

BE SUBSTANTIALLY GREAT IN THY SELF:

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

APPENDIX VII

Tamworth Circuit Court Business, October 1906

The October 1906 sittings of the Tamworth Circuit Court occupied at least six days between Tuesday 9 October and Tuesday 16 October, including Saturday the 13th. No proceedings would have been conducted on Sunday the 14th. Newspaper reports are silent about Monday 15th, but the proceedings conducted on the Saturday were reported to have concluded on the following Tuesday afternoon.

As reported in the *Tamworth Observer* the sittings involved business conducted in the criminal, civil and divorce jurisdictions. There was a contested criminal jury trial on charges of stealing cattle and receiving stolen cattle; a lengthy commercial case contested before a jury, two undefended divorce suits, and a jury trial of a claim for damages for personal injury in a ~~running down~~ case¹.

On the first day of the sittings (Tuesday, 9 October 1906) the Circuit Court opened before ~~His~~ Honor [sic] Sir William Owen. ~~Mr~~ CEW Bean was expressly identified as the Judge's Associate. Mr E Jones, PM² occupied a seat on the Bench as representative of the Sheriff.

After the sitting was formally opened, the first business conducted was the trial of Robert David Ryan on a charge of stealing at Werris Creek on 31 May 1906 one steer, with a second count of feloniously receiving the steer, well knowing it to have been stolen.

Mr Jas. Moriarty, Crown Prosecutor, was instructed by Mr J D Apice of the Crown Law Office³. The accused was represented by Mr A Thomson, instructed by Mr Thomas of Quirindi⁴. The newspaper report of the trial identifies the jury as empanelled⁵, noting that the accused challenged seven jurymen and the Crown two.

The Crown called its witnesses, and defence counsel cross-examined at least some of them. They included the owner of the steer, a butcher who was supposed to have purchased it from the accused and a constable. At the conclusion of the Crown Case, the Court adjourned ~~to~~ view the beast+ and, in the absence of the jury, Thomson made a successful ~~no~~ case submission+ to the judge. His Honour ruled that there was no evidence upon which the jury could

¹ *Tamworth Observer*, Wednesday 10 October 1906, pp. 2 and 6; Saturday, 13 October 1906, pp. 2, 3, 4 and 9; and Wednesday, 17 October 1906, p. 2.

² Police Magistrate.

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⁵ C Lye, WH Russ, WR Brooks, Wm Jacobs, CJ Britten Junr, CH Smith, G Fisher, CJ Shannon, GH Swain, WJ Barber, TB Warner and JT Hughes.

convict the accused. The directed the jury to return a verdict of acquittal. The accused was discharged.

Two youths (James Corrigan and Michael Williams) then pleaded guilty to escaping from the lawful custody of a police office at Glen Innes. They were remanded until the following day for sentence. They were each sentenced to two months imprisonment ~~with~~ hard labor+[sic] in Tamworth Gaol.

On the afternoon of the first sitting day *HS Rich and Coy. v LH Hyman (recently trading as Cohen and Levy)* was called on in the civil division of the Circuit Court. It was described by the press as an important case. The barristers and solicitors who appeared were, on both sides of the record, from Sydney. The course of the trial was reported in depth. It occupied most of the second, third and fourth days of the sitting, with what was described as a ~~sensational~~ termination+ on the afternoon of Friday, 12 October. The case settled with an agreed verdict for the Plaintiff in a sum just under half of the amount claimed.

The case arose out of the sale by the Defendant to the Plaintiff of his mill in Fitzroy Street, Tamworth. The sale included the stock of wheat and flour in the mill. The Plaintiffs claimed that they had been short-changed, that they had paid for more than they had found had been supplied. They claimed £1,498 four shillings and eight pence. The terms of settlement upon which the parties ultimately agreed provided for the jury to return a verdict of £700 in settlement of all claims except costs.

Mr JL Campbell (instructed by Mr CW Schrader of Messrs Sly and Russell, Sydney) appeared for the Plaintiffs. Mr AB Shand KC and MR AB Piddington (instructed by Mr AW Hyman, Sydney) appeared for the Defendant. There was a four man jury, identified as G McA G King, JT Flynn, J Bluett and B Bradshaw.

The Plaintiffs witnesses gave evidence, and were extensively cross-examined by Shand KC. The Defendant's case suffered from exposure of false entries in his books. The Plaintiff gave evidence in reply.

At this point, on Friday 12 October, the luncheon adjournment arrived. After lunch, the parties held a conference in one of the court rooms. The proceedings settled. In the course of giving effect to the settlement, the Defendant gave evidence to deny that he had authorised any falsification of records. Shand informed the Court that ~~in~~ view of the legal difficulties in the case, he had advised his client to settle, and terms had been arranged+. Owen J directed the jury to return the verdict agreed between the parties, which they did.

In the course of Wednesday, 10 October, Owen J interposed two items of business. One was the sentencing of Corrigan and Williams for escaping from the lawful custody of a police officer. The other was an undefended divorce case *Jane Strandt v. Henry Standt*. In that case, Mr PK White (instructed by Mr JW Abigail, Sydney) appeared for the Petitioner Wife. There was no appearance of or for the Respondent Husband⁶. The Petitioner recited, as grounds for divorce, both ~~drunkenness~~ and cruel conduct+and ~~adultery~~+but relied upon the adultery of her husband. She gave evidence herself, and adduced evidence from two siblings, her brothers. Owen J found her case proved.

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On the afternoon of Friday 12 October, after *Rich v. Hyman* had settled, the judge heard another divorce case, *Reuben Dawson v. Annie Pauline Dawson*. His Honour found that the Petitioner Husband had proved that the Respondent Wife had without just cause or excuse wilfully deserted [the Petitioner] and without any such cause or excuse left him continuously so deserted during three years or upwards⁷.

On Saturday 13 October, Owen J commenced the hearing of a personal injury claim, *Arthur Stewart McIntyre v. Fielder and Son Millers*. The Plaintiff claimed £2,000 damages arising out of an accident at the intersection of Peel and White Streets, Tamworth, that had occurred on 20 December 1904, at which time he was not quite 10 years of age. According to his counsel, he was riding his horse, towards home, along Peel Street when, at the intersection with White Street, he was run over by a horse-drawn lorry bearing a heavy load, having no brake, with one of its horses spirited, out of control.

Mr Mocatta, with Mr Young, appeared for the Plaintiff, instructed by Mr JM Proctor. The Defendants were represented by Mr Piddington, instructed by Mr Theo England. The jury, as empanelled, was identified as Jas. Fisher, PE Ranelaud, H Lowcock and AJ Johnston.

The evidence was not reported in the newspaper, which satisfied itself with a notation that the case had been before the Court on a previous occasion, when it had fully reported the action. It contented itself with reporting, on this occasion, that the trial had commenced on the Saturday; that the case had concluded on the following Tuesday afternoon, when the jury gave the Plaintiff a verdict of £750; that the verdict was subject to a proviso that the boy should not receive the money until he was 25 years of age, the interest in the meantime to go to his parents; and a stay of proceedings until next term (next week) was granted⁸.

⁷ The Divorce Legislation 1901 required proof of marriage and a particular ground

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