

JOURNALS
OF THE
EXECUTIVE COUNCIL
OF THE COLONY OF
VANCOUVER ISLAND

20 OCTOBER 1863 to 19 NOVEMBER 1866

MEMBERS OF THE EXECUTIVE COUNCIL OF
VANCOUVER ISLAND

1863-1866

GOVERNOR	First Sitting	Last Sitting
James Douglas.....	20 Oct. 1863	14 Mar. 1864
Arthur Edward Kennedy.....	26 Mar. 1864	23 Oct. 1866
William Alexander George Young (Officer Administering the Government)	23 Oct. 1866	19 Nov. 1866
COLONIAL SECRETARY		
William Alexander George Young (Acting)...	20 Oct. 1863	20 Oct. 1863
William Alexander George Young.....	15 Jan. 1864	13 May 1864
Henry P. Wakeford (Acting).....	1 June 1864	27 June 1865
William Alexander George Young.....	18 July 1865	23 Oct. 1866
Edwin James Nesbitt (Acting).....	6 Nov. 1866	19 Nov. 1866
ATTORNEY GENERAL		
George Hunter Cary.....	20 Oct. 1863	25 July 1864
Thomas Lett Wood (Acting).....	25 Aug. 1864	19 Nov. 1866
TREASURER		
Alexander Watson.....	20 Oct. 1863	19 Nov. 1866
SURVEYOR GENERAL		
Benjamin William Pearse (Acting).....	20 Oct. 1863	26 Mar. 1864
Joseph Despard Pemberton.....	31 Mar. 1864	3 Oct. 1864
Benjamin William Pearse (Acting).....	10 Oct. 1864	19 Nov. 1866

MINUTES OF THE EXECUTIVE COUNCIL OF THE COLONY OF VANCOUVER ISLAND

Tuesday, the 20th day of October, 1863

Pursuant to summons from His Excellency the Governor, the undermentioned officers assembled before His Excellency.

Mr. William Alexander George Young	Acting Colonial Secretary
Mr. George Hunter Cary	Attorney General
Mr. Alexander Watson	Treasurer
Mr. Benjamin William Pearse	Acting Surveyor General

His Excellency stated that Her Majesty had been pleased to separate the Council of Vancouver's Island into an Executive and Legislative Council, and that therefore he had summoned the foregoing gentlemen for the purpose of communicating to them the powers and Authorities in that behalf existing, and for the purpose of each Member so appointed to the Executive Council taking the requisite Oaths.

Her Majesty's Commission addressed to James Douglas C. B., Governor of Vancouver's Island and bearing date the 8th October A. D. 1862 read at length, by the Colonial Secretary.

Her Majesty's Instructions, addressed as aforesaid, and bearing date the 8th October A.D. 1862 founded upon the foregoing Commission read at length by the Colonial Secretary.

His Excellency then administered the Oath of Allegiance to the various Members appointed by Her Majesty's Instructions as aforesaid to constitute the Executive Council of Vancouver's Island, in the order in which they are described in the said Instructions.

The Council then proceeded to business.

Discussion upon the delay which has occurred in the Revision of the One per Cent Tax Roll. Mr. Wylly the Assessor called before the Council and reported that he had used every effort to induce the Revisors to continue and complete their work, but owing to the absence of one, the sickness of another; and the legislative duties of a third, it had been very difficult to form a quorum at many recent Meetings.

The Attorney General stated that he could proceed against the Revisors by Mandamus but it was a course which he would suggest had better be avoided, if it were possible by other means to obtain the end desired.

Settled that the Colonial Secretary should address a letter to the Chairman of the Court of Revision urging the completion of the work, and inquiring whether any further aid were desired from the Executive.

The Reports of Mr. Pemberton, the Surveyor General now absent in England were read respecting the arrangements for the purchase of Machinery for the Steam Dredge and Tug for Victoria Harbour.

Settled that the Colonial Secretary issue the requisite instructions to the Acting Surveyor General to call for Tenders for building the Hulls &c.

His Excellency announced that discoveries of Gold had been made in the Island, and therefore that it was desirable to prepare gold mining rules in the event of the discoveries proving sufficiently remunerative to be worked.

Attorney General instructed to draft rules and regulations in the shape of a proclamation.

Council adjourned until again summoned.

Signed William A. G. Young

Friday, the 15th day of January, 1864

Present: His Excellency The Governor, Messrs. Young, Cary, Watson, Pearse.

Minutes of last Meeting read and confirmed.

His Excellency explained that he had summoned the Council to consider the means of effecting a final settlement with the Hudson's Bay Co. of the questions concerning the land around Victoria. The questions in dispute between the Company and Her Majesty's Government had been narrowed to the yielding up by the Company of the rear portion of the Government Reserve at James' Bay, which from a letter from W. F. Tolmie Esqr. the Company's Agent at Victoria, dated the 21st November 1863, it appeared had been sold by the Company. His Excellency was therefore desirous to consider in Council the most desirable manner of speedily and finally dealing with this last remaining point.

Despatch of the Duke of Newcastle of 20th August 1863 No. 34, with its enclosures read and considered. Letter aforementioned from Dr. Tolmie also read and considered.

Discussion followed in which Mr. Young and Mr. Cary took part. Agreed that Mr. Cary should without delay prepare Drafts of Deeds for the conveyance to the Crown of the various portions of land to be conveyed under the Indenture of Settlement of 3rd February 1862; but with respect to the portion in dispute in the rear of the Government Buildings that the Company should only be asked to do what they proposed in Sir Edmund Head's Letter of 1st August 1863 viz.: to surrender any right or title the Company may have in that portion.

The Council then adjourned.

Signed William A. G. Young

Monday, the 14th day of March, 1864

Present: His Excellency the Governor, The Colonial Secretary, The Treasurer, The Acting Surveyor General.

Minutes of last Meeting read and confirmed.

The Governor stated that he had summoned the Council to communicate his intention of leaving today for British Columbia, and that his official relations with the Colony would terminate today, and he thanked the Council for the zeal and assistance which he had at all times received from the various Members composing the Council, and stated that he was ready to bear willing testimony to their integrity and ability.

His Excellency then mentioned that he had been desirous before finally closing his connection with the Colony to frame a Mining Law suitable to the particular circumstances of this Colony; explained his views thereupon, and deprecated the imposition of a Free Miners License Fee, as being not suitable to the character of the Mining in Vancouver's Island; the regulations for which he considered should be upon the same basis as the commercial policy of the Government, perfect Free Trade.

His Excellency then laid before the Council an application from Mr. Young the Colonial Secretary, for 12 months leave of absence.

Council assented thereto, Mr. Watson remarking that he thought it would be difficult to find any person capable of discharging the responsible duties of Mr. Young's office; but suggested that probably Governor Kennedy's private Secretary might be found to possess the necessary qualifications.

His Excellency then laid before the Council an application from the Chief Justice, representing the necessity which existed for some arrangement to be made by which the duties of Registrar of the Supreme Court could be discharged; and suggesting that as it had not been found possible to obtain a suitable person to fill the Office at the Salary fixed, a temporary arrangement might be made under which the Registrar General of Deeds should give a portion of his time to the performance of certain of the more responsible duties, and a Judge's Clerk be appointed to attend to the more clerical duties, the Registrar's Salary being paid to them.

Discussion followed and general opinion expressed that although there was no objection to the provisional appointment of the Clerk, it was not deemed expedient to imperil the efficiency of the Land Registry Office by the imposition of further duties upon the Registrar General. Colonial Secretary to acquaint Chief Justice accordingly.

Mr. Young then on behalf of the Council expressed to His Excellency their sense of the kind manner in which he had alluded to their individual services and assistance, and of the courtesy which they had at all times received at his hands, and concluded by wishing His Excellency upon his departure every health, happiness and prosperity.

The Council then adjourned.

Signed William A. G. Young

Saturday, the 26th day of March, 1864

Present: The Colonial Secretary, The Attorney General, The Treasurer, The Acting Surveyor General.

The Council received His Excellency Arthur Edward Kennedy C.B. appointed Governor & Commander in Chief in and over the Colony of Vancouver's Island and its Dependencies.

His Excellency produced Her Majesty's Instructions and Commission.

The Colonial Secretary then read Her Majesty's Instructions dated at the Court at Windsor the 11 day of Decr. 1863.

The Colonial Secretary then read Her Majesty's Commission bearing equal date.

The Colonial Secretary then administered the oath of allegiance to His Excellency.

The Colonial Secretary then administered the usual oath of office to His Excellency.

The Council then adjourned.

A. E. Kennedy
Govr.

William A. G. Young Col. Secty.

Thursday, the 31st day of March, 1864

Present: His Excellency the Governor, The Colonial Secty., The Attorney General, The Treasurer. Subsequently The Surveyor General.

Minutes of last Meeting read & confirmed.

Mr. Joseph Despard Pemberton, Surveyor General, admitted and sworn in, taking the Oath of allegiance administered by the governor.

His Excellency explained necessity and expediency of special oath of office being administered to each Member of the Executive Council. Settled that Attorney General shall prepare an Act providing for the form of oath to be taken by Members of Executive Council.

His Excellency brought before the Council the subject of the want of an official Residence, and read a Despatch on the same subject dated 16th September 1863 signed by Sir Frederic Rogers conveying the opinion of the Secty. of S. Settled that a message should be addressed to the House of assembly forwarding a copy of Sir Frederic Rogers' Despatch and requesting that provision might be made for a temporary residence for the gov. of the Colony, and that a distinct proposition for a permanent Residence for the governor should be submitted with as little delay as possible.

His Excellency brought before the Council the subject of the governor being provided with a private Secretary, and read a Despatch dated the 11 Sept. 1863, signed by Sir Frederick Rogers, expressing the opinion of the Secretary of State upon the matter.

Discussion upon the subject.

Settled that the matter be submitted to the Legislative Assembly and they be asked to provide a Salary of £250 per annum for a Private Secretary.

His Excellency then brought before the Council the fact that the gentleman he had nominated as his private Secretary had been compelled to pay his own passage to the Colony and read a Despatch from Sir Frederic Rogers dated 6th January 1864 conveying the opinion of the Secretary of State upon the point.

H. E. put the question whether the Despatch should accompany the beforementioned Despatch to the House of Assembly.

Ayes	Noes
The Colonial Secy.	The Attorney General
The Treasurer	The Surveyor General

His Excellency gave the casting vote in favour of the Ayes, and so it passed in the affirmative.

His Excellency then read a letter from Sir James Douglas dated the 14 March 1864 covering a Resolution of the House of Assembly upon the subject of the establishment of a Ministerial Council composed of Members of the Legislative Council & Assembly in order to form a recognized link between the Executive and Legislative.

Settled that the Message of the Assembly be acknowledged and they be informed that the matter shall receive His Excellency's best consideration, but that he deems it would be inexpedient to enter upon so important a question with the limited experience of the Colony which he at present possesses.

The tenders for conveying the Mails between Victoria & Comox were then considered.

Decided to call upon the Harbour Master to report upon the following points.

The relative size & capacity of the Fideliter & Emily Harris for carrying Cattle and produce.

The relative draught of water of these Vessels when loaded.

Their general seaworthiness.

Their relative Steam power.

The depth of water at high and low water in the Channel of the Harbour into which the Courtenaey River runs at the settlement of Comox.

An application was then read dated the 30th March 1864 and signed I. W. Powell on behalf of 90 gentlemen offering their services as a Volunteer Company.

Settled to be acknowledged & brought up for consideration at next Meeting of Council.

The Council then adjourned.

A. E. Kennedy

April 2/64

Saturday, the 2nd day of April, 1864

Present: His Excellency the Governor, The Colonial Secretary, The Attorney General, The Treasurer, The Surveyor General.

Minutes of last meeting read & confirmed.

His Excellency read to the Council the Message he proposed to send to the Assembly in respect of the absence in the Colony of any Residence or temporary Residence for its Governor.

Message met with concurrence of Council.

His Excellency read to the Council the Message he proposed to send to the Assembly with reference to making provision by way of Salary for his Private Secretary, and to reimburse the outlay incurred on account of his passage from England.

Message met with concurrence of Council.

His Excellency read to the Council Messages to the Legislative Council and to the Assembly covering copy of Despatch from Secty. of State acknowledging receipt of addresses from those bodies on occasion of Marriage of the Prince of Wales.

Message met with concurrence of Council.

Report of Harbour Master was then read upon the respective qualities of the two Vessels Fideliter and Emily Harris.

Settled that the Tender for the conveyance of the Mails between Victoria and Comox be awarded to the Emily Harris, the lowest Tender offered.

His Excellency then read the Message he proposed to address to the Legislative Assembly in reply to the recommendation of the House in respect to the appointment of a Ministerial Council.

The Council concurred in the Message.

A communication dated the 31st March 1864 signed by C. Street asking for assistance to enable Daniel Penny to bring out his Family from England was then read.

Discussion upon the subject, and upon the subject of immigration generally and the most desirable means of promoting it.

Settled that request of Daniel Penny cannot be directly acceded to by the Government.

Application read from Muir Quartz Mining Co. dated 5 March 1864.

Settled that applicants be acquainted their rights will be respected subject to the Mining Laws about to be issued.

The Council then adjourned.

A. E. Kennedy

April 11/64

Monday, the 11th day of April, 1864

Present: His Excellency The Governor, The Colonial Secretary, The Attorney General, The Treasurer, The Surveyor General.

Minutes of last Meeting read & confirmed.

The Governor laid before the Council the following communications from the Honorable the Speaker of the House of Assembly in reply to Messages which His Excellency sent to the House in accordance with the decision arrived at upon the last Meeting of the Council. His Excellency stated that he had no remarks to offer upon these communications beyond stating that he is informed that the Resolutions contained in these communications were adopted by a majority of *one*—that being the Speakers casting vote.

First. Message dated the 8th April 1864 conveying the Resolution passed by the House of Assembly on the 7th Instant declining to provide funds either for a permanent or for temporary Government House.

Second. Message dated the 8 April 1864 conveying the Resolution passed by the House of Assembly on the 7th Instant declining at present to provide funds by way of Salary and passage money for the Governors private Secretary.

The Governor then laid before the Executive Council the draft of a message which he proposed to address to the Legislative Council, submitting for their opinion the copy of an address of the Legislative Assembly dated the 9th February 1864, to Sir James Douglas then Governor of the Colony, declining to vote the Civil List proposed by the Duke of Newcastle in a Dispatch dated 15th June 1863, in return for the Crown Revenues of the Colony.

His Excellency stated that he refrained from any discussion upon this question in Executive Council, simply desiring the opinion of the Council on the propriety and expediency of taking this step. His Excellency further referred the Council to the Royal Instructions and to Her Majesty's Commission bearing upon a question of this character.

The Executive Council entirely concurred in the views taken by His Excellency.

The Governor then informed the Executive Council that the whole furniture of his office consisted of a Table, a Carpet and a few common Chairs. That there was no Library, Maps, or Books of reference of any kind. That there is no Messenger or Attendant of any kind provided for the Governors Office, nor provision made for any of these requisites in the Annual Estimates. The Estimates under the head "Governor" as passed by the House of Assembly are a blank. His Excellency desired to know whether this has been the Custom in the Colony, or whether the Executive Council consider it decent, or possible that the public service can be carried on under such conditions.

The Council expressed themselves in the following resolution.

The Council are unanimously of opinion that the requirements before described are absolutely necessary for the proper conduct of the public service,

and recommend His Excellency to apply the requisite funds for obtaining them accordingly.

The Council then adjourned.

A. E. Kennedy

Apr. 29/64

Friday, the 29th day of April, 1864

Present: His Excellency The Governor, The Colonial Secretary, The Treasurer, The Surveyor General.

The Governor informed the Council that a Member of the House of Assembly waited upon him yesterday with a draft of a Bill proposed to be introduced to the House of Assembly establishing a Common School System; but as the Bill involved a money question it was necessary that the sanction of the Crown should be given to its introduction. His Excellency had objected to receive the Bill or to go into the question unless it were brought before him in the regular way so that he could present it in a proper manner to the Executive Council. The introducer of the Bill had promised to address a letter to His Excellency upon the subject, & His Excellency had therefore summoned the Council to consider that letter so that no delay might ensue. No letter had however been received up to the present moment & therefore His Excellency refrained from bringing the question up for consideration in Council.

A Letter from the Attorney General dated April 27th 1864 enclosing Bill of Costs in the suit Attorney General versus Hudson's Bay Company was then presented by His Excellency.

Settled that the Bill should be first taxed in the regular way, and then paid.

The Council then adjourned.

A. E. Kennedy

May 2/64

Monday, the 2nd day of May, 1864

Present: His Excellency the Governor, the Colonial Secretary, the Treasurer, the Surveyor General.

The Governor read to the Council a letter dated the 2nd May 1864 from the Speaker of the House of Assembly, upon the subject of the introduction of a Bill establishing a common School system, involving a permanent charge upon

the Revenue, and suggesting that the sanction of the Executive should be given to the same, the matter not being recommended in the Governor's opening speech.

Discussion followed. Agreed that sanction should be given.

Council then adjourned.

A. E. Kennedy Gov.

May 9/64

Monday, the 9th day of May, 1864

Present: His Excellency The Governor, The Colonial Secretary, The Attorney General, The Treasurer, The Surveyor General.

Minutes of last Meeting read & confirmed.

His Excellency laid before the Council the draft of a Message to the House of Assembly enclosing a statement of sums expended in excess of votes during the year 1863, and recommending that a vote be passed for the sum of \$19,80428 to enable the Auditor to close the accounts for the year 1863.

Message read by Colonial Secretary, and agreed to by the Council.

His Excellency then brought up the subject of the appointment of Revisors under the Real Estate Tax Act.

Discussion upon the subject followed, & Appointments made of the following Gentlemen:

For Victoria City: Richard Lewis, John T. Pidwell, William F. Tolmie, Joseph J. Southgate, Lumley Franklin.

For Victoria District, Esquimalt Town, Esquimalt District, Sooke District, Metchosin District: Edward H. Jackson, W. J. McDonald, John R. Stewart, Edward Octavius Langley, David Leneveu.

For North Saanich District, South Saanich District, Lake District: Alexander Anderson, Charles Street, William Reay, William Thompson, Henry McHugh.

For Nanaimo District: William H. Franklyn, Charles S. Nicol, Joseph Fergusson, Peter Labiston, Daniel W. Gordon.

His Excellency then laid before the Council the Tenders received for printing a Government Gazette.

The same were considered and the Contract was awarded to the Colonist office.

His Excellency then laid before the Council the Draft of an Act prepared by the Attorney General to abate the nuisance and danger existing through the number of open wells in and around the City of Victoria, and in other places within the Colony.

Settled that the Bill should be introduced to the House of Assembly.

His Excellency then brought to the notice of the Council the Pilot Act, and the subject of the Appointment of Commissioners under that Act. His Excellency

stated that the following names had been submitted to him, and he proposed to appoint them as Commissioners: Mr. William A. G. Young, Mr. Henry Wootten [Wootton], Mr. Joseph J. Southgate.

Council concurred therein.

His Excellency then read to the Council a letter from M. Munro dated 26 April 1864, making a proposition with respect to the continuation of the work under his present Contract for the Victoria and Comox Road.

Question put whether it be accepted or not:

Ayes	Noes
The Colonial Secty.	The Treasurer
The Attorney General	The Surveyor General

The Governor gave the casting vote in favour of the Ayes and so it passed in the affirmative.

The Council then adjourned.

A. E. Kennedy

13 May 64

Friday, the 13th day of May, 1864

Present: His Excellency the Governor, The Colonial Secretary, The Attorney General, The Treasurer.

His Excellency laid before The Council a communication from the Mayor and Council of Victoria, dated 13th May 1864, representing the unfortunate position in which they are placed owing to the defect existing in the Incorporation Act, and asking that a present Sum of Six thousand Dollars may be placed at the disposal of the Corporation to meet present indebtedness; and also for authority to refund the sum of Five thousand Three Hundred and Sixty two Dollars paid by owners of Real Estate in December last.

Discussion upon the subject followed. Resolved that a Message be sent to the House of Assembly enclosing the representation from the Council, & requesting that the House will place the Governor in the position to advance from the General Revenue of the Colony the sum sought to cover present liabilities viz. \$6000, and recommending that a Bill should be introduced imposing a tax of the fourth of one per cent upon all real Estate within the City of Victoria, to reimburse this outlay.

His Excellency placed before the Council a Report from the Surveyor General dated 12th May 1864 with Maps, upon subject of certain encroachments at Wharf Street Esquimalt.

Letter read by Colonial Secretary, and discussion upon the matter followed.

Resolved that the papers be referred to the Attorney General for opinion as to what might to be done to protect the public.

The Governor laid before the Council a letter dated the 10th May 1864, from the Surveyor General upon the subject of encroachments upon the road from Victoria to Esquimalt.

Letter read by Colonial Secretary.

Resolved that the papers be referred to the Attorney General with former papers on the subject.

The Governor then laid before the Council certain papers contained in a letter from the Acting Stipendiary Magistrate dated 9th May 1864, relative to the alleged murder at Barclay Sound of Wm. Banfield.

Resolved that steps should be taken to vindicate the Law.

The Governor then brought before The Council the subject of the contemplated improvements in Victoria Harbour; and read a list of queries which he had addressed to the Surveyor General upon the subject, together with the Surveyor General's reply.

His Excellency commented upon the scheme and upon the exceeding discrepancy between the estimated and the actual expenditure, and also that the expenditure up to the present time had exceeded the estimate, and that further funds were required, if the project were to be gone on with & even to provide for Storehouses and other necessary Buildings and services.

Resolved that further supplies be asked from the Legislature.

His Excellency then brought to the notice of the Council a Message from the Speaker of the House of Assembly dated 12th May 1864, enclosing copy of two Resolutions passed by the Assembly, one with reference to the collection of small debts at Nanaimo, and the other to Reciprocity with the United States.

His Excellency proposed that an answer be returned to the effect that these matters had not been brought under his notice, and that with regard to the first His Excellency had no intention at this late period of the Session to cause a Bill for the purpose to be introduced—with regard to the second that nothing had been done.

The Council then adjourned.

A. E. Kennedy

May 17 1864.

Tuesday, the 17th day of May, 1864

The Council met at 11.30 A. M.

Present: His Excellency The Governor, The Treasurer, The Surveyor General.

The Minutes of the last meeting having been read and agreed to.

A letter from Mr. Pemberton the Stipendiary Magistrate of Victoria was read requesting an extension of his leave of absence for a further period of six weeks from the 16th Instant on the ground of ill health.

Which was granted.

His Excellency laid before the Council 9 tenders for the performance of certain work on the Metchosin Road. Nos. 5 and 6 of Mr C. E. Ashe and No. 7 of Mr. J. Nicholson being the lowest in amount and in other respects satisfactory were accepted.

The Council then adjourned.

A. E. Kennedy

May 21/64.

Saturday, the 21st day of May, 1864

The Council met this day pursuant to a notice.

Present: H. E. The Governor, The Hons. The Attorney General, The Treasurer, The Surveyor General.

The Minutes of the last meeting having been read and confirmed.

The following correspondence was laid on the Council table by His Excellency and the opinion of the Members of the Council asked as to what should be done in the matter.

Memo.

With reference to contracts made on the 8th & 9th March 1864 between the Acting Surveyor General and Robert Ewing and James Trahey respectively involving an expenditure of \$34,000 and \$16,000, The Governor desires to see the Authority under which they were acquired by the Acting Surveyor General.

A. E. K.
May 16, 1864

To The Acting Coll. Secretary.

Memo.

On reference I do not find that any written instructions have been given bearing on the acceptance of any contracts made between the above named parties on the 8th & 9th March '64.

The foregoing minute of the Governor is referred to the Surveyor General.

E. J. Nesbitt
Acting Colonial Secretary
May 16, 64

The Surveyor General

Memo.

I am informed by Mr. Pearse that no written instructions were issued to that effect but that the letting of these Contracts was done by the verbal Authority of the Governor after frequent personal conferences with him and the Colonial Secretary.

J. D. Pemberton
Surveyor General
17 May 1864.

Lands and Works
20 May 1864

Sir,

I shall feel much obliged by your reporting to His Excellency at your earliest convenience the following correspondence:

copy

Lands and Works
19 May 64

Sir,

In reply to your letter of the 18th Inst. making application for 2nd Instalment on Dredge Contract as certified by Mr. Leigh on 5 May, I have the honour to inform you that I have at present no authority to do so.

I have &c.
J. D. Pemberton

Mr. J. W. Trahey

copy

Victoria
20 May 64

Sir,

We have seen your letter addressed to Mr. Trahey informing him that you were not prepared to pay the second instalment due upon Mr. Trahey's Contract amounting to \$3000.

As the non payment of this money will compel Mr. Trahey to suspend his works and preclude him from fulfilling his contract with the Government, besides entailing on him a very large loss we as sureties for the completion of his contract must request the Government of Vancouver Island to relieve us from the liability.

We are, &c. &.
(sd.) Robert H. Austen
Wm. P. Sayward

Awaiting His Excellency's Commands

I have &c. &.
J. D. Pemberton
Surv. General

The Acting Colonial Secretary

His Excellency in laying the foregoing correspondence before the Council made the following statement.

The vote of the Legislature for Harbour improvement and the construction of a Dredging Machine having been considerably exceeded he made application for the Authority upon which the outlay had been incurred and found that the Acting Surveyor General had entered into Contract to the extent of about £10,000. being largely in excess of the vote without the written authority of any officer of the Government and that those Contracts had never been submitted to or approved of by the Executive Council. Under these circumstances he desires to have the opinion of the Council as to whether He would be justified in paying the instalment demanded by the Contractors pending an application to the Legislative Assembly for an additional vote.

The Council agreed with His Excellency that it was expedient that the instalments be paid without expressing any opinion as to the regularity or irregularity of the proceeding.

A Letter from George Barnett was read requesting on behalf of the Union Copper Mining Co. that the term for which they hold the reserve of certain land at Sooke may be extended for a further period of 6 months, which was granted.

The Governor brought before the Council a Statement in regard to Mr. Treasurer Gordons defalcations and it was agreed that the same be referred for the opinion of the Attorney General.

The Council then adjourned.

A. E. Kennedy

June 1/64.

Wednesday, the 1st day of June, 1864

Present: His Excellency the Governor, The Acting Colonial Secretary, The Colonial Treasurer, The Surveyor General.

The Minutes of the last Meeting were read and confirmed.

1. A letter was read from Mr. W. Ladler dated May 28th 1864 applying to have secured to him certain land in the Cowichan District in which he had discovered copper.

The Council were of opinion that this land being a Government Reserve any priority of claim Mr. Ladler might have in respect of discovery should be considered at a future time.

2. *His Excellency the Governor* inquired of the Surveyor General to whom the rock upon which the lighthouse at Esquimault is built belonged and whether it had been conveyed to the Government.

The Surveyor General stated that the rock in question belonged to Mr. Young the Colonial Secretary and that it had not been conveyed to the Government.

The Acting Colonial Secretary was requested to inquire whether any papers or correspondence existed on the subject and to produce them at the next Meeting of the Council.

3. A letter was read dated May 30th 1864 from Mr. W. A. Scott claiming the restoration to him of certain land in the Chemainus District of which he had been deprived and \$1200 as compensation for damage done by the Indians.

The letter was referred to the Surveyor General with a request that he will at his earliest convenience inspect the land and report.

4. A letter dated May from W. G. Goodwin was read with reference to receiving assistance from the Government to enable him to get his wife and family sent out from England.

The Council were of opinion that a sum of \$300 might be advanced to Goodwin for this purpose on his entering into a bond jointly with his brother for the repayment of the money in instalments.

Adjourned.

A. E. Kennedy

June 6/64

Monday, the 6th day of June, 1864

Present: His Excellency the Governor, The Acting Colonial Secretary, The Attorney General, The Colonial Treasurer, The Surveyor General.

The Minutes of the last Meeting were read and confirmed.

5. A Memorandum was read dated 4th June 1864 from Mr. E. J. Nesbitt, Chief Clerk, Colonial Secretary's office relative to the steps taken to convey the Fisgard Rock on which the Lighthouse at Esquimalt is built from Mr. W. A. G. Young, to the Government. A draft of such conveyance was also read.

It appearing that the conveyance had not been executed the Council were of opinion that assuming the Treasurer has no record of payment for the rock to Mr. Young His Excellency the Governor should refer the matter to England for the execution of the Deed.

6. His Excellency the Governor brought under the notice of the Council the question of the administration of an oath to the Members of the Executive Council and read the following form of oath:

I solemnly and sincerely promise and swear that as a Member of the Executive Council of the Colony of Vancouver Island and its Dependencies I will advise and assist His Excellency the Governor to the best of my cunning skill and ability and without fear favour or affection through doubt need or dread or from any other source—that I will keep secret the deliberations of the Council—and that I will act as a true councillor ought to do. So help me God.

And inquired of the Attorney General whether there were any legal or other objections to it.

The Attorney General was of opinion that such an oath might be administered without legislation.

7. In reference to the Minutes of the Council of the 21st May the following letter of the Surveyor General was read:

Land and Works Office
4th June 1864

Sir.

I have the honor to furnish for His Excellency's information copy of a letter from the British consul at San Francisco received this Mail which I think places it beyond a doubt that Mr. Pearse was authorized to sign the contract for the hulls of dredge and steam tug entered into with Messrs. Trahey and Ewing.

I have &c.

(signed) J. D. Pemberton
Surveyor General

[copy]

British Consulate
San Francisco 23rd May 1864

Dear Sir

Your telegram reached me late on the 21st and I am requested by Sir James Douglas and Mr. Young to state to you that as far as they remember Trahey's tender for the hull of the dredging vessel was accepted on account of its being the lowest responsible offer the tenderer making an offer below it failing to find the required security. It is believed that Ewing's offer was originally the lowest for the hull of the steamer and as his sureties were found to be responsible it was for that reason accepted. Those tenders being accepted Mr. Pearse then acting as Surveyor General was consequently empowered to sign the contracts in accordance with the accepted tenders. Sir James and Mr. Young do not for certain remember if any *expressly* written instruction were given Mr. Pearse to sign contracts but they think not as the tender being accepted such an action on his part would naturally follow to carry out the public service.

I am &c.
(signed) Wm. Lane Booker

J. D. Pemberton Esqre.
Surveyor General
Victoria

8. The following letters were read relative to certain lands reserved to Mr. Street for the purpose of prospecting for minerals:

Mr. G. Hargraves dated May 17th and June 1st 1864.

The Surveyor General dated 31st May 1864.

The Council were of opinion that Mr. Hargraves should be informed that Mr. Streets reservation Terminates on 23rd July 1864 after which any application he may think proper to make for any position of the land will be considered.

9. A letter was read from the Attorney General dated 3rd June 1864 relative to the defalcations of Mr. G. T. Gordon the late Colonial Treasurer, stating his opinion that under the circumstances of the case proceedings could not be successfully taken against Mr. Gordon's sureties.

After full discussion The Council resolved that further law proceedings would result in failure and ought not to be adopted and that the amount of G. T. Gordon's defalcations should be written off the public accounts.

10. His Excellency the Governor with the concurrence of the Council accepted Tenders from A. Neely and Mr. Munro for work on the Saanich Road at 70 cents and \$2.28—per lineal yard respectively.

Adjourned.

A. E. Kennedy
13 June 64

Monday, the 13th day of June, 1864

Present: His Excellency the Governor, The Acting Colonial Secretary, The Attorney General, The Colonial Treasurer, The Surveyor General.

The Minutes of the last Meeting were read and confirmed.

11. In reference to minute 5 of 6th June 1864 it appeared that the sum of £150 was paid to Mr. W. A. G. Young on 20th December 1859 but that no Deed of Conveyance had been executed.
12. His Excellency the Governor stated his opinion that the payment of the consideration money to Mr. Young prior to the execution of the Deed was wholly irregular.
13. His Excellency the Governor brought under the notice of the Attorney General certain law proceedings adverted to in his letter of 24th March 1863 as having been commenced against the Hudson's Bay Company relative to certain lands and requested that he would take steps for bringing the matter to some legitimate conclusion.
14. In reference to the last paragraph of a letter from Mr. W. F. Tolmie dated 21st November 1863 stating that the agents of the Hudson's Bay Company are authorized and ready to execute a formal conveyance to the Crown of certain lots in Wharf and Government Streets, His Excellency the Governor requested the Attorney General to proceed without delay.
15. The Report dated 13th June 1864 was read of a Board appointed to report upon the reservation of Crown Lands for prospecting purposes only.
The Council concurred in the latter part of the Report recommending the granting of temporary leases of blocks of 640 acres, and were of opinion that a Gazette notice should be inserted to that effect and with an additional assurance that parties so leasing minerals would be considered entitled to a renewal of their lease for a further period on the Government being satisfied that the lessees are prepared to work the minerals.
16. Letters were read from Mr. W. R. Lodge and Mr. John J. Landale dated 31st May 1864 (2) and 6th June 1864 applying for the reserve of 12,000 acres of land and minerals in the Cedar District.
17. The Council were of opinion that the Government should not grant any reservation of inferior minerals for prospecting purposes only but that the Government should grant leases under Section 15 of the Vancouver Island Land Proclamation 1862, of tracts not exceeding 640 acres in one lease, and for a period not exceeding six months under rules which will be notified in the Government Gazette.
18. A letter was read from Mr. J. S. Willis, Secretary to the American Quartz Mining Company dated June 8th 1864 applying for a lease of 640 acres for gold mining purposes.
The Council were of opinion that Mr. Willis should be informed that pending the discovery of any gold field the Government are not prepared to grant the lease of so large an extent of land.

19. A letter was read from Messrs. J. J. Southgate and Sebright Green, Directors of the Harewood Railway Company Limited, dated 10th June 1864 requesting the consent of the Governor to their taking land in the Government Reserve in the Nanaimo District for the purposes of their proposed Railway.

The Council were of opinion that the Harewood Railway Company might be permitted to take the land necessary for their line of Railway across the unsold portion of the land situate on the Government Reserve opposite Newcastle Island in the District of Nanaimo upon the same terms that are provided by the Vancouver Island Land Clauses Consolidation Act 1863 with regard to the land of private persons.

Adjourned.

A. E. Kennedy

June 27/64

Monday, the 27th day of June, 1864

Present: His Excellency the Governor, The Acting Colonial Secretary, The Attorney General, The Colonial Treasurer, The Surveyor General.

The Minutes of the last Meeting were read and confirmed.

20. The oath of office was administered to the Members of the Council by His Excellency the Governor.

21. The following Despatches were read:

Despatch from Sir James Douglas, No. 3 dated 12th February 1864 forwarding Resolutions of Legislative Assembly declining to vote a Civil List.

Despatch from the Secretary of State for the Colonies No. 2 dated April 30th 1864 in reply thereto.

The proposed message of His Excellency the Governor to the Legislative Assembly conveying a copy of the latter Despatch was also read.

The Council concurred in the propriety of forwarding the Despatch to the Assembly with the Message.

22. His Excellency the Governor drew the attention of the Council to a course of action hitherto pursued by Members of the Executive which he considered wholly erroneous. He more particularly adverted to that in connection with the subject of the Secretary of State's Despatch (No. 2 dated 30th April 1864) just read. His Excellency stated that the embarrassment which had arisen from the refusal of the Legislative Assembly to grant a Civil List, or make provision for the salaries of the Chief Justice, Colonial Secretary, Attorney General, Treasurer, and Surveyor General, had been consummated though it did not originate with some *ex-officio* Members of the Legislative Council who by their votes affirmed the action of the Legislative Assembly and that had the *ex officio* Members voted together in furtherance of the expressed views of the Secretary of State as representing the Crown, whose servants they are, the

present embarrassment could not have occurred. His Excellency further pointed out that the functions of the Legislative Assembly and Legislative Council were distinct as their organization—that the one was composed of the elected Representatives of the people, the other of *ex officio* and other Members all nominated by the Crown—and that if the *ex officio* Members voted in opposition to the Measures, and policy adopted after consideration in the Executive Council the Government of this Colony could not be carried on. His Excellency therefore expected that Measures resolved upon in Executive Council would receive the undivided support of the *ex officio* Members in the Legislative Council. His Excellency also stated that open questions would of course arise as to which *ex officio* Members might exercise their individual discretion, though as a general rule he thought that Members of the Executive voting in opposition to each other was unseemly and calculated to weaken the government.

The Members of the Council severally expressed their assent to the views of His Excellency.

23. His Excellency the Governor proposed that a sum of 500 dollars should be paid to Mr. T. L. Wood as remuneration for his services as Stipendiary Magistrate at Victoria during the absence on leave of Mr. Pemberton for the last two months.

The Council concurred.

Adjourned.

A. E. Kennedy

30 June 64

Thursday, the 30th day of June, 1864

Present: His Excellency the Governor, The Acting Colonial Secretary, The Attorney General, The Colonial Treasurer, The Surveyor General.

The Minutes of the last Meeting were read and confirmed.

24. A letter was read from the Speaker of the Legislative Assembly dated 29th June 1864 enclosing Resolutions of Assembly upon Report of Committee upon Crown Lands, and consideration thereof deferred.
25. A letter was read from the Speaker of the Legislative Assembly in reply to the message of His Excellency the Governor agreed to in Minute 21 of 27th June 1864. The proposed Message of His Excellency the Governor in reply was also read in which the Council concurred.

Adjourned.

A. E. Kennedy

July 4/64

Monday, the 4th day of July, 1864

Present: His Excellency the Governor, The Acting Colonial Secretary, The Attorney General, The Colonial Treasurer, The Surveyor General.

The Minutes of the last Meeting were read and confirmed.

26. A letter was read from the Speaker of the Legislative Assembly dated 4th July 1864 in reply to the Message of His Excellency the Governor agreed to in Minute 25 of June 30th 1864, forwarding Resolutions of the Assembly conveying an indemnity to His Excellency for the payment of the salaries of the Chief Justice, the Attorney General, the Treasurer and the Surveyor General out of the Crown Revenues.

The Council were of opinion that these Resolutions should be submitted for the consideration of the Legislative Council and their concurrence in the indemnity invited.

27. A letter was read from Mr. M. Munro dated 1st July 1864, requesting that certain tenders sent in by him after the hour notified should be considered.

The Council were of opinion that the Tenders should be returned to Mr. Munro unopened, previously to their receipt other Tenders received within the time appointed in the Gazette notice having been opened.

28. His Excellency the Governor with the concurrence of the Council accepted the following Tenders:

John Nicholson for grading &c. a portion of the Metchosin Road at \$1.95 per yard.

John Nicholson for grading &c. a portion of the West Saanich Road at \$2.37 and \$0.87 per yard.

William Thomson for grading &c. a portion of the West Saanich Road at \$2.45, \$1, and \$1.99 per yard.

Adjourned.

A. E. Kennedy

7 July 64

Thursday, the 7th day of July, 1864

Present: His Excellency the Governor, The Acting Colonial Secretary, The Attorney General, The Colonial Treasurer, The Surveyor General.

The Minutes of the last Meeting were read and confirmed.

29. A letter was read from the Attorney General dated 7th July 1864 reporting upon the Bills referred to hereunder passed by the Legislature.

30. A Bill respecting Barristers and Attorneys at Law.

In accordance with the opinion of the Attorney General and with the concurrence of the Council His Excellency the Governor withheld Assent from this Bill for the present.

31. A Bill to enable the Districts of Cowichan, Comox and Alberni to elect Members to the House of Assembly.

It appearing that Assent had been refused to this Bill by the late Governor, Sir James Douglas, His Excellency the Governor with the concurrence of the Council abstained from assenting thereto.

32. His Excellency the Governor with the concurrence of the Council assented to the following Bills on behalf of Her Majesty:

An Act to amend an act for the protection of wooden bridges.

An Act to repeal the Vancouver Island Stamp Act, 1862.

An Act to prevent the unauthorized issue of Bank Notes and paper currency.

An Act to provide for the periodical publication of the liabilities and assets of Banks in Vancouver Island and its dependencies, and for the registration of the names of the proprietors thereof.

An Act to apply the sum of \$26,000 out of the general revenue of the colony of Vancouver Island and its dependencies, to the service of the year 1864.

An Act to grant a supplemental supply of \$19,804²⁸ for the service of the year 1863.

An Act to provide for the closing of Wells upon unenclosed lands in Vancouver Island and its dependencies.

An Act for the regulation of Electric Telegraphs within the colony of Vancouver Island, and to secure secrecy and fidelity in the transmission of telegraphic messages.

An Act to alter and amend the Fireman's Protection Act, 1861.

An Act to authorise the Harewood Railway Company (limited) to make a Railway from Departure Bay, Nanaimo District, to the Harewood coal fields, in Mountain District, Vancouver Island.

An Act to incorporate the Israelite congregation named the Emanu-el of Victoria, Vancouver Island.

An Act to impose a tax of one-half of one per centum upon all real estate within the city of Victoria, and for other purposes relating thereto.

An Act to authorise the Governor to appropriate certain moneys for the completion of a Dredging Machine and other instruments and appliances connected therewith.

33. The Council on the representation of His Excellency the Governor of the necessity of employing Mr. T. Theobald as an additional clerk in the Colonial Secretary's Office and of the smallness of the payment at present made to him viz. \$60 per month approved of a payment to him of \$80 per month.

Adjourned.

A. E. Kennedy

18 July 64
