

## **SIR HARTLEY WILLIAMS (1843-1929) JUDGE OF THE SUPREME COURT OF VICTORIA**

by Patrick Street, LL B, Dip Crim.

### **Background:**

**Hartley Williams**<sup>1</sup> was born on 15 October 1843<sup>2</sup> at Brunswick Street, Fitzroy<sup>3</sup>, the second son<sup>4</sup> of Edward Eyre Williams and Jessie Williams, née Gibbon.

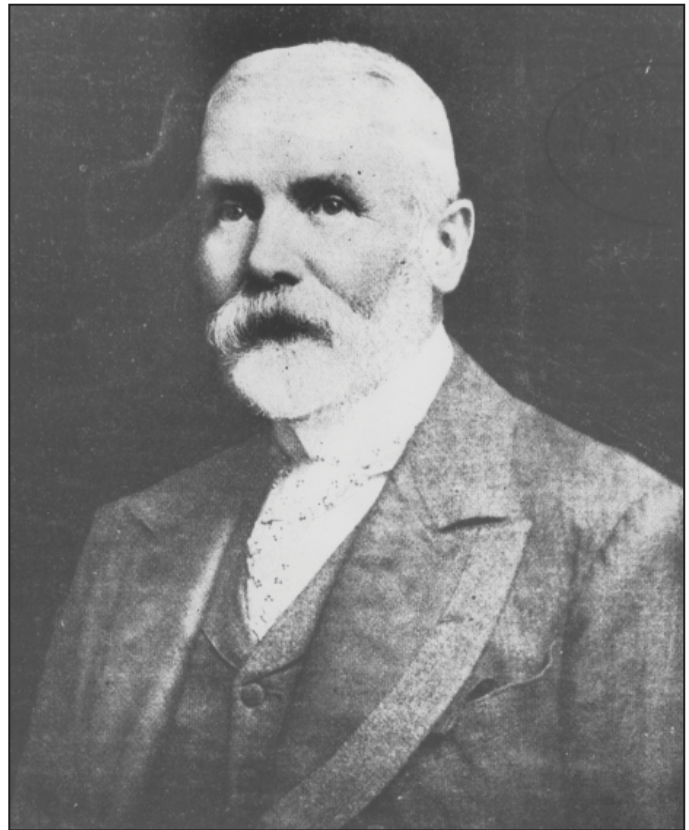
At the age of nine<sup>5</sup> Hartley enrolled at Repton School, near Burton-on-Trent, County Derby, England,<sup>6</sup> matriculating in 1862 to Trinity College, Oxford where he took the Degree of BA (1866).<sup>7</sup> He was called to the Bar at the Inner Temple<sup>8</sup> on 30 April 1867.<sup>9</sup> Respecting his father's wish that anyone who desired to be thoroughly educated in the legal profession ought to spend some time in a solicitor's office<sup>10</sup>, Hartley spent some time in the chambers of Mr Edward Bullen, an eminent pleader<sup>11</sup> and afterwards in the law office in the New Inn<sup>12</sup> of Vizard, Crowder and Austie, a London firm of attorneys and solicitors.<sup>13</sup>

Hartley decided to practise his profession in Melbourne. He left Gravesend on 3 August 1867<sup>14</sup> arriving at the Port of Melbourne on 29 October 1867.<sup>15</sup> Just two days later, Hartley gave notice to the Secretary of the Board of Examiners for Barristers that he was desirous of being admitted to practise as a Barrister of the Supreme Court commencing the next Easter Term.<sup>16</sup> The Certificate was duly signed in April, Easter Term, 1868<sup>17</sup> by the Board certifying that because Hartley had undergone an examination touching his compliance with the Rules of the Honourable Court together with his fitness as a Barrister and his call to the Bar in England, the Board was satisfied thereof giving him his certificate testifying such compliance, fitness and call.<sup>18</sup>

### **Common Law Practice**

Hartley devoted himself from the outset to the Common Law side of his profession, in which his English training stood him in good stead.<sup>19</sup> As a result, almost at once he came to the front as a pleader and acquired a large practice at Nisi Prius and in Banco.<sup>20</sup> Like his father, Hartley was involved in reporting cases. In 1870 he became a reporter for the Wyatt and Webb Reports.<sup>21</sup>

On 24 December 1870 at All Saint's Church, Hobart Town,<sup>22</sup> Hartley married Edith Ellen, daughter of Commissary General George Horne, late of 15th Hussars, formerly 12th Lancers.<sup>23</sup> The new couple arrived back in Melbourne on 15 January 1871<sup>24</sup> and from that time onwards although making law his first interest<sup>25</sup>, Hartley occupied a lot of time in extra-judicial matters.



**Sir Hartley Williams aged 59 years.**  
[From *The Leader*, 14 February 1903, p33.]

### **Public Life**

1872 was the year that Hartley first participated in public life when he became a member of an Education League, whose objects were to establish free secular and compulsory education.<sup>26</sup> He advocated the extension of the Education system so as to include the establishment of collegiate schools which would give the children of poor people the highest education that the Colony could afford.<sup>27</sup> When the *Education Act* became law in 1872, the League ceased to exist.<sup>28</sup>

### **Examiner in Law at Melbourne University**

The following year, together with William Edward Hearn<sup>29</sup> and Henry Lawes, Hartley was appointed examiner in Law at the University of Melbourne<sup>30</sup> and he held that post until 1879 when an unfortunate misunderstanding arose between the Council of the University and the Examiners in Law resulting in a complication unprecedented in the history of the University.<sup>31</sup>

Apparently, a Mr McDougal who was a lecturer at the University on the law of obligations, failed to pass the Property examination, whereupon he appealed to the Council against the decision of the Examiners (Lawes and Williams) on the "technical" ground that they had not examined him conjointly with Dr Hearn the third examiner, and therefore the examination was void.<sup>32</sup>

The Council, without communicating with the Examiners, referred the matter to a sub-committee which recommended that Mr McDougal should be re-examined. Considering this a reflection on their

competency, the Examiners refused to re-examine and at the same time refused to accept a renewal of their annual appointment.<sup>33</sup>

### Political aspirations

Like his father, Hartley dabbled in politics.<sup>34</sup> In 1874 the Francis Government proposed a measure for altering the Constitution known as the Norwegian Scheme<sup>35</sup> wherein the Upper House was to be reformed so that disputes may be settled between the two Chambers of Parliament.<sup>36</sup> Hartley dissented from this Scheme, so he resolved to contest the seat of St. Kilda in the Legislative Assembly in opposition to the Attorney-General Mr Wilberforce Stephen, who, according to Hartley, had departed from the principles which he promised should guide his political career.<sup>37</sup>

Coincidentally with this announcement, his father Mr Justice Williams had decided that because of his poor health he would resign his seat on the Supreme Court Bench.<sup>38</sup> However, *The Age* thought that the “coincidence” was a “family arrangement”, so that if Mr Justice Williams resigned at that moment, the Attorney-General Mr Stephen would fill the vacancy and Hartley would get his seat without a contest.<sup>39</sup> As a result, *The Age* sent a reporter to interview Hartley about the inference to be drawn from the near association of the two circumstances:<sup>40</sup>

Reporter: “It’s possible, is it not, that the Attorney-General will be put on the Bench before election day?”

Hartley: “I think it is probable, as my father’s medical adviser has told him that he must do no more Circuit work”.

On 6 April 1874, Hartley wrote a letter to *The Argus* stating that *The Age* had “tortured his conversation” and in fact in reply to the questions from the reporter he said:<sup>41</sup>

- (1) “it is most probable that I shall stand for St. Kilda”.
- (2) “If I do, I will be in direct opposition to the Government”.

Hartley also said that his version of the conversation was correct because he naturally had a good memory, rendered still more perfect by his training at the Bar.<sup>42</sup>

*The Age* responded:<sup>43</sup>

“Mr Hartley Williams is evidently a very silly and inconsequential young man ... if he thinks that the explanation he has given of his introduction to public life will remove the unpleasant impression created by the circumstances attending to it, we can assure him he is very much mistaken”.

Mr Justice Williams duly announced his retirement, the Attorney-General declined to accept the ermine and the election procedure progressed as usual.

On 2 April 1874 Hartley addressed about 500

electors in the Prahran Town Hall claiming their consideration ... as he was a young man and had never before mixed himself up in politics and that his opinions were the product of some years’ reasoning and self-communing.<sup>45</sup> He avowed himself as being opposed to the Norwegian Scheme of reform of the Upper House and, as a Free Trader, he was strongly in favour of immediate inter-colonial free trade and an immediate revision of the tariff.<sup>46</sup> He was a staunch supporter of the present *Education Act* and an equally staunch supporter of payment of members.<sup>47</sup>

Mr Spowers then moved a resolution to the effect that Mr Williams was a fit and proper person to represent the constituency in Parliament.<sup>48</sup> Then Mr Pelton moved an amendment that Mr Williams was not a fit and proper person to represent the constituency. After a good deal of hooting and noise, the motion was declared carried.

After another address to electors on 8 April at Cherry’s Hall, St Kilda<sup>50</sup>, and a request for electors willing to act on Mr Hartley Williams’ committee, the scene was set for the elections on 22 April 1874 wherein the contestants were Mr Stephen the sitting candidate, Mr Williams, the Free and Independent Candidate<sup>52</sup> and two others, Mr Murray Smith and Mr FJ Dixon. The Attorney-General obtained a decisive victory<sup>53</sup> defeating Mr Williams by a large majority.<sup>54</sup> At the declaration of the Poll, Mr Williams thanked the electors and hoped he would have better luck next time.<sup>55</sup> The ‘next time’ came very soon: on 29 April 1874 the Attorney-General was elevated to the Bench to fill the vacancy left by Mr Justice Williams.

*The Age* regretted that Mr Wilberforce Stephen had been induced to take the course of accepting the vacant judgeship and stated:

“The electors of St Kilda will have a tolerably strong provocation to charge him with trifling their interests.”<sup>56</sup>

By 1 May 1874 Hartley was in the field and was carefully nursing the constituency.<sup>57</sup> This time he was nominated for the St Kilda seat by Mr Thomas, Secretary of the Licensed Victuallers Association<sup>58</sup> and he was in opposition to another Conservative, Geo. Webb and Mr Dixon, the gentleman who ran last in the previous election.<sup>59</sup> Despite the fact that Webb and Williams had similar platforms, Webb did not retire, neither did Hartley who, like Coriolanus, pointed to the wounds he received at the recent contest.<sup>60</sup> While these two gentlemen were “shooting into each others mouths” a determined effort by Mr Dixon’s supporters seemed set to snatch the First prize.<sup>61</sup>

The contest was not as straightforward as it could have been. For instance, an advertisement appeared in *The Age*<sup>62</sup>:

“A reward of £10 will be paid to any person giving information which will lead to the detection and

conviction of the person who forged the names of  
JOHN WHITNEY  
HT THOMPSETT  
and others to the letter in Mr Williams' favour in this morning's paper. Electors of St. Kilda be not deceived. The list of names to the so-called Free Trade manifesto is composed of Forgeries, Non-electors, Protectionists. Vivat Regina".

On the day of the election (15 May 1874) Mr Williams advertised himself thus:<sup>63</sup>

- "Vote for Williams and Constitutional Reform of Upper House
- Vote for Williams and Reduction of Water Rates
- Vote for Williams and Early Polling for Working Men
- Vote for Williams the manly and outspoken candidate
- Vote for Williams and no Trimming
- Vote for Williams who does not circulate false and abusive squibs".

But the Free Traders neglected the Napoleonic warning against dividing forces and Mr Dixon was elected<sup>64</sup> which proved a more than usually severe mortification to his opponents.<sup>65</sup>

#### Success at the Bar

Meanwhile, Hartley was still practising at the Bar and was rapidly moving up to the front rank of the Common Law Bar.<sup>66</sup> He had no reason to complain for want of briefs.<sup>67</sup> By 1880 he had an income of £6000 a year which meant the accomplishment of an enormous amount of work.<sup>68</sup> In fact, his practice was largely in excess of any other gentleman on the Common Law side.<sup>69</sup>



Hartley Williams J, July 1881, aged 37 years.  
[From *The Leader* supplement, 16 July 1881, p1.]

Hartley was now approaching the zenith of his career, but he did not ignore other aspects of his profession. For instance, on 1 August 1879 at a meeting of the members of the Bar, it was decided that the Bar should be represented at the Social Science Congress which was held in connexion with the Victorian International Exhibition in 1880.<sup>70</sup> It was resolved on the motion of Judge Cope that three representatives be appointed, and as a result Messrs Hartley Williams, GHV Webb QC and J Warrington Rogers were elected.<sup>71</sup>

When Sir Redmond Barry died in 1881, a vacancy was thereby created on the Supreme Court bench. At that stage, Hartley Williams was regarded by Parliament and the Bar as one of the most eligible members of the Bar for the position<sup>72</sup> and on 4 July 1881 he was nominated for the position, which he accepted and was duly sworn in on that day at a meeting of the Executive Council.<sup>73</sup> Mr JGT Horne<sup>74</sup> formerly associate to the late Mr Justice Barry was nominated as his associate.<sup>75</sup>

#### Appointment to Supreme Court

The appointment of Hartley was said to have been the source of very general satisfaction<sup>76</sup> and was one which had everything to recommend it to public approval.<sup>77</sup> However, it did not meet with approval on all sides. It was said that his seniors at the Bar e.g. Holroyd, Webb, a'Beckett and Lawes had greater claims to preferment<sup>78</sup> because they were said to be as well qualified as Hartley and had the additional advantage of a much riper experience.<sup>79</sup>

On the other hand, the appointment was justified on the basis that, as the Supreme Court required no addition on the Equity side<sup>80</sup> then the appointment should be made of the advocate who had gained distinction in the common law area.<sup>81</sup> As *The Leader* said:<sup>82</sup>

"it was not the Equity but the Common Law bench which needed strengthening and it was in Common Law that Mr Williams especially shone".

It was also said that Hartley had superior eligibility on account of his youth.<sup>83</sup> The rationale of this was that the country would get more work from him before being called on to provide a pension.<sup>84</sup> However, *The Argus* was not disposed to attach any importance to this view.<sup>85</sup> The nomination of Hartley

"would be the appointment of a non-political officer to a non-political position by common consent".<sup>86</sup> His appointment was not in reward for party services but in the interests of the community as a whole.<sup>87</sup>

Mr Justice Hartley Williams was sworn in on 4 July 1881 and was the youngest judge in the colony. On 14 July 1881 he took his seat on the Supreme Court Bench for the first time, presiding at the Sittings of the Criminal Court.<sup>88</sup> Mr Purves addressed his Honour congratulating him on behalf of the Bar and of the country:

## SIR HARTLEY WILLIAMS

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“I think your appointment will add strength to a Bench already very strong. I feel sure that your Honour will win the esteem of your fellow colonists.”

Mr CA Smyth, the Crown Prosecutor congratulated His Honour and said:<sup>90</sup>

“I have had the honour of practising before your late respected father and I am sure that you will win the same respect from the country as your father did”.

Mr Justice Williams replied:<sup>91</sup>

“I trust that I will prove by the cause I intend to take that I am not undeserving of the opinion expressed by the Bar and the public on my appointment”.

On 1 August 1881 at Cafe Gunsler<sup>92</sup> a complimentary dinner was given to Mr Justice Williams to signalise his accession to the Bench.<sup>93</sup> A large proportion of the Bar<sup>94</sup> attended, the Attorney-General Sir Bryan O’Loughlen being in the Chair. In response to a toast to himself, the new judge was “humorously severe” on the Chairman for alluding to his comparative youth, declaring he had laid aside the last remnant of levity on the day on which he took his seat in the Criminal Court.<sup>95</sup> He also said that he was afraid the press and the public had formed an unreasonable anticipation of success in his new career.<sup>96</sup> He did not feel any inclination to flightiness but rather the immense responsibility thrown on him. If he could only follow in the footsteps of the one now hallowed to him, he would give satisfaction to the public.<sup>97</sup> The Chief Justice replied that His Honour would get real support from the Bar as long as it was known that he was doing his duty.<sup>98</sup>

Mr Justice Hartley Williams was notably successful in Common Law cases<sup>99</sup> and in his early years<sup>100</sup> he was well known for his exemplary punishments.<sup>101</sup> His first remarkable case was to try an attorney of the Court for shooting an archbishop.<sup>102</sup> Other instances of his penalties were:

George Barker broke into premises of James Deane and stole a quantity of property: Sentence 2 years’ impt.<sup>103</sup>  
John Barker for assault on a boy: Sentence 7 years with hard labor and three whippings of 20 lashes each.<sup>104</sup>

Justice Williams said:

“If we really desire to reduce crime, I know of no more effective method than that of the infliction of the indeterminate sentence upon all habitual Criminals.”<sup>105</sup>

In another case, John Wallace was charged with breaking into premises and stealing 27 sides of bacon. The jury convicted him of receiving and, as he had “many previous convictions” he was sentenced to 9 years with hard labour.<sup>106</sup>

In the trial of Henderson and Wallace charged with conspiracy, His Honour considered them

‘arch-conspirators’ and sentenced each to 7 years’ imprisonment.<sup>107</sup> Another time he sentenced a man to 7 years’ imprisonment for carnally abusing a child of tender age.<sup>108</sup>

Mr Justice Williams showed considerable aptitude in the work of the Criminal Court and he was long remembered for the exemplary punishment which he imposed upon a gang of garotters whose murderous operations were making streets in Melbourne unsafe after nightfall.<sup>109</sup>

But some of his exemplary punishments were not well received by all sections of the community. For instance, in 1889 when he sentenced five young Melbourne men to 9 years’ penal servitude each for swearing that one Cutler was not in Little Bourke Street on the night when a certain Chinaman was kicked to death, a ‘great hoarse shout of satisfaction’ went up from the local Press.<sup>110</sup>

The newspapers congratulated society upon the fact that Judge Williams had spoken out on this occasion and orthodox respectability regarded him as another Daniel come to judgment, until four other young men charged with the same offence were tried and acquitted. The “hero” was now a “hot-headed judge” who acquitted these four because “he had passed such a ridiculously severe sentence on the first five who were only guilty of going beyond the truth to save an innocent man.”<sup>111</sup>

In 1889 he drew cheers from the courtroom during his sentencing of a bank embezzler, when he stated that much of the blame for such crimes rested with the banks, which were careless in supervising clerks and paid them ‘starvation wages’.

On 17 December 1890 when presiding at the hearing of Criminal trials, he said that “magistrates appeared to him to sentence irrespective of prisoner’s previous career”<sup>112</sup>.

In reply, Dr Lloyd, Chairman of the North Melbourne Court said that Mr Justice Williams’ remarks could have been more discreet:

“His Honor condemned the local bench in not sentencing a frequently convicted thief to more than three months hard labor for petty larceny ... The reason for this was that the maximum provided by the Statute was three months”.<sup>113</sup>

As a result of His Honour’s remarks, the Minister of Justice communicated with His Honour and a circular was issued to all magistrates calling attention to the subject.<sup>114</sup>

*The Argus* said:<sup>115</sup>

“There are reasons to believe that the magistrates generally agree as to the soundness of the opinions expressed by Mr Justice Williams.”

**Attitude to Punishment for Offenders**

In his later years on the Bench, Mr Justice Williams’ views about punishment seemed to change. In 1902 he published, *inter alia*, his concept of punishment wherein he said:<sup>116</sup>

“that until a better system of classification of first offenders has been established in our gaols, when I have to deal with a first offender who has not committed a very serious offence and who has been given a good character and whose antecedents are reputable, who has been convicted of an offence which is not rife in the community and where there are mitigating circumstances, I will not send such first offender to gaol if I can reasonably avoid doing so”.

By 1903, Mr Justice Williams announced, that after ‘long and serious thought’ he had come to the conclusion that first offenders should not be sent to prison.<sup>117</sup> He thereupon liberated half a dozen convicts on their own recognizances.<sup>118</sup>

But at about the same time, the Chief Justice Sir John Madden, in sentencing a first offender to ten years’ imprisonment, “indulged in some sarcastic remarks about the sentimentality of his learned brother.”<sup>119</sup>

The *Daily Chronicle* complained;<sup>120</sup>

“Respect for the law suffers when it is a toss-up whether a first offender gets off Scot-free or gets ten years”.

It may be fair to say that whilst firmly sustaining the aim of the law against crime, Mr Justice Williams knew how to temper justice with mercy, and in determining the sentence appropriate to the offence, had always shown wise discretion.<sup>121</sup>

**Proposed Judicature Act**

Before Victoria accepted the fusion of law and equity as proposed in the *Judicature Act* 1883, there was considerable controversy<sup>122</sup> in Victoria and Mr Justice Williams was well to the forefront in opposing the Bill. In the public debate preceding the passing of the Bill, his considered opinion was that the proposed Bill with its complex provisions would in fact increase the cost of litigation as they had found with the English procedure<sup>123</sup> and that it would fail to simplify legal proceedings in the way suggested by its proponents.<sup>124</sup> He was not opposed to a short act simply giving power to deal with legal and equitable rights between the same parties in the same action.<sup>125</sup>

Mr Justice Williams published his views in the Press<sup>126</sup> prefaced with this warning:

“There are two rules which judges are, I believe, supposed to observe  
 (1) not to interfere in any way in politics  
 (2) not to rush into print in relation to anything said or done by them in their capacity as judge.”<sup>127</sup>

For publishing these views and his views about the proposed *Judicature Bill*, he was assailed by a member of the Royal Commission appointed in the matter, and impugned in terms that were quite uncalled for.<sup>128</sup> J Warrington Rogers said:<sup>129</sup>

“I observe that the Narcissus of the Victorian Bench has followed the example of its Nestor and has pronounced judgment against the *Judicature Bill* before it has been tried”.

As finally enacted, the *Judicature Act* fused law and equity and provided that where the principles of law and equity were in conflict, the principles of equity would prevail.<sup>130</sup> From then on, even though, essentially, Mr Justice Williams was an expert in Common Law rather than Equity, he always loyally undertook the share of Equity cases allotted to him by the practice of distributing the work amongst the judges regardless of their qualifications.<sup>131</sup>

On one occasion, he said the result of the case could be just as satisfactory if the two parties “were to toss for it.”<sup>132</sup> He was “frankly embarrassed” in dealing with cases involving the law of Equity.<sup>133</sup> Concerning the fusion of law and Equity he said:<sup>134</sup>

“I don’t understand the subject, but you must take my decision for what it is worth”.

One of the problems with the causes for trial being distributed between the three judges was that members of the Bar were required to go on exploring expeditions to discover the Court in which they were engaged and entailing similar annoyances on witnesses and jurymen.<sup>135</sup>

**Civil Disputes**

Mr Justice Williams was not always satisfied with the jury. In the case of *Williams v Argus* in 1882,<sup>136</sup> he directed a verdict for the Plaintiff, however, to His Honour’s amazement, on the return of the jury, the foreman announced that they had found for the Defendant. His Honour drew attention to his direction and the foreman explained that they had disregarded that! In astonished tones, Mr Justice Williams declared that this was the first time that he had ever heard of a jury ignoring a plain direction from the Court on a point of law.<sup>137</sup>

In the 1880s the immigration of Chinese to the Colony was providing a major crisis.<sup>138</sup> Early in that decade numbers of Chinese were restricted entry to one to every hundred tons of ship’s burthen and also to a poll tax of £10 each.<sup>139</sup> There was much protestation about the discriminatory poll tax legislation and in April 1888 the issue came to a head when a Chinaman by the name of Ah Toy who had been prepared to pay the tax was nevertheless refused entry. He sued in the Supreme Court for damages and in September 1888 a four to two majority<sup>140</sup> held that a Chinese immigrant is entitled upon duly tendering to the proper officer the poll-tax, to land in Victoria.<sup>141</sup> Mr Justice Williams confessed<sup>142</sup> that he came to that

conclusion with great reluctance. In another part of his judgment he remarked (these days politically incorrect) that:<sup>143</sup>

“It leaves us in this most unpleasant and invidious position that we are at present without the legal means of preventing the scum or desperadoes of alien nationalities from landing on our territory whenever it may suit them to come here.”

and in another passage:<sup>144</sup>

“we have no legal means of preventing cargoes of alien convicts ... from landing on and polluting our shores”.

More than two years later, the Privy Council reversed the Supreme Court judgment and the crisis effectively ended Chinese immigration.<sup>145</sup>

The longest trial Mr Justice Williams presided over<sup>146</sup> was the *Speight v Syme* case heard in 1894.<sup>147</sup> The plaintiff was the chairman of the Victorian Railway Commissioners and the defendant was the proprietor of *The Age* newspaper. The plaintiff alleged 11 libels and claimed £25,000 damages. The defendant denied that the matter was defamatory and further pleaded justification and fair comment. The first trial took place before Hodges J and a jury, and lasted 100 days, the plaintiff obtaining a £100 verdict on the 8th count, the jury disagreeing as to the remainder. The issues remaining undecided came on again for trial before Mr Justice Williams and a jury and this trial lasted 88 days and the plaintiff obtained a verdict on the 6th count for one farthing and was defeated on the remaining 9 counts. On the subject of fair comment in his address to the jury,<sup>147a</sup> Mr Justice Williams said:<sup>148</sup>

“Fair comment may be shortly expressed thus. It is criticism and comments on, or conclusions drawn from, the public acts of a public man by you or by me, or by any individual in the community, or by the press ... fair comment only applies to public men”.

Mr Justice Williams’ charge to the jury was subjected to considerable criticism both outside and inside the profession. Probably the manner of the charge rather than the matter of it was open to criticism but it must be remembered that it was quite within the judicial province to hold and express strong opinions and that judges were not paid to be “mealy-mouthed.”<sup>149</sup>

During his term on the Bench, Mr Justice Williams was not averse to stating his own opinion in the matter before him. For instance, in March 1885 he was hearing proceedings taken to recover penalties for offences against the Act for preventing certain abuses and profanations on the Lord’s Day.<sup>150</sup> In his long judgment he said:<sup>151</sup>

“It is assumed that Christianity is part of the common law of England, and it is also assumed that the religious observance of Sunday is part of Christianity. I have not been referred to any legal authority in support of the latter assumption and I know of none; and in default of

legal authority upon the point I must decline to accept as an established fact that the religious observance of Sunday is part of Christianity”.

### Extra-mural activities

Mr Justice Williams did a fair amount of work outside the Supreme Court.<sup>152</sup> In fact, he was a man of considerable ability and learning and was in demand as a lecturer on religious, moral and philosophical subjects.<sup>153</sup> By lecturing and publishing essays he proved that he had thoughtfully considered and formed opinions upon subjects of deep human concern.<sup>154</sup>

In February 1885 he published a pamphlet titled *Religion without Superstition* which in the space of 8 weeks ran through two editions<sup>155</sup> and stirred up a considerable amount of controversy in the religious life of the colony.<sup>156</sup> In the Preface to the 3rd edition, he said that the circulation of the pamphlet had been “much more rapid and extensive than I could have reason to anticipate.”<sup>156a</sup>

His view was that fundamental and cardinal doctrines of popular Christianity such as the Trinity, the Deity of Jesus, the Actual and very Sonship of Jesus to God, the Incarnation, the Inspiration of the Bible, the Atonement and the Advent were mere crude superstitions and that their effect was “to disfigure and obscure pure and true religion.”<sup>157</sup>

He said:

“When these misconcepts have been cleared away the residue left is pure Theism which is the purest as well as the only rational and scientific form of belief. I have not written with the object of throwing discredit upon Religion.”

He further argued that there was an obligation cast upon those who demand that others shall accept as credible what is supernatural, to furnish those others with reasonable evidence in support of the truth of the supernatural fact or proposition. It was also his belief that parts of the Bible e.g. *Genesis* xix 30-38 were “filthy and disgusting”.<sup>158</sup>

As a result of this pamphlet, Dr Moorhouse, the Bishop of Melbourne described Mr Justice Williams as a “thoughtless and shallow optimist.”<sup>159</sup> He was also attacked by Rev D Berry and Rev J Abernethy, the latter suggesting that Mr Justice Williams had too much “leisure time to devote to such studies as attract his taste.”<sup>160</sup> Mr Justice Williams replied that as he had consumed the only two leisure days at his disposal during the very short Easter recess in replying to Dr Moorhouse’s “rhetorical claptrap and pretty platitudes”, it was out of his power to find time to expose the unfair and evasive and absolutely misleading nature of Dr Moorhouse’s latest attempts.<sup>161</sup>

### Theological Addresses

Over the next 15 years, Mr Justice Williams delivered addresses in Melbourne and the suburbs, some in

Ballarat, Bendigo and other country towns<sup>162</sup> on such topics as:

- Death and Immortality
- Forward Religious Thought
- The Great Law
- Moral Courage
- He Prayeth Best Who liveth Best
- Has Man a Dual Mind?

and these addresses were gathered together and released in a book in 1902.<sup>163</sup> In 1885, Judge Williams was described as having

“no originality, no philosophic power of thought, no logical presentation even of old material ... no charm even in composition; for style there is none. The writer’s knowledge of the Bible is exceeded by many a schoolboy and when he reasons from passages, his dialectics are beneath contempt”<sup>164</sup>

He was accused of studying

“theology on the bicycle. In such a case the rapidity of the motor would interfere both with profound thought and serious investigation.<sup>165</sup> “We have never seen the Judge, but we have heard that he can weep – even copiously.<sup>166</sup> In such a case he is all the better prepared for one urgent matter. The entire page in which he has imputed the stigma of ‘filthy and revolting’ is simply abominable and should be blotted out with many tears”.

In 1902 a pamphlet said that Mr Justice Williams:<sup>167</sup>

“as an upright and fearless judge, as a private gentleman of worth and benevolence, he shares the esteem of the community. As a religious teacher he is another character.”

and further on in the same publication:<sup>168</sup>

“He is a most dangerous guide. He who trusts him if his scheme fails him is LOST FOR EVER!”

And again:<sup>169</sup>

“As a theologian Sir Hartley Williams is behind the times: he is a belated philosopher and his proper date is about 500BC. Will any sober earnest soul really resort to Mr Justice Williams for light as to the Eternal Future?”

It was said that there was a high proportion of leading citizens, though usually religiously inclined, were not good churchmen.<sup>170</sup> In 1890, attention turned to the Supreme Court:<sup>171</sup>

“What trouble the clergy have in keeping the toes of all the Australian judges up to the line ... As for Victoria – why, orthodoxy has scarce a judge. CJ Higinbotham is – well, all that is shocking. Then there is Judge Williams – worse if possible”.

### Unorthodox views

Mr Justice Williams, on returning from a visit to England in July 1884 declared that England would eventually become a republic as the ‘Queen is not liked ... people think she does not do her duty and is rather niggardly.’ In 1888 at a meeting of the Melbourne branch of the Australian Natives’ Association he advocated the separation of Australia from Britain. He favoured Federation which would give the colonies full power to govern themselves and he wanted a federal court of appeal to assimilate the statutes of the various colonies to deal with cases involving amounts too small to concern the Privy Council. He authored an article on anti-sweating legislation which was published in the *Westminster Review* in 1908.<sup>171a</sup>

### Domestic matters

Whilst Mr Justice Williams was struggling with his theological adversaries, his wife, on 11 August 1885 “succumbed to the serious illness which she was recently suffering.”<sup>172</sup> But Hartley was not long without another partner in life. On 4 January 1887 he married his cousin Jessie Bruce, eldest daughter of the late Acland Lawford Esq<sup>173</sup> and Janet Thring Bruce<sup>174</sup> of Kinellan Common, Wimbledon, England. The couple were married by Rev Charles John Godby at St George’s Church of England, Malvern which was not far from his house *Flete* which stood in about 6 acres of land on the east side of Boundary Road, nearer to High Street than to Malvern Road.<sup>175</sup>

### Appointment of new Chief Justice

Except for a leave of absence for 12 months from 1 February 1891<sup>175a</sup>, Mr Justice Williams continued to perform his judicial duties on the Supreme Court Bench. On 31 December 1892, Chief Justice Higinbotham died and it was expected that the claims of the senior puisne judge (Hartley Williams) would not be overlooked.<sup>176</sup> However, the Shiels Ministry preferred Sir John Madden<sup>177</sup> who at that stage was one of the leading advocates of the Bar.<sup>178</sup> The appointment was generally regarded as a political one<sup>179</sup> and Mr Justice Williams was keenly disappointed when he was overlooked.<sup>180</sup>

### Reaction to appointment of Chief Justice

On 7 January 1893 whilst on legal vacation, he wrote a furious letter to *The Argus* stating that Sir John Madden was not the best appointment to the position of Chief Justice and that being overlooked for the appointment prompted Hartley to state that in future he would do no more than his “bare duty.”<sup>181</sup>

As might be expected, this unfortunate letter caused quite a deal of concern in legal and Parliamentary circles, and there was much comment in the Press. *The Argus* lamented that:<sup>182</sup>

“The public will read with some surprise and with some regret the letter from Mr Justice Williams. He has tried for the post and worked for the post and his disappointment must be great. There are sentences in the letter which will be best forgotten by the writer and

by the community to which he has appealed ... and once first impression of injury has passed away, no one, we are sure will be more loyal to his colleagues and his country than His Honor Mr Justice Williams”.

A Mr HV Duigan of Selborne Chambers was not as understanding as *The Argus*. He wrote:<sup>183</sup>

“His Honor omitted to add to his statement that having had the unparalleled experience for a Supreme Court judge of having enjoyed 2½ years of his term of office on leave of absence in England, it was but natural that His Honor would do considerably more than his duty when he resumed his seat on the Bench”.

The *Summons* took the opportunity to put some views about appointment of Chief Justices:<sup>184</sup>

“Historical precedent in England favors the appointment of one already holding judicial office to a vacant Chief Justiceship ... but there does not appear to be any Rule or Custom which limits or prevents the Crown, or its advisers from selecting the best man to fill vacant judicial offices ... Chief Justice Madden, apart from his legal attainments which are by no means inferior to his predecessors, is conspicuous for eloquent speech, great courtesy and unbiassed power of judgment”.

At the swearing in of Dr Madden at the meeting of the Executive Council on 9 January 1893, the letter of Mr Justice Williams created a deep sensation and was discussed on all sides as the one important topic of the day.<sup>185</sup> Mr Justice Hodges felt very great sympathy for Mr Justice Williams and Mr Justice Hood said that “it is to be regretted that Mr Justice Williams chose to write to *The Argus* and that any public disturbance should be created on the subject.”<sup>186</sup>

The passage of time appears to have changed Mr Justice Williams’ view of the Chief Justice for, in 1903 in the case of *Vinnicombe v MacGregor*<sup>187</sup> he said:

“At the outset I may be allowed to express my admiration of the monumental industry manifested in the judgment of the Chief Justice and of my appreciation of the very great assistance the labours of the Chief Justice have been to this Court.”<sup>188</sup>

Perhaps to show that he was forgiven, Mr Justice Williams was knighted in 1894.<sup>189</sup> On 5 January 1894 he was congratulated by Mr MacDermott of the Bar who said:<sup>190</sup>

“Mr Edward Eyre Williams had commanded the love and honour of troops of friends and the mantle of the deceased had fallen on worthy shoulders”.

Sir Hartley replied:<sup>191</sup>

“As a recognition of any small services I may have been able to render to the State, I value the distinction highly and gratefully”.

In 1896 Sir Hartley was again under fire when a member of the Lower House “violently assailed” him in consequence of a remark which His Honour had accidentally uttered.<sup>192</sup> The Member was prepared to go to any lengths in implying the most unworthy motives, however, no sooner had Hartley explained his meaning – “and an explanation to most men would have been quite unnecessary” – than his previous reviler at once changed into “a warm supporter” thus showing that his former gross insinuations had not the slightest foundation.<sup>193</sup>

On 8 May 1899 Sir Hartley was appointed as a Royal Commission to investigate statements made in Parliament by F Madden concerning the Mt Macedon gold fields and the claims of David Syme, the transactions of Francis Johnson and of several members of Government Departments all of whom were accused of having conspired to defraud the Government.<sup>194</sup> The Report declared that Mr Syme’s claims to allotments at Mt Macedon were partly illegal but that the other charges could not be sustained.<sup>195</sup>

### Sporting prowess

For many years Sir Hartley (known as the ‘athlete judge’) showed a keen interest in sport.<sup>195a</sup> He was possessed of a good physique and a robust intellect<sup>196</sup> and had been an active athlete, much addicted to cycling.<sup>197</sup> He was for some years an active member and executive committee-man of the Melbourne Bicycle Club (President), cricket and rowing associations and he also enjoyed boxing. In his younger days he regularly walked by way of Yarra Bank to and from his home at South Yarra.<sup>198</sup>

In the 1880s he used to ride to circuit work on a ‘safety-chain-driven’ bicycle. This included a trip to Camperdown, then he continued his tour through Warrnambool, Hamilton, Moyston, Stawell and Horsham and was met by officials in every town before presiding over cases. *The Herald* was ‘shocked’:

“The whole legal profession is scandalised at the burlesquing of the judicial bench by Mr Justice Williams by going on circuit on a bicycle ... Fancy a judge of the Supreme Court entering a large city like Ballarat on a velocipede and being met, not by the sheriff and other functionaries, but by half a dozen other boobies on bicycles.”

*Bicycling News* rushed to his defence saying:

“I desire to point out that cycling stands at the very head of athletics in England, and that its votaries are generally of good status. In Great Britain alone there are 300,000 riders, among whom may be mentioned the Prince of Wales, Prince George of Wales, Lord Sherbrooke and two of Her Majesty’s judges of the Queen’s Bench.”<sup>198a</sup>

But in 1897, when aged 55 years, his active participation in sport was somewhat curtailed. When visiting the Buffalo Ranges in the autumn of that



year, he slipped on some rocks and seriously injured his knee. He had to be carried by bearer for some 11 miles and it took him several months to get well and it was then doubted whether he would ever resume duty on the Bench.<sup>199</sup>

It was announced before he met with the knee accident, that he would resign his Judgeship in March 1897 when there was a possibility of him being nominated for the Privy Council Judgeship.<sup>200</sup> However, this appointment did not eventuate and he continued to sit in the Supreme Court until 1903. On 6 April 1903, it was reported that Sir Hartley Williams was unable to attend the Law Courts as he had contracted “a chill and was confined to his room” at the Grand Hotel where he was temporarily residing.<sup>200a</sup>

### Retirement

After a lengthy period of ‘brilliant and honorable service’, it was announced in June 1905 that Sir Hartley would retire to the well-earned rest of private life.<sup>201</sup> As a result he sent his notice of resignation to the Crown Law authorities with the request that it date from 5 June 1903 and that he be paid a pension of £1500pa.<sup>202</sup>

When taking his seat in the Practice Court at the beginning of June, Mr Justice Williams “pleasantly suggested” to counsel that difficult matters should not be brought before him as he did not intend to reserve any judgments.<sup>203</sup> He also asked members of the Bar not to take leave of him in the formal way.<sup>204</sup> But in closing his connection with the Victorian judiciary, His Honour betrayed deep emotion and found it necessary to retire for a few minutes in order to regain his composure. He had to visit the Supreme Court later to bid farewell to them personally.<sup>205</sup>

Mr Justice Williams left Melbourne on the 9 June 1903<sup>206</sup> his wife Lady Williams and his youngest daughter having left for England some weeks previously.<sup>207</sup> Before he left Melbourne, Mr Justice Williams had indicated that it was his intention to take quarters in London<sup>208</sup>, and said:

“I am very fond of Australians and my relations with both the Bench and the Bar have always been of the most cordial description. But I have many strings pulling me to the old land. My mother is still living there aged 90 years, my elder brother<sup>209</sup> Colonel Williams has his home there and I have relations all over England. I am leaving Australia with very many regrets”.

Sir Hartley Williams died on 12 July 1929 at 4 Sloane Terrace Mansions, SW 1 aged 85 years,<sup>210</sup> leaving two sons and three daughters.<sup>211</sup>

### Conclusion

So the long life of Sir Hartley Williams ended, but his personality will endure in Australian history. Like his father he had been a successful advocate at the Bar, and fulfilled a lengthy period of ‘honourable service’ on the Supreme court Bench.<sup>212</sup> He was a fearless

and outspoken judge at times<sup>213</sup> not only on the Bench but in other interests which he pursued with much keenness. He was also very keen to improve his position and knowledge and his ambitions in this area were clear-cut. He was the youngest judge ever appointed to the Supreme Court Bench.<sup>214</sup> On the Bench he was very acute-minded and usually proved right in his judgments.<sup>215</sup> Like his father, Sir Hartley became a reporter for the Law Reports.<sup>216</sup> Except for one or two minor ‘peccadilloes’ where he showed a surprising lack of judgment for someone who was highly intelligent, he had done a great work! His reputation is assured and his performance deserves high praise.

### Key dates:

1843	Born on 15 October at Collingwood
1863	Educated at Repton School, Trinity College, Oxford.
1866	Took degrees of BA and LL B.
1867	Called to Bar of Inner Temple. Arrived in Melbourne 29 October.
1868	Admitted to practise as a barrister of the Supreme Court of Victoria.
1873	Appointed an examiner in Law at the Melb. University.
1874	Sought election (unsuccessfully) for the seat of St Kilda in the Legislative Assembly.
1881	Appointed Judge of the Supreme Court of Victoria.
1894	Created a Knight.
1903	Resigned from the Supreme Court bench.
1903	Emigrated to England.
1929	Died on 12 July.

### Footnotes:

- <sup>1</sup> Not ‘Hartley E. Williams’ per *Vict. Law Reports* 1886 Vol XII and VLR 1887 Vol XIII. Not ‘Hartley Eyre Williams’ per VLR 1888 Vol XIV to 1891, Vol XVII and A Dean, *A Multitude of Counsellors*, Melbourne. p138.
- <sup>2</sup> Registry of Births, Deaths & Marriages, Melbourne. File No. NSW 4455/43. Not 1844 per Forde, *The Story of the Bar of Victoria*, Melb. p299 and Dean *op cit* p138. Not 1841 per Blair (ed.) *Cyclopaedia of Australia*, Melb. 1881, p746.
- <sup>3</sup> Garryowen, *Chronicles of Early Melbourne*, i. p26.
- <sup>4</sup> JB Burke, *Colonial Gentry*, 1891, p179 and confirmed by H McCrae ed. *Georgiana’s Journal*, Sydney 1934, p114.
- <sup>5</sup> *The Age*, 23.5.1903, p8.
- <sup>6</sup> Burke, *op cit*, p179.
- <sup>7</sup> F Johns, *An Australian Biographical Dictionary*, London 1934, p379.
- <sup>8</sup> Forde *op cit*, p299.
- <sup>9</sup> H Williams’ application to Victorian Bar. File 79 (1865-1871) Public Records Office.
- <sup>10</sup> *The Argus*, 29.5.1874, p4.
- <sup>11</sup> *The Argus*, 16.7.1929, p6.
- <sup>12</sup> *The Age*, 25.5.1903, p8.
- <sup>13</sup> *The Argus*, 16.7.1929, p6.
- <sup>14</sup> *The Argus*, 30.10.1867, p2.
- <sup>15</sup> Shipping List: *Superb* 1451 tons. Shows name as William Hartley, aged 23 yrs. single, ‘trader’. Public Records Office. cf *The Argus*, 30.10.1867, p4. shows name as ‘Hartley Williams’.
- <sup>16</sup> List of Attornies, footnote <sup>9</sup>.
- <sup>17</sup> No date on Certificate but Blair *op cit*, p746 states date as 4.4.1868.
- <sup>18</sup> The Board of Examiners comprised: RD Wilmot, Thos. H

- Fellows and G Mackay. *Vide* List of Attornies with Applications (1865-1871). Public Records Office.
- <sup>19</sup> *The Argus*, 16.7.1929, p6.
- <sup>20</sup> Forde *op cit*, p299.
- <sup>21</sup> Forde *op cit*, p199.
- <sup>22</sup> *The Australian Jurist*, 16.1.1871, pii. *The Cornwall Chronicle*, 28.12.1870, p2. Celebrant was Right Rev the Lord Bishop of Tasmania, assisted by Rev Samuel Parsons DD.
- <sup>23</sup> F Johns, *Notable Australians*, Melb, 1906, p185.
- <sup>24</sup> *The Argus*, 16.1.1871, p4.
- <sup>25</sup> *Australian Encyclopaedia*, vol 9, p312.
- <sup>26</sup> D Blair ed. *op cit*, p746.
- <sup>27</sup> *The Age*, 9.5.1874, p5.
- <sup>28</sup> D Blair, *op cit*, p746.
- <sup>29</sup> Hearn, William Edward (1826-1888), political economist, jurist, politician and university teacher: ADB online.
- <sup>30</sup> Faculty of Law Handbook, University of Melbourne, 1974, p15. Melbourne University Calendar, 1874-5, p31.
- <sup>31</sup> *Australian Law Times*, 2.8.1879, p9.
- <sup>32</sup> *ibid*.
- <sup>33</sup> *Australian Law Times*, 2.8.1879, p9.
- <sup>34</sup> *Australian Encyclopaedia*, vol 9, p312.
- <sup>35</sup> D Blair ed, *op cit*, p746.
- <sup>36</sup> *The Argus*, 16.7.1929, p6.
- <sup>37</sup> *The Argus*, 16.7.1929, p6.
- <sup>38</sup> *The Age* refuted this. See paper on Edward Eyre Williams.
- <sup>39</sup> *The Age*, 27.3.1874, p2.
- <sup>40</sup> *The Age*, 7.4.1874, p2.
- <sup>41</sup> "Magnanimously" reprinted in *The Age*, 7.4.1874, p2.
- <sup>42</sup> *The Argus*, 6.4.1874.
- <sup>43</sup> 7.4.1874, p2.
- <sup>44</sup> *The Age*, 28.3.1874, p4.
- <sup>45</sup> *The Age*, 4.4.1874, p4.
- <sup>46</sup> *The Age*, 5.5.1874, p2.
- <sup>47</sup> *ibid*.
- <sup>48</sup> *The Age*, 4.4.1874, p4.
- <sup>49</sup> *ibid*.
- <sup>50</sup> *The Age*, 9.4.1874, p3.
- <sup>51</sup> *The Age*, 13.4.1874, p1.
- <sup>52</sup> *The Age*, 22.4.1874, p1.
- <sup>53</sup> Stephen 1923, Murray Smith 1146, Williams 911, Dixon 732: *The Age*, 23.4.1874, p2.
- <sup>54</sup> D Blair ed, *op cit*, p312.
- <sup>55</sup> *The Age*, 23.4.1874, p3.
- <sup>56</sup> *The Age*, 1.5.1874, p2.
- <sup>57</sup> *ibid*.
- <sup>58</sup> *The Age*, 9.5.1874, p5.
- <sup>59</sup> *The Age*, 9.5.1874, p5.
- <sup>60</sup> *The Age*, 15.5.1874, p2.
- <sup>61</sup> *The Age*, 11.5.1874, p2.
- <sup>62</sup> *The Age*, 15.5.1874, p1.
- <sup>63</sup> *The Age*, 15.5.1874, p1.
- <sup>64</sup> EJ Dixon 1093, Hartley Williams 987, Frederick George Henry Webb 630: *The Age*, 16.5.1874, p1.
- <sup>65</sup> *The Age*, 16.5.1874, p2.
- <sup>66</sup> *The Argus*, 16.7.1929, p6.
- <sup>67</sup> *The Illustrated Australian News*, 27.7.1881, p138.
- <sup>68</sup> *The Age*, 23.5.1903, p8.
- <sup>69</sup> *Australian Law Times*, piii, 9.7.1881.
- <sup>70</sup> *Australian Law Times*, 16.8.1879, p14.
- <sup>71</sup> *ibid*.
- <sup>72</sup> *The Argus*, 16.7.1881, p7.
- <sup>73</sup> *The Argus*, 4.7.1881, p4. *Gov. Gaz.* 6.7.1881 p2012. *Victorian Law Reports* 1881, vol vii.
- <sup>74</sup> *Quaere* if any relation by marriage to his first wife Edith.
- <sup>75</sup> *The Argus*, 6.7.1881, p5.
- <sup>76</sup> *Australian Law Times*, 9.7.1881. D Blair (ed.) *op cit*, p746.
- <sup>77</sup> *The Argus*, 2.7.1881, p7.
- <sup>78</sup> *ibid*.
- <sup>79</sup> Letter to *The Argus*, 2.7.1881, p8, signed 'A. Barrister'.
- <sup>80</sup> Comprising Molesworth and Stephen JJ.
- <sup>81</sup> *The Argus*, 2.7.1881, p7.
- <sup>82</sup> *The Leader* supplement, 16.7.1881, p1.
- <sup>83</sup> *The Argus*, 2.7.1881, p7.
- <sup>84</sup> *ibid*.
- <sup>85</sup> *The Argus*, 2.7.1881, p7.
- <sup>86</sup> *The Argus*, 4.7.1881, p4.
- <sup>87</sup> *The Argus*, 16.7.1881, p6.
- <sup>88</sup> *The Argus*, 15.7.1881, p5.
- <sup>89</sup> *ibid*.
- <sup>90</sup> *ibid*.
- <sup>91</sup> *ibid*.
- <sup>92</sup> *The Argus*, 21.7.1881, p5.
- <sup>93</sup> *Australian Law Times*, 6.8.1881, pxxi.
- <sup>94</sup> numbering over 40 members, *ibid*.
- <sup>95</sup> *Australian Law Times*, pxxi.
- <sup>96</sup> *The Argus*, 8.8.1881, p5.
- <sup>97</sup> *ibid*.
- <sup>98</sup> *ibid*. Prophetic words in view of his 1893 episode. p7 *post*.
- <sup>99</sup> *The Argus*, 16.7.1929, p6.
- <sup>100</sup> After 1881.
- <sup>101</sup> *ibid*.
- <sup>102</sup> Forde, *op cit*, p297.
- <sup>103</sup> *The Argus*, 15.7.1881, p7.
- <sup>104</sup> *The Argus*, 28.7.1881, p5.
- <sup>105</sup> H Williams, *Addresses*, Melb. 1902, p112.
- <sup>106</sup> *The Argus*, 23.7.1881, p7.
- <sup>107</sup> *The Argus*, 25.7.1881, p5.
- <sup>108</sup> *Australian Law Times*, 31.8.1889, pxxxvi.
- <sup>109</sup> *The Argus*, 16.7.1929, p6.
- <sup>110</sup> *The Bulletin*, 12.4.1890, p7.
- <sup>111</sup> *ibid*.
- <sup>112</sup> *The Argus*, 23.1.1891, p5.
- <sup>113</sup> *The Age*, 23.1.1891, p6.
- <sup>114</sup> *The Argus*, 23.1.1891, p5.
- <sup>115</sup> *ibid*.
- <sup>116</sup> H Williams, *op cit*, *Penology*, p105.
- <sup>117</sup> Report in *Daily Chronicle* reprinted in *The Summons*, vol xi, Part xii, 1.2.1903, p2.
- <sup>118</sup> *ibid*.
- <sup>119</sup> *ibid*.
- <sup>120</sup> *ibid*.
- <sup>121</sup> *The Age*, 6.6.1903, p8.
- <sup>122</sup> A Castles, *An Introduction to Australian Legal History*, Sydney 1970, p103.
- <sup>123</sup> *Australian Law Times*, 1.9.1883, pxxxiv.
- <sup>124</sup> A Castles, *op cit*, p109.
- <sup>125</sup> *ibid*.
- <sup>126</sup> *The Argus*, 28.7.1883, p10.
- <sup>127</sup> Hartley deserted principle two in 1893. *Vide* p7.
- <sup>128</sup> *Australian Law Times*, 1.9.1883, pxxxiv.
- <sup>129</sup> *The Argus*, 30.7.1883, p8.
- <sup>130</sup> Castles, *op cit*, p109.
- <sup>131</sup> *The Age*, 6.6.1903, p8.
- <sup>132</sup> *The Australasian*, 25.12.1897, p1410.
- <sup>133</sup> *The Argus*, 16.7.1929, p6.
- <sup>134</sup> *The Australasian*, 25.12.1897, p1410.
- <sup>135</sup> *Australian Law Times*, 4.3.1882, pcvlvii.

<sup>136</sup> *Australian Law Times*, 15.4.1882, pclxxv.  
<sup>137</sup> *ibid.*  
<sup>138</sup> G Serle, *The Rush to be Rich*, MUP, 1971, p295.  
<sup>139</sup> *ibid.*  
<sup>140</sup> Williams, Holroyd, a'Beckett and Wrenfordsley JJ.  
<sup>141</sup> *Victorian Law Reports*, 1888, p349.  
<sup>142</sup> *ibid.*, p416.  
<sup>143</sup> *ibid.*, p422.  
<sup>144</sup> *ibid.*, p416.  
<sup>145</sup> Serle, *op cit*, p301.  
<sup>146</sup> *The Australasian*, 23.5.1903, p1157.  
<sup>147</sup> *Australian Law Times*, vol xvi, p71.  
<sup>147a</sup> His Honour's summing-up extended over seven days: *ibid.*, p71.  
<sup>148</sup> *ibid.*, p73.  
<sup>149</sup> *The Summons*, vol 4, No 2, December 1894, p8.  
<sup>150</sup> *McHugh v Robertson* (1885) VLR p410.  
<sup>151</sup> *ibid* p417.  
<sup>152</sup> *The Age*, 23.5.1903, p8.  
<sup>153</sup> Dean, *op cit*, p138.  
<sup>154</sup> *The Age*, 6.6.1903, p8.  
<sup>155</sup> *Australian Encyclopaedia*, *op cit*, p312. Serle, *op cit.* p132 states that it eventually ran into 3 editions.  
<sup>156</sup> *ibid.* cf. *The Australasian*, 23.5.1903, p1157 which said that "no novel or startling views are expressed so that they did not cause much of a stir".  
<sup>156a</sup> *Religion without Superstition*, 3rd ed, April 1885, pxiii. In the Preface to the 1st edition, he said: "I therefore ask those who honestly desire to ascertain truth to lay aside ... that which they have been taught by others to believe – to struggle to teach themselves, to think for themselves, to apply the pure light of reason to the investigation of a subject."  
<sup>157</sup> Preface to *Religion without Superstition*, pviii.  
<sup>158</sup> *ibid.*  
<sup>159</sup> *ibid.* pxviii.  
<sup>160</sup> *ibid.* pxxiii.  
<sup>161</sup> *ibid.* plxi.  
<sup>162</sup> H Williams, *Addresses*, *op cit*, p1.  
<sup>163</sup> Melbourne, October 1902.  
<sup>164</sup> G Greenwell, *Infidelity in Extremis*, Ballarat, ?1885 pv, in *Theology Pamphlets*, vol 101.  
<sup>165</sup> *ibid.* pvi.  
<sup>166</sup> Referring to the fact that at times, when passing sentence, he became rather emotional: *The Age*, 16.7.1929, p9.  
<sup>167</sup> *Irenaeus* (pseudonym of Ebenezer John Thomas), *Truth for the Time*, Melb, 1902, p3, in *Theology Pamphlets*, vol 55.  
<sup>168</sup> *ibid.* p3.  
<sup>169</sup> *ibid.* p45.  
<sup>170</sup> G Serle, *op cit*, p130.  
<sup>171</sup> *The Bulletin*, 12.4.1890, p14.  
<sup>171a</sup> Miller R, *Australian Dictionary of Biography*. Sir Hartley contributed a deal of articles on a variety of subjects. See for example, *Women and Women's Rights, Fair and Reasonable Remuneration, The Dynamic of Socialism, Divorce Law Extension, A Minimum Wage and Mr Ave's Report, The Education Bill*: reprinted in *The New Age, A Weekly Review of Politics, Literature and Art*, Vol II and III (New Series), [www.dl.lib.brown.edu](http://www.dl.lib.brown.edu). He was quoted by Frank DeWitt Talmage DD in *The Journal and Republican*, Lowville, NY, 7 May 1903 as follows: "... there are some cynics who profess to believe that an honest lawyer does not exist. Sir Hartley Williams, a celebrated Australian judge once pessimistically commented upon the fact that there was a pious lawyer in his circuit who used to regularly pray that he might get clients. 'Imagine', said the judge, 'the insult to

the Almighty contained in the request that God should stir up strife among the people, foment discord and promote litigation, just to serve the selfish purpose of this pious solicitor!": [www.fultonhistory.com/Process](http://www.fultonhistory.com/Process).

<sup>172</sup> *The Age*, 12.8.1885, p5. Funeral held on 12.8.1885 and the cortège left for Boroondara cemetery: *The Age*, 13.8.1885, p5.

<sup>173</sup> Burke, *op cit*, p179.

<sup>174</sup> Registry of Births, Deaths and Marriages, Melbourne, File No 181/1887M.

<sup>175</sup> JB Cooper, *History of Malvern 1836-1936*, Melb. 1935, p136. *Flete*, (which is registered on the Register of the National Estate as 'Historic') is located at 2 Flete Avenue, Armadale, and was erected in 1882-83 for Sir Hartley Williams on a site of more than 6 acres (2.5 hectares) which originally fronted Kooyong Road. The 13-roomed Victorian Italianate style brick and stucco mansion with wide encircling verandah is allegedly based upon a Maltese villa prototype and is symmetrically planned around wide internal passage axes which intersect to form a large central entrance hall, elaborately decorated. It was designed by architect Thomas Watts. Williams sold *Flete* to auctioneer, Stratford Strettle, in 1889. Williams re-purchased the property in 1894, the same year he was knighted. When Captain Charles Lawrence purchased *Flete* in 1902, the property included a conservatory, pavilion, tennis court and stables. *Flete* has been occupied since 1946 as a women's hostel for the Melbourne Bible Institute. In 1978 the mansion was acquired by the Yooralla Society of Victoria who proposed to restore it and integrate it into a residential complex for handicapped persons. For a photo of the house taken in July 1995 see [http://www.environment.gov.au/cgi-bin/heritage/photodb/imagesearch.pl?proc=detail;barcode\\_no=rt36488](http://www.environment.gov.au/cgi-bin/heritage/photodb/imagesearch.pl?proc=detail;barcode_no=rt36488)

<sup>175a</sup> On 1 February 1891, Mr Hickman Molesworth, Judge of the Court of Insolvency) and a County Court Judge 1883-1907) was appointed one of the Judges of the Supreme Court during Mr Justice Williams' absence on leave.

<sup>176</sup> *The Argus*, 16.7.1929, p6.

<sup>177</sup> Dean, *op cit*, p153.

<sup>178</sup> *The Argus*, 16.7.1929, p6

<sup>179</sup> *The Age*, 16.7.1929, p9.

<sup>180</sup> *The Argus*, 16.7.1929, p6.

<sup>181</sup> *The Argus*, 9.1.1893, p5. Letter as follows:

"Sir,

Dr Madden has not for many years been engaged in politics, nor can he be regarded as a supporter of the present Government. The reason, therefore, why he has been selected to be Chief Justice, as successor to Sir William Stawell and Mr George Higinbotham, can only be because as an advocate he, conjointly with Mr Purves QC occupies the foremost position at the Bar as it is now constituted.

Let me briefly examine the weight and cogency of this reason. Firstly, in what capacity does Dr Madden occupy this foremost position, and secondly, how came he to fill it? As lawyers Mr Mitchell, Mr Box, Mr Isaacs, Mr Topp and Mr Higgins are undoubtedly sounder and superior. As advocates, they are equally clearly his inferiors. It is therefore, as an advocate, and not as a lawyer, That Dr Madden holds at the Bar the position he now does. But I apprehend that an essential qualification for those sought to fill vacancies on the Supreme Court Bench is that they be sound lawyers, and not brilliant or effective advocates.

Then how came Dr Madden to fill the position he now holds at the Bar? It is only within the past eleven years that he has done so. When the late Chief Justice, Mr Justice Holroyd and I were at the Bar, Dr Madden's practice was of a very insignificant

description. The best practising solicitors of those days will readily substantiate this. It was only the rapidly-succeeding elevation to the Bench of the three whom I have just mentioned which enabled Dr Madden to push his way to the front rank and into a better class of business. Though Dr. Madden started at the Bar before me I was 'standing counsel' for nearly every bank in Melbourne for many insurance offices, leading mercantile firms, the Corporation of Melbourne, the *Argus* and the *Age* newspapers, and for many private individuals, and was making thousands a year when Dr Madden did not, I venture to say hold one 'general retainer', and was making hundreds.

When the late Chief Justice, Mr Justice Holroyd and I were rapidly, the one after the other, elevated to the Bench, the great gap so caused was filled by men who hitherto had occupied comparatively obscure positions. Amongst these, I do not, of course, include Mr Purves QC as he had been before the time I mentioned in the front rank with Mr Higinbotham, Mr Holroyd and myself.

As regards large pecuniary sacrifices, every one of my colleagues and I have, for the honour of the position, made very large pecuniary sacrifices. Every present occupant of the Supreme Court Bench is nothing if not a lawyer. Each one of us has in turn been elevated because each in his turn was supposed to be, not the best advocate, but the best lawyer, though he has justly been regarded as a successful and brilliant advocate; but I take it that we do not require forensic powers on the Bench. I have now been nearly twelve years on the Bench, doing considerably more than my duty, and taking a keen interest in expediting the work of the Court. The treatment which I have just received is not such as to encourage me for the future to do more than my bare duty. I have felt constrained to depart from my usual custom and to write to the press upon this subject, for the purpose of reminding the public that, because Dr Madden happens to hold a prominent position at the Bar as at present constituted, it does not follow that the present five occupants of the Supreme Court Bench are not at any rate his equals in point of legal knowledge and attainments. In conclusion, so keenly do I feel the injustice of this latest appointment and the insult that was cast by it upon the present occupants of the Bench, that had I left the Bar only five years ago instead of twelve I should unhesitatingly have resigned my Judgeship and returned to the Bar.

I am etc

HARTLEY WILLIAMS

Gracedale-House, Healesville. Jan.7"

<sup>182</sup> *The Argus*, 9.1.1893, p4. Dean, *op cit*. p138 relates the story that shortly after the publication of this letter, Deakin and a friend were at Point Lonsdale. As they emerged from the sea after their morning swim they were surprised to see a naked figure coming out of the water. 'Good gracious,' said Deakin's companion, 'Who is that?' 'Oh,' said Deakin, 'that is Williams doing his bare duty.'

<sup>183</sup> *The Argus*, 10.1.1893, p5.

<sup>184</sup> *The Summons, About Chief Justices*, by 'Umbra', vol 2. No. 3, March 1893, p2.

<sup>185</sup> *The Argus*, 10.1.1893, p5.

<sup>186</sup> *ibid*.

<sup>187</sup> VLR (1903-4) vol xxiv, p32.

<sup>188</sup> *ibid*, p32.

<sup>189</sup> Dean, *op cit*, p138.

<sup>190</sup> *Weekly Times*, 6.1.1894, p19. At this stage, it was Mr Justice Williams' duty to preside weekly in Chambers to administer the law on urgent matters.

<sup>191</sup> *ibid*.

<sup>192</sup> *The Summons*, vol vi, No. 1, September 1896, p10.

<sup>193</sup> *ibid*.

<sup>194</sup> DH Borchardt, *Checklist of Royal Commissions and Select Commissions of Parliament and Boards of Inquiry*, Part 3, Victoria 1856- 1960, Sydney, 1970.

<sup>195</sup> *ibid*.

<sup>195a</sup> He was Chairman of the Victorian Cricket Association, the Victorian Rowing Association and the Victorian Cycling Union and in September 1885 resigned these offices. Dean, *op cit*, p138. At one stage, he banned certain leading cricketers for failing to obey the Association's ruling.

<sup>196</sup> *The Australasian*, 25.12.1897, p1410

<sup>197</sup> *The Australasian*, 25.12.1897, p1410.

<sup>198</sup> *The Age*, 16.7.1929, p7.

<sup>198a</sup> *The Age*, 11.10.1988.

<sup>199</sup> *The Australasian*, 25.12.1897, p1410.

<sup>200</sup> *ibid*.

<sup>200a</sup> *The Age*, 7.4.03, p4.

<sup>201</sup> *The Age*, 6.6.1903, p8. "Mr Justice Williams has proved himself to be an upright judge and a man of high ideas." *ibid*.

<sup>202</sup> *The Age*, 16.7.1929, p9. Resignation accepted 27th May 1903. See file No. 03/2767, Crown Law Department, Register of Correspondence. There are references to two later files nos. 17/4227 and 21/7805 but according to a Crown Law Official, these have been destroyed. *Gov Gazette* Wednesday 3 June 1903, No 55, p1589. "His Excellency by an Order made on 27 May 1903 has accepted the resignation by His Honor Mr Justice Williams to date on and from 9 June 1903." Sir Hartley Williams drew the annual pension of £1500 up until his death in 1929: *The Age*, 16.7.1929, p9.

<sup>203</sup> *The Age*, 6.6.1903, p8.

<sup>204</sup> *ibid*.

<sup>205</sup> *ibid*.

<sup>206</sup> *The Omrah*, 4583 tons, per Shipping Lists, Public Records Office.

<sup>207</sup> On *The Orontes* on 14.4.1903: *The Age*, 15.4.1903, p4. Her departure was unnoticed by the Press probably because Dame Nellie Melba left on the same ship.

<sup>208</sup> He also had a small property called Staunton on the river Ouse near Monmouth, Co. Gloucester. But it was not Sir Hartley's intention to reside there but take up quarters in London: *The Age*, 23.5.1903, p8. "Since his retirement, Sir Hartley Williams has constantly resided in England." *The Age*, 16.7.1929, p9.

<sup>209</sup> Edward Eyre Williams.

<sup>210</sup> *The Times*, London, 15.7.1929, p1. "No flowers by his own request". (Australian papers please copy)". The causes of death were certified by Wilfred Bleadon MB as arterio sclerosis and hypostatic pneumonia. There was no post mortem conducted. In attendance was a son, Roy Williams: Certified copy of an Entry of Death, District of Chelsea in the county of London, No 169 of 1929.

<sup>211</sup> In his Last Will and Testament dated 7 December 1926 and proved on 2 August 1929, Sir Hartley Williams mentioned his four surviving children as;

- Edith Ethel Greene (b. 26.6.1873) m. William Pomeroy ('Roy') Greene.
- George Herbert ('Tupp') Williams (b. 16.1.1875) m. Ella. From 1.2.1893, 'Tupp' Williams acted for many years as associate to his father (Gov. Gaz. 27.1.1893, p312) and later, was for many years associate to the Chief Justice of the Supreme Court of Victoria, Sir William Irvine (1918-35). Dean, *op cit*, p138.
- Roy Bruce Williams (b. 22.4.1888) m. Annette (Anne).
- Jessie Lilian Miles, m. William Henry Miles. They had 2 daughters, Mary Lilian and Pamela and a son Robin.

- Edward Ernest Williams (b. 4.12.1875) was killed in WW1. He was a Captain in the Northumberland Fusiliers and in 1903 was attached to the West African frontier force operation in Nigeria: *The Age*, 23 5.03, p8. He had a son Edward. Another son Hartley Eyre Williams b. 5.12.1871 was called to the Bar. *The Argus*, 16.7.1929.
- Burke's *Colonial Gentry*, vol 1, 1891, p179 mentions a daughter Muriel Maude Williams, b. 25.4.1880 who left Melbourne with Lady Williams on 14 April 1903.
- <sup>212</sup> *The Age*, 6.6. 1903, p8.
- <sup>213</sup> *The Age*, 16.7.1929, p9.
- <sup>214</sup> *Australian Law Times*, 9.7.1881, p111.
- <sup>215</sup> *The Australasian*, 23.5.1903, p1157.
- <sup>216</sup> *Wyatt & Webb Reports*, 1870: Forde, *op cit.* p199.

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