MAD JUDGE MONTAGU: A MISNOMER?

B. A. KEON-COHEN*

Algernon Sidney Montagu laboured a remarkable fifty-two years in the Colonial Service, twenty of them in Van Diemen's Land. Appointed Attorney-General to that colony in 1827, and Puisne Judge in 1833, Montagu led a successful though at times flamboyant public life, only to be amoved from office for alleged misconduct by the Governor in Council in December, 1847.[1] It will be suggested, however, that Montagu's amoval, like his pseudonym, the "Mad Judge", belies his true worth both in Van Diemen's Land, and elsewhere.

I. EARLY LIFE

The name of Montagu ranks high among the leading families of England, with notable figures dating back to the 16th century.[2] Montagu's father, Basil, was a Q.C., considerable litterateur, and a leader of the English law reform movement in the first decades of the nineteenth century.[3] In September 1801 he married a Laura Rush, who gave birth to Algernon Sidney at Cambridge in the summer of 1802.[4] Laura, who died when Algernon was only three years old, bore two more children.[5] One, Alfred Otter, became a lawyer and followed Algernon to Van Diemen's Land.

When Algernon was seven, he was sent to a Mr Dewe's private school in Ambleside, Westmorland, and spent his weekends and holidays at the

* B.A., LL.M. (Melb.), Dip.Ed. (Mon.). Senior Tutor, Faculty of Law, Monash University.
The author wishes to express his appreciation to Professor A. C. Castles who read the manuscript and offered many helpful comments.

1 See pp. 74-6 infra.

2 Sir Edward Montagu, Lord Chief Justice, 1539-1545, was the first of three members of the family to be elevated to superior court judgeships, only to be displaced in later reigns for political reasons. Montagu's grandfather was the infamous rake, the Earl of Sandwich (1718-1792)—"the gallantest man of his country". Montagu's father was that "gallant's" illegitimate son. See P. A. Howell, "Of Ships and Sealing Wax: The Montagus, the Navy and The Law" 13 *Tasmanian Hist. Research, Assocn. Papers and Proceedings* 101, 101-108. Hereafter, P. A. Howell, *The Montagus.*

3 P. A. Howell, "The Van Diemen's Land Judge Storm" (1964-1967) 2 *Tas. Uni. Law Review* 253, 254. Hereafter, P. A. Howell, *The Judge Storm.* See also fn. 11 infra.

4 Daughter of a wealthy landowner Sir William Beaumaris Rush of Roydon, Essex, and Wimbledon, Surrey. D. Pike (ed.), *Australian Dictionary of Biography* 5 Vols. (M.U.P. 1966-1974) Vol. 2, p. 246. Hereafter, *A.D.B.*

5 Ibid. p. 246.

home of the poet, William Wordsworth.[6] During this period, Wordsworth wrote to Basil Montagu, noting that[7]

> "Algernon behaves preety well on the whole, though not absolutely an Israelite in whome there is no guile."

Algernon, despite such early showings of rebelliousness, was precocious, and outshone the Wordsworth and Coleridge boys at school.[8] When almost fifteen years old, Algernon left school and was admitted to Grey's Inn in November, 1817.[9]

Algernon was not called to the Bar until February, 1826,[10] but during this period, he acquired a considerable knowledge of jurisprudence and certain branches of the law, was actively engaged in researching many of his father's books, and met many artists, politicians, writers and philosophers who constantly came to his father's house.[11]

Soon after commencing practice at the Bar, Algernon ran deeply into debt, adopting his father's habit of delaying settlement of his obligations until the last "legal" moment. Seeking financial security, and no doubt to avoid his creditors,[12] Montagu applied for the Attorney-Generalship of Van Diemen's Land in March, 1828.[13] He received the appointment[14] dependent, however, on the continued ill-health of the then Attorney-General, Thomas McClelland, forcing him out of office.[15] If McClelland had recovered by the time of his arrival, Montagu was directed to proceed to Sydney, and take the position of Commissioner of the Court of Requests

6 P. A. Howell, *The Montagus op. cit.* 110.

7 Unpublished letter, dated 1811, Harvard College Library, cited Ibid. 111.

8 John Wordsworth, and Hartley and Derwent Coleridge, attended the same school. Ibid. 110.

9 *A.D.B. op. cit.* p. 246.

10 Ibid.

11 Basil wrote a four volume digest on Bankruptcy law, and books on copyright and partnership; pleadings in Equity; and the construction of statutes, deeds and wills. He also published articles on Bacon, edited his works in 16 volumes, and wrote many philosophical essays. P. A. Howell, *The Montagus op. cit.* 111.

12 During this period, young barristers often sought colonial appointment for these reasons—especially to avoid creditors. See R. M. Hague, *Sir John Jeffcott, Portrait of a Colonial Judge* (M.U.P. 1963) pp. 6-7. Jeffcott's "only reason" for accepting a judicial appointment in Sierra Leone—"a pestilential place"—was to enable him to pay off creditors accumulated as a newly-admitted barrister. Ibid. Further, of course creditors could not pursue the debtor once he left for the colonies.

13 P. A. Howell, *The Montagus op. cit.* 113. Joseph Hone was then acting as the colony's Attorney-General, but with no prospects of permanent appointment, as he was apparently "only a few degrees removed from an idiot". G.O. 1/21, pp. 242-3, (*Tasmanian State Archives*) hereafter, *T.S.A.*

14 Apparently with Governor Arthur's help, for Montagu later described him as "a gentleman whose kindness, benevolence, and influence at home procured me the office of Attorney-General". Montagu to Arthur, 23rd January 1834, 20 *V.D.L. Duplicate Despatches* p. 258 (*T.S.A.*) hereafter, *V.D.L. D-D.*

15 McClelland had been appointed Attorney-General of Van Diemen's Land in 1826, but was found on arrival to be suffering from mental derangement. When his illness was reported to England, Montagu was appointed to succeed him. Murray to Darling, 12th June 1828, note 1. See XIV *Historical Records of Australia* Series i, p. 916. Hereafter, *H.R.A.i.*

in New South Wales.[16] Montagu agreed to this possible rearrangement, although it involved a lower salary, an attitude which greatly impressed the Colonial Secretary, Sir George Murray.[17] Montagu sailed for Van Diemen's Land on the "Henry Wellesley", arriving at Hobart Town on 31st October, 1828.[18]

II VAN DIEMEN'S LAND: 1828-1848

A *Convicts and Crime*

Conditions in the colony during Montagu's residence were generally severe, and the administration of law reflected this environment.

Though conditions had certainly improved compared to the period before 1824[19] the high proportion of transportees and emancipists in the colony[20] meant that lawlessness in the 1820s was much more prevalent than in subsequent times. Legal administration during this period also left much to be desired. The courts, especially the inferior jurisdictions[21] during Governor Franklin's[22] administration (1836-1842), when discipline slackened, did not enjoy the general public's confidence as effective administrators of the law.[23] Nevertheless, with such disregard for the law, and the usual vigorous application of a harsh criminal code, the courts were busy—at least on the criminal side.[24] However, from 1844, both civil[25] and criminal[26] matters appear to have decreased, as did executions.[27]

16 Murray to Darling, 12th June 1828, *H.R.A.i., XIV* p. 226. Roger Therry was to be appointed if Montagu did not take office. Murray to Darling, 20th April 1829, *H.R.A.i., XIV* p. 712.

17 Ibid.

18 Arthur to Sheriff's Office, 5th November 1828, *V.D.L. D-D* p. 745 (*T.S.A.*).

19 See, for a contemporary account of legal problems up to 1824, J. T. Bigge, *Report of the Commissioner of Inquiry on the Judicial Establishments of New South Wales and Van Diemen's Land* (London, 1823) esp. pp. 1-60.

20 At this time, about half of Tasmania's community comprised convicts, and their proportionate increase was rising.

21 E.g. Court of Requests (civil); Court of Quarter Sessions (criminal); Insolvency Court; Vice-Admiralty Court; Court of Petty Sessions; Caveat Board (land claims). See generally A. C. Castles, *An Introduction to Australian Legal History* (Sydney, 1971) *passim*.

22 Described by contemporaries as "an imbecile old man" and "a puppet of certain members of his own government". Cited A. G. L. Shaw, *Convicts and Colonies* (London, 1966) p. 269. He had, however, redeeming qualities. See *A.D.B. op. cit.* Vol. 1, pp. 412-15.

23 In October 1839, William Secombe was allowed to hear cases in the Court of Quarter Sessions in Launceston while he was himself released on bail and awaiting trial for manslaughter. P. A. Howell, *The Montagus op. cit.* 117.

24 Drunkenness, for example, was rife. For the period 1845-1846 the offence rose 131% among convicts, and "to their disgrace, for the same year, there were more convictions for this besetting vice among the free". *Tasmanian Journal of Natural Science* (London, 1849, 3 Vols.) Vol. 11, p. 453.

25 Statistics for civil proceedings in the Supreme Court between 1844 and 1846 show a 50% reduction in litigation—perhaps due in large part to the general depression then gripping all of New South Wales and Van Diemen's Land. See Ibid. p. 454. See also R. M. Hartwell, *The Economic Development of Van Diemen's Land, 1820-1850,* (M.U.P., 1954) *passim*, and infra, text accompanying fns. 154-60 and 194-6.

26 E.g. "The convictions for crimes against the person (in the Supreme Court and Court of Quarter Sessions) decreased by 50% between 1844 and 1845, with a further decrease of 8% in 1846". See *Tasmanian Journal of Natural Science*

Montagu was well aware of the nature of the community around him. When addressing a jury at Hobart, he once said, reflecting the prejudices of his times[28]

> "A worse community, with special reference to the very large proportion of the convict population, never existed on the face of the globe than on this island—at all events, never in the history of modern times."

B *The Supreme Court*

In New South Wales and Van Diemen's Land, the Imperial Acts *4 Geo. IV C.96* (1823) and *9 Geo. IV C.83* (1828) provided for the administration of justice during the period under review.[29] Pursuant to the former Act, a Charter of Justice was promulgated in 1823, establishing the Supreme Court of Van Diemen's Land as a Court of Record.[30] Under this Charter, the court was initially constituted by one judge, John Lewes Pedder, the Chief Justice, who arrived in the colony in March, 1824.[31] The first sittings of the court were held on 10th May, 1824.[32]

op. cit. p. 453. The activities of the Court of Quarter Sessions, with their "extraordinary" jurisdiction over convicts, and changes in the convict administration in 1839-1840, (i.e. probation and incarceration at Port Arthur rather than assignment to settlers) no doubt affected the volume of criminal business in the Supreme Court. See A. C. Castles, *op. cit.* pp. 75-6; J. West, *The History of Tasmania* (1852) (ed. A. G. L. Shaw 1971) pp. 487-8, 497-508; C. M. H. Clark, *A History of Australia* (3 Vol., 1962-1973) Vol. 3, pp. 216-17, 221-3.

27 Executions decreased from 1844. The figures were: 1844, 16; 1845, 13; 1846, 8—"exclusive of the twelve who paid the last penalty of the Law at Norfolk Island". See *Tasmanian Journal of Natural Science op. cit.* p. 453. One feels these figures give a somewhat biased view of the mortality rate of convicts at the hands of the administration, one way or another. In 1825, by comparison, 75 persons were sentenced to death. See H. Melville, *History of Van Diemen's Land, 1834-1835* (Hobart Town, 1836, Facsimile Ed. No. 104, Adelaide, 1967) p. 52. From the early 1820s, however, the number of capital offences contained in the applicable criminal code—that of England—declined steadily. In the same "humanitarian" vein, one reason for declaring that 1828 be the date for the application of British statute law to N.S.W. and V.D.L. was to enable British criminal law reforms to be applied to the colonies. See generally A. C. Castles, *op. cit.* p. 145-62.

28 Cited J. Syme, *History of Van Diemen's Land, Probation Department* from a photographic reprint of J. Syme, *Nine Years in Van Diemen's Land* (1848) pp. 183-245, 198-9. During the period under review, such judicial statements were not in fact unusual. See for example Burton J. in Sydney in 1835, cited in C. M. H. Clark, *op. cit.* Vol. 2, p. 229.

29 *4 Geo. IV C. 96* was entitled: "*An Act to provide, until the first day of July, 1827, and until the end of the next session of parliament, for the better administration of Justice in N.S.W. and V.D.L. and for the more effectual government thereof: and for other purposes relating thereto.*" See T. Callaghan, *Acts and Ordinances of the Governor and Council of New South Wales* (4 Vols. Sydney, 1844-1852) pp. 1209-14. Hereafter, *Callaghan, Acts. 9 Geo. IV C. 83* was couched in similar terms. See Ibid. pp. 202-15.

30 The Charter established . . . "within that part of our colony of N.S.W. called V.D.L. a court which may be called the Supreme Court of V.D.L." *Cyclopoedia of Tasmania* (Hobart, 1931) p. 44. The Court was also regulated by the local ordinances *2 Wm 4 No. 1* (1832) and *7 Wm 4 No. 2* (1836). See *Callaghan, Acts op. cit. passim*; See also W. A. Townsley, *The Struggle for Self Government in Tasmania, 1842-1856* (Hobart, 1951) p. 167.

31 *Cyclopoedia of Tasmania op. cit.* p. 44.

32 J. W. Beattie, *Glimpses of the Lives and Times of the Early Tasmanian Governors* (Hobart, 1904) p. 33.

By a second Charter, dated 4th March, 1831,[33] a second judge was provided for,[34] but a subsequent local Act altered its meaning and intent, cancelling his appointment.[35] This Charter thus remained in abeyance until Montagu, then Attorney-General, was appointed from England to become Puisne Judge in 1833.

The Supreme Court enjoyed civil, equity and ecclesiastical jurisdiction,[36] as well as Admiralty.[37] The court usually sat in Hobart and Oatlands, as a court of first instance, or in its capacity as a court of Oyer and Terminer or General Gaol Delivery.[38] Physically speaking, in these early days court conditions were somewhat grim. In May 1837, Montagu complained that the ceiling and one wall in the court house were insecure,[39] while Stephen, the Attorney-General, forwarded a list of proposed court-house alterations to the Colonial Secretary.[40] At Oatlands, at least until 1841, there was no court house at all.[41]

More seriously, court fees and professional ethics, judged at least by modern-day standards, also left much to be desired. A contemporary wrote in 1839[42]

> "The fees of the courts are enormous, and are rendered intolerable by the vexatious demands and exactions of many unprincipled practitioners. The abusive charges, even gross frauds, of some of these long-headed gentlemen, have been such as to reflect not only odium upon their profession, but disgrace upon their country. Some have grown to be very wealthy by their rapacity, careless of the ruin they have scattered through the island."

33 W. A. Townsley, *op. cit.* 167. See also *Hobart Town Courier*, 13th August 1831; p. 2.

34 I.e., Alexander Baxter, then Attorney-General of N.S.W. See *A.D.B. op. cit.* Vol. 1, pp. 74-5. See also H. Melville, *History of Van Diemen's Land, 1834-1835* [Hobart Town, 1836, G. Mackaness (ed.) Sydney, 1959] Part II, p. 43. A third judge was not appointed until 1887. *Cyclopoedia of Tasmania op. cit* p. 44.

35 See *2 Will, IV No. 1*, ss. 3, 4. *The Administration of Justice Act* (1831). See H. Melville, *Van Diemen's Land Statistics and Other Information* (London, 1833) p. 199. The unfortunate appointee, Baxter, was found to be ill, and was sent home to England. See *A.D.B. op. cit.* Vol. 1, pp. 74-5; H. Melville, *History of Van Diemen's Land 1834-1835 op. cit.* pp. 43-4.

36 "As the Judges of the Courts of King's Bench, Common Pleas and Exchequer in England." W. A. Townsley, *op. cit.* p. 167.

37 I.e., The Court was able and obliged to hear and determine all offences committed on the sea or in any place "where the admiral hath power". Cited Ibid. It appears however that "the court had part of Admiralty Jurisdiction" and that "the exact limits on the Admiralty Jurisdiction *vis à vis* Admiralty jurisdiction generally" is still uncertain. Comments received by Professor A. C. Castles, May, 1975.

38 W. A. Townsley, *op. cit.* p. 167.

39 Montagu to Bramont (Sheriff) 3rd May 1837, *C.S.O.* 5/46, p. 488 (*T.S.A.*).

40 Stephen to Franklin, 12th May 1837, Ibid. Items requiring attention included "gallery for the public (200 persons); room 12 foot square for the use of the profession generally; a neat fence in front of the building; two water closets at back of building; two male constructed urinals in a corner of the building". Ibid. Total cost of repairs and alterations in 1837 amounted to £1,389.4.4. Memo, 21st June 1837, Ibid.

41 *C.S.O.* to Montagu, 25th May 1841, *C.S.O.* 8, Vol. 9, No. 52. (*T.S.A.*)

42 J. Dixon, *The Condition and Place of Van Diemen's Land* (London, 1839) p. 34.

It appears then, at first sight, that, like his contemporary in Port Phillip, Judge Willis,[43] Montagu faced not only an essentially lawless society, but an often mediocre[44] even unprincipled legal profession as well. However, it should be remembered that complaints regarding court fees were not unusual in Australia, then or now,[45] and that, judged by standards then prevailing in Britain and Australia, professional competence and honesty in Van Diemen's Land was generally satisfactory, and rarely "fraudulent".[46]

C *Attorney-General 1827-1833*

On arriving in Hobart Town, Montagu took up office[47] immediately as Attorney-General,[48] on a salary of £1,000 p.a.[49] with the option of private practice.[50] Though initially "both surprised and alarmed to find the arduous nature of the office he had undertaken"[51] he clearly became an outstanding Attorney-General, earning Arthur's praise,[52] conducting prosecutions with skill and fairness, and, to Arthur's further delight, voluntarily abstaining from private practice[53]—a considerable financial sacrifice.[54]

The new Attorney-General appears to have been a dashing figure besides. A contemporary described him at this time as[55]

> ". . . a young man of engaging countenance, dark expressive eyes, and wearing his hair, which was also dark, very thick and bushy; but it became him, and helped to set off tolerable features, into which, when

[43] See B. A. Keon-Cohen, "John Walpole Willis: First Resident Judge in Victoria" (1972) 8 *M.U.L.R.* 703-14.

[44] Montagu's brother, A. O. Montagu, was at one time described as "the only capable barrister on the colony". See infra fn. 156.

[45] Indeed, one could add: nothing has changed, e.g.: "Barristers fees are a scandal . . . if the facts were known about recent rises, they would lead to widespread protests." Letter to *The Age*, Melbourne, 16th September 1972.

[46] I am indebted to Professor A. C. Castles of Adelaide University for these suggestions.

[47] Then a delicate position following bitter quarrels between Lieutenant-Governor Arthur and a prior Attorney-General, Joseph Gellibrand, resulting in official investigations of the Attorney-General and his much disputed removal from office, in 1826. See *A.D.B., op. cit.* Vol. 1, pp. 437-8.

[48] His appointment was officially gazetted in November, 1828. Minute No. 266 of Geo. Arthur, 355 *C.S.O.*, 8082-8116. (*T.S.A.*)

[49] Payable from date of arrival. Montagu to Franklin, 28th October 1837, 27 *V.D.L. D-D* pp. 755-8, 755-6. (*T.S.A.*)

[50] Worth perhaps £700-£800 p.a., Ibid. The Chief Justice earned £1,500, Puisne Judge £1,200, while income of members of the profession varied from £1,000 to £3,000. Ibid. 756.

[51] Arthur to Sheriff's Office, 5th November 1828, 4 *V.D.L. D-D* p. 745. (*T.S.A.*)

[52] See infra, text accompanying fn. 62.

[53] P. A. Howell, *The Montagus op. cit.* 115. See infra, text accompanying fns. 154-8.

[54] Though, in the light of the Gellibrand affair, he would doubtless have complied with Arthur's wishes, at least for a time. See *supra* fn. 47 and citations therein, and infra fn. 63.

[55] From H. Savery, *The Hermit of Van Diemen's Land* (3 Vols. Hobart Town, 1830, London, 1834). On another occasion, in a press article cited ibid. p. 114, Savery had Montagu state that "I am much more the advocate of sun than wind and I would always much rather reward than punish". *Colonial Times* 26th June 1829, cited Ibid.

> he pleased, he knew how to impart much grace and sweetness, by a most agreeable smile. He was dressed in the Court-Suit of a King's Sergeant, exhibiting an unusual display of shirt-frill."

James Stephen, subsequently Attorney-General, and with whom Montagu violently quarrelled[56] provides a different picture. Writing of Montagu, he said[57]

> "He appeared to me a raw young man quite unaccustomed to business, and very likely to give himself up to various affectations of sentiment, romantic feeling, and literary taste. I say affectations, not because I have any right to distrust the genuineness of the tone in which he talked, but because there was in his manner something that looked artificial and made-up, and which conveyed the impression of borrowed manners . . ."

Though Stephen probably had cause to be critical,[58] Montagu's habit of not paying debtors became quickly evident in these early years. In June, 1829, a Mr Jennings complained to Governor Arthur that he was[59]"unable to procure repayment of a debt from Mr Montagu". Jennings applied to the Supreme Court for a ruling to compel Montagu to pay, but Chief Justice Pedder refused the application.[60] Such financial difficulties were to dog Montagu throughout his career in Van Diemen's Land.[61]

However, by the end of 1831, Arthur reported to the Colonial Office that he was "perfectly satisfied" with the manner in which Montagu had exercised his duties[62]—perhaps dubious praise from one not noted for favoring Attorneys-General who acted independently of the Executive.[63] Nevertheless, Arthur hoped Montagu would be chosen to supercede Mr Baxter, "an insolvent debtor, notorious sot and wife-beater" who had been appointed first Puisne Judge in Van Diemen's Land, but whom the high-minded Arthur had prevented from assuming office.[64]

D *Puisne Judge 1833-1847*

By 1831, the Secretary of State, Viscount Goderich, had already decided to promote Montagu, but his elevation to the Supreme Court Bench was delayed because of the difficulty in finding a new Attorney-General.[65] Finally, Edward McDowell was appointed to the position,[66] and

56 See infra, text accompanying fns. 114-21.
57 J. Stephen, "Introduction" to H. Savery, *Quintus Servinton* (2 Vols., Hobart Town, 1830) xx. Described as "the first novel published in Australia". See *Notes and Queries* [London, 1868, (4th ed.)] Vol. 2, July-December pp. 462-3.
58 See infra., text accompanying fns. 114-21.
59 Jennings to Arthur, 24th June 1829, 402, *C.S.O.* pp. 9060-9091. (*T.S.A.*)
60 According to Jennings, Pedder C.J. considered "that the transaction was a civil contract between Montagu (and Jennings) and not an engagement made by him in his professional capacity as a member of the court, and therefore the court could not grant (Jennings) the rule required". Ibid.
61 See infra, text accompanying fns. 154-60, 194-215.
62 P. A. Howell, *The Montagus op. cit.* p. 115.
63 Gellibrand, a former Attorney-General, had "offended Arthur through his independent stand and refusal to institute actions which he thought it improper for the crown to bring". *A.D.B. op. cit.* Vol. 1, p. 437. See also *supra* fn. 47.
64 Ibid. *A.D.B. op. cit.* Vol. 1, pp. 74-5.
65 Ibid.
66 Memo, Geo. Arthur, 30th January 1833, *C.S.O.* 1/635/ No. 14377 (*T.S.A.*)

in January, 1833, Governor Arthur appointed Montagu Puisne Judge[67] at a salary of £1,200 p.a.[68] He thereupon ascended to the bench, being "introduced to his seat" by Chief Justice Pedder for the first time on 21st February, 1833.[69] In this first sitting, he found two men accused of sheep stealing guilty, and sentenced both of them to death.[70]

(1) *Achievements*

Montagu held public office in Van Diemen's Land for twenty years, fourteen of them as Puisne Judge. Given all the circumstances of the colony—especially the dubious standard of the legal profession and the difficulties of administering justice[71]—it seems inevitable that Montagu, a strongly outspoken, at times flamboyant figure, should become embroiled in public controversies.[72] Montagu's appointment to the bench was extremely popular. He was soon praised for his quick perception and speedy handling of cases, and gained public acclaim for criticizing "the law's unnecessary quirks, sophistries, and superfluous verbiage"[73] Thus, he was hailed as[74]

> "Altogether one of the new lights—the disciple of Jeremy Bentham and Lord Campbell."

Montagu's obvious abilities and his sound knowledge of the law were acknowledged by friends and critics alike, whether English or Colonial officials, pressmen, or contemporary historians. His full potential, however, was not achieved, due perhaps to inherited rather than professional weaknesses.[75]

However, his achievements on the bench were considerable. For example he consistently advocated law reform, but he believed that until such reform was enacted by the legislature, the law, as it stood, must be enforced. In the interim, like judges in most parts of the Empire, he often used technical ambiguities and loopholes to the advantage of prisoners

67 Via authority of *9 Geo. 4 C. 83* and on the instructions of the Secretary of State. Ibid. His appointment was duly gazetted on 1st February 1833. *A.D.B. op. cit.* p. 247.

68 Memo, Geo. Arthur, 15th March 1833, *C.S.O.* 1/635/ No. 14377 (*T.S.A.*) Montagu's commission fees as Puisne Judge amounted to £156.15.2, a sum still unpaid by June 1835. Memo, Geo. Arthur, 6th December 1833, Ibid.; Gregory to Burnett, 5th April 1834, Ibid.; Gregory to J. Montagu, 11th June 1835, Ibid.

69 Montagu was sworn in on 21st February 1833. *Hobart Town Courier*, 22nd February 1833, p. 2. However his appointment as Puisne Judge was not confirmed until the end of 1833. Arthur to Stanley, 25th March 1833, and 19th December 1833. Cited W. A. Townsley, *op. cit.* p. 6.

70 *Hobart Town Courier*, 22nd February 1833, p. 2.

71 See *supra* pp. 52-5.

72 Though Montagu's stand in some public controversies is known, (see infra, text accompanying fns 83-135) his attitude to perhaps the paramount cause célèbres of his era—the introduction of trial by jury in criminal cases—is not known. Being critical of at least some aspects of legal administration, it is likely that he supported this reform. See infra, text accompanying fns. 73-7.

73 Cited P. A. Howell, *The Judge Storm op. cit.* p. 254.

74 *Launceston Advertiser*, 16th August 1844, cited Ibid.

75 See infra pp. 72-4.

prosecuted under harsh laws.[76] The *Hobart Town Courier* appreciated his efforts, saying[77]

> "The learned judge is, all at once become calm and dignified, and on the recent trials (libel cases) showed himself a sound Judge and an upright functionary."

Unlike his contemporary in Victoria, Judge Willis,[78] Montagu generally showed consideration for his court, and to those before it. He expressed concern to Arthur about[79] "the very dreadful state of the gaol at Hobart Town, arising from the accumulation of men committed for trial". He even allowed jurors to leave until their case was called, a course appreciated by the press.[80] He was also very mindful of the enormity of his responsibilities, especially when sentencing prisoners to death. For example, in sentencing George Jones and James Platt to death for robbery with violence in April, 1844, he said[81]

> "I pity you—I feel for you—most deeply do I so, when, reflecting that we are all erring mortals, and that I am bound to pass upon you the awful sentence of death; but in doing so, I must consider the vast amount of misery and desolation which you have caused in the country to the peaceable and industrious settlers."[82]

(2) *Judicial Controversies*

(a) *The Press*

Montagu's career was not, however, noted for its achievements, rather its controversies. Like most early colonial judges of any worth[83] he quickly fell foul of sections of the press,[84] which were all much concerned with the activities of the Supreme Court and the Judiciary.

[76] P. A. Howell, *The Montagus op. cit.* p. 117.
[77] *Hobart Town Courier* 21st September 1838, p. 2.
[78] See B. A. Keon-Cohen, *op. cit.* pp. 708-11.
[79] Montagu to Attorney-General Stephen, 5th November 1833, *C.S.O.* Bundles E.C. 2/1-4. (*T.S.A.*)
[80] "The consideration evinced by Mr Justice Montagu towards the jurymen during the present criminal sessions, is beyond praise. This morning after . . . the first jury was sworn, he kindly allowed the other jurymen leave of absence until 10 p.m. when they must attend in case they were required." *Colonial Times* 4th March 1845, p. 3.
[81] *Colonial Times* 23rd April 1844, p. 4. The report continues: "He entreated them, when they returned to their miserable cells, to fall down upon their knees, to send for the clergyman, . . . and to him confess their sins, and pray to the almighty God for forgiveness." Ibid.
[82] The prisoners in this case had burst into an isolated hut and attempted to extract information as to the location of money from the sole occupant, the owner's wife, by means of a red-hot spade applied to the back of her legs. They were in their early 20s. Ibid.
[83] E.g. Willis in Victoria, 1841-1843. See B. A. Keon-Cohen, *op. cit.* 709-11 for press-judicial conflict in Victoria during this period.
[84] During the first fifty years of the colony (i.e. 1804-1854) at least forty newspapers appeared, mostly intermittently, several of which appeared during Montagu's period in office. It is important to remember that the press, especially during Arthur's autocratic regime, was partisan and factionalized. The *Hobart Town Gazette* (from 1825) and *Hobart Town Courier* 'flattered" and supported

The *True Colonist*, for example, a vigorous, partisan critic of the Arthur regime,[85] invoked Montagu's wrath on several occasions. In June 1835, the paper wrongly accused Mr John Montagu, the Colonial Secretary,[86] of building his mansion with government-owned materials.[87] Montagu, in passing sentence against the paper's proprietor, Gilbert Robinson, said, *inter alia*[88]

> "The licentious and degraded state of the press is one of the worst features in this colony. . . . Is the society of this colony so degraded, so depraved, so entirely devoid of all moral and spiritual feeling, that such abominable publications *are* to be tolerated? The press! Call you this the Press? . . . This Colony is too much *press ridden* and I wish all good men—I wish the Clergy—I wish all Christians of all denominations would come forward and oppose it—for my part, I denounce the press, or the licentiousness of it, altogether. A free and independent press is what I would support to the utmost of my ability. The press is a tool of immense power, and in the hands of good men, one of the greatest blessings . . . but that conducted by you . . . speak worse for it than anything I know of."

Montagu thus appears to have supported a free press, at a time when Arthur attempted to stifle its independence.[89] Perhaps it is not surprising then that in 1840, the *Launceston Advertiser* found that Montagu was[90]

> "independent *almost* to a fault—no respecter of persons—and . . . no worshipper of those who dwell in high places."

(b) *The Public: Thomas Lewis, 1834*

In another incident, Montagu caused no slight sensation in the colony through his treatment in court of a surveyor named Thomas Lewis. In May, 1834, Lewis was charged with conveying a challenge between two

the Governor of the day, while the *Hobart Town Gazette* to 1825 (a separate paper edited by Andrew Bent), *Colonial Times* (the original *Gazette* under a new name) and *True Colonist* virulently attacked the Governor (and his friends) and promoted radical reform movements, e.g. trial by jury. See generally H. Heaton, "The Early Tasmanian Press and its struggle for Freedom" (1914-1916) *Papers of the Royal Society of Tasmania* 1-28; E. M. Miller, *Pressmen and Governors* (S.U.P., 1973) *passim*. See also infra, fn. 89.

85 Owned by Gilbert Robertson. See *A.D.B., op. cit.*, Vol. 2, 385; J. Fenton, *A History of Tasmania* (Hobart, 1884) p. 139; *supra*, fn. 84.

86 Governor Arthur's nephew, and a distant relation of the Judge.

87 J. Fenton, *op. cit.* p. 139.

88 *Colonial Times* report, cited in full in H. Melville, *The History of Van Diemen's Land, 1824-1835* [London, 1850, G. Makaness (ed.), Melbourne, 1965] pp. 168-9. For a slightly different speech, see *Hobart Town Courier*, 19th June 1835, p. 3.

89 In 1827 Arthur initiated a local Act *8 Geo. IV No. 2* (1827) imposing a revocable newspaper licence. The act was subsequently annulled in England. The *True Colonist, Colonial Times* and *Hobart Town Gazette* all bitterly opposed it. See *A.D.B., op. cit.*, Vol. 1, p. 37; H. Heaton, *op. cit.*, 19-20.

90 *Launceston Advertiser*, cited P. A. Howell, *The Montagus op. cit.* p. 117.

parties.[91] During the two-day trial, held before a military jury,[92] Montagu told Lewis, who conducted his own defence, that he detested duelling,[93] and repeatedly declared Lewis's questioning irrelevant.[94] Montagu in fact threatened to fine him £5 "for each question he put unconnected with the case"[95] and, it is claimed, directed the military jury that "they must either find Lewis guilty, or consider him (Montagu) incapable of expounding the law".[96] After such proceedings, the jury convicted Lewis instanter, whereupon Montagu sentenced him to eighteen months imprisonment and fined him £150.[97]

Lewis fought back strongly. From Hobart Gaol, he forwarded a complaint to the Executive Council requesting a remission of sentence,[98] and "that measure of justice due to every man who has been oppressed or injured".[99] Further, two public petitions, bearing in all 188 names, were forwarded to Bannister, the Sheriff, calling for Montagu's suspension for "[H]is unconstitutional administration of justice"[100] and a public remission of Lewis's sentence.[101] Bannister refused to co-operate, but eventually a public meeting was convened in Hobart on 25th October, 1834, and a memorial requesting Lewis's discharge signed by 165 persons was forwarded to Arthur.[102] This also proved unsuccessful. Other citizens[103] wrote to Arthur suggesting that Montagu be replaced, though at the time paying tribute to his "ability, learning and general integrity".[104]

Lewis also enjoyed the powerful support of Andrew Bent, newspaper proprietor, editor and author, and long-time opponent of Arthur and Montagu.[105] Within a week, Bent published a sixty-five page pamphlet attacking Montagu for his "unjust" handling of the trial, the severity of the

91 *Tasmanian Gazette*, 16th May 1834. See A. Bent, *The Trial of Mr Thomas Lewis at the Supreme Court of Van Diemen's Land before Mr Justice Montagu and a Military Jury* (Hobart, 1834).

92 On Friday and Saturday, 9th and 10th May 1834. A. Bent, Ibid. p. 7.

93 In addressing Lewis, he said: "No language, however approbrious, would justify you in conveying a message, that might be productive of murder". Ibid. p. 9.

94 Ibid. p. 8.

95 Ibid. p. 9. He in fact fined Lewis £10 and imprisoned him pending payment for irrelevance in his final address to the jury. Ibid. p. 10.

96 Ibid. p. 6. A. Bent, *inter alia*, in his pamphlet, deplored the use of a military jury in civil cases. Ibid. p. 17.

97 Arthur to Montagu, 7th March 1836, 22 *V.D.L. D-D* pp. 415-19, 416.

98 "Memorial of Thomas Lewis, Late of Launceston, now of Hobart Gaol" 7th June 1834, in A. Bent, *The Trial of Thomas Lewis op. cit.* pp. 30-32. See also Lewis to Arthur, 19th June 1834, Ibid. 32, 33.

99 Lewis to Arthur, 7th June 1834, Ibid. 30, 32.

100 Petition to Thomas Bannister, 19th July 1834, Ibid. Appendix v.

101 Requisition to Thomas Bannister, 7th October, 1834. Ibid. Appendix vi.

102 Memorial to Arthur, Ibid. Appendices vii-viii.

103 I.e. William Effingham Lawrence and Thomas Anstey, friends of one of the duelists, William Bryan. P. A. Howell *The Montagus op. cit.* p. 116.

104 Cited Ibid. Such praise was most likely part of conventional rhetoric common at the time, and should not be taken too literally.

105 See C. M. H. Clark, *op. cit.* Vol. 2, p. 118. *A.D.B. op. cit.* Vol. 1, pp. 86-7; *supra* fns. 84, 89.

punishment, and demanding that Lewis be discharged.[106] As a result of Montagu's judicial conduct, said Bent,[107]

> "The press is intimidated, the public is intimidated, and English men *individually* intimidated, when defending themselves in Courts where justice is supposed to preside . . . Mr Montagu . . . has struck more terror into the minds of peaceful inhabitants of this colony, than would the breaking-out of 5,000 bushrangers."[108]

Arthur eventually requested a full report of the trial from Montagu[109] for the edification of the Executive Council, a report Montagu indignantly refused to provide, saying[110]

> "I was as cool at the trial and the next day when the sentence was passed as I am at the present moment. I believe my conduct has been perfectly legal. I believe I treated Mr Lewis throughout with indulgent forbearance. If the trial took place tomorrow, I should act in the same manner and I would pass upon him the same if not a severer sentence."

Montagu thus maintained his judicial independence, and Lewis remained in gaol, for Arthur refused to intervene.[111] However, the *Hobart Town Courier*, and other sections of the press,[112] attacked Montagu for several years thereafter as the "Mad judge",[113] a sobriquet which has stuck with him ever since.

(c) *The Profession: Alfred Stephen, 1836*

Though critical of the law's "quirks, quibbles and superfluous verbiage", Montagu was always conscious of the need to preserve the dignity of the Court's proceedings—a trait which strangely, often led him into the most indecorous behaviour. On the 14th June 1836, Montagu crossed swords with Stephen, the Attorney-General, admonishing him for his court behaviour, saying[114]

106 A. Bent, *op. cit.* pp. 5-7. Found at *C.S.O.* 1, Vol. 27, 18 *Corr. Files* 15793. (*T.S.A.*)

107 A. Bent, Ibid. p. 6.

108 Howell describes the pamphlet as "scurrilous", though its reported facts correspond accurately with other press accounts. See P. A. Howell, *The Montagus op. cit.* p. 116.

109 Arthur to Montagu, 7th March 1836, 22 *V.D.L. D-D* 420-21 (*T.S.A.*)

110 Montagu to Arthur, 11th April 1836, Ibid. 422-26, 425-26. (*T.S.A.*)

111 Arthur to Kemp, *et. al.* 25th October 1834, in A. Bent *op. cit.*, Appendices viii-ix. Arthur wrote: "I cannot grant the application without sacrificing the Judge's judicial and private character, and bringing contempt upon the administration of justice . . . though . . . it would have afforded me sincere pleasure to have complied with your request". Ibid.

112 Bent claimed that all papers in V.D.L. and Sydney, except the *Courier* and *Launceston Advertiser*, criticized the decision on similar grounds. E.g. *Tasmanian* and *Sydney Gazette* extracts, published Ibid., *passim.*

113 See also P. A. Howell, *The Montagus op. cit.* p. 101. The press, so far as is known, produced no substantial evidence to support this description. Certainly no medical evidence is known to exist. However, Arthur's support and friendship would have automatically attracted criticism from some factions in the local community. This, plus perhaps his somewhat bizarre state of chronic indebtedness, may explain why he was attacked. See infra, text accompanying fns. 136-160, 194-215.

114 *Colonial Times* 28th June 1836, p. 207.

> "I have sat here and listened to some of the most impertinent remarks ever made by a gentleman of the profession to any judge . . . it is the very last speech you ought to make at the Bar . . . I care not more for you, Sir, than I do for the meanest man in the Colony . . . I will not suffer you or any other man to stand at that Bar, and say that I have threatened to act in the administration of justice different from the principle upon which justice is administered in England."

Whether Stephen gave cause for this criticism or not, Montagu had much more in store for him. On 7th July 1836, Stephen irritated Montagu and delayed court proceedings by arriving late—whereupon he began to munch sandwiches and sip lemonade instead of opening the case for the prosecution.[115] Montagu had previously warned counsel and witnesses that he would not tolerate disrespectful conduct, and proceeded to admonish Stephen in no uncertain terms[116]

> ". . . in your official capacity, I shall always treat you with the courtesy and respect due to you. Were you elsewhere, I should treat you, after your conduct, with even less courtesy than a dog or a cur, as your conduct richly deserves."

The incident gave rise to 1,000 pages of official correspondence[117] and excited press comment.[118] Stephen, in outraged reply, wrote to Governor Arthur, stating his version of these events,[119] and concluded[120]

> ". . . for my own part, I was perfectly bewildered . . . Throughout my observations to the Court, I said nothing, to the best of my judgment and belief, calculated to give him offence. If I did, I am sorry for it. But such a scene as this should never have ensued on the Bench of an English Court of Justice . . . The sensations, almost approaching to horror, which were instantaneously excited by (Montagu's remarks) in that crowded court will be better described by any other pen than mine."

Arthur declined to pronounce on the quarrel, but cautioned Montagu and Stephen against a repetition of the scene.[121]

115 P. A. Howell, *The Montagus op. cit.* p. 115.
116 *Colonial Times* 12th July 1836, p. 232.
117 See *C.S.O.* Bundles E.C. 2/1-4 (*T.S.A.*)
118 See e.g. *Colonial Times* June 1836, *passim.*
119 Stephen wrote: "He told me, that I seemed to think the court bound to wait my 'Royal Will'; that it was not his duty to obey *my* commands but my place to obey *his*; that I was not his superior in any one respect, either in public or in private life; that he would not be insulted by me, or any man". Stephen to Arthur, 9th July 1836, *C.S.O.* Bundles E.C. 2/1-4, (*T.S.A.*)
120 Ibid.
121 Though Stephen continued to complain, on leaving V.D.L. in 1839 he confessed his fault to Franklin, writing: "I must tell (you) that from the nature of my (delicate health) I am often very excitable and unstable and in such state of body I have done several things for which in a more healthy state of mind I have been sorry". Stephen to Lady Franklin, 26th April 1839, (Royal Society of Tasmania Library) cited P. A. Howell, *The Montagus op. cit.* p. 116.
122 I.e. Arthur, (1824-1836); Franklin, (1836-1842); Sir John Eardley Wilmot (1843-1846) and Denison, 1847-1854. See infra, fn. 132.

(d) *The Executive*

Montagu's relations with the various Lieutenant-Governors under whom he served[122] varied considerably. He appears to have enjoyed Arthur's support and friendship, but quarrelled repeatedly with Wilmot and Denison. His concern for the public, for instance, even at the expense of Executive pride, led him into conflict on several occasions, as did his insistence on the independence of the judiciary from the executive. It was surely inevitable, given such a small community, that such unfortunate clashes would occur, and it is noteworthy that Montagu was usually supported by Chief Justice Pedder in these quarrels.

(i) *Kavanagh: 1843* One such clash occurred in 1843, when Montagu sentenced to death a man named Laurence Kavanagh, a notorious bushranger.[123] While sharing his father's abhorence of executions, Montagu observed, in passing sentence, that in ten years on the bench he had seldom tried a culprit stained with so great an aggregate of crime.[124] Ten minutes before the time set for the man's execution, however, Governor Wilmot, ignoring the Executive Council, granted a reprieve.

Montagu was very indignant. Shortly after this, he tried four men for a similar crime and instead of pronouncing sentence, merely directed that the death sentence "be recorded", for he considered it useless to do more in view of Wilmot's action.[125] Montagu further stated that such intervention could only be justified by the total abolition of capital punishment.[126] Public opinion agreed with him, especially in the country districts, where the settlers lived in terror of Kavanagh and other bushrangers.[127]

(ii) *Launceston Cottage: 1840* On a less serious note, Montagu was not above petty quarrels. A cottage in Launceston was always traditionally available for the Governor, or the judges and Attorney-General when on circuit. However, on 1st April, 1840, an official ball was to be held in the town at the same time as the commencement of the assizes.[128] Barely a week in advance Governor Franklin advised Montagu that the cottage was unavailable, but[129]

> "If there was no place to which (Montagu) could go, his Excellency would give up two rooms in the cottage rather than the court should be put off in the public inconvenience."

Montagu, who had used the cottage for several years, considered it an

123 R. W. Baker, "The Early Judges in Tasmania" (1959-1962) 8 *Tasmanian Historical Research Association, Paper and Proceedings* pp. 71, 79.
124 Ibid. p. 79. See also P. A. Howell, *The Montagus op. cit.* p. 118.
125 R. W. Baker, *op. cit.* p. 79.
126 Ibid.
127 Truth, *History of Tasmania* (Melbourne, 1915) p. 166. E.g. Martin Cash and Jones.
128 Montagu to Franklin, 27th March 1840, *C.S.O.* 5, No. 1011. (*T.S.A.*)
129 Ibid.

affront to himself and the court that Vice-Regal amusements should take precedence, and complained to Franklin[130]

> ". . . of the cottage being occupied at all by Your Excellency and suite at the time the session was to be holden . . . (of) the impropriety of a public ball being given on the day when the assizes commences, especially the impropriety of offering to a judge who may have just left the judgement seat and have passed a sentence of death upon a fellow creature a room in a small wooden cottage of five rooms—I should not like after having passed such a sentence to continue the remainder of the evening in a convivial assembly . . ."

Montagu also complained to Chief Justice Pedder, who apparently agreed, for the assizes were postponed until 15th April[131] when accommodation in the town would be easier for all concerned.

(iii) *Denison* Montagu's relations with Lieutenant-Governor Sir William Denison,[132] however, proved to be a very serious matter indeed. Denison had scarcely settled down to Vice-Regal life when Montagu and he fell out. Montagu complained of the executive's custom of allowing prisoners sentenced to death to languish in gaol for weeks or even months before considering the judge's reports on their cases.[133] Montagu argued that such delays harmed the prisoners and impaired the 'good' that could flow from a prompt administration of justice.

Montagu also annoyed Denison by advising that the Lieutenant-Governor's displacing of six members of the colony's nominee legislative council was illegal.[134] Pedder later concurred in this view, but meanwhile Denison had minuted[135]

> "Mr Justice Montagu had better keep his opinions till they are asked for. I shall certainly not be guided in any way by them in this instance, and shall proceed as if the appointments in question were perfectly legal as I believe them to be."

These arguments with Denison, though appearing trivial, are important when one considers that Montague was probably removed due to Denison's ire, as much as his transgressions in office.

E *Private Life*

Montagu's private life reflected his judicial career, with fluctuating fortunes and a tendency towards eccentricity. In particular, his long-held

130 Ibid. See also *Chronicle* 11th April 1840, p. 2, where the editor considered the government should postpone 'amusement' in favour of 'official business'.

131 Montagu to Franklin, 27th March 1840, *C.S.O.* 5, No. 1011. (*T.S.A.*)

132 Denison, an army engineer, was new to Vice-Regal life, and believed that civil government should function with the strict discipline of a well-managed regiment. P. A. Howell, *The Judge Storm op. cit.* p. 254.

133 P. A. Howell, *The Montagus op. cit.* p. 118.

134 Ibid. Montagu believed that as the displaced members had not resigned and as the Queen had not revoked their appointments, there had been no vacancies to fill. Thus the new members had no right to sit and vote. See P. A. Howell, *The Judge Storm op. cit.* p. 254.

135 *C.S.O.* 24/36/1057. (*T.S.A.*) Cited P. A. Howell, *The Montagus op. cit.* p. 118.

habit of refusing to pay debts embarrassed him several times, and contributed to his removal in 1847. Fenton alleges that[136]

> "In private life Mr Montagu was retiring and eccentric. He had an inveterate propensity for spending money in experimental farming, which left nothing but loss: he was also an enthusiast in boat racing and yachting."

Indeed, Montagu's private life in Van Diemen's Land remains sketchy. On 12th March 1832 he was married by special licence in St. David's Church, Hobart Town to Maria Ann Adams, a free immigrant who was five years his senior.[137] It appears to have been a hasty match, for it was not reported in the press, and the witnesses seem to have gathered off the street for the ceremony. Maria gave Montagu at least two children. A daughter was born in 1836, a son a year later.[138]

In 1830, Montagu bought *Rosny*—a fourteen-roomed house on the eastern shore of the Derwent estuary.[139] Following receipt of a legacy due to the death of his maternal grandfather, Sir William Rush, in 1833,[140] Montagu improved the property,[141] and invested heavily in cattle breeding and experimental farming. Until 1840 he was successful in these ventures, making good use of the transportees assigned to him by the government.

Despite these local interests, Montagu, like most of his class, pined for "Home", and in November, 1833, asked Governor Arthur for eighteen months leave of absence, one of several such requests.[142] Arthur initially refused, but agreed to submit the request to London, noting to Montagu that "the Government and the community would suffer even by your temporary absence".[143] In January, 1834, Montagu duly repeated his request,[144] and in March, Arthur, according to Montagu,[145] granted him leave, on the basis of which he made all preparations to depart. But

136 J. Fenton, *op. cit.* p. 190.
137 *A.D.B. op. cit.* p. 247.
138 Born December 1837. *Cornwall Chronicle*, 11th December 1837, p. 3.
139 *Colonial Times*, 12th March 1844, p. 1. During the thirties, he also lived at Stawell.
140 P. A. Howell, *The Montagus op. cit.* p. 118.
141 It was very irregularly shaped, extending for two miles along the Derwent, and embracing much of what was the Royal Hobart Golf Course, and the current residential districts of Rosny, Montagu Bay, and part of Lindisfarne. Ibid.
142 Montagu to Arthur, 30th September 1833, cited in Arthur to Montagu, 15th October 1835, in *Documents in the Case of Algernon Montagu* (Hobart, 1848) p. 28, reprinted in *C.S.O.* 24, Vol. 36. (*T.S.A.*)
143 Ibid.
144 On the grounds that "circumstances . . . having occurred in England . . . make it . . . a duty so far as my personal interests are concerned to return to England immediately". Montagu to Arthur, 23rd January 1834, 20 *V.D.L. D-D* pp. 256-8, 256-7. (*T.S.A.*) This was probably a reference to matters arising from the estate of his deceased grandfather.
145 Montagu to Arthur, 4th August 1835, 20 *V.D.L. D-D* pp. 265-9, 266. Montagu refers to a letter from Arthur dated 11th March 1834, (printed Ibid. 260-2) but Arthur disputed that he had ever in fact granted Montagu leave. Arthur to Montagu, 7th September 1835, Ibid. pp. 270-85, 272.

Arthur subsequently refused the application[146] under instructions from London,[147] a refusal which disappointed and somewhat embarrassed Montagu, for he had sold his law library, and, as no other was purchasable in the colony, he was "much at a loss to discharge the duties of his office".[148]

Early in 1845, it was rumoured that Montagu was again "about to quit the colony, on leave of absence for England".[149] Whether there was any foundation in this 'rumour' is difficult to judge, but the press regretted the possible temporary loss of "so active, intelligent, and independent a judge".[150]

Despite these disappointments, Montagu pursued his pleasures with the same zeal as he tackled his work. In January, 1834, he hired a sloop,[151] which was stolen for a few hours by three escaped prisoners the following October.[152] He also bought a yacht, and competed successfully in several regattas. Due to his position as a judge, social entertainment at *Rosny* was confined to a select few. However, playing the artistic patron (like his father), Montagu gave shelter to one C. S. Packer, a transportee whom he considered "a gentleman of extraordinary musical genius".[153]

In April, 1841, Montagu informed Franklin, the Lieutenant-Governor, that he and Edward MacDowell, the then Attorney-General, wished to exchange offices. This extraordinary request[154] resulted from a change in Montagu's fortunes. The long and disastrous commercial depression, which began in October, 1840, produced a wave of insolvencies and bankruptcies.[155] The market for cattle and grain collapsed, and Montagu found his property running at a loss. As there was then not one really able barrister in the Colony,[156] Montagu believed that if he returned to his

146 Arthur to Montagu, 17th February 1835, Ibid. p. 263.

147 Ibid. Arthur spoke highly of Montagu at this time, saying "He has served with zeal and great ability for eight years". Arthur to Glenelg, 10th September 1835, Ibid. p. 249.

148 Montagu to Arthur, 4th August 1835, Ibid. pp. 265-9, 266-7.

149 *Colonial Times* 28th January 1845, p. 3.

150 Ibid.

151 Arthur to Colonial Secretary, 5th January 1835, 776 *C.S.O.* 16558-76, No. 16572. (*T.S.A.*)

152 Letter to the Chief Police Magistrate, 19th October 1834, 761 *C.S.O.* 16306-40, No. 16306. (*T.S.A.*) The sloop was chased and returned the same night. The two constables who apprehended the offenders were subsequently granted tickets of leave by Arthur for this action. Ibid.

153 P. A. Howell, *The Montagus op. cit.* p. 119. Packer was transported in 1839-1840 for forgery. He went to Montagu as a pass-holder, and instead of being put to work on the Judge's farm, he was allowed to take pupils and give private recitals. Ibid.

154 It seems to have had no counterpart in the history of the British Empire. Ibid.

155 Ibid. Note a similar depression, with similar results, in Port Phillip, 1840-1842. See B. A. Keon-Cohen, *op. cit.* pp. 706-707.

156 *A.D.B. op. cit.* p. 247. Montagu's brother, Alfred Otter, after hearing of the opportunities, arrived in Hobart in February 1843, and quickly became the outstanding barrister in the colony. However, in January 1849, his yacht capsized whilst sailing on the harbour, and he was drowned. Ibid.

former office, he could make £3,000 a year by private practice without neglecting his official duties.[157]

Franklin's advisors, in fact, thought that Montagu's return to the attorney-generalship would be of great benefit to the colony, for he had never been surpassed.[158] However, the proposal foundered because Franklin rightly considered that MacDowell's lack of application, which was the root of his discontent with his office, was no recommendation for elevation to the Bench.

Meanwhile, Montagu's financial position continued to deteriorate. The depression grew steadily worse between 1842 and 1844 partly because of the introduction of the probation system in 1839-1840, a new form of convict discipline. Under this system, the government withdrew all assigned convicts, including Montagu's.[159] Finding the *Rosny* estate unprofitable, Montagu offered it for sale by auction several times during the 1840s, even once offering it without reserve.[160] However, there were no buyers in the market at that time, and the property was not finally sold until after his departure from the Colony.

F *Montagu Amoved*

In December 1847–January 1848, the colony was convulsed by an affair known as the "Van Diemen's Land Judge Storm".[161] The quarrel was twofold: it involved allegations by a creditor that Montagu had refused to honour his obligations, by claiming protection of his judicial office; and a furore caused by both judges declaring a local act—the *Dog Act*[162]—invalid. Montagu was shortly afterwards amoved by Lieutenant-Governor Denison, ostensibly for transgressions in office, but it appears, really because of his judgment in the "Dog Act" case. Both incidents must be considered, for both contributed to his amoval.

(1) *Dogs: Symons* v. *Morgan*

In 1846, the Legislative Council passed a local *Dog Act* which required dogs to be registered and imposed upon owners a tax ranging from five shillings to one pound.[163] The editor of a Hobart newspaper,[164] John

157 P. A. Howell, *The Montagus op. cit.* p. 119.
158 Since 1833, the government had suffered much inconvenience because of the careless drafting of local legislation, and the Judges had been obliged to certify that many local enactments were void. Ibid.
159 See R. M. Hartwell, *The Economic Depression of Van Diemen's Land* (M.U.P., 1954) pp. 76-85, for a discussion of the probation system and its effects.
160 Ibid. 121.
161 For a detailed analysis, see P. A. Howell, *The Judge Storm op. cit.* pp. 253-69.
162 *Dog Act, 10 Vic. No. 5,* (1830). Reprinted in H. Melville, *V.D.L.: Statistical and other Information op. cit.* pp. 196-7. Melville describes the Act as "the most universally obnoxious enactment that has passed the Legislative Council". Ibid. p. 196.
163 *Dog Act* s. 3.
164 I.e. *Britannia and Trades Advocate.*

Morgan, objected strongly to the Act on the grounds that it was unconstitutional. He refused to pay the required tax, was proceeded against, and fined in an action in the Hobart Town Quarter Sessions.[165] The conviction was immediately removed by *certiorari* to the Supreme Court to test the validity of the Act.

The case was argued before Pedder C.J. and Montagu J. in November 1847.[166] Morgan's counsel, A. O. Montagu[167] argued that the conviction be quashed on the ground that the *Dog Act* was repugnant to the *Huskisson Act 9 Geo. IV C. 83* (1838),[168] in particular sections 21 and 25, and was thus null and void and not binding.[169]

As to section 21,[170] counsel for Morgan argued that the *Dog Act* was either in excess of powers there defined, or was directly repugnant both to that section and to the laws of England, in that under English law, no tax or duty could be imposed except by the Imperial Parliament. The *Dog Act* was thus *ultra vires* the Legislative Council, and the Supreme Court was empowered and duty-bound to set aside local acts found to be repugnant to English Law or to the *Huskisson Act.*[171]

In regard to section 25,[172] counsel argued that the *Dog Act* did in fact impose a tax or duty, but said nothing about its application: the Act merely directed that income received go into general revenue, and that no purpose to which money would be applied was distinctly stated in the body of the Act. Thus, being directly repugnant to section 25 of the *Huskisson Act*, the *Dog Act* was again void.[173]

Counsel for Symons, in reply,[174] argued principally that the Supreme

165 *Symons* v. *Morgan*. Symons, the District Constable, brought the proceedings to court. Reported in Vol. III (July 1842-October 1851) *Minutes of the Executive Council* No. 17, 30th September 1847, p. 487. Found in *C.S.O.* 24, Vol. 5, No. 57. (*T.S.A.*)

166 See generally P. A. Howell, *The Judge Storm op. cit.* pp. 257-8; "Judgments of Pedder C.J. and Montagu J. in *Symons* v. *Morgan*" 62 *V.D.L. D-D* (1848) pp. 335-40; 341-5. See also "Reports on The Judgment of the Supreme Court in *Symons* v. *Morgan*" by Attorney-General Horne, and Solicitor-General Fleming, at Ibid. pp. 346-50; 351-5.

167 The Judge's brother. See fn. 156, *supra.*

168 Subsequently entitled *The Australian Courts Act 1838*. This was an Imperial statute which reconstituted the Van Diemen's Land Legislative Council.

169 See Montagu J. in *Symons* v. *Morgan op. cit.* pp. 341-5.

170 Section 21 regulated proceedings of and conferred defined and limited powers on the local legislative council, i.e. "power and authority to make laws and ordinances for the peace, welfare, and good government of (the colony) . . . not repugnant to (*9 Geo. IV C. 83*) . . . or to the laws of England". Ibid.

171 See "Report of Attorney-General Horne on *Symons* v. *Morgan*" *op. cit.* pp. 346-7.

172 *9 Geo. IV C. 83* s. 25 provided that the colony's legislature "shall not impose any tax or duty, except only such as it may be necessary to levy for local purposes; and the purposes for which every such tax or duty may be so imposed, and to or towards which the amount thereof is to be appropriated and applied, shall be distinctly and particularly stated in the body of every law or ordinance imposing such tax or duty". Ibid. p. 343.

173 Pedder C.J. Ibid. p. 336. See also P. A. Howell, *The Judge Storm op. cit.* pp. 256-7.

174 The Attorney-General, Thomas Horne, and Solicitor-General, Valentine Fleming. Both were instructed by Denison.

Court had no power to declare void a local Act: that the assumption of such power would lead to confusion and anarchy; and that section 22 of the *Huskisson Act*[175] effectively gave the judges seven days to object to any local Act, and since the judges had in this instance failed to exercise their option and certify the *Dog Act* as repugnant within that period, they could not do so now.[176] Thus, if no such certificate was given, the Act must continue to be law until disallowed by the Queen,[177]—even if the local Act was "of the most oppressive character".[178]

Counsel further argued that section 22 provided that if the Governor in Council, on review, "adhered" to such enactment, despite the judges opinion of repugnancy, he could nevertheless advise the judges accordingly, and thenceforth the enactment became, again, binding on the colony until otherwise advised by the Crown—notwithstanding "any repugnancy or supposed repugnancy".[179]

Having heard arguments, and taken a week to consider, Pedder C.J. and Montagu J. handed down separate but concurring decisions on 29th November, 1847. Both pronounced the *Dog Act* to be *ultra vires* the Legislative Council, repugnant to the *Huskisson Act*, declared it null and void, and set aside the conviction.[180] In assessing Montagu's worth as a judge, it is instructive to consider his decision, especially as both judges covered the same ground, and Montagu "entirely agreed" with Pedder's reasoning, making some comparison of legal analysis and approach possible. In short, one feels that Montagu leant heavily on his Chief in this case, for Pedder's judgment is far superior in every way.

For current purposes, it is only necessary to discuss Pedder's decision by way of comparison.[181] Montagu then, in a somewhat strident, anecdotal style, opened by considering section 21 of the *Huskisson Act*, dealing with restrictions on the powers of the Legislative Council, in particular, the repugnancy question.[182] He concluded that the Attorney-General, in

[175] *9 Geo. IV C. 83* s. 22 stated, in its relevant parts, that within seven days of assent by the Governor in Council to a local Act, it must be forwarded for enrolment to the Supreme Court and that after fourteen days of such assent by the Governor, the law became operative and binding pending Royal assent, but if within that fourteen day period a Supreme Court Judge represented to the Governor that such an Act was repugnant to the laws of England or to *9 Geo. IV C. 83* the Governor must suspend the operation of such law until reviewed by the Legislative Council.

[176] Pedder C.J. in *Symons* v. *Morgan op. cit.* p. 336; Report of Attorney-General Horne *op. cit.* pp. 347-8; P. A. Howell, *The Judge Storm op. cit.* p. 257.

[177] Pedder C.J. *Symons* v. *Morgan op. cit.* p. 336.

[178] Cited P. A. Howell, *The Judge Storm op. cit.* p. 257.

[179] "Report of Attorney-General Horne on *Symons* v. *Morgan*" *op. cit.* p. 348. Morgan's counsel undoubtedly presented argument on s. 22, but it is not recorded in available reports.

[180] See judgments of Pedder C.J. and Montagu J. in *Symons* v. *Morgan op. cit. passim.*

[181] See however fns. 183, 186, 187, 189, infra.

[182] Montagu J. Ibid. pp. 341-2.

argument, acknowledged these restrictions,[183] but suggested that his argument would deprive citizens of "the right to dispute any law if not in accordance with those limitations".[184] Montagu further considered it was "not a right but a duty" to certify acts he found repugnant "a duty (owed) to every man in the community"—otherwise "the Legislative Council would become a tyrannical and unjust tribunal from which there would be no appeal".[185]

In discussing section 22 of the *Huskisson Act* Montagu asserted that the section basically attempted "to protect the people against illegal acts". As to the difficulties encountered by busy judges having only seven days to assess the possible repugnancy of perhaps several local Acts, such that Acts repugnant could become binding by default, Montagu considered it "monstrous that in such a case the subject should be without a remedy".[186]

In relation to section 25 of the *Huskisson Act*, and to whether the *Dog Act* imposed a tax or merely a duty, Montagu, demonstrating a practical, commonsense inclination, said[187]

> "By this Act a man is called upon to pay money for keeping his dog. If that be not taxation, I am at a loss to know what is. Call it what you will, special plead it how you like, it is a tax. I do not think the common sense interpretation of the Act can be set aside or destroyed by any subtlety."

Montagu went on to point out, as had counsel in argument, that the *Dog Act* stated that monies raised "were to be applied in aid of the Ordinary Revenue", making it clearly repugnant to section 25, which required specific directions as to the expenditure of taxes, and that they

183 Under ss. 20, 21, 25 of *9 Geo. IV C. 83* the Legislative Council was an "inferior legislature" with a "temporary purpose", with limited law-making powers, the basic principle of which was that its laws must not be repugnant to the laws of England or the *Huskisson Act*, a principle that must be "strictly complied with". See Pedder C.J. *op. cit.* p. 337. Pedder's argument in this regard is much more thorough and satisfying than Montagu's.

184 Montagu J. *op. cit.* pp. 341-2.

185 Montagu J. Ibid. p. 344.

186 Ibid. p. 344. Pedder had found this question of certification and possible subsequent "adherence" by the Governor in Council "difficult" but presented, again, a more satisfying and reasoned argument. As to certification, he said the section did not confer new powers on the Council; and questions of certification and time limits would not effect questions of repugnancy. As to the "adherence" question raised by s. 22, Pedder argued, in a lengthy passage that the section did not confer power simply through a Judge's inadvertance or even neglect; pointed to inconsistencies in the language of the first and last parts of the section (i.e. that the proviso "notwithstanding repugnancy" etc. was not mentioned nor could be implied into the first part as the intention of parliament) and as the Act had not yet been reviewed by the Legislative Council, and "adhered to", the court still had competence to consider its validity. Pedder C.J. *op. cit.* pp. 337-8.

187 Montagu J. *op. cit.* pp. 344-5. Pedder also looked to the preamble and noted that though the apparent object of the Legislative Council in requiring dogs to be licensed was the abatement of a nuisance rather than the raising of revenue, yet the money so payable "was as clearly a tax as that payable on carriages and armorial bearings". Pedder C.J. Ibid. p. 339.

be spent for local purposes only. Further, in a passage demonstrating some concern for the wider implications of the case, he said[188]

> "We all know it is an axiom of the British Constitution that no man shall be taxed except by his own consent; and that the framers of (the *Huskisson Act*) did all they could under the circumstances. It says, in effect, let there be no taxes but for local purposes, and let the people know why they are taxed. Let it be mandatory that it shall be so. There is an evident anxiety throughout to give the people every information . . . The entire machinery has been constructed to secure one principle: that the public shall know for what they are taxed and how the money thereby raised shall be applied."

Montagu concluded, with Pedder C.J., that the *Dog Act* was invalid—"no Act at all"—and that the conviction below must be quashed.

Montagu's is a strangely incomplete, fragmented decision which, in terms of comprehensive argument, scholarly treatment,[189] and logical analysis of law and fact, does not compare favourably with that of Pedder. Perhaps because he "entirely agreed" with Pedder C.J. and thought it unnecessary to repeat or be as thorough,[190] Montagu's judgment does not adequately cover even those issues he did consider, so that any constitutional merit the case might possess rests almost entirely with Pedder's judgment. As a constitutional lawyer then, Montagu does not impress in this case: his performance is adequate, but limited. There is no impression of incompetence or disinterest: rather of a junior accepting the superior knowledge and experience of his Chief—perhaps disturbing in itself since Montagu was then in his fourteenth year on the Bench! His judgment also illustrates the problems of deliberately playing a minor role and attempting to avoid repetition and redundancy when following a thorough and exhaustive statement. On the other hand, Montagu displayed in this judgment a concern for "the people"; a refreshingly non-legalistic commonsense approach; an awareness of the social and political context of the

188 Montagu J. *op. cit.* pp. 343, 345.

189 In a judgment of 2,500 words, Pedder quoted three authorities apart from the Acts under review: *Davison* v. *Gill* 1 *East* 63, for the proposition "that affirmative words if peremptory are imperative"; Pedder C.J. *op. cit.* p. 339; 2 *Chalmers Opinions* p. 31, for the proposition "that the Legislative Council of a colony cannot alter the Common Law of England" Ibid. p. 337; and Lords Hardwicke and Talbot in a Connecticut case (not named) for the proposition that if a Legislative Council enacted laws repugnant to the laws of England, "they were absolutely null and void". Ibid. p. 354. Montagu, in a judgment of similar length, cited one authority: an anecdote concerning Frederick of Prussia to show "that all Sovereigns do not hold their power to be above the jurisdiction of their Courts". Montagu J. *op. cit.* p. 344. As best can be judged from press reports, whose citations were usually non-existant or inaccurate, such paucity of authority in judgments at this time was not unusual, though Montagu cites less than most. The accessibility of law books and reports was of course a problem in the colony.

190 Montagu, confusedly, stated he "would not go over (Pedder's) grounds", but felt duty-bound to give his reasons. He in fact repeated much of Pedder's reasoning, and added little substantial argument that was new.

case, and of the constitutional obligations resting with the judiciary to limit and balance executive and legislative power in the colony.

Montagu's constitutional abilities aside, Denison was very annoyed at the decision. Well he might be, for the Solicitor-General advised that four-fifths of the Colony's revenue Acts could be challenged on the same grounds—causing a possible loss in general revenue of more than £3,000 per year.[191]

Denison thus resolved to vindicate the rights of the Executive Council. He charged both judges with neglect of duty in omitting to set aside the Acts before they were enrolled[192] and proposed to the Executive Council that they be dismissed. The Council refused to comply in the case of Pedder. Denison however, not to be denied, wrote to the Chief Justice, censuring him in strong terms for his judicial decision, and suggested he had no alternative but to apply for leave of absence—a course Pedder indignantly declined to follow.[193] Denison's heavyhandedness was now directed against Montagu, whose personal finances were somewhat embarrassing for a judge.

(2) *Debts*

As in England, so in Van Diemen's Land, Montagu lived in a state of chronic indebtedness, refusing to pay creditors whilst he saved or invested much of his income. In 1840, for example, he bought cattle worth £420 from a W. E. Lawrence. He paid for half of them within three months, but did not pay the balance owing until 1845, with £124 interest.[194] Again, during the prolonged depression of the 1840s, Montagu's finances became precarious,[195] and by December, 1847 he apparently owed over £600 to various creditors.[196] Such conduct led to a number of complaints being forwarded to the Secretary of State during Montagu's career in Van

191 P. A. Howell, *The Judge Storm op. cit.* p. 258.

192 Acts of the local council did not become law until they were enrolled in the Supreme Court. These Acts had not in fact been so enrolled. R. W. Baker, *op. cit.* p. 75.

193 J. Fenton, *op. cit.* p.189. Pedder replied: "Were I to accept Your Excellency's proposal, I should, it appears to me, be guilty of shameful abandonment of my official duty. I should be forever after disgraced . . . " *Parliamentary Papers* Vol. XLiii, 1848, cited G. W. Rusden, *History of Australia* [3 Vols. (2nd ed.) Melbourne, 1897] Vol. II, p. 321. Denison was subsequently "sternly rebuked" by Lord Grey, the Colonial Secretary in London, for his treatment of both Pedder and Montagu. Grey ascribed Denison's conduct to "mistakes of judgment in a crisis of very unusual embarrassment" but expressed confidence in his ability. See Denison to Grey, 18th February 1848; Grey to Denison, 30th June 1848, cited in W. A. Townsley, *op. cit.* p. 13. See also *A.D.B. op. cit.* Vol. IV, p. 47.

194 P. A. Howell, *The Montagus op. cit.* p. 121. He also left England in 1837 owing £282 to his tailors. Ibid.

195 See *supra*, text accompanying fns. 154-160; *A.D.B. op. cit.* p. 247.

196 P. A. Howell, *The Montagus op. cit.* p. 122. This amounted to approximately half his annual salary. Ibid. It was never established that Montagu was unable to pay these debts. His property was of some value, especially with a general return of prosperity.

Diemen's Land, though their exact nature remains uncertain.[197] These circumstances were further exacerbated by the fact that his creditors could not pursue their claims at law due to Montagu's position as a judge.[198] A short time before the *Dog Act* incident, however, one such creditor, Anthony MacMeckan, decided to pursue payment with unrivalled vigour and dramatic results.[199]

On 27th October 1847, MacMeckan, through his solicitor, wrote to Montagu demanding payment of an old debt totalling £283/5/4,[200] and threatened legal action if settlement was not finalized within one week.[201] Montagu offered to negotiate, but MacMeckan ignored his overtures, and on the 8th November issued a summons against the Judge.[202] On the 17th November Montagu, in reply, obtained a summons from the Chief Justice calling upon MacMeckan to show cause why his (MacMeckan's) summons should not be set aside for illegality.[203] On 22nd November, Pedder C.J., after hearing argument, dismissed MacMeckan's summons on the basis that, although a judge could be sued in his own court in England, in Van Diemen's Land, owing to its constitutional provisions, each judge formed an integral part of the Court. As the court could not be constituted without both judges, neither of them could sue or be sued in it.[204] Therefore no judgment could be obtained against Montagu so long as he remained a judge of the court.[205]

MacMeckan, however, promptly forwarded a petition to Denison averring that he was a creditor, but had been estopped from sueing by reason of Montagu's position.[206] He prayed that the judge might be suspended so that legal proceedings might be taken.[207]

197 Montagu's conduct was brought before the Secretary of State in Despatches dated, 17th August 1829, 26th October 1836, (Arthur); 13th June 1840, (Franklin); 27th September 1842, 17th June 1843, 6th January 1844, (Wilmot); Denison to Grey, 23rd January 1848, 61 *V.D.L. D-D* p. 930. (*T.S.A.*)

198 In 1844, Lord Stanley had directed Governor Wilmot to call upon Montagu to pay his debts or to take leave of absence so that proceedings might be instituted against him, and any recorded judgment enforced. G. W. Rusden, *op. cit.* p. 320.

199 See generally *Minutes of the Executive Council* in 62 *V.D.L. D-D* pp. 163-413 (December 1847-January 1848). Eleven lengthy documents—petitions, letters arguments—formed the basis of discussion in the Council. Itemized Ibid. p. 171. See also "Documents in the Case of Algernon Montagu", *loc. cit.*; P. A. Howell, *The Judge Storm op. cit.* pp. 254-9; P. A. Howell *The Boothby Case* (unpublished M. A. Thesis, University of Tasmania, 1965) pp. Lxi-Lxxxix.

200 *Minutes of the Executive Council* No. 18, 30th September 1847, Vol. III, July 1842-October 1851, p. 488. (*T.S.A.*) See also "Documents in the Case of A. Montagu" *op. cit.* p. 14.

201 P. A. Howell, *The Judge Storm op. cit.* p. 255.

202 Ibid. See also P. A. Howell, *Boothby Case op. cit.* p. Lxiv.

203 P. A. Howell, *The Montagus op. cit.* p. 121.

204 *C.S.O.* 24/36/1057. Cited P. A. Howell, *The Judge Storm op. cit.* p. 255.

205 See R. W. Baker, *op. cit.* p. 79.

206 Denison to Grey, 17th January 1848, 61 *V.D.L. D-D* pp. 573-619, esp. 575. (*T.S.A.*)

207 A judge in office may be considered unfit for office the moment he falls into debt, due to obvious possible conflict of interests. This situation had already occurred e.g. in an action brought in late 1847, by the Bank of Australasia against Messrs. J. and S. Addison and Fraser, for debt. "Montagu, at the time

Denison considered Montagu's conduct[208]

> "most unbecoming to a man in his position, and most injurious to his character. In any country such an action would be considered discreditable . . ."

and now took decisive action. On 24th November, Montagu was asked by the Colonial Secretary, J. E. Bicheno, to explain his actions.[209] Montagu, in reply,[210] did not deny the debt, but stated that until certain securities could be sold[211] he would be severely embarrassed if forced to pay up immediately.[212] He also claimed he had offered to pay the debt, without costs incurred, before the case came to court, but was rejected,[213] and denied the power of the Lieutenant-Governor and Council to amove him.[214] Montagu pleaded that his debts had sprung not from extravagance, but quite another cause[215]

> "I was wealthy . . . for a portion of my land I had been offered £10,000 . . . (S)uddenly the probation system came. The market is destroyed . . . (A)ll my twenty years' hard struggling in my arduous office, all its advantages, destroyed by the British maladministration of this territory."

(3) *Amoval*

Whatever the cause of his poverty, Montagu refused to pay up, or negotiate further. He was thus requested to submit his resignation, with the understanding that he would be re-appointed when the suit was decided.[216] Montagu, naturally flatly refused to resign, whereupon official investigations were made, which revealed that he was suffering serious pecuniary embarrassment and was involved in some transactions which did him no credit. However, after prolonged discussion,[217] Denison excul-

of pronouncing judgment in favour of the defendants, was under pecuniary obligation to two of them to a considerable amount". Thomas Young to Executive Council, 3rd December 1847, *Minutes of the Executive Council*, 6th December 1848, Vol. III, July 1842-October 1851, p. 501. (*T.S.A.*)

208 Denison to Grey, 17th January 1848, 61 *V.D.L. D-D* p. 598. (*T.S.A.*) Denison further admitted the legal validity of Montagu's argument that "the court could not adjudicate upon matters in which he, (Montagu) one of the component elements of the court, was concerned". Ibid. pp. 596-7.

209 P. A. Howell, *Boothby Case op. cit.* p. Lxvi.

210 Dated 26th November 1847. See Denison to Grey, 17th January 1848, 61 *V.D.L. D-D* pp. 576, 590-2. (*T.S.A.*)

211 I.e. a sloop, a horse, and a threshing machine lent to a Mr Stracey. Stracey to Montagu, 17th December 1847, in *Documents in the Case of A. Montagu op. cit.* pp. 41-2. See also Montagu to Denison, 28th December 1847, Ibid. 43-5, 44, and Montagu to Denison, 23rd December 1847, Ibid. pp. 45-6, 46.

212 Montagu claimed it would be unjust, at it would involve a sacrifice of £100 per month, the amount of his salary, and that it would require twelve months for him to try the case in equity. Montagu to Denison, 26th November 1847, cited in Denison to Grey, 17th January 1848, 61 *V.D.L. D-D* pp. 578-9. (*T.S.A.*)

213 Ibid. pp. 577, 591.

214 Ibid. p. 592 "His majesty alone . . . can amove or suspend a judge".

215 Cited G. W. Rusden, *op. cit.* p. 320.

216 J. Fenton, *op. cit.* p. 189.

217 See generally *Minutes of the Executive Council*, Vol. III, July 1842-October

pated the Judge from imputations of misconduct in this affair.[218] In fact when MacMeckan complained again, Denison instructed his Colonial Secretary to ignore him, for he considered the case closed.[219] Two days later, however, the judges handed down their decision in the *Dog Act* case, a decision which upset Denison considerably,[220] and he immediately re-opened the question of Montagu's debts.

After further prolonged debate, Denison and the Executive Council, demonstrating *extraordinary* flexibility, resolved that Montagu should now be amoved from office.[221] This was duly effected by an order in council dated 31st December 1847.[222] Horne, the Attorney-General, was immediately appointed to the vacant office.[223] The Executive-Council minuted that Montagu had been[224]

> ". . . guilty of a misbehaviour in office within the meaning of statute *22 Geo. 3.C 75*, and ought to be amoved from office, and he is by the Lieutenant-Governor and Council amoved accordingly."

It was further felt that[225]

> "A Judge . . . who takes advantage of his position to obstruct his creditor in the pursuit of his legal remedy . . . derogates very much from that feeling of confidence and respect which should attach to a person holding the responsible situation of a judge."

Most subsequent writers have opined, however, that the judgment Montagu delivered in the *Dog Act* case was the real factor which led to his amotion,[226] and Denison himself subsequently seems to have doubted even this ground.[227] The Colonial Office criticized Denison's behaviour over this matter,[228] while Melville wrote, darkly,[229]

1851, in *C.S.O.*, 24 Vol. 5, No. 57. (*T.S.A.*) Discussion centred on the powers of the Lieutenant-Governor under *22 Geo. III C. 75 (1782)* (*Burke's Act*).

218 P. A. Howell, *The Judge Storm op. cit.* p. 256.
219 Ibid.
220 *C.S.O.* 24/36/1057. Cited P. A. Howell, *The Judge Storm op. cit.* p. 256.
221 In the colonies, the governor could, with the advice and consent of his executive council, invoke *22 Geo. III C. 75* (1782) and 'amove' a judge, a course more punitive than suspension, for the resultant vacancy could be filled at once. Further, prior to 1870, unless and until the amoved officer made a successful appeal to the Privy Council, the amotion was not subject to review. See P. A. Howell, *The Judge Storm op. cit.* 253. See also P. A. Howell, *Boothby Case op. cit.* pp. xxv-xxvi.
222 *Minutes of the Executive Council*, 31st December 1847, *op. cit.* 523. (*T.S.A.*)
223 Ibid.
224 Ibid.
225 *Minutes of the Executive Council* No. 20, 6th December 1847, Ibid. p. 489. (*T.S.A.*)
226 I.e. Melville, West, Baker, Howell.
227 E.g. on 6th December 1848, Denison said in Council: "It does not . . . appear that, although the conduct of Mr Justice Montagu may have laid him open in suspicion, there is evidence enough to prove that he was actuated by selfish motives in forming the judgment in question. I cannot however but think that his conduct in the matter was either wise or foolish". *Minutes of the Executive Council* 6th December 1848, Ibid. p. 500. (*T.S.A.*)
228 They concluded that he was "much wedded to his own schemes and lacking in temper and calm judgment" C.O. 280/331/318. Cited P. A. Howell, *The Judge Storm op. cit.* pp. 258-9.
229 H. Melville, *State of Australasia* (London, 1851) p. 381.

> "The conduct of Mr Montagu was brought before the Executive Council, and it was generally understood that he cleared himself of the charges, and that the Governor made an endorsement to that effect on certain papers which were afterwards very mysteriously *lost* from the Colonial Secretary's office."

Whether Montagu was properly amoved is probably in the end a matter of personal preference. In all the circumstances, however, it is submitted that Montagu was unjustly treated, whatever the theoretical implications of his indebtedness[230] for it appears he was removed primarily through executive spite, rather than serious misbehaviour in judicial office. When one considers that Montagu's successor, Thomas Horne, was at the time of his appointment, even *more* indebted than Montagu had ever been,[231] Denison's motives must be considered suspect until proved otherwise.

(4) *Departure*

For whatever reason, Montagu immediately left his office and sailed for England on board the Rattler on 29th January 1848.[232] Before leaving, he requested information from Denison as to the "specific grounds upon which (he) was amoved from office" and "the specific finding of the Council upon each charge" so that he could "justify his conduct to the home government".[233]

Public feeling ran strongly with Montagu, who now received laudatory testimonials from all classes in the community,[234] while intense public criticism arose over Denison's treatment of the two judges. Most of the local papers[235] accused Denison of having committed a 'mean', 'despicable', 'indefensible' and 'monstrous' interference with the administration of justice.[236] None doubted that Montagu's judgment in the *Dog Act* case was the real reason for his amoval, while the *Hobart Town Courier* said[237]

> "He moved in an eccentric orbit; and if he terrified by those motions, he occasionally delighted us by the brilliant light which he cast around his path. Fresh, vigorous, and original, his intellect always commended respect and not infrequently admiration."

However, Montagu's indebtedness dogged him to the last minute, for when boarding his ship, he was accosted by his butcher for payment of

230 See *supra* fn. 207 and text accompanying fns. 206-29.
231 P. A. Howell, *The Judge Storm op. cit.* p. 267. Howell adds that "by 1851, Denison was bitterly regretting that he had elevated Horne to the Bench". Denison to Grey, confidential, 18th February 1851, C.O. 280/274. Cited Ibid.
232 *A.D.B. op. cit.* p. 247.
233 Montagu to Denison, 26th January 1848, *C.S.O.* 24, Vol. 36, No. 1057. (*T.S.A.*)
234 *A.D.B. op. cit.* p. 247.
235 I.e., *Hobart Town Courier; Cornwall Chronicle; Launceston Examiner; Hobart Town Guardian; Colonial Times* and others. See P. A. Howell, *The Judge Storm op. cit.* p. 264.
236 Ibid.
237 Cited *A.D.B. op. cit.* p. 247.

£60![238] Montagu applied to the Executive Council to pay the debt. They declined, but a private subscription, to which Sir William Denison himself gave £20(!), enabled him to finally leave the Colony.[239]

(5) *Appeal*

Montagu returned to England, and like Judge Willis before him[240] appealed to the Queen-in-Council in June-July 1849.[241] Argument, however, revolved solely around Montagu's debts: no mention was made of his decision in the *Dog Act* case and executive reactions thereto—no doubt because such matters were considered irrelevant. The report, being merely a detailed statement of the facts surrounding Montagu's argument with MacMeckan,[242] is a totally inadequate discussion.[243] The real issues in Montagu's case were never aired.

Counsel for Montagu argued on two grounds: that the Lieutenant-Governor and Council had no power to amove Montagu under *Burke's Act*,[244] and secondly, that 'natural justice', (as we now know it) had been denied. Invoking the precedent *Willis* v. *Gipps*,[245] counsel submitted that proceedings in the matter were irregular and illegal, rendering the order of amotion void. Denison had given Montagu no opportunity to show cause why he should not be removed; no notice that he was in danger of being removed, nor any opportunity to be heard in his defence.[246]

Counsel for Denison argued, in reply, that the order was fully justified by the conduct of the appellant for two reasons: firstly, "obstruction of the recovery of a debt, justly due by himself"; secondly, "the general state of pecuniary embarrassment he was found to be in".[247] This second argument is interesting, as it hints of further investigations by Denison, no doubt to ensure that his high-handed actions in this affair were sanctioned by the highest legal authority. Counsel argued that[248]

> "It appears from the evidence, that the various pecuniary embarrassments of the appellant, while sitting as a judge, in a court composed

238 Truth, *The History of Tasmania op. cit.* p. 143.
239 G. W. Rusden, *op. cit.* Vol. II, pp. 320-1.
240 Willis had appealed unsuccessfully to the Privy Council against his removal in March 1844. See B. A. Keon-Cohen, *op. cit.* p. 713.
241 *Montagu* v. *The Lieutenant Governor and Executive Council of V.D.L.* 6 *Moo. P.C.* 489, 13 *E.R.* 773. See also "Petition and Appeal of Algernon Sidney Montagu to the Queen". 62 *V.D.L. D-D* pp. 169-70. (*T.S.A.*)
242 *Montagu* v. *Denison 6 Moo. P.C.* 489-95.
243 See also P. A. Howell, *The Judge Storm op. cit.* p. 265 where the author alleges that through an "unlucky" choice of counsel, Montagu's case was poorly argued.
244 Since the statute applied only to patent, not judicial offices. However, the bench noted that this argument was rejected in *Willis* v. *Gipps* (1845) 5 *Moo. P.C.* 379 where the Privy Council held that *22 Geo. III C. 75*, which empowers the Governor and Council to amove persons holding patent offices for neglect or misbehaviour, included judicial offices. Ibid. See also *Montagu* v. *Denison* 6 *Moo. P.C.* 489, 496.
245 (1845) 5 *Moo. P.C.* 379; 13 *E.R.* 536.
246 Ibid. 496-7.
247 Ibid. 497.
248 Ibid. 498.

> of only two judges, and necessarily requiring the presence of both, for the determination of all cases brought before it, were such as to be wholly inconsistent with the due and unsuspected administration of justice in that court and tended to bring into distrust and disrepute the judicial office in the colony."

With only an incomplete report of this "evidence" it is impossible to assess this argument. However, one feels that firstly, it may have been circumstantial only, and thus equally as irrelevant (if not inadmissable) as Denison's reactions to the *Dog Act* decision, and, secondly, that this "evidence" resulted mainly from additional investigations by Denison *subsequent* to Montagu being asked to show cause why he should not be suspended.[249] It thus seems hardly relevant, though it was presented by counsel as a separate and apparently persuasive argument.

The Judicial Committee, predictably, found for the respondent, dismissing the appeal on 3rd July 1849.[250] As usual, no reasons were given,[251] their Lordships simply reporting that Denison and his Council had power, under *Burke's Act*, to amove a judge, and that[252]

> ". . . upon the facts appearing before the Governor and the Executive Council, as established before their Lordships . . . there were sufficient grounds for the amotion of Mr Montagu."

None of these 'grounds' were mentioned though the report concluded[253]

> ". . . there was some irregularity in pronouncing an order for amotion, when Mr Montagu had been called upon to show cause against an order for suspension: but, inasmuch as it does not appear to their Lordships that Mr Montagu had sustained any prejudice by such irregularity, their Lordships cannot recommend a refusal of the order of amotion."

The Judicial Committee report was confirmed by an Order in Council dated 18th July 1849,[254] but due to the evidential factors discussed above, Montagu, it is submitted, thus suffered further injustice at the hands of the Privy Council. Perhaps the real answer to the merits of his dismissal lies in a study of the executive in Hobart rather than in his own judicial career in the Colony.

III LATER LIFE

Though ignominiously removed from the Bench in Van Diemen's Land, Montagu's legal career was far from over. In fact, his best work was yet to begin.

249 See P. A. Howell, *The Judge Storm op. cit.* 266.
250 Ibid.
251 Lord Brougham stated: "Their Lordships have agreed upon the report they will make to the queen: They do not state their reasons in these cases". *Montagu* v. *Denison 6 Moo. P.C.* 489, 499.
252 Ibid. 499.
253 Ibid. 499-500. See also P. A. Howell, *The Judge Storm op. cit.* p. 266.
254 *Montagu* v. *Denison* 6 *Moo. P.C.* 500. See also R. W. Baker, *op. cit.* p. 80.

After losing his appeal, Montagu was sent to the Falkland Islands, arriving in July 1850. There he took up the offices of Stipendiary Magistrate, Chairman of the Magistrates' Court, Chairman of the Police Court, and Coroner.[255] The Falklands was an inhospitable place, the population then and now being about 1,500[256] with most people living in the capital, Stanley. It was a provincial community, comprised mainly of whalers, sealers, and shepherds, and, further, a notoriously unhealthy place.

In November 1850, Montagu was appointed to the Executive Council. However, in June 1854, he resigned all his offices[257] and returned to London, leaving his wife alone in Stanley. It appears their marriage, after twenty-two years, had broken up. On leaving her, Montagu gave her a bond[258] stating that they had agreed that she would remain in the Falklands until he could send her the necessary sum of money to enable her to join him and their children. "In the event of any unforseen circumstances" preventing her returning to her family, he promised and arranged to pay her £50 a year maintenance, until she could rejoin him.[259]

Maria Montagu remained in the Falklands for several years, opening a small school in Stanley, but barely managing to survive. Though Montagu probably did not intend to abandon his wife, he proved reluctant to continue supporting her.[260] They never met again.

In January 1855, though in his late 50s, Montagu applied for and was appointed to the position of Registrar of Deeds in Sierra Leone.[261] He did much valuable work in Sierra Leone, and became in addition Master of the Court of Records, Clerk of the Crown, and Registrar of the Court of Chancery.[262] In 1856, he was appointed Acting Chief Justice, and served with distinction in that position on a number of occasions.[263] In 1857, his post was raised to Registrar-General.[264] In between his terms on the Bench he built up a respectable practice as a barrister. While in Sierra Leone, Montagu saw ten Governors come and go. In his relations with them, as with the Lieutenant-Governors of Van Diemen's Land, he showed that he was "no respecter of persons".[265] Like his ancestor, the infamous Earl of Sandwich, Montagu took a mistress, of lower rank in

255 P. A. Howell, *The Montagus op. cit.* pp. 122-3.
256 Ibid. p. 123.
257 Ibid. No reason given in official despatches.
258 Signed and witnessed at Stanley on 14th July 1854. Ibid. pp. 123-4.
259 Ibid.
260 He did not fulfil his bond. However, the Colonial Office ordered that £50 be deducted from his salary and sent to his wife. She returned to England eventually, and died in February, 1872. Ibid.
261 Ibid. p. 123.
262 Ibid. p. 125.
263 The mortality rate of Judges in Sierra Leone was high. The tropical climate and conditions were even more notorious than the arctic conditions of the Falklands. Ibid.
264 Ibid.
265 See *supra*, text accompanying fn. 90.

society than himself. Ann Bell, a creole, bore him two children, who were brought up in the same way as his legitimate family.[266]

In July, 1857, Montagu was the subject of a malicious newspaper article, written by a negro barrister, William Rainy.[267] It was alleged he had been charged with attempted rape of a girl under the age of twelve,[268] but there appears to have been little foundation for this attack.[269]

Besides all these activities, Montagu applied himself to works of scholarship. He collected, and in 1857 published, the Colony's ordinances and Acts of Council.[270] These had hitherto been neglected, and were completely inaccessible to the public. Significant historical documents were appended,[271] and the work was an immediate success. During the next 20 years, he published six revised editions. At the same time he compiled similar general collections of laws for the Gold Coast, and for Nigeria,[272] which were published in London in 1874.[273]

In 1880, Montagu took six months leave of absence to visit England.[274] He landed at Liverpool on 20th June 1880.[275] On reaching London two days later, he suffered a stroke, and died in a hotel near Charing Cross Station, aged 77 years.[276]

IV CONCLUSION

Thus Montagu spent barely one-quarter of his life in Tasmania, and his unfortunate amoval from the Bench of that Colony hardly reflects his later career. His work in the Falkland Islands and Sierra Leone, though in lesser offices, was of considerable importance in the consolidation and development of those colonies. His greatest achievement lay in his work in Sierra Leone, where he created order out of chaos in relation to land titles, and the records of the Civil and Chancery divisions of the Supreme Court.

266 P. A. Howell, *The Montagus op. cit.* p. 125. One writer comments: "Despite age and a grown up family, his private life during his many years in Freetown was not unworthy of a grandson of the notorious Lord Sandwich and the beautiful Martha Ray." C. H. Fyfe *History of Sierra Leone* (O.U.P. 1962) p. 280.

267 Ibid. p. 331.

268 *African Times*, 23rd July 1867. Cited P. A. Howell, *The Montagus op. cit.* p. 126.

269 Rainy was Freetown correspondent for the *African Times*, and published in England various attacks on successive police magistrates, Montagu, and Chief Justice French. C. J. Fyfe, *op. cit.* p. 374.

270 *Ordinances of the Colony of Sierra Leone* (London, 1857). Cited *A.D.B. op. cit.* p. 248.

271 They included the successive royal charters, imperial statutes, treaties with the native chiefs dating back to 1788, proclamations by the governors, and maps showing some of the original allotments of land. P. A. Howell, *The Montagus op. cit.* pp. 126-7.

272 Ibid. (then called Lagos).

273 Ibid. p. 127.

274 It was the first leave on half pay he had had in almost 52 years in the colonial service. Ibid.

275 Ibid.

276 Ibid.

His career in Van Diemen's Land, however, did not end so happily, though his achievements in office must not be forgotten. Described as "an acute, eloquent and impartial Judge" he was also "passionate and eccentric"[277] and, like his contemporary in Victoria, Judge Willis,[278] Montagu showed consideration for the poor and oppressed throughout his career as against the often vicious power of the Colonial Office. He made an excellent Attorney-General in Van Diemen's Land, and was highly praised by Arthur for his work in that office. Though perhaps not a great constitutional lawyer, and despite his early association with Arthur, as a Judge he remained independent of both the Executive and the Legislature, while his flexible attitude in administering the harsh criminal code was generally appreciated by the press and public. He showed himself to be "no respecter of persons" and administered the law efficiently in a convict-ridden, vigorous community earning in the end the loud praise of both the public and the press.

However, Montagu's personal life and his professional career were "dogged" by personal deficiencies. He made an unfortunate marriage, encountered financial embarrassment, and made enemies more easily than friends. Finally, his court 'flexibility' often contrasted with, and led him to conflict with, the rigid mindlessness of Vice-Regal power—especially when the issue concerned was his own reluctance to pay creditors. His chronic indebtedness repeatedly embarrassed him in his personal and judicial life, and perhaps led, along with a goodly measure of executive spite, to the abrupt termination of his legal career in Van Diemen's Land.

Whatever the merits of his amoval, it is submitted that his occasional outbursts and judicial indiscretions, though not lightly forgiven, should not label him as the 'Mad Judge'. Montagu did much good work amongst a lawless, difficult society, and was, *in fine*[279]

> ". . . an upright and fearless judge, clear in his interpretations of the law, just in his decisions, but harsh and severe in his denunciations of those whose conduct seemed to merit rebuke. His demeanour on the Bench was often uncourteous, there was a savage vehemence in his utterances when dealing with unquestionable criminality. But the clearness and impartiality of his summing-up, and the justice and accuracy of his decisions, atoned for the peculiarities which were harmless, though not pleasing."

[277] J. West, *The History of Tasmania* [1852 (ed.) A. G. L. Shaw, Melbourne, 1971] p. 204.
[278] See *supra* text accompanying fns. 76-82.
[279] J. Fenton, *op. cit.* pp. 189-90.

AN EMPIRICAL STUDY OF THE NEED FOR REFORM OF THE VICTORIAN RENT CONTROL LEGISLATION

A. J. BRADBROOK*

The statutory method of rent control currently in effect in Victoria is unique in the common law world and is radically different from that of the other Australian states and territories. The Victorian legislation, which is embodied in Part V of the *Landlord and Tenant Act* 1958-1971, restricts the application of rent control to residential dwellings classed as prescribed premises, and provides for two separate classes of premises to fall within this category.

Firstly, there is the residual group of premises that fall within the definition of "prescribed premises" under section 43. Under this section the legislative protection and rent control provisions extend to all premises leased between 31st December 1940 and 1st February 1954 which have not been re-let to the same tenant by a lease in writing for three years or over, nor have been re-let at any time to another tenant, nor have become vacant, nor have been excluded from the protection of Part V by an Order of the Governor in Council published in the *Government Gazette.*

Secondly, there is a group consisting of premises declared subject to Part V of the Act by section 44(1). This section states

> "The Governor in Council may, by Order published in the *Government Gazette,* declare that the application of this Part shall extend to any particular premises specified in the Order and those premises shall thereupon become prescribed premises . . ."

This article is designed to examine and recommend reforms to improve the practical operation of this second group of prescribed premises. This group is of considerable importance in that section 44(1) provides the only universally applicable check against landlords charging excessive rents. The statistics over the past nine years on the number of complaints of excessive rents received and the action taken by the Rental Investigation Bureau (hereafter referred to as the Bureau) are shown in Table 1. Although the number of premises declared subject to Part V of the *Landlord and Tenant Act* is quite small, it is submitted that section 44(1) has more significance than these figures would suggest. In addition to

* B.A., M.A. (Cantab.), LL.M. (York), Barrister and Solicitor (Nova Scotia and Victoria), Senior Lecturer in Law, University of Melbourne.

acting as a deterrent to landlords charging excessive rents, the threat of the possible implementation of rent control acts as a powerful incentive for landlords to reduce rents to a reasonable level after negotiations with the Bureau. One can speculate that the number of negotiated reductions as shown in Table 1 would be considerably less in the absence of section 44(1).

TABLE 1

STATISTICS OF THE RENTAL INVESTIGATION BUREAU[1]

	Number of Complaints	*Negotiated Rent Reductions*	*Premises Prescribed*	*Rents Considered Not Excessive*
1965	736	386	117	233
1966	583	337	55	191
1967	868	475	61	332
1968	649	338	47	264
1969	665	309	58	298
1970	883	376	52	455
1971	897	344	30	523
1972	745	298	28	419
1973	751	215	24	512

As very little insight into the practical operation of the legislation can be obtained from an examination of the *Landlord and Tenant Act* itself, it became clear that only field research would provide the necessary evidence of the present weaknesses and the need for reform of the existing legislation and procedures. The field research undertaken consists of three interviews with the Secretary of the Victorian Rental Investigation Bureau, Mr S. K. Gogel,[2] one interview with the Stipendiary Magistrate constituting the Fair Rents Board for the Greater Melbourne area, Mr L. K. Griffin,[3] and a detailed analysis of twelve files of the Bureau provided by the Secretary.

During the initial interview with the Secretary of the Bureau, it became clear that a number of serious deficiencies exist in the present legislation. In order to reveal the problems caused by these deficiencies in the context of a number of actual cases, at the request of the writer the Secretary provided twelve closed case files of recent origin for analysis. A summary of the contents of these files is attached as an Appendix to this article. Eleven of the twelve cases concern premises inside the Greater Melbourne area, the twelfth being in Ballarat, and all the cases occurred since 1969.

[1] Information supplied by the Secretary of the Rental Investigation Bureau.
[2] Mr S. K. Gogel died in October 1973 and was replaced in office by Mr A. H. Clark.
[3] Mr L. K. Griffin retired in December 1973.