

JUDICIAL INABILITY ON MISBEHAVIOUR

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By Section 12 of 31 Vic No. 30, the District Courts' Act of 1867, the Governor in Council was entitled to remove a Judge for inability or misbehaviour, provided that the Judge should first have been given at least 21 days' notice, and have been given an opportunity of being heard in his defence.

By Order in Council on the 3rd January, 1878, appearing in the Queensland Government Gazette of the 5th January, 1878, it was advised that "His Excellency the Governor, with the advice of the Executive Council, has been pleased to remove William Henry Abbott Hirst, Esq., from the office of the Judge of the Central District of Queensland". Mr. Hirst has the doubtful distinction of being the only Queensland Judge to be removed from office during his term.

My interest in Mr. Hirst was first raised by a note in "Triumph in the Tropics", by Sir Raphael Cilento and Clem Lack. That note was necessarily brief, and is not quite accurate. Enquiries to members of the Bench and the legal profession generally, indicate that not only the circumstances of Mr. Hirst's removal, but his very existence and the fact that any Judge had been removed during his term of office, has been forgotten.

Most of the information in this note was obtained from Mr. Paul Wilson, the Government Archivist. The remainder was obtained from the Parliamentary and Oxley Libraries.

Mr. Hirst was admitted as a Barrister in New South Wales on the 26th October, 1861, and in Queensland in December, 1861. The only information I have as to his previous history is in his letter of application for the position of Police Magistrate at Gayndah, where he stated that "I was, until recently a Magistrate of the Territory, and for many years and on different benches I had to perform the duties incident thereto". He was successful in this application, and his appointments in Queensland were:

Police Magistrate, Gayndah: 1st. August, 1863 – 31st December, 1863

Police Magistrate, Maryborough: 1st January, 1864 – 31st December, 1866

Crown Prosecutor, Northern District Court: 1st January, 1866 – 1st April, 1868

Crown Prosecutor, Metropolitan District Court: 1st April, 1868 – 5th January, 1868

Northern District Court Judge: 3rd July, 1869 – 20th November, 1876

Central District Court Judge: 20th November, 1876 – 5th January, 1878

It is interesting to note that on the same page of the Gazette of the 3rd July, 1869, as the notice appointing Mr. Hirst as a District Court Judge, a notice appears appointing George William Paul "to be Crown Prosecutor for the Metropolitan District Court vice William Henry Abbott Hirst, Esq., *promoted*".

It appears that Mr. Hirst developed the habit of dishonouring his financial obligations, leading to steps being taken against him.

A complaint to the Colonial Secretary was made by letter of the 31st July, 1877 by the Minister of the Presbyterian Church at Rockhampton on behalf of Mrs. Hill, of the Railway Hotel at Rockhampton, that a cheque given by Mr. Hirst for £16-0-0 was dishonoured. The letter sets out that Mrs. Hill objected to taking the cheque in payment of board and lodging because of the notorious valuelessness of the Judge's cheques, but was persuaded to do so. A Mr. Cooper, who had boarded along with the Judge in Mrs. Hill's house, had promised to see the cheque was honoured, but had broken this promise.

A note drawn by him on G. A. P. Hirst dated the 15th July, 1877 for £1-1-0 was stated to be dishonoured, and a letter of 23rd October, 1877 to Mr. Hirst from the Crown Law Offices above the signature of the Secretary contained a remark that there had been two formal complaints of the same nature against him, that the Attorney General (Mr. Griffith) was of the opinion that such conduct as that complained of "on the part of a high judicial officer cannot but tend to diminish the public confidence in the Administration of Justice and have a seriously prejudicial effect upon your usefulness as a Judge of the Central District Court".

The matters which lead to the Judge's suspension and removal appear in his letter of defence of the 1st January, 1878, which I set out in full.

"Brisbane. 1st January, 1878.

May it please Your Excellency.

According to instructions, I have now the honor to lay before Your Excellency my defence to the misbehaviours charged against me in the Honble. The Attorney General's letter of the 10th November last, and for which I was suspended from performing the duties of my office as Judge of the Central District Court of Queensland.

Agreeably to Your Excellency's command that I should take the charges seriatim, and answer each perfectly and exhaustively, I will now proceed to do so only trusting that the greatest forbearance may be shown me as many things may escape my memory owing to several papers being so far away as to be absolutely beyond my control.

1st Charge. "That you absented yourself from the sittings of the Central District Court appointed to be holden at Gympie on 29th October 1877 and at Maryborough on 1st November, 1877 without asking or obtaining leave of absence, and without communicating your intended absence to the Department of the Administration of Justice".

In reply I have to state that on the eve of my departure for Sydney on the 9th of October last I saw the Secretary to the Department Mr. John Keane, and asked him the course of practice adopted by Judges when they leave for a short time, his answer was, You must inform the Department. As I was in a hurry I said to him, I now give you notice and wish it to be conveyed to the Honble. The Attorney General. Probably I should have given it in writing, but I thought under the circumstances, that this was quite sufficient, and I meant no disrespect to the Head of my Department for I went purposely to see him, and as the steamer was starting almost immediately I was in a fix, private arrangements having to be completed: I could not delay.

My intention on leaving was to return within a week or so, and thus be in time to open the Gympie Court, but unfortunately within a day or two of my arrival in Sydney I had so severe an attack of illness that I had to seek medical advice.

My medical adviser Dr. Sanders gave me the certificate hereto annexed (No. 1) stating that not only then, but for weeks I was and would be unable to attend to my duties.

I still hoped against hope trusting I should be able to reach Gympie, though I might be a day late, and telegraphed to the Registrar at Maryborough that I would be there as soon as possible and to communicate the same to the Registrar at Gympie.

On the 31st of October I received the telegram annexed (No. 2) and in reply wired "Seriously ill will be up first opportunity".

However I still remained in the same state and telegraphed that I was afraid I would be unable to return for some time. Before I could take any

further steps I received news of my suspension and some days afterwards, when the Attorney General's letters arrived they were handed me without envelope by a Clerk from the Crown Solicitor's office in Sydney.

For these reasons I could not attend the Courts at Gympie and Maryborough.

2nd Charge. "That at the same time you were absent from the Colony of Queensland without leave".

Many of the reasons I have given in my answer to the 1st charge will apply to this, and especially with regard to my protracted absence, I have again to call Your Excellency's attention to Dr. Sanders's Certificate (No. 1) and also the practice hitherto adopted by the Judges, and recognised by the Department.

If I recollect rightly it was Mr. Justice Lutwyche who first mooted the point on the question of the necessity of obtaining leave of absence, and he only gave notice when leaving the colony.

It may be said in reply to this, that I am only a District Court Judge and in the terms of the Act, if strictly enforced, I should be compelled to reside in my district.

When Mr. Judge Paul was raised to the Metropolitan Bench I felt much aggrieved and immediately had an interview with Mr. Macalister the then Premier complaining of the palpable injustice to me, and he gave me by reason of failing health, on behalf of his Government, special permission to reside in Brisbane or wherever I pleased.

I might also remark that Mr. Meymott a District Court Judge of New South Wales, though I believe ordered by the Attorney General to attend his Court at Grafton, failed to do so, in fact never proceeded thither, and though suspended for this act was subsequently reinstated.

I may have been labouring under a misapprehension of my status and rights, but I still most respectfully submit that I had good grounds for believing that I had acted strictly in accordance with practice. I had no desire to act otherwise than was customary, and again I have to plead illness for so long an absence.

3rd Charge. "That you have made and uttered divers cheques or orders for the payment of money drawn upon Banks or persons in whose hands you had no funds to meet such cheques or orders, and in particular the following instances".

(A) "A cheque for £16 drawn upon a Bank in Brisbane in favour of Mrs. Hill of Rockhampton, and referred to in a letter from the Secretary of the Crown Law Office to you of date 6th August last".

As I had left all my affairs in the hands of an agent in Brisbane, I was not aware this cheque had not been met, and as soon as I became aware it had not been paid on the 6th of August Mrs. Hill was telegraphed to in these words. "Sorry your matter not attended to earlier, brother just returned, have wired you through National Bank the amount (£16) Sixteen pounds" signed G. A. P. Hirst.

I saw the Attorney General with reference to this matter, explained to him the circumstances and wrote him officially, as he told me the complaint had come through the Honble. The Colonial Secretary's Office.

I might mention also, and this will refer to the other cases, that out expenses are never paid until some time after our return, and this particularly is a source of hardship to Northern Judges, who are away for a long period every circuit, the allowance given never coming up to the actual expenses.

(B) "An order for the payment of money £1-1-0 drawn on or about the

15th day of July, 1877 upon one George A. P. Hirst in favour of Mr. Brown or bearer”.

I hereby annex a Certificate (No. 3) from the gentleman named that no such order has been presented to him, as he had funds to meet it belonging to me – it will be paid over by me when produced.

A similar order given at the same time on the same person was paid on presentation. I cannot understand how this particular order should have been overlooked. Surely I should not be held responsible for such laches, as I gave account of all orders drawn upon G. A. P. Hirst.

4th Charge. “That you have suffered judgment against you by default in divers actions in the Supreme Court of Queensland and in the Court of Petty Sessions holden at Brisbane and in particular in the following cases”.

In the Supreme Court.

(A) “On 31st of July, 1877 for £74-16-0 at the suit of Harrington Wood & Co”.

I was endeavouring to settle this, and had left authority in Brisbane to arrange – however before I knew anything further – to my horror I found judgment entered against me, whereupon I immediately paid into the hands of Messrs. Lyons and Chambers the plaintiffs attorneys, the whole amount including costs. This was a cruel case, as I had been overcharged considerably and was done to try to ruin one I verily believe – I never thought for one moment that judgment would be entered up against me. A greater portion of the debt I admit was due but under exceptional circumstances – the delay in satisfying this claim was caused by my desire to have just and equitable terms.

(B) “On the 28th September 1877 for £21-4-0 at the suit of Charles O’Reilly”.

This case was in the hands of Messrs. Roberts Little & Roberts and after the amount was paid with heavy costs, which I had objected to all along and was also the cause of the delay. I paid them, and though one of the firm, Mr. George Roberts promised me nothing further would occur and judgment would not be entered up, it got on the file, and was published. I consider this a great breach of professional etiquette. But under the circumstances I do not think there is any great gravity in the charge and further if I had been treated in common fairness, nothing would have been known, the heavy costs were the greatest difficulty.

(C) “On the 10th of October 1877 for £58-14-2 at the suit of Buss & Co.”

I cannot understand how judgment was entered up in this case particularly as Mr. Buss promised to wait for a time, under certain arrangements one third cash at a month, and the remainder on a bill. Perhaps owing to my unfortunate absence he was annoyed.

This was distinctly a breach of the agreement between us and am therefore much surprised Mr. Buss should have reverted to such extreme measures. I plead here a distinct violation of the agreement between us.

In Small Debts Court.

“On the 5th of Nov. 1877 for £7-19-3 at the suit of W. Rowney”.

In common fairness this summons should have been served upon me – it was served at my stepfather’s Mr. W. Fitz and I knew nothing of it until I received the Attorney General’s letter.

“On the 5th of Nov. 1877 for £7-7-4 at the suit of Finney Isles & Co.”

The former paragraph applies to this. I need hardly tell Your Excellency that in cases lately decided in the Colony of N.S. Wales, costs were

given against the plaintiffs for endeavouring to snatch verdicts in cases like these.

Certes, I was entitled to some notice, and never having received any – it does seem strange that I should be mulct in costs, or that even any steps should be taken against me during any absence.

5th Charge. “That at the sittings of the Central District Court of Queensland holden at Rockhampton on the 18th day of September 1877 before yourself, you were a defendant in three several actions in respect of money demands to which you had no defence”.

In one of these cases I paid the claim before it came into Court, and as I paid the Claim before it came into Court, the matter was settled.

In the others the summonses were not served, nor did I know anything about them, they were served afterwards, when the Court was closed, and were not then arranged, as I wished to enquire into them.

I am now prepared to settle them, and every other just claim preferred against me. It does seem harsh, the treatment I have been subjected to, as I have done all in my power to act fairly towards all those to whom I was indebted.

Had I attempted to act dishonestly, I should have been prepared for the opprobrium attending such a course, but I have used by best exertions to see everybody placed in a proper position.

In conclusion I would wish to bring under the notice of Your Excellency the following facts.

- (1) That I entered the service of the Queensland Government on the 1st of August 1863 much against my own will, as Police Magistrate of Gayndah, only accepting the office under promise of being transferred within a year by the then Premier Mr. Herbert.
- (2) That I was transferred to Maryborough in 1864 (January).
- (3) That I was appointed in 1866 by Mr. Justice Lilley, who was then Attorney General, Crown Prosecutor of the Northern District Court.
- (4) That in 1868 I was transferred to the Metropolitan District Court, Mr. Justice Sheppard at the time being District Court Judge.
- (5) That in 1870 I was appointed under commission from His Excellency Colonel Blackall as Judge of the Northern District Court.
- (6) That on the 20th day of November 1876 I was appointed by His Excellency Governor Cairns as Judge of the Central District Court.

On the 9th November 1875 I received a letter from the present Attorney General, but as it is marked “private” I do not consider myself at liberty to use it – sufficient to say he eulogised my services in strong terms.

During the period of my service under the Government I have never murmured – I had at one time to travel what is now the Central and Northern District with the exception of 2 towns and though I experienced the greatest hardships, trials and exposure both by sea and land, endangering my own life I still adhered to my duty.

I have been a pioneer amongst squatters in my time and I have never gone through what I have been obliged to do, since I became a District Court Judge. I have done it cheerfully, because I thought the day would come when my services would be thought something of.

I may here remark incidentally, that in one year, I was away from my home nearly nine (9) months upon Circuit. As to the expenses allowed me, they never have been sufficient to reimburse me and as I have before mentioned were never paid me, until after my return.

No one but an old traveller knows what a man, much less a Judge, has

to pay on these travels in the North; the most exorbitant prices are charged.

I have been in the bush, night after night in rain and storm, without a morsel to eat, no covering beyond the hood of a buggy coach, which itself was not impervious to rain.

From the constant exposure I contracted a disease in 1876 which nearly brought me to my grave.

The Government were kind enough to offer me through private sources leave of absence for 12 months, but I only remained away two (2) circuits, when against my medical adviser's opinion I once more resumed my duties.

In order to counteract the effects of this disease for six months I had to take large quantities of arsenic which so poisoned my system as to cause the last illness I had in Sydney.

It was in consequence of this I had to seek further advice and notwithstanding all efforts, I am still a sufferer from my constant trips to the North.

During the whole of my nearly fifteen (15) years service with the exception of the time I was ill, I have not been absent, and I have worked as hard and faithfully, as any person could possibly have done, holding office under the Government.

Unpleasant rumors have been spread about and I assure Your Excellency without the slightest foundation. Sir John Robertson the Ex premier of New South Wales has kindly permitted me to refer to him in refutation of these scandals.

If I have not supplied your Excellency with all the information required, I trust I may be allowed to supplement this.

Hoping Your Excellency will put a favourable construction upon this letter.

I am

Your Excellency's most obedt. servant
(Sgd.) W. H. A. HIRST

His Excellency

The Governor
Brisbane."

Subsequent to his removal, Mr. Hirst wrote to the Attorney General complaining of the treatment received by him, stating that he should have been given an opportunity of resigning in order to retain his pension, asking about payment until his removal, and requesting copies of all documents. The latter two requests appear to have been favourably dealt with in that notes indicate advice by the Attorney General that Mr. Hirst was entitled to payment until removal, and that he may have copies of documents.

A comment on Mr. Hirst's removal in the "Capricornian" of the 5th January, 1878, indicates that his removal was well received, and there may have been more to it than meets the eye:—

"Mr. William Henry Abbott Hirst may be congratulated on the friendly solicitude of the Government, who six or seven weeks after his disappearance have at length ventured to remove him of the crushing weight of judicial duties. Mr. Hirst has never been himself since the loss of his friend, the late Registrar at Rockhampton. The public will not deeply mourn the official demise of both, nor would intense grief be displayed if further changes are made in the judicial department. Our bench seems to be departing further and further from the high standards of purity and efficiency maintained in the Mother Country, and there is no immediate prospect of the decline being arrested, because fit men for judicial offices are not forthcoming".

Mr. Hirst's name was not removed from the Roll of Barristers and he appears to have returned to practice for at least one matter, as the name of Hirst appears as Counsel for the plaintiff in the matter of *Datson v. White* heard at Maryborough. A record of these proceedings appears in the Proceedings of the Queensland Legislative Assembly of 1878, in the matter of the removal of Mr. Thomas White from the Commission of the Peace. No other Hirst appears among the names of Barristers or Solicitors for 1878 and the reference is probably to the same man. Mr. Hirst's name does not appear among the lists of practising Barristers in Pugh's Almanac subsequent to 1878, nor have I found any further reference to him.

District Court Judges were paid £1,000-0-0 per annum in 1877; this must have been a generous sum at the time, and one wonders at his apparent shortage of money. A not impossible explanation is some involvement in family affairs as George Aldborough Prittie Hirst (the initials being the same as Mr. Hirst's brother) and August Frederick John Hirst carrying on business as graziers at Brisbane under the name of "Hirst Brothers" were adjudicated bankrupt on the 12th July, 1875 and discharged from bankruptcy on the 6th April, 1877. The late 1870's were a time of drought and recession in Queensland.

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