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THE EARLY LIFE OF MR JUSTICE BOOTHBY

ABSTRACT

Mr Justice Benjamin Boothby occupied the post of Second Judge in the Supreme Court of South Australia from 1853 to 1867. He may have been the most unsuitable appointment to the Bench in South Australia's history, and lacked almost every quality necessary for the role. After years of controversy, he was dismissed in 1867, the only judge ever to suffer that fate in South Australia's history. It was his eccentric interpretation of the law that provoked the enactment of the *Colonial Laws Validity Act 1865*, 28 & 29 Vict, and thus he was an important figure in the legal history of the whole British Empire. But very little indeed is known of his colourful early life before his arrival in South Australia aged 50. This article fills that gap.

I INTRODUCTION

Much has been written about Benjamin Boothby's disastrous period as a Justice of the Supreme Court of South Australia from 1853 to 1867, which culminated in his dismissal both for evasion of Imperial legislation passed specifically to deal with him, and for repeatedly questioning the legitimacy of the appointments of and otherwise insulting his colleagues on the Bench;¹ little indeed has been known about his life and career before his arrival in Adelaide. The entry for Boothby J in the *Australian Dictionary of Biography* does not merely summarise what is known about his early life; it virtually exhausts our present state of knowledge by stating that the judge was

born on 5 February 1803 at Doncaster, Yorkshire, England, the eldest of four sons of Benjamin Boothby, iron-founder, and his wife Elizabeth, *née* Lightowler. In 1823 the family moved to Nottingham where he was engaged with his father

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¹ The main sources are Ralph M Hague, *History of the Law in South Australia, 1837–1867* (Barr Smith Press, 2005) ch 5 ('History'); R M Hague, *The Judicial Career of Benjamin Boothby* (unpublished, 1992) ('Boothby'); A J Hannan, 'Mr Justice Boothby' (1957) 58 *Proceedings of the Royal Geographical Society of Australasia: South Australian Branch* 72; Peter Howell, 'Constitutional and Political Development, 1857–1890' in Dean Jaensch (ed), *Flinders History of South Australia: Political History* (Wakefield Press, 1986) 139; John M Williams, 'Justice Boothby: A Disaster that Happened' in George Winterton (ed), *State Constitutional Landmarks* (Federation Press, 2006) 21.

in manufacturing pursuits. In May 1827 Benjamin married Maria Bradbury Robinson. In the 1830s he helped Thomas Wilde (later Lord Truro), younger brother of Sir John Wylde, in his electoral campaigns and won repute for his ‘great skill in electioneering tactics’. Influenced by Wilde, Boothby decided to study law despite his age and large family. At Gray’s Inn he read in his patron’s chambers and was called to the Bar in 1841. He then joined the Northern Circuit, was appointed a Revising Barrister for the West Riding of Yorkshire in 1845 and became Recorder of Pontefract in 1849. His career at the Bar had no special marks of distinction. In 1842 he produced *A Synopsis of the Law Relating to Indictable Offences*, which bore witness to his industrious interest in his new profession and ran to a second edition in 1854. In 1844 he had issued a pamphlet, *Law Courts Not the Remedy for the Defects of the Law*.²

As far as it goes, this is all correct, with the exception that the pamphlet was actually called *Local Courts Not the Remedy for the Defects of the Law*.³ But what was Boothby doing in the period of nearly 40 years between his birth in 1803 and the beginning of his law studies in the late 1830s? There are major omissions from the biographical sketch just quoted.⁴ Among the highlights of Boothby’s early life were long years in the scarcely prestigious occupation of running an iron foundry as business partner of his father; the disgrace of bankruptcy in 1837; and, perhaps most remarkably of all, serious and prolonged involvement in extreme, radical politics as part of the Chartist movement, including a spell as councillor on the Nottingham City Council, before he took up with Sir Thomas Wilde.

At the end of this article, we shall still be left with a mystery: namely, why Boothby changed his opinions and outlook on life so greatly between the mid-1830s, when he was a radical Chartist, and the mid-1850s, when he was already becoming known for outspokenly conservative opinions. Swings from the extreme left to the extreme right are scarcely unheard of as people age, but this one is remarkable both because of the identity of the swinger and because his swing was so complete. But whatever the explanation for it may be, at the end of this article we shall be at least much better informed about the early life of this strange man and controversial judge.

Boothby, of course, had every interest in suppressing most of his past on his arrival in South Australia — especially the bankruptcy bit: in the Victorian era bankruptcy

² Alex C Castles, *Boothby, Benjamin (1803–1868)* (2006) Australian Dictionary of Biography <<http://adb.anu.edu.au/biography/boothby-benjamin-3025>>.

³ Benjamin Boothby, *Local Courts Not the Remedy for Defects of the Law* (Saunders and Benning, 1844) (*‘Local Courts’*) (emphasis added).

⁴ Admittedly the task of filling in the gaps was made slightly easier by electronic searching aids, but even before they existed a small degree of effort in looking at the sources would have indicated that there was enough to justify looking further. Needless to say, this article was not written without some good old-fashioned slaving away over microfilms and books in traditional libraries. The author wishes to thank Monash University, which provided the opportunity to conduct that research. Nevertheless, the time available and the steady progress of digitisation make it possible that further refinements to the story told here will one day be found.

was seen generally as decidedly a moral matter involving a lack of self-reliance and thrift and a failure to live honestly within one's own means.⁵ He succeeded in this endeavour to an extraordinary extent. Even when his death in 1868 was noticed in England, his obituaries might have led one to assume that he had done nothing all his life except lawyering.⁶ The same might be said of his entry in the Colonial Office List,⁷ although it may have been supplied by himself. It is likely that the Colonial Secretary who chose Boothby, the Duke of Newcastle — who was the subject of a string-pulling campaign by Boothby's friends when the vacancy arose on the death of Crawford J — also knew nothing of Boothby's previous financial disgrace.⁸

A friend of Boothby's from his time in Nottingham as a foundry proprietor, a period which ended with Boothby's bankruptcy, wrote to the newspaper at the time of his appointment to inform South Australians about the character of the judge selected for them by the Colonial Office; he too knew nothing of bankruptcy, or if he did chose the path of tact:

Benjamin Boothby, Esq, is a gentleman whom I have known for thirty years, and a more dauntless advocate for high and liberal principles never pleaded for them. He is a stern defender of truth and impartial justice, and a man of no ordinary capacity, coupled with an amiable disposition. He is a dissenter of the Independent denomination.⁹

⁵ V Markham Lester, *Victorian Insolvency: Bankruptcy, Imprisonment for Debt and Company Winding-Up in Nineteenth-Century England* (Clarendon Press, 1995) 67 ff. Of course there were exceptions, as people in the past, like those today, were not of one monolithic opinion about everything. Moreover, a sea change on this front was shortly afterwards to occur in New South Wales, independently of developments in England: John Gava, 'The Revolution in Bankruptcy Law in Colonial New South Wales' in M Ellinghaus, A Bradbrook and A Duggan (eds), *The Emergence of Australian Law* (Butterworths, 1989) 210.

⁶ South Australian newspapers are about as informative as the *Australian Dictionary of Biography* just quoted. The English newspapers, if they noticed the event, merely recorded the fact of his death when the news reached England with some brief mention of his legal career. See, eg, *Doncaster Chronicle*, 21 August 1868, 8; *Doncaster, Nottingham and Lincoln Gazette*, 14 August 1868, 8; *York Herald*, 15 August 1868, 8. Legal journals did no more: (1868) 26(3) *Law Magazine and Review: A Quarterly Review of Jurisprudence* 191; (1868) 45 *Law Times* 372; (1868) 13 *Solicitors' Journal* 76.

⁷ The Colonial Office List was the official list of those engaged in Her Majesty's Colonial Service. The edition for 1867 starts the story of Boothby's life with his admission to the Bar in 1841.

⁸ Hannan, above n 1, 73.

⁹ *Register*, 24 May 1853, 3. The author of this testimonial was one J B Mather, an engineer from Nottingham who had arrived in the colony at the end of 1848: *Register*, 27 January 1849, 4; 28 April 1869, 6; 22 July 1870, 2. For its part, on his arrival in Adelaide in 1853 the *Adelaide Times*, 30 August 1853, 2, informed its readers that Boothby J had been 'selected for his legal acquirements, his judicial ability and his moral worth'. If the last-mentioned concept included solvency, they were sadly mistaken.

This vaunted amiability seemed to disappear in South Australia. It may also be mentioned here that another one of the adjustments made by Boothby affected his religious denomination: he was indeed considerably involved in the Dissenting milieu in England¹⁰ and in the heady days of the first Reform Act had even taken a leading role in a petition for disestablishment of the Church of England,¹¹ but his burial service in Adelaide was conducted by the colonial offshoot of that same Church.¹²

II CHILDHOOD AND FAMILY

Benjamin Boothby's father was also named Benjamin; he married Elizabeth Lightowler on 5 September 1799; his occupation was listed as mercer.¹³ On 7 April 1800, the partnership between Benjamin Boothby and Joseph Boothby, of Doncaster, trading as woollen- and linen-drapers, mercers and haberdashers under the name of Messrs Boothby, was dissolved by mutual consent;¹⁴ presumably it had subsisted at the time of the marriage a few months earlier. Joseph Boothby appears to have been the cousin of Benjamin the elder; he died in July 1806.¹⁵

Benjamin Boothby the elder, the father of the judge, next turns up in written records in June 1805, when the partnership between him and John and Ebenezer Smith, as joint executors of one Joseph Fletcher Smith, was also dissolved.¹⁶ Joseph Fletcher Smith was a master cutler who is said to have died aged 44 of an 'excessive love of good eating and drinking and a too great dislike for employment'¹⁷ on 30 December 1804. He had married Maria Boothby,¹⁸ the elder Benjamin's sister, which is no doubt why the latter was asked to become his executor. Sheffield is 20 miles or so from Doncaster, but as it took only six months to wind up the affairs of the deceased,

¹⁰ Margaret Howitt (ed), *Mary Howitt: An Autobiography* (William Isbister, 1889) vol 1, 240, writing in the first half of the 1830s, describes him as 'anti-Church to the core' (by which of course the established Church is meant). As late as 1852, Boothby was a co-founder and leading member of the short-lived pan-Protestant Milton Hall and Club: *Manchester Examiner and Times*, 25 September 1852, 4; *Bradford Observer*, 21 October 1852, 8. See also *Adelaide Times*, 30 August 1853, 2.

¹¹ See the unpublished autobiography of William Howitt, State Library of Victoria, MS 545, 457, for the full story.

¹² *Register*, 24 June 1868, 2.

¹³ Ancestry.com, *Ancestry Library Edition* <<http://ancestrylibrary.proquest.com/>> (search of database). For the alleged pedigree of the Boothbys from the 12th century, see Boothby, 'The Family of Boothby' in Philip M Robinson and A Leslie Spence, *The Robinson Family of Bolsover and Chesterfield* (Robinson & Sons, 1937) ch 6 ('Robinson Family'); Hague, *History*, above n 1, 399.

¹⁴ *London Gazette*, 18 January 1801, 872.

¹⁵ Philip Moffat Robinson, *The Smiths of Chesterfield: A History of the Griffin Foundry, Brampton, 1775–1833* (Robinson & Sons and Thomas Brayshaw, 1957), 73 ('Smiths').

¹⁶ *London Gazette*, 22 March 1806, 381.

¹⁷ A family diary is thus reproduced in Robinson, *Smiths*, above n 15, 7.

¹⁸ *Ibid* 6, 32.

Benjamin Boothby the elder did not move to Sheffield in order to do his bit but rather took what was in those pre-railway days a fairly long journey from Doncaster to Sheffield as need arose. By this stage he had become a father; his wife had given birth to the younger Benjamin Boothby, the future judge, on 5 February 1803. The father was about 27 years old.¹⁹

The business in Sheffield was the elder Benjamin's introduction to working with hard metals instead of soft fabrics, for which he seems to have acquired a taste. Benjamin appears to have remained in Doncaster and continued in business there until 1815.²⁰ In late 1814, however, another one of the Smiths having just died, the Boothby family, including an almost teenage future judge, received an offer to join their firm. This time they did abandon Yorkshire and moved in early 1815 12 miles south to north-eastern Derbyshire — the town of Chesterfield. The elder Benjamin Boothby joined the Smiths' business (which bore the name Ebenezer Smith & Co) with 6 of 45 shares in their iron foundry in Derbyshire.²¹ The concern was one of the largest in the Midlands and was said to have manufactured cannon balls used at Waterloo; more prosaic products included kitchen ranges and stoves.²²

The elder Boothby received an annual income of £560 from his interest in the business, but, in the first sign of the difficulties with reconciling income and expenditure which afflicted both him and his son, drew more than £130 a year above his partnership income from the business' income; when he left it, on 2 September 1823,²³ he owed the partnership £1261.²⁴ It is not surprising that the partnership did not last a decade if one of the partners was so liberal in his withdrawals from the business. It must also be said that, at this time, £560 was by no means starvation wages: many clerks, messengers and similarly stationed persons managed on double-digit yearly salaries, and, to take another example that is close at hand, Sir John Jeffcott (who was, admittedly, desperate for income of any sort) received £500 per annum as the inaugural judge of South Australia from 1836.

Although he had moved to Chesterfield, Boothby *père* continued to have some sort of an interest in an iron foundry and agricultural machine factory in Doncaster which was called Sinkinson, Pearson & Co; the partnership was dissolved by consent on 31 May 1822.²⁵ This firm had made its name through the manufacture of an ingenious machine which was capable of cutting straw, grinding barley and malt, crushing oats and performing several other similar functions.²⁶ In 1822, he registered, under his

¹⁹ When he died on 22 November 1840, his age was given as 65: Islington Death Registrations, 1840 Fourth Quarter, vol III, 157. See also below n 116.

²⁰ Robinson, *Smiths*, above n 15, 33, 73.

²¹ There was also, it seems, a branch at Manchester: *London Gazette*, 10 July 1819, 1204.

²² Robinson and Spence, *Robinson Family*, above n 13, 50.

²³ *London Gazette*, 27 December 1823, 2167.

²⁴ Robinson, *Smiths*, above n 15, 32 ff.

²⁵ *London Gazette*, 4 June 1822, 940.

²⁶ John Bigland, *The Beauties of England and Wales* (Harris, 1812) vol XVI, 853 ff.

Chesterfield address, a patent ‘for an improved method of manufacturing cannon-shot, by which a superior shot is produced in the solidity and smoothness of its external surface’.²⁷

It was in Chesterfield that the younger Benjamin Boothby spent his teenage years and grew to adulthood. Although education was not then compulsory, it is likely that he attended some sort of school somewhere in the town, but there is no information I know of about his studies. On finishing school, no doubt he was put to work in the partnership as the eldest son and heir. He first emerged on to the public stage aged 19, when he was made secretary and collector of subscriptions for a committee which also included his father and was concerned with the building of a new Dissenting chapel in Chesterfield in 1822.²⁸

When they were expelled from the partnership in Chesterfield in 1823, the son was approaching his 21st birthday. The elder Benjamin, now aged almost 50 and no doubt still determining the family’s direction in life although he now had a young adult son, decided upon a move further south again — by about 25 miles, to Nottingham. There, he bought the Rutland Foundry,²⁹ in which he involved his son as a business partner and which was to lead both of them into bankruptcy in 1837.

III BANKRUPTCY IN NOTTINGHAM

For some of their time in Nottingham, the two Benjamin Boothbys, father and son, were in partnership with another relation by marriage, one William Bacon Rawson. It cannot be determined when the younger Benjamin was taken into the business as a partner, but it was certainly before Rawson’s death in 1830, by which time the future judge was already 27.³⁰ The occasion may have been either his 21st birthday in 1824 or his marriage in 1827 to Miss Maria Bradbury Robinson. One who knew the new Mrs Boothby personally as a friend described her as ‘a most excellent wife and mother ... much occupied with her family’.³¹ Her family also was connected with the drapery trade,³² but the two had doubtless met through the Dissenting chapel which both families attended; their families were on friendly terms.³³ Until their bankruptcy in 1837 father and son carried on the Rutland Foundry in Nottingham together. As well as running the foundry, the Boothbys tried their hand at cotton

²⁷ ‘New Patents Sealed in 1822’ (1822) 4 *London Journal of Arts and Sciences* 221–2.

²⁸ Robinson and Spence, *Robinson Family*, above n 13, 292, 294.

²⁹ He cannot have started it, as the *Leeds Mercury*, 18 November 1837, 1 indicates that it was then 30 years old.

³⁰ *London Gazette*, 25 January 1831, 151; Robinson, *Smiths*, above n 15, 90. *London Gazette*, 21 March 1837, 789 indicates that Rawson’s personal representatives made claims on the Boothbys’ land as late as 1837. It cannot be said how serious those claims were.

³¹ Howitt, above n 10, 241.

³² Trevor I Williams, *Robert Robinson, Chemist Extraordinary* (Clarendon Press, 1990) 26 ff.

³³ Robinson and Spence, *Robinson Family*, above n 13, 49.

thread manufacturing.³⁴ The notice consequent upon Rawson's death in 1830 has them as 'iron-founders, cotton-doublers and lace manufacturers'.³⁵

The Rutland Foundry was clearly a major institution in Nottingham, and the Boothbys will have been men of significance in the town's commercial life. One Annie Gilbert (1828–1908) published her *Recollections of Old Nottingham*³⁶ towards the end of her life, in which she mentions that the Rutland Foundry 'was the oldest and largest in the town: the premises occupied nearly the whole of Granby Street [now gone], and turned the corner into St James's Street'.³⁷ She also recalled the controversy leading up to the passing of the Reform Bill of 1832. An angry mob threatened to burn down the Rutland Foundry, believing it to belong to none other than the Duke of Newcastle, whose nearby castle in Nottingham had just been destroyed by them. A word from Mrs Gilbert's father, she recounts, saved the Rutland Foundry.³⁸ Shortly after the passage of the Reform Bill, a celebratory dinner occurred in the Boothbys' foundry after a parade through the town.

This Duke was the father of the fifth Duke, who was to become the Colonial Secretary who appointed Boothby to the South Australian Bench. While they were nearly neighbours at this stage of Boothby's life, it is not known whether Boothby ever met the future fifth (or any other) Duke, who was often away at Eton, University or in politics after Boothby arrived in Nottingham. The two men were furthermore separated by obvious barriers of class and religious denomination, although not so much by political views once each had reconciled himself, in the second half of the 1830s, to Whiggism — the Duke arriving at that point from a conservative, and Boothby from a Radical point of departure. It is therefore not likely that they knew one another personally, and when Boothby was appointed to the Bench in 1853 he relied on contacts to lobby the Duke; he did not do so in person.³⁹

A further description of the Rutland Foundry's size and extent may be found in the notice of the sale of the business after the bankruptcy.⁴⁰ It is described as a 'valuable

³⁴ See *Pigot and Co's National Commercial Directory for 1828–9* (J Pigot & Co, 1829).

³⁵ *London Gazette*, 25 January 1831, 151.

³⁶ Annie Gilbert, *Recollections of Old Nottingham* (H B Saxton, 2nd ed, 1904).

³⁷ *Ibid* 45.

³⁸ *Ibid* 42 ff.

³⁹ See University of Nottingham Manuscripts and Special Collections, Ne C 10128: this is the only reference to Boothby in the Duke's papers. Hague, *Boothby*, above n 1, 2 declares them neighbours and friends. They were neighbours in a manner of speaking, but they were not friends. As well as the points mentioned in the text, it is of note that Boothby is not mentioned in John Martineau, *The Life of Henry Pelham, Fifth Duke of Newcastle, 1811–1864* (J Murray, 1908) nor in F Darrell Munsell, *The Unfortunate Duke: Henry Pelham, Fifth Duke of Newcastle 1811–1864* (University of Missouri Press, 1985). Pelham Street Carlton, on which the University of Melbourne's Law School building stands, is thought to commemorate the fifth Duke, as Pelham was one of his Christian names.

⁴⁰ *Leeds Mercury*, 18 November 1837, 1.

and extensive iron foundry, ... stove grate and fender and kitchen-range manufactory' together with stock-in-trade such as one would expect in a business of that type; a clue to the reasons behind the bankruptcy is given by the information that the plant for manufacturing stove grates, fenders, hot-air stoves and kitchen ranges had been fitted out within the preceding 10 years 'at immense cost'. It had yielded, over the preceding seven years, an average return (presumably turnover rather than profit) of £300 to £400 per week. An earlier notice for sale by auction under a mortgagee's power of sale — this auction must have been at least partly unsuccessful — adds that the property comprised an area of 1796 square yards (about 42 yards squared) and that the cotton-doubling business was now being carried on by Messrs Thackeray & Son; they had leased some of the land from the Boothbys.⁴¹

The precise causes of the bankruptcy which overtook the business in late 1836 or early 1837 cannot be known with certainty, but it is possible to make an educated guess: as we have already seen, the elder Boothby had something of a tendency to pay himself more than he had earned; there was also the investment in expanding the business just referred to, financed by perhaps over-ambitious borrowing on a mortgage. Furthermore, the elder Benjamin Boothby was now over 60, and probably feeling his age, for he died of dropsy, aged 65, on 22 November 1840;⁴² no doubt his increasing age and infirmity made it progressively more difficult for him to contribute to running the business. Finally, the business must also have suffered from the younger Boothby's extensive involvement in politics, of which more under the next heading. There was also, it seems, a credit contraction in England in late 1836⁴³ which may have been the straw that broke the camel's back, but if it had any effect at all it can have been no more than the last straw given that the bankruptcy occurred so early in 1837.

The first official indication of the bankruptcy of both Boothbys is found in a *London Gazette* notice of 31 January 1837,⁴⁴ which was repeated in the local press under the bold heading 'Boothbys' bankruptcy'.⁴⁵ There followed a melancholy procession of notices of creditors' meetings and so on; the younger Boothby was discharged from bankruptcy by certificate in April 1838, but the final dividend was not paid until 1841, and the last details were not settled until 1854 — the year after the *London Gazette*⁴⁶ had carried another notice about Boothby, namely the information that he had been appointed a judge at Adelaide. The family were compelled to leave their home in March 1838. Later, it was said that at this time the elder Boothby was 'greatly

⁴¹ *London Gazette*, 21 March 1837, 789.

⁴² See Islington Death Registrations, above n 19.

⁴³ Murray N Rothbard, *The Mystery of Banking* (Ludwig von Mises Institute, 2nd ed, 2008) 210.

⁴⁴ *Ibid* 242.

⁴⁵ *Nottingham Review*, 3 February 1837, 1, and again in the summary of bankrupts from the *London Gazette*, 31 January 1837, 4.

⁴⁶ 21 March 1837, 789 ff; 21 March 1837, 794; 5 May 1837, 1171; 17 October 1837, 2652; 30 March 1838, 806; 14 December 1838, 2901; 8 October 1841, 2488; 25 February 1853, 604 (appointment as judge); 18 August 1854, 2590.

esteemed among the Congregationalists, of which he was a liberal member';⁴⁷ the move will at least have taken him away from people who knew of and might have reacted badly to his financial disgrace.

A thought should, however, also be spared for his and his son's creditors, for the dividend from the younger Benjamin's estate for them was precisely zero; from the father's estate it was 8 d in the pound, but from the partnership's estate only 1¼ d was paid.⁴⁸ It must have taken considerable effort to manage affairs as badly as the younger Benjamin did and to leave exactly nothing for one's creditors. They would have been entitled to be rather angry that he had allowed matters to degenerate so badly.

No doubt the said Benjamin Boothby the younger should have learnt lessons from this grotesque failure; but his future financial dealings suggest that he did not. Even after his appointment to the Bench, he continued to leave a trail of bad investments and unpaid debts behind him. His continued precarious financial position on appointment to the Bench is indicated by his demand for his full salary from the day of his appointment in England, including the several months during which he was unavailable for work because he was on the ship out. It was well understood at the time that full pay started only upon arrival, and his request was therefore refused.⁴⁹

On 28 December 1857, which by coincidence was the 21st anniversary of the establishment of South Australia, one John Harrison of the Norfolk Works, Sheffield, wrote to the Colonial Office about an unpaid debt owed to him by Mr Justice Boothby. The latter had been introduced to him in 1853 by the Chief Constable of Sheffield with a reference to his imminent departure for South Australia as one of Her Majesty's judges for that Province. As a result, and having regard to a reference from a gentleman in the town, Harrison had allowed Boothby to buy at wholesale prices and to give a cheque for £97/17/- for the goods — which bounced. Boothby had paid only £50 of this debt since, and Harrison sought the assistance of the Colonial Office in the recovery of the remainder. Its officials concluded that all they could do about this embarrassing problem was to send the letter to the Governor in Adelaide with a request to bring it to the attention of the judge.⁵⁰ The Governor did bring it to Boothby's attention, but it is noticeable that the official records in South Australia⁵¹ do not show the name of the addressee of the Governor's letter passing on the correspondence. Presumably the matter was considered so sensitive and embarrassing that the letter to Boothby was written and copied by the clerks without his name, and only the Governor knew of the identity of the letter's addressee. It may be hoped that Harrison's extraordinary step resulted in Boothby J's at last doing the

⁴⁷ *Adelaide Times*, 30 August 1853, 2.

⁴⁸ Robinson, *Smiths*, above n 15, 79 ff.

⁴⁹ State Archives of South Australia, GRG 1/21/1/171; GRG 24/4/27/102; GRG 24/6/1853/3466; Hague, *History*, above n 1, 225.

⁵⁰ CO 13/96/511–514 (AJCP 797). Except for an acknowledgement by Harrison (CO 13/98/186 (AJCP 799)), there is (to the end of 1859) nothing further on this in the records of the Colonial Office.

⁵¹ State Archives of South Australia, GRG 2/40/2/96.

decent thing and making arrangements for his debt to be paid, as there is no further correspondence either in London or in Adelaide on the matter. However, that may not be so: in Adelaide also during his tenure of judicial office, his chronic and severe inability to live within his means continued. By the mid-1860s his judicial salary, far above the average wage, did not cover payments on his debt, and his bank refused further loans.⁵²

Despite his disgraceful and complete bankruptcy in 1837, Boothby, once he had begun to practise the law in 1841, appears to have found enough spare money — not (as far as is known) to repay his earlier creditors in an honourable fashion, but to make various investments: there are records of his investing £3750 in the Eastern Union and Norwich Railway (No 2) by 1845.⁵³ He also took up 10 shares in the Ipswich Paper Mills at about the same time,⁵⁴ and probably had other investments of which no public record remains. He joined the provisional committee of the Bradford, Manchester & Liverpool Direct Railway,⁵⁵ taking up shares; but, as was stated at a meeting of the shareholders in January 1846, he had defaulted on his promise to pay for them. One Mr Wagstaff promised ‘that Mr Boothby was going to pay’,⁵⁶ but one hopes that no-one held their breath.

Despite his large family, Boothby J’s judicial salary would have been quite sufficient for his needs had he avoided not just excessive expenditure compared to income in general, but also shonky investments. In the 1860s Boothby J’s name, together with his Honour’s position as a Justice of the Supreme Court of South Australia, again appeared in the newspapers in conjunction with two failed companies, the National Assurance and Investment Association and the State Fire Insurance Company.

The London *Standard*⁵⁷ referred to the former company as a fraud without parallel when it collapsed in November 1861 owing about £65 000. Mr Justice Boothby, as he had by then become, was a director of it, a signatory to its deed of settlement and in debt to the company to the tune of £280 — for what, it is not stated, but it does not appear to have been shares.⁵⁸ Litigation was required in the case of both companies in order to untangle the mess, although Boothby J’s luck held again and he was not mentioned in the reported judgments.⁵⁹ Despite these and no doubt other entanglements, Boothby J died with a net worth of around £5000,⁶⁰ so there must have been

⁵² John McLaren, *Dewigged, Bothered and Bewildered: British Colonial Judges on Trial, 1800–1900* (University of Toronto Press, 2011) 198 ff, 204 ff.

⁵³ House of Commons Parliamentary Papers (1845) vol XL, 16, 150.

⁵⁴ House of Commons Parliamentary Papers (1845) vol XLVII, 101.

⁵⁵ *Bradford Observer*, 23 October 1845, 1.

⁵⁶ *Bradford Observer*, 15 January 1846, 6.

⁵⁷ 25 November 1861, 4.

⁵⁸ *Times*, 25 November 1861, 4; *Daily News*, 25 November 1861, 3.

⁵⁹ *Re National Insurance and Investment Association* (1862) 4 De G F & J 78; 45 ER 1112; *Re State Fire Insurance Company* (1863) 1 De G J & S 634; 46 ER 251.

⁶⁰ *Morning Post*, 14 November 1868, 5.

some successful investments as well; but then again, a large proportion of that value will have been made up by fixed investments, such as his house and land.⁶¹

Boothby J's luck did, however, run out eventually. Given the numerous and intimate contacts between Australia and England at the time, not to mention the attention he had drawn to himself and the enemies he had made,⁶² this was inevitable. There is one reference in South Australia that I know of to his financial difficulties: in 1866, as the end of his judicial wrecking career finally drew near, a member of Parliament mentioned that he had seen the name of Benjamin Boothby listed in the English newspapers as an outlawed debtor⁶³ and asked whether it was the same man as their judge.⁶⁴ If it was Boothby J, he had again failed to pay his debts and neglected to answer Court proceedings brought against him to recover them in England, resulting in a formal declaration of outlawry. Searches in England have not produced a definite answer to the question asked by the member of Parliament,⁶⁵ but the surviving records are incomplete. The answer may however still be found in reading between the lines of a speech by one of the judge's few remaining defenders in 1866: '[s]upposing Mr Justice Boothby had been outlawed in that way', said John Baker MLC, 'he was not the only man in the colony who had been in that position'.⁶⁶ In another source which also purports to give a verbatim version of the same speech Mr Baker is quoted as referring bluntly to 'the fact of his Honour's outlawry'.⁶⁷

It is impossible not to wonder whether the judicial post in South Australia offered Boothby J not merely a secure income (although he repeatedly complained of its inadequacy), but also an asylum from the demands of English creditors — almost as good as a second bankruptcy in enabling him to start again with a clean slate. 'τὸ γὰρ τῆν φροντίδ' ἔξω τῶν κκαῶ νοικεῖν γλυκύ',⁶⁸ he might have found himself saying from the relative safety of Adelaide, if his education extended far enough to enable him to say it.

⁶¹ The records of the General Registry Office — for obvious reasons, no attempt was made to search those of the Lands Titles Office — do not suggest that Boothby was a big landowner; his only holdings were in the vicinity of his house, and were subject, inevitably, to several mortgages. Perhaps the most interesting of these was that to R R Torrens (GRO 268/160), but as the representative of the Savings Bank of South Australia.

⁶² This distinguishes Boothby J from (Sir John) Jeffcott J, who was also not a model of solvency but had made many fewer enemies during his short time in the colony.

⁶³ It may be found in the *Morning Chronicle*, 22 February 1856, 8; 21 March 1856, 8.

⁶⁴ The speech is quoted in greater detail not in the official report of debates, but in the *Advertiser*, 27 June 1866, 3.

⁶⁵ Boothby's name does not appear in any of the records of the Public Record Office on outlawry from this period (CP 38/5; CP 40/4057–4062; E 18/10; E 173/5; KB 140/8), but there is no reason to suppose the newspaper reports cited in above n 63 to be wrong.

⁶⁶ *Advertiser*, 4 July 1866, 2.

⁶⁷ *Register*, 4 July 1866, 2.

⁶⁸ *Oedipus Rex*, lines 1389 ff ('it is sweet that our thoughts dwell beyond evils').

IV POLITICS

Boothby's politics were always left-wing while he was in England: he started off as a radical Chartist, but joined the Whigs before his departure.

In the pre-Reform Act days, which extended until Boothby was almost 30 years old, agitation naturally concentrated on the progress of the Reform Bill. A general history of Nottingham's political life reports:

On March 1st [1830], a 'private meeting' was held to discuss the formation of a Nottingham Political Union to work for 'effectual reform'. It was to be a union between 'the middle and lower classes of the people of this town'. But things worked out badly at first. When its first general meeting was held on July 5th, its committee had to report only slow progress. On their own confession they were men of 'no decisive character in Nottingham — influential only in their zealous adherence to the cause of reform'. This was probably an over-modest assessment. Of the four people who filled the offices of secretary and treasurer in the Union, three were men of some social standing, and two of them in positions of unrivalled influence. Richard Sutton had taken over the ['Nottingham] Review' on his father's death in 1829, Robert Goodacre was the founder of the Standard Hill Academy, the most important private school in Nottingham, strongly patronised by the business community, whilst Benjamin Boothby was an iron merchant and iron-founder, running the largest firm of its kind in Nottingham, the premises of which occupied almost the whole of Granby Street.⁶⁹

Admittedly this source, unlike almost all others still to be cited,⁷⁰ does not state expressly whether it was the younger or the elder Benjamin Boothby who was involved, but all the other sources still to be quoted suggest strongly that it was the younger, the future judge; at all events, even if it was the elder it may be said with certainty that he and his son's views certainly coincided on these issues at this point. As we have seen, the Boothbys' iron works were the scene of rejoicing in Nottingham on the passage of the Reform Act. The programme ('address') of the Nottingham Political Union, modelled on the Birmingham Political Union's, was published in April 1830 in various newspapers⁷¹ and was a fairly standard pro-Reform manifesto; the Union's last appearance in the newspapers appears to have been in August 1833⁷² — its work had, after all, been largely accomplished in the previous year.

Boothby the younger, as a convinced Dissenter, also became a leading member of the disestablishmentarian movement in Nottingham. His name was one of the four subjoined to an 'Appeal of the Nottingham Dissenters to the Dissenters of England

⁶⁹ Malcolm I Thomis, *Politics and Society in Nottingham 1785–1835* (Basil Blackwell, 1969) 223 ff.

⁷⁰ But like the equally unforthcoming *Nottingham Review and General Advertiser for the Midland Counties*, 9 July 1830, 1, which contains the 'no decisive' quotation.

⁷¹ See, eg, *Examiner*, 11 April 1830.

⁷² *Cobbett's Weekly Political Register*, 21 August 1833.

on the Necessity of Earnestness and Union at the Present Crisis' in 1834,⁷³ and he was one of the leaders of the charge against compulsory church tithes.⁷⁴ The 'Appeal' is too long to quote here, but it reeked above all of a young man's impatience at the argument that the time was not yet ripe for change; but it cannot be known now how much of it was the 31-year-old Boothby's work and how much his co-authors'. In the following decade, after his admission to the Bar, Boothby became legal counsel to the newly formed British Anti-State-Church Association, later called the Society for the Liberation of Religion from State Patronage and Control, and gave them legal advice (which swiftly proved to be impractical) on the best method of setting up their branches to avoid liability under the statutes passed to quell disaffection during the French Revolution.⁷⁵

Boothby the younger was not satisfied with the great Reform Act. As early as 1834, he was in the public eye again as one of the leaders of the charge in Nottingham for further reforms beyond those granted in 1832, such as manhood suffrage, the reduction of the period between parliamentary elections and the secret ballot. Radicalism was giving way to Chartism.⁷⁶ As far as issues of day-to-day policy were concerned, he attacked the brutal system of military discipline and called for reform of the poor law. His principal personal target was the local Whig member of Parliament, Sir John Cam Hobhouse, whose fame will live for evermore as it was he who coined the phrase 'His Majesty's Opposition'; but local Radicals of his day such as Boothby accused him of half-heartedness and insincerity on their favoured issues of the day — especially having regard to the contrast between his words before he accepted office in Lord Melbourne's government and the conduct of the government, which did not stand for complete and radical reform on topics such as military discipline.

In this period, politics in Nottingham were notoriously violent and corrupt.⁷⁷ The public record shows that Boothby entered into the political life of Nottingham with a ferocity that surprised even its seasoned observers; it does not, of course, show whether he participated in the corruption.

In July 1834 Hobhouse first stood for Nottingham at a by-election, which he won, but not before beating off a challenge to him by a Norfolk barrister named William Eagle, who stood for the Radicals. Benjamin Boothby the younger was one of Eagle's chief local supporters. It was Boothby who introduced the out-of-towner to

⁷³ *Nottingham Review and General Advertiser for the Midland Counties*, 21 February 1834, 4 (stating that it was signed by B Boothby the younger: at 3); *Morning Chronicle*, 10 March 1834, 1 ('*Appeal of the Nottingham Dissenters*').

⁷⁴ Derek Fraser, *Urban Politics in Victorian England: The Structure of Politics in Victorian Cities* (Leicester University Press, 1976) 47.

⁷⁵ William H Mackintosh, *Disestablishment and Liberation: The Movement for the Separation of the Anglican Church from State Control* (Epworth Press, London 1972) 31.

⁷⁶ *Ibid.*, above n 69, 154.

⁷⁷ *Ibid.* 240 ff; Robert E Zegger, *John Cam Hobhouse: A Political Life, 1819–1852* (University of Missouri Press, 1973), 197–9, 211 ff.

local meetings,⁷⁸ and it was to him that the Irish radical Daniel O’Connell addressed a letter in support of Eagle, which indicates that Boothby and O’Connell had been in touch for longer than the surviving correspondence shows. (Their contact may have begun when Boothby joined a committee designed to aid the starving Irish wandering through Nottingham.)⁷⁹

To Benjamin Boothby, Jr

You did me the great honour to consult with me previous to the last election on the subject of the fitness of Lord Duncannon to represent your town [Nottingham]. I hope, therefore, you will not deem me presumptuous if I initiate — as the Americans say — the correspondence on the present occasion. The fact really is that we are now in a much more critical situation than we were at the former election. The Whigs have been such cruel *drags* on the wheels of rational improvement that many of their Cabinet have been compelled to yield to and fly before the force of public opinion, repressed as it has been by a multitude of causes. But the remnant of that Cabinet want sufficient energy to meet the national exigencies or to give that substantial relief which would alleviate public distress and secure the enjoyment of popular rights against the perpetual spirit of invasion of a worthless aristocracy for whom alone these courtiers have hitherto been governed.

At such a moment it is the duty of every honest Radical reformer who is equally desirous to prevent any approach to a social revolution, as to carry into practical effect salutary changes and needful improvements in the political system, to come forward and send to Parliament men who are totally free from the bias of personal party and determined to do their duty to their country and to the cause of civil and religious liberty, fearlessly, perseveringly and disinterestedly.

Will you allow me to say that if the town of Nottingham wants just such a person, you can easily find him in Mr Eagle the barrister who I believe intends to offer himself on the approaching vacancy. His information, his talents, and above all his political integrity render him the fittest man I can think of to represent any honest and manly constituency.⁸⁰

Boothby also attended Hobhouse’s election meetings, which thanks to disturbances by his Radical allies degenerated into something little short of mass brawls and riots. According to the *Times*,⁸¹ Boothby was ‘an independent and respectable man of the Radical party, who is strenuously exerting himself to bring Mr Eagle in, and who was present for the purpose of putting some questions for explanation to Sir John’. At the

⁷⁸ *Times*, 23 July 1834, 6; *Morning Chronicle*, 23 July 1834.

⁷⁹ Mary Howitt Walker, *Come Wind, Come Weather: A Biography of Alfred Howitt* (Melbourne University Press, 1971) 10 ff.

⁸⁰ Maurice R O’Connell (ed), *Correspondence of Daniel O’Connell* (Blackwater Press, 1972) vol 5, 153 ff (emphasis in original). Boothby also was prominent at a meeting addressed by O’Connell in 1836: *Times*, 6 April 1836, 3.

⁸¹ 24 July 1834, 6.

meetings Boothby called for calm and a fair hearing for Sir John — but to no avail. According to the report, addressing his own followers who were responsible for the uproar ‘Mr Boothby exclaimed, “I repeat that your conduct is most disgraceful and disheartening and grievous to those who wish well to the cause”’, whereupon Sir John paid a tribute to Boothby’s ‘honourable conduct’. But it was to no avail: the meeting had to be abandoned and Sir John was spirited out through a side door.

Before the secret ballot, the practice was for nominations to be received and an initial poll conducted at a public meeting, and on seconding Eagle’s nomination, to a room packed with his supporters, Boothby made a rabble-rousing speech, tearing at the character of Sir John and ensuring maximum audience participation. Perhaps it is not surprising that such speeches led to disorder, even if the speaker disclaimed any desire to bring it about and scolded those who did:

The present, he would say, was the time for the men of Nottingham to prove whether they would have a sham or an honest representative. (Hear, hear.) He craved their indulgence while he stated to them his reasons for pursuing his present line of conduct on this occasion. They had before them the first Lord Commissioner of Woods and Forests [Hobhouse] (tremendous howling from the body of the meeting), who, in his address to the electors, stated that he had come forward at the request of a body of the electors. (Much roaring, and cries of, ‘Oh! oh!’) He (Mr Boothby) would ask the right hon. gentleman who those electors were (hear, hear) and he would pause a moment for a reply. (Cheers from Mr Boothby’s friends) They had no reply: but as the Americans say [this phrase appears to have been fashionable in Radical circles at this time], ‘we can give a pretty good guess’. (Laughter) He would put it to the noble-minded men of Nottingham (the men of Nottingham themselves laughed heartily at this compliment, as if they thought that it was all sham to apply it to them) — he would put it to them whether it was decent that they should be humbled to submit to the dictation of the gentlemen in Downing Street, or to their agents here? (Much groaning and uproar) This was precisely the conduct of the former government, in the case of rotten Gatton and Old Sarum. (Loud cheering) But was Nottingham to be made a rotten Gatton of for the Whigs? (Hear, hear, cries of ‘no’ and cheers) Would the men of Nottingham submit to conduct such as this? (No, no) Certain gentlemen were favourable to such, and showed by their pursuit of it that they were entirely reckless as to the character of the men whom they brought forward; but they might draw the stretching string too tight, and they had done so on the present occasion, in selecting the man who, of all others, had been guilty of the greatest political apostasy that any public man was guilty of up to the present day. (Loud uproar in the body of the meeting) He repeated the charge, ‘guilty of the greatest political apostasy’ (a voice, ‘Don’t cry over it’) — a charge which he (Mr Boothby) should be ashamed to bring were he not able to make it good. (Cries of ‘That’s right, Boothby’.) They could not forget the man who, when he first came forward for Westminster, stood forward to the character and profession of a thorough-paced Reformer (‘hear, hear’, and much confusion and hissing). Oh (the ‘Oh’ was so long that it produced bursts of laughter), the right hon gentleman indulged largely on that day in his abuse of the contemptible Whigs, with whom he now shared office. (Roaring, bellowing,

yelling and all manner of derisive [sic] noises) The contemptible Whigs! The contemptible Whigs! The contemptible Whigs! — Mr Boothby repeated, with great emphasis, which again set the ‘howl’ in motion.⁸²

And so on and so forth. At one stage later in this oration, Sir John objected to being charged with ‘shameless impudence’ by Boothby, who thereupon altered his charge to the scarcely less offensive ‘shameless apostasy’.

At this meeting also, Sir John found it impossible to obtain a hearing, and a poll was arranged. The *Times* commented in an editorial on the extreme violence of this campaign: ‘a fury almost unparalleled in English elections’ and ‘not rational, nor just, nor even human’.⁸³ Hobhouse circulated a written response to Boothby’s accusations of substance, such as that he had voted for a larger standing army, while complaining of Boothby’s ‘language too indecent even for electioneering controversies’. Another Benjamin Boothby — the future judge’s father, it seems — wrote to the *Times* asking the editor to state that it was Benjamin Boothby *junior* who was the maker of the speeches on that occasion, and that the writer of the letter did not share his political views, but would rather support Hobhouse.⁸⁴

The election did not proceed as planned for the Radicals, for on the closing of the poll Hobhouse was more than 1000 votes ahead and was duly elected. Eagle, in responding at the declaration of the poll, proposed three cheers ‘for Mr Benjamin Boothby and the other gentlemen who so strenuously and kindly supported him in the contest’; Boothby, for his part, was ‘frequently cheered’⁸⁵ and at the end of Eagle’s speech ‘was very loudly called for’⁸⁶ from the crowd.

A new election in Nottingham was soon required, as Parliament was dissolved in the dying days of 1834 following Lord Melbourne’s dismissal. Hobhouse made another speech to the assembled multitude on the hustings, after which Hobhouse was no doubt appalled to see that

Mr Benjamin Boothby, jun, rose in the body of the meeting, and, standing upon the top of a barrier which had been erected on one side of the room to secure an entrance to the hustings, was proceeding to address the electors, when he was loudly cheered, and the noise for some time prevented him from being heard; when silence was obtained, he was invited to take his place on the hustings. Having succeeded in pushing through the crowd,⁸⁷

⁸² *Times*, 25 July 1834, 5, with the addition of the note about the long ‘Oh’ producing bursts of laughter from *Nottingham and Newark Mercury*, 26 July 1834, 236; similar, *Nottingham Review and General Advertiser for the Midland Counties*, 25 July 1834, 2.

⁸³ *Times*, 25 July 1834, 4.

⁸⁴ *Times*, 26 July 1834, 4.

⁸⁵ *Morning Chronicle*, 28 July 1834, 2; similar *Doncaster, Nottingham and Lincoln Gazette*, 1 August 1834, 4.

⁸⁶ *Nottingham Review and General Advertiser for the Midland Counties*, 25 July 1834, 2.

⁸⁷ *Nottingham Review and General Advertiser for the Midland Counties*, 9 January 1835, 1.

he unburdened himself of another rabble-rousing speech, urging his hearers to ‘put down Toryism’ and providing a list of the evil acts and omissions of the late government such as passing Irish coercion, not abolishing military flogging, not introducing the secret ballot, not shortening the life of Parliament, not extending the franchise and above all failing to reform the poor laws to provide an adequate income for all. However, strife had cooled somewhat by this stage, as the Radicals under Danny O’Connell had reached an agreement with the Whigs, and Boothby’s speech was just moderate enough to reflect that also.

By this time Boothby may well have been thinking of a political career for himself, and it does nothing to weaken that supposition to find that he was elected to the Nottingham Town Council in 1835, following the great reform of local government effected by the *Municipal Corporations Act 1835*, 5 & 6 Will 4.⁸⁸ In the run-up to the election he published a long (two-column) manifesto of his political opinions in which his main point was opposition to a paid magistracy removable at the pleasure of the Crown, which he thought a danger to the liberties of the people, as well as to a professional police force for Nottingham such as had just been set up for London, which he opposed for the same reason.⁸⁹ It was, perhaps, the first sign of his later conservatism, but proceeding still from a radical standpoint: here he argued that the needs of the modern world should not be accommodated, and that the greatest degree of freedom was to be maintained by sticking to the old ways and spurning professionalism. A similar argument was to occur to him in defending the grand jury in South Australia a quarter of a century later. However, in his manifesto he also mentioned the need for complete religious equality, but in mild terms (a sensible move, given that Anglican votes were just as valuable); the need for all council votes and proceedings to be published; and the need for the elected councillors to be ‘the fast and sure friends of Freedom [sic]’.

For his pains, conservatives abused him as the ‘officious self-appointed leader of the Radical faction, advertising himself as the promoter of party strife’;⁹⁰ but despite or because of this character assessment he did very well, coming second in Park Ward with 234 votes. This was just below the top-placed candidate who received 236 votes, and Boothby was one of five elected from that ward.⁹¹ The newspapers of the time make it clear, however, that there was a left-wing ‘ticket’ on which Boothby was placed,⁹² and it is no coincidence that the top four candidates uniformly received upwards of 220 votes each.

⁸⁸ Thomas Bailey, *Annals of Nottinghamshire: History of the County of Nottingham, including the Borough* (Simpkin Marshall, 1855) vol 4, 394.

⁸⁹ *Nottingham Review*, 6 November 1835, 1.

⁹⁰ *Nottingham Journal*, 27 November 1835, 2; also quoted in *Nottingham Review*, 11 December 1835, 3 (recording also that Boothby had survived an objection to his nomination, apparently based on his not being on the rate book).

⁹¹ *Nottingham and Newark Mercury*, 2 January 1836, 4; *Nottingham Journal*, 1 January 1836, 3.

⁹² *Nottingham Review*, 25 December 1835, 3.

Nothing, perhaps, could be more hazardous than an assessment of a dead man's psychology by a non-expert based on a single comment in a newspaper report; but the comment quoted in the last paragraph, not to mention some of the facts already mentioned about Boothby's participation in public meetings and the like, does seem to suggest that others had noticed a propensity in the subject to push his own barrow, even a vainglorious need to be at the centre of attention. This was certainly a characteristic of his judicial career in South Australia also. And the characteristics of officiousness and promoting strife can be identified as applicable to his life in South Australia without hesitation.

The biography of William Howitt, another council member, records the following of Boothby's council service:

Struggling against languorous Whigs as well as stiff-necked Tories required more effort than [William] Howitt wished to give to local politics. Of his one ally, Benjamin Boothby, he wrote to Bakewell, 'Boothby is a good fellow, but he is a good-natured fellow, and melts down'.⁹³

That must be the voice of the hardest of the hard liners: others might be accused of failing to stand up for what they believed in; such an accusation could rarely if ever be levelled at Boothby, either in his English or his South Australian incarnations.

Howitt and Boothby had met as a result of the publication by the former of a work entitled *Popular History of Priestcraft*, 'a standard work for plebeian advocates of church disestablishment';⁹⁴ they became firm friends.⁹⁵ Howitt records Boothby's 'well-founded disbelief in Whig honesty' and adds that he possessed 'the spirit which looked rather at public benefit than private', but was often away from Nottingham on business.⁹⁶ They were co-signatories of the 'Appeal of the Nottingham Dissenters' of 1834 mentioned earlier. Together, Howitt moved and Boothby seconded the election of the Mayor of Nottingham for the year 1836. At the inaugural meeting of the newly reformed council, Boothby also expressed the view that aldermen should be chosen from among elected councillors only, for the possibility of appointing them

⁹³ John Rylands Library, Manchester, Eng MS 353 (109); Carl Ray Woodring, *Victorian Samplers: William and Mary Howitt* (University of Kansas Press, 1952) 51 (emphasis in original). Bakewell was a dissenting minister: unpublished autobiography of William Howitt, State Library of Victoria, MS 545, 456. William Howitt's son went on to fame in Australia, and married one of Boothby J's daughters, whose illness had brought about the friendship in the first place: Walker, above n 79, 10. He has an entry in the *Australian Dictionary of Biography*, above n 2.

⁹⁴ Peter Mandler, *Howitt, William (1792–1879)* (2004) Oxford Dictionary of National Biography <<http://www.oxforddnb.com/view/article/13998>>.

⁹⁵ William Howitt, *Land, Labour and Gold: or, Two Years in Victoria* (Lowden, 1972) 449; unpublished autobiography of William Howitt, State Library of Victoria, MS 545, 404 ('*Unpublished Autobiography*'). The *Unpublished Autobiography* is first mentioned in above n 11.

⁹⁶ Howitt, *Unpublished Autobiography*, above n 95, 405, 493.

from outside the elected members ‘had been introduced by the wily and specious [Lord] Lyndhurst, to perpetuate in corporations the sort of irresponsible power that is enjoyed by the House of Lords’.⁹⁷

The mayor’s name was Thomas Wakefield, and through him Boothby may have learnt of the plans to set up South Australia which came to fruition at the end of that year⁹⁸ — and also that even a history of financial ruin would not prevent a man,⁹⁹ if he worked hard and were lucky, from becoming a respected lawyer. Wakefield had nominated Sir John Hobhouse at the Nottingham election of July 1834,¹⁰⁰ and the fact that Boothby was willing to second his nomination as mayor was a further sign that party divisions were becoming less pronounced on the left.

As Boothby’s business spiralled towards bankruptcy in January 1837, he was appointed a charity trustee for Nottingham borough, no doubt with his councillor’s hat on.¹⁰¹ This appointment appears to have survived his bankruptcy,¹⁰² but under s 52 of the Act of 1835 he lost his seat as a councillor on becoming a bankrupt.¹⁰³ No doubt to the relief of Sir John Hobhouse, Boothby also stayed away from the hustings at the election of July 1837 consequent upon the death of King William IV.¹⁰⁴

After his bankruptcy Boothby disappeared from political life for a couple of years, but by the end of 1839 there is a single reference to him in the *Derby Mercury*¹⁰⁵ which both indicates a change of political allegiance and also is the first known reference to his association with the Whig member for Newark, Solicitor-General, future Lord Chancellor and all-round Boothby patron extraordinaire Sir Thomas

⁹⁷ *Nottingham Journal*, 1 January 1836, 2; 8 January 1836, 4; *Nottingham and Newark Mercury*, 2 January 1836, 5; *Nottingham Review*, 1 January 1836, 3.

⁹⁸ See also Howitt, *Unpublished Autobiography*, above n 95, 479. I have not been able to discover what, if any, connexion existed between Thomas Wakefield and Edward Gibbon Wakefield. Thomas is not mentioned in Philip Temple, *A Sort of Conscience: The Wakefields* (Auckland University Press, 2002). Thus I have expressed the position cautiously in the text.

⁹⁹ The reference is to Daniel Wakefield QC, uncle of Edward Gibbon.

¹⁰⁰ His Christian name is not given in the report in the *Times*, 25 July 1834, 5, but is stated in the *Doncaster, Nottingham and Lincoln Gazette*, 25 July 1834, 3.

¹⁰¹ House of Commons Parliamentary Papers (1837) vol XLIV, 9.

¹⁰² House of Commons Parliamentary Papers (1839) vol XLI, 80.

¹⁰³ Boothby may be found at the Council’s meeting in early December 1836 (*Nottingham Journal*, 9 December 1836, 4; *Nottingham and Newark Mercury*, 10 December 1836, 394), but he is missing at all meetings in 1837 starting with that recorded in, eg, the *Nottingham Journal*, 10 February 1837, 2, 4. Howitt does not mention this in his autobiography, but this must surely be tact rather than ignorance.

¹⁰⁴ *Nottingham Journal*, 28 July 1837, 3. I was not able to consult the *Nottingham Review* for the same date, there being no copy available for use by readers either in the British Library or in the University of Nottingham.

¹⁰⁵ 25 December 1839 (pages not numbered).

Wilde (Lord Truro). The reason for Boothby's change of political views and adhesion to the Whigs he had previously scorned is nowhere to be found; the unkind explanation would be that he saw greater prospects of advancement with them, but perhaps he found that the honourable member for Newark genuinely persuaded him of their superiority, and as we have seen the left was coming together anyway. It may also be that his sense of order was offended by the significant increase in violence and disorder associated with Chartism by the late 1830s (a general strike was attempted, and an armed march on Newport raised fears of rebellion). At any rate, the newspaper records that 'Boothby, a person who came down with Mr Serjeant Wilde, is still here', and that he and others were sitting in the Castle and Falcon with a few voters but many 'young fellows, such as generally cause rows and riots at elections'. Wilde was said to be willing to spend up to £5000 to win the forthcoming elections. There is a later report of Boothby as Wilde's principal election agent,¹⁰⁶ but I have not been able to find any reports of extensive speeches comparable to those quoted from Boothby's Radical period.

The Whigs and Radicals soon discovered more common ground. A chronicler of Nottingham reports that in 1842, a compromise was reached in a disputed election under which John Walter (connected with the *Times* newspaper and an inveterate enemy of Daniel O'Connell)¹⁰⁷ would be elected unopposed to one of the two seats for Nottingham.

It is unnecessary to enter into all the details of this shameless piece of political jobbing and nefarious juggling, further than to say, that the whole scheme ... broke down. When the writ was issued for a new election, on the 30th of July [1842], the town was speedily in a condition bordering almost on phrenzy. Mr Walter was again brought forward by his friends; and in place of the [previous member] Mr Joseph Sturge, a member of the Society of Friends, was announced as the representative of the conjoined powers of the Whiggism and Charterism of the borough. Feargus O'Connor, Dr McDouall, Henry Vincent and Mr B Boothby (now a barrister, formerly an iron founder in the town, and an enthusiastic supporter of the ballot and the principal points in the People's Charter) were continually, along with Mr Sturge, engaged in haranguing the people in public, and at their sectional meetings in the different wards. On the other side [various named persons] were similarly engaged for Mr Walter. The election came off on the 3rd of August, when Mr Walter was returned by a majority of eighty-four over his opponent.¹⁰⁸

¹⁰⁶ *Northern Star and Leeds General Advertiser*, 14 January 1843.

¹⁰⁷ Richard D Fulton, *Walter, John (1776–1847)* (2004) Oxford Dictionary of National Biography <<http://www.oxforddnb.com/view/article/28637>>.

¹⁰⁸ Bailey, above n 88, 426. Boothby remains, however, unmentioned in newspaper reports such as that of the *Doncaster, Nottingham and Lincoln Gazette*, 12 August 1842, 7; *Nottingham Journal*, 5 August 1842, 3. Nor do Sturge's papers in the British Library (Add MSS 43722 ff, 43845 and 50131) contain any letters to or from Boothby. The present author also conducted a search of the papers of other likely correspondents of Boothby without success.

Unhappy with this result, the defeated candidate challenged the election before a committee of the House of Commons which included Benjamin Disraeli. His counsel were John Kinglake, later a Liberal MP, and one Benjamin Boothby, admitted to the Bar in the previous year but one. The latter gentleman examined many of the witnesses, and his efforts were reported at length in the newspapers.¹⁰⁹ Their joint efforts were crowned with success: Walter was unseated and a by-election held which was won by one Thomas Gisborne, a radical Whig.

The two seats for Nottingham were re-contested at the election of 1847, when they were won by John Walter's son as a Conservative candidate and Feargus O'Connor as a Chartist. However, Boothby's involvement in politics appears to have ceased rather abruptly with his involvement in the challenge to the election of 1842 just mentioned; if, as his biographer quoted at the outset of this article maintained, he attained 'great skill in electioneering tactics', he had the good sense to quit while he was ahead, at the summit of his success and powers. He had also moved to London in 1838 and no doubt found much of his time taken up by practising and writing about the law.

V LEGAL PRACTICE

Benjamin Boothby was admitted as a student of Gray's Inn on 21 April 1838, aged 35.¹¹⁰ It is not known how he financed his legal studies, especially after his bankruptcy; it would be pure speculation to refer to the possibility of support by relations, part-time work with friendly barristers or any other of the several obvious possibilities. Boothby's later *Synopsis of Indictable Offences*, however, carried a dedication to Wilde, 'in warm esteem of his private virtues and in grateful acknowledgment of the many advantages obtained through his kindness during the period of probation as a student', so he at least may be ruled in. Boothby's seventh son, born on 9 December 1839, also bore the middle name Wilde.

In March 1838, as we have seen, the Boothbys were compelled by bankruptcy to leave their home in Nottingham; both moved to Holloway (a suburb of London). Census records from 1851 show that, of the younger Benjamin's 12 children then resident in his house,¹¹¹ those born up to 1838 were born in Nottingham, whereas those born afterwards were born in Holloway in the borough of Islington.¹¹² When Boothby's admission was recorded in Gray's Inn in April 1838, his father's address was listed as Holloway,¹¹³ just as it was in 1851.

¹⁰⁹ House of Commons Parliamentary Papers (1843) vol VI, 223; *Times* (and other newspapers), 16–22 March 1843.

¹¹⁰ Joseph Foster (ed), *Register of Admissions to Gray's Inn, 1521–1889, together with the Register of Marriages in Gray's Inn Chapel, 1695–1754* (Hansard, 1889) 457.

¹¹¹ One of his daughters at least married before the rest of the family left for Australia: *Morning Post*, 28 June 1850, 8.

¹¹² Ancestry.com, above n 13 (search of database).

¹¹³ As it is also in the *Morning Post*, 15 August 1840, 1.

Three sources, none of which is entitled to a great deal of credit, suggest that Boothby might have been a special pleader in the office of Thomas Denman (later Lord Denman LCJ) before his admission,¹¹⁴ but in the absence of more reliable information it would be hazardous so to conclude without qualification — all the more so given that Lord Denman became Chief Justice of the King's Bench in 1834, when Boothby was still practising ironmongery rather than the law. Perhaps, though, Lord Denman's former chambers were meant. Boothby's name does not appear in the list of special pleaders in *Clarke's New Law List* in the late 1830s, but when Boothby's name starts to appear in that publication as a barrister from 1842,¹¹⁵ it is adorned with the abbreviation 'sp pl north cir'. It was certainly quite common for would-be barristers to serve an apprenticeship as special pleaders, and if we may conclude from that abbreviation that Boothby too did this, no matter in whose chambers or even on which circuit he was placed, it would go a long way towards explaining the attitude he later took to the need for exact compliance with the forms of procedure.

Boothby left no record of his reasons for turning to the law, but some may be deduced from the history of his life to this point: an interest in politics and membership of a local authority lead naturally to learning about the law; he had made the acquaintance of some lawyer-politicians such as Wilde and Mr Eagle, the barrister candidate for Nottingham; and his bankruptcy will have brought him into contact with assorted legal professionals. Perhaps he was also intellectually attracted by the rigour and pedantry of the law, and by the high social status of the barrister.

After his call to the Bar on 28 April 1841¹¹⁶ it may be said with virtual certainty that Boothby must have relied on his patrons and contacts, above all Thomas Wilde, in order to build up his practice. He may be found for the first time in the *English Reports* in a case in late 1841 entitled *Sheppard v Shoolbred*,¹¹⁷ heard before Lord Abinger CB. The case was brought in trover and involved an accusation against the defendants that they had bought goods realising that they must have been obtained by fraud, but the plaintiffs could not provide any proof of such knowledge and accordingly lost. Boothby did not, of course, have a speaking part. He was the most junior of three counsel appearing for the victorious defendants. It was something of a star-studded cast: he was led by (Sir) Frederick Thesiger and (Sir) William Erle (a future Lord Chancellor and Chief Justice of the Common Pleas respectively), and the plaintiffs were represented by Sir Fredrick Pollock, the Attorney-General, and (Sir)

¹¹⁴ *Register*, 24 May 1853, 3 (letter by JB Mather, on whom see above n 9; mentions Lord Denman, but not special pleader); *Adelaide Times*, 30 August 1853, 2 (mentions special pleader, but not relationship with Lord Denman); 'Judges of South Australia' (1910) 24 *Honorary Magistrate* 305, 305 (mentions both).

¹¹⁵ It is as well to add that there is no other barrister listed in this period also called Boothby.

¹¹⁶ (1841) 6 *Legal Guide* 54; *Derby Mercury*, 5 May 1841, 2, which adds that Boothby's father had now died. His brother Captain William Boothby died at his home in Upper Holloway on 31 August 1851; he was 47 and had spent 25 years associated with Calcutta: *Hampshire Advertiser and Salisbury Guardian*, 6 September 1851, 8.

¹¹⁷ (1841) Car & M 61; 174 ER 409.

Fitzroy Kelly, two future Lord Chief Barons, alongside one S. Martin. It is a surprise in particular to see Boothby alongside Thesiger KC, who had opposed Boothby's patron, Wilde, as the Conservative candidate in the Newark election of 1840; perhaps Wilde had alerted Thesiger to the talented young (or perhaps rather, newly admitted) barrister and suggested that party feeling should not stand in the way of exploiting his skills. Boothby did, of course, also appear from time to time with Wilde¹¹⁸ until the latter's appointment as Chief Justice of the Common Pleas in July 1846.

Boothby's next major case was something of a minor sensation. He again found himself junioring Erle KC in a criminal action before Lord Denman LCJ, Patteson and Wightman JJ against the justices of Staffordshire for failing to admit certain Chartists to bail. The case was very extensively reported.¹¹⁹ The information was brought because, after an arrest for seditious language, the magistrates had rejected, as sureties for bail, two gentlemen of means solely because they had attended Chartist meetings. Although politically he was no longer in league with the Chartists, it would be hard to imagine a case which could appeal more strongly to the political instincts of Boothby, and Lord Denman LCJ (who had been a Whig MP before his elevation) was hardly an unsympathetic judge either. The case was all but a complete victory for the right of personal liberty, with the Lord Chief Justice expressing the pointed view that 'the assumption of powers not given by the law appears to us peculiarly ill judged at a period of political disturbance, and not to be palliated, but rather rendered so much the more culpable if deliberately done by high functionaries'¹²⁰ and awarding costs against the magistrates; but his Lordship concluded that they were acting bona fide, however negligently, and a criminal information should not be brought. Nevertheless, the magistrates could not have read the judgment with pleasure. In argument, Boothby had actually had a speaking part: a Dublin newspaper¹²¹ — for the case was widely reported in the daily press as well as the law reports — records him as submitting that 'he considered it a matter of evil omen to see the law officers of the Crown engaged as they were on the present occasion in defending the illegal and oppressive conduct of the magistrates'.

Boothby's cases were not all triumphs, of course. A few months after the major constitutional case just mentioned he found himself representing a small-time artist in Court who was suing for the price of two portraits of the defendant's daughter and a Spanish man, who wanted to take the likeness of the young lady with him to Mexico — for what purpose may be guessed at, but is not stated. The successful defence was that the portraits were not accurate, and that the purpose for which they were made, whatever it was, had thus not been accomplished. Boothby suffered the indignity of seeing his case laughed out of Court.

¹¹⁸ See, eg, *Morning Post*, 26 February 1844, 2 — a case which caused some comment in the conservative press, as the plaintiff's failure to seek a *tales* was reckoned by them a victory. Perhaps this experience was behind Boothby's sponsorship of what became Act No 8 of 1854 (SA): *Register*, 1 November 1854, 3.

¹¹⁹ *R v Badger* (1843) 4 QB 468; 7 *Jurist* 216; 25 *Legal Observer* 413.

¹²⁰ *R v Badger* (1843) 4 QB 468, 474.

¹²¹ *Freeman's Journal and Daily Commercial Advertiser*, 30 January 1843.

Mr Jones [counsel for the defendant] — You say that you [the daughter] are fourteen years of age, but this [picture] is more like a woman of four score.

Witness — He was to have painted me in a puce gown, but he has made it a vulgar flaming red.

Mr Boothby — Did he not ask you which of the colours on his palette you would like?

Mr Jones — He could have had no *palate*, he has shown so little taste. (Laughter)

The witness then took off her bonnet and produced the portrait, that the jury might see what sort of a likeness it was.

Mr Jones — Now, ‘look here upon this picture, and on this’ [*Hamlet*, Act III scene 4]. (Roars of laughter).¹²²

On another occasion, applying for an order for costs to be rescinded, he was informed rather abruptly from the commanding heights of the Bench that

[w]hat you are now asking is to vary the judgment of the Court after the appeal has been determined. You might as well go to the House of Lords, and say to their Lordships, after they had given judgment in the case with costs, that they had no right to do so. There is no ground whatever for the application.¹²³

Boothby developed a parliamentary practice appearing for the promoters of private Bills such as railway Bills;¹²⁴ once he even appeared in Parliament against a Bill and opposite Wilde.¹²⁵ Boothby developed in addition a flourishing criminal practice, particularly as a prosecutor,¹²⁶ and appeared regularly at the York Assizes,¹²⁷ but also in the Old Bailey,¹²⁸ mostly as a prosecutor, often led but sometimes alone. However, he remained active in the civil law as well until his departure for Australia.¹²⁹

How extensive Boothby’s general practice was and how prosperous it made him cannot now be discovered — certainly not so prosperous that he was freed of money worries for the rest of his life! While it is true that ‘his career at the Bar had no special

¹²² *Morning Post*, 12 March 1843, 7 (emphasis in original).

¹²³ *Gale v Chubb* (1847) 33 *Legal Observer* 355, 356.

¹²⁴ *Nation*, 7 June 1845, 7.

¹²⁵ *Borrow’s Worcester Journal*, 14 May 1846, 3.

¹²⁶ But not always: *Times*, 13 March 1852, 3.

¹²⁷ Reported cases are *R v Marcus* (1846) 2 Car & K 356; 175 ER 147; *R v Stokes* (1848) 2 Car & K 536; 175 ER 222; 3 Car & K 185; 175 ER 514; 1 Den 307; 169 ER 259.

¹²⁸ *R v White* (Unreported, Old Bailey Proceedings Online, 2 February 1852, Reference No t18520202-254) <<http://www.oldbaileyonline.org/browse.jsp?ref=t18520202-254>>.

¹²⁹ *Webster v Kirk* (1852) 17 QB 944.

marks of distinction', as the *Australian Dictionary of Biography* claims, it was much shorter than usual given his late start: at the time when others were looking towards an imminent appointment to the Bench, Boothby was just out of his apprenticeship. By way of comparison: his patron, Wilde, had become an attorney (a solicitor in today's terms) in his early twenties, and by his late thirties, the time of life at which Boothby was only just beginning as a barrister, was engaged in defending Queen Caroline. Perhaps the thought that there was insufficient time for a judicial post at home played a role in Boothby's decision to apply for a colonial judgeship.¹³⁰ It must also be said, in fairness, that the Staffordshire justices case was an exception to the general lack of importance of most of his cases (except to the parties).

In the census of 1851 already mentioned, Boothby is recorded as living at 23 Park Road, Upper Holloway (now Parkhurst Road, N7; the famous prison just down the road, HMP Holloway, was opened in 1852, just before Boothby left London forever). His household included his wife and 12 of his children, assisted by a servant, cook and maid; two nieces aged 18 and 11; and a visiting law student from Yorkshire aged 23 — a household of 20 in all. Boothby needed a large house for such a brood, which may explain why he lived so far out and in a suburb which was 'not favoured by the well-to-do, and ... occupied by a mixed population of labourers, railwaymen, artisans, shopkeepers and clerks'¹³¹ alongside one ambitious barrister. His eldest son — William Robinson Boothby (1829–1903), later Sheriff and Returning Officer for South Australia and the man after whom the federal electorate is named — graduated BA from the University of London in 1850 and began to share his father's passion for politics, becoming secretary at an election in Yorkshire in the early 1850s before moving with his father to South Australia.¹³²

VI REVISING BARRISTER, RECORDER AND PUBLISHED AUTHOR

Despite his lack of any outstanding achievements or major triumphs in his short time in practice, Boothby had kept his nose clean, cultivated his contacts and performed competently enough across various fields of practice. He was therefore in line for any number of minor posts. He obtained two: Revising Barrister for Yorkshire and Recorder of Pontefract, a small town also in Yorkshire.

Appointments as Revising Barrister were made under s 28 of the *Parliamentary Voters Registration Act 1843*, 6 & 7 Vict, which conferred the making of the appointment annually on the summer assize judge in each county. The function of the Revising

¹³⁰ On the other hand, it was not unheard of for lawyers to be appointed County Court Judges after about 15 years' practice: see, for an example, the obituary of CJ Gale, (1876) 61 *Law Times* 277. However, we shall see why Boothby would not have considered an appointment to that Court.

¹³¹ Stephen Inwood, *A History of London* (Carroll & Graf, 1998) 582; and see the map of London in 1862 published at <http://www.mappalondon.com/london/north-west/islington.jpg>; directions to the road are also to be found in Henry Large, *Large's Way About London* (1867) 342.

¹³² *Register*, 14 July 1903, 6.

Barrister was to audit the electoral rolls by means of quasi-judicial proceedings; objections and claims were to be made before him in open Court. The summer assize judge for 1845, the year of Boothby's first appointment, was Mr Baron Rolfe, and his appointment of Boothby was announced in late August 1845. Boothby was appointed with two colleagues, William Blanshard and John William Harden, for the West Riding and Ripon.¹³³ Having regard to his involvement in politics, Boothby's appointment, at least, could scarcely be said to be that of a political neuter. Rolfe B, however, was not one such either. He had stood as a Whig in the elections of 1831 and 1832, and retained the seat he won in the latter year until his appointment to the Bench in 1839. In 1843 he had been the trial judge at the trial of Feargus O'Connor for sedition: the accused was so impressed by the fairness of the judge that he dedicated his published account of the trial to him.¹³⁴ Rolfe B, as it happens, was to become Lord Cranworth LC, and was Lord Chancellor at the time of Boothby's appointment to the South Australian Bench also, but that appointment was a Colonial Office one rather than the Lord Chancellor's.

The three Revising Barristers held their Court for the first time in Boothby's birthplace, Doncaster, in September 1845. 'In consequence of its being the races', the newspaper informs us, 'the parties required to attend were much annoyed at the arrangement, and expressed their disapprobation on all sides'.¹³⁵ Thus Boothby's judicial career, in this humble part-timer's Court in a provincial town, began as it was to end in the capital city of a vigorous young colony: by causing inconvenience and annoyance to the public.

The Revising Barristers appeared at several places in Yorkshire, sometimes sitting separately in parallel Courts in order to get through the business faster. Boothby was reappointed in 1846 and subsequent years up to and including 1852, his last full year in England — by other judges than Rolfe B — but Harden's place was taken by one Leofric Temple from 1846. Their circuit of parts of Yorkshire took two or three weeks per year.¹³⁶

This very minor quasi-judicial role was rendered even less taxing — and even less of a test for suitability for higher judicial office — by the numerous occasions on which the business was formal only or did not raise any significant points of interest.¹³⁷ Despite Boothby's political background, his decisions appear quite even-handed,

¹³³ *Times*, 4 September 1845, 5.

¹³⁴ Rolfe B's entry in the *Oxford Dictionary of National Biography*, above n 94.

¹³⁵ *Sheffield and Rotherham Independent*, 20 September 1845, 8.

¹³⁶ *Bradford Observer*, 25 September 1845, 1; 2 October 1845; *Lancaster Gazette*, 29 August 1846, 3; *Sheffield and Rotherham Independent*, 12 September 1846, 1; *Leeds Mercury*, 26 September 1846; *Blackburn Standard*, 18 August 1847, 3; *Leeds Mercury*, 4 September 1847, 1; *Daily News*, 18 September 1847, 3; *Bradford Observer*, 31 August 1848, 4; 13 September 1849, 1; 5 September 1850, 1; *Huddersfield Chronicle and West Yorkshire Advertiser*, 6 September 1851, 2; *Bradford Observer*, 9 September 1852, 1.

¹³⁷ *Daily News*, 28 September 1846, 3; *Sheffield and Rotherham Independent*, 18 September 1847, 8; *York Herald and General Advertiser*, 2 October 1847, 2; *Sheffield and Rotherham Independent*, 21 September 1850, 2.

with rarely more than small gains for one party or the other, and one party's gains in one year or one place cancelled out by the other's gains at other times or places.¹³⁸ Only rarely did complicated questions of fact or law have to be decided. An appeal lay from the decisions of revising barristers to the Common Pleas;¹³⁹ appeals were brought every year against a few such decisions, and this provision was not a dead letter; but no record of any such decision on appeal from Boothby could be found.¹⁴⁰

On one occasion, Boothby showed traces of the sort of attitude he would later take to judicial decisions that displeased him, denigrating a decision of the Common Pleas (Tindal CJ — a Tory — and Coltman, Maule and Erle JJ). Their decision in *Alexander v Newman*¹⁴¹ allowed men to manufacture their eligibility for the franchise (which then could be had only by the propertied) by buying land and dividing it among numerous persons with the sole aim of qualifying each of them for the franchise — a tactic pioneered by the Anti-Corn-Law League. This was known as the 'faggot vote'.¹⁴² Boothby dismissed an objection to a 'faggot vote' as he was bound to do after *Alexander* with the disrespectful remark that 'after the decision of last year, any objection of this kind would not avail; they might meet now and manufacture a dozen votes, for the decision of the Common Pleas went to that length'.¹⁴³ But the Corn Laws were repealed in mid-1846 and agitation on that front subsided in intensity.

Boothby's appointment as Recorder of Pontefract added only marginally to his official duties. The vacancy arose because the previous Recorder, one Hepworth Hill, died after a very short illness on 4 January 1849;¹⁴⁴ little more than a week later, the *London Morning Post*¹⁴⁵ announced the appointment of Mr Recorder Boothby, 'who is a protégé of Sir Thomas Wilde, Lord Chief Justice of the Common Pleas'. It was well for Boothby that he had acted quickly, for the local council had met on 6 January and recommended to the central government the appointment of one (Sir) James Taylor Ingham.¹⁴⁶ Ingham's later career amply justified the council's confidence in

¹³⁸ *Sheffield and Rotherham Independent*, 18 September 1847, 8; *Huddersfield Chronicle and West Yorkshire Advertiser*, 20 September 1851, 8; 9 October 1852, 5, 8.

¹³⁹ *Parliamentary Voters Registration Act 1843*, 6 & 7 Vict, s 60.

¹⁴⁰ There is none in the English Reports nor in CP 47/47 (Public Record Office, London). The appeal in *Alexander v Newman* (1846) 2 CB 122; 135 ER 889 ('*Alexander*') itself was from Yorkshire, but given that the appeal from the revising barrister was dismissed it cannot have been Boothby's decision.

¹⁴¹ *Alexander* (1846) 2 CB 122; 135 ER 889 (other related cases were decided at the same time).

¹⁴² Derek Beales, 'Victorian Politics Observed' (1978) 21 *Historical Journal* 697, 704 ff; John Prest, *Politics in the Age of Cobden* (MacMillan, 1977), 77–102; G R Searle, *Entrepreneurial Politics in Mid-Victorian Britain* (Oxford University Press, 1993), 21.

¹⁴³ *Bradford and Wakefield Observer*, 8 October 1846, 6; cf *Leeds Mercury*, 16 October 1852, 5.

¹⁴⁴ *York Herald and General Advertiser*, 6 January 1849, 5.

¹⁴⁵ 13 January 1849, 5. Same: *Wakefield Journal*, 12 January 1849, 2.

¹⁴⁶ HO 45/2751 (Public Record Office, London).

him, but Boothby beat them to the post. Written records do not show how Boothby procured his appointment in such a short time: presumably he relied on contacts of some sort, largely Wilde CJ.

Boothby entered on to the duties of his new office within the space of another week, and his first trials showed that it was certainly not the pressure of business which had prompted the demise of his predecessor. His first case involved a girl charged with stealing two towels and two napkins, whom Mr Recorder Boothby imprisoned until the rising of the Court. The second involved a pickpocket who was imprisoned for four months.¹⁴⁷ With these two cases, his Honour's first session as Recorder closed. His Honour sat, of course, with both grand and petty juries. As he had pointed out in his book on criminal law in 1842, to be mentioned shortly, there was a long list of the more serious offences that Recorders could not try, from treason and murder — all capital offences, in fact — down to forgery, bribery and various forms of aggravated theft.

His Honour's trials were not always reported in the newspapers — Pontefract did not have its own journal until 1857 — but in July 1850 it was an occasion for comment when there was an unusually large number of defendants at one sitting: three, against whom a total of five indictments were brought by the grand jury. As before, all were for the type of petty theft which nowadays would be dealt with by magistrates. Four of the five charges were found proved by the petty jury, and all three defendants received sentences between one and four months.¹⁴⁸ By April 1851 there was only one case again: mistreating an ass,¹⁴⁹ an act which for some reason engaged the law's special attention — perhaps because of something which Charles Dickens had just pointed out about the law in *Oliver Twist*. In January 1852, there were four cases of petty theft or dishonesty again, the longest sentence being 12 months on account of prior convictions.¹⁵⁰ On another occasion, however, his Honour sentenced an 'impudent incorrigible thief'¹⁵¹ to 10 years' transportation, presumably to Western Australia, for stealing 40 yards of cloth from a draper — that appears to have been his harshest sentence. (When his Honour had himself wanted to make off with other people's money, on the other hand, he chose the legal path of bankruptcy, and his transportation to Australia was therefore of the voluntary description.)

Although Mr Recorder Boothby's term of office still had over a year to go after the comparatively busy sessions of January 1852, those four cases of petty theft were to be his last, for the next report we have is from October 1852, when it is stated that there had been no further cases of felony in Pontefract since January and there had therefore been no business for the Recorder's Court since then. The Recorder's

¹⁴⁷ *York Herald and General Advertiser*, 20 January 1849, 6.

¹⁴⁸ *Leeds Mercury*, 6 July 1850, 10.

¹⁴⁹ *Leeds Mercury*, 5 April 1851, 10; *Wakefield and West Riding Examiner*, 5 April 1851, 5.

¹⁵⁰ *Leeds Mercury*, 17 January 1852, 10.

¹⁵¹ *Leeds Mercury*, 14 July 1849, 10 — the newspaper's own description, but it may have been taken from his Honour.

only duty had been congratulating the grand jury on the lack of crime in the town!¹⁵² In January 1853, at Mr Recorder Boothby's last session, there was again no case for trial, and elaborate speeches were given by him and the mayor in commemoration of the gratifying fact that a whole year had passed in Pontefract without the commission of a single felony. Boothby received a pair of white kid gloves as a memento.¹⁵³ The *Adelaide Times*¹⁵⁴ was moved to say of Boothby J on his appointment that he had had 'some judicial experience': perhaps its readers, most of whom will have known what a small place Pontefract was, were meant to understand that the emphasis was decidedly on the first of those words. Nevertheless it was not always the case that those appointed to the colonial Bench had any such experience at all, so perhaps even this smidgin was meant to be seen as better than nothing.

Needless to say, Pontefract collapsed into disorder after Mr Recorder Boothby's departure, and his successor (one Percival Pickering, the father of Evelyn De Morgan, the noted painter) found himself trying no fewer than five accused at his maiden sessions in April 1853.¹⁵⁵

The last of Boothby's major legal achievements in England to be mentioned is his authorship of two legal works: a practitioner's manual and a pamphlet. The former was produced in 1842 — the preface is dated 21 February 1842, less than 10 months after his call — and the latter in 1844. Like many newly admitted and occasionally underemployed barristers in this period, he used the time between briefs to write in the hope of making a contribution to the law, a bit of money and a name for himself through publication.

The full title of the book gives a guide to its contents: *A Synopsis of the Law relating to Indictable Offences: in which the Crimes in Alphabetical Order; the Respective Punishments; the Necessary Evidence; together with Observations; embracing a condensed Digest of Cases, are Tabularly Arranged; and Comprising also, References to Precedents of Indictments for Each Offence, and the Text Writers on Criminal Pleading and Evidence*. Originally published in 1842,¹⁵⁶ it ran to a second edition in 1854, which, as Boothby was beyond the seas, was issued (no doubt with his permission) by his old colleague as Revising Barrister, Leofric Temple. The first edition was, as already mentioned, dedicated to Sir Thomas Wilde.

The book was emphatically a practitioner's manual, and the present writer cannot claim to have read every word. It was not a work of scholarship but of compilation and digesting, but Boothby did not claim for himself any greater merit: in his preface,

¹⁵² *Daily News*, 30 October 1852, 5.

¹⁵³ *Newcastle Courant*, 21 January 1853, 3.

¹⁵⁴ 30 August 1853, 2.

¹⁵⁵ *Leeds Mercury*, 9 April 1853, 10.

¹⁵⁶ (Saunders and Benning). The author had access to the copy held in the University of Adelaide's Law Library, which, from an inscription in the front, once belonged to Hanson CJ, of all people. With the addition of a table of cases and statutes, the first edition is very like the second of 1854, which is available on the *Making of Modern Law: Legal Treatises 1800–1926* database.

he wrote that he had ‘no other pretension than as collecting from the Statute Book, the text writers and the decided cases, the law, as it relates to indictable offences’ and claimed to have invested ‘most laborious care, to secure entire accuracy, as the most important object to be regarded’. Certainly a look at the book confirms the assertion about the labour invested in it: countless cases are cited; but whether it represented the law of 170 years ago with unerring accuracy cannot now be determined without disproportionate effort.

The book was well reviewed at the time;¹⁵⁷ there are even records of the sale of the first edition of the book in 1848 in Sydney, when it was six years old,¹⁵⁸ and the reading of a long extract from the book as late as 1859 before the justices in Birmingham.¹⁵⁹ The 1854 edition is in a catalogue of the Library of the Supreme Court of Victoria published only in the following year and in various other catalogues. The publication of a second edition also testifies generally to some demand for the work and to its utility. The reviewers were kind as well. In the *New Zealand Journal*¹⁶⁰ an anonymous reviewer opined, rather strikingly in view of Boothby’s later colonial career, that he had written a book which was ‘especially adapted to colonial practice’, ‘merits a place in every professional library’ and was useful also to law students. This last characteristic may not be a coincidence, as it may, in whole or large part, be the fruit of Boothby’s student notes. It is hard to imagine that he researched and wrote all of it in the 10 months after his call, having regard to the amount of detail and the other tasks confronting the newly admitted barrister.

The following review, from no lesser journal than the *Spectator*, may be quoted both as representative and because it provides an accurate description of the book.

An ingenious and useful synopsis of the criminal law — quite a *multum in parvo*, and containing more of the *multum* than is usually the case. The arrangement is alphabetical; each offence, from Abduction to High Treason, being [ar]ranged dictionary-wise; whilst by a four-fold columnar division, the reader sees at once the offence and by what authority created, the punishment, the evidence necessary to insure conviction and the author’s observations. Foot-notes contain fuller remarks, where requisite, than the columnar arrangement would conveniently admit; and there is a copious reference to cases for the student or practitioner to study or refer to. Copious indexes of contents, cases and statutes, with some general information, complete this useful though not bulky volume.¹⁶¹

It was this arrangement, rather than the information arranged, which was the novel feature of the book.

¹⁵⁷ Reviews located, apart from those quoted in the text, were: (1842) 6 *Justice of the Peace* 147; (1842) 6(2) *Jurist* 168; (1842) 24 *Legal Observer* 258.

¹⁵⁸ *Sydney Morning Herald*, 6 May 1848, 1.

¹⁵⁹ *Birmingham Daily Post*, 25 January 1859.

¹⁶⁰ 2 April 1842, 80. It is tempting to imagine that the reviewer was (Sir) Richard Hanson, but that would be mere speculation. See also, above n 156.

¹⁶¹ (1842) 15 *Spectator* 449.

Two years after the completion of the book, Boothby moved from mere compilation to critical commentary with his 37-page pamphlet *Local Courts Not the Remedy for the Defects of the Law* of 1844. The general thrust of this pamphlet was an attack on the proposal to establish County Courts; how far this attack succeeded appears adequately from the enactment of the *County Courts Act 1846*, 9 & 10 Vict.¹⁶²

Nevertheless Boothby's entry in the Colonial Office List for 1867¹⁶³ claimed that some of the suggestions he made in the pamphlet were adopted by Imperial legislation in 1853. They were, clearly, not the central suggestion. A perusal of the statute book for 1853 does not reveal anything that would obviously qualify as an implementation of Boothby's proposals, but s 2 of the *Common Law Procedure Act 1854*, 17 & 18 Vict, does give effect to his proposal for allowing judges of the same Court to sit not *in banco* at *nisi prius* but alone in sessions parallel to and concurrent with those of the other judges. However, this was such an obvious reform that it would be a stretch indeed to ascribe it to Boothby's pamphlet of 10 years before. Furthermore, Boothby's suggested reform — while made with the same intention as the statute, namely to mitigate 'the crying mischief of delay'¹⁶⁴ of the law — was materially different, for he suggested not single judges sitting alone but two parallel courts of three judges each, which were to be made possible by the appointment of additional judges. Only as an ancillary measure did he suggest single-judge courts, with one judge dealing with routine business.

In 1855 Boothby's pamphlet was extensively discussed by an anonymous reviewer, who believed it to have been written by 'Sir Benjamin Boothby, now Chief Judge of the Supreme Court at Adelaide'.¹⁶⁵ (It is amusing to contemplate the reaction of the Colonial Office of the 1860s, fed up to the back teeth with Boothby J, to the suggestion of conferring a Knighthood upon him.) The writer did not suggest that any of 'Sir' Benjamin Boothby's proposals, some of which he reviewed favourably, had actually been adopted two years earlier. Aside from that, Boothby's pamphlet was noticed by only a few reviewers, all of whom also reviewed it well — although one mentioned it in the same breath and in the same favourable tones as a proposal to abolish grand juries, something that would hardly have pleased Boothby J!¹⁶⁶

Boothby's pamphlet was not hostile to reform, as he suggested a total of 10 changes. And it shows that his hostility to modern legislation extended not only to colonial legislation, for there is some trenchant criticism of recent English legislation in his pamphlet also. There are also some further strong indications of the various stances, and above all of the cast of mind he was to exhibit in South Australia.

¹⁶² Short title conferred by the *County Courts Act 1867*, 30 & 31 Vict 34, sch D.

¹⁶³ See above n 7.

¹⁶⁴ Boothby, *Local Courts*, above n 3, 13.

¹⁶⁵ (1855) 23 *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 288, 317.

¹⁶⁶ (1844) 31 *Law Magazine and Review: A Quarterly Review of Jurisprudence* 241 (with grand juries); (1844) 27 *Legal Observer or Journal of Jurisprudence* 390; 466.

His hostility to the proposed County Courts in 1844 is amplified by a discussion of the defects of the existing Courts of Requests, and all this certainly found an echo in his decision 21 years later in *Dawes v Quarrel*¹⁶⁷ holding that the Local Courts of South Australia did not exist. His objections in 1844 were manifold: the ‘monstrous innovation of an abolition of jury trial’¹⁶⁸ (the County Courts established in 1846 largely did away with juries), the inferior standing of the judges and above all the lack of uniformity of the law which they produced.

Uniformity was, for Boothby, almost the sole desideratum of the law. In Boothby’s view — and this sort of black-and-white, absolutist thinking is strongly redolent of the stances he would take in South Australia — there was something which, ‘in the jurisprudence of any country, is beyond all price — UNIFORMITY’. For him, ‘centralisation is so obviously a requisite to secure the first object of law, uniformity’.¹⁶⁹ This is certainly an odd view. For many people, the first, most obvious object of the law might be the achievement of justice, or perhaps economic efficiency, but it is hard to think of uniformity as good for its own sake. The most terrible laws are not made good just because they are uniform. And the blessings of centralisation, too, are very mixed: the lack of local Courts was one of the reasons why justice was so often denied to poorer people before the rigours of centralisation were relaxed by measures culminating in the creation of the County Courts in 1846.¹⁷⁰

Clearly the idea that experimentation might be a good thing even if it detracted from uniformity had not occurred to Boothby; and uniformity with English law was to be one of his chief hobbyhorses in Adelaide.

In another part of his pamphlet Boothby astonishingly refers to ‘[o]ur system of pleading, so justly esteemed the perfection of human science, as a device for bringing to determination issues of fact or in law’.¹⁷¹ This suggests far too high an estimate of the merits of the law, one which would have been shared by only the most conservative lawyers in this era of legal reform. It is no doubt significant that Boothby had no equity practice! And there are strong signs of ancestor worship in the pamphlet also, with Boothby referring to what he calls on one occasion the ‘wise beginners of our law’¹⁷² several times: reform he holds to be necessary in some areas, but it is required, he thinks, in order to restore the principles of the ancestors and to adapt the wisdom of the golden age of the past to the realities of the present.

VII CONCLUSION: FAREWELL TO OLD ENGLAND FOREVER

The news of the death of Mr Justice Crawford in September 1852 reached the Colonial Office, which was responsible for selecting a replacement, on 12 January

¹⁶⁷ (1865) 0 SALR 1.

¹⁶⁸ Boothby, *Local Courts*, above n 3, 6.

¹⁶⁹ *Ibid* 8 (capitalisation in original).

¹⁷⁰ Sir William Searle Holdsworth, *A History of English Law* (Methuen, 1982) vol 1, 188.

¹⁷¹ Boothby, *Local Courts*, above n 3, 26.

¹⁷² *Ibid* 9.

1853. It was also published in some newspapers on the following day, Thursday 13th.¹⁷³ In his despatch to the Imperial officials notifying them of the vacancy on the Bench, the Governor of South Australia, Sir H E F Young, wrote that there had been no need for him to appoint a temporary replacement urgently pending the expression of London's wishes, as the amount of business in the Supreme Court of South Australia had declined owing to the loss of population to the gold fields in Victoria; he abstained from commenting on the applications of the several local lawyers who had put forward their names. The Colonial Office therefore concluded that he was requesting, or at least consenting to the appointment of an English barrister to the vacant post. On 2 March 1853, then, only seven weeks after it first learnt of the vacancy, the Colonial Office was able to write to the Governor and inform him that The Queen had been pleased to appoint Mr Benjamin Boothby to the vacant post. Informing the Governor of this appointment, the Colonial Secretary, the fifth Duke of Newcastle, wrote that Boothby J 'has been recommended to me as well qualified for the appointment'.¹⁷⁴

When the Colonial Office began looking for candidates to replace Crawford J, Boothby was presumably in or around Pontefract for his last and trial-less session as a Recorder, a report of which appeared in the newspapers on Friday 21 January 1853.¹⁷⁵ There is no written record of how long he had been thinking of a colonial appointment or how he found out about the vacant spot in South Australia.

In December 1852, fortunately for Boothby, Lord Derby's Conservative government had fallen, and a Whig–Peelite coalition under Lord Aberdeen was formed. (The Peelites were Tories who had broken away over the repeal of the Corn Laws.) Lord Truro (Sir Thomas Wilde) had ceased to be politically active, although may have put in a good word behind the scenes with the Peelite fifth Duke of Newcastle, who as the new Colonial Secretary appointed Boothby J. If the new Lord Chancellor, Lord Cranworth LC, was consulted about likely candidates, it is quite possible that he will have remembered Boothby as his appointment to the post of Revising Barrister in 1845 when he was Rolfe B. Boothby's principal champion, however, appears to have been Sir Charles Wood from the Whig party.

In 1852, as the fall of Lord Derby's Conservative government approached, Sir Charles Wood, Bart, had been urging his fellow Whigs 'to court the Peelites, especially Graham and Newcastle, for without them a Liberal government would not be able to gain the support of the Irish members who constituted, Wood believed, the rank and file of the Newcastle party'.¹⁷⁶ Sir Charles Wood (later Viscount Halifax) had been born at Pontefract, Mr Recorder Boothby's bailiwick, and his father resided near Doncaster, Boothby's birthplace, but at this point Sir Charles was member of Parliament for Halifax. He was also connected to the (Earl) Greys by marriage with a daughter of the second Earl. His nearest approach to legal qualifications was that his

¹⁷³ *Morning Chronicle*, 13 January 1853, 3.

¹⁷⁴ CO 13/78/135 (AJCP 786).

¹⁷⁵ See *Newcastle Courant*, above n 153.

¹⁷⁶ Munsell, above n 39, 135.

maternal grandfather had been Recorder of Leeds. In Lord Aberdeen's government which took office in late 1852, Sir Charles was President of the Board of Control, that is, responsible for India.¹⁷⁷

On 17 February 1853, just over a month after the vacancy in Adelaide had become known in England, Wood wrote to the Duke of Newcastle, newly appointed Colonial Secretary, to ask him to have the 'kindness to put him [Boothby] out of his anxiety one way or the other' about the appointment in Adelaide — for Boothby had written to him (Wood) stating that he (Boothby) had heard nothing yet — and added that he (Wood) had previously 'ventured to recommend' Boothby to his Grace 'for some judicial appointment in Australia'.¹⁷⁸ Wood, therefore — rather than any legally qualified or knowledgeable person — was the source of the recommendation referred to by the Duke of Newcastle in his letter to the Governor of South Australia advising him of Boothby J's appointment. Besides this recommendation, his Grace 'probably ... knew very little about him';¹⁷⁹ had that not been so, the recommendation and the letter of 17 February would hardly have been required.

How far exactly Boothby's string-pulling for the job extended can never be known. Possibly there was another recommendation from a lawyer or judge who knew his professional character, or the Duke of Newcastle made his own further enquiries in such quarters. Boothby may well have relied on other contacts from the legal and political worlds that he had been building up since his conversion to Whiggism in the late 1830s. We have already met some of the possible suspects, at least, such as Lord Cranworth LC. On Boothby's behalf it was also said, in 1867, that he was acquainted with the Chittys, who held him in esteem.¹⁸⁰ Hannan has demonstrated that he admitted the accusation that he had made fruitless attempts to pull strings with persons of influence in his dispute over the rightful occupant of the Chief Justice's chair in Adelaide in the mid-1860s, but unfortunately the identity of those whose strings were pulled is unknown.¹⁸¹ (Thomas Wilde, by then Lord Truro, had inconveniently died in 1855 and thus deprived Boothby of perhaps his closest patron, but Sir Charles Wood was still alive.) But if any further contacts or enquiries were made before his appointment, I have not found any trace of them. As far as we know, Boothby J was recommended for the judicial post by a non-lawyer. Nor is it even clear how well Sir Charles Wood knew Boothby; there is no other correspondence between them in the former's voluminous papers.¹⁸² Perhaps then it was not a friendship, but

¹⁷⁷ David Steele, *Wood, Charles, First Viscount Halifax (1800–1885)* (2004) Oxford Dictionary of National Biography <<http://www.oxforddnb.com/view/article/29865>>.

¹⁷⁸ University of Nottingham Manuscripts and Special Collections, above n 39.

¹⁷⁹ Hannan, above n 1, 74.

¹⁸⁰ *Advertiser*, 17 January 1867, 2.

¹⁸¹ Hannan, above n 1, 88–90. There is no record, however, of any correspondence with Viscount Halifax (Sir Charles Wood): see below n 182.

¹⁸² They do contain a letter from a B Boothby to 'My dear Courtenay' (the 11th Earl of Devon), dated 'All Souls, Tuesday' and referring to a 'loss you have sustain'd' and to one or two other persons who do not otherwise feature in the story of Boothby J's life (Borthwick Institute, University of York, Halifax Archive A3/3/3). The letter is very

rather Boothby had just done some sort of favour for Wood or his circle which was being repaid.

Boothby, at all events, got the job. Preparing to leave England forever — Boothby J would never see his homeland again — the Boothbys paid a farewell visit to a family friend in April 1853 who recorded that '[a]ll his sons are eager about Australia',¹⁸³ but unfortunately said nothing of the judge's motives for going or his own state of mind. I give little credence to the oft-told story that Queen Victoria, on being asked why Boothby J had chosen South Australia, received the answer that his need to provide for his numerous children was the cause,¹⁸⁴ but no doubt he hoped for a field in which his sons as well as he might rise further and faster than would be possible in England. If so, his hopes for them were fully justified, but for him South Australia would hold only deserved dismissal and deserved disgrace.

probably from the Rev'd Brooke Boothby, ninth Baronet (to give him his later titles). No letters from our hero appear in the period from 1832–1868 in the general correspondence series A4/181/1-6, or elsewhere in the papers, judging from the finding list in the Borthwick Institute of the University of York which holds Viscount Halifax's papers. Nor are there any relevant letters from the Duke of Newcastle or Lord Truro in A4/181/1-6, although judging solely on the occasional letter the latter seems to have been on quite civil terms with Sir Charles Wood in the early 1850s.

¹⁸³ Howitt, above n 10, vol 2, 97.

¹⁸⁴ Another version of this legend may be found in Robinson and Spence, *Robinson Family*, above n 13, 50, where Boothby personally is said to have given 'seven reasons — seven sons' in response to a query by Earl Grey about his motives for going. The same work at the same page states however that he was admitted to the Bar in 1825! There is also no reason why Earl Grey would have been involved in the appointment — just as there is no particular reason why Queen Victoria would ask for a reason behind one of the numerous minor appointments she was called upon to approve, and no particular reason why South Australia (as distinct, for example, from some African colonies with their notoriously high mortality rate) would call for any special explanation.

