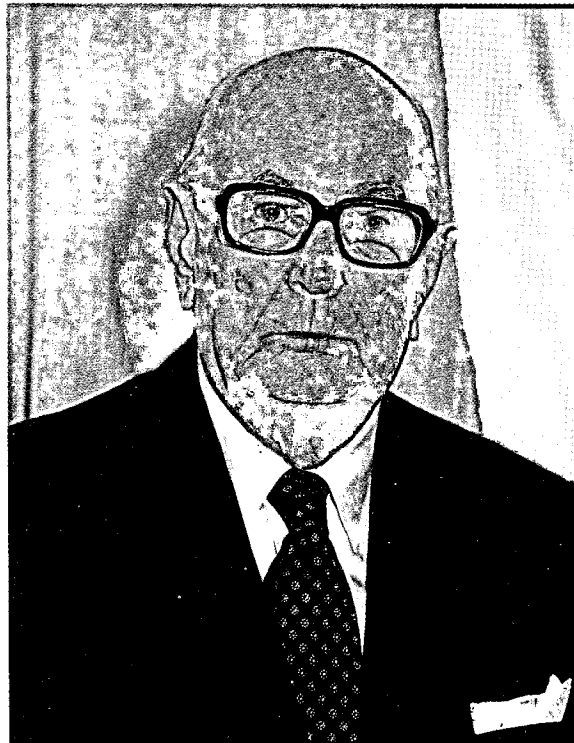


The Hon Kenneth Asprey CMG Q.C.

The death of The Hon Kenneth Asprey, CMG, QC on 28 October last at the advanced age of 88 was a final, sad severance of the Bar's association with one of the great characters, forensic and judicial, of the era in which he lived and flourished in our midst.

For many reasons, he was an altogether remarkable man. It is seldom that the qualities of accomplished lawyer and powerful advocate are united in one person in such full measure. Had he not chosen the Bar as a career after first having practised as a solicitor, his thespian qualities would certainly have enabled him to be an outstanding actor. But his penchant for playing a role was not just ostentation; it was the gift of a man who exerted himself to the utmost in the task of representing his client. He was able to combine a powerful manner with a commanding voice in the exercise of the art of ridicule - one of his favourite weapons in cross-examination. This is not to say that he lacked attention to the more humdrum tasks of an advocate: his work was always painstaking and thorough, save an aversion at times to writing opinions and drafting pleadings. Paper-work briefs travelled many miles between chambers and home without being opened. One of his secretaries, the formidable Mrs Cole, was greatly skilled in the art of placating expectant and impatient solicitors.

He was a good and careful teacher. I had the privilege of being his pupil in 1949-1950. He taught me much, for which I shall ever be grateful. Being his pupil was fun; there was never a dull moment. Occasionally he meted out impossible tasks: I remember that on one occasion he sent me up to the court of Roper CJ in Eq to seek an ex parte injunction to restrain the infringement of an industrial design; he did not seem surprised when I came back empty-handed. A vivid recollection of my time with him was of a junior brief for the defendant in a particularly difficult malicious prosecution action. The case went for some days and we worked with intense energy far into several nights in an attempt to prop our client's cause, but to no avail. But he taught me the importance of planning a cross-examination: to construct, if possible, a beginning, a middle and an end.



Sir Anthony Mason, in an eloquent tribute recently published in the *Sydney Morning Herald*, said that F E Smith KC was Asprey's role model. I would add that he also had a profound admiration for the Chief Justice's uncle, the late H H Mason KC, about whose performances as an advocate he enjoyed telling stories. Asprey was an entertaining raconteur, whose accounts of his own forensic feats never lost anything in the telling, except perhaps a little bit of accuracy.

That Asprey was not just a talented show pony with gusto of manner was always apparent to those who knew him and worked with him. His performance as a judge demonstrated the error of those very few critics who thought that his great style covered a lack of essential substance. After talking silk in 1952, he was appointed to the Supreme Court in 1963 and to the Court of Appeal in 1966. He was a model of exemplary judicial behaviour, partly because he consciously set about acting the part of a judge, confounding those who, because of his strength as an advocate, doubted his aptitude for judicial work. Unlike some great advocates who ascend to the Bench, he became a great judge.

In 1967-1968 he sat as one of the Royal Commissioners in the Second Voyager Inquiry. He was Chairman of the Commonwealth Taxation Review Committee, which did its work in 1972-1975. He was made a Companion of the Order of St Michael and St George in 1977.

Let me now tell you a short story about him. At a Bar party many years ago one of his colleagues ventured the remark: "We are an odd looking lot, aren't we Ken?" From his great height he looked around the room and said "Yes, aren't they!" His self-exclusion was correct.

In his career as counsel Asprey epitomised those qualities of intellectual rigour and rugged individualism which are the *raison d'être* of an independent Bar. The political and other minnows who are bent upon turning the Bar into an industry rather than a profession would do well to remember that traditions continued by men such as Ken Asprey may not endure if such nihilism prevails. □

T E F Hughes A.O., Q.C.