

THE REGRET OF SIR SAMUEL WAY

OUTSIDE the University of Adelaide on North Terrace stands the statue of the Rt Hon Sir Samuel James Way, Bart, PC, Lieutenant-Governor, Chief Justice, Chancellor of the University of Adelaide (1836-1916). It is a tribute to his long and distinguished career and the contribution he made to Australian colonial life. The son of a Bible Christian Methodist minister, Samuel Way enjoyed an excellent education, conspicuous success in general legal practice and at the bar, and attained the chief justiceship of South Australia in 1876 while still under forty years of age. Prominent on many of South Australia's educational, cultural and philanthropic bodies, he was Vice-Chancellor and Chancellor of the University of Adelaide, President of the Public Library, Museum and Art Gallery, promoted the establishment of the Adelaide Children's Hospital and helped effect the Methodist Union of 1900. He was appointed Lieutenant-Governor of South Australia for life when in his mid-50s. In less public matters, he was an astute collector of art, keenly interested in developments in natural science and a Freemason of some note - outside royalty no one in the world had held the position of Grand Master for so long. His substantial property holdings included Montefiore in North Adelaide, Kadlunga near Mintaro north of the city, and Sea View near Noarlunga in the south. Officially a confirmed bachelor for 62 years, he married Katharine Blue, a widow, in 1898. A "great man who left an enduring mark on South Australian life",¹ he loved God, the law, and life itself.

OPPORTUNITY

These achievements came as a result of much hard work. After completing his articles under Alfred Atkinson, Way was admitted to the South Australian bar on 23 March 1861. When Atkinson died not long afterwards Way took over and transformed the practice, taking on a junior and focussing his energies on becoming one of the country's leading barristers. Thereafter his practice and reputation flourished. He acted in

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1 Bray, "Way" in Ritchie (ed), *Australian Dictionary of Biography* Vol 12 (Melbourne University Press, Carlton 1990) p419.

several important matters, including the *Moonta Mines Case*² and the *Intrusion Case*,³ as well as appearing before the Governor and executive council for the amotion of Justice Boothby from the bench of the Supreme Court of South Australia.⁴ Ever industrious, Way's energy and skill gave him influence and popularity such that he was able to stand for, and win, the lower house seat of Sturt in the election of February 1875. Three months later he found himself in the office of Attorney-General after helping to facilitate a change in government. His responsibilities increased further the following year when he effectively appointed himself to the position of Chief Justice on the death of Sir Richard Davies Hanson. Way then dominated the Supreme Court for nearly forty years from 1876; between 1884 and 1903 he was only in the minority once, and even then upheld on appeal to the Privy Council. During this time he devoted much time and effort endeavouring to reform the law and the legal system of South Australia, the results of which are said to be an abiding legacy.

Attending to his hectic legal life, his philanthropic interests and the obligatory social whirl of provincial Adelaide of the long boom would have left Way with very little time to himself. However, he used what spare time he had travelling. He visited England, his birthplace, in 1869-70 when he took part in two Privy Council appeals. He toured extensively during the whole of 1891, and in 1897 he took his seat on the Judicial Committee of the Privy Council for about four months. He also made other journeys which few know about, as they are not recorded either in the *Australian Dictionary of Biography* or in any other major works about him.⁵

PRESENCE

There is no doubt that Way was fond of visiting Tasmania and had many friends and acquaintances there. One of them was James Backhouse Walker, whose diary entry for 5 March 1897 recalls entertaining "crowds of visitors over this year", recounting that:

Another visitor was S.J. Way, Chief Justice of South Australia, whom I used to know well, when he was a young

2 SA, Parl, *Papers HA* [1863] Vol 2 No 51; *R v Hughes* (1867) 1 SALR 143.

3 *R v Baker* (1867) 1 SALR 2 (note).

4 SA, Parl, *Papers HA & LC* [1867] Vol 2 No 22.

5 Eg, Hannan, *A Life of Chief Justice Way* (Angus & Robertson, Sydney 1960); Pascoe, *Adelaide and Vicinity* (Hussey & Gillingham, Adelaide 1901). However, there is some hint of them in Castles & Harris, *Lawmakers and Wayward Whigs* (Wakefield Press, Adelaide 1987) p195.

man. Somewhere before 1870, he was one of the first who discovered Tasmania as a place for a holiday - with James Smith of Melbourne ... While here, he received the honour of appointment to H.M. Privy Council ... He told me, that, if the appointment had necessitated residence in England, he would have declined it; but, that he would be sent for, only, when he was wanted for actual work.⁶

By 1897 Australia held too many friends and memories for Way to leave. Another Tasmanian friend was William Robert Giblin, Chief Justice and former Premier of Tasmania. Way was in Hobart when Giblin died in January 1887.⁷

Way was popular with some in Tasmania, so much so that when he died in January 1916 the *Tasmanian Mail* carried a full front-page portrait of him in its illustrated section.⁸ More interestingly, the accompanying obituary ran as follows:

To Masons in Tasmania he was very well known. He was present at the institution of the Grand Lodge of Tasmania, and delivered the oration on that occasion ... Sir Samuel Way was very widely known and had many warm friends here. For very many years past, dating back, indeed, to a time before he became Chief Justice, he had visited Tasmania almost every year, and he used to look forward with keen pleasure to these visits. He was always greatly interested in things Tasmanian, and his hospitality to Tasmanians who visited Adelaide was boundless.⁹

Newspaper reports of the auspicious occasion referred to reveal more about Way's southern peregrinations. The *Mercury* of 27 June 1890

6 Walker, *Prelude to Federation* (OBM, Hobart 1976) pp138-139. Receipt of the appointment while in Tasmania is verified in Way to Johns: Mortlock Library of South Australiana (MLSA), D 2556 (L). The lobbying to appoint Way was carried on in his absence by Sir Langdon Bonython: Hannan, *A Life of Chief Justice Way* pp145-150; Bonython, *A Story of the Past* (Bonython, North Adelaide 1933).

7 Way arrived in Hobart on board the steamship *Mararoa* from Melbourne on 13 January 1887: *Mercury*, 14 January 1887. He left by the same vessel some days after the funeral, bound for New Zealand: Walker, *Prelude to Federation* p42.

8 *Tasmanian Mail*, 13 January 1916.

9 As above p26.

records that he and a number of other higher Masons had travelled to Tasmania for the inauguration banquet where Way, the Most Worshipful Past Grand Warden, congratulated the Tasmanian Masons on their achievements and wished the local order all success and prosperity.¹⁰ Interestingly,

Brother Way had no objection to say a word or two more. The happiest moments of their lives were often tinged with regrets, and the visitors experienced considerable regret ... that Lord Carrington was unable to bring with him the gracious lady who shared with him so much popularity in New South Wales. (Loud cheers.) ... It was only at the last moment, however, and owing to the violence of the gale that the intention was given up. (Cheers.) They certainly had, on the voyage over, a new experience to him at least, as to what a trip to Tasmania meant. (Laughter.) He had been in the habit of visiting Tasmania, as occasion offered, during 22 years past, but only on last Wednesday did he discover what Bass' Straits could be in a gale. (Laughter.)¹¹

MOTIVE

Way's Tasmanian circle of warm friends included members of both sexes. Indeed, "[h]e was never shy with ladies", and was once described as "a charmer with ladies".¹² Moreover, his experience of 'happiness and regret' may have resulted from having to constantly leave one woman to whom he was deeply attached and loyal. They may even have married officially were it not for the social expectations of the brilliant young barrister.

Susannah Mary Gooding was born to Andrew and Lydia Gooding of Campbell Town in the colony's midlands, and christened in December 1842.¹³ Her family were humble people, but Way took "the keenest delight" in such society.¹⁴ Her father was the son of first fleet convicts

10 To mark the institution of the Grand Lodge of Freemasons of Tasmania on 26 June 1890 there was a ceremony of installation in the afternoon and a grand banquet in the evening which was followed by a ball. Way's address at the ceremony can be found in Grand Lodge of Tasmanian Freemasons, *History of Freemasonry in Tasmania* (The Grand Lodge, Launceston 1935) pp69-73.

11 *Mercury*, 27 June 1890.

12 Hannan, *A Life of Chief Justice Way* p80; *The Austral*, 6 December 1890.

13 Tasmania, Registrar-General's Department, *Campbell Town Births 2222/1843*.

14 Hannan, *A Life of Chief Justice Way* p82.

from Norfolk Island¹⁵ and took what work he could get. He described himself variously as a sawyer, farmer, carter and labourer.¹⁶ Her mother was a convict and, in the vernacular, she had form. She was transported from England for 14 years for forging bank notes, the gaol report describing her as "very impudent".¹⁷ In the colony she was cited for 24 other infractions of the system ranging from drunkenness to riotous conduct. In the end she was killed by her husband while she was drunk.¹⁸ Susannah once described herself as "a servant living in the country",¹⁹ and her four siblings carried on similar service trades and occupations. Yet despite their differences, social and otherwise, there is circumstantial evidence which suggests that Susannah Gooding and Samuel Way met in the mid-1860s and formed an intimate, lasting relationship.

METHOD

Way occasionally travelled to Melbourne,²⁰ where he would catch a boat directly to Hobart, as in 1887. Alternatively, he would take one to Launceston and from there to Hobart by stagecoach, or via the Tasmanian Main Line Railway after it opened in March 1876.²¹ Campbell Town, where the Goodings lived, was used as a stop for both.²² Perhaps Way first made this trip to take in the Tasmanian countryside and meet the locals,²³ as many mainlanders like to do. He may have been following the precedent set by Sir John Jeffcott, South Australia's first judge, who found

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- 15 Archives Office of Tasmania (AOT), correspondence file for Andrew Goodwin.
 16 In his children's birth and christening records: Tasmania, Registrar-General's Department, *Campbell Town Births* 6634/1835, 1140/1840, 1914/1842, 2222/1843.
 17 AOT, CON 40/5/47.
 18 Tardif, *Notorious Strumpets and Dangerous Girls: Convict Women in Van Diemen's Land, 1803-1829* (Angus & Robertson, North Ryde 1990) pp488-490. An inquest was held into her death and Andrew was sentenced to six months imprisonment for manslaughter: AOT, SC 195/41/4245.
 19 AOT, *Register of Baptisms Solemnised in St George's Church* NS 590/1/2063.
 20 Samuel Way diaries and letter books: MLSA, PRG 30/1, 30/5.
 21 MLSA, PRG 30/1/2, 14-15 February 1880.
 22 Page's Royal Mail Coach stopped there in the mid-1860s. The night coach departed Launceston 5.50pm daily, except Saturday, stopping Campbell Town 10.40pm. The day coach departed Launceston 5am, stopping Campbell Town 9.45am: *Walch's Almanac* (Walch & Sons, Hobart 1867) p81. The first Tasmanian Main Line Railway timetable can be found in *Walch's Almanac* (Walch & Sons, Hobart 1876), and allowed for a similar convenient night stopover.
 23 Campbell Town also had a Methodist chapel. However, *The Evangelist*, the Methodist newspaper of the time, does not record his visits; nor does *The Tasmanian Methodist* of 1916 record an obituary.

himself betrothed to a Tasmanian connection after spending some time there.²⁴ He might have even preferred the cool weather as his diaries suggest. Yet there is little doubt that he returned thereafter for over twenty years.²⁵

The Tasmanian births, deaths and marriages register records that Susannah Gooding gave birth to five children between the years of 1869 and 1881. The father's name for all of them is given as unknown, so their surnames have been recorded as Gooding.²⁶ They were all baptised in St George's Anglican Church, Battery Point, Hobart, where the minister, George Banks-Smith, asked no questions. These records, along with various others, provide some illumination as to what Way did during his holidays.

James Samuel Gooding, a notable choice of names, was conceived around late October 1868, born on 16 July 1869 and baptised on 6 December 1871.²⁷ Whereas Susannah's other children were all baptised within four months of their birth, usually during the Australian summer, thirty months and two summers separated James Samuel's birth and christening. This delay can be explained by Way's movements during that time. From May 1869 to April 1870 he travelled to England to holiday and take part in two Privy Council appeals. On his return he found his practising partner, James Brook, in poor health and in need of a long holiday himself, which he took the next summer. The practice was a demanding one and Way had to stay in Adelaide and oversee its running.²⁸ However, he was in Tasmania when the boy was eventually baptised in late 1871.²⁹ James Samuel died in 1895, and the death certificate records his father's name as James Samuel, gentleman.³⁰

Way's letter books show that he left Adelaide in early December 1871 and holidayed in Victoria and Tasmania before arriving home again on 19

24 Hague, *Sir John Jeffcott* (Melbourne University Press, Melbourne 1963) pp61-64, 112-115; Castles & Harris, *Lawmakers and Wayward Whigs* pp59-60.

25 MLSA, PRG 30/1/3-10.

26 Tasmania, Registrar-General's Department, *Hobart Births* 499/1869, 2895/1872, 866/1874, 2534/1877, 3191/1882.

27 AOT, NS 590/1/2063, when his date of birth was given as 19 October 1869 and the father's name as "unknown".

28 Hannan, *A Life of Chief Justice Way* pp79-86; Way to his "cousin Emma": MLSA, PRG 178/2, 21 May 1871.

29 See text accompanying fn31.

30 Victoria, Registrar-General's Department, *Melbourne Deaths* 6374/1895.

January 1872.³¹ Susannah's next child was conceived around early January 1872 and born on 4 October. He was baptised Frank Brook Way Gooding on 4 December 1872, and the parents' names given as Samuel and Susannah Mary.³² The boy's unusual middle name was the same as that of Way's law partner, whose untimely death at the age of 32 occurred not two months before the birth, and whose passing "was a great loss to Way".³³ Frank Brook Way died in 1902, and the death certificate records his father's name as James Samuel, gentleman.³⁴

The year after, Way travelled to Melbourne and Hobart again, arriving there around the time of Frank's baptism.³⁵ In a letter written soon after returning to Adelaide he described his pleasant holiday: "I was away between five and six weeks and had quite my accustomed quota of enjoyment in my long vacation travels."³⁶ That sentence can mean nothing or everything. Way left Adelaide on 6 January 1874 and returned on 12 February 1874.³⁷ Alfred Edward Gooding was conceived around early February 1874, was born on 5 November 1874 and was baptised on 17 March 1875.³⁸ By February 1875 Way had been elected to the Eighth Parliament of South Australia, but as it did not open until 6 May he had plenty of time to attend to his legal affairs as well as a March baptism in Tasmania. For most of his early life, the boy's legal guardian was RC Norman, secretary to the Board of the Adelaide Children's Hospital from 1879 to 1884, of which Way was President from 1876 to 1915.³⁹

Susannah's next child was born on 9 January 1877, indicating a conception date of around early April 1876. The second session of the Eighth Parliament closed on 30 November 1875 and the third session opened on

31 Way to Atherton: MLSA, PRG 30/5/2, January 1872; Way to Emma: MLSA, PRG 30/5/2, 2 February 1872.

32 AOT, NS 590/1/2089. The father's surname was "unknown".

33 Hannan, *A Life of Chief Justice Way* pp76, 86.

34 Victoria, Registrar-General's Department, *Melbourne Deaths* 1659/1902.

35 Way to Thorne: MLSA, PRG 30/5/2, 31 January 1873.

36 Way to Thorne: MLSA, PRG 30/5/2, 27 February 1874; see also Way to Emma: MLSA, PRG 178/2, 28 February 1874.

37 Way to Thorne: MLSA, PRG 30/5/2, 27 January 1874; Way to Emma: MLSA, PRG 30/5/2, 28 January 1874.

38 AOT, NS 590/1/2141. Child recorded as "illegitimate".

39 (1881) 1 *The Australasian Medical Gazette* 47; Gibbney & Smith (eds), *A Biographical Register, 1788-1939* Vol 2 (Australian Dictionary of Biography, Canberra 1987) p144. Alfred's matriculation certificate notes his father's address as 58 Russell Street, Melbourne, which was the office of the Trained Nurse's Agency, run by Mrs Norman, and the office of the Secretary of the Alfred Hospital, Mr RC Norman.

26 May 1876. However, Chief Justice Sir Richard Davies Hanson died on 4 March 1876, before Parliament reconvened. As the attorney-general of the day, Way recommended himself to Cabinet for the position, which was approved.⁴⁰ He took his seat on the bench of the Supreme Court on 27 March 1876, the first day of the first law term of that year, and was duly sworn in. Yet according to the law reports of the *South Australian Register* he did not sit again until 22 April, the last day of the first term.⁴¹ Susannah's child was baptised Florence Elizabeth Jane on 14 April 1877.⁴² Way himself had three sisters, Florence, Elizabeth and Jane.

The duties of being Chief Justice must have weighed heavily on Way. Five years elapsed until Susannah's last child was conceived in mid-February 1881, nearing the end of the Supreme Court vacation for the summer of 1880-81. The *South Australian Directory* notes that the vacation dates were from 25 December 1880 to 25 February 1881 and that the first law term for 1881 began on Monday March 28.⁴³ Moreover, Way's diaries reveal that he stayed in Melbourne with Susannah during the whole of February.⁴⁴ By this time she had assumed the surname of White.⁴⁵ Susannah returned to Tasmania for the birth of her last child on 14 November 1881, at which news Way rejoiced. His diary carried a prominent entry a few days later: "News of birth of Mrs White's son on 14th inst[ant]."⁴⁶ This last addition to the family was baptised Edward Rowden on 8 February 1882.⁴⁷ Way had a brother Edward, and his

40 South Australian Archives (SAA), GRG 40/1/10. He was supposedly in attendance at the meetings of the Executive Council on both 8 and 18 March 1876, the latter being the occasion of his appointment to the position by the Governor. Interestingly however, two pages of minutes from the second meeting are missing.

41 *Register*, 24 April 1876 p3. He sat on the case of *Poole v Lyons* reported in (1876) 10 SALR 1.

42 AOT, NS 590/1/2202. Child recorded as "illegitimate".

43 Boothby, *The Adelaide Almanac and Directory for South Australia* (Williams, Adelaide 1880 & 1881).

44 MLSA, PRG 30/1/3, January - March 1881.

45 Susannah's sister Belinda married George Henry White, but not before having an ex-nuptial child herself: Tasmania, Registrar-General's Department, *Hobart Marriages* 190/1862; Tasmania, Registrar-General's Department, *Campbell Town Births* 695/1860. Also, Susannah's brother Andrew married a Margaret White: Tasmania, Registrar-General's Department, *Campbell Town Marriages* 37/1862. Another inter-family marriage would hardly have been remarkable, so Susannah White would have gone virtually unnoticed.

46 MLSA, PRG 30/1/3, 18 November 1881.

47 AOT, NS 590/1/2146.

maternal grandfather's surname was Rowden.⁴⁸ When Edward married in 1917, his father's details were recorded as James White, lawyer, deceased.⁴⁹

COVER-UP

Samuel and Susannah's relationship had to be kept secret for a variety of reasons, not least because of the expectations placed upon Way by his respectable friends and relatives. To facilitate this he may have assumed the alias of White as Susannah had done and their children did later. The covert nature of the liason made for some cryptic records, where words mean nothing or everything. Way arrived in Hobart on Sunday 15 February 1880, and his diary entries for the next few days read as follows:

Drove to the quarters at Beaulieu⁵⁰ ... Dined at Beaulieu and delivered books at the Terrace ... After to Fysh's⁵¹ and after a call at the Whites home to bed ... Supped at the Fysh's - and called on the Ws after ... Dined and spent evening with Ws at Beaulieu ... Spent evening very pleasantly with the family.⁵²

When the family were moved to Melbourne in 1881 he visited them there too, keeping up the charade as his diary entries show: "M[ornin]g spent with the Ws ... Carlton am, F[rank] ill."⁵³ In 1883 he "went to see the Ws - Ed[ward] there and Frank and Alf[red] came in before I left".⁵⁴ The next day "James Samuel came from Geelong" and two days later Way lunched with all his nearby "Parkville friends".⁵⁵ When he left for Adelaide he mused into his diary: "Thus ended one of the quietest and one of the

48 MLSA, PRG 178/2.

49 Victoria, Registrar-General's Department, *Melbourne Marriages* 7405/1917.

50 Beaulieu House (now Lumeah) on Hampden Road, Battery Point, was a short walk from Susannah's residence in Fitzroy Place, Hobart. During Way's visits it was a boarding house where "families and visitors from the country and adjacent colonies will find all the privacy, quiet, and comfort of an English home": *Walch's Almanac* (Walch & Sons, Hobart 1875) p30; *Mercury*, 15 February 1876.

51 Philip Oakley Fysh was Treasurer and later Premier of Tasmania: Nairn & Serle (eds), *Australian Dictionary of Biography* Vol 8 (Melbourne University Press, Carlton 1981) p602.

52 MLSA, PRG 30/1/2, 15-22 February 1880.

53 MLSA, PRG 30/1/3, 27 January - 16 February 1881.

54 MLSA, PRG 30/1/5, 27 April 1883.

55 MLSA, PRG 30/1/5, 28-30 April 1883.

pleasantest holidays I have had in Melbourne."⁵⁶ Later on, however, the diary entries became more frequent - numerous mentions are made of luncheons, dinners and evenings at the Whites', and how he went 'to Parkville and spent a couple of hours with Su^s White and the boys'.⁵⁷

Although the relationship was secret Way was loyal; he returned 'as occasion offered', which meant almost every year. Between 1879 and 1889 he travelled to see his family annually except for 1886.⁵⁸ Moreover, he made sure that they had good lodgings and that Susannah had some means of supporting herself and the children. In 1872 Way moved his family from the Tasmanian midlands to Hobart and set them up in a house in Brisbane Street. In 1875 they moved in with Susannah's father in Murray Street and then in 1878 Way leased smart premises for them in Fitzroy Place.⁵⁹ The young family were then moved to Melbourne in 1881, where he leased a house on the east side of Rathdowne Street, Carlton, between Palmerston and Pitt Streets. Susannah ran a small millinery business from there.⁶⁰ He then organised more substantial business premises for her on the corner of Grattan and Lygon Streets sometime in 1883. While there she may have worked as a milliner to some of Way's rich and famous friends, who perhaps knew of their relationship.⁶¹ During this time he boarded in houses conveniently located around the corner from his family - next to, and sometimes in, what used to be the Rathdowne Melbourne.⁶² In 1886 he moved Susannah and her

56 MLSA, PRG 30/1/5, 7 May 1883.

57 MLSA, PRG 30/1/6-11; 30/1/10, 23 September 1888.

58 MLSA, PRG 30/1/1-11.

59 *Hobart Town Gazette* valuation rolls for 1872-1879; AOT, NS 590/1/2063, 590/1/2089, 590/1/2141, 590/1/2146.

60 Sands & McDougall, *Melbourne and Suburban Directories* (Sands & McDougall, Melbourne 1880-1882). James Samuel stayed in Hobart, leaving the Hutchins School in June 1882: AOT, *The Hutchins School Register* NS 36/101. For possible reasons for the move see fn69.

61 After Susannah died in 1888, Mrs White's millinery business in Fitzgibbon Street, Parkville, disappeared from the Sands & McDougall *Directories*. However, another one of the same name appeared in the Block, the fashionable shopping precinct off Collins Street, for the first time. The advertisement for it claimed the distinguished patronage of the Countess of Hopetoun and the Countess of Kintore, the wives of the Victorian and South Australian governors respectively. Way was quite close to both.

62 Sands & McDougall, *Directories* for 1883-1885. It was a boarding house then too. In fact, his loyalty may be questioned because he "frequently considered moving into a hotel to escape 'domestic tyranny'": Hirst, *Adelaide and the Country, 1870-1917* (Melbourne University Press, Carlton 1973). However, this may well relate to the problem of securing good domestic help experienced by such as Way.

father to a terrace house in Fitzgibbon Street, on the other side of Royal Parade, Parkville, and again set himself up just around the corner, this time in Story Street.⁶³ The frequent moving around with a young family must have been hard work, but it was necessary to preserve some measure of anonymity. Way would not have had to put his name to any documents in order to achieve protection of the leases against the owner of the land, as leases for more than three years had to be in registerable form in Tasmania and Victoria.⁶⁴ Those for less it was not the practice to register in Victoria, and in Tasmania no formalities at all were necessary in order to achieve protection.⁶⁵

Way's support extended to providing for the children as well, and Way made sure that the boys had a good education. The eldest, James Samuel, was enrolled at the Hutchins School on 23 July 1880, considered to be one of the better in Hobart.⁶⁶ After they moved to Melbourne, the boys were sent to what was then Carlton College on Royal Parade and later to Geelong Grammar School, where many of Australia's rich and famous sent their sons.⁶⁷ With this academic provision, a couple of the boys themselves went on to achieve distinction. Alfred Edward (Rowden) and Edward Rowden, who both took the surname of White along with their mother and siblings, became respected Victorian medical practitioners, studying at the University of Melbourne and serving in the medical corps

63 Sands & McDougall, *Directories* for 1886-1890. Way moved into his new house sometime before this however; his diary for 1884 notes his new address: MLSA, PRG 30/1/6. Andrew Gooding died in 1885, aged 75, at the residence of his son-in-law, Mr John White, Storey Street, Parkville: *Tasmanian Mail*, 21 March 1885 p16; Victoria, Registrar-General's Department, *Melbourne Deaths* 672/1885.

64 *Real Property Act* 1862 (Tas) s47; *Transfer of Land Act* 1866 (Vic) s75.

65 Robinson, *Transfer of Land in Victoria* (Law Book Company, Sydney 1979) p269; Hogg, *Australian Torrens System* (William Clewes, London 1905) p812.

66 AOT, *The Hutchins School Register* NS 36/101. His birthday and age coincide closely with the information in the *Tasmanian Pioneers Index* and the birth and baptism records. The parent's name was given as Mr John White, 6 Fitzroy Crescent, Hobart.

67 Alfred Edward joined his two elder brothers, James Samuel and Frank Brook, when he entered Geelong Grammar: University of Melbourne Archives, *Rowden White Papers* 1/2. Edward Rowden then entered Geelong Grammar on 12 February 1894: [1958] 2 *The Medical Journal of Australia* 811 at 812. A fellow researcher has sighted an unpublished manuscript of Sir Herbert Mayo, a former student of the University of Melbourne, in which the author stated that he met two of the White boys, his fellow students, going to meet their father who was arriving at the Spencer Street railway station. He then witnessed the meeting between the boys and Samuel Way and heard them call him father. Unfortunately, the whereabouts of this manuscript cannot be traced at present.

during the two world wars.⁶⁸ Alfred Edward's distinguished career was recognised by a knighthood and gave rise to a flurry of patronage, and he is responsible for the Rowden White Library located in the Union Building at the University of Melbourne. The original bequest was quite small, some 400 volumes. However, a number of them are on the history of South Australia and Tasmania, some of the older books bear the imprint of Rigby's Booksellers, King William Street, Adelaide (just down the street from the Supreme Court), a couple have front end pages noticeably torn out, and one is the Hannan biography of Sir Samuel Way.⁶⁹ Way also executed post-obit bonds in favour of Alfred and Edward, his two remaining sons, in 1914.⁷⁰ Such instruments provide for the payment of a sum of money after the death of a specified person, in this case £2,500 to each of the men on the death of Way, with interest thereon at 5% pa calculated from the expiration of one year after that time. These debts are paid out of the estate before it is sworn, which could help explain why Way's estate came in at £22,108 and not the £55,000 Hannan would have us believe.⁷¹

Moreover, Way cared for de facto members of his new family as well. Susannah had already borne two children before they met in 1867, and these he treated as his own. John Andrew, born in June 1865 to Susan Godding,⁷² also assumed the surname of White. He lived with the rest of the family and was educated at Scotch College, Melbourne, between 1882 and 1885.⁷³ Lydia Maria, born on New Years Day 1867,⁷⁴ also lived with the family in Hobart, Carlton and Parkville. She was married to Herbert

68 For an obituary of Edward Rowden, see [1958] 2 *The Medical Journal of Australia* 811.

69 As above fn5. Another book entitled *The Criminal* bears the following inscription on one of the end pages: "What phantoms we are and what shadows we pursue." On his death in 1963 Sir Alfred also left some personal papers to the University, and an informal account of his early life written by him confirms the substance of the information about his siblings given above. In addition it notes that he was a sickly child while at school in Tasmania, thus "it was considered that a change to a warmer clime would be more beneficial to my health". However, there is a conspicuous absence of information about his parents: University of Melbourne Archives, *Rowden White Papers* 1/2.

70 MLSA, PRG 30/22. The other two boys had died in their twenties: Victoria, Registrar-General's Department, *Melbourne Deaths* 6374/1895, 1659/1902.

71 *Australian Dictionary of Biography* research file for Way.

72 Tasmania, Registrar-General's Department, *Hobart Births* 7817/1865.

73 Matriculation exam entry records.

74 Tasmania, Registrar-General's Department, *Hobart Births* 8985/1867; AOT, NS 590/1/1984. The father's name in the baptismal register is recorded as John Dagg, of whom no records exist.

Charles Bundy in 1887,⁷⁵ but not before having a child to an 'unknown' father herself.⁷⁶

Way was devoted to his family; indeed it seems he kept photographs of them in his chambers.⁷⁷ Further, before Susannah died in Carlton in 1888 he visited her in her last days. He solicited the medical help of his brother-in-law, Dr Edward Campbell: "Ascertained from him the state of affairs at Argoed Terrace - shadow of death in household."⁷⁸ Judicial business then called him to Sydney for a week, and he arrived back too late.⁷⁹ Alighting the train on Friday 21 September in Melbourne, he found a letter waiting for him at the Australia Club

with sad news of death of my dear S on Wednesday at 10.20 pm. On account of this bad news I excused myself from going to Lady Loch's musical with the V[erdon]s and instead went to Parkville where I saw Jno & James, Frank & Alf & the dear remains thrice.⁸⁰

Way deeply missed her. He experienced a virtual nervous breakdown the following year, usually attributed to overwork alone. Two years later he embarked on a grand tour lasting 15 months, claimed to be his first long holiday in 15 years.

After Susannah died he waited another ten years before officially marrying on 11 April 1898, his 62nd birthday. Katharine Blue, a 44-year-old widow with a grown family and the daughter of a respected Adelaide medical practitioner, was for some a more appropriate choice for someone of Way's station and reputation. It was only then, in the knowledge of a legal marriage and with no chance of further issue, that he accepted honours in the form of South Australia's first baronetcy, which would pass to his heir-at-law were there one. His stated aim in waiting so long before accepting

75 Victoria, Registrar-General's Department, *Melbourne Marriages* 6055/1887. This person is no relation to Sir William Bunday, later a justice of the Supreme Court of South Australia.

76 Victoria, Registrar-General's Department, *Melbourne Births* 32075/1887.

77 Information orally given to Alex Castles. They were said to have been found in a drawer of Way's desk in the Supreme Court.

78 MLSA, PRG 30/1/10, 8 September 1888. Argoed Terrace was the house in Fitzgibbon Street, Parkville.

79 Susan Mary White, born to Andrew and Lydia Gooding, died at the age of 41 (in fact 45) at Carlton: Victoria, Registrar-General's Department, *Melbourne Deaths* 8809/1888; MLSA, PRG 30/1/10, 23 September 1888.

80 MLSA, PRG 30/1/10, 21 September 1888.

such an honour was because he was "neither rich enough nor ambitious enough to throw away money in pedigree hunting",⁸¹ but it was taken with some haste less than a year after his marriage. Thus although he had been clamouring for high honours for some twenty years, his refusal of a basic knighthood three times between 1876 and 1881 (on the ground that he wanted a KCMG) and his refusal of a KCMG in 1898 (on the ground that as a Privy Councillor and Lieutenant-Governor he merited a GCMG) may have been a clever and calculated ruse.⁸²

CONSEQUENCES

The experiences of happiness and regret gained through family life flowed over into Way's work. For example, in many of the cases he presided over involving women and children his judgments are compassionate and sometimes even progressive.⁸³ Although he did not seriously challenge the Blackstonian notion of 'ownership' of the wife by the husband,⁸⁴ his judgments often ameliorated the harsh effects of the rule, particularly in cases of desertion, property ownership and maintenance. In such cases he often gave the leading judgment with which the other justices would simply concur.

Way's experiences also gave him some impetus for law reform. In particular, while Chairman of the Royal Commission into the administration of the *Destitute Persons Act* 1881 (SA) he made several important recommendations. It was a subject that interested him in various ways, and he even travelled to NSW and Victoria at his own expense to take evidence during the two and a half years the Commission sat from May 1883. In Parliament he was reported to be "engaged every spare moment in getting information to prepare a final report".⁸⁵ The report, which he drafted entirely by himself, "was one of the most comprehensive and detailed papers ever presented to the Parliament of

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- 81 Personal correspondence, quoted in Hannan, *A Life of Chief Justice Way* p182.
 82 Howell, "More Varieties of Vice-Regal Life" (1981) 9 *Journal of the Historical Society of SA* 1 at 49-50, fn149. *The Bulletin* put it somewhat differently: "Australian knights have invariably fallen from democratic grace through wifely persuasion ... [H]ad not Mr Way, the SA Chief Justice, been free from matrimonial shackles it is probable that long ere this the brand of Imperialism would have been placed upon his brow": *The Bulletin*, 6 January 1894 p10.
 83 See, eg, *McFie v Marsh* (1876) 10 SALR 185; *Gilbey v Stanton* (1880) 14 SALR 64; *Painter v Hardy* (1886) 20 SALR 57; *Myers v Myers* [1913] SALR 180.
 84 Blackstone, *Commentaries on the Laws of England* Vol 1 (Garland Publishing, New York 1978) pp430-433.
 85 SA, Parl, *Debates* HA [1 October 1885] Col 997.

South Australia",⁸⁶ and with the minutes, evidence and appendices came to over 650 pages.⁸⁷ It was particularly scathing of the conditions under which destitute and delinquent boys were incarcerated aboard the hulk *Fitzjames* anchored off the Largs Bay jetty, and also of the forced labour that unmarried mothers of the Lying-in Home on North Terrace were required to perform for six months after they gave birth. Way recommended the centralisation of what welfare assistance existed at the time, resulting in amendments to the *Destitute Persons Act* which provided for the establishment of a State Children's Council and for the misdemeanor of unlawful desertion.⁸⁸ He was a de facto husband and father to many.

The inquiries made by the commission into conditions at the Lying-in Home and on the hulk *Fitzjames* were not contemplated at the time the members were appointed; they began and were carried on mainly because of Way's indignation at the cruel and inhuman treatment of the unfortunate women ... and of the boys ... Way was fond of children, and was moved to pity and horror at the sight of the boys' pallid faces, their insufficient food and cramped quarters, and above all by the contrast between the happy children playing on the beach within full view of the little prisoners, who were not allowed ashore. Perhaps he remembered the story in the *Aeneid*, about the pallid ghosts of the unburied dead in Hades who could not cross the Styx, and in despair held out their hands "with longing for the farther shore".⁸⁹

Perhaps he remembered his own young family, prisoners on the other side of the straits of non-convict haughtiness, who were not allowed into his life for one reason or another.

INSPIRATION

Way kept some high profile company while visiting his family in Melbourne. On many occasions during his trips he dined at Government House, the Australian Club and with Redmond Barry, the Victorian judge with whom he had much in common. In fact it seems Way may have

86 Hannan, *A Life of Chief Justice Way* p117.

87 SA, Parl, *Papers HA* [1885] Vol 4 No 228.

88 *Destitute Persons Act Amendment Act 1886 (SA)* ss2, 20.

89 Hannan, *A Life of Chief Justice Way* p121.

modelled himself on Barry, who was some 20 years older and is often mentioned in Way's diaries and letter books.⁹⁰ Both men were originally from the United Kingdom, had similar backgrounds, worked hard and were appointed to the bench at an early age. They shared a similar disposition toward cultural philanthropy, involving themselves in universities as chancellors, setting up public libraries and art galleries, horticultural societies, philharmonic societies, royal societies and even promoting hospitals. They moved in similar social circles, frequenting the same clubs in Melbourne and lunching in the same distinguished company. It is possible that Barry introduced Way to James Smith, the Melbourne *Argus* art critic, who then accompanied Way to Tasmania more than once.⁹¹ When Barry died Way exclaimed into his diary: "What a loss! Without him Melbourne to me will seem quite deserted."⁹²

Moreover, some of their other predilections were remarkably alike; so much so that Way's first Melbourne residence was just down Rathdowne Street from Barry's, who also kept his mistress of many years, Louisa Bridget Barrow, a short walk away through Carlton Gardens.⁹³ Barry sent his son Nicholas to school in Campbell Town in Tasmania, where Susannah White originally came from. Neither couple married officially.

Perhaps Barry felt that her birth - the daughter of peasant farmers - was not worthy of an official alliance with one descended from the noble line of the Barrymores. No doubt he feared she would not be accepted in the exalted colonial social circles in which he moved - other wives of lowly or dubious social position had suffered just that fate in Melbourne.⁹⁴

Perhaps Way had learned to feel the same, and perhaps with some reason. His predecessor, Chief Justice Hanson, was cruelly ostracised for years by much of respectable society in South Australia because he had married his housekeeper. A delegation, led by Morphett, Fisher and Bishop Short, had waited upon Governor Daly stating that they must decline all invitations to Government House social functions if Hanson and his wife were to be

90 See MLSA, PRG 30/1/1-11. On Barry generally, see Galbally, *Redmond Barry: An Anglo-Irish Australian* (Melbourne University Press, Melbourne 1995).

91 See text accompanying fn6; Galbally, *Redmond Barry* pp141-142, 169-170.

92 MLSA, PRG 30/1/2, 23 November 1880.

93 Galbally, *Redmond Barry* pp103-104.

94 As above p101.

invited.⁹⁵ Way would have been well aware of this, as he would have been of the ostracism which befell Justice Montagu in Hobart and Justice Lutwyche in Brisbane when they married their widowed housekeepers.⁹⁶

Such behaviour suggests the possibility of a systematic imitation of British upper class *mores* on the part of the colonial elite such as Way.⁹⁷ He adored Britain, its people, its customs, its institutions and even its weather. He thought of it as home, and of himself as eminently British. It is not insignificant that he was the first judge to accept appointment to the Privy Council, and was outspoken for the retention of appeals to it during the lead-up to Federation.⁹⁸ His desire to replicate the best of things British in the antipodes may explain why he entertained such notions of sexual relations as he did. It may explain why he refrained from marrying one below his social station - perhaps to avoid embarrassment for himself and his family, or even to maintain the purity of the Way line. It may even explain why some thought of him as the perfect example of what a knight should be, as alluded to in his memorial service eulogy given by his pastor of 14 years, the Reverend Henry Howard.

Fortunately for this community, although at great expenditure to himself of physical and mental force, the late Chief Justice placed a liberal interpretation upon the traditional restrictions to his freedom ... [N]o more chivalrous champion of the weak and defenceless than Samuel James Way ever buckled sword or took the field ... as it stood expressed in Tennyson's ideal Knight of whom our own Sir Samuel was so fine a type:

Who revered his conscience as his King,
Whose glory was redressing human wrong,
Who spake no slander, nay, nor listened to it,
Who loved one only and who clave to her.

95 See Daly's confidential despatches to the Colonial Office in London: SAA, GRG 2/6, 2/8, 2/14.

96 See, eg, Pike (ed), *Australian Dictionary of Biography* Vol 5 (Melbourne University Press, Carlton 1974) p111.

97 As in Pearl, *The Girl in the Swansdown Seat* (Horwitz, Sydney 1969).

98 Way, *Confidential. Some Observations on the Provisions of the "Draft Bill to Constitute the Commonwealth of Australia" with respect to Appeals to the Privy Council* (WK Thomas, Adelaide 1900). See also Castles & Harris, *Lawmakers and Wayward Whigs* pp237-238.

The temptation must, however, at times have presented itself both through happenings within and inducements without to sever his connection with the church of his fathers ... It was his religion that fed and fertilised the whole round of his relations, and no one knew better than he that to neglect its culture would have been to impoverish them all.⁹⁹

REGRET

The experience possessed by Sir Samuel Way was broader in scope than the annals of history have recorded until now, even though anecdotes of his personal life have long been whispered. Thus it is possible that he was speaking from experience when, during the address to his brother Freemasons in 1890, he said that the happiest moments of one's life were often tinged with regrets. It had been less than two years since Susannah died. His experience, like most others, when spun into form and woven in imagination and conversation, became history. Yet much history of happiness and regret is suppressed and distorted, forcibly and otherwise, especially when those involved consider it to reflect what is sometimes called the seedier side of life. In revealing some lesser known aspects of Way's life, this article seeks not to moralise but to demonstrate the compassionate nature of a man once described as "autocratic, and given to favouring those who pampered his ego".¹⁰⁰

However, the subject of Way's regrets remains unclear. It is unlikely he regretted the experiences provided by his own family as his loyalty, support and fidelity toward them shows. What he may have regretted was the secrecy surrounding them, including its reasons and its results, the illumination of which reveals a more interesting person, and a deeper appreciation of the context in which he lived and worked. Way was a Victorian gentleman, even down to the contradiction of his public persona by his private life. In fact, the public overlaid the private, much like his scarlet robe trimmed with ermine concealed the fact that its wearer was in charge of a judicial system which espoused home-grown law.¹⁰¹ The

99 *Advertiser*, 17 January 1916 p9.

100 Castles, Ligertwood & Kelly (eds), *Law on North Terrace* (Faculty of Law, University of Adelaide, Adelaide 1983) pp10-11.

101 See Castles & Harris, *Lawmakers and Wayward Whigs* ch6. It seems he loved dressing up: "No sight in Adelaide has ever equalled that of Chief Justice Way in the official uniform of a Lieutenant-Governor, with cocked hat, knee-breeches and sword complete": *The Bulletin*, 6 January 1894 p10.

question is whether Way acquiesced in such a cover-up out of concern for himself, his family, or because those around him required it. It is quite possible that he struggled long with the dilemma posed by the circumstances he found himself in, especially when combined with the spiritual strictures impressed upon him from a young age. Yet it seems that he took the easy option.

The biographer's routine work consists of pursuing a specific identity through the library catalogue, just like any other dead soul. Reading a sentence during that process can mean nothing, and yet it can mean everything, especially if the biographer has happened across information previously concealed, for one reason or another, and perhaps of some moment.¹⁰² Thereafter, the sentence comes alive with images, narrative, meaning and life. Actions previously thought to be baffling make sense, and omissions either do the same or are filled with the prospect of further research. For those interested in pursuing such a calling, cultivate a sense of narrative curiosity and an ability to imagine based on a working knowledge of human nature. And don't keep a diary.

102 For an excellent fictional discussion of this process, see Byatt, *Possession: A Romance* (Vintage, London 1990).

