Fathers and their Children on our Bench

The De Wets

NJ: Dignified and good humoured

Mr Justice Nicolaas Jacobus de Wet was born to his farmer father at Mooifontein, Aliwal North, in 1873. He matriculated at the Aliwal North Public School in 1898 then going on to take a BA degree at Stellenbosch University in 1893 and an LLB degree at the University of Cambridge in 1895, where he won the Chancellor’s Gold Medal. He was admitted as an advocate, first in the Cape and then in the Transvaal, in 1896 and practised in the Transvaal until the outbreak of war, when he joined General De la Rey’s staff acting, from 1898, as Chief Censor and Acting Assistant State Attorney until the British occupied Pretoria. He was present at the abortive Kitchener/Botha peace negotiations at Middelburg in 1901. He was appointed a Judge in the High Court and later became Military Secretary to Louis Botha. Amongst his other duties, he acted as interpreter between the Boer delegates and the British delegates in the negotiations which led to the Treaty of Vereeniging in 1902. After the war he resumed practice and was elected a member of the ‘Hoofd Comitee’ of Het Volk. From 1907 to 1910 he represented Middelburg West in the first Transvaal Parliament. At the National Convention in 1909 he was Legal Adviser to the Transvaal delegates. He took silk in 1912. In 1913 General Botha asked him to become Minister of Justice which he reluctantly did and, both sides recognised, very competently piloted much consolidating legislation through Parliament, including the 1916 Insolvency Act. When Lord De Villiers died in 1914, he offered the Chief Justiceship to Sir James Rose Innes when he might have claimed it himself, telling Sir James he had no judicial ambitions. In 1924, although he once again might have had high judicial office, he preferred to return to practise at the Pretoria Bar where he was leader until appointed to the Transvaal Bench in 1932. In 1937 he was appointed to the Appellate Division and in 1939 he was made Chief Justice and became a member of the Privy Council. In 1942 he acted as Officer Administering the Government when Sir Patrick Duncan was ill, refusing the position of Governor-General. He retired from the Bench in 1944 but continued as Officer Administering the Government for a short while and died in 1960. As an advocate he was said to have been exceptionally quick to grasp the essential questions on which a case turned. Jacob de Villiers JA said of him ‘De Wet’s appearance in an appeal in our Court is like a breath of fresh air’. As a judge he was said to have been dignified and good humoured both in and out of Court and to bring a sound knowledge of Roman-Dutch legal principles, a wide experience of affairs and a robust approach to bear on the problems before him, giving short and to the point judgments. A fellow Appeal Judge described him as straightforward, candid, unpretentious and loyal to his friends. He was an enthusiastic golfer, a keen bridge player and adept at all forms of ‘patience’. During his period as Minister of Justice, he tried to reduce liquor trapping to a minimum. He was Chairman of the Board of Trustees of the Kruger National Park for many years.

Since 1910, seventy-five judges have been appointed to the Appellate Division. Of these, eight have had the distinction of having a child appointed to our Bench. They are, in the order of their appointments, Curlewis, De Wet, Watermeyer, Van den Heever, Hoexter, Fagan, Williamson and Galgut, JJAs. In the first article on ‘Fathers and their children on our Bench’ (1988 2(1) Consultus 21) the Curlewis, Van den Heever and Hoexter families appeared. In this article, the De Wet, Watermeyer and Fagan families are covered.

MD Southwood SC
Pietermaritzburg Bar

Mr Justice NJ de Wet
Mr Justice EF Watermeyer

Quartus: Short judgments
His son, Mr Justice Quartus de Wet, was born at Pretoria in 1899. He matriculated at Pretoria Boys’ High School and attended the Transvaal University College and Cape Town University to obtain his BA and LLB degrees. He was admitted as an advocate in 1922 and practised at the Pretoria Bar. He took silk in 1945. His letters patent were signed by his father, then Officer Administering the Government. He acted as President of the Pension Appeals Tribunal and was appointed to the Transvaal Bench in 1950, becoming the Judge-President in 1961. He retired in 1969 and died in an old age home in 1980. During 1964, despite having received threatening letters before the trial, and having a bomb plot against him unearthed during it, he tried and sentenced Nelson Mandela and his co-accused in the Rivonia Trial. As a judge he was practical with a common sense approach. Consequently he did not waste words but gave short and to the point judgments that weathered well. He was a keen golfer and bowler and according to counsel he did not waste words but gave short and to the point judgments that weathered well. He was a keen golfer and bowler and according to counsel. One of his schoolfellows at Bath College later said that he had ‘extreme fairness of mind’ as senior prefect, in which capacity he would listen to both sides, make a decision and then be unworried by any criticism. He admitted that early in his university career he did not work very hard. He did, however, travel extensively in Europe and pursued his rowing with vigour. During the Boer War, while NJ de Wet was working for the Boers in Pretoria, he volunteered for service in the Cambridge University Volunteer Regiment and became a Captain. After nine years away he returned to South Africa and was admitted to the Cape Bar in 1904, where he eked out a living in those hard times. In 1920, as a staffgownsman, he acted as a Judge, and was appointed chairman of the Special Income Tax Court where his mathematics stood him in good stead. In 1921 he took silk. In 1922 he was appointed to the Bench of the Cape Provincial Division. In 1938 he was appointed to the Appellate Division from which he retired in 1950, to Hermanus where he gardened enthusiastically. He was a champion of Roman-Dutch law with a keen analytical mind. He is said to have been unfailingly courteous and his calm and untruffled judicial temperament was said to have been of great assistance in unravelling knotty problems. He was known as ‘Billy’ to his friends and died in 1958.

The Fagans
Henry: Remembered for ‘gentlemanliness’
Mr Justice Henry Allan Fagan was born into a legal family at Tulbagh in 1889. After school at Somerset West he took a BA degree in literature at Stellenbosch University where he was awarded the King’s Medal for outstanding scholarship. He intended to become a Minister of Religion and went to the Theological Seminary. However, he changed his mind, and went to London University where he obtained his LLB degree in 1913. He...
was admitted to the Bar as a member of the Inner Temple in 1914, returned to the Cape to practise and was swept into the political net. He was part of the committee which formed the company which became Nasionale Pers, and became a director. He became the assistant editor of Die Burger, then a fledgeling newspaper. In 1920 he became Professor of Roman-Dutch Law at Stellenbosch University, but in the same year returned to the Bar. In 1933 he again went into politics and was elected to Parliament for Swellendam as a Nationalist under General Hertzog whom he followed into the United Party becoming Minister of Native Affairs until 1939, when ousted. He returned to practice, was appointed to the Cape Bench in 1943 and to the Appellate Division in 1950. He became Chief Justice in 1957 and retired in 1959. After his retirement he unsuccessfully stood, in 1961, for election as the first State President, and in 1962, he became a Senator. He died in 1963. Although his literary output was not great when engaged in his practice and politics, in the field of Afrikaans literature he was prominent, writing poetry, short stories, plays and novels, mainly in Afrikaans, but also in English. He composed several musical pieces, was a keen and competent chess player and reputed to be a doughty opponent over the chess board. He is said to have been unfailingly courteous on the Bench and to have been a tolerant, humane and sincere man. When he died it was said that he would be remembered, using Ruskin’s words, for his ‘gentlemanliness, being another word for intense humanity.’ He was a champion of Roman-Dutch law and his best-known judgments are those in which he dealt with important common-law issues requiring investigation into the old authorities.

Johannes: Interested in community life
Mr Justice Johannes Jacobus Fagan, son of HA Fagan, was born at Rondebosch in 1927. He was schooled at Simon van der Stel Laerskool, Groote Schuur Laerskool and Jan van Riebeeck Laerskool and Hoërskool, then obtained BA and LLB degrees at Cape Town University, the latter in 1949, and a BCL degree at Oxford in 1952. He was admitted to the Cape Bar in 1952, took Silk in 1972 and was appointed to the Cape Bench in 1977. On the Bench he is active and vigorous, does not like to waste time, but allows counsel his due. He is interested in the Bar and popular with it. His pursuits show love of physical activity, an aesthetic appreciation and an interest in community life. He has been chairman of the Llandudno Residents Association, a Trustee of the National Botanic Gardens, a founder committee member of the Cape Clear Association, a committee member of the Zeekoevlei Yacht Club, a member of Rotary, Chairman of the Academic Advisory Committee and of the Board of Patrons of the University of Cape Town Institute of Criminology, a member of the Board of Trustees of the Michaelis Collection and a member of the school committee of the Hoërskool Jan van Riebeeck. He has mountaineered, sailed, and more recently board sailed, motor cycled and, above all, run. In 1979, challenged to run a marathon, he trained for six months and did so. By 1982 he had run five standard marathons and the Two Oceans event. While his runs must be accorded their due, it is felt that they are perhaps shaded by those of Mr Justice Broome of the Natal Bench.

The first article optimistically promised that all the families which did not appear in it would appear in the second article. Without reducing the life stories to a few, completely colourless lines each, this could not happen. They will, however, make their appearance in future articles.