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BRITISH COLUMBIA
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*"Any country worthy of a future
should be interested in its past."*

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PREHISTORIC CAIRNS AND MOUNDS IN BRITISH COLUMBIA:

With a Report on the Duncan Burial Mound.

Earth mounds of complex structure are, perhaps, the most numerous and widespread, in world distribution, of all prehistoric human monuments. Some of these were made of soil scraped from the surrounding terrain, but where slabs of rock or large stones and boulders were available, these were sometimes used in place of earth. More often, however, both stone and earth are found in the same construction; the earth in these latter mounds served not only to bind the rock, but also as a complete cover in which herbage became established and thus gave added permanence to the structure. The long barrows and the various forms of round barrow in Europe are examples of earth mounds of complex structure, while the pyramids of Egypt may be considered as an evolution from the primitive stone cairn.

The custom of erecting earth mounds and stone cairns over the honoured dead seems to have spread radially from Central Asia in that wide circle somewhere within the confines of which the human race is said to have originated. The history of human burial in the early Stone Ages is too complex for discussion here, suffice it to say that towards the close of the Neolithic Period in Europe we find the great stone "house of the dead" of former times giving place to a small stone cyst or vault which was placed either entirely underground or, at least, was covered with earth.

As to the attitude of the mourner in his beliefs in regard to the dead, we find that it was a common practice in very early times to take measures to preserve the dead body and to place within the tomb all the necessaries of life sufficient for a journey. Then, in the late Neolithic, the people of Europe show a new school of thought which ordained that the body be burned. Some fundamental change of creed seems to have been responsible for this change of practice, and here, possibly, we have the birth of a new aspect of religion, in which the spirit is given prior importance to the body and fire is regarded as a necessary element in

the release of the spirit from its earthly bondage. However, we have no proof of these early religions nor can we show reasons why earlier customs have survived in some parts while they have been superseded in others.

It is with the late Neolithic that we are dispassionately concerned in British Columbia; from its advent in Asia we trace the spread of the mound culture towards America. In the path of this spread we see an abundance of earth mounds similar in intent and structure to those on Vancouver Island and in the Fraser River delta. Such earth mounds are scattered from Turkestan and the Kirgiz steppes across Asia and into this continent, where they reach as far as the Central American isthmus and where they are found buried under the rank vegetation of the tropics. Under the advance of agricultural peoples, inestimable numbers of these monuments have been flattened out and destroyed, so that, in countries occupied by civilized races over long periods, all traces of such mounds have been lost, except for the occasional example and for the verbal records of early bards and historians.

The ceremonial of the funeral pyre associated with the earliest examples of these mounds is of widespread distribution and bespeaks survival of the cult over a long period of time. In northern latitudes this practice is found among Caucasian as well as among Mongoloid races. In the Caucasian field, evidences of this custom are found among Nordic, Mediterranean, and Hindu races. The fable of the phoenix reborn from its ashes bears the stamp of a fundamental psychological attitude with which the concept of the resurrection of the soul is closely allied—the destruction of the body by fire being but an incident in the complete transfiguration. The Homeric legends as recorded in the *Iliad* have many references to such funeral pyres; the account of Hector's heroic lamentations over the body of his friend Patroclus gives a very vivid picture of this custom among the ancient Greeks. The description of Hector's own funeral as told in the final pages of the *Iliad* is not so detailed, but is full of poetic colour:—

So nine days they gathered great store of wood. But when the tenth morn rose with light for men, then bare they forth brave Hector, weeping tears, and on a lofty pyre they laid the dead man, and thereon cast fire.

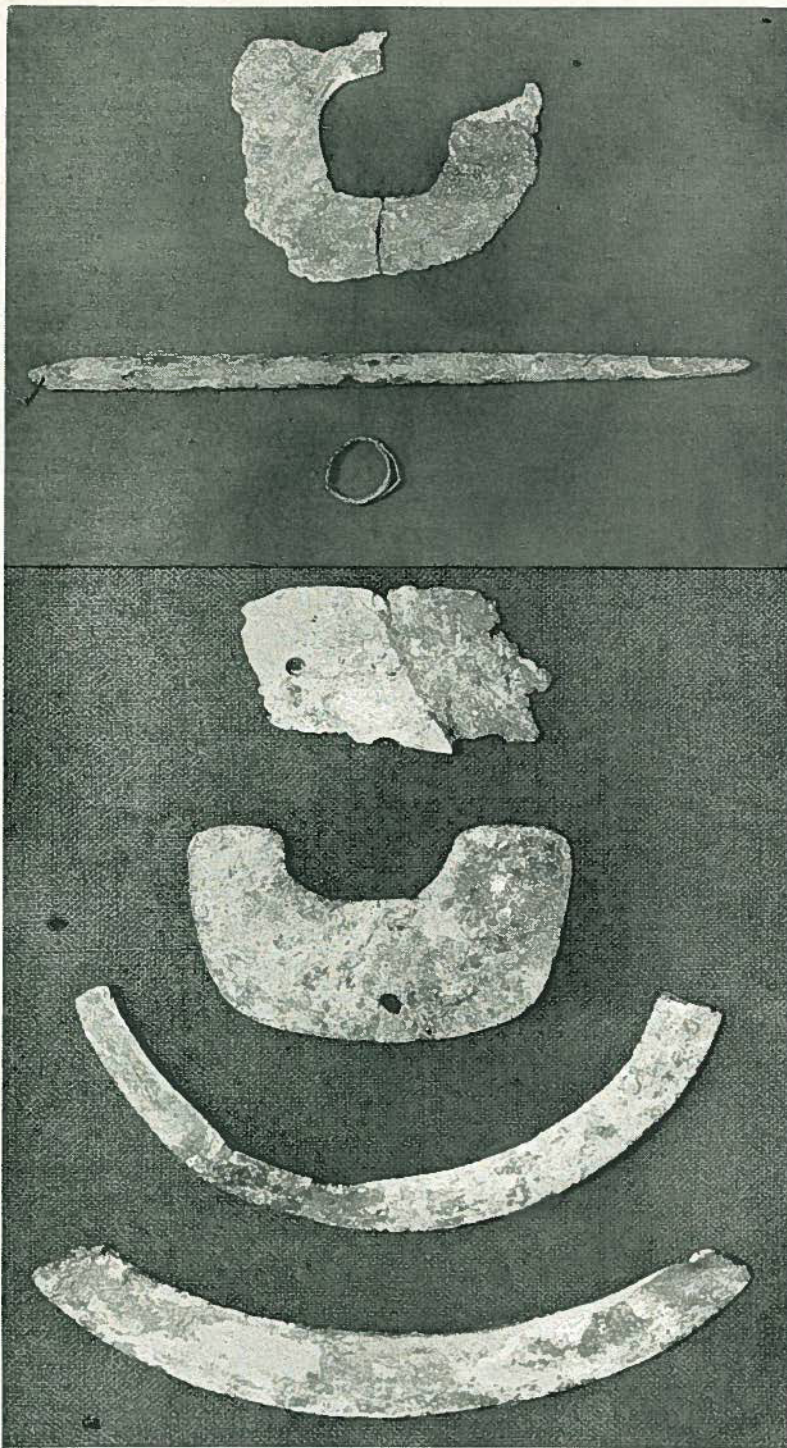


PLATE I.

Fragmentary copper objects, presumably ornaments, taken from earth mounds at Hatzic, B.C., in 1898, and now preserved in the Provincial Museum, Victoria. These are the only artifacts to be found in the many mounds excavated in this vicinity by Charles Hill-Tout.

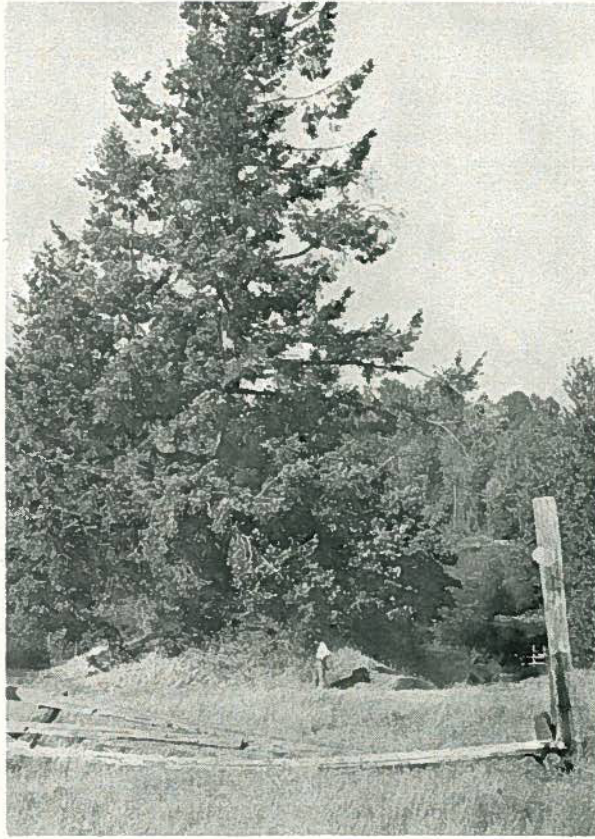


PLATE II.

General view of the Duncan mound before excavation.

But when the daughter of Dawn, rosy-fingered Morning, shone forth, then gathered the folk around glorious Hector's pyre. First quenched they with bright wine all the burning, so far as the fire's strength went, and then his brethren and comrades gathered his white bones lamenting, and big tears flowed down their cheeks. And the bones they took and laid in a golden urn, shrouding them in soft purple robes, and straightway laid the urn in a hollow grave and piled thereon great close-set stones, and heaped with speed a barrow, while watchers were set everywhere around, lest the well-greaved Achaians should make onset before the time. And when they had heaped the barrow they went back, and gathered them together and feasted right well in noble feast at the palace of Priam, Zeus-fostered king.

Thus held they funeral for Hector tamer of horses.¹

So much for the earth monuments of the Eastern Hemisphere. On the American Continent an infinite variety of such monuments occurs, ranging from small caches with no funereal significance to the elaborate tombs. Larger yet are the truncated pyramidal structures of Central America, and the Effigy mounds and other massive earthworks of the Mississippi which are ascribed to the Mound Builders. These various constructions on the American Continent had a great range and variety of uses. Prof. Cyrus Thomas, of the United States Bureau of Ethnology, lists some twenty separate types of such earthworks.² Uses are also shown in this list, and funerary use is assigned to numerous examples of the various types of construction.

In the pages that follow, it will be noted that many, if not all, of the human remains found in the prehistoric mounds of British Columbia were cremated, although some were only partially burned. Until recently this custom of cremation was still in vogue among certain tribes of the Interior of this Province—such as the Sekani, and also among the Tsimshians, which latter tribe, in former times, ceremonially prepared the bodies of dead shamans and chiefs for this cremation.³

(1) Andrew Lang, Walter Leaf & Ernest Myers, *trans., Iliad of Homer*, New York, 1915, pp. 502, 503.

(2) Cyrus Thomas, "Report on the Mound Explorations of the Bureau of Ethnology," *Twelfth Annual Report of the Bureau of Ethnology . . . 1890-91*, Washington, 1894, pp. 521-730.

(3) William Duncan, "British Columbia," *The Church Missionary Intelligencer*, IX. (1858), p. 249. Here Duncan, speaking of the "Chimsyan" Indians, says: "It is the custom among these Indians to burn their dead." This statement is confirmed and enlarged upon by Viola E. Garfield, "Tsimshian Clan and Society," *University of Washington Publications in Anthropology*, Vol. VII., No. 3, 1939, pp. 239-241.

Before the soil of British Columbia was disturbed by white settlers, earth mounds were numerous along the coastal areas. These mounds extended from Comox in the north to beyond the islands of Puget Sound in the south, and into the delta of the Fraser River as far as Hatzic to the east.

The first written notice of these mounds appears in the *Victoria Colonist* of December 15, 1871. It was evidently the outcome of a reporter's interview with Mr. James Deans, who had been interested in these works since 1853.

The local reader can scarcely have failed to have noticed in different parts of the Island—and particularly in the vicinity of this city—heaps of stones and earth so arranged as to form mounds or cairns. Many of these heaps are to be seen on Beacon Hill near the summit, at different points of Esquimalt harbor, at Cadboro Bay, Beckley Farm and several other parts. They have long been supposed to be the work of a race of men who passed away to make room for the red man, who in his turn is being 'improved off the face of the earth' to afford the white man room to increase and multiply his species. Lately several of these mounds have been opened near Cadboro Bay by Mr James Deans, who found, first a layer of earth, next, a pile of stones—some of them weighing a ton—laid with almost mathematical exactness so as to form a circle; third, another layer of earth, and beneath it a quantity of bones and dust, amidst which were found a number of teeth and jawbones in a good state of preservation. The jawbones are pronounced to be those of a human being, and the teeth those of a vegetable-eating man—being wide and flat on the top. Perhaps the Darwinian theory is about to receive new and startling confirmation from these researches. Near Beckley farm, not far from Beacon Hill, are what are supposed to be the remains of an ancient village, with trenches cut, evidently for the purposes of defence. The same thing is seen near Clover Point. A few years ago these evidences were much more distinct than now; but the large stones that dot the summit and sides of Beacon Hill, some of which are surrounded with a circular thicket of scrub-oak, were no doubt placed there by the lost race who built the cairns just opened at Cadboro Bay—a race who possessed this fair land centuries before the Deluge, and who buried their dead in caves and pits, instead of putting them away on shelves above the ground, as did the aborigines who inhabited the island when the present white settlers came to it. The early inhabitants of the British Isles disposed of their dead in the same way. In the Eastern States there are numerous mounds, some of which have been opened and evidences of a primitive race found. If these interesting researches should be continued, some very astonishing developments may result.⁴

(4) *Victoria Colonist*, December 15, 1871.

James Deans was in many ways a remarkable man. Born on June 17, 1827, in Haddingtonshire, Scotland, he engaged as a labourer with the Puget Sound Agricultural Company, a subsidiary of the Hudson's Bay Company, and arrived in Victoria on January 16, 1853, on board the *Norman Morison*.⁵ That he was a man of scholarly habits is evidenced by the references in the diary of Robert Melrose to lectures he delivered at Craigflower during 1853 and 1854.⁶ He was an amateur geologist, ethnologist, and anthropologist of no mean ability and devoted much time during his long residence in the Pacific Northwest to the study of the dialects and languages of the British Columbia Indians. He died on July 17, 1905.⁷

Fortunately Deans wrote a report of his work among the Cadboro Bay cairns. Since it is full of detail bearing upon our subject and is the first work of its kind undertaken in this Province by a student of archæology, it is reproduced verbatim:—

The Cadboro Bay Cairns.
An Ancient City of the Dead!

Any one who has wandered over the spreading glades, or under the oaken bowers, around Cadboro Bay, between Uplands Farm and Oak Bay, (Mr. Tod's), around Gonzalo's point, from Mr. Tod's to Foul Bay, and around Esquimalt Harbor, particularly about the Admiral's house, must have noticed numbers of conical stone piles, sometimes singly, in other places (as in the case of Cadboro Bay) in groups of two or three hundred. No persons could pass those around the last mentioned place without wishing to know something of those who piled them up or for what purpose they were erected. Having seen them first in 1853 I made a resolution to open a few of them whenever I had a chance, although years should elapse. This desire I have at last been able to gratify.

As fair specimens of all I selected five from different parts of the great cluster, on the south east side of Cadboro Bay. On looking over them, I found there were two kinds. Towards Uplands farm along the edge of the green slope are a number composed chiefly of earth and stones of various sizes. In the second place and lower down lie the bulk of them, made entirely of stones and having a little earth mixed with bits of burnt wood thrown on the flat top of them. Others with nothing but moss—the growth

(5) James Deans, "Settlement of Vancouver Island," a manuscript prepared in 1878 for H. H. Bancroft, now in the Bancroft Library of the University of California Library at Berkeley. A transcript of this manuscript is in the Archives of B.C.

(6) W. K. Lamb (ed.), "The Diary of Robert Melrose," *British Columbia Historical Quarterly*, VII. (1943), pp. 202-204, 206-209.

(7) *Victoria Colonist*, July 18, 1905.

of ages. The first we opened was a large earthen one, twenty-five paces in circumference. I commenced by digging a trench 4 feet wide through the center of it, or rather a little to the east as I afterwards discovered, when we had cleared the earth from the larger half, which we had to do in order clearly to understand the way in which it was constructed. I shall give a description of the first we opened, which I shall call an earth mound: On the outside is a circle of large stones set on end 5 feet apart in imitation of pillars, inside of which the earth has been dug out to the depth of one foot or down to the gravel. Two feet inside of the outer circle is an inner one, within which are piled large stones in the form of a cone, of which a large flat one formed the base. Between the inner and outer circle was a space of two feet in width, along which were strewn oak and fine ashes. Beneath the inner cone was a circular hole twenty inches in depth and six feet in diameter, at the bottom of which lay the last mentioned stone. Underneath it, amongst a deposit of black earth containing a few pieces of burnt wood, lay the remains of a human being, they having been put on the gravel and the earth thrown over them; some of the bones had become slightly petrified on the one side next the sand, others showed signs of having been burned. They were lying as if they had been gathered after burning and put in the bottom of the hole in a pile in this order: First, the skull, or what was left of it after cremation was put due south, the leg and arm bones pointing northward, while the others were piled above them. They all crumbled away when exposed to the air. Even the teeth, which were those of a grown-up person, crumbled in our hands. There was not the least trace of ornaments or utensils of any kind whatever having been put along with the dead. This cairn seemed to contain the remains of a chief. The second hole opened was smaller. It had been constructed after the same principle, with this exception: less order was observed in its construction. In this the bones were in a better state of preservation than in any of the five which I opened. The teeth were remarkably flat, smooth and round. I showed them to Dr. Barnard⁸ who kindly examined them for me. He told me, what I afterwards found to be correct, that their flatness was caused by their meeting evenly together when in the act of chewing. In this, the second one, along with the skull, I found a piece of cedar wood, the remains of what appeared to have been some sort of ornament, but much too decayed to make anything out of it. The third one I found in every case to be the same as the others. Before I say anything of the stone cairns, I must explain their mode of construction a little better, in order that Mr. McKay⁹ and others interested

(8) Dr. C. Francis Barnard, a dentist, came to Victoria from Boston, Mass., arriving here in the steamer *Josie McNear*, July 31, 1866. *Ibid.*, August 1, 1866. He remained in British Columbia until the mid-1870's when he returned to New England. As late as 1881 he was reported to be residing at Derry, New Hampshire, aged 70 years. *Ibid.*, February 22, 1881.

(9) J. W. McKay was born at Rupert House, January 31, 1829, and came to Fort Victoria in 1844 in the service of the Hudson's Bay Company. He rose rapidly in the service and in 1852 was entrusted by James Douglas

in the subject may understand them. First, a circle was formed, wider or narrower, according to the wish of the friends or the rank of the deceased; immediately within this circle were placed on end long stones in imitation of pillars, the vegetable mould, or black earth having been all cleared away previously, within this circle, each pillar being about 5 feet apart. Within the outer circle was an inner one, seven feet in diameter, leaving a space of two feet wide all round the inner circle. On this space were strewn bits of burnt wood; within this inner circle was a hole, six feet wide and 20 inches in depth, sloping inwards—this being the receptacle for the remains which were carefully gathered after cremation and covered up as described. This receptacle was then filled up with large stones until it assumed the shape of a cone (as in cairn No. 1) seven feet in diameter and five in height from the bottom of the receptacle. Afterwards all was carefully covered up with earth forming a cairn five feet in height and twenty-four paces in circumference, considerable earth having crumbled down beyond the outer circle since first erected.

JAMES DEANS.

Victoria, December 20th, 1871.¹⁰

It will be noted that Deans placed stress on monuments of two kinds—those of earth and those of stone; he gave details of the opening of one large one and two smaller ones all of the earth type. He then explained the mode of construction of monuments of the second class—namely, the stone cairns—and in a later issue of the same newspaper he described the opening of two of the stone cairns. This account is full of information by observers who, in the time scale, are much nearer to the undisturbed aboriginal scene, and in consequence it is reproduced in full.

The Stone Cairns.

I shall now say a few words concerning the stone heaps (or Cairns, as they are called in Scotland). We opened two of them and found human remains, the same as in the other three, with the skulls due south, while the other bones were piled up on the north side. Some of the bones showed signs of cremation and there was also the attendant charred wood. The only noticeable [*sic*] difference from the earth mounds was in the mode of construction, which is as follows:— First, a circular trench was dug, ten inches or a foot in depth, in which flat stones were placed on end, inclining upwards close together. Two feet from the inside of the outer circle was a receptacle in which the remains were deposited after cremation. In the

with the establishment of Nanaimo and the exploitation of the coal deposits there. In addition, he undertook several important explorations on the Mainland. In 1879 he retired from the Hudson's Bay Company and four years later joined the Federal Department of Indian Affairs, serving with them until his death on December 21, 1900.

(10) *Victoria Colonist*, December 22, 1871.

space outside the receptacle in the first cairn we found a few bones together with a piece of shell. The remains we found in this were all small, seemingly those of a young person. The last one we opened was the same as the fourth and first cairn, saving that the remains were too far gone to bear handling. In the stone cairns, as in the others, the remains had about six inches of mould thrown over them, and then the large flat stone over all, after which the earth taken out of the hole was thrown on, raising it a little above the original surface. Having done this they seem to have gathered a lot of small stones with which they filled up the space inside of the outer circle. Having filled it up all around leaving an empty space above the receptacle, they next seem to have taken large stones and placed them so as to form a cavity, over which they threw small ones, until the mound assumed a conical shape, sometimes throwing a little earth on top. I could find no traces of an opening in [t]he skulls, although perhaps I might if they had not been too far gone to handle.

The sum and substance of my researches are that the people who raised these mounds and cairns erected them as receptacles for their dead, which, I think, is proved satisfactorily by finding human remains in each mound or cairn. That they used cremation before laying them in their last resting place, seems clear from the fact that some of the bones were charred, and also from the burned wood found amongst them. There is no doubt they were erected at a very remote period—say over a thousand years ago. The present Indians say their fathers and grandfathers found them the same as they are now. I believe the people who raised the same sort of piles in Oregon raised these ones, for there is a tradition amongst the Indians that in former times the south end only of this island was inhabited, and that the then inhabitants raised cairns. As a proof the Indians say there are none on other parts of the Island. One singularity about them is that there are none under 30 feet above the present sea level. All are more or less placed on what appears to be an ancient sea level or margin, which is 30 feet above the present high water mark. Now, it is well known that the Indians of the present day deposit their dead on islands or by river sides,—a fact which everyone can prove who has been up the Fraser or Thompson rivers. If in this case they were buried by the water side, who can tell what changes have taken place since then. We find many higher, but none under 30 feet.

Mr. Robert Homfray, C.E.,¹¹ informs me that in 1859 he had one of these cairns opened at Florence Lake.¹² It was a perfect specimen. There was

(11) Robert Homfray arrived in the colony in 1859, coming from the United States, where for a time he had been county surveyor of Nevada County, California. For a time he served in the Colonial Land Office, Victoria, and then set up in private practice as a land surveyor. *Victoria Gazette*, July 5, 1859. He was born in Worcestershire, England, and was a thoroughly competent civil engineer. For a time he was employed on the Canadian Pacific Railway surveys. He died in Victoria, September 19, 1902.

(12) A small lake a short distance east of Langford Lake in the Esquimalt District.

a covering of earth on the flat top of it, on which a large fir tree grew. He dug down until he found a stone too large to move, and on digging underneath amongst black earth, he found the remains of a human being. What has been found settles so far a vexed question. The absence of implements is rather strange. If I had the means I would like to open a few more at different places in which something might be found. However, I have found enough, I think, to prove they were never meant for catching fowls. Perhaps gentlemen who have a different theory can give some plausible reason for it. If they do I shall be glad to hear from them.

JAMES DEANS.¹³

A few days later Deans again submitted additional evidence of the existence of a culture of which the Indians of his day had no knowledge and which he suggested may have belonged to the same pre-Indian period as the mounds and cairns which up to this point had been the main subject of his inquiry. This article described in some detail lines of stones, placed in a straight line running 12 degrees north of east. Each stone so used weighed not more than 30 lb. and not less than 5 lb. In length the lines were usually 50 to 100 feet, but in some instances as much as 200 feet. Removing all doubt as to the possibility that these lines were of natural formation is the fact that they were always double, being composed of parallel lines spaced about 2 feet apart from centre to centre, leaving a space about 20 inches between the stones. As to their age, Deans commented: "The present race of Indians know nothing of them whatever. They found them as their fathers did before them." He further argued: "That the stones were put there for some purpose is evident. If not why follow the same plan in placing them. And why place them so exactly to the same point in the heavens?"¹⁴

Deans then submitted a series of four articles entitled "Antiquities of This Island," in which he discussed "Cairns—their appearance, probable age, by whom constructed, their past and present use."¹⁵ Again the absence of cairns below a line 30 feet above the present high-water line is noted and advanced as evidence of antiquity. He also pointed out that the mounds were

(13) *Victoria Colonist*, December 24, 1871.

(14) *Ibid.*, January 6, 1872. Deans' findings were substantiated by James Richardson, of the Dominion Geological Survey, in so far as the dip of the rocks and their bearing was concerned.

(15) *Ibid.*, January 30, 31, and February 1, 8, 1872. These articles are reproduced in full in Appendix C., *v. supra*.

usually grouped with a series of smaller ones surrounding one of major importance. It was his contention that the larger the mound or cairn, the greater the importance of the individual buried in it, suggesting that the smaller monuments, surrounding the larger ones, were the graves of slaves or of children. Drawing on his imagination, he painted a picture of a chief being placed on a pile of wood, in which a fire is kindled while the mound is being prepared, and depicted the subsequent action of relations or beneficiaries who added earth to the mound until it reached its final proportions.

During 1892 Deans prepared an anthropological exhibit for the World's Columbian Fair held the following year in Chicago. It consisted of an ancient lodge, with its totem-post taken from Skidegate, and a model of a Haidah village, complete with specimens of dress, utensils, and implements.¹⁶ His work received further recognition when the International Folk-lore Association in 1899 published his *Tales from the Totems of the Hidery*.¹⁷

From 1897 to 1899 Deans assisted in the explorations of the mounds and cairns directed by Harlan I. Smith for the Jesup North Pacific Expedition. To this work Gerard Fowke was also a contributor. The map accompanying the *Report* shows cairns and mounds extending from Mission City to the east, Victoria and Port Angeles to the west, and Courtenay to the north. The southern limit of this particular mound area seems to be at Coupeville, in the State of Washington.¹⁸ Charles Hill-Tout places the western limit of the mound area at Nootka Sound.¹⁹

It is worthy of note that these monuments on the Mainland of British Columbia are limited to the delta of the Fraser and those lower reaches of the river that are more easily navigated.

(16) *Ibid.*, July 18, 1905.

(17) James Deans, *Tales from the Totems of the Hidery* (Vol. II., Archives of the International Folk-lore Association), Chicago, 1899.

(18) Harlan I. Smith and Gerard Fowke, "Cairns of British Columbia and Washington," *Memoirs of the American Museum of Natural History, Jesup North Pacific Expedition*, Vol. IV. (Anthropology Vol. III., No. II. [New York], 1901, p. 56.

(19) Charles Hill-Tout, "Prehistoric Burial Mounds of British Columbia," *Art, Historical and Scientific Association of Vancouver, Museum and Art Notes*, Vol. V., No. 4 (December, 1930), pp. 120-126. See also Charles Hill-Tout, "Later Prehistoric Man in British Columbia," *Transactions of the Royal Society of Canada*, second series, I. (1895-96), section 2, pp. 108-122.

Similar littoral developments are also found in the Puget Sound area and are shown to be situated usually on slopes with gravelly soil strewn with angular boulders. In every case they were built on a well-defined plan, the main feature of which is expressed in a central cyst, but many of these cysts were poorly made. The structures were especially numerous in the vicinity of Victoria and occurred on every point of land in the bay at North Saanich; many of these have since been destroyed by road-builders or by agricultural development. All of these mounds and cysts overlooked the sea or were near the shore; at many places single cairns were found about 20 feet apart. The construction of the cairns reached its highest development in the vicinity of Victoria, and according to Smith's report "the type of structure appears to have undergone modification with increasing distance from this point."²⁰ The cairns, so far as known, are always near shell heaps, but the latter are so numerous all along the coast that their proximity does not necessarily imply an historic relation in culture between the refuse heaps and the burial mounds. In the area of the cairns, human bones are rarely found in shell heaps, except where a cairn has been erected over the latter. But human remains seem to be absent from shell heaps in regions where no cairns have been found, such as in the northern part of Vancouver Island and in the State of Washington south of Coupeville. It is only in the shell heaps of the Lower Fraser River that human remains are numerous.

As to the human remains found in the monuments,²¹ in North Saanich these usually rested on the natural surface of the soil, the cairn being built over them. However, as Deans pointed out, in some cairns with regular cysts, the skeleton was found in a shallow basin scooped in the original surface of the soil. Occasionally intrusive burials are found in which a certain amount of excavation was done for the reception of the body and over which the cyst and cairn were built. The skulls from the cairns give evidence that the people practised at least two of the methods of deforming the skull that were in common use in the area until

(20) Smith and Fowke, *op. cit.*, p. 58.

(21) A tabulation showing a digest of the information as to the mounds investigated by Smith and Fowke and discussed in their report is given in Appendix B, *v. supra*.

recent times. One of these flattened skulls—from a prehistoric cairn at Cadboro Bay—was presented to the Provincial Museum, Victoria, B.C., in 1898.²²

The mounds of the Lower Mainland of British Columbia have been most thoroughly examined by Charles Hill-Tout, who, in 1930, published a summary of his investigations.²³ The mounds described are principally those found in the vicinity of Hatzic, on the north bank of the Fraser River 3 miles east of Mission City. Hill-Tout reported five main types:—

- (1) The simplest of these mounds was formed by placing the corpse in a shallow pit and then heaping it over with soil. Some of these, evidently children's graves, were only a few feet high and a yard or so in diameter. The larger ones had commonly a diameter of from 20 to 25 feet and were higher in proportion.
- (2) The next most elaborate in structure was formed by placing the corpse in the centre, whether in a sitting posture or prostrate was not determined, and then it was built over with a large pile of boulders, over which earth was heaped to a height of from 6 to 9 feet. Some of these mounds had a distinct layer of charcoal between the boulders and the earth covering.
- (3) As a variant from these there appeared to be a group in which large quantities of coarse sand were used to form the body of the mound. Much of this sand, being foreign to the district, must have been imported. One mound of this class was surmounted by a dead cedar tree, calculated to establish the age of the mound at least at 1,000 years. This mound was stated to be the only one which furnished any osteological data of any importance, such bones as were found in the others crumbled on touch. A copper awl or spindle was also found in the mound under the cedar tree.²⁴
- (4) The fourth class of mound differed from the above in that its outside limits were marked by a line of boulders

(22) It is exhibit No. 296.

(23) Charles Hill-Tout, "Prehistoric Burial Mounds of British Columbia," *loc. cit.*, pp. 120-126.

(24) See Plate I.

set side by side to form a square, each side of which faced one of the cardinal points of the compass, like the pyramids of Mexico. While Hill-Tout spoke of the base of this mound as being about 5 feet below the general level of the ground, his sketch of it does not indicate a pit.

- (5) The most elaborately constructed of all these mounds is depicted by a sketch which shows a central cairn surrounded by three successive squares equidistantly placed from one another, the outermost being composed of a double line of stones placed in close conjunction and capped by a third line or upper layer. The upper part of this structure was of the same form as fourth type described above.

Five very crudely formed copper objects,²⁵ some red ochre, a fragment of coarsely woven blanket made from the hair of the mountain-sheep and a small quantity of human hair of two colours, black and brown, constitute the entire collection of relics taken from these mounds. The skull mentioned as being found in mound type (3) above was judged to be that of a woman, and it showed traces of artificial deformation. Unfortunately, Hill-Tout did not record the total number of mounds opened in the work from which his descriptions were compiled.

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(25) See Plate I.

APPENDIX A.

Report on a Prehistoric Burial Mound located on the Comiaken Indian Reserve, Duncan, B.C., investigated by the Provincial Museum, 1944.

INCIDENTAL HISTORY.

The prehistoric mound at Duncan bears marks of ancient human handiwork. It has, therefore, long been an object of curiosity, not only to people of our own race, but also to the Indians on whose land it is located. The site is part of what is now known as the Comiaken Indian Reserve. The Salishan word *Comiaken* was given long ago as a name to the aboriginal settlement in the neighbourhood of which this mound is located. The meaning of this word is said to be "the first man." Those who are familiar with European translations will agree that even when an idiom of one language is converted into another language of more or less common origin, it is difficult enough to find a translation that will convey the exact shade of meaning. But, when an idiom of an Amerind language such as the Salishan is converted from its very foreign elements into English, the difficulty of exact duplication of meaning is very much greater. Therefore, it is suggested that the translation of the compound word *Comiaken*, if converted into terms of really modern English, would be better expressed as "the prehistoric man." Whatever the ultimate decision as to this translation may be, there will always remain the theory that the Salishan ancestors who gave the name Comiaken to the later-day Indian settlement were cognizant of the pre-Salishan human occupation represented by the mound and thus were aware that the territory on which they had elected to live had been previously occupied by a former race of what was to them prehistoric man. In other words, the theory is that they named their settlement in consequence of and in reference to their knowledge of the prehistoric men who had lived there before them.

The site on which the mound is located is now owned by Canute Lemo, of Koksilah, whose affairs under the Indian Act are controlled through the Indian Agency at Duncan. Canute Lemo is a full-blooded Indian over 80 years of age; he and his son, Chris Canute, both took an active interest in the digging operations conducted by the Provincial Museum. These and other Indians of the reservation confessed complete ignorance of the origin of the mound and did not recognize it as being the burial-site of any of their own people, thus they had not the slightest hesitation in giving their consent to the mound being opened when the project was broached to them through the cooperation of the Indian Affairs Branch of the Department of Mines and Resources.

As is natural with such landmarks, various stories have become associated with this mound. Chris Canute remembers many such stories as told by his grandmother, who was born about 1838. One of these

stories speaks of the occupation of the spot by a contingent from the Hudson's Bay Company's fort at Victoria, consisting of a number of Governor Douglas's mounted police, known as *voltigeurs*, who arrived on the scene on a punitive expedition in 1856.¹ A white settler had been shot by an Indian and H.M.S. *Trincomalee* had been sent into Cowichan Bay,² whence, according to Canute, she bombarded the Indian houses, causing the Indians to flee in terror to the woods.³ The Indian account reflects vividly the awe experienced on the flash of fire, together with the smoke and the echoing rumble of the guns. The people ran from their houses and, not knowing which way to turn to avoid the danger, they joined together in groups within the fringes of the wood, taking comfort in the presence of each other as though by mutual support they might be able to steady the quailing of their bodies and silence the crash of doom which rumbled so ominously in their ears. When at last the men from the warship came ashore, they camped in the vicinity of the mound, from which high ground they could scan the surrounding country. Then the terrified Indians were glad enough to point out the hiding-place of the murderer, who was ultimately hanged to the limb of a near-by oak tree. The twigs of this tree still spread their green foliage in the vicinity of the mound.

The second story connected with the mound, as related by Canute, is that of the coming of Father Peter Rondeault.⁴ Canute says a story concerning the deeds of his grandfather runs in the family tradition somewhat as follows. One day a ship came into Cowichan Bay and the then chief, Lo-ha, who was standing on the hill by the mound, saw a lone man come ashore. The stranger was dressed in black and, having nothing in his hand, he walked in the direction of the Indian village while the ship sailed away. This was rather surprising to the Indians, since their first experiences of the new white people had been through demonstrations in force; they did not know what to make of a man who would so deliberately deliver himself into their hands. So Chief

(1) R. H. Coats and R. E. Gosnell, *Sir James Douglas* (Makers of Canada Series), Toronto, 1908, p. 218.

(2) H. H. Bancroft, *History of British Columbia*, San Francisco, 1890, p. 236.

(3) This was the second of such punitive expeditions. The first had been carried out by H.M.S. *Thetis* in 1853, to avenge the death of a young shepherd in the employ of the Hudson's Bay Company who had been murdered by two Indians. On this occasion we are told that the commander of the vessel had specific instructions from Governor Douglas not to fire the guns of the ship. See W. N. Sage, *Sir James Douglas and British Columbia*, Toronto, 1930, pp. 178-180.

(4) Rev. M. M. Ronden, "The Cowichan, Saanich and Kuper Island Missions," *British Columbia Orphan's Friend* Historical Number, December, 1913, pp. 41, 42. In 1858 Father Rondeault paddled his own canoe from Saanich with "a sack of flour, a gun and his breviary." Hospitality was extended to him by an Indian named Gabriel Tsulchamet. The coat of the Indian is described as "His battle coat, a ragged skin vest adorned with shells and fringed with locks of hair of women." Traditionally these locks were those of his enemies killed in battle.

Lo-ha called Canute Classiston and, full of bewilderment, they went down to greet the black-robed priest; here again they were surprised, this time by his care-free manner and the friendliness of his approaches. When they learned that he had come to live with them always and to teach them how to improve their ways, they had their people build for him a little shelter made of rude boards and lined with mats, in which he lived all of the first summer of his mission. Later the Indians supplied him with logs, from which the good father built his own permanent quarters. This, and all that Father Rondeault did, awoke in them a respect so deep that, when he proposed to build the stone church which is still standing on the hill, they were ready to supply all the labour that was needed and joined eagerly in the work. The large rocks used in this edifice were all moved to the spot by the natives, some having been brought from the quarry which is still seen by the roadside just below the church.

Father Rondeault also is said to have taken an interest in the mound; this primitive monument being so close to his own most modern building, he was no doubt interested in the dominance of his own Christian monument over what he would have referred to as "this pagan burial." From one Indian source he is reported to have dug down in an attempt to open the centre of the mound but, having come across a piece of cedar board of native workmanship, he is said to have been warned thereby and to have abandoned the attempt. In support of this story there is something of a cavity on the top of the mound which may have been caused by someone digging, although more probably it was caused by the decaying of a tree which preceded the Douglas fir now standing. The interior of the mound, when opened up in September, 1944, showed no sign of previous disturbance, but some dead roots of a former tree were found.

THE PROJECT.

The interest of the Provincial Museum in this project was stimulated by three considerations:—

- (1) The fact that this mound was not recorded on the composite map published by the Jesup North Pacific Expedition, indicating that it had been overlooked by former investigators:
- (2) The fact that this mound differed from other such monuments in that it stood alone, there being no present sign, nor memory among the Indians, of other associated mounds in the vicinity:
- (3) The fact that this is practically the only earth mound to be studied scientifically within the Island area, 98 per cent. of similar monuments hitherto examined having been in the nature of stone cairns.

Thus, in the hope that the mound might yield new information on this very interesting phase of the most primitive life in British Columbia, permission was obtained from the Indian Affairs Branch, Ottawa, to proceed with the work.

THE SITE.

The mound stands on a gentle slope near the top of the low hill on the summit of which is found the old stone church erected by Father Rondeault in 1870. The mound is approached by a short private road, being the first turning to the left, or southward, after passing the old stone church on the northward journey along the old main road from Victoria to Duncan. Even at first sight the mound gives the impression that it was constructed to record some outstanding event or tragedy of major importance; it also immediately conveys an impression of great antiquity. The choice of the site is in itself remarkable, to the south and west a superb view opens up over the rich delta lands in which the Cowichan River mingles its waters with those of the Koksilah just before these rivers enter Cowichan Bay. In this delta land some of the old Indian houses are still standing, and dug-out canoes containing primitive fishing equipment can still be seen moored along the banks of the sluggish water. To the north Mount Prevost stands up in bold prominence and, over the hill, Mount Tzouhalem, named in memory of a dreaded chief, carries many a legend connected with the isolation ceremonies of the local tribes.

In the immediate vicinity of the mound and about 200 feet to the west is one of the sloughs of the Cowichan River which is navigable at high water and which lies about 43 feet below the elevation of the mound. Near this water the slope flattens out, and here, where the turf is broken, shell debris is seen in sufficient quantity to indicate that this lower portion of the slope may have been at one time the site of a native settlement.

DESCRIPTION OF THE MOUND.

Surmounting the mound and close to the centre of its periphery is a Douglas fir tree 9 feet 6 inches in circumference at breast height. This tree was bored with a 16-inch increment borer, by means of which the age was determined as approximately 90 years. Since evidence gathered from this and similar mounds indicates that this monument may be well over a thousand years old, it will be seen that the presence of so young a tree has no real relation to the original history of the structure. Below the tree the mound rises in a gentle gradient, which, due to the slope of the natural surface, is longer on the southwest side and shorter on the northeast. The height of the structure above the natural level taken at the centre of the mound is about 5 feet 6 inches. The perimeter of the structure is defined by a rough circle, from 33 to 38 feet in diameter, and is marked by irregular rocks of local origin which are very much weathered and range from 6 to 18 inches in length. The greater part of each of these is sunk in the turf, and on the south side they merge with other natural rocks of the same kind, from which they are scarcely distinguishable. On the upper side of the mound is a shallow depression, which indicates a borrowing of soil from this spot for the heaping of the mound. Another less distinguishable but larger area of borrow-pit seems indicated about 60 feet away

to the northwest. The structure of the mound supports this notion of local borrowing, the soil being similar to that of the natural surface and there being no evidence of sand or soil carried from a distance, such as seen in the Hatzic area by Hill-Tout.

THE OPENING OF THE MOUND.

The mound was opened up from the up-hill or northeast side, a ditch about 3 feet wide being dug in the direction of the centre of the mound. No evidence of stratification was found, nor were there any varying layers of soil. In the working of the ditch occasional evidences of fire were found, particularly about 4 feet from the centre and about 15 inches below the surface, where pieces of charred wood about 4 inches square in section were removed. There were no ashes in conjunction with this charcoal to indicate that a fire might have been lit on the mound itself while it was in process of building. The indications were rather that the charcoal had originated in fires lit in the vicinity of the borrow-pits and had been conveyed with the borrowed earth to the mound. A rough semblance of a wall of native rock on the northeast side flanking the upper edge of the borrow-pit may have had something to do with the burning of ceremonial fires.

The progress of the digging near the centre of the mound was hampered by strong roots from the Douglas fir tree which penetrated deep into the mound, but, on these being removed, the long-expected stone cyst soon came into sight, and strangely it was almost directly under the main trunk of the tree. After working away considerable quantities of soil, the cyst was seen to be composed of large natural angular slabs of rock varying from pieces 2 feet by 1 foot by 4 inches of oblong outline to pieces of less regular shape, but all were larger by far than the average rocks found in the vicinity of the mound. These, therefore, may have been carried from some distant point. The cyst appeared to be roughly circular in outline, having a diameter of about 3 feet inside measurement. The interior was compactly filled with earth fine enough to have infiltrated through the dome of the cyst, but there was no evidence to show that this earth had not been part of the original structure. The rocks of the cyst were sufficiently overlapped and the capping was done in such a manner that the cyst may originally have stood without this interior support.

No relics or human remains of any kind were found in the digging other than a small quantity of very fine ash on a level with some unburned vegetable debris which marked the original surface of the soil. There was no evidence of a shallow cup having been made in this surface for the receipt of human remains, such as noted by Deans and others in the southern part of Vancouver Island. In order that there might be no doubt as to a burial below this original surface, the digging was continued down to bed-rock, about 15 inches below the original surface of the soil. By testing with small holes dug on the natural slope above and below the mound, this bed-rock was found to continue with some uniformity under the whole area.

CONCLUSIONS.

That there is considerable variation in the prehistoric mounds-found on and in the vicinity of Vancouver Island is evident from a perusal of Appendix B, which shows tabulations compiled from the records of such mounds as have been excavated by former investigators. Whether this variation arises from difference of habit due to changes brought about by progression of culture with the advance of years or whether it was caused by the impulse of the moment, or governing local conditions, it is impossible to say.

We have, however, no hesitation in saying that the Canute-Comiaken mound of Duncan belongs to the same remote period of culture which marks the origin of the mounds centring around Victoria, Saanich, Hatzic, and Puget Sound. We base this conclusion on the evidence gathered during the digging and exploration of the Duncan mound as herein recited and especially on the striking similarity between this mound and the general construction of the mounds in the surrounding area, and also on the elevation of the site above the water-line, which latter factor is in agreement with Deans' records of similar constructions.

Although it was impossible to identify any, even of the smallest, human remains in the small quantity of ash found on the floor of the cyst, yet the presence of this cyst and of the ash on the unburned vegetable debris of the floor, taken in conjunction with what we know of the other mounds in the vicinity, indicates a human burial in which the body was cremated outside the periphery of the mound, with a subsequent transference of what could be gathered of the ashes to a specially prepared site.

Finally we would point out that the manner of cremation, taken together with the use of the small box-like cyst in the burial mounds of this vicinity, adds another item to the mass of evidence already gathered, all of which is contributory in favour of the proposition that a close relationship existed between this early culture of the Amerind peoples and that of the late Neolithic races of Asia.

SUBSEQUENT USE OF THE MOUND.

It has been suggested that the stones of the cyst be restored to their original place, that a small retaining-wall be constructed to keep open the trench dug in exploration, and that the mound be encircled with a fence. When this is done and a suitable plaque erected, we suggest that the mound be declared an historic monument and that facilities be given for its inspection by tourists. This proposal has received the approval of the British Columbia Government Travel Bureau, and formal permission from the Indian Affairs Branch, Ottawa, is being negotiated.

A. E. PICKFORD.

VICTORIA, B.C.

APPENDIX B.

A Tabulation of Prehistoric Mounds and Cairns of British Columbia, compiled from Harlan I. Smith and Gerard Fowke, "Cairns of British Columbia and Washington," *Memoirs of the American Museum of Natural History, Jesup North Pacific Expedition*, Vol. IV. (Anthropology Vol. III.), No. II. [New York], 1901, pp. 55-75.

CAIRNS.

North Saanich, 1898 Excavations.—Twenty-one cairns were examined. Many were built on top of shell heaps, usually the stones forming the cyst constituted the greater part of the structure, being composed of a single row of large stones, while the space between this outer wall and the cyst was filled with small fragments of boulders and soil. Bodies of the dead were usually flexed, laid on side on surface or in a shallow hole. Twenty cairns contained cysts. (Stone rings, none.) Two reported as surmounted by large trees all contained human remains. Four showed definite signs of cremation. In one the skeleton had been "redistributed." In one the skull was missing. Associated objects include a chipped arrowhead and a rough copper object; a stone mortar covered one skull and some shells (unnamed) were found in one cyst.

North Saanich, 1899 Excavations.—Twenty-three cairns were examined. Seven contained definite cysts. One had no cyst, the body being buried in the earth and a cairn over. Nine were reported as having "cairns and cysts in one." Two were mere stone heaps. Four (two with cysts as above) were cairns filled with yellow clay. All contained human skeletons, one skull missing. Four showed definite signs of cremation, this having been conducted outside the periphery of the cairn. One uncremated skeleton was covered with a single stone. In one the skeleton was covered with earth and then with boulders. Only two were reported as surmounted by trees. No associated artifacts were found.

Cadboro Bay.—Twenty-four cairns were examined. Four were rectangular in plan. Three had well-defined cysts. In ten or more the cairns and ill-defined cysts appeared to be one. In one the rocks were piled right upon the skeleton. In three the cairns were more or less covered with earth. Two had slight depressions around, and one was a grave surrounded by small stones. The maximum size of the cairns was roughly 15 feet by 15 feet by 2 feet 6 inches high. Thirteen had skeletons more or less complete. Three skulls were reported as "flattened and laterally compressed," and one skull as "flattened back and front" (these being artificial deformations made during life). In six cairns were only fragments of human skeletons, and in three there were no traces of human remains. No signs of cremation were reported.

Whidbey Island.—Ten cairns were examined, each contained a skeleton. Many of these cairns were built at the sides of large boulders which, undoubtedly, were already *in situ* before the burial; in these the skeleton lay on its right side with its face towards the large boulder and head directed to the west. No cysts were reported, the body being covered by heaping small stones.

San Juan.—Six cairns were reported; these were shown to be very ancient. Two of these were examined; in each was a cyst containing human remains. Evidence indicated that cremation had been practised outside the periphery of the cairn. One cyst contained an almost complete skeleton which was charred; this cairn was 25 feet square. The second cairn examined was 12 feet by 8 feet by 3 feet high; in this the cyst contained nothing but a little ash. On top of one of the remaining cairns was a boulder estimated to weigh 1,000 lb.; this one was on Turn Island.

Lopez Island.—One cairn was examined, it being 12 feet by 8 feet by 3 feet high. No cyst was reported, but the cairn contained a skeleton which had been subjected to partial cremation. This cairn was heaped over with earth and supported a tree 6 feet in diameter. Other small stone cairns were reported on the shores of Hunter Bay.

MOUNDS.

It should be noted that all of the above cairns were either on Vancouver Island or on the Gulf Islands. The total of those examined was eighty-one, and many others were reported. In all this area Mr. Harlan Smith and his associates found but one earth mound, and even that was very much in the nature of a stone cairn covered with earth. On the Mainland, however, practically all such monuments were of the nature of earth mounds; unfortunately, in the early development of the Fraser Valley and delta, many of these mounds had been levelled by farmers and others before they began to attract the attention of anthropologists. Nevertheless, records are available of the following:—

Cadboro Bay.—This is the one mound for the Island area referred to in the paragraph next above; it was found standing amid the twenty-four cairns above reported and was seen as an earth mound 18 feet in diameter and 3 feet high. In the centre was a rough stone cyst made up of sixteen stones, six of which weighed from 200 to 500 lb. each and the other ten from 20 to 75 lb. each. In this cyst was a skeleton, apparently uncremated. A slight depression—especially when allowances have been made for the levelling influences of the natural elements—indicated a borrow-pit technique similar to that reported at Duncan in the main body of this discussion.

Port Hammond.—Two circular mounds were reported, one 24 feet in diameter by 5 feet high and the other 10 feet high. No cysts were contained. The skeleton in one was laid lengthwise; in the other burned clay and ashes indicated cremation outside the periphery of the mound.

Hatzic.—Circular mounds of earth were found, several of them having interior stone cysts and circular rows of small stones. Three of these were examined in 1894 by Mr. Fredrick T. Lazenby, who reported on them for Mr. Smith's publication as follows:—

- (1) About 24 feet in diameter, 7 feet high, flat on top, 14 feet in diameter. Surmounted by an old cedar tree 8 feet in diameter. Large boulders, almost touching one another, encircled the base of the mound. Similar boulders formed a second ring 18 feet in diameter (therefore within the mound itself). The cyst was 4 feet square and 3 feet high, covered with a flat stone. Body flexed, facing east. Long-headed skull; hair rusty black. A broken copper needle,¹ 7 inches long by three-eighths of an inch at base, and three oblong plates of copper $3\frac{1}{2}$ inches by $2\frac{1}{4}$ inches, each with an oblong hole, all enclosed in cedar bark, were found within the cyst. A small piece of fabric of mountain-goat wool was also found.
- (2) Mound under C.P.R. embankment, similar to the above, with cyst; not opened.
- (3) South side of railway slightly west of No. 1. In the cyst was found the skull of a long-headed woman. A copper ring enclosed in cedar bark and a long strand of hair were found with it.

(N.B.—Lazenby specifically states in connection with the stone circles that no mound was found in which such stones formed squares, nor were they laid more than one tier high. Hill-Tout, however, has shown some such, for details of which see his article previously referred to herein.)

PITS.

Point Roberts.—Pits from 5 to 15 feet in diameter, and from 3 to 5 feet deep were found to contain human skeletons. In one were four skeletons, bones disarranged. Evidence suggests bodies placed in boxes buried in pits and covered with boulders. No artifacts. Some pits surrounded by boulders.

(1) See Plate I.

APPENDIX C.

Antiquities of This Island (by James Deans).

CAIRNS—THEIR APPEARANCE, PROBABLE AGE, BY WHOM CONSTRUCTED, THEIR PAST AND PRESENT USES.¹

So far as is known, there are but two sorts of Cairns on this Island, or perhaps on the whole coast from the Columbia river northward. First, the earth mounds, or burrows, constructed of earth and stones, as already described, and the stone cairns; that is, stones collected from the boulder drift and roughly filled up in a conical shape—grey, uncouth, moss-covered, hoary sentinels guarding the remains of a race who, one and all of them, have finished their journey through life with all its toils and troubles, joys and sorrows, leaving nothing, but these rude cairns to tell to future generations their existence. That they are very old, there is no room to doubt. The hoary l[i]chen, which covers the grey stones of their sides, or the gnarled oak, on the top of them, proclaim to wandering man that their leaves have dropped the dews of summers, and their branches have bent before the storms of winter for a thousand years. Even the old bones as they crumble to one's touch seem to say "leave us alone to our long rest, we belong not to your day or generation." Running down the pages of history, we find that mounds or cairns were the earliest modes of sepulture. There were the monuments of the heroes of the Trojan war, and how much earlier we do not know. They (the larger form of burrows) are dotted like low, natural hills over the steppes of Tartary; they are found buried under the rank tropical vegetation of Central America, monuments of races of whom no other relics remain. Human remains have been found up the Fraser sixty feet below the surface—remains probably of a people who lived contemporaneous with teose [*sic*] who raised these cairns. As yet we have not found any lower than 80 feet above water mark, although we have found many a great deal higher. At Cadboro bay there is an ancient sea beach, well defined. Leaving the edge of the water at present, you ascend a steep slope and gain a flat four or five hundred yards wide; leaving this flat you reach another, after having climbed a second steep bank say 60 feet in height, resembling in nearly every instance the present one at the water's edge. Along the brink of this second slope is a line of mounds of various sizes—generally two or three smaller ones around a big one. We find them extending along the brink for a distance of nearly half a mile. At one time, there is no room to doubt, the sea washed the bottom of this slope. If so, then the remains were buried on the sea shore, whereas now they are nearly a quarter of a mile back from it. If the subsidence of the waters was caused by an upheaval, I think 3000 years must have elapsed since then that being the time I allow the waters, to have formed the lower slope or terrace, as it is in its present state.

(1) *Victoria Colonist*, January 30, 1872.

All along the upper slope are hollows where water had run. In several of those hollows are small cairns. Now these cairns must have been placed there after the water ceased to run. Whether they were placed there before the subsidence of the water is very hard to say, probably they were placed shortly after. Judging by the dryness of the ground and the decayed state of the bones I think I may allow 2000 years as the probable age of the cairns. One thing is very curious; the absence of them under 30 feet above high water mark? By whom they were constructed is the point to be considered. Whether by the forefathers of the present Indians, or by a race long extinct? The people who built them, whoever they were, were identical with those who raised the cairns on mound prairie, Yamhill county, Washington Territory, and in Oregon, and (who knows?) the ancient cities and mounds in Central America as well. When once the cairns and mounds on this Island are fully explored and compared with these in Yamhill county, no doubt a great amount of historical light will be thrown on them; at present too little is known, for any person to form an idea at all plausible as to the race by whom they were raised. We have never been able to obtain a whole skull as yet, they having crumbled away on exposure to the air; but I have found enough I think, to lead me to believe that the skulls of the cairn-builders were smaller than those of the Indians of the present day. Be that as it may, further discoveries will decide.

JAMES DEANS.

CAIRNS, THEIR USES, PAST AND PRESENT.²

The only monuments to which people in a rude state of civilization seem to have been anxious to give durability, are their graves, and to the contents of these we must look for any traces of the character and manners of those who built them. From the remotest ages it is customary to mark for future generations the last resting place of the honored dead by raising mounds more or less elevated, according to the power and influence of the deceased. The larger and more perfect the mode of construction of the mound or cairn, the more did it show the power and influence of the person to whose memory they were erected, which can be proved from the fact that if we find a small or badly constructed mound we are sure to find, on opening it, that it encloses the remains of a child or a young person. If a grown-up person they must have had no property. The more they seem to have had to give away, the more pains were taken with their cairns. It is customary to this day amongst the Northern Indians to give their children an ugly name on purpose to inspire them to acquire property, with which they can buy an honorable name from their Chief; and also that they may attain habits of industry and ultimately become Chiefs themselves, when all the tribe will come and build them a respectable house with their family crest (an eagle or a crow, or

(2) *Ibid.*, January 31, 1872.

beaver,) whatever it may be, cut out on a spar and set on end at their door and when dead will give them a respectable pole, box and copper plate to make their rank in life, the pole being set up on an end with the body in the box and the copper plate underneath. This seems to have been the case with the people who left those cairns. When a chief died all the friends and tribe came and filled up his cairn, he having had the means to give them presents. Thus they in turn raised a high and perfect cairn. To the poor they raised a mean cairn. Sometimes we find a long mound with two or three little ones around them. These little ones I think must have been the slaves of the deceased or the children perhaps. Let us turn to the pages of the past and fancy ourselves in the habitations of the primitive people. Should a a [*sic*] Chief or a warrior die or be killed in battles, wood is gathered and a pile raised. The body is placed on the top of it, a fire is kindled, it smokes and blazes, the body is consumed, a hole is being dug, the ashes are gathered and put away in the hole, (the receptacle in the inner circle) large flat stones are thrown in and the mound is piled up. It is finished, and the ashes are left to their long repose. Somewhat after the manner of the early Saxons, as is described in an ancient poem—the adventures of Beodulf [*sic*]:—

Then the heroes, weeping,
Laid down in the midst
The Famous Chieftain—
Their dear lord.
Then began on the hill
The warriors to awake,
The mightiest of funeral fires
The wood smoke rose aloft;
Dark from the fire
Noisily it went.
Mingled with weeping.
Command the war chiefs
To make a mound
Bright after the funeral fire
Which shall be for a memorial
To my people.

JAMES DEANS.

CAIRNS, THEIR USES, PAST AND PRESENT.³

The next thing in order to be noticed is the shape of the cairns. In ancient times the circle had a religious significance in relation to the rites of sepulture. Now in the cairns there is the inner circle or the receptacle. Next again, are the two outer circles. Now in ancient mythology the circle refereed [*sic*] to eternity, and the central point to time. The garden of Eden was of circular form, and the Tree of

(3) *Ibid.*, February 1, 1872.

Life was placed in the centre (Gen 11, 9.) Now as this was reported to convey the privilege of immortality the centre would hence be esteemed the most honorable situation and be ultimately assigned to the Deity. The tribes contiguous to Judea placed an emblem in the centre of a circle as a symbol of the Deity surrounded by eternity. The Smothraciana had a great veneration for the circle, and hence rings were distributed to the uninitiated as amulets possessed of the power of averting danger. The first settlers in Egypt transmitted to their posterity an exact copy of our own point within a circle of boundless light, in the centre of which the Deity is supposed to dwell. The number one was the point within the circle, doubled the central fire or God. The point within the circle afterwards became a universal emblem to denote the temple of the Deity, and referred to the planetary circle in the centre of which was fixed the sun, as the universal God. Servius tells us that it was believed that the centre of the temple was the peculiar residence of the Deity, exterior decorations being most ornamental (Serv. Georg. 3.) Hence the astronomical character used to denote or represent the sun is a point within a circle, because that is the figure of protection. The most perfect metal, gold, is also designated in chemistry by the same character. With this reference the point within a circle was an emblem of great importance amongst the British Druids. Their temples were circular, many of them with a single stone placed in the centre. Their solemn processions were all arranged in the same form and without a circle it was impossible to obtain favor of the Gods. The rites of divination could not be securely and successfully performed unless the operators were protected within the consecrated periphery of a magical circle. It is remarkable that, in all the ancient system of Mythology the Great Father, or the Male Generative principle was uniformly symbolized by a point within a circle. In the latter ages of idolatry the point within a circle, with an unequivocal allusion to the public worship, was the principal object of veneration with all people in the world. After what I have said my reader will be able to see how marked an affinity exists between these points within a circle and receptacles of the cairns, which are nothing more or less then [*sic*] the same sacred point within a circle. It is, I think, worthy of notice that the remains should be put in the exact spot on the circle where the point is always put—that is in the centre of it. It is also remarkable that in every cairn the skull should be put on the sun side of the point—that is the bones pointing northward, while the skull was due South. By the order of construction it was necessary to build the cairn at once, and not by the accumulated deposits of years, as in Scotland. In Scotland it was customary when a person has been found by the wayside or on the moor, when he had been murdered or had perished in the storm, to bury him where found, and every passer by threw a stone on his grave until in after years they grew to vast dimensions. Hence the saying—"I will add a stone to his cairn."

JAMES DEANS.

TRAP HOLES.⁴

Hardly any person can have failed to notice by hill sides or forest glades and more particularly by running water, spring or swamp, large holes about six feet in diameter, and six or eight feet in depth, and looking like wells under a willow bush, for now a large willow generally grow [*sic*] out of them. These holes, long after this island is cleared and settled, and their uses forgotten, will puzzle many a wanderer. These holes were used as pitfalls to trap game (deer in particular) before the Indians had firearms. Their mode of construction was as follows: A circular hole with perpendicular sides was dug and carefully covered over with green boughs of grass and earth, resting on wood. Strong enough to bear the covering, but nothing more in order that deer passing over it would drop through. When once at the bottom deer could never get out again. The Indians used the holes regularly when, if they found game, they would club them to death and pull it [*sic*] out. In some places they are found singly, while at others they are found in groups chiefly near the water, as I said before. Some of them are very old I have found them by the sides of what must have been a large swamp, although at the present time nearly dry and covered with timber. I have seen one of these holes with part of the wood covering remaining. These pitfalls ceased to be used on this part of the Island after firearms became plentiful.

There are other holes or hallows [*sic*] scattered all over on dry or hilly ground, mostly where the Indians were, or have dwelt. They are of all sizes, but not more than 2 feet in depth. These holes are at the bottom full of stones and burnt wood. They were always and are still used as places for cooking the roots of the *camaos* [*sic*]. I have seen them in operation; the Indians use them in this fashion. First a hole is dug, a fire is made of wood at the bottom, stones are pu[t] into it when red hot, the roots are put on and covered with pine boughs, while water is thrown over the mass, which is left to cook and steam.

J DEANS.

(4) *Ibid.*, February 8, 1872.

THE WORK OF VENIAMINOV IN ALASKA.

During the Russian occupation of Alaska there were many men whose work is worthy of recognition. Two stand pre-eminent—Baranov, the builder, and Veniaminov, the priest—and appropriately enough they represent the two divisions of authority—church and state. Much has been written about Baranov,¹ both in history and in fiction, but Veniaminov seems to have been overlooked, and this brief sketch is an effort to recount the rôle he played in Alaskan history.²

Veniaminov was born on August 26, 1797, in the village of Anginsk, near Irkutsk, Siberia, the son of Eusebius Popov, sacristan of the Church of St. Elias. He was christened John Popov. The family was poor, and at the age of five John began to receive instruction from his father. Upon the death of the latter two years later the young boy was adopted by his uncle, Demetrius Popov, who took him into his own home and gave personal attention to his education. He proved to be an apt pupil, and at the age of nine entered the theological seminary at Irkutsk. Here he continued to come under the influence of his uncle, not only in matters relating to his religious studies, but also in what we would now call manual training. This latter accomplishment proved to be most valuable to him in his work in Alaska. One of his first efforts was the construction of a water-clock, the frame and hands of which were of wood and the wheels were turned by water dropping on a piece of tin.

In 1814 a new rector came to the seminary and decided to change the names of the students. John, now seventeen, was

(1) Hector Chevigny, *Lord of Alaska; Baranov and the Russian Adventure*, New York, 1942; Florence Willoughby, *Sitka, portal to romance*, Boston, 1930; and C. L. Andrews, "Alaska under the Russians—Baranof the builder," *Washington Historical Quarterly*, VII. (1916), pp. 202-16.

(2) The standard biography of Veniaminov has never been translated from the Russian. Two English sources are available, and upon these the author has drawn heavily for information: *The Life and Work of Innocent the Archbishop of Kamchatka, the Kuriles and the Aleutian Islands and later the Metropolitan of Moscow*, San Francisco, 1897; and A. P. Kashevaroff, "Ivan Veniaminov, Innocent, Metropolitan of Moscow and Kolomna," *Alaska Magazine*, I. (1927), pp. 49-56, 145-150, 217-224.

British Columbia Historical Quarterly, Vol. XI, No. 4.

the outstanding pupil of the seminary, and to him was given the name Veniaminov, in honour of Benjamin, Bishop of Irkutsk, an outstanding and greatly beloved churchman who had died that year. From that time until he himself was consecrated a bishop, he was known as Veniaminov. In 1817 he was ordained a deacon of the church and became a teacher in the parish school. The next year he was ordained a priest and continued at the Church of the Annunciation, where he became extremely popular. In 1823 the Holy Synod ordered the establishment of a mission on Unalaska Island. Great difficulty was experienced by the Bishop of Irkutsk in finding a priest for this hazardous undertaking, and in the end the embarrassing situation was relieved by Veniaminov offering his services. Thus it came about that on May 7, 1823, accompanied by his wife and year-old son, Veniaminov set out from Irkutsk for Yakutsk on the Lena River. From thence they travelled overland to Okhotsk, where they boarded a vessel sailing to Sitka. Eventually on July 29, 1824, their destination was reached.

Unalaska is one of the largest of the islands of the Aleutian Archipelago. Veniaminov was unperturbed by the primitive conditions he encountered. Only an old wooden chapel was in existence; temporarily he and his family lived in a native underground hut. Almost immediately he set himself the task of erecting a new church and dwelling-place. His first step was to teach the natives the art of building and carpentry, as well as brick-laying and masonry. In July, 1825, the corner-stone of the Church of the Ascension was laid. Much of the work was done by Veniaminov, and at the same time he built his own home and made the furniture for it.

An even more difficult task was the study of the Aleut language, for unless he was able to converse with the natives in their own tongue, his work as a priest would be seriously hampered. His parish was large, covering, as it did, all of the Aleutian and extending to the Pribilof Islands. Each year Veniaminov travelled thousands of miles, by sea in a *baidarka* (skin canoe) and occasionally with dogs and on foot. Knowing the climate of the Aleutians—almost incessant rain, fog, and wind—one can well imagine the privations he must have suffered on such journeys. It is said that he was often forced to go hungry, generally wet to

the skin, and most of the time living in dirty, smelly, cold native huts.

A true disciple of the Master, he was untiring in his efforts to teach his flock and to give them an understanding of the Christian religion, and to that end, soon after he had mastered the language, he commenced to translate the sacred books into Aleut. The first to be translated was the gospel of St. Matthew. At the same time he opened a school, where he taught the Aleuts to read and write. His efforts were further complicated by the fact that he had to invent an Aleut alphabet. Long were his hours; he spared himself not one bit in his effort to bring the Word to his children (as he called them). His reports to his superiors, or such of them as have been translated, clearly indicate his attitude to the Aleuts and throw light on the success of his efforts.

Of all the good qualities of the Aleuts nothing gave me more pleasure and satisfied my heart than the diligence they had for listening, or more properly the thirst they had for hearing the Word of God, for a most untiring preacher could become weary sooner than their diligence become lessened. . . . I acknowledge openly that during such conversations (or preachings), I experienced in fact the consolations of the Christian faith, those sweet and unspeakable touches of grace, and therefore I owe the Aleuts more thanks than they owe me for my work, and I will never forget them.³

Veniaminov laboured with the Aleuts for ten years. In that time, in addition to the translation of the gospel of St. Matthew, he translated part of the gospel of St. Luke and the whole of the Acts of the Apostles, as well as the catechism and much of the liturgy of his church. His interest in linguistics prompted him to compile a grammar of the Aleutian-Fox language and, based upon his long experience in the area, he wrote a series of scientific studies—*Notes on the Unalaska District*—describing the population, climate, and products of the region.

In 1834 Veniaminov was transferred to Sitka, then the centre of Russian activity in Alaska. Immediately upon his arrival, on November 22, he realized that a new situation confronted him. His beloved Aleuts were a quiet, easy-going race, with no thought of hatred in their make-up; the inhabitants of this area, the Kolosh or Tlingit, on the other hand, were a warlike race, arrogant and proud. They were hostile to the Russians and were

(3) *The Life and Work of Innocent*, p. 10.

still brooding over their defeat by Baranov and Lisiansky in the recapture of Sitka in 1804 and plotted revenge for the loss of life suffered at that time. It is possible that officials in Russia, having in mind Veniaminov's success with the Aleuts, urged his assignment to Sitka in the hope that he might be able to cope with the Tlingit warriors.

As he had done at Unalaska, he set about learning the Tlingit tongue, always watching for an opportunity to gain the confidence of this savage people. He went amongst them freely and fearlessly, which in itself inspired their confidence, for brave men always admire bravery in others. After a time, even though unable to do much real church work among them, he discovered that individually they were growing to trust him and to welcome him as a visitor in their homes. He went about his work with great care, never missing an opportunity to try to sow the seed of religion in their hearts. Schools were opened for the children and, as in Unalaska, he gave them instruction in manual training. He was interested in their physical welfare as well and introduced inoculation against disease. In fact a serious outbreak of smallpox in 1836 at Sitka gave him his great opportunity. Indian casualties were high, and the chiefs, quick to notice that very few Russians were taken ill, sought the help of Veniaminov. Taking a doctor with him, he had all that would consent inoculated. Thereafter he was revered by the Tlingits, for he had provided protection from the plague when the local *shaman* were helpless.

Veniaminov still found time to indulge his interest in mechanical work. He constructed a tower clock for his church, made musical instruments, as well as furniture for the church and his home. In fact his prowess in this line won him high words of commendation from Captain Edward Belcher, R.N., who visited Sitka in September, 1837, on H.M.S. *Sulphur*. He thus recorded his impressions of Veniaminov:—

I visited their church, and witnessed the ceremony. The interior of the edifice is splendid, quite beyond conception in such a place as this. The padre, who officiated in his splendid robes, was a very powerful athletic man, about forty-five years of age, and standing in his boots (which appear to be part of his costume) about six feet three inches; quite Herculean, and very clever. I took a great liking to him, and was permitted to examine his workshop, in which I noticed a good barrel-organ, a barometer, and several

other articles of his own manufacture. He was kind enough to volunteer his services on one or two of our sick barometers, and succeeded effectually. Notwithstanding he only spoke Russian, of which I knew nothing, we managed to become great allies.⁴

Five years passed quickly. After fifteen years' absence from his homeland, Veniaminov found it necessary to make a journey to Russia. He wanted to discuss his work with the Holy Synod and to urge them to expand their missionary work in Alaska. He was also anxious to obtain their consent to the publication of his translations of portions of the Bible both in Aleut and Tlingit so as to give them wider influence. He left Sitka in November, 1838, accompanied by his family and did not reach St. Petersburg until June 25, 1839. Upon arrival he discovered that the Holy Synod would not convene until the autumn and, with typical enthusiasm, he embarked on a missionary tour through Russia to raise funds for his work. It was while away on this task that his wife died—a blow that weighed heavily upon him, for his had been a happy family. After suitable provision had been made for his family, which now consisted of two sons and four daughters, Veniaminov entered the monastic order and took the name of Innocent.

During its autumn session the Holy Synod decided to create a new diocese in Alaska with a resident bishop at Sitka. The selection of the bishop was a prerogative of the Czar, Nicholas I., and Veniaminov was his choice. On December 15, 1840, he was consecrated Bishop of Kamchatka, the Kuriles and the Aleutian Islands in the Church of Our Lady of Kazan in St. Petersburg. Over a month later, on January 30, 1841, he set out on the long return journey, travelling by way of Irkutsk. He finally reached Sitka on September 27, 1841; thus Alaska welcomed its first bishop one hundred years after the discovery of the country by Vitus Bering.

The new bishop immediately set about the task of organizing his immense diocese. Plans were laid for the erection of a new cathedral, priests were ordained to work in newly created parishes, schools and seminaries were established, and particular attention was paid to the spiritual needs of the Tlingits. In the

(4) Captain Sir Edward Belcher, R.N., *Narrative of a Voyage Round the World* . . ., London, 1843, I., pp. 98, 99.

spring of 1842 he paid his first official visit to Kodiak. Sir George Simpson was then at Sitka in the course of his voyage around the world, and he gives the following account of the bishop's work:—

On the Friday after our landing [April 23, 1842], the Bishop of Sitka returned from Kodiak, distant about six hundred miles, after a run of five days. His outward voyage, however, had occupied precisely four weeks, this unusual detention having led to a great deal of privation, more particularly as the vessel was crowded with passengers; the daily allowance of water had been gradually reduced to one pint for each person, and, on anchoring at Kodiak, the whole of the remaining stock consisted of a single bottle. This prelate's diocese is perhaps the most extensive in existence, comprising as it does, not only the whole of Russian America, but also the Sea of Ochotsk, Kamschatka, and the Aleutian archipelagoes. He looks as if intended by Nature for the bishopric of two worlds, being a man of herculean frame; and the specimen of his travels, which I have just mentioned, shows that he is likely to need all his constitution for an episcopal visitation.⁵

Shortly thereafter, on May 4, Bishop Innocent set out on a tour of the Asiatic half of his diocese, a journey that took him to Unalaska, Kamchatka, and Okhotsk, and from which he did not return until late in 1843. Sir George Simpson has written a vivid description of the farewell service held at Sitka and pays a glowing tribute to this noble churchman:—

In addition to four assistants in holy orders, he was attended by a number of youthful acolytes, all as proud as possible of their embroidered robes of silk and velvet; the congregation was large and well dressed, while, so far as I could judge from the earnestness of the preacher, and the attention of the hearers, the sermon was more than ordinarily impressive. On taking leave of this worthy prelate, I cannot refrain from rendering a small tribute of praise to his character and qualifications; and, as he is still in the prime of life, I trust that his widely-scattered flock may long enjoy the benefit of those powers of mind and body, which combine to fit him for his important and arduous charge. His appearance, to which I have already alluded, impresses a stranger with something of awe, while, on further intercourse, the gentleness which characterises his every word and deed, insensibly moulds reverence into love; and, at the same time, his talents and attainments are such to be worthy of his exalted station. With all this, the bishop is sufficiently a man of the world to disdain anything like cant. His conversation, on the contrary, teems with amusement on instruction; and his company is much prized by all who have the honour of his acquaintance.⁶

(5) Sir George Simpson, *Narrative of a Journey Round the World, during the Years 1841 and 1842*, London, 1847, II., p. 180.

(6) *Ibid.*, II., pp. 190, 191.

This great man made a profound impression on all, not only in Russia, where he was widely known and well loved by people of every station, but also in America, among the natives, to whom he was attached by the strongest ties of affection. Foreigners were drawn to him by his simplicity, his quiet humour, and his deep human sympathy.⁷

The next few years were unusually busy. He was constantly on the move, travelling over his entire diocese, a distance of some 5,000 miles, still using the same method of travel as he had in Unalaska and experiencing just as many hardships, and with little or no thought of personal comfort. In 1845 and 1846 he made visits to Kamchatka. Back at Sitka in 1847 he organized a separate Indian church, and in 1848 dedicated his new cathedral, St. Michael's, which still stands. Then in 1850, in recognition of his work, he was raised to the rank and dignity of archbishop. This advancement made it necessary for him to change his see from Sitka to Yakutsk. Here, as previously, his first work was to supervise the translation of the sacred books into the native language. Therafter only occasional visits were made to Sitka.

Veniaminov was no longer a young man, and in 1857 an imperial decree granted him two vicars in an effort to lighten his labour. Despite failing health and eyesight, the latter brought about by his long journeys over snow-covered ground, he continued his work, but in 1867 he had decided to ask permission to retire. However, such was not to be, for that year the Metropolitan of Moscow had died, and much to the surprise of Archbishop Innocent, he was elevated to the office, one of the highest positions in the gift of his church.

Time is no respecter of persons, and the hardships he had endured began to take their inevitable toll. Although now totally blind he continued in his work until March 31, 1879, when he was stricken. He left behind a record of service of which it is difficult to find an equal. There are still a few old men in the Aleutian Islands that remember "the good Father," as he was

(7) Stuart R. Tompkins, *Alaska: Promyshlennik and Sourdough*, Norman, 1940, pp. 167-169.

affectionately called. If personal humility be greatness, then Veniaminov may be truly named one of the church's great men, if not the greatest in the history of the Russian church.

ARCHIE W. SHIELS.

BELLINGHAM, WASH.

THE TYRANT JUDGE: JUDGE BEGBIE IN COURT.*

As gold-mining remained the basis of the colonial economy up to the time of the union in 1866, it is not surprising that the bulk of the civil litigation of the day arose from that industry. There were, on the whole, two causes of dispute. The best known, of course, was the frequent conflict that developed over rights to certain claims. As a rule the point of issue in cases of this kind was encroachment and breach of contract. Such disputes were not easy to settle. They presented difficult points of law, and it was hard to establish the validity of the evidence given. The second cause of litigation was to be found not in the mines themselves, but in the ancillary field of transport. In those days both colonies depended on the United States for most of their consumption goods, which were routed from San Francisco to Victoria and New Westminster, and transported from Douglas to the goldfields by wagon and mule train.

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

At the time of the famous Cottonwood scandal a dispute of this kind arose between the carrying company of G. B. Wright and the Cranford brothers, who had come to the colony in the

* The concluding article in a series on the career of Sir Matthew Baillie Begbie.

spring of 1862 to engage in business in the goldfields. The younger of the brothers, Robert Cranford, arrived from San Francisco with some 40 tons of merchandise, which he intended to sell at Williams Creek. Shortly afterwards, at some time between April 15 and 20, his brother, John P. Cranford, arrived in Victoria. He stated at the time that he intended to set up in business as a commission merchant and that he was in no way associated with his brother Robert. He also brought a cargo of merchandise with him from San Francisco.

In the meantime Robert Cranford had entered into negotiations with Gus Wright to have his goods carried to Lillooet, whence they were to be transported to Williams Creek by another company. John Cranford also discussed the question with G. B. Wright, and appears to have secured an understanding, on behalf of his brother, as to the term of credit to be allowed. On April 25, 1862, Robert Cranford and G. B. Wright entered into an agreement that was satisfactory to both parties. Wright agreed to carry the goods to Lillooet at 9 cents a pound, payable sixty days after delivery. He also undertook, in the event of a drop in freight charges, to lower his own rates accordingly. Wright assured Cranford that it would take twelve days at the longest to carry his goods to Lillooet and that it would require another thirty days to convey them from that place to Williams Creek. All goods were to be marked to Robert Cranford, care of G. B. Wright & Company. Wright entered a memorandum of agreement in his pocket-book, and Robert Cranford left for the Interior, apparently well satisfied with the arrangements he had made, and confident that the term of credit would afford him ample time to sell enough goods to pay his freight bills when they came due.¹

(1) New Westminster *British Columbian*, December 27, 1862. There are two sources for the Cranford trials. The first is Judge Begbie's *Court Notebooks* in the Archives of B.C. The Judge's notes throw no light on the case, being largely a record of evidence given, all of which was accurately reported in the newspapers. He jotted down, however, that the goods had been stolen in transit, but that this could not be incontestably proved. He also noted that the number of days that elapsed between consignment and delivery was not established. The other source is the contemporary newspapers. Of these the *British Columbian* gives the fullest account of the trials, as it was the avowed purpose of the editor, John Robson, to expose

He arrived at Lillooet on May 5, 1862, and, assuming that his merchandise would begin to arrive within the next week, contracted with the Haskell Company to carry it to Williams Creek. After waiting two weeks Haskell was obliged to inform Cranford that he could afford to wait no longer, as he had another cargo offered. He generously released the merchant from any charge for the delay. The first consignment of goods arrived on May 28, to be followed at intervals by other cargoes, all of which the Cranfords insisted were seriously late. Some of the goods were perishable, particularly bacon, which goes rancid very quickly if exposed too long to the heat of the Interior summer.

It was charged that Wright had failed to deliver more than a ton of the goods consigned to him. This was brought out in the second case, that of Cranford *v.* Wright, and served as ground for a sharp exchange between Judge Begbie and counsel for the plaintiffs. The point was never pressed, however, but was used as reason for non-payment on the freight charges for the earlier consignments. The essential fact in both cases was the late delivery of goods, and Cranford's refusal to pay the charges. In general the goods were consigned between April 30 and June 28, 1862, and should have been delivered between May 12 and July 10 according to Wright's assurances. According to the Cranfords, they were not delivered until dates between May 28 and September 10. In particular, few of the goods reached Lillooet in less than thirty days, while nearly the whole of them was detained much longer. About a third of the consignment was detained between sixty and seventy-five days. The Cranfords also claimed that between June 18 and 20 over 52,000 lb. were consigned to Wright, and that all of this, save 600 lb., was at Douglas between June 20 and 25, yet none reached Lillooet in less than thirty-three days, while nearly half was delayed from sixty to seventy-five days. The goods delivered after August

the "Tyrant Judge." For this reason the reporting may be regarded as biased. Actually the accounts given are strictly accurate so far as the facts of the case are concerned. Robson's diatribes, of course, ruin the telling effect of his otherwise accurate account. The *Victoria Colonist* account is much shorter, free of frenzied denunciations, but essentially the same in substance as that of its Mainland contemporary. It has, however, a touch of aloofness, indicative of the proud conviction that the courts of the Island colony were held on a higher plane—as, in truth, they were!

25—over 23,000 lb.—could not be forwarded to Williams Creek because of the lateness of the season. Goods delivered at Lillooet after July 23 could not be delivered at Williams Creek before prices had fallen so low as barely to cover costs.

Robert Cranford spent the season at Lillooet, as he claimed, watching Wright's own merchandise going up to the goldfields while his own remained at Douglas. As he was suffering from rheumatism, he sent his brother, John P. Cranford, up to Williams Creek to sell his commodities. Wright had turned a deaf ear to Robert Cranford's complaints, but in August demanded payment. Cranford answered that his bill for damaged and lost goods would more than cover the costs of freight to date. On September 4 he wrote to Wright, informing him that he had, by delaying delivery of his goods, precluded the possibility of his being able to pay the bill.²

On September 8 Wright appeared before Magistrate Elliott in the County Court at Lillooet and informed him that he wished to take proceedings against the Cranford brothers for debt. According to the procedure of the day Wright made a sworn declaration that R. and J. Cranford were indebted to him for the sum of £1,719 15s. 3d. for goods sold and delivered to them. Magistrate Elliott then made out a writ to the police authorities ordering them to take the Cranfords into custody. This order, or *capias ad respondendum* to use the technical term, was valid so long as the affidavit was properly sworn and declared. To accompany the *capias*, which only provided for the arrest of the debtors, Magistrate Elliott made out an Order of Court commanding them to appear for trial, specifying the time and place of hearing. He made this out from the Supreme Court.³

Robert Cranford was apprehended at Lillooet on the same day, September 8, and was held in prison for eighty-four days. His brother, John Cranford, was arrested at Williams Creek on September 27, and was held in custody for a period of sixty-six days. The Cranfords secured the advice of Mr. Walkem, who at that time was not a member of the bar of British Columbia, although, as we have seen, he was qualified to plead in both Upper

(2) *Ibid.*, December 31, 1862.

(3) It has never been clear whether Elliott made out the order at this time or on some subsequent occasion.

and Lower Canada. The trial was held in the Supreme Court in Lillooet on October 15 and 16 before Judge Begbie. When the court sat, Mr. Walkem took his seat in the place allocated to counsel. Judge Begbie immediately ordered him to retire to a proper place. A hot exchange of words ensued, and it is to be inferred from contemporary accounts that he was able to conduct the defence only under certain restrictions.

The defence sought to show that John Cranford was not a partner and was therefore not liable for his brother's debts.⁴ In support of this contention the defendants outlined the circumstances under which Robert Cranford had entered into a contract with Wright. The contractor had come to Robert Cranford's office in Victoria on April 25 and stated that he was willing to make an agreement based on the terms discussed in previous conversations with the two brothers. According to testimony, Wright sat down at Cranford's desk and, taking out his pocket-book, said, "What is the style of your firm?" Robert Cranford testified, and his brother supported him, that he answered, "R. Cranford, Jr. I am the only person concerned in the business." Wright then wrote the memorandum of agreement as follows:—

April 25.

Agreed with R. Cranford, Jr., to carry goods for him from Douglas to Lillooet at nine cents, per pound, to wait sixty days after delivery at Lillooet for pay. If freights fall, to come down in price.⁵

Then, according to the evidence of the defendants, Wright got up, read the contract aloud, and asked Robert Cranford whether it were satisfactory. Robert Cranford replied "yes."

On the following morning, October 16, Wright was asked to produce his pocket-book. When read to the jury and submitted to the court for inspection, however, the terms were different from those described on the previous day by the defendant. The phrase "& Brother," written in different coloured ink, had been squeezed into the margin, and a "t" added to "him" to make "them." The "e" in this pronoun was obviously changed from "i" and the dot remained above the letter. Judge Begbie exam-

(4) *Ibid.*, December 31, 1862.

(5) *Ibid.*, December 13, 1862. *See also ibid.*, December 31, 1862.

ined the book, declared that the changes had been made, and said that since it belonged to Mr. Wright he supposed he could do what he liked with it. He also suggested that the different colours of the ink were circumstantial in nature, and therefore of little significance. Turning to Wright, the Judge said he was sure the plaintiff could give a satisfactory explanation.

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

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

These arguments closed the first plea of the defence—that John Cranford was not a partner and had therefore been subjected to illegal arrest. The second point that they sought to establish was that Robert Cranford did not owe Wright the sum specified in the writ, and that, when damaged and lost goods were

assessed, it would be found that the plaintiff, and not the defendant, was the debtor. Robert Cranford proceeded to show that Wright had disregarded the terms of the contract in assessing his liability. He had been given a written contract stating that the freight was to be "payable sixty days after delivery." Since the writ was issued on September 8, he was therefore liable for freight delivered at Lillooet on or before July 10. To meet that account he had a bill of \$4,000 against the defendant for lost and damaged goods.

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

It must be admitted that when it came time to charge the jury, Judge Begbie's task was not an easy one. Some of the evidence was circumstantial. In other instances witnesses were not able to substantiate their testimony with tangible evidence. As to the claim that the contract had been rescinded, neither party was able to do more than produce declarations on oath. The Cranfords could only testify that they had not received bills and other commercial papers addressed to them jointly. John Robson, who had quite recently been thrown into jail by Judge Begbie, charged that he was biased in favour of the plaintiff.⁶ He had, indeed, pointed out to the jury that Wright's admission that he had changed the terms of the contract was to be taken as a point in his favour. Truth in court is to be commended, but it can sometimes persuade a jury that the speaker is a shameless rascal. When Wright admitted that he altered the contract, the jurors might jump to the conclusion that he was capable of any duplicity. In those days the packer was roundly cursed by miners and business-men alike, and perhaps the Judge was just

(6) *Ibid.*, December 31, 1862.

in giving the scale a tilt. Similarly, it was incumbent on him to instruct the jury that some of the Cranfords' evidence was not water-tight.

What laid Judge Begbie open to criticism was not partiality so much as a lack of experience and knowledge. He embarked on interpretations of the law that a better qualified man would either have avoided or expressed with proper reservations. His last charge to the jury is a case in point. He thought, and, indeed, rightly, that the jury must weigh the question of John Cranford's liability. In order to aid them, he proceeded to explain the law on the matter. John Cranford, he explained, had been employed by his brother to attend store at Williams Creek, and after being appointed to that position had shown great zeal and energy in the discharge of his duties. This, argued the Judge, gave the impression that he might be a partner. He could in this way unconsciously have made himself a co-contractee. It was therefore the duty of the jury to assess John Cranford's liability from this point of view. In other words, Judge Begbie had raised a difficult point in the law of contract. He may have been justified in doing so, but he was not justified in leaving the jury without an adequate explanation. He did not point out to them, for instance, that such an explanation was based on evidence as circumstantial as any that he had ruled out in the testimony of the Cranfords.

The jury returned a verdict in favour of Wright. They found that John Cranford was a partner, that the contract had been rescinded, and that the two brothers owed Wright \$9,500. The Cranfords made application for a new trial, but Judge Begbie refused to consider the petition and ordered that they be committed to prison where, according to the law of the day, they were to remain until they settled with Wright or proved themselves to be bankrupt.

After they had been in jail some time, the Cranford brothers made application for release in the Supreme Court, on the grounds that their arrest had been illegal. Robert Cranford had taken up this plea in his address to the jury, but had not been permitted to carry the argument very far. He sought to show that Wright's affidavit was false, on the grounds that the packer had charged that the Cranfords owed him the specified sum of money for

goods sold and delivered. As Cranford proceeded to remind the jury that the goods had been bought in the United States and that he owed Wright nothing for them, Judge Begbie interrupted and stopped the argument. He stated that men sometimes make sheaves of affidavits, often without reading them. It was clear to all, he said, that Mr. Wright meant freight charges, and to question the affidavit was to impute a false oath to the plaintiff without any justification.

In the Supreme Court they offered a more extensive case for release. According to English law, which was also the law of the colony, a *capias* could be issued for the arrest of a debtor only under special conditions. These conditions were that a creditor must take oath that the debtor intended to abscond, or that he had absconded.⁷ The affidavit sworn by Wright neither mentioned nor undertook to suggest intent on the part of the Cranfords to abscond. Judge Begbie interrupted and bluntly contradicted counsel. He stated flatly that the affidavit alleged indebtedness, and that was all that was necessary to give the *capias* validity.

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

As a final argument, Robert Cranford testified that when he had been arrested he asked the Sheriff to produce the necessary Order of Court. This the Sheriff would not, or could not, do, and the document was not forthcoming until the trial at Lillooet on October 15. Upon examining the order, counsel found that

(7) *Ibid.*, January 7, 1863.

Magistrate Elliott had issued it out of the Supreme Court, a court in which he had no jurisdiction and no authority to issue writs.⁸ Judge Begbie, however, overruled the objection, stating that Elliott's procedure had been correct.

The legality of the Cranfords' arrest and imprisonment was thus fully sustained. The Judge had rejected every argument against it and, by so doing, had created a precedent for procedure in future cases of the kind. The Cranford brothers went back to prison, but later were released from custody when they signified their intention of taking proceedings against Wright for breach of contract. At the beginning of the assize they duly appeared before the Judge to make certain arrangements for the impending litigation. He informed them that their arrest and imprisonment had been a mistake!⁹ What reasons Judge Begbie had for reversing his judgment in this matter were not apparent. It does not matter greatly whether he was compelled to admit that it was the affidavit, the *capias*, or the Order of Court that was at fault, or whether he saw that the entire procedure had been wrong. What is significant is that he, a highly intelligent and able man, could make such mistakes. This and other blunders all point to the fact that he was not well versed in law and procedure.

The second Cranford case, which opened in New Westminster on December 6, and lasted through eleven stormy days, was even more revealing than the trial at Lillooet. While the Judge's lack of experience and knowledge were only too apparent, it also became clear that his irascibility and arbitrary temperament unfitted him for the exercise of his judicial duties. As the case progressed, Judge Begbie's irritation mounted to bad temper, which at the end of the trial became downright rage. In this state of mind he lost the last semblances of the impartiality and dignity of his office and was guilty of a most disgraceful and arbitrary act.

The Cranfords restricted their charge to breach of contract and did not sue for the goods which they previously alleged to

(8) Judge Elliott, or, more properly, Magistrate Elliott, was Deputy Registrar of the Supreme Court at the time. Begbie did not consider that this office entitled him to make out the writ, however. He ruled that he could do so as a Judge of the County Court.

(9) *Ibid.*, December 20, 1862.

have been damaged or lost. But after the manner of counsel, Ring, and his junior, McCreight, who were appearing for the plaintiffs, sought to implant certain ideas in the minds of the jurymen that were prejudicial to the character of the defendant. McCreight, who opened the case, pointed out that while he disavowed any attempt to charge larceny, he suggested that the jury would infer grave misconduct on the part of Mr. Wright. At this point Judge Begbie very properly interrupted, saying that he could not permit such imputations to be cast on the defendant. He went on, in a dictatorial manner, to say that counsel's imputations were disgraceful and that they would recoil on his own head. McCreight, rightly or wrongly, fired back. He said he had no fear that disgrace would attach to him and that he did not require to be taught his duty. Begbie is reported to have become very excited at this retort. He turned to Ring and asked him to withdraw the case from his junior. Ring refused, saying that the statements made by his learned friend had his entire concurrence and approbation. Begbie let the matter go. He had lost his temper, made a threat, and then decided not to make it good.¹⁰

During the proceedings tempers grew hotter and tongues grew sharper. Judge Begbie was rude to Ring and McCreight, and to the jury as well. He appears to have had pleasant words for Wright's counsel, Walker and Cary, and so exposed himself to John Robson's charges of partiality.¹¹ When Ring rose to dispute a point that Walker had just made, the Judge said, "Sit down, Mr. Ring. Mr. Walker has forgot more than you ever knew."¹² When Cary objected that counsel for the plaintiff was prejudicing the minds of the jury, Begbie agreed with him that a great mischief had been done. Speaking of the general ability of jurors to keep an open mind, he is reported to have said: ". . . True, Mr. Cary, we are supposed to know these things, as we are educated, and able to keep them in abeyance till we hear the opposite before forming a conclusion; but the Jury are not so; they hear the statement and draw the conclusion at once!"¹³

(10) *Ibid.*, December 13, 1862.

(11) Walker was the barrister to whom Judge Begbie had lent money to buy a share in Travis' claim.

(12) *Ibid.*, January 21, 1863.

(13) *Ibid.*, January 10, 1863.

At the end of the plaintiffs' case Judge Begbie announced his intention of declaring non-suit, which meant, in other words, that he was awarding the case to Wright.¹⁴ What prompted him to take this extraordinary step, it is hard to say. To many it must have meant partiality. It might have been the result of sheer bad temper. It is very likely that he was convinced that the Cranfords could not prove their case, and that in order to put an end to the strife, it would be best to settle the matter at once. Whatever the Judge's motives were, Ring rose to contest the decision. He proved to be the stronger man in the argument, and after a sharp exchange forced the Judge to concede the point.¹⁵ It was on this occasion, in all probability, that Begbie said to Ring: "Really, Mr. Ring, I do not know how to stop you, unless I order you to be removed out of Court!"¹⁶ It seems that the barrister would not be put down, for the Judge is reported to have said in great exasperation, "It must surely be after dinner with you!"¹⁷ The newspapers reported that during the case Begbie apologized to Ring in open court, and that the barrister said that he could not accept the apology unless he tendered the same regrets to his junior.¹⁸ Whether this transpired after Begbie threatened to have Ring ejected is not certain, but as it was one of the two most intense scenes in the entire case, there is some likelihood that this was the occasion. McCreight, however, was not prepared to accept an apology. He jumped to his feet and declared that he had never in his whole life had to endure so many insults, and that he found it inexpressibly irksome to have anything to do in a court where the Judge presided. The Judge would not dare to use the language outside the court that he used inside it!¹⁹

When all the evidence had been heard, and the time came for Judge Begbie to sum up and charge the jury, he announced he

(14) *Victoria Colonist*, December 29, 1862.

(15) *Ibid.*, December 29, 1862.

(16) *New Westminster British Columbian*, January 21, 1863.

(17) *Ibid.*, January 21, 1863.

(18) *Ibid.*, January 21, 1863.

(19) *Ibid.*, January 21, 1863. The ill will between Begbie and McCreight persisted until they were both advanced in years. They met by accident on Birdcage Walk, stopped, and exchanged kind words. Who made the first gesture is not known.

would not read his notes on the case.²⁰ After a few remarks he charged the jury that they must find whether the contract had been rescinded. If it had not, then they must assess what was reasonable time for the transportation of goods from Douglas to Lillooet. This being done, it remained to estimate the value of the goods when they should have arrived, and the value when they did arrive. The difference between these values must be the damages.²¹

After the jury had been confined for twenty-eight hours, Judge Begbie called them back into court. The foreman stated that they had not been able to come to an agreement. It appears that eight had decided in favour of the Cranfords, while the remaining four were uncertain or in favour of Wright. Those who were for the plaintiff pointed out that the bill of particulars had not been sent in in time, and if they could return to the jury-room, they could come to an unanimous decision. One of the minority is said to have called out that he could never agree.²² As Judge Begbie had refused earlier in the trial to permit the decision to be made by a majority vote, it was now his duty to explain the law to the jurymen and to answer any questions they might wish to ask. Ring rose to his feet and asked the Judge to do this. Begbie, however, appears to have been in a state of great excitement. He refused Ring's request and dismissed the jury.

Ring rose again and addressed himself to Mr. Matthew, the Registrar of the Supreme Court. When the Registrar, in answer to the indignant barrister's question, answered that he had the rolls in his possession, Ring asked him to strike his name off. McCreight jumped up and made the same request.

As in the case of the imprisonment of John Robson, a large public meeting was called. On this occasion the citizens presented a complimentary address to Ring and McCreight, expressing their admiration for the stand they had taken against the tyrant Judge. Both barristers made short speeches, and a

(20) *Ibid.*, January 10, 1863. An examination of the Judge's notes shows that he had nothing of importance to read to the jury. All that he had written was a general summary of the evidence given by the various witnesses.

(21) *Ibid.*, January 21, 1863.

(22) *Ibid.*, December 20, 1862.

Mr. Grieve, one of the jurymen, gave his version of what had gone on in the jury-room.²³

To many people Begbie's apparent partiality to Wright smacked of the same sort of unsavoury dealing that they were convinced had gone on at Cottonwood. His tyrannical behaviour in court was a repetition, as they saw it, of his arbitrary treatment of Robson. To partisans of the Cranfords who were unwilling to believe him dishonest, it seemed that he was blind to the truth. Dishonesty on the part of Judge Begbie is impossible to believe. He had no reason to be partial to Wright, for he, too, had suffered at his hands, as he revealed to Governor Douglas a year before Robert Cranford entered his ill-starred contract with the packer:—

I paid 10c. per lb. for packing some things—they were delivered piecemeal at Cayoosh, some not till the *eleventh day* from Douglas: some stolen—some broken. This was by the largest & perhaps best packers on the line; Wright and Nelson. What is the use of a waggon road for such a set? They will squabble & fight to the end of the chapter. . . .²⁴

The truth is that it was his character and methods that led him into such confusion. He knew little law and very little about court procedure. In the early days he had been the law. He made it, dispensed it, and sometimes acted as defence and prosecution. He made up his mind what the verdict should be and secured that verdict. But 1862 was not 1859. Barristers were appearing in the colony, jurymen were no longer awe-stricken horse thieves from The Dalles, and litigation was becoming more technical. But the Judge continued to scorn law books and could not change his ways. He knew Wright was a scamp and probably knew that the Cranfords were the injured party, but he believed that their case could not be proved.²⁵ He therefore set about bringing the trial to that conclusion, just as he would have done in the early courts. In flagrant disregard or ignorance of the law he was ready to declare non-suit at the end of the plaintiffs' evidence. At the end of the case, as a crowning disgrace, he dismissed the jury, leaving the unfortunate Cranfords saddled with heavy costs amounting to £1,810.

(23) *Ibid.*, December 20, 1862.

(24) Begbie to Douglas, April 20, 1861, Begbie Letters, *MS.*, Archives of B.C.

(25) *V. supra.*, p. 274, foot-note (1).

The Cranford brothers were sent back to prison, this time, it is to be presumed, on another writ. They determined to take the case to the Supreme Court of Vancouver Island, not as a court of appeal, but possibly on the grounds that the original contract had been drawn up in that colony with a Victoria firm. Accordingly they were released from prison and departed to make preparations for another suit.²⁶ The case never reached court, however, and the *Daily British Colonist* of April 15, 1863, reported that the dispute had been amicably settled to the satisfaction of friends of both parties.²⁷

After that time Robert Cranford disappears from sight. His older brother, John, seems to have prospered, for his name appeared as a member of the board of directors of the British Columbia Coal Mining Company.²⁸ Despite his early misfortunes, he was able to take an optimistic view of life, as the following notice from the *British Columbian* indicates:—

Victoria . . . Mr. J. P. Cranford delivered a lecture at the Institute on Thursday evening to a large audience. The text was "Latent Christianity in Modern Governments." The local papers describe the lecture as being very able, and enthusiastically received.²⁹

Whatever the feelings of the Cranfords may have been, John Robson neither forgave nor forgot. During the ensuing years he recorded and criticized every questionable act of Judge Begbie. In the spring of 1866 two suits were entered against Peter O'Reilly, and in each case the Judge intervened on behalf of the defendant, who, as it was well known, was a friend of his. In the case of *Eddy v. O'Reilly*, heard in New Westminster at the end of March, 1866, Judge Begbie told the jury that the evidence of the defendant was entitled to more consideration than that of the three witnesses for the plaintiff. The jurors, however, refused to be influenced by the Judge's instructions, and found a verdict in favour of Eddy. Judge Begbie forthwith set aside the verdict, thereby giving the decision to his friend.³⁰ Shortly afterwards, when the assizes opened at Lillooet in April of the same year, Judge Begbie took an even stronger stand on behalf of

(26) New Westminster *British Columbian*, April 4, 1863.

(27) *Victoria Colonist*, April 15, 1863.

(28) New Westminster *British Columbian*, July 27, 1865.

(29) *Ibid.*, April 29, 1865.

(30) *Ibid.*, May 19, 1866.

O'Reilly. In the course of the hearing he told the jury that if they found for the plaintiff, Walden, he would set it aside. To make sure that they would not disregard his instructions as the jurors had done at New Westminster, he dismissed the case before they could arrive at a verdict.³¹ Here again are instances of the Judge's arbitrary methods and of his habit of appearing to be partial to one of the disputants. Yet, upon reflection, the partiality was more apparent than real, for it will be recalled that he had compelled O'Reilly to grant a Certificate of Improvements against his better judgment. As in the Cranford cases, the Judge's character and methods gave an impression of partiality that did not exist. In both the Eddy and the Walden cases he arrived at his own conclusions and proceeded to railroad them through the court. As John Robson pointed out in a restrained and dignified article entitled "A Court of Appeal Wanted," Judge Begbie may have been perfectly right in his assessment of the evidence, and his prerogative as Judge permitted him to weigh the evidence for the benefit of the jurors, but to assume the prerogatives of the jury was not only illegal and tyrannous, but could lead to the surrender of the right to trial by jury.³²

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

(31) *Ibid.*, May 23, 1866.

(32) *Ibid.*, May 19, 1863.

dissatisfaction. In the celebrated *Borealis v. Watson* case he actually reversed the decision he had made in the Supreme Court!³³

What made this litigation especially serious for some of the parties involved was the process of injunctions which compelled the cessation of mining activities on the disputed claim. Valuable properties would sometimes lie fallow throughout an entire season because, in many cases, boundary disputes had never been satisfactorily dealt with or had been appealed from the Gold Commissioner's Court. The growth of the evil was noted by John Robson, who printed the following dispatch from Cariboo in the summer of 1865:—

Owing to a dispute respecting titles and boundaries Judge Begbie has placed an injunction upon the three well known rich claims, Aurora, Sawmill, and Watson, the case to be tried at the fall assizes here, if not settled meanwhile. Thus three of the richest claims are locked up, probably for the season.³⁴

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

There is a great row brewing on the Creek & Cox is really the cause of it in a great measure. He at least foments it and Begbie's judgments in the *Borealis* as well as some other suits have given rise to it. The fact is that no man feels safe in a civil action. The judge's feeling & prejudices before the Trial & his acquaintance with one of the parties & the facts gleaned & too willingly listened to by himself are all canvassed before the jury is ever dreamt of. This certainly is a deplorable state of things, and the miners are about to take very decisive steps to stop it.³⁵

Whether Cox is meant by Walkem to foment trouble by his decisions is not clear. It would be nearer the truth to conclude that the foment came from the right of the miners to appeal to the Supreme Court than from any particular activities of Magistrate Cox, who was, indeed, very popular with the miners and was widely praised for his stand in the Aurora dispute.³⁶ Walkem's

(33) *Ibid.*, July 11, 1866.

(34) *Ibid.*, August 5, 1865.

(35) Walkem to Crease, June 10, 1866, Walkem Letters, *MS.*, Archives of B.C.

(36) *Victoria Colonist*, June 11 and 13, 1866.

description of Judge Begbie's methods is only too accurate, and his words were borne out in the famous Aurora case.

In the spring of 1866 the Aurora Company notified a neighbouring concern, the Davis Mining Company, to appear at Clinton to answer an application that would then be made, on Friday, May 25, 1866, for an injunction to restrain it from working a certain piece of ground. The Aurora Company sent one of its employees, a Mr. Hazeltine, to Bridge Creek, where he met Judge Begbie on his way north to the assizes. He obtained from the Judge, without any difficulty it appears, an order to Magistrate Cox, as Deputy Registrar of the Supreme Court, to issue an injunction and to attach the seal of the court thereto, as the seals of the Registrar were in the wagons, which had broken down, and were some miles behind. Hazeltine took the order to Mr. H. P. Walker, who presented it to Magistrate Cox in the Court-house at Richfield and requested him to attach the seal of the court to the injunction. Cox said he had considered the matter very carefully and had come to the conclusion that he could not acquiesce. He read Walker a statement he had prepared the night before, which set forth the reasons for his refusal. It ran as follows:—

I hold no commission as Deputy Registrar of the Supreme Court, nor never did hold one; I have acted as such for the accommodation of the public and the Supreme Court; and it is not later than the Express before last I remarked, with reference to cases against the Sheriff, that all my acts done as Deputy Registrar of the Supreme Court must have been illegal. I entertain as high respect and esteem for Mr. Begbie, as Mr. Begbie, and also as Supreme Court Judge of the Colony as any man in it; but finding now it is attempted to drag me into this disagreeable quarrel, and act contrary to my own ruling and conscience, I would, if I actually did at this moment hold a commission as Deputy Registrar of the Supreme Court, resign the post at once. There are Court seals in the Record Office, which are at Mr. Walker's disposal; but they will not be issued as seals out of the Supreme Court by me as Deputy Registrar of the same.³⁷

The cause of the Aurora Company had few supporters, for most of the mining community regarded its suit against the Davis Company as a deliberate attempt to secure ground for which it had no claim.³⁸ Magistrate Cox had taken a similar position in

(37) New Westminster *British Columbian*, June 9, 1866.

(38) *Victoria Colonist*, June 28, 1866.

what he had called "this disagreeable quarrel." Without choosing or naming sides, he had made his feelings very clear.

Walker obtained the injunction from the Registrar when he arrived at Richfield, and the case was heard before Judge Begbie and a special jury in the Supreme Court on June 9, 1866. The jury, which consisted of seven men, had been chosen with great care. Forty-eight free miners had been summoned. Five of these were challenged by counsel and seven drawn by lot from the remaining forty-three.³⁹ It was close to midnight when the jury agreed on the verdict, which was that the 130 feet in dispute should be equally divided between the two companies.⁴⁰

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

We must say we look upon this trial as a concession to the public sentiment, a fact that must cause much satisfaction to those who are likely to bring forward questions in our courts of law, as many litigants prefer suffering an immediate loss rather than incur the risk of running the gauntlet of the whole course from the Gold Commissioner to Chancery.⁴¹

The court assembled on Monday, June 11, to wind up the case. Resplendent in wig and robes, Judge Begbie summoned the appellant and respondent before him and told them that he could not accept the verdict! He would, however, rather than take the case into Chancery, settle the matter if the parties to the suit would appoint him sole arbitrator! Counsel for the Aurora Company accepted the offer at once. The Davis Company's representatives asked for an adjournment to the next day. When the court met on Tuesday morning, counsel for the Davis Company stated that his clients refused to enter into any such agreement.⁴²

The Davis Company, after sober reflection, conceived that they might lose by not accepting the quixotic Judge's offer of

(39) *New Westminster British Columbian*, June 27, 1866.

(40) *Ibid.*, June 20, 1866.

(41) *Ibid.*, June 27, 1866.

(42) *Ibid.*, June 27, 1866.

arbitration, and on June 14 informed him that they would be pleased to put their case in his hands. Five days later, on Tuesday, June 19, the Judge summoned the parties to court to hear his adjudication, which was in favour of the Aurora Company. He stated bluntly that he could not accept the verdict of the jury, and if jury after jury were to find such a verdict, it could not be permitted to stand.⁴³

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

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

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

Resolved. That a Committee of two persons be appointed to wait upon His Excellency the Administrator of the Government, with the foregoing resolutions, and earnestly impress upon him the immediate necessity of carrying out the wishes of the people.⁴⁴

Two miners, John McLaren and Frank Laumeister, were appointed to carry the resolutions to Administrator Birch. Expenses of the journey were to be defrayed by public subscription. Judging by the enthusiasm of the meeting, there is no doubt that the fund was easily raised. When this arrangement had been made, three cheers were given for Magistrate Cox, the *Victoria Chronicle*, the *British Columbian*, the *Daily British Colonist*, the *Cariboo Sentinel*, the Chairman, the Secretary, and the Queen.

The Administrator received McLaren and Laumeister with every courtesy, gave full attention to their complaints, and

(43) Barkerville *Cariboo Sentinel*, June 21, 1866, cited in *Victoria Colonist*, June 28, 1866.

(44) *Victoria Colonist*, June 28, 1866.

accepted their petition. Two days later, on July 5, he gave the deputation an official reply.⁴⁵ Studiously avoiding the miners' proposal that Judge Begbie should be removed from office, Birch dealt with the alternative proposal that a court of appeal should be established. He declared that the subject had been under consideration for some time, but that final arrangements could not be made because of the projected union of the two colonies. With the amalgamation of the courts a court of appeal would be immediately established. The deputation retired and left for Cariboo, believing that with the advent of union the mining community would be emancipated from the rule of the Tyrant Judge.

The union of the two colonies was proclaimed on November 19, 1866, and to the consternation of the interested individuals and factions the Act of Union made no express declaration concerning the Supreme Court of Vancouver Island. The authorities were thus confronted with a problem that involved both constitutional and personal issues. Was it to be inferred from the Act that the Island court was to continue or that it was abrogated, thus bringing the territory under the jurisdiction of the Supreme Court of British Columbia? If it were abrogated, there would be the thorny question of the status of Judges Begbie and Needham. It could be argued that abrogation had abolished Chief Justice Needham's office. On the other hand, a case might be made to show that his office derived from the Queen's commission, and not from the Order in Council of 1856, which had established the Supreme Court of Vancouver Island. If this were true, Needham would continue as a Chief Justice after his court had been abolished. In the event of abrogation there could be no doubt that Needham would be offered a judgeship in the Supreme Court of British Columbia. One judge would not suffice for the large area included in the union, and Needham was both able and popular. If he accepted such an offer, would he do so on conditions that subordinated him to Judge Begbie?

These perplexing problems, which were further complicated by the unpopularity of Judge Begbie, occupied the minds of the Government for nineteen months. At the end of that time a compromise settlement was arranged. As it was designed to appease both Judges, no amalgamation took place and thus no

(45) New Westminster *British Columbian*, July 18, 1866.

court of appeal was established. The "Courts Declaratory Ordinance" of 1868 continued the powers and jurisdiction of the two courts, and the "Supreme Courts Ordinance," 1869, settled the status of the two Judges. Under the provisions of the latter, Judge Begbie was styled "The Chief Justice of the Mainland of British Columbia," while Needham became "The Chief Justice of Vancouver Island." Each enjoyed precedence over the other in his own jurisdiction. The personal and provisional nature of the settlement is apparent in the provisions that the courts should be merged when a vacancy occurred by reason of the death, resignation, or other causes of Begbie or Needham. In March, 1870, Chief Justice Needham resigned to become Chief Justice of Trinidad, and at long last Judge Begbie became Chief Justice of British Columbia.

For these reasons John Robson and the Cariboo miners failed to secure their court of appeal. But after the Aurora case Judge Begbie gave little cause for protest. Perhaps he realized that he must change his ways. It is possible that official pressure was brought to bear on him. In 1867, when it became apparent that the courts could not be amalgamated and that a court of appeal would not be established, the Government took steps to prevent miners from carrying their cases from the Gold Commissioner's Court to the Supreme Court. On April 2, 1867, the "Gold Mining Ordinance" of 1865 was amended to limit appeals to the Supreme Court to points of law. In this way a definite stop was put to Judge Begbie's habit of looking into the dispute himself before the case was heard, forming conclusions from the facts he had gleaned, and forcing them down the throats of an outraged jury. It was a telling commentary that legislation had to be enacted to save litigants from the hands of a Judge of the Supreme Court.

SYDNEY G. PETTIT.

VICTORIA, B.C.

NOTES AND COMMENTS.

BRITISH COLUMBIA HISTORICAL ASSOCIATION.

VICTORIA SECTION.

The annual field-day of the Victoria Section was held on August 16, and took the form of a basket picnic to John Dean Park in Saanich. During the course of the afternoon, the Chairman, Mrs. M. R. Cree, called upon Major Harold Nation, who spoke informally on the history of the Saanich Peninsula. Mr. W. E. Ireland also contributed remarks on the significance of the Mount Newton area in Indian folk-lore. Many of the members present availed themselves of the opportunity to climb to the summit of Mount Newton and were rewarded with a superb view of the Gulf Islands.

The opening meeting of the fall season was held in the Provincial Library on Monday, September 29, with some fifty members in attendance. The speaker was Mr. Willard E. Ireland, Provincial Librarian and Archivist, who chose as his subject *British Columbia: A Study in Parallelism*. In introducing this subject the speaker cited numerous recent examples of an increasing spirit of national consciousness in Canada and made a plea that the time had come for historians to pay more attention to "the H.C.F. instead of the L.C.M. of our nationhood." All too frequently local history organizations in their enthusiasm tended to overemphasize local events without due consideration being given to their national setting. Mr. Ireland then gave a very rapid survey of the history of this Province, describing the events against their larger national background. Parallel developments in other parts of British North America were noted in all stages of our development from the era of exploration and development to the present day. Perhaps the most singular factor in the history of British Columbia is its compactness, for the political experience of a century in the eastern colonies was reproduced here in the space of less than twenty-five years.

The Northwest Territories—Canada's Last Frontier was the subject of an address by Colonel J. K. Cornwall before the Victoria Section on Wednesday, October 29, in the Provincial Library. The speaker, popularly known as "Peace River Jim," has spent a lifetime in the Canadian Northwest and still remains one of its staunchest "boosters." In the course of his informal remarks he strongly advocated the construction of a railroad into the area as the best means of assisting its development. From his fund of knowledge Colonel Cornwall was able to interject many interesting and illuminating personal experiences dealing with such events as the discovery of the Fort Norman oil-wells and the removal of 7,000 buffalo from Wainwright to the Northwest Territories, and with such colourful northland characters as Robert Service and H. F. "Twelve-foot" Davis. The appreciation of the meeting was tendered to the speaker by Mr. G. H. Blanchet.

British Columbia Historical Quarterly, Vol. XI., No. 4.

VANCOUVER SECTION.

Dr. W. N. Sage was the speaker at the first meeting of the winter series of the Vancouver Section, held in the Hotel Grosvenor on Tuesday, October 14. The subject of his address was *The Work of the Historic Sites and Monuments Board of Canada* and, as the representative for British Columbia and the Yukon on this board, Dr. Sage was able to speak authoritatively. The present Board was organized as late as 1919, although many of its functions had previously been performed by the Historic Landmarks Association, founded in 1905. The late Judge F. W. Howay was the original representative of the four western Provinces and was chairman at the time of his death in 1943. Dr. Sage explained the administrative organization and described the manner in which decisions were reached. As a rule neither cemeteries nor churches are marked, as these are considered of Provincial or local interest; only matters of national significance are dealt with, and each case is decided on its own merits. It was pointed out that already many historic places and events in British Columbia had been marked, and many others were still under consideration. The vote of thanks to the speaker was moved by Mr. George Green and seconded by Mr. E. G. Baynes.

CONTRIBUTORS TO THIS ISSUE.

A. E. Pickford has for some time been on the staff of the Provincial Museum, Victoria, B.C., in charge of the anthropological work and was responsible for the excavation of the Duncan burial mound undertaken by this institution in 1944.

Archie W. Shiels has for years been interested in Alaskan history and has a fine collection of Pacific Northwest Americana. In addition, he has published *San Juan Islands, the Cronstadt of the Pacific*, and *Seward's Icebox*.

Sydney G. Pettit, M.A., is at present on leave of absence from Victoria College while pursuing postgraduate studies at the University of Washington.

THE NORTHWEST BOOKSHELF.

Third Crossing. By Margaret Morton Fahrni and W. L. Morton. Winnipeg: Advocate Printers, Limited, 1946. Pp. ix., 118. Map and ill. \$2.50.

The Assiniboine Basin. By Martin Kavanagh. Privately printed. [Winnipeg: The Public Press, Ltd., 1946.] Pp. xviii., 283. Maps and ill. \$5.

Papers read before the Historical and Scientific Society of Manitoba. Season 1945-46. Edited by Clifford Wilson. Winnipeg, 1946, Pp. 72. Ill. \$2.

From time to time this *Quarterly* has noted the encouraging development in the field of local history in the Province of British Columbia. Now it is a pleasure to note corresponding activity in our sister Province, Manitoba.

All too frequently local histories tend to become stereotyped, for nearly all the early communities followed much the same pattern of development. *Third Crossing* is not in this category; indeed, it might well serve as a model for local histories, for it is admirably conceived and executed. It is the history of the first quarter-century of the district centring around Gladstone—the town that came into being where the North Saskatchewan Trail made its third crossing of the White Mud River. The authors, descendants of pioneer settlers in this region, were fully qualified for the task they essayed, and it is obvious that they thoroughly enjoyed the undertaking.

The pre-settlement period is very briefly outlined, with considerable emphasis placed upon the route and significance of the North Saskatchewan Trail. The arrival of the first settlers and the gradual evolution of a rural community in terms of new roads, schools, churches, and industries is carefully detailed, and much new documentary material is reproduced. But the narrative never becomes "bogged down" with purely local details, for the authors have a broader concept of the significance of their community as an integral part of the opening-up of the Canadian Northwest. It is this method of approach that gives this history its merit. This is particularly noticeable when dealing with such factors as the coming of the railroad, the boom and depression of the early 1880's, and political events. There are several carefully selected illustrations, and it is only unfortunate that the map selected should not have been more distinct. The absence of an index is also regrettable. In format and printing the book is most satisfactory.

The Assiniboine Basin is a much more ambitious project. It was designed as "a social study" of a river-basin and should consequently be an integration of the history, geography, economics, and civics of the area. In this, however, the author is only partially successful, for while the facts are recorded in detail, the integration of these facts is not particularly noticeable. Despite the author's declaration to the contrary, one cannot but

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feel that he did not continually keep in mind the influence physical geography had on "the history and economic development of the Assiniboine basin."

In the first part of the book the author has gathered together, from secondary sources, various accounts of early explorers and fur-traders who traversed the valley of the Assiniboine. This included such men as La Vérendrye, David Thompson, Alexander Henry, John Pritchard, and John Macdonell, to mention but a few. Later events, such as the explorations of Henry Yule Hind, the Red River Rebellion, and the arrival of the first settlers, are also recorded. The development of methods of transportation is carefully considered, including steamboating on the Red and Assiniboine Rivers, as well as railroad-construction. The effect of the location of the route of the railroad upon embryonic settlements is ably illustrated by the story of Grand Valley.

The greater portion of the book, however, deals specifically with the history of Brandon, which the author considers to be typical of prairie cities. The establishment of municipal government and the gradual expansion of the various civic services, as well as the development of community life as expressed in schools, churches, hospitals, parks, libraries, newspapers, and fraternal and other organizations, are all accounted for in painstaking detail. A great mass of useful material has been reproduced in a series of eighteen appendices. The book is profusely illustrated with pictures and maps, and an excellent index is provided. The bibliography, however, leaves much to be desired, for many obvious references appear to have been completely overlooked. While the book has certain readily apparent defects, nevertheless, Mr. Kavanagh is to be congratulated, for he has drawn together a great amount of material and presented it in a useable form.

The high standard set in the first series of the *Papers* published by the Historical and Scientific Society of Manitoba has been maintained. Once again the five papers reproduced cover distinct and interesting aspects of the varied history of the Province.

"All Western Dollars," contributed by Mr. Peter Lowe, deals with the history of one of Western Canada's outstanding private banking firms—Alloway & Champion. The author was for years closely associated with this firm and, in consequence, writes with authority. As a result, in addition to much valuable biographical material relating to the Alloway brothers and their partner, many interesting sidelights into banking practice in the period of expansion following the building of the railroad.

Canadian unity, to say nothing of national economic development, demanded the construction of a transcontinental railroad, yet from the inception of Confederation Canada has always been conscious of a "railroad problem." Mr. J. A. Jackson, in his article "The Background of the Battle of Fort Whyte," has given a succinct outline of the Manitoba railroad agitation of the 1880's. The crisis was reached in the Fort Whyte incident, when the Dominion Government-sponsored Canadian Pacific Railway attempted to resist the crossing of its line by the Provincial Government-supported

Red River Valley Railway. Of particular interest is the material herein made available on the important Greenway-Macdonald negotiations.

Under a fellowship made available by the Society, Dr. E. K. Francis has been engaged in a study of the social history of the Mennonites that began to settle in Manitoba in the early 1880's. A preliminary report on "The Origins of Mennonite Institutions in Early Manitoba" is in reality a careful analysis of the European background of this sect, with a view to determining the source of some of the characteristic socio-economic traits of Mennonite culture in the Province.

Miss Lillian Gibbon has for some time been writing a column in the *Winnipeg Tribune* on old houses of Winnipeg and its environs. In "Early Red River Homes" the story of some twenty of these pioneer houses is retold. Mr. Chris. Vickers has contributed another interesting anthropological study in "Aboriginal Backgrounds in Southern Manitoba," which deals with the highly complex but fascinating problem of tribal migrations and invasions.

Several excellent illustrations greatly enhance what is all in all a most creditable publication.

WILLARD E. IRELAND.

VICTORIA, B.C.

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ERRATA.

- Page 4, line 20: For *would* read *who*.
 Page 13, foot-note 17, line 3: Delete *at that time also*.
 Page 80, line 29: For *1873* read *1874*.
 Page 96, foot-note 107, line 3: For *Meyer* read *Meyers*.
 Page 161, lines 15, 22: For *McKinley* read *McKinlay*.
 Page 229, line 40: For *C. Burns* read *J. Rodger Burnes*.

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