

# Mason's miscellany

## Wife sales in Australia

Keith Mason's *Lawyers Then and Now: An Australian Legal Miscellany* was published by Federation Press in November 2012. This extract will appear in a companion volume intended for publication next year.

Thomas Hardy's novel, *The Mayor of Casterbridge*, features a wife sale. This was a common practice in England in the late eighteenth and early nineteenth centuries and some scholars view it as a customary form of divorce even if not recognised by law.<sup>1</sup> It often involved the wife being led by a halter into a pub or other public place where an auction took place, sometimes with the wife's current lover bidding.

*R v Malkin*<sup>2</sup> shows that there were also wife sales in Australia and that the authorities here were determined to stamp out the practice. A Bench of Magistrates caused the following account to be published in the *Sydney Gazette* in September 1811:

By a letter from Windsor...we have been favoured with an account of a most disgraceful transaction which has lately taken place there, and we feel it a duty owing to society to give it public notoriety, as well for the purpose of exposing the parties themselves to the contempt and disgrace which they have so highly incurred, as also to put the ignorant and abandoned on their guard against the commission of a crime which in every sense of manhood should revolt from with detestation.

A person (for a man I cannot call him) of the name of Ralph Malkins led his lawful wife into our streets on the 28<sup>th</sup> ultimo, with a rope around her neck, and publicly exposed her for sale, and, shameful to be told, another fellow equally contemptible, called Thomas Quire, actually purchased and paid for her on the spot, £16 in money and some yards of cloth. I am sorry to add that the woman herself was so devoid of those feelings which are justly deemed the most valuable in her sex, agreed to the base traffic, and went off with the purchaser, significantly hinting that she had no doubt her new possessor would make her a better husband than the wretch then departed from. This business was conducted in so public a manner, and so far outraged all laws human or divine, that a bench of magistrates, consisting of Mr Cox, the Rev Mr Cartwright, and Mr Mileham, had it publicly investigated on Saturday last, and all the odious circumstances having been clearly proved, and even admitted by the base wretches themselves, the bench sentenced this no-man to receive 50 lashes, and put to hard labour in irons on the gaol gang at Sydney for the space of three calendar months, and the woman to be transported to the Coal River [Newcastle] for an indefinite time.

The public indignation at so gross a violation of decency was most unequivocally expressed by the acclamations with which the sentence was received by a numerous concourse of people who assembled to know the event of so extraordinary and unprecedented a business. Their feelings were

worthy of men, and judging from them, I trust with confidence that the recurrence of such a crime will not take place here at least for the present generation. The laudable promptitude with which our magistrates took up the business, and the quantum of punishment (still less than they deserve) which they pronounced, will, I have no doubt, produce the most salutary effect throughout the colony, and check the progress of a crime, which if persevered in, would degrade the inhabitants, and entail perpetual disgrace on their children and families.'

There were also wife sales in other colonies. James Fenton's *History of Tasmania*<sup>3</sup> states that sales of wives were common during the early days of Van Diemen's Land. 'One wife was sold for 50 ewes; another for £5 and a gallon of rum; a third for 20 ewes and a gallon of rum. The latter must have been a public sale, for the local paper remarks:- 'From the variety of bidders, had there been any more in the market, the sale would have been pretty brisk.'

The *Adelaide Register* reported in 1847 that 'a smart comely dame of the age of five and twenty' was taken to a back room of the Land of Promise hostelry on the Port road not far from Adelaide. She was led by a halter and sold to the highest bidder for £2.7.6. The transaction was 'authenticated' by the signing of duplicate papers by the purchaser and the woman's husband. A similar incident was reported in a Naracoorte newspaper as late as 1881.<sup>4</sup>

### Endnotes

1. See E P Thompson, *Customs in Common*, Penguin Books, 1993, chapter 7.
2. [1811] NSWKR 8.
3. 1884, p 50.
4. See Castles and Harris, *Lawmakers and Wayward Whigs*, pp 185-6.