

BE SUBSTANTIALLY GREAT IN THY SELF:

Getting to Know C.E.W. Bean;  
Barrister, Judge's Associate, Moral Philosopher

APPENDIX IV

**Wagga Wagga Circuit Court Business  
September-October, 1905**

CONSTITUTION OF CIRCUIT COURTS AT WAGGA AND DENILIKUIN

NSW *Government Gazette* Issue No. 496 of 22 September 1905 records at page 6427 four interrelated items providing for the holding of Circuit Courts in Wagga Wagga (on and following 27 September 1905) and in Deniliquin (on and following 11 October 1905). Each of the four separate Notices of Appointment were signed by the NSW Attorney General, CG Wade, as a record of an appointment made by the Lieutenant Governor (the Chief Justice of NSW, Sir Frederick Darley, deputising for the Governor) with the advice of the Executive Council.

On 20 September 1905 District Court Judge Francis Edward Rogers, KC was appointed as an Acting Supreme Court judge for the purpose of holding the Wagga Wagga Circuit Court (Item 2633) and District Court Judge Grantley Hyde Fitzhardinge was appointed as an Acting Supreme Court judge for the purpose of holding the Deniliquin Circuit Court (Item 2632).

On 21 September 1905 CEW Bean, %Barrister-at-Law+, was separately appointed to serve as %Clerk Associate+ and %Clerk of Arraignment+ to Rogers AJ (Item 2715) and Fitzhardinge AJ (Item 2716) respectively.

At page 6424 of the same issue of the *Gazette* was published (as item 2717) notice of the appointment of George Chatfield King and Albert Bathurst Piddington as Crown Prosecutors for the Wagga Wagga Circuit Court and the Deniliquin Circuit Court respectively. For reasons presently unknown, Piddington appears not to have acted upon that appointment, even though his interest in what occurred at the Deniliquin sittings might be inferred from his subsequent appearance in an appeal from a civil case determined at the sittings.

From Charles Bean's perspective, these Circuit Court sittings were a continuous narrative. The Wagga sittings ran longer than expected. Bean had to be replaced by a clerk from the Supreme Court office in Sydney in

order (it can be inferred) to attend the Deniliquin sittings. The fact of his replacement was reported in the local newspaper, *The Wagga Wagga Advertiser* (Tuesday, 10 October 1905, page 2):

***“The Circuit Court***

*It has been some time since the sittings of the Circuit Court in Wagga have been of so lengthy a duration. The criminal sittings only occupied a comparatively short period, but taken with the civil side of the Court, and the hearing of divorce issues, the session has filled in nearly a fortnight. The Judge’s Associate during the earlier part of the Court was Mr CEW Bean, but subsequently his place was taken by Mr FE Baylis, of the Supreme Court office in Sydney, and brother of Mr HM Baylis, of Wagga”.*

HM Baylis was earlier described by the newspaper (in its report of 28 September 1905 at page 2) as one of the solicitors present at the opening of the sittings on 27 September 1905.

Whether Bean’s replacement was called from Sydney, or simply co-opted on a pre-arranged visit to his home town, is unknown. So too is the timing of the changeover.

Although Bean was not present in court for an indeterminate, last part of the Wagga sittings, it is at least likely that, in preparation for the sittings, he would have reviewed all the court files (including originating process and pleadings) in assembling them so that Rogers AJ could manage the list of cases to be heard.

## **NEWSPAPER REPORTS**

Proceedings in the September-October 1905 sittings of the Wagga Wagga Circuit Court were, in part, reported in *The Wagga Wagga Advertiser*, then published three days a week: Tuesday, Thursday and Saturday<sup>1</sup>.

From the newspaper’s coverage, the Court appears to have sat for nearly a fortnight, commencing on Wednesday 27 September and concluding on (or about) Monday, 9 October.

The work undertaken appears to have been a fair mixture of the jurisdiction (other than equity jurisdiction) ordinarily exercised by the Supreme Court of New South Wales sitting in Sydney. The sittings commenced with criminal law business (pleas of guilty and a contested trial); but it was mainly concerned with civil disputes, before concluding with divorce cases.

All cases were the subject of trial by jury save for two classes of business. The first related to the imposition of sentences on pleas of guilty in exercise of

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<sup>1</sup> Thursday, 28 September 1905, p. 2; Saturday, 30 September 1905, p. 4; Tuesday, 3 October 1905, pp. 2 and 4 [?]; Thursday, 5 October 1905, pp. 2 and 3; Saturday, 7 October 1905, p. 8; and Tuesday 10 October 1905, p. 2 [plus ?]

criminal jurisdiction. The second related to the conduct of preliminary business in divorce cases. Rogers AJ presided over the jury trials and conducted the other business sitting without a jury.

## **A FORMAL OPENING**

The opening session of the sittings on the morning of 27 September was reported the following day<sup>2</sup>. Attendance at the Court House was something of a social occasion. During the early portion of the day several (unidentified) ladies were present, occupying seats on the Bench. The newspaper published a roll call of the Court officials, barristers and solicitors present:

*“His Honor [sic] Mr Acting Justice Rogers presided. Mr CEW Bean was Judge’s Associate. Mr GC King was Crown Prosecutor, and was instructed by Mr AE Withey, Deputy Clerk of the Peace. Dr CF Warren was Deputy Sheriff. The barristers present were Messrs W Holman MLA, GC Whitfeld, PK White, and DR Hall, and Messrs WMJ Walsh, HM Baylis, PR Higgins, Heath and Mitchelmore, and [?] JK O’Dwyer were the solicitors present”.*

The newspaper also reminded readers of the geographical reach of the Court as constituted:

*“The Wagga Circuit Court district, it may be remembered, includes the gaols at the following places: - Berrima, Bombala, Braidwood, Cooma, Cootamundra, Cowra, Goulburn, Grenfell, Gundagai, Hay, Hillston, Narrandera, Wagga, Wyalong, Yass and Young”.*

The Wagga District covered a vast area of south western, rural New South Wales<sup>3</sup>. Just as importantly for one of the barristers present, it included his electorate in the New South Wales Parliament. WA Holman was a Member of the Legislative Assembly. He had been the Member for Grenfell since 1898<sup>4</sup>. He was an up and coming man. He would soon be Attorney General in the first state Labour Government (1910-õ .) and Premier in the second (õ õ ). He was to the State Labour Party what WM Hughes was to the Federal Parliamentary Labour Party. He was politically opposed to CG Wade, then Attorney General of NSW. He qualified as a barrister after his entry into Parliament. Unlike Billy Hughes, he made a fist at a real practice at the Bar. It would have done his political career no harm to have been mentioned in the local news reports of the Wagga sittings.

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<sup>2</sup> *The Wagga Wagga Advertiser*, 28 September 1905, p. 2

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<sup>4</sup> HV Evatt, *Australian Labour Leader: The Story of WA Holman and the Labour Movement* (Angus & Robertson Limited, Sydney 1942), Ch. XVI and XVII, esp. pp. 102 ó 105.

## **CRIMINAL JURISDICTION: Entry of Pleas of Guilty**

After a formal opening, the first business of the sittings comprised three pleas of guilty on indictments, followed by the trial (by jury) of a charge of wheat stealing<sup>5</sup>.

### **CRIMINAL TRIAL: Theft**

William Michael O'Donnell was charged with stealing 41 sacks and 164 bushels of wheat, the property of Hastings Bramwell Beveridge at Old Junee. He was represented by Holman and DR Hall, instructed by WMJ Walsh. The trial (a retrial, in fact) appears to have occupied the balance of the first day of the sittings (Wednesday, 27 September) and much of the following day (Thursday, 28 September). The Prosecutor called several witnesses. Holman called witnesses as to the accused's good character. He also tendered evidence given at the last trial by a character witness who, taken suddenly ill, was not available to give oral evidence. It was admitted into evidence and read to the jury by the Judge. Holman concluded the evidence with four witnesses as to incidental facts. The accused did not give evidence.

Having adduced evidence on behalf of the Defence, it fell to Holman to address the jury first. He was followed by the Prosecutor in reply. The Judge's summing up appears, as reported, to have favoured a conviction.

The jury retired at 5.30 pm but, not having agreed upon a verdict at 5.30 pm, they were locked up for the night.

## **CRIMINAL JURISDICTION: Sentences on Pleas of Guilty**

The second day of the sitting (Thursday, 28 September) had commenced, not with *R v O'Donnell*, but with the three prisoners who had pleaded guilty on the first sitting day being brought up for sentence on their pleas. None of them appears to have had legal representation.

Alfred Wootton and Joseph Hayes were dealt with together. They had pleaded to three charges of breaking and entering and one charge of burglary. Wootton, in reply to the Judge, said that he had nothing to say why sentence should not be passed upon him. Hayes said he would like his Honour to deal with him as a first offender (under the *First Offenders' Act*) as it was the first time he had been in trouble. That met with incredulity on the part of the Judge. Commission of multiple offences was an impediment to leniency of that character.

Constable Bell (Gaoler), in answer to the Judge, disclosed that Wootton (a Queenslander) had form: he had previous convictions. In 1903 he had been convicted by Newcastle Police Court on two charges of stealing (upon each of

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<sup>5</sup> *The Wagga Wagga Advertiser*, 28 September 1905, p. 2.

which he was sentenced to six months imprisonment, to be served concurrently) and at the Newcastle Quarter Sessions on three charges of breaking and entering (upon each of which he was sentenced to two years imprisonment, also to be served concurrently). He had been discharged from Goulburn Gaol on 10 June 1905.

Constable Bell confirmed that ~~nothing~~ was known of Hayes (a Sydneysider).

Rogers AJ sentenced Wootton to 12 months ~~hard~~ labor [sic] in Bathurst Gaol on each of the four charges; to be served cumulatively, meaning four years in all. Hayes was sentenced to 6 months hard labor in the same gaol on each charge, each sentence also to be cumulative.

The third prisoner sentenced was John Irby. He pleaded guilty to two charges of criminal conduct at Wyndham. One was a charge of breaking, entering and stealing. The other was a charge of malicious damage to property. The victim was described as a man who had befriended the prisoner and, it might be inferred, given him employment. The prisoner had broken into the man's house; stolen property not described; and set fire to bedding. The prisoner initially said he had ~~nothing~~ to say in mitigation of sentence but, after Constable Bell had reported that ~~nothing~~ was known of him by the authorities and Rogers AJ had engaged his pride by remarking that he appeared to have behaved very ungratefully to a man who had befriended him, he offered an explanation of himself.

He said that he had been to the Albury Show and got too much drink. That provoked a judicial homily about the evils of cheap liquor sold at public houses. As to the prisoner's explanation that he had served one employer in his native northern England for six years before arriving in Queensland nine years earlier, that brought on a homily about the decline of loyalty shown by servants to their masters in Australia where the master-servant relationship was all simply a matter of contract. Expressing sorrow for the prisoner, and an intention to deal with him leniently, the Judge sentenced him to nine months hard labour in Goulburn Gaol on each charge, the sentences to be concurrent.

This first phase of the second day's sitting was concluded with an order by the Judge that the property recovered by restored to the respective owners. His Honour then resumed the trial of *R v O'Donnell*<sup>6</sup>.

### **DIVORCE JURISDICTION: Preliminary Hearing**

After the jury retired in *R v O'Donnell*, the day's sittings concluded with a preliminary hearing in a divorce case, *Watson v Watson*<sup>7</sup>. Thomas Watson petitioned for a dissolution of his marriage with Matilda Watson (nee Temple). The ground publicly relied upon was adultery. The co-respondents named in the Petition were James Larkin and Edward Kelly [sic]. Mr PK White,

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<sup>6</sup> *The Wagga Wagga Advertiser*, Saturday 30 September 1905, p. 4.

<sup>7</sup> *The Wagga Wagga Advertiser*, Saturday 30 September 1905, p. 4.

instructed by Mr RW Fraser of Sydney, appeared for the Petitioner. No other appearance was recorded.

After reciting formal details of the marriage; the departure and return of the wife, with seven children of the marriage in tow; and the end of the parties' cohabitation, the newspaper recorded that Rogers AJ directed that the evidence as to the other issue should not be published and concluded simply that the issues were settled as stated in the Petition.

The Judge returned to the case, apparently as the final business of the sittings, on Monday, 9 October<sup>8</sup>.

### **CRIMINAL TRIAL RESUMED: Jury Discharged**

On the morning of Friday, 29 September, upon the *O'Donnell* jury coming into court, the Foreman<sup>9</sup> announced that they had been unable to agree. They were thereupon discharged. The accused was bound over to appear at the next sittings of the Circuit Court at Wagga, or such time and place as the Attorney General may appoint<sup>10</sup>.

### **CIVIL JURISDICTION: Master and Servant (Contract of Service)**

On Friday 29 September, after discharging the *O'Donnell* jury, the Court commenced its civil business with *Dennis v Curtin*. Lizzie Jane Dennis sued her brother-in-law, Cornelius John Curtin, proprietor of the Riverina Hotel at Jerilderie, to recover £265 17/- for work and service done as his hired servant. He pleaded, never indebted. In the parlance of lawyers, she pleaded a common money count, claiming a liquidated sum; he pleaded the general issue. On those pleadings, the proceedings were tried before a jury.

Mr Whitfeld, instructed by Messrs Heath and Mitchelmore, appeared for the Plaintiff. Mr PK White, instructed by Mr WMJ Walsh as agent for Mr JT Quirk of Narrandera, appeared for the Defendant.

As outlined to the jury by Whitfeld, the Plaintiff claimed wages for 646 weeks at the rate of 12/- per week (£387 12/-) and gave credit for £121 15/- (for wages paid from time to time), leaving the balance of £265 17/- claimed at trial. The questions for the jury were: Did the Defendant make the alleged arrangement to pay her for work done in and around the Hotel? Did she do the work?

Although presented in the form of a claim for wages, the evidence unfolded in a more complicated story of domestic relationships. The Plaintiff's sister Jane had paid her passage out from Ireland in 1889. Her sister, then known as Mrs Murphy, was the licensee of the Hotel. In 1890 she married Mr Curtin, took his name and transferred the Hotel licence to him. The family business

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<sup>8</sup> *The Wagga Wagga Advertiser*, 10 October 1905, p. 2.

<sup>9</sup> Mr J Jeremy.

<sup>10</sup> *The Wagga Wagga Daily Advertiser*, Saturday, 30 September 1905, p. 4.

continued on as before. The household included husband and wife, the Plaintiff and the Plaintiff's uncle and aunt. On any version, the whole arrangement was attended by informality, culminating in a falling out.

The Plaintiff, the Defendant and the sister gave evidence on the first day of the hearing, which ended at 5.00pm with White (having adduced evidence for the Defendant) addressing the jury<sup>11</sup>. He continued to do so next morning, Saturday 30 September<sup>12</sup>. He was followed by Whitfeld on behalf of the Plaintiff, after which Rogers AJ reviewed the evidence in summing up to the jury. The jury retired at 12.30pm.

Counsel for the parties having agreed to accept a verdict (*semble* without unanimity on the part of the jury), the jury were brought into court at 6.10pm. They announced that they were unable to agree. The Judge ordered that they be discharged.

### **CIVIL JURISDICTION: Master and Servant (Indentured Apprenticeship)**

*Colm v Matthews*, another civil case, was tried on Saturday, 30 September and Monday, 2 October<sup>13</sup>. Joseph Julius Colm (Apprentice) sued his uncle, Charles Matthews (Dentist) to recover £750 for alleged breach of an Indenture (ie, a Deed) of Apprenticeship.

Mr King, instructed by Mr JT Lynch, appeared for the Plaintiff. Mr James, instructed by Mr WMJ Walsh, appeared for the Defendant.

In his opening address to the jury, counsel for the Plaintiff read the pleadings. In his ~~%~~Statement of Claim+the Plaintiff alleged that, by the Indenture of Apprenticeship, the Defendant had undertaken to teach him the art of dentistry, and to provide him with board, residence and clothing over a term of four years. He alleged that, although he was willing to do the work required of him, the Defendant did not teach him and he was compelled to leave before the expiration of his term. Moreover, he alleged, the Defendant had assaulted and beaten him. The Defendant, in his ~~%~~Reply+, denied the alleged breaches of indenture and alleged that the Plaintiff had not been willing to be taught and instructed; that the Plaintiff had been guilty of misconduct entitling him, under its terms, to cancel the Indenture; that he had provided board and residence and clothing; and that the Plaintiff had been unfaithful and negligent in his business, whereby the Defendant had suffered loss.

The newspaper reported that the Defendant had paid 20 shillings into Court in satisfaction of the Plaintiff's claim, if any. The absence of any indication to the contrary in the report suggests that that fact was disclosed to the jury without objection.

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<sup>11</sup> *The Wagga Wagga Advertiser*, Saturday 30 September 1905, p. 4.

<sup>12</sup> *The Wagga Wagga Advertiser*, Tuesday 3 October 1905, p. 2.

<sup>13</sup> *The Wagga Wagga Advertiser*, Tuesday 3 October 1905, p. 2.

Two witnesses were called in the Plaintiff's case. The Plaintiff gave evidence, and was cross examined, at length. He was followed in the witness box by the woman who kept the boarding house in which both Plaintiff and Defendant had resided. She deposed to never having seen any bad treatment of the Plaintiff by the Defendant.

The Plaintiff's case appeared to be slipping away before it even closed. That trend continued when, in his case, the Defendant himself gave evidence and was corroborated by four other witnesses: his Assistant; his Bookkeeper, who had observed the Plaintiff's poor responses to the Defendant's instructions; the Acting Postmaster at Wagga, who had observed an altercation between the two men; and an unhappy patient of the Plaintiff. The last was described as a clerk to HM Baylis, solicitor. Wagga was a small community, it seems.

Throughout the trial the Plaintiff's case appears to have been burdened by ridicule from Bench and Bar, all the more damaging because presented in the form of gentle humour evoking laughter in the Court. It was effective. Counsel for the Plaintiff was resigned to defeat: *"Mr King said that he would address the jury if he thought anything he could say would avail, but he did not suppose it would"*.

The Foreman said the jury had already made up their minds. At the invitation of the Judge, the Associate (presumably Charles Bean rather than his replacement, HM Baylis's brother) asked the jury for their verdict. It was for the Defendant.

### **CIVIL JURISDICTION: Contract for Services (Negligence)**

The next case in the list, *Hopwood v Caspers*, provided further opportunities for humour, with debateable effects on the outcome. The Plaintiff won a small verdict (£10) from the jury and the Judge ordered the Defendant to pay costs on the lower scale only.

The case ran on Monday, 2 October; Tuesday, 3 October; and Wednesday, 4 October<sup>14</sup>.

The Plaintiff, John Richard Hopwood, Railway Employee of Junee, sued the Defendant, Henry Caspers, to recover the sum of £100 for loss and damage alleged to have been caused to a piano, the property of the Plaintiff, in consequence of the Defendant's carelessness and neglect as a piano tuner. The defence was a denial of the Plaintiff's allegations.

Mr PK White, instructed by Mr FA Commins, appeared for the Plaintiff. Mr WA Holman, instructed by Messrs McEvilly and McEvilly of Sydney, appeared for the Defendant.

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<sup>14</sup> *The Wagga Wagga Advertiser*, Tuesday 3 October 1905, p. 2; and Thursday 5 October 1905, pp. 2 and 3.



The parties gave evidence, and expert witnesses were called on both sides of the record. The Defendant maintained that he had been employed by the Plaintiff to tune, not to repair the piano; but he appears to have been paid a retainer and undertaken work which, to a lay audience, could be mistaken for repairs.

At the close of the Defendant's case (on Tuesday, 3 October) the Defendant expressed a desire to make a request to the Judge, but the Judge declined to hear him otherwise than through his counsel. Perhaps that was hint enough for the jury. The Foreman requested, and the Judge agreed, that someone play a few bars on the piano (in court as an exhibit). Interchanges between witnesses, Bench, Bar and the Jury Foreman, and the ensuing music, were the subject of two separate reports in the newspaper.

Immediately after the impromptu recital, Holman addressed the jury on behalf of the Defendant. The Court then adjourned overnight. White addressed the jury for the Plaintiff the next morning. The newspaper report, at this point, confused the parties for whom the respective counsel appeared, suggesting perhaps that lawyers' arguments were not followed by everybody in the courtroom. That Holman addressed first reflects the fact that the Defendant had adduced evidence, entitling the Plaintiff to address the jury last.

Rogers AJ reviewed the evidence in his summing up. The jury retired to consider their verdict at 10.50am, returning with a small verdict for the Plaintiff. Holman may well have regarded that as a forensic victory<sup>15</sup>.

### **CIVIL JURISDICTION: Action in Trespass**

*Hopwood v Caspers* was followed (on Wednesday, 4 October) by *Anderson v Ayscough*. It was heard on the Wednesday; Thursday, 5 October; and Friday, 6 October<sup>16</sup>.

The Plaintiff, John Anderson sued the Defendant, William Ayscough to recover £250 damages for trespass. At the heart of the case was a dispute as to the terms upon which the Plaintiff occupied farming land as a sub-lessee from a lessee of the Defendant.

Mr James, instructed by Mr WMJ Walsh, appeared for the Plaintiff. Mr Whitfeld, instructed by Mr PR Higgins, appeared for the Defendant.

In opening to the jury (on the afternoon of Wednesday, 4 October, perhaps running into the morning of Thursday, 5 October), James read the pleadings. In his pleading (presumably a Declaration or ~~%Statement of Claim+~~) the Plaintiff alleged that he was in possession of farming land (known as ~~%Dennis's~~ Homestead Selection~~+~~); that the Defendant had broken and entered upon the land, destroyed grass and herbage, pulled down fences, excluded the Plaintiff from the land and a hut on the land, and thereby caused injury to sheep

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<sup>15</sup> í í í

<sup>16</sup> *The Wagga Wagga Advertiser*, Thursday, 5 October 1905, p. 3; and Saturday, 7 October 1905, p. 8.

pastured on the land. The Defendant pleaded ~~not~~ guilty+and that what he did he did by the Plaintiff's leave. He alleged that, before the alleged trespass, he was owner of the land; that he had let the land to one James Foster, subject to an express (apparently oral) reservation of a right to burn off stubble and grass and put in a crop; and that the Plaintiff, who took a sub-lease from Foster, agreed to that condition. The Plaintiff rejoined that the Defendant had trespassed to a greater extent than was necessary.

In his case, the Plaintiff first called Foster, through whom he adduced evidence of a written agreement for lease between Foster and the Defendant. The facts that it did not take the form of a deed or include any reservation of rights such as alleged by the Defendant appear ultimately to have been relied upon by the Plaintiff in final addresses to the jury. However, after Foster's evidence, the Plaintiff's case continued with evidence from the Plaintiff himself; his manager (JR Smith); a drover of his sheep (J Inglis); a grazier and farmer (A Taylor), who gave evidence of a conversation between the Defendant and Foster in which the Defendant had proposed that they together settle the Plaintiff's claim; a station manager (W Devlin) who deposed to the condition of the land and its sheep-carrying capacity; and a grazier (W Rolls), who deposed to the condition of the Plaintiff's sheep. The Plaintiff then closed his case.

In the Defendant's case, he gave evidence personally, as did his son (Harry), before the close of play on Thursday, 5 October. Although their evidence was the subject of a detailed report, in rebuttal of the evidence adduced on behalf of the Plaintiff, the further evidence given for the Defendant (by Messrs W Bowen, G Mitchell and JD Norman) on the morning of Friday, 6 October, was not.

The newspaper reported the dénouement of the trial under the heading, *"VERDICT FOR DEFENDANT"*:

*"Counsel addressed the jury on the evidence, and Mr James, for the Plaintiff, also took the point that there were interporeal [sic] rights, that there was no agreement because it was not an agreement by deed.*

*His Honor [sic] having summed up, the jury retired.*

*After half-an-hour's retirement the jury found a verdict for the Defendant.*

*Subsequently His Honor [sic] granted a stay of execution in order that an application for a new trial might be made".*

The reference to ~~%~~corporeal rights+appears to have been an erroneous reference to incorporeal rights; that is, intangible rights, such as easements and profits *a prendre*, as distinct from rights in visible and tangible objects such as houses and land<sup>17</sup>.

In context, counsel for the unsuccessful Plaintiff was laying the ground for an ~~%~~appeal+to the Full Court of the Supreme Court by way of a Motion, to that Court, for a new trial. His point appears to have been that the Defendant's alleged reservation of rights was not, in law, effective because it was neither incorporated in the written agreement for lease made between the Defendant and Foster (or any other written agreement) nor evidenced by a deed. No reference appears to have been made in the pleadings, or otherwise, to any legislative requirement (such as provided for in the *Statute of Frauds* 1677 (Imp.)) applicable in New South Wales for writing.

Whether the Plaintiff did file a Motion for a new trial does not appear from the law reports published for the benefit of the legal profession, the *State Reports (NSW)* and the *Weekly Notes (NSW)*.

An unrelated dispute between the same parties, apparently decided by Pring J on 4 August 1905, was, however, reported in the *Weekly Notes* published on 22 May 1906: *Anderson v Ayscough* (1905) 23 WN (NSW) 54. Charles Bean may, or may not, have been aware of that litigation. It appears to have been conducted without any involvement on his part.

### **CIVIL JURISDICTION: Sale of Goods**

The balance of Friday, 6 October and part of Saturday, 7 October, appears to have been taken up by *Gell v Walder*<sup>18</sup>.

The Plaintiff, Phillip Parker Gell, sued the Defendant, Charles Edward Walder, to recover £500 for damages by reason of a breach of agreement to purchase 6,000 wethers.

Mr Garland, instructed by Messrs Fleming and Henderson (Albury), appeared for the Plaintiff. Mr PK White, instructed by Mr JA Wilkinson (also of Albury) appeared for the Defendant.

Mr Garland opened the Plaintiff's case by reading the pleadings: the Plaintiff's declaration and the Defendant's plea. The Plaintiff alleged that he had agreed to sell to the Defendant 6,000 merino wethers at 20 shillings per head, and to fatten them before delivery, on conditions that the Plaintiff had fulfilled; but that the Defendant had refused to take delivery. The Defendant's plea was that he had ~~%~~not agreed+as alleged. Garland foreshadowed to the jury that the evidence would be largely documentary.

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<sup>17</sup> *Osborn's Concise Law Dictionary* (Sweet & Maxwell, London, 10<sup>th</sup> ed, 2005), p. 202 (entry for "hereditament").

<sup>18</sup> *The Wagga Wagga Advertiser*, Saturday, 7 October 1905, p. 8; and Tuesday, 10 October 1905, p. 2.

The Plaintiff proceeded, then, to give evidence, in the course of which the agreement was proved and written communications between the parties and their representatives (by way of letters and telegrams) were admitted into evidence. The Plaintiff established that the Defendant's refusal to take delivery of the sheep was accompanied by a move to Western Australia. The damages claimed by the Plaintiff represented a loss of 1 shilling per head on resale and an allowance for consequential loss (agistment for the sheep until their resale and a loss of wool productivity on the remainder of the flock deprived of the best feed because of the Plaintiff's need to agist the wethers, the subject of the sale).

No evidence was called for the Defendant. His counsel instead addressed the jury, and Rogers AJ summed up.

After a brief retirement, the jury returned a verdict for the Plaintiff in the full amount claimed.

## **DIVORCE JURISDICTION**

The balance of Saturday, 7 October appears to have been taken up by two divorce cases, apparently leaving another to be attended to as the final business of the sittings on Monday, 9 October<sup>19</sup>.

The first of the two cases dealt with on the Saturday, *Winkleman v Winkleman*, was the subject of a settlement (on terms filed in court) following a conference between the parties' representatives. The parties resided at Walla Walla. Mr PK White, instructed by Mr WMJ Walsh, as agent for Messrs Emerson & Tietjens of Albury, appeared for the Petitioner. Mr Whitfeld, instructed by Mr Wilkinson of Albury, appeared for the Respondent.

The second Saturday case was *Broadman v Broadman*. It was a preliminary hearing to settle the issues for trial. Joseph Broadman of Junee petitioned for a dissolution of his marriage with Rose Anna Broadman (nee Kelly) on the ground of desertion for three years and upwards. Mr Whitfeld, instructed by Messrs Heath & Mitchelmore, appeared for the Petitioner. There was no appearance for the Respondent. The evidence before the Court demonstrated that, after a marriage entered in 1897, the Respondent had left her husband in 1900 and had stayed away ever since. She gave as her reason for her departure that she was dissatisfied with her surroundings, and she would not stay with her husband any longer. Rogers AJ accepted settlement of the issues for trial, and set them down for trial before the Judge in Divorce in Sydney.

What appears to have been the final business of the sittings (on Monday, 9 October) was the trial of *Watson v Watson*<sup>20</sup>, the issues for which had been settled earlier in the sittings, on Thursday, 28 September<sup>21</sup>.

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<sup>19</sup> *The Wagga Wagga Advertiser*, Tuesday, 10 October 1905, p. 2.

<sup>20</sup> *The Wagga Wagga Advertiser*, Tuesday, 10 October 1905, p. 2.

<sup>21</sup> *The Wagga Wagga Advertiser*, Saturday, 30 September 1905, p. 4.

As at the preliminary hearing, the Petitioner was represented by Mr PK White, instructed by Mr RW Fraser of Sydney. Mr JK O'Dwyer (solicitor?) appeared for the Respondent.

The evidence adduced at trial included evidence given by both parties. The newspaper report was oblique, save that it included the Respondent's express denial of adultery with the co-respondent, Larkin. Nothing express was reported of the allegation of adultery with the co-respondent Kelly, or of the other issue which Rogers AJ had ordered not be reported.

The news report concluded:

*"His Honor [sic] found the issues proved on the 1<sup>st</sup> and 5<sup>th</sup> issues, and remitted them to the Divorce Judge in Sydney".*

Under the *Matrimonial Causes Act*, 1899 (NSW), a petitioner for divorce had to establish one or more factual grounds (such as adultery, desertion or cruelty) and then obtain from a judge of the Supreme Court of NSW sitting as the Judge in Divorce a discretionary ruling that an order for dissolution of the marriage was appropriate<sup>22</sup>.

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<sup>22</sup> HV Edwards, *The New South Wales Lawyer* (William Brooks & Co, Sydney, 2<sup>nd</sup> ed, 1904), pp. 135-143.