

SIR HENRY WRENFORDSLEY: A JOURNEYMAN JUDGE*

The following article examines the career of a colonial chief justice who served two terms in Western Australia and was a judge or chief justice in many British countries including other parts of Australia. His life's story is unconventional and quite wanting in most of the attributes one expects to find in a chief justice. But it is reviewed for three reasons. First, it is so unusual and so outrageous that, with the passage of time, it has become entertaining. Second, it is a salutary reminder of what can happen when persons are elevated to the judicial bench for political reasons unrelieved by considerations of merit and ability. And, third, it forms a unique chapter in Australian judicial history, for no other judge has occupied a seat on the benches of so many superior courts in Australia as did the subject of this article.

The name of Sir Henry Thomas Wrenfordsley does not rank as one of the great names in our judicial history. But it does rank as one of the most unusual, being in itself a striking and uncommon name, characterizing the eccentric exploits of a man of much vanity but little ability, who spent most of his life as a colonial judge a century ago.

The family came from Dublin, but the name was not Irish. Rather it seems to have been an assumed name contrived by Henry's father, Joseph, an Irish solicitor. Joseph took time to decide what surname suited him best, for he rendered it at different periods as Wrenfordsly, Wrenfordsly, and Wrenford Sly, suggesting that his patronymic may have been Ransford, Rainsford or Sly—the first two being conventional Irish names.¹ It is tempting to suppose that he adopted a new name because of some indiscretion or scandal. Henry Thomas kept secret the precise date of his birth, but acknowledged in an 1871 census that

* Based on a paper read before the Medico-Legal Society of NSW in November 1976.

¹ Information supplied to the AUSTRALIAN DICTIONARY OF BIOGRAPHY by the Research Librarian, Trinity College, Dublin. I am indebted to Mr H J Gibbney, Biographical Registrar of the DICTIONARY, for access to this and other material.

his age was 45 and that he had been born in London.² He must therefore have been born in 1825 or 1826. His sister, Louisa, seven years his junior, was also born in London. The family then went to France where Henry learnt the French language with the fluency of a native.

His mother's maiden name was Louisa Bywater,³ but what became of her remains a mystery. His father went home to Ireland by 1840 and, in 1847, married a widow, Jane Morris, who was descended from a wealthy Dublin legal family named Billings.⁴ Joseph practised in the city or at Kingstown in partnership with some of his wife's relatives. Henry, meanwhile, had been entered at Trinity College, Dublin, on 1 March 1841.⁵ To add to the confusion about names, he then called himself Wransfordsly; but he soon settled Wrenfordsley—using a final 'e', a distinction not adopted by his father. Henry did not thrive at Trinity, and left without taking a degree. But he did qualify as a solicitor and was in partnership with his father for a year or two from 1847, before establishing an independent practice that endured in Dublin throughout the 1850's.⁶

He was not a man to be long content with a settled life. He became increasingly disenchanted with a solicitor's lot and, despite his failure at Trinity, he gave increasing attention to literary pursuits. In 1854 he published a short book with a long title—THE RENEWABLE LEASEHOLD CONVERSION ACT: WITH PRACTICAL DIRECTIONS FOR THE CONVERSION OF LEASES FOR LIVES RENEWABLE FOR EVER INTO FEE SIMPLE TENURES. In it he referred to 'the pains I have taken to be accurate',⁷ but it was a very slight offering of legal writing that did not stimulate the profession to require further editions. He went on, in 1859, to translate a discourse by Adophe Monod, a French theologian, and to publish it with the admission that 'admirers of the learned writer will not fail to perceive what little justice has been

² 1871 census return, parish of St Margaret, Westminster, Public Record Office, London (hereafter PRO), RG 10/129.

³ Death certificate of Sir Henry Wrenfordsley, issued in Antibes, France, held by the AUSTRALIAN DICTIONARY OF BIOGRAPHY.

⁴ Note of issue of marriage licence for Joseph Wrenfordsly and Jane Morris alias Billings (1847) in INDEX TO THE ACT OR GRANT BOOKS AND ORIGINAL WILLS OF THE DIOCESE OF DUBLIN 1800-1858 (Dublin 1899).

⁵ Burtchaell & Sadleir, ALUMNI DUBLINESES 1593-1860, (2nd ed Dublin 1935) sub nom 'Wransfordsly'.

⁶ 'From 1849-52 Henry was on his own at 28 Bachelors' Walk and from 1853-1860 inclusive at 59 Upper Mount Street [Dublin]', from the information cited in note 1.

⁷ (Dublin 1854), Preface.

⁸ WHO THIRSTS (London 1859), vi.

done to his peculiar eloquence'.⁸ That was, perhaps, the only humble remark Wrenfordsley ever made about himself.

Resolving upon a new career, he went to London, entered at the Middle Temple in June 1860, and was called to the bar on 30 April 1863.⁹ With no family sponsorship there his life as a barrister was precarious. 'I have known', he recalled, 'what it was in my early days, when I was very glad to hold a brief.'¹⁰ His undistinguished practice was on the Norfolk circuit.

In 1868 the first opportunities for advancement came. He stood as a Conservative candidate for the parliamentary seat of Peterborough, as he did again in 1874, though the voters rejected him. Also in 1868 he had been retained by the Privy Council Office to assist a House of Commons committee inquiring into the foreign cattle market.

Then the old Norfolk circuit was abolished, and with it his career as an advocate. 'It was', he said 'too late for me to begin to form new connexions on a new circuit, and so I entered the colonial service'.¹¹ He secured his entry as a political favour. He had meanwhile been a deputy judge of certain county courts, though it is doubtful that he exercised any judicial authority, and he had tried to enter the South-eastern circuit as a special pleader, but without success.¹²

In November 1877 his Tory friends recommended him to the Secretary of State for the Colonies, who found him a place as second puisne judge at Mauritius.¹³ Accepting with alacrity, he arrived there on 3 May 1878, and was sworn in three days later.¹⁴ He soon decided that he would prefer the office of procureur-general which, under the island's French law, was the highest Crown law office—with an ex officio place in the colony's council. He told everyone that the governor, Sir Arthur Phayre, struck by his conspicuous ability, had urged the change upon him.¹⁵ The governor denied that. He said that Wrenfordsley and the former procureur, for reasons best known to

⁹ 6 AUSTRALIAN DICTIONARY OF BIOGRAPHY (Melbourne 1976) 440.

¹⁰ *The West Australian*, 18 May 1880, 2.

¹¹ *Id* 9 April 1880, 2.

¹² THE LAW LIST 1877; he was eligible to practise on the Great Yarmouth, Norwich and Ipswich Sessions.

¹³ See note 79: Carnarvon to Wrenfordsley, 27 November 1877, partly quoted in Wrenfordsley to Hicks Beach, 10 September 1878, (Colonial Office records in PRO—hereafter CO) CO 167/578.

¹⁴ Information supplied to me by the Archives Office, Port Louis, Mauritius.

¹⁵ Wrenfordsley to Bowen, 14 June 1879, enclosure in Bowen to Hicks Beach, 16 June 1879, CO 167/583 Confidential No 4.

themselves, had simply decided to exchange offices, and he had agreed.¹⁶

Not long afterwards, the chief justice took leave from the colony and the first puisne judge was appointed to act in his place. Wrenfordsley was very critical of the appointee. 'He is silly with age', he wrote to the Colonial Office, having been commissioned as a judge for nearly fifty years, and being incapable of fulfilling the duties even of his ordinary office, let alone that of chief justice.¹⁷ Wrenfordsley did not think much of the absent chief justice either. 'For many years he had violated the spirit of the rules of the service', he told the Colonial Office.¹⁸ Indeed, the bench altogether was so bad that the administration of justice languished 'in a state of the most disgraceful confusion'.¹⁹

There was only one man who stood out from this mediocrity and he, in Wrenfordsley's view, was the new procureur-general. The Colonial Office had better see to it that their bad arrangements were rectified by appointing him acting chief justice forthwith. 'By my position and past experience', he wrote to the secretary of state, 'I am entitled to be so appointed, and I certainly should not have accepted the post of puisne judge in the first instance if I had not expected such promotion'.²⁰ If they wanted him, they must be quick for, although he was quite robust enough to be chief justice, his medical adviser had counselled him to relinquish the 'enormous' pressures of the procureur's office. So he would soon have to resign for the sake of his health and his purse. He wrote that:²¹

The office of Procureur-General in this colony is about the most arduous appointment in the Colonial Service. And it is the worst paid. It requires a special knowledge of French, as also a knowledge of the French Codes. In addition to these qualifications, there are judicial duties only known to the French law. The person appointed to such an office receives about £1300 a year, while the Attorney-General of Jamaica, with half the work, receives £1500 and private practice.

¹⁶ Phayre to Hicks Beach, 22 May 1878, CO 167/577 Confidential No 12; and 12 September 1878, id, No 337.

¹⁷ Representations of Wrenfordsley to Colonial Office, 11 September 1878, CO 167/578, No 1283.

¹⁸ Wrenfordsley to Hicks Beach, 10 September 1878, CO 167/578, No 9826 para 19.

¹⁹ Ibid para 20.

²⁰ Ibid para 16.

²¹ Ibid para 26.

Governor Phayre agreed to pass on Wrenfordsley's letters to the Colonial Office, but added his own disapproval of them. 'There is something in this argument', he said, 'not altogether consistent with due zeal for the public service, and with the supposition of his own strength to deal with the arrears of causes in the court, and his capacity to reduce to order the confusion, which . . . he represents as requiring immediate attention.'²² The Colonial Office read the correspondence with astonishment. The under-secretaries made the first of many censorious minutes about Wrenfordsley. 'This', they wrote, 'coming from a man who is altogether fresh to colonial employment and has been but a few months in Mauritius, is a letter conceived in the worst possible taste.'²³ They sent him a chilling reply saying that his future advancement would depend upon his discharging his duties 'cheerfully and to the best of his ability'.²⁴ But Wrenfordsley was thick-skinned. In 1879 he again strongly criticized the conduct of judicial business in the supreme court, and he made submissions about appointing a fourth judge.²⁵ In all of these the Colonial Office thought that his representations were unsound, and presented 'in a manner which does him little credit'.²⁶

During 1879 Governor Sir George Bowen came to Mauritius having shortly before been relieved of the administration of Victoria where, in a contest between that colony's two legislative chambers, Bowen had exceeded his constitutional powers. Wrenfordsley decided to use the change of governor to revive his own hopes for a new position. He told Bowen that the chief justice, still on leave, was unlikely to return to Mauritius. The governor should, he said, recommend to the Colonial Office Wrenfordsley's elevation to the vacancy in place of 'the troublesome and ill-requited office which I have now the honour to occupy'.²⁷

Bowen acted precipitately in acceding to the request and in recommending Wrenfordsley after only a short acquaintance with him. The procureur, he told the Colonial Office, was most obliging with his professional assistance, and discharged all his duties in a 'ready,

²² Phayre to Hicks Beach, 12 September 1878, CO 167/578, No 337.

²³ *Ibid* minute of 10 October 1878.

²⁴ *Ibid* minute of 16 October 1878.

²⁵ Report of 19 July 1879, enclosure to Bowen to Hicks Beach, 21 July 1879, CO 167/583 No 169.

²⁶ *Ibid* minute of 23 August 1879.

²⁷ Wrenfordsley to Bowen, 14 June 1879, enclosure to Bowen to Hicks Beach, 16 June 1879, CO 167/583 Confidential No 4.

efficient and conciliatory manner'.²⁸ But the despatch reached London at the very time when Sir Arthur Phayre was making a personal report to the Colonial Office about his term in Mauritius. It was his view that others in the colony were better fitted to become chief justice than was Wrenfordsley.²⁹

The Colonial Office agreed, but, because of Wrenfordsley's impertuning about his health and his dissatisfaction, they decided to make some new arrangements. Remembering the favourable light in which he had depicted the attorney-generalship of Jamaica, they, somewhat playfully, offered him that post.³⁰ He declined it. Then they suggested that he go back to being a puisne judge in Mauritius 'as lighter work than your present office'.³¹ No other colonial vacancy was available for him. On reflection he decided to go to Jamaica after all. With that secured he then returned to England to see if he could solicit an even better appointment on personal application.

He left Mauritius on 10 November 1879, having been tendered a formal address of appreciation in the council. But he was very angry to find that the address was not published, and he made such strong and repeated protests that, in the following year, M Celicourt Antelme, moving to confirm and publish the address, said:³²

In November of last year, when the Honourable Mr. Wrenfordsley was about to leave Mauritius, I thanked him in the name of the Unofficial Members of this Council for the services he had rendered to the Colony. On that occasion I stated, that the representations made by that Honourable Member, as Procureur General, relative to the arrears then existing in the Supreme Court, had been the starting point of measures which resulted in a more expeditious settlement of affairs by the Supreme Court, and consequently had brought about a more satisfactory state of things in our judicial administration. I also said that the Honourable Mr. Wrenfordsley having been the Legal Adviser of the Government when the Labour Law was brought into operation, with much moderation and in a very conciliatory spirit, the Unofficial Members of Council could not do otherwise than testify their recognition of the fact, and their belief that such happy results were due in a measure to the advice given by Mr. Wrenfordsley to the Government.

²⁸ Bowen to Hicks Beach, 16 June 1879, *ibid*.

²⁹ *Ibid* Minute Paper; and Hicks Beach to Bowen, 20 August 1879 Co 167/583 Confidential.

³⁰ Bowen to Hicks Beach, 10 October 1879, CO 167/583 No 309.

³¹ Telegram, 19 December 1879 (W-19318) CO 490/2.

³² Extract from the Council Minutes, 3 August 1880, supplied to me by the Archives Office, Port Louis, Mauritius.

Testimonials like this were of the greatest importance to Wrenfordsley, for people did not often say nice things about him. He always preserved published addresses to use as 'references' when he was, from time to time, looking for new appointments in the colonial service.

Wrenfordsley's arrival in London in November 1879 came soon after the death of Archibald Paull Burt, the first Chief Justice of Western Australia. With little solicitude for the administration of justice there, but with a keen determination to keep Wrenfordsley quiet, the Colonial Office agreed that he might have that Chief Justiceship in place of the appointment at Jamaica. Well pleased, he accepted, and was commissioned on 28 January 1880.³³

In March he arrived at Albany with his sister and his cousin, Miss Finch, by a mail steamer which had called at Ceylon where some of the passengers contracted measles.³⁴ In King George Sound it was placed in quarantine. 'I was left', Wrenfordsley protested, 'with the members of my family, without luggage, on a barren island.'³⁵ During the ordeal he incurred expenses of nearly £40 which the government would not pay him, and he remained on half salary until he could travel to Perth to assume his new office. Not until 7 April could he take his seat on the bench, when he was soothed by addresses from the acting Attorney-General and the magistrates, to which he gave a fulsome reply. 'I come to you', he said:³⁶

. . . with a moderate share of experience in our profession, and I hope to be able to give to the colony the benefit of that practice and experience which can best be gained at Westminster and at the various courts of Assize which compose an English circuit. . . . I have now . . . only one object in life, and that is to perform my duty—to sustain the dignity of the bench.

In this he struck what was to be a habitual pose as a 'gallery judge'³⁷—one who played to the audience and infused into legal proceedings an element of theatre. His histrionics ranged from light comedy to tragedy. The second day of the sittings afforded him many dramatic moments, as he had to pronounce sentence upon those who

³³ London Gazette No 24807, 30 January 1880.

³⁴ The West Australian, 9 March 1880, 2.

³⁵ Wrenfordsley to Derby, 20 November 1883, Wrenfordsley Pension File (J S Battye Library, Perth) CSO 3098/03.

³⁶ The West Australian, 9 April 1880, 2.

³⁷ Inquirer (Perth) 26 March 1890, 5; cf J L Forde, THE STORY OF THE BAR OF VICTORIA (Melbourne n d) 301.

had been convicted of criminal offences at earlier trials. 'Amid the breathless and solemn silence of a crowded court' he donned the black cap to impose capital punishment on a man found guilty of attempted rape.³⁸ But alas the offender 'appeared quite unconcerned' either by the chief justice's demeanour or by his exhortation that all colonists apply themselves to honest labour. Defaulters, said the judge, 'must be taught that there is a power in the land which can and will protect society from being preyed upon.'³⁹ 'It must go forth to the public', he declaimed to another prisoner, 'that these crimes will be dealt with rigorously. A community like this, that is industrious, hard-working, and, I hope thrifty, must not be exposed to the depredations of persons of your class.'⁴⁰

Whenever he could, he delivered similar harangues at civil sittings. He interrupted a case in July 1880 to express his regret at being unable to address a grand jury—there being none in the colony. Instead he would speak his mind to those present. He said that he was exercised about the law of bankruptcy: 'In this colony [it] is not what it ought to be, and it will not be my fault if it is not amended.'⁴¹ The commercial community had to understand that it was improper for a debtor to take refuge in bankruptcy after putting his creditors to the expense of suing him for debt. These remarks, coming from a man who was himself an inveterate insolvent, and against whom English creditors still had unsatisfied judgments for large debts,⁴² were unmitigated humbug. But the paradox typified the man: what he said and what he did were often at odds. He called for honesty, diligence, labour and thrift, and yet his own judicial career constantly displayed deception, insincerity, indolence and prodigality. Such was his arrogance that, despite his own numerous failings, he presumed to tell other people how to conduct themselves.

From the bench he obtruded upon the cases before him in a manner alternately hectoring or frivolous. For the profession his overbearing methods must have been exasperating. He would often take the examination of witnesses out of counsel's hands by persistently asking his own questions: and he also engaged counsel in prolonged debate about peripheral, or even irrelevant, issues. He would interrupt the whole thread of a case to deliver a homily on some matter unrelated

³⁸ *The West Australian*, 9 April 1880, 3.

³⁹ *Ibid.*

⁴⁰ *Id* 20 April 1880, 2.

⁴¹ *Id* 9 July 1880, 3.

⁴² For example, *Thos Bailey & Co to Kimberley*, 25 May 1881, CO 18/196 f 478-480.

to the merits of the dispute. In all, he was the very model of a 'talking judge'.⁴³

Any remaining doubts about his judicial incompetence were set to rest by the Privy Council in *Thomas v Sherwood*, an appeal from a judgment of Wrenfordsley's delivered in 1881. It concerned a resumption by the railways commissioner, J H Thomas, of land for railway construction, and the chief justice said it was 'the most important case I have had before me'.⁴⁴ He took a month to ponder upon his decision, yet the judgment when published in the newspapers, occupied only eleven lines of a single column.⁴⁵ It was a mere finding against the commissioner. The Privy Council had to entertain the appeal without having access to any formal judgment and without knowing its grounds. Sir Barnes Peacock said:⁴⁶

Their Lordships regret that the Chief Justice has not complied with their Lordships' order of the 12th February 1845 directing judges to forward to this Board the reasons on which their judgments are founded. Under the special circumstances of the case, the Solicitor-General was permitted to read an extract from a letter by the Chief Justice to the Governor of the Colony, purporting to give some of the reasons for his judgment. This extract and 'the points' of the respective parties are the only materials from which their Lordships are able to conjecture how the case was presented to the court, and how the court dealt with it.

The Privy Council then declared that Wrenfordsley's judgment had fallen into fundamental error and was wrong in all aspects. The result was a severe indictment of him.

He visited Melbourne in 1881 to participate on behalf of the government of Western Australia in the Intercolonial Conference. Taking the view that Western Australia, still being a crown colony, ought not to express its ideas without imperial authority, he generally refrained from debate and from voting.⁴⁷ But he met many influential men and he made a long report to the government which met with the approval of the Colonial Office.⁴⁸

In his own estimation, the chief justice assessed the greatest of his many contributions to Western Australia as including his chairman-

⁴³ For example, *Francisco v Simpson*, *The West Australian*, 11 June 1880, 2; *Connor v Mansfield*, *id* Supplement, 24 October 1882, 1.

⁴⁴ *The West Australian*, 14 June 1881, 3.

⁴⁵ *Id*, 15 July 1881, 3.

⁴⁶ [1883] 9 App Cas 142, 148.

⁴⁷ Wrenfordsley to Robinson, 1 February 1881, CO 18/194 f 250 at 251.

⁴⁸ *Ibid*.

ship of a commission to revise the colony's statutes,⁴⁹ and his introduction in August 1881 of a new system of court procedure founded on the English Judicature Acts. When he left Perth in 1883 he said: 'As the time rolls on you will possibly associate me with the new procedure which has been introduced and which will tend to place this Court in legal priority with sister colonies.'⁵⁰ The West Australian newspaper, which had always supported the chief justice, parted company with him on that issue. The bar, it said, would probably prefer to remember him by anything in preference to his rules of court which were:⁵¹

A mere transcript of certain South Australian rules, pitchforked in, which in their turn, had been a transcript of the first English rules, before they had been modified and brought into workable form. And the first thing now, that will probably have to be done [on the Chief Justice's departure] will be to alter the procedure with which His Honour expressed a desire that his name should be associated.

In his Western Australian appointment Wrenfordsley was fortunate to establish a close relationship with the governor, Sir William Robinson. But he soon found himself in collision with Edric Frederick, Baron Gifford of St. Leonard's, who arrived soon after Wrenfordsley to become colonial secretary. Having retired young from the army, in which as an officer he had served in the Ashantee and Zulu wars and won the Victoria Cross, he applied himself to the administration of various colonies.⁵²

Nearly twenty-five years Wrenfordsley's junior, and accustomed to command, his demeanour greatly irritated the chief justice. They had fierce arguments over many trivial matters, the most upsetting to Wrenfordsley being a refusal of his seventeen-year old nephew, Hatton Riihards, appointed his assoriate.⁵³ The governor intervened to take the chief justice's side, claiming that Lord Gifford interfered too much.⁵⁴ But his Lordship seems rather to have been moderate in the face of high provocation. Wrenfordsley assailed him with pompous

⁴⁹ His evidence before a select committee of the Victorian legislature on the General Code Bill—Victoria VOTES AND PROCEEDINGS (Legislative Assembly) 1888 (1), 31, para 341.

⁵⁰ The West Australian, 9 January 1883, 3; Id 15 July 1881, 3.

⁵¹ Id 12 January 1883, 2.

⁵² Gibbs & Doubleday (ed), THE COMPLETE PEERAGE (London 1926) Vol V, 655.

⁵³ For some account of Hatton Richards, see Wrenfordsley to Derby, 16 February 1883, CO 18/199 f 396.

⁵⁴ Robinson to Kimberley, 26 October 1882, CO 18/198 f 252 at 252a.

letters full of the injury he felt at the disrespect allegedly shown for his judicial office.⁵⁵

The breaking point came at the end of August 1882 when the disputants attended a Weld Club dinner to honour the Governor. Wrenfordsley had been elected president of that club soon after his arrival in 1880 and, being a clubbish person, he revelled in the office.⁵⁶ While speaking to the toast to the governor at the dinner, Wrenfordsley noticed Lord Gifford conversing with his neighbour at the table and called him to order. Gifford took offence, and protested so strongly to the club committee that they felt compelled to ask Wrenfordsley to apologize. He wrote a long remonstrance against their pre-judging the matter without hearing his views, and he resigned from the club.⁵⁷

In a white heat he assembled all his complaints against Gifford and sent to the Colonial Office, through the governor, a broadside of invective.⁵⁸ 'It is to be regretted', they wrote, 'that the Secretary of State should be troubled with such a mass of unimportant matter. . . . The Chief Justice had no real cause for complaint. . . . [It is to be hoped that] His Honour's judgment on the bench is better than it appears to be when he is off it.'⁵⁹ However, the conflict of personalities was resolved by the customary expedient of dispersing those concerned. Robinson was sent as governor to South Australia, Lord Gifford to Gibraltar as colonial secretary, and Wrenfordsley was invited to become chief justice of Fiji. He exulted in the fact that he, not Gifford, was to be administrator of Western Australia from Robinson's departure until the new governor arrived.⁶⁰ But he had reservations about Fiji. He would have a better salary there, but a worse climate—and, socially, it was for him a back-water. He let it be known

⁵⁵ They are to be found as annexures to Wrenfordsley's complaint of 26 October 1882, CO 18/198 f 250.

⁵⁶ *The West Australian*, 23 April 1880, 2.

⁵⁷ Wrenfordsley to the Club Secretary, 2 September 1882, CO 18/198 f 294 and 300.

⁵⁸ *Id* from f 250.

⁵⁹ *Ibid*.

⁶⁰ CO 18/198 f 364; CO 18/199 f 434. In that office he delighted in every opportunity to ventilate his oratory and to take part in important occasions. The Fremantle *Herald* thought one such address to have been 'without doubt . . . one of the most important public utterances that has ever been delivered by a Queen's Representative in this Colony, and will do much to increase that respect for the ability and views of Mr Wrenfordsley which is already entertained by the majority of the public', quoted Wrenfordsley to Derby 22 May 1883, CO 18/200 f 207 at 211. Cf *The West Australian* 18 May 1883, 3, and Wrenfordsley to Derby, 23 May 1883, CO 18/200, f 222; *Australasian*, 11 September 1896, 508.

that he would consider himself to be 'thrown away' there, and that he would much prefer to go to some other colony, not as chief justice, but as governor.⁶¹

On the very eve of his departure some English newspapers arrived in which he read that the government was sending someone to Egypt to organize the legal tribunals there. He at once wrote to Lord Derby, the Secretary of State:⁶²

There is hardly anyone in the Civil Service of England better qualified than your humble servant for any office of that kind. I speak French with as much ease as English. I have gained a knowledge of French law, and when last in Egypt, I had a long interview with the Khedive. . . . I was present on the Bench of the International Court at Alexandria at one of the sittings, and perhaps I know as much about Egypt as most men.

The Colonial Office, flabbergasted at his effrontery, declined the offer. One under-secretary wrote: 'This gentleman knows how to blow his own trumpet'; and another: 'His French is better than his law'.⁶³

So he went to Fiji. But no bobbing about in small boats from Fremantle to Albany for him. He set out overland to Albany in a vice-regal cavalcade, ostensibly to meet the new governor, but really to throw upon the public the cost of moving his 120 cubic feet of baggage and forty-three further packages.⁶⁴ Perhaps some of them contained nearly thirty items of government house china, crystal and cutlery that disappeared during his short occupancy as administrator.⁶⁵ As a memento of his visit, the Western Australian government sent him a hefty account for the missing items, the use of official horses, and the cartage of his possessions.⁶⁶

Wrenfordsley's Fijian career was mischievous from beginning to end. With the governor, Sir William Des Voeux, he came into violent disagreement. Sir William, though himself headstrong and intemperate, did his best to begin their relationship amicably. He made his own house available to the new arrived chief justice and his troupe of travelling relatives.⁶⁷ And he authorized payment of half-salary to the chief justice from the date of his appointment until the date of

⁶¹ CO 83/34 f 116a and 117.

⁶² Wrenfordsley to Derby 26 April 1883, CO 18/200 f 144.

⁶³ Minute paper id f 143.

⁶⁴ Invoice of June 1883, Wrenfordsley Pension file, cited note 35.

⁶⁵ List of missing articles, 6 June 1883, *ibid.*

⁶⁶ *Ibid.*

⁶⁷ Des Voeux to Derby, 9 November 1883, CO 83/34 f 218 at 219.

his arrival, even though Wrenfordsley had, without permission, remained in Perth for two months beyond the agreed date of his departure. Taxed with the reason for his delay, the chief justice, that champion of honesty and industry, said he had heard rumours of cholera and small pox in Fiji, and wanted to avoid any risk of infection.⁶⁸

Dismissing the governor's friendly overtures, Wrenfordsley occupied his stay at government house complaining that his colonial service had been so poorly recognized, and demanding that his teen-age nephew, Hatton Richards, be made his salaried associate and clerk of the court. The governor said he could not assist: He had no fund from which to pay such an official. After incessant argument, he yielded to appointing Richards on an honorary basis only. He wrote:⁶⁹

Upon this, in a harsh tone, [Wrenfordsley] used these words: 'Why, he is giving up a good salary in Western Australia!' to which I replied, I do not doubt, curtly, 'then the best thing he can do is to go back again'.

That was another breaking point. Thereafter, even though the governor ultimately agreed to pay Richards a salary, Wrenfordsley would have none but formal dealings with Des Voeux. He used scandalous and energetic means to embarrass him and his administration.

Wrenfordsley brought to that contest a new weapon of enhanced status. Service as a colonial chief justice brought a customary knighthood, and, with a batch of similar functionaries, he was so appointed in June 1883, acquiring more of the recognition he craved. But in his case there was a peculiarity. He failed to pay the fees, nearly £100, on his letters patent and his knighthood was delayed until he made some arrangement to cover the cost.⁷⁰

In spite of his exalted title, Sir Henry debased the court and turned it into a political forum. Whenever the slightest chance came in a case to criticize the government and its officials he seized it and dwelt upon it. To public officers having business before the court he was invariably hostile.⁷¹ Such behaviour dispirited the public service, caused controversy, and had two more serious consequences. First, the native people, who regarded the supreme court as being unquestionably just, became encouraged to think that the administration was

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ CO 448/2 f 69, 76.

⁷¹ Des Voeux to Derby cited note 67; Colonial Office minute CO 83/37 f 232.

corrupt. Second, litigants became encouraged to think that actions against the government would succeed: many dormant suits of that kind were revived, and many new actions were commenced against the colonial government.⁷²

Off the bench he was equally active in embarrassing the government. He set out to win the popularity of the white settlers whom he delighted by his loud calls for white jury trial—a benefit curtailed in Fiji at the time because of the limited number of European residents.⁷³ They rejoiced at his attacks on the colony's system of native land titles—a matter within the governor's exclusive authority.⁷⁴ And they took the unprecedented step of feting their chief justice at a public dinner in Levuka in March 1884. 'The majority amongst the European in Fiji' attended and the occasion passed with much hilarity, the high point a toast to the governor sung to the strains of 'the King of the Cannibal Islands'.⁷⁵

The chief justice's health being proposed, he 'made a remarkably good address. He is an able speaker, easy, measured, and pleasant, and one, hearing him for the first time, wishes to hear him again.' He spoke much about his colonial career, concluding pointedly if inaccurately that in Mauritius and Western Australia he had 'finished his work . . . with the approval of the Governors under whom he had served.'⁷⁶

Des Voeux and his officers were dumbfounded at Sir Henry's disingenuousness. They knew that he had adjourned the court at Suva early in February 1884 allegedly because he was suffering from dysentery. He had extended the law vacation for his own benefit and he had removed to the government house at Levuka for convalescence.⁷⁷ It came as a shock to find that he not only abused that hospitality, but gave the lie to his illness by his enthusiastic participation in the public dinner for him at Levuka.

What the governor did not know was that Wrenfordsley had further used his convalescence to write directly to the Colonial Office pressing them to make an inquiry into the government of Fiji.⁷⁸

⁷² Des Voeux to Derby, 27 June 1884, CO 83/37 f 232.

⁷³ For a note of the 'evil consequences' see CO 83/36 f 30.

⁷⁴ Thurston to Derby, 10 December 1883, CO 83/36, f 37.

⁷⁵ The West Australian 13 February 1885, 3.

⁷⁶ Inquirer (Perth) 30 April 1884, 5.

⁷⁷ Wrenfordsley to Colonial Office, 10 June 1886, CO 280/392 f 752 at 752a; Thurston to Derby, 16 April 1884, CO 83/36 f 419.

⁷⁸ CO 83/36 f 30 Minutes to Paper No 2757.

The impression made by his many trifling grounds may be gauged by the following minute by one of the under-secretaries:⁷⁹

Wrenfordsley, a man of most limited capacity, of insufferable conceit and a complete failure when at the Bar of England—was given an appointment in the colonial service by the late government merely because he had gone down and contested some borough in the East of England on the Conservative interest—and was of course beaten. Here are the serious fruits of such [an appointment] . . . I have no doubt myself that Sir Henry . . . —in so far as his capacity would allow him to steer a right course—deviated from it out of spleen at not being appointed High Commissioner [for the Western Pacific] or something of the sort. . . . He has written me several private letters (for I knew him personally) urging that he is [the best] man for such a high post. I should say that he was unfit even to be a County Court Judge at home.

Hoist with his own petard, Wrenfordsley—not the colonial government—became the subject of inquiry at Downing Street. As Lord Derby himself wrote: 'He certainly cannot continue to act in Fiji where he has shown every bad quality that a judge can exhibit.' But the difficulty was, 'how to justify inflicting him on any other colony'.⁸⁰ Fortunately for his Lordship, Wrenfordsley was already tiring of the contest. At the end of March 1884, he obtained from the principal government medical officer in Fiji a certificate that his health had so deteriorated that he could not 'with safety remain longer in Fiji, but must immediately leave . . . in order that he may recuperate his strength by change of climate'.⁸¹ His sister was more seriously afflicted. She had, as the result of a disease, become blind. Sir Henry thought it some consolation that her case had been so unusual as to have been reviewed in a medical journal.⁸²

Armed with the doctor's certificate Wrenfordsley at once packed his bags. He left Fiji on 5 April 1884. It was an opportune moment for flight, as Des Voeux was himself on leave overseas. To the administrator, Wrenfordsley wrote that he was taking leave for three months during which anyone acceptable to the government might act as chief justice. He dishonestly represented that, because of his regular and prompt dispatch of court business, there would be little work for the acting judge to undertake.⁸³ In truth, Wrenfordsley had sat as

⁷⁹ Minute paper to file 2757, CO 83/36 f 33a.

⁸⁰ CO 83/37 f 236a.

⁸¹ Certificate of Dr D Blyth, 29 March 1884, CO 83/36 f 431.

⁸² Wrenfordsley to Colonial Office, 10 June 1886, CO 280/392 f 752 at 752a.

⁸³ Wrenfordsley to the Administrator, 21 March 1884, CO 83/36 f 432 at 433.

infrequently as possible, and he sailed leaving many cases in which he had reserved judgments that the parties were destined never to hear from him.⁸⁴

Des Voeux, on returning to Fiji, was incensed at what he believed to be a dereliction of duty by the chief justice. He told the Colonial Office that he intended to take proceedings for Wrenfordsley's suspension, or to resign himself.⁸⁵ But the Colonial Office disliked the washing in public of dirty linen and rebuked the governor for suggesting courses of action that would embarrass them.⁸⁶ They would pursue their plan of finding Wrenfordsley a place where he would be less troublesome—perhaps he and the chief justice of Western Australia might exchange places.⁸⁷ But they would be guided by his movements. They would pay him half-salary since leaving Fiji if he reported to them in London where they could deal with him.⁸⁸ Otherwise they would see what course his health dictated.

Meanwhile, Sir Henry was being splendidly theatrical. He had himself carried aboard ship by a stretcher party of Fijian police.⁸⁹ By May he was savouring the cool air of St Kilda in Victoria and enjoying it so much that he demanded a further two months' leave. 'My health is not what it ought to be', he wrote, though without medical corroboration. 'I have remained very quiet, but I am not in a fit state to return to Fiji.'⁹⁰ The Colonial Office, feeling that they were gaining a tactical advantage, noted that:⁹¹

With Sir Henry's selective illnesses there was no telling what might happen. Although his constitution was too weak to allow him to go back to Fiji as chief justice, it was quite enough for him to return there as High Commissioner for the Western Pacific if the Colonial Office would but appoint him, which he constantly pressed them to do.⁹² When they did not respond, he took himself to Adelaide where his old friend and patron, Sir William Robinson, was in residence as governor of South Australia. Wrenfordsley became a guest at govern-

⁸⁴ Thurston to Derby cited note 77.

⁸⁵ Des Voeux to Derby, 27 June 1884, CO 83/37 f 232, and 25 July 1884, CO 83/37 f 304 at 306; and note Des Voeux's further reflections on Wrenfordsley in his book *MY COLONIAL SERVICE* (London 1903), Vol 1 351-357.

⁸⁶ CO 83/37 f 234.

⁸⁷ *Id* f 305.

⁸⁸ *Id* f 304a.

⁸⁹ *Loc cit* note 82.

⁹⁰ Wrenfordsley to the Administrator, 24 May 1884, CO 83/37 f 321.

⁹¹ Minute of 28 October 1884, *id*, f 305a.

⁹² For example, CO 83/34 f 116a, CO 83/36 f 420.

ment house for a prolonged stay extending into 1885.⁹³ He used the governor's name freely to support his quest for a new appointment, and at last he found something that would do.

The Chief Justice of Tasmania, W L Dobson, wishing to take a year's leave in England, was willing to nominate his only judicial colleague, Mr Justice Giblin, as acting chief justice, and Wrenfordsley as acting judge on half salary.⁹⁴ The Tasmanian government agreed, as did the Colonial Office on the understanding (by them, but not by Sir Henry) that he would have no further claim upon the chief justiceship of Fiji or upon any other colonial appointment.⁹⁵ Sir Henry arrived in Hobart with his sister late in February 1885, was commissioned as a judge for one year from 6th March and, to suit the convenience of the government, later had his term extended to nearly two years.⁹⁶

For some time, early in 1886, Wrenfordsley was the only judge able to dispose of court business, Giblin being overcome by illness. Fortunately for Tasmanians, there was little litigation then before the courts. Wrenfordsley's command of the law had not improved in his travels: his habit of 'playing to the gallery' had become worse. For instance, in March 1885 he presided at his first criminal sitting in Hobart. A man was charged with committing a robbery at a branch of the Bank of Tasmania, or, alternatively, with receiving proceeds of the robbery. Sir Henry gave a most prejudicial summing up—'The case was a notorious one', he said, 'he, though a stranger had heard of it'—and he recommended a verdict of guilty on the robbery charge.⁹⁷ To his surprise, the jury made up its own mind, and brought in a verdict on the lesser count.

Defamation proceedings were common in those days, and Sir Henry disposed of a number of civil cases.⁹⁸ One unusual case sought to invoke criminal sanctions for libel. The question was whether the *Tasmanian News* had defamed the character of a magistrate of Teutonic extraction who was the mining manager of the Mt Bischoff Tin Mining Company. It was commonly said that this gentleman, in exercising his magisterial powers, followed the rule of hang first and try later. The *News* wrote that 'immediately after the reading

⁹³ *Australasian*, 20 December 1884, 1181.

⁹⁴ Tasmanian State Archives, file CSD 13/82/1695.

⁹⁵ File on Wrenfordsley's claim to half salary, CO 280/392 f 745.

⁹⁶ *Mercury* (Hobart), 27 February 1885, 2; Wrenfordsley to Derby, 5 March 1885, Tasmanian State Archives, PD 1/12.

⁹⁷ *Mercury* (Hobart), 25 March 1885, 3.

⁹⁸ For example, *Walker v Smith* (1885) 7 *Australian Law Times*, 4.

of the charge, and before any plea was given, his worship in a loud . . . voice, announced to the prisoner that he 'Will give him tree munts, are you kilty or not kilty?' That was almost certainly libellous, but the judges were determined to resist a claim for criminal relief and dismissed the charge because, as Wrenfordsley put it, 'in a young community like this', the court should not 'go out of its way' to encourage such proceedings.⁹⁹

His conduct as a Tasmanian judge was once the subject of a complaint to the Colonial Office. In the 'Aldridge Will Case', a hotly contested suit that ran for thirteen days, Wrenfordsley had virtually to sit as sole judge. Giblin, who before becoming a judge had acted for some of the parties, disqualified himself from active participation, though, as the case required a full bench, and Tasmania had then only two judges, he had to be present on the bench. He took no part and simply concurred in Wrenfordsley's decision. A dissatisfied party claimed that Wrenfordsley had been influenced by Giblin to find in favour of Giblin's old clients. Such a strong protest was made to the Colonial Office that the judges had to furnish explanations. Wrenfordsley irritated the Colonial Office by the haughty and turgid nature of his report, but his conduct was found to have been beyond reproach on this occasion.¹⁰⁰

In other decisions of the full bench Sir Henry, with few exceptions, let Giblin do all the work and said no more than 'I concur' or 'I agree'.¹⁰¹ But it must have been hard for him to find the time to think about judgments when he was so busy over correspondence with the Colonial Office about his salary and his future, and with creditors about his debts. The government of Fiji was especially unsporting about his half-pay since taking leave. Because of the state of his health they demanded proof that he was 'still alive' before they would pay him anything.¹⁰² And then they made deductions on behalf of others—the account due to the Western Australian government, the balance of the fees on the patent of knighthood, and so forth. Over these seemingly innocent matters Sir Henry maintained for two years a vitriolic exchange of letters with the Colonial Office, and the govern-

⁹⁹ Ex parte Kayser: re Gill (1885) 7 Australian Law Times 50, 51.

¹⁰⁰ Strahan to Stanhope, 12 March 1886, with enclosures including an explanation of Wrenfordsley dated 5 March 1886, CO 280/392 f 75 at 82.

¹⁰¹ For example, Maa Mon Chin v Hortin (1885) 7 Australian Law Times 86; Bray v Taylor, id 108; Lawder v Swan (1886) 8 Australian Law Times 134; Commercial Bank of Tasmania Ltd v Burgess, id, 136; Westbrook v Hobart Corporation, id 137; Fysh v Rogers, id 162.

¹⁰² Wrenfordsley to Derby, 5 March 1885, loc cit note 96.

ments of the colonies concerned. Only by the intervention of the Tasmanian premier was the dispute ended.¹⁰³

It followed that the Tasmanian government did not feel disposed to renew Wrenfordsley's employment after 1886: and that was so, notwithstanding the enlargement of the bench to three, the death of Giblin, and some support for Sir Henry in the newspapers.¹⁰⁴ J S Dodds, the attorney-general, impressed upon the ministry his own desire for advancement which, together, with the government's knowledge of Wrenfordsley's financial affairs, proved to be conclusive. His improvidence was again under discussion at Downing Street at the very moment when he needed sympathy there. One of his creditors complained directly to Under-Secretary Bramston of the judge's persistent disregard of financial obligations, and Bramston demanded an explanation. Wrenfordsley wrote a pitiful reply in which he claimed to have endangered his life in bad climates attempting to obtain a 'competent income', only to find his funds devoured by the medical profession because of his sister's affliction and his own illnesses. The Colonial Office did not take kindly to that. 'He had better not have replied at all than have written this miserable letter', said one official; '[his] treatment of his creditors has been exceptionally bad' minuted another, 'he appears to have defrauded not only tradesmen but private friends who had backed him up'.¹⁰⁵

By September 1886 Sir Henry let it be known that, for want of some appointment befitting his qualifications, he would be compelled to resume practice at the bar, probably in Melbourne. No doubt he expected the Colonial Office to be shocked at the thought of allowing a judge to return to the ranks. He would much prefer, he told them, a governorship in some British colony. He had shown them, while in Western Australia, that he could administer a colony and, in his view, do it well. He was ready for similar service. Anywhere would suit him provided that it did not have 'a climate like the Gold Coast'.¹⁰⁶ He asked for a reply by telegram: but got none. After a month he wired from Hobart the simple message 'Solicit Mauritius'

¹⁰³ Tasmanian State Archives, loc cit note 96; Wrenfordsley Pension file, Western Australia, cited note 35.

¹⁰⁴ For example Australian Town and Country Journal, 4 December 1886, 1157; newspaper cuttings in CO 280/392 f 762.

¹⁰⁵ Wrenfordsley to Colonial Office, 10 June 1886, and minute paper, CO 280/392 f 751, 752.

¹⁰⁶ Wrenfordsley to Colonial Office, 24 November 1886, CO 280/392 f 758 at 759; Australasian, 11 September 1886, 508.

which was taken to mean that he wanted to be governor in the very colony he had found so uncongenial at the start of his overseas career. The Colonial Office replied: 'The post is not vacant, and it would not be possible, if it were vacant, to entertain your application for it.'¹⁰⁷

Here another of Sir Henry's patrons becomes identified. He was the Marquess of Normanby who had been governor of Victoria when Wrenfordsley was chief justice and administrator of Western Australia. Somehow they had met and become friendly. The Marquess being in England in 1886, Wrenfordsley sent a plea for his support. 'Would it be too much to ask you to give a hint to Bramston', he entreated. 'They [the Colonial Office] cannot say that I am not a popular officer', and he threw in an assortment of those ceremonious addresses that had made polite, if not wholly accurate, remarks about him.¹⁰⁸

Normanby, filled with generous sentiment, wrote a powerful recommendation of 'poor old Wrenfordsley' to Bramston. 'He has no doubt', said the Marquess, 'a considerable amount of vanity but as far as I know he has always performed his judicial work well and it seems rather hard that in his old age he should have to return to the Bar (at Melbourne) in order to get a living.'¹⁰⁹ The Colonial Office did concede that Sir Henry might be offered judicial employment 'at the first opportunity', but a governorship was out of the question.¹¹⁰ Meanwhile he might fend for himself. So, compelled to swallow some pride, Wrenfordsley packed his bags once more and imposed himself again on Sir William Robinson in Adelaide.¹¹¹

Refreshed by the gubernatorial company, but feeling anxious about his finances, Sir Henry went to Melbourne and reluctantly sought admission to the Victorian bar on April Fools' Day 1887.¹¹² The court entertained the application with similar reluctance because the papers were not in order, and he was admitted only conditionally. By July it was noted that he had been conducting a practice and, in the same month, he became a Victorian Queen's Counsel.¹¹³ But the newcomer,

¹⁰⁷ Telegram and minute paper, CO 280/392 f 754 at 756.

¹⁰⁸ Wrenfordsley to Normanby, 27 November 1886, id, f 761.

¹⁰⁹ Normanby to Bramston, 10 January 1887, id, f 760.

¹¹⁰ Bramston to Wrenfordsley, 14 January 1887, id, f 763.

¹¹¹ 'My people are in Adelaide with Sir William Robinson and I hope to join them on the 28th of December . . . [but] I do not wish to be kept in Adelaide at expense', Wrenfordsley to Normanby, loc cit note 108.

¹¹² Australasian, 2 April 1887, 652.

¹¹³ Bulletin (Sydney), 2 July 1887, 6; records in the possession of the Victorian bar.

despite his titles and his alleged popularity elsewhere, was unpopular with Melbourne's solicitors. Long out of touch with advocacy, he was outclassed by the able and distinguished men who then constituted the senior bar of Victoria. His only notable brief seems to have been from the executors of E S Parkes, superintendent of the Bank of Australasia who had been killed in a railway accident. The executors sought damages of £39,000 from the railway commissioners.¹¹⁴ But, for the most part, as a contemporary newspaper put it, Wrenfordsley 'endeavoured to earn a living by the private practice of his profession, but he proved unsuccessful as a barrister'.¹¹⁵

It followed that the Melbourne bar was highly indignant when the government announced, early in June 1888, that Sir Henry had been appointed an acting judge of the supreme court during six months' leave granted to Mr Justice Webb because of serious illness. The appointment, said Sir Arthur Dean, 'met with universal disapproval'.¹¹⁶ J H Wrixon, the attorney-general, had been at Trinity College, Dublin, and, that, perhaps, weighed in Sir Henry's favour. As the only Victorian judge with a knighthood he may have seemed equal to the office. But the bar thought otherwise. A special meeting of Melbourne barristers disapproved of his elevation over the heads of local men. At that meeting one speaker aptly described Wrenfordsley as 'a journeyman judge, who went about with robes in his carpet bag'.¹¹⁷

In the company of Victoria's senior lawyers Sir Henry seemed to be an amateur amongst professionals. He must have been so discomfited by their hostility and superior legal knowledge that his six months' stay could not have been enjoyable. He, for the most part, heard only minor cases that were not reported.¹¹⁸ He sat very rarely in the full court, but he was on the bench in the great constitutional contest *Toy v Musgrove*¹¹⁹ along with all the other judges. The plaintiff in that case was a Chinaman: the defendant was a collector of customs who had refused Toy entry into Victoria. The case itself mani-

¹¹⁴ Illustrated Australian News, 20 August 1887, 150; Argus (Melbourne), 6 June 1888, 8.

¹¹⁵ The West Australian, 22 March 1890, 2.

¹¹⁶ A MULTITUDE OF COUNSELLORS (Melbourne 1968) 113. For the appointment see (1888) 14 VLR v.

¹¹⁷ J L Forde, THE STORY OF THE BAR OF VICTORIA (Melbourne n d) 300.

¹¹⁸ Those that were reported include Donaldson v Noble (1888) 14 VLR 1021 at 1040, and Warburton v Alston (1889) 15 VLR 94 at 102.

¹¹⁹ Chung Teong Toy v Musgrove (1888) 14 VLR 349.

fested mounting concern throughout Australia about the influx into the colonies of Chinese immigrants.¹²⁰

The plaintiff claimed that he had tendered the required statutory tax to the defendant who, by order of the responsible minister of state, declined it and refused entry. The plaintiff claimed the substantial damages of £1000 which the court, by majority, awarded to him principally on the grounds that a ministerial direction could not override the express provisions of an act. The case involved four days of submissions by counsel, their vigorous arguments being fully reported in the press.¹²¹ Sir Henry's brief contributions from the bench were brushed aside by the bar and he soon took refuge in silence. His was the last, and the least of the judgments. In it he managed to divide his sympathies evenly between the parties, though he impliedly concurred with the majority of the bench.¹²²

Throughout this period, Wrenfordsley, from Melbourne or from government house, Adelaide, where he was a regular visitor, directed a barrage of correspondence to the Colonial Office. First, he wanted a pension, but the Colonial Office would not hear of that.¹²³ Second, he wanted employment. He began by writing to Lord Knutsford, then secretary of state, a type of 'open letter', a machine-printed document that he, presumably, circulated as well to other men of influence. He referred to his exigencies since leaving Fiji, his painful sense of official indifference, and his expectations of further public service. 'For that appointment', he said, 'I have been most anxiously waiting.' And he urged Lord Knutsford to 'restore me to the service in which I have a vested interest and which, certainly of my own accord, I never left'.¹²⁴ Of course, he and the Colonial Office, maintained divergent views about the termination of his imperial employment after he took up the Tasmanian position. For good measure, he added a private reminder that: 'In spite of looks, I am over sixty'.¹²⁵ With strong, closely cut hair, firm dignified features, and a penchant for good clothes, he gave no outward hint of physical or financial infirmity.

¹²⁰ For comparable cases in New South Wales, see *Ex parte Lo Pak* (1888) 9 NSWLR (L) 221; *Ex parte Leong Kum*, id, 250; *Ex parte Lau You Fat*, id, 269; and *Ex parte Woo Tin*, id, 493.

¹²¹ *Argus* (Melbourne), 11 July 1888, 5; 13 July 1888, 5.

¹²² Cited note 119, at 435.

¹²³ Wrenfordsley to Knutsford, 6 April 1888, CO 309/133 f 683. He had meanwhile declined an appointment as judge of the Leeward Islands. CO 309/132 f 262; cf CO 309/133 f 679.

¹²⁴ Wrenfordsley to Knutsford, 4 April 1888, id, f 685.

¹²⁵ Id at f 683.

In case his solicitations failed, he needed somewhere to make a living, and further practice at the Victorian bar was unthinkable. So he went to Sydney and was admitted to the New South Wales bar on 29 February 1888.¹²⁶ It was a desperate move, for Sydney's barristers disliked the intrusion of titled strangers upon their domain, and abler visitors than Sir Henry had gladly moved on rather than endure professional ostracism.¹²⁷ While in Sydney he was summoned back to Melbourne where the governor of Victoria wanted to discuss with him the Colonial Office's decision. None of the under-secretaries had supported his employment, but Lord Knutsford himself had decided to offer him a judgeship in the Leeward Islands at £800 a year.¹²⁸

Wrenfordsley rejected the offer but asked for something better. 'I could not support my family on such a salary', he said, 'It would be useless.'¹²⁹ Moreover, he had his status to consider: How could he in conscience accept a position inferior to that he had been accustomed to hold? In any event, he did not have enough money for the passage to the West Indies. But he did have enough to travel to Perth and would be delighted to go there as governor, where 'I know I would be useful and that the appointment would please the colony'.¹³⁰ His obstinancy shocked the officials at Downing Street. 'He has cut his own throat by finding that he could not live on £800 a year,' wrote one; 'We ought to be rid of him now that he has declined the offer made,' minuted another.¹³¹

No doubt he reflected upon the wisdom of his decision when, at the end of 1888, although Mr Justice Webb's leave was extended for some months, his own temporary term was not renewed, and a member of the Victorian bar took his place. Urged on by the need to have an income, Sir Henry moved to Sydney and took chambers as a barrister at Wentworth Court. On the strength of his standing as a Queen's Counsel in Victoria he was admitted to the same dignity in New South Wales with effect from 21 February 1889.¹³² Announcing his

¹²⁶ NSW Bar Roll, 15 June 1876 to 1 December 1926. I am indebted to the Prothonotary and to Mr W Farlow, secretary of the Barristers Admission Board, for access to this record.

¹²⁷ Forde, *op cit* note 117, 301: see, for example, the case of Mr Serjeant Sleigh, 6 AUSTRALIAN DICTIONARY OF BIOGRAPHY (Melbourne 1976) 135.

¹²⁸ Wrenfordsley to Knutsford, 7 June 1888 and minute paper, CO 309/133 f 688, 682.

¹²⁹ *Id* at f 688.

¹³⁰ *Id* at f 688a.

¹³¹ *Id* at f 687, 691.

¹³² List of senior counsel, NSW State Archives 4/3772, 481; Australasian 2 March 1889, 466.

appointment to the Supreme Court of New South Wales a few days afterwards, he received the congratulations of the bench. But the Sydney bar, as their custom was, froze him out: while Sydney's solicitors were not willing to trust major cases to a man they did not know. Although his name was entered in the *Law Almanac* for 1890, he had long since put his robes back in his carpet bag and gone looking for a comfortable living within the range of his limited ability.

First he went back to Melbourne where, by this time, Sir William Robinson was installed as governor of Victoria. Robinson came perilously close to harming his own standing at the colonial office by espousing Wrenfordsley's cause. In August 1889 he strongly supported Sir Henry's request to be returned to Western Australia as chief justice. 'There can be no doubt', he said 'that [the] appointment would give great pleasure to his many friends in [the] Australian Colonies.'¹³³ The Colonial Office acknowledged this without comment. Two months later Robinson sent by telegram the telling account: 'Wrenfordsley in urgent pecuniary distress failing some prospect of employment. Banks refuse further advances and will probably take steps for insolvency.'¹³⁴ Yet a further month later Robinson applied on Wrenfordsley's behalf for him to be made acting governor in Western Australia.¹³⁵ Meanwhile Sir Henry lived the anxious life of a sponger or, as the newspapers more elegantly put it, 'a life of leisure'.¹³⁶

He found enough money for a passage to England and presented himself at Downing Street just as the Colonial Office was pondering upon a *locum tenens* for Sir Alexander Onslow who had succeeded Wrenfordsley as chief justice of Western Australia. Of uncontrollable temper aggravated by illness, Onslow was another failure as a judge.¹³⁷ The press accused him of bias—especially against newspaper proprietors—and organized a petition to the Legislative Council for his removal. He was censured, and took extended leave, his brother Judge E A Stone being appointed acting chief justice by the colonial government. But Sir Henry, being an embarrassment on the doorstep of the Colonial Office, secured an imperial appointment for twelve months which displaced Stone's commission.¹³⁸ The press looked

¹³³ Telegram, 23 August 1889, CO 309/134 f 395.

¹³⁴ Telegram, 4 October 1889, id f 428.

¹³⁵ Telegram 13 November 1889, id f 488.

¹³⁶ The West Australian 22 March 1890, 2.

¹³⁷ 5 AUSTRALIAN DICTIONARY OF BIOGRAPHY (Melbourne 1974) 367.

¹³⁸ The Colonial Office minuted of Stone's protest that 'the matter is no doubt hard upon Mr Stone, who has always acquitted himself admirably in all capacities, which is more than can be said of Sir Henry Wrenfordsley', CO 18/215, f 111.

forward to the rapid approach of self government for the colony when 'the occurrence of such high-handed acts, and the infliction of such indignities, without offering excuse or reason, will be among the things which are impossible. The treatment accorded Mr Justice Stone is one wholly unworthy of the Imperial Government.'¹³⁹

Wrenfordsley made haste to Perth, for his creditors in England were already stirring,¹⁴⁰ and was sworn in on 13 May 1890.¹⁴¹ Polite addresses were made when he took his seat on the bench a few days later.¹⁴² But, generally, he was not made to feel welcome. The *Inquirer* wrote that he had, in his first judicial term, 'signally failed to secure the respect of the legal profession or the confidence and esteem of the public'.¹⁴³ The *Daily News* said such harsh things about him that he had solicitors threaten defamation proceedings and secured publication of an effusive apology.¹⁴⁴

To Sir Henry's great delight his friend Sir William Robinson returned to Western Australia as Governor in October 1890. In that month the colony's independence was proclaimed, the Chief Justice taking a leading part. He wrote that: 'The papers were pleased to say that at the [Proclamation] banquet I made the most eloquent speech ever heard in the colony.'¹⁴⁵ At that time he felt very self-assured, as he had become convinced that Onslow would not return and that he would be able to make a permanent home in Perth.¹⁴⁶ But Onslow disliked Wrenfordsley and, perhaps out of spite, soon made it clear that he would resume his seat when his leave expired.

Notwithstanding Robinson's efforts to persuade the Colonial Office to find Onslow a place elsewhere,¹⁴⁷ that gentleman would not be removed. It was Wrenfordsley who had to go. He asked to be made chief justice of Ceylon.¹⁴⁸ Instead he was offered the post of registrar of the supreme court of Gibraltar at £600 per year.¹⁴⁹ How dared

¹³⁹ The *West Australian* 15 May 1890, 3.

¹⁴⁰ Colonial Office minute in CO 18/215 f 153.

¹⁴¹ The *West Australian* 14 May 1890, 3.

¹⁴² *Id.*, 21 May 1890, 3; *Australasian*, 17 May 1890, 966.

¹⁴³ *Inquirer* (Perth) 26 March 1890, 5.

¹⁴⁴ The *West Australian* 7 August 1890, 3; *Inquirer* 2 April 1890, 6.

¹⁴⁵ Wrenfordsley to Wise, 11 November 1890, B R Wise Papers (Correspondence), Mitchell Library, Sydney, ML MSS 1327/2, 229.

¹⁴⁶ *Ibid.*: 'There is no foundation for the telegram that Onslow returns. This other way, arrangements of a different character are proceeding, I hope so, for I am on half-pay'.

¹⁴⁷ Robinson to Colonial Office, 5 December 1890, CO 18/215 f 497.

¹⁴⁸ Telegram to Wrenfordsley, 29 October 1890, CO 18/216 f 596.

¹⁴⁹ Minutes to Robinson to Colonial Office, 5 December 1890, CO 18/215 at f 497a.

they, he must have said to Robinson, to underestimate his station: He, who had been thrice a chief justice and thrice a judge; he who had administered a colonial government; and who held the dignity of a knighthood. Why, the position offered was little better than that of a clerk. He asked Robinson to decline 'on ground of inferiority of rank and insufficient pay'.¹⁵⁰ The Colonial Office replied that 'it is this or nothing'.¹⁵¹

Wrenfordsley stood down on Onslow's return and gave his time to searching newspapers and writing letters in quest of a colonial vacancy suitable to his dignity. At last, in July 1891, he found one. Chief Justice Ludlow of the Leeward Islands was retiring. Wrenfordsley wired at once for appointment to the office and, to his surprise and relief, Lord Knutsford, the secretary of state, agreed that he might have it.¹⁵²

Sir Henry left Perth in September 1891¹⁵³ and went straight to London where, as in the past, he no doubt endeavoured to seek an even better position. Unsuccessful, he sailed for Antigua in November from which time a veil is drawn upon his doings.¹⁵⁴ Many of the public records of Antigua were destroyed in an earthquake at St John's in 1959, and Sir Henry's activities there elude us. But it can be said that no appeal was taken from him in that office to the Privy Council. After ten years he qualified for a small pension and he retired to Antibes in the south of France.¹⁵⁵ He was then in poor health and, as always, finding it hard to make ends meet. In 1903 he sent a pathetic petition to the Western Australian government for a gratuity because of his 'exceptional duties' in that state; but it was rejected.¹⁵⁶ He died, unmarried and without issue, in Antibes on 2 June 1908, aged about eighty-three.¹⁵⁷

Some favourable assessments were made of Sir Henry Wrenfordsley's itinerant life. One English journal, for example, said that, '[I]t is men

¹⁵⁰ Telegram of Robinson, 20 December 1890, id, f 510.

¹⁵¹ Ibid. Robinson sent a further telegram (27 December 1890, CO 18/215 f 527) 'Acting Chief Justice cannot be induced to accept', which the Colonial Office minuted: 'So much the worse for the Acting Chief Justice'.

¹⁵² Telegram to Wrenfordsley, 13 July 1891, CO 18/217 f 759. For the confirmation of the appointment see CO 323/387 f 78.

¹⁵³ Wrenfordsley to the Colonial Office, 22, 28 & 30 October 1891, CO 354/16 (Index volume).

¹⁵⁴ Information from the public library, St John's, Antigua.

¹⁵⁵ Times (London), 10 June 1908, 13; Wrenfordsley to premier, Western Australia, 15 July 1903, Wrenfordsley Pension file, cited note 35; 125 Law Times (1908), 164.

¹⁵⁶ Wrenfordsley Pension file, loc cit.

¹⁵⁷ Death certificate cited note 3. His age is there wrongly rendered as 81.

of the calibre of [Sir Henry] who do the State most, and themselves least, good. They accept high and difficult posts when a temporary gap occurs.¹⁵⁸ But that, surely, was too generous a construction of a career that had been directed by selfishness and greed for position. It was an evil inherent in the English system of patronage that many bad officers received appointments. The Colonial Office had, however, some checks and balances in being able to move the pieces about on their imperial chess board. The worse the officer, the more frequent his moves. Hence Wrenfordsley became one of the best travelled judges on colonial service.

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¹⁵⁸ Home News (? 26 September 1889) undated clipping in Wise Papers, cited note 145, at 231; note also the comment in Philip Mennell, *THE COMING COLONY* (London 1892) 21, that '[Wrenfordsley] has been utilized as a sort of "emergency man".'

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