Early Penal Systems in Nanaimo
Transcribed by Jennifer Bolstler, Vancouver Island University – May 7, 2015

William Barraclough: An address by Judge William E. Philpott. Presented before Nanaimo Historical Society in the Credit Union Building on Tuesday, September the 15th, 1970. His subject, early penal systems in Nanaimo. Mr. R. J. Walley introduced the speaker, and Dr. R. E. Forrester extended the thanks of the gathering.

R. J. Walley: Well it's quite an easy task for me to introduce the speaker. He is very well known to everybody, in fact his name appears in the Nanaimo Free Press very frequently, almost daily, and he has made quite a study of the history of Nanaimo. He's of a pioneer family, and I have talked to him on some occasions and he has told me stories of the old timers in Nanaimo, and I think that really should be a subject of another address in the future because that was so full of humour. But tonight he is going to speak on a very on a more serious subject: the early penal system in Nanaimo. I now call on Judge Philpott.

[applause]

William E. Philpott: Mr. President, members of Nanaimo Historical Society, I wish to thank you Mr. Walley sincerely for your kind remarks. I am well known in Nanaimo perhaps better to some others than to yourself...

Audience member: No!

WP: ...some of whom I went to school with I see you in the audience this evening. The reason I've selected tonight's topic - the early penal system in Nanaimo - is in fact of course that I myself am interested in this type of work, to call it that. The difference today and yesterday will be gleaned from what I have been very fortunate in getting from the registrar of the Supreme Court of British Columbia at Nanaimo.

Mr. Louis [Varapatne?], who took over from Mr. [Mackenzie?] about two years ago, went on a house cleaning, the old broom sweeping clean, and in the corner of an old vault he came across some old books. Among these books were a diary of the old jail at Stewart Avenue, which has now been demolished, that's about 1915-16, and the oil stations took over.

In these records, all handwriting - copies of which I've had made by photostat - show the daily life of a prisoner; what he did each day. And as we'll go through some of it we'll find out what happened and how Nanaimo developed, from these people who were incarcerated for various terms in the jail.

These books are priceless, and right now I would like to mention something, that there's a tug-of-war going on. The people in Victoria, the archivists of that city, are trying to take these books and have them lodged in Victoria. Mr. [Varapatti?] is resisting very hard as he
can on this matter, saying that they are court records, and rightfully belong to the Nanaimo courts.

But the powers that be are apparently making it worse for him all the time. I would suggest, with all respect to you people, that as he's of great [insistence?] that some efforts on behalf of the people in Nanaimo, through your good offices, representations be made to Frank Ney, or suitable members, to have these documents preserved and kept in Nanaimo, and if need be put in a museum, the Bastion - some place where they would be on permanent record. Because let me tell you, we are dreadfully short of real, written material of the history of Nanaimo.

Even these scanty reports do not give locations, exact time, no initials on names, and you have to dig around and find out to whom they are referring. But there are some names which will be- I'll reveal to you in these documents that go right back to the very founding and the starting of Nanaimo, from a little coal mining centre to the city incorporated in 1874.

Mr. [Varapatti?] was very kind indeed to let me have extracts. He allowed me to through the books, and I just picked at random items and pages that I thought which of might be of more interest than the [older?] volumes, which of course we couldn't go through in one evening, or several evenings.

Now, the method of disposing of justice in those days was either by the three systems- er, the two systems- three systems they eventually came out. They had two justices of the peace, or one stipendiary magistrate, or the- a county court judge later on, and the [size court?] judge. Now it's interesting to note that in 1892 they had typewriters, and the charge here is signed by "J. P. Planter J. P." Now he's the only man in the world that I know of that had the same initials after his name as he had in front of his name - "J. P. Planter J. P." And he is the grandfather of [Fixi Yates?], sitting in the audience tonight.

And this is a charge laid against one Daniel O'Hannelly, and a certain man of name unknown, but who can be identified by the prosecutor on his behalf. Now today, you couldn't do that. You could name an uncharged- unnamed man, but this is a man unnamed but they'll find out who he is anyway. And we just can't do it today like that, so it would be lovely if we could. However, this man is charged with the following serious, serious crime.

On the 8th day- on the 5th day of June, 1892, at the City of Nanaimo, within the limits of the municipality of the said city, to wit: On Bastion Street street bridge, a public highway of the said city, did unlawfully and wilfully drive a certain vehicle at a pace faster than a walk, contrary to the provisions of the by-law of the said city on that [behalf and [unintelligible] to the statute that the case made a provider?]. Now it took two justices of the peace to handle that serious offence - somebody trotted his horse across Bastion Street bridge.

[audience chuckles]
So, crime didn't pay in those days.

But before I go to the actual life of the prisoner, we'll have to show how he got there. They say he got there by devious ways, that he was sentenced from a court- a magistrates court. He could be sentenced from the county court, which came later (and I think Judge Eli Harrison was one of our first county court judges - that's the father of Victor B. Harrison of the prominent ex-lawyer in Nanaimo). Then Mark Bate and J. P. Planter, [long pause] Parson - he was J. P.

Now I noticed something when- something personal. I have the first job of my life - at least it was paid for it at regular salary. I was with the Western Fuel Company, and my immediate boss was Mark Bate Jr. He's the son of Mark Bate who signs these documents. And if I hadn't known that the older gentleman had signed these, I'd have sworn that the son had written it out. The handwritings are absolutely identical. I've never seen anything like it in my life - the handwriting [unintelligible] without any trouble.

Now first of all, you've got to remember we're going back now to 1888/89 and those years. Now, the offences against society were looked at in a different manner than they are today. Drunkenness was a terrible thing. And they didn't [show?] it, I note, but they certainly hampered the individual for a few days. Here's a man here, named [Pat Moore?], he was drunk. He was fined $10, had to pay costs of $3. Or on default, 21 days imprisonment with hard labour. For $10 you have 21 days.

Now today, of course, unless a man is creating a disturbance when he's drunk - by shouting, yelling, singing out too loud and disturbing people in their slumbers - he will be picked up and put in the prison, and in the morning he'll be sober enough they send him off home. And that's the end of it. But no, not here. He's drunk, he has to pay that.

But the peculiar thing is, in all these cases - and I'm not meeting any disparaging remarks against the justices of those days - but costs played a very important factor in the lives of a judge. It was by the costs that they made a good living, or a so-called good living. And if you didn't pay costs you went to jail for a good whopping time. In one case a $3 cost, and if the prisoner defaulted of the cost, he could do seven days. For $3.

So, here we have a charge of [Mary?] [long pause] We have here an Indian girl charged with being drunk. She was fined $5 and a pay cost of $3.50. In default, 14 days. Now, there's a man here with a well-known name which I'll not mention. He's charged with giving the [intoxicant?] to this Indian lady. He had to put bail up, at $20 to appear for sentence, and to pay cost.

Now, we have further on here several people being drunk. Mostly- the most of the Indian folk were the ones that were charged, and getting drunk and disorderly, and they would be
haled into court and fined or go to jail. Now here's a man here, he was on information with giving an intoxicant to Jenny, an Indian, on the 17th of June, at [Ukataw?] Camp. What happened? He was convicted and fined $50, and ordered to be in prison- in addition to being in prison for one month, and to pay costs of $5.25. In default of the payment of the fine, one month additional imprisonment, and 14 days added in the case of non-payment of the costs. 14 days extra imprisonment for not paying $5.25. And we talk about British justice. It was a- signs of the times. No wonder we had to change the laws.

There's one here, I'll come across it, quite interesting. The man was charged- the Indian lady was charged well for being drunk and she had to pay her fine. And then the man who supplied the liquor- then- she was fined $10 for being drunk and sentenced to a jail term. Then she was fined $20 for not reporting who gave her the drink. Now, you couldn't take that case into court today. The Canadian Bill of Rights would absolutely stop you from getting any further [unintelligible] her own free will.

We have one here, another interesting- something interesting you don't see happen today, in fact I was quite surprised to find it happened here. There's one, two, three, four, five, six, seven, eight men who worked on the old steamer Wellington. That was a steamer that plied between Nanaimo and San Francisco carrying coals and various cargo, but mostly coal, down to the Port of San Francisco. Captain Salmon was the man in this event, he's the man responsible for why I'm here tonight, because Captain Salmon was instrumental in bringing my father to Nanaimo, who remained here ever after since his pleasure trip.

However, these 14- eight men, are charged with lawfully and wilfully disobeying orders on board the S.S. Wellington. They're all crew members. I guess they all got up and got drunk or something, went back and told the boast of those to jump overboard and they got hauled up. So they appeared before March 8th as a magistrate. And what happens? Sentenced to 14 days imprisonment and to pay costs of $4 each. Now that's they way we handled sailors in those days in Nanaimo. You talk back to the captain or anybody on board, you went to the local jail.

And also I understand, I've heard a similar story before, that they did this, they trumped up a charge in most cases against these sailors, for the very fact that the steamer might be in port for a week or so, and these fellows might jump ship and run away. So they'd frame them - that's the correct reading, frame them - toss him in the jail, and hold him there until the steamer sail, [unintelligible] and, well, Captain Salmon hadn't lost his crew. More than one way, you know they say.

16:40
I have also some interesting information here. I wanted to mix this up 'cause I don't want to make the subject too much of the same, lest it become boring to you. However, accidents- the coroner juries played a great part in the early history of Nanaimo. Now, one sheet from when they started keeping these records - as I say, I don't know when they started - but the first page of the coroner's book says, "Accidents in Nanaimo before the year 1866."
First of all there was James Hunt, killed by a fall of coal in the first #1 mine. This is a gem, this next one. A Scotsman, name unknown, drowned at the mouth of Chase River. Now, if his name was unknown, how did they tell his was a Scotsman?

[all laugh]

There’s a man here, Levine, who had his foot crushed in the cage of the first #1 shaft, and who died from the effects of his injuries. And there was a William [Barrie?] by a man named [Honey?] in Nanaimo, in 1857. And [Honey?] was acquitted! The information is the most amazing. They come out and said “He killed him!” but they had a trial, but he was acquitted. I don’t understand it.

A man, name unknown, found in Mill Stream while attempting to save a boy. John [Work?], killed by a fall of coal in #1 mine. And a man, something Porter, was drowned while bathing in Mill Stream. Now that's the coroner's records of the '66 up until around after May '66.

The first record we have there- here is a coroners inquest upon view of the body of a "blank" [Callahan?], a seaman of the ship Helios, who was accidentally drowned by falling from a ship into Nanaimo Harbour, May 1866. Inquest held June '66 before W. H. Franklyn, Esquire, coroner. Dr Franklyn was a man after whom Franklyn Street has been given a name.

And on this- the interesting part to me in these coroner's inquests are the names of the men who served as the jury. Here we have T. E. Peck. T. E. Peck was the first collector of customs of Her Majesty Queen Victoria in Nanaimo and I believe he was the first man that drove a coach and four - four horses - in this city, way back in '66. And Joseph Huntley - I don't know anything about him. James Roberts. Joseph Webb - now Joseph Webb was well known by the old timers, I think he a one of the Princess Royal people. Henry Jerome and Archibald Muir, and there was there was Dr. Sylvester who was a medical officer on that particular occasion.

We come to a man whose a coroner's inquest upon the view of a body of a white man, name unkown, and [Kooes Tan] - a Nanaimo Indian - and [Neck Sap Too], Nanaimo Indian, who were killed in a drunken-

[recording ends abruptly]

[WorldCat has a record for this item that indicates the recording should be about 60 minutes in length.]