

ROBERT WILFRED BAKER

by His Honour, Mr Justice Neasey
Chief Puisne Judge
The Supreme Court of Tasmania

I first came to know of Bob Baker in late 1940, when as a student at the Teachers' College next to the old University, I saw him sitting on a bank watching some tennis in progress. He was in the middle of a small group of young people to whom he seemed the centre of attention, and stood out because he was wearing an Oxford University blazer. I was appropriately impressed on receiving the information that he was a Tasmanian Rhodes Scholar, home on his first leave from Oxford. I did not see him again until towards the end of 1947, when I was a second year student in law at the University, which was then still conducted mainly in the old Hobart High School, built in the middle of last century on the splendid site on the Queen's Domain. Bob returned to the University in 1947 as professor of law in succession to Kenneth Shatwell, who had left to occupy a chair in the law school at Sydney University. Bob was then thirty, and only three or four years older than many of his students, including the writer, who were ex-service and studying under the C.R.T.S. Scheme. We had the benefit of his leadership for part of our [then] three year law course, and found him a stimulating teacher who pushed his students hard and was not satisfied with anything less than their best work.

His career between 1939 and 1947 is recounted in a book which he published in 1983, called *Tasmania Now & Again*. This is a memoir of his parents and family, and an account of his own life and his thoughts on Tasmanian developments in the three areas which his life work occupied successively; namely at the University, in legal practice, and in the State Parliament. Some of the most engaging and detailed parts of the book describe his life at Oxford University before and after the war, and some of his pleasurable experiences of social contact with areas of upper class English life which would otherwise have been a closed book to one of his background. Those experiences were, of course, part of the invaluable by-product of tenure of the Rhodes.

The family had come from South Australia when his father, C. R. Baker, was appointed manager of labour relations at the Electrolytic Zinc Company's plant at Risdon, on the outskirts of Hobart. Both parents were well-known people in their time; C. R. Baker in his industrial role and as a member of the University Council and in other capacities, and Mrs. Baker as the author of a number of children's stories and two books, one of which was a biography of Sir Richard

Dry, who was the first native-born Premier of Tasmania, and the first native-born Australian to be awarded a knighthood. Bob attended Moonah Primary and Hobart High Schools, and the University of Tasmania between 1935 and 1938. He completed the law course there with the equivalent of first class honours, and was selected as the 1939 Rhodes Scholar. He left for England in May 1939 in a fast merchantman sailing by way of Capetown, although unsure when he left Hobart whether he would ever get to Oxford. The uncertainty was due to a Commemoration Day practical joke by some of the students, in which he took part. They placed bogus reports of a German invasion of Poland outside the offices of the *Mercury* and *Examiner* newspapers, done in the manner of those journals, the invasion purporting to have occurred on 26th June, 1939. This was a most untimely joke, no doubt, but scarcely more culpable than that. However, the Governor of the day, a dour and narrow-minded person named Sir Ernest Clark, who was Chairman of the Rhodes' Selection Committee, took an exceedingly dim view and sent off a derogatory report to the Rhodes Trustees in England. Bob knew about this before leaving, and therefore had a long time to wonder whether he would be accepted at Oxford. War was in fact declared a few days after his vessel left Capetown, and so the remaining voyage was not without its own uncertainties. On arrival, however, he was accepted by Lincoln College, where the bursar was a Scot, Keith Murray, later Sir Keith and then Lord Murray, who became a close friend.

Even on first arrival, he found that the University was already affected by changes occurring throughout England in that first year of the war. Lincoln College had been commandeered by government authority, and his first period as an undergraduate, from October 1939 to June 1940, was spent at next-door Exeter College where accommodation had been doubled up. One of his early tutors was Dr H. G. Hanbury. In common with the great majority of undergraduates, he found it impossible to continue with study while most of the world was at war, and he tried unsuccessfully to join a Service in England. He was recommended for a commission, but failed the medical on account of a partly disabled right forearm, which he had from birth. Accordingly, he returned to Australia by sea in the middle of 1940, and was accepted for service in the Royal Australian Navy.

Bob spent from January 1941 to May 1945 in the Navy as a junior officer, and accumulated some varied experience during that time. Some of it was spent on staff duty at Fremantle, and from December 1942 to early 1943 on various appointments in Darwin and around Papua and New Guinea. He was stationed in Darwin when the heavy Japanese air raid took place there on 15th March, 1943. He had six months of sea duty in H.M.A.S. *Adelaide*, based on Fremantle, and spent the last few months of his service to May 1945 on Staff at Melbourne Navy Office. It was during that period that he met his future wife, Alison Burton, who was a Melbourne girl and a leading Australian woman tennis player of that time. Bob was enabled to return to Oxford University in 1946 to

complete his scholarship, and he and Alison were married there in September 1946. He had enrolled in 1939 for the degree, Bachelor of Civil Law, which as he explains in the memoir was really a post-graduate course, and which he was able to complete in 1946. He then was accepted at Oxford for a third year of study, and chose the course for Bachelor of Letters, a post-graduate degree which later was to be called Master of Letters. It required the completion of an approved thesis, which he produced on the thorny old subject, the hearsay rule. His thesis supervisor was that most eminent of English-American lawyers, Dr A. L. Goodhart. The thesis, called 'The Hearsay Rule', was accepted and later published by Pitmans (London, 1950) and has since become a classic in its area. It receives its due meed of attention whenever that difficult subject of evidentiary law, and particularly the question of reforming it, comes under discussion.

This is an appropriate point to recall that a substantial part of Bob Baker's life was taken up by interest in and participation in sport. He was of medium height and athletically built, and notwithstanding his physical handicap pursued an intense interest in Australian Rules football from school and through local University days, both before and after the war, and by reputation was a good, fast and rugged player. His main love was tennis, however, both of the lawn and 'royal' varieties. The two are very different games, but as it happened Bob's natural style enabled him to play a similar type of game in both. Royal tennis, because of the heavy ball and odd-shaped racket, requires virtually slice or cut shots on either hand at all times. As a fast, aggressive, not very tall left-hander (whether natural or not I do not know, but his right arm disability necessitated it), this suited his style admirably, and he played the same sort of game in lawn tennis. [My own close friendship with him began in the early 1950's, and was sustained through some twenty-five years of Saturday social 'lawn' tennis at the home of a mutual friend, as well as co-membership of the Royal Tennis Club in Davey Street, Hobart].

Bob was, within amateur limits, very successful at both tennis games. In 1946, he and his partner reached the fourth round of the men's open doubles at Wimbledon, and one of his fondest memories was of his captaincy of lawn tennis at Oxford, and in particular of heavily defeating Cambridge in 1947. He left Oxford with a Full Blue in tennis. Back in Tasmania, he held the Australian Royal Tennis Championship for a number of years from 1952. Royal tennis is, of course, a minority sport because of the nature of the game and the enclosed and expensive court, but nevertheless there were a number of good players about in those years in the two Australian clubs, Melbourne and Hobart. He also represented Tasmania in squash. He played sport as he did everything else, intensely and with total concentration. He was in any activity in life a complete stranger to anything less than one hundred per cent effort.

Bob's tenure of the [sole] chair of law at the Tasmania University saw the development of what was really the first Tasmanian law school, in anything like a true sense. This was due to his determined and persistent efforts, in the face of difficulties of financial stringency and differences in outlook and philosophy as to the proper role and development of a law school in a small community. The Law Society of Tasmania (formerly divided, north and south) has traditionally exercised a dominant role in the structure of legal education in Tasmania, and its outlook has until recent years tended to accept the position that the overriding function of a law course is to produce practitioners to fill the community's need for work-a-day lawyers. Consequently, until his tenure the professor was the only full-time academic teacher, the remaining lecturers being practitioners teaching part-time (though in my period we were fortunate to have excellent ones, such as Burbury, Crisp, Fagan, et al.), and the students were all part-time. Bob was able during his period of approximately a decade gradually to build up a mainly full-time school, staffed with some part-time assistance. This was a transformation indeed, and wholly beneficial to the intellectual side of the law in Tasmania. By the late 1950's he had built an excellent full-time staff of young men and one fine young woman lawyer, Enid Campbell, now Australia's best-known woman law professor (Sir Isaac Isaacs Professor of Law at Monash University), and a product of our own law school. The three men, Calvert, Bartholomew and Nash, later became professors of law at other Australian Universities.

Unfortunately, it was not to last. The personnel of the school which Baker built up fell away almost at a stroke, largely as a result of the Orr controversy, which in many ways caused so much damage to the University of Tasmania. First the young men and then Campbell and Bob himself left. The motivation of the others was mainly disillusionment over the Orr turmoil and its aftermath; but there was also the fact that increasing rewards available in legal practice during the fifties made it necessary, if academic staff of suitable quality was to be obtained and retained in competition with the attractions of practice at the Bar and elsewhere, that greater rewards by way of senior lectureships and the like had to be offered. Other Universities were able to do this, whereas in Tasmania less finance was available, and the University authorities were slow to be persuaded of the necessity to provide more of what there was.

His own decision to leave the University was influenced by more than one factor. He shared the disillusionment over the Orr matter, and recounts in the memoir how he was moved on the one hand by his long attachment to and admiration for his mentor, Sir John Morris, and on the other by his recognition of the rightness of some of the complaints against the University administration made by Professor Orr; and how he remained in the end uneasy over the position of neutrality he took up on returning to Hobart after completion of the Carnegie Travel Award which he had undertaken during the height of the controversy. He felt

that, perhaps, Orr had deserved more support than he had felt able at that time to give him.

Then there was the difficulty and frustration of the struggle to obtain better financial provision for the school; and lastly he had never, I think, envisaged a complete working life as an academic lawyer. He has said that he never felt entirely comfortable in the academic and scholarly life, and thought his temperament was not altogether suited for it. I believe this was so. He had a keen, perceptive, and wide-ranging mind, but he was not particularly contemplative by nature. He was more of a striving, driving, bustling kind. At any rate, when he decided to leave in 1958 and take up private practice, a substantial part of his motivation was simple desire to try a different area of legal work. Had he wished to continue in academic law elsewhere, no doubt it would not have been difficult for him to find a congenial post, as Shatwell had done before him. As a part-time lecturer in Evidence and Procedure at the time, I remember how devoted his young colleagues were to him as their leader. On one occasion when I was in their company his three young men came and said to him, 'If you will stay, we'll stay also'. But he said no, he couldn't, his commitment to leave was made.

The six months he spent in the United States on the Carnegie Travel Award during 1954-55 was a tremendous experience for him, recalling in some ways the Oxford years. Much of the time was spent at Harvard Law School, but there were substantial visits to a number of other leading universities. He made many interesting connections and some firm friends at Harvard; the outstanding being, perhaps, his friendship with Professor Louis Loss, the expert in securities law. That friendship was renewed on a personal basis when Loss visited Australia as an adviser to the Commonwealth Government in 1974, and lectured in Hobart. Bob's own specialities in study and writing as an academic lawyer were in Torts and Australian Constitutional Law, and he made a number of noteworthy contributions to academic journals in both subjects. Amongst these may be noted in particular his articles on *Res Ipsa Loquitur* (24 A.L.J. 194 and 30 A.L.J. 563) and on 'Breach of Statutory Duty and Contributory Negligence' (22 A.L.J. 113), and his essay on 'The Compulsory Acquisition Powers of the Commonwealth' in *Essays on the Australian Constitution*, Ed. Else-Mitchell, Sydney, 1961.

When he left the law school, he became a partner in a well-known Hobart law firm, then called Piggott, Jennings and Wood; and soon, after the departure of Jennings, became the principal litigious partner. As he says in the memoir, he was thrust, in a sense prematurely, into the full flow of Supreme Court litigation, at the age of forty-one and with no previous experience in legal practice other than his days as an articulated clerk. He did very well, however, and found in it the enjoyment and stimulation which the active and ardent part of his nature required. Within a few years he became one of the State's leading litigious practitioners, and took silk in 1977; though by then State politics had become the main focus of his interest.

Encouraged mainly by his elder sister Alice (Mrs Salisbury), he stood first as a candidate in the Queenborough Division of the Legislative Council and narrowly lost. However, he was elected to the House of Assembly in the 1969 election, when the Liberal-Centre Party coalition displaced the Labor Party in government for the first time in sixty years. In ordinary circumstances he would have walked into the Attorney-Generalship, but as it happened the Liberals had another lawyer Rhodes Scholar available in Max Bingham, who had been one of Bob's students when he obtained his scholarship for the year 1950. Moreover, although under the Hare-Clark system of voting it is extremely difficult among a field of candidates in each electorate to gain name-recognition, an occasional candidate out of the mysterious workings of electoral popularity achieves extraordinary voter support, and Bingham was one of these. He was given the call over Baker as Attorney-General, and performed the office very well, but it was unfortunate that because of this temporary superfluity of talent, Tasmania did not have the benefit of the services of each man at different times.

Notwithstanding that he did not achieve ministerial office, Bob Baker's excellent contribution in committee work and chairmanship was well recognised by his parliamentary colleagues. He was chairman for a number of years of a Joint Select Committee of Inquiry into State planning procedures which became known as the Baker Committee, and it carried out the most thorough examination so far into State regional and local planning issues and procedures. In 1972 he was appointed a foundation member of the Tasmanian delegation to the Constitutional Convention, in which position his learning as a constitutional lawyer was most useful, and he remained a delegate to the end of his parliamentary career. His contributions to debate, and in press and television interviews and the like, were always serious, well researched and objective, and he achieved a full measure of respect within the parliament and substantial public recognition for his qualities.

Unfortunately, Bob's health began to deteriorate earlier than his athletic career would have suggested was likely. When he was obliged by health difficulties to give up tennis he took up lawn bowls, participating when he could and watching when he could not. He retired from his law firm in 1977, and narrowly lost his seat in parliament in 1980. His useful working life was not then at an end, however, because in 1981 he returned to his first love and taught Evidence and Constitutional Law and Remedies at the law school, and after that taught at the School of Legal Practice from 1982 to 1985; achieving in both arenas the same empathy with students and staff as he had had in the earlier years.

Indeed, it was only shortly after the end of a lecture to a legal practice class, at which debate and discussion had as usual been stimulating and had left him in a glowing mood, that he died in his room. If he had to choose a time and place, I doubt if he could have thought of anything better. Anyone who knew Bob Baker well,

and his circle of friends was wide indeed, will remember best the warmth of his personality, and his merry, irreverent, and probing wit. When Bob was around the talk always flowed, and you felt better and brighter because he was there. Those who remember him as a good and generous friend, or viewed him with a sceptical, or even a critical eye — there were some in each category, but most by far in the first — will not forget him soon.