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The Judiciary.

Most persons will doubtless still retain a vivid recollection of the disgraceful and most pernicious judicial muddle bequeathed to British Columbia by an imperfect and incongruous union. That condition, which at one time threatened to bring the administration of justice into contempt, terminated in the promotion of one of the Chief Justices to an appointment in another colony, and the elevation of the late Attorney General to the Bench. But, although by these changes the most felt difficulty was surmounted, it must be remembered that the Ordinance which merged the two judiciary systems into one for the united colony was by no means a complete measure. It was a step in the right direction. But it was only a step The colony is still without a Court of Appeal, or the material out of which to create such a Court. It is true 'The Supreme Courts Ordinance, 1869,' contains a provision apparently intended to create for the time an approximation to a Court of Appeal; but the effort was so feeble and the provision so inoperative that one experiences no little difficulty in accepting its sincerity. Section IX provides that 'Either of the said Chief Justices may, at the request of the other Chief Justice, assist such other Chief Justice in hearing and determining all cases, civil and criminal, which such last-mentioned Chief Justice might have heard and determined, and for that purpose the Chief Justice for the time being rendering such assistance shall have and exercise all the powers, authorities and jurisdiction, which the Chief Justice to whom such assistance is rendered has and exercises, and he may sit either separately or together with the last-mentioned Chief Justice, as shall seem best to the said two Chief Justices, for the due administration of justice.' Without pausing to animadvert upon an arrangement which has been graphically characterised by one of the Chief Justices as 'An appeal from Pillip Drunk to Phillip Sober,' we shall proceed to deal with the condition of the Judiciary, as at present existing. It has already been stated that the colony is still left without a Court of Appeal. It will hardly be necessary to dwell upon the subject of the importance of such a Court. That is a matter which has been so much discussed in the colony, and it is one which will so readily commend itself to every intelligent mind, that little need be said upon it here. To keep the Judiciary of the country, like Cæsar's wife, above suspicion, should be the first aim of a Government and people. That the Judicial decisions of the Courts should carry with them both justice and respect, as well as public confidence, is of the highest importance. That such can be the case without a full Bench and a proper Court of Appeal is not to be expected. We have two Judges, against neither of whom would we venture to breathe suspicion; yet the very fact of there being only two, and, therefore, incapable of constituting a proper Court of Appeal, places both in a false position. We care not how competent the Judges may be, or how carefully and correctly their decisions may be rendered; it is impossible that they can inspire that confidence and respect which would be the case did a Court of Appeal exist. And then there is, of course, the, perhaps, more practical reason, that the interests of litigants imperatively demand a Court of Appeal in the Colony. The right of appeal to England cannot in any way supply the want; it is, for all practical purposes, a mere heartless mockery of a colonist who believes himself to be in search of justice to be told tha he can appeal to England. An additional reason for the appointment of a third Judge and the establishment of a Court of Appeal is to be found in the condition of the County Courts of the colony. Without intending anything disrespectful to those gentlemen now administering County Court law, we may be permitted to say that it is highly desirable that County Court Judges should, as far as practicable, be gentlemen of legal training. With the jurisdiction of the Court extending to matters involving a money consideration of $500, such a qualification on the part of the Judges becomes especially necessary. With three Judges there would be little difficulty in so arranging County Court Circuits as to be able to dispense in a great measure, if not altogether, with the services of Magistrates as County Court Judges. If this question be regarded in the light of Confederation, we shall find still further reasons in favor of making the change. The consideration of expense has hitherto been urged as an objection to the appointment of a third Judge. This objection disappears before Confederation, which relieves the colony of the expense of maintaining its Judiciary. But while the expense of the Supreme and County Court Judges becomes a charge upon the Federal revenue under Confederation, it is open to question whether the salaries of those now acting as County Court Judges would be assumed by the Dominion. And it is, perhaps, desirable in many respects that British Columbia should go into the Dominion with a complete Judiciary, including a Court of Appeal. Should these views prevail, it will become the duty of the Legislature, at the next session of the Legislative Council, to take action in the premises.

Freedom of the Press and Liberty of the Subject.

The Police Court of this city has just been made the scene of proceedings which we must be permitted to characterise as a piece of extra-judicial tyranny and which call for the severest animadversion of the Press. The publisher of the *Standard* was arrested yesterday morning and actually locked up until the hour for opening Court arrived, when he was placed upon trial for certain alleged libellous comments, published in his paper on Friday last, respecting the conduct of the Magistrates in refusing a liquor license to one Stephens. We have carefully read the remarks complained of, and must confess that there does not appear to be anything in them of a libellous character, or such as would justify the Bench of Magistrates in taking *any* proceedings—certainly nothing to justify the extreme harshness of the form those proceedings assumed. A considerable latitude must be allowed in dealing with the official acts of public men, else the liberty of the Press will lose much of its value to society. The indulgence of private malice and personal slander should be checked and resisted with the utmost power of the law; but a proper examination into the character and conduct of public officials and Magistrates should be promoted and encouraged, so long as it is conducted with propriety and decency. In the case before us we shut altogether out of view the merits of the application for a license. Stevens may be a deserving person, or he may be the reverse. The question for us now to consider is, did the publisher of the *Standard*, believing that the case was one of hardship or 'petty tyranny,' as he termed it, over-step those bounds which may be regarded as dividing liberty and license? We must confess we cannot believe that he did. Doubtless strong words were employed; yet not more so, we venture to think, than are constantly used by public journalists on this continent, and even in England. If to characterize a judicial act as 'petty tyranny' entitles a Magistrate to place the subject in prison, possibly in irons, liberty of speech, of the Press, of the subject, must, indeed, be enjoyed on a very brittle tenure in this colony. But, admitting, for the sake of argument, that there did exist sufficient cause for proceedings in this case, still nothing could justify the extra-judicial severity which appears to have been resorted to. What need was there for taking the alleged offender into custody sooner than he was required to appear before the august tribunal? Why subject him to the needless annoyance of being locked up? The Magistrates and their officers knew full well where he could be found at any moment. An old resident, with fixed interests, he was not a mere 'bird of passage,' who might have flown had he not been 'nabbed' by a policeman. The great respect we have ever entertained for the Magistrate concerned in this most lamentable blunder must not be permitted for a single moment to stand between us and the sacred duty we owe to the public. Persons and private feelings and interests must stand aside when the liberty of the Press and the rights of the subject are threatened. In the proceedings which took place yesterday we must be permitted to say we discover a crime against society, before which mere hair-splitting about libellous words must sink into contemptible insignificance. By whose ill-advice the conscientious and usually cautious Police Magistrate has been so deplorably misled we have not the means of knowing; but we sincerely trust that he may have enough of good sense left to lead him to forego further proceedings and say no more about the alleged libel.

"Petty Tyranny" at the Police Court. High-handed Proceedings.

Yesterday Hon A DeCosmos, editor of the *Standard*, was arrested by virtue of a warrant issued from Mr. Pemberton's Court, to answer a charge of having libelled the Bench of Magistrates by asserting, through the columns of his paper, that their action in refusing to grant a license to J. Stephens, of Sooke, was a piece of petty tyranny. Mr DeCosmos was incarcerated about two hours. At 11½ o'clock, Mr. Pemberton ascended the Bench, and Mr. McCreight announced that he had been instructed by the accused to appear for the defence.

Police constable McMillan, who appeared in the position of complainant, being sworn, deposed to the publication of the alleged libellous article and to having obtained a copy of the paper from Mr. DeCosmos at the *Standard* office.

Counsel for the defence admitted the publication and questioned the propriety and legality of the proceeding, quoting Archbold and Cooke to show that a civil information is always granted in such cases, instead of a criminal information, as in the case before the Court. The Attorney-General was the proper officer to bring such a matter before the Supreme Court and the accused had a right to show that the article was not a libel. If he failed in that, then a jury would doubtless finds heavy damages against him.

The Magistrate said that the Court had no intention to do anything arbitrary. The duty of the Bench of Magistrates was to hear every application and decide conscientiously, but if every decision was criticized in the way Stephens' had been there would soon be an end to their sittings. Three of those articles had appeared, and improper motives had been imputed to the Magistrates. Such articles amounted to intimidation and he (the Magistrate) had looked well into the authorities and was satisfied that he had the power to deal with them and he intended to exert it.

Mr. McCreight objected to the mode in which the proceedings were taken, asserting that no action of the kind had been known since 1820. It was not right that criminal proceedings should be taken in such a case as against a common felon and the counsel said he felt he could not too strongly deprecate the course that had been adopted.

The Magistrate said he did not think he had traveled beyond his power. There had been three distinct offences committed and he thought it high time to take notice of them. However, he had no intention to send the case to the Supreme Court for trial.

Mr. McCreight here read the article complained of, and contended that petty tyranny meant arbitrary conduct, quoting from Cooke to show that in cases where blasphemous or seditious language was used the prisoner might be bound over to keep the peace. To ask that his client should be bound over not to write anything more of the kind would be a step in the direction of gagging the press.

The Magistrate disclaimed any such intention and directed the witness (McMillan) to read from Saturday's *Standard*, wherein it was stated that one of the 'Bench of Magistrates had a spite against Stephens.' Witness also stated that Stephens' license was refused him in 1869 because he concealed the fact that there was smallpox in his house and in consequence of that refusal the disease was communicated to a guest.

Mr. McCreight repeated his argument with respect to the proper course to pursue in such cases and the power of the Magistrate to deal with them, citing the case of Butt and Conant in support. The position of the Magistrate he regretted, as he appeared in the position of accuser and executioner.

The Magistrate said he sought only to do his duty.

Mr McCreight conceded that, but thought his position a lamentable one. The case should have come before the Supreme Court.

The Magistrate here said he would consult with the Attorney-General as to the course to be pursued, and if the Attorney-General was willing to take upon himself the responsibility he might do so. He thought the intention of the article was to intimidate the Bench, but he had no desire to deal arbitrarily with the accused, and if he would enter into his own recognizance to be of good behaviour—

Mr. McCreight said, no, he could not advise Mr. DeCosmos to be bound over not to write such articles in the future. The press might as well be gagged altogether.

The Magistrate said that he had been fourteen years on the Bench and that he had not interfered with the press in the slightest degree. In this case, however, he considered that intimidation was meant. He would lay the matter over and consult the Attorney-General.

Mr. DeCosmos was ordered to entered into his own recognizance to appear on Monday next, which he did and was discharged.

THE NEWBERN.—The U. S. S. Newbern, Capt. Freeman, arrived yesterday morning in the outer harbor, 3 days and 15 hours from San Francisco. She had as passengers Messrs J. H. Kincaid, Henry Kincaid, B. Sloman, M. C. Chestney, and Mrs. Jack and daughter. A large mail for this port was also brought. Capt Freeman reports strong southerly gales. After landing passengers and mails the Newbern stood away for Sitka *via* Port Townsend and Nanaimo.

DRUNKS.—Bill and Charley, Indians, were each fined 5 shillings for drunkenness and disorderly conduct, before Mr Pemberton, yesterday.

DR SIMMS' lecture last evening was largely attended and created if possible more interest than his previous ones. The great versatility of talent possessed by the doctor enables him to interest his audience for an unlimited time, and his style is so amusing and instructive that an hour seems too short for the subject. His examinations gave great satisfaction and were accepted by the audience as critically correct. The attendance of ladies was unusually large and they seemed particularly to enjoy the doctor's captivating eloquence. This evening's lecture is announced as the last of the series, and we would advise all to go and hear.

THE 'CORSAIR' HEARD FROM.—By yesterday's mail Messrs Sproat & Co of this city, consignees of the vessel, received advice that the English iron bark Corsair put into Coquimbo on the 12th June to repair damages sustained off the Horn. Her bulwarks, hatches, water casks, &c., were washed overboard, and the cargo damaged from salt water. Repairs were completed on the 27th of June, and it was expected the vessel would sail on the 28th for Vancouver Island. The case will be one of General Average. The Corsair is a new iron bark rated A 1 at Lloyds.

PUGET SOUND ITEMS.—Mount Ranier is said to be in a state of active eruption.....8000 acres of land were entered at Olympia on Thursday.....The fires have destroyed much valuable timber on the shores of Puget Sound. .....The Seattle *Intelligencer* says nothing of the rumored failure of the surveyors to find a practicable pass through the Suoqualinnie; the rumor is therefore doubtful.

THE Eliza Anderson reached her wharf at 11½ o'clock last night with 42 passengers and a light freight. She will sail again at 11 this morning. Among those on board were Rev Dr Lindsley and family of Portland, Mr F H Lamb and Lieut Bateman. At San Juan Island Major General Canby, U S A, and Staff were landed. Mr Finch, purser, has our thanks for customary favors.

FIRE.—On Sunday morning at 3 o'clock a small shanty situated on a lot in Herald street, near St John's Church, was totally consumed by fire. Loss, nominal. Cause, incendiarism. Saturday nights and Sunday mornings appear to be specially set apart for the operations of the Fire Fiend.

AN IMPORTANT CAPTURE.—The capture of King William and staff and the American General Sheridan, comes to us somewhat in advance of the press dispatch, and should be swallowed with a spoonful or two of salt. If the rumor be correct we should receive confirmation to-day,

HOUSE BREAKING.—Complaints are made that on Saturday night last attempts were made to burglariously enter three or four houses between the hours of one and three o'clock. Where were the night watch?

FROM SOOKE.—The steamer Emma arrived from Sooke last evening at 7:15 p. m. Mr Cowan came as passenger. A ship is expected from San Francisco in a few days to load lumber at the Sooke mills.

TRADE.—A brisk revival of trade is observable yesterday. Some heavy invoices for the interior were purchased and will be forwarded to-day per Enterprise. The buying is mostly for the mines.

THE mail steamer Alida arrived at 7½ o'clock last evening from Puget Sound, bringing 40 passengers, the mails and some freight. Capt Starr and Mr W H Taylor, purser, have placed us under obligations for late papers.

THE RAINS have done no harm to wheat on the Island and have really benefitted the root crops. A dry spell would enable farmers to garner the remainder of the grain.

RECOVERING.—Bunster's little boy, who broke both arms by falling from a loft to the floor of the brewery, is recovering and will soon have the full use of the disabled members.

THE CIRCUS BAND enlivened the vicinity of our office last evening by playing a number of fine airs. Than bank-notes we know of no notes so welcome as those of the Circus Band.

ASSAULT.—Morris Reilley and John Manson were each fined $10 yesterday by the Police Magistrate for assaulting two Indian women.

FOR THE CROWN.—Mr. McCreight, we understand, will prosecute before the Assize Court at New Westminster, in place of the Attorney-General, who is confined to his room with a broken arm.

LEECH RIVER.—The trail to Leech River is now open to the Forks, and a party of seven prospectors passed in on Sunday. White & Peterson were the contractors.

A HEAVY FOG hung over the Straits yesterday and must have proved a serious obstacle to vessels bound up or down.

SEVEN vessels from London and three from New York are now on the way to Portland with railroad iron.

THE New York *Herald* says Minister Motley was removed because he parts his hair in the middle.

THANKS—To Capt Freeman and Mr Kincaid for late papers by the U S steamer Newbern.

SUNDAY'S DISPATCHES.

Europe.

PARIS, Aug 18. — The following additional details of Tuesday's battle are obtained from official sources:

Prince Fredrick Charles attacked our right and was forcibly met by the corps of General Argad, at Theon, which hastened into action, and ceased only with the night. The Prussians attacked repeatedly, and were as often repulsed. Friday night the French corps sought to turn position, but were beaten off. Our losses are serious. General Teaulvelle is wounded. By eight in the evening the enemy was repulsed along the entire line. They had 120,000 men engaged.

LONDON, Aug. 18.—Coincidence, in the time of the recent revolutionary outbreaks in Paris and the south of France, suggests to the police evidence of a combined attempt to declare a Republic.

A special correspondent writes from Chalons, under date of Monday: An alarm was sounded at ten o'clock this evening, and the artillery was immediately put in motion, and went forward to Beismer, but found the railroad cut. They then fell back. No communication exists between Chalons, Metz or Verdun. We do not know where the main body of the French army is.

The Prussians have at least six hundred thousand men advancing on French soil, and as many more in reserve. In Germany, all talk of peace before the occupancy of Paris is laughed at.

VERDUN, Wednesday. — The battle still continues on the other side of Mars-la-Tour and seems to be going on in force. A number of Prussian soldiers have been brought into Bitche.

Trustworthy parties who have arrived here from Mars-la-Tour, speak of a heavy engagement there yesterday with a large portion of the Prussian army, in which they were charged with great vigor by our cavalry and Imperial Guard, and were thrown back on the Moselle. Thionville still remains in our possession.

LONDON Aug 19.—The *Tribune's* special says, Tuesday's battle is the crowning proof of the French falsehood and concealment in the recent telegrams. Palikao declared in the Corps Legislatif that the Prussians had been forced to abandon their attempt to interrupt the French retreat; that Bazaine was pursuing his route to Verdun unmolested; and while he was speaking the Prussians were attacking the French flank, and at night-fall one portion west of Bazaine's army had been forced to abandon the road to Verdun and were again in Metz. No considerable part of the French army has ever succeeded in getting far on the road from Metz to Verdun. The delay, from whatever cause, gave the Prussians time to come up, and they were able on Tuesday to come up strong enough to force the French to retreat and bring the 4th and 7th Corps into action. A junction of the armies of Bazaine and McMahon is expected at Vitrey la Francois, near Chalons, where the French expect to make a stand

A well informed dispatch says the Prussians will exact no surrender of French soil; but will insist on the exclusion of the Bonaparte family from thereon. The political restoration of the House of Orleans is currently discussed as practicable.

Midnight—We have it on high authority from Paris that it is the universal conviction that Napoleon's dynasty is ended, the Empress having packed up and dispatched all her valuables and left for England, *via* Belgium. It is also believed that the Emperor is on his way to this country by the same track: he does not dare to return to Paris. Prince Napoleon has fled to Italy with his family.

NEW YORK, Aug 19. — The *World's* special correspondent telegraphs from Russia that the news is almost menacing. There was a demonstration yesterday of students at Losito against Prussia. The Russian authorities are enforcing oppressive measures against the German inhabitants.

The Prince and Princess of Wales are unusually warm in their almost open sympathy for the French. The Prince's feelings are supposed to rest on his great dislike of his brother-in-law, the Crown Prince of Prussia.

LONDON, Aug 19. — Dispatches from Berlin state that the French armies seperated at Mars-la-Tours, and the main army at Metz were checked by the 1st and 2nd Corps of the Prussian army. The Crown Prince with the 2nd Corps, were marching to attack Froissard at Chalons. The dispatch adds that Bazaine must cut his way through the Prussian army or be forced to capitulate.

It is believed that preliminary negotiations for peace are under discussion here.