

THE LAW INSTITUTE OF N.S.W. 1862-1884[†]

There is preserved in the Deane Papers¹ a fairly complete record of the proceedings of the Law Institute of New South Wales, a body formed in 1862. It was successor to the Law Society² (which had been founded in 1843), and it was progenitor of the Incorporated Law Institute. The collection includes the original copy of the Institute's Rules signed by the foundation members in March 1862, expressing the principal objects of the organization to be:

to represent generally the views and wishes of the members—to afford greater opportunities for the acquirement and diffusion of legal knowledge—to preserve the integrity of their branch of the profession—to watch proposed changes, and aid amendments and reforms likely to be beneficial in the law—to suppress any illegal or dishonourable practice—to promote good feeling and encourage proper conduct amongst the members of the profession—to afford means of reference for the amicable settlement of professional differences—and to consider and determine upon all matters affecting the interests of the Profession generally.³

Most contemporary solicitors did not consider these high-sounding benefits to be worth £5.0.0 entrance fee and £3.3.0 annual subscription; while barristers regarded the association with disdain.⁴ The Institute maintained a very tenuous existence in its early years because of the apathy or parsimony of the profession. Management of the Institute was vested in a Council with a nominal strength of 13 members, which in practice could rarely muster the prescribed quorum of 5. Meetings lapsed with a regularity which, if monotonous, was sometimes amusing: for instance, the minutes for 3rd June, 1864 read:

[†] This commentary is not intended as an exhaustive history of the Law Institute, but rather as a survey of the materials available in the W. H. and Elizabeth M. Deane Collection of Papers in the Fisher Library of Sydney University. The collection was presented to the University some time ago, but has only recently been closely examined and listed by the University Archivist, Mr. D. S. Macmillan. The Papers are very detailed and give a clear idea of the type of business transacted in Sydney's law offices a century ago. The writer records his thanks to Mr. Macmillan for his help in drawing attention to the collection and in tracing those parts of it material to this study. Dr. A. D. Osborn, the Fisher Librarian, has kindly given permission for the Papers to be inspected and for quotations to be made from them.

General Editor's Note: The Minute Book referred to in this Comment (together with a companion Minute Book previously presented by the late W. S. Deane, Esq., to the Incorporated Law Institute of New South Wales) and other relevant papers and reports, had been preserved by the Deane family for over a century. It is fitting to record appreciation for this service to the profession and to the Law Faculty of the University.

¹ This expression will hereafter be used as referring only to those parts of the collection contained in Boxes 2 and 62 having reference to the Law Institute of New South Wales.

² The Law Society was formed on 2nd Feb., 1843, "for the purpose of promoting good feeling and fair and honorable practice amongst the members of the profession . . . , of preserving the interests and retaining the confidence of the public . . . of aiding in such measures as shall promote a cultivated understanding and propriety of conduct in Articled Clerks of attending to all applications for admission and for the purpose also of submitting . . . such rules of practice as may appear . . . useful". R. J. Want (Hon. Secretary) to the Judges of the Supreme Court, 29th March, 1843, from Bundle 34 of the Supreme Court papers in the possession of the Trustees of the Mitchell Library, Sydney, and quoted by their permission.

³ Rule III, Box 62. *Cf.* Letter Book p. 1, Box 2.

⁴ Annual Report of Council 1872. Box 2.

"Present the Secretary. Meeting lapsed",⁵ a lack of enthusiasm prompted no doubt by the immediately preceding meeting, of which the following solemn report exists: "The Secretary read minutes of former meeting which were duly confirmed and there being no business brought forward the meeting terminated".⁶ The useful work which the Institute could undertake was necessarily limited, as its name carried no special weight or sanction, and control of professional standards could not be achieved without unanimous support by practitioners. Most of the credit for keeping the Institute alive falls to its first Honorary Secretary, E. A. Mackechnie, who volunteered an immense amount of time during the eight years in which he held office.⁷

Slender funds and want of staff made intervention by the Institute in cases of alleged professional misconduct almost impossible. Solicitors lodging complaints (usually country men seeking protection from "law agents" and other unqualified competitors) were often referred to local Magistrates;⁸ while more hopeful rural gentlemen who asked the Institute to settle pleadings or advise them on points of law were referred to their Sydney agents.⁹ When the Institute did intervene, it acted under protest. In a case in 1866 the complaining solicitor was apprised that the Council "would have preferred the matter being decided at the Police Court as entailing less expense"; but it agreed to act on the complaint, provided he prepared all necessary affidavits supporting the charge and made the case "as full and strong" as he could.¹⁰ In fact, the Institute's great contribution lay, not in the upholding of ethics, but in the facilities of its library which, despite heavy cost, had been built up by 1871 to nearly two hundred volumes of law reports and text-books for the use of members.¹¹

The Institute's annual reports for 1871 and 1872 are preserved in manuscript in this collection.¹² They record that in 1870 a recommendation had been made that the Institute be dissolved for want of interest by its members, and that its property be sold. By 1871 under the guidance of George Wigram Allen, the President, and Henry Deane, the newly appointed Honorary Secretary, the Council decided against dissolution and resolved to "try and effect a beneficial change, by making its rules as wide, and liberal as possible, by bringing the Institute more popularly before, and making it more acceptable to, the members of the Profession".¹³ This was courageous, considering the frailty of the Institute's funds which in 1871 and 1872 were respectively £36.14.7 and £38.15.9 in debit—substantial sums in those days. The Rules were extensively modified, fees were reduced and restrictions were relaxed to such an extent that articled clerks and managing clerks were asked to join. For publicity, the Council endeavoured to organize a series of debates and lectures, an invitation being extended to the Chief Justice, Sir Alfred Stephen, to deliver the first lecture.¹⁴ The scheme was not wonderfully successful; most of the lecturers excused themselves because of their professional commitments and, in any case, a litigious boom arising particularly from the mining industry,

⁵ Council Minute Book p. 40, Box 2.

⁶ *Id.* p. 39.

⁷ The first President was George K. Holden who resigned in 1864—see Letter Book p. 31, Box 2.

⁸ *E.g.* Letter Book p. 65, 66. A Solicitor from Parkes complained that he was opposed by four unqualified men "of the very worst character" who amongst other improprieties "(drew) up agreements, leases and transfers of land in the most barefaced and impudent manner possible". J. R. Edwards to the Institute, 6th August, 1874, enclosure in "Rough Minute Book" (c. 1871). Box 2.

⁹ Letter Book, p. 65, Box 2.

¹⁰ *Id.* p. 67.

¹¹ *Id.* p. 91. A Library had been founded by the Law Society, (Supreme Court Papers *op. cit.*) and was no doubt based on the collection of the "Sydney Law Library" established in 1842.

¹² The Report for 1871 is contained as an enclosure in the Catalogue of the Institute Library in Box 62; that for 1872 is with a bundle of other manuscripts in Box 2.

¹³ Annual Report 1871.

¹⁴ Letter Book, p. 85, Box 2.

left little spare time for practitioners to concern themselves with the Institute's cultural programme.¹⁵ However, there was a corresponding increase in cases of alleged professional misconduct and a large number of complaints and reports were submitted for the Institute's consideration. Most of these were rejected as trivial or unworthy of special attention.¹⁶

Throughout the Deane Papers many references are made to proposals for the incorporation of the Institute. Under the Rules of 1862 the Council had power to obtain an incorporating Act,¹⁷ but nothing was done at that stage because of financial impossibility and practical futility. The Council of 1871, after declining to dissolve the Institute, "urged upon its Successors" the desirability of procuring incorporation and a similar recommendation was made in the following year with the further suggestion that the judges be given statutory power to delegate to the Institute the admission of attorneys.¹⁸ The matter did not come up for serious review until 1874 when a formal motion for incorporation came before the Council. It met with determined opposition—one view was that "attornies had done so well without it so long they could go on without it", another that "it appeared useless unless a greater interest were taken in the matter by the profession generally".¹⁹ After lengthy discussion a Committee was set up to consider an amendment that a Law Society be established with power to apply for a private act. Within a month, the Committee reported that such a Society should be formed, that it should seek incorporation and that its objects should be:

the protection of professional interests; the promotion of law reform where practicable; the establishment of a hall and library for the use of members; the assisting of the education of articled clerks by the formation of law classes, or otherwise; the obtaining of a power to appoint examiners of articled clerks; and such other powers and functions as may be deemed necessary.²⁰

The proposed Society was never formed, and the Institute remained as it had been for another decade.²¹ The achievement of incorporation in September 1884²² recognized the stability of the Institute, its value to solicitors and fulfilment of the ideals visualized by its founders.

J. M. BENNETT*

¹⁵ Annual Report 1872.

¹⁶ *Re Admission of Queensland, Victorian and Tasmanian Attorneys* (13th July, 1872) and *In re Simpson* (24th June, 1874) are examples of cases where the Institute did intervene: the cases are reported in *The Sydney Morning Herald*.

¹⁷ Rule XLVI.

¹⁸ Annual Report 1872.

¹⁹ Manuscript notes of a meeting of 22nd Oct., 1874, Box 2.

²⁰ Circular letter of William Deane (Hon. Secretary), 7th Dec., 1874, Box 2.

²¹ There is a gap in these records between 1874 and 1883. In the latter year a meeting was called "to take into consideration the present status of the Law Institute and the best means of increasing its efficiency". Notes of a meeting of 9th November, 1883, Box 2.

²² The decision to obtain incorporation under the Companies Act, instead of by a private statute, is surprising. The Committee of 1874 had specifically advised against such a measure—"The Act is clogged with restrictions as to the formation of limited companies or associations not formed for individual profit; and there are, moreover, one or two objects sought . . . which could not be obtainable by such a mode of incorporation", Letter of 7th December, 1874, cited n. 20 *supra*.

* B.A., LL.B. Solicitor of the Supreme Court of New South Wales.