

BE SUBSTANTIALLY GREAT IN THY SELF:
Getting to Know C.E.W. Bean;
Barrister, Judge's Associate, Moral Philosopher

APPENDIX VI

On 5 September 1906, as Clerk of Arraignment, Bean signed two formal Notices for the Holding of Circuit Courts by Owen J, one in Newcastle commencing on 25 September 1906 and the other in Tamworth commencing on 9 October 1906. Both Notices were published in the *NSW Government Gazette* on 19 September 1906¹.

The same issue of the *Gazette* published a formal Notice of the appointment of Sydney Mack as Crown Prosecutor for the Newcastle Circuit Court. That Notice included no reference to the appointment of a Crown Prosecutor for the Tamworth Circuit Court, and the *Gazette* index referred to no other such Notice having been published, but a newspaper report of proceedings in the Tamworth Circuit Court records Mr Jas. Moriarty as having appeared as Crown Prosecutor.

Mack had been admitted to the (NSW) Bar on 27 October 1892². He was a foundation student of the Law School of the University of Sydney³.

James Moriarty

Newcastle Circuit Court Business, September 1906

Proceedings in the September 1906 sittings of the Newcastle Circuit Court were, in part, reported in the *Newcastle Herald and Miners' Advocate*⁴. From the newspaper's coverage, the Court appears to have sat for four consecutive days, commencing on Tuesday 25 September and concluding on Friday 28 September. The work undertaken appears to have been primarily, if not exclusively, in the criminal jurisdiction. Bean had an opportunity to observe several pleas of guilty to various offences (with the accused in each case being remanded for sentence the following day) and two contested criminal jury trials, in both of which Richard Windeyer appeared on the defence side.

The *Newcastle Herald and Miners' Advocate* commenced each of its reports with a formal notation that the Court was constituted by Sir William Owen; that Sidney Mack appeared as Crown Prosecutor, instructed by Mr JS Harnett of the Crown Law Department; that Mr C.E.W. Bean [sic] acted as Clerk of Arraignment; and that Mr CEB Maybury, Sheriff, was present in Court.

¹ *NSW Government Gazette* Issue No. --- of 19 September 1906 at p. 5344: the Newcastle Notice at Item No. 1523 and the Tamworth Notice as Item No. 1524.

² G Lindsay and C Webster, *No Mere Mouthpiece* (Sydney, 2002), p. 335; HJ Gibbney and AG Smith, *A Biographical Register 1788-1939* (Canberra, 1987), Vol. 2, p. 71.

³ John and Judy Mackinoly, *A Century Downtown: Sydney University Law School's First Hundred Years* (Sydney, 1991), pp. 46 and 211.

⁴ Wednesday, 26 September 1906, p. 7; Friday, 28 September 1906, p. 7.

At the outset of the sittings three named people were excused from attendance on the jury⁵, and a fourth person (Hugh McCullum) was fined £2 for failing to answer his name when called upon. A further fine in the same sum, was evidently imposed for the jurymen's non-attendance the following day, Wednesday 26 September. On Thursday, 27 September, he appeared in person and applied for a remission of the fines on the grounds that he had received no notice to attend before the Court, claiming to have appeared only after having seen his name in the newspaper and having made inquiries. The judge remitted the fines.

On the first day of the sittings five guilty pleas were recorded and the offenders were remanded for sentence the next day. Joseph Russell, a seaman aged 26, and Edward Penna, a labourer aged 21, were each charged with having stolen jewellery and other personal property from dwelling houses in separate incidents. Charles Neumann, a cook aged 56, was charged with being found with house breaking implements in his possession in the early hours of the morning and on a second count of having broken into and entered a shop from which he had stolen wearing apparel. Henry Holroyd, a miner aged 53, was charged with possession of a mould bearing the impress of a shilling and on a second count of having offered a coin resembling a shilling, knowing it to be counterfeit. Antonio Aurilo Villahermazo, a seaman aged 27, was charged with malicious wounding.

Although the newspaper reported that the Bar had been well represented at the opening of the sittings, of the five men who entered pleas of guilty, only one (Villahermazo) was reported to have been represented. Mr AH James appeared for him.

Following entry of pleas, the first sitting day was occupied by a contested trial of two men. Robert Slowgrove, a publican aged 34, and William Burt, a labourer aged 28, were charged with having, on 26 July 1906, at Newcastle, stolen 480 tins of 100lb of tobacco, the property of J Ireland Limited and with a second count of receiving that property. Both accused pleaded not guilty. Mr R Windeyer (instructed by Messrs Braye and Cohen) appeared for the accused Slowgrove, and Mr TA Braye for the accused Burt⁶. Four jurymen were challenged by Slowgrove, two by Burt, and three by the Crown.

During the course of the day the jury heard evidence from several witnesses (all apparently on the prosecution side of the record), retiring at 5.15 pm, before returning with verdicts at 6.15 pm. Slowgrove, the licensee of the Lord Cardigan Hotel, was found not guilty on both counts, and he was discharged. Burt was found guilty of stealing, and was remanded overnight for sentence.

The newspaper did not report in detail the business conducted on the second day of the sitting (Wednesday, 26 September) but it did note the nature of the work undertaken. The cases set down for hearing included charges against James Alfred Heaton for 'alleged assault with intent', Robert George Bates for 'alleged attempting to set fire to a mine', Robert Valentine Hooper for 'alleged assault' and George Smith for 'alleged shop-breaking'⁷. William Peters, aged 48, also entered a plea on a charge of fraudulent misappropriation, upon which he was apparently remanded in custody overnight for sentence⁸.

⁵ J Hickenbotham, E Bell and ES Wallace.

⁶ *ibid*

⁷ *Newcastle Herald and Miners' Advocate*, Wednesday, 26 September 1906, p. 7.

⁸ *Newcastle Herald and Miners' Advocate*, Friday, 28 September 1906, p. 7

On the third day of the sittings (Thursday, 27 September) Owen J, having remitted the fines of the jurymen McCullum, imposed upon Peters the comparatively light sentence of imprisonment with hard labour for six months. In doing so, he remarked that, as Peters' misappropriations had extended over some time, he could not consider the case as one to which he could extend the provisions of the *First Offenders Act*.

The balance of the day was occupied with the trial of Heaton. He was a 21 year old labourer. He was charged with having, at Greta, on 2 September 1906, assaulted Edith Pearl Campin with intent. The trial had evidently commenced on the Wednesday and was adjourned part-heard to the Thursday⁹. Mr R Windeyer, instructed by Mr WS Enright, appeared for the defence¹⁰.

The newspaper reported briefly on evidence given by the father of the prosecutrix, a senior constable and another witness. It recorded that the accused gave evidence in his own behalf and called two witnesses who corroborated his evidence. He denied the assault, and sought to prove that the prosecutrix had acquiesced in anything that might have taken place. The Crown recalled the prosecutrix to give rebuttal evidence.

Windeyer and the Crown Prosecutor were reported to have addressed the jury at length. Owen J, in summing up, is reported to have stated that this case, which had lasted nearly two days, was one of the most painful in which he had ever been engaged, not the least painful feature being the familiarity of some young people with the most terrible language.

The jury retired at 4.30pm. At 5.30pm they returned to ask the judge if they had power to return a verdict of common assault. Mr Windeyer pointed out that under section 65 [of the **Crimes Act 1900 (NSW)**?] a count of common assault might be added to indictments of this nature, which had not been done by the Crown in the present instance. The judge therefore directed the jury that, under the circumstances, it was out of their power to return such a verdict. They were required to satisfy themselves as to the intention. They retired again and returned at 6.55pm with a verdict of guilty, with a strong recommendation to mercy on account of youth, previous good character, and the condition the prisoner was in on the night in question.

The prisoner was remanded for sentence at 10.00am the next morning. The jury, through their foreman, (Mr H Hingst) expressed their thanks to the Sheriff's Department for the manner in which their wants had been attended to during their detention on the previous day. The Court adjourned until the following morning.

The *Newcastle Herald and Miners' Advocate* report of Friday, 28 September recorded that the cases set down for hearing on that day included Reuben Daniel for alleged perjury, Robert Valentine Hooper for alleged assault, George Smith for alleged breaking and entering and Robert George Bates for allegedly setting fire to a mine.

What business was in fact conducted by the Circuit Court on or after that day is not the subject of a newspaper report.

⁹ The *Newcastle Herald and Miners' Advocate* reported on 26 September 1906 (p. 7) that Heaton's case was set down for hearing on that day. In the issue published on Friday, 28 September 1906, reporting proceedings on Thursday, 27 September 1906, it described the case as part-heard.

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However, a later report of the newspaper records that on Friday 5 October 1906, the Full Court of the Supreme Court, sitting in Sydney, had disposed of an appeal against conviction instituted by Heaton¹¹. Despite the jury's strong recommendation of mercy, Owen J declined to treat Heaton as a first offender, and passed a sentence of 18 months of hard labour. The appeal, by way of a case stated by the judge¹², involved a challenge by the Defence to rulings given at trial.

The newspaper reported the substance of the Full Court proceedings thus: 'Before the facts of the case were stated by Mr Garland, who appeared in support of the conviction¹³, the Chief Justice intimated that Mr Windeyer had called at his Honour's [sic] chambers that morning and had stated that there would not be any appeal. Mr Garland remarked that Mr Windeyer had notified him to the same effect. Counsel then made a statement of the case, after the conviction was formally sustained'.

Although the newspaper reports of the sittings in Newcastle expressly record Bean's presence, there is, naturally enough, no indication of whether he had followed the appeal proceedings. It is possible, but unlikely, that he would have been present in the Full Court or otherwise involved in its proceedings.

¹¹ *Newcastle Herald and Miners' Advocate*, 27 October 1906, p. 4.

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