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JUSTICE ALBERT BATHURST PIDDINGTON

By Peter J Short

Brisbane, 1994

I will speak about the controversy surrounding the appointment of Albert Piddington to the High Court on 6 March 1913, followed by his resignation on 24 March 1913. He died 32 years later after an interesting career in Politics, or Industrial Tribunals, and on the fringes of law. The High Court in its 91 year history has had 9 Chief Justices and 35 Justices. None have been quite so extraordinary as the 7th appointment, Albert Bathurst Piddington.

His connection with the 10th appointment to the High Court, Justice Owen Dixon, for the purpose of this evening's function, is however, rather tenuous.

Piddington was born in Bathurst in 1862, son of the Archdeacon of Tamworth and named Albert Bathurst Piddington. He graduated in Arts from the University of Sydney at age 21, winning a gold medal for classics. The next year he became a Vice Warden of St Paul's College at the University of Sydney and a lecturer in English. He studied law and was called to the Bar at age 27. At age 32 he was elected to the New South Wales Legislative Assembly for the seat of Tamworth, and the next year married a Vicar's daughter.

An examination of the first 16 volumes of the Commonwealth Law Reports does not show Piddington as having an extensive practice before the High Court of Australia. That mantle seems to have belonged to "Iceberg Irvine" of the Melbourne Bar, Knox KC or perhaps Loxton KC.

The initial High Court consisted of Sir Samuel Griffith, Sir Edmund Barton and Richard O'Connor, followed in 1906 by Sir Isaac Isaacs and Henry Higgins.

The Prime Minister at the time was Billy Hughes who although himself a lawyer, was not in the main stream of the law and was not familiar personally with potential candidates for appointment, and was no admirer of the High Court which in his view had a certain States rights bent to it. In late 1912, Hughes had the opportunity of making three appointments to the High Court, the first arising from the death of Justice O'Connor and the other two from

the creation of new positions. Hughes first appointed Gavin Duffey in February 1913 then followed two controversial appointments, Sir Charles Power at one time from the firm of Moreton & Moreton, Solicitors of Maryborough and later both Queensland and Commonwealth Solicitor General, and Albert Piddington, who was then on a boat in the Suez Canal.

The conventional argument is that Piddington was selected because during the Federal Convention Debates he had shown support for the Commonwealth and a centralised system of government, similar to Justice Higgins. Perhaps Prime Minister Billy Hughes was hoping for support from the High Court. This line of argument is supported by the telegram which Hughes asked Piddington's brother-in-law to send to him. The telegram was

"Confidential most important know your views Commonwealth v States Rights. Very urgent."

From Port Said, Piddington cabled his reply

"In sympathy with supremacy of Commonwealth powers".

That cable left Port Said on 2 February 1913 and had immediate and beneficial results. Piddington was appointed to the Court on 6 March 1913. So much for the notion that High Court Judges are appointed solely on their merit, and so much for the notion of the independence of the judiciary.

The reaction to Piddington's appointment was immediate and unfavourable. The Bulletin said:

"Piddington was, until W M Hughes discovered him last week, a more or less obscure junior, with a modest in fact insignificant practice. (The) men who were fitted for this big job stand out like beacons. The names which occur most readily are Patrick McMahon Glynn, B R Wise, Joseph Symon and Irvine "the Iceberg".

The Bars of both Victoria and New South Wales resolved not to offer their congratulations to Powers and Piddington. Piddington they said, did not have a full time serious practice at the Bar. He had read classics before

he embraced the law and the Bars of Sydney and Melbourne thought there were others more fitting for the appointment. Piddington at this time was still on the same slow boat from the Suez - in fact he was returning from a Privy Counsel appearance - and the boat had reached Melbourne at the time. Billy Hughes'; on hearing of the response from the Melbourne Bar led by the disgruntled Irvine the Iceberg, suggested that Piddington stay on the boat and go through to Sydney and have himself sworn in there. Piddington was made of sterner stuff and decided he would resign his still recent appointment. Hughes had left Melbourne for Sydney for the swearing in ceremony and was caught unawares and severely embarrassed by the press announcement of Piddington's resignation.

Then followed a life long battle between Hughes and Piddington, Hughes describing Piddington as having "resigned from his great office like a panicked stricken boy". What then followed is history. The Labour Government led by Hughes was defeated in 1913 and Piddington was shortly thereafter appointed chairman of the Interstate Commission and in 1920 chairman of a Royal Commission on the Basic Wage. In 1922 Piddington opposed Hughes for a seat in Federal Parliament and Hughes won. In 1927 he was appointed to the New South Wales Industrial Commission where he served with distinction until Sir Philip Game dismissed Premier J T Lang, and Piddington, considering that Game had acted unconstitutionally resigned in a fit of pique. Piddington is generally regarded as having been best remembered as "a scholar, a wit and a man" and according to Jeffery Sawyer "an able and civilised man who would have made a much better Judge than Gavin Duffey".

That is the official version. The alternative version of Piddington's appointment is much different and links Piddington somehow to Dixon, and thus legitimises my choice of him as a topic this evening for the Owen Dixon Society Dinner.

The colourful version is this: there were three appointments to be made by the Hughes' Labour Government at the time - Powers and "Iceberg Irvine" were to be appointed to the High Court, and Piddington to some industrial tribunal. The telegrams became mixed and Iceberg Irvine was offered a lowly position on an industrial tribunal which he rejected with resentment as it offended his status as leader of the Victorian Bar. Piddington was intended to be offered the industrial commission position, befitting his experience and ambitions, but by this mix up of telegrams was accidentally offered Irvine's seat on the High Court. Elated at the prospect he accepted.

The facts do not quite fit that alternative story, but in my view it is much more interesting. It also gives me a further connection with Sir Owen Dixon. Consider Dixon's career if the famous "Iceberg Irvine" Leader of the Victorian Bar had been appointed to the High Court in 1913. If the stories of Irvine's ability are true, he could have dominated the High Court for many years, and Sir Owen Dixon may never have had the opportunity that led to his greatness and led to us being here this evening. Tenuous it might be, but it does support my choice of Piddington as the topic tonight.

There is yet another connection between Justice Albert Piddington and Sir Owen Dixon. In Vol 63 of the Commonwealth Law Reports - (1940) at page 533 there is a case **Piddington v Bennett & Wood** which starts "Albert Bathurst Piddington was, on 11 April 1938 knocked down in Phillip Street, Sydney by a motorcycle and side car driven by a servant of Bennett & Wood Pty Ltd." That case involved the admissibility of evidence. Dixon delivered one of the majority judgments, in favour of Piddington's appeal and said in his judgment "The plaintiff who is the appellant was run down by the defendant's motorcycle and sidecar as he was crossing a city street and sustained injuries of some severity. As a result of shock, presumably, he was unable to give an account of the accident himself, and in order to make out his case he depended upon the evidence of such bystanders as he was able to call as witnesses". There is yet another connection between Piddington and Dixon.

P.J. SHORT

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