

Callaghan's Diary

Edited by J M Bennett AM

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Young, poor and inexperienced, Thomas Callaghan arrived on 13 February 1840, to try his lot at the Sydney Bar. Within a fortnight and a day, he was experiencing the delights of its open-door policy: Roger Therry, later a Supreme Court judge, 'was friendly enough and went away with one of my best books – *Chitty on Contracts* – under his arm'.

The diary runs from Callaghan's arrival until 1845. The young barrister attends Dr Bland, no doubt just as barristers today may attend a doctor's rooms in the William Bland Medical Centre on Macquarie Street. He celebrates the anniversary of the founding of the colony not on the nearest Sunday, but when it should be, 26 January. He records the arrival of that enigmatic albino barrister Robert Lowe (although no record is made of the later's major contribution to Australia, the finishing of Bronte House).

Callaghan reads and, on the whole, enjoys *Nicholas Nickleby*. He meets, but blows hot and cold over, Caroline Chisholm. What Callaghan would have made of Mrs Jellyby, reputed to be based on Chisholm, we do not know, as the last instalment of *Bleak House* was only published in September 1853, and the diary runs only until 1845. And, on matters chancery and delay, it is an excellent thing to find that a vessel of the 1840s was named 'Lord Eldon', a Lord Chancellor to be elsewhere described as equity's 'great cunctator'.

By April 1840, Callaghan has attended what would now be a professional conduct committee, ten barristers meeting to consider allegations of want of financial probity in respect of William Hustler, a barrister late of Ireland. His description of a meeting in the following year makes even the most stridently independent among the modern Bar understand why the

formalisation of an association and a council may have been desirous: it was about the circuit fees, 'but, after some talk and some squabbles about seniors and juniors, we separated without deciding anything'.

Money, or lack of it, takes up much of Callaghan's time, and in the interesting context of his religion. He is a practising Roman Catholic, and in an age of preferments, he is sensible of his occasional omission therefrom. In this context, there is continual reference to fellow Catholics Therry and Plunkett, both of whom seem to have suffered for their religious beliefs. For one brief at Windsor – 30 guineas, no less – the attorney said that 'no-one should have it but a Protestant!!!'

The diary closes with the hope that a work recently taken on, a consolidation of the Acts in council, would provide a base for professional advancement. Seemingly it did, for in 1847 reference is made in the third edition of Plunkett's *Australian Magistrate*, to 'Mr Callaghan's useful work'. Indeed, Callaghan lived to become a foundation judge of the District courts, although he died at 48 years, from a horse kick.

Dr Bennett has transcribed and edited the original journal, and has provided notes and an index for readers. The work is an invaluable record of daily life of a Sydney resident. Publication details of *Callaghan's Diary* and how to order, can be found at the web site of the publisher, the Francis Forbes Society for Australian Legal History, which has had a recent flurry of works about the presiding chief justice for much of the period, Sir James Dowling. After dipping into the diary, readers may know him better as 'Blowhard', but he has his soft side, as shown when Callaghan must have drawn the short straw, and ends up next to him at a Bar dinner. Far from being remote, the young man records, '[h]e was very hospitable and Plunkett made a good speech. The other speeches were all drivelling nonsense'.

Reviewed by David Ash

Verbatim

Combet & Anor v Commonwealth of Australia & Ors [2005] HCATrans 650 (30 August 2005)

Gummow J: What follows if you are wrong?

Mr Gageler: I have two other somewhat less technical arguments, your Honour.

Gummow J: Well, it is no good to denounce it for being technical. That is what politicians say when they find the Constitution prevents something.

Kirby J: We all have to get used to this new jargon.

Mr Gageler: Yes. Your Honour, I try not to contemplate being wrong. It seems to be the - - -

Gummow J: Just contemplate being subtle, that is all.

Paua Nominees Pty Ltd v Miller [2005] HCATrans 774 (28 September 2005)

Gummow J: It is a common law case.

Mr Maconachie: Indeed. The undertaking - - -

Gummow J: I did not mean that as a term of approbation.

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Hayne J: How else are you going to get up there, Mr Maconachie, except externally?

Mr Maconachie: From the inside.

Hayne J: Yes, if you are very thin when the last plate is going on.

Mr Maconachie: That would exclude me, your Honour, but the question of how it was to be done – I can say this in a dozen different ways – was for the employer.