

Dear Sir

I found the Winter 2009 edition of *Bar News* most interesting because of its historical content – the Hughes tribute and the legal history articles, in particular.

Brian Herron's article on the District Court brought back so many memories for me of my early days in the former Department of the Attorney General and of Justice in the 1950s and 60s. There were two branches of the department in those days: the Attorney General's Branch and the Justice Branch, with an administrative office in between. The entire body was called The Ministerial Office, not Head Office! The branches served the needs of the attorney general and the minister of justice, principally with policy and legal advice and legislation. The AGB also attended to the appointment and retirement of judges, crown prosecutors, defenders and other statutory office holders, and maintained their records in an obsolete card filing system.

The mention of BFF Telfer, or 'Buck', as he was known, led me to recall that wonderful old gentleman. He had been a crown prosecutor for so many years that his records were not at all accurate. Apparently, in the days of his appointment there was no retiring age set for crown prosecutors, and hence no need to record a date of birth. Tedeschi QC, as mentioned by Herron, covered the history of crown prosecutors in an excellent article published in the Autumn 2006 edition of the *Forbes Flyer*, the newsletter of the

Francis Forbes Society. Tedeschi made mention of Buck Telfer and that other fine gentleman, Rod Kidston, both of whom were treated in an unfortunate manner by the Executive.

When crown prosecutors travelled to a country circuit they obtained from the then Office of the Clerk of the Peace a voucher for train travel. Somehow or other Buck had acquired, not a gold pass, as suggested by Tedeschi, but an annual book of vouchers (travel warrants), or possibly a metal pass. To my knowledge he was the only holder of such a means of travel. Indeed, once he called on me and sheepishly confessed he had lost the item whilst at Redleaf Pool. I recall organising a replacement without advising my senior officers, as at that stage the move had commenced to persuade older crown prosecutors to retire, and Buck was being looked upon unfavourably.

What on earth he was doing with it at Redleaf Pool one does not know. I do know, though, that he was immensely proud of being the holder of the pass, which no other crown prosecutor had. He regularly told me that 'an attorney had given it to him', and since he had been appointed in the dark distant past, there was no record, of course, of such largess on the part of the Crown!

In the late 1950s the pressure was on Buck to retire. There was much sympathy and support for him in the branch, at the Clerk of the Peace and amongst other crown

prosecutors. However, senior departmental officers were endeavouring to regulate and unify conditions of appointment, and the bushy-eyebrowed gentleman did not deserve the action being taken which in the end would affect him.

It has been asserted that it was the attorney of the day who moved against Buck. I doubt very much this was the situation. It was the senior members of the ministerial office, who were endeavouring to regulate the retiring age of crown prosecutors and others, who planned the operation. If the attorney were involved (as Tedeschi has written) it would have been as a result of departmental pressure. Based on my experience of him, the late RR Downing QC would have found it difficult, powerful though he was, personally to suggest to a man such as Buck Telfer that he should retire. A later attorney once advised me, when I was the under-secretary of justice, that Mr Downing invariably left such unpleasant issues to be attended to by the department. And this was a bad news decision. 'I am the minister for good news – you attend to this!' Attorneys of either political status did tend to follow this course of action where matters affected office holders and the profession.

Buck, ever the gentleman, retired in due course. I, for one, have missed our chats and gossip about what happened on circuit!

Trevor Haines AO

Dear Sir

I was surprised to read the attorney-general's article on Magna Carta in the winter issue of *Bar News*. Approbation of Magna Carta can only be based on a selective reading of it. Three of its less attractive provisions were:

- 10 If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains underage ...
- 11 If a man dies owing money to Jews, his wife may have her dower and pay nothing of the debt from it ...
- 34 No-one is to be taken or imprisoned on the appeal of a woman for the death of anyone save for the death of that woman's husband.

It is interesting to note that the so-called Bill of Rights of 1688 contained the following provisions:

IX Papists debarred the crown

And whereas it has been found by experience that it is inconsistent with the safety and welfare of this protestant kingdom to be governed by a popish prince or by any King or Queen marrying a papist the said lords spiritual and temporal and commons do further pray that it may be enacted that all and every person and persons that is, are or shall be reconciled to or shall hold communion with the see or church of Rome and shall profess the popish religion or shall marry a papist shall be excluded and be for ever incapable to inherit, possess or enjoy the crown and government of this realm and Ireland and the dominions thereunto belonging or any part of the same or to have, use or exercise any regal power, authority or jurisdiction within the same.

For good measure, section 7 of the Act provided:

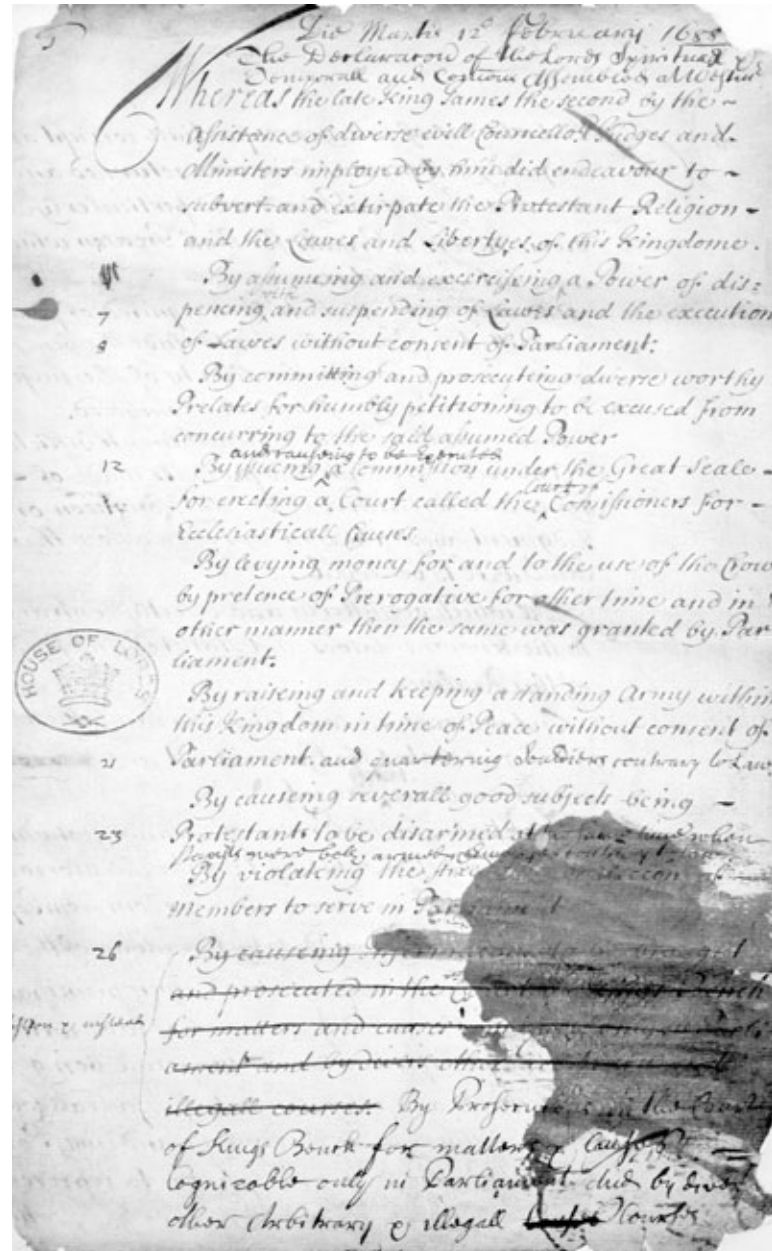
VII Subjects' arms

That the subjects which are protestants may have arms for their defence suitable to their conditions and as allowed by law.

Although we love to praise the odd 'feel-good' generalisation in these statutes, we should see them for what they were – examples of religious bigotry and, in the case of Magna Carta, sexism.

They stand as a warning against attempts to bind future generations to the morality of the times by means of entrenched bills of rights.

David Bennett AO QC



'Whereas the late King James the Second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion and the laws and liberties of the kingdom.' The Declaration of Rights: February 1688. The declaration was later embodied in the Bill of Rights passed by parliament in December 1688. This further stipulated that the throne must be occupied by a Protestant. Image: Photolibrary.com