**Gertie’s Law Season Two**

**Online Transcript - Redmond Barry**

**Paola Balla**

My name is Paola Balla. I’m a Wemba Wemba Gunditjmara woman. I’m an academic, PhD candidate and lecturer at Victoria University.

**Clare Land**

My name’s Clare land. I’m a non-Aboriginal historian, and sociologist with a particular interest in Aboriginal resistance

**Evan Martin**

We’re starting this episode in 1839 with a ship crashing through the waves of Bass Strait, en route for Melbourne, from Tasmania. Or as it were in 1839, Port Phillip from Van Diemen’s Land.

Colonisation of Van Diemen’s Land began 26 years prior, in 1803. It’s unknown how many Aboriginal people were killed in the process.

**Paola Balla**

Many Aboriginal peoples in Tasmania - and I hate to sum this up so quickly because it’s not my area of expertise and that’s not my mob down there, so, I always say with great sensitivity and respect for what happened to them as Tasmanian Aboriginal men and peoples.

Many of the survivors of the massacres were rounded up and placed on an island, on Flinders Island. And many of them then came into contact with the so-called Aborigines protector at the time, and that was George Augustus Robinson.

**Clare Land**

George Augustus Robinson, who managed to suggest that he was a good candidate to be the Protector of Aborigines in Victoria, and wanted to bring some companions with him from Tassie who he thought might help him to strike up communication with Kulin nation and other nations of Aboriginal people on the mainland. And he managed to convince authorities to let him bring about 16 people with him - 16 Aboriginal people from Tassie and at this point there were about 100 remaining Aboriginal people in Tassie out of all the nine nations. So, it was a pretty significant final group that he took with him.

**Evan Martin**

In 2015, Clare and Paola were involved in curating an exhibition about two of the Aboriginal men brought to Victoria by Robinson; Tunnerminnerwait and Maulboyheener.

I spoke with them earlier this year over Zoom.

**Clare Land**

Tunnerminnerwait and Maulboyheenner were two out of a group of five who took off out of Melbourne into the Dandenongs and Western Port area - the Boon Wurrung area.

And accompanying them were Truganini, Planobeena and Pyterruner - those were three women. Truganini is the most famously known Aboriginal person from Tassie. She was amongst this group of five.

**Evan Martin**

It’s believed that the group took off in search of one of their countrymen, who had disappeared in the region in the year or so prior.

**Clare Land**

That’s one of the reasons I think they went but, there were five members of the group and I think they all had a range of motives for leaving Melbourne. They were pretty sick of George Augustus Robinson by that time. Some of them had experience working elsewhere and thought perhaps they could get jobs. It’s possible they were heading to the southernmost point of the mainland - being Wilson’s Prom - and hoping to get home.

It could have been, because of what they had seen in Tassie and the genocidal nature of the land war, they could see this unfolding again in Victoria and were just so devastated as you would be by that they just wanted to do  anything they could to aid their cause.

**Paola Balla**

One of the greatest stories of evasion and tactical, strategic movement across the colony took place.

This group, as they’re moving around the colony, they were raiding settler’s huts, they were taking weapons, they were taking food and flour. And so posters started to appear all over the colony that this wild band of black savages was on the run and rewards were put out for their capture.

**Clare Land**

I think it was actually mistaken identity when they did kill two people. Two men who happened to be walking in the vicinity of a coal mine which was managed by a guy called Watson, near Cape Patterson.

From what I saw in the records it was my belief that they were looking for Probelattener, the man that was missing. They had heard that he had died at the hands of Watson, and it was Watson’s coal mine that they were on at the time.

I mean, they had just raided his hut and burnt it down as well so it was a volatile situation. Watson was looking around - and he had guns and they knew they would be shot on site if he found them first.

**Evan Martin**

Not long after the killings, the five were captured, and Tunnerminnerwait and Maulboyheener were charged with murder. The three women were charged as accessories.

Tunnerminnerwait and Maulboyheener were appointed a defence lawyer - a 28-year-old man who at the time was relatively unknown.

But now, he is arguably the most well-known judge in the history of the Supreme Court of Victoria, and his name is synonymous with Melbourne.

Redmond Barry. This episode is about him.

**Evan Martin**

The trial of Tunnerminnerwait and Maulboyheener was heard in December 1841. Barry was 28 years old.

**Clare Land**

He was quite junior at the time I think and he did his best.

He did make an effort to defend them but there were some practices at the time that weren’t in their favour as well around who could give evidence. Aboriginal people weren’t allowed to give evidence even though they were allowed to be convicted on their own confessions.

They weren't tried by a jury of their peers. Barry tried to argue that they were aliens - that they weren't British subjects and therefore they should be tried by a jury that included aliens.

**Evan Martin**

He also questioned the legal basis of British authority over Aboriginal people, but ultimately it was all for naught. Tunnerminnerwait and Maulboyheener were found guilty of murder.

**Clare Land**

There was a bit of popular support for these guys in the sense that they were in a pretty difficult situation and you could kind of understand what led to this and Barry did put that up in their defense - he said, ‘Look these guys have been through a lot. They’ve seen frontier violence and they’re in a pretty difficult situation. They’ve been brought over here to Melbourne from their homelands you might want to be more forgiving towards them.

**Clare Land**

The jury, while they found the men guilty, they did say that they didn’t think that capital punishment should be inflicted. They didn’t think that these guys should be hanged. And they recommended to the judge that that should be the case. The judge then forwarded his thoughts on this issue to LaTrobe.

**Evan Martin**

Charles La Trobe had just been appointed Superintendent of the Port Phillip District. A position he would hold for 12 years before being appointed Victoria’s first Lieutenant-Governor.

**Clare Land**

The judge said to La Trobe, “look I don’t think we should at all be merciful and LaTrobe agreed and he sent a communication to the Governor in Sydney, also conveying he didn’t think any mercy should be shown and so they did end up being hanged.

**Paula Balla**

They say that on the day that they did hang them half of that colony showed up. So they say that anywhere between five and six thousand people witnessed the hanging of Tunnerminnerwait and Maulboyheenner. They brought picnic blankets. They brought food. There were vendors selling flowers and beer. They were paraded through the city where people threw rotten fruit and vegetables at them.

They were taken to the corner of Franklin and Bowen streets where the gallows were erected. How the gallows were erected and who got to hang them was quite horrific too. It was basically a competition so people could put in to win the opportunity to hang them publicly.

It was very crude. It was very ugly. It was very barbaric.

**Evan Martin**

Tunnerminnerwait and Maulboyheener were the first people hanged in Port Phillip by the Government after a trial. They were two of only six people hanged in public before executions began to take place inside a jail.

It’s almost 200 years later, so we’re talking in hindsight, but what do you think of Barry’s defence arguments?

**Paula Balla**

I actually think they were quite progressive for the time. When you work in these areas as an Aboriginal person, you’re working professionally but you’re also carrying your own - you carry your culture into this. Your family teaches you what school doesn’t teach you. Your family teaches you that your people resisted and fought back and that this was not a passive invasion and take over. So when you’re reading through historical documents and you find one where rarely, and surprisingly a white person is actually presenting a view that is not about annihilating an Aboriginal person or - relegating us to the past as a dying race or as less than human.

Here was a man who was professionally, to the best of his abilities, making a very common sense and very balanced argument that the trial was not being conducted in their first language so it wasn’t fair. How could they possibly understand the complexity of the law that was being presented to them. So, I found that so fascinating that he had those views at the time - it really interested me.

When I started at Melbourne Uni, I was 18. The library was the Redmond Barry library and I remember that’s the first time I ever saw that name and I never really looked into his name - I just took it as another dead white man’s name on a building at the University of Melbourne and then discovering his statue and where it stood. Most people take monuments for granted - you walk past them and there’s a lack of monumentation of Aboriginal people and Aboriginal people’s sacrifices and so when their story -  Tunnerminnerwait and Maulboyheenner’s story was memorialised and I got the change to curate an exhibition about it, it was such an honour but is also made me realise that when I was speaking to people and informally interviewing them saying, “you know what do you know about Redmond Barry and the statue and do you know where it is most people said , ‘no’.”

So people just walk past it. People that worked in the building adjacent to the statue in the library - just no clue. I think there’s a disconnect from history in this country. And I think it’s one of those stories that he sort of becomes a bit of a footnote to Ned Kelly unfortunately.

**Evan Martin**

When we started producing Gertie’s Law and interviewing judges and legal experts, Sir Redmond Barry’s name just kept popping up. We quickly realised that Barry was worthy of his own episode.

Indeed, he’s probably best known for sentencing Ned Kelly to death, but you know what? That might actually be the least interesting thing about him.

**Joanne Boyd**

Redmond Barry is part of the Anglo Irish, so he's Protestant. He has a family of 13. His father was a general. Some of his other brothers went into the army. Redmond Barry was meant to have gone into the army but he was born in 1813 and so, by the time he became an adult the British Army was largely being made smaller because the Napoleonic Wars had finished and everything like that.

**Evan Martin**

Joanne Boyd is one of the court’s archivists and as is likely evident, is a wealth of knowledge when it comes to the history of this court.

**Joanne Boyd**

So, he looked around and decided to become a lawyer. So, he was born in Ireland and he went, you had to go to London in those days - and he completed his legal studies in London and then went back and was admitted to the Irish bar as well as the English bar.

As it happens, his father died about the time he was finishing his legal studies. So, with the small inheritance he got from his dad, he travelled out to Australia because we needed lawyers. And so, he came, he was originally meant to go to Sydney, in fact, he did land in Sydney. But there was a slight problem about that Sydney trip, wasn't there?

**Nicole Lithgow**

There was.

**Evan Martin**

Nicole Lithgow, also a court archivist and also a bit of an expert on Barry.

**Nicole Lithgow**

You can't see it from looking at pictures of him today, but he must have had some charisma, because he managed to have a fairly overt, fairly intimate relationship with a lady on board the steam ship that he was on and as a result of that - her name was Mrs Scott - and her husband Mr Scott wasn't all that impressed with that and he spent quite a bit of the journey locked in his cabin in order to keep him from getting to Mrs Scott.

**Joanne Boyd**

It's extraordinary. I mean, one of the things you should remember is, he was only 26 at the time but anyway, when their ship landed in Sydney, he didn't go off the ship for a day or two and he was in such disgrace that he wasn't received by the Governor for quite a while either, and then, this is the late 1830s, so they suggested that instead of staying in Sydney, where his name wasn't good, go to that lovely new colony in the district of Port Phillip, so he journeyed on and came down here.

**Michael Cathcart**

In 1839, when Barry arrived in Melbourne, most ships could tie up in the Yarra. They tied up at the dock which is where the Immigration Museum now is. And there was an informal market square there, where dealers could auction off supplies and luxuries brought in by the ships. Then he would have gone on to Collins Street.

**Evan Martin**

Michael Cathcart is a historian and broadcaster.

**Michael Cathcart**

He would have waded through streets if it was raining, because the roads were like porridge, but a city was already taking shape. Some of the buildings were very flimsy and wooden, but in 1839, the year he arrived, the Melbourne Club was founded, the first Princes Bridge was opened the following year. There were doctors and lawyers, a bank, a post office, a printing office. About 8,000 people would be in Melbourne by 1842, and there are rampant commercial interests at work.

Everyone is here to make money. People who bought blocks of land in Melbourne in 1837 were selling them for a hundred times as much by the time Barry arrived.

There was crime, there was drunkenness, there was squalor, there was poor sanitation, but in the midst of all this, there were some leaders who had a sense of building a city governed by the rule of law and by strong civic institutions.

**Evan Martin**

Barry joined the Victorian Bar as soon as he landed in Port Phillip.

**Joanne Boyd**

It was only a very small bar, I think it was about only four or five of them, and he started to make - I think he got his first brief after landing, about two weeks after he landed, and off he went.

**Nicole Lithgow**

When he landed in Melbourne, there was no Supreme Court yet. So, he just had to take some work in the lower courts because there was no Supreme Court for him to practice in but he did do a lot of work for Indigenous peoples. He called them the natives in one of his books. I mean, he did do a lot of work for them, early on as well.

He was fairly progressive for his day and he retained that interest in the Indigenous people all throughout his life, but he was certainly fairly liberal in his views.

**Evan Martin**

It was in 1841 that Barry defended Tunnerminnerwait and Maulboyheener. He had been appointed as standing counsel for Aborigines. A bit like a public defender role.

**Michael Cathcart**

I’m not sure he achieved very much justice for them, but he certainly tried to. He was certainly on their side and was progressive in his understanding of Aboriginal dispossession.

**Evan Martin**

As his name became more known, he started to climb the legal career ladder pretty rapidly.

**Joanne Boyd**

He was the Commissioner of the Court of Requests and that was the civil thing for matters under ten pounds but so, he used to settle those and apparently, he did that quite professionally and studiously.

**Nicole Lithgow**

He also was, for a very short time, he was the Solicitor General for the newly separated Colony of Victoria. But that didn't last very long, because that happened in 1851 and then in 1852, he was made the first puisne judge of the Supreme Court, under the Chief Justiceship of Sir William à Beckett.

**Evan Martin**

A puisne judges is a judge of a superior court, but below the Chief Justice.

**Nicole Lithgow**

Shortly after that, I think it was the same year, they got a second puisne judge, Justice Williams, and so, Justice Redmond Barry became the senior puisne judge, a role which he then retained until his death in 1880.

**Joanne Boyd**

He was also the Acting Chief Justice every now and again. Poor Sir William à Beckett was what was called in those days, an invalid. He was certainly in a wheelchair by the end of his life. Sounded a little bit like muscular dystrophy. So, Redmond Barry used to be the Acting Chief Justice.

**Evan Martin**

And even back in the 1850s, Supreme Court judges still went on circuit, visiting regional towns to hear cases, just as judges do now.

**Joanne Boyd**

So, they used to travel by railway up to say, Ballarat, Sandhurst, Bendigo and Barry also had a penchant for when he did turn up, but he'd open libraries and things like that or donate books or say, the mechanics institutes and things like that. Yes, he was very big on that.

**Evan Martin**

He did seem to have a real love for libraries.

**Joanne Boyd**

Oh yeah, he would have been better off as a librarian, and I think he went to one of the early conferences of what's called the Dewey Classification Scheme and everything like that, about how they put the books in order and everything like that. It's a Supreme Court librarian, actually, that witnesses his will.

**Evan Martin**

In fact, Melburnians have Barry to thank for, at least partly, one of Melbourne’s most wonderful institutions.

**Des Cowley**

My name’s Des Cowley and I’m the Principal Librarian of the History of the Book and Arts at the State Library of Victoria.

**Evan Martin**

I met with Des back in 2019, and in case you’re wondering what the construction noise in the background is, the library was putting its final touches on a beautiful renovation.

**Des Cowley**

Barry was absolutely seminal to this institution. The foundation stone was laid in 1854 and Barry was the president of the trustees right through until his death. And what’s interesting - I mean, we think of this as an enormous place, but Barry was the one who sat down in 1853 and he actually made a list of significant books and authors he felt this library should have. And that letter was sent to the Agent-General in London and Barry commissioned them with finding a book dealer in London who could supply the library.

When the library opened in February in 1856 - in fact, the night before it opened, Barry was still up there himself unpacking the books. He was a really, kind of, hands-on character in that way, when it came to the running of this place and the growth of this place.

And he’s also responsible for soliciting enormous numbers of donations to this library. He solicited donations from the King of Prussia, Napoleon III. He would go hat-in-hand to dignitaries.

And part of his role in a way was a kind of mission to advance, I guess, the culture of Victoria. I mean, at the time the library was founded, it was just post the goldfields. Melbourne was a wealthy city in some ways, but at the same time, the population had absolutely grown enormously in three or four years. And I guess a lot of rough and tumble kind of people had hit the goldfields, and so Barry’s mission in many ways was to ensure that Victorians had a library that would both educate, elevate and also give them the kind of tools to be a kind of significant colony, not just within Australia but internationally.

**Evan Martin**

Is it right that before this existed, he was opening up his own personal library to the public?

**Des Cowley**

Yeah, he had his own book collection. He’d allow people to come, you know, in the evening to look at his books, and one of the critical things about Barry is that he would boast that this was a free public library, and this was pretty unique worldwide. And pretty much anyone over 14 years of age could enter the library, free, and use any of the material which they could get on the shelves themselves, and I think the only proviso was that they use the hand basin to wash their hands in the library’s foyer at the time. But outside of that, he really believed in free education, and the library was very much predicated around that idea that all Victorians had access to their free public library.

It was quite a radical idea, and it’s still an idea that we foster today.

**Evan Martin**

In 1866, Melbourne hosted the Intercolonial Exhibition of Australasia. The Royal Exhibition Building, still standing in Carlton Gardens, was not yet built, so construction began on the Great Hall at the State Library.

**Des Cowley**

Barry was a great speech-maker, so when they were building the great hall, which was going to be the centrepiece for the exhibition, he actually believed and spoke of it as one of the great wonders of architecture in the world, likening it to the great cathedrals of Europe, which was probably a bit of overkill at the time.

But Barry’s speech - he gave a speech to the workers of the great hall. I think there were some 600 workers assembled for his speech, and if we look at the publication of that speech, it runs to something like 40 closely typed pages, going through the entire history of architecture of Europe, from the Romans onwards.

And to me, it’s almost unimaginable to think of these 600 workers who probably put in an incredibly hard day being herded into this space to listen to Barry for what must have gone on for some hours. But it got a big hoorah in the papers at the time, and in fact one of the newspapers published it in full, but I can’t imagine what it would have been like to have been there. And my endeavour to even read the 40 pages has failed on many occasions.

**Evan Martin**

As part of his role on the commission for the exhibition, Barry proposed the publication of a Vocabulary of Dialects, spoken by the Aboriginal people of Australia. An indigenous dictionary.

**Des Cowley**

There had been other language books prior to this, but he had a notion of drawing a lot of that together, but also doing it in a really systematic way, and to that end, he sent an open letter to all the colonies or states of Australia, inviting them to, in fact, fill out a word list he’d constructed, send them back, and this would become part of the publication.

He came up with about 700 common terms, and when we look at it, we see words for, sort of, man, woman, child, arm, leg - words that would be in every language. And this is a very important item now, of course, because much of these languages have been lost over time, and here we have a recording of it made in 1866.

**Evan Martin**

The document is a huge pamphlet of six sheets, full of words in English, French and many different Aboriginal languages from around Australia.

**Des Cowley**

The publication was delayed, possibly because Barry, through various politics at the time and the exhibition, resigned in a huff from the commission for the exhibition. It didn’t come out until May 1867, which is too late for the 1866 exhibition which closed in February 1867. It was in time for the French exhibition, and the fact that we’ve got French editions of this work indicates that it was obviously intended for that, but there’s no record, in fact, in the exhibition catalogues that this was ever shown.

And it became, actually, an incredibly rare pamphlet which was little known. It was not recorded in the standard bibliographies of Australiana, and until a few years ago, very, very few libraries had a copy of this. Except, strangely, the library here, buried in a kind of basement in boxes, we literally had some hundreds of them. So, it appears in a way that there was almost no distribution at the time. That this labour of love, I guess, that Barry assembled, worked on, believed in, received almost no notice in the day.

**Evan Martin**

Barry’s influence on Melbourne’s cultural institutions didn’t end at the State Library.

Michael Cathcart.

**Michael Cathcart**

I think of Melbourne as a peculiarly liberal city. One of the giant figures in establishing that idea - the city as cosmopolitan, tolerant and liberal - a city where arts and ideas are prominent, and Barry is an absolute giant in establishing that as a norm in Melbourne.

He’s steeped in European culture, he’s driven by a thirst for knowledge for his new country, and that’s why he sets up a library, he sets up what is now the National Gallery of Victoria. He’s instrumental in founding and running and building the University. He’s founded the Mechanic’s Institute which is now the Atheneum.

Everywhere you look, there are institutions that are dedicated to knowledge, to inquiry and to a code of western civilization which Barry upheld and which Barry himself was instrumental in establishing.

**Evan Martin**

Nicole Lithgow.

**Nicole Lithgow**

I would say that Redmond Barry is very important to Melbourne as a whole because when he got here, he was very keen on Melbourne, Victoria, the district of Port Phillip, the Colony, not being a place where you send convicts and he was big on it being a civilised society and he felt it was his duty to civilise the society.

**Evan Martin**

Joanne Boyd.

**Joanne Boyd**

So many others make their money by going and seizing large swathes of Victoria and being squatters and landowners, and he could have done that but clearly, he wasn't no farmer but so, he's here in Melbourne, creating all these institutions that Nicole rightly says, gives you this civilised society.

**Nicole Lithgow**

He was very big on educating people less fortunate than himself and he really felt that it was his duty to bring these civilising influences into the infant colony which perhaps didn't have a lot of civilising influences at the time.

**Nicole Lithgow**

He was an early member of the Melbourne Club. So, he's really involved in these gentlemanly, civilised pursuits.

**Evan Martin**

Speaking of the Melbourne Club, one of my favourite stories of Barry involves somebody he met at the club. A man by the name of Peter Snodgrass.

**Joanne Boyd**

Snodgrass seemed to have been - and can you believe his name? Snodgrass seemed to be one of those people that had a bit of a temper on him. Barry was always considered very gentlemanly and very polite, and Willis, the first resident judge, was really pretty rude, but it was only ever Barry that could sweet talk him from the bar table, apparently.

But anyway, Snodgrass had taken offence to something that Barry had or hadn't done and demanded a duel. I think this was coming off a duel he’d had previously - Snodgrass, not Barry.

**Evan Martin**

You heard right. Barry had gotten himself into a duel.

Were duels a common practice in Melbourne in the 1800s?

**Michael Cathcart**

Duels were terribly common in Melbourne, yes.

**Evan Martin**

Michael Cathcart.

**Michael Cathcart**

The centre of duelling in Melbourne was the Melbourne Club. Now, today we think of the Melbourne Club as a rather austere, exclusive place where gentlemen of conservative attitudes and considerable means gather. But back in Barry’s day, the Melbourne Club was really a watering hole for squatters who came up to town from the bush, but also for lairy young gentlemen. I think of it as being a bit like the junior common room in an exclusive university college.

So, there are all these young red bloods who see themselves as a cut above everyone else, who are mimicking the manners of England, who are constantly getting drunk and picking fights with each other and then deciding that they will resolve their differences at dawn in a duel.

And it’s really about, sort of, ruling class theatrics among the kind of young men who today would tear around in a, you know, a Mercedes Benz sports car.

**Evan Martin**

So, yes. Barry did fight a duel. And he dressed rather splendidly for it.

**Michael Cathcart**

Barry dressed up in what was described as a peculiarly fabricated bell-topper, strap-trousered, whatever that is, swallow-coated, white-vested, he had gloves, he had a cravat. So, he really dressed for the role.

**Evan Martin**

While Barry certainly dressed for the occasion, the duel ended somewhat anticlimactically. While fiddling with his pistol, Peter Snodgrass prematurely fired the gun into the ground, leaving Barry with the only live round.

**Michael Cathcart**

Barry sportingly fired off harmlessly in a different direction and honour was satisfied. That was how most duels ended. No one really got hurt. It was all just a lot of silly ruling class theatrics.

**Evan Martin**

Was Barry religious?

**Michael Cathcart**

The thing you’ve got to understand about Barry is that he came from a military family of British Anglicans, and they were a staunch part of what’s sometimes called the Protestant ascendancy in Ireland. The class of British landlords who derived their wealth from Irish-Catholic tenants and agricultural workers.

So, he’s bringing that Patrician world view to Melbourne. But what he was free of was the sort of sectarian division that he’d grown up with in Ireland. The conflict between Catholics and Protestants - he didn’t hold with that at all.

**Joanne Boyd**

It's really interesting to think of comparing him with Stawell, his exact contemporary and who was the Chief Justice who was also Anglo-Irish. Apparently, they may have vaguely known each other in Ireland but they had a pretty interesting men-about-town life in the 1840s before the Gold Rush, and then Stawell got married to, I think, the bishop's niece or something like that, and he was much more focused on the Church of England and everything like that.

Barry doesn't seem to have been particularly religious. He believed in those secular civilising things rather than the religious, because of course, he had, what in those days was a real problem, is that he didn't marry, and lived with Mrs Barrow and he had four kids with Mrs Barrow. He kept her in a little house, was it in Brunswick Street, Nicole?

**Nicole Lithgow**

Brunswick Street, Fitzroy.

**Joanne Boyd**

Yes, which was quite convenient cause he was living in Rathdowne Street, Carlton, so he could sort of cross the park and visit Mrs Barrow.

So, although he kept her in a separate circumstance, she came and nursed him when he was sick, he left her all the money, their children live with him, but to go back to the religious point again. So, his eldest son, Nicholas Barry, was meant to go to Melbourne Grammar but the bishop wasn't having that because poor old Nicolas was illegitimate. So in fact, he went down to school in Launceston.

**Evan Martin**

And they’d take him in Launceston.

**Joanne Boyd**

Yes, they’d obviously take him in Launceston.

**Evan Martin**

While Barry was hugely influential on Melbourne becoming the city it is today, as a judge, he also heard some of the biggest cases of the time.

In December 1854, only a couple of years into the Victorian Gold Rush, thousands of miners from across the world had descended on Ballarat to test their luck. Tensions between the miners and the government were on the brink of boiling over.

**Nicole Lithgow**

The miners were unhappy with the fees being charged for gold mining licences as well as various other harsh things that the troopers down at Ballarat Bakery Hill were doing. Eventually, tensions bubbled over.

On 3 December 1854, the miners built a stockade which is basically not much more than a fence really, but that was seen as an act of violence

**Joanne Boyd**

The troopers came in the middle of the night so that some of the stockade wasn't particularly occupied during that period. And the troops had come up from Melbourne and they started firing and all hell broke out.

**Nicole Lithgow**

It is Australia's one and only armed uprising, and because we are a fairly laid-back nation, our big armed uprising lasts for 34 minutes - there is no 100 years' war, there's no civil wars, there's 35 minutes of chaos and mayhem between these miners and the troopers.

It's quite crazy. And then they do eventually disperse. well, not eventually. After 34 minutes. They're on the run, 13 of them are rounded up.

**Evan Martin**

At least 22 miners and 6 soldiers were killed during the conflict.Less than three months later, the 13 arrested miners faced trial for their part in what is now commonly known as the Eureka Stockade.

**Joanne Boyd**

There was so much tension about it that they didn't do these on the Ballarat goldfields, they brought them back down here to Melbourne. So, it was in the old courthouse at the corner of Russell and the La Trobe streets and Barry as well as Chief Justice Beckett presided over these trials.

There was a huge public gallery and they were all partisan for the people that were on trial. Quite a few lawyers that had turned up during the gold rush, all of a sudden decide they want to be lawyers again and were appearing for people and everything like that.

**Evan Martin**

The prosecution was led by the Attorney-General at the time, Sir William Foster Stawell, who decided to charge the rebels with high treason, a crime punishable by death.

Two years later, Stawell would be appointed Chief Justice of Victoria, a position he held for 29 years.

**Joanne Boyd**

It was Stawell who drew up these penalties and they were seen as being treasonous because they had risen up against the Crown and we're demanding better rights and they'd rioted and everything like that.

**Nicole Lithgow**

The first person to bring to trial, the first person that he prosecutes is actually an African-American person by the name of John Joseph.

Now, as I said, he's charged with high treason which is very high bar, and he brings him to trial first strategically because he believes that the jury will have no trouble convicting a black man. He's mistaken and the jury do have trouble convicting a black man and they actually acquit him to the jubilation of the crowd. So, the subsequent trials all fall over fairly quickly after that. It really doesn't last very long. William à Beckett does those first two trials and then Barry does the subsequent 11 and yes, they all are acquitted.

**Evan Martin**

Michael Cathcart.

**Michael Cathcart**

It’s not Barry who finds the men not guilty. That’s a jury who does that. But Barry, all the way through, is making sure that the trial is conducted impeccably, and with the result that liberal values become the norm in Melbourne. The idea that you could demonstrate against the government, that you could stand up for democracy, for individual rights, that you could speak truth to power. All of those ideals are at stake in the Eureka stockade trials, and he’s the judge who oversaw that process.

**Nicole Lithgow**

I like to think that the "fair go" that Australia used to be famous for actually has its burgeoning beginnings, in the courtroom on those days.

**Sir Redmond Barry (actor)**

Edward Kelly, I sentence you to death by hanging. May god have mercy on your soul.

**Nicole Lithgow**

There have been more words written about Ned Kelly than any other Australian and he is possibly the most famous Australian ever.

He's just 25 when he's executed. But I'll let you go first.

**Joanne Boyd**

One of the things to remember at the trial is that it's not actually about the Glenrowan matter. So, Glenrowan - there’s a siege at Glenrowan, the pub's burnt down. They're going to derail a train. Ned loses his whole gang, you know, his brother... One of them dies terribly in the fire and another is killed as well. He himself was injured but, you know, because he's got his famous armour on, he's shot in the legs and so there was a slight delay about them actually even doing the trial because they had to wait until he was better, and they had the preliminary trial up in Beechworth, and then they came back down here to Melbourne feeling that that would be a better place for the trial.

But what Ned was being tried on was the murder of the police officer Lonergan at Stringybark Creek. I mean, they could have thrown the book at him, but they just went with this one thing that they felt was incontrovertible. Some people say that Ned was acting in self-defence. Other people say it's a cold-blooded execution of a police officer going about his duty.

So, the trial was, at that time, was couple of days. Ned was considered to have a relatively inexperienced barrister because I think one of the Molesworths was asking too much money - Hickman Molesworth.

So the trial takes place in the old courthouse at the corner of Russell and Latrobe streets, which is no longer there, adjacent to the old Melbourne jail.

**Evan Martin**

The trial takes place in October 1880, and I think nearly every Australian is familiar with the outcome. The jury finds Ned guilty and he is sentenced by Sir Redmond Barry.

**Joanne Boyd**

The sentence is death and he was executed on November 11. So, within a very rapid space of time.

**Evan Martin**

Redmond Barry’s book with his sentence remarks is on display in the Supreme court Library, which - in a move I’m sure Barry would support - is now open to the public.

But what a lot of Australians likely don’t know is that Ned’s and Barry’s deaths will forever be linked.

After announcing Kelly’s fate - death by hanging - Barry uttered the customary words...

**Sir Redmond Barry (actor)**

May God have mercy on your soul.

**Evan Martin**

To which Kelly replied…

**Ned Kelly (actor)**

I will go a little further than that, and say I will see you there when I go.

**Joanne Boyd**

So, Kelly is executed on 11 November. Within ten days, Barry himself is dead. He dies in his home in East Melbourne of a boil or a carbuncle, but the general theme for the medical experts now was he probably had undiagnosed diabetes, which he couldn't do anything about in the early 1880s.

So, that's kind of how they've kind of inextricably been entwined and some people say that Barry didn't give him a fair go. Other people say it's not very different from any other trial that you might have had in the 19th century.

**Evan Martin**

Michael Cathcart.

**Michael Cathcart**

The astonishing thing about Barry is for all his largess, all his generosity with his time and expertise, he died poor. He didn’t hoard money for himself. He gave what he had to Melbourne, and today, we are still the richer for his generosity.

**Evan Martin**

What kind of reputation did Barry have as a judge?

**Michael Cathcart**

Barry was a conservative judge. He applied the law as it was written. He wasn’t an inventive judge. And I don’t think you’ll find any legal experts who regard him as a particularly brilliant jurist. He could be pompous in the way he delivered his judgements. He did have a fine sense of his own importance and standing.

So, you have to weigh that against his liberal influence. But I think his liberal influence is found more in the contribution he made to the civic institutions of Melbourne than it is in the judgements he delivered from the bench.

It’s easy to misjudge Barry, because that statue of him that stands outside the library looks so self-important and arrogant.

One of his contemporaries was a writer - a newspaper man named Edmond Finn, who wrote one of the early histories of Melbourne under the pseudonym Gary Owen, and he said that Barry was “ the most remarkable personage in the annals of Port Phillip. He threw in his lot with the destiny of the province when it was a weak and struggling settlement in 1839 and identified himself with every stage of its wonderful progress until he left it a bright and brilliant colony in 1880.”

**Evan Martin**

And before I let you go, here’s Nicole Lithgow with quite a personal story about Barry.

**Nicole Lithgow**

So, way back in 1841, not long after the Supreme Court first sat, there was a young Irish girl in Keilor, and she found herself in a very close relationship with a very slippery character by the name of William O’Neil, who had come out to Australia as a convict, but ended up as the police sergeant in Keilor.

The relationship must have been quite close, because she found herself pregnant and unmarried. William agreed to marry her, but on the morning of the wedding breakfast he decided “no” and locked himself in the police cells.

Bridget was understandably pretty upset about this and rather than just let it go, she engaged the up-and-coming barrister Redmond Barry to represent her in a breach of promise, a suit that she brought against William, and it was in fact the first suit of that kind in the colony of Victoria.

The case was brought before Judge John Walpole Willis in the Supreme Court in November of 1841 and it made for some very salacious reporting in the newspapers. Barry must have done a great job, because Judge Willis found for Bridget and awarded her 100 pounds damages, which was a huge amount of money in those days.

In April of 1842, Bridget was still pregnant and William had not paid her the money he owed her for the breach of promise. So, rather than do so, he thought it would be easier just to marry her, which he did, on the 9th of April, 1842. Two days later, their daughter Mary was born. Two years later, they had a second child called Sarah.

Now, Sarah is my great-great-grandmother, and I believe that if Redmond Barry hadn’t won that case, Sarah wouldn’t have been born and so I wouldn’t have come into being. So, I’m a very big fan of Redmond Barry.

**Evan Martin**

The rather pompous piece of piano music you’ve just been listening to is called Le Bon Voyage Waltz and was composed for Sir Redmond Barry by CJ Dawson in the 1800s.

While the sheet music has been sitting in the State Library of Victoria for over a century, we think this may be the first time it has ever been recorded. Thanks to our producer Greg Muller for taking to the keys of the Supreme Court Library’s grand piano.

If you have a question you’d like to ask a judge or somebody else at the court, send them in to gertie@supcourt.vic.gov.au

Thanks for listening.

Ends.