Sir Adrian Knox

By David Ash

> Some day someone will write the full story of Australian roguery, from the rum racketeers of the First Fleet to the beer racketeers of the Second World War, from land swindlers to mine swindlers, from William Wentworth to Claude de Bernales. The dramatis personae will be well assorted – red-coated English officers and wide-hatted Australian squatters; Tories and Socialists; knights and nobodies; politicians, policemen, aldermen; racing-men and brewers; and every State will provide a scene or two, though, unquestionably, New South Wales will steal the show.

Adrian Knox was a New South Welshman. He was neither a red-coated English officer nor a wide-hatted Australian squatter, although his birthright was upon both. He was a Tory and not a socialist. He was a knight and a politician and a racing-man. But he was no rogue; rather, he was the acme of his own perception of integrity.

Why open this fifth instalment of *Bar News*'s Sydney High Court prosopography with Cyril Pearl's paean to larrikinism, other than to note the bar's founding father gets his own guernsey?[1]

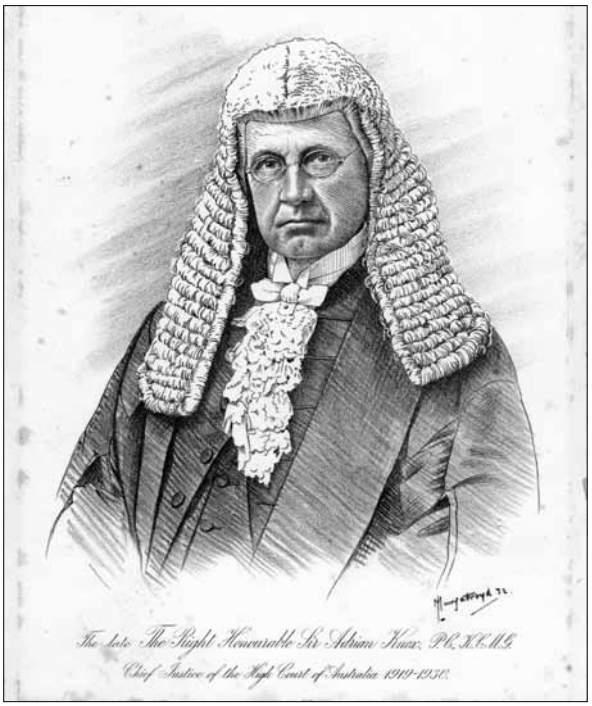
In fact, the word 'larrikin' and the child Knox each made an appearance in the 1860s, with the child – at 1863 – in by a head. Knox was the last appointment to the High Court to spend the greater part of his life in the 19th century. Knox's time was at least his own as much as the larrikin's, a fellow described by Pearl as the 'product of the acute social inequality, the class bitterness and the frustration of his times…'[2]

Knox was more than not a larrikin. He was an anti-larrikin, a counter-product of that same inequality. For him, the concept that class was anything other than an inert collation of rights and obligations, or the idea that bitterness or frustration was anything but a personal trait of the weak, these were foreign things.

None of which is to say that Knox was a foreigner in his own land. He was intimately involved with it; if we stress each of 'his', 'own' and 'land', we may add 'More so than any High Court judge before or since.'

Frigyes Karinthy

Frigyes Karinthy was a contemporary of Knox. That is the end of what they had in common. Karinthy was a poet, a satirist, a comic writer and a café society wit. He was Hungarian. While not a Jew, his second wife would die in Auschwitz. He was way removed from Knox's world, physically, financially and spiritually.



Sir Adrian Knox, by Arthur D Murgatroyd, published in a supplement to *The Australian Law Journal*, May 15, 1932. National Library of Australia.

In 1929, Karinthy wrote a short story whose title translates as 'Chains' or 'Chain-Links'. In it, he proposed the 'six-degree-of-separation' theory:[3]

> A fascinating game grew out of this discussion. One of us suggested performing the following experiment to prove that the population of the Earth is closer together now than they have ever been before. We should select any person from the 1.5 billion inhabitants of the Earth—anyone, anywhere at all. He bet us that, using no more than five individuals, one of whom is a personal acquaintance, he could contact the selected individual using nothing except the network of personal acquaintances.

Sir Harry Gibbs wrote in a foreword to Graham Fricke's excellent sketch of earlier members of the court:[4]

> The writer of the biography of a member of the High

> Court who has not engaged in politics has no easy task. The life of such a judge has not usually been an adventurous one, except in the field of the intellect, and a scholarly analysis of judgments on legal topics, and an examination of the development of legal principles, does not make exciting reading for the layman.

The interesting thing about Knox (who did engage in politics, unexcitedly) is that if the living of his life may have been unadventurous in the Gibbsian sense, it was a life with a box seat position from which we may vicariously view our colony and our early state and nation. Knox by his birth and then by his ability was intimately involved in so much of Sydney's commercial and legal life that he gave up one fortune to take the post of chief justice and gave up the post of chief justice to take another. It is these involvements, chain-links if you will, which make Knox's story far more accessible than Knox himself.

As a postscript, I accept that it would be unfair to Karinthy not to attempt at least one 'six-degreer' between himself and Knox:

> Karinthy (1) had as translator and a person who as a child had met him, Paul Tabori (2); who was a member of the Ghost Club Society[5] with K E Shelley QC (3); who successfully led the appeal in Chappell & Co Ltd v Nestle Co Ltd [1960] AC 87 before inter alia a dissenting Viscount Simonds (4); who had juniored R G Menzies QC (5) in one of the Privy Council forays of Mr James, well after Menzies had had his victory in the Engineers' Case, a victory built upon (6) Adrian Knox asking him why he was putting an argument he knew to be nonsense.[6]

Chappell is perhaps better known to the tortured contract student for Lord Somervell's observation that '[a] peppercorn does not cease to be good consideration if it is established that the promise does not like pepper and will throw away the corn.'[7]

A recent *Herald* obituary throws up a 'five-degreer'. The obituary is for Charles Campbell (1937–2011). Knox is not mentioned, but we can infer his presence: Charles (1) married Martha (2); Martha is the daughter of Helen (3); Helen was the daughter of Colin (4); and Colin was – apart from being a descendant of the original Campbell by a different route – best man to Knox (5).

The obituary mentions that the original Campbell had owned Duntroon (and, for that matter, Yarralumla). In the *Women's Weekly* of 1 July 1964, Mary Coles writes on the subject of new bells for Canberra's St John the Baptist Church:

> St John's owes its start to Robert Campbell, Sydney Free-Settler merchant and original owner of 'Duntroon,' a sheep-run in the Limestone Plains – Canberry Creek district. He names the property after Duntroon Castle, the Campbell family seat in Scotland…
>
> With Campbell backing, the foundation stone was laid in 1841 and the church, with seating for a congregation of 200, was completed in 1844.
>
> … In a lighter vein there's an original pew with the inscription A KNOX LLB.
>
> It's believed to have been scratched (prophetically) in 1878 by Sir Adrian Knox, a former Chief Justice of the High Court of Australia, when he was a lad.

Sir Edward Knox

Neither entrepreneurs nor judges are known for pondering the Hamletian dilemma, so it is not surprising that Edward Knox emigrated from Elsinore (in 1839 after quarrelling with his uncle).

In 1844, he married Martha Rutledge, the sister of the well-known merchant and settler William.[8] (Martha being the great-grandmother of the aforementioned Martha).

Edward had chosen Australia to make his fortune as a pastoralist; a high degree of business acumen saw him first try his hand in a number of Sydney business enterprises, including sugar and banking.

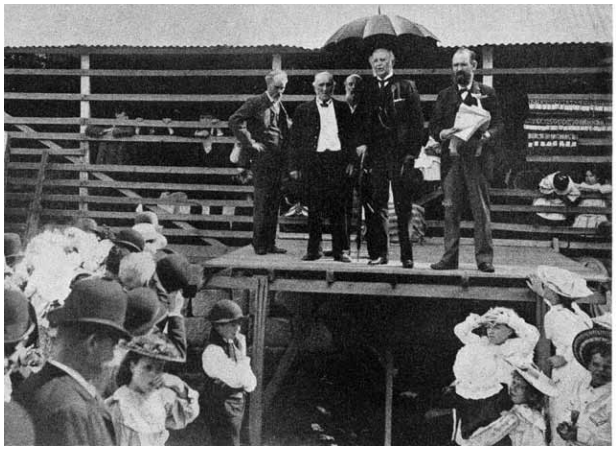
Edward was involved with sugar from 1843; the Australasian Sugar Co, a lessee of his sugar making equipment, made sugar at the corner of Liverpool and Pitt Streets, the intersection where the Downing Centre is found. But the defining – or refining – moment would come on New Year's Day 1855, when the Colonial Sugar Refining Company commenced business with Edward retaining a third of its capital.

Chippendale and Pyrmont

When Sydneysiders think of CSR, most of us think of Pyrmont. The land had been bought by John Macarthur in 1799 for a gallon of rum; when he took a group

for a picnic in 1806, one of the women in the party said that the peninsula reminded her of Germany's Bad Pyrmont. Young barristers know that Bad Pyrmont was once home to Nobel laureate Max Born. Old barristers know better the songs of his granddaughter Olivia Newton-John.

Before Pyrmont, CSR had Chippendale, where Knox Street still comes out onto City Road opposite Victoria Park, between the Landsdowne Hotel and the Golden Fang Chinese Restaurant. The land was owned by Robert Cooper, who had his Brisbane Distillery there.



Sir Edward Knox.

Cooper had been a convict, and if too early and occasionally too rich to be a larrikin, he was certainly a prototypical 'colourful Sydney identity'. Pearl's rogue W C Wentworth – wearing it seems a solicitor's hat and not a wig – once wrote to Cooper's solicitor on behalf of a client, regretting that 'Mr Robert Cooper who is so liberal of his Gin to others, should not have indulged Mr Alexander with a taste of it last night, instead of that taste which he gave him of a bludgeon'.[9]

Cooper was not ashamed to advertise the source of his wealth, choosing for the name of his still-extant-on-Oxford-Street residence, Juniper Hall. (It is tempting to wonder whether one of the Knox family houses in Darling Point, Lansdowne, was the reason the pub later got its name. Perhaps not.)

Cooper's workers did not have it so good. Edward Wise, on the other hand, had a social conscience. In 1859, he was attorney and not yet Supreme Court judge. After firsthand and detailed inspections, he gave evidence to a select committee 'on the condition of the working classes'. After observing of part of Chippendale, he would aver:[10]

> This row of houses [in Paradise (!) Row, now Smithers Street], twenty-five in number, are all weatherboard, with a roof of shingles, in an exceedingly dilapidated condition, totally unfit to be the residence of any human beings; many of these dens are so filled with vermin that the people can hardly live at all in them. The wet comes in through the roof, and runs off the street into them, the floors being lower than the street. Each dwelling contains two rooms – the one 10 feet square, the other 7 feet 6 inches by 10 feet. All the light is from two windows, about 25 inches square. The back room in which they sleep is so small, that when the bed is up scarcely room is found to turn round, and yet I found, huddled together, five of both sexes, indiscriminately. There is no drainage, and only one well to all the houses. At the back of the house, fronting the back, are the privies, five in number, three full, and four out of the five unfit for any human being to enter; three have no doors, and another has no roof, so that, if the feelings of delicacy were at all consulted, four would never be used, and the 100 inhabitants would all go to one privy. The men seemed ashamed to look at me while they told me the barbarous state in which they were compelled to live. The houses were 8s. each, reduced to 6s.

Things would not be so bad after CSR began operations. Local historian Shirley Fitzgerald observes that 'If Robert Cooper represented the first generation of colonial adventurers, [Edward Knox and his two partners] represented a second generation of more respectable investors and merchants', adding that 'All three men were free immigrants with considerable standing in the commercial world of Sydney, and considerable involvement in worthy social ventures'.[11]

True it is that Wise actually gave his evidence in 1859, after Cooper had decamped and four years after CSR had commenced operations. Against this, CSR had upon its commencement begun the demolition of most of the cottages to the west (towards the now Knox Street), erecting in their stead 'more substantial four-roomed, two storey brick houses with slate roofs', although probably selling them off rather than using them as tied housing.[12] Many years later, in 1877,

Edward would make a personal gift of £1,500 to the 129 employees in the business.

None of which is to say that CSR ran a model operation. Like other capitalists before and since, it would confess its participation in a nuisance (in this case, the fouling of city water) and avoid any responsibility. CSR was fortunate in 1872, when, as one of the defendants in a prosecution relating to the same, it was able to find local residents prepared 'to vouch for the sweetness of the air in Chippendale'.[13]

Sir Edward Knox's offspring

Edward and Martha had George (1845–1888, barrister); Edward William (1847–1933, chair and managing director, CSR); Thomas Knox (1849–1919, managing director, Dalgety's Sydney branch); Clara (1851–1928); Jessie (1853–1927); Fanny (1856–1944); Katie (1859–1946); and Adrian (1863–1932).

In omitting parenthetic particulars of the women, I am not being unfair. First, this is an article about Adrian and not about them. Secondly and in any event, I will try to make good the imbalance. In the last issue of *Bar News*, legal historian Tony Cunneen wrote:[14]

> (Sir) Adrian Knox KC lamented having to serve on a particular Red Cross committee then added: 'When the war is over I hope I never have to act on a cock & hen committee again – at least until the next time.' Knox's reference was clearly to the necessity of having to work with women and he was obviously keen to avoid it if at all possible.

With four sisters separating Adrian from three high-achieving brothers, we are entitled to speculate on a link between his family life and his attitude to working with women. And we are fortunate in this respect to have a book of recollections by Helen Rutledge, the mother-in-law of Colin Campbell, whose obituary is referred to above. We are fortunate for three reasons.

The first is that Rutledge was no mere relation of Knox. Her father Colin was Adrian's best man, her mother Knox's niece.

The second is hinted at when Rutledge acknowledges in an afterword her daughter Martha's 'professional editorial experience and her historian's knowledge'. This is an understatement. Martha is the doyenne of Australia's *Dictionary of Biography*, with 169 entries to her name at last count.[15] Pertinently, she and Graham Fricke are the joint authors of a biographical note on Adrian in the *Oxford History of the High Court of Australia*.

The third is that Helen provides a legal flavour to our theme. Lucy Campbell was the daughter of the great-great-uncle of Martha's late husband Charles. There is debate at *Bar News* as to whether Lucy and Charles can each be described as the other's first cousin twice removed. Lucy married Septimus, the seventh son of Stephen CJ and father of the aforementioned Colin, Helen's father. Septimus was second cousin to the father of the law of evidence, James Fitzjames Stephen, and second cousin once removed of Virginia Woolf. As his middle name indicates, the father of the law of evidence was the son of a James. Justice Heydon's assessment of the legacy of Woolf's uncle appears elsewhere in this issue.

I digress.

Of Adrian, Helen writes:[16]

> Adrian was the one his family considered to be the most brilliant. He was the fiercest and most dogmatic of the brothers and though he did not suffer fools gladly, he was powerfully attractive. Unlike Edward, who seemed to have no pleasures except in business affairs and his home and garden, the sons had other interests. [Colin's father-in-law] Ned and Tom were keen yachtsmen and Ned enjoyed the theatre and dancing (he said the latter came naturally to him and he always danced on his toes, not his heels as some men were seen to do). Adrian liked racehorses and racing. He was chairman of the Australian Jockey Club for years but gave up all his racing interests when he became Chief Justice of the High Court of Australia, after a brilliant career at the Bar. He also sold all his company shares. There were considerable sacrifices on his part, but like Ned, who said he never tried to make money because he thought it was wrong for a salaried man to speculate, Adrian thought it would be wrong to hold industrial shares in his new position. He, also, had a high sense of duty and of what was fitting. He was much younger than the others and much spoiled by his sisters, who doted on him. He never had the rugged upbringing that fell to the lot of Ned and Tom nor did he possess tolerance as an employer of men that Ned learnt in the Sugar Company, and Tom had as a manager, general manager and inspector of Dalgety and Company.

Of the Knox women, Helen writes:[17]

> Grandfather [Edward William, Edward's son] was known as Uncle Ned, and Granny as Aunt Edith by those who had the right; because there were no sons of [their] marriage she was never called 'Old Mrs Knox'. When her sister-in-law, Mrs George Knox died in England [in 1937], Edith had her cards changed from Mrs Edward W. Knox to Mrs Knox, much to her satisfaction. Before this, there was Mrs Ned, Mrs Tom and Adrian's wife, soon to be Lady Knox [sic; Knox's CMG had been upgraded to a KCMG in 1921]. There was something very distinctive about being 'Mrs Knox' and being acknowledged head of the family, but it was pleasing custom in those days to be called Mrs Tom, Mrs Dick and Mrs Harry. It was unthinkable to speak of these married ladies by their Christian names if one belonged to a younger generation or were only an acquaintance.

Five years after Knox's cock & hen committee complaint, Frigyes Karinthy completed the second of his two sequels to *Gulliver's Travels*. Gulliver finds himself in Capillaria, a land beneath the sea where men – or 'bullpops' – are enjoyed as fine dining by women, who rule as gods. Knox might have enjoyed Karinthy's introductory remark:[18]

> Men and women – how can they ever understand each other? Both want something so utterly different – the men: women; and the women: men.

Knox would resign as chairman of the AJC immediately upon his elevation, whereupon the AJC would institute a classic race, the Adrian Knox Stakes. This is a race for three-year-old fillies, and is perhaps a vindication of sorts. What would Knox have said had he lived to see the list of acceptors for the 1939 race, which the *Herald* of 10 January reported as including Some Vixen, Feminist, Early Bird, Lady Curia, Talkalot and Radio Queen?

It is not enough to explain Knox by his connections with his family; it is necessary to consider closely his family's – and his own – connections with commerce. Older barristers will recall that the NAB branch at the corner of Elizabeth and King Streets was once a CBC branch. In the latter's centenary history is written: [19]

> At the annual meeting of the bank in July, 1933, Mr James Ashton, the chairman of the bank, in making reference to the death of [Adrian's brother] Mr E W Knox, stated "The recent deeply deplored death of Mr E W Knox, a foremost figure of Australia's commercial life, removes another link with the past. Mr Knox's father, Sir Edward Knox, became a director of the bank-then a co-partnery-in the year 1845-88 years ago. In 1847 he became managing director, and when the bank was incorporated the following year with a capital of £72,000 he was appointed manager. He vacated this post in 1851 to become a director, which position he held until 1856, when he was appointed auditor. [Meanwhile in the second full year of CSR operations!] In 1862 he again became a director, and remained on the board until 1878. Thereafter he was a director at intervals until his death in 1901.
>
> Continuity of service was broken during the earlier years of his connection with the bank by an arrangement for periodic retirement of members of the board. During his absences from the board from 1878 onward, Sir Edward Knox's place was filled for the most part by his son, the late Mr E W Knox, who, joining the board in that year, finally ceased to be a member in 1909. Mr T F Knox, another son of Sir Edward Knox, was a member of the board from 1915 until his death in 1919, and the third generation is represented by Mr E R Knox, who is present as a director.

Sir Edward Knox, like William Lever, was a paternalist. But there was a difference. Lever was a liberal but a peculiarly meddlesome one, building his paradise of Port Sunlight upon the intrusive rules of an autocrat. Knox was a Tory and an extremely rich one, but I rather think he thought himself a privileged person who was required to discharge his own obligations and not permitted to impose his own mores. In this, he was Adrian's father.

Knox's Australian education

In 1827, Barnett Levey commenced building Waverley House at Bondi Junction, named by him in honour of Sir Walter Scott.[20] It is gone now, and all that remains is Barnett Levey Place, at the corner of Bondi Road, Waverley Street and Council Street, Bondi Junction. The closest street is in fact none of these, but the deadend Dalley Street. I do not know whether this is the Dalley whose statue looks from Hyde Park at his three homes, the Supreme Court, the Legislative Assembly and St Mary's Cathedral, or his equally colourful son John Bede Dalley, or some other Dalley. Be that as it may, this site of Waverley House would become Knox's first place of education.

Founded in 1866 by Miss Amelia Hall, in 1928 a teacher would write:[21]

> It was my privilege to be on the teaching staff of 'Waverley House' fifty four years ago (1874) [when Knox was a student]…. Waverley House was the principal preparatory school in the colony at that time. We had boys from all parts of Australia and Fiji.

The boys wore Eton uniforms and silk hats, and students included (Sir) Philip Street and members of Sir Alfred Stephen's family. Hall led the boys to water and let them drink, and her commemoration is two granite horse troughs at the entry to Waverley Cemetery on the corner of St Thomas and Trafalgar Streets. A feature is a lower drinking trough at pavement level, it being suggested that this was for dogs.[22] I suspect that this is correct. If you stand at the corner and look at the gates of the cemetery (which opened for business in 1877), the most notable thing is a high-placed sign barring dogs. This must have been to prevent unhygienic outcomes in otherwise solemn moments. Anyway, I wonder how many of Hall's students are buried there?

Hall's death in 1891 was the catalyst for the Kilburn Sisters taking over a lease for the purpose of enlarging their day and boarding school for girls and infant dayboys and of incorporating an orphanage.[23] George Rich's sister – Kilburn Sister Freda – may have taught here while she was not assisting the homeless.

After Waverley House and until Knox was about 14 years of age, he attended H E Southey's school in the Southern Tablelands. The nephew of the poet laureate, Southey rented Throsby Park at Moss Vale and opened with eleven boys in the early 1870s, purchasing Oaklands in Mittagong in 1875.[24]

The poet laureate had named his school magazine *The Flagellant* and compounded his problems by using an early number to apply the title to Westminster School's headmaster:[25]

> Vincent was moved to uncontrolled wrath and an action for libel against the publisher. Southey at once admitted himself the author of the paper and was promptly expelled.

The author of the school's history notes that a lack of humour was one of Vincent's two faults.[26] What Vincent would have made of his student's own nephew's hack at headmastership, we cannot say. However, the *Australian Sports History Bulletin* has given us an insight with a short note on John Walter Fletcher, the English FA's first secretary and a man advanced as the 'Father of Australian Soccer':[27]

> Fletcher's movements from 1870–1874 remain obscure but during 1875 he accepted a position as Assistant Master at H E Southey's country school, Oaklands. Initially located at Moss Vale, New South Wales (NSW), the school was moved to Mittagong before Fletcher arrived in the last months of 1875. Employment and a touch of adventure lured Fletcher to Oaklands but the man Southey himself was an attraction. Also an Oxford man, even if he was secretly sent down for persistent gambling, Southey was the nephew of the prominent poet Robert Southey.
>
> If Fletcher believed Oaklands was going to be another Cheltenham, he received a rude shock upon arrival. Southey's school was a small, rough and tumble establishment where bullying among the boys was reminiscent of English schools in the 1820s. Set in the bush with 640 acres of scrub attached, the school had a better than average standard of teaching but Southey's methods, much liked by the Murrumbidgee squatters who sent their sons to Oaklands, were alien to the likes of Fletcher. His stay was accordingly short.
>
> While there, Fletcher did become a pioneer of lawn tennis in Australia. He seems also to have been the 'reformer' who introduced history and geography to the school. His charges included Gilbert Murray, then a ten year old but later an eminent classics scholar. Murray's memoirs help explain why Fletcher's stay at Oaklands was so brief:
>
> > When my mother and sister came up once to see me they were horrified at our dishevelled and ruffianly appearance, but took comfort from the thought that we were as healthy as we were untidy.[28]
>
> A final reason for Fletcher's quick departure conceivably lay in his staunch Anglicanism and disagreement with Southey, who had a commitment to Catholic religious instruction.

Murray's brother, later Sir Hubert, administrator of Papua, was named John Henry Plunkett, for his father's friend, attorney and ultimately successful prosecutor in the Myall Creek massacre.

Knox would become and remain a keen sportsman. I Zingari (from the Italian for 'the gypsies') Australia is amongst the oldest cricket clubs in Australia. There is a

photo of a youthful Knox in the I Zingari Australia First XI for the 1899/90 season. An uncaptioned copy can be seen on the club's website.[29] Knox is the boatered beau in the top left corner.

Knox did not have to go far for a game. He generally lived in Woollahra, although he may at this time have been spending bachelor days in the Dower House, now part of Ascham School (for girls!) in Edgecliff. By that season, the club had ironed out accommodation difficulties: [30]

> It is generally not known that there existed considerable opposition to our old club obtaining the lease of Rushcutter Bay oval when first built– and further to prevent football being played on the new turf in its first winter, we cricket club members introduced baseball but, as there was no competition, the game did not prosper. We then formed the Roslyn Gardens Harrier Club as our winter sport and held a Sports meeting on the oval.

A digression – Darling Point realty

By 1864, Adrian's father Edward felt secure enough to buy land from Thomas Whistler Smith:[31]

> After his father's death in 1842, Thomas Whistler Smith took over the successful family importing business and built a house for his mother known as Dower House in the grounds of Glenrock. In 1847 he married Sarah Maria Street… Smith also directed several companies including the Commercial Banking Co. of Sydney, and was a member of the New South Wales Legislative Assembly from 1857–1859.

From the Edward Knox side of things, there is the mere commonality of bank and politics. On the family front, John Street had married Maria Wood nee Rendell. A daughter was Sarah Maria Street: see above. Meanwhile, a son was John Rendell Street, a son of whom was Philip Whistler Street. Had I had either time or politeness, I would have contacted one or other of the extant dynasts for confirmation; for now, I have to hypothesise: I haven't found a Whistler in Philip's ancestry; I suspect the early death of TW Smith (in 1859) was remembered by his widow's brother and his wife when giving Philip a middle name (in 1863). *Bar News* editor, stand by for clarificatory letters.

I add only that there is no dispute that Philip Street's mother was Susanna Caroline Lawson, a granddaughter of William, explorer colleague of Blaxland and rogue barrister Wentworth. Keep the link in mind for later.

A digression – The Royal Society

The poet's nephew made a go of being a headmaster. On page 9 of the *Herald* of 11 January 1879, the school's scholarship advertisement is larger than the adjoining ones for The King's School and Newington College.[32] Meanwhile, he was elected to the Royal Society of NSW on 7 June 1876. Given the school's sporting outlook it is happy to note that a person elected with him was a John Eales.[33] At the same meeting, Henry Chamberlain Russell (later a president and one of Australia's foremost men of science) read a paper entitled 'Notes on some remarkable errors shown by Thermometers'.[34]

Knox's brother George joined the society in 1874; his father Edward in 1875; and his brother Edward junior in 1877. On 4 October 1876, the society resolved to send a deputation to wait upon the government to urge it 'to introduce during the next Session an efficient General Public Health Act…'

The deputation included a Knox; George Wigram Allen; George Dibbs; John Fairfax; and A B Weigall. A number of other prominent names appeared. As the abstract of a recent paper by Dr Peter Tyler to the society entitled 'Science for Gentlemen – The Royal Society of New South Wales in the Nineteenth Century' says:[35]

> Members of the Royal Society were part of the colonial conservative establishment. Women were excluded, while rigorous admission procedures ensured that "working men" did not become members. Nevertheless, the Royal Society recognised the need to educate or inform the broader public about the achievements of science, and organised regular gatherings for that purpose. It would be easy to characterise the members as typical class-conscious paternalists of the Victorian era, but there were always a few dissenters who did not fit that model.
>
> In the twentieth century more inclusive attitudes emerged gradually, reflecting the changes in the wider community. Today it is difficult to discern any remnants of the earlier caste system. A question we might ponder is – has the influence and public profile of the Royal Society diminished at the same time?

Doctor Tyler points out that the society's origins go back to 1821 when The Philosophical Society of Australasia

was established under patronage of the governor, Sir Thomas Brisbane, who was its first president. Himself an eminent astronomer, the origin of his name will interest barristers of our northern sister; one or more members sat on the Scottish woolsack, hence it is said the name Brisbane, or 'bruised bone'.

And what of Mr Fletcher?

With Fletcher's sporting firsts, readers will not be surprised that his son played club cricket with Victor Trumper while his wife Ann(e?) embroidered the velvet bag in which Ivo Bligh carried back the Ashes urn in 1883.[36]

Fletcher began a school in Woollahra – Knox's home suburb for much of his life – and had his own brush with the law thereby. As recorded by the *Herald* on 19 September 1883:

> In this case WH Chard sued JW Fletcher for £20 12s for alleged breach of contract. Mr F Barton, instructed by Messrs Spain and Sly, appeared for the plaintiff; and Mr O'Connor, instructed by Messrs Want, Johnson and Scarvell, for defendant. It appeared that the defendant was headmaster of Coreen College, Woollahra. Plaintiff's case was that it was agreed between him and defendant that in consideration that he paid defendant one quarter's fees in advance defendant would board, teach and instruct a son of plaintiff at his college during the whole of the said quarter. He paid defendant the said fees, and everything happened necessary for entitling him to have the agreement performed; yet defendant did not board, instruct and teach the plaintiff's said son during the whole of the said quarter. Although he received plaintiff's son at his said college at the beginning of the said quarter, he refused and neglected to board, instruct and teach plaintiff's son during the whole of the said quarter, whereby plaintiff lost the said quarter's fees, and the board and instruction that otherwise would have been given to his son. The amount sued for consisted of the fees which plaintiff had paid to defendant. The defence was that the son of plaintiff was suffering from ringworm, and that he was sent home as a precaution against the other scholars suffering contagion from the said disease, but that defendant was prepared, upon the boy being cured, to receive him back again in the college. Having heard the evidence the Judge stated that the case was a rather unusual one. It appeared to him, however, that defendant had acted judiciously, as there was no doubt that he had to perform a duty to his other pupils as well as to plaintiff's son. His verdict would be for defendant, with costs for witnesses and increased fees for counsel.

Such were the early days of a future master in lunacy and a future High Court judge.

An English education

From Mittagong, young Knox was sent to Harrow. Why, I do not know. The brothers (or at least Edward Junior and George) went to Sydney Grammar, and if Edward senior and his wife knew that Adrian was headed for the High Court, he would have felt at home there. Gavan Duffy CJ said from the bench upon Knox's death:[37]

> Educated at an English school and an English University, and bred in a society which does not encourage the display of exuberant emotion, Sir Adrian did not wear his heart upon his sleeve; but he had a kind and generous heart, and his friendships once formed were warm and lasting.

And the Harrovian that Knox must have made? Perhaps a Shavian Colonel Pickering over Withnail's Uncle Monty. He would stay in England from age 14 for a decade, later moving to Trinity College Cambridge, where his elder by two years was A N Whitehead, Bertrand Russell's partner on *Principia Mathematica*, and his junior by three, George Lord Carnarvon, known to generations of schoolboys as the man who funded the discovery of – and would suffer a mysterious death by – Tut'ankhamun's tomb. Knox was admitted to the Inner Temple in May 1883, took his prayed-for LLB in 1885, and was called in May 1886. However, he cannot have practised there, as he was admitted to the colonial bar on 26 July and commenced reading with George at Lyndon Chambers.

Brother George

George Knox had a large equity practice, but he died two years later, in 1888. Born in 1845, he was almost two decades his reader's senior, although this did not stop the precocious Adrian succeeding to much of his practice, and to much of his contact with the leading solicitors of the day.

Adrian would still have been in Mittagong when the *Herald*'s law reports for Wednesday, 18 February 1874 recorded:

> Central Criminal Court. Tuesday. Before his Honor Sir

James Martin, Chief Justice.

The Attorney-General (Mr Innes) prosecuted for the Crown.

FORGERY AND UTTERING.

Frederick Poole, otherwise Frank Percy, was indicted for that he, at Sydney, on the 12th of January last, did feloniously forge a certain warrant and order for the payment of £4 sterling, with intent to defraud. There was a second count for feloniously uttering.

The prisoner pleaded guilty to the second count, and was remanded for sentence.

CHILD MURDER.

Frances Alderson was placed in the dock to stand her trial for that she, at Liverpool, on the 4th of January last, did murder a male child, by name unknown to the Attorney-General.

The prisoner, who had pleaded not guilty on the day previous, was defendant by Mr P A Cooper.

The case for the Crown was supported by the evidence of the apprehending constable, Robert Jones; Elizabeth Anderson, a midwife; and Dr Strong, a duly qualified medical practitioner.

The medical testimony went to show that there were grounds for the presumption that the child whose body was found had been "fully born alive", but he could not swear that such was the case, or that what he saw was inconsistent with the theory that death might have taken place before birth.

The first count was withdrawn on the part of the Crown, and the counsel for the prisoner addressed the jury in defence of the prisoner on the minor charge.

The jury returned a verdict of "Not guilty of murder, but guilty of concealment of birth".

The sentence of the Court was that the prisoner be imprisoned in Darlinghurst gaol for twelve calendar months.

RAPE.

Michael Desmond was placed in the dock to stand his trial for that he, on the 25th day of December last, did commit a rape on a female child named Ellen Anne Williams, aged 11 years.

The prisoner was defended by Mr George Knox, instructed by Mr J Carroll.

The testimony for the Crown consisted of the evidence of the apprehending senior constable James Potter, of that of the child herself (prisoner's step-daughter), her young brother, and Dr Egan.

The counsel for the prisoner (Mr G Knox) contended for the possibility of the two children being quite mistaken in their identification of their stepfather as the perpetrator of this gross outrage.

The Attorney-General replied, pointing out that no reasonable ground had been shown against the most implicit acceptance of the testimony of the child and her brother.

The jury retired to deliberate; and, on their reappearance in Court, after a short interval, returned a verdict of "Guilty".

The prisoner, on being asked what he had to say – by way of showing that sentence of death should not now be passed upon him – declared that the testimony of the constable, on some trivial circumstances connected with the apprehensions on his charge, was not to be relied upon. He complained also that the girl's "bad conduct" had not been spoken of in the evidence given in the case – that she had often been brought home drunk, and was frequently out late. This charge brought against him was due to nothing but the vengeance of his wife, a woman older than himself, who was very jealous of him, and with whom he lived on bad terms. As to this charge of rape he was innocent of it altogether. It was a mere plot against him by the Williamses, who had put up the two children to swear against him. The girl was out that very night till half-past 10 o'clock.

His Honor said that the prisoner had been tried for the capital crime of rape, and had been found guilty by the jury who had heard and considered the evidence. His defence had been very ably conducted by the learned counsel assigned, and everything had been said in his behalf that could be said. All that the prisoner now said, or might hereafter say, would of course be considered by the Governor and the Executive Counsel, but what weight would be attached to such statements, under the circumstances, it was not for him (the Judge) to say. It was his painful duty to pass upon the prisoner the sentence of death awarded by the law to those who were guilty of rape – an offence hateful in every case, but under the peculiar circumstances of this case calling for special reprobation, committed on his step-daughter – a child of eleven years, and of remarkable intelligence. For himself he must say that he could see no grounds for any possible mitigation of sentence, for the circumstances disclosed seemed to be of particular atrocity, but that would rest with the

Executive. The Chief Justice then passed sentence of death on the prisoner in the usual form.

The prisoner heard the sentence (apparently) unmoved, and was removed from the dock.

ATTEMPT AT SUICIDE.

Mary Dogherty, a woman advanced in years, was charged with having, at Sydney, on the 6th February instant, feloniously attempted to kill herself by taking poison.

The prisoner, who pleaded not guilty, was undefended.

The facts of the case were simple. The prisoner took some powder mixed with water in the presence of her son giving him to understand that she was taking poison. The son went for the police, and senior constable Stephen Foley soon arrived; and, by his presence of mind, in giving the woman a dose of salt and tepid water, probably saved her life. The murderous / mysterious [?] nature of the powder taken by the prisoner, and the effect it took upon her, was shown by the evidence of the house surgeon at the Infirmary.

The jury, however, took a merciful view of the case, and without leaving the box returned a verdict of not guilty. The prisoner was discharged.

ATTEMPT AT SELF-MURDER

Robert Payton was charged with having, at Sydney, on the 25th of January last past, feloniously attempted to kill himself.

This case was very similar to the preceding. The accused had, it appeared, taken poison, but fatal consequences had been averted.

Verdict: Not guilty.

The prisoner was discharged.

George's family

George's son would become a noted diplomat. I wonder how much of uncle Adrian found its way into his temperament:[38]

> [Sir Geoffrey] Knox was a man of strong views and a pronounced realist. Pugnacious in character, he was no compromiser and, fully conscious of his abilities, took few pains to endear himself to his superiors. For his friends he had a warm smile and an infectious laugh, and he enjoyed happy relations with his foreign diplomatic colleagues. He was fond of the good things in life and had the means to ensure their enjoyment. As a result he was sometimes, and generally unjustly, accused of neglecting the less agreeable tasks performed by diplomats.

He was no buffoon, working hard under Eden's patronage and irritating the right people to irritate. The *Herald* reported from Berlin on 29 April 1937:

> Sir Geoffrey Knox, the Australian, who was formerly Commissioner for the Saar, and is now British Minister at Budapest, has been attacked in the "National Zeitung" (Essen), which is regarded as the organ of the Minister for Air (General Goering).
>
> Sir Geoffrey Knox is accused of trying to undermine German influence in central Europe, at the orders of the British Foreign Minister (Mr Eden). "He wishes to make up on the Danube for the defeat on the Saar," it says. "He aims at undermining Hungary's friendship with Italy and Germany, and at bringing her under the influence of Paris and London."

Law reporting

By the mid-1870s, publication of the *Supreme Court Reports* was becoming haphazard. Into the gap rode George Knox. JM Bennett and Naida Haxton report:[39]

> Reports were also written up for 1877 by George Knox but, like 14 SCR, were not published for many years, and then by Maxwell. Known as Knox's Reports, there were to have been annual volumes of them, but only the first was published…
>
> In 1879 a 'New Series' of the *Supreme Court Reports* was undertaken by Foster and Fairfax 'Printers and Publishers, 13 Bridge Street'. Volume 1 covered 1878 and was edited by Knox and Frederick Harvie Linklater… The series survived only to Vol 2.

George retired hurt after the failure of these ventures, but Adrian would be more inspired than deterred. He began reporting equity, divorce and lunacy cases for volume 8 of the *New South Wales Law Reports*, covering the year 1887. He stopped at volume 10.

In the last case he reported, Knox himself appeared in strong company. In a stoush over the liquidation of a couple of companies, the bar from the big end of town appeared in force: C J Manning, Walker, Wise and Rich for the punter; Lingen and Davies for the liquidators of company A and the directors of company B; A H Simpson, Lingen and Knox for the liquidators of company B; Barton QC and Bevan for one named

defendant; and Salomons QC leading A H Simpson for a bank.[40]

The case was an offshoot of Davy's case, an important bankruptcy judgment much later overruled by the High Court in 1908, a youthful Isaacs J dissenting.[41] The High Court case is notable for comments about judicial interpretation of a statute repealed and re-enacted in identical terms. Also of interest are the parties to the litigation. Barton QC and Bevan were appearing for one Lawrence Hargrave [the first name spelt with a 'u' in the report]. If there is a barrister in the metropolis who still has a pre-polymer $20 note, that person will know of whom I speak. The minutes of The Engineering Association of New South Wales record in December 1887, during the runup to the litigation, 'Mr Lawrence Hargrave exhibited diagrams of his flying machine'.

Other early matters involved Knox appearing for Dalgety & Co[42] (his brother's company) and in a dispute among relatives and creditors of a late AMP policyholder (Adrian later being a director of AMP).[43]

Knox had rooms in Northfield Chambers:[44]

> The first substantial move by barristers into Phillip Street initiated by the construction of Denman was shortly followed by occupancy of Northfield and Lyndon Chambers. In its thirty years of use, the former at 157, later re-numbered 163, Phillip Street never held more than a dozen members of the Bar while the latter at 161, later 165, Phillip Street had thirteen barristers in 1890 but was closed in the first decade of the twentieth century.

Marriage

Helen Rutledge recalls:

> My parents' courtship began, I believe, when [father] Colin [Stephen] was best man to Adrian Knox and [Adrian's sister and Colin's future wife] Dorothy was bridesmaid to his bride, Florence Lawson, at their wedding at Bong Bong Church in 1897. Though Adrian was nine years older than Colin, they were lifelong friends.

Florence Lawson was a Lawson: see above. Meanwhile, Colin and Dorothy married two years later. Colin was the father not only of Helen but of Sir Alastair, Sir Warwick Fairfax's solicitor. Sir Warwick's daughter was Caroline. Caroline married Edward Philip Simpson, a partner in Minter Simpson, now Minter Ellison. Colin's firm is now known as Mallesons. The Simpsons built their house in Fairfax Road, Bellevue Hill, on what was the tennis court of Sir Alastair. Just down from Rona, Adrian's brother's house.

I digress.

And I interpolate again. This very moment, a minute or two after I had written the previous two paragraphs, *The New Lawyer* email newsletter has popped up on my screen. The main story? 'Law firm Minter Ellison has hired a Mallesons Stephen Jaques finance expert to its ranks, and appointed him partner.' I hope they provide a tennis racquet, for old times' sake.

I digress.

The New South Wales bench and bar has a special place for the Stephen family. While some of the children and grandchildren have kept barristers in Vegemite, it should not be forgotten that Alfred, Colin's grandfather and longserving chief justice, was only the second of four generations to serve on the NSW Supreme Court: John (1825); Sir Alfred (1839); Sir Henry (1887); and Milner (1929).

If barristers have ever wondered what judges do while they are boring them, Stephen has told us. On circuit in Bathurst in 1859 and during a long reply in a squatting action, the chief penned a poem on his fecundity, 'Twice nine, or Judicial impartiality exemplified':[45]

> Of children this Knight had no less than eighteen-
> Twice nine little heads, with a marriage between.
> He had nine when a barrister, nine when a judge,
> And of "sex"-thus to Nature he owed not a grudge-
> Nine precisely were girls, the other half boys,
> An equal division 'twixt quiet and noise;
> While, if by marriage the number be reckoned,
> There were nine of the first and nine of the second.
> Nine in Tasmania, nine New South Wales,
> Then, to show with what justice he still held the scales,
> Since nine it was clear he could not divide,
> (A third sex as yet having never been tried),
> Five sons and four daughters in Hobart were born,
> And four sons, five daughters might Sydney adorn.
> Twin daughters, twin sons, complete the strange story
> Of this patron of "Wigs", though constant old Tory.

Parliament

Standing on a platform of free trade and non-payment

of members, Knox was elected to the Legislative Assembly for Woollahra in 1894. He was 'an excellent speaker 'precise, easy, deliberate' and supported (Sir) George Reid, favouring direct taxation, civil service reform and federation.

A good conservative's platform. Meanwhile, in 1895, William Francis Schey introduced the self-explanatory Legal Profession Amalgamation Bill. Schey was a Protectionist and member for Darlington, which may or may not have gone as far towards the city as Knox Street. He was a unionist much interested in conditions of labour:[46]

> Scheyville National Park was part of Pitt Town Common set aside for the new neighbouring town in 1804. Although used for grazing and farming, Scheyville remains one of the largest surviving remnants of the Cumberland Plain bushland which once covered the Sydney Basin.
>
> In 1893, with the Australian colonies suffering the first 'Great Depression', a co-operative farm for unemployed workers was established on 2,500 acres of the Common. This socialist experiment failed by 1896, and the NSW Government established a Casual Labour Farm to train unemployed city workers as farm labourers.
>
> Around this time the farm gained the Scheyville name (pronounced 'sky ville'), after William Schey, NSW Director of Labour and Industry. [In fact, Schey's appointment as Director of Labour was in 1905.[47]]

And Knox's reaction to the amalgamation bill?[48]

> Mr Schey [introducing the second reading]: I do not think any valid arguments can be advanced against it. There is no ground for opposition to such a step except pure toryism and conservatism, which has its last stronghold in many places in New South Wales. It is time that we placed ourselves in line with the other colonies, and made so desirable an advance.
>
> Question proposed.
>
> Mr Knox [following immediately after]: I do not intend to offer any opposition to this bill. I do not think it will make a great deal of difference whether we have the two branches of the profession or not. I do not know much of the other branch of the profession with which I am connected, that is to say, I have never been in a solicitor's office, but I know enough of it to be able to say that in a very few cases, and those very unimportant cases, can one man do the work of the two branches. In the first place, a solicitor has to have means at his disposal to collect and sift evidence and to get through the preliminaries of the case which counsel can never have at his disposal unless he happens to be as this bill would make him, a member of a large firm of solicitors. The effect of the bill would probably be to lead to the amalgamation of a certain number of gentlemen now practising at the bar with solicitors by going into partnership with them. But if the hon. Member thinks that this bill is going to reduce the cost of litigation I think he is a little too sanguine.
>
> Mr. Schey: I have no doubt the profession will do all they can to prevent its being effective!
>
> Mr. Knox: It is not a question of the bill being effective. The bill does not attempt to do anything to lessen the cost of litigation. All that it provides is that from and after the passing of this bill every person who is a barrister shall be a solicitor and every solicitor shall be a barrister. If a man acts in both capacities he can charge for both branches of work. Qua solicitor he will go to the taxing master and get his costs taxed. Qua barrister he will get a certain amount allowed in the taxation for his fees member makes a mistake in saying that a solicitor is merely paid by quantity. Any one who has anything to do with the taxing of costs will know that one of the large items in a great many bills of costs is instructions for brief. That is certainly proportioned by the taxing master not only according to the size of the case, but according to the difficulty of the case. There a solicitor is paid according to quality, and not quantity. I see no objection to a bill of this kind. I do not mind it personally, and I dare say most members of the profession take the same view; but I have not ascertained whether they do or not. I did not come to the House to-day prepared to make a speech on this subject; but, as far as I am concerned, I shall offer no opposition to the bill. I can only tell the hon. Member that he is somewhat sanguine in his expectations if he thinks that this bill will altogether get rid of those little matters in connection with litigation which give the comic papers so much food for reflection. In Victoria, where they have this amalgamation, and where, I presume, they carry on under an act somewhat similar to this bill, I know there are a great many men at the bar who still stick to the practice of the profession as barristers, and who do not do solicitors' work.

The bill passed without division. In the Legislative Council, it failed miserably. Attorney Want, who made sure to say that he did not oppose amalgamation 'in an honest way', heaped scorn upon the drafting: 'Of all the wretched abortions of a bill which was ever produced this bill is about the worst'.[49]

It seems impossible to suppose that Knox – whose

father had sat in the upper chamber until the previous year – knew other than that the bill would be rejected there. If that is correct, then he must have seen no good reason not to take the position he did, a decision without real consequence. If advocacy for the bill, his effort was tepid. If advocacy against the bill, it was excellent.

In the course of debate on the Totaliser Bill, Knox admitted:

> No one is readier than I am to admit the over-racing around Sydney at the present time is very great; but, if we come to investigate it, we will find that the over-racing is due, not to the clubs under the auspices of the Australian Jockey Club – that is to say, horse-racing clubs- but is due to pony clubs, and, more especially, to those wretched, miserable, round and round the frying-pan clubs-Rosebery Park and Brighton, and these other places.[50]
>
> … I do not think gambling is immoral. I gamble myself, and I am not ashamed to own it. I think the man who gambles on the Stock Exchange is as much a gambler as one who goes to Randwick and puts his "fiver" on a horse, if he can afford it.[51]

Readers of Pearl's book will know that the man busily taunting Knox in this sitting was W P 'Paddy' Crick:[52]

> … a Sydney police-court lawyer with many clients, few scruples, and boundless impudence… [He was] hard-drinking, cynical, and accomplished. Crick was a man of great ability in politics as well as law… "His arrest by the Sergeant-at-Arms was at one time an ordinary event of the session," said Melbourne Table Talk in 1892. During one debate, he offered to take on any three members of the Opposition who were willing to come outside.
>
> Early in his public life, he distinguished himself at a debating society by throwing a glass of water into the face of the chairman, Judge Windeyer, with whom he was in disagreement…
>
> He looked like a prizefighter, dressed like a tramp, talked like a bullocky, and to complete the pattern of popular virtues, owned champion horses which he backed heavily and recklessly.

A pony club man, methinks.

And so to the tote

Knox later enjoyed golf, sailing, and fishing on the south coast. He handled a motor car 'in expert fashion', but his great interest was the turf in all its forms.

The Australian Race Committee met on 5 January 1842 for the purpose of transforming the body into a permanent institution to be known as the Australian Jockey Club.[53] Although '[l]awyers and manufacturers [with Knox the crossbred exemplar] were not yet prominently involved', two members of the Lawson family were, including the veteran explorer himself.[54] And it was W C Wentworth's land at Homebush where many of the early races were run.[55]

In Painter & Waterhouse's history of the club, there is reproduced a page of '[a] count of votes in the ballot for the committee in the early twentieth century'. The handwritten computations allow us to infer that eleven were standing, with ten getting the 203 proxies and nine getting 270 votes or more, with Knox first at 283. One of Knox's colleagues came in at 271; this was 'Hall, Walter R.'[56] It is not surprising that Knox was an original member of the Walter and Eliza Hall Trust.

On 1 December 1944, the *Herald* reported that Dovey KC (father-in-law and grandfather of well-known Sydney barristers) had resigned his seat on the committee of the STC to contest a vacancy on the committee of the AJC:

> In his law-student days at Sydney University, Mr Dovey was persuaded to finance two of his companions whose visits to the early days of the AJC spring meeting in 1912 had mulcted them of their cash…
>
> He came to know the sport more when, after his return from World War I, he was made associate to Sir Adrian Knox, who was chairman of the Australian Jockey Club until his appointment as chief justice.
>
> Association with such an outstanding racing legislator had a natural sequel in Mr Dovey's interest in the administrative side of the turf…

Just how much earlier than 1944 did the Great War become known as World War I? Anyway, Painter & Waterhouse conclude their chapter on racing people by saying:[57]

> There is a gulf that has traditionally separated AJC administrators, especially those on the committee, from those who belong to the other side of racing – the bookies, jockeys and trainers. The gap is epitomised in the lives of Adrian Knox… and TJ Smith, the son of a teamster-

> timbercutter, who was educated in the school of hard knocks as a rabbit-trapper, strapper and jockey, for whom racing was a necessity, the only yellow-brick road leading to wealth and social acceptance.

That must be correct, although it is piquant to reflect that the very greatness of Knox's achievements paved the way for an (unintended) democratisation of the turf.

There is one curious postscript to Knox's role in the turf, and that is his determination to keep the tax man at bay. Exhibit One is young Knox the legislator. In the course of one debate in the House, he said: [58]

> It is not a tax or impost, because nobody need apply for a license for the totalisator unless he likes. It is not a tax imposed on anybody.

Exhibit Two is old Knox the magistrate. When the tax man served a notice on Automatic Totalisators Ltd, a notice suggesting that it held winning dividends on trust for the punters, and that it held tax thereon on the basis that dividends were a cash prize in a (taxable) lottery, Knox led his brothers to remind the tax man that:[59]

> In [betting] the investor exercises his own volition with respect to the horse which he desires to back, and eliminates all chances except those inseparable from the event of the race and the amount of the dividend.

This is Knox the Tory in full flight. His sentiment is exactly the same as that expressed on the floor of the House decades before, when he said that this type of gambling was indistinguishable from investing in the stockmarket: see above. I confess a little discomfort when I see that a party to the proceedings was his successor as chairman of the AJC Committee, Colin Campbell Stephen, but am prepared to give both the benefit of the doubt on the question of recusal; Stephen was a plaintiff *ex officio* and all classes at the races no doubt thought them both acting *pro publico bono.*

The AMP

And who was the poor eleventh soul who failed to impress the AJC proxyholders, getting a final vote of only 80? It was Richard Teece.

Richard Teece KC

The Australian Mutual Provided Society was established in 1849 under the Act of Council 7 Vic No 10. According to an advertisement in the *Herald* of 1 January 1849, its patron was the governor and its vice patrons included the chief justice, two puisne judges, the attorney and the solicitor general.[60] Others were the colonial secretary, Edward Deas Thompson (founding father of the AJC) and pastoralist Thomas Icely, an AJC steward.[61]

Deas Thompson is a common surname. We can be sure it was not his daughter Eglantine who had married the brother of Lucy Stephen nee Campbell. Icely is a common surname. We can be sure it was not his daughter Caroline who had married Lawson's son and whose own daughter would be mother to Philip Whistler Street.

In the preface to his 1999 history, Geoffrey Blainey observes:[62]

> It was probably the first institution in Australia to work in effect as a federation – the system later adopted in 1901 for the new Commonwealth of Australia. By coincidence, when the Commonwealth of Australia was set up, the prime minister and every member of the first cabinet was a policyholder in the AMP Society.

Knox senior never sat on the principal board, although George did, in 1887–1888. Unlike George's practice, Adrian did not – officially or otherwise – inherit George's seat. The first mention by Blainey of the younger brother is of his legal nous (something, in relation to AMP policies, we have already seen). The setting is the AMP on the one hand wanting to tap the lucrative 'industrial policy' business but on the other hand wanting to avoid a power shift to 'a new and poorer class of policyholder':[63]

> Late in 1903 the board of the Society hurried towards a decision which it had long avoided. Two leading Sydney lawyers, Adrian Knox and J.H. Want [aborting Attorney on the amalgamation bill, above], were consulted about the vital question of whether, under by-law 45 of the Society's constitution, industrial policyholders would be allowed to vote. Their reply was firm: any members insured for £100 or more – a sum higher than usually permitted in industrial policies – could vote in person or by proxy at the annual election of directors. The holders of smaller policies could only vote if they attended an annual meeting or special meeting of members in Sydney, and their vote was counted only when a question was put by the chairman to a show of hands.

Knox was only raised to the board at a later time; from 1909 to 1919 and from 1930 to 1932, in other words, the rest of his life bar judicial appointment.

And Teece? He was what we would now call the CEO, from 1890 to 1917. Blainey observes:[64]

> An original thinker, Teece axed his way through the barricades set up by conventional ideas. He antagonised most of the friendly societies of New South Wales when in 1883 he told a royal commission that they were not solvent. He took pleasure in writing long articles on the economic obstacles of the day.

One of Teece's children became (upon marriage to a son of an AMP director) Laura Littlejohn, a feminist of world standing. Another, Richard Clive Teece, was the foundation president of the New South Wales Bar Association, reigning from 1936 to 1944. Active in the Anglican church, his great legacy is the *Red Book* case. Judging from Blainey's description of Teece *pere*, he and Knox may have been chalk and cheese (hence the AJC vote). That did not prevent Teece's son reading with Knox, or writing to the *Herald* on 7 December 1946:

> "Case For Labour's New Appointments," by Mr J P Ormonde, contains some serious inaccuracies which require correction. He speaks of "a long line of political appointments to the Bench by non-Labour Governments" and gives as instances thereof Justices Higgins and Powers.
>
> Of these justices, Mr Justice Higgins was appointed by a Liberal government, but inasmuch as, though never a Labour member, he had been attorney-general in the Labour government of which Mr J C Watson was prime minister, his appointment could hardly be regarded as the reward of services to the Liberal Party.
>
> Mr Justice Powers was not, as Mr Ormonde says, a non-Labour politician. He was a civil servant. At the time of his appointment he was crown solicitor for the Commonwealth, and prior to that he had been crown solicitor for Queensland. And he was appointed, not by a non Labour government, but by the government of which Mr Andrew Fisher was prime minister. His appointment aroused great public indignation, which found expression in the *Herald* of the day. A leading article strongly condemned the appointment on the ground of his lack of the professional qualifications for the position. And his subsequent record on the bench proved the *Herald*'s criticism to be only too well founded.
>
> Then Mr Ormonde says of Sir Adrian Knox that, although 'not a member of any political party he could have been considered as being very much in politics.' Why? I was closely associated with Sir Adrian Knox for many years prior to his elevation to the bench, and I know that that statement is untrue.
>
> He was appointed solely on his professional qualifications. At the time of his appointment he was *facile princeps* amongst the counsel then practising before the High Court. He was, at any rate, such in the opinion of Sir Samuel Griffith, whom he succeeded, as Sir Samuel himself told me.

Teece means 'easily first' or, more colloquially, the obvious leader. Shooters at the bar will know that the English firm W W Greener first introduced the Facile Princeps (or Treble Wedge-Fast Hammerless Gun) in 1876. A confluence of Icelys, Deas Thompsons and all the rest had already taken up the expression:[65]

> Icely's conformity in the council involved him in the one case of notoriety in his career. He voted against the motion for a select committee to investigate Earl Grey's strictures on John Dunmore Lang's immigration scheme. In 1851 Lang publicly accused Icely of sycophancy and more directly of having defrauded Joseph Underwood over the

> sale of the Midas in 1824. Lang, who admitted that the charge was inspired by Icely's attitude, apologized but was given a gaol sentence for criminal libel. While in prison he investigated a story that Icely had hired someone in 1824 to fire a shot into Underwood's house 'to shut his mouth about the Midas'. Brent Rodd, who had fired the shot unwittingly, denied that Icely had had anything to do with the affair. The court proceedings did not harm Lang's electoral popularity but they vindicated Icely's reputation for honest, though perhaps hard, dealing. His fellow-landowner, Edward Hamilton, told (Sir) Edward Deas Thomson that he 'always considered [Icely] as the best gentleman of the old settlers—facile princeps', and he was glad that, as a result of the libel case, his 'estimation of him as a friend, and a good citizen, is in the highest sense not misplaced'. Icely was appointed to the Legislative Council once more in June 1864 and retained his seat until his death.

Meanwhile, Teece and Adrian's brother EW (Rutledge's grandfather) were:[66]

> … the only men on the Senate without university degrees, [and they] carried a motion that Greek should be taught by a professor rather than a lecturer. He felt sure they were right about this, 'though a knowledge of Greek literature is not one of my achievements'.

Having attempted to excuse Adrian's attitude to women by his age, I feel obliged to report the more worldly Ned was no better. Rutledge continues:

> Few would have thought [her grandfather] right in his opposition to co-education [and he later wrote]:
>
> A grievous blunder, made before my election, and there is no evidence that female influence softened the manners of the undergraduates. On a certain notable occasion, the commemoration after Windeyer's death, there was a studied rudeness to the Chancellor in which women were as prominent as the men.

Which, *pace* EW and the late Chancellor Windeyer, says something for equality in learning.

High Court advocate

Knox appeared in 138 High Court cases, fourth after Starke (211), Dixon (175) and Barwick (173). But Knox had the shortest period, and we have already seen what one chief justice thought of him. Consider too Gavan Duffy CJ, in his short eulogy already cited:

> His career at the Bar was brilliant and successful, and he became easily first in the Courts in which he practised.

Bearing in mind (1) that Knox had appeared before him, he being appointed in 1913; and (2) that he was sitting on a bench with Starke and Dixon, Gavan Duffy would not have used facile princeps – albeit translated – in reference to the High Court itself without reflection.

Knox's longest appearance was in the *Coal Vend* case. Notoriously, the proceedings before Isaac J take up 280 pages of the official reports,[67] and the successful appeal 38 pages.[68] Knox appeared for one of two groups of miners at trial, but led for both groups on the appeal. The group that took him on for the appeal consisted of the firm J&A Brown and the person John Brown. (Knox did not appear for the respondents in the Crown's unsuccessful appeal to the Privy Council. Mitchell KC who had led for the shipowners and himself a notable High Court advocate, led Atkin KC of the English Bar.)

The Great War

> To some Knox appeared 'brusque in manner': Sir Ronald Munro Ferguson recorded that he was an 'ill-tempered person … a worthy man, but sees the disagreeable side of things first'.

The correctness of the observation is not to the point; others disagreed. More important is that Munro Ferguson had a peculiar opportunity to observe Knox. Munro Ferguson's wife had been a member of the British Red Cross Society in Fyfe, Scotland, and sought and received permission from England to form an Australian branch. Permission was received and the deed was done on 13 August 1914. (The Australian Red Cross dates from 1916.)

Knox was apparently a foundation member of the NSW division. At any event and at the height of his professional achievements, he went to war. The official historian records:[69]

> It was decided that the Australian Branch of Red Cross should have its own representatives in Egypt. Mr Norman Brookes and Mr Adrian Knox were appointed the first two commissioners. Norman Brookes, one of Australia's most renowned tennis players, had won Wimbledon in 1914. When he tried to enlist he was turned down because of a duodenal ulcer. Nevertheless, he was determined to play a part in the war effort and accepted this Red Cross role. At

> the time he said, "If I can play tennis, I am fit to take part". In Egypt the commissioners had their headquarters at Shepheards Hotel, Cairo, where they took two rooms for six pounds a month. Their area of responsibility was the Canal, Cairo and the island of Lemnos. As well as providing comforts to the patients they provided free barbers' shops at all Australian hospitals and convalescent depots in Egypt. The commissioners were able to purchase a seagoing motorboat for 750 pounds from the BCRS so they could service Lemnos adequately. At this time they completed arrangements to take over the hospital activities of the Australian Comforts Fund enabling the ACF to concentrate on working for the well soldier and avoiding duplication of effort.

An observer recalled in 1950 what was surely a contribution of Knox:[70]

> An important development was the establishment in Cairo of an enquiry bureau for the purpose of obtaining all possible information as to the sick, the wounded and the missing, and to ascertain details of the death and burial of those who were killed or had died of wounds. This bureau worked in co-operation with bureaus in Australia, set up and conducted in all capital cities by members of the legal profession.

Brookes was no doubt frustrated and saddened by the death in France in 1915 of his erstwhile playing partner, New Zealander and barrister Tony Wilding. Knox's biographer continues:

> Knox showed great organizing ability and worked 'amid many difficulties and not a few risks' (when he took stores to Gallipoli) to allocate comforts for the wounded, stores and medical supplies. Returning to Sydney early in 1916, Knox was an official visitor to internment camps and served on a Commonwealth advisory committee on legal questions arising out of war problems. He was appointed C.M.G. in 1918. On 10 December he made a celebrated appearance at the bar of the Legislative Assembly to defend the members of the Public Service Board against charges arising out of the report of a royal commission.

The advocate as CJ

On 18 October 1919 Knox succeeded Sir Samuel Griffith as chief justice of the High Court and was sworn in on 21 October. He immediately resigned as chairman of the A.J.C. …, and sold all his shares, including his inheritance in C.S.R., lest he should be involved in a conflict of interest.

A chief justice is *primus inter pares*, first among an equality of colleagues. A chief can have two functions, one as intellectual leader and one as the court's advocate. The first is of course desirable but not necessary for an effective court. The second is indivisibly part of a chief's role. Whether advocates make for intellectuals is moot, but do we glean anything from the experiences of the three advocates who were appointed chief without having held judicial office?

Whatever Knox's own view of his judicial ability, it is clear that he continued as an advocate. The most well known example was his refusal to buckle to government pressure for justices to conduct royal commissions.

Latham, I think, was a better advocate for the court when he was attorney; his fault – and his fate, given Dixon and Evatt at his flanks – was that he wanted to be an intellectual leader at a time when the court's need for an advocate may have been at its greatest.

Barwick's main legacy as an advocate for the court is impressive; Gar's Mahal rises over the shores of Lake Burley Griffin. And Barwick the intellectual leader? Leaving to one side both the enormous social and political changes during his long tenure and the fact that generational change and premature deaths led to at least three 'Barwick Courts', I think the better question for current purposes is whether Barwick cared. While Barwick's background was vastly different from Knox's, like Knox he had been facile princeps; did it matter that he now was merely primus inter pares? A question for another time, no doubt.

Whatever Knox's own view of his judicial ability, it is clear that he continued as an advocate. The most well known example was his refusal to buckle to government pressure for justices to conduct royal commissions.

Such requests were not uncommon. Griffith, despite a robust reluctance, had regarded the war as justification for himself sitting on one and Rich sitting on another (the latter perhaps as a break upon the death of his son in France).

Knox showed his colours immediately upon his appointment, with a rebuff to Prime Minister Hughes the day after his appointment. Further requests came in 1921, 1923 and 1928. The last, in which Knox expressly invoked the Irvine Memorandum, interests for two reasons. First, the request came from Attorney Latham, who would one day be chief himself. Secondly, the facts which wrought the request typify a political squabble which the third branch must avoid like the plague.

In 1928, the press published allegations by the Labor member for West Sydney, William Henry Lambert, that he had been offered £8,000 to vacate in favour of E G Theodore. There were difficulties, not least of which was Lambert's denial of the same allegation when made by another newspaper in 1925. Could it be – shock horror – that Lambert was peeved at losing the 1928 preselection?

Bruce announced that the allegations struck at the honour and dignity of the parliament – the clearest sign that they did not – and eventually, after Knox flicked the pass, the two-week and forty-witness farce commenced. Sometime Clerk of the House Frank Green observed (in a readable memoir available in the NSW Bar Library) that '[w]hen the report [by Commissioner Edward Scholes NSWDCJ] was tabled in the House discussion was confined to a complaint by Mr Theodore that the enquiry had cost him £800 in legal expenses.'[71]

As for Theodore, a leading candidate for the best Labor PM we never had, he became partners with a man called Frank Packer in a company called Australian Consolidated Press. He recouped his expenses. And as for the dignity of the House, Green summed it up:[72]

> To speak of a member selling his seat sounds sinister, but it differs very little from the practice of a member, on the promise of an official government appointment, resigning in order to make way for somebody else; for example, the case of Sir Granville Ryrie resigning his seat of Warringah to become High Commissioner for Australia in London to create a vacancy allowing Archdale Parkhill to enter the House. [Parkhill laid the groundwork for a non-Labor alliance, but like Theodore was unpopular with much of his own party. As his biographer puts it,[73] after 1935, Menzies probably had his measure.]

And as for Knox? The press applauded his approach. Oriel, the Argus's political commentator, lauded him in song:[74]

> Dear Mr Bruce, it is no use
> To seek of me this favour;
> For what you ask appears a task,
> Of very doubtful savour.
>
> I tell you, Stan, as man to man,
> In language far from kidding,
> It would be rash were I to dash
> Away to do your bidding.
>
> I'd live in courts, I'd wade through torts
> In oceans, for to please you,
> And burn the oil in midnight toil
> To aid what whim would seize you.
>
> But when you bid me raise the lid
> Of some soiled linen basket,
> And plunge its duds into the suds-
> O Stan, how can you ask it?
>
> I am a judge, and cannot budge,
> Though hopes I may be squashing,
> It is not meet; I must repeat,
> I WILL NOT DO THE WASHING.

Another contribution by Knox to the efficient running of the court was advice to Attorney Latham in 1927 about proposed amendments to the Judiciary Act, questioning the wisdom of a single judge hearing constitutional cases at first instance.[75]

Joint judgments

Knox tended to favour joint judgments. Whether the tendency sprung from a tenet of jurisprudence or of management, it is generally regarded as a positive in his legacy. I set out Fricke's statistical summary, which also provides something of a counterpoint to the troubled court of a decade or so later:[76]

> An examination of the reports during the Knox regime… shows that his approach was conducive to simplicity, though at time it produced merely simplistic solutions. One striking feature is the volume of reported cases. He is recorded as giving judgment in just under 500 cases – an average of more than one per week if one excludes vacations. The constitutional cases represent slightly less than 10 per cent of the total.

> Of the total of private and public law cases, the Chief Justice dissented in slightly more than six per cent of the cases. So he was in the majority in almost 94 per cent of the cases. Furthermore, he participated in an astonishing 260 joint judgments in which he was a member of the majority – approximately 53 per cent of the total of the private and public law cases heard by the full bench.
>
> Knox was frequently partnered by Gavan Dufy in these majority joint judgments (180 cases or almost 37 per cent of the total number of such cases). The next in line was Starke, with whom he wrote a joint majority judgment in approximately 30 per cent of the cases which he heard. He participated in a joint majority judgment with both Gavan Duffy and Starke in approximately 23 per cent of the cases.
>
> Sir Adrian was joined by Rich in a joint majority judgment in slightly less than 20 per cent of the cases, by each of Powers and Isaacs in approximately 5 per cent of the cases, and by that staunch individualist, Higgins, on two occasions. During the short period in which his tenure coincided with that of Dixon, they participated in joint judgments in approximately a third of their cases.
>
> As Sir Zelman Cowen has observed, in the course of the decade Knox tended increasingly to align himself with Gavan Duffy in cases involving the industrial arbitration power. This placed him more and more in opposition to Isaacs' centralism.

The Privy Council

Knox was appointed to the Privy Council on 2 March 1920. In 1924 he visited England to sit on the Judicial Committee of the Privy Council. The issue was the Irish boundary question. In 1921, the British and Irish delegations had executed what would become a treaty, but had left the question of the borders of the Irish Free State and Northern Ireland open.

In 1924, a number of specific questions arose about the composition of a commission provided for in the treaty. The treaty had provided for three appointments, one by the new dominion, one by the royal rump, and a chair by the British Government. In March, the dominion (which had made its nomination) pushed for completion of personnel. In May, Northern Ireland refused to name its member.

By section 4 of the *Judicial Committee Act 1833*, the Judicial Committee of the Privy Council was empowered to hear a referral and to advise accordingly. In other words, while anything from the council was and is, strictly, an advice, section 4 empowered the Judicial Committee to act on a clearly executive basis, as an advisor and not as a court.

The trouble with this – perhaps a foreseen trouble – was that the dominion had always objected (just as the nascent Commonwealth of Australia had objected) to the imposition by a now-foreign Britain on its domestic courts, of rights of appeal to the Privy Council.

The upshot was a committee to investigate the proper quorum of a commission, in circumstances where the committee arose from party A pressing for the commission and party B refusing to join it, a committee which party B recognised and which party A disclaimed 'being in any way committed to the acceptance of opinions' falling from the aforesaid committee. The outcome was equally extraordinary. The commission eventually met, to find that neither Britain nor Northern Ireland wished to make any submission, with a further hearing set for counsel on behalf of the dominion to be heard. Another chapter in the tragic story of England's first colony.[77]

The retirement

Sir Adrian resigned as chief justice on 30 March 1930.

In 1929, the NSW colliery owners, instead of applying to the Arbitration Court for a new award, closed their mines and locked out elven thousand miners. This was a flouting of the Industrial Peace Act. In August, EG Theodore (now deputy leader of the ALP) moved a motion:

> That, by its withdrawal of the lock-out prosecution against the wealthy colliery proprietor, John Brown, after its vigorous prosecution of trade unionists, the Government has shown that in the administration of the law it unjustly discriminates between the rich and the poor, and that as a consequence the Government has forfeited the confidence of this House.

The government survived by four votes, one Billy Hughes and three other government supporters voting for the motion. The rot set in, the government went to the people in October 1929, Bruce lost his seat, and the ALP took 46 of the 75 seats:[78]

No ministry had ever assumed control of the Government under less auspicious circumstances. Not only did it face national bankruptcy, but for eight months a disastrous dispute had been proceeding between the colliery owners and the coal-miners of the northern coal-fields of New South Wales, bringing great economic loss and causing much suffering to the miners and their dependants.

Brown died in March 1930, the lockout still in force. On 23 March 1930, Knox wrote:

My dear Isaacs,

As I told you in my note I am off to Canberra tomorrow, Monday, morning early, and I think I ought to let you know the reason for my visit there… my real purpose in going is to tender my resignation as Chief Justice. The fact is that my old friend John Brown has made me one of his residuary legatees, and this involves my taking a direct interest in the business of J. & A. Brown – a position quite incompatible with that of Chief Justice… I am very grateful for the loyal support you have always given me, and hope to see you to thank you personally on my return…

On Saturday 5 April 1930, page 19 of the *Sydney Morning Herald* reported:

MR. JOHN BROWN.

Details of Will.

Sir Adrian Knox and Mr. Armstrong.

PRINCIPAL BENEFICIARIES.

NEWCASTLE, Thursday.

A copy of the will of the late Mr John Brown, made available to the "Sydney Morning Herald" last night, shows that the former Chief Justice of the Commonwealth (Sir Adrian Knox) and the present general manager of Messrs. J and A. Brown (Mr Thomas Armstrong) are the principal beneficiaries.

They are to share equally as tenants or owners in common after the payment in Mr. Brown's estate of legacies amounting to £15,250 cash and the transfer of certain properties. In addition, Sir Adrian Knox receives a cash legacy of £ 10,000, Mr. Brown's Darbalara Estate, with all fittings and all bloodstock owned by Mr Brown, and Mr Armstrong receives a cash legacy of £10,000 and Mr. Brown's home and freehold property in Wolfe-street, Newcastle.

The will further directs that Mr. Armstrong should be paid a salary of £10,000 a year as executor, and expressly desires that he should continue as manager of the firm at a salary of £4000 a year.

The will, which is a document of only two pages, drawn up as recently as December l8 last, and witnessed by the secretary of the A.J.C. (Mr Cropper) and by Ellen Brown, further provides for the appointment of Mr Armstrong and of Mr W T. Morris, of the firm of Priestly and Morris, executors and trustees. It bestows respective annuities of £250 and £208 on Miss Clara Burns, one of Mr Brown's servants for almost 20 years, and on Sarah Ann Wilson, Mr Brown's housekeeper in recent years, and gives the following legacies:-£250 to Peter Poole, Jun., £ 1000 to Mrs. Margaret Poole, of Armidale, daughter of Sir Adrian Knox; £1000 to Lang Dunn, Mr Brown's chauffeur; £1000 to Miss Elizabeth Knox, daughter of Sir Adrian Knox; £2000 to Mr A B Shand, K.C.: £1000 to Mr. W J. Cleaves, of the firm of Sparke and Helmore, solicitors to Mr Brown; £1000 to Mr. Joseph Hambley, who had served the Brown family for more than 30 years; £500 to the trustees of St. Andrew's Presbyterian Church, Newcastle, with which the Brown family has long been identified; £7500 to Mr. Leslie Bower, stud groom and manager of the Darbalara Stud.

…

"MISLEADING STATEMENTS."

A statement accompanying the will, and signed by Mr. Armstrong, says:

"Under normal conditions, the contents of the will of the late Mr. John Brown would have been made public when probate was applied for, but on account of most inaccurate and misleading statements that have appeared recently in some of the daily papers, I feel that as the sole executor of the late Mr. John Brown at present residing in Australia, it is my duty to release the full text of the will of the late managing partner of the firm of J. and A. Brown, so as to avoid further misleading statements.

"Quite a number of the general public have been under the impression that the late Mr. John Brown was sole owner of the firm of J. and A. Brown, but the facts are that the firm, for many years past, consisted of the three brothers, Messrs. John, William, and Stephen Brown, as equal partners in the business, but by agreement, Mr. John Brown was constituted sole managing partner during his lifetime.

"The position now is that Mr. Stephen Brown is the sole survivor of that partnership business, which, on account of the decease of his two brothers, will be carried on under the old firm's name, but the personnel of the firm will be that Mr. Stephen Brown will be senior partner, and

> associated with him his sister, Mrs. M. S. Nairn, Sir Adrian Knox, and Mr. Thomas Armstrong, beneficiaries under the will of Mr. John Brown. The latter gentleman will also be general manager of the business."

The miners would not be kind. On 10 April 1930, ALP member JC Eldridge attacked Knox on the floor of the House. To Latham's interjection of 'Shame!' Eldridge said:

> The shame is that such a man dramatically resigned his high post to become a beneficiary to the tune of a million pounds under the will of one of the chief coal magnates, whose law-breaking tactics plunged thousands of men, women and children into a long period of distress, poverty, destitution, and suffering…

Fricke observes in a footnote to an succinct and balanced assessment of the resignation:[79]

> A perusal of a number of volumes of the Commonwealth Law Reports preceeding Knox's retirement suggests that Knox did not in fact sit on any of the cases in which John Brown's interests were involved, despite the suggestion to the contrary in J Robertson, JH Scullin (1974) at 224. The footnote references to the Sydney Morning Herald and the Maitland Mercury do not bear out Robertson's assertion. Knox seems to have been careful to avoid sitting in such cases as Caledonian Collieries Ltd v Australian Coal and Shale Employees' Federation (No 1) (1930) 42 CLR 527.

Adrian's family

Clean-shaven, Knox had a long, straight nose, brown eyes, and a firm mouth and chin. Although his practice was lucrative, unlike his brothers Edward and Tom he never built a large house, living after his marriage at eight different addresses at Woollahra and Potts Point; nor did he speculate in real estate, but he did give his wife beautiful jewellery. He liked entertaining and frequenting the Union Club (which he had joined in 1886) and, from 1915, the Melbourne Club; he was an excellent bridge player. 'As fierce as his brothers were mild', he was held in affection by his family: his sister-in-law always had a whisky and soda waiting for him when he came to afternoon tea. He loved Australian and Sydney silky terriers and would often return from Melbourne with a pup in his pocket. In his later years he spent much time in his garden and would not permit anyone else to prune his roses.

There is little in the books about Florence, Adrian's wife. The descriptor in the index of Rutledge's memoir is 'Knox, Mrs Adrian, ('Lady'), 'Aunt Flo'.[80] The only mention apart from those already referred to is the fact that 'Flo Knox and her children' were in England in 1914, probably at the same time as the Ned Knoxes, with his daughter and Adrian's niece beginning her account 40 years later with '1914, the last year of the Old World. Nothing has ever been the same since.'[81] After the Second World War, the *Herald* records the death of 'Dame Florence Knox', but this appears to have been an imagined courtesy from a democratically educated sub-editor.

There was a son, 'Knox, Colonel Adrian Edward, "Bob"', whose only appearance in the memoir is as a lad, at the wedding of his cousin Clara Mackay:[82]

> The Adrian Knox children were in attendance, Margaret looked uncommonly well, almost pretty, Elizabeth a perfect duck with gloves of which she was tremendously proud. Bob had white knickers, and copied Captain Wilson and did not kneel down…

The wedding has something for royalwatchers: the bridegroom Grenville Miller upon his retirement from the Royal Navy would decide to knock back the job of being Queen Mary's treasurer, presumably aware of her notorious 'bowerbird ways'.[83]

Bob would have been 17 at the outbreak of the Great War, although I have found no record that he enlisted then or later. Which may explain his keenness to enlist in July 1939, prior to the outbreak of hostilities. After enlisting at Port Kembla, he finished his tour in December 1944, as Lieutenant-Colonel commanding the Kembla Fortress. Bob died in 1962.

In 1934 Adrian's younger daughter (Mary) Elizabeth became the second wife of Lewis Joseph Hugh Clifford, who succeeded to the title of 12th Baron Clifford of Chudleigh upon the death of his brother, in 1962.[84] The curious will know that the 1st Baron was a barrister; the prurient that he committed suicide by hanging himself from his bed tester by his scarf; and the neologist that his 'C' formed part of King Charles II's Cabal.

Meanwhile, Adrian's elder daughter Margaret made a Sydney alliance.

Readers who frequent Bondi Beach will know that three main streets coming down to Campbell Parade are Hall, O'Brien and Curlewis. It is too much to hope that the Campbell was the Campbell whom we have met. Nor is this the place to repeat the tale of Edward Smith '*Monitor*' Hall, a founder of what would become the Benevolent Society; first cashier of the Bank of New South Wales; first assaultee at St James in Phillip Street; journalist; and autolitigant extraordinaire. In his Sydney Peace Prize acceptance speech, John Pilger said:[85]

> After all, Australia has had some of the most outspoken and courageous newspapers in the world. Their editors were agents of people, not power. The Sydney Monitor under Edward Smith Hall exposed the dictatorial rule of Governor Darling and helped bring freedom of speech to the colony.

For now, it is enough to focus on Hall as a property developer. In 1851, he qua trustee for his daughter Georgiana Elizabeth purchased Bondi estate for £200. By 1852, Francis O'Brien was advertising for sale subdivisions of the estate.[86] O'Brien had been co-editor with Hall of the *Monitor* and was married to Georgiana. (His marriage to another of Hall's daughters Sophia Statham had been cut short by her death.)

O'Brien Torrensed the land in 1868. In 1873, with the family running out of money, he mortgaged some 51 acres to Frederick Charles Curlewis. This did not stop him from becoming bankrupt in 1877.

Lucius Ormond O'Brien was born of the second marriage, in 1844. About a quarter century later (well prior to 1873!), Lucius married Matilda Emma Curlewis, the sister of Frederick Charles.[87]

And here we have the opportunity to show that Mr Hall for the city wordsmiths could do just as well as Mr Campbell for the pastoralists. In 1815, Hall had parented a daughter Matilda Martha Binnie, whose union would produce Frederick Charles and Matilda Emma. And so it was on 15 October 1868 at the Homestead, the family compound near the end of Sir Thomas Mitchell Road and with a beach frontage, a double wedding took place among four of Hall's grandchildren. Lucius married Matilda, his first cousin. And Frederick Charles, Matilda's brother, married Lucius's sister Georginia Sophia Ormond.

Lucius was called to the bar in 1867.[88] As was a son of Frederick Charles: Herbert Raine Curlewis signed the roll in 1893. He would become a District Court judge, as would his son Adrian. As for Herbert Raine Curlewis, a happy marriage to the author of *Seven Little Australians* did not stand in the way of his earning 'a reputation for severity, especially for his insistence that correct English should be spoken in the cases over which he presided.'[89] (Perhaps a role for Leonard Teale?) As for Adrian Curlewis, among his numerous distinctions were leadership of the lifesaving movement, survival at Changi (where he taught surf lifesaving to fellow POWs), and clerkships to Sir William Cullen and (Sir) Philip Street.[90] Cullen, it may be noted, had read with George Knox. As for Adrian Curlewis's daughter Philippa, she married Adrian Poole, the issue of Adrian Knox's elder daughter and BCH Poole, that couple having wed on Remembrance Day 1925.[91]

So the grandson of Sydney's patrician jurist married the great-great-great-granddaughter of Sydney's greatest ratbag journo. But surely Knox felt nostalgia and not shame. You see, Barnett Levey never got to occupy Waverley House. He went bankrupt, and it was first occupied by Edward Smith Hall, a half century before Adrian Knox and Philip Whistler Street attended upon Miss Amelia Hall for their declensions and conjugations. Unfortunately, I am almost certain she was no relation.

The end

Knox died of heart disease at his home at Woollahra on 27 April 1932 and was cremated after a service at All Saints. And his legacy? Is the person nominated by two judges of a court as easily the best advocate to appear before it, entitled to be considered for elevation to it? Is the person disqualified by being a scion of a billionaire family? Is the person disqualified from disqualification by selling his share of the family fortune to appear to be and be, independent of that wealth?

Dixon's tribute upon his own retirement 34 years after Knox's contains the well known barb. It is worth setting out in full:[92]

> [Sir Adrian Knox] was a conspicuous advocate, as strong an advocate and as keen-witted an advocate as you would ever wish to see; very powerful, and with a highly

> developed intelligence. But he was of a type that you do not often meet: a highly intellectual man without any intellectual interests. That always strikes me as a bit of a pity. He was capable of almost anything, I should have judged, yet he was not capable of taking a really serious intellectual interest. He would read biographies, he would read history, he would read this, that, and the other; but I have known him, when I got to the Bench and sat with him, refuse to have anything to do with a judgment I wrote, on the ground that it sounded too philosophical for him. I think he meant it as a compliment to me, but there was a sort of cynicism about it, and it might have been true.

Knox was someone who felt both entitled and obliged to take the leadership of what was, after all, merely the senior domestic appellate court. It amazes not at all that Griffith and Gavan Duffy enjoyed his advocacy. He found himself at first surprised and later exhausted by the increasing nationalism – and, particularly with Isaacs – the increasing pages of nationalism, that the court was generating. Nor did he gel with Dixon's – or the court's – desire and need to expound the law.

For Knox the patrician, the law was a tool to be applied, and not something which required an elevation to the esoteric concept of legalism, no matter how 'strict and complete' that legalism might be. Knox was not in Dixon's class, in a Dixonian sense, but then Dixon was not in Knox's, in a Knoxonian sense. Had Bruce gone around Knox to invite Isaacs to head a commission into whether the Knox Court was 'the Knox Court' and had Knox given evidence, I suspect the exchange might have gone:

> Commissioner: Do you have any interest in having a Knox Court?
> Witness: No.
> Commissioner: Don't you dream of being remembered for a Knox Court?
> Witness: No.
> Commissioner: I must ask you to be more discursive.
> Witness: No.
> Commissioner: I am troubled by your lack of co-operation.
> Witness: I am co-operative.
> Commissioner: Perhaps. If you will be discursive, I promise not to reason ex tempore when sitting with you.
> Witness: I am not a Court. I am a steward of one. I should not have to explain myself to you. I digress.
> Commissioner: You may retire.
> Witness: I shall.

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