

Mr. Senior's Speech Delivered by R.P. Meagher Q.C.

MR. MEAGHER: Mr. Chairman, the Honourable Mr. Justice Mason, Chief Justice of Australia; The Honourable Mr. Justice Bowen, Chief Justice of the Federal Court; The Honourable Mr. Justice Gleeson, Chief Justice of New South Wales; The Honourable Mr. Justice Fisher, Chief Judge of the Industrial Court; The Honourable Judge Staunton, the Chief Judge of the District Court; The Honourable Mr. Justice Cripps, who is the Chief Viewer of the Parks & Gardens Court; all your other Honours; ladies and gentlemen:

I first met Mr. L.W. Street when I was an articled clerk. On behalf of an unfortunate plaintiff I had to brief the fashionable junior Mr. Ian Sheppard in the District Court. The other side had secured Mr. Street's services. The plaintiff's evidence in chief went as planned. Mr. Street then began cross-examining in a very gentle voice. Within twenty minutes I noticed that he was saying to our client "Everything you said to Mr. Sheppard was false, wasn't it?", and he said "Certainly, Mr. Street". Then Mr. Street said in a quiet voice "You are a fraud, aren't you?", and he said "Certainly, Mr. Street".

Outside the Court, after our humiliation, there was a terrible scene. In those days Mr. Sheppard seemed to suffer from a physical affliction which I can only describe as seeming like having epileptic fits. He went bright purple in the face, his neck swelled like a lizard and he seemed to go into an ungovernable rage. There was a storm before every calm. He went into another of his fits and then said to our client "Why did you tell Mr. Street the opposite of what you told us in conference?", and he received the reply "But Mr. Street is so nice. I didn't want to upset him".

Now, I bet you no client has ever made a similar remark about any other person in this room.

Mr. Street in those days was a very fashionable counsel, the progeny of great lawyers and the progenitor of others to come, a dashing Naval officer, a social lion. He was engaged in all the important cases, from the Petty Sessions Courts to the Privy Council - and usually in all of them simultaneously.

He darted urbane around the Courts amongst his various cases, petting someone on the head over here, and inserting an elegant stiletto in somebody else's ribs over there; "Fin faux et fanfaron" as Talleyrand once said of Metternich at the Congress of Vienna.

I know that is what Talleyrand said, because Tony Larkins told me, and he was there at the time!

As well as conducting his extensive and fashionable practice Mr. Street also lectured in the Law School in Company Law. They were vintage days because at the same time Mr. A.S. Mason was lecturing in Equity. I can remember Mr. Victor Maxwell in those days taking me to a window on the seventh floor of our building to observe Mr. Mason lecturing across the road in Phillip Street. He said to me "Look at him lecturing in Equity. He looks just like a constipated ostrich. Besides that, he knows nothing about the subject because I beat him at it in the Law School".

But I digress.

At the end of 1964 the student magazine Blackacre

published epitaphs on various lecturers. Mason's was: "He was a sane and practical man", not a very amusing quotation, one would have thought, from Bernard Shaw. Street's epitaph were the lines of Shakespeare:

"The courtier's, soldier's, scholar's eye, tongue, sword,
The expectancy and rose of the fair state,
The glass of fashion and the mould of form "

A more handsome compliment, one would have thought, though perhaps just hinting at a preference for style over content.

But beginning in 1965 there come ten years of Street's undisputed greatness as an Equity Judge, and by "greatness" I simply mean greatness.

First he disposed of an incredible volume of work: twelve complicated reductions of capital in a day, and three not-short injunction applications in a day. That was nothing to him.

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Secondly, he was quick. Few judgments were reserved and all work was disposed of with despatch. Thirdly, his reasons for judgment were comprehensible, felicitously expressed and eminently quotable. His reasons for judgment did not resemble the "position papers" now churned out by our Court of Appeal, lengthy ramblings on matters that their Honours deem to be of current social interest - which have no resemblance to the issues which are actually before the Court.

Nor did his Honour favour that judicial technique of writing pioneered and ultimately perfected by Mr. Justice Moffitt, of writing totally verbless sentences.

Fourthly, he had what Sir Robert McGarran said is the greatest possible judicial attribute. I appeared often before him but can hardly remember ever winning a case. Yet I never left his Court feeling any sense of grievance.

Fifthly, his judgments amounted to a significant contribution to equitable learning. This has been recognised overseas as well as in Australia. For example, his judgment in re Dawson on a defaulting trustee's obligation to compensate his beneficiaries is the leading authority on that subject quoted in all the main English textbooks, although not with the percipience with which it is quoted in our local textbooks.

In the 1974 Annual Survey of Commonwealth Law Mr. Hackney of Wadham College who was well known for his dislike of all judgements of all Judges, wrote of Mr. Justice Street's judgment in re Hilder on charitable trust to the aged, "This is a splendid contribution to our jurisprudence. We are shown the workings of the law in action. The choice is made between conflicting lines of authority, on the basis that overtly stated social policy, with relevant public law legislation at the front of the Judge's mind".

And, lastly, by way of example, there is an important decision of his Honour in a case called re Dinari. In that case I persuaded his Honour to hold that the now repealed provisions of the Conveyancing Act, dealing with prohibitions on accumulations of income, had no application to settlements

made by a corporation. That is a proposition which only a common lawyer would regard as less than riveting. I remember it well for two reasons. One is that it is the only case I can ever remember winning before his Honour. The other is when the decision became known Handley, our beloved and saintly President, said - with that degree of tact and delicatessen, which I notice from his recent speeches has not abandoned him - that the only reason that decision was given was because neither counsel nor Judge understood the principles involved.

However, it has been approved in recent English decisions and followed regularly both here and abroad.

Then Sir Laurence became Chief Justice. What exactly he did in that office I am not quite certain, because I was never afforded the opportunity of appearing before him. But I understand that he was a dab hand at drafting interjudicial memoranda, and that he devoted a lot of his time to "administration" - which I gather is a buzz word for that policy which prevents barristers drinking coffee in the corridors outside the Courts.

I understand also that he made newly admitted female members of the Bar feel - I was going to say "at home", but I suppose that depends where they came from.

But one thing he certainly did was to preside over the Court of Criminal Appeal two or three times a week, usually being the Judge who delivered that Court's reasons for judgment. Again one saw the same qualities: quantity of work, speed, elegant immaculate judgments. And he was almost always correct. There have been very few applications for special leave from the judgments of the Court of Criminal Appeal, and such applications are usually refused. In 1987 there were twelve such applications, ten of which were refused. The previous year there were seventeen out of eighteen applications refused, and two years before that ten out of twelve applications were refused. That is a very impressive record.

I have consulted with persons at the Bar who function in that rather grubby area of the law and have been assured by them, even by the caring and sharing prisoners' rights loony left members of the Bar, that Sir Laurence's behaviour in criminal matters was, amongst other things, warm hearted, humane and even compassionate.

In view of the change which has taken place with Chief Justices one must ponder these things very deeply; because one can only appreciate the past if one takes cognisance of the grim realities of the present and the awful possibilities of the future. Charles the Second is dead! And James the Second has ascended the throne. Of Theloneus it was never said that smiling came to him as naturally as flight comes to a porcupine! The physicians never had difficulty in locating his heart. When he was in command no ice age had dawned. In his day the Yeti was not the only person who felt comfortable in Court. No signed portrait of Gleeson hangs, or ever will hang, in Kings Cross on the walls of the Bar Coluzzi.

It is not generally known that Gleeson is, amongst other things, the visitor to a convent of nuns. He descends on these hapless women once a week. He inspects their cells to see they contain no bottles of French perfume or books of Protestant theology. He pokes his finger into their pillows to ensure they are made of kapok instead of down. The terrified holy women huddle in their cloisters, praying for him to go away. That is how he developed an extensive commercial practice.

I am sure that if Sir Laurence had been the visitor they would have had fears of an entirely different kind.

When Gleeson's appointment was announced the inmates of Long Bay rioted and flung themselves on the barbed wire, raising their heads to heaven and crying out "Come back Sir Laurence, all is forgiven".

Ladies and gentlemen, I am inclined to agree with them.

Mr. Junior's Speech delivered by LLoyd Waddy, R.F.D., Q.C. _____

"Please to remember, the 5th of November,
Gun powder, treason and plot "....

Welcome to Parliament House on the eve of the 383rd anniversary of the attempt to blow up Parliament. They couldn't actually let this dining room to any members of Parliament tonight. Don't touch the food...!

John Street, (the son of Francis de Streate, who for five years from 1563-1568 was a member of the House of Commons under Elizabeth I), is best remembered for killing two of the conspirators of the Gunpowder Plot, in 1605. Those killed did not include Guy Fawkes, but Catesby and Percy. As Street killed them both with one shot from his gun this gave rise to the Street family motto:

"Two birds with the one (when) stone(d)"

John's son became mayor of Worcester in 1635, (just prior to that Civil War, when even the King had his head cut off), and he had two sons: Thomas and Laurence.

Thomas Street served in four successive parliaments from 1659 to 1678 until he became a Sergeant-at-Law. He was

appointed Baron of the Exchequer in 1681 (at the age of 56) and Judge of the Court of Common Pleas in 1684. When, in 1686, King James II claimed the power to dispense with the oaths of allegiance and supremacy required by the Test Act, ten judges were consulted of whom only one, Sir Thomas Street, (as he had become), found against the King's claim. To popular acclaim he was dubbed "faithful amongst the faithless" and in truth this has become the family motto since "fidelis inter perfidos"

or, more latterly,

"Why am I the only one in step?"

Needless to say it was Sir Thomas's younger brother and our Guest of Honour's namesake, Laurence, who in the time of James II bought the family seat of Birtley in Guildford, Surrey. A branch of the family remained there for a couple of centuries producing, eventually, the famed architect George Edmund Street, who designed the Law Courts in London and is buried in Westminster Abbey. (At least no one has ever claimed to be the architect of the present Supreme Court of NSW or he could be buried too.) I could digress on Sir