

# A reflection on Mr Justice Cross

By John Maconachie

**R**F Cross was an interesting man; I was privileged to be his associate for a short time when he was on the District Court. It was 1969, I think.

He had come to sit in Sydney after some years serving on country circuits. War service as a fighter pilot in Europe, where he had been shot down I believe, left him with a number of ailments including a dicky heart.

I think he was pressed to come back to sit in the city by his wife, because of his health concerns which, even in the few months I worked for him, were quite evident.

But, sadly for me, he determined to return to full time circuit work; my services were transferred to another judge. I am not sure if his return to the bush was by reason of the effect I had upon him, a miraculous return to robust good health, or his detestation of the 'foetid air and grit of the dusty dirty' city.

In any event, return to circuit work he did.

He had a wonderful command of the English language, and while he could be a stern and demanding judge, he also had a lively sense of humour.

He left the District Court in 1978 and spent some years on the Supreme Court. I believe he left Australia in his later years and died in Canada well into his 80s.

He was a relatively tall, spare man, given to wearing morning dress and a Homburg hat when I worked for him.

In the late 60s and early 70s several District Court judges had chambers on the ground floor of the Old Barracks Building at Queens Square.

In the forecourt, not inappropriately some thought, was a tall, mature and quite attractive palm tree: those cynics obviously had in mind that the Industrial Commission shared the building, and the judges of that tribunal occupied a part of the rear of the building.

But on reflection, Judge McKillop (a.k.a. 'the old Shearer') had chambers, and sat in a courtroom, towards the rear of the building as well. He was then an old man; rather short, he was also stooped, and when sitting in court on a quite elevated bench



he used a writing slope/lectern affair onto which he was in the habit of resting his forehead on his arms. He was also somewhat taciturn. That combination of characteristics could mislead.

J.P. Slattery, later Mr Justice Slattery of the Supreme Court, was once misled: appearing in front of the old Shearer he made what he thought was a devastating point in cross-examination, worthy he thought of the making of a note ... at least the making of the note; but from the Bench there was not so much as a flicker of movement. The judicial head was in quiet repose.

Slattery paused: he glanced at his opponent – *he* was rather encouraged by the absence of a response, and could not restrain a smirk.

Mildly irritated, Slattery remarked, 'He's asleep; the old bastard's asleep!'

'Not quite, Mr Slattery,' rebuked Judge McKillop. 'Please go on.'

But I digress.

Judge R F Cross had chambers towards the front of the Old Barracks Building, and commonly sat in number 27 court, immediately across the corridor which divided the building.

The court transcription service was provided by extremely competent shorthand writers who rotated through the day, resulting in a daily transcript which was available, incredibly, at about 6:30 p.m. each night from a box located, variously, at the Goodsell building which was then on the corner of Phillip and

Hunter streets, and at the FAI building in Macquarie street.

Many judges had their favourite court reporters; or perhaps it was that many court reporters had their favourite judges, I don't recall quite which. And there was at least one District Court judge who couldn't get a female court reporter to go anywhere near his courtroom, but that's another story.

Molly Cavanagh was a delightful, open faced, absolutely gorgeous Irish Australian middle-aged lady who frequently worked in Judge Cross's courtroom. He was habitually courteous, almost to the point of gallantry, to female court reporters, and I think Molly liked that. She was unpretentiously very ladylike.

For all of her charms and feminine graces, Molly was not the fastest shorthand writer albeit she was very competent.

As the judge's associate I sat in front of the judge and Molly, the court reporter, sat immediately to my left, and close to the witness box. I was well-placed to see how, from time to time, if counsel or witnesses spoke too quickly she might become a little stressed, and I could raise my hand as a signal to the judge that the pace of delivery of the evidence would have to be reduced somewhat.

But I had no signal for difficulties created by complex words, or at least words too complex for Molly.

They were days when motor vehicle property damage claims were heard in the District Court; even if such matters were defended they would rarely run for more than a couple of hours at most.

Judge Cross heard one such action on a day when Molly Cavanagh was writing for him; the evidence finished shortly after the morning tea adjournment, and the submissions were economical. No rotation of reporters was required.

The judge entered upon an *ex tempore* judgment.

It was plain to me that he wanted to dispose of the case before 1 p.m. and repair to the Common Room lunch room then maintained by the Bar Association

in the basement of Selborne Wentworth, as he sometimes did. Accordingly, he was speaking at a fair clip, but not such as to cause a problem for most court reporters.

I cannot pretend to remember, verbatim, how Judge Cross expressed himself, but I am certain that what follows is a pretty faithful reconstruction.

He commenced by observing that the matter involved a collision between motor vehicles at such and such an intersection, and that the court was required to deliberate upon a factual matrix (*at the delivery of these words by the judge I discerned a modest discomfort in Molly*) that was developed by a forensic patina (*a barely discernible, but nonetheless audible to me, squeal emitted*

*from Molly's tightly clenched teeth*) informed almost entirely by the viva voce evidence of the dramatis personae (*the squeal became somewhat more discernible, and Molly shifted noticeably in her seat*), and largely without the assistance of the usual objective indicia provided by the detritus, et cetera of collision (*a guttural groan came from Molly; I could see that she looked quite distressed*).

The judge paused for a moment, as if to gather his thoughts, Molly's relief was almost palpable.

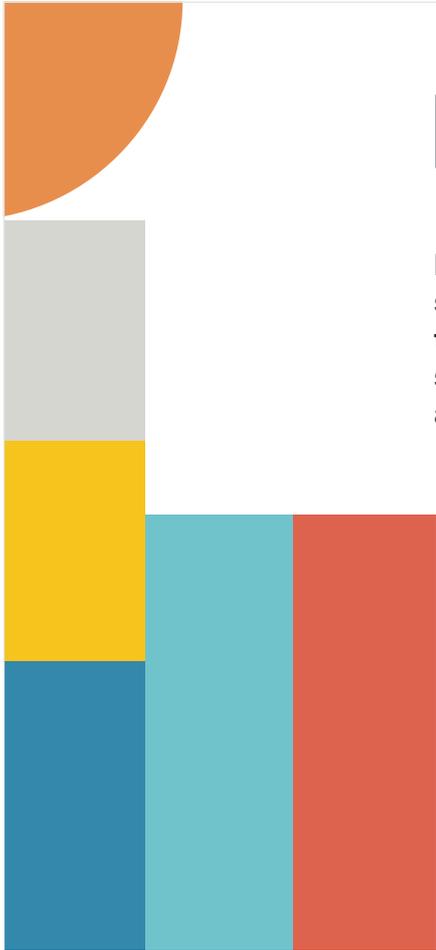
The judge continued – 'Parenthetically, may I say.....'

That was too much for Molly – she rose to a half stand, let out a squeal, and then exclaimed 'Oh, shit!'

I have a great deal of difficulty remembering quite what happened thereafter; I do remember that it took every ounce of my self-control to avoid falling to the floor and bursting forth in peals of laughter.

My best recollection is that the judge realised that he was asking a lot more of Molly than Molly had to give. I suspect, rather than recall, that he slowed down, used significantly simpler words, and brought Molly to the end of her torment, and him to his lunch at the Common Room, sooner rather than later.

But it is an incident in my life in the law that I will never forget. **BN**



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