

Women who wanted to be judges, and the men who feared or befriended them

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In 1921 Charlotte Sheens JP became the first woman to exercise judicial powers in NSW, and the only woman to consistently exercise those powers until the first female magistrate was appointed fifty years later. Mrs Sheens heard eight cases at Windsor court in 1921 and 1922 as part of a three- or four-person Bench. In Windsor the community's response to seeing a woman on the Bench was much calmer than in Sydney, where there was much opposition to women being in any position to judge men. It was during one of her cases that for the first time in NSW a witness was assured that they could say swear words in the presence of a female judicial officer when giving evidence about a conversation.

After the long campaign to obtain the rights in the *Women's Status Act 1918*¹ the next challenge was to exercise them. Charlotte Sheens was one of a group of 61 women who became JPs as soon as it was possible after the passage of the *Women's Status Act 1918* (NSW). It was previously thought that none of those women were able to participate on the bench, as male JPs could in those days.² Only Charlotte Sheens sat on the Bench more than once. How did she do it? She was a working-class woman in her early 50s who grew up and lived in Windsor and was married to a tradesman. Part of the answer may lie in the unusual character of the then-presiding police magistrate, Mr Thomas B Clegg.

The Women's Legal Status Act

The *Women's Legal Status Act 1918* enabled qualified women to become practising lawyers, members of Parliament, aldermen, mayors, judges, magistrates, and justices of the peace. Women were quick to exercise some of the new rights to become:

- practising lawyers – the first barrister, Ada Evans (1921) and the first solicitor, Marie Byles (1924);³
- justices of the peace – 61 women were appointed, including Charlotte Sheens (May 1921);
- member of the Legislative Assembly – Millicent Preston Stanley JP, after having narrowly missed election in 1922 (1925)⁴



- alderman and mayor – Lillian Fowler JP in Newtown (1928 and 1938).⁵

The first woman magistrate and judge were not appointed until 1970 and 1980, but there was another path to the bench. In the 1920s justices of the peace could sit on the bench at Petty Sessions courts outside the Sydney metropolitan area. Of the 61 pioneer women JPs, 13 were located outside Sydney⁶ but only Charlotte Sheens of Windsor participated in court proceedings on more than one occasion.

Charlotte Sheens (née Handley) was born in Richmond NSW in about 1867 or 1868.⁷ Her mother was Sophia Handley (née Barwick). Her father, Denis Handley, was a furrier.⁸

Charlotte came from a family of strong women. Her mother's younger sister, Mrs H Jaffray, became famous as a young woman for driving the family's bullock team from Kurrajong to Sydney and was 'quite the equal of any of the Hawkesbury's 'bullockies''.⁹

Charlotte Sheens' parents had a difficult relationship and Sophia Handley took out at least four prohibition orders against her husband Denis.¹⁰ The report of Sophia's 1892 application at Windsor court (a year after Charlotte married) stated:¹¹

Sophia Ann Handley applied for a prohibition order against her husband Denis Handley. Defendant did not appear, and service of the summons was proved. Mrs. Handley stated that defendant was almost constantly under

the influence of liquor and that she had previously had two orders against him; last Sunday night he broke nearly everything in the house and put her out in the street. She applied for a renewal of the order against her husband for 12 months.

The bench unanimously granted the order. Happily, by the time of Denis's death in 1930 he was referred to as Sophia's 'beloved Husband'.¹²

At the age of 24 Charlotte married John Sheens, widower, of Windsor on 17 September 1891.¹³ In those sectarian times, it could have been a mixed marriage – the couple were married by a Presbyterian minister in the bride's home. Each was later buried in the Catholic cemetery in Windsor.¹⁴

John Sheens was a tradesman and during his working life was the head carpenter and painter at the Riverstone meat works for 25 years.¹⁵ He died in November 1940 aged 75 after becoming ill while fishing on the banks of the Nepean River.¹⁶ The couple had three sons. Charlotte Sheens died in August 1956 at the age of 88 at Burwood.¹⁸ There is no published information about her education.

The appointment of women as justices of the peace – public reactions

The following *Sydney Morning Herald* editorial summarised the mixed responses in the community to the appointment of women as justices of the peace, described by some critics as 'unsexing', and describes the limited role they had to play in the city:¹⁹

The appointment, for the first time in New South Wales, of a number of women as justices of the peace has given rise to a mild controversy. Some correspondents have deplored the innovation; in their eyes it is another milestone on that via dolorosa along which modern woman persists in travelling. It is a further stage in the insidious process of 'unsexing' which has already gone so far. Others reply that the phenomenon of a female J.P. is no more abhorrent to nature than that of a male milliner. If a woman may become a member of Parliament or a lawyer, why should she be denied



Interior photo of Windsor Court

the privilege of enrolment in an order whose commission does not, after all, carry very exacting responsibilities. The man in the street sometimes wonders, why the distinction should be so highly coveted, and is a little vague as to the precise duties of a metropolitan justice of the peace. The latter's principal functions are, we understand, to witness certain documents, to administer oaths, to vouch for the integrity of persons who wish to join the municipal library, and in general to diffuse an atmosphere of irreproachable respectability. None of those things should be incompatible with the finest instincts of womanhood, and it is difficult to see why the acceptance of a commission should have the baleful consequences envisaged by the critics. Even if we insist that a woman's proper place is her home, these duties can be discharged equally well, at home; the new magistrates can write their testimonials and extort their fees from deponents without even leaving their fireside. But in any case, objections to their appointment will fall upon deaf ears. The process of 'unsexing', if we like to call it so, has gone too far to be arrested at this time of day by the same protest that proved unavailing with Florence Nightingale. Few men and fewer women would now care to argue that woman's activities should be limited exclusively to the household. Woman has ventured out into the world; she has found it to her taste. She will not return to the domestic cloister – and she would refuse to assent to the proposition that she is less feminine than she used to be.

Charlotte Sheens was proud of her appointment and work as a justice of the peace. In 1932 she was a prosecution witness at Parramatta Police Court in a complaint against a neighbour who had allegedly used insulting words towards her. The

local newspaper reported that Mrs Sheens 'informed the magistrate that she was a JP and had sat on the bench'.²⁰

In those days, as now, justices of the peace had to be nominated for appointment by a member of Parliament.²¹ During cross-examination of Mrs Sheens in the 1932 case a political motive behind her appointment was put to her and she denied it. The following exchange was noted by a newspaper court reporter:²²

Mr. Murray (for the defence, to Mrs Sheens): *Q. Who appointed you a J.P.?*

Q. (Mr Murray to Mrs Sheens) *Mr. Molesworth*²³ – *You were appointed by the Labor bunch?* – *A. I don't know.*

The magistrate: *I don't know whether she would know who appointed her.*

Mr. Murray: *Every Government that goes in appoints certain J's.P. It's just a sop. And they know perfectly well who appoints them.*

Mr. Kemp [prosecutor]: *I was appointed a J.P., and I don't know who appointed me.*

Mr. Murray: *Your Worship knows they are all political appointments.*

Mr. Kemp: *Mine wasn't.*

Mr. Murray: *That was years ago.*

Mr. Murray (to Mrs Sheens): *Q. When you were appointed, Mr. Molesworth was the member here and held Communist views, and you were an agitator with him?* – *A. I wasn't.*

Mrs Sheens may have been proud of her appointment as a justice of the peace, but she did not join the Women Justices Association of NSW, which was formed in 1923.²⁴

Justices of the peace

The Justices Act 1902 provided for courts constituted by multi-person benches of justices of the peace. In regional NSW one or more justices of the peace could sit on the bench with a police magistrate. It is not clear how particular justices became a member of the Bench.

There were about 10,000 male JPs in NSW in 1910 when a Justices Association was established. It was described as an 'essentially conservative group'²⁵ and it was not particularly welcoming to women. At the first national conference of Australian women justices of the peace in Sydney in October 1924 Mr HC Brierley, vice-president of the NSW Justices Association, gave a speech to the women JPs in which he said that women were just as capable of sitting on the Bench as men '... but I would not let a woman judge a woman'.²⁶

Mr Brierley obviously did not know that Charlotte Sheens JP had already participated in the trial, conviction and sentencing of Elizabeth Clark for assault in September 1921 at Windsor Court.²⁷

The Women Justices Association of NSW was formed in 1923 with 190 members. A national organisation – the Australian Association of Women Honorary Magistrates – was formed in 1924.²⁸ The NSW Association tried unsuccessfully to obtain an active court role for women JPs in NSW metropolitan areas, particularly in the Children's Court, and pointed to the experience in Western Australian and Victoria. The NSW minister for justice, Thomas Ley,²⁹ had promised women JPs a greater role in the Sydney Children's Court however he broke that promise. He told the association in 1923 that 'the question of service on the Bench was not a matter of sex versus sex, but a matter of qualification'.³⁰

The reference to qualification was misleading. At that time women were excluded from working in those divisions in the Justice Department from which clerks of the court and magistrates were recruited.³¹

Charlotte Sheens' first appearance on the Bench on 26 September 1921 prompted the following reported response from court watchers and the Bench:³²

ROUSE HILL REVELS THREE YOUTHS FINED

Three youths, Edwin and Gerald Terry and Lance Edwards, looked quite out of place in the Temple of Justice at Windsor on Monday, and had the unique experience of having a female magistrate on the Bench to help adjudicate in their first appearance at court. The situation was a novel one, and sly winks went round the court when Mrs. Charlotte Sheens was seen occupying a seat on the Bench. The usually stern and very proper P.M. (Mr. Clegg) could not repress a smile as he turned to the woman J.P. to ascertain if she concurred in the remarks he occasionally interpolated as chairman; while on the usually dour and immobile broad countenance of Mr. Matheson, J.P., there was at times just a suspicion of pained pleasantries.

Mrs Sheens was sitting at Windsor Court when there was the first recorded exhortation to a witness in a NSW court that it was acceptable to give evidence about a conversation that involved swearing when there was a female judicial officer on the Bench. The exchange between a witness and Mr Clegg PM was as follows:³³

Witness: He continued to call out 'Five bob, seven and six, ten shillings,' and I asked Mr. Pendergast not to go on with the sale. Azzabox then went away and picked up a stick and said — er — er —

Here the witness became somewhat embarrassed at a lady JP being on the Bench, whereupon the PM remarked: Go on, tell us what he said. If ladies choose to sit on the Bench, they must put up with what they hear as evidence in cases of this sort.

Witness: He said, 'You bloody bastard — come here and I'll kill you.'

Charlotte Sheens was to hear more 'hard swearing' during her time on the bench. She sat on eight defended cases — three involving men brawling, one where boys damaged a house with stones, one where there were threatening words, one concerning the theft of a gold watch, a charge of physical assault on a state ward by his female carer, and one case of a suspected pickpocket loitering at the Hawkesbury show. There was also a civil case involving alleged damage done to a crop by a neighbour's wandering cows.

How did Charlotte Sheens JP achieve her role on the Bench?

Charlotte Sheens sat at Windsor Court with Mr Clegg PM from September 1921 until May 1922. Mr Clegg retired in October 1922. Charlotte Sheens did not sit on any

hearings after that and nor, it appears, did any other woman until 1971.

Mr Thomas B Clegg (1857–1945), who served on the Bench from 1909 to 1922, and was the police magistrate presiding at Windsor Petty Sessions court in 1921 and 1922 was not a typical police magistrate. Police magistrate was the title given to more junior magistrates who sat in Petty Sessions courts outside the Sydney metropolitan area. Eligibility was determined by a competitive examination, after which successful candidates awaited a vacancy.³⁴ Police magistrates could determine cases alone or sit with one or more justices of the peace. In the 1920s police magistrates were usually chosen from clerks of Petty Sessions courts who had come up the rungs of a career clerical service, and who could later be promoted to become stipendiary magistrates. They spent years travelling between small country town court houses. The classification of police magistrate was abolished in 1947.³⁵

Thomas Clegg however had a different background. He had worked as a journalist in the 1880s for both the *Sydney Morning Herald* and the *Echo*, covering social issues such as the convict system in New Caledonia and the kanaka labour question in Queensland. In July 1885 as a representative of *Echo* newspaper he witnessed the hanging of Thomas Williams, a former bushranger.³⁶ He travelled to England in 1888 to study



law and in 1891 was called to the Bar in London and then in Sydney. He published four novels between 1906 and 1909, and many short stories, most of which were published in *The Bulletin* between 1924 and 1930.³⁷ From the mid-1890s he held senior positions in the NSW Department of Labour and Industry, and then the NSW Pensions Board. In June 1897 he sat the examination for police magistrates and was one of eight men who passed.³⁸ For some reason he did not commence as a police magistrate until 1909, an unusually lengthy delay even though candidates had to wait for a vacancy to occur.

Mr Clegg sat as a police magistrate until the statutory retirement age of 65 in late 1922. During the last 10 years of his career his circuit included Katoomba, Penrith, Richmond, Windsor, Wyong, Gosford, Liverpool, Campbelltown, and Camden.³⁹ In retirement he was the chief literary critic of *The Bulletin*.⁴⁰

Lillian Fowler at Cooma, December 1921

Lilian Fowler JP of Newtown participated in the deliberations of the Cooma Police Court on Tuesday 27 December 1921,⁴¹ three months after Charlotte Sheens sat at Windsor. Her appearance on the Bench was by accident. She was visiting her father in Cooma at the time. The story unfolded as follows, although accompanied by false claim of a 'first':⁴²

WOMAN PRESIDES AT POLICE COURT

Mrs L. Fowler, of Newtown, Sydney, was called upon recently to show her capacity as a JP by acting as presiding magistrate at Cooma Police Court.

While visiting her father, Mr C. I. Gill, an old Cooma resident who is seriously ill, she was called upon hurriedly last Tuesday, in the absence of the local magistrate, to try a police court case. This is said to be the first occasion in New South Wales where a woman magistrate sat in judicial capacity. Mrs Fowler is said to have comported herself with credit, and to have given her decision unhesitatingly and wisely.

Mrs Fowler's adjudication on the Bench was greeted with some derision in the city newspapers. A Sunday newspaper column described one character's response as follows:⁴³

THE MOVING PICTURE SHOW

Woman's Inhumanity

'Mrs Fowler, J.P., sat on the Bench at Cooma and fined a man 2s 6d for drunkenness,' read the Count de Main.

'Orrible!' said Willie. 'Did she 'ave a man to 'elp her?'

'There was a male J.P. on the Bench with her,' replied the Count, 'but man's inhumanity to man isn't half so terrible as woman's, when she gets a chance.'

'Yes,' exclaimed Willie in disgust. 'I allus knoo women was more cruel than men. If she'd 'ad 'er way I expect she'd 'ave made the fine £5, I've no doubt. I bet the bloke 'ad a 'ard job to influence 'er to cut it down.'

'It was her first attempt,' said the Count. 'No doubt she will do ...'

'Cripes!' said Willie 'Life's a 'orrible business, ain't it. I reckon women's place is in the 'ome.'

'That's where you'll find yourself if you meet Mrs. Fowler professionally,' said the Count. 'The Inebriates' Home or the Dogs' Home.'

Lilian Fowler was undeterred by such condescending remarks. She went on to have a brilliant political career and the federal electorate of Fowler is named after her.⁴⁴ She was a woman of many 'firsts':⁴⁵

- part of the first group of female justices of the peace (May 1921),
- first female alderman in NSW (1929-1948),
- first female mayor in Australia (Newtown, 1938-1939),
- the third woman to become a Member of the NSW Legislative Assembly (1944 to 1950 – Newtown, Labor).

The process by which JPs appeared on the Bench in the 1920s is unclear. Charlotte Sheens was not prominent in the feminist movements of the day, and she denied she had been a political activist. She would have been aware of her mother's use of the courts. Perhaps she simply felt the same desire to serve the community that male JPs felt. One can only speculate that there was a particularly respectful relationship between Thomas Clegg and Charlotte Sheens, and she was invited to sit by the enlightened and worldly Thomas Clegg. It is a pity that more women JPs were not given a similar opportunity. The explanation for the 50-year delay that followed until the next appointment of a woman judicial officer is another story. **BN**

ENDNOTES

- 1 Tony Cunneen, 'One of the 'Laws Women Need' - The Women's Status Act of 1918', *Bar News* Summer 2010-2011: 102-116.
- 2 Hilary Golder, *High and Responsible Office: A History of the NSW Magistracy* (Sydney University Press, 1991): 148.
- 3 www.first100years.com.au.
- 4 Australian Dictionary of Biography.
- 5 Australian Dictionary of Biography.
- 6 *NSW Government Gazette* No 76, Monday 30 May 1921.
- 7 Birth Registration for Charlotte not found, although the birth certificates of younger siblings were found. Marriage certificate for Denis and Sophia Handley not found.
- 8 NSW Births Deaths and Marriages. Registration, Death Certificate for Charlotte Sheens, no 18812/1956.
- 9 *Windsor and Richmond Gazette*, 19 October 1928; *Dubbo Liberal and Macquarie Advocate*, 4 December 1928.
- 10 *Windsor and Richmond Gazette*, 13 February 1892; *Windsor and Richmond Gazette*, 6 February 1909.
- 11 *Windsor and Richmond Gazette*, 13 February 1892.
- 12 *Sydney Morning Herald*, 14 November 1930.
- 13 *Windsor and Richmond Gazette* 19 September 1891; NSW Births Deaths and Marriages. Registration no 18812/1956.
- 14 NSW Births Deaths and Marriages. Registration no 18812/1956; *Nepean Times* (Penrith) 7 November 1940.
- 15 *Nepean Times* (Penrith) 7 November 1940.
- 16 *Nepean Times* (Penrith) 31 October 1940.
- 17 NSW Births Deaths and Marriages. Registration no 18812/1956; *Nepean Times* (Penrith) 7 November 1940.
- 18 NSW Births Deaths and Marriages. Registration no 18812/1956. Death Certificate.
- 19 'Woman's Progress', *Sydney Morning Herald*, 11 June 1921.
- 20 *Cumberland Argus and Fruitgrowers Advocate*, 7 November 1932.
- 21 *Justices of the Peace Act 2002* ss 4,5.
- 22 *Cumberland Argus and Fruitgrowers Advocate*, 7 November 1932.
- 23 Mr Voltaire Molesworth was the Labor Member for Cumberland from 1920 to 1925. He left the ALP in 1925 and worked with the United Australia Party.
- 24 Women Justices Association of NSW membership lists: 1924-2009. State Library of NSW, MLMSS90453(22).
- 25 Hilary Golder, *High and Responsible Office: A History of the NSW Magistracy* (1991, Sydney University Press): 134.
- 26 *Tweed Daily*, 30.10.24, *Daily Examiner* (Grafton); the comments were not included in the *Sydney Morning Herald's* coverage on 30 October 1924.
- 27 *Richmond and Windsor Gazette*, 30 September 1921.
- 28 Janette Butler-Grech. 1923-2013: NSW Women Justices Association is celebrating 90 years of service to the public (State Library NSW. Call Numbers: HQ 2014/2787).
- 29 Mr Thomas Ley, NSW Minister for Justice 1922-1925. In 1947 he was convicted in England of the murder of a man he suspected was his mistress's lover and was also suspected of involvement in the deaths of two political opponents in Sydney in the 1920s.
- 30 *Sydney Morning Herald*, 3 May 1923.
- 31 Nerida J. Cohen, 'Women's Legal Status Act - How Far It Goes', In Feminist Club of NSW, *Silver Jubilee Souvenir*, 1914-1939 (Trove).
- 32 *Windsor and Richmond Gazette* 30 September 1921.
- 33 *Windsor and Richmond Gazette* 26 May 1922.
- 34 For a satirical view of the process see: How to Become a P.M., *Sunday Times* (Sydney) 31 January 1897.
- 35 *Justices (Amendment) Act 1947*.
- 36 *NSW Government Gazette*, 17 July 1885: 4549.
- 37 www.austlii.edu.au.
- 38 *Daily Telegraph*, 19 July 1987.
- 39 *Nepean Times*, 14 October 1922.
- 40 *Sydney Morning Herald*, 20 June 1945.
- 41 *The Sun* (Sydney) Fri 30 Dec 1921.
- 42 *The Sydney Stock and Station Journal*, Friday 13 January 1922.
- 43 *The Sun* (Sydney) 31 December 1921.
- 44 <https://www.aec.gov.au/profiles/nsw/fowler.htm>.
- 45 www.parliament.nsw.gov.au/members/formermembers.