

TOWARDS A NEW HOMELAND: SIR HENRY PERING PELLEW CREASE AS PUISNE JUDGE

by Bill Magee

For Henry Crease the Cariboo gold rush of 1858 created an opportunity to implant an English milieu in early Victoria. Aged thirty-five when he landed here that December, he had already lived through his most formative years. They had fixed both his social and his legal outlooks as ideals which were to help make Victoria a thoroughly British

outpost. Born in a stately home in Cornwall, educated at the University of Cambridge, having practiced law in London, married to a prominent professor's daughter, he came more to re-create than to adapt to pioneer life.

Like many who arrived with the gold rush, he had failed in his career and social standing at home, even suffering as victim of a financial scandal over a Cornish tin mine. Like the more successful of them, he found a demand for his skills, but it was in the law courts, not the gold fields. Judge Cameron on Vancouver Island and Judge Begbie in Mainland British Columbia were anxious to eradicate murder and theft in their jurisdictions but they needed lawyers to help them. As an extra asset



Henry Crease. PABC B-01397

during the gold rush, Crease could speak French, German, Greek, Italian, and Spanish. They quickly admitted Crease to the bar in both colonies, making him the first lawyer to be so honoured.

Perhaps even more urgent than lawyers was the need to set down, define, and codify the laws in the two new colonies. Though without formal legal training, Judge Cameron had been labouring to do so for Vancouver Island. On the Mainland, the nascent colony of British Columbia was a legal infant. Within three years Henry Crease found himself its Attorney General, with his headquarters, and soon a house, in New Westminster. As such he was responsible for establishing the laws of British Columbia: as Alfred Watts notes, “he drafted most of the laws that were enacted in the Colony between 1861 and 1870”. They amounted to some five hundred acts. In 1866, when the two colonies became one, Crease continued as Attorney General, and he continued drafting its laws. Within another three years he brought together the few judges and lawyers there were to form the Law Society of British Columbia (then numbering thirteen members). In 1870 it became Crease’s duty to introduce the Confederation debates in the Legislative Assembly when the debate about British Columbia’s joining Canada began. In just eleven years Crease had prepared the laws of the new colony, founded its law society, and directed its future national allegiance. Now he needed to apply the new laws to all corners of the new Province. Crease’s private life was also altered for good. Starting in 1866 his headquarters were in Victoria, so his home had to be there too.

From the first as he set out from London for Vancouver Island he had intended to transplant his family too. When Sarah his wife and their three young daughters sailed into Victoria in 1860, they entered on a way of life

quite as primitive as the legal infant confronting their husband and father. Sarah left behind the domestic, social, and artistic distinctions she had enjoyed as the daughter of University of London Professor John Lindley. On their arrival they were fortunate to move into even poor rented rooms in the tent city that was Victoria at the height of the gold rush. Still more fortunate, Crease was soon able to move them into the comfortable house of “Fernwood” for eighteen months. There Sarah was able to adapt the artistry she had used to illustrate her father’s books on botany to sketch the life and landscape of early Victoria.

Less conducive to domestic comfort and art was the difficult accommodation in the forest clearing of New Westminster when Crease was based there as Attorney General of the Mainland colony. Expecting a permanent future there, he had Ince Cottage built beside the Fraser River, and in 1862 his family joined him in it. In name it recalled the old stately home in Cornwall, but it lacked the domestic and social amenities taken for granted in England. With household help poor when available, society strictly limited to the few respectable families, and little leisure to sketch, Sarah’s domicile was as demanding as her husband’s was in formulating laws. Even so leaving Ince Cottage was financially ruinous². When Victoria became the capital of the united colony and the family had to relocate there, New Westminster was teeming with houses for sale and Victoria was equally short of them.

During the 1870s and 1880s Henry Crease struggled to achieve dignity in both his career and his social life. In 1870 he was appointed Puisne Judge of the Supreme Court of British Columbia, and two years later John Hamilton Gray joined him as a second Puisne Judge. Along with Chief Justice Begbie, they shared a cramped

office in the old Birdcages beside James Bay, but it was at the centre of what aspirations to high society there were in the Province. As judge, Crease bolstered his hierarchical vision by insisting on formal attire when holding court. Although not appearing himself in the full bottomed wig and fur-trimmed scarlet robes that Chief Justice Needham had displayed, he insisted that all lawyers in his courtroom wear wigs. If they failed to do so, he refused to recognize them³. Nevertheless in balancing formality and justice, he was praised for making justice paramount⁴.

When touring the Mainland, Crease usually had to abandon dignity for justice. As Puisne Judge he made lengthy circuits of the Province twice a year, trying cases and sustaining himself in frontier conditions. Judge Begbie had been making these circuits alone for twelve years, living off the land by hunting birds and animals. In contrast Crease took generous supplies of food and wine with him, but, as Sarah noted when she joined him on one circuit, though the food may have been good the living conditions were squalid⁵. There were also physical dangers that demanded fortitude to endure and survive. Once he nearly drowned when his horse slid into a river. Another time he suffered an agonizing abdominal rupture from his horse's stumbling when he was on circuit in the Dease Lake area. Even then, although carried for miles on a litter over rugged terrain, he insisted on hearing the cases which he had come to judge. Only in Victoria could he look forward to a life of social distinction, so along with Gray he absolutely refused to move back to the Mainland when Premier Walkem introduced the Judicial Districts Act of 1879⁶.

Henry Crease was in fact largely responsible for the legal tradition that was beginning to emerge in British Columbia, and his presence in Victoria did advance his

contribution to it. Having codified its laws as Attorney General, he was the person best fitted to revise the statutes in 1871 and 1877 to make them conform to the Canadian legal system. He was also responsible for establishing the principles of divorce in the Province, for Chief Justice Begbie refused to hear such cases⁷. Typically he was also ready to travel quickly when serious crimes like murder called for immediate justice⁸. For despite Begbie's boast, life and property were not entirely safe in gold rush days, as victims like Jack Walton sadly found out, not only on the Cariboo Trail, but also in Victoria itself⁹. For a stable civilization to emerge, a well-ordered centre was necessary. As well as refusing to move his family to the Interior, Crease joined Begbie and Gray in building the local version of stately homes in Victoria.

It took Henry and Sarah ten years after leaving Ince Cottage in New Westminster to attain the house they wanted in Victoria, for tight financing and a devastating house fire thwarted them. In 1875 they were at last able to move into a mansion of some twenty-two rooms on Fort Street, where the Victoria Truth Centre now stands. Situated on ten acres of land that sloped in two directions, the Cornish meaning of "Pentrelew", its name recalled Crease's English background, just as Ince Cottage had done. Once settled in, the Creases held continual open houses for the socially elite. Dinner parties would last the night through, and naval officers from visiting British ships thronged the gardens¹⁰.

Although emulating an English social structure, the Creases inevitably failed to transplant it. Society here was less hierarchical than in England, it depended on Chinese servants who did not live in, and it included all the families aspiring to social distinction. It was indeed

more a new order than one that reproduced the social structure of their former homeland.

When retiring in 1896 after twenty years in Pentrelew, Henry Crease still thought of England as “home”, but wistfully admitted that his sons and daughters did not¹¹. Although he sent them to England for years at a time, they grew up as citizens of Canada. Never able to return “home” to England himself, Crease clung to a nostalgia that kept him and Sarah from advancing from pioneer settlers to conscious citizens.

By 1894 when Chief Justice Begbie died, Crease was no longer considered the obvious choice to succeed him. That position, which he had hoped would be his, went instead to Premier Theodore Davie. Instead he was made “Sir Henry Crease”, being knighted in 1896 along with similar judges in Cypress, Sierra Leone, Lagos and Bombay. During the forty years Crease had lived in British Columbia, the population had grown to over 100,000, the bar to some fifty practicing lawyers, and the bench to a network of Puisne and County Court Judges. Gradually too, some independence from the British legal background had begun to emerge with the Supreme Court Rules of 1890.¹² When he retired in 1896, Crease had become yesterday’s man.

For his remaining nine years of retirement, he combined the socially elite aspirations of a Pentrelew with the rigor of fishing and hunting expeditions, just as he had done when on circuit in the pioneer days of the 1870s and 1880s. His attempt to transplant a British society to the forest clearings on Vancouver Island was not quite absurd. Along with colleagues like Begbie and Gray, he had helped create a distinctive society based on British law and British devotion to the prestige of property. It is fitting that Sarah and he came to their final

resting place in a dignified section of Ross Bay Cemetery just a few steps from their graves.

(Footnotes)

¹“The Honorable Sir Henry Pering Pellew Crease”, *The Advocate*, vol. 25, Part 1, pp. 5-6, Jan.-Feb. 1967.

²Crease put his complaint on paper in a letter of Jan. 20, 1874, to the Minister of Justice in Ottawa.

³Hon. David R. Verchere, *A Progression of Judges. A History of the Supreme Court of British Columbia*, Vancouver: University of British Columbia Press, 1988, p. 109. See p. 33 for Judge Needham’s regalia.

⁴Crease was praised as “the arbitrator between man and man rather than the stern judge enforcing the utmost rigor of the law” in the *Nanaimo Free Press*, Jan. 21, 1896.

⁵Sarah’s 1880 Journal”, Kathryn Bridge, *Henry & Self: The Private Life of Sarah Crease 1826-1922*“, Victoria, B.C., Sono Nis Press, 1966, pp. 124-208.

⁶With Begbie, Crease and Gray all living in Victoria, the complaint was that “about fifty County Court cases [went] unheard....[while] there are three Supreme Court Judges residing in Victoria without work enough before them to command the attention of one active judge for an hour a day” (*Weekly Standard*, July 14, 1880).

⁷See Verchere, *op. cit.*, pp. 59-62. Crease and Gray overruled Begbie and heard the case of a Mrs. Sharpe seeking divorce.

⁸See Christine B. Johnson-Dean, *The Crease Family Archives: a record of settlement and service in British Columbia, Victoria: Provincial Archives, c. 1981, pp. 31-32.*

⁹Verchere, *op. cit.*, p. 68. Begbie wrote to the Colonial Secretary in 1866 that “Crimes of violence are ex-

tremely rare: highway robberies almost unknown”. But poor Jack Walton was pursued by highway robbers on the Cariboo Trail. He escaped them with only a bullet through his hat, but soon after he was shot for his money in Victoria and died a lingering death from the wound.

¹⁰ Son A. D. Crease recalled that “When we had a dance everybody seemed to stay the night”, and that “We used to say there was hardly an admiral in the British navy who hadn’t, as a midshipman, climbed our cherry trees” (Cited by James K. Nesbitt, “Noted Homes of Early-Day Victoria”, Victoria, *Times*, Nov. 28, 1944). See also Christine B. Johnson-Dean, *op. cit.*, p. 25.

¹¹ Johnson-Dean, p. 27.

¹² Verchere, *op. Cit.*, p. 91.

puisne judge (pronounced *puny*, from the Old French *puis* and *né*,

“afterwards born”): as used in British Columbia, a judge of the Supreme Court secondary in rank to the Chief Justice. This usage is simplified from the more complicated British usage, where it means a High Court judge who is not the lord chancellor, the lord chief justice of England, the master of rolls, or, by the Supreme Court of Judicature Act of 1877, the lord chief justice of common pleas or the lord chief baron. (*puny* comes from the same root word).