

District Court judges at war

By Brian Herron QC

The article in the Summer edition of *Bar News* relating to Judge Storkey VC was, I think, most apt in that it brought to the notice of members of the association firstly that Judge Storkey VC had been a judge of the District Court and secondly that he had been one of Australia's most distinguished soldiers. Both these facts I fear would sadly have been unknown to the majority of members. The actions of other members of the court, who distinguished themselves in war service should also in my view be brought to mind, so that the contribution they made to Australian life and the community is not forgotten. I do not attempt to provide an exhaustive history and my intention is to draw attention to some figures with whom, incidentally, I personally came into contact albeit in some cases this was but transient. I recommend Judge H T E Holt's *A Court Rises* (1975) for an excellent and fascinating account of the members of the court (who however had passed on at the time of his writing (a deliberate course which he took)).

Judge Storkey was the first District Court judge to whom I was formally introduced and at all places upon the railway platform of Coffs Harbour in the early hours of a morning in late 1954. I was then a clerk with the crown solicitor instructing B F F Telfer, the northern crown prosecutor, in a civil matter to be heard by the judge at Lismore. We were travelling on the Brisbane express, which had stopped for breakfast. Telfer led me along the whole length of the train to a carriage from which the judge emerged and from his sleeping compartment. I have never forgotten this meeting. The judge wore a stiff white shirt (without collar) immaculately pressed trousers, but all partly covered by a scarlet silk dressing gown. In his hand he held a cigarette in an extremely long holder.

He was a remarkably handsome man exuding aplomb and dignity of the first order. The photograph in the article shows his good looks as does the one in Anthony Staunton's book *Victoria Cross: Australia's Finest and the Battles They Fought* (2005). I saw a portrait of him by Max Meldrum some years ago hanging in the Australian War Memorial, the whereabouts of which I am now unable to ascertain although it may be in the New Zealand archives, but it more than emphasises the point I am making. If I had not been on Coffs Harbour railway station I could have imagined myself being on the legendary Orient Express being presented to nobility. It is somewhat ironic that photographs of the actor Clark Gable appear in the same issue of *Bar News*. Storkey VC would have held his own against the actor so far as the physiognomy stakes are concerned.

The details of the events which led to his gaining the Victoria Cross are set out in the article and also in Judge Holt's book. Les Carlyon in *The Great War* (2006) refers to a contretemps which occurred between Storkey and his battalion commander immediately after 'his day in Hangard Wood' and his incredibly courageous actions there. This officer ordered him to go back and hold the position which Storkey thought was impossible. 'He would not take them (his men) back. He would go himself, if ordered, but only after he had explained the impossibility of the objective to his brigadier. Storkey's fifty-three prisoners appeared on a nearby slope as the



Photo: iStockphoto

argument continued. According to Bean, this saved an 'awkward situation'. Storkey eventually saw his brigadier. He was not ordered back' (ibid p.602).

Judge Holt (ibid p.225) refers to an occasion, just after Japan had declared war, when the judge was travelling by train with the then crown prosecutor F W Berne (later Judge Berne). He was dressed more casually than 'wearing a very old Harris tweed lounge coat but looking very young and fit enough to be in the armed forces' (these were Judge Berne's words and in fact are to be found in a letter dated 11 December 1962 addressed to Judge Holt which is in the State Library). Judge Berne, at Storkey's request, managed to expel an arrogant colonel with two other army officers from the judge's compartment, who in effect had tried to commandeer it. The gossip at the bar always was that when the colonel was told whom he had been confronting he attempted to tender his abject apologies which the judge refused to accept. It was not quite like that. Freddie Berne having got rid of them, the judge was content. The judge, although formidable when occasion demanded, was an exceptionally courteous man. This was obvious to me as a young man when I was first introduced to him.

[Storkey VC] was a remarkably handsome man, exuding aplomb and dignity of the first order...If I had not been on Coffs Harbour railway station I could have imagined myself being on the legendary Orient Express being presented to nobility.

Judge Storkey VC (so far as I can determine) is one of only two judges in the British Commonwealth to have received the VC. The other was Lord Justice Sir Tasker Watkins VC, who became a High Court judge, then a lord justice of appeal and deputy lord chief justice of England. He received the award as a lieutenant in the Welch Regiment on 16 August 1944 in Normandy.

'The Victoria Cross is awarded for supreme courage in battle' (to quote General de la Billiere in his *Supreme Courage* (2004) and it is invariably awarded for a single outstanding action. Lord Leonard Cheshire VC, the British bomber pilot and philanthropist, was an exception. His act of bravery consisted of exceptional courage over a period of four years 1940-1944 (See Jolliffe in *English Catholic Heroes* (2008).

Lieutenant-Colonel Judge Stacy DSO and Bar CMG was appointed a judge of the court in March 1939. But during the First World War he was a soldier who for nearly four years showed more than 'exceptional courage'. To find an equal I think would be difficult. Judge Holt supplies the details (ibid at 220ff). The judge was mentioned in dispatches on six occasions, in November 1915, January and June 1917, May and December 1918 and July 1919 (which of course must have been in respect of service before 11 November 1918). It would appear that, so far as the Australian Army is concerned, Brigadier-General Henry Gordon Bennett holds the record, having been mentioned in dispatches on eight occasions during the First World War. He incidentally became a brigadier general at the age of 29, making him then the youngest brigade commander in the British Empire armies (see Carlyon ibid. p.754).

Judge Stacy was awarded the DSO in June 1917 and a Bar to that Order in February 1919. In January 1919 he was awarded the CMG. After January 1917, the DSO, originally established as an order, was generally awarded for gallantry and leadership in battle (see Wikipedia entry). I do not know who holds the record so far as the number of DSOs won. Lieutenant-General Baron B C Freyberg VC, the New Zealand commander is said to have been the only man to have won four (see Wright: Freyberg's War (2005)), this

Lieutenant-Colonel Judge Stacy DSO and Bar CMG was appointed a judge of the court in March 1939. But during the First World War he was a soldier who for nearly four years showed more than 'exceptional courage'. To find an equal I think would be difficult.



being as the result of service during the course of the two wars.

Judge Stacy had enlisted in the AIF in 1914 at the earliest opportunity. The *Dictionary of Biography* gives the date as 6th August. He enlisted as a private but was commissioned as a lieutenant in the 4th Battalion in September. He was with that battalion in Gallipoli and in France when he was its commanding officer and in March 1917 he became the commanding officer of the 1st Battalion. He was then only 30 (having been born on 7 December 1886). I appeared before the judge in my very early days at the bar. He was a courteous and dignified judge and most generous to junior members, such as myself. He was always known by the bar as 'the Baron' a sobriquet bestowed upon him by his men who referred to him as 'Baron von Stacy'.

I think that it is appropriate to refer to the fact that his brother Dr V O Stacy had a distinguished career as an army medical officer rising to the rank of lieutenant-colonel. For his war service he was appointed OBE in 1919, awarded the Croix de Guerre and was twice mentioned in dispatches (see *Australian Dictionary of Biography* - online edition).

I have been unable to discover how the judge came to have his second name 'Vandeleur' despite enquiries made of the family (who can claim a very ancient lineage). Sir John Ormsby Vandeleur came to command the whole of the British cavalry at Waterloo and for many years had been a distinguished cavalry man with many decorations including a Knight-Commander of the Order of the Bath. (20 *The Dictionary of National Biography* p.97). *The Australian*



Photo: iStockphoto

Dictionary of Biography (Vol 9) reveals that Robert Vandeleur Kelly (1843-1913) a medical practitioner and army officer served in the Boer War and his son Robert Hume Vandeleur (1878-1951), a soldier, eventually became a lieutenant-colonel in 1917 being attached to 1 Anzac Corps AIF.

Judge Charles Vincent (Mick) Rooney was appointed as a judge of the court on 4 February 1954. He however received the Military Medal in respect of the courage he had shown on 26 August 1917. The gazettel notice (*Commonwealth Gazette* No 31) is as follows:

On 26th August 1917 at about 5.30 pm near Potjze an ammunition dump of the 13th Aust. F.A. Brigade became heavily shelled by the enemy and was set on fire causing the ammunition in the dump to explode....Corporal Rooney who was in charge of the dump immediately set to work to extinguish the fire. This was successfully accomplished and by his initiative, bravery and disregard of risk he succeeded in extinguishing the fire and in saving a large quantity of valuable ammunition required for the immediate use in Batteries.

I did not know the judge had received this award although it is shown in the 1955 *Law Almanac*. From the rest of the information I have seen in relation to his army service however I think he did not like army life that much. As Tedeschi QC stated in his address to the Forbes Society relating to the history of crown prosecutors the judge had been a 'coal lumper' on the Sydney waterfront when he decided to study law. He was admitted to the bar in 1923. He became a crown prosecutor in 1941. I always had taken him to have been an Irishman. In fact he had served for six months in Royal Field Artillery, Fermoy and had 'purchased his discharge'. He obviously came to Australia and enlisted in the AIF in September, 1915 in Brisbane.

I have mentioned Judge Berne. He is recorded in *AIF Project* (UNSW) as having been in the artillery. Sir Leslie Herron once informed me

that the judge had had long and incredibly arduous service in the First World War and had never really recovered from his war experience. He had known him for many years. A photograph of a Sydney Law School rowing eight taken in 1921 (see *A Century Down Town* (1991) p.63) shows Judge Berne (whose surname apparently was not quite known to the authors) wearing what obviously is a returned soldiers' badge from the First World War (a common sight when I was a youth at least) with Sir Leslie two behind him, Sir Adrian Curlewis being the stroke. Judge Berne had the reputation, so far as the bar was concerned, of being somewhat eccentric. A story which circulated was that he claimed that he personally had shot down the German air ace Baron Manfred von Richthofen on 21 April 1918. This claim or what was said to have been such was met with a great deal of scepticism at the bar, but the judge, it would appear, had never made such a claim. There is no doubt that von Richthofen was shot down on the day mentioned. After a great deal of controversy and argument the probabilities are that he was shot down from the ground rather than by the Canadian pilot, Captain Brown, as had been claimed. An Australian gunner was probably responsible. It seems that it was Sergeant Popkin but not Sergeant Berne (see Dr Miller's paper on the matter first published in *Sabretache* in 1998 and which can be found online; Carlyon *ibid* at p.604ff and the entry under von Richthofen in the Wikipedia encyclopedia). His claim, however was that he was at the scene, which cannot really be a matter of dispute. Judge Brian Wall QC (retd.) informs me that Bill Macdonald of the bar told him that he had had morning tea with the judge together with Michael Helsham (later chief judge in Equity (who incidentally held the DFC)) at the Campbelltown Court and probably in the late '40s or early '50s when the judge said that he was at the scene and in effect had joined the numerous souvenir hunters who mobbed the crashed plane. It does seem that 'Richthofen's aircraft was dismembered by souvenir hunters' (see the Wikipedia piece online). Carlyon states 'the Australians rushed the plane' (*ibid* p.606). I think that the details of the judge's failure in this souvenir expedition which were said to have been related by him need not

Judge Berne had the reputation, so far as the bar was concerned, of being somewhat eccentric. A story which circulated was that he claimed that he personally had shot down the German air ace Baron Manfred von Richthofen on 21 April 1918...but the judge, it would appear, had never made such a claim.

be discussed here.

Judge Holt himself had a most impressive war record. He, together with Merle Loxton QC, (as he became) and a country friend Keith McKay went to England to enlist. His son Judge W J (John) Holt (retd.) tells me that this was due to their age. Loxton QC, whom I remember well, was awarded the Military Cross. The judge himself served with Royal Field Artillery in Gallipoli, Sinai, Palestine and France. He was severely wounded at Cape Hellas and spent some time recovering in Cairo. He resumed active service however.

So far as the Second World War is concerned, many if not most of the judges who were of an age to serve in the forces did so. Judge Cross (later Cross J) had a distinguished career in the Air Force as a fighter pilot. He was severely wounded when his plane was attacked whilst he was landing. All fighter pilots, one would have thought, deserved a decoration. Judge Sam Ross was also a fighter pilot. Judge RJM (John) Newton QC re-enlisted under a false name having been discharged because of injuries sustained whilst on service. Judge Sir Adrian Curlewis was renowned for the work he did for fellow prisoners of war in Japanese hands. Judge Philip Head was made a Member of the Order of the British Empire for military services he performed also as a prisoner of war with the Japanese.

Judge Thomas Alfred Milton (Mick) Boulter MM QC, having been taken prisoner, after the fall of Crete escaped from the German

prisoner of war camp at Corinth on 7 June 1941. Single-handedly he made his way to Turkey and eventually back to Palestine, bringing much valuable information. He was commissioned and ended the war as a Captain in 9th Divisional HQ.

I commenced this piece with some observations concerning Judge Storkey VC but also to bring to the notice of members some of the other judges of the District Court, especially Judge Stacy, who had performed magnificently as soldiers. I hope I have not made any obvious omissions. Before concluding however may I say that Buck Telfer became the longest serving crown prosecutor in NSW. The rather unseemly circumstances of his enforced retirement were discussed by Tedeschi QC in the paper to which I have referred. Frank Telfer did however see service in the 35th Field Artillery, being a staff sergeant. He enlisted on 1 September 1916. He was admitted to the bar on 17 November 1916 and I was told that he was actually in uniform at his admission which was on the eve of his embarkation. If his date of birth had been recorded by the Attorney General's Department as 1 April 1899 rather than the 1 April 1889 as stated by Tedeschi as being the position, this should have been an obvious error, as the recorded date would have meant that he had been admitted to the bar and had gone upon military service when he was under 18! Buck was a very well educated man. He was an accomplished cellist and organist and had a knowledge of languages, especially French. He was what I would call a true Edwardian.