

(No. 39.)



1857.

T A S M A N I A.

MR. WHITEFOORD.

Return to an Order of the House made on Friday, 13 November. (*Mr. Nutt.*)

Laid upon the Table by Mr. Attorney-General, and ordered by the House to be printed, 17 November 1857.



Launceston, 7th July, 1857.

SIR,

THE public Journals notify that, with a view to retrenchment, it is the intention of the Government to supersede our present Chairman of Quarter Sessions and Commissioner of the Court of Requests, by the appointment of Mr. Whitefoord, the Police Magistrate at Oatlands, to those offices.

As Members of the Legal Profession, practising in the Northern Division of the Island, we take leave to submit that the appointment of a non-professional man to these offices is calculated to act most detrimentally to the interests of the community.

Courts of Quarter Sessions are tribunals having almost co-extensive jurisdiction in Criminal matters with the Supreme Court of the Colony.

It is of frequent occurrence that, in the course of a trial in these Courts, important points arise,—amongst others, as to the omission or rejection of evidence; the requisite ingredients to constitute felony; the nice distinctions between felony and breach of trust; where a felonious taking may be inferred, and various other points requisite to establish the degree or legality of proof of the offence charged, and which points can only be *satisfactorily* decided by one trained to the Profession, and not only well conversant with the general principles of Criminal Jurisprudence, but also with the judgments on appeal or otherwise founded on special cases.

It cannot be expected, however intelligent a non-professional man may be, that he can be competent to give a correct and satisfactory decision on important points arising upon the spur of the moment; and it is, therefore, neither fair to him, nor just to the community, that the liberty of the subject should be thus jeopardised, and the administration of justice subjected to suspicion, upon so inadequate a ground as that of Retrenchment.

The Courts of Requests have jurisdiction in debt or damage to the extent of *Thirty Pounds*.

Many important causes arise in these Courts, which, if arising on the Southern side of the Island, would unquestionably be tried in the Supreme Court; but, in order to avoid delay and expense, they are brought into the Court of Requests, the Profession and the public having full confidence in the ability of the present Commissioner.

To say that a non-professional man is competent to point out the nice distinctions in many of these cases, is simply absurd; and we will even go further, and assert that a professional man who had not kept up his professional reading would frequently find himself at fault in giving a correct ruling to the Jury.

There is another most cogent reason why we should have the advantage of a professional man filling these offices in Launceston.

With a view to curtailing expense and avoiding delay, many causes, originally commenced in the Supreme Court, are referred to arbitration; and the fact of being able to avail ourselves of the legal acumen of a man like Mr. Adams has tended greatly to facilitate this popular mode of arrangement. From his professional position he is selected as a third party; and within the last month he has been the Referee in seven arbitration cases, one of which (an Insurance case) involved a claim of *Three thousand Pounds*, and has remained in abeyance for a considerable time from the difficulty that existed in obtaining a suitable Referee like Mr. Adams.

In support of the present communication, we would beg to draw attention to a communication addressed to the Governor by the Members of the Profession on this side of the Island, under date the 26th September, 1848, upon the occasion of the contemplated retirement of an ex-Police Magistrate (Mr. Breton) from the Quarter Sessions and Court of Requests Bench, the duties of which he had so discharged as to draw upon himself unbounded ridicule, and bring the administration of justice into contempt. In this communication the gentlemen signing it, amongst whom are the names of "John W. Gleadow," "W. Henty," and "Abye Douglas," three of the oldest practitioners in Launceston, say—"That they are deliberately of opinion that no man who has not been brought up to the profession *can, with advantage to the public service, or comfort and credit to himself, fulfil the duties of those responsible offices;*" adding, "*that they consider that the want of legal knowledge and experience cannot be compensated by talents or character of the most respectable order.*"

If the necessity for a professional man to fill these offices existed so imperatively nine years ago, we should be glad to learn under what circumstances such necessity, so forcibly expressed by these gentlemen, has ceased to exist at the present day.

We would, in conclusion, beg leave to say, that the duties of Chairman of the Quarter Sessions and Commissioner of the Court of Requests are most efficiently discharged by Mr. Adams. He has gained the confidence of the Public and the Profession, and his removal will most justly be a highly unpopular act.

We would, at the same time, disclaim any personal objection to Mr. Whitefoord. It is not the man, but the principle we object to. We believe Mr. Whitefoord to be an efficient Police Magistrate, and we should be sorry that the public should lose his services as such; but we beg, at the same time, most emphatically to record our firm conviction that if Mr. Whitefoord supersedes Mr. Adams it will be an act of injustice to both gentlemen, and that the administration of justice in the Courts of Quarter Sessions and Requests will not command, as it ought to do, the confidence of the community and of the Profession.

We have, &c.

C. A. W. Rocher.
Wm. Douglass.
W. D. Grubb.
Robt. Gleadow.
E. J. Dawes.
R. Byron Miller.
H. M. Taylor.
Benjamin M. Campion.

The Honourable the Colonial Secretary.

(Copy.)

Launceston, 26th September, 1848.

It is currently reported, and we believe with much truth, that Mr. Breton is about to vacate his offices of Chairman of Quarter Sessions and Commissioner of the Court of Requests, on a temporary leave of absence.

We, the undersigned Solicitors practising in Launceston, beg leave very respectfully to request you will represent to His Excellency the Lieutenant-Governor that we are deliberately of opinion, that no man who has not been brought up to the Profession can, with advantage to the public service, or with comfort or credit to himself, fulfil the duties of those responsible offices.

We consider that the want of legal knowledge and experience cannot be compensated for by talents or character of the most respectable order,

We have the honour, &c.

Jno. W. Gleadow.
Wm. Henty.
Henry Jennings.
F. Walford.
Abye Douglas.
Chas. A. W. Rocher.
W. D. Grubb.

Colonial Secretary's Office, 2nd October, 1848.

GENTLEMEN,

I HAVE laid before the Lieutenant-Governor your letter of the 26th ultimo, in which you represent the necessity for the appointment of a gentleman brought up to the Legal Profession being appointed to the offices of Chairman of Quarter Sessions and Commissioner of the Court of Requests in the event of Mr. Breton's resignation, which it appears is currently reported as about to take place.

His Excellency desires me to convey to you his thanks for this communication.

I have, &c.

J. E. BICHENO.

J. W. GLEADOW, *Esq.*, and others signing letter of 26th September.

Colonial Secretary's Office, 16th July, 1857.

SIR,

I HAVE the honour to acknowledge the receipt of a letter signed by yourself and seven other gentlemen, containing a representation against the removal of Mr. Adams from, and the appointment of Mr. Whitefoord to, the offices of Chairman of Quarter Sessions and Commissioner of the Court of Requests at Launceston: and in reply I have to acquaint you, and through you the other subscribers to the letter, that the subject has been most anxiously considered by the Government, but that it has been found impossible to alter the arrangements which have been made.

I have, &c.

WM. HENTY.

C. A. W. ROCHER, *Esq.*

Launceston, 16th July, 1857.

SIR,

WE, the undersigned Bankers, Merchants, Tradesmen, and others residing in the Town of Launceston, have learnt with unfeigned surprise that it is in contemplation to remove our present efficient Commissioner of Court of Requests and Chairman of Quarter Sessions, in order to provide a situation for the Police Magistrate at Oatlands.

Desirous as we are for *consistent* retrenchment, and reluctant as we ever should be to interpose any obstacle to the attainment of so important an object, yet we cannot in justice to ourselves, and to the community of which we form a portion, permit such an appointment as the one in question to be even contemplated without remonstrating against it in the strongest terms. The extension of the jurisdiction of Courts of Requests was effected through the instrumentality of a Petition emanating from this Town; and, as now constituted, these Courts have been found to work most economically and beneficially on the Northern side of the Island,—excepting at one period, when they were unfortunately presided over by an ex-Police Magistrate, whose glaring ignorance and incapacity rendered him the laughing-stock of the community. Causes involving points of law of considerable commercial importance are frequently tried in these Courts; all parties having full confidence in the legal attainments and ability of the present Commissioner, and of his predecessors Messrs. Knight and Gregson.

We cannot for one moment be induced to believe that any non-professional man, whose occupation has been solely confined to the administration of justice on the Police Bench, is qualified to preside over tribunals having jurisdiction in all Actions of Debt or Damage (with but two or three limitations) to the extent of Thirty Pounds. We would just as soon credit his capability to take his seat on the Bench of the Supreme Court; and we have not the slightest hesitation in asserting, that the appointment of Mr. Whitefoord or any non-professional man to preside in the several Courts of Requests on this side of the Island will create universal dissatisfaction, and tend most materially to withdraw all confidence from these Courts, and to render nugatory their present important and beneficial advantage to the public.

The above observations apply with equal force to Courts of Quarter Sessions.

No man watches the due administration of justice with greater jealousy than an Englishman. Be his station in life what it may, he is taught to look with reverence upon those who preside in our Law Courts, deeming them to be men of acknowledged ability, and who have gone through a course of long professional training.

In a community like ours, it is of paramount importance that no cause for dissatisfaction should exist in the selection of persons to preside over the Criminal Courts of the Colony, and especially Courts of Quarter Sessions, having jurisdiction nearly co-equal with the Supreme Court.

To imagine that a Layman placed on the Sessions Bench can command the confidence of the community, is ridiculous. Speaking for ourselves, we unhesitatingly declare that we should place no confidence in the legal dictum of a non-professional man; and we are much mistaken if such is not the general feeling throughout all classes of the community.

The present Chairman and Commissioner, by the able and efficient discharge of his duties, has gained the confidence of the public. Why then, we would ask, should a most grievous act of injustice towards the community be perpetrated under colour of the popular plea of Retrenchment?

For the reasons above stated, putting aside many other points that could be urged in support of our present communication, we most respectfully, but emphatically, protest against the contemplated appointment of Mr. Whitefoord being carried into effect.

We have the honor to be,
Sir,

Your most obedient Servants,

Francis Evans, J.P., Managing Director, Bank of Tasmania.	Smith and Poole, drapers.
J. G. Jennings, J.P., Manager Union Bank of Australia.	Allen, Marsh and Co., drapers.
Charles Thomson, J.P., Manager Bank of Australasia.	J. J. Hudson, bookseller.
James Robertson, J.P., merchant.	G. Maddox, physician.
Joseph Cohen, merchant.	W. Brown and Son, merchants.
Wm. Sanderson, chemist, &c.	R. L. and A. MacEachern, ditto.
Henry Solomon, draper.	W. Tyson, builder.
H. J. Mitchell, grocer.	Evan Roberts, grocer.
Lewis Cohen, auctioneer.	James Peters, merchant.
Dan Macqueen, grocer.	Edward Brooks, grocer.
C. Gavin Casey, J.P., medical practitioner.	Charles M'Arthur, merchant.
F. J. Houghton, auctioneer.	John Cope, commission agent.
Henry Howe, ditto.	William Patterson, draper.
John Holland Webster, general dealer.	A. Pardew, wheelwright.
Robert H. Brand, grocer.	John Rattray, grocer, Wellington-street.
John Atkinson, J.P., landholder.	R. Price and Son, saddler, Charles-street.
Thomas T. Osborne, chemist.	F. Riva, watch and clock maker
Alex. Webster, ironmonger.	Thomas Hughes, watchmaker.
M. J. Solomon, draper.	Edward F. Dease.
William T. Bell, auctioneer.	John Francis, builder.
Dowie and Woodgate, grocers.	Philip Miller, mason.
T. Barnett, draper.	Thomas Corbett, ironmonger.
G. B. Levy, ditto.	H. Bennet, merchant.
D. Room, ditto.	William Johnstone, ditto.
John Tozer, watchmaker.	Edward Symonds, ditto.
Hatton and Sams, chemist and druggist.	F. G. Spicer, chemist.
Wm. Brean, merchant.	Browne, Kennedy and Co., merchants.
John Tevelein, saddler.	John Fawns, J.P., brewer.
Arch. Simpson, watchmaker.	John Thompson, J.P., merchant.
A. Duthie, stationer.	William Birch, merchant.
	Charles B. Armour, ditto.
	William Cleveland, ditto.
	Robinson and Allison, auctioneers.

Attorney-General's Office, 20th July, 1857.

GENTLEMEN,

I HAVE received your Letter of the 16th instant, protesting against the contemplated appointment of Mr. Whitefoord as Chairman of Quarter Sessions and Commissioner of the Court of Requests at Launceston, in succession to Mr. Adams. Without pausing to notice certain passages to which exception might justly be taken without incurring the charge of captiousness, further than by remarking that your arguments would rather have gained than lost in strength and cogency if conveyed in more calm and moderate language, I proceed at once to answer your Letter.

In the first place, I beg to assure you that I fully recognise the importance of the Courts in question, the great advantage to the community of their efficient operation, and the necessity of their being presided over by qualified persons; and cordially concur with you as to the importance of giving no cause of dissatisfaction in the selection of those persons.

You object to Mr. Whitefoord's appointment on the ground of his being, as you allege, a non-professional man, whose occupation has been solely confined to the administration of justice on the Police Bench, for which reason you state that you cannot believe him qualified to preside in the tribunals above mentioned.

Now, in point of fact, Mr. Whitefoord cannot be regarded as a non-professional man, nor is it correct to say that his sole occupation has been the administration of justice on the Police Bench. He was regularly trained and educated for the profession of the law, having served under articles the full period of five years with a very eminent Solicitor in England. He thus became qualified for admission to practise in the Superior Courts at Westminster; but, on the termination of his service as an articled Clerk, determined to emigrate, and, in consequence, relinquished the intention of practising his profession, and therefore did not seek admission. Shortly after his arrival in this Colony he was appointed a Police Magistrate, and has held that office for no less a period than twenty-four years,—having, during the same period, or the greater portion of it, also executed the functions of a Coroner, and Deputy Commissioner of the Court of Requests. Mr. Whitefoord, therefore, has the peculiar advantage of early training and education as a lawyer, followed by a very long and varied experience in the administration of justice as a Magistrate, Coroner, and Judge of an inferior Court of Civil jurisdiction.

The present Administration assumed office under a very solemn, distinct, and emphatic pledge to make every possible retrenchment consistent with efficiency. It was in accordance with this pledge that the Government determined to replace Mr. Adams by Mr. Whitefoord. On investigation of the Police Department it was found that such arrangements might be made with a view to reduction as would dispense with Mr. Whitefoord's services as Police Magistrate, and save his salary. It was our plain duty rather to provide for his continued employment in some other capacity for which he was qualified, than, by reducing him, to burden the Revenue with his pension.

On the one hand was Mr. Adams—a very young Barrister—recently arrived in the Colony—newly appointed to the offices of Chairman of Sessions and Commissioner of the Court of Requests at Launceston—having received an intimation on his appointment of the possibility of his tenure of office being but temporary—a gentleman who, though he had undoubtedly shown himself possessed of sufficient knowledge and ability to perform the duties of the office, yet was so youthful as to render it impossible that he could have gone through a course of long professional training, or had much experience in the administration of justice. On the other hand was Mr. Whitefoord—a Colonist of a quarter of a century—a gentleman of great intelligence and high attainments—having received an education fitting him for the profession of a lawyer—having been concerned in the administration of justice both criminal and civil for a period of years reaching back to the time of Mr. Adams' infancy—having, in his efficient discharge of the duties of Magistrate and Coroner, exhibited a familiarity with the Criminal law sufficient for the office of Chairman of Sessions, and, by his satisfactory performance of the similar functions of Deputy Commissioner of the Court of Requests, proved, as might have been anticipated from his previous professional education, his capacity to perform those of Commissioner. Such being the circumstances, were Ministers either to forego the proposed retrenchment, or to reduce Mr. Whitefoord, after so long a period of service, upon a pension, which, though a burden to the community, would, with his large family, be to him but a pittance, in order that Mr. Adams might be permitted to retain his newly acquired appointment?

Gentlemen, my position as a Law Officer of the Crown during ten years has given me favourable opportunities of forming a tolerably accurate estimate of the legal knowledge and ability of the several Stipendiary Magistrates throughout the Island. My official intercourse with Mr. Whitefoord has furnished me with ample proof that his acquaintance with the Criminal law is accurate and extensive, probably not surpassed by that of any lawyer (not on the Judicial Bench) in the Colony. I have no doubt whatever, therefore, that his knowledge of that law is amply sufficient to qualify him for the office of Chairman of Sessions; and, judging from his mastery of one very difficult and important branch of the law, and bearing in mind his early professional training, and his subsequent experience in the administration of justice in the Court of Requests as Deputy Commissioner, I can as little doubt his qualification to preside in that Court as Commissioner.

That he will bring intelligence, uprightness, and impartiality to the performance of his duties I entertain no doubt, and that his decisions will be in accordance with the substantial merits and justice of the case I am quite sure; and if, at the first, he should not manifest so great a familiarity with technicalities as to satisfy the predilections of the lawyers, I have no fear but that, in a very short time, he will so far master them as to prevent justice from being defeated by any ingenious perversion of them. The only circumstance that could raise in my mind any fear lest Mr. Whitefoord should not at once and fully justify his appointment, would be the embarrassment which would naturally result from an unfavourable reception by the public and the profession in Launceston.

Ministers have not attempted reduction in any instance without encountering obstruction. If they were to give way on insufficient grounds to opposition, however formidable or influential, further retrenchment would become an impossibility, and their pledges a mockery and delusion.

While, therefore, I entertain, and beg unfeignedly to express, the most profound respect for the opinions of so intelligent and influential a body of my fellow-Colonists as have signed the letter to which I am now replying, yet, holding the views above stated, I find it impossible to advise any deviation from the course determined by the Government. It would afford me the highest satisfaction to be able to comply with your wishes, but I cannot do so against a clear conviction of my duty. To alter the decision of the Government now would be to disturb the whole of the Police arrangements, and to render the contemplated reductions impracticable; and though I agree that the principal point to be secured in the execution of offices is efficiency, yet, where economy can be combined, it is the duty of the Executive to be influenced by both considerations. I have stated my reasons for believing Mr. Whitefoord to be qualified for the offices to which he will be appointed; and I trust that, after the explanation I have given, you will be induced to suspend your judgment until he has been a sufficient period in the execution of his functions to prove whether he has or has not the qualifications of which I believe him to be possessed.

I have, &c.,

FRANCIS SMITH.

F. EVANS, *Esq., J.P., and the other* }
Gentlemen signing the Letter. }