

Austin Asche's random reflections

This being the year of the elderly, or something like that, I understand that I have been selected as the token greybeard to recollect, ruminate and remonstrate. It is expected of those who have left the field to allege that things are not now what they were, and in fact, much worse: the clear implication to be drawn, and intended to be drawn, being that this parlous state of affairs has come about since the retirement of a Certain Person whose superior talents had been the only reason why the enterprise has lasted as long as it did.

I do not propose to indulge in this sort of senescent maundering. It only results in the maunderer having justly bestowed on him the title SOB, which our American friends translate as "sonofabitch" but which to the unstarspangled Australian means "Silly Old Bastard". Either description will do. Though some may argue to the contrary, I do not believe that I have yet reached the seventh of Shakespeare's seven ages of man. With some reservations I am prepared to rank myself in the sixth stage, although the description "lean and slippered pantaloons" does not sit well with one verging on rotundity and preferring thongs.

I therefore content myself with some random and disconnected observations. If, nonetheless, anyone concludes that he or she has discovered some hidden (and possibly Freudian) common theme in the items that follow, I will award a prize of the most recent (1857) edition of Cole's Ejectment, previously the property of Sir Heydon Starke, which I acquired many years ago, when his son, Sir John Starke, was throwing out of his Chambers what he described, in his usual robust fashion, as "a lot of rubbish". It is true that the book will be of no practical assistance, but it has a quaint antiquarian interest and will undoubtedly impress your clients with the strength and length of your knowledge.

I have and retain a great affection for the late Rex King QC of the Queensland Bar. Stories about him abound, and this is not the time to expand on his complex and many-sided character. This story will serve for the present. He was briefed in an



important case in Cairns. It was difficult and lengthy. Cairns had not then attained the reputation of a comfortable tourist resort that it now has. Hotel accommodation was then no more than barely adequate. Rex, who was working into the early hours of the morning preparing for the next day's hearing, found the noise of the residents, and their guests, distracting and infuriating; for the pub, like most country pubs of the time, regarded the licensing laws, and particularly those tiresome provisions about licensing hours, as unjust and invalid intrusions on the constitutional right of the ordinary Queenslander to drink and shout (in both sense of the word), whenever he felt like it. Rex, who usually had a pretty short fuse, smouldered, but bided his time till the case was over. Then, somewhere, somehow, he acquired a Scottish Piper. He waited until about 3am, when the last of the revellers had finally retired, and then paraded his man, in full regalia and in full blast of the pibroch, up and down the hotel corridors for an hour or so. He returned to Brisbane satisfied that all debts had been paid.

I have been long enough in the law to have observed that interesting phenomenon whereby the hoary old legal jokes which, in my day, were ascribed to certain contemporary judges, are now fostered on the next generation. This has probably been going on for centuries. No doubt the witty retort, presently sworn to by impeccable witnesses as emanating from Judge X just last year, was originally propounded by Lord Chief Justice Coke in the seventeenth century, or Lord Chancellor Hardwicke in the eighteenth; though

they probably said it in Latin. However, I am prepared to vouch for, though not to bet on, this one as an original. Counsel appearing before Gowans J. objected to certain evidence. The judge upheld the objection, but about ten minutes later, told counsel he had reconsidered the matter and would now allow the evidence to be led. "Well", said counsel, rather grumpily, "the Lord giveth and the Lord taketh away." "Yes", said Gowans J., "But I think you should complete the quotation." If you don't know what the learned judge meant I will leave it to you to find out.

I have known some robust judges. The "robustest", if one can use that expression, was a certain judge of the Victorian County Court. The saying that, "the common law is common sense" fitted his philosophy, except that he never allowed the first to stand in the way of the second. "Don't quote law to me," he would say, "if you want law go to the Supreme Court. My brethren up there are paid a lot more than I am to deal with the law." Some of the more earnest of the profession detested him, but I found him refreshing, and his results always seemed to me to be pretty much on the ball despite the lack of learned citations. Indeed he was quite content to dispense with reasons for judgment. "Do you want the result?" he would say, "or do you want the labour pains as well?". This was a veiled threat, because if you insisted on the "labour pains", he would reserve, and this meant an inordinate delay, if indeed you could ever persuade him to remember the case at all. On one famous occasion an appeal was launched and the Court of Appeal requested the Judge's notes. (Civil cases in the County Court were not recorded and the Judge was expected to take a note of the evidence). After a long interval the appropriate book was produced in which His honour kept his "notes". The learned Judges of the Court of Appeal were not particularly enlightened to find, on the relevant page, the name of the case, the names of counsel appearing, and underneath that, a drawing of horse's head; and absolutely nothing more.