

The incredible, but true, tale of Jane New

by
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Today, almost no-one in Australia will have heard of Jane New, but in her own time, she was probably the most famous woman in New South Wales. Known for her exceptionally striking beauty, she was indeed, a “loin-stirrer”, as Marcus Clarke refers to her in his monumental, and monumentally flawed, *History of Australia*. However, beyond being footnoted to history with this brief epithet, there was a lot more to New and the events surrounding her than her looks. Her tale was certainly one that captured the adventurous imaginations of her day, but more than stirring romantic fantasies, the issues involving her stirred nothing less than movements for independence from Britain, after helping to ensure a messy end to Ralph Darling’s governance, as New South Wales was progressing from regimental to civil leadership. Her tragic end was as mysterious as the events that gave rise to her celebrity, but New’s story provides revelations about life for a woman in her time, the reality of which is far more fascinating than either the fantastical tales or dismissive footnotes that later came to define her.

N.B. This excerpt has been extracted from my work in progress, *Politics in Queanbeyan – From the Counties to Federation*, without alteration but for minor editing and the designation of two footnotes in the original as postscripts in this account. On extraction, the footnote numbers now correspond with this text and not that in the original work.

As this is a work in progress, I apologise in advance for any unwitting errors and incompleteness.

Abbreviations

HRA *Historical Records of Australia*

Newspapers and Journals

<i>Aus</i>	<i>Australian</i>
<i>Col Times</i>	<i>Colonial Times</i>
<i>Gov Gaz</i>	<i>Government Gazette</i>
<i>Hbrt Chron</i>	<i>Hobart Chronicle</i>
<i>Hbrt Cour</i>	<i>Hobart Courier</i>
<i>SA Gaz</i>	<i>South Australian Gazette</i>
<i>Sthn Aust</i>	<i>Southern Australian</i>
<i>Syd Clnst</i>	<i>Sydney Colonist</i>
<i>Syd Gaz</i>	<i>Sydney Gazette</i>
<i>Syd Hld</i>	<i>Sydney Herald</i>
<i>Syd Mon</i>	<i>Sydney Monitor</i>

Civil Justice

With judicial progress having begun under Governor Brisbane, Australia was moving from being a penal settlement toward resembling a society of free settlers. Progress in legal and social justice was being made due to the intelligence and ability of a few very well-educated men in the judiciary and at the bar. Leading Australia from regimental to judicial governance were Francis Forbes, who had taken his seat as Chief Justice of the Supreme Court on May 17, 1824, Supreme Court Justices, James Dowling and John Stephen senior, the Attorney-General, Alexander Baxter, Australian born and Cambridge educated barrister, William Charles Wentworth, and barrister Dr. Robert Wardell. Wardell was also editor of the *Australian* newspaper. Stephen senior headed what Wentworth termed the “Stephen family deluge”, who among others included John Stephen senior’s legally practising sons, Sidney and Alfred. For their independence but legally proper leadership progressives came up against the autocratic but lesser in legal ability, Governor Ralph Darling, who was determined to assert his regimental authority. In the interim few weeks following Sir Thomas Brisbane’s departure, the Lieutenant-Governor, Colonel Stewart, was Acting Governor until the arrival of Darling on December 18, 1825.

Darling’s reputation as a pen-pusher pre-empted a cool reception to the colony of the new Governor in place of the popular, if administratively weak, Brisbane.¹ Wentworth only, greeted Darling with a cordial welcome, that was also, however, to be short-lived as Wentworth found his reformist principles challenged by Darling’s less liberal politics. Darling and Macleay’s efficient revision of the management of New South Wales was a necessary development from the laxness of Brisbane’s administration, but Darling’s sympathies were with the “exclusives” with whom he soon fell in and the new Governor was intent on purging the public service of the convict and emancipist element introduced by Macquarie and tolerated by Brisbane.²

¹ Bennett, 1865

² Ibid.

The free press, Edward Smith Hall of the *Monitor* and Atwell Edwin Hayes, who became editor of the *Australian* after Wardell sold his interest in 1828, were acutely hostile toward Darling.³ When Wardell's independent *Australasian* newspaper was established in 1824, Robert Howe had entreated the government that the *Gazette*, essentially the government paper, be able to act in a similarly uncensored manner, but Darling's response to criticism was to muzzle the press, leading to lengthy libel laws between Darling and the free papers. The Howes at the *Gazette* remained faithful to Darling but the independent newspapers, the *Monitor* and the *Australian*, were relentlessly scathing of the autocrat whose every act of militarism provided them with the opportunity of condemning his governance and bringing his fitness into question. The rejection of Darling peaked with his treatment of Sudds and Thompson, two officers who had attempted to leave the service by acquiring criminal convictions for which they were subjected to exceptionally cruel punishment. For criticising Darling's harshness in the Sudds and Thompson case, Captain Robison, the Stephens' brother-in-law, was court-martialled.

After Darling dismissed public servants such as W. H. Moore, the press began to cast him as an autocrat, nepotistically favouring friends and family in lucrative positions, land grants and assignment of convicts and in removing opponents, seemingly at will. Dr Henry Grattan Douglass, of whom Alfred Stephen was agent, became another of Darling's casualties, when in 1828 he was ordered back to England after the "Turf Club Dinner" affair. Douglass was a doctor on the King's staff in England and a medical researcher in France before returning to Australia in 1848 and becoming one of the founders of the University of Sydney and Member of the Legislative Council.

Matters between Darling and the reformers were brought to a head by incidents involving John Stephen junior. In a despatch of October 26, 1827, Governor Darling had informed Viscount Goderich that he had appointed Stephen junior as a Joint Commissioner for Apportioning the Colony, under the Surveyor-General, Thomas Mitchell, to replace J. T. Campbell. In February, 1828, Darling appointed Stephen junior as Registrar of the Supreme Court to the continued antagonism of Chief Justice Forbes, who, while having no objection to Stephen personally, was somewhat slighted by Darling's *sub judice* appointment of Stephen without his consultation. Forbes' examination of the legality of the appointment, Darling claimed, was motivated by Forbes' continuing antagonism of his government. As the hostilities between Darling and the press and the legal reformers of New South Wales intensified, Darling complained to the Secretary of State for the Colonies, Sir George Murray, in a lengthy diatribe against the New South Wales Justices, even accusing the unimpeachable Forbes of being "greedy for power".

Murray's reply was a declaration to Darling that the days of military rule in Australia were over. Darling gained no sympathy from Murray, who in no uncertain terms expressed his displeasure at Darling's attempt to outmanoeuvre the Justices by going behind their backs. On the 30th of August, 1828, Murray censured Darling for his excessive character attacks on individuals of unimpeached reputation and for conveying accusations to Britain against the Justices without their knowledge and without them having been given opportunity of defence. He denounced Darling's treatment of John Stephen senior, Francis Forbes, Wardell and Wentworth. Murray upheld Justice Forbes' interpretation of several matters and recognised Forbes' hesitation in relation to Darling's original appointment of Stephen junior as Registrar, stating that Forbes had acted correctly in ensuring that it was legal.

Murray censured Darling for his actions over the 'Turf Club Dinner' affair and for his dismissal of W. H. Moore, which he "regretfully allowed", for his treatment of Sheriff Mackaness and of Douglass, which was also "regretfully approved due to past disturbances". Darling was also upbraided for his autocratic manner in issuing Proclamations and Orders without appropriate consultation and seemingly for ulterior personal motive against his critics. Faced with this state of affairs, Murray demanded a resolution between the parties on threat of recall of both the Governor and the Judges.

There the matter remained until in early 1829, Darling was able to pounce on John Stephen junior for his part in the harbouring of convict girl, Jane New. Convicted in Chester on April 27, 1824, New had been transported to Van Diemen's Land. Initially placed in a respectable assignment, in 1826, she married emancipist, James New, and with still some time to go on her sentence, in September, 1827, she was given permission by the Lieutenant-Governor of Van Diemen's Land to leave the colony for New South Wales with her husband. Now a woman of some means (her husband owned an inn in Sydney) and living a relatively privileged life, essentially the same as a free woman in Sydney, New was convicted of stealing a large quantity of silk from French widow, Madame Josephine Reus⁴ in George Street. The theft was alleged to have taken place on December 18, 1827, but the case did not go to trial until January 5, 1829, when New was defended by Sidney Stephen.⁵ At the time, theft of goods over the value of forty

³ A. E. Hayes was the nephew of notorious kidnapper and builder of Vacluse House, Sir Henry Brown Hayes.

⁴ Madame Reus is referred to in several sources as "Rous" or "Rens". "Reus" was used in letters by Mme Reus in relation to requests for denization (*HRA, Despatches, XVII*) and complaining of the conduct of Father J. J. Therry toward his fellow Catholic Priest, Father Power (*HRA, Despatches, Vol. XV*).

⁵ *HRA, Despatches XIV*

shillings (£2) was still a capital offence and New was found guilty and sentenced to death. New was remanded to Sydney jail, but on the grounds of a legal technicality relating to the law under which she had been detained, her conviction was found to be invalid and her sentence was remitted.⁶ The *Monitor* records a separate case in August, 1828, whereby New and Hannah Ralph were convicted of shoplifting from a Mrs Rickards, a Mrs Reynolds and a Mr Appleton.⁷ On behalf of New's husband, Sidney Stephen's brother, Francis Stephen, applied for a writ of *habeus corpus*, Sidney Stephen refusing to do so, believing New to be guilty and that she "should be punished" for her actions.⁸ In the mean-time, on the Governor's orders, New had been removed from Sydney jail to the Female Factory at Parramatta.

Fortunately for New, her case came along at a time the reformers were in the middle of their battle with Darling and while there was little doubt that New was guilty of the offence for which she was tried, what caught their attention was that the Governor took it upon himself to remove New from her legal assignment to her husband to have her placed in the Female Factory, a liberty with her person which they saw as a breach of his authority. From there on, the protagonist became almost incidental to the matters surrounding her, as New's case suited the political interests of Darling's opponents who challenged his autocracy on the grounds of his interference with the law.

Part of the background to New's case lay in the grievance Edward Smith Hall of the *Monitor* and Atwell Edwin Hayes of the *Australian* held toward Darling for his interference in their convict assignments. Employees at the *Monitor* and the *Australian* had been removed by Darling, as punishment, Hall and Hayes believed, for their criticisms of the Governor. Claiming that the purpose of transportation was to effect punishment and to provide labour for the colonies, the significance of the Jane New case related to the Governor's right to interfere with the assignment of labour, upon which the value of one's property and business depended. Intercession in assignments, it was claimed, was supposed to be only in the interests of the prisoners and had thus been along the lines of masters and apprentices, i.e. as remission of sentences or to protect servants from abuse. On the basis that those criteria did not apply in this case, Hayes and Hall welcomed the case against Darling as grounds for their own actions against him.

Transportation was not subject to the common law of England, but was administered by Acts of Parliament, giving the three judges sitting *in banco* to hear the Jane New *habeus corpus* writ, Chief Justice Forbes, James Dowling and John Stephen senior, a substantial decision to consider. The result of the examination of the relevant Acts was that all three judges were in agreement that New could be remanded, not for the offence for which she was tried in New South Wales, but for still being under sentence for the offence for which she was originally transported to Van Diemen's Land, from where she had travelled illegally, her original sentence being not due to expire until April 26, 1831.⁹

On lengthy interpretation of the statutes, on the 21st of March, 1829, Chief Justice Forbes summarised the case as consisting of two parts - 1. That New's sentence had been remitted by the Governor and therefore she was deemed not to have committed an offence in New South Wales and therefore he did not have the right to detain her and 2. That the Governor of New South Wales did not have the right to intercede in her assignment to her master, in this case, her husband, by the Lieutenant-Governor of Van Diemen's Land.

Justice Forbes also determined, however, that the Lieutenant-Governor of Tasmania had not the right to allow Jane New to travel to New South Wales and therefore, her original sentence not yet completed, as only a pardon could allow her to leave the colony to which she had been sent, she was a prisoner-at-large in New South Wales, whereby the authorities did have the jurisdiction to detain her in whatever manner they saw fit pending her return to Tasmania.

The *Australian* differed in that while it welcomed the decision that the Governor did not have sovereign rights over New's person, they disagreed that New was illegally at large in New South Wales.¹⁰ While there was some disagreement as to whether Jane New was innocent in the Reus case, the *Monitor* embraced the decision as some form of vindication and immediately invoked it as a precedent in their claims against Darling for the removal of their workers.

The *Gazette* was at variance with "the Decision", maintaining that the Governor did have the right to determine assignment of prisoners, by placing emphasis on a literal translation of the Act as giving the Governor absolute power, quoting the same relevant part of the Act that referred to the Governor's powers to revoke assignments, but focussing not on the proviso of remission of sentences, as Justice Forbes had in interpreting the spirit of the Act.¹¹

⁶ Ibid.

⁷ Mon 18 Aug 1828, p4

⁸ *Aust*, Tues 10 Mar 1829, p2 & *Gazette*, Tues 17 Mar 1829, p2 & *HRA Despatches*, XVI

⁹ *HRA XIV & Syd Gaz*, Tues 24 Mar 1829

¹⁰ *Aust*, Fri 27 Mar 1829, p2

¹¹ *Syd Gaz*, Thurs 26 Mar 1829, p2

The storm intensified when in the midst of the battle ensuing around her, New escaped from custody twice, once whisked away in a carriage at Hyde Park racecourse while on the way to the Female Factory,¹² following which she was re-captured, and then on April 5 from the Factory¹³ after which she disappeared entirely.

Evidence was found that Justice Stephen's son, John Stephen junior, had organised New's escapes and was harbouring her at a cottage in Lower Minto under the name of "Mrs Frances Dickson", when following up on information received, on June 17, the cottage was raided by the police under the instructions of Superintendent of Police, Captain Francis Rossi. Although there was no sign of New, a warm bed, apparently recently vacated, women's apparel and letters signed by John Stephen junior claiming Mrs Dickson and Jane New to be free women, constituted strong evidence that New had been at the cottage and had fled on the arrival of the police.¹⁴

Darling referred to the matter to the Executive Council, who, after examining Stephen, and the owner of the Minto cottage, Amos Crisp, concluded that Stephen had been implicated in the Jane New case for some time and they recommended he be removed from his public service positions.

Before the Executive Council, Stephen admitted to signing letters found at the cottage purporting New and Dickson to be free women, being information that differed with the official date of New's conviction and also from information in a letter Stephen had written to the Governor of Van Diemen's Land pleading for a remission of New's sentence which he stated was not to expire until 1831.¹⁵ The incriminating letters were based, Stephen claimed, on Affidavits he had witnessed, but which, on investigation, could not be located, a fact confirmed by Chief Justice Forbes.

Governor Darling was convinced that Jane New and Mrs Dickson were one and the same person and the material evidence of Stephen's complicity in New's disappearance was all Darling needed to remove Stephen from all his public offices and with an apparent determination. On June 29, Darling documented the case against Stephen in a Despatch to the Secretary of State for the Colonies, Sir George Murray, with the conclusion that

Mr Stephen has been guilty of a flagrant dereliction of duty, both as a Magistrate and Registrar of the Supreme Court, in granting Certificates of the freedom of a Female Convict, which he knew to be contrary to the fact, and which Certificates it was not within his province in either capacity to grant, the Convict, moreover, having absconded from Government and being absent at the time when the certificates were granted.

- *Despatch 81 from Darling to Murray, 29 June 1829 (Historical Records of Australia, Despatches XV)*

Darling proposed "infatuation" as a mitigating factor for Stephen, a proposal enhanced by the fact that apparently Stephen's wife, Mary Matthews Stephen, was in London at the time. However, Stephen's exceptional determination to defend New may in part have been based on principle. New was unusually noted as a young woman of "prepossessing" beauty¹⁶ and genuine fears were held for her, should she be placed in the Factory. Moreover, evidence that it was obligation, at least in some part, fuelling her protection may lie in that, according to Stephen junior, New was an informant.

In May, 1829, Stephen wrote to the gentleman New had been originally assigned to in Van Diemen's Land, claiming persecution of New. Stephen claimed New to be innocent, including in several instances of shop-lifting charges against her brought before him.¹⁷ He claimed the Madame Reus case of January, 1829, to have been malicious and that New had been convicted by "an infamous perjury". However, he also stated that two petitions pleading mercy had been prepared, one by fourteen magistrates and another by the Bank of Australia, due to information obtained by New in relation to a robbery which had taken place at the bank. During the weekend of September 13 to 15, 1828, robbers had tunnelled through the nine-foot thick concrete walls of the bank's underground strong room in George Street to steal a large amount of cash.¹⁸ A reward of an absolute pardon was offered by the Governor for any information relating to the robbery.¹⁹ According to Stephen junior, while in jail New had provided information that had led to the recovery of some of the stolen money.²⁰ Stephen claimed that the petitions never reached the eye of the Governor, being allegedly maliciously withheld by the unnamed bearer. He also claimed that when the Judges passed their judgement that New was at large in New South Wales, every effort was

¹² *Aust*, Tues 31 Mar 1829, p3 & *Syd Gaz*, Tues 24 Feb 1829, p2

¹³ *Syd Gaz*, Thurs 9 Apr, p2 & *Aust*, Wed 15 Apr 1829, p2

¹⁴ *HRA, Vol XV*

¹⁵ *HRA Despatches XV & XVI*

¹⁶ *Aust*, Tues 31 Mar 1829, p3

¹⁷ *HRA, Despatches XV*

¹⁸ *Syd Gaz*, Wed 17 Sep 1828, p 2 & *Aust*, Fri 19 Dec 1828, p3 & *Syd Mon*, Sat 20 Dec 1828, p8

¹⁹ *Syd Gaz*, Wed 19 Sep 1828, p1

²⁰ *HRA, Despatches XV*

made by New's husband to arrange her return to Tasmania.

If New was being shielded from malice or out of obligation, Darling was unmoved. Stephen had been uncooperative with the Executive Council enquiry, calling it a "star chamber" and accusing that documents had been stolen by the police when they raided the cottage at Minto. Moreover, whoever Mrs Dickson was, there was no account of Jane New, who had entirely disappeared.

Notwithstanding the outcome against Stephen, New's case was taken up by E. S. Hall as a parallel to that of Peter Tyler, a compositor at the *Monitor*, who Hall believed had been taken from him as punishment for his criticisms of Darling's governance. With the Jane New case as a precedent, Hall objected to Tyler being taken from his service at the *Monitor* to be put in a chain gang at the Governor's will without having committed any offence and like Francis Stephen for New, he applied for a writ of *habeus corpus*. The magistrates who heard this case, Captain George Bunn, Captain Rossi, Edward Wollstonecraft and W. J. Brown, concluded that the Jane New case was distinctive and that the Supreme Court's decision in that case had been meant to apply to that case only. Subsequently, Hall sued Rossi *et al.*, defended by Wentworth, with Chief Justice Forbes finding in his favour, stating that the bench had acted in contempt of the decision made by the higher court in relation to the assignment of servants as determined by the Jane New case. Wentworth applied for a criminal conviction against the magistrates, in the argument for which he claimed they had been influenced in their actions by Alexander McLeay, whom Darling had replace Frederick Goulburn as Colonial Secretary. Justice Dowling dismissed the criminal case against what the *Monitor* referred to as a "packed bench", considering that malice on the part of the magistrates had not been proved, but with severe remarks as to the affront of a lesser tribunal taking it upon themselves to usurp a decision of the Supreme Court.

The *Gazette* was indignant at Justice Dowling for what it considered a passing rebuke for its criticism of his decision in the Jane New case and it defended the magistrates, Rossi *et al.*, questioning if the Supreme Court had the right to censure them. While accepting the Supreme Court's decision in the Jane New case to be binding and that the magistrates had therefore not acted according to law, they questioned if they had done so "knowingly".²¹

Confusion surrounding New's convict records and apparent discrepancies in the case against her in Sydney²² led to questions as to the dates of her convictions and her guilt. As a repeat offender, New had been convicted for larceny in Lancashire as Marie Wilkinson in 1821, for which she was sentenced to twelve months in jail, and she also went by the names of Jane Henrie and Marie Wilson, under which she was convicted in 1824. An alteration of New's convict indent, for which the Colonial Secretary of Tasmania's Chief Clerk was later held responsible, became the basis of a libel case that ultimately saw Edward Smith Hall imprisoned for printing an editorial article referring to the Colonial Secretary, Macleay, as having knowingly submitted false records.²³ Charged with libel for that misleading article and losing his case to retain Tyler as his assigned servant, Hall was charged with harbouring a prisoner of the Crown, which, along with another libel case against him, in all meant a fifteen-month prison term. Hall, who continued to manage the *Monitor* from his jail cell in Sydney, also appealed to the Secretary of State in London, George Murray, in a lengthy set of accusations against Darling in relation to his management of the colony.

With Darling again under fire from the press, John Stephen junior pleading persecution and an ambiguous public sympathy for New evident in a subscription fund for her defence published in the 'free' papers promising anonymity,²⁴ the matter now looming in much the same manner as the mutiny against Bligh, an address was got up in support of Darling, published in the *Gazette*.²⁵ Among those who signed the Address were Robert Campbell, the MacArthurs, G. T. Palmer, John Palmer, John MacLaren, John and Gregory Blaxland, Robert Johnston, John Hosking, J. J. Moore, Lachlan MacAlister, J. B. Montefiore, H. C. Antill, Major Rohde, David Reid, James Styles, Henry Donnison and Richard Brookes.

Funds for New were raised in Van Diemen's Land as well as New South Wales.²⁶ While Hall put his name to the fund,²⁷ subscriptions were also stated as having been received by people signing themselves "A Friend to Constitutional Liberty", "One who hates persecution", "Audi alteram partem" (hear the other side) and "over the hills and far away".²⁸

²¹ *Syd Gaz*, Tues 4 Jul 1829, p2

²² Tues 24 Feb 1829, p2

²³ *HRA Despatches XVI & Syd Mon*, Sat 4 Jul 1829, p2 & Sat 5 Sep, 1829, p3 & *Col Times*, Fri 31 Jul 1829, p3

²⁴ *Aust*, Fri 3 Apr 1829, p3

²⁵ Tues 7 July, p

²⁶ *Aust*, Fri 8 May 1829, p2

²⁷ *Syd Mon*, Mon 13 Apr 1829, p7

²⁸ *Aust*, Fri 27 Mar 1829, p2

Two days later, on July 9, 1829, Darling's new Legislative Council of New South Wales, composed at the time, consisted of himself, Colonel Stewart, Chief Justice Francis Forbes, Anglican Archdeacon Scott and the Colonial Secretary, Macleay, (who comprised the Executive Council), with John MacArthur, Robert Campbell, senior, and Charles Throsby.

Much was made of Stephen junior's apparent refusal to sign the Address to Darling, an omission Stephen explained with reference to the impartiality required of his public service position. However, Darling remained unmoved and therefore, with testimonials from the Justices Forbes, John Stephen senior and James Dowling, and the Attorney-General, Alexander Baxter, all testifying to his good conduct while in office, Stephen junior went to England to plead his cause, claiming he was doing so because Darling had advised him that his only recourse was direct appeal to the Secretary of State, similar to the manner in which disputes had been settled in the past. On Tuesday, July 28, 1829, Stephen sailed out of Sydney on board the *Eliza*, his arrival in Britain delayed by some four months when he was detained on Mauritius, a move he claimed was due to interference by Darling. In London, Stephen was rebuffed by Sir George Murray, who despite several pleas refused him an interview and instructed him through Under Secretary, R. W. Hay, that his only chance of a government position was by directly clearing his name before the instrument of his dismissal, i.e. Governor Darling, back in Australia. Faced with this dilemma, Stephen emphasised the great cost he had borne in going to England to clear his name only to be met with contradictory advice and the greater cost and risk that would be borne by him in returning to Australia for the same purpose. Stephen appealed to Murray that he had never been given an appropriate opportunity to defend himself or even been adequately advised of the grounds for his dismissal, but that Darling's only answer had been a bare referral to his "conduct at the enquiry". He invoked seeming devices of humiliation as evidence of persecution, i.e. that Darling had advertised his dismissal five times in the *Gazette*, the *Monitor's* observation that Darling had addressed him as "Mister" rather than "esquire", that Darling had his ship searched prior to his departure for England and that Darling had arranged his detention on Mauritius for four months under suspicion of harbouring New. Stephen claimed that he had been denied all normal processes of justice, including by the Superintendent of Police, Captain Rossi. He also claimed that he had been confused with his brother, Sidney Stephen.

However, Sidney Stephen refuted his brother's claim²⁹ and Stephen junior had no sympathy from his cousin in England, the Permanent Secretary, James Stephen. Murray disclaimed all responsibility for Stephen's decision whether to return to Australia or not. Murray was also deaf to Stephen's appeals for financial assistance in a situation Stephen claimed the government held some responsibility for. Caught between the old system and the new, when full transition to trial by jury and responsible government in New South Wales had not yet been realised, Stephen found himself in a state of 'suspension' in more ways than one. Deprived of "all further hope of succeeding in the object of [his] return to [England]", i.e. to "procure redress against the arbitrary conduct of Lieut. General Darling", Stephen took the only course he felt left open to him, with no parliament yet in Australia, he would appeal to the House in Britain and on July 22, 1830, Stephen notified Murray of his intentions in an impassioned letter.

Driven to a measure solely by the cruel necessity of the case to which I would fain have avoided, it becomes my last duty to that Department, which has denied me justice, to give respectful notice of my intention to bring the subject under the consideration of the ensuing Parliament.

My reputation having been deeply injured, my means of support debarred, and my domestic happiness destroyed by a most unparralleled [sic] act of infamous oppression, I trust an ample excuse will be allowed for my thus throwing myself on the House of Commons for protection and support.

- *Historical Records of Australia, Series 1, Despatches Vol. XV, 12 August 1830*

Murray's reply remained blunt in the form of a brief statement from Under-Secretary Hay stating that, "Sir George Murray does not conceive any further reply to be necessary",³⁰ but the matter now about to go to Parliament, Murray approached Governor Darling for details.

In reply, Darling complained to Murray that the legal team behind New had managed to 'get her off' by wrangling the system, alongside a general accusation that within a supposed network of relationships, both familial and friendly, they were manipulating the law and avoiding prosecutions. These claims did not find sympathy with Murray, being somewhat spurious and defensive at a time that Darling himself was denying charges of nepotism and cronyism on his part when attention was drawn to his visible connections with the Dumaresqs, the Colonial Secretary, Alexander McLeay, and Auditor-General, William Lithgow. Originally, Darling had proposed "infatuation" as a mitigating factor for Stephen. A (possibly coded) letter from Jane New to her husband written two days before her second escape and declaring her affection for him may have offset any perception of carnal impropriety and Amos Crisp had testified that when Stephen stayed at the cottage, although Stephen and "Mrs Dickson" breakfasted and

²⁹ *HRA Despatches Vol XVI*

³⁰ *Ibid.*

dined together, Mrs Dickson always slept in his daughter's bed.³¹ While it was never certain what exactly took place in May and June of 1829, or of anyone's role in Jane New's escapes, Stephen's father, Justice John Stephen senior, later stated that he truly believed that his son had acted with disinterested but, humanitarian, motive. E. S. Hall at the *Monitor* emphatically defended Stephen in his efforts for New when referring to Stephen's passion in other cases of alleged injustice.³² Now, however, against all such defences, Darling blatantly accused Stephen junior of "living with" Jane New at the "abandonment of his wife and family", a fact he claimed was apparently well-known, and rather than claiming the New incident to be a matter of singular "infatuation", he now brought Stephen junior's general character into question, invoking "criminality" and raising an issue of supposed circumstances under which Stephen had left his previous position in Jersey for New South Wales.³³ Darling now also noted that the certificates signed by Stephen falsely stating New to be free and dated April 1, had to have been prepared after her escapes, even though Stephen signed a sworn Affidavit that he had no association with her March 21 abscondment.

Darling claimed that after New had fled the cottage at Lower Minto, she had gone to a hut on William Cordeau's farm nearby and then to Francis Kenny's property at Airds. From there, Darling claimed, she had been harboured at William Wentworth's mansion at Vaucluse, where she stayed until July 6, the same day that Notary, John Raine, had stated a woman calling herself "Mrs Dickson" had gone into his office. Darling believed New then rowed out on Sydney harbour to meet a cutter, the *Emma Kemp*, which made for New Zealand.³⁴ Darling claimed that the "strict" attentions Stephen was calling persecution and interference with his travels, had foiled an earlier plot by Stephen to smuggle New out with him on the harbour from Vaucluse.³⁵

If Darling appeared confident in his accusations against Stephen it was with good reason. Privately, and never declared publicly, England had stood by Darling against "the Sydney Judges" in their interpretation of the Jane New case. In a Despatch of January, 1830, George Murray had conveyed to Darling that the NSW Judges' interpretation of the Statutes was beyond their jurisdiction and erroneous – that the Governor did have the right to intervene in the assignment of convicts and that the purpose of transportation was to reduce expense to the government, not to supply labour to settlers, which was deemed a privilege, not a right. Within polite statements of lack of presumption that the Sydney Justices had been pandering to popular applause, Darling was instructed to deliver the blow to the Justices discreetly so as to preserve public confidence in the local judiciary.³⁶ John Stephen's brother, Sidney Stephen, also agreed that the Governor had the right to intercede in assignments and there was evidence that Stephen junior had forged letters he claimed to have been written by his wife and his cousin, James Stephen, the Permanent Secretary, falsely claiming that Darling had been recalled.³⁷

Stephen junior's supporters, however, did not desert him and armed with a petition he pled the cause for trial by jury and representative government for Australia in the British House of Commons. London MP for Middlesex, Joseph Hume, entered the affray, defending Stephen junior and his brother-in-law, Captain Robison, and criticising Darling's governance of New South Wales in statements appearing in the London papers, *Times* and the *Mirror of Parliament*, claiming financial mismanagement, nepotism, favouritism, "muzzling" of the press and improper military trials.

Darling lengthily answered to Murray in England,³⁸ while at the same time in Australia he was demanding the dismissal of Surveyor-General, Thomas Mitchell, for "insubordination" to "set an example to the colony", similar to his approach to Sudds and Thompson.³⁹ Additionally, while Darling was praising Charles Sturt for his expeditions into the continent, writing glowingly of him to Murray and recommending him for reward and commissions for further explorations, the *Australian* criticised Darling for his treatment of Sturt's fellow explorer, Hamilton Hume. At the time that the Jane New case was being tried in the first months of 1829, Hume had been away with Sturt on his expedition past the Macquarie River. In May, 1829, the *Gazette* stated that the expedition had returned with no discovery of any importance, but simultaneously declared that Sturt had accomplished the aim of his instructions, an anomaly the *Australian* noted, questioning the value of the expedition in relation to its expense, having achieved nothing beyond Oxley previously and also intimating that Hume was somehow being slighted in relation to his role in the expedition, stating that the government should be rewarding him with more than mere thanks. This, followed by payment to Sturt with a land grant, raised eyebrows even further. When a

³¹ HRA Despatches Vol. XV

³² Syd Mon, Mon 27 Jul 1829, p2

³³ HRA Despatches Vol XVI

³⁴ HRA Despatches XVI

³⁵ Ibid.

³⁶ HRA, Despatches XV

³⁷ HRA, Vol. XV, 14 Dec 1829, 10 June 1830, 30 July 1830 & 18 August 1830

³⁸ HRA, Despatches XV

³⁹ HRA Despatches Vol XVI

second expedition was proposed shortly after, the *Australian* questioned the expense of the venture and Sturt as leader compared with Hume, for example. Under siege in New South Wales and now also back in Britain, in response to his critics and a recommendation by British MP, Maurice O'Connell, for his recall, Darling appealed to George Murray to stop the "poison", dismissing the *Monitor* and the *Australian* as melodramatic gutter press exploiting a common public's taste for cheap scandal and venting an unrealistic perception that Hall and Wentworth had "no influence whatever" in New South Wales.

John Stephen junior more than likely was harbouring Jane New and Britain had supported Darling against the Sydney Judges in the Jane New case, but Darling responded to the rise against him with a level of arrogance that blinded him to the real issues and a stubbornness that all but ensured a messy end to his Governance when recalled in 1831. He had attempted to pass a Bill to restrict the press, fortunately refused by Britain and, with few people sorry to see him go, Darling sailed out of Sydney in October, 1831, with conflicting revisions of his governance, starting with an enquiry called by Maurice O'Connell in the House of Commons on July 23, 1832.

In 1832, Viscount Goderich acceded to Stephen junior's request to be able to bring his evidence in the Jane New/Frances Dickson identity case before the Executive Council⁴⁰ and under the new Governor, Richard Bourke, in 1833, the Council conducted a second enquiry, for which Stephen was ordered to return to New South Wales. Stephen's return to Sydney in May, 1833, accompanied by his wife and daughters, was a noisy celebration of his representation of Australia in Britain and his criticisms of Darling. Stephen was Secretary of the Australian Patriotic Association, whose main achievement was the advocacy for a Legislative Assembly for New South Wales and Trial by Jury, in relation to which a petition was forwarded to one of Stephen's supporters and a champion for the cause in Britain, liberal MP, Henry Lytton Bulwer, for presentation in the House of Commons.

Prior to the start of the second examination, probably to raise much needed funds, in November, 1833, Stephen junior mortgaged his 2560 acres at Limestone Plains on the south bank of the river at Canberry, next to what had been Donnison's land but was now Francis Mowatt's, to Daniel Cooper and Samuel Levey, and in January, 1834, he sold it to William Klensendorlffe. In 1838, Klensendorlffe paid out the mortgage to Daniel Cooper as the surviving partner of Cooper and Levey.

In the mean-time, Amos Crisp had left Airds to reside on a property near Lake George, where he was when a statement obtained by Captain McAlister caused him to be delivered to the inquiry in Sydney.⁴¹ The *Monitor* believed the manner in which Crisp was brought up constituted witness tampering and it questioned the impartiality of the proceedings.⁴² In 1836, Crisp was convicted of cattle-stealing and subsequently forfeited of his property, including his land near Lake George, which went to Francis Kenny.⁴³ Crisp's descendants remained as settlers in Gundaroo and at Monaro.

After several months of investigation, the second inquiry upheld the original finding that Jane New and Frances Dickson were probably the same person,⁴⁴ a result which denied Stephen any chance of a public service position. In 1835, Stephen tried to sue a man who had loaned him an urgent £150 for allegedly under-selling possessions left with him as security on default, but lost the case.⁴⁵ The following year, in obscure circumstances, Stephen junior left Sydney for Tasmania, with uncertainty surrounding his position as Secretary of the Patriotic Association until he formally resigned in February, 1837. Not long after, a scandal erupted over £500 worth of missing Patriotic Association Treasury bills entrusted to Stephen for transmission to Bulwer in England for his services on behalf of the Association but which never reached him. E. S. Hall, who had been elected Secretary in Stephen's place, claimed that Association funds were never in jeopardy, the bills for them being payable only to the nominated recipient, and Stephen's character was defended with reference to the debt owed to him for his efforts on behalf of Australian political and judicial reform. Nevertheless, suspicion surrounded Stephen's explanations for the missing bills. The Association disintegrated, but Stephen emerged relatively unscathed until in January, 1840, notices were posted that he had fled creditors in Tasmania, arriving a short time later in Port Phillip. At this point the coincidence of the manner in which Stephen had left Sydney was now overtly noticed both in a Tasmanian paper and re-printed in the *Port Phillip Gazette*, just as Stephen arrived at his new town of residence.⁴⁶ Stephen tried to bring libel proceedings against the *Gazette*, even as the master of the ship that had ferried Stephen out of the colony was facing charges for improper carriage in Tasmania and the Commissioner for Insolvent Estates in Hobart Town posted notices

⁴⁰ *HRA, Despatches XVI, 24 Dec 1832, No 147*

⁴¹ *Syd Mon*, Wed 18 Dec 1833, p2

⁴² *Ibid.*

⁴³ *Syd Hld*, Mon 8 Aug 1836, p1

⁴⁴ *HRA Despatches XVII, No. 68 22 Jul 1834*

⁴⁵ *Syd Gaz*, Thurs 9 Jul 1835, p3

⁴⁶ *Cornwall Chronicle*, Sat 11 Jan 1840, p2

that he had dismissed Stephen's petition for insolvency.⁴⁷ However, again Stephen emerged relatively intact. By September, he was an assistant editor at the *Port Phillip Gazette*, the paper he had originally tried to sue.⁴⁸ He became Secretary of the Port Phillip Mechanics Institute and enjoyed a stable career as a Police Court prosecutor. He was an Alderman on the Melbourne Council at the time of his death on October 30, 1854.⁴⁹

Whatever Stephen's role in advocating Australian interests, it was over-shadowed by the questions surrounding his character and conduct and by the 1840's his name was all but forgotten in New South Wales. In ill-health, his father, Stephen senior, had re-located to Tasmania and then resigned in 1832. He died in December, 1833, at the same time as the second inquiry into his son was taking place, when Lord Aberdeen denied his widow's plea for a pension.⁵⁰

As for Jane New, there was uncertainty as to her whereabouts after her escape. On July 9, 1829, Affidavits by John Raine, a Notary Public in Sydney, sworn before solicitor, D. Pool, and Registrar, John Eyde Manning, stated that on July 6, a woman calling herself Frances Dickson had come forward to his office and made a declaration that she had been at Stephen's cottage, in hiding from an abusive husband and that when the police approached she had fled fearing that she had been found.⁵¹ Raine, who claimed he had seen New many times, including in court on March 21 when the writ of *habeus corpus* was heard, swore that New and Dickson, although bearing a resemblance to each other, were not the same woman. It was believed, however, that New had sailed out of Sydney for New Zealand with her husband, James. New had borrowed money from John Jobbins, leaving a box for security for which Jobbins posted notices in August would be sold to cover the debt.⁵² Governor Darling contended New went to New Zealand and then maybe to England, but accounts in the papers were that while she did flee the colony for the Bay of Islands, on being exposed there, reports of which by Alfred Stephen's nascent *Australian*,⁵³ the *Monitor* denounced as being "in very bad taste",⁵⁴ she went to Hawaii,⁵⁵ where she was reported to have died on July 28, 1831.⁵⁶

Following the Stephen affray, Australia was denied responsible government until 1856, not through the impositions of Britain, but by the landed gentry in Australia, the wealthy pastoralist "squattocracy", of whom Wentworth later was to become one in an alliance with the Macarthurs.

Postscript

1. Forrell (2012) contends that New may have sailed to Hawaii in the brig, *Bee*, seized in Hawaii in 1834 by the British Consul for transporting runaways from Hobart.

Some evidence for this may lie in the strange tale surrounding the owner of the *Bee*, William Cuthbert, which the author of this paper has constructed from newspaper reports of the time. It seems that Cuthbert arrived in Hobart on Feb 14, 1833 (*Hobart Colonist*, Sat 22 Feb 1833, p3), having left Sydney on the 7th (*Hbrt Cour*, Fri 22 Feb 1833, p3, states the *Bee* arrived on Feb 17) and in March, he married a Martha Kilpatrick (*Hbrt Cour*, Fri 5 Apr 1833, p2). On March 31 he sailed out of Hobart, reportedly, with a cargo of runaway debtors aboard (*Hbrt Chron*, Tues 2 Apr 1833, p3; *Syd Gaz*, Sat 27 Apr 1833, p2). The *Bee* then arrived at the Bay of Islands on May 9, departing for Hokianga a week later on May 16, but mysteriously remaining in sight off the bay for two days (*Hbrt Cour*, Fri 26 Jul 1833, p4). Another ship, the *Byron*, reported that the *Bee* had then apparently left the Bay of Islands, intending to sail for Hawaii with a cargo of flax (*Syd Hld*, Thurs 22 Aug 1833, p3), a report corroborated by a letter appearing in the *Australian* (Fri 23 Aug 1833, p3). On Aug 27, the *Hobart Colonist* claimed that the matter of the runaways had

⁴⁷ *Syd Hld*, Wed 1 Jul 1840, p3

⁴⁸ *Port Phillip Patriot*, Mon 7 Sep 1840, p3 & *Australasian Chronicle*, Tues 6 Oct 1840, p3

⁴⁹ On 6 October 1834, at St James' in Sydney, Stephen's daughter, thirteen-year-old Claudia Hamilton, born in London on 19 February 1821, married Charles Christian Dutton, a Sydney businessman in partnership with his brother, P. L. Dutton. In June 1837, Stephen's son-in-law, C. C. Dutton, dissolved his business partnership in Sydney with his brother and went to Adelaide in the newly established colony of South Australia, where he became Clerk of the Supreme Court and then High Sheriff of South Australia in May, 1838 (*Syd Mon*, Wed 29 Oct 1834, p3 & *SA Gaz*, Sat 19 May 1838, p1). Claudia died on November 26, 1838, in Port Macquarie, New South Wales (*Syd Gaz*, Sat 1 Dec 1838, p3). It seems that Dutton was in Adelaide at this time, fully engaged in his duties as Sheriff (*SA Gaz*, Sat 24 Nov 1838, p1), so it may be that Claudia and Dutton were separated by this time. In January, 1839, Dutton put all his property in Adelaide up for sale (*Sthn Aust*, 30 Jan 1839, p2 & *SA Gaz*, Sat 4 May 1839, p5), after which he sailed to Port Lincoln, from where in March and April he was part of an exploratory expedition of the near environment (*SA Gaz*, 20 Apr 1839, pp2,3). A son to Dutton and Ellen White was born in Port Lincoln on 16 April 1839. Dutton was appointed Coroner for Port Lincoln in September 1839. He had two more children with Ellen White before in 1842, he disappeared while droving a herd of cattle around Spencer's Gulf, after which a search party led by Edward John Eyre failed to find him.

⁵⁰ *HRA, Despatches XVII, No. 11, 25 Dec 1834*

⁵¹ *HRA, Series 1, Despatches Vol. XV, 12 August 1830*

⁵² *Syd Gaz*, Sat 22 Aug 1829, p4

⁵³ Fri 22 Nov 1833, p3

⁵⁴ Sat 23 Nov 1833, p2

⁵⁵ Forrell (2012)

⁵⁶ *Syd Mon*, Sat 28 Mar 1835, p3. Given the discrepancy in the dates this may have been meant to be 1834.

been resolved without going to law (Tues 27 Aug 1833, p2). In September, however, Cuthbert was in Hobart, where a Warrant was issued for his arrest, it appearing that his marriage to Kilpatrick was bigamous, the circumstances of which were complicated, relating to the marital status of his first wife (*Austral-Asiatic Review*, Tues 27 Aug 1833, p3). A series of mysterious events then took place surrounding the *Bee*. According to the *Hobart Colonist* (Tues 17 Sep 1833, p3), Cuthbert bribed the arresting constable, Holding, to assist him in a series of deceptions involving a boat that Cuthbert took to East Bay Neck from where he rejoined the *Bee*, having sent her on a decoy sail around Maria Island, and after which the *Bee* did sail for Hawaii with constable Holding on board. In January, 1834, the former first mate of the *Bee* arrived in Sydney from New Zealand in the *Harriet* relating how he and others had been forced off the *Bee* at gunpoint without clothes or provisions (*Syd Mon*, Fri 24 Jan 1834, p2). He reported that Cuthbert had a police constable from Hobart and several runaways on board and intended offloading his cargo in Tahiti before heading for the Spanish Main. However, in March, the *Bee* arrived in Hawaii, where she was seized by the British Consul on Oahu, Richard Charlton. Cuthbert again escaped, reportedly heading for California, but the new master of the *Bee*, Captain Stewart, was ordered to sail her back to Sydney (*Syd Hld*, Mon 24 Apr 1834, p2 & Mon 5 May 1834, pp2,3; *Syd Gaz*, Tues 6 May, 1834, p2; *Hbrt Cour*, Fri 16 May 1834, p4). The *Bee* left Hawaii on 12 March and arrived in Sydney in May, hauled off from the wharf to Rotten Row (*Syd Gaz*, Tues 20 May 1834, p2; *Syd Mon*, Wed 21 May 1834, p2; *Syd Hld*, Mon 5 May 1834, p2 & Sun 25 May, p2), after which from the King's Wharf on June 18, she was sold to satisfy Cuthbert's creditors, as listed in the claims court (*Aust*, Fri 6 Jun 1834, p3; *NSW Gov Gaz*, Wed 11 Jun 1834, p394; *Syd Gaz*, Thurs 12 Jun 1834, p1; *Syd Hld*, Thurs 19 Jun 1834, p2).

2. As the proprietor of *Truth* newspaper, in 1912, John Norton, the notoriously corrupt politician suspected of gaining the newspaper by fraud and of murdering George Grohn in 1902, serialised a book about the Jane New case, called "Under the Broad Arrow", written by Sir Francis Forbes' grandson, George Forbes, published as a book in 1913. Along with containing much incorrect information, the account was an absurd amalgamation of New's case with that of John Fitch, who was convicted of murder in Sydney in 1844 (*Morning Chronicle*, Sat 27 Jan 1844, p3). In this version, as an innocent girl victimised by evil men of power, New is framed by Fitch, in Forbes' narrative elevated to the status of a police constable, who predates upon the beautiful Jane and has her falsely convicted in revenge for rejection. The book was very popular and was the basis of a law suit by Forbes against the executors of Norton's estate in 1916 for unpaid royalties (*Wyalong Advocate*, Wed 25 Oct 1916, p2).

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