

# Tales from the Colonial Judicial Service

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**ABSTRACT:** brief account of the life and career of the first South Australian judge Sir John Jeffcott.

**KEYWORDS:** personalia — South Australia — legal profession — history — colony of SA — Supreme Court — Justice — Judge — Sierra Leone — The Gambia — Sir John Jeffcott — career — biography — Adelaide — Governor Hindmarsh — Tasmania — Victor Harbour

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[1] The Summer 1991 issue of *Bar News* (page 29) said of Sir William Jeffcott, the second Resident Judge of the Port Phillip District: “Possibly Sir William’s greatest claim to fame is as the younger brother of Sir John Jeffcott ...”. This brief history of the colourful career (judicial and otherwise) of Sir John Jeffcott owes a great deal to R M Hague’s *Sir John Jeffcott: Portrait of a Colonial Judge*, Melbourne University Press (1963).

[2] Born in Tralee, Ireland in 1796, Sir John Jeffcott was the first judge of the South Australian Supreme Court. His younger brother was the second resident judge in the Port Phillip District of New South Wales.

[3] Sir John matriculated at Trinity College, Dublin in 1815 and graduated BA (1821) and MA (1825). Called to the English Bar (the Middle Temple) in 1826 he practised on the Home Circuit until 1829. As with other newcomers to the Bar, his practice was sparse and in 1828 he began “an extraordinary bombardment of the Colonial Office” seeking a legal appointment in the colonies and applied successively for posts in Grenada, St Christopher, Dominica, Lower Canada, Ceylon, Tobago and in 1830 was appointed as Chief Justice of Sierra Leone and the Gambia at a salary of £ 2,000 p.a.

[4] In the early nineteenth century the desirable qualities for colonial posts, particularly equatorial West Africa, were the good health and mind of youth rather than the experienced wisdom of maturity. The English colonies were the white man’s burden and Sierra Leone was the white man’s grave. The high salary was commensurate with the prospects of an early demise. Jeffcott’s was the sixth appointment to the position. The first was dismissed and thus survived to return to England while all his other predecessors had succumbed to the misery and the

mortality, the swamps and the savages and the yellow fever. *John Bull* magazine offered its sincere condolences to Jeffcott upon his appointment. Presumably he accepted the position to enable him to pay off his creditors.

[5] Installed in office in April 1830 Jeffcott was able, with the assistance of the newly appointed Lieutenant-Governor, to impose a peace of some sorts between two warring factions of the colonists. Almost immediately upon his arrival he made numerous requests of the Colonial Office for leave to return to England to attend to his private affairs. These requests were refused until he had served two years.

[6] On a voyage to the Gambia in December, 1830 the French brigantine *La Caroline* (carrying slaves) was captured by the ship in which he was travelling (HMS *Conflict*) and the Chief Justice took an active part in the boarding party which captured the slave ship.

[7] The more congenial climate of the Gambia induced Jeffcott to stay over and upon his return to Sierra Leone he found that an enemy he had made in Sierra Leone, and whom he had dismissed from his government post, had returned to England and was buying up Jeffcott's notes from his creditors in an effort to embarrass him.

[8] In April 1832 he was given leave to return to England. By now he was suffering from tapeworm and he sought to use this fact to either delay his return to Sierra Leone or obtain a more congenial posting. He also importuned for a knighthood.

[9] In a wheedling letter he hinted that he had become engaged to be married and, whereas he himself was prepared to serve the Empire wherever the Empire desired him to, "the climate of Sierra Leone, which as Your Lordship well knows is not very favourable to me, has always been peculiarly fatal to women".

[10] In a similar vein he was angling for the knighthood. Whereas he himself possessed no overweening anxiety for such an honour, it was in deference to the wishes of others that he was moved to request the honour. It was, after all, a slight upon the loyal colonists of Sierra Leone that their legal affairs were to be presided over by a Chief Justice without a knighthood.

[11] In fairness to Jeffcott, what may be seen today as the wheedling tone of the letter may be no more than flowery nineteenth century writing.

[12] Jeffcott sought a vacancy in Mauritius or possible postings to the Cape or the Australian colonies. Because of his ill health the Colonial Office felt bound to accede to the request for extended leave but, as the political climate in Sierra Leone was deteriorating, wished to persuade him to return on the basis that he would be viewed favourably for future vacancies and also the knighthood. The rigours of the climate on the female body were no longer relevant as his engagement had been broken off.

[13] Consequently Jeffcott forewent further leave so that “the public service should not be impeded by the want of efficient authority in the colony”. In the same letter he noted the sailing date of his ship to Sierra Leone and the limited opportunity this departure date provided for His Majesty to bestow a knighthood upon him if “therefore you should feel disposed to recommend me for this honour ...”.

[14] On May 1, 1833 Jeffcott was knighted by William IV and ordered to embark for Sierra Leone five days later. His ship was delayed for a further five days, which time permitted rumours alluding to the cause of his broken engagement to reach his ears and for him to challenge the alleged rumour monger. In a great flurry over very little, imagined slights on the honour of both sides saw Jeffcott and a Dr Peter Hennis engaged in a pistol duel on the eve of Jeffcott’s departure which left Hennis mortally wounded.

[15] A week after the duel, with Jeffcott, who had borrowed £50 from one of his seconds, at sea en route for Sierra Leone, Hennis died. Warrants were issued and the seconds arrested. In July Jeffcott was charged, in absentia, with murder.

[16] At the trial of the three seconds, notwithstanding a strongly worded direction from the bench and the strong evidence led by the prosecution, the jury acquitted. It seems clear that had Jeffcott stood trial he would have been convicted as the jurors later stated the grounds of their verdict to be that the seconds “never titched him [the deceased]”.

[17] Present at court was Jeffcott’s younger brother William, then a Dublin barrister and who was later to become the second Resident Judge at Melbourne: *Victorian Bar*

*News No 79, Summer 1991.* Upon the jury's verdict being announced William sought to intervene with the Colonial Office on his brother's behalf.

[18] Having returned to Sierra Leone prior to the news of Dr Hennis's death, Jeffcott was in a state of ignorance regarding his own status, although he feared the worst, having been appraised of the severity of the wound suffered by Dr Hennis.

Supposedly because of ill health he returned to Europe (not England) and was thus not within British jurisdiction when the warrant for his arrest arrived in Sierra Leone in early September requiring Sir John to be returned in custody to England.

[19] Jeffcott landed in Normandy in October 1833 and awaited developments from without the jurisdiction while proclaiming his desire to submit himself to trial at the earliest opportunity in order to vindicate his character. The earliest opportunity was March 1834 after agreement had been reached that if he returned to England and stood his trial, no evidence would be led against him.

[20] Accordingly, later on Friday March 21, Sir John pleaded "Not Guilty" to the charge of Dr Hennis's murder and Mr Bere, for the Crown, advised the jury that he had been instructed to offer them no evidence at all. Williams B then directed the jury to enter a verdict of Not Guilty. Thereafter the Judge, counsel and accused proceeded to the Guildhall to answer the Coroner's inquisition where a similar course of conduct and result took place.

[21] With his career now in tatters, Jeffcott began "an epistolary bombardment" of the Colonial Office seeking another position. His biographer, Hague, notes that a weary copier of Jeffcott's letters feelingly remarked "[t]hat man certainly spilled a quantity of ink in his time".

[22] At this time there were moves afoot to found a colony at Spencer Gulf (South Australia). This held out some hope for Jeffcott but the recent events in his life rendered such an appointment impossible.

[23] Next he sought a New Brunswick (Canada) posting and was unsuccessful. His friends pushed for his appointment as Lieutenant-Governor of Sierra Leone. Thereafter he applied for a similar position in Dominica and by the close of 1835 was

seeking either employment or a pension to tide him over until he could obtain a posting. All to no avail.

[24] April 1836 saw Jeffcott (who had been forced to live on the continent where the cost of living was cheaper and he was outside the reach of his creditors) make a renewed application for the Spencer Gulf judgeship. The founding of the colony had become bogged down in red tape, and by now his past was no longer so recent. His application was successful.

[25] Jeffcott was not the first choice for the South Australian position. Daniel Wakefield, who had drafted the Act creating the colony, was the favoured candidate. However, he had a convict brother and had incurred the wrath of influential members of the South Australian Association, and Henry Walter Parker was appointed. Unfortunately, even before the colony's founding there were intrigues and plots between the colonists and Parker resigned in disgust before he was able to take up the position. The judgeship was again vacant and the difficulty in deciding between the two leading contenders, Harrison and Hanson, was resolved by appointing the outsider Jeffcott at a salary of £500 p.a. (his salary as Chief Justice of Sierra Leone had been £2,000).

[26] Sir John's reputation as a duellist and his debts were not a serious impediment to his appointment. As John Dunmoore Lang facetiously observed:

It was an ancient practice of the colonial Office to send out men for the highest appointment in the colonies who have been bankrupt alike in character and purse.

[27] Jeffcott arranged to travel out to South Australia via Van Diemen's Land with the newly appointed Governor of Van Diemen's Land, Sir John Franklin, on the *Isabella*. To avoid the risk of arrest by his hostile creditors, it was necessary to steal aboard the *Isabella* after being rowed out to her in darkness.

[28] Contrary to his promise to the Colonial Office to proceed promptly to South Australia upon arrival in Tasmania, Sir John stayed three months as a guest of William Kermode, a distant relative by marriage, at Mona Vale in Tasmania. He explained the delay to the Resident Commissioner at Adelaide as stemming from the desirability of learning from the Tasmanian Chief Justice and the Attorney and Solicitor-Generals the manner in which the judicial business of that colony was

conducted. Notwithstanding this explanation Sir John appears to have spent his time in Tasmania sightseeing and courting his host's daughter Anne, to whom he had become engaged.

[29] Jeffcott arrived in Adelaide to find, as he did on his arrival in Sierra Leone, squabbling among the settlers. It is conjectured that his delayed arrival permitted the quarrelling to simmer too long and added to the gulf that had opened between the Governor (Hindmarsh) and his opponents. Certainly, after arrival his restraining influence upon the autocratic Governor reduced the friction and brought a semblance of peace.

[30] At this stage, one of the seconds from the Hennis duel, Milford, was dunning the Colonial Office for the £50 lent to Jeffcott prior to his departure for Sierra Leone after the duel. There were fears expressed in the Colonial Office that Sir John might find himself being sued in his own court by his English creditors.

[31] After only six weeks in Adelaide, Sir John returned to Tasmania, his journey being brought forward three months by the necessity of replacing his personal effects which had been lost when the ship carrying them was wrecked off Portland. They were uninsured and the Colonial Office refused his request that it reimburse him for their loss, although it did provide £100 towards replacing his law books on the understanding that they were to remain the property of the Government of South Australia.

[32] In Tasmania, Sir John borrowed money from Kermode to pay off Milford.

[33] In his four months absence from Adelaide, there arose two celebrated legal disputes involving constitutional and jurisdictional issues. That the dispute arose may in part be attributed to his absence from the colony and the lack of a restraining influence on Governor Hindmarsh.

[34] Within a month of his return to Adelaide from Tasmania, Sir John applied for the newly vacated position of Attorney-General in Van Diemen's Land. He even contemplated resigning his post without first obtaining a position and commencing private practice in Tasmania, such was his distaste for the South Australian colony's

squalor and the seemingly never-ending bickering. With regret, Governor Hindmarsh supported Jeffcott's application for the Tasmanian position.

[35] In the meantime, Jeffcott also sought leave from the Governor to travel to Tasmania to seek counsel with the judges there in regard to the two forthcoming legal disputes involving constitutional and jurisdictional issues. It was imperative that Jeffcott avail himself of the assistance he could obtain at Hobart "at the sacrifice of a little personal inconvenience because the cases coming up involved points of the highest importance to the welfare of the colony and the stability of the government". Again reluctantly, the Governor approved Jeffcott's leave. He was to be away one month. So far, he had spent only about ten weeks in the colony and had sat as judge twice only. There were some in Adelaide who conjectured that he was proceeding to Tasmania to shore up his relationship with his fiancée.

[36] Jeffcott sailed for Kangaroo Island expecting to find there the *Hartley* ready to depart for Tasmania. It was not there and he proceeded to Encounter Bay (Victor Harbour). Again there was no awaiting ship and he decided to while away his wait by joining an exploration party which was investigating Lake Alexandrina and its sea access (Governor Hindmarsh was hoping to establish Encounter Bay as a more superior site for the colony than Adelaide).

[37] For ten days in December 1837 the party explored the lake and then sought to return to Victor Harbour. There were two available modes of travel — to walk or to return by whaleboat through the mouth of the Murray River. Jeffcott elected to go by boat despite being warned of the danger of the wild surf at the mouth and, with three others, was drowned when the whaleboat foundered.

[38] His drowning ensured him of a place in the history of South Australia which would have been lost to a mere short-term judge who in all likelihood was already permanently departing the colony at the time of his death.

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