed petitions from all parts of the country praying that Victoria may be made the seat of Government,

RESOLVE,

"That were the seat of government placed in Victoria it would be consonant with the desire of the public, advantageous to the administration, conducive to the best interests of the country, and diminish the cost of government;

"That, without wishing to embarrass the Executive in any way, the Council would urge that such steps should be taken as may, to His Excellency, seem best towards carrying out the desire of the petitioners;

"That His Excellency, the Governor, be humbly solicited to cause the next session of the Legislature to be holden in Victoria."

(80).

On May, 1868, Victoria was chosen by the Home Government, much to the chagrin of the inhabitants of the Fraser River City. The second session met in 1868 and the following laws were placed on the statute books:

1. An Act standardizing weights and measures.
2. An Act to provide protection to naval and victualling stores.
3. An Act to confirm the grants of land made by the Hudson's Bay Company, prior to December 16, 1860.
4. An Act to debar the claims of creditors of other countries, against debtor colonists under the Statute of Limitations.

In December 1868, the session was held in the new capital and in all some twenty-eight ordinances were passed, but they were colorless and unimportant affairs with the exception of the Public School Act, which provided for local boards, and some laws attempting to encourage the mining of silver, lead, copper and coal, all of which were known even at that time to exist in paying quantities in the colony. During the recess of 1869 - 1870, Governor Seymour died and his successor, Governor Musgrave was specially charged to bring about Confederation.

At the opening of the session of 1870 on February 15th, the new Governor announced that Dr. J. S. Helmcken and Dr. R. W. W. Carroll, two elected members, had been taken into the Council, and that although he was opposed as yet to responsible government, he wished the Constitution changed to make the majority of the Legislative Council elective. The interest of the session centres around the

now one all absorbing topic - Confederation.

A Confederation League had been formed in 1868, and meetings were held in Victoria and Yale that year, and it was found while there were many opponents to the scheme on the Island, the Mainland was practically unanimous in its favor. The Island Colony was composed very largely of Americans and Old Country people, and they believed that a union without a railway would be detrimental and that to build a railway was practically impossible. Certain influences, however, were working outside of the Colony itself. The Imperial Authorities were using every influence to bring it about and Sir John A. MacDonald, the Premier of Canada was an enthusiastic advocate. "At the Quebec Conference in 1864, it was decided that for the purpose of making a United British North America, affording a seaport on the Pacific, and for other important reasons, British Columbia and the Middle West should be brought into Confederation. Even before that, the Imperial Authorities were determined that sooner or later for imperial purposes, such a consummation should be brought about if possible. In the British North America Act of 1867, provision was made to admit into the Union, British Columbia and the North West Territories, and when the issue became a live one in the Pacific Coast Colony, that they had the strongest kind of support in the Canadian statesmen, and the Imperial Authorities. So thoroughly had the matter been thought out, and decided upon in Ottawa, that at the time the delegates from British Columbia proceeded there to negotiate terms, they asked for a coach road, and

ultimate provision for a railway, they were offered a railway to be commenced within two years from the date of union. Sir John A. MacDonald was keen about bringing the extreme West into the Dominion, and it was his hand that directed the appointment of Anthony Musgrave to succeed Frederick Seymour as Governor." (1)

That Governor Musgrave succeeded in getting the members of the Council in line is evidenced by the fact that the terms of the Union, which were practically his own, were assented to in the Session of 1870, and a delegation consisting of J. S. Helmcken (who was at first one of the most pronounced opponents), J. W. Trutch, and W. W. Carroll, left Victoria on May 10, 1870, to submit their offer to the Dominion Parliament. On July 7, 1870, the proposals were accepted with but a few minor changes. The terms of the Union are given in full:-

THE TERMS OF UNION.

"1. Canada shall be liable for the debts and liabilities of British Columbia existing at the time of the Union.

2. British Columbia not having incurred debts equal to those of the other Provinces now constituting the Dominion, shall be entitled to receive, by half-yearly payments, in advance, from the General Government, interest at the rate of five per cent per annum on the difference between the actual amount of its indebtedness at the date of the Union and the indebtedness per head of the population of Nova Scotia and

1- Judge Stourey - B.C. J. 11

(83.)

~~and~~ New Brunswick (27.77 dollars), the population of British Columbia being taken at 60,000.

3. The following sums shall be paid by Canada to British Columbia for the support of its Government and Legislature, to wit, an annual subsidy of 35,000 dollars, and an annual grant equal to 80 cents per head of the said population of 60,000, both half-yearly in advance; such grant of 80 cents per head to be augmented in proportion to the increase of population, as may be shown by each subsequent decennial census, until the population amounts to 400,000, at which rate such grant shall thereafter remain, it being understood that the first census be taken in the year 1881.

4. The Dominion will provide an efficient mail service, fortnightly, by steam communication, between Victoria and San Francisco, and twice a week between Victoria and Olympia; the vessels to be adapted for the conveyance of freight and passengers.

5. Canada will assume and defray the charges for the following services:-

- A. Salary of the Lieutenant-Governor;
- B. Salaries and allowances of the Judges of the Superior Courts and the County or District Courts;
- C. The charges in respect to the Department of Customs;
- D. The Postal and Telegraphic Services;
- E. Protection and encouragement of Fisheries;

- F. Provision for the Militia;
- G. Lighthouses, Buoys, and Beacons, Shipwrecked Crews, Quarantine and Marine Hospitals, including a Marine Hospital at Victoria;
- H. The Geological Survey;
- I. The Penitentiary.

And such further charges as may be incident to and connected with the services which, by the "British North America Act of 1867," appertain to the General Government, and as are or may be allowed to the other Provinces.

6. Suitable pensions, such as shall be approved of by Her Majesty's Government, shall be provided by the Government of the Dominion for those of Her Majesty's servants in the Colony whose position and emoluments derived therefrom would be affected by political changes on the admission of British Columbia into the Dominion of Canada.

7. It is agreed that the existing Customs Tariff and Excise Duties shall continue in force in British Columbia until the Railway from the Pacific Coast and the system of Railways in Canada are connected, unless the Legislature of British Columbia should sooner decide to accept the tariff and excise laws of Canada. When customs and excise duties are, at the time of the union of British Columbia with Canada, leviable on any goods, wares, or merchandises in British Columbia, or in the other Provinces of the Dominion, those goods, wares, and merchandises may, from and

after the union, be imported into British Columbia from the Provinces now composing the Dominion, or from either of those Provinces into British Columbia, on proof of payment of the customs or excise duties leviabale thereon in the Province of exportation, and on payment of such further amount (if any) of customs or excise duties as are leviabale thereon in the Province of importation. This arrangement to have no force or effect after the assimilation of the tariff and excise duties of British Columbia with those of the Dominion.

8. British Columbia shall be entitled to be represented in the Senate by three members and by six members in the House of Commons. The representation to be increased under the provisions of the "British North America Act, 1867."

9. The influence of the Dominion Government will be used to secure the continued maintenance of the naval station at Esquimalt.

10. The provisions of the "British North America Act, 1867," shall (except those parts thereof which are in terms made, or by reasonable intendment may be held to be specially applicable to and only affect one and not the whole of the Provinces now comprising the Dominion, and except so far as the same be varied by this Minute) be applicable to British Columbia, in the same way and to the like intent as they apply to the other Provinces of the Dominion, and as if the Colony of British Columbia had been one of the Provinces originally united by the said Act.

11. The Government of the Dominion undertake to secure the commencement simultaneously, within two years from the date of the Union, of the construction of a Railway from the Pacific towards the Rocky Mountains, and from such point as may be selected, east of the Rocky Mountains, towards the Pacific, to connect the sea-board of British Columbia with the railway system of Canada; and further, to secure the completion of such Railway within ten years from the date of the Union.

And the Government of British Columbia agree to convey to the Dominion Government, in trust, to be appropriated in such manner as the Dominion Government may deem advisable in the furtherance of the construction of the said Railway, a similar extent of public lands along the line of Railway, throughout its entire length in British Columbia, not to exceed, however, Twenty (20) Miles on each side of the said line, as may be appropriated for the same purpose by the Dominion Government from the public lands in the North-West Territories and the Province of Manitoba. Provided, that the quantity of lands which may be held under preemption right or by Crown grant within the limits of the tract of land in British Columbia to be so conveyed to the Dominion Government shall be made good to the Dominion from Contiguous public lands; and, provided, further, that until the commencement within two years, as aforesaid, from the date of the Union, of the construction of the said Railway, the Government of British Columbia shall not sell or alienate any further portions of the public lands of British Columbia in any other way than under right of preemption, requiring actual residence of the preemptor on the

{87.}

land claimed by him. In consideration of the land to be so conveyed in aid of the construction of the said Railway, the Dominion Government agree to pay British Columbia, from the date of the Union, the sum of 100,000 dollars per annum, in half-yearly payments in advance.

12. The Dominion Government shall guarantee the interest for ten years from the date of the completion of the works, at the rate of five per centum per annum, on such sum, not exceeding 100,000 sterling, as may be required for the construction of a first class Graving Dock at Esquimalt.

13. The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union.

To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians, on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies.

14. The Constitution of the Executive Authority and of the Legislature of British Columbia shall, subject to the provisions

of the "British North America Act, 1867," continue as existing at the time of the Union until altered under the authority of the said Act, it being at the same time understood that the Government of the Dominion will readily consent to the introduction of Responsible Government when desired by the inhabitants of British Columbia, and it being likewise understood that it is the intention of the Governor of British Columbia under the authority of the Secretary of State for the Colonies, to amend the existing constitution of the Legislature by providing that a majority of its members shall be elective.

The Union shall take effect according to the foregoing terms and conditions on such day as Her Majesty, by and with the advice of Her Most Honourable Privy Council, may appoint, on Addresses from the Legislature of the Colony of British Columbia and of the Houses of Parliament of Canada, in the terms of the 146th Section of the "British North America Act, 1867," and British Columbia may in its Address specify the Electoral Districts for which the first election of members to serve in the House of Commons shall take place."

In the meantime the Imperial Parliament on August 9th, 1870, had passed "The British Columbia Act of 1870," changing the Constitution of the Colony in that the Legislative Council was to consist of fifteen members, nine of which were to be elective.

The franchise was limited to British subjects, males, twenty-one years of age, who could read English. The Colony was divided into

eight districts and the elections in November 1870 were fought on the question of for or against accepting the terms and every member favorable to the acceptance was returned. In the Session which followed the following Resolution, addressed to the Governor, was passed:

"TO HIS EXCELLENCY, THE GOVERNOR: May it please Your Excellency. We, the members of the Legislative Council, in council assembled, having agreed to an address to Her Most Gracious Majesty, praying that Her Majesty will be graciously pleased, by and with the advice of Her Most Honourable Privy Council, to admit British Columbia, under the Provisions of the 146th section of the British North America Act, into the union or Dominion of Canada, on the basis of the terms and conditions offered to this colony, by the Government of the Dominion of Canada, as in such address set forth, do hereby pray that Your Excellency may be pleased to transmit such address to Her Majesty's Principal Secretary of State for the Colonies to be laid at the foot of the Throne."

The address to the Governor praying for admission into the Dominion of Canada was forwarded to Ottawa and was adopted by the Dominion Houses April 5, 1871 and the Imperial Order-in-Council on May 16, 1871, whereby Her Majesty declared that "from and after the twentieth day of July 1871, the said Colony of British Columbia shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the hereinbefore recited addresses.

Pursuant to his promise, that as soon as the terms of Union should be assented to the Colony should have responsible government,

the Governor introduced a measure called the Constitution Act of 1871, whereby a Legislative Assembly of twenty five members was substituted for the existing Legislative Council. The Mainland obtained thirteen members and the Island twelve. The elections were held late in 1871, but before so, Governor Musgrave had left the Colony, his task having been completed. His successor was Mr. Joseph W. Trutch who had already figured prominently in the affairs of the Colony. British Columbia was now a full fledged province of the Dominion of Canada and entered upon its career with a responsible government and a clean financial sheet.

CHAPTER 9.

Constitution

of

The Province of British Columbia.

The Province of British Columbia came into Confederation in 1871; and at the same time responsible government was introduced. With the exception of an act passed by the Dominion Government in August 1907, making further provision for the payment of sums by Canada to the various Provinces, there has been no constitutional change since 1871. We will now consider in some detail the present constitution of the Province of British Columbia.

By the Confederation Act, the exclusive Legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects enumerated as follows:

1. The Public Debt and Property:
2. The regulation of Trade and Commerce:
3. The raising of money by any mode or system of Taxation:
4. The borrowing of money on the Public Credit:
5. Postal Service:
6. The Census and Statistics:
7. Militia, Military and Naval Service and Defence:
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada:
9. Beacons, Buoys, Lighthouses, and Sable Island:
10. Navigation and Shipping:

11. Quarantine and the establishment and maintenance of Marine Hospitals:

12. Sea Coast and Inland Fisheries:

13. Ferries between a Province and any British or Foreign Country or between two Provinces:

14. Currency and Coinage:

15. Banking, Incorporation of Banks, and the Issue of Paper Money:

16. Savings Banks:

17. Weights and Measures:

18. Bills of Exchange and Promissory Notes:

19. Interest:

20. Legal Tender:

21. Bankruptcy and Insolvency:

22. Patents of Invention and Discovery:

23. Copyrights:

24. Indians, and Lands reserved for the Indians:

25. Naturalization and Aliens:

26. Marriage and Divorce:

27. The Criminal Law, except the constitution of Courts of Criminal Jurisdiction, but including the procedure in Criminal Matters:

28. The Establishment, Maintenance, and Management of Penitentiaries:

29. Such classes of subjects as are expressly excepted in the

enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces:

And any matter coming within any of the classes of subjects enumerated in this Section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

In each province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects enumerated as follows:

1. The amendment from time to time, notwithstanding anything in this Act of the constitution of the Province, except as regards the office of the Lieutenant-Governor.

2. Direct Taxation within the Province in order to raise a Revenue for Provincial purposes:

3. The borrowing of money on the sole credit of the Province:

4. The establishment and tenure of Provincial Offices, and the appointment and payment of Provincial Officers:

5. The management and sale of the Public Lands belonging to the Province, and of the timber and wood thereon:

6. The establishment, maintenance, and management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Provinces, other than Marine Hospitals:

7. The establishment, maintenance, and management of Public and Reformatory Prisons in and for the Province:

8. Municipal Institutions in the Province:

9. Shops, Saloons, Tavern, Auctioneer, and other Licenses, in order to the raising of a Revenue for Provincial, Local, or Municipal purposes:

10. Local works and undertakings other than such as are of the following classes:-

(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province:

(b) Lines of Steam Ships between the Province and any British or Foreign Country:

(c) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the advantage of two or more of the Provinces:

11. The incorporation of Companies with Provincial objects:

12. The Solemnization of Marriage in the Province:

13. Property and civil rights in the Province:

14. The Administration of Justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including procedure in civil matters in those Courts:

15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any

matter coming within any of the classes of subjects enumerated in this Section:

16. Generally all matters of a merely local or private nature in the Province.

It will be seen that the purposes of the framers of the Confederation Act were to allow the Provinces to control everything pertaining to purely local affairs and to give to the Federal Government control of all matters pertaining to the country as a whole. "Provincial Legislation in every way more nearly affects the daily life and interests of the people of a province than the more general and national legislation of the Dominion. For instance, indirect taxation on imports does not come home to all classes in every day life like those taxes which are imposed on the authority of provincial statutes." 1. While the assignment of the various Federal and Provincial powers resembles quite closely the system of government in the United States, there are yet these fundamental differences:

In Canada we have the responsible or Cabinet principle in the management of all our affairs whether Federal or Provincial, and while in the United States, each State is at liberty to make any laws providing they do not go beyond their constitution. In Canada the Governor-General has the power to ~~veto~~^{veto} any act of the Provincial Governments.

The Government of British Columbia since Confederation consists, besides the judiciary, the Municipal Councils and School Boards and The Civil Service, of: A Lieutenant-Governor, appointed by the

Governor General in Council, an Executive or advisory Council, responsible to the Legislature and a Legislative Assembly, elected by the people. British Columbia like all the other Provinces, with the exception of two, decided it did not need the second house or Legislative Council, which corresponds very closely to the Senate of the Federal Government.

The Lieutenant-Governor is appointed by the Governor-General for a term of five years, and possesses within his constitutional sphere all the authority of the governors of the Colonies, previous to Confederation. Holding his position as a gift of the Governor-General, he is subject to dismissal by the same authority, providing he fails in his duty, but under the constitution, this must be communicated to the Parliament of Canada. The Lieutenant-Governor is the representative of the Governor-General, who, in turn, represents the Crown. As the acting head of the executive of the Province, he assembles, prorogues and dissolves parliaments and assents to or reserves bills passed by the Legislature, but under the responsible government principle he is *g*uided by the Executive Council, who, in turn, are the representatives of, and who must have the support of the majority of the people's elected representatives, the members of the Legislative Assembly. All bills must originate in the Legislative Assembly, and afterwards receive the approval of the Lieutenant-Governor. The Lieutenant-Governor is generally chosen from some ex-member of the Government, and he is generally a man of high attainments and one who is well versed in the laws, conditions and needs of the Province. Besides his official duties, he is a leader

in society and by visiting the various parts of the Province in his official capacity he keeps in touch with the people and knows their needed legislation. When the elections are held he holds aloof from taking any sides in the issue and after the representatives are elected, he chooses his council from among the people's representatives. Should he dismiss any member of his Legislative Executive, he must immediately choose another and if the one chosen is not at the time a member of the Legislature, he must seek election in some constituency.

An Act respecting the Constitution of the Province, passed in 1888 by the Legislative Assembly defines the duties of the Lieutenant-Governor as follows:

SECTION 4. "The Lieutenant-Governor and his successors shall be a corporation sole; and all bonds, recognizances, and other instruments by law required to be taken to him in his public capacity, shall be taken to him and his successors by his name of office, and may be sued for and recovered by him or his successors, by his or their name of office as such; and the same shall not in any case go to or vest in the personal representatives of the Lieutenant-Governor during whose government the same was so taken."

SECTION 5. "The Lieutenant-Governor may, with the advice and consent of the Executive Council, from time to time, appoint any person or persons, jointly or severally, to be his deputy or deputies within any part or parts of the Province,

(98.)

for the purpose of executing marriage licences, money warrants, or commissions under any Statute of the Legislative Assembly of British Columbia."

SECTION 6. "Notice of any such appointment shall be published in the British Columbia Gazette, and a similar notice shall be given if such appointment is rescinded."

SECTION 7. "The appointment to public offices under the Government of British Columbia, hereafter to become vacant, or to be created, whether such offices be salaried or not, shall be vested in the Lieutenant-Governor, with the advice of the Executive Council, with the exception of the appointment of the officers who are also appointed members of the Executive Council, which appointments shall be vested in the Lieutenant-Governor alone."

SECTION 8. "No part of the revenue of this Province shall be issued out of the Treasury of this Province, except in pursuance of warrants under the hand of the Lieutenant-Governor.

The present Lieutenant-Governor of British Columbia is the Honorable Mr. Barnard.

The Executive Council or Ministry is the Advisory Council of the Lieutenant-Governor and at present consists of six members as follows: Premier and Minister of Mines, President of the Council, ~~Provincial~~ *Provincial* Secretary and Minister of Education, Attorney-General and Minister of Finance, Minister of Public Works, and Minister of Lands. As their

names imply, their duties are along special lines. For example, the Minister of Finance administers the financial affairs of the Province, and the Provincial Secretary carries on and registers the correspondence of the Province and registers all commissions under the provincial seal. In most of the Provinces he registers joint stock companies, but in British Columbia there is a civil service official for this work, known as the Registrar of Companies. The members of the Executive Council are chosen from the members in the Legislative Assembly and are therefore elected by the people. At any time the Ministry has not the support of the majority of the members of the Legislative Assembly they must resign office and the Lieutenant - Governor chooses another Executive or dissolves the house and a new election takes place. "The executive councillors are called 'honorable' but only while they are members of the Council."

The "Constitution Act" of 1888 defines the duties and powers of the Executive Council as follows:

SECTION 9. "The Executive power shall, so far as the same is unaltered by this Act, be continued as it exists at present, subject, however, to the provisions of the "British North America Act, 1867," sections 58, 59, 60, 61, 62, 66, and 67, and to any other part of the said Act affecting the same, and to the said Order of Her Majesty in Council."

SECTION 10. "The Executive Council of British Columbia shall be composed of such persons as the Lieutenant-Governor from

(100.)

time to time thinks fit to appoint, not exceeding six, and shall include the following officers, namely: a Provincial Secretary, Attorney-General, Chief Commissioner of Lands and Works, and Minister of Finance and Agriculture."

SECTION 11.

"When either of the offices held by the last-mentioned officers become vacant by the death, removal or resignation of any or all of them, the Lieutenant-Governor may appoint officers to hold such offices respectively during pleasure, and may, from time to time, appoint another or additional officer to be a member of the Executive Council, and to hold office during pleasure; and the Lieutenant-Governor in Council may, from time to time, prescribe the duties of the officers of the Executive Council and of the several departments over which they shall preside, or to which they shall belong, and of the officers and clerks thereof, but so, nevertheless, that the whole number of members of the Executive Council shall not exceed the number of six, as is hereinbefore in that behalf provided."

SECTION 12.

"It shall be lawful for the Lieutenant-Governor in Council to appoint some one member of the Executive Council of the Province of British Columbia to be Minister of Mines, and the duties, with respect to mines, of the member so to be appointed shall be in

(101.)

addition to his other duties, and shall be such as the Lieutenant-Governor in Council shall direct."

SECTION 13. "Such appointment shall not be deemed to be the creation of another office in the said Executive Council, nor to authorise the payment of any salary to the member so to be appointed Minister of Mines."

SECTION 14. "All rights, powers, duties, functions, responsibilities, or authorities on the 14th day of February, 1871, vested in or imposed on the Provincial Secretary, Attorney-General, Chief Commissioner of Lands and Works, and Minister of Finance and Agriculture, and other the officers appointed, or to be appointed, as aforesaid by the Lieutenant-Governor by any law now in force in this Province, and not repugnant to this Act, shall be vested in or imposed upon any officer to be appointed by the Lieutenant-Governor for the discharge of the same, or any of them, subject to the regulations from time to time made by the Lieutenant-Governor in Council as hereinbefore provided."

SECTION 15. "The officer described as the Chief Commissioner of Lands and Works shall have, and shall be deemed to have had, all the powers, duties, and authorities had and exercisable by the officers mentioned as the Commissioner of Lands and Surveyor-General, the Chief Commissioner of Lands and Surveyor-General, and Chief Commissioner of Lands and Works and Surveyor-General,

and the Surveyor-General, in any Act, Ordinance or Proclamation passed or made in the former Colonies of British Columbia and Vancouver Island."

SECTION 16. "Every person appointed to the office of Provincial Secretary shall have all the powers, duties, and authorities which by any Act, Ordinance, Proclamation, or Order in Council, heretofore passed or made, are conferred and imposed upon the Colonial Secretary."

SECTION 17. "Any of the powers and duties which have been heretofore, or may be hereafter, assigned by law to any of the officers now constituting, or who may hereafter constitute, the Executive Council, of British Columbia may from time to time, by Order in Council, be assigned and transferred, either for a limited period or otherwise, to any other of the said officers, by name or otherwise."

SECTION 18. "Notice of any such assignment and transfer shall be published in the British Columbia Gazette, and a similar notice shall be given if rescinded."

The Legislative Assembly at first consisted of twenty-five members, elected from the various electoral districts or constituencies of the Province. This number has been increased from time to time and now is forty-two. At first the Island of Vancouver had the larger number of representatives, but the Mainland with its greater area, wealth, and population has now gained the ascendancy.

The old sectional feeling of Island vs. Mainland has died away and the Province of British Columbia knows at present no local jealousies. The sessional indemnity was at first \$250, and is now \$1500 per member and mileage.

The electoral franchise in British Columbia for provincial elections is extended to every male native-born Canadian or British subject by birth or naturalization, twenty-one years of age, not insane nor convicted of crime, who has been a resident of the Province for six months and in an electoral district, one month of that time whose name appears on the official voters' list at the time of the election. Japanese, Chinese and Indians have no vote.

The members of the Legislature do not require any property qualifications but must be male, natural born or naturalized British subjects. Contractors and persons receiving salaries from either the Dominion or Provincial Governments are not allowed to hold seats in the Legislative Assembly. The laws against bribery are severe, and in all cases the provincial judges try cases of disputed elections. As supplies have to be voted yearly it is necessary for the Legislative Assembly to meet at least once a year since they have full control of the revenues of the Province.

The "Constitution Act" of 1888 defines the duties, powers, limitations, qualifications of members, duties of speaker, privileges etc., of the Legislative Assembly as follows:-

SECTION 19. There shall be established in this Province a Legislative Assembly constituted in the manner hereinafter provided, and the Lieutenant-Governor shall have power, by and with the advice and consent of the said Assembly, to make laws in and for this Province in all cases whatever, subject, however, to the provisions of the "British North America Act, 1867," or to the said Order of Her Majesty in Council.

SECTION 20. The Legislative Assembly of British Columbia shall consist of thirty-three members to be elected in manner provided by the "Provincial Elections Act," and to represent the Electoral Districts constituted and defined by and in the said Act.

SECTION 21. No Legislature summoned or called in and for the Province of British Columbia shall determine or be dissolved by the demise of the Crown, but such Legislature shall continue, and may meet, convene and sit, proceed and act, notwithstanding such demise of the Crown, in the same manner as if such demise had not happened.

SECTION 22. Nothing in the next preceding section shall alter or abridge the power of the Crown to prorogue or dissolve the said Legislature.

SECTION 23. The Lieutenant-Governor of British Columbia shall from time to time, in the Queen's name, by instrument under the public seal of British Columbia, summon and call together the Assembly.

(2) It shall not be necessary for the Lieutenant-Governor, in proroguing the Legislative Assembly, to name any day to which the same is prorogued, nor to issue a formal proclamation for a meeting of the Legislature, unless it is intended that the meeting shall be for dispatch of business.

SECTION 24. There shall be a session of the Legislature of this Province once at least every year, so that twelve months shall not intervene between the last sitting of the Assembly in one session and its first sitting in the next session.

SECTION 25. For all general elections of members of the Assembly, the writs for the several districts shall be issued by the Registrar of the Supreme Court, at the instance of the Lieutenant-Governor, addressed to the Returning Officers respectively of each district.

SECTION 26. The Lieutenant-Governor may, by Proclamation, in Her Majesty's name, under the public seal of the Province, prorogue or dissolve the said Assembly when he shall think fit; and in the absence of such dissolution the

members of the said Assembly shall hold their seats for four years from the day of the returning of the first writs for the election of members to the said Assembly, and no longer.

SECTION 27.

No member of the Assembly shall vote or sit therein until he shall have taken and subscribed the following oath before the Lieutenant-Governor, or some other person authorized by him to administer such oath:-

"I, A. B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God."

But every person authorized by law to make a solemn affirmation or declaration instead of taking an oath may make such affirmation or declaration in lieu of the said oath.

QUALIFICATION.

SECTION 28.

No person accepting or holding in British Columbia any office, commission, or employment, permanent or temporary, to which an annual salary, or any fee, allowance, or emolument, or profit of any kind or amount whatever from the Province is attached, shall be eligible as a member of the Assembly, nor

SECTION 28

shall he sit or vote as such; but nothing in this section shall make ineligible any person being a member of the Executive Council as hereinbefore mentioned, or shall disqualify him to sit or vote in the Assembly, provided he is elected while holding such office.

SECTION 29.

No person whatsoever holding or enjoying, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, any contract or agreement with Her Majesty, or with any public officer or department, with respect to the public service of this Province is to be paid for any service or work, shall be eligible as a member of the Legislative Assembly, nor shall he sit or vote in the same.

SECTION 30.

No person shall be capable of being elected a member of the Legislature who shall not be duly registered or entered on the register of electors for some electoral district of the Province, according to the provisions of the "Provincial Elections Act" at the time of his election, and who shall not have been resident within this Province for one year previous to the date of his election; and no person shall be capable of being elected a member to serve in the Legislative Assembly who shall be a minister of any religious denomination, whatever may be his title, rank, or designation.

SECTION 31.

If any person disqualified or declared incapable of being elected a member of the Assembly by this Act, or by any other law in force in this Province is nevertheless elected and returned as a member, his election and return shall be null and void.

SECTION 32.

No person disqualified by this Act, or by any other law, to be elected a member of the Assembly, or to sit or vote in the same, shall sit or vote in the same while he remains under such disqualification.

SECTION 33.

If any person is disqualified or declared incapable of sitting or voting in the Assembly, sits or votes therein, he shall thereby forfeit the sum of five hundred dollars for each and every day on which he so sits or votes; and such sum may be recovered from him by any person who will sue for the same in any Court of competent Civil Jurisdiction in this Province.

SECTION 34.

Nothing in this Act contained shall apply or extend to render ineligible or disqualify as a member of the Legislative Assembly-----

- (a) Any shareholder or director in, or trustee of, any incorporated company having a contract or agreement with the Government of the Province;

SECTION 34.

(but no such shareholder, director or trustee may vote at any general or special meeting of the company, or of the directors or trustees, for the making of such contract or agreement); or

(b) Any person on whom the completion of any contract or agreement, expressed or implied, devolves by descent, or limitation, or by marriage, or as devisee, legatee, executor, or administrator, until twelve months have elapsed after the same has so devolved upon him; or

(c) Any contractor for the loan of money, or of securities for the payment of money to the Government of British Columbia, under the authority of the Legislature, after public competition, or respecting the purchase or payment of the public stock of debentures of British Columbia, on terms common to all persons.

SECTION 35.

If any person, being a member of the Legislative Assembly, shall sit or vote as a member of the House of Commons of Canada, his election to the Legislative Assembly shall thereby become void, and his seat shall be vacated, and he shall become incapable of sitting or voting in the Legislative Assembly, and a writ shall issue for a new election in the manner provided for in this Act, and such person shall not be eligible for re-election as a member of the Legislative Assembly so long as he continues to be a member of the House of Commons.

SECTION 36.

If any such member of the House of Commons of Canada shall, notwithstanding his disqualification as in the preceding section mentioned, receive a majority of votes at any election to the Legislative Assembly, such majority of votes shall be thrown away, and it shall be the duty of the Returning Officer to return the person having the next greatest number of votes, provided he be otherwise eligible.

SECTION 37.

In case any person who, under the two last preceding sections of this Act, is made ineligible as a member of, or incapable of sitting or voting in, the Legislative Assembly, shall, while he is so ineligible or incapable, sit or vote therein, he shall thereby forfeit the sum of two thousand dollars for every day on which he sits or votes, and such sum may be recovered from him by any person who shall sue for

SECTION 37.

the same in any competent Court of Civil Jurisdiction in British Columbia.

SECTION 38.

Forthwith after the receipt by the Speaker, or (in case there is no Speaker) by the Clerk of the House, of a certificate of the Judge determining any election petition and certifying that the election was void, the Speaker or Clerk, as the case may be, shall address his warrant, under his hand, to the Registrar of the Supreme Court of British Columbia for the issue of a new writ for the election of a member for the constituency the election in which has been certified to be void, and such writ shall issue accordingly.

SECTION 39.

In case any person returned as elected is, by the certificate of the Judge appointed to try an election petition in respect of the election, determined not to have been duly returned or elected, such person shall not thereafter sit or vote in the Legislative Assembly, unless duly elected afterwards.

SECTION 40.

In case any person, other than the person returned as elected, is by the certificate of the Judge appointed to try an election petition, determined to have been duly returned or elected, such person shall thereupon be entitled to sit and vote in the Legislative Assembly.

SECTION 41.

The Speaker shall forthwith, after the receipt of any -certificate from the Judge determining any election petition, communicate the same to the Clerk, for his guidance, as to the persons entitled to take the oath and sign the roll as members.

SECTION 42.

No writ shall issue under any of the provisions of the four last preceding sections of this Act during a session of the Legislative Assembly.

SECTION 43.

The proceedings taken under the five last preceding sections of this Act by the Speaker or Clerk shall be reported by the Speaker to the Legislative Assembly at the earliest practicable time, and shall be forthwith entered on the Journals of the Legislative Assembly.

SECTION 44.

The Assembly shall, on their first meeting, before proceeding to the dispatch of business, elect one of their members to be Speaker, which election being confirmed by the Lieutenant-Governor, shall be valid and effectual during the continuance of the Assembly, or until the said Speaker shall die, or resign his office by writing under his hand, addressed to the Lieutenant-Governor, or shall cease to be a member of the Assembly.

SECTION 45.

In case of a vacancy happening in the office of Speaker by death, resignation, or otherwise, the Assembly shall, with all practicable speed, proceed to elect another of its members to be Speaker.

SECTION 46.

The Speaker shall preside at all meetings of the Assembly.

SECTION 47.

If the Speaker, from illness or other cause, does not attend a meeting of the Assembly, a member elected by the Assembly may preside at such meeting until the close of such meeting, or until the Speaker himself arrives and takes the Chair; and whenever the Speaker, from illness or other cause, finds it necessary to leave the Chair during a meeting of the Assembly, on any day, he may call upon any member thereof to take the Chair and act as Speaker during the remainder of such day, unless the Speaker himself resume the Chair before the close of the sittings for that day, and the member so elected or so called upon shall take the Chair and act as Speaker accordingly; and every Act passed, and every order made, and thing done by the said Assembly while such member is acting as Speaker as aforesaid, shall be valid and effectual, to all intents and purposes, as if done while the Speaker himself was presiding in the Chair.

SECTION 48.

In case of the absence, for any reason, of the Speaker from the Chair of the Assembly for a period of forty-eight consecutive hours, the Assembly may elect another of its members to act as Speaker, and the member so elected shall, during the continuance of such absence of the Speaker, have and execute all the powers, privileges, and duties of the Speaker.

SECTION 49.

The Assembly shall not be competent to the dispatch of any business, except that of adjournment, unless nine members be present, and for this purpose the Speaker, if present, shall be reckoned as a member.

SECTION 50.

All questions shall be determined by a majority of votes of the members present, other than the Speaker. When the votes are equal the Speaker shall have a casting vote.

SECTION 51.

The Assembly shall, at its first meeting, and from time to time afterwards, as occasion may require, adopt Standing Rules and Orders for the orderly conduct of business.

SECTION 52.

The Lieutenant-Governor may transmit by message to the Assembly the draft of any laws which may appear to him desirable to introduce, and all such drafts shall be taken into consideration by the Assembly in such convenient manner as shall be by the Rules and Orders provided for that purpose.

SECTION 53.

The Assembly shall not originate or pass any vote, resolution, address or bill, for the appropriation of any part of the Consolidated Revenue Fund, or of any other tax or impost, to any purpose which has not been first recommended by a Message of the Lieutenant-Governor to the Assembly during the session in which such vote, resolution, address, or bill is proposed.

SECTION 54.

Whenever any Bill shall be presented to the Lieutenant-Governor for his assent thereto, he may return the same, by message, for the reconsideration of the Assembly, with such amendments as he may think fitting.

SECTION 55.

If any member of the Assembly shall, without the permission of the Assembly, fail during the whole session to give his attendance in the said Assembly, or shall take any oath or make any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign State or Power, or shall do, concur in, or adopt any act whereby he may become subject or citizen of any such State or Power, or shall become a bankrupt, or an insolvent debtor, or a public defaulter, or be attainted of treason, or be convicted of felony or any infamous crime, or if any member of the Assembly, by accepting any office or becoming a party to any contract or agreement becomes disqualified by law to continue to sit or vote in the same, his election shall thereby become void, and the seat of such member shall be

vacated, and a writ shall forthwith issue for a new election as if he were naturally dead.

SECTION 56.

Provided, nevertheless, that whenever any person holding the office of Provincial Secretary, Attorney-General, or Chief Commissioner of Lands and Works, or any other office, who is a member of the Executive Council, and also a member of the Assembly, resigns his office, and within one month after his resignation accepts any other office, but still remains a member of the Executive Council, he shall not thereby vacate his seat in the said Assembly.

SECTION 57.

Any member of the Assembly wishing to resign his seat may do so by giving in his place in the Assembly notice of his intention to resign, in which case, and immediately after such notice has been entered by the Clerk in the Journals of the House, the Speaker may address his warrant under his hand and seal to the Registrar of the Supreme Court for the issue of a writ for the election of a new member in the place of the member resigning. Or such member may address and cause to be delivered to the Speaker a declaration of his intention to resign his seat, made in writing under his hand and seal before two witnesses, which declaration may be so made and delivered either during a session of the Assembly, or in the interval between two sessions;

and the Speaker may, upon receiving such declaration, forthwith address his warrant, under his hand and seal, to the Registrar of the Supreme Court for the issue of a writ for the election of a new member in the place of the member so resigning, and a writ shall issue accordingly; and an entry of the declaration so delivered to the Speaker shall thereafter be made in the Journals of the Assembly. And the member so tendering his resignation shall be held to have vacated his seat, and cease to be a member of the Assembly. C. A. 1888, c. 22, s. 57.

SECTION 58.

No member shall so tender his resignation while his election is lawfully contested, nor until after the expiration of the time during which it may by law be contested. C. A. 1888, c. 22, s. 58.

SECTION 59.

If any member of the Legislative Assembly wishes to resign his seat in the interval between two sessions of the Assembly, and there is then no Speaker, or if such member be himself the Speaker, he may address and cause to be delivered to any two members of the Assembly the declaration before mentioned of his intention to resign; and such two members, upon receiving such declaration, shall forthwith address their warrant, under their hands and seals, to the

Registrar of the Supreme Court, for the issue of a new writ for the election of a member in the place of the member so notifying his intention to resign, and such writ shall issue accordingly; and the member so tendering his resignation shall be held to have vacated his seat, and cease to be a member of the Legislative Assembly. C. A. 1888, c. 22, s. 59.

SECTION 60.

The Registrar of the Supreme Court, may, at the Lieutenant-Governor's instance, issue a new writ for the election of a member of the Legislative Assembly, to fill up any vacancy arising subsequently to a General Election, and before the first meeting of the Legislative Assembly thereafter, by reason of the death or acceptance of office of any member, and such writ may issue at any time after such death or acceptance of office. But the election to be held under such writ shall not in any manner affect the rights of any person entitled to contest the previous election; and the report of any competent authority appointed to try such previous election shall determine whether the member who has so died or accepted office, or any other person, was duly returned or elected thereat, which deter-

mination, if adverse to the return of such member, and in favour of any other candidate, shall avoid the election held under this section; and the candidate declared duly elected at the previous election shall be entitled to take his seat as if no subsequent election had been held.

SECTION 61.

If any person returned as elected to the Legislative Assembly for one or more constituencies at a general election, wishes to resign his seat, or any of his seats, before the first meeting of the Assembly thereafter, he may address, or cause to be addressed, to any two members elect of the Legislative Assembly, a declaration of his intention to resign his seat, made in writing under his hand, before two attesting witnesses; and such members, upon receiving such declaration, shall forthwith address their warrant, under their hands, to the Registrar of the Supreme Court of British Columbia for the issue of a new writ for the election of a member in the place of the member so notifying his intention to resign, and such writ shall be issued accordingly by the said Registrar; and the member so tendering his

resignation shall be held to have vacated his seat, and shall cease to be a member of the House in respect to the seat so vacated.

SECTION 62.

No member elect shall so tender his resignation for a seat in respect of which his election is lawfully contested, nor until after the expiration of twenty-one days from the time the return of his election is made to the Registrar of the Supreme Court of British Columbia.

SECTION 63.

The election to be held under such writ shall not in any manner affect the right of any person, entitled to contest the previous election and claim the seat; and the Judge trying such previous election shall determine whether the member who has so resigned, or any other person, was duly returned or elected thereat, which determination, if adverse to the return of such member, and in favour of any other candidate, shall avoid the election held under the last but one preceding section, under and subject to the provisions of the "Provincial Elections Act," and the candidate declared duly elected at the previous election shall be entitled to take his seat as if no such subsequent election had been held.

SECTION 64.

If any vacancy happens in the Assembly by the death of any member, or by his accepting any office, the Speaker, on being informed of such vacancy by any member of the Assembly in his place, or by notice in writing, under the hands and seals of any two members of the House, shall forthwith address his warrant to the Registrar of the Supreme Court for the issue of a new writ for the election of a member to fill the vacancy, and a new writ shall issue accordingly.

SECTION 65.

If any such vacancy happens, and at any time thereafter, before the Speaker's warrant for a new writ has issued, there be no Speaker of the House, or the Speaker be absent from the Province, or if the member whose seat is vacated be himself the Speaker, then any two members of the Assembly may address their warrant, under their hands and seals, to the Registrar of the Supreme Court, for the issue of a new writ for the election of a member to fill such vacancy, and such writ shall issue accordingly.

SECTION 66.

No omission or failure to elect a member or members in or for any Electoral District, nor the vacating the seat or avoiding the election of any such member or members, shall be deemed or taken to make the Assembly incomplete, or to invalidate any proceedings thereof or to prevent such Assembly from meeting and dispatching business, so long as

there shall be a quorum of members present.

SECTION 67.

In each session of the Legislative Assembly there shall be payable to each member of the Legislative Assembly, attending at such session, a sessional allowance of six hundred dollars and no more.

SECTION 68.

A deduction at the rate of six dollars per day shall be made, from the said sessional allowance, for every day on which the member does not attend a sitting of the House, or of some Committee thereof, provided the House sits on such day; but each day during the session after the first on which the member attends as aforesaid, on which there has been no sitting of the House in consequence of its having adjourned over such day, on which the member was in the place where the session was held, but was prevented by sickness from attending any such sitting as aforesaid, shall be reckoned as a day of attendance at such session, for the purposes of this Act, and a member shall, for the purposes aforesaid, be held at the place where the session is held whenever he is within ten miles of such place.

SECTION 69.

The said compensation may be paid from time to time, as the member becomes entitled to it, to the extent of six dollars for each day's attendance as aforesaid, but the remainder shall be retained by the

Clerk of the House until the close of the session, when the final payment shall be made.

SECTION 70.

If any person is from any cause a member of the Legislative Assembly for a part only of any session, then, provided he is a member for upwards of thirty days during the session, he shall be entitled to the sessional allowance hereinbefore mentioned, subject to the deduction aforesaid for non-attendance as a member, and also to a deduction of four dollars for each day of such session before he was elected, or after he ceased to be a member; but if he is a member for less than thirty days, then he shall be entitled to only six dollars for each day's attendance at such session, whatever be the length thereof.

SECTION 71.

There shall be also allowed to each member, twenty-five cents for each mile of the distance between the place of residence or the Electoral District of such member and the City of Victoria, reckoning such distance going and coming, according to the nearest mail route; which distance shall be determined and certified by the Speaker.

SECTION 72.

The sum due to each member at the close of any session shall be calculated and paid to him by the Clerk of the House, on his making and signing before the Clerk of the House, or a Justice of the Peace, a solemn

declaration, to be kept by the Clerk, stating the number of days' attendance, and the number of miles of distance according to the nearest mail route, as determined and certified by the Speaker, for which such member is entitled to the said allowance, and the amount of such allowance, after deducting the number of days (if any) which are to be deducted under any preceding section of this Act; and such declaration may be in the form contained in Schedule A hereunto annexed.

SECTION 73.

There is hereby granted to Her Majesty, out of any unappropriated moneys forming part of the Consolidated Revenue Fund of this Province, an annual sum sufficient to enable Her Majesty to advance to the Clerk of the Legislative Assembly such sums as are required to pay the estimated amounts of the sessional allowance hereinbefore mentioned.

SECTION 74.

The Clerk of the Legislative Assembly shall account for all moneys received by him under this Act, in the same manner as for moneys advanced to him for the contingent expenses of the said Legislative Assembly, and he may apply any surplus thereof to the payment of such contingent expenses, and may supply any

deficiency of such estimated amount out of any moneys in his hands applicable to the payment of such contingent expenses.

SECTION 75. The payment to and acceptance by any member of the Legislative Assembly, of any allowance or salary under this Act, shall not be deemed to vacate the seat of any such member.

SECTION 76. It shall be lawful for the Legislature of this Province, from time to time, to define the privileges, immunities, and powers to be held, enjoyed, and exercised by the Assembly, and by the members thereof respectively: Provided, that no such privileges, immunities, or powers shall exceed those held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof, on the 14th day of February, 1871.

SECTION 77. This Act shall not exclude or be deemed to exclude any rights, immunities, or privileges of members of the Legislative Assembly not herein expressly recognised or enacted.

SECTION 78. No action at law or other civil proceeding shall be brought against any member of the Legislative Assembly for any words spoken by him in the Legislative Assembly.

SECTION 79.

No action at law or other civil proceeding shall be brought against any such member for introducing into or laying before such Assembly (without actual and express malice) any documents or papers.

SECTION 80.

No action at law or other civil proceeding shall be brought against any such member, or against any person for, by reason, or on account of, the printing or publication of any documents or papers, printed or published by order of the Legislative Assembly or the Speaker thereof, and no suit in equity shall be brought to restrain the publication or printing of any such papers or documents.

SECTION 81.

No such member shall be liable to arrest on any civil process during a period commencing at forty days before, and ending at forty days after, any session of the Legislative Assembly.

SECTION 82.

Any select Committee of the Legislative Assembly to which any Private Bill has been referred by that House, may examine witnesses upon oath, upon matters relating to such Bill, and for that purpose the chairman, or any member of such Committee, may administer an oath, in the form contained in Schedule B hereto annexed, to any such witness.

SECTION 83.

Any Standing or Select Committee of the Legislative Assembly may require that facts, matters, and things relating to the subject of inquiry be verified or otherwise ascertained by the oral examination of witnesses, and may examine such witnesses upon oath, and for that purpose may administer an oath to any such witness.

SECTION 84.

Where witnesses are not required to be orally examined before such Committee, any oath, affirmation, declaration, or affidavit in writing, which is required to be made or taken by or according to any rule or order of the said Legislative Assembly, or by the direction of any such Committee, and in respect to any matter or thing pending or proceeding before such Committee, may be made and taken before the Clerk of the House, the Clerk of any such Committee, or any Commissioner for taking affidavits in the Supreme Court of British Columbia

As pointed out above, the Dominion Government has the power to ~~veto~~ any act passed by the Provincial Government, the same way as the Imperial Government can ~~veto~~ any act of the Dominion Government. Previous to Confederation, the Imperial Government held this power over the colonial governments but in 1867, this power was given to the Federal Government. This power to ~~veto~~ is very rarely exercised and before

it is done the Supreme Court of Canada decides the points of law in question. By taking the matter out of the political sphere in this way ~~was~~ very little friction has ever occurred between the provincial and federal governments.

Previous to 1898 some property qualifications were necessary for voters at the Dominion elections, but in that year the provincial lists were accepted. Superior or County Court Judges cannot vote but the Dominion law does not allow the provincial statutes to disqualify Dominion officials in the case of Dominion elections. In case of municipal elections, other qualifications are necessary for voters but this will be dealt with later.

As already noted, besides the Provincial Government, consisting of the Lieutenant-Governor, Executive Council and Legislative Assembly, the province has a well-established judiciary, besides local, municipal and school governing bodies, all of which will be dealt with in the succeeding chapter.

CHAPTER 10.

THE JUDICIARY--MUNICIPAL AND SCHOOL BOARD GOVERNMENT.

The Hudson's Bay Company received their charter as early as 1670, and theirs was the only government west of Lake Superior for many years. Quoting the original charter we find that the Governor and Council were given powers "to make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances, as to them, ..., shall seem necessary and convenient for the good government of the said Company, and of all governors of colonies, forts and plantations, factors, masters, mariners and other officers employed or to be employed in any of the territories and lands afor^esaid, and in any of their voyages." The Company in this connection were given the right to impose fines and penalties to enforce the law, and the fines thus levied were to be devoted to the use of the Company, without any impediment from the Crown, providing the laws and fines "be reasonable, and not contrary or repugnant, but as near as may be agreeable to the laws, statutes or customs of this our realm." The document concludes with this important clause: "AND WE DO hereby straitly charge and command all and singular our Admirals, Vice-Admirals, Justices, Mayors, Sheriffs, Constables, Bailiffs, and all and singular other our officers, ministers, liege men and subjects whatsoever, to be aiding, favouring, helping and assisting to

the said Governor and Company, . . ."

For many years the Company held this monopoly of trade and government in the Middle West, but it was another company that first crossed the Rockies, and to Alexander MacKenzie belongs the honor of first reaching the Western Sea from Canada by land in 1793. The North Westers were influential in Canada, and it was through their influence that the Act of 1803 was passed, giving the Courts of Upper and Lower Canada jurisdiction to try criminal cases in all the West, besides empowering the Governor of Lower Canada to appoint Justices of the Peace to commit offenders to be taken to Canada for trial.

There seems to be no report of any offender having been taken to Canada for trial, and the history of justice in this vast territory for many years is a blank. In 1849 the Colony of Vancouver Island was founded and these judicial powers of the Act of 1803, as far as Vancouver Island was concerned, were cancelled. In the Act of 1849 the Crown was given the power to establish courts of justice, and to appoint "judges, justices, and such ministerial officers for the administration and execution of justice in the said Island as Her Majesty shall think fit and direct." Governor Blanshard appointed Dr. Helmcken a Justice of the Peace at Fort Rupert, but he soon resigned and the only judges on the Island until 1853 were Governor Blanshard and his successor, Governor Douglas.

In that year David Cameron was appointed Judge of the Supreme Court of Civil Justice of Vancouver Island. He held the position until 1865, when he retired on a pension of £500 per annum and his successor, the Hon. Joseph Needham, held the position until 1870.

In 1858 the Colony of British Columbia was established on the Mainland, and the old Statute of 1803 was repealed, and Judge Begbie was appointed "a judge in our Colony of British Columbia." "This date (November 19, 1858) was fixed as the date on which the civil and criminal laws of England, so far as the same are not from local circumstances inapplicable should be taken to have been introduced into the Province." (1) In 1859 Governor Douglas by proclamation established the Supreme Court of Civil Justice of British Columbia. In 1866, the two colonies were united, but the two courts were allowed to remain separate, known respectively as the Supreme Court of the Mainland of British Columbia, and the Supreme Court of Vancouver Island. In 1870, Chief Justice Needham resigned and Chief Justice Begbie became Chief Justice of the Courts of British Columbia, and was assisted by the first puisne, judge of the Colony, Sir Henry Pering Pellow Crease, who held office until his resignation in 1896.

In 1871, the Province entered Confederation. The Supreme Court of British Columbia had wide powers, and differed from the other Supreme Courts of the Dominion in that the civil and

(1) Canada and its Provinces, Vol. 22. His Honor Justice Clement.

criminal laws of England previous to 1858 were the laws of the Province. Thus the laws of this Province are more in accordance with the laws of England than are those of any other Province of Canada. This Court still has jurisdiction in divorce and matrimonial cases, as was finally settled by the Privy Council in 1908. In 1879 the Legislature of the Province took from the judges the power of the Common Law Procedure Acts of England, and conferred it upon the Lieutenant-Governor. In the same year the Legislature divided the Province into judicial districts, much to the chagrin of the judges, but they were upheld in their act by a decision of the Supreme Court of Canada, June 10, 1883, and to this day the procedure and practice of the Courts of this Province are in the hands of the Lieutenant-Governor, subject to the provisions the Legislature may at any time make.

Besides the Supreme Court, the Province has a Court of Appeal, to which appeals are made from the decisions of single judges of the Supreme Court, and also of the County Courts. This Court of Appeal of the Province was established by an Act which came in force on September 1, 1909. It consists of the Chief Justice of the Court of Appeal, and four puisne justices, known as the Justices of Appeal. Chief Justice Hunter held the office before the establishment of the Court of Appeal, and when he ceases to hold that office, the Chief Justice of Appeal will be known as the Chief Justice of British Columbia. Besides hearing appeals

(133)

from the Supreme Courts, and of County Courts, where the amount involved is over one hundred dollars, it is the Court of Appeal for the Province in all criminal cases under the Criminal Code of Canada. It sits four times a year, in January and June in Victoria, and in April and November in Vancouver.

There are at present nine County Courts in the Province. These Courts have jurisdiction in all personal actions where the amount involved does not exceed \$1,000; actions of ejectment, where the property does not exceed \$2,500; in equity cases, such as proceedings upon mortgages, probate, etc., where the amount involved does not exceed \$2,500. They also have wide jurisdiction under the provincial mining acts, and they hear appeals from the Small Debts Courts.

The Small Debts Courts have jurisdiction in personal matters up to one hundred dollars. The judges of these Courts are appointed by the Provincial Government.

Besides the Court of Appeal, the Supreme Courts, the County Courts and the Small Debts Courts there are many magistrates and Justices of the Peace, similar to those in the other Provinces of Canada. They have limited jurisdiction under the Criminal Code of Canada as well as under the Provincial Summary Convictions Act.

The Confederation Act provides that the Federal Government must appoint and pay all judges of the various courts, but magistrates and Justices of the Peace are appointed by the Provincial Governments. Judges of the Higher Courts must be barristers of at least ten years' standing, and County Court judges at least seven years' standing. Magistrates and Justices of the Peace must possess certain property qualifications. A judge holds office for life, and can be dismissed by the Dominion Minister of Justice, only. While the Federal Government makes the appointments of judges, the Provincial Government has entire control of the constitution, organization, and procedure of all its own courts, having civil and criminal jurisdiction. They may change the constitution of courts established, impose new duties upon them, abolish courts already established, or add a new court. While the Provincial Government has these powers, the Dominion Government must appoint and pay all judges and can call upon them to carry out their legislation, such as Dominion Elections Act.

Under the existing division of legislative powers, it will be seen that the Provinces have exclusive control over all matters pertaining to property and civil rights, while the Dominion alone makes laws relating to crime and criminals.

Besides the Provincial Government, British Columbia has a system of local or municipal government, similar to the other

Canadian Provinces. In 1896 the Legislature codified the law governing municipalities in three Statutes, known as the Municipal Incorporation Act, the Municipal Elections Act, and the Municipal Clauses Act, and these Acts, with very few amendments are in force to-day. In the case of municipalities then existing, these Acts conserved their corporate rights, powers, etc.

Under the Municipal Incorporation Act, any community, including not more than two thousand acres in area, and having resident therein not less than one hundred male British subjects of full age, may petition the Legislature, asking to be incorporated as a city. The petition must be signed by the owners of more than one half in value of the lands, included in the proposed city. In British Columbia there are no classifications of cities, towns and villages, and many ambitious communities are now known as cities, which hardly deserve the name of village, as it is defined in the older Provinces. The Councils of these cities consist of a mayor and from five to nine aldermen. The mayor is elected annually by general vote, and the aldermen are elected annually by wards, where they exist. The law makes special provision with respect to the larger cities, such as Vancouver, Victoria, New Westminster and Nanaimo. The mayor must be the registered owner of real estate within the city limits, valued

at not less than one thousand dollars above any registered encumbrance or judgment, and must be a British subject. An alderman must have property qualification to the extent of at least five hundred dollars. Similarly any district containing not fewer than thirty British male residents may petition to be incorporated as a municipality. The petition must be signed by the owners (including pre-emptors who have been residents for a period not less than one year) of over one half in assessed value of the real estate of the proposed municipality. The Municipal Councils consist of a reeve and from four to seven councillors. The reeve must be registered possessor of real estate of not less than five hundred dollars, and the councillors, two hundred and fifty dollars above encumbrance. The franchise is extended to males and females of full age who:-

1. Are landowners of the assessed value of one thousand dollars, or who,
2. Hold trade licenses, the annual fee for which is not less than five dollars, or who,
3. Are householders.

Nominations are made on the second Monday in January, and voting in the cities takes place on the following Thursday, and in the district municipalities on the following Saturday. There are at present twenty-eight rural municipalities in British Columbia. All territory outside these municipal areas is under the direct

jurisdiction of the Provincial Government.

The Municipal Councils acting within their jurisdiction have wide powers, but as a partial limitation, the Legislature reserves the right to appoint auditors to examine their accounts.. They raise their revenue by direct taxation upon assessment of the actual cash value. Land and improvements are assessed separately, and in the large cities, and in many municipalities single tax is in vogue. The powers of the councils are exercised by by-laws when not authorized by Statute. By-laws must be under the seal of the corporation, and be signed by the reeve or mayor and by the clerk or secretary. By-laws must be printed and advertised in the papers. In the case of authorising bonds for borrowing purposes the vote of the property holders is necessary. Among the most important powers of the municipality may be mentioned the following: Passing "By-laws for the construction and maintenances of waterworks, the amounts required to be collected under local improvement by-laws, licensing and regulating transient traders, the purchase of real property for the erection of public buildings and school-houses thereon, cemeteries, their improvement and protection, cruelty to animals, fences, exhibitions and places of amusement, planting and preservation of trees, gas and water companies, shows, exhibitions, tavern and shop licenses, public morals, giving intoxicating liquor to minors, nuisances, sewerage and drainage, inspection of meat and milk, the weight of bread, contagious diseases, fevers, preventions of accidents

by fire, aiding schools, endowing fellowships, markets, police, industrial farms, parks, bathing houses, cab stands, telegraph poles, prevention of fires, construction of buildings, public libraries, charities and numerous other subjects immediately connected with the security and comfort of the people in every community." 1.

Some idea of the growing importance of the municipalities of the Province may be formed from the following figures, which have been compiled from the government records of nine of the largest cities of the Province for the year 1912.

Total Revenue	\$ 9,701,202
Total expenditure	\$ 9,167,415
Total bonded indebtedness	\$36,927,983

Taxable assessed value \$255,752,124.

A study of the constitution of our Province would not be complete without some reference, necessarily brief, to another branch of local government, namely the school board. After Confederation the Legislature passed in 1872 "An act respecting Public Schools," which with some important amendments is the School Act of to-day.

By this Act, the Common School Ordinance of 1869 and the Common School Amendment Ordinance of 1870 were repealed, a Public

1. How Canada is governed--Bourinot, Page 234.

School Fund of \$40,000 was set aside from the provincial revenue for 1872, and such sums as were needed in each succeeding year, and a Board of Education was appointed by the Lieutenant-Governor in Council. The Lieutenant-Governor was also given power to appoint a Superintendent of Education who would be ex-officia^o the chairman of the Board of Education, who would supervise and inspect the schools, report progress to the Government, etc. The Lieutenant-Governor was, in addition to the above, given power to create new schools and pay teachers, buy apparatus etc., providing there were not fewer than fifteen children of school age in the new district. The Board of Education were to meet once every three months and to adopt such means as they thought advisable for the advancement of the schools in the province, examine teachers and grant certificates, fix salaries of teachers in various districts, and where advisable, to establish High schools. Three trustees were to be elected in each school district and the schools were to be conducted on strictly non-sectarian principles. In the annual report of the Superintendent of Education for 1872, we find a total of 514 children attending school besides the 350 who were attending private and denominational institutions. He also estimated there were 900 children in the province at the time, who were attending no school.

Since 1872 there has been a steady progress in the development of our school system and every year shows a greater expenditure in the interests of education and an increased attendance.

In 1873 the government gave trustees the power, under certain

restructions, to compel the children in their district to attend school. In 1876 another amendment of the school act was passed giving authority to the Lieutenant-Governor to appoint a Deputy-Superintendent of Education. Another important act was passed in 1876, known as the School Tax Bill, which provided that every male person over eighteen years of age resident in the school district should be taxed annually three dollars for the support of the school.

In 1879 the government passed the "Public Schools Act" which revoked all previous acts governing schools, and which is, with certain amendments, the school law of the province to-day. The chief features of this Public Schools Act may be summarized as follows:

1. The Provincial Board of Education was abolished, and its duties were transferred to the Superintendent of Education.
2. The Superintendent was given power to prescribe text-books, to make rules and regulations, to establish separate schools for girls if desired, to close schools having an average attendance of less than ten, to have a general supervision over all the schools which was formerly the work of the provincial board, such work being now carried on through the inspectors who work under the directions of this official.
3. Trustees were given power to dismiss teachers by giving them thirty days' notice.
4. High schools were now placed under the trustee boards instead of being under the provincial board.

5. The Lieutenant-Governor in Council was given power to appoint inspectors to visit schools and report on them and on teachers; to appoint paid examiners to examine candidates at the entrance, high school promotion and teachers' examinations; to grant teachers' certificates.
6. Teachers must now furnish monthly and yearly reports to the Superintendent of Education and to the parents.
7. Teachers were given the right to resign at any time by giving thirty days' notice to the trustee.

In 1888 the provincial government, instead of bearing all the expenses of the schools, placed the responsibility of paying one-third of their teachers' salaries in the four cities of Victoria, Vancouver, New Westminster and Nanaimo, and in 1891 this was increased to one-half. Since that year these cities have to provide for all expenses connected with new buildings, incidental expenses, etc., and in 1893 these cities were given the right to fix the salaries of their teachers. At the present time all the city municipalities have to provide their own school expenses, but the Provincial government still pays a per capita grant of thirteen, fifteen or twenty dollars per pupil, according to the school attendance. This year (1916) the total salaries paid to teachers in the city of Vancouver will be \$478,179, and the provincial grant will be \$185,353.35, while the total cost of the school maintenance is placed at \$639,404. In 1905 and 1906 amendments to the school act

require rural municipalities and rural school districts to provide for a portion of their school expenses, but the cost of the building of new schools in districts is yet borne by the province. There are yet some assisted schools in the province in very sparsely settled districts, and the teachers' salaries in such are ~~paid~~ ^{paid} entirely from the provincial treasury. There are at present some 240 teachers employed in such schools.

There are at present in the province besides the public schools, some twenty-five high schools, two normal schools, a provincial university, eleven public school and one high school inspector, and the free text-book system adopted in 1908 at a yearly cost of about sixty thousand dollars which is borne exclusively by the province. The daily attendance has increased from 575 in 1872 to 37,568 in 1912. On the whole the school system of the province is an excellent one and compares very favorably with that of any other province of Canada.

CHAPTER 11.

RECENT IMPORTANT LEGISLATION.

Although, strictly speaking, the many acts of the provincial legislature since confederation have little direct bearing upon the constitution of the province, yet a history of its constitution is hardly complete, without reference, necessarily brief to some of the more important of them.

One of the greatest assets of the province and one of the strongest supporters of the revenue is its almost illimitable areas of standing timber, but very little value seems to have been attached to this great provincial asset previous to the completion of the C.P.R. In the early days, some two or three small saw mills had operated in different parts of the province and they secured rights in the form of timber leases from the government, but the fees were but *nominal* ~~nominal~~, and the government was only too glad to have such an industry started. After the completion of the railroad in 1885, the government saw that the timber was becoming more valuable and in 1888 we find the first legislation in that connection. In that year it was enacted that standing timber should be sold at fifty cents per thousand feet, board measure, and mill owners could obtain exclusive cutting privileges, over any area, by paying a tax of ten cents per acre, annually. In 1895 the government recognized that leasees were holding certain areas for speculation and a larger tax was imposed on such than on the mill operators, and in 1896 timber lands were withdrawn from sale, and only the timber sold. Non-operators were now charged twenty five an acre annually, and operators fifteen cents. This policy was continued until 1905 when

the government threw open all timber lands, and any one who desired to do so could stake a square mile of timber lands and all he was required to pay was a small rental. When the timber was cut he had to pay a royalty or special timber license, which was increased from time to time as the value of the timber increased and in the three years following 1905, no less than 9,600,000 acres of timber lands were staked. That the government revenue was materially increased from this source may be seen from the fact that while in 1905 the forest revenue of the province was but \$486,516, it had risen in 1908 to \$2,424,668, about double the amount that Ontario receives from a similar source.

In 1908 the government decided that they were now securing sufficient revenue from this source and a reserve was proclaimed, and the privilege to stake timber lands was cancelled.

The agitation of the license holders for fire protection, and for an unlimited tenure instead of for a term of years, prompted the government to appoint a Forestry Commission consisting of Hon. F.J. Fulton, A.S. Goodeve, and A.C. Flumerfelt. This Commission made a thorough study of the conditions, visited different parts of Canada and the United States, and made an estimate of the area of the timber lands in the province. The result of their investigation embodied in a report in 1910, prompted the government to enact certain measures which:-

- (1) Provided fire protection by the appointment of fire wardens.
- (2) Abolished the time limit of license holders.

(3) Provided for the conservation of the timber wealth
of the province.

To pay the expenses of keeping an army of fire wardens, a tax of one and one half cents an acre is levied on all timber lands held under license. The fund thus raised is known as the Forest Protection Fund.

At the present time something over twelve million acres of timber lands are held by investors and lumbermen, of which about one and a half are owned under the sales previous to 1888, one million are held by limited leases, and the balance under the un-expiring license system. Although the balance of the timber lands of the province are now held in reserve, occasionally the government cruises, and surveys a limited area and offers it to the highest bidder. It is estimated that at the present time not more than one quarter of the timber lands of the province are under reserve.

Although extremely mountainous in character, the province possesses, besides its almost illimitable areas of timber lands, very many large stretches of extremely fertile farm lands. It has been estimated (owing to the character of the country it is merely an estimate), that there are in the province no fewer than fifteen million acres of tillable soil.

Previous to confederation, very little legislation is found in the old law records of the colony. While the Hudson's Bay Co. held the Colony of Vancouver Island, the sales of land were insignificant for obvious reasons, but after the union in 1866 much land was thrown open to pre-emption and as these lands were not surveyed, vast areas were alienated.

In 1872 the legislature attempted to tax these lands, but this tax was disallowed because their lands were unconditionally their own. In the same year provision was made where by a pre-emptor could secure 160 acres east of the Cascades at one dollar an acre, and four years' residence and in 1875 this was changed to two years' residence and the same law is in force to-day. Since 1875 leases can be obtained for pasture lands of unlimited area, and for hay lands of an area of five hundred acres. In 1873 the Drainage, Diking and Irrigation Act allowed farmers to co-operate in improving their land but the majority must agree and the work must be carried on under a government commissioner. In 1874 the Agricultural Societies Act provided for the incorporation of such for the purpose of holiday fairs^{ir}, and in 1886 the government provided for the assessment of all lands and imposed a direct taxation, while in 1877 the Island Pasturage Act made provision for the prevention of the spread of noxious weeds. In 1884 the Land Act opened for sale all the land in the province, placing the price at one dollar an acre. This Act is in force now but the price is now fixed at ten dollars an acre for first class and five dollars an acre for second class lands. Something like two and a half million acres have been purchased but to encourage improvements these lands are taxed as wild lands at four percent per annum on the assessed value.

As early as 1873 provision was made for a Minister of Agriculture but it was not until 1894 that the department was fully organized, and sufficient support given it for the compiling of statistics, and for making it of any practical value to the farmers. Since then

much has been done and many important and progressive acts have been passed, the more important of which may be briefly stated as follows:-

- (1) Horticultural Board Act for prevention of insects.
- (2) An Act to incorporate the Horticultural and Fruit Growers' Association.
- (3) Dairy Association Act providing for the incorporation of Cheese and butter Companies.
- (4) In 1897 the Farmers' Institutes and Co. operation Act.
- (5) In 1898 the Agricultural Credit Associations Act providing for loans from the government to farmers at a low rate of interest.

During recent years the real estate boom in Vancouver and other large cities has been reflected in the rural districts where land has risen to one hundred and even five hundred an acre. For this reason many of the more substantial farmers have found it more profitable to part with their holdings and as a result much of the land is held by speculators. But a readjustment is already taking place and the cry is now "back to the land".

Not less important as an industry and as a source of revenue are the unmeasurably rich deposits of gold, copper, silver, lead, zinc, iron, coal, etc., and with the increase in population and shipping facilities one can foresee the province of British Columbia becoming one of the greatest mining centres of the world. The coal lands alone, now discovered, comprise an area of not less than 1351 square miles, capable of producing, it is estimated, 40,225,000,000

tons and already the mines of the province have yielded the enormous sum of \$430,137,522.

Although it is beyond the scope of this work to give anything like a complete summary of the mining laws of the province, an attempt will be made to call attention to the outstanding features of the law under which mining is carried on.

Under the "Mineral Act" of 1896, and its amendments "every person over, but not under, eighteen years of age, and every joint stock company, shall be entitled to all the rights and privileges of a free miner and shall be considered a free miner, upon taking out a free miner's certificate. A minor who shall become a free miner shall, as regards his mining property and liabilities contracted in connection therewith, be treated as of full age. A free miner's certificate issued to a joint stock company shall be issued in its corporate name. A free miner's certificate shall not be transferable.

A free miner's certificate may be granted to a free miner for one or more years, to run from the date thereof, or from the expiration of the applicant's then existing certificate, and to a joint stock company for the period ending on the 30th day of June after the issue of the certificate next ensuing, upon the payment therefor of the fees set out in the Schedule of Fees to this Act. Only one person or one joint stock company shall be named therein."

The free miner's certificate must be obtained from the Mining Recorder, and the fee is \$5.00 to an individual and from \$50 to \$100

to a joint stock company, according to the nominal capital of the company. This certificate gives the miner during the continuance of his certificate, the right to enter, locate, prospect and mine upon any waste lands of the Crown, for all minerals other than coal, with the exception of such lands as may be occupied by buildings and orchards, or are under cultivation, or reserve for Indians, or for military purposes. When locating a claim which must not be more than fifteen hundred feet in length by fifteen hundred feet in width, the miner must stake and must record the claim with the Mining Recorder within fifteen days, or such time as is possible, according to its location. The miner may now work his claim for a period of one year and this claim can be renewed from year to year, or he may pay One Hundred Dollars and thus hold his claim without working it and a mill-site may be staked and held in a similar way. When abandoning the claim or the mill-site, a record of abandonment must be filed in the office of the Mining Recorder, and during the time the claim is held, a tax of twenty-five cents per acre must be paid to the provincial government, ^{or any fee they} may see fit to impose.

Regarding coal mining, the act provides that the lands must be staked and at least thirty days' notice given before the license is granted, and a fee of Fifty (\$50) Dollars must accompany each application. The land staked must not include more than six hundred and forty (640) Acres and then, "It shall be lawful for the lieutenant-Governor in Council to grant a lease of lands covered by prospecting license, for coal mining purposes to any licensee who produces satisfactory evidence that he has discovered coal on the lands held

under his licence, for a term of five years, at an annual rental of ten cents per acre; and if during the term of such lease, or at the expiration of such term and within three months thereafter, the leasee can shew conclusively that he has continuously and vigorously prosecuted the work of coal mining, and has fully carried out the provisions of his lease, he shall be entitled to purchase the said lands at the rate of five dollars per acre, payable in full in one payment at the time of sale:

(a) Provided that a lease shall not be issued until after the land has been surveyed in a legal manner, and to the satisfaction of the Chief Commissioner of Lands and Works, by the applicant:

(b) Provided, also, that in addition to the annual rental of ten cents per acre the leasee shall pay to and for the use of Her Majesty a royalty of five cents per ton upon every ton of merchantable coal and one cent per barrel on all petroleum raised or gotten from the leased premises:

(c) Provided, further, that the lease shall contain provisions binding the leasee to carry on coal mining, and works incidental thereto, continuously, and to make a reasonable use, within reasonable periods, of the premises thereby granted, and to apply the same to the purposes intended, to the satisfaction of the Chief Commissioner of Lands and Works. And any such lease may be subject to any general stipulations which the Lieutenant Governor in Council may see fit to impose:

(d) Provided, also, any number of persons, not exceeding ten, uniting in partnership for the purpose of holding and working coal or petroleum lands which adjoin each other, and for which leases have been granted, shall be entitled to work such land as a firm, and in such case it shall not be necessary for each leasehold to be worked separately, provided work is carried on upon any one of them to the satisfaction of the Chief Commissioner of Lands and Works."

The law pertaining to renewal of license, tax, royalties, abandonment is not unlike that provided in the Mineral Act above referred to.

The "Coal Mines Regulation Act" of 1888, provides protection to miners and outlines certain restrictions as to the class of persons who can be employed. Sections 3, 4, 5, 6, 7, 8, of the Act are as follows:

3. Boys under twelve years of age shall not be employed in or about a mine to which this Act applies.

4. No boy under the age of twelve years, and no woman or girl of any age, and no Chinaman, shall be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground.

5. A boy of the age of thirteen and under the age of fourteen years shall not be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground, except in a mine in which the Minister of Mines, by reason of the thinness of the seams of such mine, considers such employment necessary, and,

by order published as he may think fit, for the time being allows the same, nor in such case--

(a) for more than five days in one week; or

(b) if he is employed for more than three days in any one week, for more than six hours in any one day; or

(c) in any other case for more than six hours in any one day; or,

(d) otherwise than in accordance with the regulations hereinafter contained.

6. A boy of the age of twelve and under the age of fourteen shall not be employed in or allowed to be for the purposes of employment, in any mine to which this Act applies, below ground for more than thirty hours in any one week, or more than six hours in any one day, or otherwise than in accordance with the regulations hereinafter contained.

7. For the purpose of the provisions of this Act with respect to the employment of boys and male young persons in a mine below ground, the following regulations shall have effect, that is to say:-

(1) There shall be allowed an interval of not less than eight hours between the period of employment on Friday and the period of employment on the following Saturday, and in other cases of not less than sixteen hours between each period of employment:

(2) The period of each employment shall be deemed to begin at the time of leaving the surface, and to end at the

time of returning to the surface:

(3) A week shall be deemed to begin at midnight on Saturday night, and to end at midnight on the succeeding Saturday night:

(4) No boy under fourteen years of age shall work below ground for more than six hours in any one day.

8. With respect to women, young persons, and children employed above ground, in connection with any mine to which this Act applies, the following provisions shall have effect:-

(1) No child under the age of twelve years shall be so employed:

(2) The regulations of this Act with respect to boys under fourteen years of age shall apply to every child so employed:

(3) The regulations of this Act with respect to male young persons under fourteen years of age shall apply to every woman and young person so employed:

(4) No woman, young person or child shall be so employed between the hours of nine at night and five on the following morning, or on Sunday, or after two o'clock on Saturday afternoon:

(5) Intervals for meals shall be allowed to every woman, young person, and child so employed amounting in the whole to not less than half an hour during each period of employment which exceeds five hours, and to not less

than one hour and a half during each period of employment which exceeds six hours.

The provisions of this section as to the employment of women, young persons, and children after two o'clock on Saturday afternoon, shall not apply in the case of any mine so long as it is exempted in writing by the Minister of Mines."

Besides the protection thus afforded to coal miners, the "Inspection of Metalliferous Mines Act" of 1897 provides for an Inspector of Metalliferous Mines and it is the duty of this official to see that no women, children, Chinese or Japanese are employed, and that the health and general welfare of the workmen are protected, and the Act lays down specific rules regarding ventilation, explosives, fire protection, signals, shafts, hoists, ladders, exits, timbering, &c.

Litigation arising from disputes, disagreements, counterclaims, &c., in connection with the mining industry of the Province, is conducted with considerable satisfaction to all parties by the County Courts, which have special jurisdiction in this regard, as appears from Section 117 of the "Mineral Act" of 1896, as follows:

"In addition to the jurisdiction and powers given to County Courts by the "County Courts Jurisdiction Act," and other Acts, every County Court shall have and exercise, within the limits of its district, all the jurisdiction and powers of a Court of Law and Equity--

(1) In all personal actions, where the debt or damages claimed arise directly out of the business of mining (other than coal

mining), or from the exercise of or interference with any right, power, or privilege given, or claimed to be given, by this Act or any other Act relating to mining (other than coal mining):

(2) In all actions between employers and employees, where the employment is directly connected with the business of mining (other than coal mining):

(3) In all actions for supplies to persons engaged in mining, where such supplies were bought, contracted for, or supplied, or were alleged to have been bought, contracted for, or supplied for mining purposes, or for consumption by persons engaged in mining or prospecting:

(4) In all actions to trespass on or in respect of mineral claims or other mining property, or upon or in respect of lands entered or trespassed on, or claimed to have been entered or trespassed on, in searching for, mining, or working minerals (other than coal), or for any other purpose directly connected with the business of mining (other than coal mining), or in the exercise of any power or privilege given, or claimed to be given, by this Act, or any other Act relating to mining (other than coal mining);

(5) In all actions of ejectment from mineral claims or other mining property, or from lands entered, or claimed to have been entered, in searching for, mining or working minerals (other than coal), or for any purpose directly connected with the business of

mining, or entered, or claimed to have been entered, under some power, right or authority given or obtained under the provisions of this Act, or any other Act relating to mining (other than coal mining):

(6) In all suits for foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge or lien shall be on mineral claims, mines, or other mining property:

(7) In all suits for specific performance of, or for reforming, or delivering up, or cancelling any agreement for sale, purchase, or lease of any mineral claim, mine, or other mining property:

(8) In all suits for the dissolution or winding up of any mining partnership, whether registered or not, under the provisions of this Act:

(9) In all suits relative to water rights claimed under this Act, or any other Act relating to mining (other than coal mining):

(10) In all proceedings for orders in the nature of injunctions, where the same are requisite for the granting of relief in any matter in which jurisdiction is given to the County Court by this Act:

(11) Provided, always, that at any time during the progress of any action, suit or matter relating to or concerning any of the classes of subjects in this section before referred to and enumerated, any of the parties to such action, suit or matter may

apply by summons to any Judge of the Supreme Court at Chambers for an order directing the transfer of such action, suit or matter into the Supreme Court, and upon such summons any Judge of the Supreme Court may, if satisfied that it is expedient such action, suit or matter should be so transferred, make an order directing the transfer of such action, suit or matter into the Supreme Court, and may in and by such order give all necessary directions for effectually procuring and completing such transfer, and may make such order as to costs, as well of the proceedings theretofore had and taken in the County Court as of such summons, as he may think fit, and from and after the making of any such order for transfer into the Supreme Court all proceedings in respect of such action, suit or matter, shall be had and determined in the Supreme Court, and the jurisdiction of the County Court in respect thereof shall absolutely cease and determine. The Supreme Court, or a Judge thereof, shall have discretion to order that any case so transferred shall be heard, tried or disposed of without pleadings."

Besides the legislation to which we have referred in connection with the timber, the farm lands and the mines, a great many acts have been passed by the legislature dealing with trust companies, joint stock companies, and partnerships, provincial railroads, health, elections bills of sale, arbitrations, public works, Sunday observance, taxes,

trustees and executors, succession duties, rivers and streams, inland fisheries and game protection, public revenue, public works, pawnbrokers, minors, mechanics liens, master and servant, married women's property rights, wills, assignees, lunacy, liquor traffic, licenses, libraries, law stamps, landlord and tenant, labor conciliation and arbitration, sale of goods, public revenue, etc. These laws resemble very closely the English Acts from which they are, in many cases, literally copied. On the whole the laws of the Province are equitable and progressive and in this respect, the Province of British Columbia compares favorably with any of her sister provinces of the Dominion.