

THE HON T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
BOOK LAUNCH
ADJUDICATION ON THE GOLD FIELDS IN NEW SOUTH WALES AND
VICTORIA IN THE 19TH CENTURY*
TUESDAY 8 MARCH 2016

1. It is a great pleasure to join you this evening to launch the book *Adjudication on the Gold Fields in New South Wales and Victoria in the 19th Century* and have the opportunity to give a few short praises to the book and its author.
2. John Hamilton was an acting judge, permanent judge and then acting judge again of this court for 15 years. Prior to that, he was a distinguished barrister and Queens Counsel for some 33 years. Unsurprisingly, a great deal of his practice involved mining law. During that time, he made great contributions to the legal profession through his passion for civil procedure and legal history. Indeed, he is a foundation member and active supporter of the Francis Forbes Society for Australian Legal History.
3. Like many former judges, John seems to not be able to sit still and relax during his retirement. In the 4 years since he retired, he has written various

* I express my thanks to my Research Director, Ms Sarah Schwartz, for her assistance in the preparation of this address.

papers¹ and has also obtained a PhD at Macquarie University, which forms the basis of this book.

4. In short, this book provides a comprehensive and learned work on a topic that, I am informed, has been largely neglected in literature on the gold rushes. This is surprising to me. The Australian gold rushes of the nineteenth century, and the lives of those who worked in the goldfields – the ‘diggers’ – are etched into our national memory. Australian folklore is littered with stories of ‘mateship’ and camaraderie between the diggers, as well as stories of the disdain of the diggers for authority. Indeed, those who fought for Australia in World War I were also named ‘diggers’, after their goldfield predecessors.
5. In 1851, an article in the Bathurst Times stated, "[a] complete mental madness appears to have seized almost every member of the community, and as a natural consequence, there has been a universal rush to the diggings." Between 1851 and 1861, the population of New South Wales doubled and the population of Victoria increased sixfold. This rush, as comprehensively detailed by Hamilton, created an immediate necessity for a system of resolving disputes between those on the gold fields and administering public life on the fields.
6. This book not only charts the development of a system for the administration of justice in the gold fields, from 1851 to 1875, but details some delightfully eccentric parts of Australian history. It records changing legislative provisions and examines, in some detail, the careers of Gold Fields Commissioners

¹ <http://heatgg.org.au/he/wp-content/uploads/2013/09/Goldfields-life-talk-John-Hamilton-for-website.pdf>.

such as Thomas Alexander Browne, the Commissioner at Gulong in the early 1870s, who was also the novelist Rolf Boldrewood.

7. The book provides an interesting argument for why the system of adjudication on the gold fields in New South Wales and Victoria made life on these gold fields more peaceful and orderly than life on their Californian counterparts of the same era. The book gives a lively sense of the interest of these communities in the adjudication of disputes. Perhaps judges and legislators have something to learn from the way in which adjudicators on the goldfields provided order and worked with a community that may otherwise have been rebellious and disorderly.
8. Hamilton notes that there are three features of the system of adjudication on the goldfields that are particularly remarkable and may have contributed to the success of the system. First, the elected Local Courts; second, the oral nature of the proceedings before Commissioners in New South Wales from 1851; and third, the distinctive adjudicative jurisdiction that was vested in the Wardens' Courts.
9. For a judge like myself, who is used to court documents being carted in trolleys by hordes of young paralegals, no doubt gaining invaluable experience in managing time pressures, muscle spasms and the bitumen craters at the corner of Elizabeth and Phillip Streets, the success of a system so lacking in paper and writing is very alluring. As stated by Hamilton, "[t]he continuation and success of a totally unwritten system is one of the most remarkable features of adjudication on the Australian gold fields. It can only

be explained by the nature of the communities in which the decisions were made, in which the participants and the communities generally were physically and socially close and all in the community were interested in what was occurring around them, particularly in relation to mining.”² “The lack of necessity to record the proceedings undoubtedly contributed to justice being so prompt, cheap and accessible, especially during the early days when Commissioners were deciding many cases, particularly on the move.”³

10. It is evident from this book that John has spent a great deal of time trawling through surviving records of adjudications in the gold fields. Despite the great deal of data that is contained in this book, it appears to me to strike a good balance between providing an informative and detailed overview of the law applied in the goldfields and painting a colourful picture of the system of public administration on the goldfields, intertwined with historical anecdotes.

11. Indeed, unlike most of the books that I have the privilege of launching in this court, this book has appeal not only to lawyers.

12. As Justice Lindsay points out in the foreword, the book is “[w]ritten in a readable style, accessible to a lay audience no less than a legal one, it provides a classic example of the development of ‘government’, with a blend of principle and pragmatism, in the common law tradition, in British colonies of the 19th century. ... It is a triumph in versatile storytelling. It can be read as a novel, studied as a judgment, or consulted as an expert’s report, according to the purpose and mood of the reader.”

² *Adjudication on the Goldfields* p. 195.

³ *Ibid* p. 204.

13. I congratulate John for his dedication and hard work in putting together such a detailed, well-researched and structured piece of work. I have no doubt that this book will be an excellent resource for both lawyers and historians, but particularly for legal historians.