

A Long Way from 22 Church Street

Alan Sullivan and Bruce McClintock tell the true story of Mr. Justice McHugh's progression to the High Court.

The High Court is indeed a long way from the junior barrister's chambers at 22 Church Street, Newcastle which the Court's most recent appointee, Michael Hudson McHugh, occupied early in his career.

Although his Honour insists that the possibility of concluding his career as a judge never occurred to him while he shared one of a row of 19th century terrace houses opposite the court house with solicitors, doctors and other barristers, there has been something inexorable about his rise since being called to the bar in July 1961.

Nevertheless anyone who knew his Honour 10 years before his admission when he was 15 might well be forgiven for thinking his prospects of a career, any career, were dim at best. At that age he had dropped out of school without obtaining his intermediate certificate, because he says, he did not know what to do with his life. The events which preceded that departure are illuminating. Even at that age he was an enthusiastic, even fanatical, devotee of sport. Naturally, his first love was rugby league and he occupied the position of centre three quarter for the local Marist Brothers First Thirteen with, so he says, poise, pace and flair. The positional preference will surprise no one who knew him later. When banished from the team for some forgotten infraction of school rules, he abandoned the Brothers for a brief flirtation with Newcastle Boys (with neither parental knowledge nor approval). He remained there for six months.

From the time he left school until he was 20, he worked at an extraordinary range of jobs - among them, clerk, telegram boy, sawmill worker, crane chaser, general labourer and even insurance salesman (the last occupation may suggest where his subsequent ability tenably to propound the barely tenable to the superior courts of this state originated).

In the same period, he was a regular visitor to the greyhound tracks of the Hunter Valley, although again his Honour insists that it is "stretching the truth" to say that he was making a living out of the dogs, although they formed a large part of his life at the time. It is said that he could recognise and name every racing greyhound in New South Wales by appearance. Examples of his photographic memory could be multiplied - he can still name every Melbourne Cup winner since Archer by year. Later, his Honour's ability to pinpoint where on a particular page of the Commonwealth Law Reports the apposite quotation appeared was well known.

In March 1957, he was walking past the Hamilton Public School and saw a sign offering evening classes for the Leaving Certificate. Disillusioned with the aimlessness of his life, he made the first of several snap decisions which had a crucial effect on his life and enrolled. He passed and went on in 1958 to the Barristers Admission Board. His Honour asserts that he

then absented himself from the race track to devote himself to studying and between 1958 and 1969 was seen on the race track only three times.

Despite the fact that he was working full time as a clerk for BHP, he qualified for admission in three years. His admission was delayed for six months not because, as some have said, he knew no lawyers who could move it, but because there was no one in the categories of occupations able to swear the affidavits of character and fitness who had known him the requisite five years.

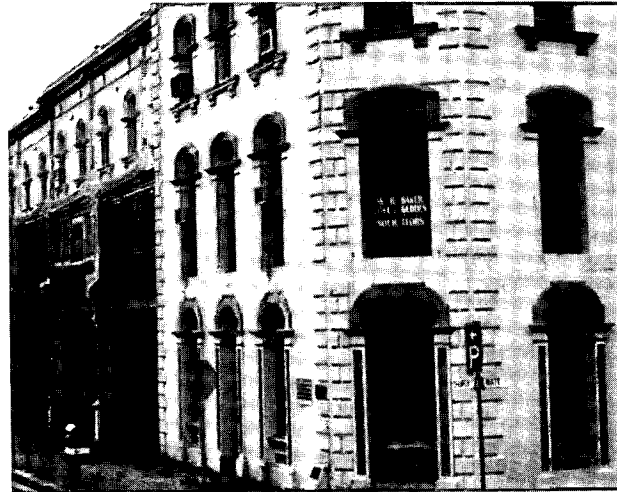
After admission he moved to Sydney and commenced practice. He moved back to Newcastle in April 1962 after a successful period in Sydney - for example, within his first year at the bar he had appeared at least once unled in the High Court and as junior in Commonwealth v. Cigamatic Ltd. 108 C.L.R. 372.

In January 1965 after a conversation with the great Jack Smyth (who told him he was wasting his time in Newcastle) he returned permanently to Sydney and a room in University Chambers which he shared with John Nader (now of the Northern Territory Supreme Court).

The Sydney Morning Herald quotes C.A. Evatt as saying that his Honour sat in a corner of C.R. Evatt Q.C.'s room picking up the crumbs that fell from his untidy table. His Honour never did so. Indeed, his first contact with C.R. Evatt Q.C. and C.A. Evatt occurred when both father and son managed to get themselves jammed on the second day of a jury trial before

Isaacs J. in 1966 and his Honour took over. More important influences upon his Honour and his style of advocacy were Smyth Q.C. and Mr. H.H. Glass Q.C. Smyth's approach appealed because of its logic - he applied a set of principles to the conduct of a case and never proceeded on an ad hoc basis, always showing a deep knowledge of the law combined with a keen appreciation of the facts. Glass Q.C., with whom his Honour co-wrote what became the standard work in its area The Liability of Employers in Damages for Personal Injury in 1966, passed on his deep knowledge of law and principle and his ability to distinguish them from fact.

By about this time he had started appearing in the defamation cases which ultimately were to make up so large a part of his practice in his last years as a junior and his first years as a silk. He always appeared for plaintiffs until 1968 when Mirror Newspapers was sufficiently impressed by his performance for the plaintiffs in Yarwood v. Mirror Newspapers Ltd. (1968) 1 N.S.W.R. 720 to offer him its junior retainer. He then at the invitation of D.B. Milne Q.C. moved to the sixth floor of Selborne which was to be his home for the rest of his time at the Bar. By this time his practice was enormous particularly in defamation cases - he had already adopted his distinctive stance (since much emulated in defamation cases, at least) when addressing a jury - backside resting on the bar table, face perhaps two feet from that of the closest juror,



Barristers' Chambers, Church Street, Newcastle

complete concentration on the emotions passing over their faces. The jury's response to him was usually the same as that of the bird to the mesmerizing cobra.

He took silk in 1973 at the insistence of Les O'Brien, his clerk. O'Brien's version of this story which his Honour does not dispute is that he, O'Brien, appeared in his Honour's room with a completed application form for silk and this dialogue followed:

O'Brien: "Sign that document."

McHugh: "What is it?"

O'Brien: "An application for silk."

McHugh: "Don't be stupid - you're crazy."

O'Brien: "I've thought about this - I'm your clerk - I'm telling you sign."

McHugh: "I'm a man of impulse - I'll sign it - but if I don't get it I'll never apply again."

He did get it, of course.

As a silk, his practice broadened into one of the most wide ranging ever seen at the Sydney bar. Consider a small sample of his cases in his last few years before appointment to the Court of Appeal - United States Surgical Corporation v. Hospital Products Limited [1983] 2 N.S.W.L.R. 157 (fiduciary obligations), Bickel v. John Fairfax & Sons Limited (defamation), Chamberlain v. R., (crime) and the Combe-Ivanov Enquiry.

His style of advocacy was robust and he was never one to shirk the bold proposition - no-one who appeared in the Hospital Products litigation will ever forget his submission that there were four and only four circumstances when it

would be held that fiduciary obligations arose. Despite the fact that he never had too much use for his juniors (except to carry his red bag) and did all the work himself, he had a remarkable run of successes as a silk, particularly in defamation trials. He was extraordinarily versatile.

Shortly after his two successful and hard working years as President of the Bar Association he accepted the then Premier's offer of an appointment to the Court of Appeal.

It is perhaps too soon fully to assess his contribution to that Court - although there can be no doubt that it will be seen as exemplifying the best traditions of the common law, that is, the organic development of the law through the application of history and principle to the facts of the case before him in the manner exemplified by his judicial hero, Sir Owen Dixon. His Honour's attack on the doctrine of privity of contract in Trident General Insurance Co. Ltd. v. McNiece Bros. Pty. Ltd. 8 N.S.W.L.R. 270 is an example.

His Honour's appointment as the 37th Judge of the High Court was universally acclaimed and so far as we are aware not one dissenting voice was raised. Even B.A. Santamaria seemed to approve.

As is well-known, his Honour is married to Jeanette, the member for Phillip in the House of Representatives. They have three children, one of whom, Richard, shows fair signs of following his father to the Bar. His Honour is no doubt looking forward to seeing more at least of Jeanette as the sittings of Parliament this year largely coincide with those of the High Court.

We wish them well. □



Mr. Justice McHugh with (l. to r.) son Richard, wife Jeanette, daughter Giselle and Michael Jr.