

Introduction



*The Court of Criminal Appeal, London, 1916 (oil on panel)
by Sir John Lavery*

This monograph explores the origins and history of the Court of Criminal Appeal (CCA) for NSW. It begins with a discussion of the events that led up to the passage of the Criminal Appeal Act 1907 (UK), which created a CCA for England and Wales and served as the model for the Criminal Appeal Act 1912 (NSW). The monograph then explains the criminal appeal structure that predated the Criminal Appeal Act, recounts the little-known legal troubles of the Attorney General who pioneered the Act, and canvasses the parliamentary and public debates on the Criminal Appeal Bill. Also discussed are the proviso; various amendments made to the Act since its inception (including provisions for Crown appeals against sentence, “time to count” and interlocutory appeals); controversies surrounding the composition of the court; and the jurisprudential evolution of the “unreasonable verdict” ground of appeal. The monograph then goes on to catalogue some of the more notorious cases to come before the CCA, before concluding with a brief discussion of guideline judgments and other, less commented upon, aspects of the court’s work.

A Court of Criminal Appeal for England and Wales

The miscarriages of justice that precipitated the establishment of a Court of Criminal Appeal (CCA) in England spurred a similar push for reform in NSW. Two cases in particular are worthy of mention.

Wilhelm Meyer, aka John Smith among other aliases, was born in Lincolnshire in 1839. He was an enterprising soul. He claimed to have studied medicine in Vienna, and even practised as a doctor in Adelaide for a time. More fancifully, he claimed to have been surgeon-general to the King of Hawaii as well as the owner of a coffee plantation in Honolulu.¹

With this level of apparent achievement in conventional society, it is perhaps surprising that Meyer came to be a significant figure in the criminal history of England and, indirectly, NSW. By the 1870s, Meyer had taken to a life of crime on the streets of London. Posing as a nobleman by the name of “Lord Willoughby”, he successfully tricked at least 17 women into parting with their jewellery. His modus operandi was simple. He would pretend to mistake a woman on the street for one “Lady Everton” or some other fictitious lady of vague significance, and then engage her in conversation. After developing a rapport with the woman, he would promise to show her the French Riviera on his yacht, or perhaps take her as his mistress. But first, she needed jewels and a wardrobe

¹ “Report of the case of William Thomas, alias John Smith, contained in *The Times* newspaper, of 16th Sept, 1904”, reproduced in ER Watson, *Adolf Beck (1877–1904)*, William Hodge & Company, London, 1924, pp 222–229.

fit for the occasion. At Meyer's request, the woman would hand over her ring, in the belief that "Lord Willoughby" would have it examined for size by a jeweller and return with more resplendent pieces. Suffice to say, he never came back. Meyer must have had a way with words because the historical record does not paint a flattering picture of him: short, rotund, double-chinned. In his victims' defence, Meyer's expensive suit and top hat did give him the appearance of a nobleman.

As one might expect, Meyer eventually saw the inside of a prison cell. In 1877, he was convicted and sentenced to five years imprisonment. Specific deterrence proved totally ineffective and he left prison unreformed. He very quickly reprised his alter ego and set about defrauding more women of their jewels and other belongings.

In December 1895, a well-dressed Norwegian man named Adolf Beck was walking down Victoria Street when one of Meyer's many victims identified him as the charlatan who had made off with her jewels. Although Beck denied the accusation, he was arrested and charged. His life took a further and more significant turn for the worse when a number of other women identified him as the culprit. He was tried at the Old Bailey. As if things were not bad enough, the trial judge had prosecuted Meyer when he was at the Bar and was convinced that the man now before him was the culprit. His Lordship refused to allow the defence to call evidence to show that Beck could not have been the guilty party because he was in Peru when a number of the crimes took place. On the sworn evidence of a number of victims, Beck was convicted of Meyer's crimes and sentenced to seven years imprisonment. Only when it was discovered from prison records that Meyer was circumcised, whereas Beck was not, did doubts begin to surface about Beck's guilt. Although the Home Office brought this anomaly to the trial judge's attention, his Lordship was unmoved. Beck continued to languish in prison for crimes he did not commit, until he was released on parole in 1901.

His sorry tale did not end there. In 1904, Beck was again arrested, and after trial convicted on the evidence of another woman who mistook him for Meyer. This time, however, Beck's accuser was not certain in her identification. The trial judge was troubled by the guilty verdict and chose to delay sentencing. In a rare stroke of luck for Beck, the case was solved a few days later when the police arrested "Lord Willoughby", who had continued all the while to sweet-talk women into handing over their jewels. Many of the women who had previously accused Beck recanted their testimony after seeing Meyer. Beck was finally pardoned and given £5,000 for his troubles. But he was shattered and his life ruined. He lived out his final years in "poor circumstances" before succumbing to bronchitis and pneumonia in a Middlesex hospital in 1909.²

There is another person of historical significance to the origins of the CCA. His story is also one of unmitigated misery. George Edalji was a solicitor from Birmingham of Indian and Persian descent. In 1903, a number of animals were inexplicably slaughtered near his father's residence. An anonymous letter sent to the police claimed that Edalji was seen disembowelling a horse. Edalji was convicted after trial and sentenced to seven years imprisonment. According to those who have studied the matter, Edalji's innocence should have been obvious to anyone who cared to look at the evidence. Not only did his father, an Anglican clergyman, supply Edalji with an alibi, but the mistreatment of animals did not abate while he was in gaol awaiting trial.³

Both Beck's case and the misfortune of Edalji attracted significant publicity. They were cited by those who urged reform of the criminal justice system because of the unreliability of some jury verdicts. In 1907, Sir Arthur Conan Doyle, of Sherlock Holmes fame, authored two articles in the

2 "Mr Adolf Beck", *The Times* (London), 8 December 1909, p 11.

3 R Pattenden, *English criminal appeals 1844–1994*, Clarendon Press, Oxford, 1996, p 30.

Daily Telegraph in which he sought to prove Edalji's innocence.⁴ Edalji was eventually released without "comment or pardon" and restored to his position in society, but it would be fair to say, as Holmes might to "dear Watson", that his case required only elementary powers of deduction.⁵

There were other miscarriages of justice in England, but it was the fate of Beck and Edalji that provided the impetus for the *Criminal Appeal Act 1907* (UK) and the CCA which it established. Before the Act, the English criminal justice system did not provide for appeals on questions of fact. An appeal on a question of law was confined and could only be pursued with the leave of the trial judge. It may come as no surprise that leave was rarely granted. English judges were notorious for strong-arming juries into returning the verdicts the judge wanted.⁶ It was thought, over-optimistically, that the Crown prerogative of mercy would be adequate to deal with the occasional wrongful conviction.⁷



Sir Arthur Conan Doyle 1859–1930

Sir Arthur Ignatius Conan Doyle DL was a Scottish physician and writer who famously invented the detective Sherlock Holmes.

The pressure for reform came from the newspapers, and not just the tabloids. The perceived dysfunction of the criminal justice system is reflected in a letter to the editor published in *The Times* in February 1907, which read:

"No one in his senses can approve of the course of things, now becoming almost normal, in which the main features are conviction, agitation by friends, investigation by a distinguished amateur, a 'boom' in the popular Press, [and] a departmental committee of the Home Office."⁸

Though initially opposed by the English judiciary, the CCA proved a success. *The Times* concluded two years after its establishment that "even with ... imperfections in procedure, the formation of the Court has been justified".⁹ An editorial published the next month was also positive. It delivered the following verdict:

"There is no sign that juries are losing their sense of responsibility by reason of the knowledge that they no longer always speak the last word. There is no likelihood that almost all prisoners will appeal, as was at one time feared ... The Act has not proved unworkable, as was predicted."¹⁰

As we will see, the success of the English experiment did not go unnoticed in NSW.

4 "The case of Mr George Edalji: special investigation by Sir A Conan Doyle", *Daily Telegraph* (London), 11–12 January 1907.

5 AC Doyle, *The true crime files of Sir Arthur Conan Doyle*, Berkley Prime Crime, New York, 2001, pp 18–19.

6 Pattenden, above n 3, p 16.

7 *ibid* pp 19–20.

8 H Stephen, "Criminal appeal", *The Times* (London), 14 February 1907, p 11.

9 "The working of the Court of Criminal Appeal", *The Times* (London), 2 February 1909, pp 9–10.

10 "The Court of Criminal Appeal", *The Times* (London), 12 March 1909, p 9.

