

## THE MAGISTRATES' COURT MELBOURNE — AN HISTORICAL OUTLINE

When Captain Arthur Phillip arrived at Botany Bay in 1788, he had come to establish a prison without walls, but the 1,010 persons who came with the First Fleet were all Marines or convicts and their dependants. But they brought the Laws of England with them.

Some of the officers in this contingent had been appointed Justices of the Peace before they left England, and Captain Phillip made further appointments as soon as he established the Colony of New South Wales. These Justices of the Peace were empowered by the Law of England and by Orders issued by the Governor to punish persons who offended against the laws. One Justice of the Peace would deal with charges during the week and the Justices would all assemble on Saturdays to hear difficult charges or to commit the accused person for trial before the Supreme Court.

In 1823 the English Parliament passed a law which changed the manner in which New South Wales was governed, setting up a Legislative Council. A later Act of the Imperial Parliament provided that the Law of England as in force in 1928 should be the law of the Colony of New South Wales, unless and until it was altered by the new Legislative Council.

In 1823 the Legislative Council of New South Wales passed an Act of Parliament which established a Court of Petty Sessions in which two or more Justices of the Peace could:

“take cognizance in a summary way of all misdemeanors, pilferings from a master or mistress, and simple larcenies to the value of any sum under five pounds, which have been or shall be committed by a felon or offender transported or removed to the said Colony or its dependencies, whose sentence hath not expired or been remitted at the time of committing such offence; and also of all complaints made against such felon or offender for drunkenness, disobedience of orders, neglect of work, absconding from the employment of government or from the service of his or her master, abusive language to, his or her master or overseer, or other disorderly or dishonest conduct; and the said offences respectively to punish as hereinafter directed”.

In the meantime, the settlers on the north coast of Van Diemen's Land were taking an interest in the lands around Port Phillip and, in 1835, parties headed by Batman and Fawkner landed and settled here. There were no Police here at all then and, on 1st June 1836, the local residents held a meeting at which they decided that Mr James Simpson JP,

who had been the Police Magistrate at Campbelltown in Van Diemen's Land, should be appointed as an arbitrator to decide all disputes between individuals, and they even gave him power to inflict fines. The meeting decided to petition Governor Sir Richard Bourke in Sydney to appoint a resident Magistrate for Port Phillip.

Sir Richard Bourke decided to establish proper law and order here, and in September 1836, he sent Captain William Lonsdale with a detachment of his regiment, the 4th King's own, on HMS *Rattlesnake* to Port Phillip. He was also provided with one District Constable and two ordinary Constables. Lonsdale had already been appointed a Magistrate — a Justice of the Peace — in 1835, but he was now appointed Police Magistrate for the District of Port Phillip.

He was instructed:

“Under your Commission of the Peace and in the capacity of Police Magistrate, you will exercise the ordinary jurisdiction of a justice, the Laws of England in force in this part of the colony and the Acts of the Government and Council being equally applicable to the district in which you are to be placed as to any other part of New South Wales”.



**Capt William Lonsdale**

Ensign George King of the King's Own, who was in charge of the soldiers, was also a JP, and between them they were able to enforce the laws so far as two Justices not sitting as a Court could do.

Captain Lonsdale set up his Police Office near the present site of Spencer Street Station. The streets had not been surveyed then, but the building would have been on the east side of Spencer Street between Collins and Little Collins Street. He heard charges in a rough bush house constructed of wattle-tree boughs and branches. The records kept by him are preserved in the Archives at the State Library and the first entry is dated 17th October 1836, when he heard a charge against Thomas Brown, an escaped

convict from Van Diemen's Land, He ordered his return to that place.

Robert Hoddle made his survey of the Town of Melbourne in 1837 and on that plan he had marked St. Paul's corner as a reserve for a Court House. On a second copy of that plan the reserve had been moved to the Haymarket corner and, on the plan of 1840, the reserve had been moved again, this time to the corner of Russell and LaTrobe Streets.

In the meantime Ensign William Hawkins of the 80th Regiment and Mr James Simpson were both appointed Magistrates for the Territory of New South Wales and Captain Foster Fyans was appointed Police Magistrate at Geelong in September 1837, his boundary being fixed as the "Wearaby River".

On 17th July 1838 Melbourne was appointed as a place at which a Court of Petty Sessions could sit and from this date, the history of the Melbourne Magistrates' Court really begins, although regular sittings were not held until 1839. Usually two or more Justices of the Peace were necessary to constitute a Court of Petty Sessions.

The Court was transferred from the Police Office near Spencer Street to a turf and sod hut, roofed with bark, which stood on the south-western corner of the Western Market Square. The Court sat in this building until the beginning of 1839 when it was again transferred to a wooden building which had been moved to the Market Square from William Street. When the Court of Quarter Sessions sat here, the Court of Petty Sessions sat in a brick cottage at the intersection of King and Bourke Streets.



**Early Melbourne Police Office**

In January 1839, Lonsdale was appointed Police Magistrate for the Town of Melbourne. In 1840 he relinquished that office to accept the appointment as Sub-Treasurer, and James Simpson was appointed in his stead.

In those days Courts of Petty Sessions dealt with criminal matters while a Court of Requests heard civil claims. A Court of Requests was established here on 31st August 1839, to deal with claims up to ten pounds. It did not sit until 1st April 1840. It used a building on the south-eastern corner of King and Bourke Streets and then, in 1846, it transferred to a disused billiard room which was part of the premises of the Lamb Inn, later Scott's Hotel in

Collins Street.

For some years the Town and the District Court business was transacted in the old wooden building, certain days of the week being assigned to each branch. From this early division of the Court work we have still retained the names "City Court" and "District Court", but those terms are, in reality, now meaningless.

A new Police Court was erected on the corner of Little Collins Street and Swanston Street where the Melbourne City Council Offices now stand, and the first sittings were held there on 2nd August 1849. Both the City Court and the District Court sat there for some time until the District Court was moved to a two-storied house in Little Collins Street East formerly occupied by Mr Andrew Russell, an ex-Mayor of the Town.

When the Supreme Court was held in Melbourne from 1841 to 1843 it sat in the little brick building at the corner of King and Bourke Streets. A new Supreme Court building was erected on the Court House reserve on the corner of Russell and LaTrobe Streets and the Court sat there from 1843 until the Law Courts in William Street were built. When the Supreme Court moved into its more commodious and elaborate quarters in 1884 the Court of Petty Sessions was transferred from the Police Court in Swanston Street to the vacant Supreme Court building. It sat there until the end of 1910 when the building was demolished to make way for the present imposing building.

The new City Court was opened by the Lord Mayor of Melbourne, Cr DV Hennessy on 20th January 1914. A photograph taken of that occasion indicates that almost every Justice of the Peace in the City was there present on the Bench together with the Attorney-General Hon D MacKinnon and the Chairman of the Bench of Magistrates, Mr PJ Dwyer PM.

The body of the Court is occupied by most of the legal practitioners who were attending the Courts at that period. On that occasion, a huge portrait of Mr JA Panton was unveiled. He had been the presiding Police Magistrate at the City Court for nearly thirty years and, on his retirement, he suggested that a testimonial fund in his honor should be devoted to the painting of a portrait which should hang in the Court where he presided for so long. He died before the unveiling took place, but his name is perpetuated in Panton Hills. The picture has since been greatly reduced in size.

The original building contained three large Court Rooms: the City Court, the District Court and the Third Court. A feature of the District Court is the wooden canopy over the Bench. It was taken from the old Supreme Court, and a sketch made at the time that Sir Redmond Barry was sentencing Edward Kelly, the Bushranger, to death shows His Honour sitting beneath that same canopy. The two

Police Magistrates on duty sat in the Court and the District Court, the Third Court being used only in emergencies.

Since that date Court business has expanded in the number of cases and their complexity. There are now eleven Court Rooms in the City Court building and sometimes Courts — usually the City Court deals with arrest cases, the District Court all the civil cases and the Third Court with prosecutions on summons. The remaining eight Courts hear cases sent to them from the three main Courts.

In 1948, Parliament decided that the title Police Magistrate was no longer desirable for the power of Police Magistrates to control the operations of Constables placed under the direction disappeared when the Victorian Police Force was constituted in 1853. The title was changed to Stipendiary Magistrate. There are, as at 1973, 65 Stipendiary Magistrates in Victoria and two Special Stipendiary Magistrates dealing solely with Children's Court cases.

On 1st April 1970, there was further change when Parliament decided that the old name, Court of Petty Sessions, which was taken from from New South Wales, should be changed to Magistrates' Court — a title which has more meaning to it.

Magistrates' Courts hear charges for all kinds of offences many of them serious and they direct many persons for trial by the County Court or the Supreme Court. Although they handle thousands of traffic offences, much of the time of the Magistrates is devoted to hearing civil disputes. They have jurisdiction to hear civil claims up to \$600 and to \$1000 where damages are sought arising out of a motor car accident. They also hear all maintenance cases and landlord and tenant ejection cases and they hold recounts of votes at disputed elections, they hold inquests into all deaths by violence, they decide mining disputes and they hold many other types of inquiries.

**—Mr William Cuthill,  
Chief Stipendiary Magistrate, Victoria  
May 1973**

**Postscript:**

The City Court building was vacated by the Magistrates and Clerks of Court in 1994 when they moved to new purpose-built accommodation on the corner of William and Lonsdale Streets, Melbourne. This construction cost of the building was \$54m. and presently houses a large number of Magistrates and support staff. The "old" City Court was taken over by the RMIT and many of the rooms are occupied by RMIT staff. The City Courtroom and District Courtroom still contain their original features. The Third Court is used by the RMIT for meetings. The National Trust has also taken an interest in ensuring that the building is maintained in a good condition.

**—PD Street  
March 2007**