

As this issue of the Bar News will coincide approximately with the publication of the Annual Report, which will contain a deal of information as to the activities of the Bar Council, the Editors considered that a more "literary" flavour might be in order.

We are most grateful to Dr. E.G. Coppel, C.M.G., Q.C. for his reminiscence of early days at the Bar.

We also have included an extract from the report of R. v Goodere Mahony & White (1740), which may be of interest to those members of the Bar holding prosecution briefs, whether as permanent prosecutors for the Queen or otherwise. We are not in a position to say whether the prosecutor in that case was an ancestor of a well-known member of the Bar today who is perhaps more accustomed to appearances at the other end of the table in criminal trials.

For those whose interest lies in more mundane matters, a comparison of Counsel's fees in Victoria compared with those in other States is also published.

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Earlier Days at the Bar  
By Dr. E.G. Coppel, C.M.G., Q.C.

The great majority of members of the Victorian Bar were not born when I joined the Bar in 1922 and I thought it might be interesting to them to learn what the Bar was like in those days. The most striking difference, of course, is in the numbers of men practising at the Bar. I doubt if more than 80 were actively practising in 1922 though there were in addition a number who would now be described as non-practising members.

Of the total about half a dozen had taken silk. The smallness of the number of silks was a legacy of the depression which fell on the Bar after the collapse of the banks in the 1890's. Work fell off to an alarming extent and even the ablest men were unwilling to take silk. Thus among men appointed to the Bench the following were "stuff gownsmen" - Cussen, Starke, Schutt, Mann and later Lowe.

Corporate life was almost unknown. There was a "Committee of Counsel" elected annually which dealt with matters of ethics and very little else. There was an annual Bar Dinner at which new appointees to the Bench were the guests.

This lack of corporate activity undoubtedly stemmed from the passing of the Legal Profession Practice Act 1891 which set out to abolish the distinction between barristers and solicitors. Notwithstanding the Act the Bar continued to accept briefs as before from established firms of solicitors. After a few years a Roll of Counsel was established and everyone wishing to join the Bar was required on signing the Roll to give an undertaking that he would practise exclusively as counsel. The existence of a separate Bar depended solely on these undertakings. It was not recognised by law until the Act of 1946 required an audit of solicitors' trust accounts. For the purpose of that Act "solicitor" did not include a member of the profession who practised exclusively as a barrister. This, at least implicitly, recognised the existence of a separate Bar. These legal obstacles to corporate action were reinforced by the notion that a barrister was an individualist and that the Bar was no more than a collection of individuals.

The leader of the Bar was Sir Edward Mitchell, K.C. who, from the inception of the High Court, had appeared in most of the early constitutional cases. He was beginning to be overtaken by two young silks - Latham and Dixon - and his practice gradually fell away. He died in poverty. There were six Supreme Court Judges who rotated month by month between the various lists. There

was one jury list, one non-jury cause list, one judge in the criminal court, one in divorce, one in Chambers and one on circuit. Motor cars were fewer and moved more slowly so that there were few Supreme Court actions for personal injuries. Divorce was a purely State matter and my impression is that the procedure was simpler than it now is under Federal Law.

There was only one Master who dealt exclusively with equity matters such as accounts and enquiries. The practice matters which are now handled by the Masters were all disposed of by the judge in Chambers. Since there was no miscellaneous list this included orders to review and originating summonses. As a result the Practice Court sometimes sat beyond the normal court hours.

There were six County Court Judges, one of whom - the father of the present Chief Justice - spent practically the whole of his time as Chairman of the Railways Classification Board. This was not the only "odd job" performed by County Court Judges. There was no Federal Bankruptcy Act - instead we had a Victorian Insolvency Act. Legal insolvency commenced when the Supreme Court judge in the Practice Court made absolute an order nisi for insolvency. This was always done on Thursday morning and we juniors received a fee of 3 guineas for formally moving the order absolute. Thereafter, all matters in the insolvency came before a County Court Judge assigned to this work - though only part time. Workers Compensation Boards had not been invented and disputed claims came before the County Court.

Despite all these extraneous matters I do not recall that there was any undue delay in the hearing of civil cases in the County Court or criminal trials in what was then called the Court of General Sessions.

As might be expected, fees were much smaller in those days. I frequently went to courts of petty sessions for a fee of 3 guineas (plus 2/6d. for my clerk). Perhaps I should have said my normal fee was 3 guineas, for I do not wish to convey that I went to any court frequently. In my first month I had two petty sessions briefs - a total of 6 guineas for the month. In earning 400 guineas in my first year I was regarded as one of the more successful juniors.

County Court scale fees began with 2 guineas brief fee and 1 guinea for a conference if the amount claimed did not exceed £50. Speaking from recollection, I think the top County Court scale for claims up to £500 was "11 & 2" - i.e. 11 guineas on the brief and 2 guineas for the conference.

In the Supreme Court briefs were not marked according to scale, but still fees were not high. It was said that you get an opinion from Weigall K.C., the outstanding leader of the equity bar, for 5 or 10 guineas. However, Weigall was more timid than other silks. A trial brief in the Supreme Court would seldom be marked more than 25 guineas.

Let us turn now from how the Bar lived to where it lived. The great majority by far were in Selborne Chambers, that odd building erected in the mid 1880's by a company composed of existing members of the Bar. It ran from Bourke Street to Little Collins Street on part of the site upon which B.H.P. is now erecting its head office.

In the southern half of the building there were two storeys of rooms on either side of a central passage but the northern half had a narrower frontage and there were two storeys of rooms on the east side only. There were basements at either end which contained wine cellars, I wonder what possessed the Bar of those days to include these!

By effluxion of time the original shareholders of the company had died and their shares had devolved on their executors who were not members of the Bar. The site was a valuable one and in 1922 the company decided to sell it by auction. This was a real threat to the Bar and its leading members decided that somehow the

Bar must buy the building. A general meeting of the Bar promised support and my father, who knew something of city real estate, secured an option on behalf of undisclosed principals. The option was exercised before the date of the auction and this not only preserved the Bar's home, but doubtless saved a good deal of money also.

A new company was formed to own the building and this time special provision was made that on the death of a member his shares must be sold to existing members of the Bar. In this way control of the building by the Bar was ensured.

Outside Selborne Chambers there were one or two small groups of barristers of whom the best known were Sir Edward Mitchell and Herring.

The Law Courts housed both the Supreme Court and the County Court. There was no High Court building and when the High Court came to Melbourne it sat in what was then called the 3rd Civil Court. This was the courtroom on the south western corner of the building. I do not know what arrangements were made for Chambers for the High Court Judges.

In my first 10 years at the Bar the number of men practising greatly increased. This was in part due to the number of returned servicemen who completed their courses after World War I. Both State and Federal governments adopted a policy of preference to returned servicemen in the allocation of briefs, which was a great help to us beginners.

Each month appeals to General Sessions would be handed out in batches of three by the Crown. It was a gala day thus to earn 9 guineas for the 3 briefs. I received a number of junior briefs in taxation appeals in the High Court for the same reason. Apart from the money, this led to the erroneous belief that I was a specialist in income tax and from that I began to get briefs for taxpayers in due course.

Incidentally, in those days there was very little specialisation - there was just not enough work to justify it. However, a few juniors did become known as skilled in particular fields, as Arthur Dean did in patent cases and Russell Martin in tax cases.

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R. v Goodere, Mahony & White

At Bristol 17th March, 1740; before the Right Worshipful Henry Combe, Esq. Mayor of the said City, Michael Foster, Esq. Serjeant at Law, Recorder: and others by His Majesty's Justices of Gaol-Delivery.

Cl. of Arr: How Sayest thou, Samuel Goodere, art thou guilty of Felony and Murder whereof thou standest indicted, or not guilty?

Samuel Goodere: Not guilty.

Cl. of Arr: Culprit, how wilt thou be tried?

Samuel Goodere: By God and my Country.

Cl. of Arr: God send thee a good Deliverance.

Mr. Vernon: Mr. Recorder, I attend as Counsel for the King on this melancholy occasion, and it is with no small Regret and Concern I at any time act in this station against my Fellow-Creatures, when under circumstances like those of the prisoners at the Bar; and the rather, as knowing it almost impossible so to act in a Business of this nature, as not to be thought on the one side to have done too much, and on the other too little: However, Sir, I shall, in the Course of this Prosecution, endeavour to observe that Mediocrity which is ever inseparable from humane Minds; and if I can be so fortunate as to conduct myself to the satisfaction of you, Mr. Recorder, and the Court, I shall readily give up the rest, and content myself with the Thoughts of having aimed at a just Discharge of my Duty.

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Counsel's Fees in Other States

Standard Minimum Fees in the Supreme Court

Comparisons in other jurisdictions show that the standard minimum fees recommended by the Bar Council for work done in the Supreme Court in 1972 are now comparable with those charged in other jurisdictions. The brief fee recommended in Victoria for junior counsel in running down cases is \$180. This compares with the following fees normally charged by junior counsel in running down cases:

Queensland:	\$210
South Australia:	\$210
Western Australia:	\$200-300

The fees charged by junior counsel in running down cases in New South Wales and the Australian Capital Territory are lower than those charged in Victoria but are now subject to revision.

The present brief fees charged by junior counsel in Victoria progress in relatively regular steps up the County Court scale to the Supreme Court.

			<u>County Court</u>	<u>Supreme Court</u>
\$0	Over \$500	Over	Over	Personal
to	to	\$2000 to	\$6000	Injuries
\$500	\$2000	\$6000		
\$40 (+\$36)	\$76 (+\$40)	\$116 (+\$36)	\$152 (+\$28)	\$180

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Letter to the Editor

Owen Dixon Chambers,  
205 William Street,  
Melbourne, 3000

26th May, 1972

The Editor,  
Bar News,

Dear Sir,

The Bar Council should negotiate cheap professional negligence insurance premiums for barristers. At present the cost of insurance is prohibitive. Since claims on barristers are so scarce, the introduction of a system whereby the Bar bears the first \$10,000 of any claim against a barrister should be considered. This would be met from a fund to be established by contributions by all barristers. If claims were few, the fund would increase and the premiums ought correspondingly to drop.

Yours faithfully,

(sgd) R.M. JOHNSTONE

(Editor's Note: A Committee appointed by the Bar Council has this matter under consideration. Further suggestions would be welcomed).

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New Members of the Bar

<u>Name</u>	<u>Master</u>	<u>Clerk</u>
J. Stuart-Stevenson	Liddell	Dever
Ann Riordan	(State Parliamentary Counsel's Office)	
D.M. O'Callaghan	Hedigan	Dever
R.H. Grace )		
P.W. Young )		
N.S.W. Bar		
P.H.N. Opas, Q.C.		Foley
N.G. Ross	Waldron	Dever
D.P.D. Grace	Cullity	Calnin
P.J. Cahill	Walsh	Calnin
J.M. Toal	Balfe	Calnin
M.J. Croyle	Hanlon	Calnin

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Committee to Review the Structure of the  
LL.B. Degree

The Faculty of Law, University of Melbourne, has set up a Committee to investigate and make recommendations concerning the structure of the LL.B. Degree Course at Melbourne University. A curriculum review was last carried out in the early 60's and this resulted in some rather far-reaching changes in the structure of the course. Since then, further changes have taken place and Faculty now considers the time appropriate for a full scale investigation into the law course.

As a preliminary step the Committee is seeking the views of interested groups as to the subjects to be included in the LL.B. Degree course and as to possible changes in the existing course - whether there should be a more limited number of "core" subjects and a greater number of "elective" subjects, whether some existing subjects should be sub-divided into a number of separate subjects, what subjects should be "compulsory" and what type of subjects should be "optional".

The Committee has informed the Bar Council of the proposed review and has sought its views. The Bar Council has appointed a committee comprising Storey Q.C. and Rendit to prepare a report to the Bar Council. Any member of the Bar who desires to make comment on the structure of the LL.B. Degree course is invited to do so. Comments in writing may be forwarded to Storey Q.C., Rendit or Mr. P.M. Nicholls, Senior Administrative Officer, Faculty of Law, University of Melbourne, Parkville, 3052.

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