

Queen's Counsel

Dear Editor,

I refer to the brief historical review of the origins of Queen's Counsel in New South Wales (*Bar News* 1993 Edition, 9). In my paper "Of Silks and Serjeants", (1978) 52 ALJ 264 at 270-271, I wrote of the difficulties that stood in the way of giving an authoritative answer to the question "Who was our first QC?" at the time of compiling *A History of the New South Wales Bar* (1969). I referred to my later discovery, by pure serendipity, of an unlikely but nevertheless official record that enabled the question to be answered definitively, and I set out a list of our first 22 silks (appointed between 1856 and 1889). At the head of the list was John Hubert Plunkett: his commission was dated 6 June 1856, though the Executive Council appointment was earlier. The contemporary, but unofficial, source, which claimed that Darvall had taken silk in 1853, was wrong.

The silk gown supposedly given to W C Wentworth as a mark of esteem, was mentioned thus in the *Sydney Gazette* of 12 February 1835 (p. 2): "We understand that Mr Wentworth will be presented with a silk gown, and something equivalent to a 'patent of precedence' at the Australian bar, on the first day of the ensuing term." The "something equivalent" was, presumably, a document, but it could not literally have been a patent of precedence (not "precedent" as your typesetter put it) for that amounted to letters patent of the Crown. Such patents had not always given an assured right of precedence and, at times, the courts had been somewhat coy about yielding their discretion in these matters to the Crown (Renton (ed.), *Encyclopaedia of the Laws of England*, Vol 10 (London, 1898), "Precedence, Patent of", at p. 296). The Supreme Court in Sydney was similarly touchy in its early years about attempts by the Crown to obtrude upon precedence questions. I mention such a case (that of Foster) in my *History of Solicitors in New South Wales* (Sydney, 1984), at p. 50.

The action of the "Australian Bar" in 1835 does, however, provide a pertinent "precedent" in the 1990s, though it is regrettable that resort should have had to be made to it. If one of the first acts of Responsible Government in New South Wales in 1856 was to commission Queen's Counsel, it is, surely, a mark of irresponsible government that so significant and useful a distinction and tradition should now be abrogated unilaterally.

Victims of Crime

Dear Editor,

It is a matter of regret that humour is still being sought and had in our professional ranks from the terror being experienced by victims of crime, retailed in court evidence.

I refer to "Observant!", p. 56 of the 1993 Summer Edition.

Christopher Ryan, Barrister, Canberra City

Cases!

Dear Editor,

I was interested to read the comments made by Sir Anthony Mason as reported in the *Sydney Morning Herald* on Wednesday, 16 March 1994:-

"It is no longer feasible for courts to decide cases by reference to obsolete or unsound rules which result in injustice and await future reform at the hands of the legislature. Nothing is more likely to bring about an erosion of public confidence in the administration of justice than the continued adherence by the courts to rules and doctrines which are unsound and lead to unjust outcomes."

I was reminded of a case in which I was involved in the early-1960s when Mr Mason (as he then was) was citing cases to the Chief Judge in Equity, Mr Justice (Charles) McLelland. The following exchange occurred:-

His Honour: "Mr Mason, you know that I am not interested in cases."

Mr Mason: "I have noticed that deplorable tendency on your Honour's part."

Peter Scammel
Henry Davis York

Digging Deeper

Dear Editor,

The referee quoted on p. 42 of *Bar News* 1993 Edition managed to uncover a 1554 expert witness by using a plough. Had he dug deeper he probably would have unearthed the real first specimen, namely the 1313 expert on fishing nets. A gentler successful approach might have been to dig into the literature, thus exhuming only a limb, namely L Hand, "Historical and practical considerations regarding expert testimony" (1901) 15 Harvard L Rev 40 at 42.2.

George Humphrey

Boating

Dear Editor

I have plagiarised D T Kennedy's ideas and manner of expressing them in that a report of the Great Bar Boat Race of 1992 was published in your magazine under my name when all the original work was that of Des.

I take this opportunity to acknowledge my guilt in this matter and to tender to Mr Kennedy an abject apology.

Damages are to be assessed by an arbitrator yet to be appointed.

D A Wheelahan QC

PS Publication of this letter will mean that Des and I have made up.