

Abandon all hope . . .

Ever-mindful, no doubt, of the development of the law concerning misleading and deceptive conduct concerning individuals (see now Fair Trading Act, 1987) Lord Redesdale, in 1827, penned a disarmingly frank introduction to the Third Edition of his *Treatise on the Pleadings in suits in the Court of Chancery by English Bill*.

PREFACE TO THE THIRD EDITION.

“The materials from which the first edition of this Treatise was compiled were not very ample or satisfactory; consisting, principally, either of mere books of practice, or of reports of cases, generally short, and in some instance manifestly incorrect and inconsistent; and the author had had little experience to enable him to supply the deficiencies of those materials. The communication of information, and the assistance of experience, were earnestly solicited by the preface to that edition, but with little effect. Four-and-thirty years have since elapsed; and when, at the distance of seven years from the first publication, the second edition was prepared for the press, such observations as had occurred to the author in practice, and such notes as he had collected, were the principal means of improvement which he possessed; and he was then too much engaged in business to give that attention to the subject which it required. Nearly eight-and-twenty years have since passed; and many volumes of reports have been published, and some treatises have appeared (particularly those by Mr. Fonblanque and Mr. Cooper), from which much assistance might have been derived. During the greater part of this period the author was not only unwilling to engage in the labour of preparing a new edition, but disabled, by various avocations, from attempting to make any important additions. Long absence from the bar, the consequent want of the habits of practice, age, the enjoyment of repose, and the indolence which that enjoyment too often produces, have increased his unwillingness to undertake a work of labour; and that which is now offered is little more than a republication of the second edition, with references to some cases since reported; a few additional notes of cases not reported; some corrections of apparent errors; and some extension of parts which appeared to have been most imperfectly treated in the former editions. It is therefore far from satisfactory to himself; and would not have been now given, if he had not been assured that even a republication of the last edition, with all its imperfections, was desired by the Profession.”

Squelch

“I confess that my mind fluctuated one way and then the other during the course of the argument upon this separate trial and to having changed my view once more after I had reserved my decision. However, counsel should not too readily accept that confession as demonstrating their powers of advocacy, as the different views which I formed were in each case against the argument of counsel who was then addressing me.”
(Hunt J, *Glenwood Trading Corp. Pty Ltd v Magnani & Wife Pty Ltd & ors*, 6 October 1987) □

Building and Engineering

The renovations to the foyers of Wentworth and Selborne Chambers have evoked a strong response from the Bar (see under).

It is hoped that one day the functioning of the lift system will reflect the magnificence of its surrounds. At the moment the light indicators work on only one lift in Wentworth, while the doors on at least one other won't operate until they have executed a number of shuddering spasms which cause more nervous occupants to exit hastily. The best trick, however, is for the lift to refuse to close its doors or move at all, defying all attempts to prompt it into action by the usual methods (pressing destination buttons, waving arms across the light beams regulating the doors, jumping up and down etc). The moment the despairing would-be travellers exit to seek another lift, the doors slam shut and it (apparently) departs! Not what is needed when you're trying to get to Court on time. Which leads us to the Supreme Court lifts . . . another story reserved for another day, although it is noted, in passing, that on occasions they defy Newton's Law of Gravity - they all go up, but never come down, especially trying when you're trying to juggle a few Friday applications and motions.

The Foyer Revisited - Wentworth and Selborne

Although the Necropolis School, evident in these renovations, is a recent movement in architecture it owes its inspiration to sources as diverse as the pyramids of the Pharaohs, and Dr. Geoffrey Edelsten.

Features of this school of design include the curiously shaped and apparently irrelevant light fittings and lift indicators, the latter irrelevant because, of course, the lifts so rarely go places. It is not clear whether the architect welcomed the decision to include those quaint plastic plant boxes in his new scheme - the contrast with the marble walls is an interesting one.

For those who ask, on entering these portals, “whose tomb is this?”, the answer must echo “the unknown barrister”, of course, who else?

Some have apparently questioned whether the spending of such a large sum of money was justified, but marble is an expensive material. Was it then Alan Bond who coined the phrase “who says you can't buy good taste?” □

Lawyer Foyer

The rumours abound,
They've spread around
The humble and the well-born;
If you want a treat
Come to Phillip Street -
Stop at Wentworth or at Selborne.

For there you'll see
(the vista's free!)
A spectacle most stunning;
As you just look right at
The awesome sight that
Is the product of some architect's cunning.

Well, I guess that the Lord
Spake with some on the Board,
And said "Tart up the front of your building";
And the Board Said "That's funny -
Let's expend some money -
to give the old lily a gilding".

"It's the ideal foyer
For any lawyer" -
One can hear the Board's resolution;
"Now, shareholder, you'll
Have your own vestibule,
'Cos it's financed by your contribution".

You might well criticise -
"He's got failing eyes", or
"He's nothing but a cynic";
And "How would he know
A Brereton Casino,
From an Edelsten Medical Clinic?"

There are many, I guess,
Whom it will impress,
And I suppose that's better by far;
For it's epitomised
What's oft criticised -
The bold front - of those at the Bar!

"L.D"

Cross Purposes

The following forensic clashes come out of the one case (Toolin v. Electrical Installations Pty. Limited) which was heard before Grove J. and a jury of four on 11th December, 1987 and following. Cummins Q.C. appeared for the plaintiff, McAlary Q.C. appeared for the defendant and Shand Q.C. appeared for the cross-defendant.

The plaintiff claimed damages for personal injury which resulted in significant brain damage. A jury of four was requisitioned and heard the case.

Dr. FW. Wright-Short, psychiatrist, was qualified to give evidence for the plaintiff and he did. One of the heads of damage claimed was loss of memory. Shand took up the cudgels on that aspect of the claim and the transcript records the following (with the barest of editorial licence):

"Q: It is correct, is it not, that so far as your first report is concerned it contains no complaint by him as to defective memory?

A: Does it not?

Q: One of the things you would expect him to recognise would be a defective memory, would you not, as part of his insight?

A: He told me about that on the second occasion and it was probably because of his defective memory he forgot to tell me about it the first time."

It should be noted, in fairness to Shand Q.C., that he was more than equal to the occasion and responded with

one or two forensic body blows to the good doctor and more than recovered the initiative.

Then McAlary gave us an insight into his appreciation of the sophistication of modern juries, and the depth of their education. He cross-examined Anna Tesoriero, psychologist, and at one point took issue with her reasoning; he was attempting to have the witness admit that the basis for her conclusion that the plaintiff suffered an alcohol and drug problem as a result of brain damage was simply no alcohol or drugs before accident, but alcohol and drugs after the accident. Again, with the barest editorial licence the cross-examination proceeded:-

"Q: And who had had no relationship to drug or alcohol consumption before the accident but had had it afterwards.

That was your history wasn't it?

A: Yes.

Q: And prima facie therefore the assumption is *post hoc ergo propter hoc* . . .

Mr. Cummins: I do not know if the jury understand.

Mr. McAlary: Q: I am sure they do.

A: Yes, well - "

No doubt with his usual perspicacity, McAlary had somehow divined that they were all old St. Ignatians! □
John Maconachie

That Sinking Feeling

At a recent inquest at Wilcannia, counsel cross examining a witness with less than perfect recall was suggesting that she would remember significant events. When she seemed confused he continued:

"BUCHANAN: Well . . . if you had never been a sky diver and you fell out of a plane once, isn't it likely that you'd recall that for the rest of your life?

(Aside, MATER)
But not for long."

Vignette

Des Kennedy (cross-examing Plaintiff with left homonomous hemianopia [loss of vision on the left side])

"Looking straight at me witness, are you able to discern that I have at least the appearance of a barrister?"

McInerney J: "That's a dangerous question. Do you really want him to answer it?" □