

Who Was Sir Matthew Baillie Begbie?

by Fred Hook

Who was Matthew Baillie Begbie? Was he “The Hanging Judge”? A kindly man? An Englishman? A Scot? A woman hater? A social butterfly? A failed lawyer? A brilliant jurist? A racist? A champion of human rights? These and many other questions will puzzle anyone who looks for the man



Matthew Baillie Begbie .

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in the publications of the popular press – in his time or ours. He was a man who avoided publicity and interviews but whose writings and drawings in his court books and letters to James Douglas form an invaluable record of British Columbia’s earliest days.

Begbie’s birthplace is often cited as Edinburgh but the *Dictionary of Canadian Biography on Line* says: “BEGBIE, Sir MATTHEW BAILLIE, judge and politician; b. 9 May 1819, probably on a British ship at the Cape of Good Hope, son of Thomas Stirling Begbie and Mary Hamilton Baillie; d. 11 June 1894 in Victoria, B.C.” *BC Bookworld* reports that “Although his birth has been recorded at Cape of Good Hope on May 9, 1819, Begbie was born either en route to the Indian Ocean or on the island of Mauritius, where his father had been

posted.” The date of the recording of his birth is May 9 but he may have been born a day or two before and almost certainly at sea. His father was a Colonel in the Royal Engineers who had fought under Wellington and, for the first seven years of his life, Matthew and the family traveled extensively, following the pattern of military life. He spoke of his earliest recollections on board a Dutch ship, traveling to Antwerp. Colonel Begbie then inherited the family estate on Guernsey. The family settled there.

At Elizabeth College, Guernsy, Matthew studied drawing, divinity, literature, history, and mathematics and became fluent in the languages of French, Latin, Greek; he excelled at mathematics. A good drawing master helped him develop the sketching skills that he used throughout his career in British Columbia. He won a scholarship to Cambridge, where he did well but not brilliantly. His studies suffered because his other interests – sports, music, drama – occupied too much of his time. He was a member of many clubs, including one of his own creating whose members had to exceed him in height. As he is variously reported as having been anything from 6’4” to 6’6”, the membership must have been limited. He graduated with a BA in 1841 and, in 1844, took his MA and was called to the bar at Lincoln’s Inn. Some accounts say he had little ability as a barrister and was reduced to acting as a court reporter. Others say that, once again, his many other interests kept him from achieving great standing.

It was the great range of his abilities and interests (and possibly his great size) that gained him the position as judge in BC. When gold was discovered on the Fraser River, James Douglas, at that time Governor of Vancouver Island and representative of the Hudson’s Bay Company, saw trouble coming with the American gold

miners on the mainland. He knew of the chaos in the California gold fields and he worried that, if similar violence erupted, the American government would take action to establish United States law in the area. He asked Sir Edward Bulwer Lytton, then Secretary for the Colonies, for help. Lytton introduced a bill in Parliament in August 1858 constituting the Colony of British Columbia. He then sought the man who would be the Colony's first judge, seeking a man "who could, if necessary, truss a murderer up and hang him from the nearest tree."¹ It was this specification that gave rise to the epithet that Begbie has carried since: The Hanging Judge.

Several reasons are suggested for Begbie accepting a position in a distant, rough colony. The romantic notion that Matthew had been jilted by a woman who left him in favour of his younger brother Thomas is rendered unlikely by the fact that Thomas married the lady eleven years before Matthew left for North America. Another suggestion, that he was such a poor lawyer that he needed the money, is belied by his extremely social lifestyle (including several trips to Europe and residence in a stylish part of London), his expectation of a salary of £1,000 per year (he settled for £800) and by the terms of his appointment. Begbie was given a patent from the Queen appointing him a Judge in the Colony of British Columbia. Lytton told Douglas that "Although invested with the very important office of judge, (Begbie) will nevertheless have the kindness, for the present at least, to lend you his general aid for the compilation of the necessary laws"², not a task he would have given to a man poorly versed in the law.

1 Cited by Professor Sydney G. Pettit in British Columbia Historical Quarterly, XI, p. 4.

2 Sir Matthew Baillie Begbie, by Roy St. George Stubbs in MHS Transactions Series 3, Number 25, 1968-69 season

Begbie arrived November 16, 1858 at Esquimalt, where he was greeted by Douglas. The *Victoria Gazette*, November 25, 1858, printed the following:

—”New Fort Langley, 20th November 1858. Editors *Gazette*: Yesterday, the birthday of British Columbia, was ushered in by a steady rain which continued perseveringly throughout the whole day, and in a great measure marred the solemnity of the proclamation of the Colony. His Excellency, Governor Douglas, with a suite comprising Rear-Admiral Baynes, Commanding the naval forces on the Pacific Station; Mr. Cameron, the respected Chief Justice of Vancouver Island; Mr. Begbie, the newly appointed Chief Justice of British Columbia; Mr. Lira and others, proceeded ...to New Fort Langley....The ceremonies were commenced by His Excellency addressing Mr. Begbie and delivering to him Her Majesty’s Commission as Judge in the Colony of British Columbia. Mr. Begbie then took the oath of Allegiance and the usual oaths on taking office and then addressing His Excellency took up her Majesty’s Commission appointing him the Governor and proceeding to read it at length. Mr. Begbie then administered to Governor Douglas the usual oaths of office, viz.: Allegiance, Abjuration, etc. His Excellency being then duly appointed and sworn in, proceeded to issue the Proclamation of the same day, 19th instant, viz.: one proclaiming the act; a second, indemnifying all the officers of the Government from any irregularities which may have been committed in the interval before this proclamation of the act; and a third, proclaiming English Law to be the Law of the Colony. The reading of these was preceded by His Excellency’s Proclamation of the 3rd instant setting forth the Revocation of Her Majesty of all the exclusive privileges of the Hudson Bay Company.”

Begbie's first act was to establish the rules of court for the new colony. Under his rules only a person who had been called to the bar or admitted as a solicitor in the United Kingdom, or who had taken the degree of Doctor of Laws from a British University, or who had studied as a barrister or solicitor in British Columbia or Vancouver Island could practice in BC. Begbie was the only person in the colony to meet these qualifications. For the first year of his time in office, he modified this to allow American lawyers to defend American clients. He deplored the lack of qualified council which often forced him to act, from the bench, as council for the defence, but he strongly opposed the admission of those with what he considered lesser training.

He set about his duties almost immediately, riding over the years a circuit that covered the whole colony. The tent that he slept in often served as his courtroom and, contrary to some newspaper reports, he conducted his trials in full costume: robe and wig. When other counsel appeared he insisted on the same degree of formality, to establish the majesty of English justice. Begbie quickly established a reputation for sternness and for fairness. His reputation as "The Hanging Judge" was ill deserved. In the years between his arrival and the entry of British Columbia into Confederation in 1871 he conducted 52 murder trials in which five were acquitted, nine found guilty of lesser offences, 38 convicted and 27 sentenced to hang. It was the only sentence available under law. Of the 27 who were hanged, 22 were Indians, one Chinese, and four white. Some look on this as evidence of racial discrimination. In fact, 11 of those convicted received clemency after Begbie petitioned Douglas for it. All of those were Indians and no such requests were made for any whites. It is also worth remembering that the vast majority of the population at the time was Indian.

The reputation served him well. There are several documented cases of American desperados leaving the colony on hearing of his imminent arrival. Americans committing crimes in that first year were not only allowed American counsel but were often tried by American jurymen. His answer to a man in Salt Lake City who challenged him on his reputation was: "Excuse me, my friend, I never hanged any man. I simply swore in good American citizens, like yourself, as jurymen, and it was you that hanged your fellow-countrymen."

The reputation continues. The town of Lillooet has on its website a photograph of what it calls "Begbie's Hanging Tree", the remains of a dead pine snag. The accompanying story of Begbie personally conducting hangings from it have little basis in fact. Begbie always had a chaplain present when passing a sentence of death, less to comfort the accused than for himself.

When he wasn't traveling his circuit, Begbie lived in a comfortable home on Cook Street where he settled permanently in 1870. He was very active socially, belonged to the Victoria Philharmonic Society, where he sang Italian opera, joined the choir at Christ Church, read the lessons at St. Johns Anglican Church, shot snipe in the marshes that covered what is now lower Cook Street. His Saturday dinner parties and Tuesday Tennis matches became institutions in Victoria's society. The grounds of his house included extensive gardens (tended by a full time gardener) a croquet lawn and three tennis courts. He is said to have introduced the modern game of tennis to Western Canada. Begbie was lionized by the ladies and a most sought after guest but, while he enjoyed their company he remained a bachelor. As was the first president of the Union Club and instrumental in writing its rules which excluded women. He owned considerable real-estate in Victoria, including a 700 seat theatre on

Government Street (the Victoria Theatre, later to become the Theatre Royal and then the Royal Theatre).

When he was recruited, Begbie was led to believe he would become Chief Justice of the new Colony of British Columbia and he was given that post. He expected to be Chief Justice of the united colonies of British Columbia and Vancouver Island when they were united in 1866. The legislation, however, failed to create a mechanism for this and the Chief Justice of Vancouver Island, Joseph Needham, was suggested for the post. As a compromise the two judiciaries were kept separate until Needham resigned in 1870. Begbie was named Chief Justice of the united colony and, after it joined confederation in 1871, Chief Justice of the Province of British Columbia, remaining in that position until his death.

The decade after Confederation was largely a quiet one for Begbie. He continued his circuit travels without great incident. It was a local Victoria case, the dispute between Bishop Hills and Edward Cridge that resulted in Cridge leaving the Anglican Church to form a new congregation of the Reformed Episcopal Church, which caused the next great controversy for Begbie. Partly because of that and partly to settle his father's estate, Begbie left for England in 1874 for his first long vacation in 16 years. While he was there, he was unexpectedly called to Balmoral to be knighted by Queen Victoria in a rare, private investiture. The following years were to be more controversial.

Begbie had always championed equal rights. He had told Douglas in 1860 that the Indians' title to the land was not extinguished and that treaties must be sought. He modified his stand somewhat after Confederation but this and his stand against laws that sought to impose various prohibitive taxes on Chinese were very unpopular. With an attitude well ahead of popular thought, he recognized

the rights of labour unions to strike. Add to all of this that he never lost his habit of autocratic behaviour on the bench, established years earlier when he was the only law in the area, and he remained a controversial figure to the end.

In late 1893, Begbie fell ill for the first time in his career. He underwent exploratory surgery and spent some months off the bench recuperating, returning in January of 1894. He refused further surgery or drugs, preferring to keep his mind clear. He stayed on the bench until May 15th of that year. Despite a fairly recent article that says he died of grief when a depression caused the value of his land holdings to fall sharply, what killed him on June 11th 1894 was cancer of the stomach and liver.

His will was generous to many, his family, his friends, his employees. He left a trust for the widow of Justice Gray, who had died early leaving her in poverty. It specified that he be buried in the closest cemetery with a simple funeral, with no flowers, and costing no more than \$200. Begbie asked that a simple wooden cross be erected over his grave with his name and dates and the inscription "Lord be merciful to me a sinner." It is clear that the funeral was a major affair. The procession from St. John's church to Ross Bay Cemetery was unequalled. It isn't clear if the simple wooden cross was ever placed, but if it was it was replaced by the three-tiered granite monument surmounted with a stone cross, which stands there now. The inscription, though, is as he wished.

Matthew Bailley Begbie is memorialized in a number of ways. There is, of course, Begbie Street here in Victoria, one in New Westminster, Sir Matthew Bailley Begbie Elementary School in Vancouver, and Mount Begbie, south of Revelstoke. Less well known are the Law Society Award of the Benchers of the Law Society of British Columbia which is a bronze statue of Begbie astride his horse and the Begbie Contest which is a

Canada-wide Scholarship contest in Social Studies for Senior Secondary students.

There have been films, books and articles of all sorts. If you wish to try to find more answers try:

- Roy St. George Stubbs' excellent paper 'Sir Matthew Baillie Begbie' from *Manitoba History Society Transactions* Series 3, Number 25, 1968-69 season, on line at: http://www.mhs.mb.ca/docs/transactions/3/begbie_mb.shtml
- 'First Among Men' a series of articles from the *Cariboo Sentinel*, on line at: <http://www.barkerville.com/nwarch.htm>
- The late David Ricardo Williams' complete biography "...The Man for a New Country: Sir Matthew Baillie Begbie." Sidney: Gray's Publishing Ltd, 1977.



Begbie's marker at Ross Bay Cemetery.