

Sketches on Territory Legal History

Chief Warden M L Connor

By the Hon. Justice Mildren

When gold was discovered by Overland Telegraph workers at Yam Creek in late 1870, *The Gold Mining Act 1871* (SA) required all mining dealings to be dealt with in Adelaide. It was not even possible to obtain a miner's right in Palmerston. Notwithstanding this problem, a large number of mining leases were pegged out and claimed, leading to a mining boom between 1872-1874. The boom brought with it the usual speculative hysteria. By May 1873 some thirty mining companies had been floated in Adelaide, and significant townships had grown up in Yam Creek (The Shackle), Southport, Union Reefs and Pine Creek, with a number of new hotels established on the route to the goldfields. In 1873 the population of the Territory, excluding Aborigines, increased from 192 to some 1500 souls.

It was not until May 1873 that the government passed regulations which empowered mining wardens to issue miner's rights, to register claims, and to approve transfers, amalgamations, business leases and the suspension of works. Wardens' offices and accommodation consisted of tents on the goldfields. The early wardens were untrained and often did not stay in their jobs for very long. The legal position was complicated. New regulations applying to NT gold fields were issued on 20 December 1871. These were replaced by a new Act in 1872, the *Northern Territory Land Act*, and on 24 December 1872 a new set of regulations were passed. These were superseded by yet new regulations passed on 8 May 1873. These regulations were superseded by the *Northern Territory Gold Mining Act 1873*, which came into force on 1 March 1874.

It is hardly surprising therefore that the reports of the Hon. Thomas Reynolds and of George Byng



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Scott, the government resident from 1873, describe the mining records as being in a state of confusion, that nearly all mining tenements were in dispute and the law either obscure or unsatisfactory.

In September 1873 the government appointed a Member of Parliament, M. L. Connor, to the new position of Chief Warden of Goldfields. Connor is of interest for several reasons. Not only was he a colourful character, but the first judgment delivered by him sitting in the new Warden's Court at Southport on 17 December 1873 was reported verbatim in the *Northern Territory Times* on 2 January 1874. The judgement is the oldest known written judgement of any court sitting in the Northern Territory, and the defendant is probably another well-known Territorian, John Lewis whose diaries and book, *Fought and Won*, provide much of interest to Territory historians. The report in *The Times* is as follows:

WARDENS COURT -
SOUTHPORT
WEDNESDAY, DECEMBER 17.

(Before Mr. Connor, Chief Warden).
“(Subjoined is the judgement of Mr. Connor, Chief Warden, in the case of *Jones and Gozzler v Lewis and Others.*)”

“In this case I grant a verdict for the plaintiffs, with £50 damages, and £19.19s costs; and as it is the first case decided in the Northern Territory, I make the following remarks in connection with it.

The claim now made by Jones and Gozzler was originally made in an objection to a lease being granted to Lewis, on the grounds that he had not complied with the requirements of the Act under which he supposed he was talking up the claims. I say *supposed*, because as a fact on the day when he pegged or professed to peg out the claims, the Act had been repealed and a new one substituted, in which Act - that is the one now existing - there is no power to take up land on lease, and no power in the Government to grant leases. The then Warden, Mr Melville, after, in an unjudicial manner, hearing the case, came to the conclusion (which is in writing) that the claim had not been properly pegged out, and evidently thought that the plaintiffs were in justice entitled to the claim, but hesitated in deciding the point, and referred the matter to the Government Resident, Capt. Douglas, such reference being at that date illegal and at variance with the Act, which grants no power to anyone save the Warden, or appeal from him to Local Court, in disputes connected with claims. I regret to find that the defendant, in his examination by me, stated that the decision was given in his favor by the Warden, the exact contrary being the case. Had the defendant in the first instance complied with the Act of 1871, I should have felt that great consideration was necessary prior to displacing him from possession, hav-

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ing regard to the fact that my Court is a Court of equity as well as law; but as it has been distinctly proved that he did not comply with the clauses requiring proper pegging and posting notice of lease application, and that he knew he had not done so, from the fact of his sending men to repeg the day the Warden was proceeding to the ground, several days after the plaintiffs had pegged correctly, I can only arrive at the conclusion that his taking up the claim in such a careless – wilfully careless – manner, was one of those acts so common, and which has brought much of the gold mining industry to disrepute, namely, running over a country and taking any kind of possession so as to prevent others.

Under all these circumstances, I find that the defendant is in illegal possession of the ground, and has been since December, 1872; and that the claims in question are properly the property of the plaintiffs.”

The new Court had hardly opened its doors for business when a telegram was sent from Adelaide to the Chief Warden the terms of which led to great consternation. When Connor resumed Court on 14 January 1874 he announced to counsel and the litigants waiting for their matters to be heard that he had been instructed that he was not to hold court; that he no longer had jurisdiction, that he could not even adjourn pending cases, and that nothing could be done until the new Act came into force on 1 March. He said that “the doors of the Court were simply not open any more than as though the Court had never existed.” This pronouncement led to indignation meetings being held by the miners, led by William Villeneuve Smith, the town’s leading lawyer, who regaled all and sundry with ramblings about Judge Jeffries, Magna Carta and the British Constitution.

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By the Hon. Justice Mildren

the terms of the telegram (which was in code). His instructions were to adjourn proceedings until 1 March. Connor was criticised by the Hon. Thomas Reynolds, (another parliamentarian) at a public meeting, the terms of which were published in *The Times*, and Connor sued the publisher, Clarkson, in the Local Court for £100 damages for libel, the then maximum of the Courts’ jurisdiction. The libel action was heard by Price SM in May 1874 who awarded Connor £5, plus costs. *The Times* gloated:

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“We hope that Mr Connor is satisfied with this, and that those persons who considered him “degraded” when they read the objectionable paragraphs about him, will now feel joyful and elated to know that the alleged damage to his reputation has been repaired at so trifling an expense.”

The *Northern Territory Gold Mining Act 1873* continued the Wardens Court, but it also created a new Mining Commission which was designed to deal with all claims registered prior to 1 March 1874. Connor continued as Chief Warden, and was appointed to the Commission, the other members of which were the Government Resident, Scott, as President, and the magistrate, Mr Price SM. The Commission first sat on 9 June 1874, the report of the proceedings noting that Connor was absent due to illness. The Commission announced that all matters relating to claims registered prior to 1 March were to be dealt with by the Commission. Connor, apparently, was not ill, but had gone to Union Reefs and when he heard of the decision, hurried back to Palmerston and caused a notice to be published to the effect that he did not agree with this decision. The precise point of disagreement is not known, but it may be surmised that the view was taken that whilst the Commission would resolve disputes as to title, all other jurisdiction remained with the Warden’s Court. Clearly, if the Commission’s view were correct, this was a great inconvenience to the miners who would have to travel to Palmerston to have every trifling matter attended to instead of having the matter resolved by a warden locally, and at least one of the wardens resigned in immediate protest. Connor’s action resulted in the Commission obtaining an opinion from the Law Officers of the Crown who advised that the Commission was correct, and on 20 June the Commission published this opinion. In the meantime, the Attorney-General asked Connor for an explanation. What happened thereafter is not clear, except that a new Chief Warden, Mr S. M. Plunkett, was appointed shortly thereafter.