

Sketches on Territory Legal History

by the Hon. Justice Mildren

The Hon. Justice Pater First Judge of the Northern Territory

After the disastrous first and only circuit sittings conducted by a Judge of the Supreme Court of South Australia in Palmerston in 1875, the South Australian Parliament passed the Northern Territory Justice Act 1875¹ which provided for the granting of a commission by the Governor authorising the holding of criminal and civil sittings of the Court presided over by a commissioner. Under the Act, the commissioner was required to be a practitioner of the Supreme Court of at least seven years' standing or a Special Magistrate. Between 1875 and 1884 the practice was to appoint the Government Resident a Special Magistrate – even though he had no legal qualifications – so that commissions could be granted to him.² Commissioners could try all except capital offences. Criminal trials were thereafter tried by a commissioner and a jury of six.³

In 1884, the government decided to amend the Act so that all offences could be tried locally. This required the appointment of a Judge, to be styled "The Judge of the Northern Territory". As part of this arrangement, the office of Judge was to be separated from that of Government Resident. The Act was duly amended in October 1884,⁴ and on 8 October 1884, the government appointed Thomas Kennedy Pater SM as the first Judge on a salary of £1,000 per annum.

Mr Justice Pater was born in England in 1837 and was admitted to the Bar at Lincoln's Inn in 1859. He practised chiefly in the criminal courts of the Middlesex Sessions and the Old Bailey. In 1864, when appearing as counsel at the Middlesex General Sessions, he was fined £20 for contempt of court for comments he made during his address to the jury about the conduct of the foreman. An attempt to quash the conviction by certiorari failed.⁵ His contra-temps with the court interfered with his practice for a while, although it was generally thought amongst the profession that though legally wrong, he was morally right in asserting his rights as an advocate⁶ and it is fair to record that the judgment of Cockburn CJ was also critical of the conduct of the Judge who had allowed the foreman to misbehave, thereby prompting Pater's remarks. Subsequently he served as Crown Prosecutor in Sierra

Leone for a while, before returning to London to resume his practice. Subsequently he was admitted to the Bar in Tasmania and in Victoria before settling in Adelaide in 1874 where he practised principally in the area of criminal law.⁷ He was a close friend of the barrister William Villeneuve Smith whom he had met in London whilst the latter was a student, and he appeared as Smith's counsel at his trial for criminal libel.⁸ He appears to have been a tall person, (his grandfather, who served under the Duke of Wellington, was described as one of the tallest men in the British Army) and he wore a full beard. He was considered to be a very effective advocate and speaker, despite a theatrical and somewhat demonstrative manner,⁹ and the habit of speaking in a slow, drawling tone.¹⁰ Between 1874-1884 he practised in Adelaide, with some notable successes. In late 1883 or early 1884 the government offered him the position of Stipendiary Magistrate in Palmerston, with a promise of the judgeship as soon as the legislation could be passed. He was appointed to the Magistrate's position on 19 March 1884, and arrived in Palmerston with his wife Emily and two daughters on the SS Menmuir, together with the new Government Resident, J.L. Parsons, on 8 May 1884.¹¹

The following day, at an official ceremony held at the new Courthouse on the Esplanade¹² to welcome Parsons, the latter explained that the government had decided to send an experienced lawyer to Palmerston to preside over the Courts and to separate judicial functions from those of the executive.¹³

The local inhabitants initially greeted Pater with some enthusiasm, but this was soon to change. Pater began disastrously with some jocular and harmless remarks at a welcome dinner held at the Town Hall on 12 May 1884 directed at John George Knight and Vaiben Solomon whom he allegedly described respectively as "the modern Lord Eldon and Cicero" who "had jointly conducted the legal affairs of the Territory upon a happy family system of mutual admiration".¹⁴ Knight had been sitting as a Special Magistrate. Solomon was the editor of the Northern Territory Times and Gazette, had frequently appeared by leave in the lower courts for litigants who could not secure the services of a lawyer¹⁵ and he clearly took offence. Pater's sense of humour was to cause him more trouble soon thereafter. The N.T. Times, in a lengthy and critical article published on 14 June 1884 in

respect of an application before Pater sitting on the Licensing Court, observed that the Court's duty was to decide the case on the evidence before it, and nothing else, and concluded:

...we hope on future occasions witnesses will be treated with respect and consideration, and not made the butt for satirical sneers and unfeeling jocularity.

The town's other newspaper, the North Australian, was soon to echo these sentiments, commenting in an article published on 25 July 1884 that "Mr Pater's aptitude for making caustic jokes appears to get the better of his common sense." By this time the Bill had been introduced to enable Pater to be appointed as the Judge, and Pater was in the process of conducting criminal sittings as a Commissioner.¹⁶

The following month, both the town's newspapers ran trenchantly critical articles, designed to prevent his appointment. His problems arose out of critical remarks allegedly made about the town's journalists whom he was reported as saying were in the pay of the police.¹⁷ The North Australian commented that he was "grossly unfitted for the position". The N.T. Times accused him of "prosy oratory, pedantic argument and delicate satire", bullying witnesses, interrupting counsel and dictating to the jury, and concluded that his "nervous excitable temperament and hasty, violent temper prove him utterly unfitted for the position of Judge."¹⁸ Both articles were reported in the Adelaide Observer, the N.T. Times talking up the cudgels with another trenchant article a week later.¹⁹ In the meantime, efforts were being made in the Legislative Council to defer the passage of the Bill until more information was known, but the Minister advised the House that the Bill did not itself elevate Pater to the bench, but merely created the position, and that, the previous government having promised the position to Pater, that promise would have to be fulfilled unless some grave reason to justify acting otherwise was shown. The Bill passed on 12 August 1884.²⁰ The N.T. Times kept up the assault with yet another critical article on 13 September 1884 in which it reviewed the history of the matter to date. Obviously it was designed to influence a forthcoming meeting of the Northern Territory Reform Association, which discussed the Bill and Pater's appointment at a public meeting held on 15 September, at which meeting Solomon was a principle speaker.

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Solomon successfully moved a motion to the effect that Pater should not be appointed, notwithstanding a vigorous defence by one of the town's lawyers, one Beresford.²¹ Pater was also supported by another of the town's lawyers, Charles E. Herbert, in a letter to the South Australian Register.²² The Adelaide Observer noted that those in favour of the motion included journalists, ex-defendants in police and civil cases, the police and the working classes, whilst those opposed included those who were 'influential': three bank managers, a solicitor, a plantation manager, agents, a storekeeper, a hotel keeper and "others", and that had any civil servants taken part in the meeting, there would have been a large majority in Pater's favour.²³ Pater, himself, kept a dignified silence, and was eventually appointed to the office on 8 October 1884.²⁴ The N.T. Times expressed its intense surprise at the appointment without an enquiry, saying that it was an insult to the people of the Territory; and concluded that it hoped that Pater would take warning and give the press no occasion to find fault with him in the future.²⁵ The N.T. Times had another jibe at Pater on 22 November 1884, accusing him of placing himself in the position of a censor, and "teaching the government their duty".

The following year, Vaiben Solomon again attacked Pater's suitability in a letter to Parsons dated 5 February 1885. Solomon had sought leave to appear in a Local Court case to represent a Chinese storekeeper on the ground that the other party had secured the services of Beresford, the only lawyer in the town at the time, and his "client" could speak little English. Pater was sitting with two Justices of the Peace and refused his application without consulting the other members of the Court, on the ground that Solomon had insulted him, referring to the events of the previous year. Solomon sought an inquiry into Pater's fitness. This complaint was supported by letters written by the other justices. Pater was asked to explain by the Attorney-General, Charles Kingston. In a letter of 9 February, 1885, he confirmed the reasons given for refusing Solomon's application were as stated, because he felt that "the dignity of the Bench should be upheld", and that under s 12 of the Local Court Act, 1861, the question was one for him alone. Kingston was of the view that the decision was one for the majority of the Court, but that a contrary opinion may fairly be open, and rejected Solomon's complaint and request for an inquiry.²⁶

Thereafter, the enmity between Pater and Solomon and his supporters seems to have died down, and Justice Pater's term in office fuelled no further controversy. In 1886 he served as Acting Government Resident whilst Parsons was on leave, his wife Emily christening the first locomotive to travel to Pine Creek.²⁷ In the same year, his nineteen year old daughter Emily died of an incurable disease.²⁸ Two of his decisions went to the Full Court and are reported: *Rv Nammy and Ah Kong* (1886) 20 SALR 65 and *R v Whitton* (1887) 21 SALR 80.

Towards the end of the decade, South Australia entered a period of severe depression, and as a cost-cutting measure, it was decided to recall Pater and the Government Resident and replace both with a single incumbent.²⁹ In late 1889, both agreed to resign, Pater returning to Adelaide in 1890, where he was appointed a Police Magistrate.³⁰ 5a³¹ In mid 1890, as the government had still not decided on a successor, Pater returned to Palmerston to conduct criminal sittings, returning to Adelaide before the end of the year to assume his Police Court duties. However, the government did not immediately find a successor, and in 1890 John George Knight acted as Government Resident although his permanent appointment was confirmed on 16 July.³² In late 1890 and in 1891 commissions were then conferred on Knight, who was an architect and not legally trained, to conduct criminal sittings in December, June and again in December. Knight died in office on 10 January 1892, and no appointment to the position of Judge was made until 25 February 1892, when Justice Dashwood's appointment was gazetted.³³

Justice Pater died suddenly at his home on 9 August 1892 after a very short illness, attributed to "apoplexy and heart disease",³⁴ at the age of fifty-four. His funeral was the largest ever held in Adelaide, the procession involving over two hundred vehicles extending from the General Post Office to St Peter's Cathedral, and the streets literally lined from end to end with spectators.³⁵ He received glowing tributes in the press, none more so than from his old critic, the N.T. Times, which said, that despite his faults, he succeeded in turning his harshest critics into his most earnest admirers, and praised him for his "unbending independence" and ability to do what he thought right regardless of whether his critics agreed with him.³⁶ He left his widow and other daughter in "very necessi-

tous circumstances" as a result of which the former was forced to petition the government for compensation on the grounds that his term in the Territory had diminished his health to such a degree that it eventually led to his death, and had forced his early resignation. Eventually the government paid her £650.³⁷

¹ No 15 of 1875

² Section 9 of the Act originally provided for a sunset clause of 2 years, with a further 3 years by proclamation. The Act was extended for a further 3 years by proclamation in the *Government Gazette* of 15/7/1877. By amendment No 170 of 1880 the sunset clause was repealed.

³ Although theoretically civil causes could also be tried under the Act, there was no provision for a local registry and consequently there is no known instance of any trial in the Court's civil jurisdiction in the N.T. prior to 1911. There was no provision for appeals from the lower courts.

⁴ Act No 311 of 1884

⁵ see *Re Pater, ex parte Pater, R v Middlesex Justices* (1864) 5 B&S 299; 122 E.R. 842; 4 New Rep 147; 33 LJMC 142; 10 LT 376; 28 JP 612; 10 Jur NS 972; 12 WR 823; 9 Cox CC 544; 3 Digest (Repl) 361. It seems that Pater was harshly dealt with.

⁶ The *Adelaide Observer*, 20/8/1892

⁷ The *Adelaide Observer*, 20/8/1892

⁸ (1876) 10 SALR 213

⁹ See also *Re Pater*, endnote 5 above, where he is described by Deputy Assistant Judge Payne as having uttered the insulting words "in a loud, threatening insulting tone and manner, and accompanied by violent gestures".

¹⁰ The *Adelaide Observer*, 20/8/1892

¹¹ *N.T. Times* and *Gazette* (NTTG) 10/5/1884

¹² The new stone courthouse was built to replace the original timber building, work having begun in 1879. The building was officially gazetted in May 1884: see *Territorian - The Life and Work of John George Knight*, D. Carment, H. J. Wilson & B James, Hist. Soc. of N.T. (1993), p49, and NTTG, 10/5/1884. Knight subsequently added a verandah to the rear of the Courthouse and installed punkas he obtained from a passenger vessel which had been scrapped.

¹³ NTTG, 10/5/1884

¹⁴ NTTG, 13/9/1884. The report of his speech in NTTG 17/5/1884 contains no reference to this.

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Dangers of Unsafe Glazing

Recent judgments highlight dangers of unsafe glazing

Building owners and operators must ensure glass on their premises meets current Australian Standards or they run the risk of being sued for negligence. This is the clear message from several court cases.

An 11 year old Northern Territory girl successfully claimed \$139,058 in damages after her leg was almost severed when she fell through a glass door. The court found that the owner was liable for not installing toughened Grade A laminated glass in line with current Australian standards.

And in a separate incident, a man was awarded \$11,400 in damages after he walked through a plate glass door at a takeaway store, thinking the door was open. He suffered extensive lacerations to his face. The judge ruled that the store had not placed strips, stickers or markings to indicate the presence of an obstacle. The only indication of the door being closed was a 15cm x 75cm plastic 'Closed' sign.

These follow earlier cases in which:

- An 18 year old South Australian girl was awarded \$23,961 in damages. Her back and arms were seriously lacerated and disfigured by a breaking shower screen. The court found that the owner/operator South Australian Housing Trust, was liable for having glass in the shower screen not up to current Australian Standards.

- A year 11 student was awarded damages of \$260,000 after he fell through school cafeteria glass doors. The court found the school failed to replace plate glass in the cafeteria doors with stronger safety glass required by Australian Standards.

"For both safety and legal reasons, those who may be affected by claims for unsafe glazing practices would be well advised to consider replacing glass that does not meet current Australian Standards - regardless of when the glass was installed," said Australian Glass and Glazing Association Executive Director Ian Koochew.

Mr Koochew said building owners and operators should make sure that all glass products on their premises are:

- glazed to Australian Standard 1288;
- fit for their purpose;
- adequately marked to indicate the presence of glass.

"In addition, all laminated safety glass should be marked with the Australian Glass and Glazing Association (AGGA) accredited installers label. The label shows home owners, builders and inspectors that the correct glass has been installed by an accredited person," Mr Koochew said.

"We have now seen a series of judgments given against landlords and some of the damages payouts have been substantial. Landlords, real estate agents and their legal advisers ignore this at their own peril," he added.

Pool Contract Surfaces

Building a new Pool?... then take advantage of Standards Australia's newest consensus based Contract for the supply and construction of concrete swimming pools and spas.

Standards Australia, the nation's peak standards body, has developed the document with the aid of a wide range of consumer, building and regulatory groups to provide a Contract that is practical, reasonable and fair to all parties concerned.

Unlike its popular predecessor, which was published in 1984, AS 2160.1 - 1998 now contains new clauses on contract inclusions, workmanship and disputes.

It has been thoroughly reviewed to satisfy Principal and consumer requirements of Federal State and Territory laws, and includes a cooling off period and right to terminate the Contract where the contractor has failed to finish the work.

The Contract is also based on more user-friendly terminology and presentation than its predecessor, with eye catching "alerts" and "warnings" in the margins and "items" for specific details which need to be filled in.

Susan Foley, Paralegal with Standards Australia's Contracts and Business Group, said particular attention was paid to insurance issues.

"The Contract now provides that the Contractor must effect a Public Liability policy and Workers Compensation Insurance 'so that they are in force from the date on which the contract commences work'," she said.

Ms Foley said the Standard would be a valuable document for both Contract Principals and consumers.

"It is an immediately accessible Contract which provides the basis for a fair and equitable agreement between parties," she said.

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¹⁵ Letter G R McMinn to the Minister 5 1885, reproduced in the correspondence referred to in endnote 26 *infra*.

¹⁶ NTTG 12/7/1884

¹⁷ NTTG 6/8/1884; *Adelaide Observer* 16 1884

¹⁸ NTTG 9/8/1884; *Adelaide Observer* 16. 1884

¹⁹ NTTG 16/8/1884

²⁰ *Adelaide Observer* 16/8/1884

²¹ NTTG 20/9/1884

²² see NTTG 1/11/1884; *S.A. Register*, 1/1 1884. Herbert was a solicitor practising in Palmerston at the time, and was late to become the Judge and Government Resident (1905-1910)

²³ *Adelaide Observer*, 20/9/1884. In a letter published in the NTTG on 1/11/1884 an anonymous correspondent pointed out that Pater's supporters included a "drunken carter, a dismissed policeman, and others whose stock in trade is a window and a few sheets of foolscap, combined with a few who transact all their business in their bedrooms".

²⁴ SA Govt. Gazette, 9 October 1884, p 1383

²⁵ NTTG 11/10/1884; *Adelaide Observer*, 11/10/1884

²⁶ *Correspondence Between Mr Solomon and The Government Resident, Northern Territory*, S.A. Govt Printer, 17/11/188:

²⁷ B. James, *No Man's Land*, (Collins, 1989), p 66-7

²⁸ Emily Pater's grave is in the Goyder Road cemetery, and still in excellent condition. Carment, Wilson & James, op. cit. endnote 12 *supra*, p 55; P.F. Donovan, *Land Full of Possibilities*, (University of Qld Press, 1981) p 158.

³⁰ SA Govt Gazette, 24/7/1890, p178

³¹ 5a

³² Carment, Wilson & James, op. cit. endnote 12 *supra*, p 56

³³ S.A. Govt Gazette, 25/2/1892, p 459

³⁴ *Adelaide Observer*, 13/8/1892

³⁵ *Adelaide Observer*, 20/8/1892

³⁶ NTTG 12/8/1892

³⁷ James, op. cit. endnote 27 *supra*, p 67

"This makes it an excellent alternative for Principals and consumers wishing to avoid problems experienced with the use of other contracts drawn up for similar purposes."

AS 2160.1 - 1998 is now available at Standards Australia offices in all State capitals or from the organisation's Web site at www.standards.com.au