

Sir Charles Lilley: Premier and Chief Justice of Queensland

Author: Dr J M Bennett AM

Publisher: The Federation Press

Reviewer: John McKenna QC

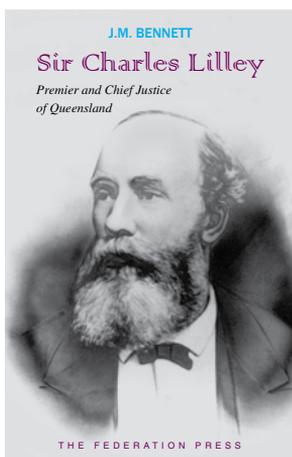
In colonial Queensland, two legal figures stood out from their contemporaries—Sir Charles Lilley (1827-1897) and Sir Samuel Griffith (1845-1920).

We know a great deal about Griffith. His public life, as barrister, statesman and judge, was well-documented. So too was his private life, through this diaries and letters. As a key figure in the drafting of the *Australian Constitution* and as the first Chief Justice of the High Court of Australia, Griffith has been the subject of recurring biographical interest. Whilst noting his flaws, both legal and political historians have generally been kind to him.

Lilley is a more elusive and difficult figure.

He arrived in Brisbane in August 1856, at the age of 29, alone and without money, connections or qualifications. As Lilley later put it, ‘I came among you, poor and unbefriended ... without a single soul to assist me, and I fought my way up among you’.

Within about two years of arriving in Brisbane, Lilley had completed the remainder of his articles of clerkship with an influential local solicitor (Robert Little) and had become the first practitioner to sign the new *Roll of Attorneys, Solicitors and Proctors of the Supreme Court of Moreton Bay* (14 August 1858). In this short period, he also became active in local politics, the editor of the local newspaper (*Moreton Bay Courier*), and married to the daughter of a prominent local builder (Joshua Jeays). It seems likely that Mr Jeays also built for the young couple a stone cottage on Wickham Terrace (Jesmond), in which the Lileys ultimately raised a family of five daughters and eight sons—seven of whom became lawyers.



Within his first 12 years in Brisbane, Lilley's professional and political achievements were even more astonishing. He had been elected to Queensland's first Legislative Assembly as the member for Fortitude Valley (1860) and commenced practice at the Bar (1861), then was successively appointed Attorney-General (1865), the colony's first Queen's Counsel (1865) and ultimately Premier of Queensland (1868-1870).

By 1870, Lilley was still only 43 years of age. After losing government as a result of a no-confidence motion on the floor of the Legislative Assembly, Lilley shifted his main focus to the law. In 1872, he was appointed judge of the Supreme Court—with an appointment as Queensland's second Chief Justice soon to follow (1879–93).

It was in this last capacity that Lilley attracted the attention of Dr John Bennett. Since the 1960s, Dr Bennett has been meticulously filling in pieces of the complex puzzle which is Australia's colonial legal history. Dr Bennett's home jurisdiction has been the beneficiary of an important set of his works, exploring the history of the New South Bar (1969), the Supreme Court (1974) and its solicitors (1984). For many years, however, Dr Bennett's more ambitious plan has been to produce a set of works devoted to the lives of each of the Chief Justices of the Australian colonies. There are now 14 volumes in this set—including two volumes dealing with the first two Chief Justices of Queensland.

Judicial biography is a challenging genre, as so many lawyers who were great celebrities in their own time do not necessarily ignite the interest of the modern reader. Fortunately, the colonial Chief Justices were a quite remarkable group. To the extent that any one theme can be extracted from a study of such a diverse group, it is the steadying role which most played within colonial society by reason of their moderate, educated, charitable and civilising influence. In Lilley's case, he was a man of strikingly modern and progressive views. At a time when Queensland politics was dominated by conservative rural interests, Lilley was prepared to give public support for progressive causes such as free primary school education, votes for women, trade unionism, the establishment of a university in Queensland, federation of the Australian colonies and even republicanism. During his short term as Premier, Lilley did not have the luxury of control over the Parliament. Indeed, it was only by a somewhat adventurous use of executive power that he was able to become, as the obelisk on his grave records, the 'founder of free education in the Colony'. However, by advocating a range of reforms with great skill and vigour, Lilley's efforts did much to introduce ideas which would later take root.

In the rough and tumble of colonial politics, Lilley's conservative opponents did not hesitate to respond with attacks upon his character—in Parliament, on the hustings and in the press. These were not nuanced or subtle attacks. In effect, Lilley was alleged to be 'a drunkard and one who comported himself shamelessly as a man guilty of gross immorality and sexual lust'. For a time, Lilley was well equipped to defend himself. In November 1871, for example, Lilley had the courage to bring defamation proceedings in the Supreme Court against two regional newspapers—with jury verdicts vindicating his reputation by awarding damages in the relatively large amounts of £300 and £475 respectively. After his appointment to the court, however, the position was very different.

It is this period of Lilley's career, as Chief Justice of Queensland, that creates the greatest challenge for a biographer. In the absence of any private diaries and letters, or any dispassionate assessment by his contemporaries, it is difficult to fully understand some aspects of Lilley's conduct which, to modern eyes, seem quite unwise. During this period, for example, one of the Chief Justice's sons (Edwyn Lilley) was developing a successful career at the Bar in Brisbane. By modern standards, there would be no question of a son or daughter appearing as counsel in contested hearings before their own parent. In Lilley's court, however, it was common for Edwyn Lilley to appear as counsel before the Chief Justice—with many of these hearings occurring in the privacy of the judge's own chambers. This practice may have been legally permissible at the time, but not surprisingly it seems to have generated some disquiet. It also seems to have led some litigants to seek a forensic advantage by briefing Edwyn Lilley in matters that could be arranged to be heard by the Chief Justice. Lilley, however, appears to have been unconcerned by appearances. Outside court, a similar lack of concern seems to have led the Chief Justice to participate in political debate as if he were any private citizen. As Dr Bennett explains, 'Sir Charles Lilley considered that he had an absolute right to comment publicly, while Chief Justice, on matters of public concern, no matter how contentious. He candidly admitted that speaking out in such a way exposed him to criticism—as it did—but he brushed that risk aside'.

This lack of concern about appearances, or sensitivity to criticism, may well have done Lilley's reputation no serious harm, but for his unfortunate involvement as the trial judge in *Queensland Investment and Land Mortgage Company Limited v Grimley* (1892). This case had a number of features which should have signalled danger to the Chief Justice. It was a case of enormous public importance. The claim was very substantial (£60,000). The claim was being brought by a financier not only against its borrower, but also against its former directors for negligence in failing to obtain appropriate securities for the loan. These directors were prominent and influential Queensland figures, two of whom were former political rivals of Sir Charles Lilley—Sir Thomas McIlwraith and Sir Arthur Palmer. If this were not enough, the counsel chosen by the plaintiff to conduct its case against these defendants was Edwyn Lilley.

When hearing the trial of this exceedingly complicated and lengthy case, it seems clear that the Chief Justice was not in good health. Nevertheless, in the course of the hearing, he made a number of important and contentious discretionary decisions—which seemed to consistently favour the plaintiff (and the submissions advanced by his son) over the defendants (including McIlwraith and Palmer). Most significantly, the Chief Justice determined not to act upon the answers given by the jury, which were favourable to the defendants—but substituted his own judgment on the facts, which substantially favoured the plaintiff.

Lilley's conduct of this trial was the ruin of his reputation—particularly after this judgment was so comprehensively reversed by the Full Court (1892). This controversy also revived earlier rumours and innuendo about Lilley's character and conduct—with further colourful material being added to the existing corpus by a private investigator engaged by McIlwraith. In these circumstances, it seems certain that, had Lilley not himself decided to resign from the court, others would have taken steps to have him removed. Sir Charles Lilley's resignation took effect in early 1893—when another Premier of Queensland, Sir Samuel Griffith, took his place as the next Chief Justice of Queensland.

In Dr Bennett's new biography of Sir Charles Lilley, he has been careful not to be distracted by the 'many personal and vicious attacks upon [Lilley] by his political opponents'. He has marshalled the objective evidence which is available about Lilley's personal and professional life, and applied his deep knowledge of this period of Australian history to make considered and judicious assessments. In the result, a great deal of misinformation about this important figure has been exposed, and Lilley rightly emerges as 'one of the leading statesmen of colonial Australia' and 'as one of the most accomplished lawyers of his generation'.