

JOHN WALPOLE WILLIS:
FIRST RESIDENT JUDGE IN VICTORIA

(a) *Introduction*

John Walpole Willis was the first resident Judge in the district of Port Phillip of the Supreme Court of New South Wales, on its extension to that district. A controversial, sometimes eccentric man, he opened the first sittings of the court on Monday, 12 April 1841¹ and held office for just over two years. During that period, he polarised the small Melbourne community, alienated the entire legal and executive establishment, and brought disrepute on himself and his court. He created such controversy and opposition amongst influential sections of the community, that Governor Gipps, acting on numerous complaints, removed him from office in June 1843.²

The traditional view of Willis supports this dismissal. Contemporaries and subsequent writers considered him an argumentative, volatile and cantankerous man, both on and off the bench, a man

[w]hose habitual sarcasm is unbecoming, whose facetiousness is indecorous, whose domineering is improper, whose fidgeting is a sign of censurable impatience and whose system of 'summing up' is partial to the last degree.³

This writer, however, considers this view to be grossly unbalanced, if not erroneous, and that Willis's judicial career, far from warranting summary dismissal, deserves some recognition, if not acclaim. Willis possessed a brilliant, scholarly mind, sound legal knowledge and was imbued with the highest ideals of a judge's role. He had a highly developed sense of justice and unquestionable professional integrity. He was impartial,⁴ hardworking, a stickler for punctuality and court procedure, and was lauded for 'fearless independence'⁵ and 'wisdom and integrity of judicial decisions . . . unwearied assiduity, unflinching firmness, and unbending independence in effecting substantial justice'.⁶ He thus enjoyed consider-

¹ *Port Phillip Gazette*, 14 April 1841, 3. The Supreme Court of Victoria was not created as such until 1852. See Woinarski, *The History of Legal Institutions in Victoria* (1942) 311-53, for a detailed account of its foundation.

² Willis was removed by an order of the Governor in Council, dated 17 June 1843: Gipps, *Letter to Stanley*, 27 December 1843, reprinted in *Historical Records of Australia* (1st series) xii, 797. The Records are hereinafter referred to as *H.R.A.*

³ *Port Phillip Gazette*, 21 June 1841; Court proceedings and Willis's career were closely followed by the three bi-weekly newspapers published in Melbourne: the *Port Phillip Gazette* and *Port Phillip Herald* vehemently opposed him, whilst the *Port Phillip Patriot* supported him.

⁴ See address to Willis on his dismissal in July 1843: *Port Phillip Gazette*, 12 July 1843, 3. The *Gazette* also wrote: 'We like him the better because he has never administered one kind of justice to the rich, and another kind to the poor': 28 June 1843, 3.

⁵ *Port Phillip Patriot*, 26 June 1843, 3.

⁶ *Port Phillip Gazette*, 12 July 1843, 3, quoting from an address by Willis: see n. 4, *supra*.

able popularity, mostly amongst the lower, socio-economic sections of the community. He was, in addition, chronically ill,⁷ a fact to be remembered when assessing his extraordinary judicial demeanour.

(b) *Early Career*

John Walpole Willis was born on 4 January 1793, the second son of Captain William Willis of the 13th Light Dragoons.⁸ He attended Rugby, Charterhouse,⁹ and was called to the Bar in 1816. In 1824, by which time he was enjoying a rising reputation as an equity barrister,¹⁰ he married Lady Mary Lyon, the daughter of a Scottish nobleman, by whom he had one son. That marriage was subsequently dissolved by Act of Parliament in 1833, and in 1836 he married again to a Miss Anne Bund, daughter of Colonel M. T. H. Bund of Wick House, Worcester.¹¹

Willis enjoyed rapid legal promotion. In 1827,¹² then thirty years of age, he was nominated as a Judge to the Court of Chancery in Upper Canada. He took up office in Canada in 1827, but soon quarrelled with the Lieutenant Governor, Sir Peregrine Maitland,¹³ his advisors, and his own legal colleagues. The Governor,¹⁴ without consulting Willis, eventually removed him from office when he declined to sit *in banco* in the absence of the Chief Justice.¹⁵

Willis repaired to London and appealed successfully to the Privy Council against his dismissal, thus vindicating his name and reputation.¹⁶

In March, 1831, he was appointed Vice-President of the Court of Civil and Criminal Justice of British Guiana.¹⁷ There, he devoted himself with great energy and success to his duties, but in February 1836, his health failed and he returned to England on furlough.¹⁸ On the point of departure back to Demerara, British Guiana, he was appointed puisne judge of the Supreme Court of New South Wales. Willis thus arrived

⁷ The exact nature and severity of his illness is uncertain. See *infra* pp. 707-8.

⁸ Pike (ed.), *Australian Dictionary of Biography* (1966) ii, 602.

⁹ From which he was expelled, in 1809. *Ibid.* 602. No reason is given.

¹⁰ He published the following during his early career, while waiting for briefs: *A Digest of Rules and Practice as to Interrogatories for the Examination of Witnesses* (1816); *Pleadings in Equity Illustrative of Lord Redesdale's Treatise on the Pleadings in Suits in Chancery by English Bill* (1820); *Duties and Responsibilities of Trustees* (1827); see *ibid.* 603.

¹¹ Forde, *The Story of the Bar in Victoria 1839-1891* (1892) 54. Willis spent the last years of his life in Wick House, dying there in 1877.

¹² Willis, *Letter to Gipps*, 30 March 1839 in *H.R.A.* xx, 118.

¹³ *Ibid.* 119.

¹⁴ *Ibid.*

¹⁵ Willis voiced his opinion (probably correct) that because of the language of the Act creating it, the court could not sit *in banco* in the absence of the Chief Justice: *ibid.* 120-1.

¹⁶ The Privy Council held that though the Governor had power, under Imperial Legislation to remove the judge, the order was improperly made, as he was not given an opportunity of being heard in his defence. Strangely, in 1845, the Privy Council repealed the decision of Governor Gipps removing Willis from office on the same grounds. See *Willis v. Gipps* (1845) 5 Moo. 379; 13 E.R. 536.

¹⁷ Willis, *Letter to Gipps*, 30 March 1839 in *H.R.A.* xx, 118.

¹⁸ *Ibid.* 123.

in Sydney on 3 November 1837,¹⁹ there to begin a short but tempestuous judicial career in the colony.

(c) *Australia: Sydney (1838-41)*

(i) CONFLICT

Willis was not long in the colony before he began to consolidate and compound his unfortunate reputation. Whilst in Sydney, he quarrelled with his brother judges,²⁰ especially the Chief Justice, Sir James Dowling, and with members of the community at large; he criticized Dowling for accepting the service of aboriginal convicts, a practice he placed on a par with having slaves.²¹ Little wonder that Dowling wrote:

Willis is a fidgety, restless, self-opinionated fellow and it requires a good deal of forbearance and caution on my part to go on with him. Some people have the opinion that he is cracked.²²

Willis also quarrelled with Dowling over the appointment of a Judge in Equity. Willis had been a Chancery barrister in England, and, as all his brother judges were common lawyers, it followed, 'by a natural, (private) sort of arrangement amongst the Judges'²³ that he heard mainly equity cases alone in the colony.²⁴ Thus Willis considered that he should receive the appointment, with the title of Chief Baron. However, the Home Government and his brother judges differed. Dowling, largely through animosity, claimed the position late in 1840,²⁵ much to the general surprise of the community—and Willis's annoyance.²⁶

Willis also indulged in some extraordinary 'extra-judicial' behaviour whilst in Sydney. In a speech at a public meeting to the Committee of the Diocesan Society,²⁷ on 19 July 1838, Willis 'charged Roman Catholics with the practice of idolatrous worship'.²⁸ After much newspaper controversy, Willis requested Gipps to take out libel proceedings against the Right Reverend Dr Polding, Vicar General of the Roman Catholic

¹⁹ Willis, *Letter to Thompson*, 27 December 1837 in *H.R.A.* xix, 364.

²⁰ *I.e.*, Sir James Dowling, Sir William Burton and Sir Alfred Stephen.

²¹ Gipps, *Letter to Russell*, 3 January 1841 in *H.R.A.* xxi, 161.

²² Dowling, 'The Judiciary' in Australian Historical Society, *Journal Of Proceedings* (1907) ii, 98.

²³ Gipps, *Letter to Russell*, 3 January 1841 in *H.R.A.* xxi, 163.

²⁴ Thirteen cases in which Willis sat have been reported in Legge, *A Selection of Supreme Court Cases in N.S.W.* (1896). Willis's judgments appear learned, forthright, and conservative, notable mainly for occasional classical quotations, *e.g.*, *Ex Parte Lyons* in Legge, *op. cit.* 140, 149: 'I prefer the elucidation of the law by the Sages of Westminster to anything that can be obtained elsewhere, even from the profound philosophy of another Minos, or from the righteous rigour of a resuscitated Rhadamanthus. But can we say of this or any other colony,

"Gnossius hacc Rhadamanthus habet durissima regna, Castigatque auditque dolos?" *Vir. Aeneid*, c.C.'

²⁵ The statute, 4 Vict. c. 22 (1840), vested the equity jurisdiction of the Supreme Court in one judge: see Gipps, *Letter to Russell*, 1 January 1841, in *H.R.A.* xxi, 155.

²⁶ For details of the quarrel, see Gipps, *Letter to Russell*, 1 January 1841 in *H.R.A.* xxi, 155-6. See also Woinarski, *op. cit.* 291-2.

²⁷ See Gipps, *Letter to Glenelg*, 3 March 1839 in *H.R.A.* xix, 587.

²⁸ *Ibid.*

Church in the colony, and 'Titular Bishop of the same'.²⁹ Gipps successfully mediated, but lamented to Glenelg that

. . . such controversy between the head of the Roman Catholic Church on the one side, and a Judge of the Supreme Court on the other, did not fail to produce a considerable sensation in the Colony.³⁰

(ii) APPOINTMENT TO PORT PHILLIP

The growing importance of the Port Phillip district led to great inconvenience and some injustice in the administration of law. In 1838, Courts of Quarter Sessions, and in 1839, Courts of Request, were instituted³¹ for trial of minor offences and for the determining of small civil claims respectively. Thus, for trial of graver offences, all parties concerned had to undergo an expensive sea voyage to Sydney.

After various schemes were mooted,³² the Local Administration of Justice Act³³ was passed on 24 August 1839 giving Victoria its first resident judge and creating its Supreme Court.

Having decided to establish a court in the Port Phillip district, Gipps, on 7 February 1841³⁴ appointed Willis to be its resident judge, largely it appears, 'to put an easy termination to the dissensions which had unfortunately arisen on the Bench in Sydney'.³⁵

Dowling, at least, was considerably relieved, for he wrote:

Willis is going to Port Phillip as resident Judge, where I pray he may stick, and I pray that I may never see his face again.³⁶

(d) *Australia: Victoria (1841-43)*

(i) SOCIAL BACKGROUND

When discussing Willis's career in Victoria, the peculiar difficulties under which he worked should be considered. When he arrived in March 1841, he found a young, rapidly growing, rustic settlement,³⁷ used to its own standards of local justice and its own legal administrators. Further, Willis's arrival coincided with a severe financial crisis. Most of the merchants and many of the stockholders were passing through the insolvency courts, and chicanery and dishonesty were rife in the business

²⁹ *Ibid.*

³¹ Woinarski, *op. cit.* 280.

³² As early as 1837, Bourke had proposed the appointment of a fourth judge so that assizes might be held twice a year in Port Phillip: Bourke, *Letter to Glenelg*, 14 June 1837 in *H.R.A.* xviii, 782.

³³ 4 Vict. c. 22 (1839). This Act enabled the Governor to appoint a judge of the Supreme Court to reside at Port Phillip: see *Willis v. Gipps* (1845) 13 E.R. 536, 537. See also, Woinarski, *op. cit.* 284-96.

³⁴ *Port Phillip Gazette*, 6 March 1841, 3.

³⁵ Gipps, *Letter to Stanley*, 14 June 1842 in *H.R.A.* xxii, 145. The Home Government agreed with this policy: Russell, *Letter to Gipps*, 2 June 1841 in *H.R.A.* xxii, 406.

³⁶ Dowling, *op. cit.* 108.

³⁷ Between 1836-41, the population had increased from 224 to 11,728 of whom about 4,500 were in Melbourne: see Vasey, 'John Walpole Willis, The First Resident Judge of Port Phillip' (1911) 1 *Victorian Historical Magazine*, 42. During 1841, 10,000 immigrants arrived, 80% of them being assisted migrants.

³⁰ *Ibid.*

and professional community.³⁸ Willis, with his extraordinary sense of justice, set out to 'wage war without question'³⁹ in this corrupt society, to impose the stringent rule of law without fear or favour, and understandably bred discontent and opposition from those sections of the community most concerned. Yet his difficulties were understood and his efforts appreciated by many in the community.⁴⁰

Willis's problems did not end there. He did not enjoy the advantage of a colleague on the bench with whom he could confer and enjoy some social contact; he had only a minute, often mediocre bar and group of solicitors as colleagues,⁴¹ and suffered social and intellectual isolation in an essentially anti-legal, uncultured society. One should remember that the judicial environment was much rowdier and less disciplined than the measured tones of today. Thus judicial behaviour appearing eccentric or unseemly to us might merely have been appropriate or warranted.⁴² Little wonder then that Willis emphasised correct court procedure and the high dignity of his office.

(ii) WILLIS'S HEALTH

Willis had a long history of chronic and serious ill-health, deriving from his period in British Guiana; he wrote:⁴³ '[i]n February, 1836, my health sank under my exertions and I very narrowly escaped death.'

According to his medical advisors,⁴⁴ Willis 'suffered from and occasionally laboured under a functional derangement of the liver'.⁴⁵ However, it has been recently suggested,⁴⁶ on the basis of the available evidence, that

³⁸ Garryowen wrote: 'Most of the merchants and settlers of the time had got their affairs into . . . labyrinths of intricacy and roguery . . . tangled masses of chicanery, sharp practice and swindling were disclosed by the Nisi Prius, Equity and Insolvency Suits'. See Garryowen, *Chronicles of Early Melbourne* (1888) i, 67-8.

³⁹ Therry, *Reminiscences of 30 Years Residence in N.S.W. and Victoria* (1863) 342.

⁴⁰ In an article appearing in the *Port Phillip Gazette*, 28 June 1843, it was stated: 'But for his determined conduct on the bench, we certainly should not have overcome that lamentable want of principle which . . . characterised our merchant and professional men. Judge Willis did his utmost to restrain the dishonest practices which formerly prevailed'. This paper generally opposed Willis.

⁴¹ On opening his court, the bar numbered five: Redmond Barry (later a Justice of the Supreme Court and founder of the University of Melbourne); Robert William Pohlman (later Judge in Insolvency), Edward John Brewster, Archibald Cunningham, and Croke, the Crown Prosecutor: see Vasey, *op. cit.* 39.

⁴² Willis was not the only 'eccentric' judge who sat in the early colonial period. Jeffery Hart Bent, of N.S.W., Algernon Montagu of Van Dieman's Land ('Mad Judge Montague'), Benjamin Boothby of S.A., and Willis, 'were all able and upright lawyers, but with bad tempers, unruly tongues, and an obstinate pride . . . All were removed from office.' L. Whitfeld, *Founders of the Law in Australia* (1971) 72.

⁴³ Willis, *Letter to Gipps*, 30 March 1839 in *H.R.A.* xx, 118.

⁴⁴ See 'Medical Certificates', February-March 1836 in *H.R.A.* xx, 125.

⁴⁵ Mitchell, *Letter to Willis*, 10 January 1839 in *H.R.A.* xx, 125. This statement remains the only contemporary diagnosis available.

⁴⁶ This is the opinion of Mr B. T. Keon-Cohen, F.R.C.S., F.R.A.C.S., of Melbourne and Dr J. L. Frew, F.R.C.P., P.R.A.C.P., Senior Physician, Royal Melbourne Hospital. Such complaints would cause considerable pain and discomfort, not to mention disruption in his personal habits! Both chronic conditions, they would be virtually impossible to cure without the aid of modern drugs.

Willis suffered from recurrent liver abscesses, caused by contracting amoebic dysentery or, possibly, from recurring attacks of malaria.

Whatever the exact nature of his complaint, it cannot be doubted that it troubled Willis greatly in Australia. In 1839 he wrote:⁴⁷

My exertions in Guiana and the dangerous illness with which I was afflicted have now left me, at the age of 46, so feeble and debilitated from frequent pain in my side (proceeding it is feared from derangement of the liver), pain which is greatly augmented whenever I sit for any length of time in a crowded court, that I feel myself almost incapable to discharge my judicial duties, especially when under the excitement and anxiety of Criminal and Nisi Prius Proceedings.

Willis applied to Gipps several times for leave of absence because of his health,⁴⁸ before being granted leave in February, 1843. He was, however, dismissed before he could avail himself of this opportunity to leave discreetly.

Willis's health is an important consideration in assessing and explaining his abrasive, judicial demeanour. Though imbued with the highest ideals and intentions, it is arguable that his physical condition both aggravated an already volatile personality until he appeared merely malicious, and impaired the proper exercise of his judicial duties.⁴⁹

(iii) SOME ECCENTRICITIES

Willis arrived in Melbourne on 9 March 1841,⁵⁰ with his wife, one child, a goat, a dog, and 43½ tons of luggage, at the cost of £215.10s.0d.⁵¹ The judge's salary was £1,500 a year,⁵² his reputation was that of a brilliant but eccentric equity lawyer, he was 48 years old, and described as 'an honest, stubbornly upright, elderly gentleman, in silk stockings and old world fashions.'⁵³

The judge took up residence at Heidelberg,⁵⁴ and on 12 April 1841,⁵⁵ opened the sittings of the Supreme Court in a small brick building at the

⁴⁷ Willis, *Letter to Gipps*, 30 March 1839 in *H.R.A.* xx, 118.

⁴⁸ Gipps, *Letter to La Trobe*, 4 August 1842 reprinted in *Records of the Superintendent, Port Phillip District: 1843-1844*.

⁴⁹ In an article appearing in the *Port Phillip Gazette*, 23 March 1842, it was stated: 'The Sydney Herald . . . alludes to some *physical* disability under which it is said Mr Willis labours, and to which is attributed much of his capriciousness and hasty changes of temperament'.

⁵⁰ Vasey, *op. cit.* 36.

⁵¹ Gipps, *Letter to Stanley*, 14 June 1842 in *H.R.A.* xx, 147. The Home Treasury queried the expense, but Gipps had promised to pay it, being only too glad to remove Willis at any price. See also Gipps, *Letter to Stanley*, 7 February 1843 in *H.R.A.* xxii, 556.

⁵² Bridges, *One Hundred Years: The Romance of the Victorian People* (1945) 221.

⁵³ Sutherland, *Victoria and its Metropolis, Past and Present* (1888) i, 200.

⁵⁴ Heidelberg was some distance from Melbourne, over a difficult, if not impassable, road. Willis often kept the court waiting whilst negotiating his way to chambers, so that it was suggested that 'The Judge should hold sittings of the Supreme Court at Heidelberg': *Port Phillip Gazette*, 22 September 1841, 3.

⁵⁵ *Port Phillip Gazette*, 15 March 1841, 3.

south-west corner of Bourke and King Streets. A single roomed cottage adjoining the court-house became his chambers. At the opening ceremony, the new judge was sworn in before Superintendent La Trobe, and four counsel were admitted to practice before the newly created court.

Willis now proceeded to enhance his reputation for eccentricity. His judicial eye was keen to detect any infringement of the rules of forensic etiquette and court procedure. When a dandified solicitor, Mr Sewell, ventured into Willis's court wearing a 'fiercely voluminous moustache'⁵⁶ and rose to seek indulgence of 'audience', Willis roared from the bench that his court was not a place for '[a] Whiskered Pandour or a fierce Hussar!'⁵⁷ and that

[i]f the person who had spoken was desirous to appear as counsel, he ought to assume the semblance of one. As it was, his physiognomical get up was enough to frighten a man out of his wits!⁵⁸

But Willis indulged in more serious practices. On one occasion he passed remarks so offensive to the Crown Prosecutor, Mr Croke, that Croke 'bowed and left the court, followed by all the barristers present.'⁵⁹ This mass exodus was endorsed by the publication of a manifesto signed by the entire bar⁶⁰ declaring Willis's remarks to be unwarranted, and thanking Croke for 'the manner in which he had maintained the dignity and privilege of the bar.'⁶¹

Willis's treatment of witnesses and litigants was no more reserved, so much so that Garryowen wrote:⁶²

Such was his irascibility, and so often was the Court the arena of unseemly squabbles, that people who had no business there attended to see 'the fun', for, as there was no theatre in town, Judge Willis was reckoned to be 'as good as a play'.

Willis maintained a running battle with the press, particularly with Mr Arden, editor of the *Gazette*.⁶³ On one occasion, Arden published an anonymous letter which read, in part:⁶⁴

The praise he never awards except to those who flatter and cringe to him is nearly as disgusting as the unmeasured censure he so copiously emits on the . . . wretched individuals who are dragged beneath the outpourings of his bilious temperament.

⁵⁶ Garryowen, *op. cit.* 70.

⁵⁷ *Ibid.* 71.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.* 79.

⁶⁰ Now numbering six, a Mr Carrington being the latest addition.

⁶¹ Garryowen, *loc. cit.* Willis in reply merely declared from the bench that his court could carry on well enough without a bar at all.

⁶² *Ibid.* 67.

⁶³ The *Patriot* alone supported him, though Kerr, the editor, and Fawcner, the proprietor, owed the judge £645 and £550 respectively, both sums lent at 20% interest *p.a.*: Forde, *op. cit.* 77. Gipps, however, wrote that he saw 'no reason to suppose that money was lent . . . for the purpose of obtaining influence over the paper': Gipps, *Letter to Stanley*, 4 February 1843 in *H.R.A.* xxii, 552.

⁶⁴ *Port Phillip Gazette*, 29 October 1841, 3. The article was signed 'Scrutator'. This letter probably came from amongst Willis's own bar, for it emanated from 'one who had attended the English Courts of Justice'.

The same morning that this diatribe appeared, Willis had Arden arrested on a charge of criminal libel, and brought him before his court. A heated exchange took place:⁶⁵

Mr Arden: Will Your Honour not let me say a few words?

Judge Willis: Not one word! Silence! or I commit you.

Mr Arden: What am I to do?

Judge Willis: Be silent! Tipstaff! Do . . .

Mr Arden: Your Honour . . .

Mr Arden, silenced at last, sat down. The case was eventually deferred to the next day, and when Arden left the court, cheering broke out from the assembled crowd outside, whereupon⁶⁶

[o]n hearing the universal shout, His Honour rushed upon the bench, his gown streaming behind him, and the tails of his wig standing on end. 'Tipstaff! apprehend them all! Bring them all in who are making the noise! I will, at all events, keep the sacred purlieus of the court of justice free from insult'.

The tipstaff, however, did not move and Willis retired fuming to his chambers. The complaint against Arden was dismissed the next day in the police court—a result received again by loud cheers.⁶⁷

Willis's last controversy before being removed involved a Mr J. B. Were, a Melbourne merchant of high character and standing, and a justice of the peace. In June 1843, Were, a witness in a case over which Willis was presiding, frequently declared under searching cross-examination that he 'did not remember' things asked of him. Willis, irritated at what he described as 'this non mi ricordo way of giving evidence'⁶⁸ promptly committed Were at the close of evidence, for 'gross prevarication'. When the case was over, Were protested strongly:⁶⁹

Mr Were: I shall protest against the registry of that evidence and I shall do so as long as I stand here.

Judge Willis: Let him be committed for three months.

Mr Were: (Leaving the court): I wish your Honour good morning.

Judge Willis: (Excitedly): Let him be committed for four months for gross contempt.

Mr Were: I am obliged to your Honour, for I know that every month you give me will add to the pleasure it gives yourself.

Judge Willis: Let him be committed for another month.

Mr Were was by this time at the door of the judge's room, where he was heard to say something indistinctly.

Judge Willis: (In great wrath): Then let him be committed for six months!

Before he could utter another word and further prolong his stay, the Sheriff and some officers of the court bundled Were outside and shut

⁶⁵ *Port Phillip Gazette*, 1 October 1841, 3.

⁶⁶ *Ibid.*

⁶⁸ *Port Phillip Herald*, 6 June 1843, 3.

⁶⁷ *Ibid.*

⁶⁹ *Ibid.*

the door. Were was incarcerated in 'The Rules'⁷⁰ and complained to the Executive Council in Sydney,⁷¹ a complaint which hastened Willis's removal from office.

(iv) CONSIDERABLE ACHIEVEMENTS

Such eccentricities, however, were mitigated by much good work. Though asserting impartiality, Willis probably favoured the poor as against the rich, and was always generous in assigning counsel to prisoners destitute of means⁷² and was sympathetic to their plight.⁷³ He was hard working,⁷⁴ independent, of unimpeachable integrity and staunchly concerned with the impartial administration of the law. He did much to clean up the community and to help overcome the mercantile difficulties which had engulfed it.

Perhaps his most outstanding, but least remembered work, lay in his addresses to the jury at the monthly opening of the Criminal Sessions of the court.⁷⁵ Based on the traditional practice of the Law Lords charging the Grand Juries in England, Willis's addresses have been criticized as ranging far beyond the traditional 'state of the calendar', and as containing 'flights of fancy and brilliant, caustic, censorious, satiric, snarling and spiteful irrelevancies'.⁷⁶ Yet Willis's speeches were extremely scholarly, revealing a highly cultured, wide-ranging mind, and a scrupulously honest, socially concerned man. They dealt with many legal and quasi-legal subjects⁷⁷ and never failed to instruct the jury in their proper legal duties. Though perhaps strictly irrelevant in terms of the calendar, they were, it is submitted, very relevant in terms of Willis's position as the ultimate, perhaps sole bastion of justice in a rustic, essentially anti-legal community. Willis thus used the bench as a public forum to disseminate traditional values of justice and morality, and to instruct the young community (as he was uniquely qualified to do) where he considered that it had erred.⁷⁸ His speeches remain as a monument to his outstanding legal and literary

⁷⁰ 'The Rules' as gazetted by the judge, comprised a portion of the west end of the town, bounded by Collins, Spencer, Lonsdale and Queen Streets. Willis himself created this area, as existing prison accommodation proved inadequate for debtors and for persons committed by himself for contempt. Persons committed to this area could move within it, but not leave it.

⁷¹ Were was subsequently released after a short period in gaol.

⁷² He did not confine himself to capital charges in this. Even in civil cases, he permitted suitors to apply in *forma pauperis* and would request counsel and attorneys to act for them. See *Port Phillip Gazette*, 19 May 1841, 3.

⁷³ It was reported: '. . . we never heard that His Honour refused to hear a poor man either in public or in private': *Port Phillip Gazette*, 28 June 1843, 3.

⁷⁴ Twenty (civil) cases was an average day's work.

⁷⁵ Willis delivered 26 such formal speeches in Melbourne.

⁷⁶ Bridges, *op. cit.* 222.

⁷⁷ E.g.: *Drunkness*, 16 May 1842; *Government*, 15 June 1842; *Justice and Liberty*, 15 August 1842; *Religion and Political Liberty*, 13 December 1842; *Education and Crime*, 15 March 1843; *The Constitution*, 7 April 1843.

⁷⁸ The inhabitants valued his speeches: Referring to his last address, delivered on 16 April 1843, the *Port Phillip Gazette* described it as 'one of the most talented addresses . . . which has ever emanated from the colonial bench': 21 June 1843, 3. Willis was removed from office three days later.

scholarship, his independence, and social concern, while reflecting the peculiar difficulties of his position.⁷⁹

(e) *Summary Dismissal*

The end came suddenly. As a result of numerous complaints and petitions⁸⁰ from influential sections of the community, Gipps finally removed Willis from office by a writ of amotion dated 17 June 1843.⁸¹ Thus Willis, whilst sitting *in banco* on Saturday, 24 June 1843,⁸² was suddenly called by the deputy registrar to his room and was handed the notification of his suspension. He returned to his court and said:⁸³

Circumstances have occurred which render me unable to proceed with the business of this court. The court is opened for civil business, but I cannot proceed in it, or take any steps in criminal matters.

and thereupon adjourned his court for the last time.

Gipps declared that Willis's removal was not

[o]n any single accusation, or for any precise number of improper acts, but for a long and continued course of misbehaviour which . . . rendered

⁷⁹ The following address delivered on 16 August 1841, is a representative example in terms of content, and quality of thought and expression: ". . . Thus, what is preliminary, is entrusted to gentlemen of the law; what is final, is left to the ultimate decision of the jury; to the plain understanding of plain men. Since, however, it is requisite that the judgment of such men should be informed from some higher source, and the respect due to the tribunal, of which they form so essential a part should be enforced—that error should be corrected—chicanery and improper practices suppressed—ignorance rebuked—sophistry exposed—testimony adduced and analysed, and its legal applicability and seeming preponderance pointed out, this task is confided to the judge; to one who is or ought to be conversant with the law, and ever mindful of his oath, "to do equal justice to all his fellow subjects, rich and poor, without having regard to any person;" to one free from such levity and timidity as to be swayed by passions so mean and unworthy, that popular clamour can shake a resolution built on a solid basis of a legal principle; to one totally uninfluenced by all predilection to bias that can operate to draw him to one side or to the other, who had no other feeling than to render everyone his due, and to do justice in each particular case as if he had no care for anything beyond it—to one ever ready to declare, in the emphatic language of that great Judge, Lord Mansfield,

"I will not do what my conscience tells me to be wrong, to gain the huzzah of thousands, or the daily praise of all the papers which issue from the press; I will not avoid doing that which I believe to be right, though it draw down upon me the whole artillery of libels—all that falsehood or malice can invent, or the credulity of a deluded multitude can swallow;"—
to one, in fine,

"Qui dedit patriae quid debeat,
Quid sit conscripti, quod iudis officium, et qui
Reddere personae convenientia ciqua".

Reprinted in the *Port Phillip Gazette*, 21 August 1841, 3.

⁸⁰ The petitions were both for and against his removal. Between October 1841 and July 1843, Gipps received eight petitions and complaints. One raised in May 1843 bore 523 names, including those of 18 magistrates, and was endorsed by the Superintendent, Mr La Trobe. After his suspension, 'an address by respectable citizens supporting His Honour, bearing 1,425 signatures was collected': *Port Phillip Gazette*, 12 July 1843, 3. See also Gipps, *Letter to Stanley*, 2 July 1843 in *H.R.A.* xxiii, 4, where complaints are itemized.

⁸¹ Done 'according to the powers given to the Governors in the Colonies and their Councils by 22nd. Geo. III., c. 75': Gipps, *Letter to Stanley*, 26 June 1843 in *H.R.A.* xxii, 797.

⁸² *Port Phillip Gazette*, 28 June 1843, 3.

⁸³ *Ibid.*

his further occupation of the judgment seat incompatible with the peace and good government of the colony.⁸⁴

Yet Willis's removal caused considerable public consternation, with public meetings and petitions in his favour, and violent press reaction. The *Herald* published an 'extraordinary' edition 'for the purposes of announcing at the earliest possible moment the gratifying event'⁸⁵ while the *Gazette* did a *volte face*, describing Willis as 'the ablest and most independent Judge in the Colony' and 'one of the best friends Port Phillip ever had'.⁸⁶

But Willis again returned to England to seek redress, sailing from Melbourne on 14 July 1843⁸⁷ when 'a company of 400 bade him farewell'.⁸⁸ He presented an appeal to the Privy Council in March 1844, against the order of Governor Gipps which had removed him from office.⁸⁹ After two years delay, their Lordships reported⁹⁰ that the Governor in Council had power to remove the judge; that on the facts established there was sufficient ground; but that the appellant should have been given an opportunity of being previously heard, and that the order of 17 June 1843, should therefore be reversed.⁹¹

Willis applied for, but never received, further judicial appointments, and his life drew to a prolonged close. In 1850, he published a book entitled *On the Government of British Colonies*. The former judge died at his father-in-law's house in Scotland on 10 September 1877,⁹² aged 85 years.

(f) Conclusion

Willis's career in Australia was colourful and controversial, and, in the writer's opinion, sadly misjudged in spirit and in fact. His abrasive personality and fierce independence alienated the influential sections of the community then enmeshed in an unprecedented financial crisis, with its attendant malpractice and dishonesty. His eccentricities, perhaps, lay in his strict adherence to the rule of law amongst such a society, rather than his unseemly judicial behaviour. But he stood to his principles and paid the price, being sacrificed on the altar of public expediency.

Throughout his career, his impartiality endeared him to the lower classes, for he made the law a servant to all people, not just a tool of the wealthy. Though the man sometimes usurped the judge, though he erred undoubtedly in law and in etiquette, his transgressions were due to

⁸⁴ Gipps, *Letter to Stanley*, 19 July 1843 in *H.R.A.* xxiii, 50.

⁸⁵ *Port Phillip Herald*, 27 June 1843, 1. ⁸⁶ *Port Phillip Gazette*, 28 June 1843, 3.

⁸⁷ *Port Phillip Gazette*, 15 July 1843, 3. ⁸⁸ Sutherland, *op. cit.* 201.

⁸⁹ *Willis v. Gipps* (1845) 5 Moo. 379; 13 E.R. 536.

⁹⁰ *Report delivered to the Queen in Council*, 8 July 1846. See Grey, *Letter to Fitzroy*, 15 March 1847 in *H.R.A.* xxv, 395.

⁹¹ *Willis v. Gipps* (1845) 5 Moo. 379; 13 E.R. 536.

⁹² Pike (ed.), *op. cit.* 604.

human failings, not to incompetence or malicious intent. To dwell on them alone grossly distorts the man, and his career as a judge, and ignores his considerable achievements under very difficult circumstances.

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