Fathers and their children on our Bench

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Common factor

There can be no common-denominational factor that has induced children to follow their fathers as advocates and judges. It would be a waste of time to try to find one. There are qualities which have led to families' successes as advocates and judges. Few will agree on them all, or on their order of importance, but diligence, courage, judgment and honesty must be four of them. There can be no doubt, however, that there is one quality apparent in all but one of our judges. They have about them a whiff of rugged old tom cat. Having seen the best and the worst, having fought hard to win, only sometimes to lose, having been forced sometimes to compromise, and having always to deal with the nettle, by grasping it or otherwise, has left its marks. Children of judges, following them as advocates and then judges, appear to have benefited from observing these marks and the practical application of the qualities necessary for success. What follows bears this out.

Toon: man of many parts

The exception referred to above is, of course, Miss Justice Leonora Van den Heever.

Judge Van den Heever is the first, and only, woman to have been appointed a Judge of the Supreme Court, and the daughter of Mr Justice Francois Petrus Van den Heever. Her father was born near Heidelberg in 1894. He matriculated in 1913 and took his BA degree at the Transvaal University College in 1916. While at university he persisted in calling a scrum-half "Duimpie" until his victim cried out in desperation "Ag man, jou groot toon." The name stuck and this is how he became Toon van den Heever, as he was known for the rest of his life. After university he taught Latin, Nederlands and English for two years, and then joined the Civil Administration at Windhoek, took his LLB degree by correspondence, and began to practise at the Bar at Windhoek in 1921. In 1926 he was appointed Senior Law Adviser to the Union Government and later to the Department of Foreign Affairs. In 1931 he was Secretary for Justice, Law Adviser for External Affairs and Government Attorney. About this time he was instrumental, in large measure, in bringing about the change which accorded Afrikaans its full place beside English in our Statutes. He also helped prepare the Statute of Westminster. In 1933, aged thirty-eight, he was appointed a judge on the South West African Bench. In 1938 he went to the Bench of the Orange Free State Provincial Division, becoming Judge President in 1948 and being appointed to the Appellate Division in the same year. Prominent in Afrikaans literature, he received the Hertzog Prize in 1951. He was a pilot who sometimes flew to circuit court venues, and, when he died in 1956, was an Honorary Colonel in the Air Force. He modestly refused to allow a biographical note to be published before 1949, after his appointment to the Appellate Division. His first-rate intellect, his ability to move with ease in the old authorities and his integrity were widely admired by the Bar. He believed very strongly that the rule of law is the foundation on which civilisation is built.

Leonora: first woman judge

The apple did not fall far from the tree. Born in Windhoek, she lived in Pretoria, Windhoek again, and, finally, Bloemfontein. She has the same aptitude for languages as her father and demonstrated it at the Oranje Girls' High School and later at Pretoria University, where she obtained, cum laude, her BA degree in English and Latin. Her father wanted her to take a legal degree but she obtained
an MA degree, *cum laude*, in English instead. She then taught, but, persuaded by her father that she would be doing him an enormous favour by temporarily acting as his registrar, she did so, decided to do a legal degree, graduated with an LLB in 1951 and began practice at the Bloemfontein Bar in 1952. After she married in 1958, the Bar Council gave her permission to practise from her home in Welkom. During the next five years, she bore three children, one of their births preventing an appearance the same morning in Motion Court. In 1968 she took silk. In 1969 she was appointed a judge in the Northern Cape Division, and, in 1979 in the Cape Provincial Division, where she now sits. A person who has demonstrated what a woman can do in a male-dominated profession, she has an ironic sense of humour which is often like a zephyr of fresh air through her judgments. She has observed, wryly, for example, that, in assessing a husband’s damages for adultery, “Courts apparently regard the loss of a modern ‘liberated’ woman less seriously than that of her predecessor”, (in *Chapman v Chapman and Another* 1977 (4) SA 142 (NCD) at 144).

**The Hoexters**

The first person to follow his father on to the Appellate Division Bench was Mr Justice Gustav Gerhardus Hoexter. He followed his father, Mr Justice Oscar Hendrik Hoexter.

The older Hoexter was born to a doctor of German extraction at Rouxville in 1893, matriculated first class at Rouxville Secondary School and obtained a Cape University BA degree with Honours in Classics, when eighteen years of age. He then took a double first in economics at Emmanuel College, Cambridge (where he studied under Keynes, was awarded a research scholarship for further study in banking and currency and was elected president of the Cambridge Union) and an LLB at the Cape University. Admitted to the Bar in 1918, he practised in Bloemfontein, where he was also a part-time lecturer, and took silk in 1929. He was appointed a judge in the High Court of South West Africa in 1938. In his spare time he played the piano, the violin (and, it is reported, could have become a successful professional performer), bridge, tennis, billiards, and practical jokes. In 1944 he was transferred to the Eastern Districts Local Division, becoming Judge President in 1948, in which year he was transferred to the Appellate Division. He retired in 1963 and died in 1970. With his sharp intellect, he could read and absorb details at speed and analyse complex situations quickly. (He held that the amount of damages awarded for pain and suffering must not vary with the standing of the injured person, and “most decidedly not...by reference to his race” (*Radebe v Hough* 1949 (1) SA 380 (AD)).

**Gus: first person to follow father in AD**

Gustav Gerhardus Hoexter was born in 1924. He matriculated at the Hoërskool Windhoek, but then interrupted his studies in 1942 to serve in the Sixth South African Division in Italy. After the war he obtained his BA degree at the University of Cape Town, and, in 1948 a BA and an LLB at Emmanuel College, Cambridge. He then worked as a Judge’s registrar. In 1949 he began to practise at the Pretoria Bar and took silk in 1965. His organisation of huge quantities of material in the Parity fraud case is famous, as is the generosity he showed to his juniors. In 1970 he was appointed to the Bench in South West Africa, from 1974 to 1982 he served on the Natal Bench and in 1982 he was appointed to the Appellate Division. He is eloquent in both official languages, fishes for trout, reads and plays the piano, the violin, an ultra-subtle game of tennis and, often post-prandially, practical jokes.
The Milne family is the only one yet to have had father and son constitute a court, and to have father and son appointed as Judges President.

Alexander: son of a seafaring captain

Mr Justice Alexander Milne was the son of a seafaring Captain and was born at Aberdeen, Scotland, in 1899. His parents came to South Africa in 1907, and he went to school at Bethlehem. In the First World War he served in the East African campaign in Signals. He was under age but told the recruiting officer he would be nineteen years old on “27th November”, omitting to add that it would be in a year three years later. After the war, in 1919, he went to Exeter College, Oxford, through the good offices of an uncle, (his uncle’s message arriving on the day he was to begin his articles in Durban) and obtained a First in the BA Hons degree. In 1922 he was called to the Bar at the Middle Temple, after which he returned to Durban where he then became an articled clerk. Practice at the Bar began in 1924. During the Second World War he served in Signals in North Africa, became a major and took silk. He was appointed to the Natal Bench in 1954, becoming Judge President in 1962 and retiring, after a short spell acting in the Appellate Division, in 1969. In retirement he sat as a member of the Court of Appeal of Swaziland, Lesotho and Botswana and re-wrote Henochsberg on The Companies Act. He died in 1986. He took endless trouble to get to the bottom of everything that came before him with the result that, in litigious matters, it was widely held by counsel that everyone left his court satisfied that justice had been done. He drove inventively and fast. From a standing start at a robot in Pietermaritzburg a left-hand turn from the right-turning lane, across two lanes of traffic, presented no problem. The writer was the admiring motorist on his left.

The Milnes

John: only person to follow father as Judge President

His son, Mr Justice Alexander John Milne, is from the same mould. Born in 1929, he went to Hilton College, Rhodes University, where he did a BA degree, with, after some nudging by his father, some law subjects, and Exeter College, Oxford, where he took an MA degree. He was admitted to the Bar in 1953. While a junior, he was led by his father on a number of occasions, an experience he has described as an educating one. He took silk in 1965 and, while acting as a Judge of the Natal Provincial Division, made history by sitting with his father on 9 September 1968. He says that, fortunately, they agreed. Appointed a judge of the Natal Provincial Division in 1971, he became Deputy Judge President in 1981 and Judge President in 1982. On 1 January 1988 he was appointed to the Appellate Division. Counsel have found him to be accomplished in both official languages: he presides with a courtesy both friendly and firm, and invariably masters all the facets of the cases he decides. He has been constructively involved in wildlife conservation (as a member of the Natal Parks Board), he is a fly fisherman frequenting both the Dargle and Underberg areas of Natal and, perhaps influenced by experience, has been president of the Institute of Advanced Motorists. His interest in, and affection for, all the peoples of Natal has been manifest.

Three-generation contributions

A three generation contribution to the Bench has happened three times. In the Transvaal it was Mr Justice John Stephen Curlewis, Mr Justice Ivan Curlewis and Mr Justice David Jeppe Curlewis. In Natal, it was Mr Justice William Broome, Mr Justice Francis Napier Broome and Mr Justice John Jervois Broome. In Natal and Southern Rhodesia it was Mr Justice Kenneth Howard Hathorn, Mr Justice Alexander Anthony Roy Hathorn and Mr Justice Anthony Scott Hathorn.
The Curlewis's

John: became Chief Justice

Mr Justice John Stephen Curlewis's father was a Rector at Paarl. The future judge was born in 1863. He first went to school in Paarl and then matriculated at the Diocesan School, Rondebosch, in 1881. He took his BA degree and began to teach at Cradock, then worked in the Registrar's office of the High Court of Griqualand, when he decided to take an LLB degree, and did so in 1887. In 1888, attracted by the discovery of gold and its associated mining and commercial activity, he went to the Transvaal where he began to practise in Pretoria, making himself at home in Dutch, the official language of the Transvaal High Court, and working to the extent that his health began to fail. He acted on the High Court Bench and would have been appointed to it but for the Anglo-Boer War. After the war, in 1903, he joined Innes CJ on the wonderful Transvaal Bench of that time. All along he was a great sportsman and a "well-known owner of racers on the Pretoria course", which he sold when appointed to the Bench. In 1924, he became Judge President, in 1927, three years later, he was appointed to the Appellate Division and in 1936, after the death of Wessels CJ he became Chief Justice. His outstanding characteristic was the thoroughness with which he investigated every point which came up for decision, since he had a conscientious resolve to test the correctness of the conclusion from every possible angle. When he died in 1940, the Chief Justice, Mr Justice N J de Wet, said: "Off as well as on the Bench, he was always the perfect gentleman. He was a genial companion and a warmhearted friend to those who had the privilege of knowing him intimately."

Ivan: held permanent appointment together with father

His son, Mr Ivan Curlewis, was appointed to the Transvaal Bench on 1 March 1938, but died four and a half months later. Curlewis CJ had delayed his retirement until his son was appointed. They then became the only father and child to have been appointed permanently as judges at the same time. The son was a hard working man who contracted malaria on circuit and died after it was misdiagnosed by the family doctor's locum.

David: demanding leader

Mr Justice David Jeppe Curlewis was born at Pretoria in 1925. He matriculated at Michaelhouse in 1942, went to Rhodes University, joined the Navy in the Second World War when he reached the right age, learned there to call everyone "Towns", went to University College (his father's college) at Oxford on his discharge in 1945, qualified, was awarded a Blue as a welterweight, and began to practise at the Pretoria Bar in 1949. He took silk in 1965 and was appointed a judge in 1974. A demanding leader, generous both materially and with praise for work well done, he used his juniors not so much as sounding boards, but as thumping boards. His frankness with clients coupled with an acute sense of humour provided them with moments of high comedy. He memorised his briefs, minutely examining everything from every angle, and was unshakeable in advancing what he considered good points - using a fine command of English. He presides at speed, takes firm prima facie views, is persuasive, and might crucify the writer for having amplified this sketch beyond its bare bones as he believes in judicial reticence.
The Broomes

William: adventurous life

Mr Justice William Broome was born in 1852 to a chaplain in the British forces on the Greek island of Zante. He went to Victoria College, Jersey, until 1867 when he went to New Zealand to farm sheep with his oldest brother Frederick. Hard times came for sheep farmers, so he returned to England. He then travelled to the United States of America just after the Civil War, where he eked out a living as a signwriter, in the retail trade, as a shop assistant and as a timber clearer. Attracted by the discovery of diamonds he came to South Africa in 1872 and worked as a sheep farmer near Beaufort West before seeking his fortune in the diamond fields. The days of the individual diamond digger passed, gold was discovered and he went to Pilgrim's Rest. He then visited Natal, caught malaria and, when returning to the Transvaal, became too ill to travel further and remained at Newcastle. He joined the Civil Service (his brother Frederick having arrived in Natal as Colonial Secretary) became Clerk in the office of the Attorney-General, qualified for admission as an Advocate, joined a legal firm, left it to rejoin the Civil Service and, in 1888, was appointed Magistrate at Newcastle. In 1889 he went to Pietermaritzburg as Master and Registrar of the Supreme Court. From 1897 to 1900 and from 1902 to 1904 he was Chief Magistrate of Durban, being a member, during the second period, of a special court hearing treason trials resulting from the Boer invasion of Natal. In 1904 he was appointed to the Natal Bench, retiring in 1918. He died in 1930. His son says that, although his adventurous life had not made him a scholar, he was an extremely well-read man who wrote impeccable English. He was rather shy, but had courteous good manners and was painstaking, thorough and dignified. He always rode a bicycle to and from court, enjoyed long excursions on foot and preserved his slim erect figure into old age.

Francis: ex-Member of Parliament

His son, Mr Justice Francis Napier Broome, was born in Pietermaritzburg in 1891. He went to Hilton College, becoming Head Boy, and, as a Rhodes scholar, to Oriel College, Oxford, where, knowing its value to a pleader in court, he took an Honours Degree in English. He was called to the Bar at the Inner Temple in 1913. He was admitted to practice in South Africa in 1914. In the First World War he served in the Natal Carbineers and the Royal Field Artillery, was awarded the Military Cross and became a Captain. Afterwards he resumed practice and took silk in 1931. From 1938 until he was appointed to the Natal Bench in 1939, he was member of Parliament for Pietermaritzburg District. In 1951 he became Judge President, in 1961 he retired and in 1980 he died. At the Bar he was generous with advice and encouragement to junior colleagues and presented clear, competent argument, being an effective public speaker. As Judge President he was an effective administrator and his door was always open to colleagues. He was 'n traditionalist and presided with scrupulous courtesy, but demanded that counsel know precisely what his case was and make clear submissions. Like those of his father, his judgments contain disciplined clarity of expression. He played a prominent role in the life of the University of Natal and Hilton College, where he was a governor, and he gave expression to his love of wildlife by serving for many years on the Natal Parks Board. He enjoyed walking and long walking trips exploring Natal. Like his father, he preserved his slim erect figure into old age.

John: completed fifteen Comrades Marathons

The third Broome on the bench, Mr Justice John Jervois Broome was born in 1928 and matriculated at Hilton College, tried other occupations before being called to the Bar at the Inner Temple in 1955 after qualifying for the English Bar and serving six months' pupillage, was admitted to the Bar in Natal in 1956, took silk in 1971 and was appointed to the Natal Provincial Division in 1976. He presides in an atmosphere of calm reasonability, writes the clear Broome prose, is a governor of Hilton College and an avid reader of the financial press. He likes to gather mussels, oysters and octopus, then eat them, usually with wine, a drink about which he has some knowledge. Like his forbears, he enjoys covering long distances on foot - though he does this at a faster pace than they did - having completed fifteen Comrades Marathons, and acquired the number 835, and having run three sub-three-hour standard marathons in his mid-fifties.
Kenneth: courteous and kind-hearted

The first of the Hathorn judges was Mr Justice Kenneth Howard Hathorn who was born in Salford in 1849. He came to South Africa with his parents in 1850 and attended Pietermaritzburg High School. He was an articled clerk for two years and was admitted as an attorney in 1871. He immediately left Natal for the diamond fields, did not make his fortune, returned to Natal and acted as Master when his father, the Master, was disabled by his last illness. He began to practise as an attorney and in 1877 was admitted as an advocate. In 1879 he bought the site in Church Street where the offices of the firm he founded still stand. From 1901 to 1906 he represented Pietermaritzburg in the Natal Parliament. He took silk in 1922 and was appointed to the Natal Provincial Division in 1931, becoming Judge President in 1939. He is said to have been a worthy opponent for MacKeurtan in the many cases they fought. As a judge he was generous hearted, but could and did strike terror in the hearts of the dishonest. He was not, he said, a learned judge, but he was regarded as a wise one and decisive. He died in 1957, after retiring in 1951. He played tennis regularly and was President of the Natal Lawn Tennis Association and the Pietermaritzburg Borough Tennis Association.

Alexander (Roy): became Judge President

His son, Mr Justice Alexander Anthony Roy Hathorn was born in Pietermaritzburg in 1882. He was christened with only two first names but his red hair earned him the name Roy, via Rooikop, and it was added by Deed Poll. Hilton College and Lancing College, Sussex, provided his early education, followed by Gonville and Caius College, Cambridge. He read law and passed his Bar examinations, obtaining a BA degree in 1903, and was called to the Bar by the Inner Temple in 1904. In 1904 he was admitted as an advocate in Natal and joined his father's firm, where he practised as an advocate and an attorney until 1921, practising exclusively at the Bar with Chambers in Durban and Pietermaritzburg thereafter. He took silk in 1922 and was appointed to the Natal Provincial Division in 1931, becoming Judge President in 1939. He is said to have been a worthy opponent for MacKeurtan in the many cases they fought. As a judge he was generous hearted, but could and did strike terror in the hearts of the dishonest. He was not, he said, a learned judge, but he was regarded as a wise one and decisive. He died in 1957, after retiring in 1951. He played tennis regularly and was President of the Natal Lawn Tennis Association and the Pietermaritzburg Borough Tennis Association. 1908, went to Malvern College from 1922 to 1926 and then to Gonville and Caius College. He obtained his BA Hons degree and was then called to the Bar by the Inner Temple in 1930. He returned to Natal to become an articled clerk in the Hathorn firm and was admitted as an advocate in 1931. He began to practise at Pietermaritzburg in 1932, did pupillage with MacKeurtan that year and went with him to Rhodesia when he appeared in Bulawayo. He served in the Artillery in the Second World War, was captured and was a prisoner of war for three years when his health was damaged. Returning to Durban, he took silk in 1951. He was appointed to the Rhodesian High Court in 1954. His colleagues have said that he could quickly strip a case of technicalities and unnecessary details to reveal the essentials on which to base his decision. He was also said not to give learned judgments, but being guided by Mr Justice F N Broome's proposition that what was not good sense could not be good law, gave wise ones, in the Hathorn way, until his health failed. When he retired he was a member of the Appellate Division of the Southern Rhodesian High Court. He died in 1967.

Conclusion

A study of the list of judges in South
Africa since 1850 reveals that, all whites, they have contributed to the Bench from most parts of the range of cultures composing our white society. A study of the same list reveals that at least eighteen families have had a father and his child and, in three cases, also his grandchild, who have contributed to this tradition. The foregoing sketches reflect this and show that the particular fathers and children have, not surprisingly, tended to be similar to each other, but different from other fathers and their children. While this article is not intended to be one in which profound conclusions are drawn, this will further be illustrated when the remaining fathers and their sons are sketched in a second article. Then, such families as the Brinks, de Wets, Fagans, Friedmans, Galguts, Jennetts, Ludorfs, Sampsons, Searles, van der Riets, Watermeyers and Williamsons will appear.

Appêlregters tree af

Elike appêlregters wat diep spore op regsgebied agtergelaat het, het in die jongste verlede die tuig neergelê.

Sy Edele E L Jansen het by die Pretoriase Balie gepraktiseer toe hy in 1957 tot die Natalse regbank verhef is, vanwaar hy in 1961 na Transvaal oorgeplaas is. In 1968 is hy as appêlregter aangestel wat daarop neerkom dat hy vir ongeveer 20 jaar in die hoogste hof van die land gedien het. Vele uitsprake van hom wat sekerlik vir baie jare as ligbakens sal dien is in die hofverslae aangeteken.

Sy Edele G Viljoen is ook 'n produk van die Pretoriase Balie. Hy is in 1963 as regter in Transvaal aangestel en in 1980 as appêlregter. Regter Viljoen het ook belangrike bydrae buiten die suiwes regsprekende terrein gelewer. Hy was onder meer Voorsitter van die Kommissie van ondersoek na die Strafstelsel van die Republiek van Suid-Afrika (1974/76). Die Kommissie se verslag en aanbevelings het die weg gebaan vir 'n meer verligte strafstelsel en talle nuwe idees aangaande straftoemeting - sommige waarvan vandag nog in die proses van verfyning of implementering is. Regter Viljoen was ook vanaf 1977 Ondervoorsitter en vanaf 1982 Voorsitter van die Suid-Afrikaanse Regskommissie en het 'n reuse bydrae tot die ontwikkeling en uitbouing van die Kommissie gelewer.

Sy Edele W G Boshoff, ook 'n produk van die Pretoriase Balie, is in 1957 as regter in Transvaal aangestel. Hy het vir bykans tien jaar - vanaf November 1976 tot Junie 1985 - een van die moeilikste en veeleisendste regsposte in die land beklee, naamlik die van Regter-president van die Transvaalse Provinsiale Afdeling. Hy het nogtans tyd ingeruim om ook ander belangrike take in hierdie tydperk te verrig, onder andere as Voorsitter van die Regshulpraad. Op 16 Junie 1985 is regter Boshoff in die Appêlafdeling aangestel waar hy tot met sy uittrede gebly het.

Sy Edele H R Jacobs was 'n relatief senior beampte in die Departement van Justisie toe hy bedank en by die Bloemfonteine Balie aangesluit het. In 1965 is hy as regter in die destydse Griekwaland-Wes Plaaslike Afdeling aangestel. In 1968 is hy op secondeeringsgrondslag as Hoofregter in Lesotho aangestel, waar hy en sy gade met aansienlike persoonlike opofferrings in meer as een opsig baanbreekerswerk verrig het. In 1974 keer hy terug en word hy as Regter-president in Kimberley aangestel waar hy gebly het totdat hy in 1985 in die Appêlafdeling aangestel is.