

THE UNIVERSITY OF NEWCASTLE

DEPARTMENT OF HISTORY

STUDENT RESEARCH PAPERS

IN

EARLY AUSTRALIAN HISTORY

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C O N T E N T S

RACE AGAINST TIME

by Christine Misko

CONVICT OFFENCES: SHAW/ROBSON?

by Gary Luxford

JAMES MUDIE, CIVILIAN MAGISTRATE, PROPERTY OWNER,
"CASTLE FORBES", PATRICK PLAINS

by Louis Greenwell

THE AUSTRALIAN AGRICULTURAL COMPANY

by Ken Kennedy

THE SQUATTING WOMEN OF AUSTRALIA

by Sally Kinsley

P R E F A C E

Each year students in the History IIB Class are asked in First Term to research a paper on some aspect of the History of Australia before Federation that interests them, basing their work, wherever possible, on primary sources. Some of these papers reach high standards, and not infrequently make original contributions to the understanding of our history, especially to the local history of this region.

This collection of five of the papers presented this year has been assembled to make the fruits of some of this research available to others, and at the same time to show students the standard of work that can be achieved. These essays are not necessarily the best essays, but they are good ones and are technically well presented. They have been chosen, however, more to demonstrate the variety of issues that interest students: local as well as national; female as well as male; black as well and white.

They display a solid background and provide an insight into several themes developed during the First Term. In this way they constitute a useful supplement to the course and should prove interesting reading.

It is hoped that this project will continue from year to year both to encourage research and originality and to slowly build up a body of material to which later students can refer.

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JAMES MUDIE, CIVILIAN MAGISTRATE, PROPERTY OWNER -
 CASTLE FORBES, PATRICKS PLAINS

by Lois Greenwell

SYNOPSIS

James Mudie, "the Flogging Major", was notorious in the colony of New South Wales during the 1830's for the ill-treatment of his assigned servants, his rigid and unshakeable views of the purpose of transportation, and his implacable hatred of Governor Richard Bourke whose enlightened views on remedial punishment cut into the very fabric of Mudie's beliefs and to whom he ascribed the reason for his difficulties in controlling his servants and his eventual "forced" disposal of his property, "Castle Forbes".

In his vindictiveness towards Bourke he implicated others, particularly Commissioner Roger Therry and William Watt, a Ticket-of-leave editor of the Sydney Gazette, whom he saw as in league with the corrupt administration. His venom was boundless and supported at all times by his conviction of the rectitude of his methods.

Since the publication in 1852 of "Uncle Tom's Cabin", the name of Simon Legree has been synonymous with cruelty and maltreatment of slaves. The colony of New South Wales was established with its own particular brand of slavery, that of the assignment system. Though it was later abhorrent to many Englishmen to think of men in bondage and at the mercy of those entrusted with their physical welfare, it was apparently considered a just and Christian act to transport felons to the other side of the world and there assign them to private masters. This system fostered the emergence of an antipodean Simon Legree in the person of James Mudie Esq. of Castle Forbes, who arrived in 1822 and was granted 2150 acres of land at Patricks Plains. The grandiloquent title of the property was a sycophantic gesture to Sir Charles Forbes who had been his patron.

The fertile land was sown to wheat and Mudie was granted 70 convicts as labourers and herdsman for his flocks, with the number reaching 120 at harvest times.

The farm prospered and was recognized as the producer of excellent quality grain at a high yield per acre. Though the rather ramshackle buildings belied their imposing name, Mudie assumed an arrogance even greater than that which he had possessed on his arrival. He had been cashiered from the army and had been declared insolvent after involvement in a scheme to manufacture and sell medals after Waterloo. As a result he was given the sarcastic title of "Major Medallion". Though he quickly dropped the second part, he proudly, though illegally retained the "Major" for its prestige value.

He had extremely forceful and fixed ideas on the reasons for transportation and of the treatment which should be meted out to the unfortunate convicts. He felt that "Indulgence merely impairs their usefulness. Prolongation of punishment is justified, even when reformation has been achieved, because it acts as a deterrent to the lower classes in England". (1) To reinforce his views he adopted fear of severe punishment as his means to force the convicts to work long hours under poor conditions. They were housed in hastily constructed, poorly built shacks, were undernourished and were sadistically flogged for minor infringements of rules set by their master. Mudie was "intensely proud of his

achievements in creating a civilization where hereto there had been barbarism". (2) Roger Therry, a barrister and Commissioner of the Court of Requests, claimed that from his convicts 'he contrived to extract the largest amount of labour at the least possible cost' and "looked upon perpetual punishment as the natural state of all persons who had once erred. This should be continued even when the judicial sentence pronounced in England was completed". (3)

His sadistic, inhuman treatment was common knowledge in the young colony. Dr. West, in his "History of Tasmania", said that Mudie was 'Not fitted for the control of his fellow countrymen... he spoke of the men he employed in the tone of an executioner". (4)

It was therefore inevitable that the "Major" should come into conflict with Governor Richard Bourke, who had arrived in the colony in December, 1831. Here was a man "of liberal education...who commanded general respect and who had talent and kindness combined". (5) W.C. Wentworth said of Bourke at his farewell that "The colony had been a scene of rapine, violence and disorder but (Bourke) brought universal peace and prosperity. He had got rid of the paid press, had given up the assignment of convicts into other hands, had introduced trial by jury on a more extensive scale, had stopped hunting men down as though they were savage beasts, had restored religious equality among all classes and had behaved magnanimously towards those who had launched truculent attacks on his government". (6)

The views of Bourke and Mudie were thus diametrically opposed and the rift began to widen, especially when Bourke passed a law restricting punishment of convicts to 50 lashes. The influential John Dunmore Lang, Presbyterian clergyman, politician and writer, considered the lash "A thoroughly degrading and brutalizing species of punishment", and felt that Bourke's decision was "highly creditable to his sense of justice and enlightened humanity". (7) Mudie disagreed and also declared that Bourke "listened to, comforted and advised"; (8) Instead of taking into custody, an assigned convict who escaped from Castle Forbes and travelled the 140 miles to Sydney with a petition charging Mudie with oppression. Bourke's private secretary, his son, advised the convict to return and gave him a letter to Mudie explaining the circumstances and suggesting that the master "overlook his fault", (9) and the man would probably mend his ways as he seemed sorry for his misconduct. The convict followed these instructions. Mudie was thunderstruck at the Governor's actions and dated his subsequent misfortunes from the time of the incident. When the convict was again on his property Mudie had him arrested and tried before a bench of civilian magistrates, all landholders and masters of assigned labour, by whom he was found guilty and sentenced to an iron gang.

By proving himself to be the friend of the convicts, Mudie claimed, the Governor had set the stage for rebellion and "had stirred up the poison the magistrates were trying to counteract". (10) Convicts were now insolent and insubordinate and Mudie attempted to subdue this new spirit by increased severity. On 5th November 1833 six of his convicts, in desperation, revolted, locked up the absent Mudie's wife and servants and robbed the homestead. Now armed, they went in search of John Larnach, Mudie's son-in-law and merciless overseer. He was found, and his life was threatened but he escaped and the convicts absconded. Eight days later they were captured and tried in Sydney. Though no provision was made for convicts to have counsel, an anonymous benefactor, thought to be an emancipist, engaged the barrister, Roger Therry to represent the men. Their guilt was obvious and Therry felt that the only excuse could be mitigating circumstances. The trial caused a sensation and the court was told of perpetual and excessive floggings which were of a nature to shock even a colony where brutality was commonplace. "The men were in utter hopelessness

of their escape from conviction. They had repeatedly declared before the trial that they would prefer death to return to Castle Forbes". (11)

When they received the capital sentence, which was already a foregone conclusion, their most articulate member, Hitchcock, begged the court to allow the men to exhibit their "lacerated backs to the public gaze to show what tortures they had endured". (12) Their request was refused and three of them were hanged in Sydney, one sent to Norfolk Island for life and the remaining two, Hitchcock and Poole, returned to Castle Forbes in a dray and seated on their own coffins. There they were hanged with Mudie forcing his assigned servants to witness the gruesome spectacle.

The Sydney Gazette, whose editor was William Watt, a ticket-of-leave convict who had arrived on the Marquis of Hastings in 1828, faithfully reported the details of the trial in all its horror. The Sydney Morning Herald presented a much more toned down version of the events "for it was the recognized organ of the magistrates and landholders" (13) and supported severity as the only way to extract value from convict labour. It was not considered that the majority of convicts were town dwellers and unused to and often incapable of farm labour. However, following Hitchcock's plea for an investigation to be held into conditions at Castle Forbes Bourke ordered an independent enquiry by government inspectors. The result was that "a condemnation (was made) of the mode in which assigned servants were dealt with at Castle Forbes", (14) although the immediate charges were unable to be proven.

Mudie's hatred for Bourke was increased as his pride was injured by the investigation. The Gazette now began a campaign against Mudie which censured him for his treatment of convicts and for the inhuman punishments meted out to those who came before him in his capacity of magistrate. The "Black Book", listing charges and sentences imposed at Patricks Plains during Mudie's magistracy is a damning record of man's inhumanity to man and shows punishments of 100 lashes, 12 months on the iron gang, and confinement on bread and water for such crimes as "leaving the farm when desired not to", "sheep stealing" (to supplement insufficient rations), and "insolence and neglect". (15)

Mudie pursued those he considered his detractors with implacable hostility. In particular he sought vengeance against Watt, especially after the publication of an anonymous pamphlet in which transportation was likened to "legalised abomination and savagery", (16) and which denounced Mudie and Larnach for ill-treatment of convicts". It was signed "Humanitas" and Mudie was sure the author was Watt and that he was in collusion with Roger Therry. He replied in a pamphlet vindicating himself and Larnach and this was widely distributed.

There had long been bitter feeling in the colony against Roman Catholics. Both Watt and Therry were of that faith and Therry felt that he would be entitled to "favourable remembrance" due to the effort he made to "Rescue my co-religionists from the insubordinate position in the political and social scale" (17) of the colony. In this he was "strengthened and sustained by the authoritative aid and the power and ability of Sir Richard Bourke". (18) Whilst Bourke was a Protestant, he was of Irish extraction and renowned for his religious tolerance. It is possible that the Calvinistic Mudie based his original antagonism towards the three men on the grounds of their attitude to, or practice of, a religion abhorrent to him.

A newspaper war broke out with The Gazette, largely read by the convict and emancipist faction, opposing the views of the Colonist, the Monitor, and the Herald, and much bitter feeling was engendered. Bourke cut off the government's connection with the Gazette, which had been instituted by Governor King in

1803, as he felt it "was the source of many annoyances to the administration". (19) The situation worsened, however, when Watt was charged with receiving a paper to the value of one penny stolen from the Herald office. He was exonerated after being defended by Therry and having made many remarks at his trial derogatory to Mudie who claimed the verdict was largely due to the jury consisting of "some of his own caste - emancipists", (20) a situation brought about by Bourke's enlightened attitude to jury reform. Mudie vowed he "would not leave in Sydney a single educated prisoner, whether ticket-of-leave or otherwise, but would ferret them out, root and branch". (21)

Mudie then charged Watt with slander and "being a notorious liar and a grossly immoral character". (22) Therry again offered his counsel, but the court denied Watt the right to legal aid. He was found innocent and Mudie claimed the trial was a farce because paid police magistrates raised technical points in favour of the accused. He accused Judge Windeyer of "being a refined apologist for infamy", (23) and then used the court as a platform to attack Bourke.

Reports of the trial do seem to show collusion of the government and Watt for unknown reasons, and proven perjury by government witnesses was ignored by the police magistrates. Mudie claimed that "neither law, nor fact, nor reason, nor religion were regarded". (24) The Colonist reported that a spirit had been aroused in the colony by "The whole college of Roman Catholic exorcists, with Mr. Commissioner Therry himself" (25) at the head. When Judge Kinchela, also a Catholic, and later denounced as such by Mudie, refused to cancel Watt's ticket-of-leave the paper claimed that "the monstrous doctrine of devil-worship seemed to have infected the Police Magistracy of the capital of Australia". (26) Kinchela's grandson later publicly horsewhipped Mudie for his statements, was taken to Court, found guilty and fined £20, which was immediately subscribed by public donation within the court room!

Bourke had no option but to remove Watt to Port Macquarie where he was accidentally drowned some time later. The Governor then took the opportunity of the new commission of 1836 to delete from the list the names of Mudie and 35 other magistrates. He gave them no explanation, but wrote to Lord Glenelg, the Colonial Secretary, that "the individuals used their power as ministers of Justice to forward political intrigue". (26)

Mudie also corresponded with Glenelg, claiming that he had been "degraded in the eyes of his fellow colonists" (28) but Glenelg upheld Bourke's right to refuse an explanation.

Embittered, Mudie returned to England to claim justice, stating that Bourke's decree had made it unsafe for him ever to live at Castle Forbes again and had forced him to sell the property. (29) There he became a principal witness at the Parliamentary Select Committee into Transportation in 1837. He violently denounced the system and denigrated Bourke's administration, especially the ruling which permitted emancipists to serve on juries, stating they were heavily biased in favour of convicts. He claimed that all convicts were depraved, useless and dishonest and "would swear anything for a glass of grog". (30)

"He testified to anything that would blacken the reputation of Bourke"., (31) and painted a "revolting picture" (32) of Sydney society. His accusations grew so wild that the Committee ordered part of his evidence to be stricken from the record.

His pride was so injured that he sought revenge by publishing "The Felony of New South Wales", in which he blamed Bourke for the depravity and crime of the colony. The Colonist reviewed the book as "the production of that indefatigable genius, James Mudie", (33)

but others viewed it with disgust, the Gazette calling it "the farthing felony". (34)

He claimed that the colony was so highly regarded by the criminal element that crimes were committed with the express purpose of transportation to "the land of promise" (35) and accused Bourke of "criminal collusion with the convicts" (36) and culpable relaxation of laws. His style became venomous when he stated that "the chief object of the present work is to arraign at the bar of public opinion the conduct of his Excellency, General Sir Richard Bourke". (37) He saw the convicts as "depraved and profligate" (38) and the women as "the pest and gangrene of society", (39) while the law courts were pictured as "sinks of corruption and iniquity". (40)

Bourke was little affected by the book as he had resigned before its publication and its style was such as to lead its readers to think of the author as deranged by his frustrations. Bourke's legacy was the knowledge that his work was "Firm, fair and liberal" at a time when "the shrieking brutalities of penal discipline were at last beginning to choke on their own excesses". (41)

The only legacy left by Mudie was a small creek near Singleton which bears his name.

FOOTNOTES

- (1) Scone and Upper Hunter Historical Society Journal, vol.1, 1959, p.106.
- (2) C.M.H.Clark, A History of Australia, Melbourne, 1968, p.204.
- (3) Roger Therry, "Reminiscences of 30 Years Residence in New South Wales and Victoria", London, 1863, p.165.
- (4) John West, History of Tasmania, vol.1, Launceston, 1852, p.183.
- (5) W.F.Morrison, History of N.S.W., vol.1, Sydney, 1888, p.105.
- (6) C.M.H.Clark, op.cit., Melbourne, 1968, p.253.
- (7) J.D.Lang, A Historical and Statistical Account of N.S.W., London, 1852, p.211.
- (8) James Mudie, The Felony of New South Wales, London, 1837, p.70.
- (9) Ibid, p.70.
- (10) Ibid, p.70.
- (11) Roger Therry, op.cit., London, 1863, p.165.
- (12) Ibid, p.169.
- (13) J.D.Lang, op.cit., London, 1852, p.262.
- (14) Roger Therry, op.cit., London, 1863, p.169.
- (15) The Black Book, (List of charges and sentences, N.S.W. 1833-1839).
- (16) C.M.H.Clark, op.cit., Melbourne, 1968, p.209.
- (17) Roger Therry, op.cit., London, 1863, p.144.
- (18) Ibid, p.144.
- (19) W.F.Morrison, op.cit., Sydney, 1888, p.107.
- (20) James Mudie, op.cit., London, 1837, p.86.
- (21) The Gazette, 12th September, 1835.
- (22) The Colonist, 3rd September, 1835.
- (23) James Mudie, op.cit., London, 1837, p.88.
- (24) Ibid, p.104.
- (25) The Colonist, 17th September, 1835.
- (26) Ibid, 17th September, 1835.
- (27) Historical Records of Australia, vol. XVII, Sydney 1923, p.307.
- (28) Ibid, p.310.
- (29) British Parliamentary Papers, vol.2, 1837, Ireland, 1968, p.37.
- (30) Ibid, p.119.
- (31) C.M.H.Clark, op.cit., Melbourne, 1968, p.335.
- (32) The Colonist, 31st August, 1837.
- (33) Ibid.

- (34) The Sydney Gazette, 2nd September, 1837.
 (35) James Mudie, op.cit., London, 1837, p.1.
 (36) Ibid., p.52.
 (37) Ibid., p.52.
 (38) Ibid., p.116.
 (39) Ibid., p.122.
 (40) Ibid., p.157.
 (41) Michael Cannon, "Who's Master, Who's Man?", Melbourne, 1971, p.31.

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The Times, 1.9.1836.
Government Gazette of New South Wales, 6.1.1835.