



AROUND THE GRAVES

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NEWSLETTER OF THE FRIENDS OF CHELTENHAM AND REGIONAL CEMETERIES INC.

Back in the Beginning

In another important find amongst the many references to the Cheltenham cemeteries in the *Victorian Government Gazette* is this entry (pictured below) from August 1862. The reference is interesting for a number of reasons. Firstly, it reveals the origins of the Cemetery are earlier than previously thought. Secondly, it took a further seven months before the appointment of the first Trustees in March 1863. And finally, the size of the original area was only two acres two roods (2.49 acres).

MORDIALLOC AND SOUTH MOORABBIN—Site for a Public Cemetery for Mordialloc and South Moorabbin, temporarily reserved by Order of the 5th of August, 1862.—Two acres two roods, county of Bourke, parish of Moorabbin, situate in the reserve known as the Spring reserve: Commencing at the north-east angle of the reserve, being a point bearing south six chains from the south-east angle of the Presbyterian Church reserve; bounded on the north by a line bearing west five chains; on the west by a line bearing south five chains; on the south by a line bearing east five chains; and on the east by a road bearing north five chains to the point of commencement.—(62.F.5217.)—Gazetted (1^o) on 29th August, 1862.

above:
Extract from the Gazette in 1862

The Case Against Peter Toy

How little has changed with the problem of vandals removing ti-tree on the Bayside foreshore as this case against Peter Toy before the Cheltenham Court attests;

John Butler, Inspector of the Shire of Moorabbin, charged Peter Toy, an old fisherman, residing between Black Rock and Ricketts' Point [sic], with having damaged the ti-tree in the Moorabbin Beach Park.

The inspector stated that at 3 o'clock on the 21st of September [1899], he heard sounds of chopping, and proceeding to the spot, found the accused in the act of cutting down a ti-tree about the thickness of his arm at the trunk. He said to Toy, "You ought to know better." He answered, "I didn't know it was wrong. The tree is dead." It was owing to the wholesale destruction of the ti-tree in this magnificent reserve that the proceedings were taken. He had often seen the defendant with bundles of dry sticks. He never knew him to take any green wood.

Peter Toy said he had been living in the district for 23 years, and he had been seen hundreds of times taking dry

wood from the beach and the reserve, and as no one had ever said a word to him about it before [sic]. He was not aware that he had been breaking the law. He could name people who were in the habit of cutting down the growing trees.

Mr [Edwin] Penny [JP]: You must not in the future take anything from the reserve without obtaining the permission of the council through its officers.

Fined 2s 6d and 2s 6d costs.

All three rest peacefully in the Cheltenham Pioneer Cemetery. Peter Toy died in July 1914 aged 73 and lies buried in an unadorned grave with two other persons (Pres "60" 25). Cr. Edwin Thomas Penny died in December 1916 aged 67 (CofC "A" 72). And John Henry Butler lived until the age of 63 and was buried on 3 February 1922 (CofC "42A" 26). (Source: *The Cheltenham Leader* 7 Oct 1899 p2)

Links to Ned Kelly

A number of persons associated with the story of Ned Kelly are interred in the Cheltenham cemeteries. They are:

John Archdeacon (1840-1912) was a constable in the Victorian Police force and was involved with the arrest of Jimmy Quinn in 1870.

William Bignell (1858-1936) who was a fellow student at the Avenel Common School with a young Ned Kelly.

William Sefton Bowman (1863-1921) was the son of John James Beresford Bowman (1832-79) the barrister who defended Ellen Kelly at her trial for assaulting Constable Fitzpatrick in 1878.

Eustace Cuddon (1891-1956) whose father arrested James Kelly in 1873 and spent five years for cattle theft.

Henry Laing (1842-1903) was the Wangaratta stationmaster who applied for a portion of the £8,000 reward and gave evidence at the Royal Commission into the Kelly outbreak. (Source: Corfield, J., "The Ned Kelly Encyclopaedia")



above:
Gravesite of William Bignell—Cheltenham Memorial Park (CofE "93" 20)

Murder at Mordialloc: The Case of Patrick Duff

It was late one summer evening in December 1920 when Arthur Ernest Dowling, unable to sleep, awoke and found his mother locked in the kitchen of the family home alone with his near neighbour.

"Who is there?", the man asked as Dowling banged on the door and tried to break it.

Dowling was told by his mother to go back to bed and as he did, he overheard her saying to the man, "My God, Ern knows everything".

The sons of the soil who worked the land along the Wells Road corridor in the Mordialloc-Chelsea district were small scale farmers. Ownership was fluid as their success waxed and waned from season to season such were the hardships they faced farming on land which had been wetlands. In the small community, there resided two families, fellow farmers and friends – the Duffs and Dowlings. Patrick Joseph Duff (1867-1921) was a native of Wexford, Ireland born in 1867, the middle of six children to Nicolas Duff and Mary Ann *née* Cowman (1842-98). After his marriage to Esther *née* Hawkins (1867-1941) in 1890, the newlyweds emigrated to Victoria on the *Cuzco* arriving in August.

The months passed but time had not healed the hurt inside Ern Dowling. That festering emotion within had to erupt. And it came on Thursday 2 June 1921 – the six month anniversary of the incident in the kitchen. It was also the eve that he and his father Arthur senior were due to travel to Wonthaggi for a job involving chaff cutting coming soon after they had previously spent two weeks at Cranbourne. The thought of his mother alone with Duff was more than he could bear. The previous night, Wednesday, was the last straw. Arthur Dowling was again absent and Ern had noticed Duff and his mother in the front room alone. And it made him wild.

The 1920s may have been a decade of great social and technological change, but in many respects, it was a simple era when compared with today. The majority were church going, honest, law abiding citizens with a strong sense of community and respect for one another. So when a serious crime occurred only a hardened criminal avoided the long arm of the law while the innocent had nothing to fear. The problem, however, was that the police viewed serious crimes as having violet intent. That meant in the eyes of the police for every crime there was

a criminal. And we know from the painstaking research by Kevin Morgan into the wrongful conviction of Colin Campbell Eadie Ross in 1922, if a criminal did not fit the crime, the police made sure it did.

The machinations of the law moved swiftly and the coronial inquest before Robert Hodgson Cole took place on 22 June, just 19 days after Duff's death. Ern Dowling had made two statements on his arrest and both were read to the court. In his second statement, Duff would explain that;

"I have been greatly worried in mind by this man Duff annoying my mother. I must have been mad at the time when I shot him. I told my mother on 3 December that if Duff did not keep away I would go a long way to stop him. I took this step because my mother would be left with two or three of my family who were unsuspecting while we would be out of the district with the chaff cutter and Duff would be at our house and have the run of it while we were away. These thoughts used to drive me nearly crazy".

The lucrative trade of jury rigging was a blight on the justice system in the 1920s. The ease of identifying witnesses and jury members meant a visit by a few shady thugs had a way of achieving a favourable outcome. All that was needed was a deep pocket and the right connections. And then there were the self-styled 'legal advisors' who could see the business opportunity of paying a friendly visit unannounced and offering advice on the finer art of obtaining justice. And it didn't take long before the Dowlings were paid such a visit.

Members can download the entire 6,450 word article for free from the Members' area of our website:

www.focrc.org/members.htm.



above:
At the scene on Edithvale Road looking towards the Dowling home

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