

Examples of administration of Justice in Indian territory

Court testimony regarding Indian marriages in Oregon Territory

Comments regarding Native marriages, taken under oath in the celebrated Connelly vs. Woolrich case, are given below. Noël Annance, former clerk of HBC who served at numerous posts including Thompson River and Okanagan testified:

I can see no difference between the marriages contracted in the Patriarchal ages and those contracted in the present day, in the North-West, among the Indians: that is, buying the girl by giving presents to the father, mother, and brothers of the bride, and sometimes by exchanging presents; that is all the marriage rites that I know of in the North-West, among the Indians. The chief or the father will never give his consent to give away his daughter to any man, as a wife, without these marriage rites, because they consider it to be a disgrace for any girls, without her father, or her mother, or brother having received this token of marriage to live with any man. Chiefs of the tribes are generally first consulted, and any one selected, can give away the girls upon those conditions. The ceremony consists of giving away and acceptance. It is not necessary to have anything else.... A man cannot live quietly with a squaw, in that country, without the performance of the above ceremony, for, without it, the brother would even kill his sister, and it would be a disgrace for the whole family. The Indians considered me as Hias Yaye, because I was the trader and dealt out the goods. There were then no ministers nor priests and no register kept, and the country was ruled by Indian law. The Indian law is, as I have above stated, for custom of marriage. When the company gives permission to a man, or a gentleman, to take a wife, the wife is supported by the company, and she will not be supported by the company, unless she is taken with the permission of the company as the man's wife. The Indian customs do not differ much, with regard to marriage. The custom of polygamy prevails invariably among the Indians, particularly, with the chiefs, in consequence of their ability to support a certain number of wives. When a man and a woman live together, they are called man and wife. I could not say that I ever knew of any distinction being made, in the Indian territory or North-West, with regard to any man and woman who live together. The woman or squaw is called the wife of the man with whom she lives, without regard to the manner of marriage. It is presumed that she is regularly bought. I am not aware that the Company ever enquired whether a man is legally married, before they give supplies to the wife.... A man cannot legally have more than one wife there, but the Indian chiefs have many wives.... When I say that a man cannot legally have two wives, in the North-West or Hudson's Bay Territory, I do not mean that Indian law prohibits it, but that the law of the civilized people, that is the HBC's servants, is against it. The term squaw signifies a woman or wife, a young woman is called a hunck squaw. A woman who lives with a man is called that man's squaw, which, in fact, means a wife. If I had a squaw or wife, in the Hudson's Bay territory, she would be called Annance's squaw, meaning my squaw or wife....

John Harriot, another officer with experience in the Oregon territory, testified:

When I say married, I mean according to the custom of the country, which is by an agreement between the father of the girl, and the person who was going to take the girl for wife. We lived as married people, when married this way. I consider it as binding as if celebrated by an archbishop. I was married after the custom of the country myself. It was not customary for the Europeans to take one wife and discard her, and then to take another. The marriage, according to the custom above described, was considered a marriage for life. I considered it so. I know of hundreds of people living and dying with a woman they took in this way, without any other formalities. According to my opinion, this marriage lasted the lifetime of the parties, in as binding a manner as if married by a clergyman. I know of instances, persons married after the custom I have described, bringing their wives into civilized countries, remarrying them, according to the forms of civilization. But I know of no instance when they have been so brought into civilization, without going through that form. It is very customary for the natives to have more than one wife. It is generally the case that they have, according to the ability they have to support them. They cannot keep servants, and they are obliged to keep enough women to do their work. That is very much the footing on which the female sex is placed there. A servant of the company is obliged to obtain permission of a superior officer, before he takes a wife. A superior officer acts from his own sense of propriety, he may do what he likes. When I took a wife, as above mentioned, I made a solemn promise to her father to live with her, and treat her as my wife, as long as we both lived. I kept this promise until her death, which occurred in the North-West, in 1830. Had I come to a civilized community, I believe I should have married according to the civilized form of solemnizing marriage. I should have done so to please people, and to conform to the custom of society. I would not consider myself more strongly bound to that woman as before."

A NWC officer at Thompson's River, who married an Okanagan woman, offered a somewhat different perspective to the court:

It was very common to change women in the Indian country. The French Canadians in the North-West, and the English did it too. The practice was common among the natives also. There was no ceremony in those days, about taking a woman or leaving her either. The women themselves did not care for their husbands, but they were very fond for their children.... There was no other ceremony, except the giving of a few presents. The man lived with her as long as he liked or she liked." (Joseph Larocque)

Marital affairs of Francis Ermatinger

Francis Ermatinger, a HBC clerk who served at Thompson's River, married Cleo, an Okanagan woman, who he mentioned as "My Girl" in a letter on October 18, 1826. A year later, troubles began to appear in his relationship:

With respect to my Girl, I have as yet had very little cause to complain. She has, it is true, in one or two instances, while I was absent not been too well used, and some quarrels took place in the family; last spring Mr. McDonald's cook made advances to her of which she complained but no notice was taken of it, until I arrived at Okanagan, when I gave the fellow a good thrashing. Since then a more pointed neglect has been shown, and if I have not complained, I am never the less sensible of it. While I was at Fraser's River last August, she was ill used in the family, and an Indian actually scaled the pickets, in the night, and entered my room and would likely have gained his end, had not another prevented him. This was known, but nothing was said to him upon the subject and when I came here he was cautioned to keep out of my way, which he has done.... However, after all I have said, I declare I feel no love for her, by the Lord, No! Nor do I at present mean to become attached to any one in the country. They are all alike, faulty in some shape or other, and to turn away one upon vague suspicion and take another, perhaps worse, would be folly indeed. Besides, it will require some resolution while I remain at Kamloops. Nor am I, I confess, anxious to do so. She answers my purpose well and so long as I can keep clear of a family, or her conduct is not more palpable than it has, with every effort, been proved to me, we may remain together. But the first appearance of either, a separation shall, I promise, take place. (Letters, 85-6)

Marital discord came to a climax in 1830, when Ermatinger tersely announced his separation from Cleo:

...I was not too long off when the news reached me that she had absconded with the same rascal who had caused all my trouble with Kittson. My resolution was soon formed and [the Indian] was punished with the loss of his ears, and Madam came under my own discipline. She is now with the Indians. (Letters, 137)

John McLoughlin provided more detail:

Mr. Ermatinger's woman ran away with an Indian last spring and he sent Leolo the interpreter after her and desired him to punish the Indian by cutting the tip of his ears, which he did, and though in the civilized world such an act will seem harsh, and on that account it would be preferable that he had resorted to some other mode of punishment; still, if the Indian had not been punished, it would have lowered the whites in their estimation, as among themselves they never allow such an offense to pass unpunished: however, to prevent further difficulties on this subject I kept Ermatinger here and appointed Mr. Black to Thompson's River. (McLoughlin to Simpson, 16 March 1831, HBRS IV, 227)

Fur traders write about administration of Justice in Indian territory

1. "An Indian thinks the Revenge of Murder belongs only to the kin of the Murdered, & this, because having lost a Good, a something desirable; Society has nothing to do with it. Those not of the kin say, it was a foolish Action, & there the matter stands, But a foreigner, or one of another tribe to kill an other Indian, is to call the injured Tribe into the quarrel, if they are strong enough, but other wise they let the matter pass, as what cannot be helped." (David Thompson, cited in Belyea, 223)

2. "Among these people there are no regular punishments instituted for crimes or offences of any kind; yet all transgressions are cognizable and punished by their laws, so as to ensure security to life and property. Theft, in particular is held in the utmost abhorrence, so that it rarely occurs among them. The property of each individual, even of the slave, is held sacred." (Alexander Ross, 322)

3. "If one Indian kills another, the murderer saves his life by making a suitable present to the nearest relative of the deceased, and they draw no line of distinction between accidental or justifiable homicide and willful murder; death caused in any way by another is looked upon in the same criminal light." (Alexander Ross, 327)

4. Excerpts from Alexandria Fort Journal of 1831 (HBCA B/5/a/4. *(Taotins are the local Carrier people and the Atnahs are from a Secwepemc village)*

Tuesday Sept 12th Trade a few Beaver Skins. The men work at the Wheat. A Report is brought that the Atnahs accuse the Taotins of murdering the Atnah Boy lost + that they will avenge his Death. Great confusion among the Taotins.

Wednesday Sept 13th Some of the Taotins abandon their Verveaux and come to the Fort to encamp for more safety. We go on with our usual work +c.

Thursday Sept 14th The Taotins greatly alarmed and more come and encamp around the Fort. We continue at our same work +c.

Friday Sept 15th The Taotins from above as well as below by Canoe Loads arrive and encamp around the Fort and appear greatly alarmed. ...

Sunday Sept 17th All hands rest. A fine day and the whole of the Taotins are now assembled at this place and intend to build a Block House.

Monday Sept 18th All the Taotins at work Building a Block House a little above the Fort in case of an attack from the Atnahs....

Tuesday Sept 19th Pass a disagreeable night, the Natives on the alarm, making yells, firing Guns +c. so that it is dangerous to go out of Doors.

Thursday Sept 21st The Indians more alarmed than ever but still say the Atnah Boy was not murdered + must have drowned himself....

Saturday Sep 23rd Charters from the Chilcotin Post arrives for Goods, Horses +c. Charters reports that the Indⁿ lad was murdered + that the Cⁿ know.

Monday Sept 25th ...The Taotin's declare the murderers (Ioway and Yak ka nil sir's son) + that they committed the act near Chalkin's Verveaux, that they met the lad in the evening alone and murdered him .

Sunday October 22nd All quiet except that the Indians kick up [Hell's?] delight, yells, whoops, and firing of Guns every night + make it rather unpleasant for us at the Establishment the more so having no stockades.

Sunday Oct 29th All quiet except the Indians who still are greatly alarmed.

Thursday Nov 2nd Taotins receive a visit from the Atnahs who request that the former give property to pay for the Body of the murdered Lad + that they will make peace + I left them to do so....

Friday Nov 3rd ...I succeed in Reconciliating the two Tribes Atnahs and Taotins by making the latter pay for the murdered Atnah, it also cost us a damaged 2 1/2 pt. Blanket which I prefer'd giving to set an example, than let them remain in such a state having put a final stop to our trade.

5. Manson to Simpson, 6 Dec 1841

Thompsons River, 6th Dec^r 1841

Dear Sir,

I reached this on the 11th Ult^o where I found M^r Tod & his people all well, on the 13th, finding that M^rT. had not a sufficiency of Salmon collected for the winter, I dispatched M^r Cameron with a Party of six men to Alexandria, for a supply, and he with his Party returned from thence yesterday, having brought us a supply of 6000, which with those we had on hand, will, I think, suffice for the Season. I am happy to inform you that from what I can see and learn, the Sushwaps and other Tribes in the vicinity of this Establishment, are now in pretty good order, and apparently, well disposed towards us, and certainly (when we look back to the very different state of things in this quarter, during the past few years, when I am told it was no uncommon thing for the Indians, to draw their Knives on the late M^r Black inside of his Fort, and, invariably, grossly insult and rob his men when ever they met them on the route). I think M^r T. is justly entitled to every praise for his very superior management and arrangements, in having effected such a desirable change in so short a time, indeed his persevering exertions in hunting down, and finally, destroying the Murderer, considering the limited means he had, are deserving of the highest commendation. M^r Tod informs me, the Indians along the communication between this place and Alexandria, as also some of the Tribes, inhabiting the banks of Fraser River, have repeatedly plundered, grossly insulted & frequently nearly

murdered several of our People, when passing in small parties along that route, these offenses, having been repeated so very frequently, and with impunity, the scoundrels have taken a footing upon it, so much so, that, I am told, they now think nothing of publickly insulting M^r Ogden on his way out and in, tho' supported by his whole Brigade. Some time last autumn an Indian of Lac Verde, and a ringleader amongst that horde of Banditti, passed nearly two months on this road, with the avowed intention of waylaying, and Killing, one of our Gentlemen, or as he expressed it, a white chief, and while stationed there for this purpose, one of the N Caledonia men (Chartier) on his way from here to Alex^a passed the place and suspecting the evil intentions of the miscreant, immediately clapped Spurs to his Horse to whose speed he was indebted for his life, as the blood thirsty wretch pursued him for a considerable distance, so much for that system of forbearance so closely followed lately in this quarter. On my way here from Colvile, I saw the greater part of the Okanagan River Indians, a Tribe who have given great annoyance during the past few years, to both M^r Ogden & the late Mr Black, indeed the latter had one of his men Killed and his horse shot under him, and himself made a prisoner and his arms taken from him in an offing with this Tribe some two or three years back, the arms were however returned shortly after the affair, these people have also given much annoyance latterly in thieving the Company's Horses, and bullying the men, when passing through that route in small parties, still from what I have seen of them, I am inclined to be of opinion that with proper management and by showing that degree of firmness & decision, which is so absolutely necessary in our transactions with the Natives, these people may be brought to conduct themselves peaceably & usefully towards us in future.

I am sorry to say I found the Fort here in a wretched state of defence, the houses & Store being completely rotten, and were it not for the number of Props, placed against them, they would have been down long ere now, the Fort Pickets and Bastions are even worse than this, and I am really astonished that any Gentlemen would have allowed an Establishment to go to ruin in this manner, without doing something towards renewing it, - finding the Fort in this wretched state I of course immediately determined to use every exertion in my power to remedy the evil with as little loss of time as possible, on enquiry however, I was sorry to find, that we could only muster six axes, one half of which number were already worn out and unfit for Service, I have therefore determined on sending to Colvile, as M^r M^cDonald has a Blacksmith, in hopes he may send me a few, and in the mean time do what I can with those I have, I never, throughout the time I have passed in the Indian country found any place so completely guttred of every thing as Thompsons River, and when I make enquiry what has become of this or that, the almost invariable reply is, M^r Pitt carried it to N Caledonia or we have seen nothing of it since the death of M^r Black, and tis my opinion this evil will continue to exist, while the place is considered under the jurisdiction of New Caledonia.

Having now given you as plain and correct a view of the state of affairs in this quarter as I am at present capable of doing, I shall trespass no longer on your time or patience, and wishing you a pleasant winter,

I remain with much respect,

Your very Humble and Obedient Servant,

Donald Manson

6. Excerpts from John Tod's Thompsons River Journal, October/November 1841

Thur Oct 30th A considerable band of Indians consisting chiefly of the principal men arrived at noon from above. They are the Same people whom the murderer had gone to visit, and many of them his own relatives after having Smoked their pipes, one of them in rather a peremptory tone demanded two Interp^{rs}, being about to communicate to M.^r Cameron & myself something of importance, but he was told, that one Interp^r must serve our purpose, or if he wanted another he must find him himself, after some warm altercation concerning the murderer, and their having hitherto in a great measure concealed his haunts from our Knowledge, tho' not openly, they at length became perfectly silent, apparently convinced of the justice of our cause _ during the pause which ensued M.^r Cameron somewhat startled them all by walking deliberately up to a tall stout man, a notorious character who in former times used to insult the whites & shoot horses belonging to the Estab^t, and taking him by the chin said "this man has the looks of a villain" and asked him why he did not look up like an honest man, to which the other made no reply, but looked very like a man who is condemned to be hung _ In the evening after they were turned out one of them in a conversation with Lolo said that he was willing to assist us to take the murderer. This was Grand Gule, the same to whom we promised to give some property provided he would decoy the murderer into our hands_

Fri Nov1st... Grand Gule came to us this morning to give us notice that he was ready to enter into our views respecting the murderer_ he agreed, that, if M.^r Cameron & some of our men would lay in ambush at a certain place which he mentioned to Lolo, he would first disarm the murderer then give M.^r C. notice. the affair was mutually arranged and immediately after he set forward on his mission M.^r Cameron will set forth tomorrow

Sat 2nd Towards afternoon M.^r Cameron got a few of the horses collected and with Lolo and three men set out once more after the murderer. One of Nicola's Sons also accompanied the party.

Sun 3rd Rain _ upwards of twenty Indians assembled about the Fort _ they came into the haul in the course of the day and quietly smoked their pipes. Grand Gule having left word with them to remain at the Fort until they heard some account of the murderer_

Mon 4th Rained again _ afternoon clear _ all anxiously looking out for M.^r Cameron's return.

Tues 5th Late on the afternoon M.^r Cameron & party returned, but without the murderer the wretch however is dead. being captured on the night amidst his relations. in bringing him to the Fort, where we intended to have him hung, he made his escape in crossing the river, by upsetting the canoe & nearly drowning the two men who were embarked with him _ on reaching the opposite side he was again driven wounded into the river. and being finally caught in an eddy on the same side on which M.^r Cameron & his men stood by them he was kept in the water until he sank to rise no more. the event appears to have caused little or no excitement in the minds of those in our immediate vicinity They all acknowledge that he merited death at our hands

Wed 6th The Indians assembled came in to the hall and quietly smoked their pipes _ Made them a speech on the death of the murderer. they acquiesced fully in all that was said on the subject _ Grand Gule was elected chief and paid the goods he was promised for betraying the murderer into our hands. these he distributed in part amongst a few of his relatives

7. Tod to Simpson, 20 March 1846

... [A]ffairs have assumed a position here that renders our situation much less secure than at any period since the death of M^r Black, and which is the result of a fatal event that occurred last spring with M^r McKenzie on the way out to Colvile with the Express - having for guide a son of Nicola (a chief of whom it is probable you may still retain some recollection) and one evening while encamped in the vicinity of OKⁿ Lake, the Indian, in an attempt to disengage Mr. McK's Rifle from under their baggage, & while his hand was still on its muzzle, received the whole of its contents immediately under his armpit, and died a few hours after in great agony. This unfortunate accident, as was natural to be expected, caused an immense sensation with the numerous relations, & others attached to the deceased, and tho' we succeeded at the time in allying their excited feelings without the sacrifice of property, Yet the affair has left an impression on their minds, which, tho' it may eventually subside, will not be easily effaced.

8. Francis Ermatinger's Journal

"While I was at Okanagan in Jan[uar]y a fellow, who had killed a man here, some years ago, stole a horse. [This may have been the Indian murderer of Charette, an NWC officer left in charge of the Thompson's River post by Alexander Ross in 1814.] Immediately on my return, altho' we mustered only five strong, I had him shot. The chief of the place talked a little upon the occasion in hopes of extorting property, but Dears and I set them all at defiance and appeared so determined that they at once lowered their tone and even confessed we had done right. I am prepared it will be said by those who preceded me, that it was a rash act, merely to screen themselves from blame for they were well-mannered when he committed the first fault and certainly ought to have made an example of him; but I am satisfied we will see the good effects of what we have done (Ermatinger, 119)

Comments re: marriage by fur traders in Oregon Territory.

"[Flathead women were] excellent wives and mothers, and their character for fidelity... so well established, that we never heard of one of them proving unfaithful to her husband." (Ross Cox, 135)

"[Okanagan women] have in general an engaging sweetness, are good housewives, modest in their demeanour, affectionate and chaste, and strongly attached to their husbands and children. " (Alexander Ross, 295)

"The Saleesh Indians were a fine race of moral Indians, the finest I had seen, and set a high value on the chastity of their women; adultery was death to both parties." (David Thompson)

Alexander Ross, who married an Okanagan woman, wrote:

We now come to the mode of courtship and the rites of marriage observed by these people. The law of the land, or rather the established custom of the country is, that parents betroth or promise their children in marriage while they are still very young; and these contracts are in most cases held valid when the minors come of age.

When a marriage alliance is thus entered into between parties on behalf of their infant children, reciprocal presents exchanged immediately between them serve as a seal to the marriage contract. These presents are occasionally repeated afterwards, but not by both parties, as in the first instance. The friends of the young woman cease to give but are always ready to receive what the friends of the young man may from time to time choose to bestow, until the parties come of age. What these presents amount to is immaterial, and depends on the means of the parties. Sometimes horses, or a horse, or a dressed skin, or a few trinkets of but little value; but as soon as the young man attains the age of fourteen or fifteen years, and the young woman that of eleven or twelve, he then goes and pays his addresses to her in person; which is done in this way: After the people are all in bed, the young man goes to the lodge or wigwam of his intended bride, enters it in the dark, makes a small fire, and sits by it till he is observed by some of the inmates. The whisper then goes round. If he be welcome, the girl's mother gets up, and without speaking to the young man herself, she awakens her daughter, who sits up with him by the fire; but the matron immediately retires to rest, leaving the young couple by themselves. During the tête-à-tête, no person in the lodge ever interrupts them. The interview is not long: the young man departs, and the girl retires to rest again. These visits are repeated some three or four times, or more; if the

suitors be welcomed on every occasion, all goes on well. He then goes in the day-time, pretty sure of success, to his intended father-in-law, accompanied by some near relative, and bringing with him the purchase-money; that is horses, robes, skins, and trinkets, more or less, according to the rank of the parties. On arrival they sit down opposite to the door of the lodge. If invited in, all is well; then the pipe of peace is smoked; one side of the lodge is put in order; a new mat is spread out, and the young man seated thereon. The young woman is then brought by her father and mother, each taking her by an arm, and placed near her intended husband. They are thenceforth considered lawfully married. This done, the pipe of peace is again produced; and during the ceremony of smoking, the father-in-law and the young man's relative expiate on the worth of their respective families; after which the parties regale, the bridegroom's companion returns home, and the whole business is ended.

Now in all cases of first marriage the wife must be purchased by her husband; for there is no greater disgrace to a family than for a parent to give his daughter away in marriage for nothing, as they call it. In this, as in many other instances, the custom here is exactly the reverse of that which prevails in civilized life; for in place of giving a portion with the daughter, the parent requires a portion for her; and the nobler the family the greater must be the donation, for the quality of the bride is on all occasions measured by the price paid for her by the husband. I have seen, however, the property tendered more than once refused; nor is it uncommon to increase the offer once or twice till it is accepted. We have now shown the fair and natural side of the question, and shall next turn to take a view of the reverse side.

It sometimes happens that the plighted virgin rejects the parents' choice. The parents themselves also change their sentiments in this case; and the young woman marries, not the person she was betrothed to, but another. This never fails to produce feuds and quarrels between the families concerned; the tide of animosity runs high - so high, sometimes, that the tribe splits into two portions, which separate from each other, perhaps permanently.

We need not touch on second or subsequent marriages; they are made and unmade according to circumstances, whim, fancy, without being subject to any other law than the will of the parties themselves.