

# THE WEEKLY BRITISH COLONIST.

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## THE BRITISH COLONIST

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## THE WEEKLY COLONIST.

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## LEGAL PRIVILEGES AND CHEAP LAW.

The debate yesterday on the Barristers' Bill brought out some interesting traits in the character of the Assembly. The exceedingly conservative amendments introduced by Mr. Dennis were ignored, and the liberal clauses contained in the bill—at least those comprised in the first two sections, embracing the most important points of the measure—again met the sanction of the Assembly. We are glad to see that the House is not inclined to go back on its former action, even to please so important a body of men as the lawyers of Victoria. We are a young colony—free in every sense of the word: unconstrained by treaty to adopt any foreign system of jurisprudence, and unhampered by the millstones of antiquated formulas that weigh almost the life-blood of older countries. Let us, therefore, guard carefully, in framing our statutes, against anything that has the remotest tendency to competitive restrictions. The days are happily gone when learning was confined to the professions. We see men now in the ordinary walks of life better read than many of the members of the Court, and with more extensive attainments than Blackstone himself. Of course it was natural in the old days of ignorance that a man who could write his name and smatter a little of Virgil and Horace should be a privileged character; but we shall find now—days these accomplishments pretty generally discontinued. We can see any day a hard working gold miner, an apothecary's boy, or a theatrical door-keeper, just as well up in the "classics," as the most pompous pedantic pettifogger from Lincoln's Inn. There is therefore now a monopoly of neither learning nor ability. In England, where education has been till very recently pent up within a circumscribed compass of course the professional classes had things very much their own way, not only because they were really the most competent, but because the ability which they possessed gave them power, and that power was exercised generally for their own especial advantage. At one time the Church had the monopoly, and then we saw its episcopal characteristic developed in the attempt to make this mundane sphere a grazing ground of very excellent material pasturage for the shepherds, but not the sheep. As men became more enlightened this spiritual incubus gradually disappeared, but only to give place to another dead-weight in the legal fraternity. This body comes in with all the potency and malignancy of some evil spirit and turns everything it touches into the most rampant confusion and disorder. It runs coaches through Acts of Parliament, questions the right of succession, makes society its general hunting ground, and protests itself by an invulnerability more effective than that of Achilles. Its reign, however, with the rapid dissemination of education, is gradually drawing to a close; and many who are at present living will see the day when barristers' privileges even in England will be no more than those of a carpenter or blacksmith. Ability and good character will be the sole test in all walks of life, and the man who can argue his client's case the most effectually and at the cheapest rate, will obtain the patronage of the public, whether he ate his regular number of "burnt dinners," or economized with "free lunches."

In Vancouver Island we are happily not weighed down by some of the absurd superstitious and disadvantages of our forefathers. We desire laws that will meet with the exigencies of the colony, and we have no body's interest or caprice to consult but our own. If with this *tabula rasa* before us we show a disposition to encumber ourselves with burdens that older countries would gladly wish dispensed with, we will indeed prove ourselves unfit for self-government. If we aim at making law a luxury for the rich and a terror to the poor—a means of carrying out injustice and cruelty to those who cannot afford to pay for its protection or assistance—we shall maintain legal monopolies, make restrictions on new-comers that are simply prohibitions, and divide one lawyer's labor among two. There is, however, a nobler work for the Legislature. It is to do what every other country is trying to accomplish—to make law cheap. At present it is better in Vancouver Island for a man to put up with almost any amount of wrong than go to law. If he wins his suit it is generally such a triumph as that which called forth the lips of the great commander.

Another such victory and we are undone. If he loses, he had better depart in an open boat for that bourse from whence no Vancouver Island debtor returns. The legal expenses in many cases amount to more than the whole sum in dispute. Of course there are instances where these expenses are more reasonable: the other day, for example, for the recovery of a debt of \$125, one of our citizens was only obliged to pay \$75, which, considering all things—the employment of a solicitor as well as a barrister—is not out of the way; still we think it would have been much better for the creditor had he agreed to deduct fifty per cent. from his bill and kept out of the court; or for the debtor to have paid at least fifty per cent. over the amount claimed, and saved legal expenses. Surely it is time that this disgraceful state of things should be remedied—time that the poor man should not be frightened out of insisting on his claim for fear of ruin. Colonies are not made for lawyers, any more than butcher's meat is killed for the flies, or the human body created for the lazar. If we must be bled occasionally let it be done with moderation; but let us not have a wholesale depletion that leaves the system irretrievably exhausted. If the legal brethren feel that they are so immoderate, so high above ordinary mortals—that the mere thought of a black sheep getting amongst them is enough to send them into a state of horror, let them nurse their spleen in some social state of beatitude, and not carry it, like the holy of holies, into so rough a place as the House of Assembly. We do not object to the gentlemen of the bar sitting themselves on a monopoly of some kind, of delicacy; but we have a strong antipathy to see the monopoly extend into a more practical and material region.

### THE CHARGE OF MANSLAUGHTER AGAINST MAJOR-GENERAL HUTCHINSON.

At the Exeter Assizes, on Monday, before Mr. Justice Byler, Major-General Hutchinson, commandant of the western district, surrendered to take his trial for the manslaughter of George McCoy, at Devonport. The grand jury having ignored the bill, the Major-General took his place to the dock to be tried under the coroner's inquisition. He was dressed in private clothes, and on being arraigned, pleaded "Not Guilty." Mr. Lopes, in addressing the jury, said: "I appear for the Crown in this case; and, as you have heard, Major-General Hutchinson is charged on the coroner's inquisition with what is called the manslaughter of a man named McCoy, whose death occurred under the following circumstances:—McCoy was proceeding from the Breakwater in Plymouth Sound, when a ball directed from the citadel of Plymouth struck the boat he was in, and McCoy was killed. Upon this a coroner's inquisition was held at Devonport, and a verdict of manslaughter returned. Subsequently a bill has been prepared at these assizes, and that bill has been ignored by the grand jury. I have had the opportunity of learning what were the directions of the learned Judge to the grand jury. I have also had the opportunity of consulting the authorities upon this subject; and I am of opinion that this charge cannot be legally brought home to the General. For these reasons I propose not to offer any evidence upon the coroner's inquisition. Perhaps I may be allowed, however, to say this further—that whilst several communications which have been sent to the General in respect to this practice from the towns of Devonport and Plymouth have not been attended to, it is now to be hoped that the death of this man, at any rate, will have the effect of causing the authorities for the future to take efficient and immediate measures to prevent the recurrence of similar fatalities." His lordship to the jury:—"The course which the learned counsel has taken in the usual course. Where the grand jury have ignored a bill it is not usual to proceed further upon the coroner's inquisition; and not only is it not usual, but in some cases it would lead to a public scandal were it otherwise; because at the same session one jury might say there was not enough evidence against a person even to put him upon his trial, whilst another jury might find him guilty. As no evidence is offered against him, and as you have no opportunity of finding a man guilty without evidence, there is only one verdict you can return." The jury immediately returned as their verdict, "Not Guilty." His lordship:—"Let him be discharged." Major-General Hutchinson then bowed and left the dock.—*Dispatch.*

## HOUSE OF ASSEMBLY

MONDAY, Sept. 26th.  
The House met at 3 p. m. Present—Messrs. DeCosmos, Duncan, Trimble, Dennis, Franklin, Street, Dr. Powell, Dickson.

## UNION OF THE COLONIES.

Mr. DeCosmos said he had given notice that he would ask for a day to consider in Committee of the Whole the union of the colonies of Vancouver Island and British Columbia. His Excellency had in his opening speech called the attention of the House to this matter, and the House had promised to give him their views. It was important that members should have time to consider the subject in their full and unbiassed opinions; he therefore would move that Monday next be fixed for that purpose.

Seconded by Dr. Dickson and carried. PROPRATE COVENANT.  
Mr. Duncan said on the 14th September last he had given notice of a motion for returns connected with the Probate Court. A

motion for returns had not been presented, and nothing had been done. There was a great deal in the Probate Court which required to be looked into. A great deal of property had gone into that Court and had not come out. It was due to the public as well as to those more particularly interested, that the whole matter should be carefully and thoroughly gone into. He accordingly would move the following resolutions:

Resolved, That His Excellency the Governor be most respectfully requested to cause the following returns to be laid upon the table of the Honorable House at as early a date as convenient:

1st. A return of all applications for Probate or Letters of Administration, with the names of the several parties, their descriptions, and full particulars, as furnished to the Probate Court, with reference to such estates.

2d. A return of all sums paid into the Probate Court in respect of estates of deceased persons, specifying testate or intestate, with the date of such payments, and how the same have been appropriated.

3d. A return of all sums paid for expenses or salaries on account of estates in the Probate Court (testate or intestate), specifying the name of each estate and the date and amount of payment, and the name of each party to whom and to whom made.

4th. A return of all sums paid out of Court on account of interest or testate estates, with the date of payments, the amounts and particulars of each item so paid, and the parties to whom paid and for what purpose paid.

5th. A return of all sums paid out of Court on account of interest or testate estates, with the date of payments, the amounts and particulars of each item so paid, and the parties to whom paid and for what purpose paid.

6th. The above several returns to be filed May 1868, to September 1868.

Mr. DeCosmos seconded, not that he had any idea that anything was wrong, but he was in favor of public inquiries into such matters. The resolutions were carried.

## BANKRUPTCY COURT.

Mr. DeCosmos gave notice that he would move to-morrow to amend the clause relating to the powers of the Bankruptcy Court.

## WEIGHTS AND MEASURES.

Mr. Franklin gave notice that he would ask the House to request His Excellency to procure a set of weights and measures of the Imperial standard for the use of this colony.

## MANUFACTURES BILL.

The House went into committee of the whole on this bill, Dr. Dickson in the chair. Clause 1 of the printed bill was passed nem con: on clause 2.

Mr. Dennis introduced his amendment to the effect that the following words be added in which the word "England" are the fundamental basis of the laws of the colony, but subject to the provisions herein contained as to proof of character and attainments:

Mr. DeCosmos opposed the amendment. The clause would virtually exclude Scotch barristers, as the Scotch law was different from the English; and as the next clause admitted the Scotch lawyer he did not see why colonists should not be similarly treated. English law was the real basis in all English speaking colonies. In Lower Canada where by treaty French law prevailed, lawyers are obliged to be thoroughly conversant in the English law; it was so also in the Cape of Good Hope as to Dutch law.

Mr. Franklin was a strong advocate for liberal measures, and he was happy to find that the bill before him was so liberal, and he was also happy to find that the amendments before him, which had been prepared by the members of the bar here, were more liberal than the Canadian statutes themselves. He was prepared to adopt the views of the bar of the colony which he believed were the views of the colonists at large.

Dr. Powell was glad to hear that his hon. colleague was so liberally disposed, but he failed to find in the amendments before him that liberality which his hon. colleague had alluded to.

Mr. Franklin:—Probably the hon. gentleman has not seen the amendments I allude to.

Dr. Powell spoke in regard to the printed amendments before him. The idea of a board of examiners appointed from men who had never been examined themselves was anything but liberal.

Mr. Street said if the printed amendments were the ones proposed he objected to the mode in which the proof of character and attainments was to be obtained. The provisions of the amendment were in his mind impracticable and absurd. A party wishing to practice here must first apply to the Chief Justice for permission to apply; this takes 14 days; then the Chief Justice must fix a time sufficient to write and receive a reply from the press where the applicant is located. It would be well to ask hon. gentlemen to imagine the applicant—possibly a man with a family, and limited means—waiting a letter from parties who may hardly take the trouble to answer the letter, and if they do, whose answer may never arrive, and whose

reply came—if it ever did—he then must be examined by a body of men who had never been examined themselves, and who were probably no more competent than those they proposed to examine. If this was the hon. gentleman's liberality he (Mr. Street) had heard enough of such liberality.

Mr. Franklin said he had quite another series of amendments, which he believed represented the views of the majority of the bar in this colony.

Mr. Street said the hon. mover of the printed amendments (Mr. Dennis) had just told him he intended to press his amendments.

Mr. DeCosmos said he had conferred with some of the legal fraternity and understood that there were only two or three points in which the most influential members of the bar wished the bill amended.

Mr. Dennis said he understood that if he, a qualified English Attorney, were to come to the colony he would have to undergo a year's probation with a Canadian lawyer, and then pass an examination, and he did not see why he should be more liberal than

how he could get his colony into a similar footing with Canada or Australia? We were in a totally different position from these colonies. He would ask the hon. gentleman whether he had been examined by a body of lawyers when he came to this colony?

Mr. Dennis:—I did not come from a colony; I came from England, where I passed a proper examination, and brought my papers with me.

Mr. Street:—That's all we want colonial lawyers to do.

Dr. Powell explained that the years probation which a lawyer friend (Mr. Dennis) had alluded to was rendered necessary by the voluminous nature of the Canadian Statutes, which extended over a period of sixty years.

Mr. Helmecken moved that all the words be struck out after the sentence where "English law" is the fundamental basis of the law of the colony.

Mr. Dennis' amendment was lost, only the mover in the affirmative.

Mr. Helmecken's amendment was also lost by the casting vote of the chairman (Dr. Dickson), and the original clause carried.

Mr. Franklin moved in amendment the insertion of the words "subject to proof of character and attainments" after the word "practice" in all such colonies.

The amendment, with the addition of a few words by Mr. DeCosmos, passed.

Clause 3, admitting D.C.L.s to practice, was struck out.

On Clause 5, referring to those instructed in the colony.

Mr. Franklin moved the striking out of the words "subject to such regulations as may from time to time be established," and the introduction of the words "subject to proof of character and attainments." Carried.

On Section 2, respecting Attorneys.

Mr. Dennis moved the striking out of the word "Practor," carried, and the clause relating to the powers of the Bankruptcy Court.

On Clause 3, Section 2, admitting Colonial Attorneys.

Mr. Franklin moved the addition of the words "Provided that such admission shall be subject to proof of character and attainments." Carried.

On Clause 3 of Section 2.

Mr. Dennis moved an amendment, to the effect that any applicant should apply to the Chief Justice, who should within fourteen days write to the place from which such applicant came, and on receipt of proof of character and attainments, applicant should pass an examination before a board of lawyers appointed by the Chief Justice.

Mr. Franklin moved the insertion of the words "subject to proof of character and attainments." Carried.

The words providing for the advertising of the intention of applicant in a daily paper for two months, were agreed to—5 to 4—and the clause passed as follows:

2.—Who may have been wholly or partially instructed within the colony to the knowledge and practice of Law and duly qualified to be enrolled in the Superior Courts of the Colony as Attorney, Solicitor, under and subject to the provisions hereinafter contained in proof of character and attainments. Provided that no applicant for admission shall be capable of being admitted, enrolled, or allowed to practice, whether as Barrister-at-Law, Attorney, or Solicitor, until he shall have taken and subscribed the Oath of Allegiance before the Registrar or Deputy Registrar of the Supreme Court of Civil Justice of Vancouver or Victoria, B.C., at least two calendar months previous, notice of his intention to apply in the next meeting term thereafter of the Court to which such application is intended to be made, and have delivered in writing to the Registrar or Deputy Registrar his application for such admission, giving therein at full length his name and address, and a statement of his qualifications, and shall also have made and subscribed the statutory declaration hereinafter mentioned, and shall also have deposited with such Registrar or Deputy Registrar, for at least one calendar month after making such written application, the certificate following: That is to say, If the applicant be a Barrister-at-Law of England, Scotland, or Ireland, duly authorized in that behalf.

The committee here rose and reported progress.

C. B. YOUNG'S SEAT.

Dr. Trimble asked the Speaker if Mr. C. B. Young might not take his seat, as the fourteen days had expired. Mr. Young had petitioned for the seat and deposited \$1000 as security for costs.

The Speaker said petitions against the return might be sent in up to 12 o'clock at night.

House adjourned till to day at 3 p. m.

YEBROU.

REPAIRS.—The new bridge near Cook's Bay, near the trail to Leech river, to replace that which was burnt during the late bush fire, has just been completed by Mr. Nicholson, for the Government.

## CITY COUNCIL.

MONDAY EVENING, Sept. 26th.  
Present: His Worship the Mayor and Councillors McDonald, Wallace, Ewing and Bunting.

## VIEW STREET DRAIN.

A communication was read from Mr. Tites, contractor, with reference to the above drain, stating that he had completed his contract, and had expended money in the construction of the drain, and requesting that the amount of the contract be paid him. The letter stated that \$165 had been collected by him from resident property holders, and a similar amount received by the Council's attorney.

On the motion of Mr. Wallace, it was agreed that the funds collected be paid over to the contractor.

His Worship remarked that the contractor was entitled to the most favorable consideration from the Council, and he should wish the matter brought before the Council again next meeting.

## VICTORIA WEST.

Long communication was read from the

petitioner of Victoria West, complaining of the road which had been laid out by Mr. Surveyor Green, with that gentleman's knowledge and directly through two blocks, making 12 lots valueless, and petitioning for a deviation.

His Worship said that the lots were laid out and the road made before the city was incorporated, and he did not see that the Council could interfere in the matter.

Mr. McDonald said the owners of the property should have protested at the time of the construction of the road; it was useless to appeal now to the Council, who had at a previous session declined to interfere with the Requisite road or bridges.

Mr. Wallace thought the parties had good cause for complaint, and some effort should be made to relieve them.

Mr. Surveyor Green, who was in attendance, explained to the Council that he was in the service of the Surveyor General at the time the road was laid out, and he pointed out to Mr. Pemberton the difficulty of getting the road through in consequence of the huge masses of rocks, without making a certain quantity of land was reserved for roads and that he must put the road through, whether he could. To have blasted the rocks would have cost an enormous sum. The lots had been bought since the road had been made, and the purchasers well knowing the difficulty, it took, and some persons had purchased lots fronting on the present road.

The petition was ordered to be placed on file, and the discussion postponed till next meeting.

## YATES STREET LANDING.

Mr. Green being called upon by the Mayor produced a map of the public landing at the foot of Yates street, and explained to the Council the position of the property.

Mr. Ewing moved the following resolution:—"That a communication be addressed to the Surveyor General, requesting him to delineate the boundaries of the Public Landing from the original surveys and water frontage on Wharf street to the west of Yates street at his earliest convenience." The motion was agreed to, and a committee, consisting of Messrs. Ewing and Wallace, with the acting City Surveyor, appointed to meet the Surveyor General or his assistant, and have the landmarks pointed out and defined.

Council then adjourned to the usual hour on Monday next.

## A LEADING JUVENILE.

A Paris correspondent of a London paper thus describes an odd scene which he says took place lately at a theatre in the environs of Lyons.—A worthy blacksmith occupied the first seat in the pit (there is no parquette in the theatre) and seemed to be absorbed by the interests of the drama until the 'leading juvenile' made his appearance, whereupon the excellent spectator leaped upon the stage and gave the 'leading juvenile' a sound thrashing, which the latter bore with exemplary resignation. The police rushed forward and soon obtained the explanation of the strange proceeding. The blacksmith told them that the 'leading juvenile' was his son, whom he believed to be at Paris pursuing his studies, and who drew regularly on him for his board, tuition fees and book bill. He excused himself for his impetuosity, but confessed that he could not command himself. The blacksmith agreed to allow the proceedings to continue, and he resumed his seat, but when he shook his fist at the 'leading juvenile' and called him a blackguard, rogue, knave, etc., which ever he appeared, the laughter in the house destroyed all the effect of the drama. After the curtain fell he collapsed, the 'leading juvenile' and carried him home.

## THE KING OF ITALY AND THE POPE.

Monsr. Salvini, Archbishop of Camerino and the Marches, and a priest named Rocconi, have been summoned before the criminal tribunals for attempting opposition to the government by carrying out the receipt of the Sacra Penitenzieria of Rome, forbidding the admission to confession of all who willingly submitted to King Victor Emmanuel. In case of non-compliance with the summons the archbishop and priest are to be arrested forthwith. The United States of Turin states that the archbishop will certainly refuse to appear.

## PROGRESS OF SOUTH AUSTRALIA.

The public revenue of South Australia in the year ending the 31st of March, 1864, amounted to £394,848, an increase of £123,513 over the previous year; but £35,000 of the increase appears to be due to a change in the mode of making up the accounts. The expenditure of the year was £275,465, an increase of £26,312, the chief increase being in immigration charges. The exports of colonial produce from South Australia in the first quarter of 1864 reached the unprecedented amount of more than £1,000,000, nearly half of it being in cereals.