

# Young Bullfry and the Fox:

## A reminiscence of appearing with M S Jacobs QC (1930 – 2017)

'You have a new nickname' young Bullfry's close colleague had said, over a cup of tea, many years before. Adjusting his Wits tie, he leant forward conspiratorially, and intoned softly: 'Seun van die jakkals'.

'If that means what I think it does, it is high praise indeed! I have always enjoyed appearing with him', said Bullfry.

How many cases had they worked on together? At the very beginning, when things had sometimes gone awry with the evidence, Bullfry had always been impressed by the studied calm of his learned leader.

'Paragraphs 8 to 26 are struck out.'

'May it please your Lordship. Might we have leave to file a further supplementary affidavit in support by tomorrow?'

The endless hours in chambers, day and night, weekday and weekend, working, and reworking submissions. The endless cups of tea, of every type and description. The constant recourse to the authorities which lined the walls of the room.

And then in court, the imperturbable countenance, the ingratiating smile, the deep sonorous voice, as his leader moved forward relentlessly, sometimes crab-wise, to his forensic objective. The ability to withstand the annoyance, and vexation of any arbitrator, or jurist – the polite indifference to indications that matters were taking too long, or the cross-examination was misdirected – the fixed determination to ensure that nothing was left undone which might benefit the client.

One matter involved allegations of vast chicanery, the alleged theft of very valuable intellectual property, the purloining of an important formula – the cross-examination of the key scientific officer for the defendant company went on for days to the ever-increasing vexation of the arbitrator, questions dropping as water falls on a stone, the seemingly never-ending interrogation directed to the basic work books said to underly the 'discovery' of the formula until – suddenly – just after the morning tea adjournment: 'Please, please stop, Mr Jacobs. I did steal the information, I admit it, I admit it'.

In another, against the cream of the Victorian Bar (two old advocates going toe-to-toe) he adroitly moved the situs of the arbitration which threatened the very survival of a na-

tional carrier from New Zealand to a small atoll far out in the Pacific where by some stratagem the matter came to be adjudicated, happily for our client, before its Chief Justice. Because of some misadventure with the luggage, he appeared at the first day of the hearing wearing informal attire including his walking shoes but he was unfazed by this as he was by almost every forensic mishap.

The first Mrs Bullfry had complained about Bullfry's extended absence from pressing domestic duties, sojourning at a luxury hotel in the South Pacific – in truth, for the four days the matter lasted, young Bullfry did not leave the hotel except to attend the offices of the local solicitor – RL Stevenson's grave remained unvisited.

The case of the failed swimming pools; and the certainty, over time, of the 'skin' on the bottom of each peeling off as it reacted with the chlorine in the water; the initial denial of manufacturer's liability – and the ultimate damning concession, extracted after several days of unrelenting chemical analysis, that the whole lining product was 'boiling up like a witch's brew in the drum' before its damaging application.

The titanic battle in the Full Federal Court, (on remitter from Gaudron J) improbably seeking prohibition under section 75(v) on behalf of a justly maligned builder, years after the initial decision of the Federal Court judge in favour of the ACCC – Jacobs QC 'on remote' on the difficult constitutional point, saying to the Chief Justice, without embarrassment, 'I hope you can all hear what my learned junior is saying to me'.

He had arrived in Sydney in his late fifties, from East London in the Cape, as matters became increasingly uneasy there. His grandfather, so he told me, had fled Russia, and made his living selling ostrich feathers, and other things, as accoutrements for hats. He was an accomplished pilot. As he became more established in practice in Sydney, he devoted part of his time to writing, and produced a text on compulsory acquisition, on security for payments, and a multi-volume work on commercial arbitration. Each was a testament to his tremendous industry, and love of his profession.

CP Snow has a barrister-character who says about silk: 'No-one is a hero to his jun-

iors'. But that is not true. A long and bitter court case requires a large mental effort but matters of morale are also vital. It is for this reason that 'teams' develop at the Bar. In a *Tale of Two Cities*, Dickens describes the sympathetic relationship between Stryver QC (the Lion) and Sydney Carton (the Jackal). They complement the skills and supplement the deficiencies of each other other. That was our relationship exactly.

Counsel will frequently choose to work closely and constantly with the same companions. (The suggestion that this natural selection by clubbability has a chilling effect on various cohorts of the Bar is not wide of the mark but it is hard to see what can be done about it – clubbability cannot be enforced). On many Floors, as well, it is everyone's mutual interest to keep as many briefs as possible 'in-house'. To be successful, a Floor needs both a competency of leaders so that work may flow 'down' and a band of keen juniors so that work may flow 'up' as the difficulty of the forensic quest (and thus the need for more senior counsel) becomes apparent as the matter unfolds.

It is always a delicate matter when to sever the tie – in order to become a competent, stand-alone counsel, at some stage the fledgling must forego the comfort of working only with the same leader and head out into the darkness. This may well mean a large drop in income, and the need to find new solicitors. On the other hand, too long with the same leader may well mean that when the latter takes a judicial post, or otherwise alters practice, the permanent junior is left high and dry. There is no answer to this dilemma.

In the end, our own relationship slowly atrophied as more and more matters came in which required an experienced junior alone to fight the fight. I always thought of him fondly and sought him out – he was not a man who gave his acquaintance or friendship easily, but once given it was steadfast.

How best to sum up – CP Snow puts it well in *Time of Hope*:

'[His] mind was muddy, but he was a more effective lawyer than men far cleverer, because he was tricky and resilient, because he was expansive with all men, because nothing restrained his emotions, and because he had a simple, humble, tenacious love for his job.'