

**The state of the road was such ‘as to be a disgrace
to the responsible city officers’: Immunity for
nonfeasance for the repair of roads and its
challenges to the imperial legal order in the late
nineteenth century**

Professor Mark Lunney

Dickson Poon School of Law, King’s College London

Forbes Society Lecture, 11 August 2025

Plan showing
Hole
Kent Street
Scale 20 feet to an Inch

KENT



Scale 1 inch to one foot



KENT

Footway

Metalled

Figure showing place where man fell on 6/11

Verandah Post

Verandah Post

Verandah Post

Verandah Post

80' 10"

Footway

Grating

Form

Grating

402

400

398

396

Door

394

Door

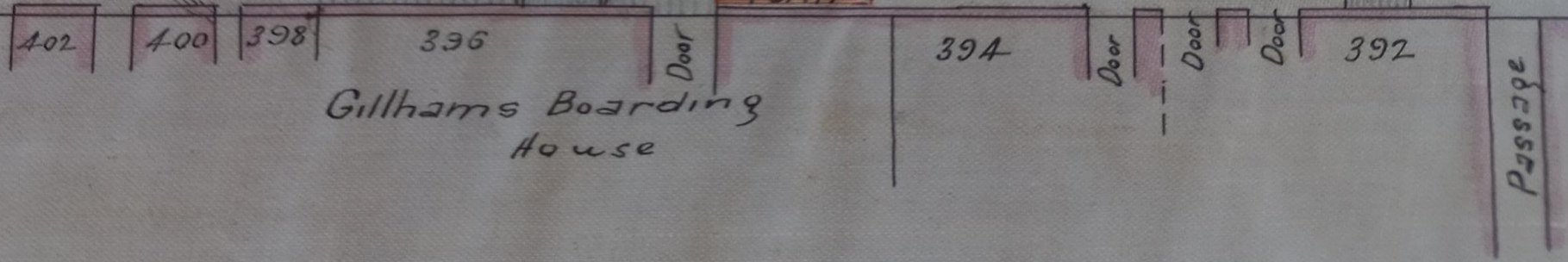
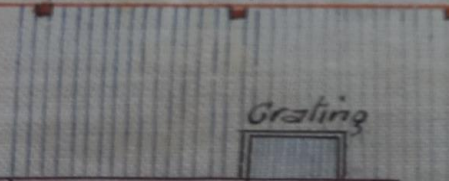
Door

Door

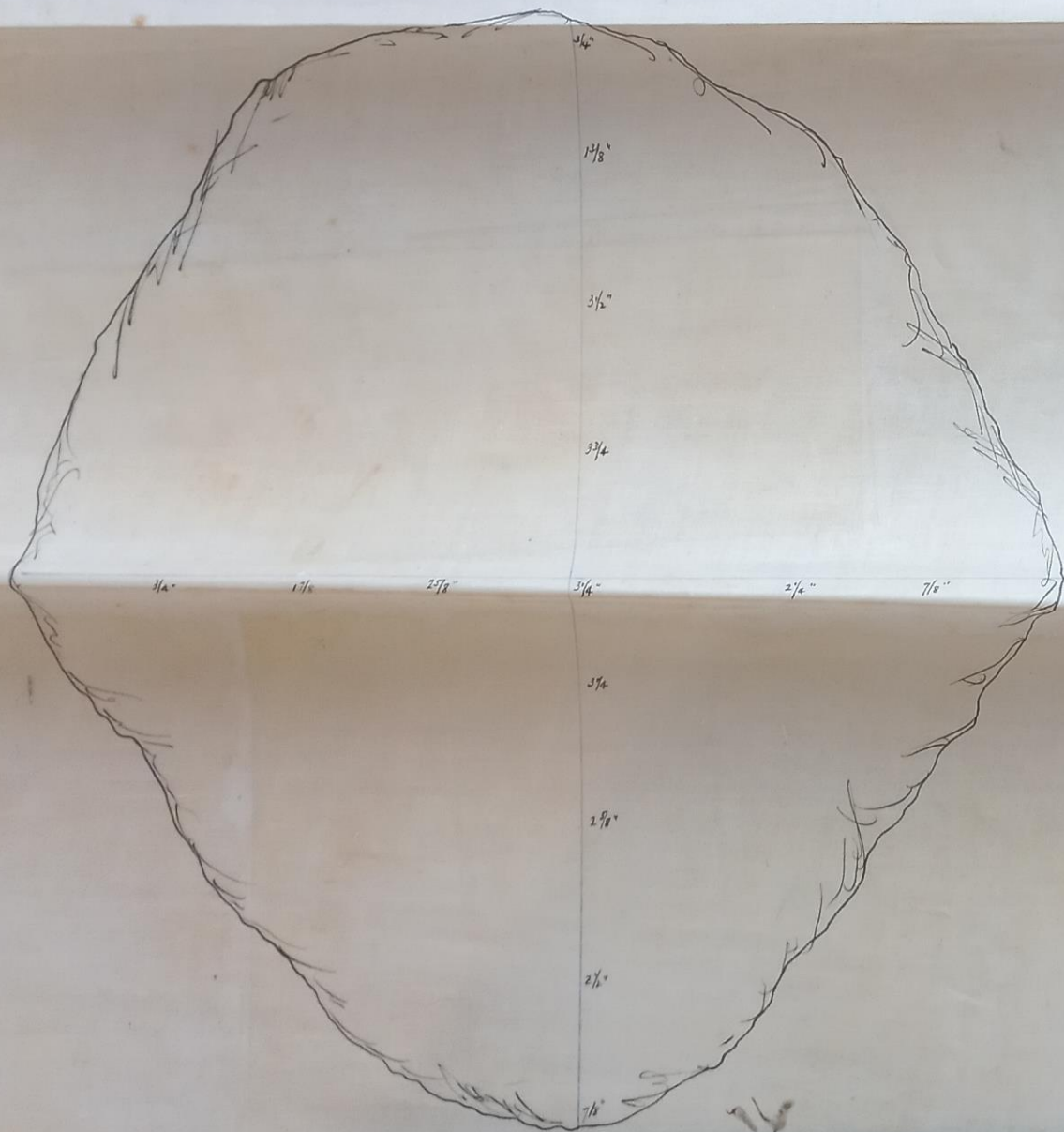
392

Passage

Gillhams Boarding House



Scale 1 inch to one foot



Municipal Council of Sydney v Bourke

Full Court – Windeyer J (1)

- This, to say the least of it, was unfortunate, as had Sir Barnes Peacock examined it, it seems to me that he could hardly have come to the conclusion which he did, without saying that he differed from the learned Judges of the Court of Queen's Bench, and probably we should not have been placed at times in the somewhat awkward position, if our endeavours to distinguish it were unsuccessful, of having to follow a decision which, because given by our Appellate Court, commanded our assent, though it appeared to conflict with a decision of the Court of Queen's Bench, which convinced our reason

Municipal Council of Sydney v Bourke
Full Court – Windeyer J (2)

- Therefore with every desire, not only as a Judge dutifully to uphold the authority of the decisions of the Judicial Committee of the Privy Council as the final Court of Appeal of England's Colonial Empire, but as a colonist regarding it as a link uniting the peoples of the two countries, anxious that its decisions should command our intellectual respect, I cannot help respectfully expressing a doubt whether the judgment of Sir Barnes Peacock would be regarded, to the extent of the plaintiff's contention, as correctly stating the law, by the Courts of England which are not bound by it; or by the Privy Council when reconsidering the case under the light of recent decisions...

^{James}
Mr Justice gave some -
where near it but
unfortunately he
put a different
construction on the words
to that placed on
them by the Privy
Council ^{perhaps} and
therefore fails to see
the distinction drawn
by the ~~the~~ ^{the} finding of the
Privy Council

The Court here seemed to think itself bound by
the ^{cases of Macpherson & the} Borough of Bosthurst ~~& Macpherson~~ 4 App.

Cases 256 - ~~with all respect it seems to~~
~~me that our judges missed the ratio decidendi~~
~~of that case~~ + It seems to me that the
governing fact in that case was that the
conduct complained of was not in the view
of the Committee non-feasance but misfeasance
for Sir Barnes Peacock expressly said that
they did not decide whether the Legislature



3468 x 4624 5 MB



64%



the case his closest
attention

Yours truly
Barraud Regge & Jupp

G. C. Waldron Esq.

recd - 24 April

BARRAUD, REGGE & JUPP,

TELEPHONE NO 1650.

TELEGRAPHIC ADDRESS:
"INDURATE" LONDON.

7, St. Mildred's Court, Poultry,
London, E.C.

19 March 1895

Dear Sir,

Municipal & Bourke

We expect this appeal
will be reached this day
week and have delivered
Briefs to counsel.

We have been obliged
to mark Sir Edward
Clarke's Brief 100 guineas
which is the lowest-fee he
will accept

He has promised to give

Municipal Council of Sydney v Bourke
Judicial Committee of the Privy Council

- Their Lordships, for the reasons which have been indicated, have arrived at the conclusion that the judgment of the Supreme Court cannot be supported. Whether the law is in a satisfactory state, it is not for your Lordships to say. Weighty reasons have been adduced both for and against the liability sought to be established in the present action. It is for the Legislature to determine to which side the balance indicates.

W. P. CRICK,
SOLICITOR.R. D. MEACHER,
SOLICITOR.Chancery Chambers
180 Phillip Street

Sydney 25. 10. 1895

Dear Sir

re Mrs. Bourne

At Mrs. Bourne's request
I beg to inform you that
I shall make no claim
upon her for costs in
respect of the action brought
by her against the Council
and so far as I am
concerned whatever she
receives from the Council
she shall keep for herself

Yours truly

W. P. Crick

W. P. Crick
The Magistrate