The Appointment of Judges and their Return to the Bar

Address to the Second Biennial Conference of the Australian Bar Association by the Hon. Dame Roma Mitchell.

In 1970 the legal profession in England expressed something akin to horror at the resignation of Sir Henry Fisher from the High Court Bench to take an appointment in the City. The Solicitors' Journal reported it as causing "a shock"[1]. In a paragraph which appeared among Current Topics the Journal referred to the resignation and said:—

> "This seems to be without precedent, although in some ways parallel with Viscount Kilmuir's work after leaving the Woolsack. We cannot welcome the innovation. Head hunting, recruiting able men from other people's organizations, has become an established feature of industrial and commercial life, and there is little reason to object to it. However, if the Bench becomes part of the territory for the head hunters' safari, British justice will suffer in two ways. The best brains will be creamed off, reducing the quality of the Bench. Worse probably, after it became known that judges were likely to be in negotiation with big business concerns over their future employment, their reputation for absolute impartiality and integrity, which is as valuable as the impartiality and integrity themselves would suffer. It should not be too much for the country to ask that, in return for the invaluable constitutional guarantee of security in their appointments, High Court Judges should themselves refrain from resigning to take other jobs unless the circumstances are exceptional. The current salary of £11,500 is too low for High Court Judges, but it is unlikely that their salary will ever match what they might command elsewhere, and they must consider this when accepting their elevation."

The New Journal[2] took a much less stringent view of the situation. It said:—

> "Judges are men (a statement which causes me some dismay) and men change their careers for many reasons. Prominent among those reasons is the realization that the career they are in is not really for them — the belief that they would be happier and more effective elsewhere. If a High Court Judge feels that he is unsuited to the judicial way of life, surely it is better for the administration of justice, as well as for the individual concerned that he go. The fact that Mr. Justice Fisher has been on the Bench for only two years, and that he came to it (as all judges must) from the very different discipline of practice at the Bar, suggests an explanation that may adequately explain the motive for his decision. Perhaps he would have liked best to return to the Bar, if he could. But is it really his going or is it the particular destination that he has chosen that accounts for the indignation with which he is rebuked? If for example he had abandoned the Bench to become a Professor of Law (at a salary worth at the most only half of what he is getting now) would he have been told that his duty was to remain where he is? Such a contention is in our view ridiculous. A judge is entitled, like anyone else, to make his life where he honestly believes he can best be himself. The judicial oath is not an irrevocable vow. Nor is the City, even at £15,000 a year a choice that necessarily justifies attitudes of outrage that might be appropriate in the Headmistress of a Finishing School who hears that one of the most promising pupils has gone off to be a bunny girl."

The repercussions of Sir Henry's retirement were still felt in England when the Lords were debating the new Courts Bill in November 1970. Clause 16 of that Bill was in pari materia with section 6 of the County Courts Act 1959, the effect of which was that, for as long as he held the office of a judge a County Court judge could not practise as a barrister nor could he be directly or indirectly concerned in the practice of a solicitor. Clause 16 caught the eye of Lord Dilhorne and aroused his righteous indignation. His Lordship said:—

> "What I think is unprecedented and I myself think inexcusable is that someone who has accepted the appointment by Her Majesty as a judge should thereafter relinquish the appointment and take one in business. It should be clear, surely, to everyone at the Bar that if one accepts a judicial appointment, there are obligations attached to it; that one cannot return to the Bar and practise as a barrister and that, having embarked on a judicial career one is under a moral obligation to do the job and not to give it up in favour of one that appears more attractive."[3]

Lord Denning contributed to the debate upon this topic in the House of Lords. He said:—

> "Perhaps it is to be remembered that in this country alone, as far as I know, by a convention, a judge on his retirement does not return to the Bar or engage in legal work at all. In the United States, Canada and in many other countries it can be done and it is done. I venture to think that it is unsatisfactory because during his tenure a judge might have his eye too much on what he was going to do when he ceased to be a judge."[4]

Lord Dilhorne later returned to the attack and proposed an amendment to section 16 to limit the work that could be undertaken by a retired judge. His Lordship said that he did not want to prevent retired judges from acting as arbitrators or referees (work traditionally undertaken by retired judges here as well as in England) but he thought that they should not be otherwise employed. The Lord Chancellor, Lord Hailsham, opposed the amendment saying:—

> "We leave what he may do when he leaves office to the appropriate professional body. I think that it has been accepted since the 17th century that this return to the Bar is not proper for High Court judges and I should have thought the same to be true of County Court judges. Indeed I thought there was a ruling of the Bar Council, and probably of the Law Society, to the same effect."

In the result Lord Dilhorne withdrew his amendment.[5]

The question of High Court judges returning to the Bar had been raised in England in 1952 when two members of the High Court indicated that they found themselves unable to support their families upon their judicial incomes and that they wished to resign from the Court and return to the Bar. Dr. Shimon Shetreet in his work "Judges on Trial" says that their request to return to the Bar was refused.[6] Sir Winston Churchill, as Prime Minister, referred to the request in the House of Commons debate upon a Bill to increase judicial salaries which had not been increased for a century. The Prime Minister said:—

> "I heard two years ago that several judges had asked to return to the Bar, as is their right."[7]

Whether they had a right to do so or not they did not return to the Bar and presumably made do on their inadequate judicial salaries. Mr. Justice Legoe of the South Australian Supreme Court, who was a pupil at the Inner Temple at the time the alarming request was made, tells me that his Master was asked by a not very successful silk what he thought of the move and Chris's Master replied "Very good idea. It should be a precedent for a few silks to take stuff again."

Section 6 of the County Courts Act, to which I have referred, seems to state the obvious but it must be remembered that England used and still uses to some extent the Recorder as a part time judicial officer and so the roles of barrister and judge may be played by one person, though not at the same time but certainly throughout the same year.

However in some parts of the United States of America, even in comparatively recent times, full time judicial officers have claimed the right to practise law in their spare time. In *Bassi v. Langloss*[8] in 1961 the Supreme Court of Illinois, while it held that it was against public policy for an attorney to practise law during his tenure as a County Court judge, postponed the operative date of this new ruling until the time when judges elected at the next election would assume office. The reason given for the postponement was that the legislature would have an opportunity to recognise that henceforth County and Probate judges would be prohibited from practising law and that, if lawyers were to be attracted to the office, their salaries must be increased. The annotation which accompanies the report of *Bassi's* case contains some entertaining digests of cases in which the courts considered the involvement of such judges in matters arising in the courts to which they had been appointed. In one such case in 1949 the action of a judge in disqualifying himself from acting in the probate proceedings of a will and later appearing as counsel for one of the litigants in an action brought to interpret the will was held to be "highly improper".[9] In another matter the judge was held to have violated the provisions of a criminal statute making it illegal for a judge to practise law because he filled in blanks for executors, administrators and others interested in the settlement of estates of deceased persons. He advised interested persons as to the proper steps to be taken in administration of the estates.[10] In Australia we do seem to be spared the necessity of debating whether persons occupying judicial office can, while they occupy that office, undertake legal work.

In the passage from the House of Lords debates which I cited earlier Lord Denning suggested that England was the only country in which a judge on his retirement could not return to the Bar or engage in legal work. But in South Australia at least the prospect of him so doing was not treated with equanimity as far back as 1959. Sir George Ligertwood was the first South Australian Supreme Court Judge to be caught by a compulsory retiring age. When he left the Bench there were judges substantially older than he still occupying positions on the Bench. He was an active man with a keen intellect. He indicated that he intended to do some opinion work. The only professional body in South Australia at that time was the Law Society of South Australia of whose Council I was a member, the unofficial separate Bar not then having been established. The proposal of Sir George caused dismay within the Council. Consultations were held and resolutions were passed. However the matter faded away when Sir George was appointed a Royal Commissioner to inquire into taxation matters. This occupied him and defused the situation.

There was one other occasion when the Law Society of South Australia considered the matter. That was in the mid

1960's when a retiring Magistrate who had presided over the Adelaide Magistrate's Court announced his intention of setting up in practice to a limited extent. On that occasion an opinion was obtained from Dr. Bray Q.C. (as he then was) as to an appropriate rule of practice to prevent any former judicial officer from practising the law after retirement from the Bench but I believe that nothing further was done. In recent years several South Australian Magistrates have retired from the Magistracy long before reaching retirement age and have either returned to private practice or have taken appointments as legal officers. No objection to this course has been taken by the Bench or the profession generally. There has been no further case of a retired judge of the Supreme Court or any other South Australian Court returning to legal practice.

I do not know whether there were any problems in Victoria when Sir Reginald Sholl, who had taken early retirement from the Bench to take up a diplomatic position, subsequently returned to Melbourne and became a consultant to a firm of solicitors. My recollection is that he first intended to return to the Bar but later abandoned this in favour of acting as a consultant.

I am grateful to the Chairman of this Conference who checked for me and ascertained that I was correct in my understanding and that the Lord Chancellor now requires High Court judges, before their appointment, to give an undertaking that they will not return to the Bar upon retirement. I did not know that, apart from that undertaking, they forfeit their commissions as Queen's Counsel and their admission to the Bar. This is not the position anywhere else in Australia as far as I know. I understand that in Australia the commission as Queen's Counsel is dormant upon the appointment to a superior court but that the title Queen's Counsel reverts after retirement from the Bench. The name of the judge remains on the roll of barristers or the roll of legal practitioners as the case may be, notwithstanding elevation to the Bench.

There is a rule of ethics of the England Bar Council that Crown Court judges may not return to the Bar after retirement.[11] I have been informed by David Bennett that there is some concern in England that the rule may be unlawful under the monopolies legislation but that so far it has not been tested.

I do not believe that the Lord Chancellor required an undertaking not to return to the Bar to be given by about-to-be appointed High Court Judges at the time of the 1970 debate in the House of Lords to which I have referred. In the course of that debate Lord Hailsham said that he told intended judges that he regarded "their immovability by Parliament as one reason for treating the career as a permanent one and that they should approach the Bench with the enthusiasm of a bridegroom approaching marriage, or of a priest approaching priesthood."[12] Can it be that in the interim the impermanence of many marriages and the defection of some priests from the priesthood have convinced the Lord Chancellor that a more effective sanction is called for?

The rules of the New South Wales Bar Association provide:—

> "A barrister who is a former judicial officer (including a former Magistrate but excluding any acting juducial officer) shall not practise as a barrister in any court or before any officer exercising judicial or quasi judicial functions if he has been a member of or presided in such court or exercised such function."[13]

That rule has been observed by the two former superior court judges who have returned to the Bar in recent times. If a judge, upon retirement from the Bench, takes up practice as a solicitor he or she is not disabled from appearing in any court in which solicitors have a right of audience.

The main question for discussion on this topic is probably whether there should be a prohibition against the return to the Bar of former judges and, if so, whether the prohibition should be absolute or should be limited in any way. I have always felt that the acceptance of a judicial appointment should have, as a corollary, the final farewell to the Bar. But the task of writing this paper has necessitated an examination of the reasons behind such a conviction. I would still regard with distate the prospect of wholesale resignations from the Bench followed by the return of judges to the Bar but appreciate that my distaste, as Dr. Shetreet says in the work to which I have already refereed, "rests not so much upon reason and argument as upon a long established tradition" which tradition he says "has never been questioned."

Although it may not have been questioned in England it has now been questioned successfully in Australia. Highly qualified and well respected judges have resigned from a superior Court and have returned to the Bar. Certainly there are some impediments to their freedom to appear but those impediments are slight today when there are a multiplicity of courts in Australia. Are the restraints imposed by the New South Wales Bar Association adequate? To those who believe that elevation to the Bench should negative any possibility of return to the Bar they are not. If, however, the prohibition is not to be absolute are the restraints necessary and are they sufficient? A superior court is not likely to be affected in its judgment by the fact that one of the counsel appearing before it was formerly a member of the court. It is possible that, in demonstrating that the former status of the counsel does not affect his judgment, the judge may lean in the opposite direction. But is there a danger that the litigant not represented by the former judge would believe that he is prejudiced? If there is such a danger will it not exist whether the counsel was a

member of the same Bench or of a Bench of equal standing? Would such a belief be reasonable and should it weigh the scales against permitting a retired judge to return to the Bar? Is there not a greater danger in the former judge appearing before an inferior court? The danger may be twofold if one assumes that judges are venal. If the former judge in his judicial capacity has allowed appeals from the presiding judge his client may suffer a disservice but, if the position is reversed, the opposition may be disadvantaged or may believe itself to be disadvantaged. The reputation of the retired judge, now counsel, may unduly impress an inferior court, but I would be inclined to think that, by and large, the mere fact that a person has held judicial appointment is not likely to enhance his reputation above that of the well regarded counsel who has not at any time forsaken the Bar.

What of the judge who, after retirement, limits himself to giving opinions as counsel. Are those opinions likely to carry a weight disproportionate to their real value? Mr. Justice Jacobs of the Supreme Court of South Australia has informed me that during a short period in which Sir George Ligertwood did some opinion work Sam Jacobs, then a junior, obtained an opinion from him in a matter which was about to go to court. I assume from his story that he must have shown the opinion to his opposition because he says that the matter was promptly settled. However, as the leader on the other side was the late Sir Harry Alderman, a counsel not easily intimidated, both Sam and I doubt whether the fact that the opinion in Sam's favour which was given by a recently retired and revered judge was responsible for the settlement.

The fact that non-contributory pensions are paid to judges upon retirement after a stated number of years service seems to me to provide a good reason for discouraging judges from returning to the Bar. It would not add to the prestige of the profession if it became common for a judge to serve for ten years (which is the statutory time after which some judges receive pensions) then retire and resume a lucrative practice at the Bar. I have heard it suggested as an argument against permitting British High Court judges to return to the Bar that they could receive their automatic Knighthood upon appointment and, of course, retain it after retirement. That inducement to the taking of an appointment does not exist in Australia nor do I think that it is one that is likely to trouble us in the future. In Maryland U.S.A. a judge who retires and accepts a pension is enjoined by statute against practising the law "for compensation." In 1977 one Richard V. Waldron's term of office as a judge was not renewed, a judicial nominating commission having failed to recommend him because of his unsuitable "temperament and disposition with attorneys." He retired on a pension of $21,000 a year and went into private practise as a lawyer. He claimed that the statute prohibiting him from doing so was unconstitutional as violating his constitutional right to practise law. According to a newspaper article printed in October 1979 the question then remained unresolved.[14] The article suggested that a number of Maryland retired judges who had hitherto obeyed the injunction were eager to have the question of constitutionality tested. I do not think therefore that we can lightly disregard the possibility that retirement on a pension as soon as it is available and a return to the Bar may become an attraction to judges.

It is said that nowadays judges are appointed too young to the Bench and that to some of them the road ahead appears too long, too straight and too uninteresting. It is said that they are likely to become disillusioned and that we must expect a number of them to wish to return to the Bar. There are probably two main reasons for the appointment of judges to the Bench at earlier ages than was the custom hitherto. The first is that the compulsory retiring age means that some positions on the Bench become available earlier than would have otherwise been the case. The second is that there has in recent years been a proliferation of courts and quasi-judicial bodies and appointments to them. One cannot quarrel with the proposition in the article from the New Law Journal which I cited earlier that, if a judge feels that he is unsuited to the judicial way of life, it is better for the administration of justice as well as for him that he should leave the Bench. However I have not a great deal of sympathy for the person who leaves the Bench because he does not find it sufficiently stimulating nor am I impressed with the fact that judges appointed at an early age have to serve for many years if they serve until the statutory age of retirement. They know that when they take the appointment. A former Chief Justice of the Supreme Court of South Australia, Sir Mellis Napier, was aged 42 when he was appointed to that Bench. He later became its Chief Justice and served in all 42 years before he chose to retire. Presumably he was not one of those who was bored by life on the Bench, although I do believe that he became impatient of arguments which he felt he had heard hundreds of times. This is a problem which a long serving judge and those who appear before him have to face.

So far I have addressed myself to the question of the return by judges to the Bar. I turn now to the earlier question in the topic set for this session, namely the appointment of judges. In his foreword to Dr. Shetreet's Judges on Trial Lord Justice Scarman (as he then was) said:—

> "In the English practice of juducial appointment there is no systematized plan."

His Lordship concluded:—

> "It is better thus. Judicial appointments are not suitable work for a committee, where compromise is a virtue and mediocrity would be a likely consequence. They must not fall into the hands of the politician (or a group of politicians) — unless (bless the illogicality of it!) he happens to be the Lord Chancellor."

In 1972 the Justice Subcommittee on the Judiciary recommended that the Lord Chancellor should be assisted in his selection of judges by a small advisory committee on which should be representatives of The Law Society, the Bar, academic lawyers, the judiciary and perhaps the general public. The recommendation has not been adopted in England. From time to time in Australia one hears the argument that there should be an official body to recommend appointments to the judiciary. I shared Lord Scarman's doubts about the appropriateness of such a method. I, too, fear that there would be compromise and that it would not be the best method of selection. Nor do I think that the judges themselves should have the final say in the selection of a new member of a particular Bench. This might result in self-perpetuation and eventual stultification of the particular Bench. Nevertheless consultation both

with the Bench and with the Bar is surely desirable. In his paper "Judging the Judges" presented at the 20th Australian Legal Convention in 1979 Murray Gleeson Q.C. referred to the part played by the Attorney-General, whether State or Federal, in judicial appointments. He said:—

> "There does not seem to be any settled practice as to consultation and inquiry. Presumably a good deal of informal consultation goes on. It will rarely be the case that the responsible Attorney-General will have any detailed personal knowledge of the possible appointees. It is a defect in our system of appointing judges that there are no clearer and more widely-known procedures of consultation and inquiry in relation to judicial appointments. Notwithstanding that such procedures were left in the area of practice and convention, they would reinforce public confidence in the judiciary."[15]

So far as I know those remarks have fallen upon stony ground. It appears that the processes of consultation and the sources consulted vary from Attorney-General to Attorney-General. Certainly before an appointment to the High Court of Australia is made State cabinets are invited to suggest names of appropriate appointees but I do not believe that, in the case of other appointments, any process of consultation is disclosed. Questions for this conference are:—

(1) should there be a different method of selection of judges from that which exists at present and, if so, what method would be appropriate?
(2) in any event should there be consultation and, if so, with whom and should the method of consultation be made public?

There is also the question of the appropriate qualifications for the Bench. In those States of Australia in which the profession is divided it has in the past been thought appropriate to appoint to the Supreme Court only from the Bar and ordinarily from the Senior Bar. Where the profession has been fused the practice has been similar, in that it has been usual to appoint silks to the Supreme Court Bench. In this respect Australia has followed the English practice. However, as there have been exceptions in England, there have been exceptions in Australia. One of my contemporaries on the South Australian Supreme Court came to the Bench after a career first as a junior practitioner then a magistrate and subsequently Deputy Master and then Master of the court. The present Chief Justice of Tasmania took that office straight from the Magistrates' Bench. In neither case can it be said that the choice was wrong. One of the present incumbents of the Bench in South Australia had also been a Master before he became a judge and later Chief Judge of the Industrial Court. From this position he moved to the Supreme Court. A recently appointed puisne judge had not joined the unofficial Bar in South Australia before his appointment to the Bench and doubtless would have described himself as a solicitor, although in the years immediately preceding his appointment to the Bench he must have been required to give many opinions on important commercial matters.

In recent years there has been considerable discussion concerning the appointment of academic lawyers to the Bench. In Judges on Trial, to which I have already made reference, the learned author says:—

> "It is generally admitted that the academic lawyer is not qualified for appointment as a trial judge."[16]

This statement assumes that the academic lawyer has always been an academic and has had no other experience. Sir Richard Blackburn, who was Bonython Professor of Law at the University of Adelaide before he gave up that position to enter private practice, gives the lie to a blanket statement that academic lawyers are not appropriate to be trail judges. There is one former academic in the Family Court of Australia, in which the selection of judges has been from a wider spectrum of the profession than that thought appropriate for other superior courts, and South Australia has one former Professor of Law in the Local and District Criminal Court. Both these judges are required, on a daily basis, to deal with issues of fact. I have not heard that their academic experience has been too narrow to enable them to do so.

Sometimes it is suggested that it would be appropriate to appoint an outstanding academic to the appellate courts but to have academics bypass the trial courts. It seems to me however that, if a lawyer is not fit to preside over a trial, he or she is not fit to sit as an appellate judge. In every court (and this includes the High Court of Australia) there is a necessity for the judge to have some knowledge of how a trial is conducted and of problems which beset trial court including judge, counsel, litigants and witnesses.

Finally I address the difficult question of promotion of judges. Theoretically in Australia, as in England, there is no promotion for a judge. This is in contrast to the system which applies in France and most other European and many Asian countries in which a judicial career means that one starts in the lowest rank of judicial officer and aims to progress to the top rank. This latter system has been regarded both in England and Australia as likely to militate against true judicial independence which is more likely to be achieved where, in the words of Lord Scarman, "a judge does not come to the Bench looking for further promotion; judicial office is itself the apex of legal career."[17] But in practice there may be promotion after appointment to the Bench both in England or in Australia. Almost without exception judges of the Court of Appeal in England have come from the High Court and almost all Law Lords have been appointed from the Court of Appeal. The High Court of Australia consists of judges, all of whom were either members of other courts or law officers prior to appoint-

ment to the High Court. And would Australia benefit if it were otherwise? It is easier and less impertinent to draw upon the past rather than to comment upon the present in this connection. So I merely ask would it have been appropriate for Sir Owen Dixon to remain a judge of the Supreme Court of Victoria rather than to become eventually Chief Justice of the High Court of Australia?

If we assume that there will be progression by some judges to a higher court than that to which they are originally appointed and if we accept, as I do, that it is appropriate that this would be the case there remains the question whether there can be any safeguards to prevent the progression being by way of political favour and to ensure that it is upon merit alone and the further question how can the general public be made to understand that this is the position. In dealing with the second question first I refer to *Barton v. Walker*[18] in which one of the questions before the Court of Appeal was whether it might reasonably be suspected by fair-minded persons that the judge from whose order the appeal had been brought might not resolve the questions before him with a fair and unprejudiced mind. The allegation of bias arose from the fact that the judge in question had recently been appointed as Chief Judge of the Criminal Division of the Court and one of the litigants was the Attorney-Geneal. Samuels J.A. in whose reasons the other members of the court agreed said:—[19]

> "I do not consider that, in the circumstances presented by this material,' fair-minded persons might reasonable entertain the suspicion of prejudice which provides the standard to be applied. The Attorney-General's role in the matter, to the extent that it may be inferred, was imposed upon him by the nature of his office. The learned judge was bound as an officer of the judicial arm of government, to entertain (but not, of course, necessarily to accept) the offer of appointment, involving, as it did, the administration of justice in this State. Both of them were, therefore, acting in pursuance of public duties which they had to perform, notwithstanding that the Attorney-General was a party to proceedings before the judge.
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> .....
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> The appellants' point is that the suspicion generated (as they contend) by (the judge's) appointment would have been created, fundamentally, by the apprehension that the judge might favour the respondent out of gratitude for the benefit which the appointment represented. This argument has no rational foundation once it is apparent that the appointment was not the product of the respondent's own favour."

There is no ready answer to the first of my questions. It is not surprising if governments favour appointment to high office of persons whose philosophy appears to accord with their own, although one may wonder, without undue cynicism, whether an identical philosophy is espoused by all members of any government. That practice will be likely to be adopted in appointments to the highest judicial offices. Provided that the appointments are of persons whose capacity to fill the office equals that of others who might have been selected there can be, as it seems to me, no valid criticism of the selections. For the rest I think that we must rely upon the tradition of impartiality of judges mentioned by Samuels J.A., a tradition which should be nurtured in possible future appointees to the Bench from their law school days onwards.

1. The Solicitors' Journal Vol. 114 No. 32 7th August 1980. p. 593.
2. August 13th 1970 pp. 746-747.
3. 312 H.L. Deb. 1288 (19th November 1970).
4. ibid 1303.
5. 313 H.L. Deb. 733-734 (3rd December 1970).
6. p. 374.
7. 525 H.C. Deb. 1063 (23rd March 1954)
8. 89 A.L.R. 2d 881.
9. *Tucker v Myers Estate* (1949) 151 Neb. 359.
10. *Wheat v. Hilkey* (1938) 148 Kan. 60.
11. see W.W. Boulton note 30 at 34; A.S. 1963 at 28.
12. 312 H.L. Deb. 1314 (19th November 1970).
13. rule 7.
14. 1979 The Washington Post (12th October 1979)
15. 53 A.L.J. at 339.
16. p. 58.
17. Scarman, The English Judge 30 Mod. Rev. 1 at 3 (1967)
18. (1959) 2 N.S.W.L.R. 740.
19. at pp. 757-758

Moments Like These . . .

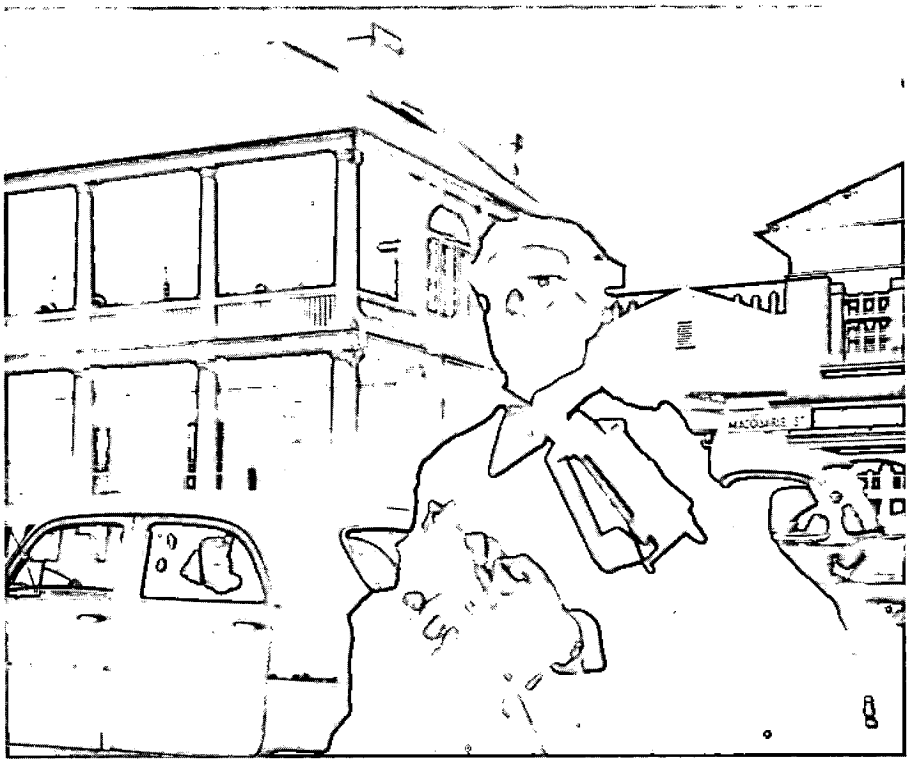
A well-known criminal named Seeley was being tried at Newcastle Quarter Sessions before Judge Cross and a jury of twelve on a charge of break, enter and steal. Two detectives from Sydney, Detectives X and Y, gave evidence that in an interview between them and Seeley, Seeley had made a verbal confession. Seeley made an unsworn statement from the dock. In the course of his statement Seeley said:

> "What Detectives X and Y said in their evidence was not true. It is the fact that they were interviewing me in the Newcastle Police Station and on that occasion what occurred was as follows. Some footsteps were heard outside the window of the room in which they were interviewing me and the local sergeant of police, Sergeant A, walked past the window. Detective X said to Detective Y, "Who is that?" Detective Y said: "That is the village idiot."
>
> Sergeant A then opened the door and said to Detectives X and Y: "What are you doing?"
>
> Detective X said: "We are in here putting a verbal on Seeley."
>
> Sergeant A said: "You had better watch out. Cross does not like verbals."
>
> Detective X said: "We don't care about Cross. We're only interested in the twelve idiots on the jury."

Seely was acquitted.

Barristers in Macquarie Street April 1965

C.A. Evatt and C.R. Evatt, Q.C. (dec'd)



Judge Herron, Q.C.