

VOTES AND PROCEEDINGS OF THE LEGISLATIVE COUNCIL OF HONGKONG.

No. 16 of 1858

THURSDAY, 10th JUNE, 1858.

PRESENT :

HIS EXCELLENCY THE GOVERNOR AND ALL THE MEMBERS, EXCEPT THE LIEUTENANT GOVERNOR FROM INDISPOSITION, AND MR JARDINE, WHO HAD REQUESTED TO BE EXCUSED FROM ATTENDANCE.

The Council met to-day, pursuant to adjournment.

The Minutes of the last Council were read and approved.

Read Resolution of Council of 11th January, 1858, - "That it is the opinion of this Council, that each Member should be authorized to introduce a stranger, by order under his hand, to the Sittings of this Council; and that the Governor should be authorized to introduce strangers without any such limit."

Read Despatch No. 14, of 9th April, 1858, from The Right Honourable Lord Stanley, concurring in the views of the Council, - That the Public be admitted to the Sittings of the Legislative Council, on the conditions expressed in the said Resolution.

It was moved by the Acting Colonial Secretary, seconded by the Attorney General, and carried unanimously, - That on strangers being admitted to the Sittings of the Legislative Council, the publication of the Proceedings of the Legislative Council in the *Government Gazette*, be discontinued.

Read Resolution of Council of 19th January, 1858, - "That His Excellency be requested to recommend that the Salary of the Clerk of Councils be increased to £200 per annum; such increase to commence from the 1st Day of January now instant."

Read Despatch No. 18, of 13th April last, from The Right Honourable Lord Stanley, on the subject of the said Resolution ; and

It was unanimously Resolved, - That the Salary of the Clerk of Councils be raised to £200 per annum, from the 1st Day of January, 1858.

The Ordinance " for Penal Servitude" was read a second time,
And the Council went into Committee upon the said Ordinance.

Sections 1, 2, and 3, struck out.

A new Section was introduced, discussed, and ordered to stand as Section 1.

A new Section was added, amended, and ordered to stand as Section 2.

A further Section was introduced, and adopted as Section 3.

Section 4 struck out.

Section 5 being renumbered as Section 4 and amended, -

The Governor put the question, - That the word "Seven" before the word "Years," stand part of the Clause.

Council divided.

Ayes (3).

—
MR. DENT.
ATTORNEY GENERAL.
CHIEF JUSTICE.

Noes (5)

—
MR. LYALL.
CHIEF MAGISTRATE.
SURVEYOR GENERAL.
COLONIAL TREASURER.
ACTING COLONIAL SECRETARY.

Question negative.

The Governor put the question, - That the word "Seven" before the word "Years" be struck out, and that the word "Three" be substituted.

Council divided.

Ayes (5).

—
MR. LAYALL
CHIEF MAGISTRATE.
SURVEYOR GENERAL
COLONIAL TREASURER
ACTING COLONIAL SECRETARY.

Noes (3)

—
MR. DENT
ATTORNEY GENERAL.
CHIEF JUSTICE

Question passed.

The Governor put the question, - That the said Clause as amended stand part of the Ordinance.

Council divided.

Ayes (5).

—
MR. DENT.
COLONIAL TREASURER.
ATTORNEY GENERAL
ACTING COLONIAL SECRETARY
CHIEF JUSTICE

Noes (3)

—
MR. LYALL.
CHIEF MAGISTRATE.
SURVEYOR GENERAL.

Question passed.

Section 6 made Section 5, and amended.

Sections 7 and 8, renumbered as Sections 6 and 7, and adopted.

Ordered, that the said Ordinance as amended be published in the *Government Gazette*.

The Governor laid on the Table *Draft Ordinance "for the Prevention of Offences touching Securities, Sales, and Deposits."*

It was read a first time, and ordered to be circulated amongst Members.

The Governor laid on the Table *Draft Ordinance "for Practitioners in Law,"* and the same having been read a first time, -

The Chief Justice, by leave, presented the following Memorial and Petition of the Hongkong Law Society,

To the Honourable JOHN WALTER HULME, Esquire, Chief Justice of the Colony of Hongkong.

THE HUMBLE MEMORIAL OF THE HONG KONG LAW SOCIETY.

We, your Memorialists, look to your Lordship, as the common head of both Branches of the Legal Profession, to protect us against an insidious attempt, now being made, to deprive us of our just rights and privileges, under the specious pretext of the amalgamation of the two Branches, thereby pretending to give to us equal advantages and position with the Barristers.

None in this Colony knows so well as your Lordship the reasons for the division of the profession into Barristers and Attornies, and the advantage gained to the Community thereby, and that the assistance which the Court expects, and so often receives, from the learning and research of an intelligent Bar, and which could not be expected from the legal education of an Attorney, is not lightly to be disregarded.

Your Lordship in the discussion of points of Law before you, would hardly lose sight of the fact, that an Attorney was addressing you in one case and a Barrister in another, and however desirous you might be to give a fair and equal attention to the arguments of each, it would be more than could be expected of humanity that you should pay equal regard to them.

We conceive that an amalgamation would be very prejudicial and unfair to us, and of no advantage to the Community, who, not regarding expense, may have all they can desire under the present system.

We beg leave to hand to your Lordship, for presentation to the Legislative Council, the accompanying Petition, which more fully expresses our views, and we humbly request your Lordship to give such effect to the prayer thereof in the Legislative Council, as your Lordship may deem just and equitable. - We have the honour to be, your Lordship's obedient servants.

THE HONGKONG, LAW SOCIETY,

By their Secretary,

EDWARD K. STACE.

5th June, 1858.

To His Excellency SIR JOHN BOWRING, *Governor of Hongkong, and its Dependencies, &c., &c., &c., in Legislative Council.*

THE HUMBLE PETITION OF THE HONGKONG LAW SOCIETY.

Sheweth, -

That in the *Hongkong Government Gazette*, of the Twenty-ninth of May, One Thousand Eight Hundred and Fifty-eight, a Memorial was published, purporting to have been signed by Fifty-one Mercantile and Trading Firms of Hongkong, addressed to the Attorney General, in which an opinion was expressed that the distinction between Barristers and Solicitors in this Colony was unnecessary, and that great benefit would result to the Memorialists, and their fellow citizens, were an amalgamation to be effected between the two branches of the Legal Profession here. And further stating, that they did not desire the change on account of the expenses attending legal proceedings, as they knew they must be necessarily high in this place, but that they could see no sufficient reason why they should be compelled to employ two advisers when it would be much more convenient for them to confide the whole of their law matters to one, and that the conviction had been long gaining on them, that in a young and small community like ours, there should be but one class of

practitioners, and that unrestricted competition between all the properly admitted members of the Supreme Court, would be a great improvement on the existing state of things.

That no reasons are given in the Memorial, except the convenience of confiding law matters to one adviser, and the inability of the Memorialists to perceive any sufficient reason for a state of things which has existed in England at least ever since the time of King Henry the Third, and has been found convenient and beneficial wherever the British Laws prevail, and under which the Memorialists, if they do not regard the expense, as they assert, can have all the convenience which they desire.

That your Petitioners are at a loss to understand the conviction of the Memorialists, that in a young and small community there should be but one class of practitioners, when it is borne in mind that in such a young and small community there has been introduced under the auspices of the present Attorney General, and there is now in full operation, all the technical, artificial, and complicated machinery of the Law as existing at home, which the addition of the numerous local laws which the position of this Colony has rendered necessary.

That the Memorialists appear to have overlooked the fact, that in England there is not only the distinction of Barrister and Attorney and Solicitor, but that the sub-division between Barrister and Barrister in different branches of the Law is as distinct as between Barrister and Attorney. There are the Common Law Barrister, the Equity Draughtsman, the Conveyancing Counsel, the Bankruptcy and Insolvency and Criminal Law Counsel, and the Advocate of the Admiralty Court, and again there are Special Pleaders and Conveyancers, who, not being Counsel, relieve them of some of their most difficult duties.

That the Attornies, Solicitors, and Proctors are the *general* practitioners, who are not expected to possess profound knowledge of any particular branch of Law, but to have a *general* knowledge of all, and to be expert in collecting and arranging facts with a view to the application of the Law to them in every branch, which latter duty devolves on the Barrister.

That there has been no public demonstration or expression of opinion, other than the above mentioned memorial, - no complaint has been made against your Petitioners' branch of the legal profession, and your Petitioners have been informed, and have good reason to believe, that the Memorial emanated from two individuals only, and that by means of house to house solicitation, and friendly persuasion, several of the Memorialists were induced to subscribe the Memorial, in the belief that the Solicitors of Hongkong were reasonable to the amalgamation, and many who could know nothing of the effect of the proposed change, added their names for the simple reason that others had signed before them; and your Petitioners' affirm that such Memorial is no reasonable or intelligent reflection of the matured opinion of any part of the Community possessing competent information on the subject upon which they solicit the interference of the Legislature, and that, moreover, but few of them have Law business of any magnitude to transact.

That your Petitioners submit, that even if such memorial were a *bonâ fide* exposition of the sentiments of the Community, it was, having regard to the want of representation in the Colony, and unconstitutional course to adopt,

with a view to such an important legislative measure as the destruction of the relative distinctions between Barristers and Solicitors, without reason or evidence, and without regarding the rights of those most interested in the question, and your Petitioners humbly but firmly remonstrate against the fact, that two Members of the Legislative Council were the first to sign a memorial to the Attorney General, himself a Member of the Council, and not a disinterested person in the present question, to solicit an alteration which they themselves would, in their Legislative capacity, be called upon to make, - the Signatures of those two Members of the Legislative Council being, as your Petitioners assert, the principal, if not sole cause of the signatures which followed, and tending materially to influence other member of the Council.

That bearing in mind the fact, that the Barrister in this Colony has to undertake advising in *every* branch of the Law, your Petitioners submit that the necessity for a division of the profession is *greater* here than in England, and that the advocacy of "unrestricted competition" in legal knowledge between Barristers and Attornies, in the circumstances above detailed, merely shews that those who advocate it have not made themselves competent to form a judgment on the subject.

That your Petitioners believe the Memorial to have orginated in a spirit hostile to their branch of the profession, covertly supported by certain members of the Bar, and that the real object of the Memorialists is to benefit those members of the Bar at the expense of your Petitioners, - a real and complete amalgamation being, as your Petitioners submit, simply impossible, and an imaginary one being destructive of the rights and privileges of your Petitioners, to which they are entitled in exchange for their disabilities, the supervision by the Courts in which they practice of their conduct and charges, and a laborious and expensive training.

That your Petitioners doubt the competency of a Colonial Government to make the change proposed, but they humbly submit, that before any attempt should be made at legislation on the subject, your Honourable Council should appoint a Committee to take evidence, before which Committee the persons who signed the Memorial, and others could be examined, and state their views and grievances, and your Petitioners might be allowed to defend themselves against that which is intended to cause destruction to their branch of their profession, without giving them any compensation, and deprive them of the undoubted right of every Briton, that of being heard before being condemned.

That, as an additional reason for proceeding with all caution in such a proposed change, your Petitioners would beg respectfully to call the attention of the Council to the fact, that in Canada, where an amalgamation of the profession nominally, although not really, exists, a call is being made at the present time for a distinct *separation* of the two branches.

Your Petitioners therefore humbly pray that the said Memorial and this Petition may be referred to an independent Committee or Commission to take evidence, and report thereon, before any attempt be made to legislate on the subject of the memorial. And your Petitioners in duty bound will ever pray, &c.,

THE HONGKONG LAW SOCIETY.

By their Secretary,

EDWARD K. STACE.

June, 1858.

And the same having been read and received, -

It was moved by the Chief Justice, seconded by the Attorney General, and carried unanimously, that the said Memorial and Petition be printed in the *Government Gazette*.

Ordered, that the said Ordinance be printed in the *Government Gazette*, for general information.

The Council adjourned till Tuesday, the 15th instant, at 12 o'clock.

By Order of His Excellency The Governor,

L. D'ALMADA E CASTRO,

Clerk of Councils.