VICTORIAN

BAR NEWS

Centenary Edition

1884 - 1984

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THE COVER

The cover design is based on one of the illuminated pages in the original Roll of Counsel for Victoria. Bound as a book, the pages of parchment, it is entitled "Ye Roll of Ye Utter Barristers in Ye Supreme Court of Victoria". The illuminated pages, containing various oaths of office, statutes and a list of early judges of the Port Phillip District and the Colony of Victoria, are incomplete. On the page from which the cover design is taken the figure of Justice is unfinished.

From internal evidence the book was probably started some time in the eighteen seventies. Early names on the Roll going back to 1841 are in pencil. Presumably it was intended to write them in ink if the barrister was dead or could not be found to sign for himself. The last pencilled entry is in 1869. The Roll ceases in 1891 with the amalgamation of the profession. The last entry is in the neat hand of one James Cholmondeley Kaufmann who gave his University as London and who was of the Inner Temple, having been called to the English Bar on 30th April 1870. He was admitted to the Supreme Court of Victoria on 18th December 1891.

Centenary Edition 1884 – 1984

THE BAR COUNCIL

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The Bar Council is elected in September of each year.

N.R. McPhee Q.C.	
J.E. Barnard Q.C.	
P.A. Liddell Q.C.	
J.H. Phillips Q.C.	(to September 1984)
S.P. Charles Q.C.	
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P.D. Cummins Q.C.	
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F.H.R. Vincent Q.C.	(to September 1984)
A.C. Chernov Q.C.	
R.K.J. Meldrum Q.C.	
P. Mandie Q.C.	(to September 1984)
J.A. Coldrey	(from September 1984)
J.D. McArdle	(to September 1984)
D.L. Harper	
B.A. Murphy	(from September 1984)
Rachelle Lewitan	
M.B. Kellam	
Elizabeth H. Curtain	(from September 1984)
K.M. Liversidge	
B.S.T. Vaughan	(to September 1984)
J.E. Middleton	(from September 1984)

HISTORIES
OF THE
VICTORIAN BAR

Introduction

It is not a mark of the deference given to its senior members that the Bar seems to enjoy recitals of its glorious past and anecdotes concerning its illustrious and eccentric forebears. That aspect just shows it is a human institution. Any Bar Dinner is proof of all the foregoing.

We thought, then, it was appropriate that this the fiftieth edition and Centenary Issue of the **Victorian Bar News** should indulge this predilection. We have sought to compile a history of the past one hundred years that the Victorian Bar has existed as an identifiable organised community of barristers.

We recognise that the Bar's centenary celebrations are to a large extent ill-conceived. There had been barristers in the Colony for some forty years prior to 1884. Francis Q.C. has traced this period of pre-history. Between 1884 and 1900 the Bar was a fragile thing, lacking any real organisation. Monti has dealt with the first period of our history.

We have rather arbitrarily divided the period since 1900 into decades or double-decades. The first twenty years was given to Gunst. The periods from 1920 to date have been described by those who actually witnessed or participated in the events they described, or at least knew first hand those of whom they have written.

The authors are well known to us: Sir Gregory Gowans and Sir Murray McInerney both former judges of the Supreme Court; K.H. Marks a present member of that Court; Berkeley Q.C., Solicitor-General and Bar enthusiast; and Henshall of our own editorial committee.

Finally to provide a balance for the pre-history, we solicited from among the younger Bar some post-history. A.J. McDonald, Paul Elliott and Gyorffy were asked to gaze into the future.

Each contributor was asked to evoke in his own way the flavour of the period allotted to him. We have made no attempt to provide uniformity of treatment or literary style. We thought that in this way the Centenary Edition of **Bar News** would reflect the amazing variety of the Victorian Bar and would entertain our readers.

A final word about the manner of describing the characters which appear throughout this edition. Our contributors have often referred to the most eminent of our members in a familiar way, sometimes by nickname. This is not intended as any mark of disrespect for those persons — friends and colleagues. Put it down to an attempt to recreate the flavour of the Bar's history.

BYRNE & ROSS D.D.

HOW THE CENTENARY DATE WAS FIXED

Memorandum

From: Frank Costigan Esq., Q.C., Chairman
To: S.E.K. Hulme Esq., Q.C.
J.D. Merralls Esq., Q.C.

The Victorian Bar is slowly approaching its Centenary. The difficulty with that statement is that it does not know for certain when its centenary occurs. It may well be 2000 although there are some suggestions in Sir Arthur Dean's book which would put forward the date to the late 1980's.

I have in mind that when the appropriate date is ascertained the Bar should give serious consideration to putting down a first class red wine which could be specially labelled for the occasion and used by the Bar at its various celebrations during that year and also made available for sale to members of the Bar.

Before any such decision can be made it will be necessary to determine in a conventional sense the appropriate date. I would accordingly be grateful if you could constitute yourself as a Committee to consider the matter and report to the Bar Council as to what you deem to be the appropriate date.

Owen Dixon Chambers,
205 William Street,
Melbourne, 3000

18th August, 1978

Owen Dixon Chambers
23rd August, 1978

Dear Mr. Chairman,

On historical grounds, and without reference to vintages, we recommend:
(a) That wine of 1971* be laid down for drinking in the year 1984;
(b) That wine of 1971* and/or 1984 and/or 1991 be laid down for drinking in the year 2000.

We publish our reasons.

On 20th October 1871 and 13th December 1871 there were held the first recorded formal meetings of Victorian barristers: **Dean** 87. (We observe that the proceedings of the second of these meetings were reported in the Argus of 14th December 1871. Not all problems are new.) These meetings did not lead to the formation of either a code of ethics or any continuing organisation. It seems improper to regard them as constituting the origin of the Victorian Bar. But it would seem proper to give their significance a nod, by choosing wine of the centenary of that year.

In February 1884 and on 17th** July 1884 took place the next known meetings: **Dean** 89-90. A committee was appointed at the February meeting, and at the July meeting (and a series of further meetings) there were adopted the Bar Regulations 1884. In February 1885 a new committee was elected. **Dean** finds no evidence of the committee operating thereafter, and suggests that its continued existence seems inconsistent with the Rules adopted by the newly formed Bar Association in 1891: **Dean** 93.

Dean does not say on what he founds that inconsistency. The Rules of the Association could well have been intended to provide a proper basis for a continuing **ad hoc** committee. They do not necessarily show that there was no existing committee. But it must be admitted that there is no evidence of the 1885 committee being active at any time after 1885.

The Bar Association formed in 1891 was dissolved in 1892. On no view do it and the Victorian Bar Council have continuity. But again some recognition of 1891 is appropriate, and we have recommended choosing wine of the centenary of that year also.

It seems to us doubtful that the Bar Regulations of 1884 were ever completely laid aside. That is not the way of lawyers. There is plenty of evidence that there did exist in the 1880's a body of persons called "the Bar", with a well-developed clerking system. It seems to us significant that as late as 1910 the Committee of the Victorian Bar (which as appears below dates from 20th June 1900) referred to one of the 1884 Rules as indicating what had hitherto been the practice in Victoria: **Dean** p. 105.

As just stated, 20th June 1900 is a significant date. On that day a meeting of Counsel agreed to appoint a Committee, and proceeded itself to do so. Rules were adopted. The continuity of the Victorian Bar Council from that Committee is undoubted and needs no amplification.

In our view two Centenaries emerge:

(a) The Centenary of the Victorian Bar
We fix this on 10th July 1984, in deference to the meeting of 10th July 1884 at which there were adopted Bar Regulations governing the conduct of "members of the Bar of Victoria".

(b) The Centenary of the Victorian Bar Council
This fixes itself, at 20th June 2000.

Of the two dates, we regard 1884 as the more significant. At all times since then there has existed in Victoria a definable body, known to itself and the public as the Bar, and carrying on, pursuant to a known code of governance, functions similar to those carried on by the members of the Bar of England. That it lacked a formal representative body seems to us unimportant, when compared with the features it did have. Until that date gentlemen practising as barristers did so as individuals, regulated in the conduct of their professional affairs only by the Court that had admitted them. After that date regulation by the profession itself had begun, and "the Victorian Bar" existed.

We have the honour to be, Sir,
Your most humble etc. servants,

(Sgd.) S.E.K. Hulme
James Merralls

* Although historically appropriate, the 1971 vintage may be found oenologically unsuitable. Some regard it as the worst Hunter vintage in recent memory, and suitable wines from other areas may be found too expensive for laying down now. Though having no claim to historical significance, 1976 may be a more practical year in these respects.

** So says **Dean** at p. 89 and p. 92. The Bar Regulations themselves, set out at pp. 90-02, refer to the meeting as having been held on 10th July 1984. We will pursue this point further.

The Old Supreme Court Building corner of Russell and La Trobe Streets in the 1850's.

1841 – 1884

A COLLECTION OF LEGAL ADVENTURERS

by Charles Francis, Q.C.

"Great Oaks from little acorns grow" — and our Victorian Bar may be said to have begun with a small ceremony on the 12th April 1841 conducted by the resident Judge John Walpole Willis when he admitted E.J. Brewster, Redmond Barry, James Croke, Cunninghame, the Honourable James Murray and Robert Pohlman as barristers of his District Court.

Brewster, who had come to the Port Phillip District in 1839 as Chairman of Quarter Sessions and Commissioner of the Court of Request, was the first Victorian barrister, closely followed by Croke, who in 1841 was appointed Crown Prosecutor. In 1842 four more barristers were admitted, but Eyre Williams, who was appointed a Judge in 1852, was the only one to practice. In 1843 William Stawell (later Chief Justice) joined the Bar and in 1844 Sydney Stephen (a brother of Sir Alfred) was admitted, but soon after was appointed to the Supreme Court of New Zealand.

There is nothing better than a cantankerous judge to develop esprit de corps and camaraderie in a bar and no one could have been better equipped for the task than His Honour Mr Justice Willis. His quick temper, quarrelsome nature and violent language swiftly effected a remarkable unification of the small Victorian Bar. After a particularly derogatory attack on Croke, who then bowed and left the Court, the Bar sprang to the learned prosecutor's defence with one of its first works, a manifesto declaring His Honour's remarks to be offensive. Croke was also thanked for his maintenance of "the dignity and privileges of the Bar."

Until separation in 1851, the work of the Victorian Bar was like some well organised country circuit in which the same busy counsel divide the spoils between them. Nearly all the briefs went to Barry, Stawell and Williams, though Pohlman did a little of the equity work. Murder trials were plentiful and virulent controversies in "The Herald", "The Argus", the "Port Phillip Gazette" and the "Port Phillip Patriot" not only gave rise to a plethora of libel actions, but also led to prosecutions for criminal libel.

Activities of bushrangers were another valuable source of work, not to mention the red blooded behaviour of many of the citizens. Horse-whipping in the street was a gentlemanly and appropriate mode of redressing an insult, but not infrequently led to subsequent legal action. In April 1844 Barry and Stawell appeared for the defendant, Stawell's cousin John Foster (who with Stawell later drafted the Victorian Constitution) in an action for assault and battery arising from Foster's horse-whipping of Dr. Farquhar McCrae in Queen Street, Melbourne.

Perhaps the two most notable trials of the pre-separation era were **Moor v. Kerr** and **St. John v. Fawkner**, both of which occurred in 1848. Henry Moor a solicitor and former Mayor of Melbourne, sued "The Argus" for libel following its sarcastic criticism of his appointment as Chancellor of the Anglican diocese. Williams and Stawell appeared for Moor and Stephen and Pohlman for the defendant. Many technical points were raised for the defence but the plaintiff was finally awarded 250 Pounds damages. Descriptions of the trial and comment on it in "The Argus", some of it in doggerel, led to subsequent action by the plaintiff. Despite peals of laughter when the doggerel was read in Court, the plaintiff obtained a further award of 500 Pounds damages. In **St. John v. Fawkner**, St. John, a former police magistrate and Commissioner of Crown Lands, sued John Pascoe Fawkner for having published in the "Port Phillip Patriot" an allegation that he accepted bribes. The jury were unable to agree and the plaintiff did not seek a further trial.

Although during its first decade only five barristers were in active practice, the prestige of the Bar was high. Barry, Stawell and Williams were all men of genuine ability and complete integrity. Barry and Stawell were also extremely active acquiring fame in a wide range of public affairs including the separation movement.

In 1851, Stawell, who was already acting as La Trobe's principle adviser on the Legislative Council, was appointed Attorney-General. In 1852 Barry and Williams went to the Supreme Court Bench and Pohlman was appointed to the County Court. Brewster

and Cunninghame had long since returned to England whilst in 1843 the unfortunate Murray led an ill-fated expedition into Borneo providing a Roman holiday (if not a bar dinner) for the natives.

Separation and the gold rush saw a remarkable development of Melbourne and an extraordinary transformation of the Bar. Into the vacuum created by the disappearance of all the Bar's original members, there came a huge wave of barristers from England and Ireland, more than one hundred arriving between 1851 and 1860. Thirty-one barristers came from the Middle Temple alone and some twenty-nine from King's Inn, Dublin. In 1853 twenty-three members joined the bar, an annual intake which was not again exceeded until 1961.

In 1854, the original Temple Court was built in Chancery Lane. By the following year 45 members of the Bar were accommodated there, but the building by no means was comprised of barristers' chambers only. Its tenants included many solicitors, an estate agent, a grain merchant and an artist. In 1858 Archibald Michie purchased 73 Chancery Lane, and Michie's Building, as it became known, the first building occupied only by barristers. Druce, the barristers' clerk moved there from Temple Court to establish the clerking business now carried on by Percy Dever in Owen Dixon Chambers. Until 1880 these two buildings provided the sole homes of the Bar.

By 1856 barristers such as Michie, Ireland, Fellows, Adamson, Denistoun and Wood, all of whom were elected to the first Legislative Assembly, had already acquired considerable reputations and large practices. The first home grown product was Henry Lawes, who studied law at the University of Melbourne and who was admitted in 1859. Others prominent during this decade were Chapman, Higinbotham, Mackay, Dawson and McDermott.

Despite the enormous growth of the Bar, the 1850s proved a most prosperous time for its members, the Courts being kept extremely busy, and there seems to have been work for all. In the Victorian Law Times (in some ways a precursor of the present **Bar News**) an article by Fellows proposing an Inn of Court "to guard against the admission of objectionable members and to exercise a wholesome control over the conduct of those admitted" went on to comment "The Colonial Bar, as at present constituted, is little more than a collection of legal adventurers, met together from all quarters of the globe, each engaged in carrying out his own object and furthering his own interest". Chief Justice William a'Beckett at his farewell in 1857 made a more generous assessment when he said "Except in Westminster Hall, there is no part of Her Majesty's dominions in which there is a more numerous intelligent and courageous Bar than can be found in Victoria. . .Amongst the Bar are many who would be listened to in any Court." Perhaps the truth lay somewhere between the two.

It is, of course, impossible to assess accurately the giants of the past but, at a time when oratory was a greatly admired art, Richard Ireland, Archibald Michie and Butler Aspinall in particular achieved great reputations for advocacy. Michie, a very effective advocate, was largely lost to politics, but his appointment as Minister of Justice prompted the Attorney-General Higinbotham to create the first "silks". On the 10th August 1863, Michie and Ireland were appointed together as the Bar's first Queen's Counsel.

In his era, Ireland was perhaps the finest advocate of all. Indeed, Sir Arthur Dean suggests that, with the possible exception of Purves, he was the greatest advocate in the history of the Bar. Raffaelo Carboni, who was one of Ireland's Eureka Stockade clients, later wrote of him —

> "His whole head and strong built frame tell that he is ready to settle at once with anybody, either with the tongue or with the fist. His eloquence savours pretty strongly of Daniel O'Connell and is flavoured with colonial pepper; hence Mr. Ireland will always exercise a potent spell over a jury."

Within weeks of his appointment as Queen's Counsel Ireland became embroiled in the famous Molesworth divorce suit, in which Mr. Justice Molesworth counter-petitioned for judicial separation on the grounds of his wife's adultery with Ireland in 1855, and with an unknown person in England in 1862. It would be difficult to imagine a case more likely to evoke Owen Dixon coffee room conversation and discussion — a Supreme Court judge a respondent before his own Chief Justice on the grounds, inter alia, of cruelty, and a leading silk (who was in addition a former Attorney-General) named as co-respondent in the counter-petition. The jury negatived Ireland's adultery with Mrs. Molesworth, but found her conduct "unduly familiar for a married woman".

The divorce suit did little to affect Ireland's practice. He continued to earn enormous fees but he was a hard liver. He was reputed and claimed himself to have gone through four fortunes, became insolvent in the late 1860s and died in penury in 1876.

Butler Cole Aspinall, who was admitted in 1855, acquired perhaps, in retrospect, an even more lasting reputation. Fluent of speech his addresses to the jury were full of wit, fun and sarcasm, and often pathos. Handsome, fresh-faced and charming, his eloquence gained him remarkable successes before juries and a considerable practice. In Parliament or in Court, he invariably enlivened proceedings and was a much sought after dinner guest in Melbourne society.

When a Judge took exception to his remarks and complained "Mr. Aspinall are you trying to show your contempt for the Court?" to him is attributed the famous rejoinder "No, Your Honour, I was merely trying to conceal it."

Aspinall never took silk and, by his late thirties, was already a chronic alcoholic. In 1870, when he was only forty, he had a complete mental breakdown and was confined within an asylum, where he was reputed to have spent much of his time addressing imaginary

juries (presumably on a fee declined basis). He recovered sufficiently to return to England where he died in 1875.

Although by 1860 there was a well developed Bar, (not much smaller than the Bar in the first years after World War 2) there was no professional body which could control its activities, lay down rules or enforce their observance. Such etiquette as there was, was left entirely to the conscience of the individual barrister although many who had practised in England and Ireland adhered fairly closely to the practices of those Bars. Away from Melbourne however, Counsel often took briefs without the intervention of an attorney, complaints were made that seniors were doing juniors' work and it was clear that there was no code of ethics capable of enforcement. A Bill introduced to the Legislative Counsel by Fellows in 1856 to establish an Inn of Court lapsed.

The first recorded meeting of the Bar as such was convened on the 20th October 1871 by Walsh, the Attorney-General. A further meeting held on the 13th December was attended by some sixty members of the Bar. The main proposal at this meeting was to amalgamate the two branches of the legal profession. Like many subsequent meetings of the Bar, sharp differences in views emerged, a significant minority supporting amalgamation. There is no further recorded meeting of the Bar until 1884, although in 1875 Ireland convened a meeting which no one attended.

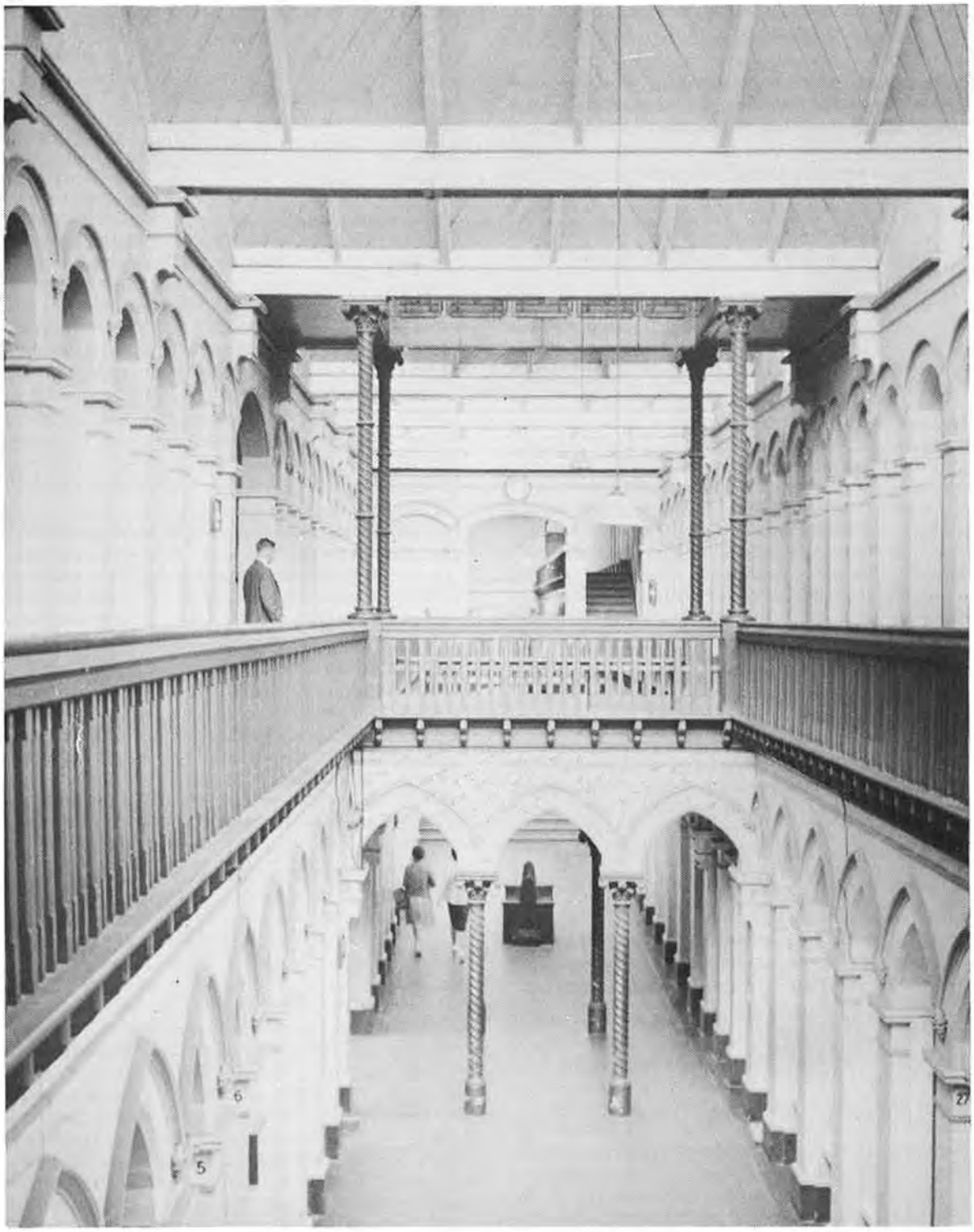
Despite the absence of meetings amalgamation of the professions remained a hot topic. In 1871, James Purves and McKinley, as editors of the Australian Jurist, recommended amalgamation and a number of bills were introduced into the Legislative Assembly to effect amalgamation. In 1875 a Bill introduced by Coppin was opposed by John Madden (later Chief Justice), Henry Wrixon, and by Purves whose views had apparently changed. Purves who was by this time a prominent junior said that he saw a distinct advantage to be gained by this Bill. "It will, for example, enable a man who has failed in one profession to fail in another also. If he has mistaken his profession as a barrister, he will be afforded an opportunity to mistake it again by becoming a solicitor."

In the 1860s and 1870s there came a gradual change in the nature of the Bar. From 1861 onwards local men formed the bulk of new admissions to the Bar. The first Annual List in 1863 showed only seven as having first qualified in Victoria, but, from then on, Victoria itself began to produce such outstanding barristers as Purves, Duffy, Madden, Cussen, Isaacs, Higgins and Coldham. There was no longer work for all and a number who were in active practice in the fifties moved to County Court judgeships, became prosecutors or assumed other public offices, or moved to other fields.

For the successful however, fame and wealth was still available. At the time when newspapers covered every trial of any significance in considerable detail (with the best interchanges often verbatim) the most successful members of the bar were far better known by the community than they are today. Not only members of the profession but also the general public would often flock to Court to see the giants of the Bar in action. It was in this atmosphere that Purves ("the great QC") flourished to his immortality. Other prominent common lawyers included Higinbotham, Dr. Mackay, Dawson, Wrixon and Hartley Williams.

By 1881 moves by the barristers in Temple Court, which despite the fact that it was less than thirty years old, was becoming increasingly dilapidated, led to the formation of "The Barristers' Chambers Company Limited" of which the primary object was "to provide chambers for the accommodation of barristers and other persons as may be approved by the directors." The formation and history of Selborne Chambers which housed most of the Bar for almost eighty years is well traced in Maxwell Bradshaw's "Selborne Chambers Memories". The building with its gallery around a two storied central corridor was first occupied early in 1882. From then until 1961 the history of Selborne Chambers was closely linked with that of the Bar.

By 1884 our Bar could be said to be firmly established, and the meetings that year, which appointed a Committee to draft and submit to the Bar regulations for the guidance of its members in their relations with both solicitors and clients, finally gave to the Bar a formal entity and an organization which this year celebrates its centenary.



Interior of Selborne Chambers. Built for the Bar in 1881. Photo courtesy P. Galbally.

1884 – 1900

BOOM AND BUST

by Trevor Monti

In the Legislative Assembly in 1891 Mr. W.T. Carter asked the Attorney-General, "what steps he (the Attorney-General) proposed to take to suppress this newest form of communism?" Members of the Bar in 1984 may be surprised to learn that Mr. Carter's question was directed at a number of Barristers (believed to number 49 as at the 30th January, 1892) who formed the first Association of Barristers following the passing of the Legal Profession Practice Act of 1891. Such was the hostility of the public to the formation of the Association.

The passing of the Legal Profession Practice Act in 1891 was one of the most controversial events that affected the lives of Barristers in the period under consideration. It was first mooted in 1875 when a private members Bill was introduced into the Legislative Assembly designed to effect the amalgamation of the profession. At that time, one Purves spoke in opposition to the Bill in the following terms.

> "I see a distinct advantage to be gained by this Bill. It will for example, enable a man who has failed in one profession to fail in another also."

In 1875 the Bill to amalgamate the profession was defeated. It was again introduced into the Legislative Assembly in 1884 and at that time 23 witnesses were called before the House, 22 of whom were either Judges, Barristers or Solicitors. The Bar in that year carried a resolution opposing the Bill by 68 votes to 5. It was eventually defeated in the Legislative Assembly by 16 votes to 15. However, every year thereafter until 1891 it was again introduced and was passed by the Legislative Assembly only to be defeated in the Legislative Council. Finally, in 1891 it was passed, with the Legislative Council proclaiming that litigants, "were not to be lathered at one shop and shaved at another." At that time the object of the Bill was to save expense.

In the early part of the year 1884 the first ever meeting of the Bar was held and this was followed by a second meeting which occurred on the 17th July, 1884. These meetings were called to combat the threat at that time to legislate for the amalgamation of the profession. At the July meeting it was decided:—

1. A Barrister may see a client direct without the intervention of a Solicitor in order to advise him before litigation is commenced, but he could not issue proceedings, engross documents, prepare briefs or do any of the other things done by a Solicitor.
2. To institute regulations for the first time governing the practice of the profession of a Barrister.

There were 20 such regulations and these can be found in the Australian Law Times Journal for Victorian Law Reports (Law) 101.

It should be noted that these regulations did not attempt to prohibit the established practice that existed in the country, of Barristers more fully acting out the role of Solicitors.

Until the passing of the Act admission to practise could be achieved in either of two ways. An applicant who desired to practise as a Barrister had to pursue a course of study and pass the examination prescribed. Or, if he desired to practise as an attorney (or solicitor) he had to pursue the course of study and pass the prescribed examinations and thereupon serve the prescribed period of articles. The rules of 1854 prohibited a practitioner from practising in both branches of the profession, but there remained considerable confusion as to the work which a member of either branch might undertake. The only thing that was clear was that only a Barrister could appear and conduct a case in the Supreme Court.

The passing of the 1891 Act forced the Bar for the first time to organize itself to lay down rules and to provide for their enforcement. The effects of the Act were not as far reaching as the Bar had at first feared with most Solicitors still continuing to brief as before the Act, in spite of the fact that they were now permitted to appear in the Supreme Court. One other component of the Act was to provide for a single requirement for admission to practise.

It cannot be established whether from 1885 until 1891 a Bar Committee continued to meet and make

decisions. But, it is known that in 1891 an association was formed of men practising exclusively as Barristers and on the 5th December of that year a copy of the Rules of that Association was published in "The Argus". In summary, these Rules provided for each applicant for membership to sign a request declaring his intention to practise only as a Barrister usually did before the 1st December 1891. Other rules forbade members from appearing with non-members and members could only accept briefs from Solicitors. In addition, a committee was established to govern the Association. The Association, however, was not without its opponents from within, and it was reported by "The Argus" on the 9th December, 1891 that 15 members of the Bar had signed a protest against the formulation of the Bar Association. Further opposition was maintained by the Law Institute which refused to recognize the Association.

In "A Multitude of Counsellors", the late Mr. Justice Dean, describes the development of a small number of "amalgams" in the early 1890s, following the passing of the Act, who did combine the practices of Solicitor and Barrister. In particular, these amalgams concentrated on and practised in the fields of crime and divorce. According to Dean, it seems that some members of the Bar joined the Law Institute in the early 1890s and the actual Bar Association which had been formed after the passing of the Act and previously referred to was abolished in 1892 by the Bar itself. The result was that Barristers continued to practise as before without any formal organization until a committee of the Bar was established in 1900 and that committee established a Bar Roll.

The period from 1884 until 1891 was generally a period of boom and prosperity for the Bar. Throughout the 1880s the recently constructed Selborne Chambers attracted as its tenants, a steady stream of practising Barristers, although by 1891 the building was still not full. During this period one of the more convenient features of life at the Bar was the existence of a number of wine cellars situated underneath the Bourke Street frontage of Selborne Chambers. These cellars were occupied by G. Sutherland, Smith & Sons Pty. Ltd. until 1961 when Selborne Chambers was closed to the Bar. It was said that as a result of the existence of the wine cellars, there was a strong smell of wine through the building and in some rooms in particular, especially after the building had been shut up for a time.

During the 1880s there existed in the centre of Selborne Chambers a well with a pump attached to it. In those days when apparently it was not unusual for Counsel to stay overnight in Chambers it was said the common law men could be distinguished from those practising in the equity jurisdiction because the common lawyers rose early and worked the pump to enable each other to wash, while the equity men stayed lazily in bed. (The author specifically refrains from considering any such comparison in 1984).

The year 1891 heralded the commencement of the economic depression which was to last well into the '90s. It was also the year which saw intense industrial conflict occur and it is interesting to observe that Chief Justice Higginbotham donated 50 pounds to the Trades Hall Council in support of the striking maritime workers and thereafter 10 pounds per week while the strike continued. At about this time the great land boom terminated.

The whole colony of Victoria was affected by the bursting of the land boom and economic crisis which commenced in 1891 and this included the Bar, in spite of the number of criminal trials, committals and commercial disputes which arose. Many of the criminal proceedings involved Solicitors, members of the State Parliament and even one Magistrate but very few involved members of the Bar.

The Magistrate in question, Matthais Larkin, was appointed at the age of 28 years and was Victoria's youngest Magistrate. He also became secretary of a building society in 1891 and arising from his activities associated with that society he faced a number of criminal charges, was convicted and sentenced to 6 years jail. Paradoxically, shortly prior to his own conviction, he had claimed, "I always put men away in a scientific and gentlemanly manner."

During the '90s there was a distinct shortage of work at the Bar and this crisis continued through until 1900. The March 1896 edition of "The Summons" published by the Law Students' Society commented:—

> "Until about 5 years ago legal business in Victoria was steadily on the increase and those who were at the present time in actual employment at the Bar acquired their experience and reputation during years when of necessity solicitors were from time to time compelled to give work to untried men. The Bar swelled in numbers in anticipation of a further increase in the volume of work but suddenly the tide turned and with the Bar numbering nearly 80 actually in Chambers, legal business — of a litigious nature especially — is steadily diminishing year by year. At the present time 9/10ths of the work of the Bar is in the hands of between 30 – 40 of its members and less than 20 are actively employed."

It seems that by the year 1900 the great mass of legal work was still in the hands of a small group of Barristers with little work being available for the remainder of the Bar. This deterioration of conditions at the Bar during the 1890s was reflected by the fact that Selborne Chambers had many vacancies near the end of the century.

It would be inappropriate to conclude without making reference to the leaders of the Bar during the particular period. Unrivalled in reputation was James Liddell Purves who was involved in many of the controversial trials both civil and criminal including the mammoth defamation trial **Speight v. Syme** which commenced in 1893 and ran for seven months as a result of which it became known as "Space v. Time". In his latter years he was acclaimed as the greatest advocate the Victorian Bar produced. He was a powerful cross-examiner whose sense of atmosphere, it was said, and gifts as an actor assured his success. Purves himself

readily admitted he was not a great or even sound lawyer, but as an advocate he was unsurpassed.

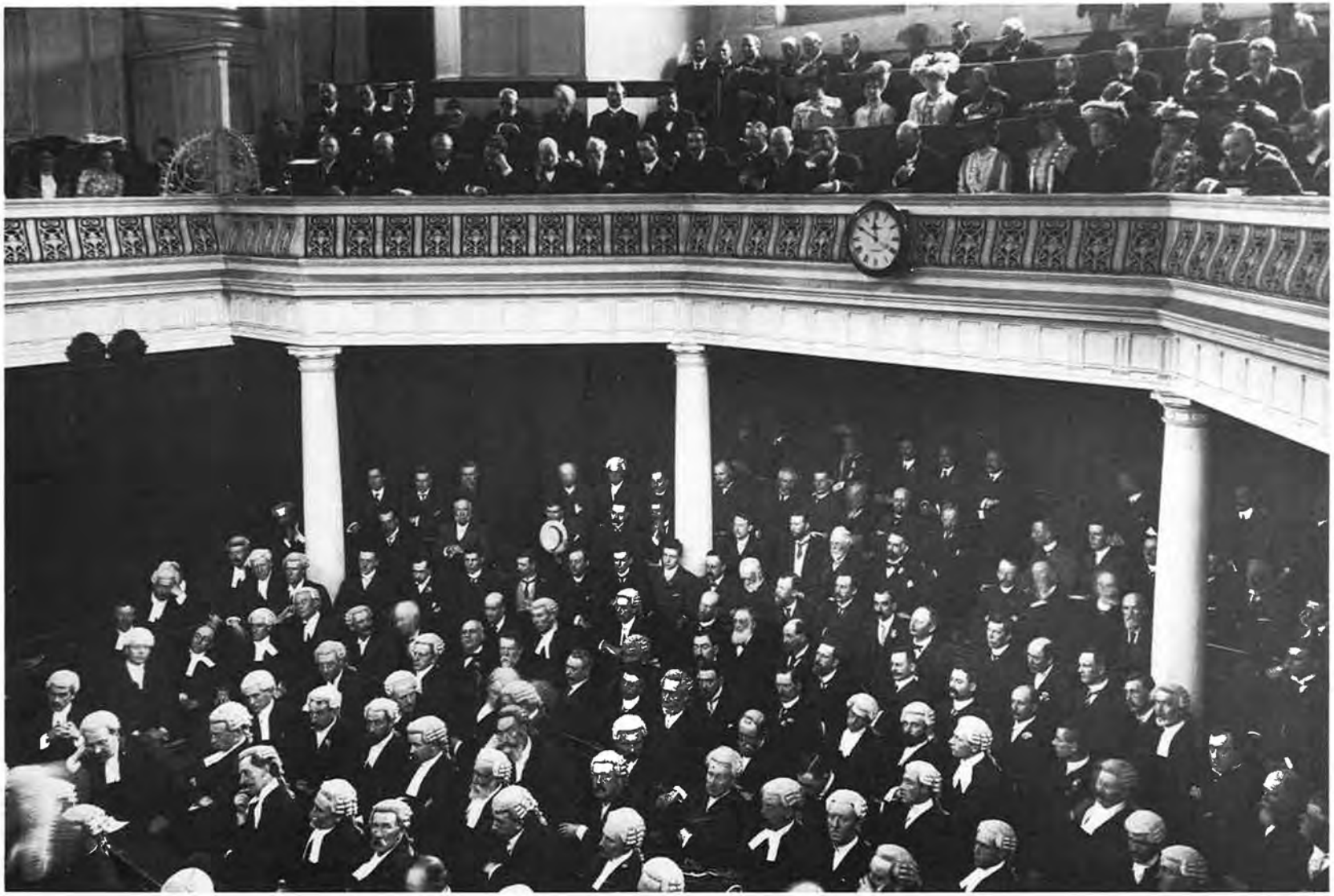
On one occasion Purves was appearing in what was to become known as "The Great Will Case" and was cross-examining a Miss Mackie who had been called to give evidence in disproof of the charge of undue influence. She was immediately tackled on the subject of her age by Purves and the cross-examination went as follows:—

"How old were you?" asked Mr. Purves, "when you came to Victoria?"
"About 20".
"Is that a lady's answer or a truthful answer?"
(Pause)
"A lady's answer." (Laughter)
"Then you were more than 20?"
"Yes". (Laughter)
"What was your age when you came to Victoria?"
"25" (Laughter)
"Why did you tell me a wanton falsehood and say you were 20?"
"Because I was 20."
"And the rest."
"Yes." (Laughter)
"Why did you tell me a falsehood?"
"It just occurred to me."
"What do you mean?"
"It wasn't particular."
"Do you mean that it wasn't relevant to the case?"
"Yes, not of any consequence."
"Do you say that you would imperil your soul for something of no consequence?"
"No. I beg your pardon!"
"It isn't my pardon. It is something far beyond me or anyone else in the Court. Why did you tell me that lie?"
"I cannot say."

Another example of Purves' skill as an advocate occurred in the same trial where he cross-examined an Irish cab driver. Although the precise details of the cross-examination are not known Purves' address to the jury provides an indication of what must have been an enthralling duel between cross-examiner and witness. That part of Purves' speech which is relevant appears as follows:—

"Among the other witnesses for the Defendants" proceeded Mr. Purves, "was the Irish cab driver, Donoghue. Now Donoghue was a witness whom it was impossible to cross-examine, like many others who came from the south of Ireland." (Laughter)
"He was introduced as a cab proprietor. That was to keep up the 'class' of the witness." (Laughter)
"He was actually a cab driver."
"Before I knew where I was, Donoghue was cross-examining me; and just when I thought I had got the witness out of his depth, I found myself swimming for my dear life." (Laughter)
"All that he said — and the evidence ought to be preserved in the archives of the country — was that Captain McMeckan was a liberal Scotsman. And he followed it up by distributing winks all around the Court." (Laughter)

Younger members of the Bar in 1984 may be interested in the views expressed by Purves when addressing the Law Students' Society at the Athenaeum Hall in 1895. He told his audience that the first consideration for the lawyer was the predominating character of the presiding Judge, "You must", he said, "ascertain whether he was the kind of man who would send for the Sheriff on the slightest brush with Counsel."



Opening of the High Court 1903.
Photo courtesy the Librarian, Supreme Court

1900 – 1920

NEW BAR, NEW CENTURY

by C. Gunst

History rarely provides a neat framework for the chronicler. The year 1900 saw Melbourne celebrating, first the new century, and second the Relief of Mafeking. The more prescient of Melbourne's lawyers might have charged their glasses on 9th July upon the passing by the British Parliament of the Commonwealth of Australia Constitution Act.

During the preceding year the last barrister vacated Temple Court. This was Sir Isaac Isaacs who then established Chambers at 463 Chancery Lane, the site presently occupied by Harston and Partridge. These Chambers were maintained throughout the first two decades of the century.

Bradshaw, in his Selborne Chambers Memories, paints the following sad picture of the Bar in 1900:

> "A barrister whose recollection goes back to the beginning of the century has stated that around 1900 the great mass of legal work was still in the hands of a small group of barristers — in fact it may well have been an even smaller group than that referred to in 1896. The result was that there was very little work for the remainder of the Bar, most of whom were nearly always idle. The deterioration of conditions at the Bar reflected itself in the tenancy situation in Selborne Chambers, and by the end of the century there were quite a number of vacancies."

Selborne Chambers was then leased by The Barristers' Chambers Company Pty. Ltd. In the expectation of large numbers of visitors for the opening of the Commonwealth Parliament in the Exhibition Buildings in May 1901, a number of rooms were let to the adjoining Menzies Hotel and fitted out as bedrooms. It was not until after the Great War that Selborne Chambers was fully occupied by barristers. It was purchased by the Bar in 1924.

By 1900, the Bar Association formed by Sir John Madden in 1891 had proved ineffective as an organisation, and the future of a separate Bar was by no means certain. Continuing pressure was exerted by various politicians, and by the then unincorporated Law Institute, in an attempt to effect the abolition of a separate Bar. Recognising that a well organised independent Bar Association was the best defence in the circumstances, a meeting was called on 20 June, 1900 to establish a new organisation. Twenty-five barristers attended the meeting, there being some seventy barristers then in active practice in Melbourne (plus some ten amalgams). John Burnett Box, described in the Victorian Law Reports of which he had been editor since 1889 as "Barrister-at-Law", was elected chairman of a newly constituted "Committee of Counsel", a position he held upon his appointment to the County Court in 1905. A seven man committee was elected, comprising Box, Purves, Duffy, Topp, Higgins, Mitchell and Bryant. A further meeting was held later in the year, on 21st September, and Rules providing for the annual election of the Committee of Counsel were then adopted. It is from those meetings and adoption of those rules that the Victorian Bar as it is presently constituted is descended. The shaky commencement of the various Bar Associations of the 19th Century was thus replaced by a solidly based and well organised body which has continued to the present day.

The importance of practising exclusively as a barrister was recognised by the Bar Rules of 1900, which by Rule 13 provided that:

> "Any person may apply to the Committee for their consent to his signing the Roll and the Committee upon being satisfied that the applicant is duly qualified and intends to practise exclusively as counsel, may, if in their absolute discretion they think fit, consent to his signing the Roll."

The primacy of this rule has, of course, continued to the present day.

By 1902 all barristers then in active private practice in Melbourne had joined the new Association, and had signed the Roll of Counsel kept by the Committee.

The fledgling Association, although solidly based amongst barristers within Victoria, and well organised, lacked public recognition until 1903. In that year, the State Parliament created the Council of Legal Education to regulate admission to practise, by the enact-

ment of the Legal Profession Reciprocity Act 1903. That Act provided for a council, partly constituted by three members nominated by the Law Institute of Victoria, and further partly constituted by three members nominated by the Committee of Counsel. Such was the acclamation of the Bar for this, its first official recognition, that a general meeting was held on 18 February, 1904, for the purpose of congratulating the Committee. That this recognition had come within a mere twelve years of the enactment of the Legal Profession Practice Act 1891, which Act had sought to destroy the independence of the Bar, was doubly satisfying.

The Law Institute of Victoria continued its opposition to the separate Bar throughout the early years of the 20th Century, going as far in 1907 as to brief an Adelaide lawyer, Sir Josiah Symon, to advise as to the prospects of success for an action to challenge the legality of the principal rules of the Bar Association. The view of Sir Josiah Symon was that the Bar committed no offence by its insistence upon the various strict rules of practice and conduct.

The new Bar Association was brought into existence too late to prevent the appointment in 1899 of a solicitor to the dignity of letters patent as one of Her Majesty's Counsel, for in that year a Ballarat solicitor and politician, Henry Cuthbert, was granted a silk gown. The Association was successful, however, in 1906, in lobbying the government to prevent the appointment to the Supreme Court of the then Attorney-General, Mr. J.M. Davies, a solicitor. The appointment went instead to Leo Cussen, whom Sir Owen Dixon later described as "the greatest of all judges".

The Law Institute of Victoria was incorporated by the enactment of the Law Institute Act 1917, and the issue of fusion was again canvassed in the public domain at that time. The Act provided for the establishment of a statutory committee, with power to investigate allegations of misconduct by both barristers and solicitors. Notwithstanding this, however, there appears never to have been action taken by this committee against a member of the Victorian Bar.

FEDERATION

In 1901 Queen Victoria died, and the various Australian colonies federated as the Commonwealth of Australia. The establishment of the Commonwealth led to the creation of the High Court, with the appointment to it in 1906 of two Victorian lawyers, Isaacs and Higgins. The Victorian profession was early dismayed by the new federal Court, which displayed a marked propensity to overrule judgments of the Supreme Court of Victoria. The ability to come to grips with this propensity may not yet have been mastered by some members of the Bar.

THE BENCH

The Chief Justice of Victoria in 1900 was Sir John Madden, and the puisne Justices were Holroyd, Hartley Williams, a'Beckett and Hodges J.J. Madden was the fourth Chief Justice of Victoria, and the third to have been born in Ireland. After emigrating to Melbourne with his family as a youth, Madden attended St. Patrick's College, East Melbourne, and then Melbourne University. After his call to the Bar in 1865, he was awarded the first degree of Doctor of Laws ever granted by Melbourne University. He was active in politics, serving as Minister of Justice in two ministries between 1874 and 1883. A fine orator with a great command of the English language, Madden was sought after as a speaker both in Court and on social occasions. His drive and commitment to an independent Bar in Victoria have previously been noted. Hartley Williams, son of Sir Edward Williams, also a Supreme Court Judge, had been appointed in 1881 when only 37, the youngest Victorian ever appointed to the bench of the Supreme (or of any other) Court.

A third Williams, William H., was in 1900 appointed to the County Court. Billy Williams' place in judicial history was made when (so Bradshaw reports) he told Counsel who wanted to argue a point of law before him, "You go over to the other side of the Courts (meaning the Supreme Court). The man over there is paid more than I am." So much for stare decisis.

Sir John Madden continued as Chief Justice until 1918, when Sir William Irvine, an ex-federal Attorney-General and Premier of Victoria succeeded him. Irvine C.J. was the fifth Chief Justice — the fourth and, so far, the last of Irish extraction. His appointment thus constituted the last direct link in the chain of Irish influence in early Victorian legal history. Irvine was active in politics, and for his stern demeanour gained the nickname "Iceberg Irvine". As Chief Justice he brought dignity and stature to the Court.

The other Judges of the Supreme Court appointed during the course of the two decades from 1900 to 1920 were Hood, Leo Cussen, Schutt, Mann and McArthur. Sir Leo Cussen was almost lost to the law as a young man. After his secondary schooling he attended Melbourne University to graduate in engineering, before studying law. His industry and talent, which led to the universal esteem in which he was held, mirror therefore to some extent those of one of Australia's greatest engineers, Sir John Monash, who graduated at about the same time in both law and engineering.

THE BAR

During the first ten years of the 20th Century, litigation in Victoria was dominated by the figure of James Liddell Purves, perhaps the greatest advocate the Victorian Bar has ever had. A notoriously robust and outspoken advocate, he was often described as brusque and "bullying". Stories about him are legion, but one little-known one is as follows. At the conclusion of one address to a jury, a jury member said to Purves "It's no good, Mr. Purves, we are not listening to you". Purves promptly responded "None of my observations, sir, are directed to you. Had you been paying proper attention, you would have noticed that I said 'gentlemen of the jury'".

Alfred Deakin, the second Prime Minister of the newly formed Commonwealth of Australia and the first Commonwealth Attorney-General, was a member of the Victorian Bar until his death in 1919. Although not an active member of the Bar after federation, he played an important part in the enactment of the Commonwealth Judiciary Act and the High Court Procedure Act, the procedures of which are largely followed today.

Sir Frank Gavan Duffy was a son of Charles Gavan Duffy, the Irish politician and rebel. An advocate comparable to Purves, against whom he was regularly engaged, Duffy was extremely quick witted. His appointment to the High Court bench in 1913 was a loss to the Bar, but a gain for that Court.

Sir Hayden Starke, the father of Sir John Starke, was a man of great dignity and capacity. He dominated the junior Bar, at which he remained (never taking silk) until his appointment to the High Court bench in 1920.

The Great War of 1914-1918 had a noticeable effect on litigation and on the profession at the Bar which at that time numbered eighty, or so. Nineteen immediately enlisted for service. Five were killed; Mervyn Higgins, Carse, Mackay, Connolly and Hodges. All of these, Dean says, would in all probability have had distinguised careers. Those who returned provided personnel for the Supreme Court until the late 1940's. Charles Gavan Duffy served in an artillery unit, as did Norman O'Bryan, Edmund Herring and Wilfred Fullagar. Russell Martin won the Military Cross at Passchendaele, and Arthur Dean served with distinction in an infantry battalion.

But they returned to lean years. The folklore of the Bar abounds with stories of eminent jurists-to-be eking out a meagre living upon a few briefs per annum. The statistics from the Year Book set out in Dean (p.166) attest to this decline. In 1890 there were 297 Supreme Court civil trials. This figure declined annually to 61 in 1907. By 1913 it had risen to 116 but it dropped away again to 50 in 1920. The work of the County Court remained constant, between 500-600 trials throughout the period under review. No silks were appointed between September 1912 and December 1920.

The Bar, and the community it served, had to await the optimism and the growth of the twenties as well as the advent of the motor car before it could put behind it a very lean twenty years.

• • •

(In 1908 the business of the Supreme Court fell to an all time low. In one month there was only one Cause listed for hearing)

The Judge sat with a vacant stare
His note-less book to scan.
The skeletons of causes were
Around that lonely man;
All to a finish fought — the brands
Of Bills of Costs from expert hands
May still be seared on some!
But now he hears no suitor's tread —
The bored Associate droops his head,
By slumber sweet o'ercome.

Yet wigged and gowned that lone one stood.
A brief he did untie
From force of habit long, and "Would
Your Honor certify"
He said, "Our legal work is done;
Your Honor's race and mine is run —
The public bid us go.
No causes have been heard for years:
The business" (he spake through tears)
"Has gone to Jericho!"

W. LEWERS

"R.G. the A.G."
(Air — Gilbert the Filbert)
TO **R.G.M., LLM., K.C. M.L.A.**

Attorney General: It's R.G.
The A.G.
The Pride of the Law
Who, now he's in high office,
We humbly adore;
His largesse
(Or Smallesse)
Will soothe our puny griefs
When R.G.
The A.G.
Hands round a few Crown briefs.

Master of Laws: It's R.G.
The A.G.
The double L.M.
The alphabetic wonder
Gawd's boy friend (pro tem)
O. K.C.
F. R. P.
What symbol this? You ass
To R.G.
F. R. P.
Just means "Free Railway Pass".

King's Counsel: As K.C.
Our R.G.
Can learn no more law.
He simply hasn't got to,
Nor did he before:
It's E.C.
As U. C.
To sing in squiffy bliss
Till, hearts O —
Verflowing
We'll finish up — like this.

Good Bloke: Our R.G's
A "G. B."
Which stands for "Good Bloke"
He'll hold a quart of whisky
Or crack a broad joke;
Though straitened
Not fraightened
Are we to do the job
We've all clubbed
Together
And lent the State a Bob.

ARTHUR DEAN
Judge of the Supreme Court
1949 – 1966

1920 – 1940

THE ERA OF DIXON AND MENZIES

by the Honourable Sir Gregory Gowans, Q.C.

"The year 1920 had been treated for many purposes as the opening year of an era", said Sir Owen Dixon in an address delivered in Toronto and later published in "Jesting Pilate". Not surprisingly, he linked the change in outlook with the new course taken by the High Court of Australia in the Engineer's Case in deciding that the operations of State instrumentalities were not immune as such from the exercise of the power of the Commonwealth to make laws in its specified fields. Other signs and symptoms of the new era were slow in coming, although perhaps the leaven was working, But at its opening with the Engineer's Case, there had arisen a star from out of the east (or as his impersonator, Basil Murphy was wont to say in a semi-derisory reference to his origins — "East Pirron Yallock"). The star was Robert Gordon Menzies, the successful young counsel in the case.

His subsequent speedy rise through the junior ranks of the Bar was not typical of the times. Nor did the Bar in general then present the appearance of a prosperous profession. In a measure this was due to the influence of tradition, which in some respects owed something to the image of the profession created by Dickens.

The overwhelming majority of the Bar were concentrated in rooms in Selborne Chambers, with its atmosphere of cells inhabited by a monastic community. Whatever the effect upon the minds of the public the tendency among members of the Bar was to enter them to set themselves up where the action was, where solicitors were likely to congregate in their search for counsel. One well known barrister was jokingly accused of building up his prestige and practice by standing on the gallery of Selborne Chambers when solicitors were gathered at the notice board below and shouting out to some fellow barrister or anybody in general: "How long will you take?"

Whatever the attraction, newcomers to practice crowded into Selborne Chambers whenever there was any available space, notwithstanding that there was not much of that.

The recruit to the Bar, having sought out some more senior member who would take him as a reader, got himself a table in a corner of his master's often narrow room, and access to a telephone, and equipped himself with a supply of blue paper and a bottle of ink from Harston and Partridge, opposite on Chancery Lane. With this he was equipped to provide hand-written advices or drafts for inter-locutory proceedings for return to an instructing solicitor in a pink-taped brief.

His master was likely to write his own opinions on the inner fold of the brief presented to him by the solicitor. Typed memoranda were not to come into common use till later, and when they became more the custom there was only one typist, an independent contractor, available in the whole Selborne Chambers for the great majority who did not run to a personal secretary.

The image presented to the members of the public brought into contact with members of the Bar was that of a profession reputedly learned, but oddly "cribbed, cabined and confined" and mean in its manner of carrying on its practice. Public relations were unexplored.

The work of the Bar was concerned with traditional subjects — disputes as to contracts, as to rights of property the subject of disposition by will, sale or lease, as to personal injury in the course of employment or as the result of negligence, as to defamation of character and divorce, as to the guilt or innocence of crime or summary offences. They were well worn fields. Fees were modest, although those in specialized fields like the constitutional area were able to claim their due. Litigants had to have stout hearts and long purses. In the field of negligence, contributory negligence was an absolute bar to success, and a wrong doer in a motor car did not have to be insured against liability to third parties, and could be impecunious. In the criminal field there was no legal aid and only well-off or well supported accused could afford to be defended by counsel. The burgeoning of industrial disputes into a wide field where the expertise of counsel became common was as yet to come and the

field of administrative law had yet to be explored.

The road to success at the Bar had to be trodden warily and the taking of silk was spoken of as a dangerous step. Two or three silks a year was the current quota and in some fields such as the criminal jurisdiction new silks took their professional lives in their hands. In the event of miscalculation of the demand for their services as silks, they needed to have an available recourse to politics, lectureships, writing or commercial directorships. In the period between the beginning of 1922, when Latham and Dixon took silk, and the beginning of 1927, when Maxwell took silk, there was no new appointment except one of a formal character in the case of a law officer of the Commonwealth. In accordance with the climate of the Bar, Menzies was not to take silk for another nine years after his triumph in the Engineer's Case in 1920. Latham entered Federal politics in the year he took silk and occupied the office of Attorney-General on two occasions between then and 1934 when he returned to the Bar shortly before his appointment to the High Court as Chief Justice. Dixon must have known that a judicial appointment was his for the taking, and in 1926 he indeed accepted appointment as an acting judge of the Supreme Court of Victoria for six months and three years later a seat in the High Court. The position of these two when at the Bar was pre-eminent as constitutional and pure law experts.

Maxwell's case was very different. His practice was almost entirely in the criminal jurisdiction and he carried it on in spite of growing blindness but with the aid of a strong rich voice and a marked Scottish accent and a convincing air of sincerity he was highly persuasive. Early in 1922 there occurred the murder trial of the year, one newsworthy murder trial in Victoria being about the programme for the year in those days. The Gun Alley murder trial followed from the finding of a girl's naked body in a lane near the Eastern Arcade not far from the wine saloon of the accused Colin Ross. Many of the witnesses were sleazy characters and the trial excited great public interest. Maxwell led T.C. Brennan for Ross's defence of an alibi in a strong attack on the witnesses for the Crown, but without success. Appeals to the Full Court and the High Court failed, and Ross was executed. His counsel were strong in their belief that there had been a failure of justice and Brennan went to the extent of putting his name to a pamphlet to that end. In 1929 Maxwell appeared again for the defence in two trials of one Ronald Griggs, a young Minister of the Methodist Church, for the murder of his wife by poison at Omeo. In that case amid avid public interest Maxwell was successful.

After Maxwell and Brennan had each taken silk they both faced thin times but, fortunately, both were or became members of the Federal Parliament and that softened their adversity. But the idea that it was unsafe to take silk on the strength of criminal practice long lingered.

Another instance, although not drawn from the criminal sphere of practice, of the notion that silks fade away in time, was that of Sir Edward Mitchell, once a great name at the Bar but later more concerned with dabbling in the discovery or exploitation of mineral fields than the pursuit of a legal practice. A long moustached figure and rather noted for elaboration in argument, his appearance in the High Court on one occasion evoked from Sir George Rich the quip — "The long (K)night cometh when no work is done".

The ranks of the Bench and the upper ranks of the Bar in the early period of the new era showed some influence of the Victorian period from which they had come.

Sir William Irvine had been appointed Chief Justice of Victoria in 1918 and was to hold office until 1935. He had been born in Ireland in 1858 and was a nephew of John Mitchell who had been involved in the Smith O'Brien rebellion of 1848 and was consequently transported to Tasmania. Also involved had been Charles Gavan Duffy who having made his peace with the authorities, was not prosecuted and ultimately came to Victoria with his son Frank, preceding Irvine by 20 years. In his "Jail Journal", dealing with his transportation, Mitchell was wont to refer to Charles Gavan Duffy as "Give-in Duffy", but that was a by-product of the influence of current Irish politics. Both Irvine and Charles Gavan Duffy became Premiers of Victoria and both Irvine and Frank Gavan Duffy became Chief Justices, the one of the Supreme Court of Victoria and the other of the High Court of Australia.

Irvine was a product of his age, dignified and impassive in appearance. His presence had to be observed with due regard to his office, whether in the corridors of the judges' chambers in Melbourne, by the banishment of wandering practitioners from them, or on his arrival on circuit at the railway station at Ballarat, by the presence of the station master complete with top hat. His aloofness had the virtue of his never yielding to a temptation of getting down into the arena when hearing a case in court. Sometimes this detachment, particularly after lunch at the Melbourne Club, took the form of disinterest in the details of the proceedings. One such occasion was when one Rupert Millane, a vexatious litigant who had to get the permission of a judge to institute proceedings appeared before him in the Practice Court on an application for such leave, with Stretton for the Crown appearing to oppose it. Millane inaudible and unintelligible, got so tangled up in his attempt to explain the circumstances to the judge that Stretton at last got to his feet to help the judge to understand what was being put, and was somewhat shattered after he had concluded his explanation by the judge concluding the matter by saying — "Thank you, now I understand. Very well, the application will be granted".

A very different man in appearance and court demeanour was his successor as Chief Justice, Sir Frederick Mann, who had been a puisne judge since 1919. His appointment to the Bench along with Schutt had evoked from Will Lewers the well known quatrain —

"There never were judicial pair, since judging first began,
To equal Mr Justice Schutt and Mr Justice Mann,
Others before the ermine wore, and with distinction — but,
They were not Mr Justice Mann nor Mr Justice Schutt."

Mann was articulate, incisive, sometimes cutting, in his observations.

For the purpose of making a decision which he regarded as proper and acceptable to his own sense of justice, he seemed to regard legal authority as interesting and perhaps useful but not binding in his case. After becoming Chief Justice in 1935, he could still be seen after court hours in William Street waiting for a tram to take him home. Yet he could begin a ruling in the Practice Court by saying, "The applicant in this case follows the humble occupation of a meter reader", without any apparent consciousness that the epithet could be anything but a relevant fact. The story is told that after his retirement he was stopped one day in the street by a former divorce barrister older than himself and who, after inquiring as to his health proceeded to list the physical assets he himself still possessed, hair, teeth etc. and finishing with the inquiry, as to how Sir Frederick thought he would be when he reached his age. "Dead, I hope" was the laconic reply. It was very much in character.

Contemporaries in office of these two were Sir Leo Cussen and Sir James Macfarlan. Diversity in temperament among judges has always been part of the legal scene as was underlined in relation to these two by the transposition of epithets worked by Lewers in his verses for the occasion of the dinner tendered to them in April 1922:

"We meet to honour two illustrious names —
The fiery Leo and the gentle James".

"Horses for courses" is an adage as familiar to legal practitioners in its application to judges and barristers and their temperaments and expertise as it is to racegoers in relation to performers in that field. It was well illustrated in proceedings with respect to the interpretation of a will in 1934. An originating summons for interpretation, although the remuneration is modest was a welcome source of income in straightened times and the particular one attracted a mixed bag of running down experts and equity aspirants from the Junior Bar, expecting the usual exercise of arguing the meaning of words and their arrangement. But it came before Macfarlan J., before whom one had to tread warily. He stopped counsel for the first defendant in his tracks by asking — "What about the Rule in Shelley's Case?" A suggestion that it had been abolished was met with the retort, made with some enjoyment, that the repeal did not apply to a will of this particular date. The dismay in the ranks was evident and ended with relief when the judge suggested an adjournment to another day might be expected to uncover more assistance to him. In the course of the adjournment counsel became full of information as to the rule referred to. But unfortunately the judge became ill and his place was taken by McArthur J., an amiable judge whose practice and experience had been in common law matters, and whose inquiry at the outset was — "what is the rule in Shelley's Case?" After he had been informed at considerable length he reserved his judgment, became ill, resigned and died. The matter was renewed before the Chief Justice who, after some painful enlightenment, decided, with some relief, that the rule in Shelley's Case had no application at all to the case. As the new era had advanced the numbers at the Bar had increased. Men who had left their practice for war service came back and men who had deferred their entry into practice on account of the war now took it up again. There were 100 new signatories to the Bar Roll in the decade after 1920.

The work of the Bar was aided by the achievement of Sir Leo Cussen in the compilation of the Imperial Acts Application Act of 1922 and the consolidation of the statutes of 1928.

But towards the end of the first decade of the new era the earnings of the Bar were being affected by the general malaise in the economy of the world which affected the general confidence and deepened into the Great Depression ushering in the decade of the 1930's. It became a time for pulling in belts for the Bar as with the rest of the community, particularly for the very junior members who had to content themselves with a lunch consisting of a buttered roll and a cup of tea in Griffith's Tea Shop in Elizabeth Street at the expense of eight pence half penny.

Accommodation in Selborne Chambers was still inadequate for the members who chose to battle along in the profession. Some of the men who had served in the war began to emerge as prospective leaders and they put into effect the vigorous habits of thought derived from the experiences they had been through. With some of them there developed an intolerance of the conditions that were available with the accommodation circumstances in Selborne Chambers. A move to obtain additional and better accommodation in the Equity Trustees Building in Bourke Street was led by Eugene Gorman Q.C. one of these returned men. He was a man of dynamic character who had built up a considerable reputation in jury trials. He had been known to laugh a libel case out of court in such a trial. Many leading men joined him in the move early in 1931, including Fullagar and O'Bryan.

One of these returned men who remained in Selborne Chambers was Wilbur Ham who took silk in 1927 who, in the main was an appeal counsel though sometimes to be found in a nisi prius trial where he did not always reflect his best qualities. With a dragging leg from war service and a cultivated accent enriched with expletives, he had a special individuality. It was an experience to be his junior. He was meticulous on taking his junior to lunch at the Wattle Tea Rooms in Little Collins Street, in which he was said to have a family interest. He would call a conference at his home at night, talk for two or three hours in his racy

style about anything but the case in hand, call for supper and then start the business of the occasion to last till midnight. He was rumoured to finish off his opinions with an expletive.

In contrast with these new men were a number at the Bar who still preserved the personal manner and style of dress of the Edwardian period from which they had come and to which they truly belonged. Harry Hayball wore a billy-cock hat and grew artichokes which he brought into Norman O'Bryan's Chambers in a hessian bag. S.K. Hotchin wrote for the Argus Law Reports and carried the appearance of a Mississippi gambler or a tea planter. When the High Court sat in the Supreme Court building in the Twelfth Court this atmosphere was strengthened, with the personalities of Gavan Duffy, Isaacs and Higgins.

Menzies who had gone into State politics became Attorney-General for Victoria in 1934. But he still found time to carry on his practice at the Bar for limited purposes. He was equally good on the facts and on the law. When he was putting an argument in law he absorbed the principle of a legal authority, even though unfamiliar to him, on the run, with an amazing accuracy. When in a common law case, of libel or fraud, he was due to cross-examine, the word would go around the junior bar and there was always a crowded courtroom to observe him apply what was reputed to be his favourite exercise, to take the witness to all the conceivable avenues of escape and close all the gaps before putting the critical question to him. On one occasion early in the 1930's he was briefed to appear in the High Court in a case concerning the operation of the will of one Lawlor who had left his residuary estate to be divided as to one half to Archbishop Mannix for the establishment of a Catholic daily newspaper and one half to the Pope for the propagation of the faith. Menzies led for Dr. Mannix to uphold the validity of his gift. He could not refrain from recounting how he, a good Presbyterian, had been taken to task for appearing for Dr. Mannix. "Ah, I said to him," said Menzies, "you are not fullly informed. I am appearing for Dr. Mannix, but I'm appearing against the Pope". He did not find it necessary to add that the Pope's gift would not have been reduced or increased by the failure or validity of the gift of the half to Dr. Mannix. It would have spoilt the explanation and the story.

But he was not so ready with a quip on another occasion, later in the decade, when he was briefed to appear for one Carter, a rough and ready producer of eggs at Werribee, in one of his fights in the High Court against the Egg Board. As Carter entered Menzies' Chambers for a conference, he greeted Carter with the enquiry, "Well, Carter, how are the hens laying?" Carter took off his hat, in which he carried his papers, and peered inside. "Same old way", he remarked laconically, "through their arses". Menzies, for once was lost for words to cap this.

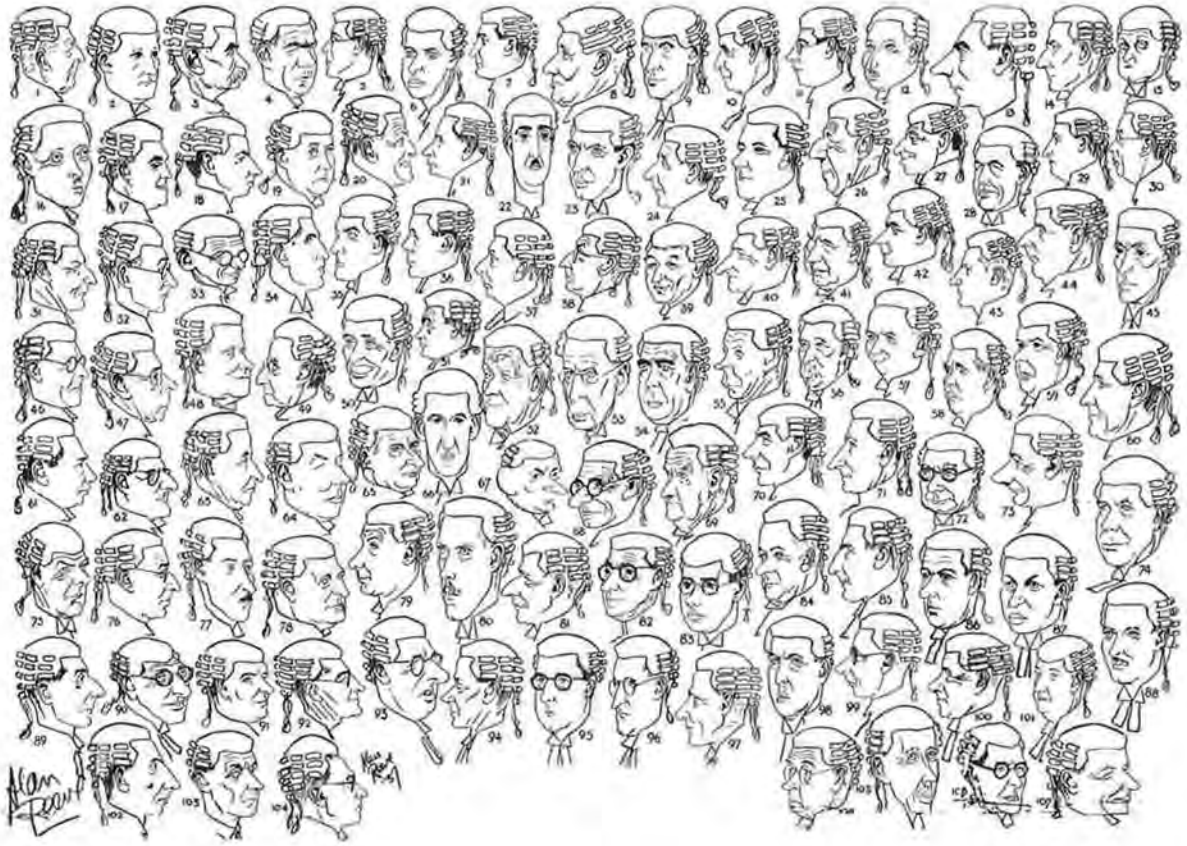
One who found words readily, but in the sense of making use of the less usual word or phrase, was P.D. Phillips, who was for some time Chairman of the Transport Regulation Board. His tendency towards preciosity in expression is said to have elicited from Sir Owen Dixon the bon mot, "There never was a man over whom the English language had a greater mastery".

By the end of the Thirties there had been some recovery from the worst of the Depression. The statutory requirement for compulsory insurance against Third Party liability enacted in 1939, operating on the increase in the numbers of motor cars, bid fair to aid the recovery in litigation. But the members of the Bar hovered about the modest figure of 100. As the decade grew to an end that threatened to be drastically reduced by the outbreak of war and the ensuing demands of war service. It was a disheartening prospect.

Members of the

MELBOURNE BAR, 1937

caricatured by Alan Reeve



1. Mr. W. St G. Sproule
2. Mr. A.M. Fraser
3. Mr. S.K. Hotchin
4. Mr. H. Minogue
5. Mr. C.K. Lucas
6. Mr. Percy E. Joske
7. Mr. J.P. Bourke
8. Mr. J.H. Keating
9. Mr. J.W. Flannagan
10. Mr. J.M. Cullity
11. Mr. R.M. Eggleston
12. Mr. J.F. Mulveny
13. Mr. B. Seletto
14. Mr. S.H. Collie
15. Mr. J.V. Barry
16. Mr. D.M. Little
17. Mr. W.A. Fazio
18. Mr. Gregory Gowans
20. Mr. J.K. Borrowman
21. Mr. T.W. Smith
22. Mr. O.J. Gillard
23. Mr. Rhys Davies
24. Mr. D.M. Campbell
25. Mr. E.H.E. Barber
26. Mr. P.A. Jacobs
27. Mr. M.J. Ashkanasy
28. Mr. R.R. Sholl
29. Mr. P.D. King
30. Mr. J.A. Spicer
31. Mr. F.R. Nelson
32. Mr. Murray V. McInerney
33. Mr. L. Voumard
34. Mr. A.D.G. Adam
35. Mr. W.M. Irvine
36. Mr. R.L. Gilbert
37. Mr. R.V. Monahan
38. Mr. G.B. Gunson
39. Mr. H. Headen Cuthbert
40. Mr. C. Stafford
41. Mr. A.C. Morley
42. Mr. Arthur Adams
43. Mr. Davern Wright
44. Mr. Harry Woolf
45. Mr. J.B. Tait
46. Mr. Norman O'Bryan
47. Mr. Wilbur Ham, K.C.
48. Dr. W.A. Sanderson
49. Mr. H.I. Cohen, K.C.
50. Mr. J.G. Norris
51. Mr. Arthur Dean
52. Mr. L.S. Woolf
53. Sir Edward Mitchell, K.C.
54. Mr. E.R. Burgess
55. Mr. G.A. Pape
56. Mr. J.T. Collins, K.C.
57. Mr. W.K. Fullagar, K.C.
58. Mr. E.F. Herring, K.C.
59. Mr. C.H.A. Eager, K.C.
60. Mr. T.S. Clyne
61. Mr. F.A.L. Callil
62. Mr. T.K. Doyle
63. Mr. Harry Walker
64. Mr. F. Maxwell Bradshaw
65. Mr. D.C. Robertson
66. Mr. K.A. Morrison
67. Mr. Eugene Gorman, K.C.
68. Dr. E.G. Coppel
69. Mr. W. Paul
70. Mr. D.I. Menzies
71. Dr. A.D. Ellis
72. Mr. H.D. Wiseman
73. Mr. B.J. Dunn
74. Mr. J.H. Moore
75. Mr. L.P. Little
76. Mr. R.A. Smithers
77. Mr. F.D. Cumbrae-Stewart
78. Mr. F.F. Knight
79. Mr. Llewellyn C. Jones
80. Mr. N.E. Burbank
81. Mr. H.P. Box
82. Mr. Stanley Lewis
83. Mr. P.C. Wickens
84. Mr. T.G. Jones
85. Mr. S.H.Z. Wolnarski
86. Mr. W.T. Charles
87. Mr. H.T. Frederico
88. Mr. R.R. Marsh
89. Mr. H.A. Winneke
90. Mr. I.T. Sergeant
91. Mr. J.A. Nimmo
92. Mr. A.L. Read
93. Mr. Norman Mitchell
94. Mr. J.W. Barnaby
95. Mr. E.F. Healy
96. Mr. J.X. O'Driscoll
97. Mr. G.L. Dethridge
98. Mr. P.D. Phillips
99. Mr. G.H. Lush
100. Mr. J.B. Best
101. Mr. E.H. Hudson
102. Mr. F.L. McCay
103. Mr. V.G. Brham
104. Mr. C.W. Ostenmeyer
105. Mr. Whitney King
106. Mr. H.J.A. Campton
107. Mr. F.B. Ormiston
108. Mr. J. Hassett

KINGS CHARACTERS

A Retrospective

"MERRY CHRISTMAS!"

Bar Cricket Team 1935

(L. to R.), Gillard, King, Sholl, Winneke, Irvine, — (obscured), Dethridge, Eggleston, Lush, Dunn.

1940 – 1950

THE BAR AT WAR, AND AFTERWARDS

by The Honourable Sir Murray McInerney, Q.C.

The decade 1940-1950 covers the years of World War II and the beginning of what has been called "Post War Reconstruction". It followed the decade of the Depression and it preceded the years of the enormous expansion of the 1950s and 1960s. It was a decade which saw many of the Members of the Bar absent from practice serving in the various armed forces. It was a decade also where many of the young men who in the normal course of events might have joined the Bar in that decade had either had their admission to practice or their attainment of qualifications postponed by service during the War. Many members of the Bar were limping painfully out of the Depression: very few if indeed anyone anticipated the enormous boom in development and consequently in legal work which followed the end of World War II.

The Bar was small in numbers — some 107 names appear in the list of caricatures of the Melbourne Bar done in 1937 by Alan Reeves. Of that 107 perhaps ten or more were not in active practice, some through age and, some who, in the days before high income tax lived on inherited means, lived for many years at the Bar without developing any practice. Of the 100 men in active practice there were perhaps nine silks, T.C. Brennan, Eugene Gorman, R.G. Menzies, Wilfred Fullagar, Ian Macfarlan, Clifford Book, Clifden Eager, Edmund Herring, Norman O'Bryan, Walter Sproule, Edward Reynolds, Edward Hudson. Of these men, T.C. Brennan and Macfarlan were in politics, and Book and Sproule were Crown Prosecutors. Menzies for much of the time was more active in politics than in practice, although he did come back to the Bar following the victory of Labour in the elections in 1940.

The Supreme Court was small consisting of Sir Frederick Mann, Chief Justice, James Macfarlan, Charles Lowe, Charles Gavan Duffy, Russell Martin and in 1938-39 Norman O'Bryan. Sir Frederick Mann resigned as Chief Justice in 1944 and was succeeded by Sir Edmund Herring (at that time Lieutenant-General Herring). Wilfred Fullagar was appointed in 1945 (curiously enough Sir Arthur Dean omits this appointment in "A Multitude of Counsellors"). John Barry was appointed in 1947 and Arthur Dean in 1949. In 1950 Sholl and Smith were appointed to the Bench and E.G. Coppel and E.H. Hudson were appointed Acting Judges of the Supreme Court.

On the other hand, in the High Court there was at the outset of this decade a settled Court. Sir John Latham had become Chief Justice in 1935 and he remained Chief Justice until 1952. Sitting with him were Sir George Rich (appointed in 1913), Hayden Starke (appointed in 1920), Owen Dixon (1929), Dr. H.V. Evatt, and Justice McTiernan (both appointed in 1931). On Dr. Evatt's resignation in 1940 to enter Federal politics, Mr. Justice Williams of the New South Wales Supreme Court was appointed. Towards the end of the decade, Mr. Justice Webb of the Queensland Supreme Court was appointed to the High Court, and soon Mr. Justice Fullagar transferred from the Victorian Supreme Court to the High Court in 1950, in which year also Mr. Justice Kitto was appointed.

At the outset of the decade the County Court numbered nine Judges, namely, Wasley appointed in 1912, H.C. Winneke (father of Sir Henry Winneke) appointed in 1913, H.C. Macindoe appointed in 1926, A.W. Foster appointed in 1927, W.H. Magennis appointed in 1935, J.A. Richardson appointed in 1936, L.E.B. Stretton appointed in 1937 and T.S. Clyne appointed in 1939. Of these Wasley retired in 1940, and Winneke died in office in 1943. Macindoe retired in 1946. Foster transferred to the Arbitration Court in 1944. Magennis died in 1946, and Richardson in 1942. Clyne transferred to the Federal Bankruptcy Court, retiring in 1964. During the War new appointments made were Judge Moore in 1944 and A.L. Read in 1945 and after War Judges Mitchell and Gamble in 1946 and Stafford in 1948.

During the 1940-50 decade the Bar was housed substantially in two sets of Chambers, namely Selborne Chambers and Equity Chambers. Eugene Gorman had led the move into Equity Chambers in about 1930 and the colony included Ned Herring, Norman

O'Bryan, Reg Sholl, Thomas Smith, Ted Hudson, Rob Monahan, each of whom subsequently took silk and later became a Judge of the Supreme Court. One or two men were in chambers in Peacock House (on the western side of Synagogue Lane) and one or two were in Chancery Lane directly opposite Selborne Chambers in the building later occupied by the late Dan Condon, Solicitor.

Prior to the outbreak of World War 2 a number of the Bar had joined the Army or the Air Force Reserve and they were promptly called up into service and were absent for the entire War. They included Herring who went with the A.I.F. to the Middle East as a Brigadier, and ultimately became lieutenant-General in command of the New Guinea Force. A number of men had joined the Army Legal Corps as reservists before the War and they also went into service. Some of the younger men joined the A.I.F. for instance, Lush, Gilbert, Starke and Jim Mann (son of the then Chief Justice Sir Frederick Mann). Jim was lost in the evacuation of Greece and Crete. Harry Lawson (son of the former Premier, Sir Harry Lawson) was killed in air operations overseas with the R.A.A.F. and Phil Jacobs, a son of P.A. Jacobs and a brother of (ex Master) Charlie Jacobs, died as a prisoner-of-war at Ambon Island. Happily, Bob Gilbert, who as a prisoner-of-war in Germany, survived.

The present Sir John Starke and the late Olaf Moodie-Heddle, cut their teeth in Army courtmartials in the Middle East. The pair of them, together with Norman Vickery (later of the County Court) later served as Artillery Liaison Officers aboard naval ships in the Pacific area. A number of the rising juniors, including Ashkanasy (who took silk in 1940), Sholl, Oliver Gillard, Fred Gamble and Ben Dunn joined the Army. Dallas Wiseman, Whitney King and Bill Charles were with the Army Legal Corps. A number joined the Air Force where Harry Winneke was Director of Personnel.

Future members of the judiciary serving in the R.A.A.F. included George Pape and Douglas Little and, from the County Court, Jack O'Driscoll. In a flying capacity serving in operations in the European theatre were barristers Alan Mann and Peter Murphy. George Pape saw a period of service in India. In the R.A.N., Trevor Rapke appeared in a courtmartial involving two stokers charged with murder of a fellow stoker and he subsequently became "Captain's Secretary" in H.M.A.S. Australia. Charles Sweeney also served in H.M.A.S. Australia and was in that ship when it was hit in a "kamikaze" attack. Two future members of the Bench, Dick Newton and Bill Harris were serving in H.M.A.S. Hobart when it was torpedoed in the Solomons. Serving in Air Operations in the New Guinea theatre were the future Judges Forrest and Shillito.

A notable contingent of rising juniors from the Bar served in a civilian capacity at Victoria Barracks, including Thomas Smith, Alistar Adam, Gregory Gowans, Esler Barber, D.I. Menzies, Dick Eggleston, Frank Nelson and Severn Woinarski. Jim Tait was Director of Hiring, (he had been a pilot in World War I). A number who qualified either just before the outbreak of the War or during the War, served in the armed forces, including the present Chief Justice (in the Scots Guards). Future members of the Supreme Court, Newton, Anderson, Murray, Crockett, Kaye, Fullagar, Harris, McGarvie, Gray, Southwell, and I were in the Navy, as well as Ivan Franich and the late Des Whelan of the County Court.

Sir Arthur Dean, "A Multitude of Counsellors", p.202, ventures the opinion that "the Navy appears to have managed its own legal department without calling upon the lawyers". This hardly corresponds with the mode of that operation. All matters affecting personnel in the Navy were referred to the Second Naval Member, whose secretary was one Paymaster Commander Robinson. Many of these problems had legal implications, as for instance, when a rating wished to cancel the allotment he had made in favour of his wife because it had come to his knowledge that she had been unfaithful to him. It was Robinson's habit, having formed an opinion on the matter, to seek out and obtain what was literally a kerb-side opinion, from the first reservist whom he encountered whom he knew to have been a lawyer in civil life. He would propound the problem to this reservist and if the kerb-side opinion given by that reservist coincided with Robinson's own opinion, that was the end of the matter; the opinion was duly acted on. If, however, the kerb-side opinion of the reservist did not coincide with Robinson's, he would shop around among the reservists until he obtained a kerb-side opinion which coincided with his own, on which he would then act on that opinion. It saved the Navy Department a great deal of money and I suppose it worked as well, in a way, as the more sophisticated methods of the Army Legal Corps or the Air Force and the advice tendered by members serving as members of the administrative and specialiative branch of the R.A.A.F.

The Bar numbers were reduced to about 40 during the War and many of the chambers in Selborne Chambers rendered vacant were let to non-lawyers, e.g., to accountants.

This brought about a great shortage of accommodation when members of the Bar returned from the War. Immediately prior to the War litigation was not yet fully recovered from the effects of the Depression. Civil jury cases were few in number. Under the Poor Person's Legal Assistance Act 1928, the services of the Public Solicitor were available in criminal cases and indeed on occasions an accused person could have his own solicitor appointed under the provisions of that Act.

A spate of wartime restrictions imposed in the exercise of the defence power brought about a great many challenges to their constitutional validity, with a consequential volume of litigation in the High Court in which the talents of senior men who had remained at the Bar, Wilbur Ham, R.G. Menzies, Wilfred Fullagar, J.V. Barry, Dean, Tait, Coppel and P.D. Phillips, as

well as Barwick (of the New South Wales Bar), were frequently called into service. Many of these cases originated in Courts of Petty Sessions, e.g., in a prosecution for providing goods or services in excess of those fixed by the Prices Commissioner. Towards the end of the War, as a number of new names in the constitutional field began to emerge, T.W. Smith, Adam, Gowans, D.I. Menzies and Eggleston, and after the War, Menhennitt.

For the Junior Bar the bulk of the work consisted of "Landlord and Tenant" cases, (in which ex-servicemen sought to obtain houses for themselves and their families), undefended divorces and criminal trials. The divorce jurisdiction was then under Victorian Law, constituted by the Marriage Act 1928. It was a fault liability system and, as a matter of practice, corroboration of the petitioner's evidence was required. The story of the marriage was, in those days, set out in the affidavit of the petitioner verifying the petition. Personal service of a sealed copy of the petition and a copy of the citation had to be proved and the identity of the person served had to be corroborated. In a case about that time it was found that a decree nisi had been granted on a false evidence of service against a husband whose first knowledge of the proceedings came when he read the pronouncement of the decree nisi in the newspapers.

I remember appearing before Mr Justice Macfarlan for a petitioner. The petition alleged and the affidavit verified that the respondent wife had committed adultery. Macfarlan had read the affidavit and knew that adultery was alleged to have been committed in a bungalow at Fairfield. I called a private enquiry agent as a witness to prove the adultery. He narrated very laboriously how he had taken up his station in the foyer of the Athenaeum where he had seen the respondent and co-respondent coming out of the pictures into the foyer, how he had followed them down Collins Street, then across Swanston Street and on the safety zone of Collins Street where he had seen them board an East Preston tram. Macfarlan could stand this laborious recital no further: "Get them into bed", he said. I obeyed the judicial command and got them into bed. Decree Nisi.

Jimmy Macfarlan had a razor-sharp mind but his temper was at least as quick as his mind. Much of the trouble occurred because counsel were several leagues behind him in his assessment of the point of the case. Further trouble would arise when if Macfarlan put a question to counsel which counsel did not answer, answering instead a question which had not been put. "I didn't ask you that", Macfarlan would snap. It paid to listen very carefully to Jimmy Macfarlan's question and to answer that question, no more and no less. He was feared by the Bar, especially by the senior men (he was capable of kindness to the very junior men) and many senior men of the Bar refused to appear before him. Jimmy was blissfully unaware of the feelings of the Bar towards him, for out of court and on social occasions, such as Bar Dinners or on circuit, he could be very charming and kind to barristers, especially the juniors. There was talk at one stage of a petition to both Houses of Parliament to remove him, but this was averted by Eugene Gorman who invited Jimmy to dinner and in the course of the dinner told him of the problems which his behaviour was causing. Jimmy was most amazed at the existence of this feeling against him and promised to amend his ways. He did — for a while.

He went on circuit once to Warrnambool, driving his own car, which on arrival was found to have a substantial dent in the bonnet. Jimmy explained that this was due to the fact that a bullock had backed into him. What he omitted to add was the fact — disclosed subsequently by his loyal associate Ewan Warliss — that at the relevant time when the bullock "backed into" Jimmy's car, Jimmy was doing 60 miles per hour along the highway.

The Chief Justice Sir Frederick Mann was a man who, had a great dislike for precedent. Citation of a case was apt to evoke the question, "What of it?" Few ventured on argument with him: he had a merciless tongue.

Dean has mentioned (**ibid.** p.203) that the intake to the Bar in the War years was very small. The figures for the years 1940-45 being 1940, 5; 1941, 1; 1942, 2; 1943, 1; 1944, 9; 1945, 2. They included the late Lionel Revelman (1945), whose meteoric career brought him a silk gown within eleven years. He was a cross-examiner of the first rank. Another, who quickly established himself at the criminal Bar was the late John (Wingy) Moloney (1942) who later took silk and became a Crown Prosecutor. Another was Jim Gorman (1943), later a common law silk and now of the County Court.

On the criminal side Jack Cullity, Rob Monahan and Tom Doyle had surged to the front rank. Cullity was, year in and year out, probably the ablest cross-examiner this Bar has seen. I, personally, never saw Cullity do a bad cross-examination and I don't think anyone else ever did. He could wheedle the desired answers out of any witness and his preparation for cross-examination was particularly thorough. He was not as dramatic in his effect as was Rob Monahan but, on the other hand, he never suffered any failure in cross-examination. Rob Monahan had come very much to the fore in an enquiry conducted in the latter years of the War into the administration of Australian Comforts Fund. Here he was pitted against senior and outstanding men from other Bars, including the famous Bill Dovey, K.C., of the New South Wales Bar (the father of Margaret Whitlam).

Tom Doyle was, of course, then as ever a great wit and a very imposing figure in court. The files of a Shepparton newspaper record a trial in which he appeared as counsel for the defence in a rape case, tried by the late Sir Norman O'Bryan. Tom was cross-examining the prosecutrix (a river-flat dweller) to suggest that she had been asked, by the police of the place of her former residence, to move on. She denied the allegat-

ion, "Nothing like that was said" she said. "Well," said Tom, "how did they put it?" Later in the same case — there were no shorthand writers and no tape recorders in those days, and the judges used to make their notes of evidence by amending the depositions. Norman O'Bryan in summing up to the jury, said, "Now I must take you through the evidence of the man with whom the lady was living on the river flat, although you may think that having regard to what emerged in cross-examination by Mr. Doyle that his evidence won't assist you very much, and that he was not of very good character. But, still, I had better refer you to his evidence, since it's your function, not mine, to assess his credibility." So Norman began thumbing through the depositions but could not find the place. Finally, he turned to the Bar, "Could either of you two gentlemen assist me with the name of this witness? I cannot find it in the depositions." Tom rose to his majestic height, "The name, your Honour, was O'Brien — Clarum Ac Venerabile Nomen". ("A famous name and one to be venerated" — the translation is added for the benefit of those members of the profession who have not done Latin as part of the Law Course).

Members of the Bar returning from War Service were glad to accept any briefs and these included briefs to prosecute for the Crown. The Crown followed the policy of preference to returned soldiers and Crown briefs to prosecute were marked on a daily basis of 7 Guineas — the fee was the same whether day's work included one trial, or four or five. Not unnaturally, since some of the recipients of these briefs were men who had little experience in criminal trials, things occasionally went wrong. I recall an occasion when I was briefed at 2.15 p.m. by the late Ray Dunn to undertake a trial which was next in the list. I was assured that there was no real chance of it starting that afternoon, that I would have the afternoon to read the depositions and have a conference with my client in the cells. I was reading the brief at 3 o'clock when there was an anguished call to come immediately to court. The prosecutor in the previous case had been unwise enough in his address to the jury to comment that the accused wife had not been called to give evidence — whereupon the jury had to be discharged. I rushed up to court but could obtain no postponement or adjournment from the trial judge — the most I could get from him was an undertaking that if I reached some point in cross-examination at which I found I could go no further without obtaining instructions in conference with my client, the trial judge would then grant me an adjournment, and it was on that basis that I played out the balance of the afternoon.

I have mentioned constitutional cases. The late 1940s were notable for two great constitutional cases, each of which involved many men from our Bar. The Bank Nationalization case in 1948 and 1949 saw a number of members of the Bar briefed for the banks and for the Commonwealth. For the banks, the team (led by Sir Garfield Barwick) included Hudson, K.C., Dean, K.C., Coppel, K.C., Smith, Adam, Spicer, D.I. Menzies and Eggleston. The Commonwealth team included Tait, K.C., Gowans and Menhennitt. Later, in 1950, there was the Communist Party Dissolution Act case, in which Dr. Evatt led a team, or a series of teams, which included Ashkanasy, K.C. and Ted Laurie for the Communist Party and for certain trade unions alleging that the Act was invalid, while the Commonwealth team — the Australian Eleven as Dr. Evatt called it — led by Sir Garfield Barwick, supported by Alan Taylor, Frank Kitto (all later of the High Court), Dick Ashburner, Bernard Riley, Bruce Macfarlan, included five from Victoria, P.D. Phillips, K.C.; Stanley Lewis, K.C.; myself, Lush and Menhennitt. The hearing took place in the High Court in Darlinghurst, a small court, with very little accommodation so that the juniors of the team Lush, Menhennitt, Macfarlan and I could get no nearer to the Bar table than the back row of benches in the court.

In October 1946 when the first post-war Bar Dinner took place, there were seven guests of honour — Mr. Justice Fullagar (of the Supreme Court), Sir Clifden Eager (President of the Legislative Council), Judge Foster (of the Arbitration Court) and Judges A.L. Read, (the father of Judge J.L. Read), Mitchell, Gamble and Dethridge. The dinner was notable for the speech of Mr. Junior, B.L. Murray (now Mr. Justice Murray), whose speech is commonly regarded as being the best ever made by a Mr. Junior. In those days Mr. Junior was indeed Mr. Junior, the very most junior Member of the Bar Roll. An occasion such as that served to give a young barrister an opportunity to make his name among his fellows and among the judges, and certainly Tony Murray made the most of his opportunity.

The occasion provoked short verses in honour of each of the guests. Fullagar made the seventh of the members of the Supreme Court and this provoked a verse "Now We Are Seven — a Milnish commentary on the Supreme Court Act 1945":

"W.K. Fullagar J.
Studied his equity —
Lewin and Snell,
Strahan as well,
Maitland and Hanbury.
The CJ said to Macfarlan
"Jimmy" he said, said he
We'd better move up from the end of the Bench
He knows too much for me."

The verse to Judge Dethridge indicate the change in the jurisdiction in the County Court which has occurred since those days:

"A happy lot has Dethridge when he sits in County Court
With a limit of 500, in contract or in tort.
But in the Police Tribunal when his duty's to be done,
It's the policeman's lot will be the happy one."

Those verses came from the late Dr. E.G. Coppel K.C.

Before the War running down cases were comparitively rare. They were commonly tried before a judge

alone and many claims were not brought to court because it was known that the defendant, though negligent, it was not worth powder and shot. There were a few specialists in the field including A.L. Read. But in 1939 compulsory Third Party Insurance was introduced and this factor coupled with the practice substantially initiated by John W. Galbally (then a solicitor) of setting down of running down cases for trial by jury led to a great development in that kind of work. Such cases were, however, subject to the risk factor that contributory negligence, no matter how slight, was an absolute defence to the claim. Under the Wrongs (Contributory Negligence) Act of 1951 contributory negligence became a matter of apportionment and the running down business boomed; and there developed a specialist "running down" Bar whom Grattan Gunson called "motor mechanics".

Gunson, of course, was one of the immortal characters on the Bar: a host of stories are told and could be told about him. Xavier Connor once suggested that there should be a volume, "Gunsonia", in two parts — Part 1 the stories as told by Gunson, and Part 2 the stories as told of Gunson. Connor volunteered the observation that the same stories might well be found in both Parts, but it would be difficult to recognize their identity.

One of the Gunson stories concerned an occasion when he was addressing the Full Court in an appeal arising out of the Landlord and Tenant Regulations. The Court was presided over by Jimmy Macfarlan and Norman O'Bryan was sitting on the Bench. Gunson was outling the Regulations to the Court. Under the Regulations, he explained, the landlord's rights were severely curtailed. He could give notice to determine the tenancy only on specified grounds, a certain length of notice was required and so on. Under the Regulations the landlord was disabled from doing this, that, and the other thing. Norman O'Bryan grew impatient, and he leant forward "Surely, Mr. Gunson, the landlord has some rights?" Gunson looked at him severely and said "Since when hath it become a Justice O'Bryan to be solicitous for the rights of a landlord". Norman was about to blow up when Jimmy Macfarlan collapsed in laughter and Norman saw the joke. Tom Doyle, as usual, had the last word. Gunson was quite wrong, he said — surely Gunson ought to have known that in Ireland the landlord was accorded the rite of Christian burial.

On another occasion Gunson was addressing Mr. Justice Gavan Duffy in a divorce case. The husband had discovered that the wife had committed adultery and refused to have her back in the home. The wife alleged that this constituted "constructive desertion" by the husband. Mr. Justice Gavan Duffy said "Perhaps, Mr. Gunson, the husband was justified in refusing to receive her: he may well have thought her a loose and dissolute woman". Gunson said, "Surely, your Honour, one swallow does not make a summer".

On another occasion Gunson, opening a case before a Judge in the County Court said, "Then, your Honour, there ensued a fracas". The Judge said "A fracas? Mr. Gunson. I don't think I know the word". Gunson replied, "I do apologise, your Honour, I forgot I was in the County Court". It may be said that Gunson lived dangerously. No-one else could get away with what he did. But he was beloved by all, and he is much in the memory of those who practised alongside him and later before him.

And not even Jimmy Macfarlan ever invoked the "contempt" powers against him — as Jimmy did once to Redmond Nolan, whom he committed to the cells late one afternoon. This was a circuit and after dinner Jimmy thawed and sent word that Mr. Nolan could be released. "Red" refused to budge. "His Honour committed me in open court: I'll trouble His Honour to come into court and release me". And Jimmy Macfarlan had to do just that.

But Jimmy retired in 1949: the fifties were upon us and the age of "running down cases" — a new age was dawning.

1950 - 1961

THE BAR EXPANDS

by The Honourable Mr Justice K.H. Marks

In this period the number at the Bar doubled, the Bar spilled over from Selborne Chambers into Saxon House, Eagle Star, Condon's Building and the 4th Floor of Equity, a new home was planned, B.H.P. bought Selborne Chambers, divorce and matrimonial law began to throw off ecclesiastical law, personal injuries claims and their trial by jury gained momentum, contributory negligence as a complete defence was abolished, negligence and breach of statutory duty were judicially perceived more generously and industrial disputes, with increased union strength, propelled the Bar into the Arbitration Court (as it then was), the High Court and Privy Council.

In 1950 the approximate 128 on the Practising List were in Selborne Chambers and the 3rd Floor of Equity. In the latter were Jack Cullity and Rob Monahan, leaders in crime, Ted Hudson and Bill Coppel in civil law, Lou Voumard, lecturer at Melbourne University in Mercantile Law and author of "The Sale of Land". Eugene ("Pat") Gorman was no longer in practice but maintained his large Chambers at the Little Bourke Street end. He had led the exodus from Selborne Chambers in 1931 and set himself up with two rooms, a waiting room and secretarial space. From here, he cultivated his godfather image and although not in practice, kept a vigil over the Bar, particularly the Equity enclave which he regarded as his special preserve. Every Christmas, Pat Gorman perpetuated his visible connection with the Bar (and Bench) by throwing the best and brightest cocktail party. The carefully compiled guest list included not only the judges and busy counsel of the day but leading politicians, occasionally the Premier, nearly always the Attorney-General and invariably the incumbent Deputy Commissioner of Taxation. Family connection led to my being on the guest list from early days, for long the most junior and least eligible of all present. Pat Gorman had remarkable brilliance, and a powerful personality, he could "sell you the post office", as one of his followers (Harry Ford) once complained. He commonly held court behind his desk, puffing on an ample Cuban, in a stage setting of walls lined with shelves of unemployed law reports. Between the shelves were photos of "Prince de Conde", eighteen or more times provincial winner, "Charles Fox", "John Wilkes", "Bon Chretian". He liked to tell how he got difficult clients to settle. "You see this horse" he would say, leading them by the arm from picture to picture, "I paid a lot of money for him — client wouldn't settle!"

Pat Gorman raced his horses under the name "G. Ornong" having been born at Goornong near Rochester. Under the name "Junius Junior" he occasionally wrote articles for the daily press — one of them, if I remember correctly, on capital punishment when Ryan was executed. When younger he was a staunch opponent of capital punishment, but with age, success and power — not so staunch! He also wrote for "Truth" a series on "Lucky Leslie", purported investigative journalism about Leslie Rubinstein, promoter of many companies of controversial substance. After much provocation Rubinstein, on the eve of the expiry of the limitation period, issued a writ claiming £1m for libel and conspiracy against "Truth", Gorman and Henry Marks (my father). Eventually, after an irregularly entered judgment in default of defence being set aside, the action was dismissed for want of prosecution and concluded by Rubinstein paying in full the amount of a counter-claim by H. Marks. Leslie Rubinstein was a remarkable man who emigrated to Australia and started in Perth as a tuckpointer, riding a bicycle with his materials hung from the handlebars. When Australia devalued its currency, he organised the collection of English pennies for shipping back to England, where they were capable of yielding something like a fifty percent profit. In late 1949 and early 1950 Dick Eggleston assisted Bill Coppel's complex investigation of a number of Rubinstein companies. Bill Coppel, however, was made an acting judge in February 1950 to fill the vacancy provided by Fullagar J's elevation to the High Court. On February 1st 1950 Reg Sholl was appointed to the vacancy provided by the resignation in December 1949 of Sir James Macfarlan and Tom Smith was appointed acting judge to replace Martin J. who was on leave. Thus the Bar was suddenly

depleted of four leading silks. Alistair Adam and Dick Eggleston applied to fill the gap and received their letters patent on the same day.

But most of the Bar was in Selborne Chambers, an eccentric building built in 1881-2 for a company formed to provide barrister's chambers but not one controlled by the Bar. It appeared to have changed little by the 1950s. Many barristers held 25 £1 shares in the Barrister's Chambers Company Limited which owned the building but they were not easy for newcomers to obtain. B.H.P. paid £1250, if I remember correctly, for such a holding and this was helped greatly when subscription was sought to build Owen Dixon. Selborne was a primitive piece of architecture dominated by a wide roof-height corridor down its whole length between Bourke and Little Collins Streets flanked by the chambers which opened from it.

Not long after the war there was overcrowding. By 1950, some of the dingiest and smallest rooms had two occupants. There was no facility for secretarial staff and indeed through the early '50s there was but one elderly lady employed as a secretary. It was never clear to me where she was housed but it was somewhere upstairs! Interlocutory and opinion work was done by hand and I never knew who was the privileged employer of the secretary. Towards the end of the '50s secretaries became more common but invariably they had to occupy a desk in the barrister's chambers. There was nowhere else for them. Nor were there facilities for solicitors and clients who were obliged to wait for conferences in the cold and draughty corridor. The only female at the Bar was Joan Rosenove who returned to it in 1949 and acquired a thriving matrimonial practice. The largest room was occupied by Don Campbell who used to make it available for annual and the rare other meetings of the Bar. In winter there were only open fires. The caretaker, a man called Jarvis, did the cleaning and supplied wood at 5/- per fire.

I commenced reading with John Starke in September 1950. His room was at the end of a passage opposite the A.B. Nicholls clerking establishment which was in a single room. In 1950 Nicholls was at the height of his power — Dever's employer. It was he on whom I attended early in 1950 to enquire about a master with whom I might read. "It's time Starke took a reader" he said, and marched down to my future mentor to give him the disturbing news! I was the first and sat at a table in the small room, an increasingly depressed observer of the intense parade of plaintiffs and insurers which gave me a wide berth. Briefs for the newcomer were not easy to come by if he had no solicitor connections. I spent long days waiting. When work did come it was substantially from the Legal Aid Bureau in the landlord and tenant jurisdiction. The Bureau was federal because recent regulation of tenancies had been under federal law. By the time I reached the Bar there was a State act but legal assistance was still being provided by the Commonwealth. The majority of baby juniors were sustained by its services. Remuneration was meagre but it was important to get into court. It was not uncommon to appear for a tenant for 1 guinea. You got 2 for a landlord. Shortly, it was possible to be paid 4 guineas for a landlord and 2 for a tenant. Undefended divorces were marked 5 and 2 guineas in the early years but rose to 7 and 2. My memory is that John Starke's briefs in the Supreme Court were marked 30 guineas, which to me at the time spelt arrival. Overheads, on the other hand, were negligible. Rent was about £6 per month in Selborne Chambers. But Chambers were impossible to get for newcomers in the '50s. As a result young barristers prevailed on those with rooms for use for conferences. It was common for masters, because of the unavailability of rooms, to allow their pupils to stay on a further six months after their reading period. This was certainly permitted to me. At one stage Reg Smithers had three readers in his room at the same time. At the end of my twelve months I could not get accommodation. If I couldn't borrow a room I had conferences in the corridor. There was pressure all round to do something about a home for the expanding Bar.

The landlord and tenant jurisdiction was a great training ground, particularly in the art of taking technical points. Put more kindly, a barrister with a good analytical mind could achieve great success in that jurisdiction. The sharpies persuaded magistrates daily to hold that a notice to quit was invalid, service improper, or that the landlord's case for one reason or another had not been proved.

At the time, a particularly obnoxious landlord called Edward Arthur Green, now deceased used to delight in conducting his own eviction proceedings against terms purchasers of his properties who had attorned tenant and fallen behind in payments. Invariably the tenants were unrepresented migrants who had often suffered some illness or other tragedy which prevented them from meeting their commitments. It was not uncommon for young barristers waiting to get on in the Footscray Court to rise as 'amicus curiae' and mention a point adverse to Green which the magistrate was only too happy to uphold. In those days Clive Harris, John Mornane, Nubert Stabey, Arthur Webb, Barry Beach commonly arrived at court with armfuls of briefs. Suburban solicitors like Bill Jones at Footscray, Joe Lynch and Tom Forbes at Richmond, Patricia O'Donoghue at Moonee Ponds were very formidable opponents.

But the real sport was in the jury arena. In 1955 three of its most prominent practitioners, Frederico, Starke and Revelman, all took silk. Silk was also granted to Pape and Barber making what Starke has called "the class of '55". This was unique testimony to the rising prosperity of the Bar. Between 1929 and 1940 only 11 barristers took silk. Twenty did so between 1940 and 1950, 28 between 1950 and 1960. There were many prominent names in the jury arena and the standard of advocacy was high.

Anyone recalling the era will mention Don Campbell who practised widely before juries and in the licensing

jurisdiction. He had a large practice, was a very competent lawyer and effective advocate. There are many stories about him. One of the funniest was his inadvertent Spoonerism while examining a witness in the licensing jurisdiction. Intending to ask whether he would like to have his liquor delivered, he asked him whether he would like to have his "liver deliquored". The witness enthusiastically replied in the affirmative.

John Starke knew him very well. He was often junior to him and admired him. After 1955 they were often opposed. Sir John has written to me:—

> "Campbell was the outstanding advocate during my time at the Bar. He was a rough, tough and somewhat uncouth character. He was however a much better lawyer than given credit for and was very well read. Very quick to take offence he was nevertheless capable of much kindness and was very kind to me. I suspect contrary to the rules of the Bar he sometimes suggested I should be briefed as his junior. However he is not the only silk who has offended in that way. His basic philosophy, unlike so many barristers, was that he was engaged to win. Fundamentally he was an honest barrister but like many others was on occasions prepared to run inside a fly or two. Because of his manner in court and in negotiations his judgment was deemed to be bad. However in conference I found him exceptionally level-headed and was acutely aware of the weaknesses in his case. He was a fine cross-examiner but sometimes was inclined to be a bit ruthless. He had little or no sense of humour. He was an exceptional winner. He once won 24 verdicts for **defendants** in a row.
>
> In those days two running called for a celebration. . . He had a remarkable ability to make his best point, not necessarily the central point, the most important point in the case. If he won on that point very often quite illogically he got the verdict. It was sad to see his practice steadily decline in his latter years as so frequently happens to those not lucky enough to achieve judicial preferment. . .He was a man of great courage. He was struck down with polio at the age of 13. He also suffered from diabetes, a fact I did not discover until later in my time at the Bar and I was as close to him as anyone."

Starke was junior to Campbell in the trail of Frank Hardy, author of "Power Without Glory", for criminal libel. A great deal of the book was untrue. There was no evidence of the truth of the part about Mrs. 'West' on which the trial centred. Hardy stood mute.

Sir John Starke writes:—

> "This was Campbell's greatest case. There can be little doubt it would not have been won without him. From the start Campbell was of the opinion that it was necessary to remind the public what a scoundrel Wren was. . .Don was of the opinion that we could not do this at the trial but at the committal proceedings we had a weak magistrate although a decent man. We were favoured by the fact that almost every word spoken at the committal was published throughout Victoria. I am sure that the eventual jury was alerted to Wren's background. Some time later I met the foreman. He said that Wren had lived outside the law all his life and as soon as he was hurt he rushed to the law for protection. 'We were not going to let him get away with it.'. . .The Communist Party was paying our fees. Campbell did not trust them so he stipulated that our fee should be paid in advance to our clerk at 10 a.m. each morning. "What if they are not paid then?" said Hardy. "No need to trouble about that" said Campbell. "Good", said Hardy, "Yes" said Campbell, "On that day Jack Starke and I will not be appearing for you." We got our money punctually."

Don Campbell was, particularly to those who knew him, a highly intelligent and talented person. He had a very rough manner, it is true, but he taught young barristers a great deal. He was not averse to fighting with the judge. Mr. Justice Coldham remembers being junior to him before Martin J when each started shouting at the top of their voices. At the luncheon adjournment Campbell asked Coldham whether he knew, "'ow to apply for a writ of 'abeas corpus in the face of the court." Coldham was unconvincing. Campbell said to him, "Well, you'd better bloody well find out because if that bastard opens 'is mouth this afternoon, I'm going to let 'im 'ave it." On another occasion Barry J started shouting at Reg Smithers (for one defendant) to "resume his seat". Smithers kept refusing and the judge threatened contempt. Don Campbell for the other defendant said to his junior and instructing solicitor that the goings on were getting "Reggie" too much sympathy with the jury. He got up and said something outrageous and got himself threatened with contempt as well!

Campbell certainly dropped his "h's" but why I cannot say, unless he thought it helped his tough image.

Moodie-Heddle was another great jury advocate. On one occasion Campbell saw Heddle reeling into Little Bourke Street after an enormous verdict against his defendant client. Campbell said, "What's the matter 'eddle, you're looking very gloomy?" Heddle told him. Campbell replied "Never mind 'eddle, it 'appens to all of us. Mind you, it's never 'appened to me as bad as that."

Another time Ashkanasy was calling a large number of witnesses in a jury case on something not really in issue. Campbell said, "The trouble with Ashkanasy is, 'e doesn't know 'ow many stones make a bloody 'eap." He found it hard to pay compliments. I thought he was going to pay me one once. "Marks", he said "You ought to practice in the High Court." I started to glow until he quickly added, "Yes. It's the greatest High School debating society you could ever hope to belong to."

Campbell was a great gladiator and no client could hope for better. But it was a highly significant measure of the power the clerking system held over the Bar that so courageous a man as Don Campbell felt he could not fight it. He was loyal enough to the Bar and treasured its independence. But he was not prepared

to fight the clerking system, although in private discussion it was clear he understood its threat.

In 1952 Maurice Ashkanasy was elected to the Committee of Counsel (which changed its name to the Victorian Bar Council on April 23rd 1954) and became its Vice-Chairman and Chairman of the Accommodation Committee. Until that time little or nothing had been achieved to accommodate the expanding Bar. Indeed, there was a view amongst the Bar's elders that accommodation was not a concern of the governing body. Ashkanasy had been a very successful junior in pre-war days and taken silk in 1940. He was a very gifted lawyer with a special talent for thinking up arguments which could turn the legal process to his client's advantage. He was a creative thinker with a powerful personality and very ambitious. He was associated for many years with the Labour Party but appeared to make the wrong alliances at the wrong time. Accordingly he never made it to the Bench and his practice declined with his health. But Ashkanasy's service to the Bar and his role in solving the critical accommodation problem have been too often overlooked.

Until Ashkanasy became Chairman of the Accommodation Committee little or nothing had been done to resolve the accommodation problem. One of the reasons for the inactivity was the lack of conviction that anything ought to be done. But in June 1952, some three or four months after Ashkanasy was elected to the Committee of Counsel, 22 barristers were accommodated in Saxon House which abutted Kitz Lane. In August 1952 Articles of Counsel's Chambers Limited were drafted for the formation of a company to govern the new premises. In December 1952, as a result of Ashkanasy's activities, a concurrent lease was granted by the Eagle Star Insurance Company over a portion of Oxford Chambers. This made the Bar a landlord with capacity to issue notices to quit against existing tenants. The morality of this might have been questionable, but the fact is that the Bar went along with it. It necessitated proceedings being taken for the possession of rooms on the fifth floor of the Eagle Star building in Bourke Street. This occurred in June 1953. A great deal of preparation was involved and many members of the Bar gave evidence. By that time Reg Smithers was prominent on the Accommodation Committee. Of course the question had become critical. The Bar was increasing in size and there was nowhere to conduct conferences save in the passage and on the bridge in Selborne Chambers. In the court proceedings at the Court of Petty Sessions at Melbourne in La Trobe Street the Bar congregated. Ted Reynolds appeared for a number of the tenants. Ashkanasy was the Master of the Hunt and organised the case for the Bar. Relays of silks appeared, including Douglas Menzies, Reg Smithers, Oliver Gillard and others. The result was successful and a large number of barristers, including Keith Aickin and Richard Newton, moved into the Eagle Star building, where they stayed until Owen Dixon Chambers. An extraordinary consequence, however, was the campaign against Ashkanasy waged by some unkind members of the Bar, who effected his non-election to the Bar Council in 1956. In that year, Eggleston was appointed Chairman and Tait Vice-Chairman. It is difficult to understand the ingratitude of the Bar to Ashkanasy at that time. There is little doubt however that there was a concerted campaign against him.

Sir John Starke has written to me:—

> "Ashkanasy's removal as Chairman was a most shameful act. . .the Bar was greatly denuded during the war and it was necessary for economic reasons to rent a large part of Selborne Chambers to a firm of accountants. After the war, with many young returned men coming to the Bar, it was for a long time impossible to get them out. Ash was a very fine man and a skilled financier and negotiator. At considerable personal inconvenience and financial sacrifice, he worked tirelessly and successfully for chambers for the homeless. The young men at the Bar were grateful to him and one hundred percent behind him but then had little or no representation on the Council. I have no doubt that Doug Menzies and his cronies organised his removal. Their motive was entirely racist. I heard one of them refer to him as 'Shylock with the black ringlets'. He had the humiliation of having to open the votes himself. I believe he behaved with great dignity."

I am unable myself to speak of Doug Menzies. I was a witness to the campaign against Ashkanasy but knew nothing of its source. It came through to me as an attack on his "methods" in obtaining accommodation. The fact was, however, that whatever methods Ashkanasy used they had the full support of the Bar, including those who campaigned for his removal. Doug Menzies was a spectacularly successful member of the Bar, constantly in the High Court and frequently at the Privy Council. He had a boyish sense of fun. In one case he and a junior were briefed to read and advise on a mass of about 2000 pages of transcript taken abroad. They had to accept the brief because there was current extensive related litigation in Australia. Advice was prepared. The junior raised the matter of a fee and suggested a figure. Doug Menzies said: "Good God! No! If I charged (the solicitor) as little as that he'd **know** we hadn't read the stuff."

Sir Reginald Smithers has written to me of the enormous energy and dedication of Doug Menzies in finding the new home for the Bar in William Street. Sir Richard Eggleston has written to me about him:—

> "D.I. Menzies was the leading Victorian silk in that period though not by any means the most senior. He had a very large consultative practice in company matters and when, as sometimes happened, I had a joint consultation with him and his clients, I was amazed at the confidence with which he expressed opinions on matters which I would have required much more time to consider. We found ourselves on opposite sides shortly afterwards in the leading case of **Newton v. Commissioner of Taxation**. . .this was my last case in London and was also the last for Doug Menzies;

indeed he told me just before he left to go home that he had accepted appointment to the High Court. I told him, sincerely, that I did not know of anyone better qualified."

Despite the treatment of Ashkanasy, the Bar had embarked on an irreversible course of corporate responsibility. The sub-committee system, for instance, which he set up, proved workable and invaluable for discharge of wider functions.

On December 16th 1955 the first Christmas cocktail party was held in Selborne Chambers. There were still those who said that because no such event had ever been held in Chambers in the past, it should not now be held. George Lush was responsible for organising it. He watched nervously the guests assembling and the party developing until it was clear it was going to be a success. It then occurred to him that his wife was not there. He thought she was late until he realized that he in fact had not invited her! The following year at the cocktail party the Bar Art Group for the first time exhibited its work. Hazy Ball and George Brett were exhibitors.

On May 6th 1957 a general meeting of the Bar adopted a resolution approving the continued use of juries in civil litigation. It appears to have arisen out of a rumour that the judges might, by rule, alter the status quo and there was possibly some public discussion. In fact the judges do not appear to have made any move to alter the relevant rules and the fear may have been based on an estimate of the personal opinions of some judges and perhaps the Attorney-General. Among the judges Sir Arthur Dean was outspoken in his contempt for juries but it is unlikely that his views were universally shared by other members of the Bench. It is possible that he had the ear of the Chief Justice. At the time, the Bar was very active and published a blue-covered pamphlet lauding the importance of juries, the authors of which were predominantly Kevin Anderson, Xavier Connor and Leo Lazarus. The jury issue remained alive for some two years or more. Coppel was appointed a Royal Commissioner to report on various matters including this. In August 1949 Greg Gowans was instructed with a junior to represent the Bar to make submissions before him.

In 1959 the Bar superannuation scheme was put into effect, largely with the assistance and inspiration of Jim Tait.

Ted Reynolds had been Chairman of the Committee of Counsel from 1946 to 1952. He had taken silk in 1939 and in the post-war years was, after Eugene Gorman, the senior silk in active practice. He had an extensive practice in matters connected with shipping and was an orator of the old style. He got seriously into debt and in his last years lost his sight. He too was a sad figure at the decline of his highly successful career.

Reg Smithers was a colourful jury advocate particularly when appearing for plaintiffs. He gave a lot of thought to his cases and would agonize endlessly about tactics. His juniors rarely knew exactly what he was going to do before the case started. It was only when he rose to open his case that all was calm and the narrative unfolded as if there was never any doubt. He could be very wily as Don Campbell once found to his horror. Campbell had stock jury ploys. He would tell them he could see that they were a fine jury who "didn't come down in the last shower", that they "didn't leave all their commonsense behind them when they walked into the jury box" and so on. Also he would walk out during his oponents address. On one such occasion Reg Smithers in his absence told the jury all the things that Don Campbell was going to tell them when it came his turn. In due course Campbell returned, only to be horrified by a jury rollicking with laughter as he uttered each predicted phrase.

On the Geelong circuit the jury bar normally stayed at the Carlton Hotel. Amongst them were Smithers, Xavier Connor, Peter Coldham, Noel Burbank, John Starke, Ted Laurie, Charlie Sweeney etc. At Ballarat, "mess" was at Craig's and Frederico presided.

John Starke was a most formidable, effective and successful jury star. As a cross-examiner in factual situations he was dominant. His towering figure, loud voice and incisive questions frequently extracted admissions from witnesses that they were guilty of negligence. So common was this occurrence that Reg Smithers used to tell the jury that undoubtedly Mr. Starke would persuade his client to admit that he was negligent but not to take too much notice because every witness he had ever cross-examined did the same. He was never stopped by any judge and Starke never objected but it was about all he could do to take the sting out of what was likely to be the effect of Starke's cross-examination. In one case when I was junior to John Starke for an insurance company in a Wrongs Act claim we had up our sleeve what we thought were a couple of aces, namely that the widow's relationship with the deceased was so strained that she had not only an association with another man but a fifth child by him. We did not know whether Reg Smithers (for the plaintiff) knew and Reg Smithers did not know whether we knew. Accordingly there was great speculation as to what he would do. If Reg Smithers failed to make the disclosure early in his own case a reasonable assault on quantum was possible. I have learned since that there was much consternation in the Smithers' camp and much vacillation before his opening. However there was much gloom in our camp when Reg Smithers opened the embarrassing facts. He coasted home to a sizeable verdict, with John Starke falling back on the 'wickedness' of adultery.

Noel Burbank wore a Battle of Britain moustache and went for the laid back Biggles style of advocacy. He would try by gentle persuasion to get the witness to make the necessary admissions. His contemporaries thought him very competent. He was a very independent aloof person and no junior was ever known to have been consulted by him at any stage of a joint briefing. As far as he was concerned there was only one counsel in the case.

Lionel Revelman was highly respected by his contemporaries. He took silk at a remarkably early age

(33 or 34 as I recall). He did, however, have the advantage of practice during the war when demand was high and supply sparse. He was doing final year at Melbourne when I began the law course in 1941. At that time he was conspicuous by an unshaven countenance and a long ill-fitting overcoat. After graduating he obtained exemption from war service as a conscientious objector. In order to give the right answers he studied the literature extensively in the Public Library. When asked at court what he would do if his sister was raped by an invading Japanese soldier he answered: "Absolutely nothing". As I understand it, he did not have a sister. He then drove a taxi for some time and commonly told of his exploits which he never suggested were creditable. However, he was one of the most competent cross-examiners the Bar has known. He studied anatomy at the University and often demolished medical witnesses. Sir Reginald Smithers has written:—

> "He was a most effective cross-examiner of the insinuating mould. He assumed omniscience in all subjects. He had an excellent mind and as a cross-examiner was devastating. Carried out with a suggestion of a sneer he was able to destroy any but the most valiant and competent witnesses. Revelman appeared for the "Adelaide Advertiser" in the Dedman defamation case at Geelong."

The subject report was that Dedman, the former Minister for War Organisation of Industry, had said something to the effect that he would look forward to Australia being a land of little capitalists. After Revelman's long cross-examination a distinct impression was left that Dedman in fact did desire most of all that all Australians should be little capitalists. Dedman lost his case. The judge was Acting Justice Coppel who was very rude to Dedman, raising wartime criticisms of the Labour Government's regulations disallowing icing on cakes and cutting the tails off shirts and the size of pyjamas etc. One result was that Bill Coppel was not made permanent and he returned to the Bar. There was a Labour Government in Victoria at the time.

Sir John Starke describes Revelman as a genius with figures and a most honourable and honest opponent. He says that in view of the hair-raising stories he told against himself concerning his career as a taxi driver during the war this at first surprised him:—

> "However I came to understand that he was far too intelligent not to realize that absolute integrity is the first and basic quality of a barrister. . .Revelman and Sweeney were, I think, the forerunners of the rather mechanical young men who practise the art today. Emotion has become a dirty word. The result is that unwinnable cases are no longer won."

At the Criminal Bar Jack Cullity was probably one of the greatest cross-examiners ever. He was a great advocate in every sense. His preparation of his case was meticulous. He never took silk and would not have a junior. He did not want anyone else at conferences. His method of cross-examination was to take the witness in a number of different directions without letting on his destination but at the end he would link the answers to make his points. The result was almost invariably devastating. But his final address was not to be denied. I remember walking into one of the old courts when he was addressing the jury for two accused charged with acts of gross indecency. There were no spectators and the court seemed remarkably empty. Normally a quietly spoken man, Jack Cullity was working himself into a frenzy. The prosecution evidence was that on certain 'information', police had entered premises where the heinous acts were thought to be in progress, marched down the side of the house, broken down the door of a bungalow and found the two accused each with the other's erect penis in his hand. At the time a visiting hypnotist called Franquin the Great was much in the news. Cullity put to the jury (convincingly I thought) that these police must have been better than Franquin the Great, the accused being mesmerised into frozen postures (like Statues of Liberty) despite the highly telegraphed arrival.

In this period the Bar had a number of watering holes. At morning tea the under-employed at about 11 a.m. gravitated to Pym's in Bank Place or Gibby's Coffee Lounge in the basement of Temple Court. After hours there was drinking at Menzies Long Bar, the Four Courts, the Mitre Tavern and an hotel then on the corner of Queen and Little Collins. Some went further afield. As Arthur Nicholls became less active as a clerk and Percy Dever more prominent a group would line up with the latter in Menzies Bar sometime after 5. Recently a barrister told me that he had to give up the Menzies Bar despite the perceived advantages as he was putting on too much weight!

Gratton Gunson, one of the Bar's characters, was a frequent visitor from Equity to Pym's. He had had a chequered career at the Bar, for many years beleauguered by an alcohol problem, from which he emerged with the assistance of Pat Gorman to whom he was ever grateful. Indeed Pat Gorman had some hand in his and Buller Murphy's appointment as Acting Chairmen of General Sessions. The star performers at Pym's were Gamble and Stretton looking in from the Workers Compensation Board on which they sat, Doug Menzies, George Pape, Esler Barber, Jack Norris and George Lush. Gratton Gunson would frequently arrive late dressed in Bar jacket, wing collar and bands. Esler Barber was then associated with the divorce jurisdiction. As he came in one day early in the 1950s, a time when artificial insemination was much in the headlines, George Pape said to him, "Well, Barber, I suppose they'll be having some strange cases in that jurisdiction of yours, like those old actions in rem, like **The Queen v. Four Bargeloads of Horse Manure.** Instead of Smith (Petitioner) v. Smith (Respondent): Jones (Co-Respondent) there'll be **Smith v. Smith and Two Test Tubes of Spermatozoa** (Co-Respondent)."

This was rarely said about Gratton Gunson whose legend revolves around his capacity for unlikely stories and anecdotes. He was hardly a conventional

advocate. On one occasion before the Full Court in a Landlord and Tenant Appeal, O'Bryan J (the father of the present judge) said: "Surely landlords have some rights Mr. Gunson." Gunson put down his brief and in a tone of shocked surprise said, "I never thought I would see the day when an Irishman would have a good word to say about landlords." Gunson had two readers — Carty-Salmon and Martin Ravech. Martin Ravech was still in his reading period when a legal aid brief found him taking Sir Charles Lowe to the Court of Criminal Appeal. Unfortunately when the appeal was called on Mr Ravech was not to be seen. The case had been called out of turn because the Court had to be reconstituted but Martin Ravech did not know. The three judges sat in silence between noon and 1 p.m. awaiting junior counsel. When finally he arrived at 2.15 the Court told him that it would hear the appeal first and afterwards call on him to show cause why he should not be committed to gaol for contempt! He argued the appeal despite the state of the weather and won it. He was then called upon. At one point Coppel A.J. addressed his fingernails: "Mr. Ravech", he said "How long have you been at the Bar." "Three months Your Honour." "Three months!!!" In his address Ravech made reference to "my learned master Mr. Gunson". "Did you refer to me as learned?" said Gunson later, "It's a wonder Norman O'Bryan didn't give you six months just for that."

Despite it being no longer necessary to hold conferences in the corridor of Selborne Chambers after 1953 and 1954, the rooms in Saxon House were substandard. The first obtained were in an annexe to the third floor previously occupied by the Commonwealth Public Service. It was divided by glass partitions and the "rooms" were tiny and crowded. Commonly there were three barristers in one of them if it had any size at all. I shared a small one with Geoff Byrne. It was virtually impossible for us to have conferences at the same time. In the summer, the heat in the cubicles was stifling. Although it was hardly the way to conduct a practice we were grateful for the improvement on nothing. Eventually, further space was acquired on the third floor and a number of us moved into actual rooms. In time a library was acquired for Saxon House and a receptionist/typist. It was only towards the end of the 1950s that some of us acquired dictating machines and actually had paperwork typed. Even the presentation of typed work to solicitors was regarded as a little "radical" and not quite in line with tradition. Nevertheless it was good for turnover and broke the ice.

Towards the end of the '50s the size and composition of the Bar Council changed when the rules were altered to allow greater representation from the Junior Bar. It was this move, which perhaps more than any other, landmarked the change in the functions performed by the Bar's governing body. In particular it became absorbed with two main problems, accommodation and clerking. Accommodation had not been solved by the finding of new chambers. They were not of a high standard and there was a wish to have the Bar housed in the one building. The clerking question was bound up with that of housing, for it was appreciated that when the new building was erected a decision would have to be made about the number of clerks the Bar would employ. It was a highly vexed and critical problem. The fact was, that with the increased numbers at the Bar and volume of work, the clerks had acquired, probably through little or no fault of their own, immense power. My former room-mate was the first to change his clerk. It caused enormous controversy at the Bar and there was much pressure to prevent it. Nevertheless, justice was on his side. His clerk quite unjustly had chosen to discourage work in his direction. The truth was, as I knew, he was a very capable and honest barrister. But he was a quiet fellow who refused to genuflect before his clerk as did nearly everyone else. Do they still? The 'change of clerk' event was the first of a series which culminated in a broad discussion about the balance of power between the clerk and the Bar. Already there were too many busy barristers who felt themselves indebted to their clerks for their own success. This was appreciated by a not insignificant group of barristers in the late '50s and there was much debate about what was to be done. It culminated in the specific debate about whether there were to be four or two clerks (the same) in the new Owen Dixon Chambers. A climactic meeting of the Bar took place at the Constitutional Club in Temple Court on June 9th, 1960. This meeting was intended to be merely an opportunity for discussion on a questionnaire which had been circularized about the number of clerks to be engaged in the new building. No decision was made at the meeting. Discussion was very restricted, as many members of the Bar refused to air their opinions in case they should suffer financially. Indeed, the next morning the clerks were fully aprised of those who had spoken for an increase in number and promises and threats were made. It was eventually decided to increase the number of clerks. This did not take place, however, without many meetings and much deliberation. I myself was a vocal supporter of an increased number of clerks and an exponent of the need for the Bar to take control of its own destiny. I was amazed to experience quite senior counsel speaking to me in private about their fear of coming out in open support. Others would enter my chambers, close the door and secretly tell me of their gratitude for the matter being brought into the open. The power of the clerks was indeed a grave reflection on the vaunted independence of the Bar. The fact was that many at the Bar felt themselves indebted to their clerks. In due course, to their great credit, many, if not the majority, of senior counsel changed their clerks to help establish new lists. There is much yet to be told about this highly important and vital struggle against the threat to the Bar's independence. I have little doubt the decision to increase the number of clerks was critical to the Bar's future.

Most of us that had lived through the accommodation crisis wholeheartedly supported the building of Owen Dixon Chambers. It was opposed by Equity, led by Pat Gorman who liked his enclave. The excuse was that it

would be too expensive and that the Bar could not afford it. Those who said this were nearly right. However, Owen Dixon Chambers survived and a number from Equity moved into it. Everyone from Eagle Star and Saxon House did.

It was in 1957 that it was first known that the Owen Dixon Chambers site might be available. Financed by guarantees by members of the Bar Council and others, sketch plans were produced by architects, Bates Smart and McCutcheon. This was organised by the Accommodation Sub-Committee which was chaired by Reg Smithers between 1954-58. During 1958 the Building Sub-Committee was set up under Oliver Gillard. In May 1958 a general meeting of the Bar approved the principle that the Bar should be housed in one building and confirmed it in October 1959 at a further general meeting. Eventually the Bates Smart and McCutcheon design was abandoned in favour of a "design and construct" contract made with Costain Limited in the early months of 1960. The decisive factor in the building being achieved was the drive of Oliver Gillard and a now forgotten enormous contribution by Bob Gilbert who attended to the immense detail in arranging the move and allocation of accommodation. In order to achieve the success of the Owen Dixon Chambers venture, Oliver Gillard and Reg Smithers and at time Murray McInerney interviewed individually each member of the Bar and obtained his agreement to take accommodation in the new building and make a financial contribution.

Sir Reginald Smithers has written to me of the ceremony on possession being taken of the new building:—

> "In due course in 1961 we took possession of the building and we had a great ceremony. At that ceremony there were: Prime Minister of Australia, an ex-Attorney-General of Victoria, Sir Robert Menzies, the current Attorney-General of the Commonwealth, Sir John Latham, the builder, the Attorney-General for the State of Victoria and various other people including the Premier of Victoria, Sir Henry Bolte. I can't remember why but it was impossible to fit Sir Henry Bolte anywhere else except to respond on behalf of the visitors. Just at that time there seemed to be a contest going on with Mr. Menzies and Sir Henry Bolte as to who would declare open the new buildings which were going up in Melbourne. Sir Henry took umbrage at his more or less minor role in relation to our building and it was a terrible job to get him to come at all. I had a terrible row with Arthur Rylah who was Attorney-General at the time. I was very angry with the Premier and indicated to his secretary and to his Attorney-General that if it was a jam factory which was being opened Sir Henry would be present. However under pressure he did come and he made a speech which I knew was quite insulting but other people seemed to think that it was just amusing which was a comfort. Sir Henry was no great man in supporting the profession and I know that he regarded the judges as people who only gave judgment against the government."

• • •

Of D.M. CAMPBELL, Q.C.

And when I laughs,
I laugh all big,
And when I speaks I roars,
And when I fights I'm terrible,
All blood and guts and jaws.
When I look up,
The stars roll back,
The sky, it splits asunder,
I'm smart, I'm strong, I'm keen, I'm great,
I'm Don, the bloody wonder!

NORMAN MITCHELL
Judge of the County Court
1946 — 1970

SUMMER POEM

"... BUT I'D FEEL UNDRESSED WITHOUT A WIG!!"

"Of course we must keep up tradition"
I'm sure you'll all say loud and clear
But we are rather far
From the London-based Bar
And things could be changed a bit here.

I am really referring to climate
And the heat of the South Hemisphere
Bar clothes weren't designed
With the Aussies in mind
And the sticky first months of the year.

Let's have a concession to summer,
Let's bring a new look to our Courts.
So show off your knees
When it's 40 degrees
In crisp black and grey pinstripe shorts.

A tee-shirt instead of a Bar shirt,
I am sure you will see it makes sense
Which states front and back
Boldly printed in black
"Prosecution" — conversely — "Defense".

The wig could be half size for summer
And robes made of gauze, feather light,
And so thus attired
You'll feel airy, inspired,
A confident, cool, courtly sight.

And the man of the silken persuasion,
Could let us know where he belongs,
And lest we forget
He could wear a rosette
Neatly stitched to the front of his thongs.

So make this a comfortable summer,
Do not break, rather bend, the Court rule,
And by dressing this way,
There'll be no-one can say
That the Vic Bar did not keep its cool.

SUSAN MORRIS

1961 – 1970

ONE BARRISTER'S LIFE IN THE SIXTIES

by H.C. BERKELEY, S.-G., Q.C.

I was first called to the Bar in Sydney in the month of December 1958. I was 30. I had a wife of five years' standing and we had two hostages to fortune.

The Sydney Bar was so organised that there was virtually no floating work — it all went back to the solicitor. In the first six months I got one brief. I had a friend in Melbourne who was a solicitor. He urged me to come down to Melbourne and promised that his firm would support me.

I was admitted to practice in Victoria on 1st June 1959 and signed the Roll of Counsel on 25th June. My admission was moved by Bill Harris and he also took me on as his reader. There were 3 people admitted that day. I thought the ceremony was at 10.30 a.m. and sauntered into the Banco Court at 10.15, long after everybody had disappeared. Bill persuaded Sir Edmund Herring to reconvene the Full Court (in the sixth Court upstairs) at 2.15 p.m. for the purpose of my admission. I had to give the Chief Justice an undertaking that I would everafter read the Law List in "The Age" each day.

I have been asked to write about the 60s.
The first five years were fairly leisurely, and I remember them well. The last five tend to merge one into the other. It was the time of the Beatles, long hair (not for barristers), the Southern Aurora, the Commonwealth Matrimonial Causes Act and the drawn Test between Australia and the West Indies. In 1959 no elections were held for the Bar Council. The number nominated did not exceed the vacancies. There was one appointment and that to the Supreme Court, Little J. Barristers' Chambers Limited had just been incorporated and bought the old fire station on the western hill in William Street. The annual subscription for silks was 10 guineas and for junior juniors, 1 guinea.

Bill Harris had his chambers on the 2nd tier of Selborne Chambers. His neighbours were Bill Kaye and Eric Hewitt. Selborne was a sort of enclosed alleyway between Chancery Lane (Little Collins Street) and Bourke Street. At each end there was an entrance to the street about ten feet wide closed at night by solid wooden doors. It was in a florid architectural style reminiscent of The Merchant of Venice.

Walking through, there were on each side doors leading into barristers' chambers. Some rooms were larger than others. General meetings of the Bar were held in Campbell's chambers. That says more of the corporate spirit of the time than of the size of Campbell's chambers. On the left coming in from Chancery Lane, the first door led into the chambers of R.G. Menzies with his name still on the door. In fact it was sublet to Ninian Stephen. Further on, about half way down, were the clerks' rooms. First Messrs. Nicholls and Dever (old Arthur and young Perce) then Mr. Foley (not Kevin but his father Jim). Then there was a short flight of steps (I think there was another flight further on) to accommodate the gradient to Bourke Street. There was another row of chambers on each side above the first and a gallery to provide access to the 2nd tier. The gallery was reached by a staircase at each end and in the middle. Somewhere there was a precipitous stairway to a few garret rooms where completely forgotten juniors led their undistinguished lives under the tiles, undiscoverable by solicitors or clients. To the glory of the Bar, in the basement at the Chancery Lane end, Seabrooks the vintners carried on business.

The rooms were small by today's standards and severely furnished. Comfortable furniture was thought unprofessional and even effeminate. Each room had a fireplace and the caretaker (who moved with the Bar to O.D.C.) supplied firewood once a week. It was rumoured that Douglas Little was so Presbyterian that he took his firewood home. One of his ex-readers put it this way; "Sir Douglas had his novel methods of coping with the shortage of accommodation for the Bar in the 1950s." This shortage was as acute then as it is now and standing space in the corridors of Selborne Chambers was at a premium. Sir Douglas, in a quite small room housed two readers, Harry Mighell and Ninian Stephen and an ex-reader Sam Gray while conducting an extensive practice of giving advice to other former readers such as Stephen Strauss and

Bruce McNab. From time to time he also attended to his own practice. All this was done in semi-darkness, Sir Douglas taking the view that the high cost of electric light could not be justified. Another item of reckless expenditure was the cost of dry cleaning carpets. It is little known that Sir Douglas was a connoisseur of oriental carpets. One important example graced his chambers. It was rumoured that he acquired it fourth-hand at a Sheriff's sale. Its authenticity as a rare Caucasian rug was verified by a label that it was machine made by white Caucasian labor in Fitzroy. This high cost of dry cleaning was thrust upon Sir Douglas by the peculiar habits of Harry Mighell's landlord and tenant clients who, shaken by the rigors of Harry's cross-examination of them in conference, were wont unexpectedly to relieve themselves on the floor."

The hub of activity was the clerks' rooms. Betwen 4.00 and 5.00 in the afternoon there was always a group of barristers going in and out and a goodly portion of them would hang around and chat. Perce would come out and bellow, "Mr. Starke". If he was not there someone would soon lean over the railing around the gallery and up would fly the brief. It was a lot more convenient than today's intercom.

The Bar's Christmas Cocktail Party was held downstairs in the thoroughfare and the walls on each side were decorated with paintings by the Myrniong Art Group. Hulme aroused much excitement in my first year with a not too subtle painting of a figure in a homburg hat, black jacket and striped pants with the seat cut away to expose the judicial bum.

Bill Harris had two conditions for each of his readers. "No conferences in my chambers and you must leave at the end of six months." I sublet from Counsel's Chambers Limited a little room (part of a suite of 3) in Condon's Building which was opposite Selborne in Chancery Lane. There were 4 of us, Gerry Nash, Elaine Kiddle, and David Condell. The rest of the building was occupied by a firm of solicitors. It did not do any of us any practical good.

The solicitor friend who induced me to come to Melbourne sent me one brief and then he himself came to the Bar. My clerk told me that if I wanted to be a successful barrister I would have to drink with the insurance company solicitors who gathered nightly in the Long Bar at Scotts Hotel. It was still the days of 6 o'clock closing, but I could not stand the pace and decided to be a failure. I was lucky enough to get a very junior brief at the hearing of applications for a provincial television licence. It went for three months in the South Melbourne Town Hall. I was led by a commercial Sydney silk. He was commercial enough to own half shares in the applicant for whom we were appearing (just in case the licence was granted to his client). It helped me to put 900 pounds into my fee book for the first year (compared to 5000 or 6000 pounds for the run of the mill silk of those days).

I was in court about three days a week. There was lots of work in Petty Sessions — landlord and tenant, debt collecting, motor car cases and occasionally a three day stint in General Sessions prosecuting for the Crown. I did not have a car and I had to get up early to get to Cranbourne. By train to Dandenong and then taxi. Sometimes I was lucky enough to get two briefs for the one court on the same day. I found out how that was done by hearing my clerk say on the telephone; "Well, there is always Berkeley." There was then a silence while he listened and then said; "Yes I know but he is cheap".

The building contract for O.D.C. was signed in June 1960. The nine storey building was ready for occupation in July 1961, just in time for the introduction of compulsory breath testing.

The Commonwealth Bank, Sheraton Office Centre and the Clerks occupied the ground floor. The Crown Law Department occupied the 1st Floor and barristers occupied most of Floors 1-8. The Common Room and so forth occupied the 9th Floor. The need to collect the rent meant that for the first time the Bar employed staff. A Registrar doubled as the Secretary of Barristers' Chambers Limited and he had a full time stenographer. In the same year the Australian Bar Association was formed and the Victorian Bar Council was duly appointed to be the Ethics Committee of the A.B.A. (I suspect the subject was of no interest to New South Wales).

There were three clerks in 1960, two in O.D.C. and one in Equity. Calnin stayed in Equity until 1965 when he too moved. The Bar Council decided that the Bar needed more clerks and the move to O.D.C. was the opportunity to add to the number. The silks were deputed to go round and persuade the juniors to move. The silk who persuaded me then stayed with Foley. As he explained to me later some had to stay with the list to keep it viable. Of course the clerks knew six to nine months in advance who was leaving and who was not. I did not expect my old clerk to feel that he was duty bound in the circumstances to further my professional advancement. In the result he felt about it the same way as I did. In the second year I put 500 pounds into my fee book. In the July vacation of 1961 we all moved to O.D.C. I had taken the smallest type of room on the 7th Floor next to the spacious loungeroom where Balfe then had and still has his chambers. One Saturday afternoon Gerry Nash and Bob Vernon helped to push and pull my old Sydney desk and cupboard (on a trolley) out of Condon's Building up William Street and into O.D.C. Not everybody moved. Fifteen stayed in Equity with their clerk Calnin. Russell Barton and Max Bradshaw took a long lease of our old suite in Condon's Building. It turned out to be a good thing for them. Some years later the building was bought by an insurance company and rumour had it that they were paid a large sum to surrender their lease.

In 1963 two clerks retired. Arthur Nicholls because he had given 50 years service to the Bar. One of the new clerks, Harvey because (as the Bar Council reported) "Deficiencies were discovered in his trust account".

In that year too, Robert Peter Tait was convicted of murder. There were many proceedings in the Supreme Court to avoid his execution. Eventually it got to the High Court on the morning of Wednesday the 30th October. The execution was fixed for 8 o'clock on the morning of the 1st November. There was an application for an adjournment to enable counsel to put their papers in order. The Solicitor-General said, "It is the considered view of those who are responsible for advising His Excellency in this State that it is essential in the public interest that this matter should be finalised."
The Chief Justice said, "When you say it to this court are you saying it to a court which has supreme jurisdiction in Australia and you are in effect saying even if you want time to consider this case, we will not give it."
At the end of the morning the Chief Justice said, "That the authority of this court may be maintained and we may have an opportunity of considering the application, we shall accordingly order that the execution of the prisoner fixed for tomorrow morning be not carried out but be stayed pending the disposal of the applications to this court for special leave. Mr. Solicitor may we have your undertaking that that will be enough."
Sir Henry Winneke was unable to give the undertaking and it was accordingly ordered that the Chief Secretary and the Sheriff and his deputies be restrained accordingly. The applications were adjourned until Tuesday 6th November. At 5 o'clock on the Friday afternoon the sentence was commuted to life imprisonment. The gossip at the Bar was that the government proposed to carry the sentence into execution whatever the High Court said and that the Solicitor-General was obliged to remind Cabinet that the unlawful taking of a human life was the felony of murder.

By 1964, O.D.C. (meant to last a generation) was too small to accommodate the whole Bar. Four floors were added at a cost of 367,000 pounds. Humes Limited was given a 10 year lease of the 12th Floor and part of the 11th Floor was occupied by the editorial staff of Vogue magazine.

This was the time of the credit squeeze. Good times followed for the Bar. There were big company failures, there was the Reid Murray enquiry and then the two King's Bridge enquiries and later the Royal Commission into the police and abortion. Even if not many of the junior Bar were involved, enough were taken away to make sure that some of their work passed down to the others.

In 1965 I moved to a room one size larger on the 11th Floor and shared a secretary with only one other barrister. That year my name appeared as counsel five times in the Victorian Reports. I had said to my wife in 1960 that if I could gain the patronage of one solicitor a year, at the end of 10 years I would have made it. I was on the way.

Fees were still fairly modest. Dick Griffith did an originating Summons in the Practice Court and asked the new Chief Justice Sir Henry Winneke to fix the costs. He was awarded 5 guineas. Winneke had been out of private practice for 20 years. When Griffith complained of the amount it was increased to 7 guineas.

It was the time of selling company tax losses by means of schemes arrangement. I did 72 in the year. Brusey was the king of that field. The first time he did one before the new Chief Justice he carefully explained that this was a way to obtain an unfair advantage over the Commissioner of Taxation. "Thank goodness" said the Chief, "there should be more of it."

Solicitors still seemed to have no machinery for paying barristers' fees and I still had the habit of avoiding my bank manager. Five years before, as so many new barristers did, I had a run of bankruptcy petitions for the Commissioner of Taxation. He never paid me. When the time came for me to pay my provisional tax that year I set off the amount that the Commissioner owed me. I got a cheque from the Commonwealth Crown Solicitor within a week.

Before 1966 when the clerk sent out his account he added to counsel's fees a clerk's fee which the lay client paid. Decimal currency saw the end of guineas and clerk's fees. Instead 3.5% was to be deducted for the clerk from the fee charged by the barrister.

1966 was the beginning of the Articled Clerks Course at R.M.I.T. and the meteroric rise of N.H.M. Forsyth who was the course's lecturer in income tax. It was the year in which the great P.D. Phillips, Q.C. was responsible for 10 o'clock closing. The Bar in Annual General Meeting duly resolved not to have a liquor licence. It was a decision ignored in a splendid example of guided democracy 14 years later.

I remember three things about 1968. I moved to a very large room at the north end of the 10th Floor when Shaw left it to go into practice in England. Originally the suite had been occupied by Shaw, Stephen and Greenwood. Stephen was still there. I bought a new teak veneer desk and gave my old Sydney desk to one of my ex-readers. Immediately I got a better class of business. During the year we had the extraordinary spectacle of a barrister found guilty by the Bar Council of a breach of professional conduct, appealing (as the rules then allowed) to a general meeting of the Bar. There was a huge crowd milling around on the 13th Floor at the appointed time. Brusey did the only sensible thing by organising a settlement. The same year saw the publication of **"A Multitude of Counsellors"**, Sir Arthur Dean's history of the Bar.

In 1969 Sir Reginald Sholl wanted to come back to the Bar after his stint as Australian Consul in New York. After deep divisions on the Bar Council, it was resolved that he be allowed to sign the Bar Roll. In the end he did not do so. In 1970 the Judges' Pension Act was passed to make it unprofitable for a judge to come back into private practice after having earned his pension.

Norman Mitchell was the Chairman of the County Court bench at some time during this decade. County Court chambers was then in the 7th Court of the Supreme Court building. Many will remember Judge Mitchell coming into court lumbering past his chair (while the tipstaff said "All Stand") and flinging open the window for fresh air before he sat down. He was a County Court bully but (after their fashion) if you gave as good as you got he would settle down and listen to what you had to say. Another County Court Judge of the decade is said to have driven his drunken Holden up and down the steps of Parliament House before the police took him home. A third is alleged to have had his homburg returned to him by a member of the Vice Squad.

Those who went to the Bar in the 60's had the chance to enjoy the exquisite pain of appearing before Judge Moore. I never struck him on one of his bad days so I cannot describe his particular brutality. I do know that some good men refused to appear before him. Oliver Gillard told us that this was improper but that we were entitled to danger money. Most of these souls were the height of pleasantness off the Bench so I suppose that their trouble was boredom rather than nastiness.

In the Supreme Court manners were better. No one ever corrected your pronunciation to start off with. The problems were different. Sometimes the trial was longer than the client's purse. I spent 30 days before Sholl J. contesting a winding up petition in the interest of the debenture holders. Luckily the receiver had circulated all 10,000 of them and most of them had replied enclosing the 2 pounds that he had asked for to pay counsel's fees. Sir Charles Gavan Duffy did not cause problems although some people thought he did. Having been appointed before compulsory retirement was enacted he was still there in his eighties. After lunch he would settle down comfortably, hands clapsed across his paunch and close his eyes against the mediocre drone of the cross-examiner. Take one step in the wrong direction and one eyelid would rise. It was enough to keep us in line.

There were a few of the old police magistrates left; tough, fast and coppers to a man. Then there were men like Mr. Morris, S.M. at Prahran. Their idiosyncracies enabled a young man to make his reputation with solicitors by winning impossible cases. He evicted an old war widow from her protected tenancy in favour of my 30 year old bachelor client. The case was decided on the balance of hardship;

> "She will suffer no hardship because I think she would be much better off in a home". I am pleased to say it was his argument and not mine.

As for the silks of the decade let Ninian Stephen speak in the words he used at the Bar Dinner in 1971;

> Who was it then that rules in that demesne
> Ere Owen Dixon Chambers' light was seen?
> Was it Starke or Gillard in his prime;
> Trust busting Revelman, or Monahan sublime;
> Smithers of the purple phrase,
> And of the angered glaze;
> Pre-Constitutional Murray, the insurer's friend;
> Or D.M. Little, for whom the wise defendants send;
> O'Driscoll, meter running fast,
> Heddle — back the winner in the last?
> All these could justly claim the palm.
> As prime providers of the widows' balm,
> Or as the rack on which the plaintiff suffered —
> Depending on which side their bread was buttered.
> Yet, from the memories of twenty years,
> Down Selborne Chambers' corridors appears
> One figure, stooped and coughing as he comes,
> Who marches to the beat of halting drums;
> 'Tis Donny Campbell whom I ever see
> As jury advocates' epitome.

By 1970 there were 350 in active practice as against 200 in 1960. There was a proportionate rise in the number of judges from 42 to 72. The Bar Council said;

"The accommodation position is now acute". I was too busy to enjoy myself. That had to wait until I took silk in 1972.

"Having read the book the subject of this appeal, it is my considered opinion that no one would fail to be inflamed and excited by its contents."

(from **Bar News**, Spring Edition 1978)

Isn't that taking things a bit far, George?

(from **Bar News**, Spring Edition 1977)

1970 – 1980

A COMMUNITY OF INTERESTS

by David Henshall

In May 1975 Rocky Bennett died at night in a fire at his home. One wishes to be gentle with the memory of a dead brother — let it just be said that Rocky was not a leader of the Bar. Quite a bit of his time in court was spent acting for the accused in criminal cases which his instructing solicitors considered hopeless. A man who lived alone, his life probably had little enough of joy and his performance varied a bit depending on the time of day. But he said he would starve to stay at the Bar and, by his Will, he left one-third of his Estate to the Victorian Bar Council. In 1973 he had told the then Chairman that he would like to make a gift in his Will to a fund for the purpose of providing assistance to young barristers with financial difficulties upon commencing practice. The Estate was not large and included insurance policies upon which more was payable in the event of death by accident. At the inquest E.A.H. Laurie Q.C. and M.B. Phipps appeared without fee for the Estate. The Coroner made a finding of accidental death. The money was used in 1979 to purchase a library for Four Courts Chambers.

On July 18th, 1978 Barry Watson Beach Q.C. was, to the delight of the profession, appointed to be a Judge of the Supreme Court of Victoria. An outstanding advocate and a natural candidate for appointment, he had nevertheless earned no love from the police force for his resolute conduct of an Inquiry into allegations of police corruption. He learned, like many who have conducted Inquiries since, that those who dislike the findings will not hesitate to make in personam attacks. It was a tough time for him. At a general meeting of the Bar on Tuesday, 10th November, 1976 it was resolved:

> "That this meeting expresses its support and confidence in Beach Q.C. and the other members of Counsel involved in and assisting the Inquiry and condemns the unwarranted public attacks made upon their professional integrity."

The meeting also called for the immediate release of the general recommendation of the Beach Report. To the Bar, Beach's appointment to the Bench was a vindication of the independence and integrity of the man and of his colleagues who had supported him utterly.

The decade of the 1970s opened with the Kaye Inquiry into allegations that senior policemen had been bribed by abortionists. Indeed Kaye Q.C. (who was himself appointed a Judge of the Supreme Court on 1st March, 1972) came home early from his summer vacation on 5th January 1970 to start working on the Inquiry.

The decade closed, if one stretches it a little, with the move of the High Court to Canberra. The Court sat for the last time in Melbourne prior to that move on 27th March, 1980.

In between, the capacity of the Bar to gossip and backbite; to stand together and inspire loyalty was undimmed. We are a curious lot.

Merely to read in the Annual Reports the names of those who died during the decade conjures memories. One could not mention them all. The following are chosen not because they had merit more than all others, but because each points up something of the Bar and its people.

Maurice Ashkanasy C.M.G., Q.C. was a man of great presence. He had a large domed head, smoked a curly, almost Sherlock Holmesian, pipe and wore beautiful suits. He, as much as anyone, was responsible for the concern the Bar developed for young barristers. He brought the Bar Council from being a body dealing mainly with questions of ethics to its present role. He seemed in some way more civilised than most. Once he had an orchid plant with a great spray of flowers in his chambers, and that was long before you could buy them at Coles.

Many stories, a number of them scandalous, still circulate about Donny Campbell Q.C. who died on 3rd September 1971. Is it really thirteen years? Even in death he is larger than life. He had one leg in a calliper and was not averse to using his disability to advantage before a jury. Only one side of his mouth opened when he spoke giving his words the strange appearance of sliding out sideways. Donny never

seemed to recover fully from an accident when he backed his new car out of his drive into the path of a Police car (of all things). "It must have been going at a million miles an hour". Certainly Donny didn't see it. Ironic for one who spent so much time in Running Down.

For a long time Joan Rosanove Q.C. was the only member of the Victorian Bar with a fur coat. It was a beauty. Indeed for a long time she was the only woman barrister in active practice. By the seventies the wall which she first stormed had been at least partially breached. A total of forty-seven women signed the roll in that decade, twenty one of them in its last two years. The attack was mounted initially in the area of matrimonial and family law. That was Joan's specialty. Women preferring perhaps to discuss intimate family problems with women; that was a natural point of weakness in a male dominated Bar. She made some fairly brief forays outside that area. Those that followed her have consolidated positions in other fields. To the end she showed the style and courage that characterised her working life. A relative visiting her within days of her death in April 1974 found her with hair carefully arranged and face made up. Even then she was determined to present herself in the best way possible.

Of Lou Voumard Q.C. Mr. Justice Nimmo said "No one ever spoke ill of him. . .all were better and none worse for having known him". He was a tiny man with intense alert eyes behind very large glasses and he was unfailingly gracious. The only complaint anyone ever heard of him was that of his juniors who said he didn't charge enough. If ever a book deserved an LL.D. it was Voumard's Sale of Land and if ever there was a man who would have been an outstanding judge it was he. Certainly he was shown great respect by the Courts. Many qualities exit in great abundance at the Bar, but there is one that is a rarity and Lou had it. With all the force of his intellect and his great learning, he had complete and natural humility.

In 1977 the Bar library was named after the man who, as it was said, created it almost single handed: Richard Griffith. Like two other Judges in that decade, Newton and Harris JJ., he died after a very short time on the Supreme Court bench and was very sadly missed. Small and dapper, given to wearing rather perky little hats, he had a great capacity to inspire affection. The editors of the **Bar News** still say that the tribute to him on his death, written by his friend Marks Q.C. was among the best things they have every published.

It cannot be very often that Supreme Court Judges in large black cars with motor cycle escorts turn up at St. Ambrose's Church, Alphington. Certainly it startled the parish priest. Jim Foley M.B.E. died on 7th November 1978. The turn out at his funeral was a demonstration of the bonds created during the twenty-six years that he had acted for barristers. No one he had served who could attend, would not have gone. There must have been a lot of floating briefs on other lists that morning. The Foley List was burying its Clerk.

Clerking and accommodation were the twin obsessions of the decade, both induced by a surge in the numbers at the Bar. The Annual Reports disclose that at the end of August 1969 the total number of barristers in active practice was 327. By the end of August 1980 the number was 691.

The question of whether or not to erect another building promoted, as always, slightly more opinions than there were barristers. Many passionate, unpaid, arguments were put at Bar General Meetings. One gentleman who had participated in attempting to persuade his brethren to support the building of Owen Dixon Chambers remarked of that attempt —

> "It was then I learned that barristers are rather like small children but without their charm."

(The same gentleman at another General Meeting commented upon the refurbishing of the 13th floor —

> "It once looked like a professional common room, now it resembles nothing so much as a tarted up tea shop.")

Many stop-gap measures were adopted in search of space. Chambers came and went, floors of new buildings were leased. The matter came to rest, more or less, with the purchase of the A.B.C. site approved by the Bar in December 1979. From then on it was a question of who was to build, and how it was to be financed. Owen Dixon Chambers, becoming progressively more and more dingy, by comparison with other city accommodation, continued to function as the hub of the Bar's corporate life and to be the mecca of younger barristers in "out-stations" hungry for contact with more experienced people.

New clerks were appointed (starting with Muir in 1973 and then Stone and Duncan in 1976), and various strategems engaged in to cajole or otherwise persuade people to leave "senior" lists in order to provide "balance". In all these moves the usual tension between self-interest and altruism was evident and led to the usual compromises. Whether we were, like the exemplary testator in his armchair, just and wise, others must judge. But as the decade wore on the Bar became younger and younger.

Self-interest and altruism in various blends also inspired other decisions. The two-thirds rule was progressively watered down. The Bar became somewhat more open to public scrutiny and barristers became entitled to speak and write in public in many ways previously denied them.

The Legal Profession Practice (Discipline) Act 1978, whilst recognising the Ethics Committee, also provided for a Barristers' Disciplinary Tribunal to hear more serious matters and appeals and for a lay observer to enquire into and report annually to Parliament on the way in which the Bar and the Tribunal exercised their powers under the Act. The lay observer was invited to and did attend meetings of the Ethics Committee in 1979-80 and also by leave attended a number of summary hearings. It was a decade of self-examination as the Bar became increasingly conscious of its accountability to the com-

munity and of the fact that the community was increasingly demanding such an account.

This consciousness and the increase in the numbers of "junior juniors" led to concern that the Bar should provide, and be seen to provide, some reasonably adequate education for its young hopefuls. By the end of 1979 the requirement for people coming to the Bar was that they should undertake a nine month reading period; for the first three months of which they should not be entitled to accept a brief. The "reader's course" had also been decided on. John Doe's comment —

> "I know someone who's done a trial before and he said it'd be a good idea to ask for a voir dire early on"

(Bar Review 1984) was, one hopes, less apt at the end of the decade than at the beginning.

Of the eighteen judges on the Supreme Court bench in 1970 only five remained at the end of 1979 and the bench was then twenty-one strong. The former Chief Justice Sir Henry Winneke retired on 30th April 1974 and the present Chief Justice was appointed the next day.

Those in practice during the decade saw many other changes: the Federal Court with its Trade Practices jurisdiction, the Family Court, administrative law statutes, the Australian Legal Aid office, many additional specialist tribunals; the List could be extended considerably.

In some areas, as for instance in the use of the Trade Practices Act, and in the increased possibility of judicial or quasi-judicial review of administrative decisions, the changes produced some solutions for old problems. With its usual inventiveness the Bar was quick to exploit the new opportunities. But the proliferation of tribunals, some with limited or no rights of legal representation for parties, appears to have sprung from a certain impatience with the cumbersome processes of the law.

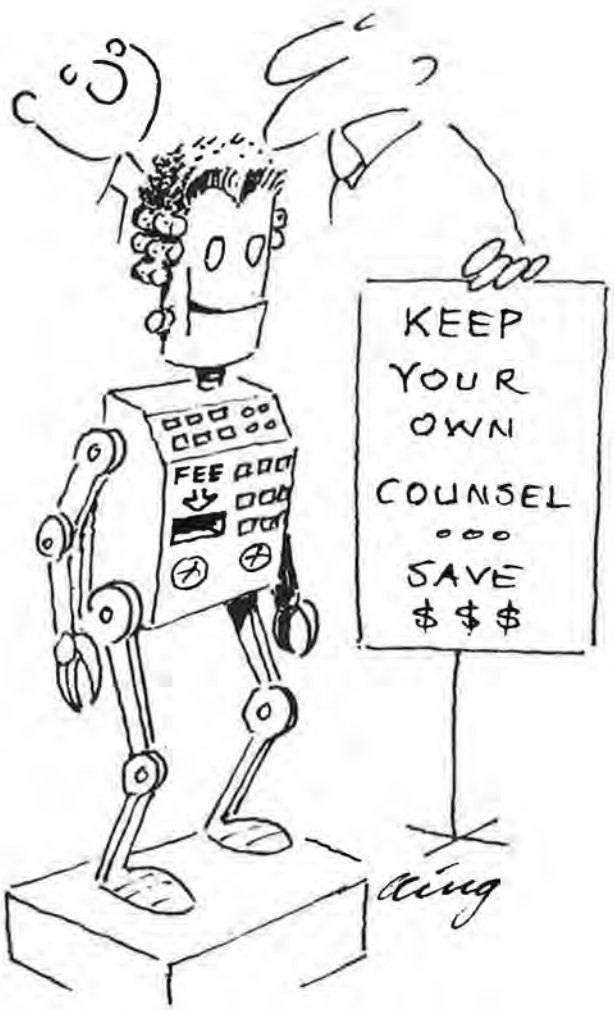
It has taken another ten years for one thing to change. In "The Herald" of 2nd June 1974 there appeared a letter jointly signed by the Chairman of the Bar (McGarvie Q.C.) and the President of the Law Institute calling for an end to the exercise of judicial powers by Justices of the Peace and stating that the overall experience of practising lawyers in this State was that, as a general rule, adjudication upon the rights of citizens by Justices of the Peace was substantially less satisfactory than adjudication by a trained and qualified Stipendiary Magistrate. This letter provoked a robust response from one Mr. F.R. Power J.P. The Bar Council wrote to Mr. Power on 13th August 1974 confirming that the views expressed represented those of the great majority of members of the Victorian Bar who had practised in courts of summary jurisdiction.

These sallies warmed the hearts of those then appearing in Magistrates' Courts. In those days one of the primary functions of Counsel engaged for a defendant in a summary criminal or traffic matter seemed to be to try and keep the case before the "Stipe" rather than be "sent out" to the "Js". A good deal of negotiation with Clerks of Courts and of jockeying for position with other counsel similarly minded, occurred to that end.

The desire of the Bar for some nice round figures to mark its place in history also goes back about ten years. The 1974-75 Annual Report proclaimed that the Bar was then 75 years old. If that be correct we are now eighty-four and not one hundred, and all this effort should be repeated in sixteen years time. In 1975 we were tracing our birth to the meeting of Counsel held at 4 p.m. on 20th June 1900 in the chambers of one Mr. J.B. Box at Selborne Chambers and referred to earlier by Gunst. The new Roll of Counsel was commenced in September 1900, with Box being number one on the Roll. What a pity that they did not revive the old Roll kept by the Prothonotary which had fallen into disuse some nine years previously upon the amalgamation of the profession and from which the cover of this edition of the **Bar News** is in part taken. That has names of Counsel going back to 1841. Perhaps we are really forty-three years too late for these centenary celebrations or seven years too early for our 150th? Or perhaps we are only as old as we feel?

Throughout, the Bar remained alert to its duty in the preservation of the rights of the individual against the State. Once again that curious blend of altruism and self-interest came into play. The Bar continued to do as barristers have probably done from time immemorial. It served the community and the concept of the rule of law but recognised too where its own interests lay.

Bigger, younger in average age of its members and more alert to its public accountability, the Bar entered its centenary decade of the '80s giving every indication of an intention to survive at least another hundred years.



" THIS ONE HAS A BAKED STUFF FINISH . . . THE DEARER MODEL COMES IN SILK ! "

(from **Bar News**, Spring Edition 1981)

1980 – 1990

ANOTHER ICE AGE?

by A.J. McDonald and P.D. Elliott

It is 1984 and the horizon to 1990 is cloudy. Few of the clouds have a silver lining. Like the British coalminers' pits, our jurisdictions are closing. Unlike Arthur Scargill's coalminers we are not striking. We did not hear our death knell on 10th April 1980 when the Bar Council approved part-time taxi work for Barristers. That infamous event failed to cause alarm.

We began the decade as 691 active, mostly full-time Barristers. We are now 890, and if undaunted will number 1,400 by 1990. Inevitably there will be a water-shed. Let us evaluate our work to 1990.

Unlike our clients we have little use for modern computer and technological aids to project us into the future. We have but one new tool, the recently approved business card.

The word processor now utilized by a handfull of personal injury Barristers will be repossessed at the expiration of the current lease. Particulars of Claim and Interrogatories will not be necessary under the Universal Insurance (No Fault Liability) Act 1987. Personal injury advocates will be able to spend more time with their families.

The newly formed amalgams of large Solicitors' firms employing their own in-house whizz-kid specialists may soon ease the burden on the overworked commercial Barrister. He will have the chance to exercise his mind on his own personal commercial pursuits, dabbling in the share market or dealing in commercial properties. Will he advise himself, or enjoy advising himself, the way he has advised others?

The Family Court Barrister will no longer be worried by threats against the life of himself and his family. The Family Court will become a non-legal family forum. The Judges will be retired on health grounds as a result of the stress from 1976 to 1990.

The "Money Managers" will replace Barristers in property and maintenance cases. They will tell husbands, wives and defactos not only what they are worth but how they should invest.

The Legal Aid Solicitors aided by social workers, psychologists and psychiatrists will conciliate custody and access disputes. The scenes now common in the Magistrates' Court of the poor overworked Legal Aid Solicitor attending many clients without due time for preparation will be repeated in the family forum.

If custody disputes cannot be resolved by agreement the children will be sent to foster parents. No one will be subjected to the stress of the 1984 adversary system where one party's gain was another party's loss.

The political parties will have their own aspiring political lawyer advisers. For the Liberal Party there will be the Liberal Lawyers Society avowed to assist the Party in legal matters, similarly the Labor Lawyers Society for the A.L.P. Their advice will be in the public interest, inspired and non-partisan, in favour of reform and the abolition of the lawyer.

The general public, for the price of a telephone call, will rely upon recorded "Tell-law" messages, compliments of the Law Institute of Victoria. More difficult problems will be dealt with by anonymous Barristers on Sunday morning and week night talk-back radio. These Barristers will, during normal working hours, give on the spot advice to the radio station in cases of defamation or contempt. They will aid radio personalities in the use of conveyancing and litigation kits.

In 1990 the Federal and State Government support for an independent Bar will be very apparent. The Bar will be called upon for Royal Commissions. The tedious repetitive cases now done by Barristers will be abolished so that more attention be paid to the traditionally prestigious areas of constitutional and administrative law. These will be the sunrise jurisdictions.

Freedom of Information and anti-discrimination cases will be endless. The silk of the Q.C. will be replaced with the fashion silk from Georges. Elegant women, no longer discriminated against, will present factual not legal arguments. Multi-coloured English Reports will constitute the wallpaper of the modern offices not encyclopaedias in Chambers.

Gone will be the traffic cases. Every intersection and main road will be under the surveillance of red light cameras. To streamline procedures and eliminate the statistical errors of breath analysis units, it will be an offence for any driver or any passenger to have any alcohol in his blood. Blood alcohol readings will be conclusive proof of guilt and the onus will be on any person seeking to plead not guilty to prove his case beyond reasonable doubt.

Those annoying neighbourhood disputes which often result in assaults, adverse possession claims over land, nuisance from noise and smoke, and fencing cases will be sent to a Neighbourhood Disputes Tribunal. This tribunal will consist of any two persons from a panel of plumbers, carpenters, mechanics, electricians, clerks and the unemployed who will patiently listen to both parties for the meagerly sum of $30.00 per hour. They will conciliate by allowing the parties to work out their own non-legal, non-binding solution.

The criminal law, that stalwart of the legal system, will be streamlined to remove reliance on Barristers. It will be recognised that as 86% of persons are guilty they will not need Barristers. Police Commissioner Miller will be Director of Public Prosecutions. Save in exceptional circumstances the Legal Aid Commission will provide Solicitor advocates to determine which are the 14% mistakenly charged.

Barristers will not be required for committal proceedings because these will be abolished. This will be generally acceptable to a community which is fed up with criminals and prefers quick and inexpensive trials for little crooks. Leaving aside the obviously high cost of superannuation, long service leave, maternity leave, holiday pay and overhead expenses, the salaried Solicitor is less expensive than the independent Barrister.

It should not be necessary for any ordinary person to go to Court. Courts will be retained for cases involving matters of high principle which never need worry the ordinary man.

The Courts themselves will be more democratic. For the Supreme Court elections will be held every four years. To demonstrate the government's support for an independent Bar it will legislate that only persons who have signed the Roll of Counsel may be elected a Judge of the Supreme Court. As recognition of the status of the Court the number of Judges will be reduced to 21.

In the County Court the large number of surplus Judges resulting from the lessening of the Court's work will be re-employed in the administrative law. They will be ably assisted by lay people. Lest these administrative law tribunals become an overused or a lucrative source of practice for members of the independent Bar, appearance will be strictly by leave and there will be no costs awarded.

There will be some diehard Barristers practising successfully in the Supreme Court. They may have expensive computer retrieval systems to provide the authorities and the arguments in support. The computer printouts will be provided to the Judges who will place them into another computer for a result.

The Judge will not have to listen to long and detailed argument. To ensure a just and fair result she will have an unfettered discretion to accept or reject the computer result. Appeals will be futile because the computer will probably give the same result to the Appeal Court.

The Federal and High Courts will be the remaining stages for the theatre of trial. Barristers will relish performances there directed by cheering multinationals. But like actors 90% of them will spend most time resting between performances. When it comes the work will be demanding and exhausting.

In 1984 the direction of the future is recognizable in the seeds of the present. There were good years between 1980 and 1984. We survived the recession. We opened our own licensed club, modernized our telephone system and introduced our version of a laissez-faire clerking system. Most importantly we undertook the development of the A.B.C. site for our new Chambers.

In all of these matters our vision was internal. The Bar Council and the Young Barristers' Committee generally considered domestic matters while accepting external changes with, at best, ineffective resistance.

These changes included the transfer of much civil work to lower, and supposedly cheaper jurisdictions, legislative attempts to exclude Barristers and all Lawyers, from newly established specialist tribunals, and a substantial decline in real income. They have signalled an undesirable trend.

The 100 years of a unified and independent Bar with community respect, if not admiration, is the true foundation of the future. Perhaps a little more public awareness of our community aspirations may defeat these otherwise regrettable predictions. We trust that such will be the finding of a reader in 1990.

1990 – 2000

THE CHALLENGE OF CHANGE

by Tom Gyorffy

". . .It is the fate of today's generation of lawyers to be exercising their profession in a world whose watchword is change. The profession will not be immune from the processes of change. It will be profoundly affected by it. . .

But out of the processes of change, new opportunities will arise. . ."

In this centenary year, a gloom has descended upon the Victorian Bar. Many are predicting that there will be no independant Bar in Victoria by the end of this century. This pessimistic view is totally unjustified unless the Bar rejects the opportunities referred to by the newly appointed President of the New South Wales Court of Appeal quoted above.

The current pessimism is a product of a number of factors. First, there is the imminent demise of some areas of work that have for the last 50 years provided the bulk of work to the Bar i.e.: personal injuries and family law. Secondly, there is the interest taken by the Government in the provision of legal services and the restructuring of the legal profession. Finally, there is the effect of the explosion of numbers at the Bar without (as yet) any corresponding explosion in the volume of work available to these people.

In this paper I shall consider the changes that will occur in the Victorian Bar in the remainder of this century and the factors at work that will bring about those changes. It is the theme of this paper that this is not a time for pessimism but for optimism. At the present time the events around us are indicative of change in and not the demise of the Bar. The principle areas of change are likely to be the sources and nature of our work, the destruction of the traditional monopoly enjoyed by lawyers in general, and the Bar in particular over dispute resolution, the advance of technology in the practice of law. Finally, it seems to me likely that the approach of the new millenium will see changes in the structure of the Bar as an institution. These changes, when they come will be irresistible. We cannot ignore them. As Barristers we should interpret these changes and adapt to them. Those of us that do, will form the Victorian Bar of the 1990's.

Sources of Work

Kirby P. in his Reform the Law has predicted that in the foreseeable future there will be four major forces at work that will structure the practices of the legal profession. These are:

- Big Government;
- Big Business;
- Big Moral and Social Change; and
- Big Science.

The input from each of these areas will in the near future lead to an explosion in the volume of work available to the Bar, and will more adequately replace the loss of personal injuries and family law.

Big Government

In recent times government has encroached more and more upon the private lives of citizens and the control of business. There has been a proliferation of legislation either giving powers to the government to interfere with the rights of citizens or granting hitherto unknown rights to citizens.

The control of government power and the enforcement of citizens' rights created by legislation have been beyond the capacity of mainstream courts. At Commonwealth level a new apparatus, the Administrative Appeals Tribunal, has been created along with Tribunals of first instance to cope in areas where the Courts could not. Accompanying this change has been the increase in the rights of persons to demand the reasons for administrative decisions, and to hold administrators accountable for their decisions. The fearful medieval procedure of prohibition, mandamus and certiorari are being replaced by the simpler and more efficient administrative review system.

It is predictable that States will also turn to an administrative review structure in preference to the mainstream courts as the mechanism to control government power or enforce citizens' rights in new areas created by legislation. Consider the Victorian experience with Freedom of Information legislation and its implementation.

Administrative law will therefore, be a booming growth area of the future. By the last decade of this century it will form as integral a part of work done by the Bar as personal injuries work has been in the past. Competent barristers must desist from treating this work as, in some way, demeaning.

Big Business

In the years leading up to the end of this century there will be an expansion in the areas of commercial and company law. The impact of the Trade Practices Act is well known and is being felt by the State Courts. The Companies Codes also have intruded into every aspect of commercial life. There is every prospect that we shall see a proliferation of uniform legislation in Credit Law, Unfair Contracts Law, Environment Law and in Consumer Protection. These statutory changes are matched by an accelerating trend in the Courts themselves to apply and enlarge traditional common law concepts such as negligence and equitable principles — Spry's book is already in its third edition.

In addition, there have been and will be changes in civil procedure which will open untapped areas of litigation. On 10th July 1984 the National Times described as "Victoria's Quite Damages Revolution" the acceptance of representative actions in Victoria's Courts.

Scientific and technological development coupled with the interests of business organisation will lead to an expansion of work in the intellectual property and confidential information areas of the law. The latter has proved to be a major litigation area in the United States and Canada in very recent times, particularly in the area of the computer technology and the knowledge obtained by employees in the course of their work.

In all probability by the 1990's civil practitioners at the Victorian Bar will be substantially occupied with group actions and commercial disputes.

Big Moral and Social Issues

The better education of modern generations and the awakening of an interest in the rights of individuals will lead to further developments in the law by the end of this century. We have already witnessed the enactment of legislation defining new rights and liabilities in the areas of the environment, historical buildings, aboriginal rights and discrimination. In the coming years the clarification and enforcement of these rights and liabilities will give rise to considerable work for the Bar.

The greatest area of growth in personal rights will probably be in privacy. Rights to privacy are likely to give rise to new and hitherto unheard of causes of action. In its discussion paper on this subject, the Australian Law Reform Commission has predicted that, in all probability, by the end of this century privacy litigation will replace negligence as the most common forms of action before the Courts.

Moral and social issues will bring change to the criminal law also. The effects of the Costigan Royal Commission and the National Crimes Authority will be the development of new crimes to deal with the problem of organized crime and new procedures to prosecute them. The problem of organized crime will lead to the development of new penalties to deal with the ill-gotten gains of organized criminals.

White collar and corporate criminals will also find themselves increasingly in the spotlight as a result of changing community attitudes. We have already witnessed a remarkable change of judicial attitudes towards taxation avoidance. We will see a restructuring of offences and penalties in this area before the end of this century.

Finally, the Franklin Dams issue should have brought home to Barristers that there is a large untapped area of the law in International Law which may have implications to everyday issues. Australia is now a party to a large number of conventions and international treaties which may affect issues such as the criminal law, racial discrimination and sexual discrimination to name just a few. It may well be that the validity of government actions and, in some cases, legislation can be challenged on the ground that they do not conform with some Convention or Commonwealth legislation made pursuant to such Conventions.

Big Science

The future will see the development of laws to deal with issues created by the explosion of science and technology. This year we have already witnessed the problems that science will cause us with the case of the orphan embryos in the In Vitro Fertilization programme. The I.V.F. programme, however, represents only the tip of the iceberg.

In the near future the law will have to come to grips with the implications of sex change operations, the sale of human tissues and embryos and the right to die. Imagine the clucking of the Equity Bar when considering property rights where the cancer-ridden testator is quick frozen in the hope that he might be restored to life on some future day when the cure for cancer is discovered.

Technology will also cause problems that will need to be met by the law. The development of computers will have implications in many areas e.g.: privacy, the laws of evidence, crime and intellectual property to name a few.

By the end of the 1980's the law will have come to grips with many of these problems. By the end of the century litigation involving medical and technological issues will be commonplace. By then also, barristers will have to have acquired a working knowledge with this technology.

COMPETITION TO THE BAR

In the coming decade the Bar will face competition from many quarters for the provision of legal services. Zander's Legal Services for the Community (1978) predicts that competition will come from the following:

- Unqualified personnel in solicitors' offices;
- Community Advice Bureaus;
- Trade Unions;
- Consumer Advice Centres;
- Housing Advice Centres;
- Specialist "lay" Advice Centres;
- Social workers;
- Public sector lawyers;
- Lay advocates; and
- The "do it yourself" movement.

In the final analysis, the effect of these available alternatives will be to take away from the Bar the more mundane areas of work which really do not require the attention of persons highly trained in the law or the art of persuasion. What will be left to the Bar will be the more difficult areas of the law and the more complex cases.

CHANGES TO THE PRACTICE OF LAW

By the 1990's technology will have entered the chambers of barristers in a big way. In all probability barristers will conduct their research through computers. The sixth generation of computer-word processors will make secretaries redundant.

The presentation of cases in Courts of the future will also require significant changes to the practices of barristers. Evidence will be presented before the courts by electronic means without the necessity for witnesses to actually appear and there are many other possible changes to court practice to be brought about by technological developments. Even now it is possible to call a witness by telephone in the Administration Appeals Tribunal.

The skills then required by barristers will change considerably. In general terms these skills in the 1990's will be:

(a) The facility to present complex well researched arguments of law;
(b) An understanding of the deeper social implications and policies behind the laws that are being presented;
(c) The facility to put together complex factual cases and present them in a cogent way in the shortest time possible; and
(d) The development of the special skills required for the presentation of cases before a particular Tribunal.

By the end of the century, barristers will be retained primarily for their special skills in interpreting complex areas of the law and their ability to present legal arguments. This is not to say that the presentation of facts will not be important in the future, but simply that the "wizardry" will be replaced by a more methodological approach in the presentation of them.

More than 50 years ago Professor Laski in his studies in Law and Politics (1932) suggested that lawyers should pay greater attention to the social implications of the laws that they dealt with, yet there is still a great deal of criticism of them for having failed to achieve that goal. The enlargement of Sources of Work discussed above will bring about the need for lawyers to consider social issues if they are to be effective in the carrying out of their tasks in the 1990's.

CHANGES IN THE STRUCTURE OF THE BAR

In recent times the structure and practices of the Victorian Bar have come under scrutiny from outside sources including the Government. This is in line with trends occuring interstate and overseas, particularly in England and Canada.

The reason why lawyers (including barristers) are coming under greater scrutiny is that:

"...lawyers have occupied a more important social, political and economic position than most other occupational groups in the community. And they are dealing with a commodity-justice — that lies at the heart of our social system."

Attacks on what are perceived to be the restrictive practices of the Bar are by no means a modern phenomenon, but what is disquieting at this time is that they are becoming more vehement and persistent. In recent times in England the following general view was expressed in a Royal Commission Report:

"In most of the industrial and commercial field it is now generally accepted that collective restrictions on competition are unacceptable unless it can be shown that, in the particular circumstances in which they are operated, they produce positive identifiable benefits that outweigh any disadvantages."

This view forms a significant plank in the platform of modern commentators on the legal profession. The traditional answer of the legal profession to this general attack has been to rely upon a distinction based upon the legal fiduciary obligation to the client. In respect of this distinction Zander has said:

"The way the profession presents this point smacks to modern ears somewhat of humbug. It is plain that the fact that a relationship of trust exists between lawyers and their clients...does not **in itself** justify the restrictions on services. They can be justified, if at all, only by a careful inquiry into all the relevant pros and cons — which of course, include the possible effects of the abolition of a restrictive practice on the relationship between professional men and their clients..."

In order to meet these outside pressures on the Bar I expect that considerable changes will occur in many areas. Minor irritations like the two counsel rule and certain aspects of fees will easily be swept aside.

The most significant change will occur in the governmental structure of the Bar. At the present time members of the Bar have an intensely individualistic approach to the issues that affect them in the conduct of their practices. This fierce independence has

brought about a situation where major decisions are made at general meetings of the Bar. This represents a most inefficient form of decision making. By the end of this century the Bar will have turned to a corporate structure, with an elected board of directors having very broad decision-making and management powers.

By the 1990's the issue of clerking will probably be resolved by the adoption of a system along the lines of the Sydney Bar. Coupled with this will be an alteration of the professional conduct rules to permit a more aggressive and open approach to practice development.

The change to a corporate structure of government will bring with it other developments. Most notably the Bar will have its own media liaison unit which will be backed by a significant number of researchers. The purpose of this unit will be to present a unified voice on behalf of the Bar on significant policy and social issues, on law reform and also to project the image of the Bar into the community.

Finally, in the last decade of this century there will be a move away from specialization. Technological changes will bring this about by enabling more complete and accurate access to the law in any given area.

CONCLUSION

During the 1990's the Victorian community will continue to receive legal services from an independent and healthy Bar. That Bar will have changed in its structure and in its approach to the provision of legal services. The services provided by it will be in areas that are only just beginning to open up.

For those who doubt the capacity of the Bar to accept these changes, my advice is to consider how different was the Bar and its practices on the date whose centenary we celebrate this year.

(from **Bar News**, Autumn Edition 1979)

VERBATIM

(a selection)

"It is a very salutary check for a judge to realise that if he does say something silly, it is liable to get in the papers."

Templeman J.
reported "The Observer"
20th August, 1978.

• • •

In the Full Court, assessing the List —
Young C.J.: How long will your case take Mr. Balfe. It's only a short point is it not?
Balfe Q.C.: It is a short point, Your Honour, but it may take some time to get to it.

27th April, 1983.

• • •

Judge Shillito (in Appeals, August 1980) on being able to send an old lag to an attendance centre:
"Look the last man with form like this that I sent to an Attendance Centre stole all of its lawnmowers".

• • •

There are only two kinds of people I don't particularly trust. One are barristers. The other are newspaper reporters. They try to make capital out of things that are done wrongly, said wrongly.

Brian Ritchie
Chief Inspector of Police
Reported in "The Age"
18th October, 1983.

• • •

I like to read "The Age". That's how I find out what the Bar Council is doing.

Strahan, 18 July 1979

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Scene: Return of application for an interlocutory injunction to restrain a company dealing with $8m worth of shares in another company, an interim injunction having already been granted. Silk and Junior for the Applicants, Silk and Junior for the Company, two Silks and a Junior for the Directors. Allegations that the interim injunction was obtained in scandalous circumstances with complete lack of candour. Strenuous denials and counter allegations that the Directors simply cannot be trusted. Alarums and excursions and general table thumping.
McGarvie J: Gentlemen, I shall proceed on the assumption that each party is thoroughly outraged by everybody else's conduct.

• • •

The accused having been asked whether he would give sworn evidence:
"Then I have to decide whether to give Mr. Ray the opportunity — he keeps reminding me of a hungry dog sitting outside the front of a butcher's shop looking at a side of beef."

R. v. Brazel
Cor. Judge Murdoch & Jury
6th August, 1984.

• • •

Two Chinese gentlemen were applying for bail. A Chinese interpreter was in attendance —
SM: There is a letter here on the file. It may assist me, but it is written in Chinese. Is there a translation available?
Interpreter: I gave a translation to the magistrate who heard this case before.
SM: Can you tell me who that was?
Interpreter: No. They all look the same to me.

Cor. Dugan SM
Police v. The Kaw Teh
and Ng Long Seng
17th June, 1983

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In the course of a plea on behalf of an armed robber with priors going back to 1944 —
Crafti: Your Honour, when my client is released he proposes to live with his daughter-in-law at Bairnsdale.
Judge Kelly: If she's still alive.

R. v. Paul
18th December, 1980.

• • •

"People feel dissatisfied with the justice administered in these Courts. Wait until some of them have to meet their maker."

Per McInerney J.
Smith v. R.
September, 1978.

• • •

McGarvie J: "The law has always been thought of as a chancy business. Even in the newspaper, the law list appears flanked by the weather and the shipping."

At Lunch
15th February, 1979.

• • •

Judge Forrest: His Honour's charge to the jury included the following:
"Mr. . . .was the articled clerk, and like all articled clerks he seems to lose documents. That is the function of the articled clerk, members of the jury, to lose documents. If they do not lose them, they are blamed for not losing them. . ."

R. v. Nathan
26th February, 1979.

• • •

His Honour was taking exceptions to the charge.

Accused (in person) dealing with how His Honour had put the prosecution case to the jury.

"You've taken a dirty old lolly shop and made it look like Darrell Lea's . . ."

R. v. Brazel
Cor. Judge Leckie
19th July, 1978.

• • •

"Appearing in the Court of Criminal Appeal is a bit like going in the Olympic Games.

It's not so much a matter of winning, as competing without making a fool of yourself."

John Barnett
20th July, 1981
(just before entering C.C.A.)

• • •

In the course of an opposed application for renewal of a 'disco' permit before the Liquor Control Commission:
Licensing Inspector: "I expect that the 'disco' will in the future be run much better, and these disgraceful incidents will not recur, because the Licensee's wife, Mrs. X is now running it. No offence intended, but she's a bit like the English lady who's Prime Minister, 'The Iron Maiden'."
Hedigan QC: I daresay he means Mrs. Thatcher, the so-called 'Iron Butterfly'."
His Honour: I hope so, the Maiden was a Mediaeval instrument of torture."
Hedigan QC: "Perhaps he's not mistaken at all."

Cor. Judge Kimm
April, 1984.

• • •

An old local farmer, with a prior conviction for selling lice-infested sheep, is convicted again for an identical offence. He explains that his dipping facilities were destroyed by fire 6 months before, and decided to "take the chance".
S.M.: "You are fined $150 with $100 costs.
Farmer: "Could you break it down because of the fire, sir?"
S.M.: "No, you are an old offender."
Farmer: "Aw, come on."
S.M.: "I don't give discounts."
Farmer: "Couldn't you make it $200?"
S.M.: "Look, you are not in the saleyards today."
Farmer: "Cut it back to $225 and I'll pay you cash today."
S.M.: "You will pay $250. Good day, sir."

Coram Mayberry S.M.
Korumburra Magistrates' Court

• • •

"One of these days an accused will make an unsworn statement and the Court will rise as one man with cries of 'Author! Author!' "

Vincent, at lunch
June, 1979.

• • •

Meldrum (examining a psychiatrist in the course of trial for attempted murder):
"The accused has successfully attempted suicide on two previous occasions, has he not?"
McInerney J.: "Mr. Meldrum, you have just propelled yourself into legal immortality."

R. v. Doutch
December, 1969.

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CENTENARY OFFER

To mark the Centenary of the Victorian Bar and of the Supreme Court Building we offer a large size picture of the Supreme Court Bench as set out below.

The Judges of The Supreme Court of Victoria
15th February 1984

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