

Motions & mentions

Three blind mice

Readers may be interested in a poem describing the proclivities of the Court of Criminal Appeal constituted by Jordan CJ., Bavin and Halse-Rogers JJ sitting in the late thirties. The appellants were almost invariably unrepresented.

The poem has been rescued from oblivion thanks to the acute recollection of Mr J.M. Brennan, formerly a judge of the District Court.

Mr Justice H.H. Glass

THE THREE BLIND MICE

*Aloof and austere, august and severe
Sir Freddy, Sir Perc and Sir Tom
Administer law as applied to the poor
With dignity, grace and aplomb.*

*This trinity deals with the man who appeals
And lest he should do something worse — he
Is led back to gaol all trembling and pale
By Sir Freddy, Sir Tom and Sir Percy.*

*To allow an appeal is not in the deal
To dismiss one they're always quite ready
So I'd tremble with fear if I had to appear
Cor: Sir Percy, Sir Tom and Sir Freddy.*

light winds and deep calm seas in the Mediterranean. Suddenly a hole opened in the plates in her engine room, water rushed in and she quickly sank.

The ship owners sought indemnity from the underwriters claiming the loss had been due to the perils of the sea. The ship owners conceded that there could have been no collision with a submerged rock or floating object to cause the hole in the ship's side.

They contended, nevertheless, that the ship must have collided with a submerged submarine travelling in the same direction and at about the same speed as the ship. There was not a scintilla of evidence to support this proposition. The underwriters argued that prolonged wear and tear of the ship's hull over many years caused the plates to open up under the ordinary action of wind and waves.

The trial judge, Bingham J., rejected the underwriters' defence on the evidence and found that he was bound, in the circumstances, to accept the ship owners' hypothesis, however improbable.

The House of Lords unanimously overruled the trial judge's findings, holding that the ship owners had failed to discharge the onus of proof. Lord Brandon, who delivered their Lordships' judgment, said that in accepting the submarine theory the trial judge had applied Sherlock Holmes "well known but unjudicial dictum": "when you have eliminated the impossible, whatever remains, however improbable, must be the truth". This their Lordships held was the wrong test.

Edmunds & Fenton Insurance Company Limited v. Rhesa Shipping Co. S.A. (1985) 3 ANZ Ins. Cases 60-635.

Not so elementary

On a fine clear day, the Popi M, an old weatherbeaten tramp steamer nearing the end of its life, was sailing in



Chief Justice Sir Laurence Street, the retiring President of the Bar Council, A.M. ("Smiler") Gleeson Q.C., and Robyn Gleeson.

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Affidavit blues

In a crowded Court room on a motion day in the District Court Council moving had eight affidavits, none of which had backsheets. The following exchange took place between the Judge and Council:

Judge: "Mr Tink, it is essential that the backsheets on affidavits be properly completed with the name of the deponent and the date of swearing. Otherwise much court time is wasted finding the identity of the deponent and the date of the deposition. This is the eighth affidavit filed by your instructing attorney the backsheet of which has not been properly completed. I only wish that I could require you to have this task performed standing on top of the mens' lavatory in Martin Place".

Mr Tink: "Your Honour, I only wish I was right there, right now!"

Quotable quotes

"... The point taken by the cross defendant (insurer) ... is that the very fact which gives rise to the insured's liability to a third party also entitles the insurer to deny indemnity to the insured in relation to that liability.

That is a point worthy of the notorious Ostrich Insurance Company which features in the advertising of one of the largest insurers in this State".

(*Knezevic v Sanderson & Anor*, Hunt J, unreported, 14 November 1985)

On the rails

Recently I learned that a shunter wishing to sue the largest employer of shunters, namely the State Rail Authority, has only one year to do so under a limitation provision which has survived the Notices of Action & Other Privileges Abolition Act, 1977.

I suppose everyone else at the Bar knows about the provision, which has been around for the best part of this century and lies in wait in Regulation 5 of Schedule 5 of the Transport Authorities Act 1980 and extends to all officers of the State Rail Authority and the Urban Transit Authority.

For those short of restful reading at night this subject has been considered in *Commissioner of Railways v. Farley* (1958) 101 CLR 339; *James v. Commissioner of Railways* 80WN 524 and *Storozuk v. Commissioner of Railways* (1963) SR 581.

— Restless

The mention peril

One of the hazards of the first year reader is the obligation to undertake the variety of mentions which busy and more prosperous colleagues need undertaken. There are hazards within the hazard.

One such reader during that period of readership

when one's mention practice is wider than any other facet, arrived breathlessly before the Master as his case was called.

Advancing purposefully to the Bar table, he shuffled through the bunch of scribbled notes in his hand and announced his appearance for the Plaintiff.

"Master", he said, "the Plaintiff requires an adjournment by reason of the amended defence which the Defendant has foreshadowed in a recent letter. In my submission, the Plaintiff can not be forced on in the face of this outrageous ambush".

Noticing another familiar name amongst the papers still clutched in his hand he paused, and said slowly and uncertainly "and I, for the Defendant, oppose the Application."

Having a ball

The annual soccer match between the Bar Association and the Law Society was held this year on Sunday 20 October 1985 at No. 4 Oval in Centennial Park.

Having won the Challenge Cup last year, the Bar Association team was keen to retain it, just as the Law Society team was out to win it back.

So much so, they turned up in force with a full team of eleven, plus some six replacement players who were able to continually relieve some of their flagging task force. (The Bar Team had a full team plus one, which was two players better than last year when we won the cup with only 10 men).

To beat the late season heat, the game kicked off at 9.30am and whilst the first half ended nil-all, it was full of promise for the Bar Team with a number of excellent chances going astray.

But, after starting so well and looking so good, two lapses in our defence half-way through the second half let the solicitors in for two relatively easy goals.

To add to our burden, soon after, one of our more impressive players (who shall remain nameless) made a copybook header into his own net whilst attempting to clear the ball over the baseline.

With the score standing at 3-0 against us and time running out our lads were not for giving up. In a determined fight-back, Nick Tiffen produced a superb cross in front of goal to find the head of Alastair Little who nodded it into the back of the net to pull one back.

But time was against a recovery and, at the final whistle, the result stood at 3-1 and the Cup was lost — until next year.

The best and fairest player trophies for the Bar Team and the Law Society team were awarded to Nick Tiffen and Aaron Mucsnik, respectively.

Other members of the Bar team not already mentioned were: Michael Ellicott, Dennis Flaherty, Christopher Fox, William Purves, Brian Ralston, John Rose, Matthew Rowe, Peter Stone and David Williams.

Unfortunately, the Patron, Hon. Mr Justice Powell, was unable to be on hand to present the Cup and other trophies this year, and the task fell to John de Meyrick, the Bar's soccer guru, who also supplied the nets, posts, shirts, and so on, dressed the walking wounded, and ran the line.

Coming events

February 20-21 — Conference — Judicial review of administrative action in the 1980s — prospects and problems — University of Auckland, New Zealand. Contact: the Co-ordinator, Legal Research Foundation Incorporated, Qantas Airways Limited (Liz Gilmore).

March 5 — Environmental awareness course (7 two-hour weekly lectures to 23 April) — organised by among others, Institute of Engineers, Augustralia in conjunction with the environment law association.

March 16-18 — Conference — Role of Courts in Society — Jerusalem (contact: Shimon Shetreet, Faculty of Law, Hebrew University of Jerusalem, Mount Scopus, Jerusalem).

March 15-21 — Environmental Law seminar: "Resource Investigation, funding and control: Victoria & Vancouver, British Columbia (contact: International Bar Association, 2 Harewood Place, London W1 R9H3).

June 19-21 — Tenth annual conference of the Australian Mining and Petroleum Association Limited — Regent Hotel (Milburn) (contact A Rosenthal — D.X. 104, Melbourne).

From Roll to Roll

Persons who have had their names removed from the Roll of Barristers to the Roll of Solicitors from Friday 20th September, 1985 to Friday, 1st November, 1985 inclusive:

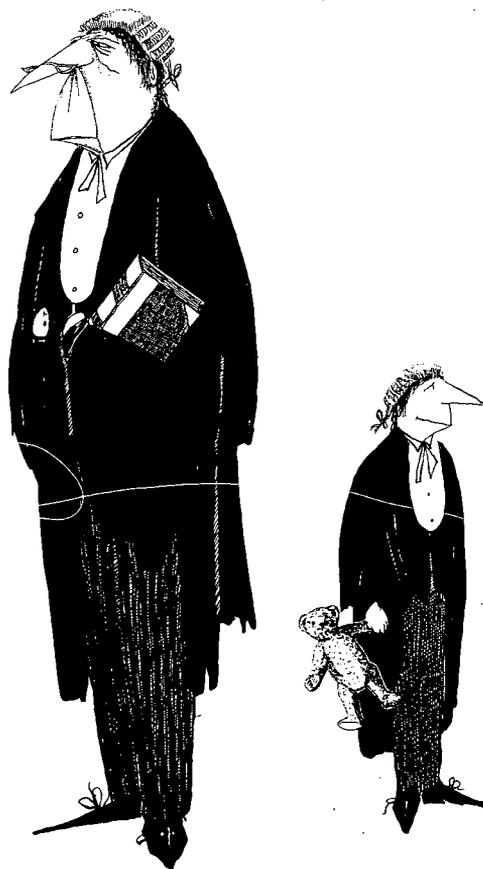
Friday, 20th September, 1985:

Anthony John Parkes
Michael Joseph Wilcox
Stephen Edward O'Connor
Henry Edward Moore
Peter John Kennedy
Patricia Mary Hutton
Henry Anthony Mierczak

Friday, 1st November, 1985

David Thomas Wilson
Peter George Robert Erman
Jeffrey James Hinde
Anthony Mineo
Howard Smith Charles
Bruce Edward Coyle
Philip Densham White
Gavin John Lawrie
Peter Denis McNamara
Roger Colin Ralston
Michael John Crowe
Ernest John Schmatt
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