
Wednesday, the 1st day of September, 1869

Council met at 11.30 a.m.

Present: His Excellency The Governor and The Honbles. The Colonial Secretary, The Attorney General, The Chief Commissioner of Lands & Works, The Collector of Customs.

Minutes of the last Meeting read and confirmed.

A letter from Mr. Alston dated 28th August was read enclosing a Petition from the inhabitants of Salt Spring Island, praying a grant of \$500 be allowed them, towards paying the expenses of their School, under the "Common School Ordinance 1869."

Same deferred for further information.

A letter was next read dated 12th August from the Local School Board at Lytton praying that the Statutory grant of \$500 be allowed them for the assistance of the School at Lytton, the same deferred for further information.

A letter from the Magistrate at Cariboo dated 1st August was then read, enclosing an application from his Clerk Mr. Cochrane for Six Months leave of absence, to commence from the 1st November 1869, when it was agreed that the leave be granted with half Salary, and Mr. Brew be requested to suggest the name of some person to act as "locum tenens" who will be entitled only to the half Salary unappropriated by Mr. Cochrane, and Mr. Brew be further instructed to inform Mr. Cochrane his half Salary cannot be paid in advance.

The question of selling the Dredger, Punts, "Leviathan" and "Atalanta" was then discussed by the Council, when it was agreed that they be duly advertised and sold by Public Auction.

The Council then adjourned.

Read and confirmed.

(Signed) A. Musgrave.

Monday, the 6th day of September, 1869

The Council met at noon.

Present: His Excellency The Governor and The Honbles. The Colonial Secretary, The Attorney General, The Chief Commissioner of Lands & Works, The Collector of Customs.

Minutes of last Meeting were read and confirmed.

The letter of the 28th August from Mr. Alston enclosing application from the inhabitants of Salt Spring Island (which was deferred at last meeting) was again brought before the Council, when it was agreed that the usual grant at the rate of \$500. per annum be allowed, with the understanding that the

provision for 1870 would depend on the report of the Board on the condition of the School.

A letter of September 2nd from the Chairman of the local School Board at New Westminster was read requesting a Government grant of \$500 for the purpose of building a School House at Burrard Inlet. Decision deferred.

A letter of 12th August was next read from the local School Board at Lytton, making application for the Statutory grant of \$500 for the support of the School, when it was agreed that the same be granted for this year, and the provision for 1870 would depend on the report of the Board.

The Council then adjourned.

Read and confirmed.

October 22nd 1869

(Signed) A. Musgrave
Governor

Friday, the 22nd day of October, 1869

Council met at 11 a.m.

Present: His Excellency The Governor and The Honbles. The Colonial Secretary, The Attorney General, The Chief Commissioner of Lands & Works, The Collector of Customs.

Minutes of the last meeting were read and confirmed.

An application from the School Board in Lake District was read, asking for the usual Government Grant of \$500. When it was agreed that the Board be allowed a grant of \$500 per annum, on their submitting the name of a Teacher for approval.

An application was next read from the Chairman of the School Board at Yale dated 18th August asking the Government to sanction a compulsory tax of \$2 per head on all the adult Males in the Yale District which it was agreed should be sanctioned for limits previously fixed viz.: within a radius of two miles from the Court House.

An application dated 17th September was next read from the Revd. A. C. Garrett enclosing a Petition from Comox praying that District be converted into a School District. When it was agreed the prayer of the Petition be granted, and further that they be informed the usual grant at the rate of \$500 per annum be allowed them on their submitting the name of their Teacher for approval.

A letter was next read from the Chairman of the Pilot Board dated 13th August, Submitting for approval the following alterations to Rules and Orders for the Regulation of Pilots.

To be numbered 8a.

“Qualified Pilots speaking Vessels outside the Pilot Grounds, and their services being declined shall be entitled to half Pilotage both inwards and outwards from such Vessels spoken, provided that the Pilots claiming such Pilotage shall offer their services at the Port of Lading to take the ship to sea, if required thereby becoming entitled to full, or half Pilotage as the case may be, the Pilot first speaking Vessels, outside the Pilot ground, having the preference, over local, or other Pilots, and in order to define the words, “outside Pilot Ground” it is resolved by the Pilot Board that they shall be taken to mean “inside Cape Flattery”, in Straits of Juan de Fuca, Straits of Haro and Straits of Georgia and the Channels between such Straits.

To be numbered 17.

Pilots taken to Sea on board any Vessel against their wish, shall be entitled to claim from the Master, or Owner of such Vessel the sum of \$5 per diem, until the day of their arrival at the Port of Victoria Vancouver Island British Columbia, and shall also, in addition to the above, be entitled to the amount of their expenses back to the same Port.

A letter was then read from the Acting Magistrate at New Westminster, enclosing a list of the Government Stores at Sapperton, when it was ordered the list should be referred to the Chief Commissioner of Lands & Works, to report if any, and which of the articles could be usefully retained for Public Service.

A letter was next read dated October 6th from the President of the Municipal Council at New Westminster requesting that the Government would receive repayment of the sum of \$2000 which had been advanced to the Council to enable them to purchase certain Bonds by instalments at the rate of 50 per cent of the amount now due, when it was decided that the letter be referred to the Attorney General and Chief Commissioner of Lands and Works for their report, on the arrangements which would be desirable in respect of the proposal of the Municipal Council.

A letter was then read from the Magistrate in Cariboo, requesting permission to purchase the library building at Barkerville, when it was directed that Mr. Brew be acquainted that in the existing condition of the finances of the Colony, the Governor does not feel at liberty at present to place any sum for this purpose on the Estimates.

The Governor then read a despatch from the Secretary of State, dated 14th August relative to the incorporation of the Colony of British Columbia, with the Dominion of Canada.

The Council after considerable discussion on this subject adjourned.

Read and confirmed.

(Signed) A. Musgrave
Governor

Wednesday, the 1st day of December, 1869

The Council met at Noon.

Present: The Honbles. The Colonial Secretary (Presiding), The Attorney General, The Chief Comr. of Lands & Works, The Collector of Customs.

The Colonial Secretary informed the members of Council, he had been directed by the Governor, (who was in consequence of illness)³⁶ unavoidably absent, to request a meeting of the members, to afford him their advice, in determining whether the extreme sentence of the Law should be carried into effect in the cases of three Indians, who were tried for murder and convicted before Chief Justice Begbie at the late Assizes on the mainland.

Chief Justice Begbie, who had been requested to attend the meeting, was then introduced and his notes on the trial were read, when having expressed his opinion he retired.

In the case of the Indian known as "Charley" alias "George" for the murder of Alfred Perry known as "Mountaineer Perry" it was unanimously agreed by the Council, that there existed no reason why the extreme penalty of the Law should not be carried into effect.

In the case of the Indian known as "Peter" for the murder of Patrick O'Brien Murphy in 1861, the Council with the exception of Mr. Crease, were of opinion that the evidence appeared so unsatisfactory and contradictory, that they would not be justified in recommending the extreme penalty of the Law should be carried into effect.

Mr. Crease in the case of "Peter", considered him guilty, but under the circumstances of the case, would not recommend that the extreme penalty of the Law should be carried out.

Chief Justice Begbie thought the evidence unsatisfactory, and suggested the Prisoner might be kept in custody until steps were taken to elicit further evidence.

In the case of the Indian "Mootsack" for the attempted murder of John Alway, the Council were of unanimous opinion as to his guilt. The Colonial Secretary and Chief Commissioner of Lands & Works, considered he was as deserving of death, as any Indian who had ever been hanged in British Columbia, and although it has been the practice in England within the last 12 years (as they were informed by the Chief Justice Begbie) that the sentence of death should not be carried out, unless life had actually been taken, yet they were of opinion, that the circumstances of this Colony, do not call for a strict adherence to that practice, and especially in this particular case, in which it appears to them, an example should be established, to deter others from such an act of Treachery.

³⁶ Musgrave was thrown from his horse and broke his leg. Presumably the last paragraph of the minutes for this day was added afterwards, probably when Musgrave confirmed them from his bed in Government House. The meeting on 1 December 1869 was held in the Government Buildings, James Bay. The Council continued to meet at Government House until it resumed sittings at the Government Buildings on 12 October 1870.

The Attorney General saw no reason for interfering with the sentence of the Court.

The Collector of Customs agreed that there was no doubt as to the guilt of Mootsack, and judging by the evidence would say he was deserving of death, but under the circumstances of the case would not recommend the extreme sentence of the Law should be carried into effect.

The foregoing Minute being submitted to the Governor His Excellency concurred in the opinion expressed by the Council in the cases of the Convicts known as "George" and "Peter".

With regard to the third case of the Boy "Mootsack" His Excellency stated, that notwithstanding the opinion of the Council he found himself unable to regard it as one in which the extreme penalty should be inflicted, when according to the present state of the English Law, the sentence of death, would not be carried into effect in such a case in England. He regarded it as dangerous to admit the principle even with regard to the conduct of offenders from among the White population, that a different standard from that prevailing in the Mother Country should govern the Administration of Criminal Law in this Colony. Painful instances had already come under his notice as a disposition to regard as venial offences in the case of White men, acts which would have incurred Capital punishment in the case of Indians.

Moreover the lad "Mootsack" had himself confessed his crime, before he had been accused, and the manner and circumstances of its Commission, as well as the absence of any previous Malice or motive, suggest strongly the suspicion of Insanity in the Prisoner's Conduct. And life had not actually been taken.

The Governor stated that under all these circumstances of the case he should commute the sentence to Imprisonment for Life with hard labor, and he understood the Chief Justice to agree with him in the propriety of this course.

Confirmed this 10th day of January.

(Signed) A. Musgrave
Governor

Tuesday, the 7th day of December, 1869

The Council met at Government House at 11.30 a.m.

Present: His Excellency The Governor and The Honbles. The Colonial Secretary, The Attorney General, The Chief Commissioner of Lands & Works, The Collector of Customs.

The Governor read a Despatch from the Secretary of State No. 82 of the 9th August 1869 stating that the Petition forwarded by the Legislative Council of British Columbia relative to the present unsatisfactory condition of the Courts of Justice in British Columbia had been laid before the Queen and that Her Majesty had been pleased to receive it very graciously.

The Governor then read several other despatches relative to the position of the Supreme Courts, which were discussed at length.

It was then ordered that the following Memorandum should be placed on record, on the Minutes of the Executive Council.

Until the Secretary of States despatch No. 40 of 26th March 1868 was read to us by His Excellency Governor Musgrave we had no idea such a despatch existed.

2. The only Despatches from the Secretary of State, on the sketch Ordinance relating to the Judiciary, with which we had been made acquainted, were No. 81 of November 13th 1867 and No. 94 of October 25th 1868, and judging from the tenor of these despatches, and from all that was communicated to us on this subject, by the late Governor Seymour in Executive Council, and otherwise, we had every reason to suppose that it was the desire, and intention of the Imperial Government, that the sketch Ordinance transmitted by the Secretary of States Despatch of the 13th November 1867 No. 81 should be enacted without material alteration, or amendment whatsoever.

3. With this understanding, when called upon in Executive Council, in the early part of this year for our opinion, as to whether the sketch Ordinance sent out by the Secretary of State should be made a strictly Government measure in the Legislative Council, we could not hesitate to advise that such a course should be adopted, believing as we did that by that means only, could the Secretary of States directions be carried into effect. And having been led to suppose that on the passage of this measure, we might expect the direct intervention of the Imperial Government to relieve us from the embarrassment which has resulted from the existence of two Chief Justices in the United Colony.

4. Had we been aware at that time of the views which had been expressed on this subject in the Secretary of State's Despatch No. 40 of 26th June 1868, we certainly should not have advised, that a measure, which was not, in our opinion, fully adapted to the requirements of the Colony, and to the harmonious working of which, peculiar circumstances appeared to present great practical obstacles, should be forced in its entirety, upon a Legislative Council, known to be almost unanimously opposed in opinion, to its passage, unless amended in some material points.

5. It is much to be regretted that the Legislative Council was not allowed the opportunity of making such alterations, and additions as the Secretary of State expressly states, this Bill might be expected to require; the special local knowledge of members of the Legislative Council, could most aptly have suggested and framed amendments which would have so modified the Bill, as in their opinion to have rendered it more likely to secure the object it was intended to effect and therefore [less] objectionable to the community.

6. As it was, however, The Secretary of States views were not communicated to a single member (as we believe) of that Council and the Bill was passed as sent out from the Colonial Office by the votes of Official members only; carrying out, by so doing (as they supposed) the wishes and intentions of the Imperial Government conveyed to them by the Executive of the Colony.

Signed Henry Pellew Crease Atty. Genl.
J. W. Trutch Chief Comr. of L. & W.
W. Hamley Coll. of Customs

The Council then adjourned.

Confirmed this 10th day of January 1870.

Approved.

(Signed) A. Musgrave
Governor

[Note] Certified to be a correct copy of the Minutes of the Executive Council from 2nd July to 7th December 1869, being for the half year ending 1869. Philip J. Hankin, Colonial Secretary and Clerk of the Executive Council.