# HAGUE'S HISTORY OF THE LAW IN SOUTH AUSTRALIA 1837 – 1867

Ralph M. Hague

With a foreword
by the Honourable Justice John Perry

With a foreword to the 2019 Hardback edition
by the Honourable Justice Martin Hinton

And a biography of the author
by Helen Whitington

Illustrations compiled and captioned
by Bruce Greenhalgh

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The abbreviations listed above are used to acknowledge the source of the illustrations in the main text. A full list of illustrations is included – see contents.

# *Preface*

It is not unusual for a long time to elapse between an author finishing a work and that work being published. But the nearly seventy years it has taken for Ralph Meyrick Hague's *History of the Law in South Australia 1837 – 1867* to be published is notable and begs some explanation. That explanation is even more warranted when it is considered that this is a posthumous publication of a work that failed in its initial goal of gaining a doctorate for its author.

When Hague submitted his *History* to the University of Adelaide for the Bonython Prize (which was the Law Faculty's de facto doctorate) in 1936 he did so as somebody accustomed to academic success and with designs on a career in academia. The rejection of his work, which had less to do with its merit than with the narrow thinking of the time, thwarted that career and might have consigned the *History* to oblivion. But Hague understood the value of his work for he not only deposited a copy with what became the State Library but also continued to research the subject using the *History* as a basis for further monographs.

Over time others discovered the value of Hague's work and slowly it became recognized for what it was; a pioneering work born of meticulous and original research and delivered in an elegant and sometimes witty style. It became one of the foundations of a growing appreciation and study of Australian legal history.

Until this publication, however, the *History* remained in the form that Hague deposited it with the State Library; namely some 1500 pages of typewritten manuscript. In this form the *History* is a daunting work with a bare table of contents as its only navigational tool. The *History* was worthy of publication in a more attractive and accessible form. The decision, then, by the John Bray Law Chapter and, in particular Justice Gray, was more overdue than surprising. This publication aims to honour Hague, preserve his work and to take it to a wider audience.

The publication is distinguished from the usual mode of history presentation in a number of ways. Firstly, very little editing of Hague's manuscript has been done. Discrepancies between sections of the typescript, reflecting preparation over several years, have been rendered consistent throughout. Typographical errors have been corrected and the punctuation around Hague's interpolations into quoted texts has been simplified. Apart from these small changes the publication is faithful to Hague's typescript.

Performing a fuller edit was considered but rejected because of a desire to honour the author and preserve his unique style. The endnotes presented are essentially those listed in the typescript, which were incomplete and less than detailed. It was not practical to produce a full and detailed set of references although some amendments were made. Accordingly, the endnotes are not of a standard that would normally be expected. They are reproduced, however, for the possible benefit they may give to researchers. Illustrations and marginal notes were included to give the book a visual dimension, and to assist the reader. Images and reproductions of documents are used to convey an understanding of the times Hague described in words alone

Hague originally titled his work *The Early History of Law in South Australia*. It was retitled, possibly when deposited at the State Library, as *History of the Law in South Australia 1837 – 1867*. This second title is the one the work is commonly known by and is the title used in most (if not all) references to the *History* and because of this the decision was made to use the latter title.

Helen Whitington's biography of Hague was produced to satisfy the anticipated desire of readers to know something of the man who wrote the *History*. It also recognises that the story of the *History* and Hague's life are themselves part of South Australian legal history. It was not written as an authoritative biography but as a means of understanding the man not only through his work and career but also through his interests and relationships.

This publication is, in some ways, an imperfect work. The only real alternative to this, though, was not to publish the *History* at all and therefore to continue the neglect of this important work and to deny the benefits its publication creates. The publication should not be judged on its imperfections but on how well it educates, entertains and fosters a greater understanding and study of South Australian legal history.

Bruce Greenhalgh
Historical Collection Librarian
Supreme Court Library South Australia

# *Foreword*

Ralph Hague's *History of the Law in South Australia 1837-1867* is a fascinating and perceptive narrative of the early legal history of South Australia

Completed in about 1936, the work remained unpublished at the time of his death in March 1997.

Hague begins with an account of the establishment of the province of South Australia. This was the culmination of the earnest endeavours of a group of idealists, who, as he reminds us, were dubbed disparagingly by James Stephen, as the Wakefield Theorists.

In the early chapters, he lays bare the intricate obscurities of the Foundation Act, no doubt a product in part of the unedifying wrangles between the promoters and the Colonial Office. His description of this is brought into sharp relief by a series of graphic pen portraits of the major protagonists such as Gilles, Wakefield, Gouger, Lord Howick and Lord Stanley.

He is equally graphic in his portrayal of the first Governors, beginning with Hindmarsh. He depicts Hindmarsh in a cruelly unflattering light, presiding over what he describes as "administrative pandemonium", marked by endless bickering between public officials.

But it is in his description of the judges and court officials, and their dealings with each other and with the Commissioners, wherein lies the strength of this work.

Hague's brush darts across the canvas, painting pictures of eccentric, larger than life characters. His description of their personalities and their lives causes me to reflect on the staid, carefully correct existence which most judges lead today.

It is hard to imagine such an adventurous and impetuous figure as Sir John Jeffcott, the province's first judge, who killed a man in a duel and stood in the dock on a charge of murder, taking up a position on today's Supreme Court bench.

Jeffcott's dramatic and untimely death by drowning while navigating the swirling breakers of the Murray mouth, left acting Justice Henry Jickling marooned on the Supreme Court bench. Hague quotes the description of Jickling which appeared in *The South Australian* as a man "inebriated with the exuberance of his own verbosity".

In his treatment of Jeffcott's successors in office, it is Hague's description of Mr Justice Boothby which is perhaps the most illuminating. The reader is left in no doubt about the extent of the havoc wrought by Boothby's eccentric ways and stubborn adherence to his bizarre views as to the application of English law to the Colonies.

Replete with quotations from contemporary journals, embellished by his own sharply perceptive writing, this book is a testimony to the dedicated scholarship of a man I knew as a quiet, unassuming lawyer whose talents are only now being recognised.

The book makes an invaluable contribution to our appreciation of the early legal history of the State.

Full credit is due to the John Bray Law Chapter of the Alumni Association of the University of Adelaide, more particularly to its former President, Justice Tom Gray, whose idea it was to publish the book; to Bruce Greenhalgh of the Supreme Court Library staff who prepared the manuscript for publication and selected the illustrations; and to Helen Whitington who wrote the biography of the author which is incorporated in the book.

The Honourable Justice John Perry
Supreme Court Chambers
Adelaide

# *Foreword to the 2019 Hardback Edition*

I was very pleased to be asked to write a brief foreword to the second edition of *Hague's History of the Law in South Australia 1837-1867*.

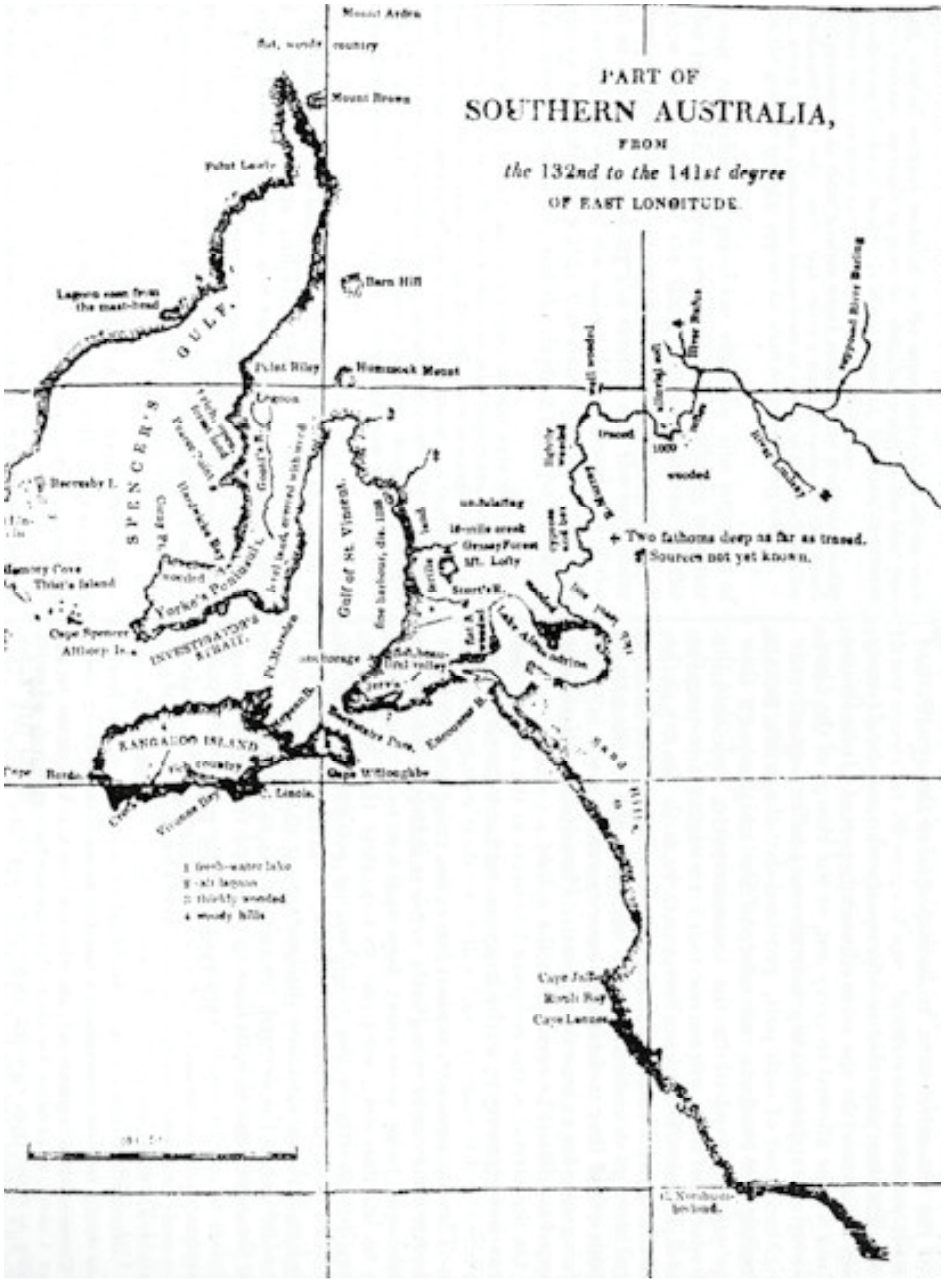
I recall first diving into *Hague's History* when as Solicitor-General I was required to trace the origins and content of the executive power of the State in order to understand the power that a contemporary Governor may wield on the advice of his or her Ministers.

On another occasion I turned to Hague for his treatment of the establishment of the Supreme Court for the purpose of tracing the scope and content of the Court's jurisdiction.

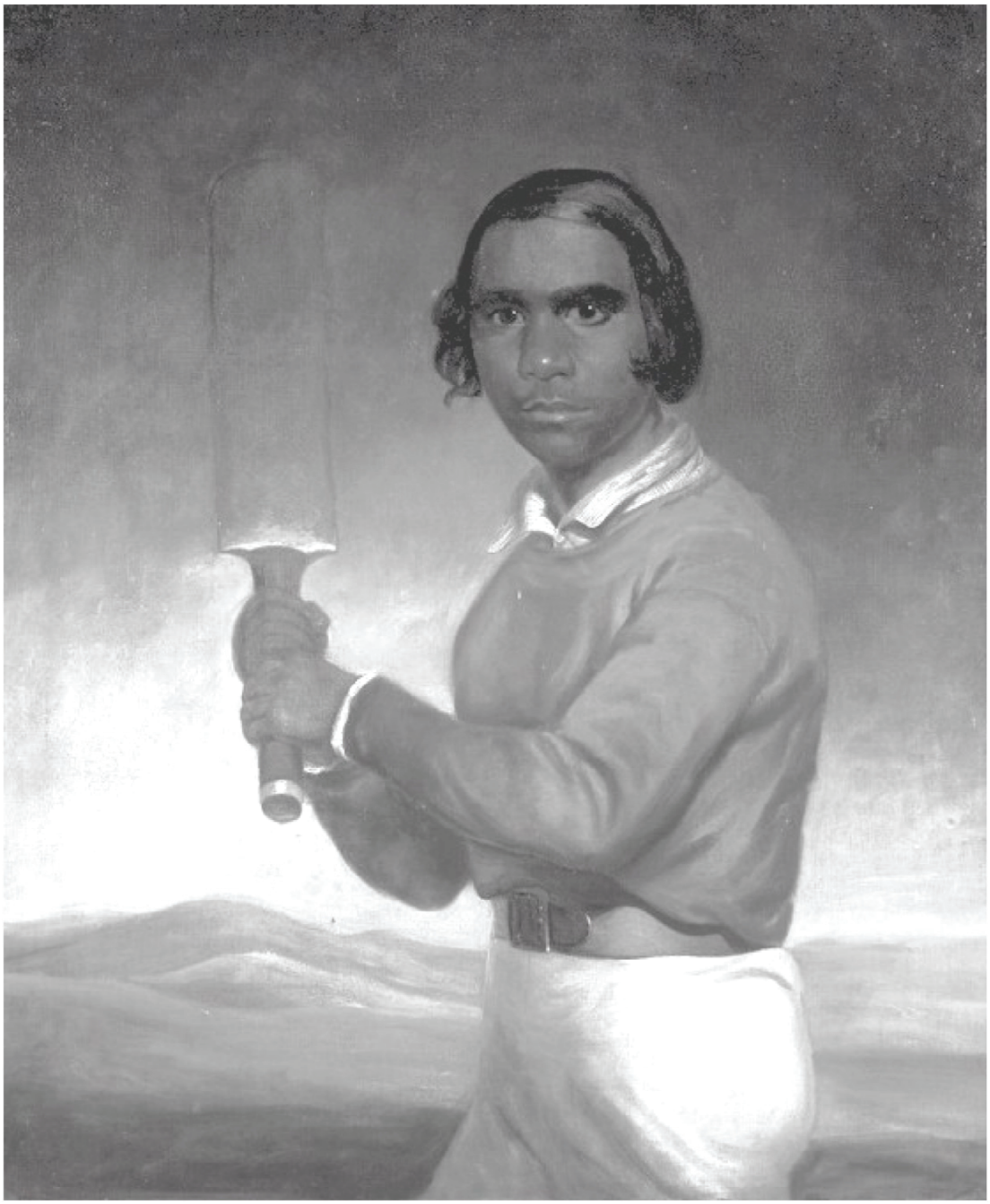
More recently it was the work Hague had done on the first petit and grand juries that assisted in an analysis of the protection afforded by trial by jury.

In each case the origins of important legal institutions were critical to understanding the structure and purpose of contemporary equivalents. From its very beginning, the Province-cum-State has enjoyed a constitutional structure intended to allow for its people to grow and flourish. When change is proposed, as it is from time to time, we are fortunate to have *Hague's History* on hand so we can comfortably plot the course from where we have come and better pilot our way forward.

The Honourable Justice Martin Hinton
Supreme Court Chambers
Adelaide




*Part of Southern Australia, from the 132nd to the 141st degree of east longitude*, (detail) from a pamphlet published by the Colonization Commissioners in 1835 addressed to "small farmers and others" promoting the merits of emigration to South Australia (SLSA)



John Michael Crossland's *Portrait of Nannultera, a Young Poonindie Cricketer* 1854. Poonindie was a mission established in 1850 near Port Lincoln to convert Aboriginals away from "barbarism" and toward a Christian European life. The portrait was painted as "proof" of the success of the mission and the "progress" of the Aboriginals. The view of successful assimilation conveyed by the painting was, of course, belied by the reality of Aboriginal contact with Europeans. Indeed, Poonindie's Aboriginals suffered a very high mortality rate through the 1850s. (NLA)

One of the numerous deficiencies of the Foundation Act was its failure to make any provisions for the Aborigines. The preamble having gloomily recited that the proposed province consisted of "waste and unoccupied lands which are supposed to be fit for the purposes of colonization", the Act went on to declare that the whole of the land should be open to purchase by British subjects.

After the Act was passed, however, the Colonial Office (according to Brown, in order "to satisfy the Saints in the House of Commons") decided that they could not authorise the continuance of the colonisation scheme unless some satisfactory arrangements were made for the protection of the natives. Lord Glenelg therefore proposed that the settlers should occupy only a small district, which was not already in the occupation of the natives. The colonists were up in arms at once. Robert Thomas wrote to Lord Glenelg accusing him of having thrown "a causeless impediment" in their way, "thereby constraining their energies and disappointing their most sanguine views and expectations". It was well known, he said, that the natives wandered from place to place without any fixed location, and these wandering propensities of the Aboriginal tribes were a sufficient reason:

> '... why the millions of fertile acres over which they tread, like the beasts of the earth, unconscious of their value and ignorant of their use, may be taken possession of by a colony of civilized people, without doing them the smallest injury ... I confess myself at a loss to comprehend how a few strolling savages, entirely ignorant of the arts of civilized life, and not only without the means, but absolutely averse to cultivating the land, and who, if they may be said to possess a small portion of it today by erecting their crude huts, will abandon it tomorrow, can be called its actual proprietors, or what wrong it can do them if others till that which they know not the use of'.[1]

John Brown wrote indignantly in his journal:

> 'That measures should be devised and enforced for their protection and civilization as far as possible is not only just and humane, but politic; but that a legislature should authorize the sale of land and the formation of a colony in a part expressly declared by them for the purpose, and then as soon as people have embarked their money and spent their time on such an assurance, suddenly find out that there are natives and native rights which they ought to have first enquired about is beginning at the wrong end, and, if just to the Aborigines, is

unjust to the Colonists. At least, this ought to have been foreseen and prepared for, and we not delayed by their oversight.' [2]

And in another entry he has some sensible and pointed remarks:

'What is to be the interpretation of the word 'occupy' is the question. The Act itself declares the ground to be waste and unoccupied, and this question, if raised at all, ought to have raised before it was past (Sic). But it is not occupied according to any law regulating possession which is recognized by civilized people. I believe it is now only started to record by correspondence the opinion of Government upon a point which they may think will be hereafter moted by the Quakers or others upon the grounds of supposed Humanity and Abstract Rights. I say the supposed Humanity for the idea of buying the land by a few hatchets or old clothes, may be a purchase in one sense, but is decidedly a Jew's bargain. The mind it can reconcile must be as blunt to the real feeling of strict honesty as it is squeamish upon Humanity. Because a Native is ignorant of its value it is no excuse for a false price. If you buy at all, it is quite clear the seller ought to have what is given for it; and this with us is easily ascertained viz 12/- per acre.' [3]

A compromise was reached by which the Commissioners undertook that all native rights should be respected and that a protector of the Aborigines should be appointed.

Alexander Schramm's *Civilisation versus Nature* ca. 1859. (NLA)

The views of the Commissioners were set out in their first report (1836). The due observance of justice to the natives and the preservation of native rights, they said, could not but be regarded as of the first importance in the formation of the new settlement. The natives should be guarded against personal violence and outrage, they should be protected in the undisturbed enjoyment of their proprietary right to the soil wherever such right might be found to exist, and it should be an invariable and cardinal condition in all bargains and treaties made with the natives for the cession of lands possessed by them that a permanent subsistence should be supplied to them from some other source. Many of the native tribes had been exposed to injustice and cruelty in their previous intercourse with Europeans.

> 'The Colonization of South Australia by industrious and virtuous settlers, so far from being an invasion of the rights of the Aborigines, is a necessary preliminary to the displacement of the lawless squatters, the abandoned sailors, the runaway convicts, the pirates, the worse than savages that now infest the coasts and islands along that extensive portion of New Holland, and perpetrate against the defenceless natives crimes at which humanity revolts.'

No portion of the land of the province was to be offered for sale until it had been ascertained by the Protector of the Aborigines whether it was occupied or enjoyed by the natives; if so, it must first be acquired by surrender or cession from its native proprietors. The Protector's duty was to see that all bargains or treaties made with the natives were faithfully executed, and to call upon the executive government of the colony to protect the Aborigines in the undisturbed enjoyment of the lands which they were not disposed to transfer to the settlers.

Cessions of territory by natives were not only to be voluntary but involved a stipulation that the natives should be permanently supplied with subsistence and with moral and religious instruction. To create a permanent fund for this purpose it was proposed that lands ceded by the natives to the Colonisation Commissioners should be sold under the condition that for every 80 acres conveyed the party to whom the conveyance was made should pay for four-fifths, or 64 acres only, the conveyance being subject to a stipulation that at the expiration of a term of years the lands so conveyed should be divided into five equal parts. One of these parts would be resumed as a reserve for the use of the Aborigines; the remainder would remain with the proprietor as his freehold. In determining which of the five parts should be resumed, the proprietor was allowed first choice of two of the five parts and the Protector was then to select the reserve out of the remaining three parts. By this ingenious arrangement, the proprietor would get the gratuitous use of 16 acres for a term of years

sufficient to yield him a remuneration for clearing and improving and, as he would be doubtful which parts he would ultimately get, he would have to distribute a certain amount of labour upon each of the last three blocks. The reserves would then be worth considerably more than their unimproved value and could be used as a fund for the benefit of the Aboriginals.

> 'Thus conducted, the colonisation of Southern Australia will be an advent of mercy to the native tribes. They are now exposed to every species of outrage, and treated like cattle of the field; they will in future be placed under the protection of British laws, and invested with the rights of British Subjects.'

Following up this plan, the Commissioners directed Colonel Light that in surveying land he was to use the utmost caution to prevent collisions with the natives.

> 'You will consider the wild animals as the property of the natives, of whom any which may be desired as food should be purchased. You will therefore discourage sporting and in inhabited districts prevent it altogether.' [4]

The Commissioners' schemes as to the purchase of land from the natives were never put into force, and thus perhaps a legal difficulty was avoided which might have otherwise arisen, namely whether the Commissioners had any powers under the Foundation Act to promulgate such a plan. The Act did not recognise the existence of Aborigines. It empowered the Commissioners to declare that all the land of the province was public land open to purchase by British subjects, and provided that the lands must be sold for ready money. Nowhere did it give the Commissioners any right to reserve part of the land for the benefit of the natives. George Fife Angas, giving evidence before the House of Commons Committee in 1841, contended that the setting aside by Governor Gawler of Aboriginal reserves at Adelaide and at Encounter Bay was illegal and that the natives could not purchase or hold lands. He urged that the natives should be acknowledged and naturalised as British subjects and should have the power of buying and selling land. Additional laws should be made for them. "A valuable code of laws" for the natives, drawn up by Mr Standish Motte, a barrister of the Middle Temple, was placed before the Committee but unfortunately was not printed.[5]

Correspondence later took place between a number of colonists who held preliminary land orders, and Captain Sturt, the Assistant Commissioner, about the withdrawal of certain sections of land in favour of the Aborigines. Sturt's reply was that prior to the landing of the colonists the Aborigines possessed "well understood and distinctly defined proprietary rights over the whole of the available lands in the province" and that their rights must be respected. Apparently this was considered to be sufficiently secured by reserving

a few sections for them. No person was sufficiently interested or litigious to challenge in the courts the legality of the reservations.[6]

Intending colonists were assured, before leaving England, that the protection of their lives and property had not been overlooked.

> 'No danger is to be apprehended from the natives'—it was stated in the first number of the Register—'for it is well ascertained that they are a tractable and inoffensive race when treated with kindness. Pains have already been taken to establish a friendly intercourse with them, and they will be treated in every respect with forbearance and consideration.'

*Rapid Bay, encampment of Yankalilla blacks* by George French Angas ca. 1840s (NLA)

Governor Hindmarsh had particular instructions from the Colonial Office that he was to give proper protection also to the natives, and one of his first steps was to issue a proclamation apprising the colonists of his resolution:

> '... to take every lawful means of extending the same protection to the Native Population as to the rest of His Majesty's subjects, and of my firm determination to punish with exemplary severity all acts of violence or injustice which may in any manner be practised or attempted against the natives, who are to be considered as much under the safeguard of the law as the Colonists themselves and equally entitled to the privileges of British subjects. I trust therefore with confidence to the exercise of moderation and forbearance by all classes in their

> intercourse with the native inhabitants and that they will omit no opportunity of assisting me to fulfil His Majesty's most gracious and benevolent intentions towards them by promoting their advancement in civilization and ultimately under the Blessing of Divine Providence, their conversion to the Christian Faith.' [7]

At first the natives proved friendly and inoffensive. "They have committed some depredations, such as spearing a few sheep and such like"—wrote Mrs Mary Thomas—"otherwise their conduct has hitherto been peaceable and orderly." [8]

The Governor himself wrote home:

> 'My preconceived notions were quite opposed to fact as regards these people, they being as good looking blacks as I ever saw and much more apt and intelligent than any account of the New Hollanders I had read led me to expect.' [9]

Their numbers were too small to give any cause for apprehension; it was rather the natives who needed protection from the white settlers. At a dinner given to him before leaving England, Governor Hindmarsh had called upon the colonists above all things: "... to prevent the aborigines from imbibing from them a taste for that bane of humanity—spirituous liquors". [10] The most effective way the colonists could do this, he said, was by setting them an example "in forming one vast temperance society". The Governor's premonitions were fulfilled, for some of the colonists lost no time in giving liquor to natives. While the first settlers were living in tents at Glenelg, the Government had to issue a proclamation prohibiting the supply of ardent spirits to natives, and offering a reward for the conviction of any person committing this offence.

> 'One of the first things we noticed on entering the settlement"—wrote one pioneer—"was the truly English custom: I mean several printed bills—one a caution, the other a reward. The caution was a high fine on any person giving spirits or wine to the blacks; the reward was £5 for the discovery of a person who had already transgressed the orders.' [11]

At the first Criminal Sessions in May 1837 two white men were charged with stealing spears and waddies from some natives. In addressing the Grand Jury, Sir John Jeffcott said:

> 'There is one offence to which, although it is the last upon the list, I shall first advert, because it is one upon which I consider it of paramount importance that I should offer a few observations, and I trust the observations which I consider it my duty to offer, may make a due impression upon those for

whom they are intended.'

After referring to the Commissioners' expressions of the policy to be pursued towards the natives and to the Governor's proclamation, the Judge continued:

> 'They have been declared British subjects. As such they are entitled to the full protection of British law, and that protection, while I have the honor of filling the situation which His Majesty has been pleased to confer upon me, shall be fully and effectually afforded them. I will go further, and say, that any aggression upon the natives, or any infringement of their rights, shall be visited with greater severity of punishment than would similar offences committed upon white men.' [12]

*Native weapons and implements* by George French Angas ca. 1840s (NLA)

The prisoners were acquitted, but the Judge, in an address through an interpreter, attempted to explain to the natives whose weapons were supposed to have been stolen the nature of private property; that as their property would be held sacred, they must in return respect the property of the white men; and that all acts of aggression on either side would be severely visited. "To all of which, when explained by the interpreter, they nodded or rather laughed assent, for they seemed evidently pleased in the interest taken in them." [13]

In Adelaide itself the natives never gave any very serious trouble. There were complaints of minor nuisances such as begging, petty pilfering of melons and potatoes, or camping on the acres which the

colonists had bought, and taking wood for their fires; the Protector had occasional trouble with them when they refused to eat their porridge and insisted on having biscuits supplied to them; and a problem which was not solved for several years was that of their wandering about the streets naked. In 1841 the Governor issued an order:

> 'The Police will prevent any of the Natives from appearing in the town who are not clothed with tolerable decency. If any of the native male adults should persevere in resisting this order they will be taken before a Magistrate and committed to prison on the charge of indecent exposure.'

The local blacks soon acquired a few rags of cast-off clothing, but from time to time strange natives from the country wandered into the town and unwittingly offending against this Ordinance, were seized and locked up for twenty-four hours without food. What they thought they were being punished for, it would be vain to speculate. As settlement spread, offences of this nature rapidly disappeared.[14]

Murder
The murder at Encounter Bay was the subject of Blenkinsop's letter (reproduced in Chapter 2.5).

In June 1837 a white man was killed by the blacks at Encounter Bay and the first serious legal problem as to the punishment of natives arose. The Advocate-General visited Encounter Bay to make inquiries, and one native, supposed to be the murderer, was captured and brought back to Adelaide. It had now to be decided whether he was to be tried and, if so, how. The Judge was away in Van Diemen's Land, and Mann said that he thought the matter was so important as to call for the special consideration of the Governor and Council:

> 'I feel that the habits of the civilized and uncivilized man differ so widely and the uncertainty of evidence arising out of our ignorance of the language of the natives is so great that a serious responsibility will attach to the adoption of any application of the strict rules of English law to cases similar to the present. On the other hand, it seems equally impolitic, nay even impossible, to leave the subjects of His Majesty unprotected and their lives and property exposed to the vindictive passions or cupidity of the aborigines.'

He was inclined to suggest that those natives who were known to the Protector and who had acquired a reputation for trustworthiness should be allowed to give evidence.[15]

The Governor wrote to Mr Angas with reference to the prisoner:

> 'We are not yet decided how to proceed with him, but evidence is being collected. It would, however, be worse than useless to bring him before a Jury unless there is almost a certainty of his conviction. To release him under any circumstances (his tribe knowing him to be guilty) would be naturally ascribed by the natives to fear ... As to this prisoner,

> had the whites knocked him on the head, on discovering his guilt, I believe his relatives would have considered it quite in the way of business, and then thought no more about it. Not so, I fear, should a regular process condemn him. And yet the bull must be taken by the horns. The colonists must be protected, and we must do all that we can to show these poor people that justice is equal between us.' [16]

The accused solved the immediate difficulty by escaping, but the problem remained, and one of the objects of Sir John Jeffcott's intended visit to Van Diemen's Land in December 1837 was to consult with the Judges there as to what course he should adopt upon the trial of native prisoners.

As settlement extended, conflicts with the natives became more numerous. In March 1838, Governor Hindmarsh issued a proclamation stating that there was reason to believe that many of the outrages by blacks had been induced by the previous aggression of the settlers. The colonists were commanded to abstain from hostile measures, or the use of firearms against natives, and:

> '... to remember at all times that the native population are under equal protection of the laws, and are to be regarded and treated, and are liable to the same punishment in all respects as Her Majesty's other subjects. The advantages which may be derived by treating the aborigines with kindness, notwithstanding what has recently occurred, must be evident; for, by retaliating injuries upon a race of being who never discriminate when seeking revenge, the unoffending may suffer for the wrongdoer'.

Every instance of an Aboriginal committing "a fault or any act of impropriety" was to be reported in order that measures could be taken to prevent the repetition of such conduct "by an uniform system of punishment".[17]

Governor Gawler, when he arrived in the colony, also urged forbearance, but it is not likely that a homily which he delivered to the colonists was very much appreciated by them.

> 'Remember'—he admonished them—'that we are descended from the same first parents; they are bone of your bone and flesh of your flesh; you are brothers—the colour of your skin is no excuse for you. They are children in understanding; you bear with the ignorance of children—bear with theirs; so shall we have the gratification, under God's blessing, of making them happy and useful members of society.' [18]

About two hundred natives, with their lubras and children, were entertained by the Governor at a dinner in the parklands. With the

help of an interpreter, he delivered a speech to the Assembly and, in conclusion, waved his plumed white hat, which caused a native with a sense of humour to call out, "Berry good cockatoo, Gubner"; and as the "Cockatoo Gubner" Gawler was known amongst the natives for many years.

> 'A few days after this feast, which gave new wants to a harmless race of beings, they relished roast beef and roast mutton so well, that they immediately commenced operations to supply themselves with those luxuries which neither they nor their forefathers had ever tasted before.' [19]

Governor Gawler's dinner for Aboriginals in the parklands (AGSA)

In spearing sheep, the natives were not without justification. The white man came and killed their kangaroos; why should not they kill "the white man's kangaroo". The *Southern Australian* was at pains to show by an ingenious distinction that, while it was a most heinous offence for a blackfellow to spear a sheep, it was no offence at all for a white man to shoot kangaroos.

> 'The latter animal'—it said—'traverses the waste owning no guide or master, but its own free will, until it becomes property to him who has pursued and succeeded in killing it. The former, on the contrary, is in all stages of its existence the property of an individual, or of successive individuals; an equivalent has been given for it, and it is fed and protected at the expense of its owner.' [20]

In March 1839 the first native was brought to trial before the Supreme Court. He was accused of wilfully and maliciously setting fire to grass. It was a common practice, and in the opinion of the natives a laudable one, to burn off the withered grass to hasten the growth of new grass. Obviously this was dangerous and would have to be stopped, but how far could it be said to be wilful and malicious?

> 'I shall require very satisfactory evidence'—said Jickling—'that the native knew he was committing a serious crime before I shall consent to inflict upon a native of the country what in the case of a white man I should conceive to be a punishment proportioned to the offence.' [21]

Like every other prisoner at this sessions, the native was acquitted and the Grand Jury drew up a presentment deprecating the strong feeling among many of the colonists against the Aborigines. Governor Gawler replied:

> 'I have seen with deep regret that petty offences and depredations have been increasing among the aborigines, and that these evils have been accompanied by a corresponding increase of impatience and anomosity [sic] against them by some of the settlers. Every friend of morality must see with deep concern that that vice which brutalises man—or rather which degrades him lower than the brute—drunkenness—that vice which especially renders man a burden to himself and a pest to society, is through the example or at the instigation of thoughtless and abandoned persons, gaining ground among the natives. As one of the leading points of hope for them, its progress must be steadily and universally discountenanced by us. The aborigines have been brought under British law. To the utmost of my power, when they are guilty of crimes, I will not from any mistaken sympathy towards them, suffer those laws to be evaded; but, at the same time, as aborigines may be punished by our laws, by those laws they must also be protected, and I look to the juries of the colony for steadfast support in defending them, according to the full scope and power of British statutes, against every lawless aggression. It must also be remembered that, if (on?) the one hand we have set before them the blessings of Christianity and civilisation, we have, on the other, received from them the beautiful country, of which, until our arrival, they were undisputed possessors.'

It had been suggested that no native carrying weapons should be allowed to enter any town or settlement, but the Governor did not approve of this:

> 'I do not at present see that the disarming of the natives when they enter towns would offer advantages sufficient to counterbalance the expense and trouble which would be required to carry it into effect, and the evil feelings which it might excite. It is not in town that their arms can often be made instruments of mischief, nor indeed can they often be formidable in the rural districts if settlers take, as they should, ordinary precautions against them.' [22]

In April 1839 one of Osmond Gilles's shepherds was killed by natives. A proclamation was issued stating that for the purpose of inducing the Aborigines to give up the offenders, the Government had resolved to withhold from them the usual provisions.[23] This was very widely condemned as a harsh and short-sighted measure which punished the innocent for the guilty. A colonist who signed himself "W.B." (perhaps Mr William Bartley) contributed to the *Southern Australian* a sensible letter which placed the relations between the settlers and the Aborigines in their true light. The proclamation depriving them from food, he said, was not so much unjust as unwise. The food was given to them purely as a gift and there was no reason why it should not be discontinued, but to do so was impolitic, for it confused in the minds of the natives the ideas of right and wrong by punishing the innocent, and it confirmed them in their practice of taking vengeance on the first white man they met for any injury done to them. Further, if they had not provided food for themselves, the Government would have had to rescind its order rather than see them all starve to death, which would have been a confession of weakness. It was useless for sentimental settlers to talk about the right to appropriate land or injustice in dispossessing natives. "Let every sincere objector on this ground prove his sincerity by at once leaving the colony, which he thinks he has so unjustly taken from another."

The plain fact was that the natives *must* conform to the laws and customs of the settlers, because might was right and there were only two ways of dealing with them:

(1) Driving them away to other parts of the colony by the use of physical force.

(2) Attempting to educate and civilise them.

The latter was obviously the proper course, and the one to which the colonists should turn their attention.[24]

A public meeting was held to consider the relations of the colonists and the Aborigines, and it was agreed that a crisis had arrived. Prompt measures were urged."A decision as summary as the forms and spirit of justice will admit of, should be adopted. [25]

Three natives were caught and charged with the murder of the shepherd. The public outcry against them was prodigious and the Government, impressed with a consciousness of the danger of error

which, as Mr Justice Bundey has remarked, always exists "when a community, especially a limited one, is excited by the prevalence of any particular class of crime, and jurymen are called upon to enquire into charges of similar character during such excitement",[26] postponed their trial in the hope that the agitation would subside.

Mann was instructed to defend them. The Advocate-General and Mr Matthew Smith appeared to prosecute. In opening the case the Advocate-General said:

> 'If they find equal justice administered to them as well as to ourselves—if they find we treat them as we treat each other, they will soon learn to respect our laws. When a murder is committed amongst themselves, I am led to understand they require blood for blood, but amongst them as amongst all other uncivilized nations, the friends of the deceased are the parties who administer justice ... They, therefore, cannot wonder if we should punish them for committing that crime upon us.' [27]

One native was found guilty and sentenced to death.

At the same sessions three other natives were also charged with murder, and again one was found guilty and sentenced to death. These latter prisoners were defended by Jickling. It was his first appearance as a barrister on the criminal side and, from the uncomplimentary remarks made about his efforts, it was probably as well for the prisoners that they were unable to appreciate the ability of their counsel.

Both the condemned natives were hanged. Their execution did not pass without criticism. It was denounced as "judicial butchery". The evidence to some extent consisted of admissions said to have been made by the accused in words and manifestations of feelings, but it was doubtful, to say the least, whether they had any idea of what was going on. The Judge himself said:

> 'It is a painful feature of the present case that, however desirable it may be to make the prisoners thoroughly understand the proceedings, this can only be done through the medium of interpretation, in a broken language, of which the interpreters themselves have only a limited knowledge.'

No evidence was called for the defence; the Aborigines did not know how to give it; and it would have made no difference if they had. Fifty native witnesses to prove a watertight alibi could not have been heard without being sworn, and they were quite ignorant of the nature of an oath. The counsel assigned to defend no doubt did their best in the addresses they made to the jury, but, as it was said, it was:

> '... just as if a learned gentleman had been assigned to plead for two dogs upon trial, for the purpose of inducing the jury to

take a favourable view of certain reported barks, howls, and motions of the tail'. [28]

The Colonisation Commissioners in their fourth annual report were at pains to justify the executions:

'To subject savage tribes to the penalties of laws with which they are unacquainted, for offences which they may possibly regard as acts of justifiable retaliation for invaded rights, is a proceeding indefensible except under circumstances of urgent and extreme necessity. Such circumstances had unhappily occurred in the case under consideration ... If the murderers had not been tried, convicted, and legally punished, the settlers unprotected by the governing authorities would have been compelled to take the law into their own hands, and in their fear and rage might have commenced an exterminating warfare against the natives. The necessities of the case left but a choice of evils, and the authorities chose the least. In establishing a new colony, it is one of the first and most sacred duties of the legal government to protect the native races; but to protect the native against the colonist, without at the same time protecting the colonist against the native, would be impracticable. The aborigines cannot have the protection of British law without being made amenable to British law. If the European and native races are to live together in amity, they must live under equal laws; to place them under different codes would be to place them in hostility to each other. Were a system established inflicting punishment upon the colonists for offences against the natives, and not inflicting equal punishments upon the natives for offences against the colonists, the colonists debarred from equal justice and protection by the constituted authorities, would speedily adjust the balance by taking the law into their own hands. If it be necessary to inflict the punishment of death for the murder of a native by a settler, it is equally necessary to inflict that punishment for the murder of a settler by a native. It might, perhaps, be practicable to abolish capital punishment in both cases, but it would not be practicable to abolish it in one case and to retain it in the other without producing a state of lawless and vindictive hostility between the races ... It is only by equal laws, impartially administered, that the heathen savage can be brought within the pale of Christian civilization. In order to accomplish this most desirable end, we must treat our less favoured fellow man with a kindness too enduring and real to allow impunity to crime, and we must constrain him to obey the law of England

while we teach him the law of God.' [29]

The difficulties in the application of British law to uncivilised Aborigines were forcibly demonstrated in July 1840, when the Ship *Maria* was wrecked on the Coorong and its crew and passengers were brutally murdered by the natives of the Milmenrura or Big Murray tribe. Some steps had to be taken to punish the guilty. The Governor consulted the Judge and the Advocate-General, who both expressed the opinion that the law could not be brought into effect at all.

> 'I feel it impossible'—said the former—'to try according to the forms of English law people of a wild and savage tribe, whose country, although within the limits of the Province of South Australia has never been occupied by settlers, who have never submitted themselves to our dominion, and between whom and the colonists there has been no social intercourse.' [30]

This opinion he subsequently elaborated in next addressing the Grand Jury.

> 'Let me disclaim all idea of conceding rights to the native population at one time and withholding them at another'—he said. 'My objection to try the natives of the Big Murray tribe is founded not on any supposed defect of right on their part, but on my want of jurisdiction. It is founded on the opinion that such only of the native population as have in some degree acquiesced in our dominion can be considered subject to our laws, and that with regard to all others, we must be considered as much strangers as Governor Hindmarsh and the first settlers were to the whole native population, when they raised the British standard on their landing at Glenelg. And as I apprehend, no one would have thought of trying according to the forms of English law, any of the native population who might have attacked the British settlement the day after its establishment, so I conceive that, by the same reasoning, it would be impossible to try, according to these forms, people who are now almost as much strangers to us as the whole native population were to the first settlers—a people, towards a political union with whom, no approach has been made. I will not attempt to define with accuracy the circumstances which bring one class of natives within and leave another without the pale of our laws ... I must content myself with saying, that to bring them within the pale there must be some submission or acquiescence on their part, or at least, some intercourse between us and them.'

The natives executed in 1839 had been in friendly intercourse with the settlers. Jickling had objected that they were not cognisant of, nor amenable to, English law; but in summing up the Judge had told the jury that as the natives seemed to have acquiesced in the dominion exercised by the settlers and as the crime was one against the law of nature, which even amongst themselves would have been punished with death, he overruled the objection.

> 'I felt I was taking a fearful responsibility on myself on that occasion; but I also felt, as I still feel, that it is for the general benefit of the native population that the crimes of any of its members should, whenever practicable, be enquired into and punished according to the forms of English law, rather than by any other means, for by thus proceeding all pretext is taken away for settlers taking the law into their own hands, as they might otherwise be too apt to do, and they at the same time receive forcible warning that the natives are under the protection of the same laws as themselves.'

But the Murray blacks were wild: "there had been no exercise of dominion over, no intercourse with them; they owed no obedience to English law".

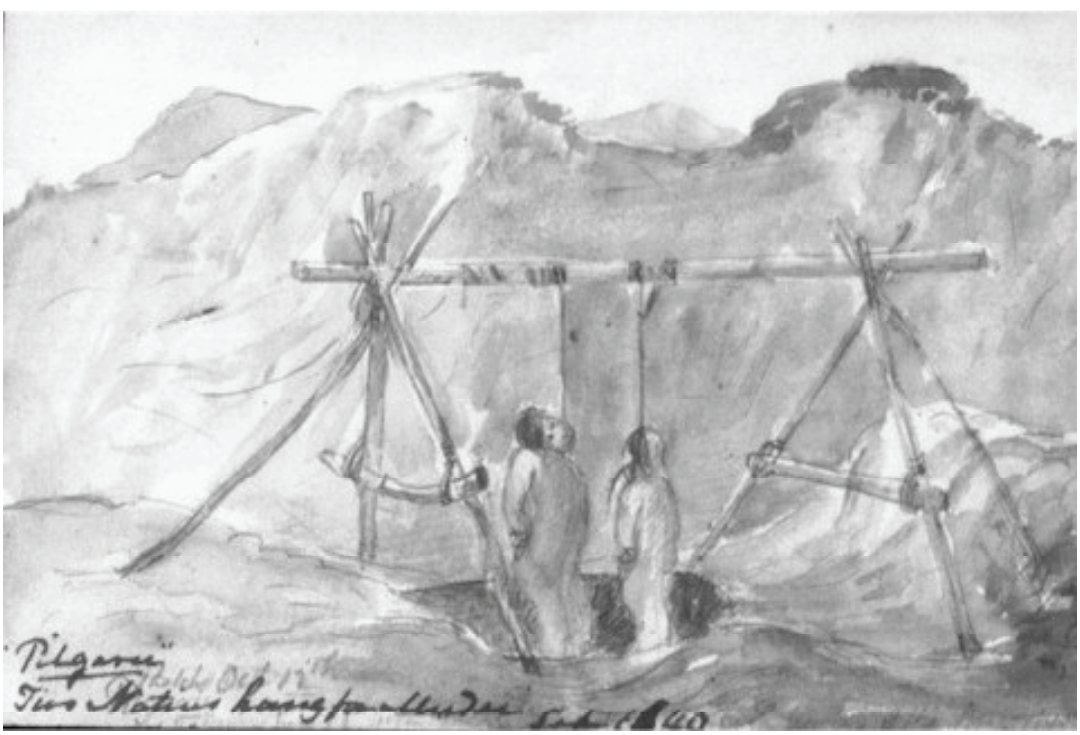
> 'Cases may arise in which it will be difficult for the Judge to decide to which of the two classes they properly belong; still it is his duty at least to endeavour to keep in view the English law as his guide.' [31]

Upon these views having been expressed by the Judge and Advocate-General, the Governor called a special meeting of the Council at which it was decided to dispatch Major O'Halloran, the Commissioner of Police, with a strong party, to apprehend and bring to summary justice the murderers.

> 'To this end'—Major O'Halloran was instructed—'your first object should be, if possible, to make prisoners the whole number congregated with the murderers. It is of very great importance that, if possible, in effecting this portion of the duty, no blood should be shed, or violence shown or encountered. The future effect of the expedition on the minds and conduct of the natives, will certainly be much more beneficial if the murderers can be captured without bloodshed. This, however, will probably be the most difficult part of your duty, and if, in the execution of it, you are really compelled to abandon temperate measures, and to resort to those of extreme force against the whole tribe, you will not be held blamable. Your duty is to capture the murderers, and this object must be effected if they fall within your reach ... When

> the prisoners are taken, you will proceed deliberately and with all suitable form to discover who were the persons actually concerned in the murder. You will take every reasonable method of exhibiting to your own party and to all the blacks present, that your inquiry is deliberate, and conducted on principles of the strictest justice ... Should your mind become satisfied of the guilt as to actual participation in the murder of any number not exceeding three, you will, if possible, move the whole tribe in your power to the spot at which the murder was committed. You will there explain to the blacks the nature of your conduct, and the orders you have received from the Governor, and you will deliberately and formally cause sentence of death to be executed by shooting or hanging, upon the convicted murderers not exceeding three, as above described ... For so doing this shall be your sufficient warrant.' [32] (Tolmer I 180-1)

The punitive expedition succeeded in capturing a number of natives, two of whom were given up by their tribe as being among the actual murderers. A drumhead court martial was held, the two natives found guilty, taken to the beach and hanged, in the presence of their tribe.[33]



This painting, by Edward C. Frome, depicts the hanging of the two Aboriginals by O'Halloran's expedition. (AGSA)

When their summary execution became known at Adelaide there was a furious outburst of controversy as to whether it could be justified.[34] The officials of the Colonial Office in England were horrified when they heard of it, and wrote out in great alarm to the Governor that the law officers had advised that the murders with which the natives were charged having been committed within the limits of the province defined under the authority of an Act of Parliament, the Aborigines might have been brought to trial in the ordinary legal tribunals, that their summary execution was contrary to law, that Major O'Halloran and those assisting him were guilty of murder as principals and that Governor Gawler was guilty of murder as an accessory before the fact. They could only be indemnified by an Act of Parliament or a pardon under the Great Seal. As a matter of policy and to keep the matter as quiet as possible, the Secretary of State thought it advisable not to do anything to give the officials concerned protection until someone actually prosecuted them—a step which it never occurred to anyone to take.[35]

Although the officials of Downing Street might put their consciences to rest by pretending that to confer upon all natives within the province the benefits of British citizenship was all that was necessary to solve any judicial doubts as to jurisdiction to try Aborigines, and that the courts could then proceed without more ado to administer justice according to the established forms of English law, yet Mr Justice Cooper could not bring himself to agree and persisted in maintaining that it was impossible for him to try prisoners who were quite unacquainted with Europeans.

> 'My opinion rests upon the ground that wild and savage people whose country although within the limits of the colony has never been occupied by settlers, people between whom and the settlers there has been no social intercourse, and who until the moment of the commission of their alleged offence have never been known, cannot reasonably be deemed cognizant of our assumed dominion over their country and themselves.' [36]

In a case in 1846, for instance, where two natives were charged with murder, it was found that they belonged to a strange tribe whose language was not known.

> 'If it be admitted'—said the Judge—'that the aborigines came for the first time into contact with Europeans when the offence with which they are charged was committed I do not think them fit subjects for trial in our Criminal Court.' [37]

In another case in the same year he laid it down that "a person wholly uncivilized ought not to be prosecuted".

In Governor Grey the colony received a man who had had experience with native tribes and who had formed conclusions upon the best methods of improving their social and moral condition. The

natives, he pointed out, were generally treated upon the principle that although they should, as far as the persons and property of Europeans were concerned, be made amenable to British laws, yet so long as they only exercised their own customs amongst themselves and not too immediately in the presence of Europeans, they should be allowed to do so with impunity. This principle was due to philanthropical motives and ignorance of the peculiar traditional laws of the savage and uncivilised natives.

> 'It is necessary, from the moment the aborigines of this country are declared British subjects, that they should, as far as possible, be taught that the British laws are to supersede their own ... I do not hesitate to assert my full convictions that while those tribes that are in communication with Europeans are allowed to execute their barbarous laws and customs upon one another, so long will they remain hopelessly immersed in their present state, and, however unjust such a proceeding might at first sight appear, I believe that the course pointed out by true humanity would be to make them, from the commencement, amenable to British laws, both as regards themselves and Europeans; for I hold it to involve a contradiction to suppose that individuals subject to savage and barbarous laws can rise to a state of civilization, which those laws have a manifest tendency to destroy and overturn ... To punish the aborigines severely for the violation of laws of the existence of which they are ignorant, would be manifestly cruel and unjust, but to punish them in the first instance slightly for the violation of these laws would inflict no great injury on them, whilst always punishing them when guilty of a crime, without reference to the length of time that had elapsed between its perpetration and their apprehension, at the same time fully explaining to them the measure of punishment that would await them in the event of a second commission of the same fault, would gradually teach them the laws to which they were henceforth to be amenable, and would show them that crime was always eventually (although it might be remotely) followed by punishment.'

If the Aborigines were allowed to rob and murder one another under their own laws, they would get the idea that wrongfulness consisted not in the acts but only in their being done to white men. It would be easy near the towns to enforce an observance of English laws, but:

> '... to attain this object in remote districts, it is necessary that each colony should possess an efficient mounted police ... No

> objection to this force on account of expense can hold good, it being absolutely necessary for the cause of humanity and good order that such a force should exist; for, so long as distant settlers are left unprotected, and are compelled to take care of and avenge themselves, so long must great barbarities be necessarily committed'. [38]

In a minute on these views of Grey, Sir George Gipps said:

> 'It is only the more obvious offences against society that can, with any degree of justice, be visited against the savages with extreme severity—such as murder, rape, violence against the persons, and other offences which there can be no doubt should be regarded alike by the savage and civilized man as deserving of punishment.' [39]

Mr Justice Cooper used to say that he always looked with dread on cases in which natives were concerned, because of the difficulty experienced in communicating with them—a difficulty which may be illustrated by the fact that in 1843 there were at one time four natives in the gaol who spoke four languages which appeared to be as distinct from each other as English and German and for which no interpreters could be found. The Judge occasionally remanded natives in the hope that an interpreter might be discovered, but more often they had to be released and sent back to their tribe.[40]

Even when a conversation could be carried on with natives, it was seldom of much use. The natives had no conception at all of the abstract idea of truth although it could be impressed upon some of them, in a negative way, that if they told a lie they would be punished. The missionaries taught them a few phrases, which they learnt to repeat, but whether they understood them was another question. One native confidently asserted in the witness box that if he did evil on earth, he would be sure to go to heaven when he died.

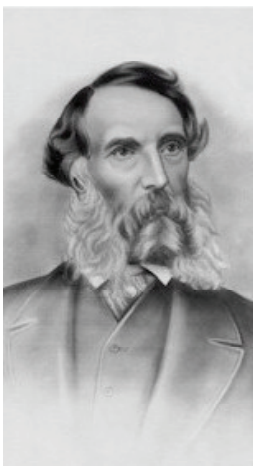
An almost insuperable obstacle to the application of British law to the Aborigines was the fact that a native from his ignorance of the nature of an oath was not competent to give evidence.

> 'To him'—as Mr Justice Angas Parsons has said—'an oath meant nothing. He had his own ideas of devil-worship and nature worship; but the kissing of a Book which he could not read, and the swearing by one God, when he professed acquaintance with many, made the administering of an ordinary oath a farce, if not an impossibility.' [41]

It was speciously argued that the inadmissibility of their evidence would operate to their advantage because the hardship of it was always urged on the jury by their counsel and by the Judge and was taken into consideration by the executive in carrying into effect the judgment of the Court. Edward John Eyre, who for several years did

remarkable work amongst the natives at Moorunde, wrote more soundly:

> 'Can it be deemed surprising that a rude, uncivilized being, driven from his home, deprived of all his ordinary means of subsistence, and pressed perhaps by a hostile tribe from behind, should occasionally be guilty of aggressions or injuries towards his oppressors? The wonder rather is, not that these things do sometimes occur, but that they occur so rarely. In addition to the many other inconsistencies in our conduct towards the aborigines, not the least extraordinary is that of placing them, on the plea of protection, under the influence of our laws, and of making them British subjects. Strange anomaly, which by the former makes them amenable to penalties they are ignorant of, for crimes which they do not consider as such, or which they may even have been driven to commit by our own injustice, and by the latter but mocks them with an empty sound, since the very laws under which we profess to place them, by their nature and constitution, are inoperative in affording redress to the injured ... In declaring the natives British subjects and making them amenable to British laws, they have been placed in the anomalous position of being made amenable to laws of which they are quite ignorant, and which, at the same time, do not afford to them the slightest redress from any injuries which they may sustain at the hands of Europeans. This arises from their being unable legally to give evidence in a Court of Justice, and from its rarely happening that any aggressions upon them take place in the presence of other Europeans, who might appear as witnesses for them. During the past year, two such cases have come before me, of complaint on the part of the natives against Europeans, and several others have been brought under my notice by natives, in which I could take no steps to redress them from my inability to receive their evidence, and from the impossibility of procuring any other than native evidence. This very great disadvantage under which the aborigines labour, must until remedied tend materially to prevent the full development of those good results which might otherwise be expected to accrue from their intercourse with Europeans. It is impossible to explain to the natives the reason of their being unable to give evidence; they only see that their own people are always punished for offences, that the Europeans almost always escape, and they naturally deduce an inference unfavorable to the justice of the white man.'



Edward John Eyre ca. 1860 (SLSA)

No permanent improvement in their character or conduct, he thought, could be expected until some way was devised by means of which the evidence of the natives could be received, both in cases where they themselves only were concerned, as well as in those where Europeans were concerned. This was a vitally important subject, he concluded: "... one upon which all our connections with the aborigines principally hinge". [42]

In 1843 the Imperial Parliament passed the Act 6 & 7 Vic c.22 which enabled colonial legislatures to make provision for the reception in courts of law of the testimony of Aborigines, and Governor Grey was directed to introduce an act for this purpose into the Legislative Council.[43] An Act (No 8 of 1844) was accordingly passed, providing:

(1) Any Justice of the Peace might receive the information of an Aboriginal or half-caste upon his affirmation or declaration to tell the truth, the whole truth and nothing but the truth, without administering the usual form of oath.

(2) The evidence of Aboriginals and half-castes might be taken upon their affirmation to tell the truth, the whole truth and nothing but the truth, provided that in preliminary proceedings the substance of the evidence was to be reduced into writing and signed by a mark of the person giving it, and verified by the Justice of the Peace.

(3) Before taking evidence, the Court was required to caution the Aboriginal that he would be liable to incur punishment if he did not tell the truth, and wilful falsehood was made punishable as for perjury.

(4) The degree of weight and credibility to be attached to such evidence was to be left to the Justice or Judge, or to the jury under the direction of the Judge.

(5) The Act further provided that, "No person whether aboriginal or other shall be convicted of any offence upon the sole testimony of such uncivilized persons", but it was not necessary to such conviction that any particular fact affirmed by such uncivilised person should be corroborated by other evidence; two clauses which appear to be contradictory.

Two years later the words "No person ..." et cetera quoted above were repealed and it was enacted that no person, whether Aboriginal or white, should be adjudged to suffer death or sentenced to transportation upon conviction of any offence upon the sole testimony of uncivilised persons.

These Acts were not conspicuously successful. Few natives had any idea of "the truth, the whole truth, and nothing but the truth". More often than not they were bewildered and had no idea why they were being questioned, or if they did they endeavoured to guess what the Judge and the questioners would like them to say and answered accordingly. They were blissfully unconcerned with consistency, and contented themselves with trying to satisfy whoever happened at the

moment to be interrogating them. Some of them had a superstitious fear of mentioning the name of an acquaintance who had died, which made them extremely reluctant to give any evidence at all in cases of murder.[44] Sometimes the only available interpreter was another native who could not be sworn; or, if he could be sworn, the accuracy of his interpretations was often doubtful.

> 'I consider it a matter of the greatest moment'—said Mr Justice Cooper—'that the Court and Jury should be able to place full reliance on the ability and fidelity of the Interpreter and this can seldom be the case with uncivilized natives. When the testimony of any of these poor people is given through the medium of an educated and intelligent interpreter the Judge and Jury may at least feel satisfied that they know what the witness has said, but how can they have this satisfaction if they cannot rely upon the correctness of the interpretation?' [45]

In 1848 the Judge drafted an Aboriginal Evidence Ordinance (No 3 of 1848) superseding the earlier legislation, and providing:

(1) That in all proceedings in the administration of justice, whether civil or criminal, wherein the testimony of uncivilised persons was required, the court, (coroner?) or Justice, might receive such evidence without administering any oath and without any formality, except that it should be first explained to the Aboriginal that he was required to tell what he knew about the matter.
(2) Such testimony, upon being reduced to writing, might be received in evidence when under like circumstances evidence of a civilised person would have been admissible.
(3) Any Aboriginal might make an information or complaint before a Justice of the Peace without any oath being taken.
(4) In preliminary proceedings the unsworn testimony was to be reduced to writing and certified by the magistrate.
(5) The weight to be attached to the evidence was a matter for the Court or jury.
(6) Unsworn native interpreters might be used provided the Court was satisfied of their ability to interpret.

> 'I would strongly impress upon you"—wrote the Secretary of State to the Governor when the Act was sent home—"the importance of the consideration that no such Ordinance, however carefully drawn up, will be found to work satisfactorily, unless those who are charged with the administration of the law anxiously endeavour to discourage the evasion of its spirit and substance by the unnecessary introduction of technical refinements.' [46]

In 1846 occurred the first instance of an Aboriginal being charged with an offence against another Aboriginal. A preliminary discussion took place as to the jurisdiction of the Court. Mr Justice Cooper (presumably facetiously) remarked, "At present I do not know that the party murdered was an aboriginal native, as the indictment does not so term him." "It calls him Ballooloolyoo," replied Mr Hartley. "Surely that is not an English name!" "How can I know that?" said Mr Justice Cooper.

The Judge held he had jurisdiction and the native was tried, convicted and sentenced to death—a sentence which was afterwards commuted by the Governor. A report of the proceedings was forwarded to the Secretary of State, who approved of the course adopted.[47]

A similar case arose in 1851, when three natives were charged with the murder of another Aboriginal. Mr Justice Cooper told the Grand Jury:

> 'I have on former occasions felt bound to say that if the aborigines were amenable for offences committed against Her Majesty's civilized subjects, I could not point to any law by which they could escape the consequences of crimes committed among themselves ... I feel it is my duty to treat the charge of murder between aborigines the same way as I would between any other subjects of Her Majesty, regard being had to the rules of the law which regulate evidence in such cases.'

The Grand Jury, in reporting that in accordance with the Judge's direction as to the law they had found a true bill against the Aboriginals, added a long protest:

> 'That in so doing many of the Grand Jurors have done violence to their own natural feelings of equity and justice; since, without entering upon the abstract question of the rights which, possession once obtained, the superior and more powerful people may justly exercise over those subjected to them, the Grand Jurors conceive that if the subjugated tribes be uncivilized men, it is morally incumbent on the superior people, in the first instance, to confine their interference to the mutual protection of both races in their intercourse with each other, and not to meddle with laws or usages having the force of laws among savages, in their conduct towards their own race.'

They believed that the slaying of the natives was in accordance with a law common among the native tribes, that the man killed knew that law, and that he knew the risk he ran if he violated it. Prior to the occupation of the country by the colonists, the native tribes admittedly had power to make their own laws and usages for their own protection and government.

> 'It can scarcely be assumed that the limited intercourse which has yet subsisted between the colonists and the aborigines, especially on the confines of the province, should have sufficed to impart such information to those uncivilized men as would justify us in breaking up their own internal system for the punishment of offences to which all their previous traditions and habits give force and sanction.'

While the jury relied on the wisdom and humanity of the Judges and the Government to extend mercy to the natives, they considered:

> '... that a system which only nominally denounces severe penalties, and from the very fact of their injustice, declines to enforce them, is a system which fosters rather than prevents the evils which it professes to punish and designs to remove'—

and they asked the Judges to consider the law with a view to defining the limits within which it should be the province of British law to interfere between Aboriginal natives in their own social relations, since the Grand Jury could not but feel that, if manslaying were an offence to be recognised, other infractions of the law such as adultery or even polygamy might become equally cognisable by the Courts. If so: "... a whole train of anomalous proceedings, repugnant to every feeling of right and justice, would be presented for the adjudication of our tribunals".

This protest took the Judge by surprise. He replied that it was a subject to which, from its difficulties and importance, he had from his earliest arrival in the colony devoted much patient attention. Europeans could not be punished for crimes against natives without apparent injustice if natives were not to be punished when they injured Europeans, although he had always endeavoured to secure justice to the natives by looking after their interests and by assigning them counsel.

> 'I am not aware of the unreasonableness of trying persons who are not cognizant of the law by which they are to be tried. I have therefore made it a rule that I will not try persons by our mode of trial who were not cognizant of our existence as a nation.'

With regard to offences by natives amongst themselves, if the Court had jurisdiction to try them for offences against white men, he thought it must necessarily have jurisdiction over their own quarrels and wrongs. What was considered crime by civilised people was, no doubt, in many instances not considered as a crime at all amongst the Aborigines.

> 'They, however, as I have learned from diligent enquiry, are accustomed to punish deeds of violence; and for a life taken

> away by violence to inflict on the man who had taken away that life the penalty of the sacrifice of his own life.'

In summing up to the jury, the Judge repeated that he had no doubt at all as to his jurisdiction, but: "... the question of the guilt or innocence of the parties, arising from the degree of ignorance in which they might be of our laws, is not so easy to decide".

A verdict of guilty having been returned, the prisoners were asked through an interpreter whether they had anything to say why they should not be condemned to be hanged, to which they replied, very naturally, that they did not like to be hanged. They were sentenced to death, but reprieved by the Governor.[48]

The *Register*, commenting upon the case, pointed out that as a matter of policy the colonists were compelled to interfere in the disputes of the Aborigines. "The principle which would exempt us from all inter-meddling would soon give the strongest tribe the undisputed mastery of the whole country." [49]

Charged with Murder Thomas Donelly was tried on 13 and 15 March 1847 "For the wilful murder of an aboriginal native named 'Billy' on 1 September 1846 at Rivoli Bay".

The first white man to be charged with the murder of an Aboriginal was tried in March 1847, convicted, and hanged.[50]

> 'Whatever question may be raised as to the right to try any of the aborigines for aggressions upon settlers or others'—said Mr Justice Cooper—'no question can arise as to the right to try British subjects for aggression upon the aborigines, and I hope the law will never be found wanting in strength to avenge their wrongs.' [51]

Cases in which natives were involved were not very numerous, but from time to time dissatisfaction was expressed at the prosecution and trial of uncivilised Aboriginals.

> 'When a native is charged with a crime of the nature of which he is ignorant, before a Court of whose jurisdiction he knows as little, the solemn forms and legal paraphernalia of the trial look painfully like a farce, and the sentence, inevitable according to law, is preposterous according to common sense.' [52]

No person of common humanity could look indifferently upon a scene such as that described in the following extract from the *Register*, relating to a native brought from Rivoli Bay to stand his trial in the Supreme Court on a charge of sheep stealing:

> 'The prisoner wore a wild and scared appearance. The adventures of the last few days must have been strange to him indeed. The firearms of the white men—the chain with which he was bound—the sea-voyage—the buildings at the port and city—and now the justice-room, on every object of which he gazed with looks of wonder; and handcuffs, too, annoyed him

> exceedingly, and he incessantly endeavoured to remove them. He several times spoke and seemed most desirous of an answer, but his language was wholly unintelligible to Mr Moorhouse and the black policeman Jimmy, who addressed him in various dialects. When brought to the bar he was alarmed, and evidently thought summary punishment was to be inflicted on him.' [53]

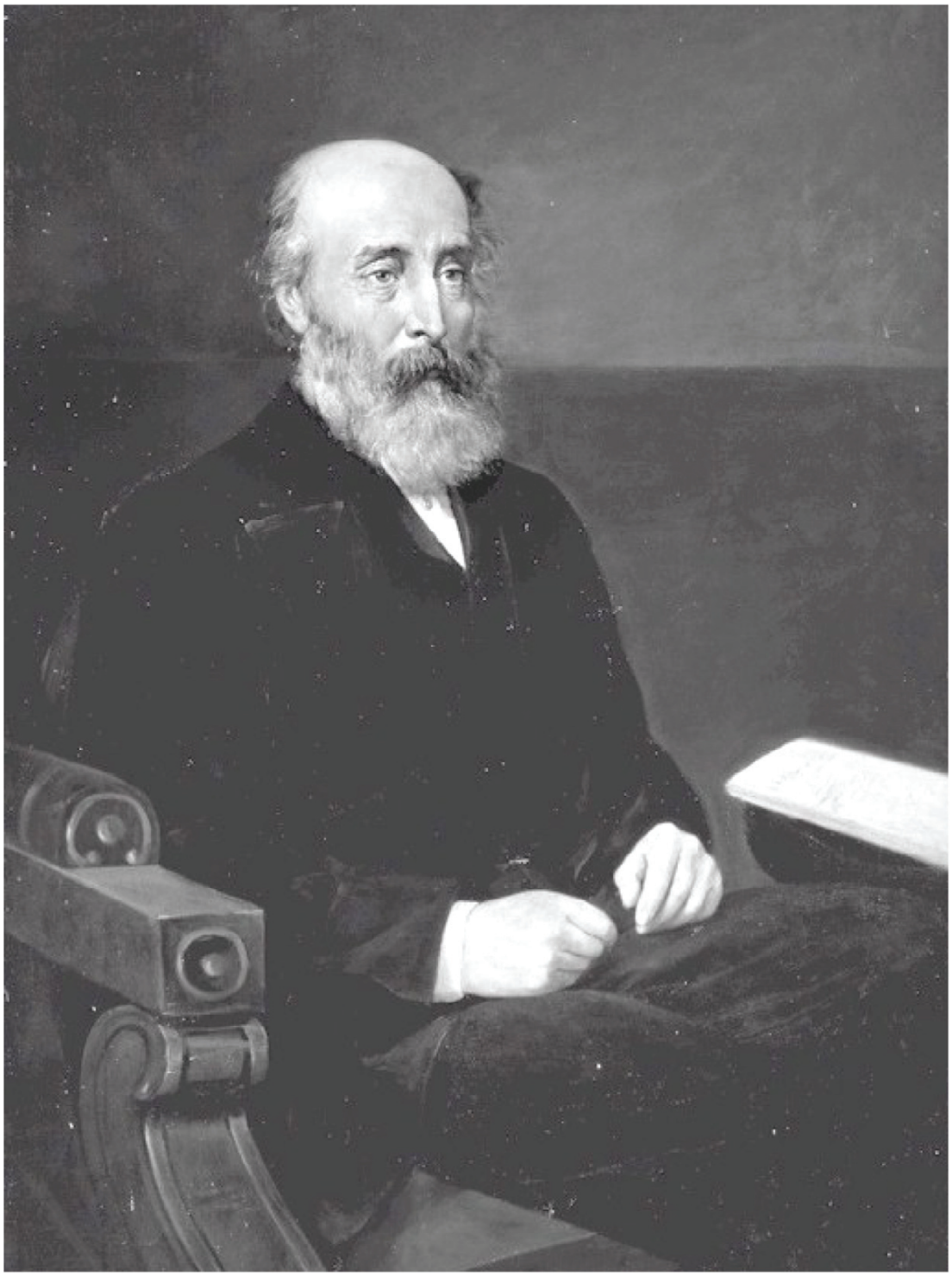
Eventually this poor creature had to be released and taken back to the South East, as no-one was able to communicate with him.

In 1860 a Select Committee recommended that a protector of Aborigines should be appointed with power to visit native tribes periodically for the purpose of holding courts and dispensing justice, in all except capital cases. To drag natives to the Supreme Court for trial was denounced as an "expensive mockery"—a waste of public money, the time of the Court and the labour of the police. A black man was left to his savage habits, it was said:

> '... he is an outcast until he does something wrong; and then he is instantly a privileged British subject—privileged to be tried by twelve men sitting in a box, and to be sentenced by a Judge whose words are incomprehensible'. [54]

Not only did the Aboriginal prisoners suffer but, if any native witnesses were required to attend the Court, the only way to get them there was to use force. As soon as a native found himself in the custody of a policeman, he moved heaven and earth to escape, and almost invariably native witnesses had to be put in irons and handcuffs to prevent them from running away. The natural result was that by the time they were called on to give evidence they were frightened out of their wits and thought they were about to be punished for some offence they had unwittingly committed.

The recommendations of the Committee were ignored and the native problem was left slowly to solve itself. The Aboriginals were never very numerous, and their numbers diminished owing to the encroachments on their hunting grounds and consequent reduction of their natural food resources, the effects of disease and vices contracted from white men, and the disintegration of tribal life. Those who survived became hangers-on on the outskirts of civilisation, broken in spirit, who were seldom guilty of any serious offences.



John Upton's portrait of Sir Robert Torrens ca. 1880 (NLA)

# *Illustrations*

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- *Montefiore*, ca. 1895 (State Library of South Australia – B 25130)
- *Sir John George Shaw-Lefevre* by Carlo Pellegrini, 1871 (National Portrait Gallery, London – NPG 2741)
- *Mona Vale, the residence of William Kermode Esq., Van Diemen's Land* (Allport Library and Museum of Fine Arts, State Library of Tasmania)
- The courthouse where Jeffcott was tried in Exeter as it stands today, 2003 (Jane Stephenson)

Chapter 2.3

- *David McLaren*, 1830 (State Library of South Australia – B 7333)
- *A view of J. Barton Hack esqrs. Farm, Echunga Springs, Mount Barker, South Australia* from a sketch by Col. Gawler by J. Hitchen, ca. 1840 (National Library of Australia - nla.pic-an7837302-v)
- *The new port, Adelaide, South Australia* by J. Hitchin, 1841 (National Library of Australia - nla.pci-an6016283-v)
- *The first settlement on the site of Adelaide*, (after Colonel Light – unknown artist) watercolour on paper, 22.9 x 45.7 cm (Art Gallery of South Australia, Adelaide, Gift of Mrs Simpson Newland 1926, 0.596)
- Court record of the first trials in South Australia listing the members of the first grand jury (Supreme Court Library of South Australia)

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- *Osmond Gilles*, 1865 (State Library of South Australia – B 7030)
- Cartoon from *The Adelaide Independent and Cabinet of Amusement*, Volume 1 Number 5 2/9/1841 (State Library of South Australia – B 15998/5)
- *Portrait of Robert Gouger* by A. Stephens (working 19th century) 1833, 12.7 x 10.1 cm (Art Gallery of South Australia, Adelaide, Gift of the Adelaide Gouger 1913, 0.682)
- Morphett's letter *South Australian Gazette and Colonial Register* 16/9/1837 (State Library of South Australia)
- *Young Bingham Hutchinson* by Townsend Duryea, ca.1860 (State Library of South Australia – B 11177)
- A calendar of prisoners… from the court record of the first Supreme Court trials (Supreme Court Library of South Australia)

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- *View of Encounter Bay with the fisheries* attributed to William Light, between 1837 and 1839 (Alexander Turnbull Library, National Library of New Zealand, Te Puna Matauranga o Aotearoa – A-096-047)
- *Edward Stephens*, 1865 (State Library of South Australia – B 9502)
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- *View of Company's fishing station and Cape Rosetta, Encounter Bay, South Australia, taken from the beach*, 1838 (National Library of Australia - nla.pic-an6016320-v)
- Letter from Captain Blenkinsop (State Records/Department of the Premier and Cabinet - GRG 24/90/284)

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- *Dick Ling* from *The Adelaide Independent and Cabinet of Amusement* 19/8/1841 (State Library of South Australia - B 15998/1)

Chapter 3.2

- *View on the north side of Kangaroo Island* by William Westall, 1814 (La Trobe Pictures Collection, State Library of Victoria – pb00061)
- *Mr and Mrs Alfred Watts* by the Adelaide Photographic Company, 1865 (State Library of South Australia – B 7966)
- *George Milner Stephen*, 1841 (State Library of South Australia – B 7011)
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- *Lady Hindmarsh* by George Milner Stephen, 1840 (State Library of South Australia - B 7010)

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- *Boyle Travers Finniss* by Hammer and Co. photographers, 1882 (State Library of South Australia B 11204)
- *Robert Thomas*, 1850 (State Library of South Australia - B 6019)
- *Execution of Michael Magee* by John Michael Skipper, 1838 (State Library of South Australia - B 7797)
- *Southern Australian* 2/6/1838 (State Library of South Australia)

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- *Robert Thomas' tent and rush hut Glenelg* by John Michael Skipper, 1836 (State Library of South Australia – B 2128)
- Stanhope printing press by Henry Krischock photographer, 1936 (State Library of South Australia – B 9390)
- Charles Sturt monument, 1916 (State Library of South Australia - B 39842)
- *Government House, North terrace, Adelaide 1845* by S.T. Gill (Australia 1818-1880) 1845, watercolour on paper, 27.1 x 39.7 cm (Art Gallery of South Australia, Adelaide, Gift of the South Australian Company 1931, 0.34)

Chapter 3.5

- *Colonel George Gawler* by Samuel Laurence, photographer, 1843 (State Library of South Australia B 14428)
- *Osmond Gilles* by S.T. Gill, 1850 (State Library of South Australia - B 347)
- *Adelaide race course '45* by S.T. Gill, 1845 (National Library of Australia - nla.pic-an2377127-v)
- Court record of the first trial in the Milner Estate saga (Supreme Court Library of South Australia)

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- *Sir Henry Ayers* by J. Hubert Newman, photographer, 1873 (State Library of South Australia - B 10161)
- *Portrait of William Kyffin Thomas* (unknown artist) oil on canvas, 59.7 x 49.5 cm (Art Gallery of South Australia, Adelaide. Gift of Mr Evan Kyffin Thomas 1931, 0.778)
- The court record for G. M. Stephen's perjury trial (Supreme Court Library of South Australia)
- *George Milner Stephen*, 1886 (State Library of South Australia - B 24984)
- *Charles Cooper* by J.M. Crossland (Australia 1800-1858) ca. 1853, oil on canvas, 127.0 x 101.2 cm (Art Gallery of South Australia, Adelaide. Gift of the legatees of Mrs W. Bartley 1895, 0.636)

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- *William Ewart Gladstone* by Harry Furniss (National Portrait Gallery, London – NPG 3385)
- *Thomas Shuldham O'Halloran* by Government Photolithographer, photographer, 1865 (State Library of South Australia – B 447)
- *Sir Henry E. Fox Young, Knt, C.B. Governor-in-Chief* (Allport Library and Museum of Fine Arts, State Library of Tasmania)
- George John Crawford (Supreme Court Library of South Australia)
- Justice Cooper's Letter Book, letter on Paxton's Case (Supreme Court Library of South Australia)

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- *The Right Reverend Augustus Short, D. D., Bishop of Adelaide* by Samuel Calvert, 1872 (La Trobe Pictures Collection, State Library of Victoria – IAN13/08/72/168)
- *Adelaide, Victoria Square, looking north* [actually it is looking south], ca.1880 (National Library of Australia - nla.pic-an10608594-82-v)
- Sir Charles Cooper (Supreme Court Library of South Australia)

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- *Overlanders with cattle* by Frederick Grosse after S.T. Gill, 1864 (La Trobe Pictures Collection, State Library of Victoria – IAN 24/03/64/9)
- *Rundle Street looking east* by S.T. Gill, 1851 (National Library of Australia - nla.pic-an75666601-v)
- *Cutting wood* by J.M. Skipper, ca. 1855 (State Library of South Australia – B 5553)
- *In his habit as he lived; Sir Redmond Barry on horseback near Public Library*, ca. 1880 (National Library of Australia - nla.pic-an23621420-v)
- *Charles Harvey Bagot* by S.T. Gill, 1849 (State Library of South Australia – B 329)
- *William Henville Burford* ca. 1890 (State Library of South Australia – B 7109)
- Title page to Boothby's *A Synopsis of the Law Relating to Indictable Offences* (Supreme Court Library of South Australia)

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- *Portrait of Judge Boothby* by Nicholas Chevalier from a photograph by the Adelaide Photographic Company, 1864 (La Trobe Pictures Collection, State Library of Victoria – IAN 25/10/64/13
- Family group of Mrs Benjamin Boothby (Valerie Esau)
- Court record of the Mara and Popham trials, Criminal Sessions Record Book 13/8/1855 to 14/8/1863 (Supreme Court Library of South Australia)
- *Richard Bullock Andrews* by Hammer & Co., photographers, 1870 (State Library of South Australia – B 7014)
- *Two unidentified men attending to a bullock's hoof*, ca. 1912-1930 (National Library of Australia - nla.pic-an24295339-v)
- *John Henry Barrow* by Johnstone O'Shannessey & Co. Photographers, 1870 (State Library of South Australia – B 8760)
- *Henry Bull Templar Strangways*, ca. 1875 (State Library of South Australia – B 11138)
- *Edward Castres Gwynne* by Hammer & Co, photographers, 1880 (State Library of South Australia – B 7015)

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- *Surveyors' Encampment Yorkes Peninsula* by Edward J. Snell, 1850 (State Library of South Australia – B 55782)
- *The Hon. J. Morphett, President of the Legislative Council, S.A.* by Samuel Calvert, 1866 (La Trobe Pictures Collection, State Library of Victoria – IMP27/07/66/300)
- The "Crown Seal" copy of the Marriage Act 1858 (Supreme Court Library of South Australia)
- *South Australian Government Gazette* 8/11/1860 p. 1000 (Supreme Court Library of South Australia)
- *Sir R. G. MacDonnell*, ca. 1860 (State Library of South Australia – B 5975)
- *George Marsden Waterhouse* by Stump & Co. photographers, ca. 1890 (State Library of South Australia – B 11140)
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- *S.A. Northern Pioneers; Matthew Moorhouse*, ca. 1870 (State Library of South Australia – B 6912/K10)
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- *William Bakewell* by Hammer & Co., photographers, ca. 1860 (State Library of South Australia – B 11303)
- *John Brown* by S.T. Gill, 1849 (State Library of South Australia – B 333)
- *The "Cuba" at anchor, in a NW breeze, at Port Nicholson heads* by Charles Heaphy, 1840 (Alexander Turnbull Library, National Library of New Zealand, Te Puna Matauranga o Aotearoa – A-144-003)
- *City of Wellington, New Zealand* by Luke Nattrass, 1841 (Alexander Turnbull Library, National Library of New Zealand, Te Puna Matauranga o Aotearoa – C-029-004-2-3)
- *The Late Sir R.D. Hanson, Chief Justice of South Australia, 1876* (La Trobe Pictures Collection, State Library of Victoria – IAN18/04/76/53)
- *Portrait of Sir Dominick Daly* by Townsend Duryea, ca. 1861 (National Library of Australia - nla.pic-an10673556-v)
- *"Woodhouse", Summertown* by Samuel White Sweet, ca. 1872 (State Library of South Australia – B 10648)

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- Sir Roundell Palmer by the London Stereoscopic Co. photographers (Roger Vaughan Picture Library)
- *Crown Mills, Snowtown*, 1882 (State Library of South Australia – B 47833)
- *Henry Clinton, 5th Duke of Newcastle* by Frederick Richard Say, 1848 (National Portrait Gallery, London – NPG 4576)

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- *Edward Cardwell, Viscount Cardwell* by Carlo Pellegrini, 1869 (National Portrait Gallery, London – NPG 2569)
- *Josiah Boothby* by the Adelaide Photographic Co., ca. 1870 (State Library of South Australia – B 7001)

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- *The Late Sir James Hurtle Fisher* by Samuel Calvert, 1875 (La Trobe Pictures Collection, State Library of Victoria IAN24/02/75/21)
- *Unloading grapes at Auldana winery, ca. 1900* (State Library of South Australia – B 12194)
- *Robert Collier, 1st Baron Monkswell* by Alfred Thompson, 1870 (National Portrait Gallery, London – NPG 2734)
- *Hon. Archibald Michie, Minister of Justice* by Samuel Calvert, 1863 (La Trobe Pictures Collection, State Library of Victoria – IAN/25/08/63/8)
- Memorial re removal of Judge Boothby (State Records/Supreme Court - GRG 36/61/00)

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- Walter Watson and Sophia Hughes (Pamela Oborn)
- *Wallaroo* by Samuel Sweet photographer, ca. 1870 (State Library of South Australia – B 10630)
- Boothby family tree (Valerie Esau)

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- *Willunga* by Townsend Duryea, ca. 1870 (State Library of South Australia – B 7193)
- *Neville Blyth*, ca 1865 (State Library of South Australia – B 3650)
- *Part of Victoria Square, looking north, ca. 1866* by Townsend Duryea (National Library of Australia - nla.pic-an24189475-v)
- *Charles Mann, Junior,* ca. 1880 (State Library of South Australia – B 3651)
- *Rupert Ingleby* by Townsend Duryea, ca 1870 (State Library of South Australia – B 6994)
- The Colonial Laws Validity Act (28 &29 Vic. C. 63) (Supreme Court Library of South Australia)

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- *Randolph Isham Stow*, ca. 1870 (Supreme Court Library of South Australia)
- William Alfred Wearing (Supreme Court Library of South Australia)
- *Sir James Penn Boucaut* by Charles H. Manning, ca. 1880 (State Library of South Australia – B 7000)
- *"Smoko" in the Quarries, Yatala by an inmate*, ca. 1877 (State Library of South Australia – B 21925/8)
- *James Brook*, 1880 (State Library of South Australia – B 13252)
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- Judge's Note Book (Judge Boothby) February 1861 (R v Preston) (Supreme Court Library of South Australia)

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- *Henry Howard Molyneux Herbert, 4th Earl of Carnarvon*, 1878 (National Portrait Gallery, London – NPG D9525)

- *Sir Thomas Elder*, ca. 1890 (State Library of South Australia – B 34517)
- The Privy Council Chamber (Privy Council Office)
- *Portrait of Judge Benjamin Boothby*, ca. 186? (National Library of Australia - nla.pic-an12884004-v)

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- *The best of friends must part*, cartoon *Adelaide Punch,* 30/1/1869 (State Library of South Australia)
- *Sir Samuel James Way*, ca. 1870 (State Library of South Australia – B 5970)
- The Belt Fountain, Walkerville (Tony Kimberlin)
- *Court House, Mt. Gambier* by Richard E. Collett, 1870 (State Library of South Australia – B 46434)
- *A (nearly) full dress rehearsal*, cartoon, *Adelaide Punch,* 28/9/1878 (State Library of South Australia)
- The "Glen" (The Passionist Monastery)

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- *Police Trooper Robert W. Ewens in winter dress, 1860* (South Australian Police Historical Society)
- *Joseph Eldin Moulden* (Mouldens Solicitors)
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- Boothby grave (Helen Whitington)

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- *Part of the wharves of Port Adelaide, fronting the Bonding Warehouses, 7 miles from Adelaide* by Townsend Duryea, ca. 1866 (National Library of Australia - nla.pic-an24190014-v)
- *George Frederick Dashwood*, ca. 1850 (State Library of South Australia – B 31064)
- Custom house etc Port Adelaide (State Records/Department of Administrative and Information Services, Building Management - GRG 38/58 12/4)

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- *Trial by jury in the early digging days* by Thomas Carrington, 1886 (La Trobe Pictures Collection, State Library of Victoria – mp009914)
- *December* by S.T. Gill, ca. 1847 (National Library of Australia - nla.pic-an2377111)
- *George Charles Hawker*, ca. 1870 (State Library of South Australia – B 3712)
- *John Bentham Neales*, ca. 1840 (State Library of South Australia – B 15386)
- Criminal Cause List 16/9/1844 (Supreme Court Library of South Australia)

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- *Execution of George Hughes and Henry Curran, Adelaide, 16 March 1840* by J.M. Skipper (Australia 1815-1883) 1840, pencil on card, 15.0 x 20.1 cm (Art Gallery of South Australia, Adelaide. Morgan Thomas Bequest 1936)
- *Attack on store dray* by S.T. Gill, 1865 (National Library of Australia - nla.pic-an7149191-v)
- *William Robinson Boothby*, ca. 1914 (State Library of South Australia – B 8073)
- *Charles Algernon Wilson* by Martha Berkeley (Australia 1813-1899) ca. 1843, Adelaide, watercolour on card, 15.5 x 12.5 cm (Art Gallery of South Australia, Adelaide. Gift of Miss Emily Watson 1950, 0.1474)
- *The new rush* by S.T. Gill, 1865 (National Library of Australia - nla.pic-an7149201-v)
- *L.J. Pelham*, 1867 (State Library of South Australia – B 22979)

- Eastern entrance to Supreme Court (State Records/Department of Administrative and Information Services, Building Management – GRG 38/58)

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- The Queen's Theatre (Tony Kimberlin)
- Supreme Courthouse, ca. 1870 (Supreme Court Library of South Australia)
- *King William Street* [Police Court], 1870 (State Library of South Australia – B 1928)
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- Supreme Court Library catalogue, 1866 (Supreme Court Library of South Australia)
- Sir Samuel Way's bookplate (Supreme Court Library of South Australia)

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- *Paxton Square cottages, Burra, 1849 (in old township of Kooringa)* by Brendon Kelson 1996 (National Library of Australia - nla.pic-an13233522-6)
- *Alexander Hay*, ca. 1885 (State Library of South Australia – B 50607)
- *Travelling in a dust storm* by William Anderson Cawthorne and Samuel Calvert, 1867 (La Trobe Pictures Collection, State Library of Victoria – IMP24/01/67/13)
- Certificate of appeal pending in *Walsh v Goodall*. (State Records/ Supreme Court - GRG 36/37)

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- *George Strickland Kingston* by S.T. Gill, ca. 1838 (State Library of South Australia – B 350)
- *Alexander Tolmer* by Government Photolithographer, ca. 1860 (State Library of South Australia – B 449)
- *The 'Ville de Bordeaux' at Port Adelaide* by J.M. Skipper (Australia 1815-1883) 1841, Adelaide, watercolour on paper 10.8 x 16.2 cm (Art Gallery of South Australia, Adelaide. Morgan Thomas Bequest Fund 1942, 0.1199)
- *John Alexander Jackson* by J.A. Jackson, 1845 (State Library of South Australia – B 7152)
- Dench document (State Records/ Supreme Court – GRG 36/37)
- *Richard Bethel, 1st Baron Westbury* by Michele Gordigiani (National Portrait Gallery, London – NPG 1941)
- *Augustine Stow*, ca. 1890 (State Library of South Australia – B 3835)
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- *Arliegh Gosden's Saw-mill* by Thomas Sladdin, ca. 1890 (State Library of South Australia – B 18921)
- *Bullock team*, 1906 (State Library of South Australia – B 9856)
- *Adelaide, South Australia* by J. Hitchen, ca.1841 (National Library of Australia - nla.pic-an7832564-v)
- *North Terrace looking east*, ca, 1920s-30s (Adelaide City Council Archives – HP 1603)

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- *Charles Bonney*, ca. 1900 (State Library of South Australia – B 7390)
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- *Eyre's journey to Albany* by Samuel Calvert and J. MacFarlane, 1891 (La Trobe Pictures Collection, State Library of Victoria – IAN01/01/91SUPP/12)
- *Cornish miners, Burra*, ca. 1870 (State Library of South Australia – B 46012)
- *Adelaide Town Hall*, ca. 1866 (Adelaide City Council Archives – 44T.A. 203)

- *John Michael Skipper*, 1863 (State Library of South Australia – B 7028)
- *Wool scouring plant*, ca 1870 (State Library of South Australia – B 542)
- *Glen Osmond [Birksgate]* by Samuel White Sweet, ca. 1872 (State Library of South Australia – B 10632)

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- *Monument in Nairne cemetery*, 1931 (State Library of South Australia – B 6036)
- *Arthur Hardy*, ca. 1858 (State Library of South Australia – B 18681)
- *Frederick Holt Robe*, ca. 1890 (State Library of South Australia – B 5976)
- *Thomas Magarey*, ca. 1840 (State Library of South Australia – B 56079)
- Mount Lofty House (Tony Kimberlin/Mount Lofty House)

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- *Port Lincoln* by George French Angas, ca. 1844 (State Library of South Australia – B 15276/13)
- *Thorndon Park Reservoir* by H. Davis, 1875 (State Library of South Australia – B 7349)
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- *Portrait of Nannultera, a young Poonindie cricketer* by John Michael Crossland, 1854 (National Library of Australia - nla.pic-an2242510-v)

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- *Civilisation versus Nature* by Alexander Schramm, ca. 1859 (National Library of Australia - nla.pic-an9308949-v)
- *Rapid Bay, encampment of Yankallila blacks* by George French Angas, James William Giles, 1847 (National Library of Australia - nla.pic-7322212-v)
- *Native weapons and implements* by George French Angas, James William Giles, 1846 (National Library of Australia - nla.pic-7342542-v)
- *First dinner given to the Aborigines, 1838* by Martha Berkeley (Australia/Great Britain 1813-1899) 1838, Adelaide, watercolour on paper, 37.5 x 49.5 cm (Art Gallery of South Australia, Adelaide. Gift of J.P. Tonkin 1922, 0.692)
- *"Pilgaru" – two natives hung for murder, September 1840* by E.C. Frome (Australia 1802-1890) 1840, Adelaide, watercolour on paper, 11.1 x 19.0 cm (Art Gallery of South Australia, Adelaide. South Australian Government Grant, Adelaide City Council & Public Donations Fund 1970, 709HP43)
- *Edward John Eyre*, ca. 1860 (State Library of South Australia – B 5880)
- *Portrait of Sir Robert Torrens* by John Upton, ca. 1880 (National Library of Australia - nla.pic-an2284297-v)

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- *Henry Gawler*, ca. 1860 (State Library of South Australia – B 22868)
- *Ulrich Hubbe*, ca.1880 (State Library of South Australia – B 9042)
- Adelaide Gaol [tower] (State Records/Department of Administrative and Information Services, Building Management – GRG 38/58, 5/9)

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- *Governor and staff at Adelaide Gaol* by H. Glover, 1850 (State Library of South Australia – B 17790)
- Adelaide Gaol [front of gaol] (State Records/Department of Administrative and Information Services, Building Management – GRG 38/58, 5/8)

- *Adelaide Gaol, park lands facing south*… by S.T. Gill, ca. 1850 (National Library of Australia - nla.pic-an2376678-v)
- Adelaide Gaol, ca. 1980s(Adelaide Gaol)

# *Endnotes*

Presumably when Hague completed his manuscript in 1936 he had a complete (or very near complete) set of endnotes. Unfortunately, with the passage of time, a significant number of those references have been lost. The listing presented here was compiled from existing copies of the manuscript. Where practicable additions have been made but the notes remain incomplete.

The abbreviations used in the endnotes are as follows:

AGL – Attorney-General's letter books (Archives)
AGP – Attorney-General's papers (Archives)
CLCO
CLO – Colonization Commissioners' letters to officers in S.A. (Archives)
CO – Colonial Office records (Records Office, London)
CRJ
CRSA – Correspondence relative to S.A., published by the House of Commons, 1841
CS – Colonial Secretary
CSL – Colonial Secretary's letter books (Archives)
CSMisc
CSP – Colonial Secretary's papers (Archives)
ECM – Executive Council minutes
GHD
PRSA – Public Records of S.A.
RC – Resident Commissioner
RCL – Resident Commissioner's letter books (Archives)
RSC
RSCD
RSCE

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2. RSC, 1841, p.ix
3. Quoted A.G. Price, *Advertiser*, 15/8/1934
4. *Register*, 11/1/1840
5. South Australia v. Victoria, transcript of proceedings in High Court, p.14
6. A.G. Price, *Founders and Pioneers*, (Adelaide: Preece, 1929) p.11
7. E.G. Wakefield. *A View of the Art of Colonization* … (London: Parker, 1849) p.49
8. *Register*, 25/3/1876
9. Price, p.11
10. See A.G. Price, *The Foundation & Settlement of South Australia, 1829-1845* (Adelaide: Preece, 1924)
11. Price, *Foundation,* pp.219-220
12. CRSA, p.1;Price, *Foundation,* pp.221-222
13. RSCD, p.1
14. RSCD, p.1; Rudall, Thesis
15. RSCD, p.19
16. RSCD, pp.19-22
17. RSCD, p.21
18. CRSA, p.34

19. Rudall, Thesis
20. Wakefield p.47
21. Price, *Foundation,* p.229

Chapter 1.2

1. Rudall's classification

Chapter 1.3

1. Rudall, Thesis, p.62; SA Commissioners to Colonial Office, 8/12/1835
2. For the letters patent see South Australia v. Victoria (1914) AC 283 at p.291
3. Brown, Journal, 14/1/1836
4. Rudall, Thesis, p.105
5. Ditto, p.106
6. Rudall, An.X, Law Officers to CO
7. RSC, p.xxx iv
8. RSCD, p.49
9. RSCD, p.50
10. Brown, Journal, 26/3/1835
11. RSCD, p.51
12. *Register*, 18/6/1836
13. Rudall, An.III
14. Brown, Journal, 12/1/1836
15. RSCD, p.66
16. Rudall, An.IV
17. RSCD, p.68
18. RSCD, pp.72, 75-76
19. CSL, 30/3/1838 (to Resident Commissioner)
20. RSCE, p.223
21. RSC, p.iv
22. T.H. James, *Six Months in South Australia* (London: J. Cross, 1838) p.65
23. Rudall, An.IV, Stevenson to Colonial Office, 17/2/1837
24. Angas Papers, Rowland Hill to Angas, 8/6/1835
25. Brown, Journal, 13/11/1835, 30/12/1835
26. Rudall, An.IV, Hindmarsh to CO, 24/12/1839
27. Ibid
28. Brown, Journal, 12/4/1836

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1. Stevenson's Journal, printed in *Proceedings of the Royal Geographical Society of Aust (SA Branch),* vol.XXX, pp.21-73
2. Angas Papers, Hindmarsh to Angas, 11/10/1836
3. Ibid
4. Stevenson, Journal, 19/8/1836
5. Ditto, 30/8/1836
6. Angas Papers, Stevenson to Angas, 10/10/1836
7. Ibid
8. Stevenson, Journal, 25/10/1836
9. Ditto, 9/12/1836
10. Angas Papers, Hindmarsh to Angas, 11/4/1837
11. Stevenson, Journal, 25/12/1836

12. M. Thomas, *The Diary and Letters of Mary Thomas (1836-1866),* (Adelaide: W.K. Thomas, 1925) 3rd ed.pp.62-63
13. Rudall, Thesis, p.100
14. J. Allen, *History of Australia* (Melbourne: Mason, Firth & MacCutcheon, 1882) p.135
15. Angas Papers, Hindmarsh to Angas, 12/6/1838
16. J.D. Lang, *Historical Account of New South Wales* 2nd Ed (1837), vol.I, p.152
17. E. Hodder*, The History of South Australia*… (London: Sampson Low, Marston, 1893) vol.I, p.104
18. Jeffcott, Letter to Kermode
19. CSL, 8/12/1937 [sic], 13/12/37 (to Resident Commissioner)
20. Rudall, An.IV, Stevenson to CO, 25/11/1837
21. *Southern Australian*, 16/3/1847, 19/3/1847
22. Rudall, An.IV, SA Commissioners to CO, 23/4/1838; CLO, 4/8/1837, 19/8/1837, 14/10/1837 (to Fisher); ditto, Rowland Hill to Gawler, 27/9/1838
23. CLO, 15/9/1837, 21/2/1838 (to Fisher); 17/9/1837 (to Light)
24. Stevenson, Journal, 9/12/1836
25. Rudall, An.II
26. Archives, A355/B5, Fisher to SA Commissioners, 1/6/1837
27. Rudall, An.I, Hindmarsh to CO, 6/1/1837
28. Angas Papers, Hindmarsh to Angas, 5/1/1837
29. Rudall, An.I, Hindmarsh to CO, 1/2/1837
30. Third Annual Report of SA Commissioners 1838
31. Rudall, An.V, Gouger to CO, 1/8/1838
32. Rudall, An.I, Hindmarsh to CO, 11/2/1837
33. Angas Papers, Hindmarsh to Angas, 15/2/1837
34. J.B. Hack, Diary, 16/3/1837
35. Brown Papers, Brown to Wakefield, 8/5/1837
36. Rudall, An.II, Fisher to SA Commissioners, April 1837
37. Brown Papers, Brown to Wakefield, 8/5/1837
38. CSL, 10/4/1837 (to Resident Commissioner)
39. CSL, 15/4/1837 (to Resident Commissioner)
40. Rudall, An.II, Hindmarsh to CO, 12/4/1837
41. Angas Papers, Gouger to Angas, 5/3/1837
42. Rudall, An.I, Hindmarsh to CO, 12/4/1837
43. Angas Papers, Hindmarsh to Angas, 15/2/1837
44. Ibid
45. Ditto, 11/4/1837
46. Ditto, 4/6/1837
47. CLO, 18/11/1839 (to Gawler); Archives, 895/86, Government circular (May 1840) that trafficking must cease
48. Rudall, An.I, Hindmarsh to CO, 12/4/1837
49. Brown Papers, Brown to Wakefield, 10/4/1837
50. Ditto, 8/5/1837
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52. Ibid
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54. Brown Papers, Brown to Wakefield, 10/4/1837
55. CSL, 15/4/1837 (to Resident Commissioner)
56. CSMisc`, 12/4/1837
57. Rudall, An.I, Hindmarsh to CO, 22/4/1837
58. CSL, 17/4/1837, 24/4/1837 (to Advocate-General) and 25/4/1837 (to Resident Commissioner)

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3. C. Clark, *A Summary of Colonial Law*, (London: Sweet & Maxwell, 1834) pp.494-495
4. Annual Register 1833, App. to *Chronicle*, p.193
5. Annual Register 1833, *Chronicle*, p.105 ff., *Law Magazine and Review*, August 1833, p.367 ff. (Available in Supreme Court Library, Adelaide)
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7. *Law Magazine and Review*, August 1833
8. Archives, 516/B7, Notes on Jeffcott by J.W. Wallace
9. Gouger, Journal, p.124

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1. SA Commissioners to Lord Glenelg, 23/7/1835, 18/8/1835
2. CRJ
3. R. Garnett, *Edward Gibbon Wakefield*, (London: T. Fisher Unwin, 1898) p.109
4. Gouger, Journal, pp.171, 173; Brown, Journal, 23/2/1835
5. Parker to Lord Glenelg, 15/2/1836
6. *Advertiser*, 17/3/1874
7. CRJ, Parker to Lord Glenelg, 15/3/1836
8. Ditto, 29/3/1836
9. Ditto, Hindmarsh to Lord Glenelg, 31/3/1836
10. Brown, Journal, 3/4/1836
11. CRJ, Jickling to Lord Glenelg, 11/4/1836
12. I. O'Connor, *E.G. Wakefield*, (London: Selwyn & Blount) p.118
13. Brown Papers, p.45; Brown, Journal, 14/4/1836, 16/4/1836
14. Brown, Journal, 15/4/1836, 18/4/1836, 19/4/1836, 20/4/1836, 21/4/1836
15. CRJ, Hindmarsh to Lord Glenelg, 21/4/1836
16. Brown, Journal, 25/4/1836
17. CRJ, Jeffcott to James Stephen, 19/4/1836
18. Brown, Journal, 28/4/1836, 4/5/1836
19. CRJ, SA Commissioners to CO, 6/5/1836 and reply 11/5/1836
20. CRJ, Rundle to Grey, 29/9/1836
21. CRJ, Rundle to James Stephen, 10/10/1836
22. CRJ Grey to Jeffcott, 27/5/1836,
23. CRJ, Charles Milford to Glenelg, 2/6/1836
24. CRJ, T. Skelton to Grey, 11/7/1836
25. Rudall, An.III, SA Commissioners to CO, 3/9/1836CRJ, Jeffcott to James Stephen, 9/6/1836.
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27. Ibid

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2. Archives, A355/B5, Fisher to SA Commissioners, 1/6/1837
3. Rudall, An.I, Hindmarsh to CO, 19/5/1837
4. Brown Papers 67, Brown to Wakefield, 8/5/1837
5. Angas Papers, Hindmarsh to Angas, 24/2/1837
6. Angas Papers, Hindmarsh to Angas, 11/4/1837

7. Rudall, An.IV, Stevenson to CO, 25/11/1837
8. Angas Papers, Stevenson to Angas, 9/12/1837
9. Rudall, An.II, Fisher to SA Commissioners, April 1837
10. CSL, 24/3/1837 (to John Morphett)
11. Angas Papers, McLaren to Angas, 22/6/1838
12. Angas Papers, Hindmarsh to Angas, 24/2/1837
13. Rev W. Norris, *Annals of the Diocese of Adelaide* (London: Society for the Propagation of the Gospel, 1852), p.2
14. J.B. Hack, Diary, 25/4/1837
15. Norris, p.2
16. Angas Papers, Gouger to Angas, 5/3/1837
17. Brown Papers, Brown to Wakefield, 8/5/1837; Angas Papers, Hindmarsh to Angas, 4/6/1837
18. Brown Papers 67; J. Blacket, *History of South Australia* (Adelaide: Hussey & Gillingham, 1911) p.137
19. Brown Papers 68, Memorial dated 16/5/1837
20. Brown Papers 71, Brown to CO, 31/5/1837; Brown Papers 67
21. Blacket, p.138
22. Brown Papers 67
23. *Register*, 3/6/1837
24. Archives, A355/B5, Fisher to SA Commissioners, 1/6/1837
25. *Register*, 3/6/1837
26. Brown Papers 67, Brown to Wakefield, 8/5/1837

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1. CS, 185/1837; Gouger to Gilles, 2/5/1837
2. See details in *Register* 16/9/1837
3. Brown, Journal, 16/1/1836
4. Angas Papers, Samuel Stephens to Angas, 3/8/1835
5. Stevenson, Journal, 28/12/1836
6. *Register*, 16/9/1837
7. Ibid
8. Angas Papers, MacLaren to Angas, 22/9/1837
9. Rudall, An.I
10. Brown Papers 78, Protest of Robert Gouger, 1/9/1837
11. Rudall, An.V, Law Officers to CO, 21/8/1838
12. C. Clark, *A Summary of Colonial Law*, (London: Sweet & Maxwell, 1834) p.28; Manning, *British Colonial Government after the American Revolution* (1933), p.117
13. Third Annual Report of SA Commissioners 1838
14. W. Forsyth, *Cases and Opinions on Constitutional law,* (London: Stevens & Haynes, 1869) p.70
15. *Register*, 16/9/1837; Rudall, An.V, Gouger to CO, 1/8/1838
16. CS, 298/1837 (Gilles to Hindmarsh, 23/8/1837)
17. CSMisc, Stevenson to Mann, 27/9/1837
18. CSMisc, Mann to Stevenson, 23/9/1837; Mann to Gilles, 23/10/1837
19. CSL, 23/9/1837 (to Advocate-General)
20. CSMisc, Opinion of Charles Mann "in the matter of the Colonial Secretary in suspension", 26/9/1837
21. CSL, 2/10/1837 (to Colonial Treasurer)
22. Rudall, An.I, Hindmarsh to CO, 30/5/1837
23. CSL, 8/9/1837 (to Brown) and replies
24. CSMisc, Fisher to Brown, 9/9/1837
25. CSL, 11/9/1837 (to Brown); ditto (to Colonial Treasurer)

26. Jeffcott, Letter to Kermode
27. Brown Papers, Brown to Wakefield, 10/4/1837; CSL, 13/9/1837 (to Brown)
28. Angas Papers, MacLaren to Angas, 13/9/1837
29. CSMisc, Opinion of H.R. Wigley, 21/9/1837; Rudall, An.V, SA Commissioners to CO, 26/4/1838, and reply 11/5/18383
30. CSMisc, Fisher to Brown, 12/9/1837
31. CSL, 13/9/1837 (Fisher to Hindmarsh with copy of notice); *Register*, 16/9/1837; CS, 370/1837; *Register*, 14/10/1837; CSL, 23/9/1837 (to Advocate-General); CSMisc, Opinion of Advocate-General, 28/9/1837
32. CSMisc, Mann to Gilles, 23/10/1837
33. CSMisc, Instructions to Hutchinson; CSL, 3/10/1837 (to Colonial Treasurer); RCL, 5/1/1838 (Colonial Secretary to Colonial Treasurer); CSL, 13/9/1837 (Fisher to Colonial Secretary); RCL, 4/1/1838 (Resident Commissioner to Colonial Treasurer); RCL, 5/1/1838 (Colonial Treasurer to Colonial Secretary)
34. RCL, 8/1/1838 (Resident Commissioner to Gilles); 6/1/1838 and 9/1/1838 (Gilles to Resident Commissioner)
35. RCL, C. Johnston to Fisher, 10/2/1838
36. Rudall, An.V, CO to SA Commissioners, 11/5/1838

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1. Jeffcott, Letter to Kermode
2. CSL, 4/11/1837 (to Advocate-General)
3. Ditto, 6/11/1837 and 11/11/1837; Jeffcott, Letter to Kermode
4. Angas Papers, Blenkinsop to Angas, November 1837; Stevenson to Angas, 25/11/1837 ("Blenkinsop has been represented to be a sort of Pirate. There is no trusty evidence on this head, and it is not believed here in any degree.")
5. CSL, 6/6/1837 (to Advocate-General); CSMisc, Opinion of Advocate-General, 8/6/1837; CSMisc, Mann to Gouger (undated) and 6/7/1837
6. CSL, 14/6/1837 (to Resident Commissioner)
7. *Southern Australian*, 22/9/1838
8. CSMisc, Opinion by Mann, 17/10/1837
9. *Register*, 11/11/1838
10. *Register*, 7/4/1838
11. Jeffcott to Hindmarsh, 16/11/1837 (quoted R. 18/8/1838)
12. Brown Papers 70, Hindmarsh to Jeffcott, 28/5/1837
13. *Register*, 1/6/1838
14. C. Clark, *A Summary of Colonial Law*, (London: Sweet & Maxwell, 1834) p.36
15. Rudall, An.V, Law Officers to CO, 8/8/1838
16. GHDSuppVol, Hindmarsh to CO, 1/11/1837
17. CSMisc, Mann to Jeffcott, 16/11/1837
18. *Southern Australian*, 22/9/1838; *Register*, 7/4/1838
19. CSMisc, December 1837
20. Brown Papers, Brown to Wakefield, 8/5/1837
21. Jeffcott to Lord Glenelg, 1/11/1837 (in GHDSuppVol)
22. GHDSuppVol, Hindmarsh to Glenelg, 1/11/1837
23. Jeffcott, Letter to Kermode
24. Reminiscences of Y.B. Hutchinson, *Observer*, 7/7/1866
25. *The Land of Promise by one who is going* (1839), p.128, J.B. Hack, Autobiography; R. 6/1/1838.
26. R. Gouger, *South Australia in 1837* (London: Harvey & Darton, 1838)
27. Archives, Notes on Jeffcott
28. Supreme Court files, Affidavits 1837
29. Gouger, Journal, p.219
30. Archives, Notes on Jeffcott

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2. Hawker, I.p.13; Mrs Napier Sturt, *Life of Charles Sturt* (London: Smith Elder, 1899), p.158
3. Archives, Reminiscences of Miss Annie Duncan, p.21
4. Information supplied by Librarian, Lincoln's Inn
5. CSP, 1930/1849
6. CRJ, Jickling to Glenelg, 25/7/1835
7. Rudall, Analysis X
8. CRJ, Jickling to Lord Aberdeen, 9/2/1835
9. CRJ, Jickling to Lord Glenelg, 8/5/1835
10. CRJ, Testimonials to Jickling
11. CRJ, Jickling to Lord Glenelg, 25/7/1835
12. Stevenson, Journal, 13/9/1836

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2. Archives, A331/B4; Angas Papers, Report by Stevenson and Strangways
3. J.B. Hack, *Reminiscences*; Diary, 20/4/1837
4. *Register*, 3/6/1837
5. CSMisc, Minutes of meeting of Magistrates held 5/7/1837
6. Rudall, An.I
7. *Register*, 6/1/1838
8. Jeffcott to Hindmarsh, 1/12/1837, printed in R. 29/9/1838
9. *Register*, 6/1/1838; RCLI, Certificate by Stevenson, 6/1/1838
10. *Register*, 20/1/1838
11. RC Letters Inwards, Mann to Fisher, 4/1/1838
12. Gouger, Journal, p.219
13. *Register*, 18/8/1838
14. RCL, 11/1/1838, Resident Commissioner to Governor
15. Hindmarsh to Fisher, 12/1/1838, printed in R. 18/8/1838
16. RCL, 29/1/1838, Fisher to Stevenson
17. CSL, 8/12/1837 (to Resident Commissioner)
18. CSL, 13/12/1837 (to Resident Commissioner)
19. CSL, 10/1/1838 (to Resident Commissioner)
20. RCL, 10/1/1838 (Resident Commissioner to Colonial Secretary); ditto, 12/1/1838 (Strangways to Resident Commissioner)
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29. *Register*, 17/3/1838
30. GHD, 15/12/1845 (CO to Robe)
31. CSL, 31/3/1838, 3/4/1838, 6/4/1838 (to Resident Commissioner)
32. Rudall, An.IV, SA Commissioners to CO, 22/12/1837; ditto, An.V, SA Commissioners to CO, 26/4/1838
33. Rudall, An.V, SA Commissioners to CO, 13/4/1838

34. Rudall. An.V. CO to SA Commissioners 21/4/1838
35. CLO, 4/1/1839 (to Gawler)
36. Rudall, An.VIII
37. Proclamation by Hindmarsh, 14/7/1838; R. 14/7/1838
38. *Register*, 4/8/1838
39. Ibid
40. *Register*, 14/7/1838; Rudall, An.VIII (Stephen to CO, 24/7/1838)
41. GHD, Stephen to CO, 24/7/1838; R. 16/6/1838; Rowan, *Distinguished Kerry Men*
42. A. G. Price, *Foundation and Settlement*, *1829-1845,* (Adelaide: Preece, 1924) p.130

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2. Copy of petition in possession of C. Travers Borrow
3. Finniss to Hindmarsh (undated). Copy in possession of C. Travers Borrow. (There is no proof that this letter was sent, but it expresses Finniss's sentiments.)
4. *Register*, 24/3/1838
5. *Register*, 17/2/1838
6. Supreme Court, Criminal Files 1838; R. 24/3/1838
7. RCL, Fisher to Hindmarsh, 14/1/1838
8. RCL, Hutchinson to Fisher, 19/1/1838
9. *Register*, 12/2/1838; RCL, Hutchinson to Fisher, 3/2/1838
10. RCL, Wigley to Fisher, 5/2/1838
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12. *Register*, 28/4/1838
13. *Register*, 17/3/1838
14. *Register*, 24/3/1838
15. Ibid
16. T.H. James, *Six Months in South Australia* (London: J. Cross, 1838) p.67
17. *Register*, 19/5/1838
18. Ibid
19. *Southern Australian*, 2/6/1838
20. *Southern Australian*, 9/6/1838
21. *Register*, 28/4/1838
22. James, p.55

Chapter 3.4

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2. *Southern Australian*, 2/6/1838
3. *Southern Australian*, 9/6/1838; *Register* 16/6/1838
4. *Southern Australian*, 27/10/1838
5. *Southern Australian*, 9/1/1839
6. *Southern Australian*, 16/1/1839
7. *Register*, 26/1/1839
8. *Register*, 20/10/1838
9. *Southern Australian*, 3/4/1839
10. *Southern Australian*, 23/6/1838
11. *Southern Australian*, 9/1/1839
12. *Southern Australian*, 9/1/1839
13. *Register*, 22/12/1838
14. *Southern Australian*, 29/12/1838
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19. J. Bentham, *Principles of Legislation*, I.p.23
20. *Southern Australian*, 17/4/1839
21. Rudall, An.V, S.A. Commissioners to CO, 23/6/1838
22. *South Australian Gazette* Extraordinary, 5/12/1838
23. *Southern Australian*, 10/4/1839, 17/4/1839
24. *Register*, 13/4/1839
25. *Register*, 10/11/1838
26. *Southern Australian*, 11/5/1839, 15/5/1839

Chapter 3.5

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2. CLO, Hill to Mann, 4/9/1838
3. Rudall, An.V, SA Commissioners to CO, 4/8/1838
4. *Register*, 5/1/1839; SA, 9/1/1839
5. GHD, Gawler to CO, 26/10/1838
6. Ditto, 22/1/1839
7. Gawler to SA Commissioners, 16/2/1839
8. GHD, Gawler to CO, 20/18/1838, 14/2/1839
9. *South Australian Gazette*, 4/7/1839
10. *Adelaide Stock and Station Journal*, 18/5/1927, p.4
11. Land Office Letters Out 1838-1842, 24/10/1838 (to Brown); *South Australian Gazette*, 11/7/1839
12. CLO, 23/5/1840 (to Gawler)
13. CSL, 28/3/1839 (to Jickling)
14. CS, 162/1838
15. *Southern Australian,* 1/12/1838
16. *Southern Australian,* 6/2/1839
17. *Register*, 6/3/1839; SA, 13/3/1839
18. *Southern Australian*, 13/3/1839
19. SA Blue Book 1840, p.27
20. CRSA, p.136
21. Hawker, I.p.16
22. CSP, Advocate-General to Colonial Secretary, 13/11/1847
23. CSP, 1931/1849 (Cooper to CS, 25/10/1849)
24. *Register*, 19/2/1852
25. *Register*, 20/2/1852
26. Parliamentary Papers 1855-56, No 158K, p.266
27. Ibid
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29. AGP, 447/1861 and 474/1861
30. J. Blacket, *History of South Australia* (Adelaide: Hussey & Gillingham, 1911) p.87

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2. *Observer*, 28/5/1887
3. *Register*, 20/5/1851
4. *Register*,11/3/1846
5. 1866, Hansard 85

6. Quoted *Adelaide Times*, 20/8/1849
7. Rudall, An.V, Cooper to CO, 31/7/1839; Law Officers to CO, 22/8/1838; W. Forsyth, *Cases and Opinions on Constitutional law,* (London: Stevens & Haynes, 1869) p.8
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9. *Southern Australian*, 3/4/1839
10. *Register*, 6/4/1839
11. *Southern Australian*, 17/7/1839 (Brown v. Thomas, verdict for plaintiff, 40/- damages); *Southern Australian*, 24/7/1839 (Fisher v. Thomas, verdict for plaintiff, 40/- damages); *Southern Australian*, 14/8/1839 (Fisher v. Thomas, verdict for plaintiff, 1/- damages)
12. *Southern Australian*, 24/2/1839, 22/5/1839
13. *Southern Australian*, 29/5/1839
14. *Southern Australian*, 5/6/1839
15. *Southern Australian*, 3/7/1839
16. *Southern Australian*, 17/7/1839
17. Supreme Court Misc Papers (Archives)
18. Supreme Court files
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3. CSP, 53½/1847
4. *Register*, 19/1/1848
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23. CSP, 2284/1853
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3. Despatches, Stephen to CO, 6/8/1838
4. Despatches, Gawler to CO, 14/1/1841; CSL, 28/9/1842 (to Advocate-General)
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