Of Prefaces Forewards and Dedications

Like jewellery they tell us something at a glance, commonly they are unimaginative, some are modest, others are outrageous; the best are those which arouse interest, in the subject addressed.

Spencer Bower said of a Preface:—

> "It has been insisted by a courtly writer of the eighteenth century that a preface to a book is, in all case, a seemly concession to the ceremonial conventions and amenities, if not to the decencies, of literature. 'A preface', he observes, 'is part of the habit of a book, and no author can appear full dressed without it'.
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> The convention referred to can no longer claim the universal allegiance it enjoyed in the days of Queen Anne; but it is still true to say that a preface is expected from any work which aspires to deal with a scientific or serious subject. An explanation of this demand, conceived in a spirit of sardonic gloom and somewhat overdone modesty, is given by the late Sir Leslie Stephen, when introducing to the world his Science of Ethics: 'a preface is generally the most interesting, and not seldom the only interesting, part of the book. It is useful to the hasty critic who wishes to avoid the trouble of reading at all, and to the more serious student who wishes to have the clue to the author's speculations put into his hands at the earliest possible period.' This deliverance sounds a rather harsh note, and seems gratuitously churlish to the prospective critic. The author who was accustomed to describe the lector benevolus as "that beast, the general reader," did not do so in a preface." (*The Law of Actionable Misrepresentation,* George Spencer Bower)

In May 1860 Bullen & Leake commended to their colleagues their precedents of pleading which Sir Frank Kitto later described as "that noble ornament the system of pleading that shines in third edition . . ." with these words:—

> ". . . it is now presented to the profession with sincere diffidence, but with a hope that it may serve in some degree to supply the existing want".

(In his Foreward to the First Edition of *Equity Doctrines and Remedies* Meagher, Gummow & Lehane)

No such modesty had inhibited W.R. Cole in November 1856 whose great work on Ejectment is prefaced:—

> "The Common Law Procedure Acts of 1852 and 1854, and the New Rules, have rendered all previous Treatises of Ejectment of little or no value.
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> Having practised as a Common Law Barrister and Conveyancer for eighteen years, I hope I may, without presumption, venture to offer to the Professional a New Treatise of Ejectment, &c. I have taken great pains to render it as complete and accurate as possible. As a general rule no case is cited at second-hand, or with reference only to the Marginal Note; but I have read and maturely considered every case and authority cited, with few exceptions."

I suppose every set of Chambers has such a member but rarely does history vindicate their self confidence.

A rather different attitude may be discovered in some Australian practice and text books. R.G. Walker announced his Forms and Precedents for use in the Supreme Court of New South Wales:—

> "I express the fervent hope that the publication of this work will in no way result in the practice of law being considered a matter lightly to be enterprised by the unqualified.
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> Nevertheless, I express my regret — not so profound, I fear — to the few practitioners who have assiduously collected precedents over the years only to find that the unthrifty are now placed on an equal footing." (*Forms And Prececents For Use In The Supreme Court of New South Wales,* R.E. Walker, B.Ec., LL.B.)

One may well imagine that the late F.C. Hutley was a little disappointed, not to say embarassed when B. Sugerman, then a Judge of Appeal, prologised that "Cases and Materials on Succession" "may not be without some utility to practitioners".

R.G. Reynolds in the first edition of Ritchie was unable to predict much future for a commentary on the

incandescent language of the Supreme Court Rules in the drafting of which he had played a large part as a member and later Chairman of the Law Reform Commission of New South Wales:-

> "It is hoped that the rules need no commentary by way of paraphrase and little by way of explanation. A well-drawn provision should need no informal gloss.
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> Jeremy Bentham, in his View of a Complete Code of Laws written about two hundred years ago, said:
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> 'If any commentary should be written on this code, with a view of pointing out what is the sense thereof, all men should be required to pay no regard to such comment: neither should it be allowed to be cited in any court of justice in any manner whatsoever, neither by express words nor by any circuitous designation.'"

Meagher Q.C. has used Prefaces & Forewards to fulminate:—

> "Two years after the publication of the First Edition of this work, Lord Diplock, with the apparent approval of his colleagues, delivered himself of a pronouncement in **United Scientific Holdings Ltd v. Burnley Borough Council** [1978] AC 904 at 924, that to speak (as we have) of the rules of equity as an identifiable part of the present law was "about as meaningful as to speak similarly of the statute of uses or of Quia Emptores". This speech represents the low water-mark of modern English jurisprudence. Lord Diplock did not explain how equity vanished or what were the consequences of its disappearance. Moreover, when he spoke, Quia Emptores remained in force as a pillar of English real property law.....
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> If Baron Parke were to survey the common law today, he would be baffled and understandably dismayed by what he saw. But his great equity contemporaries would, at least if they migrated to this country, be of good heart." (*Equity — Doctrines and Remedies,* Meagher, Gummow, Lehane.)

Of Sir Frederick Jordan he wrote:—

> "In 1897 he graduated from Sydney High School, an academy which had not at that time been favoured with Government degrading.
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> .....
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> As with Mr Justice Dixon and Mr Justice Kitto, despite an almost exclusively equity background, he also proved himself to be a consummate master of the common law. (The reverse process never happens.)
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> .....
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> Almost every judge of the High Court of Australia, for example, has at some time lectured at a University law school. In England this has never been the case. Most judicial members of the House of Lords not only have not lectured at any law school (and glory in not having done so), but many of them — like Lord Diplock — have never even attended one. English law has not benefited from that experience." (Sir Frederick Jordan — *Select Legal Papers*)

In my only venture into Canon Law I found that Meagher (who is reputed to be fluent in Latin) was my opponent and that the English translation of the Code of Canon Law contained in its Introduction a warning that Papal permission for the translation into the vernacular was "subject in particular to the clear understanding that the only official and binding version of the Code is the Latin text".

Dedications to spouses, relatives and anonymous lovers are usually self indulgent, esoteric and dull; an exception may be found in the First Edition of Stroud's Judicial Dictionary which is dedicated:—

> "TO THE CHERISHED MEMORY OF
> H.S.,
> FRIEND AND WIFE
>
> Ever, and in all things, full of wise counsel and steadfast courage,
> Who took an affectionate interest in this enterprise,
> But whose too early death has taken away its charm.
>
> THIS BOOK
> is reverently and lovingly
> DEDICATED
>
> Easter, 1890." □

P.M. Donohoe