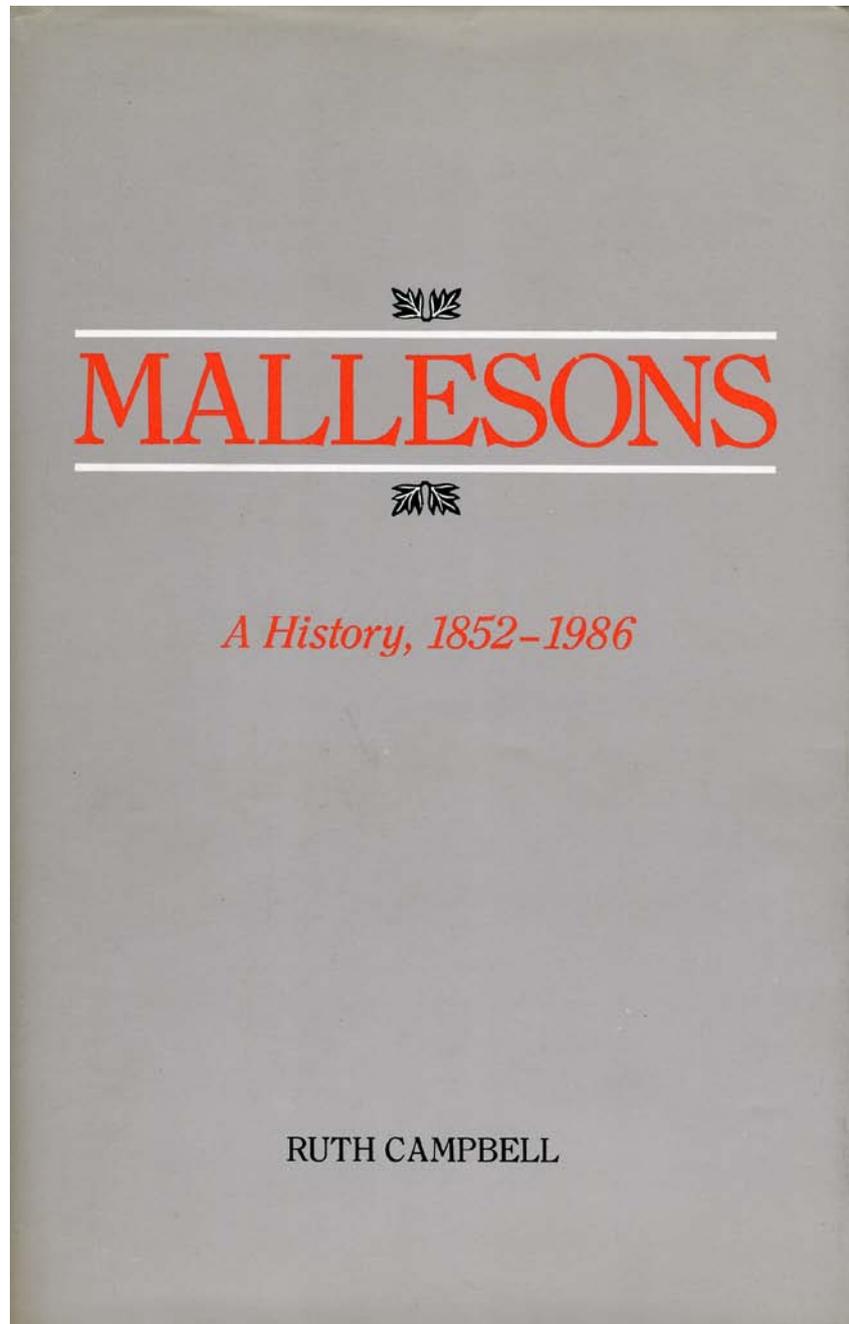


James Cooper Stewart
Extract from ‘Mallesons A History 1852 – 1986’
by Ruth Campbell



as a Senator in the new Australian Parliament.⁵² Perhaps Mr England first made his acquaintance in the late 1950s, when Zeal was engineer to railway contractors Cornish and Bruce, clients of the firm.⁵³

Edward England, at his death, on 23 August 1904, left a wife, two daughters, and a son; but they all lived in Great Britain, except his daughter, Ida, who was married to William James Bayles, a barrister, and apparently an 'amalgam', with the firm in the mid-1890s.⁵⁴ Edward England's son, Frank, did articles with Alfred Malleeson, from 20 June 1888, till 29 January 1892, when they were ended by mutual consent, on Frank's sailing for England, probably with his father. He resumed them on 12 April 1893, after Mr Malleeson's death, with Mr J. C. Stewart, but he was never admitted to practice in Victoria.⁵⁵ Nor was his older cousin, Alfred's son, Arthur England, of Sandhurst, articled to Mr Stewart from 6 February 1872.⁵⁶ Arthur, exactly eighteen months after he was 'bound Clerk' to James Stewart, secured a release of his articles of clerkship, and there is no record of his ever completing the residue of his term.⁵⁷ No member, then, of either the Malleeson or the England family, was to continue in the firm.

Mr England's death, after a serious illness, was not unexpected, but was 'deeply regretted' by those who knew him. His estate was impressive: valued for probate at £45,623, its full net value after liabilities was £36,823. Apart from 'Genista' and 'Warringa', his only other realty of significance was his one-third share, worth £3,000, in the firm's Queen Street property. His shares, however, were valued at over £18,000, most of them in solid banks and utilities, and he had a good spread of other securities. His interest in the partnership was in the region of £7,000. Altogether, he was a very wealthy man, his fortune almost certainly added to by land transactions over the years.⁵⁸ So much for Edward England, who came to Victoria a stripling, in 1852.

Mr James Cooper Stewart migrated to Victoria for different reasons from Mr Malleeson and Mr England: he came for his health.⁵⁹ The first Scottish partner in the firm, Mr Stewart was born at Edzell, near Brechin, Forfarshire, on 24 January 1836, and so was four or five years younger than Alfred Malleeson and Edward England. His father was an artist and James was 'educated for the law'. According to the *Age* obituary, he did his articles in Edinburgh, though ill-health 'caused him to abandon his profession before he could be admitted'. In Victoria, he was compelled to begin his articles all over again, and to undertake the full period of clerkship, five years, which can only mean that his Scottish articles, if actually undertaken, were not approved by the Supreme Court of Victoria.

A passenger on the famous *Marco Polo*, James Stewart arrived in Victoria in 1857, with the intention of acquiring land, and he 'settled at Warrnambool, taking up farming'. Whether he bought or leased land, or even worked as a labourer, is uncertain. Nor do we know if he were more alive to matters of moment, in the Australian countryside, than Mr R. W. Pohlman, another native of Scotland, who established himself in the Port Phillip District in 1840, as a squatter. A friend's reminiscences of this barrister turned sheep-farmer, tell of Mr Pohlman, supposed

to be watching his sheep, but instead, opening 'a large and cumbrous volume he always carried under his arm', and saying to his companion, '“Now, here's an interesting case in point”, quoting from his book — a volume of Blackstone's 'Commentaries', which I considered a very dry and uninteresting recitation'.⁶⁰

'So he would read on, good man, forgetting all about his sheep, until I would remind him that the sun was getting low, and it was time to head our flocks for home. Then I would take the leading flock, so that he could follow me, otherwise he would never have found his way . . . I advised him to leave squatting and bush life, return to Melbourne, and resume his profession, which he did', in time becoming a County Court Judge and an Acting Judge of the Supreme Court of Victoria.⁶¹

Did James Stewart prosper on the land? Serle notes the 'rude careless plenty [of] the Irish potato-farmers round Warrnambool, [which] so astonished Gavan Duffy in 1856. Every man there, he observed, many of them illiterate, "had a horse to ride; every farm a team of bullocks"'.⁶² At least Stewart's health was restored, and for reasons known only to him and his contemporaries, he abandoned farming after about two years, 'returned to his profession — the law — and entered the office of Messrs Muttlebury and Malleson'. Both the *Age* and the *Argus* are agreed on the name of the firm, so this would place Stewart's starting there at some time between 23 February 1860 and 10 April 1861, the interval during which the practice was conducted by these two partners.⁶³ As he began the Articled Clerks' Course, at the University of Melbourne, in February 1861, he was probably with the firm by then, and perhaps in 1860.

The *Argus* has James Stewart's job on entering the firm that of clerk, stating that he became 'their managing clerk' later. The *Age*, on the other hand, makes him an instant managing clerk. But however he began, and when, Stewart was a managing clerk in the firm during 1861, 1862, and till April 1863, when he began his articles with Mr England.⁶⁴ During 1861 and 1862, also, as a student at the University of Melbourne, he passed in the subjects of the six terms, sitting for the examinations in Law Part 1, in October 1861, and in Law Part 2, a year later. The former comprised Rights of Persons, Personal Property, Contracts and Torts, and the latter the Law of Real Property, Estates, Conveyancing Inter Vivos, Wills and Intestacy, and Legal Remedies for Torts Relating to Real Estate.

Stewart was articled to Edward England on 8 April 1863, swearing, as England had, years before, that he would 'not . . . cancel obliterate injure spoil destroy waste embezzle spend or make away with any of the books papers writing documents monies stamps chattels or other property' of his principal. He would, however, 'cheerfully obey and execute his . . . reasonable commands'. Like him, too, he was not asked for a premium, and he was to receive a wage. Mr England agreed to pay him £5/10/0 a week — not as much as he, himself, had received from Mr Muttlebury, when he began his articles, and he had not been a managing clerk with the firm. But the 1860s were another decade, and many of the high salaries of the 1850s had vanished. It must be remembered, too, that £5/10/0 was still good money: the Basic Wage was just approaching this figure over eighty years

later. Stewart, though now an articulated clerk, doubtless still performed the same skilled work as formerly.

At the end of his five years in articles, Stewart was admitted to practice, on 8 July 1868, on the motion of Mr Fellows, and some time very soon after, became a partner.⁶⁵ The folklore of the firm suggests that he coerced Malleson and England into giving him a partnership, threatening, otherwise, to quit.⁶⁶ And as Stewart had been in sole charge of a case with which the other partners were quite unfamiliar, and which, in 1868, looked like going on appeal to the Privy Council, they had little choice but to make him a member of the firm. Tradition also rates Mr Stewart a mysterious character, in his old age, at least, who, in the early twentieth century, dominated the newcomers to the practice, William Stawell and Hugh Nankivell.

The *Argus*, in Stewart's obituary, on 20 August 1919, gave a different explanation for his partnership, though the two are not necessarily incompatible. The newspaper's account was that the young Stewart, in the 1860s, was detailed 'to assist in the preparation of the case for the Plaintiffs in the claim against the Government for many thousands of pounds brought by Messrs Cornish and Bruce, contractors for the building of the railway line to Bendigo'. Associated with the firm of contractors was Thomas McIlwraith, later Sir Thomas and Premier of Queensland, who 'was so highly pleased with the capacity and shrewdness shown by Mr Stewart that largely upon his recommendation, he was admitted as a partner by Messrs. Malleson and England'.

Cornish died in 1859 and Bruce in 1863, and their 'descendants . . . were left to face a long legal battle for recognition by the government of additional financial claims from the railway contract'.⁶⁷ Litigation, says the biographer of Cornish, 'lasted over five years before the government recognized the additional financial claims of the contractors'.⁶⁸ Although the matter never did go to the Privy Council, that we know of, such a move was possibly contemplated at some stage, and Stewart's involvement might, indeed, at that point, have elicited the promise of a partnership when he had finished his articles. Even if there were no suggestion of an appeal to the Privy Council, his willingness to continue, while an articulated clerk, with the heavy burden, might have depended on such a promise being given.

Anyway, whatever the reasons, James Stewart did become a partner, in the second half of 1868, and the firm was thenceforth known as Malleson, England and Stewart. The *Age*, in its obituary, in 1919, said that Mr Stewart 'was regarded as one of the best common law solicitors in Melbourne', and that he acted 'as solicitor to some of the large shipping, banking and commercial institutions'. The *Herald* obituary noted that he was 'adviser to many financial, commercial and public concerns'. As we have seen, he came to specialize also in work relating to Private Acts, as Mr Malleson relinquished this field.

Sole survivor after 1904 of the 'well known firm' of Malleson, England and Stewart, he 'stood for many years at the head of his branch of the legal profession in Victoria', wrote the *Argus*, on his death, 'and his opinion and advice was (sic)

often sought by fellow-practitioners in matters of etiquette and procedure. He adhered to the highest standard of conduct in the profession, and the force of his example and practice will long remain effective in legal circles'. Interestingly, the *Herald*, at the same time, not only called him 'a sound lawyer', but declared that he 'introduced a good deal of common sense into his law'.

Though Stewart, in the later 'eighties and the 'nineties, lived splendidly at 'Edzell', in St George's Road, Toorak — the table-glass specially blown in Venice, and the wall-paper painted by hand — he had resided, towards the end of the 1860s, at '6 Howe Crescent, in the Borough of Emerald Hill', a pleasant and convenient location.⁶⁹ In 1868, however, he moved to Lygon Street, Carlton, where he stayed for some years, before going to Barkers Road, Kew.⁷⁰ His final address, in 1919, was at Kensington Road, South Yarra.⁷¹ The Melbourne he first knew was that of the 1860s, in between the building booms of the 'fifties and the 'eighties, 'raw-looking still in its combination of noble stone and humble weath-er-board . . . widespread and open', but nevertheless, 'a true metropolis which closely reflected English, Continental and American intellectual currents, and maintained educational institutions, libraries, and a daily, weekly and quarterly press of high world standard'.⁷²

James Stewart, with his pleasing disposition, and 'large circle of friends', doubtless adapted to colonial life more easily than some, because of his marriage, in 1860, to a wife born in Victoria, Amelia Henderson Waugh.⁷³ By 1870, he was plainly immersed in the life around him, and, in that year, he was elected to the Melbourne City Council, for Smith Ward. His platform was the preservation of the city reserves — alienation of the public domain was already afoot and, as we know, 'the portion of Royal Park now known as Parkville' was lost forever, along with the part of Fawkner Park fronting St Kilda Road, disposed of by 'greedy treasurers'.⁷⁴

In 1872, 'Mr Stewart was elected an alderman, in opposition to Mr Alderman Story, who had taken an active part against the council, in trying to open a road through Carlton-gardens'.⁷⁵ These were the years of growing interest in Melbourne's open spaces: 'in 1874 the City Corporation agreed to maintain the Fitzroy Gardens', while a year earlier, W. R. Guilfoyle was appointed Director of the Botanic Gardens, and proceeded to convert the 'trim scientific order' of his predecessor, Baron von Mueller, 'to a superbly planned landscape-garden which has since been a joy and delight to successive generations'.⁷⁶

In his role as conservationist, then, Mr Stewart began, in 1870, his connection with the Melbourne City Council, that was to last till his death in 1919. His sound legal knowledge was of great value to the city on many questions, stated the *Age*, 'and he became leader of the council on all matters of law'. Enjoying the respect and regard of the City Council, from his first years as a Councillor, he was 'frequently pressed', from the late 'seventies, 'to stand for the position of mayor, being assured of a walk-over'. His 'professional engagements . . . prevented him from acceding to the wishes of the council' till 1885, but he was then elected Mayor of Melbourne for the year 1885–6, and assumed office on 9 November 1885.⁷⁷ Still

under 50 years old, Stewart had climbed high: the Corporation was venerable by the Colony's standards, and had played an important role in its history.

By the mid-1880s, when Stewart wore the mayoral chain, Melbourne was 'Marvellous Melbourne', one of the great cities of the world. The financial and commercial centre of Australia, borne aloft on a dizzy boom, and with the population approaching half a million, the city was being 'largely rebuilt (to look like "a Renaissance gone wrong") and extensive public works programmes were carried out'.⁷⁸ One of these was the construction of 'a new Prince's Bridge, "equal to any of the London bridges" and in fact modelled on one of them', which 'had to be built to cope with traffic to the southern suburbs'.⁷⁹ The building of this bridge, which we know today, was begun during Stewart's term as Mayor, and the foundation stone was laid by the Mayoress, Mrs Stewart, the first Australian-born woman to occupy that position.⁸⁰

Maybe it was because his wife was Australian — perhaps, too, a sign of James Stewart's identification with his adopted country — that their ballroom at 'Edzell', Toorak, was adorned, in 1888, with a decorative painting, 'The Spirit of the Southern Cross', by Arturo Jose de Souza Loureiro (Portuguese by birth, and friend of Tom Roberts and Frederick McCubbin), who had previously, in 1887, done the portrait of Stewart, still hanging in the Melbourne Town Hall.⁸¹

Towards the end of his first year as Mayor, James was, 'to his own surprise . . . re-elected, but he declined to accept office and for so doing he was fined one shilling, in accordance with the antiquated municipal law under which Melbourne is still governed'. Councillor William Cain was elected Mayor in his stead; but Stewart continued as a member of the City Council till 1895, representing Smith Ward for the entire period. In that year, he resigned, to become City Solicitor, an appointment he held till his death, in August 1919. James Stewart was the only partner in the firm ever elected to municipal office, though, since May 1931, the Solicitors to the City of Melbourne have always been appointed from within the practice.⁸² Thus, Mallesons have had, all told, a link of over a century with Melbourne's civic authorities.

Besides his participation in local government, Mr Stewart was deeply involved in the often turbulent affairs of the Presbyterian Church in Victoria. An elder of Scots Church, 'the "Cathedral" church of Presbyterianism' in Victoria, he was also, in the 1880s, 'the Assembly's Law Agent', and, in 1891, solicitor for the trustees of Scots Church.⁸³ Stewart was aligned with the more liberal elements among Melbourne's Presbyterians, chief among whom was the Reverend Charles Strong, minister at Scots Church since 1875, and doctrinally suspect in the eyes of the Colony's 'rigid, hardline Scottish (and Northern Irish) Calvinists'.⁸⁴ Battle was joined from 1880, with James Stewart leading the Scots Church congregation, 'into full support' of Mr Strong.⁸⁵ 'Month after month', says Serle, 'year after year, the ferocious disputes dragged on in full public view.' Peace was eventually restored to Scots Church, but 'Victorian Presbyterianism had suffered great damage to its prestige and influence' — 'the Melbourne presbytery', Serle goes on, 'had made it "a sort of disgrace to be known as a Presbyterian"'.⁸⁶

The Scots Church congregation was a rich one, and despite the setbacks consequent on the struggles of the first half of the 1880s, 'a Church Jubilee Fund of £40,000 was raised (with another £20,000 promised) between 1887 and 1889 to celebrate fifty years' work in the colony'. It was a church where 'the beauty, fashion, wealth, and talent' of Melbourne were well represented and Stewart's active membership undoubtedly brought the firm many clients, in the same way as his City Council connection.⁸⁷

His business interests must have taken a deal of his time, for in his last years, while still a member of Malleson, Stewart, Stawell and Nankivell, he was known to be involved 'in the management of a number of leading . . . firms'. He was, in fact, on a business trip in England, when he died — though whether for the practice, or in a private capacity, is uncertain. Although he had engaged in many land transactions, Stewart's estate consisted entirely of personalty, and was valued for probate at over £17,000.⁸⁸ This included £7,000 for his interest in the goodwill of the firm and more than £5,000 for his share of costs and undrawn profits. He had, it appears, made provision for certain members of his family in his lifetime.

A touching bequest was an annuity of £100 to Miss Eleanor Bertha Connolly, his 'present secretary', in recognition of 'her valuable and faithful services to me and my firm and her kindness to members of my family. I also bequeath to her my gramophone and records'. Mr Stewart's son, George, an accountant, and Mr Albert Higgins, the firm's accountant, were named as executors; but if either was unable or unwilling to act, Miss Connolly was to take his place.

In good health till the very end, Stewart was a leading Victorian bowler, representing Victoria in interstate matches on several occasions. A member of the Armadale Bowling Club, he played 'in its pennant team, which won so many premierships'. This was a sport he enjoyed for over forty years.

The only one of the nineteenth century partners with a son to enter the firm — Mr Gordon R. Stewart, admitted to practice on 1 December 1885, and a partner from 1893 — a great blow befell James Stewart when this son died, on 18 February 1906, at the age of 43.⁸⁹ Another son who predeceased him was Frederick, who had lived in Canada, and who, as a flyer, was killed on active service in World War I. But a third son, George, survived his father for many years, and in the 1920s, had an office at 46 Queen Street.⁹⁰ Mr James Stewart also had three daughters, who, at the time of his death, from 'heart trouble accelerated by a chill', on 18 August 1919, at Southsea, England, all lived in that country.⁹¹ His first and second wives both died before him.⁹²

Although James Cooper Stewart came to Australia as a young man for the sake of his health, he was able to travel to England, 'on special business', at an advanced age, and to practise till he died at 83. He probably did not dream, in 1857, of becoming senior partner in a renowned legal firm, and Mayor of a famous city.

Malleson, England and Stewart were three young gold-rush migrants to Victoria, 'people who chose to come', who achieved prominence and fortune, and whose 'greatest contribution . . . was, quite literally, themselves'.⁹³