

## Don't Trifle With the Law

There is a Latin saying in English law: *De minimis non curat lex*, which can be translated as: "The law does not concern itself with trifles".

Perhaps it has good reason.

His Worship, Robert Anthony Dewcliff, swatted a fly from his face. He hated these stints in the country, preferring his familiar, modern, courtroom in Melbourne.

The space he was presiding over could hardly be called a courtroom. It was the local hall, with a tin roof and plasterboard walls. The wooden floor was scuffed and dusty. The magistrate's 'bench' was no more than a large table set on a raised dais, with what looked like a red plush curtain thrown over it.

Two ceiling fans did little to make the heavy air more breathable, though they did manage to circulate the flies equitably among those present. One of the fans squeaked annoyingly.

Robert Dewcliff looked over the assembly. Facing him were five lawyers, sitting at two tables. Behind them were some seven rows of the sort of collapsible seats which are common in halls. On these sat a mixed collection of citizenry. More seats were empty than occupied. If he leaned forward he could look down on the balding head of the Clerk of Courts, sitting at a small table facing the body of the Court.

Robert Dewcliff coughed and the Clerk looked up at him. "Let's get on with it, for goodness sakes," he whispered to the upturned face.

"Yes, your Worship."

The Clerk shuffled through files on his table, pulled one out, opened it and stood up. "The case of Erwitt and Jones." This he shouted in a deep voice that echoed around the hall.

One of the lawyers stood up and adjusted a tie festooned with white sheep, among which was one black one. "I represent the Plaintiff, Mrs Erwitt, your Worship."

Robert Dewcliff looked through a list on his table, looked up and said, "Go ahead Mr Whittle."

"Thank you, your Worship. My client claims that the Respondent has stolen her intellectual property." There were giggles from some of the onlookers.

A woman in her fifties stood up from her seat behind Mr Whittle. "It's not about property! She stole my recipe!" As she said this, she pointed to a woman some five years younger, sitting behind the lawyers at the other table.

The Clerk stood up. "There will be no interruptions in this Court. Everyone sit down." He looked up at the Magistrate, like a dog expecting a pat on the head.

Robert Dewcliff ignored him and pulled a handkerchief from his pocket to wipe the sweat from his brow and the back of his neck. "Listen folks, it's a hot day and I don't want to be here any more than most of you do. So let's get on with it as quickly as we can and we can all go home. I've three more days here; please don't make them any harder for me."

Mr Whittle rose again. "Thank you, your Worship. We also don't want you here any longer than necessary." There was more giggling. "I mean, sir, we don't want to keep you here too long." His face had turned a deep red and he shuffled his feet and then his files. "As I was saying, your Worship, my client claims that Mrs Jones stole her intellectual property and has profited from this theft and she claims compensation for her loss."

"It says in the Statement of Claim, Mr Whittle, that your client's loss amounts to \$5,000. What was her recipe for?"

"It's a trifle, your Worship."

“Even I wouldn’t call \$5,000 a trifle, Mr Whittle.” More laughter from the body of the hall. The Clerk looked up with a scowl on his face and all went quiet, except for the fan.

“No, your Worship, the recipe was for a trifle.”

“I see. In that case the \$5,000 is certainly not a trifle. Please continue.”

“Your Worship, my client alleges that the Respondent stole her recipe for her prize-winning trifle and used it for her own purposes, without my client’s permission.”

“Theft is commonly done without the victim’s permission, Mr Whittle.”

“Yes, your Worship.”

While the Magistrate was speaking, Mrs Jones rose and then interjected as Mr Whittle was in mid-response. “It wasn’t hers in the first place, it was our mum’s.”

“Mr Avergaard, please ask your client to sit down and warn her not to interrupt. Now, Mr Whittle, have you any witnesses?”

“Yes, your Worship, twenty.”

“I hope you’re not planning on calling all of them. Mr Avergaard, do you have any witnesses to call?”

“Yes, your Worship, twenty.”

“Another twenty!”

“They are the same witnesses, your Worship.”

“I beg your pardon?”

“Mr Whittle and I are calling the same witnesses, if it please your Worship.”

“It doesn’t please me at all. Why are they the same witnesses?”

Mr Whittle rose. “Because, your Worship, they are mostly relatives of the parties and people who live around here.”

“Okay, Mr Whittle, who is your first witness?”

“I call the Respondent, your Worship.”

“You can’t call her as your witness, Mr Whittle. The Complainant’s lawyer can’t call the Respondent as a witness.”

“With all due respect, your Worship, according to the Supreme Court decision in the case of *Menders v Menders* I’m entitled to call the Respondent as a hostile witness.”

The solicitor picked up one of the books from his table and walked forward, giving it to the Clerk. “On page 335, your Worship. It’s marked with a yellow sticky note.”

Robert Dewcliff frowned, wiped his forehead and neck again and took the proffered law report from the Clerk. He studied it for a few minutes, grunting occasionally and waving flies from his face. The ceiling fan squeaked away relentlessly.

The Magistrate looked up. “I don’t agree with the judges’ reasoning, but there’s little I can do about that, Mr Avergaard. Mr Whittle, you may proceed.”

“Thank you, your Worship.” He turned to his right, pointed at Mrs Jones and told her to “step into the witness box”.

There was no such structure in this make-do courtroom, only a card table with a chair behind it. Mrs Jones got up and shuffled to the place indicated, looking surly.

The Clerk rose and faced her. “Please put your hand on the Bible and repeat after me: ‘I swear to tell the truth, the whole truth and nothing but the truth’.”

“I always do,” Mrs Jones replied.

“Please do as I asked.” The Clerk repeated his instructions and the witness obliged. She sat down.

Mr Whittle rose to his feet. “Mrs Jones, please state your full name and address.” She did. “Mrs Jones, do you consider yourself an expert in culinary matters?”

“In what?”

“In matters of cooking and baking and so on.”

“I don’t know... I suppose so.”

“And as such, you would be able to tell the difference between different versions of the same item.”

“What do you mean? Like between different sorts of knives?”

“Well, not exactly. For example, if I put two chocolate cakes in front of you, you’d be able to tell me if they were made to the same recipe, wouldn’t you?”

“You know damned well I would. But this isn’t about chocolate cakes, it’s about trifles.”

“Yes, quite. So if I put two trifles in front of you and they were different, you’d be able to tell?”

“But they *were* different. Toll can tell you that.” Several people in the courtroom laughed.

Robert Dewcliff looked up from reading a letter he’d received from his wife that morning. “Who is Toll, Mrs Jones?”

“My lawyer over there. Tollus Avergaard.” She pointed.

“Please refer to people by their proper names, Mrs Jones,” the Magistrate told her.

“But that *is* his proper name, your Honour. Most people call him ‘the Dane’.” More laughter, this time with less control.

“That will do. Mr Whittle, please control your witness.”

“But, your Worship, she’s a hostile witness.”

Robert Dewcliff groaned again as he put his face in his hands. He looked up. “Please get on with it, Mr Whittle.”

The solicitor searched through the files in front of him and pulled out a sheet of paper which he held out for the Clerk to give to the witness. The paper looked like a sheet torn from a foolscap pad, was lined pale blue and was dog-eared. The writing on it was neat and obviously executed with a fountain pen.

Mrs Jones looked at the paper, blanched and looked up at Mr Whittle. By the time she opened her mouth her face was red. “Where did you get this? This was our mum’s!”

Mr Whittle smiled. “In answer to your question, that is my business. In response to your assertion, I understand it was and that is my point.”

“What do you mean, that is your point?”

Robert Dewcliff turned to face the witness. “Mrs Jones, you are not to argue with the lawyers. That is what *they* are paid to do. The way it works in a Court of Law is that the lawyers, and sometimes the Magistrate, ask the questions and the witness answers them. Witnesses are not expected to ask questions and I order you not to ask any more. Do you understand?”

“But, your Honour, this is preposterous. Now he’s in cahoots with my sister!”

“What on earth are you talking about, Mrs Jones?”

“Geoff Whittle is in cahoots with my sister over there.” Mrs Jones pointed at Mrs Erwit, who at this stage was standing and shaking her fist at the witness.

“Don’t you accuse Geoff of being in cahoots with anyone! How dare you?” Mrs Erwit was shouting and Mrs Jones was shouting something back, but in the commotion it was

impossible to make any sense of what was said. Both solicitors were also raising their voices to try and be heard above the noise, apparently aiming their remarks at the two sisters.

The Magistrate frantically searched for his gavel and, when he found it, banged it down hard on the table in front of him. "That will do!" he shouted and there was instant silence in the hall, except for the squeaking fan.

"I want someone to explain to me what on earth is going on here."

Immediately there was a confusion of loud talking from the lawyers, the two women in the dispute and some of those in the public area. Robert Dewcliff used the gavel again, had to wait this time for silence and then leaned over to speak to the Clerk. The two held a whispered conversation, with everyone else straining to catch what was being said.

After several minutes of this the Magistrate sat up straight. During the conversation the Clerk had pointed at various people and the Magistrate had looked at each one with interest.

"I see," Robert Dewcliff said. "I see." He had a broad smile on his face.

He turned to Mrs Jones and asked her to resume her seat behind her lawyer and asked everyone else to sit down and be quiet. There was much shuffling and coughing and dropping and picking up of things.

"From what the Clerk tells me, we could be here all day and the next, if we don't move things along. I intend to ask the questions from here on."

Mr Avergaard stood up. "But with all due respect, your Worship, that is highly irregular."

"Sit down please, Mr Avergaard. I agree with you, it is irregular. But I will do this my way and if anyone is dissatisfied with the outcome, they can appeal."

Mr Avergaard muttered, "I certainly will!"

The Clerk turned around and spoke to the Magistrate quietly for another two or three minutes, to the accompaniment of more shuffles and coughs and conversations from those present; and the squeaking fan.

Robert Dewcliff turned his attention back to the lawyers. "I'm sure that we can sort this out in a minimum of time. Mr Rogers here," indicating the Clerk, "has explained some of the background to this saga and the relationships of those involved."

Both lawyers involved in the case stood up and their words of protest ended up jumbled into a senseless noise. Robert Dewcliff held up his hand and they stopped and sat down.

"Let me see if I've got this straight. Mrs Erwit and Mrs Jones are sisters. Mr Avergaard is Mrs Jones' brother-in-law and Mr Whittle is Mrs Erwit's brother-in-law. Six of the proposed witnesses are also related to the parties. Another seven proposed witnesses are close friends of various branches of the family. The other witnesses are members of the local agricultural judging committee." Robert Dewcliff looked at the Clerk for confirmation and the latter nodded.

He continued. "Now I'd like to get clear on the facts. Mrs Jones, you said before that the sheet of paper you were shown by Mr Whittle was your mother's. Please explain to me its significance."

Mrs Jones stood up. "It's our mum's recipe for her famous trifle. She won prizes with it all over the place; even at the Royal Show." She looked at the Magistrate proudly.

"Thank you Mrs Jones." The Magistrate turned to the sister. "Mrs Erwit, is this the recipe you claim your sister stole from you?"

"No, your Worship. It's *my* recipe she stole. Mine's better than our mum's, because it's got berries on top."

Mrs Jones jumped up and shouted at her sister, "You always use strawberries. I always use raspberries. It's not the same!" She sat down with a satisfied look on her face and folded her arms defiantly.

Robert Dewcliff opened his mouth to speak, but was prevented by an outburst from Mrs Erwitt, who was now standing again. “It makes no difference because everything else is the same in it. Berries are berries!”

Before she could say more, the Clerk told everyone in a loud voice to not talk, unless asked to, followed by Robert Dewcliff himself. “Thank you, Mr Rogers. Now, which of you is the senior judge from the agricultural committee?”

A small, thin woman with a head of white hair stood up. “I am, your worship.”

Mr Avergaard stood up and said, “Her name’s Ivy Bloomfield, your Worship.”

“Thank you, Mr Avergaard. Now, Mrs Bloomfield, have you had the opportunity to see and sample trifles from the two feuding sisters?”

“Yes sir, I have.”

“And are they different?”

“One’s a strawberry trifle and the other’s a raspberry trifle.”

“Yes, so I understand. But under the berries, are they different?”

“No sir. Under the layer of berries they are the same; except they use different berries.”

“So you would say they are the same recipe — use the same recipe.”

“Yes and no, your Worship. You could say that a trifle is a trifle. They’re all based on the same simple recipe. What makes them different are the little things.”

“Could you please give me an example?”

“Yes sir. Some people use Madeira cake, some use a simple sponge, some even use cake made without wheat flour, and so on. Also people can make the custard in different ways. People use different alcohol or none at all. And some people use different fruit, as with these two.” She pointed to the two sisters in turn.

“And you would say that in this case they are different recipes?”

“Yes, I would.”

“So a trifle using strawberries is clearly different from a trifle using raspberries; they would be considered different recipes?”

“Yes sir.”

“And are both different from the mother’s?”

“Yes sir. She always used quince in her trifles, with no fruit on top.”

“Thank you, Mrs Bloomfield.” She sat down.

“Now Mrs Erwitt and Mrs Jones,” he continued. Their respective lawyers turned around and motioned to them to stand up.

Robert Dewcliff wiped his forehead and shook his head. “I’m amazed at all this carry-on. I don’t want to go into it, but I’m sure that if I enquired I’d find that this feud goes back a long way and has nothing to do with desserts.” There was a murmur through the Court and people nodded. “So,” he continued, “I order that the two of you seek mediation.” At this point several onlookers (or they may have been potential witnesses) stood up and cheered. The Clerk had to quieten everyone down again.

The Magistrate continued. “I dismiss the claim made by Mrs Erwitt. As for costs, I order that each party pay their own legal costs as I don’t expect there will be any, seeing that you are closely related to your lawyers.”

Now there was pandemonium in the Court. The cheering and laughing from the majority echoed off the bare walls and roof and mixed with the shouts of outrage from the two sisters and their lawyers. The lawyers approached where the Clerk was sitting and both started talking at once, their angry remarks aimed at the Magistrate. It amounted to suggesting that

city magistrates did not understand how people in the country operated and that family relations had nothing to do with how the law should be administered and that lawyers were entitled to their fees no matter what and...

Robert Dewcliff kept hitting the table with his gavel until, finally, the noise had subsided to a bearable level. He stood up and shouted, "I will not have this in my Court!" and banged the gavel down hard again. There was silence at last, except for the squeaking fan.

He sat down and pulled his handkerchief out again to wipe his face and neck. "Before anyone in this town brings this sort of action in the future, let them remember a centuries-old legal principle — *the law does not concern itself with trifles.*"

As he stood up and left, Robert Dewcliff sighed, then smiled — glad that from time to time he was able to call on something useful he remembered learning in law school.

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