

1856.

VICTORIA.

PETITION.

JOHN DUNMORE LANG, D. D.

*Ordered by the Legislative Assembly to be printed, 10th December, 1856.*

To the Honorable the LEGISLATIVE ASSEMBLY of VICTORIA, in Parliament assembled.

The Petition of JOHN DUNMORE LANG, Doctor of Divinity, of Sydney, in the Colony of New South Wales,

HUMBLY SHEWETH,—

1. That, in the year 1854, George Dunmore Lang, Australian born, and the only surviving son of your Petitioner, being then a young man of twenty-one years of age, who had shortly before finished his education in Europe, at the Universities of Edinburgh and Glasgow, and had risen rapidly by his own merit, in the Colonial institution into which he had been admitted shortly after his return to the Colony in the year 1850, was manager of the branch bank of New South Wales at Ballaarat, and Frederick Lee Drake, a young man of highly respectable parentage in the city of Bristol, whose uncle is at present secretary of the Bank of Bengal in Calcutta, was accountant.

2. That these young men, conceiving they could materially better their fortune by commencing business as gold-brokers on their own account at Ballaarat, where they had formed an extensive business acquaintance, and had gained the confidence and esteem of the public, resigned their situations in the Bank with that view, on the thirtieth of September, 1854; but that on examining the books and accounts of the Bank, which had fallen into arrear from the pressure of business, and the insufficient accommodation which the establishment afforded at the time, it was unexpectedly found that there was a serious deficiency in the funds of the Bank.

3. That the young men were quite unable to account for this deficiency, and did not feel warranted to charge any person whatsoever with having either robbed the Bank or stolen the money; but that their suspicions alighted from the first on a person of the name of Burtchell, from the south or west of Ireland, who had been employed for sometime previous as gold-buyer for the Bank, and also as a supernumerary clerk on the establishment, and who had thus had abundant opportunities of abstracting the money; as the Bank premises, during the whole period the young men were in charge, were of the most inferior description, and as the work of the establishment was greatly beyond their ability to overtake.

4. That these suspicions were first awakened by reports that were brought to the young men from various quarters, after they had themselves been arrested on the charge of embezzling the bank's funds, that Burtchell had been transmitting money to Melbourne from Ballaarat to a much greater amount than it was supposed he could have honestly come by.

5. That in consequence of these suspicions a warrant was issued for the apprehension of Burtchell, who had in the meantime suddenly taken his departure from Ballaarat; and that having been accordingly apprehended in Melbourne, after he had been for several days both there and in Geelong, and conveyed to Ballaarat, he was subjected to an examination at the Police Office of that locality; but that having no larger amount of money on his person at the time of his arrest than he was able to account for, the charge against him was at once dismissed, and he again left Ballaarat for Melbourne immediately thereafter.

6. That so strongly persuaded were the young men and their friends at Ballaarat that Burtchell had stolen the missing money, that after his acquittal at the Police Office in that locality, Mr. Marshall, a respectable householder of Ballaarat, actually rode to Melbourne with all possible expedition to have Burtchell apprehended a second time; but that on his arrival in this City, Mr. Marshall found that Burtchell had just left the Colony by the steamship *Great Britain*, by which he had previously engaged his passage, and which sailed for England on the twenty-ninth of October, 1854.

7. That Mr. Alexander Stuart, the inspector of the Bank, arrived at Ballaarat for the first time in the afternoon of the nineteenth of October, 1854, and after a very cursory examination of the Bank books, gave out that the deficiency amounted to twenty-four thousand pounds and upwards, and caused the two young men, Lang and Drake, to be arrested accordingly in the morning of the twentieth of October, on the charge of having embezzled the funds of the Bank to that amount; but that on a further examination of the books the deficiency was found not to exceed ten thousand pounds, or thereby.

8. That, on being bound over at the Police Office of Ballaarat to stand their trial for the alleged embezzlement of the bank's funds, bail for the two young men was tendered to the extent of five thousand pounds by five of the first inhabitants of the place, but that this bail was refused at the instance of the said Alexander Stuart, and the young men were consequently confined in the lock-up of the place along with the vilest felons.

9. That, while this negotiation was in progress in regard to the bail, the two young men were informed by the solicitor for the prosecution, at the instance of the said Alexander Stuart, that their bail would be received, provided they made over to the Bank two gold-buying offices which they had established respectively at Avoca and Creswick's Creek, thereby authorizing the grave suspicion that it was not the ends of justice which were sought for on account of the Bank, but the ruin of a rival establishment which the two young men were expected to form with the fairest prospects of success; but, as these offices belonged to private individuals, who were trading as gold-buyers on their own account, and had repaid to the Bank the sums temporarily advanced by the Bank for their establishment, they were in no way under the control of the two young men, and the bail which was tendered for them was consequently refused.

10. That, in order to justify this procedure in the eyes of the public, and to induce the belief that the young men were really guilty of embezzling the funds of the Bank to an enormous amount, they were advertised in the public journals of the Colony by the said Alexander Stuart, on the twentieth of October aforesaid, as having been dismissed from the Bank in consequence of a serious defalcation in the funds under their charge although they had voluntarily resigned their situations, and had ceased to receive salary

E.—No. 2.

from the Bank from and after the thirtieth of September; and they were charged, moreover, by the said Stuart, both here and in New South Wales, with having purchased Crown Lands on their own account, at the Government sales of the period, to a large extent, and with having expended the funds of the Bank in extravagant and riotous living—all of which charges were found to be false and unfounded, and were subsequently and successively abandoned.

11. That, although there were regular assizes held periodically at Ballaarat, the two young men, who had thus been virtually deprived of all means of establishing their innocence, were suddenly, and in direct violation of one of the first principles of the laws of England, dragged to Melbourne, as your Petitioner verily believes, at the instance of the Bank, which despaired of obtaining a conviction in Ballaarat, and were tried here, at the Supreme Court, on the eighteenth December, 1854.

12. That although there was not even the shadow of evidence to prove that either of the young men had appropriated and converted to his own purposes a single farthing of the Bank's funds, yet, as it appeared that certain deposits, for which they had given receipts to the respective depositors, and of which, as they allege, and as your Petitioner firmly believes, the butts or blocks were in every instance in the possession of the Bank, were not entered in the regular Bank books, the presiding judge, Sir William a'Beckett, virtually directed the jury to find them guilty on what His Honor was pleased to call *the constructive evidence* which was thus afforded of *their denial* of having received the money, a principle which your Petitioner humbly submits is contrary to all law and justice, and they were convicted accordingly and sentenced, the one to five and the other to four years' imprisonment and hard labor, two of which are now nearly expired.

13. That, in consequence of the imperfect constitution of the judicial system of this Colony, no appeal can lie from the sentence or decision of any one judge to the full court in criminal cases, and that no writ of error can be sued out as in England; and your Petitioner is informed, moreover, and verily believes that in cases of felony there is no appeal allowable from a Colonial court to Her Majesty in Council.

14. That, in such circumstances, and taking it for granted, as your Petitioner firmly believes to be the fact, that an enormous wrong has been committed upon these young men under the desecrated forms of law and justice, there is no possible remedy for such wrong, contrary to another of the fundamental principles of English law and of eternal justice, unless your Honorable House, as the grand assize of the country, and the only remaining hope of the wronged and oppressed, is pleased to interpose on their behalf.

15. That there is the more urgent necessity for such interposition on the part of your Honorable House, from the fact that a whole series of facts and circumstances—demonstrating, in the estimation of a large portion of this community, the entire innocence of the two young men, and the guilt of the aforesaid Burtchell—has unexpectedly come to light since the trial and conviction of Lang and Drake; but although these facts and circumstances have been duly submitted to the Executive at least nine months since in various forms, and by different and disinterested parties and bodies, both in Melbourne and Geelong and elsewhere, no notice has hitherto as your Petitioner has been informed and believes, been taken of them, in any way, and no reply has been sent to any of the parties or bodies who have submitted them.

16. That although your Petitioner is naturally and intensely desirous that his son should be forthwith relieved of the foul stigma which has thus been so long, and as he conceives undeservedly, fixed upon his previously unblemished character, he begs to assure your Honorable House, on the word of an honest man, as well as of a minister of religion, who has a reputation to sustain in the world, that, if he really believed his son guilty of the crime laid to his charge, he would assuredly leave him, however sorrowfully, to the utmost awards of the law, and would make no personal exertion on his behalf, as having on such a supposition utterly and irretrievably disgraced not only himself, but all the family he belonged to; but that, under the circumstances he has detailed, it is morally impossible for your Petitioner to entertain such a belief for one moment.

17. That although your Petitioner, in approaching your Honorable House, would humbly desire to rest exclusively on the merits of the case he has detailed, yet, as it was customary for an ancient Roman, when pleading his cause in any way before the Assembly of the people, to show the wounds he had received in the wars of his country and to recount the services he had rendered to the State, he would beg to remind your Honorable House that he has a strong personal claim upon the people of this Colony, which at least entitles him to anticipate a very different treatment for the case of his son from the studied neglect which it has hitherto experienced from the local Executive. In the year 1843, when this noble province was a mere district of New South Wales, your Petitioner was elected one of the six representatives of Port Phillip in the Legislative Council of that Colony, and continued to represent this district till he left the Colony for England on the first of July, 1846. In the session of 1844, your Petitioner, conceiving that Port Phillip was justly entitled to be erected into a distinct Colony, moved, that a humble Address be presented by the Legislative Council to Her Majesty the Queen, praying that Her Majesty would be graciously pleased to take the requisite steps for separating Port Phillip from New South Wales, and for erecting it into a distinct Colony; but although the six Port Phillip members were all strongly in favor of the measure, the only support it obtained from the thirty other members, who represented New South Wales proper, was the solitary vote of the Right Honorable Robert Lowe, now a member of the Imperial Parliament, and Vice-President of the Board of Trade, who was then merely a nominee member of the Legislative Council of New South Wales. As there was, therefore, no hope for the measure through this channel, your Petitioner suggested and strongly recommended that the six Port Phillip members should petition Her Majesty on their own behalf, and on that of their constituents, and this suggestion and recommendation having been accordingly adopted, your Petitioner was deputed to draw up the petition to the Queen, which was duly signed by the six members, and transmitted to Her Majesty by the late Sir George Gipps, then Governor of New South Wales, and within nine months thereafter, or, in the month of October, 1845, the great boon of separation was granted to Port Phillip in answer to that petition, although, from the delays of office and other causes, which it is unnecessary to enumerate, it was not consummated till nearly six years thereafter, or on the first of July, 1851.

Your Petitioner, therefore, humbly prays that your Honorable House will be pleased to take the premises into consideration, and to institute a searching inquiry into the matters above detailed, and especially into the important facts and circumstances bearing upon the case that have come to light since the trial and conviction of Lang and Drake in the month of December, 1854.

And your Petitioner, as in duty bound, will ever pray, &c., &c., &c.

JOHN DUNMORE LANG, D.D.

Melbourne, 5th December, 1856.