



Forbes Flyer

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History reports itself

It is a curious aspect of contemporary culture that the Australian public venerate their sporting heroes and pop idols with such enthusiasm but spare little thought the men and women who make a significant contribution to government or public service. That is not to say that other nations do not celebrate sporting or cultural achievements, but in Europe, Canada and America there is also a certain ethos reserved for great political and legal figures that arguably adds much to the national life.

The oddity of it is that lack of interest is no explanation. Biographies of the significant politicians or judges of the United States of America and Great Britain frequently grace Australian bookshelves, and names like Oliver Wendell Holmes Jr and Lord Denning have resonance all over the globe. Such is the interest in these figures that they have developed their own legend beyond the community of lawyers. As I write I can be confident that historians somewhere are industriously re-visiting earlier works and revising, re-interpreting and re-writing the lives and legacies of those well known names.

For the longest time one could not say the same for the Australian judge. Our legal giants have been fortunate to become more than a footnote in the public consciousness. Even our most recent and most famous, like Sir Owen Dixon, have been the subject of only limited works. Australia, in many ways, can be said to have short-changed its history, by-passing a legacy of intellectual rigor and tradition of great public service.

But there is hope that the tide is slowly reversing. Historians are placing renewed interest in bringing the lives and achievements of Australian jurists to public attention. Publishing houses are also offering vital support, with their funding and marketing efforts ensuring that the work finds its ever-present but largely untapped readership.

This edition of the *Forbes Flyer* showcases extracts of the latest books in the series of the *Lives of Australian Chief Justices* by Dr J.M Bennett (published by Federation Press). Both Sir James Cockle, the first Chief Justice of Queensland, and Sir John Pedder, inaugural Chief Justice of Tasmania are featured. Dr Bennett is one of the most significant contributors to the art of legal biography and his most recent works bare the hallmarks of his typically meticulous attention to detailing the sources of his original research.

The *Flyer* is also pleased to introduce a new column in this issue, which will highlight the work and research being conducted by legal historians around the country. This time round we draw attention to the work of Dr John Emerson, a South Australian based historian who is currently researching the history of South Australia's independent bar, and producing a book on South Australia's Chief Justices.

Catherine Douglas
Editor

Making History



John Emerson

Investigating the South Australian Independent Bar*

Of the 150 or so barristers in South Australia, John Emerson hopes to interview around 100 of them to gain the broadest possible perspective for the book he is writing on the history of the South Australian Independent Bar. A chance meeting with Justice Tom Gray in 2001 led to discussion about the history of the Chief

Justices of South Australia, which John was subsequently commissioned to write (through the John Bray Law Chapter of the Alumni Association of the University of Adelaide). He was asked to write a second book, on the history of the bar, given that the project would involve similar research, and interviews with many of the same people as for the book on the Chief Justices. In addition to Justice Gray, the Hon. Christopher Legoe QC was keen to initiate a written history of the SA bar, as he was South Australia's first independent barrister.

One of the challenges for John in writing the 45-year history of the bar is to present it in a way that encapsulates the very different perspectives of those involved. "At this stage it's really important to do a history of the bar while the original people who founded it are still around (with notable exceptions such as the Hon Howard Zelling and Jack Elliot QC)." He has completed 40 interviews and hopes to complete another 60 by the end of this year. He began by interviewing founders of the various chambers and other senior members of the profession such as Cedric Isaacson DSO (who practised for around 30 years from 1934 before there were any real chambers in South Australia) and The Hon Christopher Legoe QC. The latter, who was the only barrister in SA for at least five or six years, recalled sitting in his office the first day (in the Epworth building in Pirie St) with an all-day sucker, waiting for briefs.

Christopher Legoe was also one of the founders of the first chambers in 1964: Bar Chambers, with Howard and Sesca Zelling. He was later joined by Robin Millhouse and during the late 1960s Bar Chambers slowly grew, with the addition of Michael Detmold, Keith Sangster and Bob Mohr. But it was 13 years before another chambers was established – Hanson – in Carrington Street.

continue to page 2

continued from page 1

John plans to include a chapter on women in the bar and has interviewed (among others) Marie Shaw QC, the Hon. Justice Margaret Nyland and Lindy Powell QC. He notes that although 50% of law graduates are women (this has been the case for quite some time), a much smaller percentage of barristers in SA are female. John would also like to explore the experience of young barristers coming in over the last few years; why they decided to join the bar and how they have found the profession since.

He has found the majority of barristers interviewed to be supportive, interested and willing to divulge their opinions. "They are the sort of people who can make this decision to operate essentially as a sole trader . . . so they're not on a

salary and they're going to be this individualist type person. Therefore each one of them is quite different [they are all] courageous characters and very strong personalities . . . it has been fascinating."

The book will include a section about the history of the chambers, which are scattered throughout the city. "Adelaide has got a spate of little cottages, with perhaps a dozen barristers in a cottage or an old hotel, and a couple of times old brothels, as opposed to Victoria and NSW where barristers are in massive buildings all grouped together. That's interesting, as to why that might have happened in SA." He also wants to investigate how the South Australian Bar has grown and why.

John hopes to complete the history of the bar by mid 2004, in conjunction with his book on the Chief Justices of South

Australia. Does he have any idea what the future holds after completing the books? He plans to continue writing biographies of South Australia's legal identities and believes there is a large gap to fill, as he says very few have been done to date.

John Emerson completed his Phd in French and Australian colonial history last year. He currently works on the two books at least six days per week, surrounded by old law reports in the Staff Library at the University of Adelaide Law School.

*This article was first published in the LSSA Bulletin, Vol 25, No 3 April 2003

The Lives of Australian Chief Justices

Dr John Bennett continues his remarkable project, *Lives of Australian Chief Justices*, with the publication of two new volumes chronicling the lives of the first Chief Justices of Queensland and Tasmania. In the following extract, Dr Bennett reflects on the series so far, outlining how the project started and what he hopes to achieve from writing about the lives of our earliest chief justices.

From Sir James Cockle: *First Chief Justice of Queensland, 1863-1879* by JM Bennett. *Acknowledgments*, pages xi-xii

This being the last study, in the present series, of the foundation Chief Justices in all of the Australian States, the scope of the entire project now takes shape. It is timely to comment on it.

I began this research as a Senior Research Fellow at the Australian National University in 1969 and 1970. My initial plan was to write a collection of biographical essays that might be presented in a single volume. But professional commitments drew me away from the pleasures of academy, and my research had then to be continued part-time. The *Australian Dictionary of Biography* had meanwhile so overtaken my ideas of synoptic judicial biographies, that I turned my mind to writing longer accounts including, perhaps, three or four subjects to each volume.

As time went on, and the amount of research material accumulated, the challenge presented itself of producing a series of volumes, cognate as to presentation and length, that would generally allow each of my subjects to be allocated a separate book. Thanks to the sustained interest and commitment of The Federation Press, that concept has become a reality.

While it has been gratifying to find that some reviewers have declared the works to be acceptable week-end or vacation reading, that is not their principal object. The sources from which to write biographies like this are scattered and often well hidden. Finding them becomes a virtual treasure hunt. My plan has been to disclose, as to each of my subjects, the range and location of those sources. Hence the extensive documentation to each volume. My hope is that future writers may be able to build on these foundations. Much of the primary material is devoid of any finding aids,

such as indexes, and hardly any of it can be accessed electronically at the time of writing this.

In the United Kingdom and the United States judicial biographies are undertaken and received with great enthusiasm. Generally speaking, that has not been the case in Australia. This series is designed to redress the balance and to encourage an understanding of the way in which personalities influenced the shaping of courts, legal institutions, and the law itself, throughout Australia.

The Lives of Australian Chief Justices



So many of the names that occur in the various volumes of the *Lives of Australian Chief Justices* are found throughout our cities and towns. But not that of James Cockle. Although

Cockle, as Chief Justice, soothed the storm created by AJP Lutwyche who had been lobbying for the position against fierce opposition, it is Lutwyche who is eponymously remembered in the Brisbane suburb of Lutwyche; Lutwyche Road, a major arterial road in Brisbane; and two Lutwyche Streets (there are also Lutwyche Place and Lutwyche Shopping Village, but one suspects these are named for their suburb). Remarkably, there is not a single place named after James Cockle, not even a small alley. Is Cockle himself to blame for this? Justice McPherson's statement that "good judges who avoid pressing their own claims do not flourish" perhaps explains why Cockle has not been remembered in this way.

Bennett argues that Brisbane itself may well have had another name were it not for the force of personality. The following extract from Sir James Cockle contains an interesting anecdote about Sir Francis Forbes's role in the founding of Brisbane.

"The Settlement of Brisbane Town"

...

Sir Francis Forbes, first Chief Justice of New South Wales, in 1824 (his introductory year in the Colony), played an unexpected but significant part in the inauguration of what would become Brisbane. In August he wrote to Under-Secretary Wilmot Horton at the Colonial Office, "all accounts agree in representing the Brisbane River as wide, deep and strong, all evidence of its coming from a distance in the interior. The natives there are very superior in stature, appearance and civilization". In November 1824 Governor Brisbane invited Forbes to accompany him to Moreton Bay. There Brisbane was greatly impressed by the location, while Forbes was somewhat disappointed and thought it "only fitted at present, for a penal settlement . . . [which] will be a very good place for the reception of local transportees".⁵¹ Although Surveyor-General Oxley had given the name Brisbane to the site on inspecting it in 1823, Sir Thomas Brisbane, with excessive modesty, proposed that Forbes rename the place. Forbes chose "Edinglassie", commemo-rating his family's ancestral home in Scotland. But his choice was ephemeral:

By accident or design, . . . this name for what was to be the capital of Queensland soon fell into disuse. In September 1827 Governor Darling referred officially to "the settlement of Brisbane Town", and, some seventeen months later, to "Brisbane Town, the name of the settlement".⁵²

Darling, incidentally, was in such open and ill-advised conflict with his Chief Justice that the expunging of anything to do with Forbes may be assumed to have owed much to design and little to accident.

⁵¹ From the transcription in J. M. Bennett (ed.), *Some Papers of Sir Francis Forbes* (Sydney 1998), Forbes to Wilmot Horton, §33, 14 August 1824, 36 at 42; §34, 7 November 1824, 44 at 47; §35, 6 February 1825, 50 at 55.

⁵² C. H. Currey, *Sir Francis Forbes* (Sydney 1968), 92. It is not correct that Forbes' proposal earlier "received no support" - Charles Bateson, *Patrick Logan* (Sydney 1966), 46.

Foreword, from Sir James Cockle: First Chief Justice of Queensland, 1863-1879

By the Honourable Mr Justice B.H. McPherson, C.B.E. Judge of Appeal, Queensland

The subject of this the latest of Dr Bennett's early Australian judicial biographies is Sir James Cockle F.R.S. In 1863 he came to Queensland to be its first Chief Justice. Fifteen years later he returned to England, where he lived in retirement until his death in 1895 at the age of 76 years. Scarcely a quarter of his working life was spent in Queensland.

If this was all there was to the story of James Cockle, his life would hardly warrant a biography by a historian of Dr Bennett's calibre. Yet the author concludes this volume by describing his subject as "a truly great and remarkable man". The justification for that assessment lies in the strength of the man's personal character and his

achievement sustained against powerful odds: in what he found when he came here, compared to what he left behind him when he went.

When Cockle arrived in Queensland in 1863, relations between the government and the only Supreme Court Judge were in a state of turmoil that threatened the very survival of the young colony. Not long before, Mr Justice A. J. P. Lutwyche had declared Queensland's infant Parliament and all its Acts invalid. To the surprise of many, the Law Officers in England agreed, and imperial legislation was needed to put the matter right. Encouraged by this outcome, Lutwyche looked for other occasions to invalidate legislative actions and to continue

attacking the government. A state of open warfare ensued between the radical Judge and the conservatively-minded executive and legislature. While the former vigorously asserted his own claim to the office of Chief Justice, the latter searched for ways of removing their judicial tormentor altogether.

That neither succeeded in their ambitions is perhaps not altogether surprising. Not many do. What was unexpected is that under Cockle's influence, harmony was restored so quickly and completely that it was almost as if the ill-feeling of the early years had never existed at all. Lutwyche agreed to give up his political activity and to devote his considerable

continue to page 4

The Lives of Australian Chief Justices

continued from page 3

talents as lawyer and judge to their proper purpose, which he continued to do unflinching until his death in 1880. It was all Cockle's doing; and it was no small thing. How and why he was able to achieve it is a principal part of this study. It called for intelligence, tact, firmness, moderation and, above all, personal modesty, qualities which few men possess in combination and some not at all. A minister of religion and lifelong acquaintance, who shared Cockle's fascination for algebraic theory, recalled his "imperturbable temper" and "graciously tolerant spirit". For these Queensland had and still has reason to be grateful.

In writing to that particular acquaintance, Dr Bennett says that Cockle typically began a letter:

"My dear Sir,
Let $yn - ny \ n-r + rx = 0$
Then ...".

Not many Justices (Chief or otherwise) are able to begin their correspondence in this way. Fewer still are invited to become Fellows of the Royal Society for their work on algebraic equations. It can confidently be predicted that in Queensland none will pass this way again. Cockle's interest in higher mathematics and other scientific

subjects, including astronomy, imparted an intellectual discipline to his life and work in the law. Perhaps because he knew his studies to be abstract rather than human, mathematics taught him to shun the application of rigid rules to people. The current fashion for mediation and conciliation would have suited him well.

In Queensland Cockle was regarded as a reserved and private person, who deliberately held aloof from others for fear of being identified with any particular party or interest. His attitude must have puzzled some of his more ebullient colonial contemporaries; but it was thrust upon him by the conditions that prevailed at his appointment, and it formed part of the public image of judicial detachment and impartiality which he cultivated and genuinely believed in. He kept his personal feelings and opinions well tucked in. In that respect he is an object lesson to some modern judges. Reports of his later life in London strongly suggest that he was in fact a naturally vivacious and companionable fellow. His self-control when it was called for was of an unusually high order.

Cockle's experience in Queensland shows that good judges who avoid pressing their own claims do not flourish. Having been appointed Chief Justice in conditions in which his character and talents were

sorely needed and well displayed, he was paid only three-quarters of the amount of his junior colleague's salary. It is not something that would be tolerated nowadays. Conventional recognition of his position in the form of a knighthood was unnecessarily delayed. The right to a pension on retirement was eventually conceded, but only on a reduced scale. His making use of it was predictably resented.

To infer that these things weighed with him in deciding not to continue on after 1879 must surely be correct. Typically, however, there is nothing in what he said himself that exhibits ill-feeling at the way he was treated. He was a rare instance of true human virtue. Jane Austen has taught us that tales of virtue can make absorbing reading. In this account, Dr Bennett has done as much for Sir James Cockle. The author's achievement is to have demonstrated Queensland's debt of gratitude to its first Chief Justice. Without Cockle the story might have been one of confusion, scandal, and disaster, as it was in some of Queen Victoria's other colonies that were so much less fortunate in the example set for later holders of the office.

Chambers, Supreme Court,
B. H. McPherson
Brisbane
August 2003



In contrast, Bennett's other subject, Sir John Pedder, is remembered, among other places, by the beautiful Lake Pedder. This is despite the bad press he received in

his own time, some of which has been repeated by modern historians. The following extract gives some examples of the dreadful reputation Pedder gained, which Bennett argues is undeserved.

From Sir John Pedder: First Chief Justice of Tasmania, 1824-1854, by JM Bennett, pages 63-65

"Ever Deferential to the Feelings of Others"

...

Pedder's demeanour in criminal sittings has been much misunderstood and distorted, largely because of contemporary press criticisms directed, not to criminal cases, but to the controversial issues of public law earlier discussed. In many of those issues journalists themselves were involved, and it suited them to depict the Chief Justice as irresolute and temperamental. The *Colonial Times*, a habitually tendentious critic, wrote, of his conduct in the Bent proceedings, that he "worked himself up into something very like one of those little paroxysms of infirmity of temper... which never appear to less advantage than on the Judgment Seat". The same journal later accused him of "a want of courtesy towards

the Bar",⁴ while it has been further suggested that:

The *Colonial Times* . . . described the Chief Justice as a "passionate, violent-tempered man", and this is confirmed by the *Tasmanian* which said he sometimes acted "under the influence of an infirmity of temper to which he is unhappily - equally for himself and for the public over whom he is the highest minister of the law - uncontrollably subjected".⁵

On the Bench, Pedder did not use the deferentially diffident and ceremonious style that typified his correspondence.

continue to page 5

The Lives of Australian Chief Justices

continued from page 4

He was sometimes blunt when things did not go smoothly in court. "If you expect me to sit here to wait for this affidavit", he once exclaimed, "I shall do no such thing".⁶ If remarks like that are to be deemed temperamental, no judge in history could be absolved from the reproach. No objective report attributes to Pedder anything approaching hectoring or bullying behaviour. The contrary assertions of his critics should be disregarded. When, in 1845, an over-enthusiastic newspaper reporter wrote that Pedder had conducted court proceedings in a spirit of "concentrated verjuice", the publishers at once repudiated the imputation.⁷

Yet the myth has been allowed to evolve that Pedder was a constantly irritable judge easily provoked to rancour. Its origins, found in the columns of early hostile journalists, were embellished in an ill-considered piece in the Hobart *Mercury* in 1873. Written by Tasmania's retired Surveyor-General, turned prolific author, James Erskine Calder,⁸ it asserted, wrongly, that Pedder had "passed more death sentences than any other colonial judge living", and was

usually rather ill-tempered when on the Bench and was sometimes unnecessarily harsh, and never over merciful to the unfortunate creatures whom he tried, who were hanged, literally by dozens... [and] when once sentenced in those days a man stood almost as little chance of a reprieve as the dead have of returning to life.⁹

As following paragraphs show, that assessment is virtually the antithesis of the truth. But it was fastened upon in the following century by sensationalist newspapers, and recast with ludicrous exaggeration, including such headlines as "Australia's Fastest Hanging Judge" and "Judge Maintained Fodder Supply to Hobart's Gallows".¹⁰

So much was that the opposite of the truth that Pedder "sighed with relief when he had few, or no, calls to assume the black cap",¹¹ and, when he was obliged to impose capital punishment, it was observed that "his tremulous subdued voice was scarcely audible in court" as he tried to conceal his personal feelings.¹² In *R. v. Lacey*, in 1828, a murder trial where several accused men were found guilty, Pedder was said to be "almost overcome by the lamentable and unexampled spectacle" of having to sentence nine to death.¹³ Newspapers, when reporting court proceedings without engaging in polemics against authority, confirmed the Chief Justice's moderation and competence. Thus, in *R. v. Buckley*, in 1824, the *Gazette* declared that the trial "elicited from His Honor the Chief Justice as admirable a charge as ever was addressed to a Jury". It declared that "the whole proceedings were equally honorable to law, humanity and justice".¹⁴

Calder persisted in his obsessive criticisms of Pedder, claiming that "I... have often seen him give way to petulance, when there was no occasion for its exhibition", and that his "peevishness" was so frequent "as to acquire for him the sobriquet of Sir Petulant Pedder".¹⁵ The ephemeral *Britannia and Trades' Advocate*, in 1847, when suggesting that Pedder should make way for a younger man, obliquely observed that "Age... makes men hasty, and petulant, and the high standing of a judge, especially in the colonies, is enough to make men forget their position".¹⁶ R. W. Baker, in modern times, assessed Pedder's temperament as "somewhat haughty and disdainful".¹⁷ But a better view is that of J. W. Kirwan who, as Clerk of the Executive Council, had constant opportunity to observe Pedder's judicial style. Kirwan considered the Chief Justice, on the Bench, to have been "ever courteous, ever considerate, ever deferential to the feelings of others".¹⁸

⁴ 2 June 1826, 2; 13 August 1839, 260.

⁵ L. A. Whitfeld, *Founders of the Law in Australia* (Sydney 1971), 68.

⁶ *C.T. Supplement*, 16 September 1825, 1. Those remarks were addressed to Alfred Stephen with whom the Chief Justice seemed constantly at odds. In *Stephen v. Crowther*, for example, (*H.T.G.*, 15 July 1825, reproduced in Kercher's Reports, n. 1 above), a case in which Stephen sought to recover costs for acting privately as barrister and solicitor in the same proceedings, it was reported of an exchange between them "a very unpleasant conversation ensued which, not being of a public nature, we do not think it necessary to report".

⁷ *H.T.C.*, 8, 29 October 1845, 3; 8 November 1845, 3.

⁸ (1966) 1 *A.D.B.* 193.

⁹ *Mercury*, 19 August 1873, 3. No attempt will be made here to suggest definitively who awarded the greatest number of capital sentences, but Judge-Advocate John Wylde, assisted by his son Thomas (Clerk of the Peace), sentenced 39 men to death in 1821 at one Tasmania "assize", E. J. Minchin, in J. M. Bennett, *A History of Solicitors in New South Wales* (Sydney 1984), 311.

¹⁰ *The History of Tasmania Written Specially for Truth* (Melbourne 1915); *Sun* (Sydney), 4 February 1975, 14; *Daily Mirror* (Sydney), 22 August 1986, 21.

¹¹ M.C.I. Levy, *Governor George Arthur* (Melbourne 1953), 158; *H.T.C.*, 8 May 1830, 3; *R. v. Pettit*, *id.*, 7 February 1840, 2.

¹² *H.T.C.*, 15 December 1827, 3; *Launceston Examiner*, 20 January 1870, quoted, Richard Ely (ed.), Carrel Inglis Clark, *The Supreme Court of Tasmania* (Hobart 1995), 19.

¹³ *H.T.C.*, 2 February 1828, 3.

¹⁴ 4 June 1824, 2. Cf a similar testimonial in 1839 when the *Courier* reported of *Friend v. Goodwin* (19 April 1839, 2) that "the charge of Sir John Pedder, as all his charges are, was distinguished for its strict impartiality, and almost too scrupulous care not to let anything go to the jury, which is not supported by law, as well as equity": and *Argus* (Melbourne), 13 April 1853, 9.

¹⁵ Calder Papers (M.L. A594), 783 at 785; Ely (ed.), *op. cit.* n. 12, 16 n. 34.

¹⁶ 1 April 1847, 2.

¹⁷ "The Early Judges in Tasmania" (1960)

¹⁸ *T.H.R.A.*, at 75.

¹⁸ *Mercury*, 27 August 1873, 3.

The Lives of Australian Chief Justices

Foreword, from Sir John Pedder, First Chief Justice of Tasmania, 1824-1854

By His Excellency the Honourable Sir Guy Green, A.C., K.B.E., C.V.O.
Chief Justice of Tasmania, 1973-1995, and Governor of Tasmania, 1995-2003

On Monday, 15 March 1824 a message was sent from the Mount Nelson signal station to Hobart announcing the approach of a ship. A little later the station sent a Code 42 signal indicating that "a person of consequence" was on board. The ship turned out to be the *Hibernia* and the person of consequence was the first Chief Justice of Van Diemen's Land, John Lewes Pedder. The next day the *Hibernia* berthed and after being accorded a thirteen-gun salute His Honour stepped ashore to take up his office.

In a substantial study published in 1977 Dr Bennett concluded that Pedder was a figure of profound importance whose contribution to the law in Tasmania has been much under-rated" and set out to present him in a new light. This work, the culmination of a good deal more research in Australia and England, builds upon and extends that earlier study. One of a series of books by Dr Bennett about Australian Chief Justices in the nineteenth century, it provides us with a thorough and thoughtful account of Pedder's judicial, public and private life.

John Lewes Pedder was born in London in 1793. He studied law at Cambridge and was called to the Bar in 1820. In March 1823 after only three years' practice, he put his name forward for appointment as the Chief Justice of the new Supreme Court of Van Diemen's Land which was then being established. He was successful and eight months later he and his wife left Plymouth in the *Hibernia*.

On 7 May 1824 Pedder was sworn to office and on 24 May he presided over the first trial to be heard in the new court. Whilst recognising that Pedder was the first Chief Justice of the oldest Supreme Court in Australia, the author also defends the claim he has made elsewhere that the Chief Justice of the Supreme Court of New South Wales, Sir Francis Forbes, should be regarded as the first Chief Justice in Australia. It is not for the writer of a foreword to arbitrate between the author and those who contest that claim but it appears that the issue may turn upon how one defines "the first Chief Justice".

One of the challenges faced by newly created colonial Supreme Courts was the need to determine novel constitutional and jurisdictional issues. In Pedder's case these included whether magistrates sitting in Courts of Quarter Sessions were required to sit with a jury, whether Van Diemen's Land legislation requiring newspapers to be licensed was repugnant to the laws of England and whether it was open to a judge to hold legislation to be invalid which he had previously declined to declare to be repugnant to the laws of England. Pedder also heard cases which had significant social and constitutional ramifications, including the prosecution of Andrew Bent, the printer and publisher of the *Hobart Town Gazette*, for publishing a libel on the Lieutenant-Governor which was seen as an attempt by the Government to muzzle the press, and judicial and extra-judicial proceedings which culminated in the suspension from office of the Attorney-General, Joseph Tice Gellibrand.

Dr Bennett's full accounts and analyses of these cases are most valuable for the light they throw on Pedder and on Tasmanian law and society in the nineteenth century.

Dr Bennett is critical of Pedder as a judge, particularly in his handling of some of the major legal and constitutional issues which came before him. But Pedder's work as a trial judge would have had a greater impact on the life of the colony than anything else he did and in this area of his judicial work it appears that there is much to be said in his favour.

The book reveals Pedder as a competent and enlightened trial judge especially in the criminal jurisdiction. He was greatly troubled by having to impose the death sentence, he being acutely conscious of its finality if the verdict turned out to be erroneous. And at a time when the principle that the guilt of an accused person had to be proved beyond reasonable doubt was not given the emphasis it has today, Pedder's view that the defendant should be given the benefit of any doubt which might arise showed him to be well ahead of his time. But it is also apparent that these aspects of Pedder's approach to criminal trials

were not the product of a weak want of resolution to do his duty but reflected a principled, humane approach to the administration of the criminal law.

The book shows that Pedder also had an enlightened attitude towards the Tasmanian aborigines; he publicly protested against their ill treatment and it is more than symbolically significant that Pedder's first criminal trial, and thus the first trial to take place in any Supreme Court in Australia, concerned a charge of manslaughter against William Tibbs, a white man, for killing an aboriginal man John Jackson. Tibbs was convicted and sentenced to transportation for the term of three years. This and other cases show that Lieutenant-Governor Arthur's proclamation, published five years later in the form of a cartoon showing a black man who had killed a white man and a white man who had killed a black man both being equally dealt with according to law, was not, as some would have it, mere propaganda.

This work also serves to remedy substantial injustices which have been done to Pedder by the press and some historians. For example, Dr Bennett shows that the portrayal of Pedder by some sections of the press as a hectoring bully and a harsh, even cruel, judge, was quite false. J. W. Kirwan who as Clerk to the Executive Council saw a good deal of Pedder in court, considered him to have been "ever courteous, ever considerate, ever deferential to the feelings of others". Similarly, Professor Manning Clark's assertion in his *A History of Australia* that Pedder "ducked and delayed decisions" in the civil jurisdiction is shown to be without any foundation either, although it does fit nicely into the poetic and imaginative paragraph in which it appears which contains no fewer than four other misstatements about Pedder.

Most Australian historical studies fail to give any, or any adequate, treatment of the impact of the advent in the colonies of the rule of law and the institutions which sustained it. As Dr Ruth McConnell,

continue to page 7

The Lives of Australian Chief Justices

continued from page 6

the author of a major study of the coming of the law in Central Queensland, observes, "Until the early 1980s, there was very sparse analysis of the role the law might play in the historical study of colonial Australian society" and she cites Dr W. Ross Johnston's identification of "the operation of the jury system, the establishment and development of legal infrastructure, and the general community acceptance of notions of law and order", as examples of over-looked areas. Following the seminal work of Professor Alex Castles there has emerged a significant school of historians who are supplying that deficiency. This book, along with Dr Bennett's other works, is in the vanguard of that movement. It is thus not only valuable as a most comprehensive and thorough account of Pedder's life and times but also makes a significant contribution to the history of Tasmania and Australia generally.

Government House,
Guy Green
Canberra, A.C.T.
June 2003

Conclusion

The Lives of the Australian Chief Justices series, written by JM Bennett and published by The Federation Press, comprises seven books so far:

- Sir Francis Forbes: First Chief Justice of New South Wales 1823-1837 (November 2001, ISBN 1862874085)
- Sir James Dowling: Second Chief Justice of New South Wales 1837-1844 (November 2001, ISBN 1862873917)
- Sir William a'Beckett: First Chief Justice of Victoria 1852-1857 (November 2001, ISBN 1862874093)
- Sir Archibald Burt: First Chief Justice of Western Australia 1867-1879 (December 2002, ISBN 1862874387)
- Sir Charles Cooper: First Chief Justice of South Australia 1856-1861 (December 2002, ISBN 1862874425)
- Sir John Pedder: First Chief Justice of Tasmania 1824-1854 (November 2003, ISBN 1862874824)
- Sir James Cockle: First Chief Justice of Queensland 1863-1879 (November 2003, ISBN 1862874859)

All titles in the series have a recommended retail price of \$49.50. Forbes Society members can purchase individual copies for \$45.00 each, and the entire set of 7 volumes for \$300.00. As a special offer to Forbes Society members, The Federation Press will also waive all postage and handling charges. To order, contact The Federation Press directly on (02) 9552 2200, email sales@federationpress.com.au, and quote ref: MP756 to obtain the special offer.

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