

Home Truths

Stories from the Nineteenth-Century Castlemaine Police Courts

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Heather Holst lives in Castlemaine and became interested in the subject of 'home' through working in services for the homeless for 15 years. Her paper 'Home Truths' is part of a larger PhD project at the University of Melbourne on making a home in the Castlemaine district.

Abstract

This paper uses the records of the Castlemaine, Chewton and Fryerstown police courts from 1860 to the 1890s in order to examine the ways that people sought to make themselves a home after the main goldrushes had finished in the district. 'Home' is taken to mean a place that offers security, comfort and a sense of belonging – more than simply a house. The paper briefly considers the ways that the courts worked both for and against the various interests of claimants and then looks in more depth at some of the family law cases that came before the court. These cases reveal that the struggle to make a home was often carried on even within the four walls of a house.

When Europeans and Chinese came to the Castlemaine district in the 1850s in great numbers to look for gold, many of them also came to look for a home. The idea of settling in central Victoria may not have been uppermost in their minds, and of course many came with quite the opposite intention of making a fortune with which to return to their real home; however, it was not easy to return home on the old terms after such an experience. Some who did return found that they preferred the new settlement, after all. Others stayed for a short period around Castlemaine and then followed a better opportunity in some other district. Others again built permanent homes and stayed for the rest of their lives. How did this complicated, multifarious project of making a new home unfold?

The registers of the district police courts of Castlemaine, Chewton and Fryerstown[1] offer one way of recovering stories of making a home. Through the cases before the police court (otherwise known as the Court of Petty Sessions), it is possible to see the legal framework which underpinned the success of some people in making their home in the district, as well as the exclusion of others. The registers convey a strong picture of those who operated at the margins of success and respectability, with the court acting as a kind of sorting machine, apportioning guilt, innocence and consequence to the men, women and children who stood before it. To appear in the police court as a defendant on one of the more serious charges was to cross the boundaries of acceptable behaviour and, usefully for the historian, to have the clerk carefully record it in the register and the newspaper make it the next day's news. I have examined the police court registers of Castlemaine, Chewton and Fryerstown from 1860 until the mid-1890s as a way of better understanding the period of settlement after the centre of the goldrushes had moved away from the district.

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The court could exclude in very direct and disastrous ways: imprisonment for vagrancy, removal of a neglected child from home and parents, eviction from property, denial of a deserted wife's claim for financial maintenance, denial of access to land or employment on the basis of race. They could also exclude in more insidious and less absolute ways, such as the dismissal of cases brought by some residents – cases others had no difficulty in winning when they brought the same type of complaint. Even in the more trivial charges that many residents occasionally faced, such as failing to register a dog or being overdue in the payment of an account, which do not in themselves indicate much of the social position of the respondents, the registers reveal layers of detail about nineteenth-century lives. For example, that there were Chinese men among the list of debtors to a particular European storekeeper shows that this storekeeper allowed credit to the group so despised by many Europeans. This may then raise questions about the conventional understandings of the separateness of the Chinese population in the goldmining towns.

Success and inclusion when acted out through the police courts were quite subtle. Those who had the law on their side tended to appear less often in the courts and, when they did, it was more likely to be as complainants or administrators of law. As just one example, it is possible to read on one page the long lists of Council rate debtors – men and women who were having difficulty paying the tax that entitled them to occupy their homes – and on another that Ernest Leviny of Buda, one of the largest property owners in the district, made a successful case for the reduction of the amount that his twelve residential and commercial properties would be rated. Charles Tolstrup, who served for periods as Town Clerk as well as Justice of the Peace in the same Castlemaine Court of Petty Sessions that heard his application, made an even more financially successful appeal that day and had to pay only half of the original £70 rate on his block of offices.[2]

The court records are a useful indicator of relative influence and success, while the outcomes recorded in the registers also form part of that process of building or losing power. The advantageous position of wealthy settlers such as Tolstrup and Leviny, or the already existing disadvantage of others, influenced the court's consideration of their cases. At the same time, the position of those appearing before the court was further consolidated – to their advantage or disadvantage – by the way their cases fared in court. Perhaps those who most gained social position through the local police courts were the men who served on the Bench as Justices of the Peace. As Shapely has argued in his analysis of the committees of charitable institutions

in nineteenth-century Manchester, the performance of such a role accrued more 'individual social capital' to those already in a position to be eligible for the part.[3]

Although it is certainly possible to see some people falling unequivocally into the category of 'winner' or 'loser' in their dealings with the police courts, more often the situations were blurred. For instance, defendants, even in quite serious cases, often also used the court to prosecute their own cases against other people. A good example of this complex arrangement can be seen in the court appearances of Ann Ah What (or Awot or Ah Wat or A Wat) who was sent to prison on three occasions as the keeper of a brothel. She nevertheless used the same court to charge Hock Fon with assault, William Clough with illegal detention of goods, Elizabeth Scantlebury with injury to property, and her husband, James Ah What, for failure to provide maintenance.[4] Similarly, many of the Chinese men who had been treated so harshly by the administration of the Chinese Residence License and, at least in one district police court, by the vagrancy legislation, used the courts to recover debts and prosecute both Europeans and Chinese who assaulted them.

Even well after the turmoil of the goldrushes, nineteenth-century residents of the district came before the police courts at a quite astonishing rate, charging or answering a great range of matters, from debt collection and licence applications, through offensive language, maintenance, child neglect, lunacy, vagrancy and drunkenness, to assault, rape and murder. The police court was apparently viewed as an accessible means of settling a grievance as well as a place you were very likely to have to answer to at some stage. For our period the courts were busiest in the early 1860s when the population was high but also less established. The attempt to exclude the Chinese through the enforcement of the Chinese Residence License also created a huge spike in the number of cases; for example, the Fryerstown court heard 1,139 cases in 1860 compared to 341 in 1863 after this legislation was repealed. As Fryerstown lost population and became more settled, the cases fell so that there were 142 cases in 1870 and only 14 in 1890. However, the decline in court cases was much larger than the decline in the number of residents, indicating that the terms under which people lived also became more stable.

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The police court played a particularly active role in the regulation of behaviour between husbands and wives. Cases of wife and child desertion and domestic assault can tell us a great deal about the effort of making a successful home and of the centrality/marginality of men in domestic life. In many respects, the cases that women brought against their husbands were also about defending the material wealth and social standing necessary for maintaining a home. Women were very often present in the police court to defend cases brought against them that could radically alter their material circumstances and social status. Frequently these were charges of being drunk and disorderly, of assaulting another woman, or of using obscene or offensive language.

The two main charges brought by wives against their husbands – assault and maintenance – were brought before the court in approximately equal numbers and often the two would appear together or in quick succession. In the great majority of cases, women brought a charge but then did not follow up with an appearance in court – a pattern which remains a feature of domestic violence court cases today.[5] The other most common matter which women brought to court was to seek an order for maintenance of illegitimate children. This type of case was very similar to maintenance claims by a wife after desertion, in that both sought some security of income in order to live independently of the man and still be able to provide for the children. There were very few cases of divorce, although many women who sought maintenance lived in permanent separation from their husbands. There was also a very small number of cases of women seeking protection of earnings from a husband after separation. There were hardly any cases of sexual assault, and, when they did occur, they tended to be prosecuted by the police rather than the victim and were often ‘carnal knowledge’ cases of sexual contact with an under-age girl.[6] All these matters could cause disruption in the home. Assault and abuse within the home destroyed the sense of home as a place of comfort and security, while the breakdown of a marriage could lead to the outright loss of the roof over one’s head.

Especially before the mid-1870s, women could expect a reasonable chance of success with their assault charges against their husbands. On the few occasions when a woman did go ahead with prosecution, the court would frequently assist by ordering the assailant to be ‘bound to the peace’ with a surety of a sum of money in case he breached the order. The courts were also prepared to gaol husbands on occasion. James McKenna was sentenced to fourteen days in gaol for an assault on his wife Susan in 1867.[7] Edwin Mitchell was sent to the

lock-up for three days for threatening to take the lives of his wife and child in 1874.[8] Watson was sent to gaol in 1871 after breaching an order to bind to the peace.[9]

However, in a time of harsh penalties for breaking the law, the fines and gaol terms for domestic assaults were very low in comparison to typical punishments for assaults outside the home. For example, William Williams was found to have broken panes of window glass with a gun and was ordered to keep the peace for three months ‘towards all Her Majesty’s subjects, especially his wife’, yet this evidently very violent intimidation attracted only a surety of £25.[10] Richard Williams was bound to the peace with a surety of £50 in 1871 for an assault against his wife Jane at Fryerstown.[11] By comparison, in the Supreme Court session at Castlemaine in April 1863, Judge Stawell sentenced Joe George to twelve months hard labour for an assault, and in the July 1869 session Judge Williams sentenced Patrick Murphy to two years hard labour for wounding with intent to do grievous bodily harm.[12] With cases of assault by a husband against his wife, the law concerned itself with trying to prevent future assaults rather than offering a means of redress for the assault that had already occurred.

Perhaps a more effective sanction against an abusive husband can be seen in the case of Charles and Jemmima Glass. Glass was the prominent publisher and bookseller in Market Square, Castlemaine, whom local historians would recognise as the publisher of town directories in the 1860s. Glass was bound to the peace with a surety of £50 by the Castlemaine police court in 1877 for assaulting his wife Jemmima.[13] On this occasion, Jemmima Glass had another very real lever, her husband’s social standing, with which to counter his violence. This course of action was not without consequence: there was a great risk that by placing her private affairs in the public realm Jemmima would forfeit her own social standing, but she must have calculated that it was a risk worth taking. Jemmima Glass was one of a small number of women who went beyond the usual assault and maintenance charges when she successfully sought an order for protection of her property against any claim of her husband’s.[14] There was a provision of the 1861 Divorce and Matrimonial Causes Act that allowed a deserted wife to make application to have any money or property acquired since the desertion protected against any claim by her husband or his creditors. If granted, this protection was as strong as if the couple had been granted a judicial separation.[15] There were only seven women who brought such cases in the Castlemaine district, but all were successful.[16]

When Mary Hazlett brought a case against her husband Samuel for threatening to take her life, she did not fare so well. Samuel Hazlett was a publican and storekeeper in Fryerstown, with a social prominence comparable to Charles Glass and considerable status at risk with such a charge. Mary Hazlett did not follow through with a court appearance so the case was dismissed.[17] She may have been too intimidated (by her husband, by the court formalities or by the publicity) to proceed, she may have decided her best chance was to put up with the situation, or she may have forgiven Samuel his actions – we cannot know from this distance. Within two years of this incident, Hazlett was appointed Justice of the Peace for the Fryerstown court and became one of the arbiters of such cases.

Just how disastrously it could all go wrong for a woman and her children unable to get help with a violent husband is illustrated by the case of Margaret Watkins. In January 1880 Margaret charged her husband Henry with assault, but, as she did not appear in court for the hearing, her case was dismissed.[18] Nearly eight years before Margaret had twice made assault charges against Henry, but did not attend court on either occasion to have these heard.[19] Henry and Margaret had married in 1870 and from 1871 children had been born two years apart in a pattern common to those times.[20] Margaret already had a daughter from a previous marriage, so the couple had five young children in their care by 1880.[21] Three months after the 1880 incident, Margaret was brought to the Fryerstown court to defend an assault charge laid by Annie Myers. Myers' case against Margaret Watkins was dismissed.[22] Ann Myers was very frequently in court, mainly in Chewton although sometimes in Fryerstown, and usually as drunk and disorderly with a smattering of cases against other women for obscene language or assault.[23] Five days after this incident, Margaret was charged by the police with stealing a clock and two iron bedsteads but this charge was converted during the hearing to the vagrancy charge of 'having no visible legal means of support'. For this she was sentenced to six months in gaol and on the same day her five children, Mary Ann, Margaret, Henry, Harriet and Sarah were removed into the care of the Department of Neglected Children.[24] The Watkins home was comprehensively broken up by this sequence of events.

Other women who brought assault and maintenance charges against their husbands achieved more mixed results in their struggle for physical and financial security. Elizabeth Stevenson took her husband Charles to court in Castlemaine in 1867 for maintenance and had an order made in her favour for 35s to be paid to her quarterly for twelve months. The court also

ordered that two of their children remain in Elizabeth's care. Although the court acted on her behalf, 35s quarterly was nowhere near enough money to live on, and the determination meant that Elizabeth lost the care of three of her five children. She followed up this appearance three weeks later with a summons against Charles to 'show cause why a distress warrant should not be issued', meaning that he had not paid her the money ordered by the court. The warrant was issued against Charles, but he then brought Elizabeth to court in 1868 on a charge of having set fire to goods, a charge which was dismissed. In 1869 Elizabeth was back in court seeking maintenance but had her case dismissed. Four months later an assault charge was brought against Charles, who was consequently fined and 'bound to the peace'. They were back in court in 1873 with Elizabeth again seeking maintenance for herself and their five children.[25] The Stevensons' prolonged legal conflict was far from unusual. For a woman to survive a violent marriage without losing custody of the children and all respectability meant a sequence of court appearances to gain some independence interspersed with periods of attempting to live with her husband.

The mid-1870s marked the end of the most active period for women bringing maintenance and assault cases against their husbands. It is difficult to say why this should have happened at that time, but perhaps part of the explanation lies in a falling away of court sympathy for women making maintenance claims. A report from the *Mount Alexander Mail* in 1876 catches the new tone and may help to explain why women were no longer as inclined to seek court support for their marital problems.

Elizabeth Anderson v Alexander Anderson ... Mrs Anderson complained of hard treatment, and of being turned out of her house without receiving adequate means for her support. She had £4 in the Saving's [sic] Bank. The defendant became very irate during the case, attempting to conduct it himself. The Bench thought it a sad thing for the differences between man and wife being brought before the court. The husband offered to take back his wife, but she did not feel inclined to come again under his tyranny. The Bench directed her to return to her home.[26]

Nevertheless, many women throughout the period 1860 to the mid-1890s managed to make quite an effective break from an abusive husband and went on with life as if widowed. Twomey has written that this was the goal of women making claims for maintenance in the 1850s and 1860s, although it was not generally how the police court Benches understood their welfare to be best served. The men hearing the cases believed that women required the protection offered by a responsible man or, if this was not possible, by the State, rather than independence.[27] The court records indicate, however, that many women kept stores and hotels, let out rooms to lodgers, paid house rates in their own right and had sole custody of children. Other women were paid for various types of employment such as domestic labour, school teaching and nursing or earned money boarding children for the Department of Neglected Children. Most of these women would have been earning their own independent living.

The manner in which a woman could use the court in her bid for independence from a violent husband is well illustrated by Ellen Ellis. She had sought maintenance from her husband, James, in June 1865 and they had settled out of court.[28] She brought him back to court to face an assault charge in December 1867, which was also settled.[29] A few months later the police charged James with obscene language and he was fined 10 s ; they charged him again in May 1868 with threatening behaviour, for which he was fined 20s.[30] It is not clear who James was being aggressive towards in these cases, as the police brought the prosecutions, but it is very likely to have been his wife. Ellen did not appear in court when she charged James to be bound to the peace in June 1868,[31] but it was later that month that she succeeded in a protection of earnings order. [32] Ellen continued to use the court to help her as she made her own way financially. She sought payment from Patrick Doyle for board and lodging in December 1868 and later charged him with assault and damages, although neither appeared in court on either occasion. [33] She also used the court to charge Richard Williams with assault and damages, winning the case and being awarded £2 damages and costs.[34] Phillip Miller took her to court for unpaid wages in May 1869 and Ellen was ordered to pay him the outstanding amount of £1.5.1.[35] She apparently established herself as a liquor seller, although without a license, as she was before the court to have her liquor confiscated in March 1869.[36] At this stage Ellen had at least two children, Mary Jane born in 1865 and William born in 1867.[37] She would be granted the license for the New London Hotel in July 1869 without anyone lodging an objection.[38] After this, Ellen Ellis no longer appeared in the court registers.

These family law cases that came before the nineteenth-century police courts of the Castlemaine district give an indication of the complexity of the struggle facing many people, particularly women, trying to make their home in the colony. While the difficulties facing new settlers have more often been framed in terms of land, the police court records tell us something of the social and human factors that account for the differing degrees of success, security and sense of belonging found in the colonial population.

Endnotes

[1] Public Record Office Victoria, VPRS 1446, Chewton Court of Petty Sessions: 12.4.1865 to 21.11.1872; 8.1.1879 to 24.12.1890; 28.7.1893 to 1915; Maintenance Register and Gold Buyers Register. VPRS 1455, Fryers Creek/Fryerstown Court of Petty Sessions: 15.11.1858 to 19.1.1862; 20.7.1863 to 13.12.1890. VPRS 365, Castlemaine Court of Petty Sessions: 3.11.1862 to 31.8.1865 (v.1); 2.9.1865 to 3.6.1867 (v.2); 4.6.1867 to 24.8.1868 (v.3); 24.8.1868 to 27.5.1870 (v.4); 28.5.1870 to 8.12.1871 (v.5); 14.5.1872 to 3.2.1874 (v.6); 6.2.1874 to 28.12.1875 (v.7); 4.1.1876 to 29.3.1878 (v.8); 2.4.1878 to 12.10.1880 (v.9); 15.10.1880 to 17.7.1883 (v.10); 20.7.1883 to 28.5.1886 (v.11) and 1.6.1886 to 30.5.1888 (v.12). Despite each case having only a minimal entry in the register, the diversity of cases, the recurrence of names and the ability to follow a sequence of events allow stories to emerge, at times quite dramatically. It is more difficult to follow Chinese cases as the usual problem of erratic spelling of names is considerably amplified in the translation of Chinese names into English. It is also possible to cross-check the register entries with local newspaper reports, prison records and registers of births, deaths and marriages to fill in the story.

[2] VPRS 365, Castlemaine, 28.3.1876.

[3] P Shapely, 'Charity, status and leadership: charitable image and the Manchester Man', *Journal of Social History*, vol. 32, 1998, pp. 157-69.

[4] VPRS 365, Castlemaine: 28.2.1871: police charged Ann Ah Wah with being the occupier of a house frequented by idle and disorderly persons – 3 months' prison; 18.7.1871: police charged Ann Ah What as the keeper of a house frequented by persons having no lawful means of support – sentenced to 6 months' prison; 19.1.1872: Ann Ah Wat charged William Clough with illegal detention of goods – goods to be given up to her; 17.5.1872: Ann Ah What charged Elizabeth Scantlebury with injury to property – case dismissed; 16.5.1873: Ann Ah Wat charged James Ah Wat with deserting his three children – not served; 20.3.1874: Ann Ah What charged Hock Fon with unlawful assault – no appearance, struck out; 16.10.1874: Ann Ah What charged with keeping a house frequented by prostitutes – 3 months' prison. James Ah What and Ann Coogan had married in 1860, and produced four children, William, James, Alexander (who died as an infant) and Theresa by 1872. They had another child at The Loddon in 1875, Annie May, so presumably reconciled after the maintenance charge (*Pioneer Index. Victoria 1836-1888: Index to births, deaths and marriages in Victoria*).

[5] Agencies funded under the Supported Accommodation Assistance Program (SAAP) to work with women leaving violent relationships report this failure to follow through with an initial complaint as a feature for women considering legal redress. Women leave on average seven times before finally ending a violent relationship (conversations with domestic violence agency workers).

[6] Cases came to the police court to establish if there was sufficient evidence for the accused to be committed to stand trial in the Supreme Court.

[7] VPRS 1455, Fryerstown, 11.11.1867.

[8] VPRS 1455, Fryerstown, 13.3.1874.

[9] VPRS 1446, Chewton, 2.3.1871.

[10] VPRS 1455, Fryerstown, 6.7.1868.

[11] VPRS 1455, Fryerstown, 24.4.1871.

[12] VPRS 78, Unit 4, Criminal Record Book of Prothonotary, 27.4.1863 and VPRS 78, Unit 6, Criminal Record Book, 14.2.1870.

[13] VPRS 365, Castlemaine, 19.6.1877.

[14] VPRS 365, Castlemaine, 20.1.1882.

[15] VR No. CXXV, An Act to amend the Law relating to Divorce and Matrimonial Causes, 3 July 1861, section VII.

[16] Elizabeth Barnes v Joseph Barnes, Fryerstown 20.11.1865; Ellen Ellis v James Henry Ellis, Fryerstown 29.6.1868; Sarah Roberts v James Roberts, Fryerstown 18.1.1879; Sarah Marks v Barras Marks, Castlemaine 29.1.1878; Rose Whittaker v Thomas Whittaker, Castlemaine 7.1.1879; Jemmima Glass v Charles Edward Glass, Castlemaine 20.1.1882; Bridget Platt v Samuel Platt, Castlemaine 6.1.1888.

[17] VPRS 1455, Fryerstown, 30.4.1881.

[18] VPRS 1455, Fryerstown, 10.1.1880.

[19] VPRS 365, Castlemaine, 30.4.1872 and 11.10.1872.

[20] P Grimshaw & C Fahey, 'Family and community in nineteenth-century Castlemaine', in P Grimshaw, C McConville & E McEwen (eds), *Families in Colonial Australia*, Allen & Unwin, Sydney, 1985.

[21] *Index to births, deaths and marriages*, record nos. 3476, 7831, 8077, 1077 and 2701.

[22] VPRS 1455, Fryerstown, 10.4.1880.

[23] Myers and her husband ran the Live and Let Live Hotel on Golden Point Road, Chewton. Just over a month later, Ann was sentenced to a month in gaol in default of a £5 fine for using insulting behaviour in a public place, so she and Margaret may well have met again in prison (VPRS 1455, Fryerstown, 15.6.1880).

[24] VPRS 1455, Fryerstown, 15.4.1880 and *Mount Alexander Mail*, 19 April 1880.

[25] VPRS 365, Castlemaine, 4.12.1867, 24.12.1867, 28.5.1868, 9.2.1869 and 31.10.1873.

[26] *Mount Alexander Mail*, 29 April 1876.

[27] C Twomey, *Deserted and destitute: motherhood, wife desertion and colonial welfare*, Australian Scholarly Press, Kew, Vic., 2002, p. 149.

[28] VPRS 1455, Fryerstown, 12.6.1865.

[29] VPRS 1455, Fryerstown, 23.12.1867.

[30] VPRS 1455, Fryerstown, 24.2.1868 and 11.5.1868.

[31] VPRS 1455, Fryerstown, 8.6.1868.

[32] VPRS 1455, Fryerstown, 29.6.1868.

[33] VPRS 1455, Fryerstown, 21.12.1868 and 26.4.1869.

[34] VPRS 1455, Fryerstown, 31.5.1869.

[35] VPRS 1455, Fryerstown, 10.5.1869.

[36] VPRS 1455, Fryerstown, 22.2.1869 and 1.3.1869.

[37] *Index to births, deaths and marriages*, nos. 8532 and 8210.

[38] VPRS 1455, Fryerstown, 26.7.1869.