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THE ATLAS OF THIS DAY CONTAINS:—

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MR. BREWSTER'S BILL.

THE gentlemen of the bar have succeeded in thwarting this measure of reform, at all events for the present session of the Legislative Council. On the order of the day for the second reading coming on, the Attorney General moved, pursuant to notice, that Messrs. Gordon and Broadhurst should be heard at the bar, on which Mr. Windeyer moved, as an amendment, that the Bill should be submitted to a select committee of ten. On this, Mr. Wentworth moved and carried a second amendment, to the effect, "That this Bill be referred to a select committee of this House, with an instruction to inquire into and report upon the best means of reducing the expenses of the law in all its branches; and in the event of their report being against the amalgamation of the profession by the said Bill contemplated; that it be a further instruction to such Committee, to inquire into and report upon the best mode of providing for the admission of youth educated in the colony to practise as advocates in the different courts of the colony." Now we do not, for one moment, doubt the propriety of acceding to the request contained in the petition presented by the members of the bar, that the Bill should not be hurried through the House. Without placing any weight whatever upon the allegations set forth in that petition—without believing the statement that these gentlemen will not, upon the whole, lose by the contemplated change—without giving them credit for any remarkable degree of sincerity, in the extremely temperate course which they have adopted, we cannot but admit that it is fair and decent under all the circumstances, that some slight pause should be made—that some inquiry should be gone into—before a great change is effected, which if effected at all, it is obvious, must be of a permanent character. Although we cannot agree with the Attorney General, in thinking that the barristers by the passing of this Bill, will lose any right or privilege, we cannot at the same time forget that it is a measure by which their interests are likely to be seriously affected. We should, therefore, have been pleased to see the amendment proposed by Mr. Windeyer adopted by the Council—for we think that that amendment was as great a degree of attention as the gentlemen of the bar had a right to expect. But these gentlemen were not, it seems, satisfied with such a step as this, but desired first to be heard by two of their body at the bar, and secondly to clog the consideration of the measure, with an entirely irrelevant and unnecessary enquiry into the best means of reducing expense in all the branches of the law. The first attempt has, for the present, failed, and should it be repeated at any future period, we have no doubt it will fail a second time. If admitted to the bar of the House, all that the learned gentlemen can do in speaking against a measure which they admit cannot affect their pecuniary interests, will be to discuss its policy, a duty which it is the province of the members of the Council only to perform. Should any members of the bar be allowed to speak before the House, under such circumstances, they would, in fact, be permitted to usurp, for that occasion, the functions of legislators, and thus make the most direct inroad that can be conceived upon the privileges of the Council. This is so obvious that we entertain no fear that our representatives will tolerate any such proceeding, should it be hereafter attempted to be practised. But although the learned gentlemen failed in their application to be heard by counsel,

they succeeded in passing the amendment proposed by Mr. Wentworth. Wisely considering that the two grand reasons for the introduction of Mr. Brewster's Bill were, first, the diminution of expense, and secondly, the admission of the native youth to practise at the bar, they declared their willingness to consent to any proper measures for securing the latter object, and proposed an enquiry into the whole subject of lawyers charges, for the purpose of attaining the former. Unfortunately the bait took, and several of the country members suffered themselves to be caught. Mr. Wentworth's committee has now been appointed, and the result will be merely a postponement of the whole matter until the ensuing session, without any practical advantage to the community whatsoever. But the Bill is only postponed—its supporters are not entirely defeated. Long before the commencement of another session, the motives which prompted Mr. Wentworth's amendment will be seen through, and those gentlemen who have suffered themselves to be led foolishly away from the substance in pursuit of a shadow, will see how glaringly they have been duped. It was never intended that Mr. Wentworth's committee should propose any reforms, and we confidently predict that it will propose none. The object which those who framed it had in view has been already attained, its labors therefore will lead to no result, and when the next session will have shown the country members how fallacious are the visions of cheap litigation which Mr. Wentworth promised them by means of this committee, they will, we have no doubt, give their assistance to the passing a measure, to the principle of which they are already pledged. In the meantime, it will be the duty of those who approve of this Bill to keep the attention of the public fixed upon it—and we promise so far as we are concerned, that it shall receive the fullest discussion, for the more it is discussed the more clearly will its necessity be established. The arguments, if arguments they may be called, brought forward in the House on Thursday night against it, are in every respect fallacious and contemptible. We cannot do better, on the present occasion, than devote a little attention to their examination. Much stress was laid by the Attorney General, upon the fact of the division of the bar having been determined upon after seven years deliberate consideration, by three eminent luminaries of the law—one of whom, to use the words of Mr. Windeyer, "was ever anxious to do everything for the welfare of the colony, and of whom he fully believed, that a more patriotic judge never existed in any community." Two of these gentlemen are now no more, and one still lives. Of him we have nothing to say that can redound to his credit—we cannot honestly offer him even the smallest tribute of applause. Neither as a judge nor as a man does he possess any share of our respect. Of those who are gone, one indeed was a distinguished and enlightened character. Sir Francis Forbes—*clarum et venerabile nomen*—was a luminary of the highest order. Though dead he still lives in our holiest recollections, and while any reverence exists in this land for distinguished learning, combined with a genuine love of freedom and of justice, the memory of this great judge will be cherished with almost filial fondness and respect by the present generation and their posterity. Any measure, therefore, which has the undoubted sanction of such a name as this, is not to be lightly treated. If, after seven years deliberation, Sir Francis Forbes saw the necessity of a division of the profession, and, therefore, consented to it, much of what the Attorney General said would be correct. But this is not the case. It is true that a rule of Court was made for the division of the profession in the year 1828, which rule was not to come into force until the approval of the King had been obtained. But this rule was not transmitted for such approval for several years, and was almost forgotten. At the instance of the late Dr. Wardell it was ultimately sent to England, and in the year 1835 it came into effect. But it was not under consideration during the whole of this period of seven years, nor did it at any time have the cordial support of Sir Francis Forbes, who was importuned by Mr. Justice Burton to assent to it. Not only is this the fact, but it is also undoubtedly true, that a very few

weeks before his death, Sir Francis Forbes told one of the gentlemen whose interests it prejudicially affected, that he never regretted any act of his life more than his assenting to this most injudicious rule of Court. Instead, therefore, of Mr. Brewster's Bill being opposed to so great an authority as this, we find the contrary to be the case. But apart from authority, we feel satisfied that nothing can be said against this Bill. It is, indeed, said that it would not diminish the cost of seeking justice. Mr. Wentworth even went so far as to say that it would increase expense, and in order to prove this incredible fact, he read several ancient bills of costs made before the division of the bar. The first bill was one in which the attorney confined himself solely to his duty as attorney, and therefore the costs were exactly as they would be now. This bill, therefore, shows nothing, beyond the disgraceful cupidity of the late Dr. Wardell, who refused to receive less than four guineas for a retainer. Mr. Wentworth produced a second bill, and after reading several of the items, he told the House that the whole of it amounted to the enormous sum of £251 4s. 5d., and that, too, in an action of a very simple character. The mention of this sum produced a considerable sensation—a sensation which would have been spared if the learned gentleman had had the common honesty to state, that upwards of £150 was paid in this case for witnesses expenses alone—expenses too, rendered necessary, in all probability, by the absence of those rules of pleading which Mr. Wentworth so loudly condemned. After pointing out so gross a *suppressio veri* as this, we might be perfectly justified in treating the rest of Mr. Wentworth's arguments with silent contempt. Among other items in this bill, he singled out the fee for drawing the brief, from which it appeared, that the sum of £27 10s. was charged for 55 sheets. Not knowing anything about this case, it is, of course, impossible to say whether it required so much as 55 sheets of writing to state the circumstances, and the nature of the evidence to be adduced. But if so, then this charge of ten shillings per sheet is perfectly correct and no fault can be found with it. But if, as may have been the case, this expenditure of writing was unnecessary, then it only shows the avarice and the dishonesty of Dr. Wardell. We are not aware from what quarter Mr. Wentworth obtained those bills of costs, whether from a relative of Dr. Wardell or not, but if so it reflects as little credit upon such relative as it does upon Mr. Wentworth himself, that for the paltry purpose of hood-winking the community, they scrupled not to expose, in no honorable light, the conduct of a man who is no more. Mr. Wentworth, at all events ought to have been the last man to attempt to bring discredit upon the memory of his friend, by exposing to light acts which are at all events disreputable if they are not positively dishonest. One or two of the items quoted by Mr. Wentworth, were undoubtedly improper, but it does not follow that because the taxing officer of that day winked at such extortion, the taxing officer of the present day would do the same. Charges in a bill are not, as Mr. Wentworth well knows, optional with the attorney. The bill, when made out, must go through the ordeal of taxation; and if the taxing officer be honest, and skilful, the public will be adequately protected. There can be no question, that if, after the amalgamation of the legal profession, attorneys should still send briefs to barristers, as they now do, the costs would remain unaltered. But if, as would undoubtedly be the case, clients placed their business in the hands of those who could carry it quite through without additional assistance, all the expense of retainers and attendances on counsel would be saved, for whatever might have been allowed in former times, it cannot be supposed that an attorney or barrister would be permitted to charge for attending upon or retaining himself or his partner. So far then as expense is concerned, there can be no doubt that the public would be considerable gainers by the abolition of the division which now exists in the legal profession. The Attorney General laid great stress upon the danger to be dreaded from the increased and petty litigation which would be encouraged, if attorneys were allowed to practise at the bar, and

mentioned an instance of thirteen actions having once been brought for thirteen individuals then actually in a chain gang. We can tell the Attorney General, that speculative actions would not be more numerous than they are now, if the division should be abolished; and we defy him to prove that they were more numerous in former times. It is very well for him to make the assertion, but we positively deny the fact. As to trivial suits, we know of no right which the Attorney General, or any body else, has to prevent a poor man from seeking redress from the law, for an injury however small. It is the boast of English law, that the courts of justice are open to every one—and every facility should be afforded to approach them. The smallest injuries are entitled to redress, as well as the most enormous. "I know," says Bentham, in a passage the force of which even Mr. Darvall must admit, "what a *groundless* suit means—I know of no such thing as a *frivolous* one. No wrong that I know of, can be a trivial one, which, to him to whom it is done, appears a serious one—serious to such a degree as to make it worth his while to demand redress at the hand of justice. Conduct is the test of feeling. I know of no right I have to set up any feelings of my own as the standard of those of my neighbour, in contradiction to a declaration of his, the truth of which is evidenced by his own conduct. What to one man, again, is trivial, to another man may be of high importance. In the account of wrong, too, must be included not only the wrong taken by itself, but its effects in the way of encouragement to repetition, and its effects in the way of example. I know of no wrong so slight, that by multiplication, may not become intolerable. Give me but a license to do to any person at pleasure the minutest wrong conceivable—I need no more—that person is my slave. Allow me to rob him, though it be but of a farthing—farthing by farthing I will find the bottom of his purse. Allow me but to let fall a drop of water upon his head—*gutta cavat lapidem*—the power of striking his head off would be less susceptible of abuse." This is the spirit in which our legislation should be framed—this is the language with which the condemnation of trivial suits should be refuted. Here, as in other respects, has Bentham shown the soundness of his philosophy—theorist though he was. Mr. Darvall indeed, with a degree of rashness which we did not expect from him, attempted to throw discredit on the exertions and abilities of this most distinguished man; but it was the pigmy attacking the giant. He was replied to by Mr. Lowe, in a burst of eloquence, which, we regret that we are not enabled to quote entire; "Let us do justice," said Mr. Lowe. "to the memory of a great man. I never heard a bolder attempt than that of the honorable gentleman, to persuade this House that Bentham was an enemy to law. Bentham, the whole of whose long and useful life was devoted to investigating the principles, and mapping out the details of the science—the oracle of states and princes—the lawgiver of legislators. Wherever young freedom burst her shackles, she held out to him her hands yet benumbed from their pressure, to receive the inestimable gift of a constitution. To him, the wisest among the leaders of revolutionary France looked for advice, and happy had it been for them, had his wise and moderate councils been more implicitly obeyed. Spain, in the brief interval of her independence, submitted her institutions to him. The young republics of America sought the benefit of his wisdom and experience. His labours were beneficially exerted upon every department of jurisprudence. Every court of justice, every suit that is brought, is a monument of his merit. The litigants of the present day, reap partially the advantage of his labors, and a fuller harvest is reserved for those of posterity. Bentham," said the honorable member, with a well-merited sneer, "the friend of law and liberty, to be held forth as the advocate of arbitrary rule!"

Whatever may be the result of this measure one thing, at all events, is certain, and that is, that the native youth will be no longer deprived of the means of admission to the bar. This, at all events, the gentlemen of the bar said, it was impossible any longer to withhold, and if nothing more should be gained by the discussion than this, the pains bestowed upon the advocacy of the measure will not have been altogether misapplied. "Yet, sir, do I rejoice," said Mr. Lowe in his brilliant peroration, "that amidst all our miserable bickerings and professional jealousies, one principle has been wrung from the reluctant admission of the other side, the principle of opening the bar of Australia to her native youth. I rejoice that this was craved as a boon before it was insisted on as a right. I trust that this measure will be the means of establishing a higher scale and standard of intellectual excellence, of rendering people discontented with an education which merely teaches the ordinary routine of business, and of leading the young men of the colony to look for amusement, not in horse racing and its attendant dissipation, but in the cultivation of those higher faculties of the mind, which assuredly were not given them for no purpose. The result of this system I hope to see in the establishment of an university resembling as nearly as may be the institutions of the parent country, in which native talent may be fostered and encouraged. I well perceive, sir, that through our supineness and negligence in not providing

for the educational wants of the country, the spread of ignorance among the lower orders, even to a greater extent than at present, is inevitable, but I trust that this new field of ambition may be the nucleus of a light whose beams, at no far distant period, may dispel those dark and chaotic elements which are day by day accumulating around us, and relieve the country from what might otherwise become a more than Cimmerian darkness."

THE DOG AND THE SHADOW.

Never, since
when the poplons North
Poured from her frozen loins her barb'rous sons,
To deluge all the South

NEVER have such "huge affliction and dismay" been witnessed, as have been exhibited in certain quarters, from the invasion, irruption, and inundation, with which the self-asserted superior branch of the legal profession has been threatened. The Attorney General convened a meeting of "the afflicted powers" on Monday, to consider

How best avert the dire calamity,
What reinforcement they might gain from hope.
If not, what resolution from despair.

Our reporter was not permitted to be present, but we hear that they assembled,

Downcast and damp, yet such whereon appeared,
Obscure, some glimpse of joy to have found their chief
Not in despair—to have found themselves not lost
In loss itself—which on his countenance cast
Like doubtful hue—but he his wonted pride
Soon recollecting, with high words, that bore
Semblance of worth, not substance, greatly raised
Their fainting spirits, and dispelled their fears.

We admire the tactics of the honorable the Attorney General, though we cannot admire his supercilious and spiteful pride. He has, however, succeeded in deluding the House to act the part of the dog and the shadow in the fable. The dog, when crossing the river with a piece of flesh, saw his own shadow in the stream; believing it to be another dog, that was carrying another and a larger piece of flesh, he could not forbear catching at it, but, far from getting anything by his greediness, he dropped the piece that he had in his mouth, which sunk to the bottom and was lost.

Just so with the honorable the Legislative Council. They have clutched at what is unattainable, and, in their greediness, have lost what is attainable. They have preferred Mr. Wentworth's committee to Mr. Windeyer's. In other words, they have been deluded into a preference of the shadow to the substance.

We cannot believe that the petition of the bar will carry weight with the public, whatever importance may be attached to it by Mr. Plunkett. We cannot, indeed, but believe that remonstrance from such a quarter will have an effect the reverse of that intended.

The resolution of the attorneys was most prudent. At a meeting held to consider the subject on Tuesday, the Law Society declined to give expression to opinion. They felt that, as their motives might be misconstrued, they were consulting dignity as well as delicacy by abstaining from interference, particularly as personal interests were glaringly involved. But when, as at the bar meeting, men herd and band together to sustain privilege, they render themselves suspected. It was thus that Demetrius, the silversmith, assembled his brother craftsmen at Ephesus, "whom he called together with workmen of like occupation, and said, 'Sirs, ye know that by this craft we have our wealth.'"

The legal mind has a close affinity to the agricultural mind. Both abhor abundance. "You'll be cursed with cheap bread," says Mr. Miles; "You'll be cursed with cheap law," says Mr. Darvall. The Somersetshire Sage and the Australian Senator, would alike prevent the needy from "partaking Nature's feast." We, however, are for equal freedom in the "staff of life," and in the "rule of life." We would make the law, which should assert right and redress wrong, economically accessible; and we would not that a single person, however poor, should, if so piously disposed, be precluded from worshipping in the temple of justice.

But, say these logical exclusives, in the same breath ("so well have they been taught their dazzling fence"), "you will not economize by employing one, where before you employed two."

We do not affect to deny that, in many cases, law will continue to be as expensive as before. When men are in difficulties, they will hire heavy teams of barristers and attorneys to drag them out, just as when dying they will engage corps of physicians and surgeons to prolong life. But we would wish to give *patients* (we beg pardon, we mean suitors) an option either to proceed expensively or inexpensively. We would render a superfluous expense no longer compulsory, and it is therefore that we would declare, that if barristers and attorneys are both to be employed, they should, like livery servants, be the luxury of the rich, and not the necessity of the poor.

But, by the petition of the bar, it is proposed, and it is by the vote of the House, an instruction to Mr. Wentworth's committee, "to inquire into and report upon the best mode

of providing for the admission of youth educated in the colony, to practise as advocates in the different courts of the colony."

Here the agricultural mind breaks out. There is to be conceded to us a local manufactory for barristers, so long as they act in their separate capacity—that is, provided the privileges of the bar are not prejudiced, and the public not benefitted. And thus, when the Premier proposed the introduction of "grease" duty free, Mr. Miles acquiesced, provided "tar" were mixed with the "grease"—so that the "grease" might not, to the prejudice of the grazier, be used as butter by the poor. But no, "tar" no "grease," no "barrister privilege," no "barrister manufactory."

The Attorney General, with a face of fastidious horror, and in a tone of supercilious spitefulness, spoke as a Roman senator *might* have spoken when Alaric and the Goths were at the gates of the venerable city. "The first emotions of Honorius and the nobles," says Gibbon, "when the Gothic army formed the siege, were those of surprise and indignation;" but, adds the historian, "their arrogance was soon humbled by misfortune." And our readers will be pleased to recollect that Alaric *thrice* attacked Rome before he conquered it, and that the barriers of privilege are seldom broken at the first assault.

The arguments used on Thursday evening have left the question where it was, so it may still be asserted, that the division of the profession, though it *were* theoretically desirable, is, with us, premature. And it is not probable that, for centuries, we shall be ripe for it. Mr. Wentworth conceded, on the previous debate, that there are places too "beggarly" to afford the luxury. Now, we humbly conceive that New South Wales is one of those places (the well-lined purse of the honorable member for Sydney, notwithstanding). And we humbly conceive that the sarcastic epithet, "beggarly," came with a bad grace from New South Wales—and with a worse from the honorable member. Does Mr. Wentworth forget that New South Wales is but emerging from a state of insolvency, her population and resources regarded unparalleled among communities? Does Mr. Wentworth forget his own desponding vaticinations? Does he not remember

When credit, building on a sandy shore,
Saw the sea swell, and heard the tempest roar,
Heard death in ev'ry blast, and in each wave
Or saw, or fancied that she saw—her grave;
When property transferr'd from hand to hand,
Weak'ned by change, crawl'd sickly through the land,
When mutual confidence was at an end,
And man no longer could on man depend;
When, certain death to honor and to trade,
A retrospective Interest Bill was pray'd!
The era of the sponge! when most undone
We paid off all our debts, by paying none!

Verily New South Wales has but little cause to crow over other "beggarly" places. To return—the division of the profession with us is, we repeat, premature, because it is extravagant (in an economical sense). So long as the precedents elaborated in the Courts at home govern us here—so long as the profession and the public are benefitted by the law there, ground for their use by fifteen Judges, a Master of the Rolls, a Vice-Chancellor, a Lord Chancellor, a Privy Council, and a House of Lords, assisted by hundreds of barristers of signal ability, we cannot but look upon the division of the profession here to be as unnecessary as it is costly. If the Supreme Court were the Court in which the precedents and law which rule us were exclusively elaborated and ground, there might be a pretence for a privileged class to claiming the monopoly of assisting in the mysterious process of elimination and evolution; but as both are imported, (each Text Book and Digest by which we are regulated having cost the parties experimented on thousands upon thousands of pounds) why should we, we will not say borrow, but mimic, an arrangement for which we are unfit? Let us prudently *adapt* rather than implicitly *adopt* the institutions of the mother country. Even in England the separation of the profession did not take place till she was far wealthier than we can expect to become for ages. It has not existed for a thousand years, as alleged by Mr. Windeyer, for up to Michaelmas Term, 1654, it is clear that attorneys appeared as advocates. (See Maughan, page 348 to 359). To appreciate the opulence of England at this time, let it be considered that her resources had been adequate to pay the incalculable cost of constructing all those mighty ecclesiastical edifices which remain to this day prodigies of design, and skill, and tributary wealth. Yes! Westminster Abbey, and the cathedrals of England, were constructed prior to the separation of the profession

Port Phillip.

SERIOUS FIRE.—Melbourne was visited about three o'clock yesterday with an occurrence of the above description, which it was one time supposed would terminate in a most calamitous manner. The servant of Messrs. Liddy and Passfield, the coach-builders, Queen-street, was employed about the yard, when she imagined she heard some crackling, and upon looking towards the coach-house, beheld it in flames. An alarm was instantly raised, and Mr. John Thomas Smith, who happened to be riding by, galloped off to the barracks, and summoned the military, a portion of whom, under Lieutenant Wilton, was soon in attendance. Persons then began to assemble from all parts of the town, and the