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ADVICE.

We would advise him to be advised by no one except by those whom his Sovereign has commissioned to advise him; and even from them he would do well to take advice warily and circumspectly.—*Sydney Morning Herald, Tuesday, August 4th, 1846.*

The question naturally suggests itself, from what quarter is a gentleman in the situation of Sir Charles Fitz Roy, suddenly placed at the head of a community, of the details of whose local politics he must be ignorant, to seek for information and advice. In the general principles of colonial administration, we must presume him to be fully versed, and unlike the prosy and self-sufficient twaddlers of the *Herald*, who seem to measure all men's ignorance by their own, and to imagine that the assertion of the most vulgar truisms, in the most ungrammatical and slip-slop language, entitles them to lecture and dictate to their betters; we shall not, at any rate, start with the supposition that a gentleman with great experience, selected for a task of great nicety and difficulty, has anything to learn from scribblers in a colonial newspaper. His Excellency will naturally look, we apprehend, not as the *Herald* says, to those only whom his Sovereign has commissioned to advise him, which, we presume, is a grandiloquent periphrasis for the Executive Council, but to two other quarters, the Speaker, and the press of the colony. From the Speaker we are sure he will receive advice at once candid, moderate, and judicious, and information thoroughly to be relied on. Of this source of information, therefore, we need say no more. From the Executive Council we expect advice of a very different stamp. They have been the obsequious instruments, and, if we are to believe themselves (which we do not) the ardent admirers of the tyrant from whom we have just been delivered.

They have identified themselves with his policy, and they cannot without a short respite—a decent delay, repudiate it.

The Bishop of Australia is the most dangerous counsellor that can be imagined—too arrogant to retract opinions once taken up, too fond of power to yield to the maxims of constitutional government, too bigoted and narrow-minded to seek any other object than the interests of the small minority of his own church, who coincide with him in opinion; plausible and fluent in discourse, but thoroughly perverted in view, and unsound in judgment, this man has been and will be the source of incalculable evils to this colony. As distinguished from the Governor, he is the Executive Council.

We do not apprehend much danger to Sir Charles from the bad advice of the press of the colony, not that he will not receive bad advice, nay the very worst imaginable from this quarter, but that that advice, most happily for us, carries with it its own antidote. People, especially educated people, are not apt to be swayed by the opinions of men obviously ignorant of the common rules of grammatical construction, knowing no language but their own, and finding in that a mystery which they cannot solve—inflated when they would be forcible, twaddling when they wish to be conciliatory, insupportably vulgar and tedious when they strive to be witty, soaring into the most bombastic hyperbole, and sinking into the most puerile pathos when they endeavour to be sublime. Truth has an intrinsic beauty, but truth itself would look hideous in this disguise. We make no exception to this sweeping censure on the style of our cotempo-

raries, for they merit none. Alike to us is the stilted inanity of the *Herald*, the mawkish seullity of the *Australian*, the Robertson's-phrase-book style of the *Chronicle*, (which, in profound and *bonâ fide* ignorance of everything except the Hibernian dialect of the English language, strives to write up to Dr. Pangloss, and outdoes Sancho Panza in proverbs), or the lumbering balderdash wherewith the *Weekly Spectator* is pleased to delight those choice spirits for whose edification it is concocted. All these in their different ways are perfect models of depravity of style, so like and yet so different.

Facies non omnibus una
Nec diversa, tamen quales decet esse sorores.

Of their merits we must speak separately. The *Herald* is characterised by servility, venality, and inconsistency; it is too dull to lead itself, and too uncandid to acknowledge its obligations to those whom it follows. To ourselves it has adopted a uniform course, stolen our ideas, and abused their authors. While the Governor was strong, it supported the Governor; when the Council grew strong, it fawned upon the Council. Its whole idea of argument is confined to statistics, which it has not the power to analyse; its religion is a bigotry which it dare not express; its politics are a constant harlequinade, having nothing permanent in them, but the servility which the conscious braggart seeks in vain to conceal by kicking the fallen and insulting the helpless. Its reports of legislative and forensic proceedings are agreeable romances, totally free from the matter-of-fact dulness which characterises its efforts at wit or invective. Such is the *Sydney Morning Herald*. The *Australian*, in its little way, is equally contemptible. The pole-star by which the *Herald* steers its course is the state of its subscription list. The *Australian* is guided by the intense desire of its editor to obtain a place—even a little one. This, and a pecuniary necessity for humouring the vagaries of that highly consistent and judicious politician, Mr. James Macarthur, may account for the downward career of this unhappy print, which has long fallen into idiocy, and cannot be far from dissolution.

It would be doing the Roman Catholic clergy an injustice to fix them with the *Morning Chronicle* as their organ. It is no doubt anxious to be so, but its literary execution is so contemptible, its ignorance of public matters so gross, that they are understood wisely to repudiate it. Its politics are comprised in a single sentence—democracy for Ireland, despotism for New South Wales. The *Spectator* is made up of incomprehensible tirades on the land question, novels which nobody reads, criticisms which nobody understands. But as it has already arrived at the period which closed the existence of its two predecessors, it were cruel to embitter its last moments by unnecessary censure. Such is the Sydney press—in many respects but a too faithful reflection of the community. It is not, perhaps, worse than might be expected in a country where ability is at a high premium, and, consequently, where the salaries which can be afforded to newspaper editors are barely sufficient, to enlist even outcasts and charlatans in this important calling. From such a source there is nothing to be learned, but the facts of the day as they occur. Its opinions are worthless, its censures pointless, its praise little honorable.

For ourselves we will only say this, that between us and our cotemporaries there is this irreconcilable difference, that they are of the past and present, we of the present and future. That they acquiesce in the moral, social, and political state of this country, while we spurn it. They fawn on the vices of the community—they tell them that their dishonesty is sharpness, their servility loyalty, their vulgarity spirit. They seek to perpetuate, we to regenerate. The tone of moral feeling must be raised, the standard of political independence must be heightened, education must become more universal and profound, before an honest newspaper can speak in other tones than those of indignant reproof. Then, and not sooner, we may hope to have a press whose advice would be really valuable—a beacon to guide, and not an *igni fatuus* to betray.

THE BAR.

SOME days since Mr. Brewster, an Irish barrister, caused a motion to be made on his behalf, for a rule directing that he should be struck off the roll of the barristers and forthwith placed upon that of the attorneys of the Supreme Court. Their Honors granted a rule nisi, in which liberty was given to any member of either branch of the profession to come in and shew cause if he thought fit. Accordingly, on Wednesday last, on the motion being made to make the rule absolute, it was opposed by the Attorney General, on behalf of the bar; by Mr. Darvall, on behalf of Messrs. Lowe and Home, solicitors; and by Messrs. Norton, Nichols, Johnson, and Martin, in person, and was, after argument, discharged. The only authority cited by Mr. Windeyer, in applying for the rule in the first instance, was an Irish one, of which he could produce no report, except a statement of it, with which he had been furnished by an Irish barrister—Mr. Thomas Callaghan, the learned Crown Prosecutor. This case, he informed the Court, went the length of showing that the Court of Queen's Bench in Ireland, held that it had a discretionary power to admit a barrister on the roll of attorneys, and on the statement of this case to this effect, *ex relatione* the Crown Prosecutor, the rule nisi was granted. On the subsequent argument, Mr. Johnson read the case itself, from a number of the *Legal Observer*, from which it appeared that the Irish Act of Parliament expressly gives the Court power to admit persons as attorneys, without having served articles, and also, that before it will admit a barrister on the roll of attorneys, he must be disbarred. Under these circumstances, the *ex relatione* statement fell to the ground, and Mr. Windeyer made no further use of his case. The opposition to the granting of the rule was made on various grounds. It was argued, that although the Court of Queen's Bench in Ireland had the discretion to admit such persons as it may think fit, to be attorneys, there was no discretion of the like kind conferred upon the Courts of Westminster, or the Courts here, and that there was no instance of a barrister, or any other person ever having been admitted as an attorney in England, without having served under articles for either three or five years, as required by the Act of Parliament in that behalf. Several cases were cited, to the effect that even a barrister who had been previously an attorney, would not be re-admitted, nor would a barrister who had never been an attorney, be allowed to serve under articles, until he had been first disbarred. From these cases, it was quite clear that barristers possessed no right, by virtue of their standing as barristers, to walk into the inferior branch of the profession at pleasure. There being no English precedents, then, to warrant the application, reference was made to the Charter of Justice, and the Old New South Wales Act, and it was contended, first, that supposing the Charter to be still in force, the application could not be granted, inasmuch as by that Charter all barristers and attorneys were to be at liberty to practice in either or both branches of the profession, and, secondly, that the rules made under the sixteenth section of the New South Wales Act had repealed the provision in the charter, and declared that certain persons *only* (amongst whom barristers are not included) should be admitted as attorneys. The clause of the Charter which was referred to is the tenth, which is to this effect:—"And we do hereby further authorize and empower the said Supreme Court of New South Wales to approve, admit, and enrol such, and so many persons having been admitted barristers-at-law, or advocates, in Great Britain or Ireland, or having been admitted writers, attorneys, or solicitors, in one of our courts at Westminster, Dublin, or Edinburgh, or having been admitted as proctors in any Ecclesiastical Court in England, to act as well in the character of barristers and advocates, as of proctors, attorneys, and solicitors in the said Court, and which persons so approved, admitted, and enrolled as aforesaid, shall be, and are hereby authorised to appear, and plead, and act for the suitors of the said Court: subject always to be removed by the said Court from their station therein upon reasonable cause. And we do

declare, that no other person or persons whatsoever, shall be allowed to appear, and plead, or act in the said Court, for and on behalf of such suitors, or any of them. Provided always, and we ordain and declare, that in case there shall not be a sufficient number of such barristers at law, advocates, writers, attorneys, solicitors, and proctors within the said colony, competent and willing to appear, and act for the suitors of the said Court, then, and in that case, the said Court shall admit so many other fit and proper persons to appear and act as barristers, advocates, proctors, attorneys, and solicitors as may be necessary, according to such general rules and qualifications as the said Court shall, for that purpose, make and establish." The 16th section of the New South Wales Act, 9 Geo. IV. cap. 83, enacts "that it shall be lawful for the Judges of the said Supreme Courts, in New South Wales and Van Diemen's Land respectively, to make and prescribe such rules and orders touching and concerning, (amongst other things,) the admission of attorneys, solicitors, and barristers;"—"as to his Majesty, his heirs, and successors shall seem meet for the conduct of business in the said Courts respectively, and as may be adapted to the circumstances and condition of the said colonies," and all such rules "shall be of such, and the like force and effect, as if the same had been inserted in this present Act." In pursuance of the powers contained in this section, certain Rules of Court were made, one of which provides "That persons admitted as barristers, or as attorneys of this Court, shall only be allowed to act in their several and respective characters of barristers, and advocates, or of proctors, attorneys, and solicitors in the said Court." Another of these rules is to the effect, "That the following persons only shall be eligible to be admitted as solicitors, attorneys, and proctors of the Court," and then it specifies certain persons amongst the number of which barristers are not included.

It was contended on behalf of Mr. Brewster, by his two counsel (Messrs. Windeyer and Lowe), that the charter of justice gave a privilege which could only be taken away by express words, and that the words of the 16th section of the New South Wales Act were not sufficient for the purpose. The words "touching and concerning" the admission of attorneys, solicitors, and barristers, they contended, only gave power to regulate the manner of admission, but could not be construed to authorize the Court to admit persons in any capacity but that specified by the Charter. The Act, they asserted, was never intended to overrule the Charter, and by the Charter every barrister had a right to be admitted as an attorney, although no attorney had the right to be enrolled as a barrister. After the arguments had been heard, the Court took some time to consider, and, the Judges differing in opinion, the Chief Justice delivered his judgment first. That judgment was to the effect, that all Rules of Court at variance with the tenth section of the Charter were invalid—that the words "touching and concerning," gave power only to regulate the manner of admission—that, by the Charter, every barrister has a right to practise as an attorney, though it was not clear that every attorney has a right to practise as a barrister—that, although this was his opinion, nevertheless, inasmuch as those rules which had been adverted to, had been made by the Judges, and acted upon and upheld for fourteen years, he felt himself bound by the acts of his predecessors, and therefore, in direct opposition to what in his conscience he believed to be the law, he felt bound to dismiss the rule. Mr. Justice Dickinson, in a remarkably lucid judgment, delivered his opinion to the effect that the 2nd section of the New South Wales Act, only confirmed the charter so far as it was not altered by the Act—that the 16th section of the Act, gave the Court power to make other provisions for the admission of barristers and attorneys than those contained in the charter—that the Court had exercised that power—that the charter was thereby repealed, and that, therefore, the rule must be discharged. Mr. Justice Therry, with some apparent hesitation, concurred with Mr. Justice Dickinson.

Now with respect to the judgment of the Chief Justice, we believe that there do not exist two opinions about it. Every one that we have met with, concurs with us in believing that his reasoning was erroneous, and that if it had been correct, his decision would have been improper. The tenth section of the charter, he said, was in full force, because the words "touching and concerning" gave no power to alter it. But how was the charter itself made? By what authority was it framed? Why by virtue of the very same words as those which the Chief Justice said were not sufficient to alter it. The 17th section of the Act of Parliament 4 Geo. IV., cap. 96, enacted:—"That it shall be lawful for his Majesty, his heirs and successors, by his said charters or letters patent, or by any order in Council, at any time hereafter to make and prescribe, or to authorise and empower the judges of the said Supreme Courts in New South Wales and Van Diemen's Land respectively, under such limitations as his Majesty shall deem proper, to make and prescribe such rules and orders touching and concerning (amongst other matters) the admission of attorneys, solicitors, and barristers." These words the Chief Justice considers sufficient to authorise the framing of the 10th section of the charter, but the very same words he does not think sufficient to warrant the judges of the

Supreme Court, in making different rules with respect to the same subject matter. Surely the Chief Justice must, when he looks attentively at this 17th section, see the absurdity of the position which he has taken up. If he be right in the interpretation which he has put upon the 16th section of the 9 Geo. IV., cap. 83, then it does not follow, as he says, that the 10th section of the charter is still in force, but that it, equally with the rules made under this 16th section, is illegal and void, as being made without any power to warrant it. If the judges had no power to make the rules which they have done with respect to the admission of barristers and attorneys, then it necessarily follows that King George the Fourth had no power to make the 10th section of the charter. This is the position in which the Chief Justice's interpretation of the words "touching and concerning" places him. But admitting his view of the matter to be the correct one, what are we to say to the conclusion at which he has arrived? We can understand as well as the Chief Justice does himself, how very important it is in some matters, for judges to be guided by established precedent. But where was the established precedent to bind him in this case to decide against his own deliberate opinion? The validity of the Rules of Court for the admission of attorneys, had never been judicially enquired into before, and, therefore, there was no previous decision upon the point. The meaning of the words "touching and concerning," for the first time, came into question on this occasion, and, therefore, the Chief Justice was bound to decide respecting them according to what he honestly believed to be the law. It might be that other judges by framing rules in pursuance of those words, showed that they conceived that those words gave them the power, but their opinion thus tacitly expressed without any argument whatever, cannot be sufficient to bind any of their successors. If *obiter dicta* not directly relating to the point at issue, are not looked upon as authority, surely the mere actings of judges, not in their judicial capacity, cannot be looked upon as sufficient to establish a judicial precedent. In the present instance, a certain clause in an Act of Parliament, came, for the first time, before the Court to be construed, and every member of the Court was bound to decide according to whatever construction he gave it. We, therefore, think that the Chief Justice was wrong; first, in his construction, and secondly, in deciding in opposition to his own deliberate opinion.

We have said thus much upon a matter which, to some of our readers, may probably be very dry and uninteresting, because we think that this proceeding of Mr. Brewster's has given the death blow to the division of the bar in this colony, and this we look upon as a matter in which every member of the community is deeply concerned. In whatever way we consider it, we cannot help being thoroughly convinced, that the separation of the legal profession in this colony, into two distinct branches, is a great and constantly increasing evil. As far as the suitors are concerned, it not only makes the obtaining of justice more difficult and expensive than it would otherwise be, but it also compels them to throw themselves into the hands of a limited bar—which, however respectable it may be for education and talent, is still not such a bar as it would be, if thrown open to the competition of the whole colony, for it cannot be said that any twenty barristers who are unable to obtain practice in England, are superior, or are at all likely to be superior, to the talent which an entire community could furnish. We do not, for one moment, wish to under-rate the pretensions of our bar, some of the members of which are, we admit, most able and learned men, but we do say that it is not fair or expedient that they should enjoy the great monopoly, which is at present in their hands. It is a monopoly which, if it were enjoyed by people of twenty times the talent which our barristers possess, would still be injurious to the country. It may be said that the bar has no monopoly, but that surely must be considered a monopoly which no one can participate in, except by first residing three or four years in the mother country. If the native youth of this colony think proper to be called to the bar, no doubt that branch of the profession is open to them, if they leave their friends and relatives for a few years, and go to London. But why should parents who wish to make barristers of their children be compelled to send them away from them, probably without protectors or friends, at that period of life when they most require them? All the means of acquiring a good legal education exist here on the spot, as any one acquainted with the present state of the profession will readily admit. It is unjust, therefore, and injudicious, to exclude the native youth from a path in which so many laurels may be won. In England, the bar has ever been the high road to wealth, to honor, and to fame, and there, it is open to every one, and great have been the benefits which such a state of things has produced. But here this path is closed to the aspiring views of young ambition. The sons of Australia may possess talent of the loftiest kind—they may have education sufficient to fit them for the highest stations—but they are excluded from that honorable and intellectual profession which is best adapted to make available that talent and that education—a profession which is and ever has been the nurse of patriots and of statesmen—a profession which for

ages has been the safeguard of the parent state in its darkest hours of political adversity—a profession which owes all its splendour to the fact of its ever having been open to universal competition. It is therefore one of the first duties which our legislators owe to themselves and to their country, to place the legal profession on the same footing here as it now stands in the great majority of the United States of America, and in the great majority of the British colonies also, and abolish the distinction between barrister and attorney—a distinction suited only to a rich and ancient community—unsuited to any community which has not the privileges of making barristers of its own. We shall then have an abler and a more independent bar than we now have, and no barrister in defiance of all law, will be able to say to an attorney as was said the other day; it is competent for me to become an attorney when I like, but the converse is not true. It may be very poetical in the fortunate occupant of a wig and gown to say:—

Facilis descensus Averni
Sed revocare gradus, hic labor, hoc opus est.

but we trust the Legislative Council will speedily raise the attorneys from the lower regions which they now occupy, to that more elevated position in which the barristers are placed.

EPIGRAM.

Three Captains called, (in courtesy or scorn),
The recent Levee greatly did adorn.
The first in timberness of toe surpassed,
The next in cat skin, and in brass the last.
Innes the entrance, Brown the exit kept,
Midst of the circle proud Macdermott swept.
Wooden in head, and feline in the heart,
In forehead brazen, well they played their part.

PROMPT SERVILITY.

His Excellency having shaken hands with those immediately about him, mounted a horse prepared for him.
Such was the language used by the *Sydney Morning Herald* of Tuesday last, in the glowing account which it gave of the "Installation of his Excellency Sir Charles Fitz Roy." We were at first at a loss to conceive what description of horse it was that was thus prepared—whether it was really and truly a live animal, or merely one of the flax and calico imitations of the Victoria Theatre, newly furnished up for the occasion. We have since, however, had our doubts resolved. The horse alluded to was a veritable horse, but the reporter was, nevertheless, correct in saying that it had been prepared; for, it turns out that Mr. Moore Dillon, the Criminal Crown Solicitor, provided the animal, while his friend, Mr. Thomas Callaghan, the Crown Prosecutor, contributed the saddle and bridle. The knowledge of this little fact lets us into the whole mystery of the preparation, and, at the same time, makes us acquainted with the prettiest piece of unadulterated servility that has yet been exhibited in New South Wales. There is a tide in the affairs of sneakism, which taken at the flood leads on to office and to pay, and Messrs. Dillon and Callaghan have shown that they know it. Before Sir Charles Fitz Roy had even landed, it appears that they commenced their preparations, and by a species of ingenuity perfectly characteristic, managed to be the first persons in the community to render him a service. We know not yet whether Sir Charles delights, like his predecessor, in the society of sycophants rather than in that of honest, honorable, and independent men, but if he does not—if, on the contrary, he is a straight-forward English gentleman, who detests fawning as much as he detests dishonesty itself, he will treat with the most undisguised contempt, such a humiliating exhibition as that which Messrs. Dillon and Callaghan were in so great a hurry to afford him. The sneaks have commenced their tactics promptly, and it is to be hoped that Sir Charles Fitz Roy will as promptly put them down.

Port Phillip.

THE Melbourne papers received this week announce the arrival at that place of the *William Wilson*, from England, bringing news to the 28th of March; but on looking over the English extracts in those papers, we do not see anything new to communicate to our readers. We have given a few extracts of a local nature from the papers received, though not of much interest to our subscribers.

MEDICAL ASSOCIATION.—A number of the medical gentlemen of Melbourne have resolved themselves into an Association, having for its objects the promotion of friendly intercourse, the general interests of the faculty, and the establishment in fact, of a "board of honor," for the adjudication of any minor differences that may happen to start into existence. Dr. Cussen, the colonial surgeon, has been appointed president for the current year. One of the not least pleasing phases in the institute is the establishment of periodical festivals, the first of which was duly celebrated at the Prince of Wales Hotel, on Wednesday evening. The "spread" was in Murray's very best style. Dr. Cussen officiated as chairman, and Dr. Wilkie as croupier, and the "feast of reason and the flow of soul" was protracted to such a length as clearly to establish the fact, that though "doctors differ," they can, like all other mortals, "live and be merry." The night was accordingly spent right jollily. One remarkable feature of the institution, we forgot to state, is the intention of establishing a medical library, for which a considerable amount of funds has been realized.

THE FINE ARTS.—Mr. Opie is engaged in executing some scenes from the government paddock, at the instance of his Honor Mr. La Trobe. This artist is a decidedly improving one, and deserves the very liberal patronage which is bestowed upon him.