Archive: Civil way

Stephen Gold dusts off the archive for the first in an extended series of updates tracing *NLJ's* history in tandem with legal and practice developments through the centuries

Two hundred years ago, all lawyers in the United Kingdom were male and regarded as professional gentlemen, albeit not in Parliament but certainly by *The Law Journal*. Available to annual subscribers only, the publication made its debut with an editorial by the proprietor in unctuous language 'begging leave' to offer a few remarks. That's the way to address the punters, *NLJ* please note. Lawyers, including those resident at a distance from London, were for the first time to be presented each Thursday with every species of legal information which the conduct of business could require. There was an anxiety not to interfere with the more elaborate labours of the learned and accurate established law reporters. Readers were to expect notes rather than reports of cases. In equity, for example, the variety of cases occurring every day would anyway afford an ample harvest for more than one reaper.

And so it was for around 20 years, as Queen Victoria ascended to the throne, William Gladstone replaced Robert Peel as prime minister and M'Naghten was found not guilty of murder by reason of insanity. Alas, in April 1843 the Chancery Lane paving stones shook with the arrival of newsier competition. From the *News of the World*, conceived but unborn? Nay, from *The Law Times*, published for 'the numerous, intelligent, wealthy, and influential classes engaged in the administration of the law throughout this great empire'. The editor prevailed upon readers not to criticise the publication too severely, nor pass upon it too hasty a judgment. The endeavour was to make it practical.

It might be thought that membership of White's and possession of a Coutts' cheque book and a snuff box were conditions precedent to being invited to an interview in order to assess suitability to read this new organ. In fact, it was not as grand as it sounded. Its offices were established at no 49 Essex Street, close to the base of *The Law Journal* and copies could be acquired on subscription at 9d per go. A list of subscribers—1,625 at the start—was distributed early on as a cute marketing ploy. In a poverty plea, it was pointed out that the cover price would not meet expenses and, for reasons of cost, law reports would be short and restricted to the courts of common law.

The practice at the start of running obituaries under the off-putting title of 'Necrology' soon expired as did general news items 'in accordance with the expression of an almost universal desire' and it was felt the omission would give the publication a loftier character. A report of the public execution of three men in Derby witnessed by 30,000 or 40,000 people may have put readers off their breakfast.

Dear editor

Correspondence for publication took a while to get going. There may have been some deterrence on account of the requirement for all letters to be authenticated except for extraordinary reasons. 'A long anonymous letter on Local Courts cannot be received.' A reader had a very useful tip which almost equals my own for reinforcing the elbows of woollen jumpers by sewing on part of the cuffs.

> *'Immediately I receive your valuable journal (about mid-day on Sunday's post) it is opened and spread whilst yet damp, and ironed (in the usual laundry mode) on an ironing board by the servant who attends to the culinary department, thus completely smoothing the external surface, and removing all creases and fold; but it is necessary to perform the operation on the other side also, otherwise the type will appear raised , and the surface on the paper quite rough as contrasted with the side so operated upon.'*

Surprisingly, nobody wrote in—or, if they did, they went unpublished—about the early inclusion of a report of a Queen's Bench case in which 'Mr Newlands, in person, made a notice; but from the low tone in which he spoke, we were unable to collect the exact purport of it'.

['Don't send that bloody fool out to court again unless he's got a trumpet in his ear 'ole.' Ed]

Hot topics

Lawyers were being unfairly attacked by the peers—'It is time to meet the matter gravely, and assume a resolute attitude of defence', proclaimed an editorial —and were complaining about scale fees. Really. The profits of lawyers had reduced by one-half since 1825. While attorney's fees had been unsparingly pruned, those of the court were tenderly dealt with. There had been a fearful reduction in scale fees for trial before the sheriff of debts under £20. To come was an annual tax on lawyers by way of a certificate duty which would be a poll tax without reference to means. And a store of mischief was in preparation which, if not arrested, would prove destructive. This was an allusion to the establishment of local courts.

'Hurtful and absurd ill-feeling' existed between advocates and attorneys, later termed as jealousy. *The Law Times* was certainly not taking sides but was to have a lot to say on the subject. It's opening plea for peace drew attention to the rules of conduct that forbade the barrister from travelling in a stagecoach from place to place on circuit; going to the assize town before the commission day; and avoiding while visiting any place in his professional character an appearance of intimacy with an attorney and so forth. It was later pointed out that these rules protected the attorney from undue solicitations and gave him unlimited freedom in the choice of the advocate in whom to entrust the fortunes of the client and his own reputation.

But after calling for a truce between advocates and attorneys, an editorial was stirring it up nicely between counsel and counsel. It was explained that the Bar's membership was comprised of two classes: the advocate and the chambers counsel. In needful natural qualifications and in the requisite education, it was said, they broadly differed. As to the qualifications for chambers counsel, these were deliberation almost amounting to dullness, steadiness and slowness of thought and profundity rather than cleverness. But the advocate needed keenness of perception, extreme rapidity of reflection and readiness of idea of words.

It was said that defendants acquitted of a misdemeanour at quarter sessions were being charged by the court a fee of nearly £3. There had been instances of attorneys advising the wholly innocent to plead guilty because the fine inflicted would be less grievous than the fee. There was much debate on whether this was in fact happening and whether it was legal. A correspondent put the issue to rest. The practice was unlawful and prohibited by statute.

The Attorneys and Solicitors Act 1843 received royal assent. No attorney was to have more than two articled clerks at a time. Clerks articled for five years might serve one year with a barrister or special pleader (nice) and one year with a London agent. A person having taken degrees at Oxford, Cambridge, Dublin, Durham or London could serve a three-year clerkship, one year of which with a London agent. Be that as it may, it seems that for articled clerks it was generally the case of No Education, No Education, No Education. *The Law Times* was receiving correspondence from clerks by almost every post which proved not only how defective were the means and applications for good legal education in the country but the existing lack of guides for them. The editorial advice given was that the clerk should live like a hermit. Work like a slave. Learn everything. Mingle in all business. Shun all pleasure. For one hour dedicated to reading, two should be given for reflection and three for observation. They should beware of becoming a mere lawyer for a man who knew nothing beside law, did not know law.

From a good hand to an enema syringe

An earnest plea was made for readers to treat *The Law Times* as their advertising medium. Classifieds were to fill the front page at 5s for up to 50 words and displays to cost £4 for a half page and £7 a full page. They came rolling in. The classifieds were the most interesting and often included puff which is deserving of revival in the current century. Clerks seeking employment invariably wrote with 'good and expeditious hand'. A Chester solicitor, targeting parents and guardians, sought a respectable and well-educated youth as an articled clerk who would have the opportunity of becoming a partner on advantageous terms at the end of his clerkship, the advertiser not having a family. A young man of 'about 17' who had been in a country office of a large business for about three years promised that his employer's interest and relief from the fatigue of business would be his consistent aim and consideration. And an articled clerk was sought in a country place in Sussex who would be received as part of the family.

Pugh's Mourning Establishment, the first of its kind in England, favoured with a rolling advertisement for the supply under one roof in London's Regent Street of every article requisite in mourning, be it family, court or complimentary mourning. Gillott's, steel pen manufacturers in ordinary to the Queen, boasted of their very superior patent and other metallic pens which were suitable for the legal professions (70,612,000 sold between 1832 and 1841). J W Barrier, who had removed from Burlington Arcade to larger premises in Regent Street, invited the attention of the nobility, gentry and the public to his improved and perfectly noiseless Accelleropoedo boot which was an invaluable acquisition for gentlemen afflicted by gout, corns or other affections of the feet. Springs supplied to the trade. Walters' Hydro-Pneumatic Enema Syringes were warranted as providing a continuous jet of any force required and free from air at £1.11s 6d. Edward Lukyn had a beautiful and unsurpassed method of fixing artificial teeth which so exactly resembled the nature as to defy detection. It was guaranteed to answer every purpose of mastication and articulation. And notice of the upcoming auction of land was addressed to 'solicitors, stewards of manors and capitalists'.

'What am I likely to get, sir?'

The tally for one session at the Old Bailey was death sentences–three; transportation–three for life, 36 for seven years; acquitted–76; pleaded guilty–64; discharged by proclamation–18; and privately whipped–5. Alas, in Cornwall, Mr Sergeant Halcombe could have done with a Thomas' Sentencing Referencer and a Judicial Office press adviser. While a prisoner convicted of stealing a cow was sentenced to one year's imprisonment, the judge dished out seven years' transportation to another prisoner who had stolen two pints of cider. *The Law Times* thought that there had been a wise exercise of sentencing discretion but berated the judge for having written a letter to the *Western Times* after local criticism of his apparently inconsistent sentencing. 'We only regret that he should have deemed it desirable to vindicate himself; he is sufficiently well known to have needed no justification, and it would have been better to have treated in silence an anonymous newspaper attack.'

Book reviews—without the books

Books came in but mainly from the authors rather than the publishers. *The Law Times* alleged publishers' hostility towards it on the ground that it was not in the hands of the trade: the copyright and control did not belong to one of them. A stark warning was delivered to them. '...If, because it is not a bookseller's hack, *The Law Times* is to have your friendship, it will, we doubt not, continue to flourish without your aid or in spite of your opposition. The choice is yours.' It is not beyond the realms of possibility that some publishers were concerned at an earlyish assessment of *The Juryman's Legal Handbook and Manual of Common Law*. It was said to be a strange book which would disappoint the practitioner but be creditable for the unlearned. The author was evidently a bookworm. His style was without pretension, having neither striking faults nor merits. *Forms for the use of persons acting under the Parish Constables Act* got a better, if cursory, reception. 'We have gleaned over the packet sent to us...and so far as we have examined them, they seem to be drawn with care...' Interestingly, a display advertisement for this work appeared in the very same edition. *The Justices Handbook of Information under Summary Jurisdiction* by Samuel Stone (who was to become a frequent correspondent) had supplied what had long been a 'desideratum' to be followed by a second edition within 12 months of his *Justices 'Pocket Manual'*. Mr Stone had been appointed as clerk to the Leicester justices who were 'fortunate to have so able' an adviser. The latest work was liberally extracted.

Aff story

Any suggestion that Mrs Justice Steyn's decision in *Barking, Havering and Redbridge University Hospitals NHS Trust v AKC* [2021] EWHC 2607 (QB) that a bill of costs bearing an indecipherable signature was invalid was inspired by the 1843 ruling of Mr Justice Wightman in the Bail Court would be nonsense. *The Law Times* reported that an affidavit was non-compliant where the commissioner before whom it had been sworn had signed himself in the abbreviated form 'a commr., &c.' instead of writing the word at length. A laugh had been caused in court because counsel had raised objection to his opponent's affidavits on account of the abbreviation but, on reference to his own affidavits, it was discovered that they had been subscribed in precisely the same manner. On his own objection, he was put out of court though having a good case on the merits. NLJ