

Chapter 11

Building a Nation: The Doctrine of Precedent in Australian Legal History

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Law in the service of community

In 1788 David Collins (1756-1810),¹ an officer of Marines, took his place as the first Judge Advocate in the British colony of New South Wales. On 11 February 1788 the Criminal Court of Judicature over which he presided was first convened by order of the Governor (the representative of the British Crown in the colony), Captain Arthur Phillip. Three trials were conducted that day. The first, *R v Barsby*,² dealt with a charge of assault. The next two, *R v Hill*³ and *R v Cole*,⁴ dealt with charges of theft.

On 1 July 1788, the Court of Civil Jurisdiction over which Collins presided was first convened. After a trial that commenced on that day, continued on the afternoon of the following day and concluded on the afternoon of 5 July 1788 the Court, acting on process described as an “information and complaint”, granted the complainants Henry and Susannah Cable a verdict on a claim which, in England, would be recognised as a cause of action in detainee. *Cable v Sinclair*⁵ is celebrated as an early demonstration of a commitment to the rule of law in the military camp that served as a convict settlement.

1 (1966) 1 *Australian Dictionary of Biography* (ADB) (National Centre of Biography, ANU, <<http://adb.anu.edu.au>>), 236-240; Currey, *David Collins: A Colonial Life* (Melbourne University Press, Melbourne, 2000).

2 In Kercher & Salter (eds), *The Kercher Reports: Decisions of the New South Wales Superior Courts, 1788 to 1827* (Sydney, 2009) the report of *R v Barsby*, 1-7, is accorded alternative modes of citation. It can be referred to as (1788) NSW Sel Cas (Kercher) 1 in recognition of that volume of law reports as part of the Francis Forbes Society for Australian Legal History’s “NSW Select Cases” series of early Australian law reports. It can also be referred to by its medium neutral citation, [1788] NSWKR 1. This form of citation facilitates reference to online versions of cases: See Macquarie Law School as part of University’s “Colonial Case Law” project (<www.law.mq.edu.au/html/ccl_colonial.htm>).

3 (1788) NSW Sel Cas (Kercher) 8; [1788] NSWKR 2.

4 (1788) NSW Sel Cas (Kercher) 10; [1788] NSWKR 3.

5 (1788) NSW Sel Cas (Kercher) 15; [1788] NSWKR 7.

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