
Around the Nation: Tasmania

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THE MASON – DIXON LINE

Although the Supreme Court of Tasmania regularly sat in the “northern capital” of Launceston as early as 1824 and a dedicated court building existed there from 1826, the question that took many more years to resolve was the appointment of a judge of the Court who would reside there permanently. With tongue in cheek I note that, as a long-term resident of both Launceston and Hobart, I feel qualified to write impartially about the subject.

John Lewes Pedder arrived in Hobart Town with his wife, aboard the barque *Hibernia* on 15 March 1824. On the sighting of the vessel the flag signal, known as signal 42, was given from Mt Nelson, perched above the River Derwent. The important person arriving, as signified by the flag, was thought, particularly by Lieutenant-Governor Sorell, to be his replacement, Lieutenant-Governor Arthur on board the *Adrian*. Such was not the case however. It was Pedder who disembarked at noon and proceeded to Government House, where he was introduced to Sorell and other officials of the colony. In his possession Pedder had a document authorising the establishment of a Supreme Court in Van Diemen’s Land.

The *Act for the Administration of Justice in New South Wales and Van Diemen’s Land* 1823 (4 Geo IV, c 96), known as the *New South Wales Act 1823*, empowered His Majesty, as a temporary measure, to institute a court of judicature in Van Diemen’s Land. An Imperial Warrant, *Warrant for Charter for Supreme Court in Van Diemen’s Land*, issued on 18 August 1823, authorised separate Royal Letters Patent under the *New South Wales Act*, which became the First Charter of Justice for Tasmania issued under the warrant on 13 October 1823.

The year on the First Charter of Justice for Tasmania was 1823, however it took approximately seven months for it to be delivered to Hobart Town by Pedder and to be read at Government House and in the market place on 31 March 1824. The first sitting of the Court took place on 10 May 1824.

From the outset the Supreme Court of Van Diemen’s Land was an itinerant court. Pedder first sat in Launceston on 23 September 1824. The Court remains a travelling court to the present day, embarking eight times each year on four-week circuits to Launceston and Burnie.

To give some context, in 1826 when John Ward Gleadow, the first solicitor to establish a practice in Launceston, set up his shingle, the settlement had a population of some 2,500 souls, there was no road suitable for traffic between Hobart and Launceston and the journey via a poorly defined track, took three days on horseback. Nonetheless, circuits were busy. In Launceston in January and February 1829, Pedder sentenced 21 of those souls to the death penalty. Eight must have escaped the gallows, as the *Launceston Advertiser* of 23 February reported:

On Tuesday last, six unfortunate human beings were launched into eternity. These, with seven that suffered the same fate on Monday, make 13 launched into eternity within 24 hours.

Hobart and Launceston were linked by railway in 1876 (which crossed what some have regarded as Tasmania’s “Mason-Dixon Line”, the 42nd parallel, just north of the town of Ross), however, the northern city did not have a resident judge until 1918, and even then it was not without controversy.

It was the Launceston *Daily Telegraph* of 18 October 1917 that was able to report that a Supreme Court judge was to be resident in the “North”. The newspaper report claimed that continued growth in Northern Tasmania “of the judicial work for which the services of the judges of the Supreme Court are necessary”, had revived the question of the need of a judge resident in that part of the State. The report went on to state that “their Honours of the Supreme Court bench were constantly travelling to and fro, and their visits were becoming more frequent and lengthy”. Then came the somewhat wordy dénouement:

The discussion of the subject of one of the judges residing at Launceston in order that the business of the Court may be more conveniently discharged has recently assumed a form indicative of the possibility that

an arrangement may shortly be made, if it has not already been completed, by which a judge may take up residence in the Northern city. Rumour in connection with the matter has gone so far as to point to Mr Justice Ewing as likely to become the first judge of the Supreme Court resident in the North.

The *Mercury* of 16 February 1918 reported that Mr Justice Norman Kirkwood Ewing had arrived in Launceston to commence duties as resident judge in the North and that the recent arrangement was that he should continue in residence in the North, and undertake all business at that end of the State for a period of at least 12 months.

No one saw the storm that was to brew later in the year as a result of the suggestion of increased emoluments to be paid to Ewing. On the afternoon of 9 December 1918, then Chief Justice Nicholls took the highly unusual step of handing to the press correspondence that had passed between the Attorney-General, himself and Ewing. This was to cause a deep rift between the members of the Court.

The first letter was dated 22 October 1917 and was to the Chief Justice from the Attorney-General (Hon W B Propsting CMG), intimating that Ewing had informed him that he proposed to live in or near Launceston, and stating that the Government had no objection provided that the judges could carry out the judicial work of the State without inconvenience to the public and without any increased cost.

On the same date the Attorney-General wrote to Ewing replying to previous letters and conversations as to his proposal to live in Launceston, and expressing the Government's willingness, provided no inconvenience would be caused. If the judges found an arrangement practicable, the Government would defray the cost of the removal of books and the fitting up of a room as a library at the court house at Launceston. It was thought that one of the clerks in the public service might act as an associate.

On 29 October 1917, the Chief Justice replied to the Attorney-General. He prefaced his remarks by correcting the statement published in the press to the effect that the Premier had said "Ministers had been consulting with the judges for some time on the matter", and said that the Premier had obviously been misunderstood, as no such consultation had taken place. He objected to the impression being created that the Bench was to be split up and the judges separated, when at least two of the judges held strongly the view that the only proper way in which the State could be given the full value of such knowledge the judges possessed was by the judges living in one place, practically in permanent consultation. Ewing, he said, desired to reside in Launceston for the benefit of the health of one of his family, so that the proposed alteration was not for the benefit of the judicial work, but was for purely private reasons.

Ewing went to reside at Launceston and that was the end of the correspondence at that time, but nearly a year later, under date 8 October 1918, the Attorney-General, in a letter to the Chief Justice said that Ewing was prepared to reside in the vicinity of Launceston for at least five years "provided certain allowances were made to him".

Three days later, in reply to the Attorney-General, Nicholls directed attention to the fact that "the junior puisne judge had been communicating with Ministers upon matters affecting the administration of justice by the Supreme Court", while he (Nicholls), had actually known nothing of what had been going on until informed by the Attorney-General. He requested that all correspondence between the Government and judges be by the Attorney-General through the Chief Justice, and said that if that course had been followed Ewing's proposal to Ministers would "never have needed consideration" because he and Crisp would not have agreed to it being made.

Nicholls said that during the last two years the junior puisne judge, by means, so far as Nicholls knew, of private negotiations with some members of the Ministry, had made more than one proposal by which his salary was to be substantially increased. As he (Nicholls) telegraphed to the Premier when he heard of the first of these arrangements in February 1917, it was a breach of the rules which were supposed to govern the conduct of the judges and of the Crown in dealing with the judges. The junior puisne judge, Nicholls wrote, was seeking an arrangement to obtain an increase in pay or allowances of £250 a year. Any such increase, unless by Act of Parliament, would, in the Nicholls' opinion, be illegal.

His Honour then went on to give his reasons against such proposal, instancing a libel brought by the Premier, with the fate of the Ministry depending upon the verdict, and the case being tried by a judge, whose hope of a large increase of pay depended upon the fate of the Ministry. With regard to the question of a judge residing in Launceston, Nicholls and Crisp were still of opinion that it was "a mistake". What

had happened that year he said, had strengthened their views. There was no economy to suitors in it. All work which should be done in Launceston had been done there for some years. It was important he said, that allegations as to the advantage to litigants of a judge residing in Launceston “should be investigated down to small details”.

Notwithstanding Nicholls’ ire, Ewing went on to live and work in Launceston until his death on 19 July 1928. Thereafter, things reverted to the position existing before his move north. On 13 June 1930 Crisp (later Chief Justice Sir Harold Crisp), opened the new and still existing Supreme Court building in Cameron Street in Launceston. Two years later, on 1 July 1932 the *Launceston Examiner*, under the headline “Resident Judge: Launceston Claims Important Problems”, lamented that since Ewing’s death the two puisne judges, Crisp and Mr Justice Inglis Clark Jnr, and Nicholls, “have resided in Hobart. Launceston has been visited from time to time as occasion demanded by one of the judges for the purpose of holding courts”.

From 1958 until his untimely death in 1961 Justice Richard Kenneth (Ken) Green, later Sir Richard, was a Launceston resident and maintained a house there with his brother, however it was not until the appointment to the Court of the then pre-eminent Launceston barrister, George Hunter Crawford, later Sir George, that a judge would again spend more time in Launceston than in Hobart.

After Green’s death, Crawford spent more time in Launceston where he and his family maintained their principle residence and he spent less judicial time in Hobart. Of the eight Court sittings a year he would only undertake one civil and one criminal sitting in Hobart and one sitting in Burnie. Things have remained largely the same since then, with a number of Launceston judges successively appointed to the Court, including Crawford’s son, Chief Justice Ewan Crawford, who administered the Court from Launceston between 2008 and 2013.

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