

JUDGES and POLITICIANS

By LESLIE BLACKWELL

THE announcement that Mr. Henry Fagan, ex-Chief Justice of the Union, is to receive from the United Party the gift of a Senatorship in Natal, brings into sharp relief the tendency of retired Judges in this country to mingle in, if not actively to return to politics.

Such a thing could not happen in England. In that country, upon the foundation of whose legal system our own was mainly built, and whose traditions we inherit, very few Judges are appointed from the ranks of politicians, and I have never heard of a Judge who, after retirement, has entered political life. A favoured few enter the House of Lords as Law Lords, but even these do not take part in party politics. Up to quite recently there was no retiring age for English Judges; now it is 75 for new entrants to the Bench. Those already there can remain as long as they are able to carry out the duties of their office, and some have done so until the late eighties, and even up to 90. One of my most cherished recollections is that of meeting Lord Halsbury at a great dinner in London in 1918. He was then 96, and had, until quite recently, been sitting in big cases in the House of Lords.

Retiring Age

In South Africa the retiring age for Judges is 70, and their pension is, by any standards, a meagre one. This retirement provision has provided a large crop of retired Judges, still active and vigorous, and much disinclined to face the boredom of retirement. Judge Krause of the Transvaal, who lived for twenty years to draw his pension, never actually returned to political life, but he took a prominent part in many aspects of public life, specialising in Prison Reform. Judge Feetham of Natal, now in his eighties, was a leader in the campaign against the Nationalist Government's plans — alas ultimately successful — to circumvent the Union Constitution in order to remove the Coloured voters at the Cape from the common roll; in that campaign he was vigorously seconded by ex-Chief Justice Centlivres.

Centlivres was never a party politician, but since his retirement from the Chief Justiceship, he has shown himself to be an outstanding leader of liberal thought and an outspoken critic of the present Government's policies in regard to non-European South Africa. A generation earlier two other retired Appeal Court Judges, Sir James Rose-Innes and Sir William Solomon, were prominent in pointing out the dangers of the policy behind the Hertzog Native Bills. How right they both were!

Henry Fagan

Henry Fagan has had an interesting history. He was always, in my political days, considered as a pattern of orthodoxy, both in the Nationalist Party and as an elder of the Dutch Reformed Church. Hertzog made him Minister of Native Affairs in the Fusion Ministry in 1938. When the split came over the war issue in 1939, Fagan followed Hertzog into the political wilderness, as loyalty to his leader bound him to do. In 1943 the Smuts Government raised him to the Cape Bench, and in 1946 the same Government appointed him to the Chairmanship of a Commission on Native Laws.

That Commission created something of a sensation by declaring roundly that any idea of sending our Native urban population, or even a large part of it, back to the Reserves was impractical. That report still today provides part of the answer to the policy of Bantustan.

Fagan's progress on the Bench was rapid. He reached the Court of Appeal in 1950, became Chief Justice in 1957, and retired two years ago at the age of 70.

Soon after retirement he showed the way his thoughts were turning by writing a small book, "Our Responsibility," which evoked extreme interest for the liberality of its views, coming as they did from an ex-Nationalist leader. This year, when Japie Basson hived off from the Nationalist Party to form his own National Union, he was able to induce Fagan to accept its leadership. As part of a bargain with the United Party for the recently held General

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over-riding question of the terrible poverty of the vast majority of African families. After this meeting the local location superintendent was approached with a view to visiting the night school and location.

Protests

A protest was made to the East London City Council and the Group Areas Board in Port Elizabeth against the proposed re-zoning of Milner Estate housing scheme for Coloured people. It is at present a sub-economic estate for under-privileged White people, and the protest was based, not only on the enormous expense to which the Council would be put to replace the housing, but also because the Council had provided proportionately more amenities for under-privileged Coloureds than Whites. This does not, however, alter the serious Coloured housing situation in our city.

Pass Laws

Cases have been investigated with some success in East London. Members also investigated without success an individual case under the Group Areas Act. A sub-committee has been organised to go into pass law offences to see what can be done in alleviation.

The members in *Idutywa* are taking an active part in the local Christmas carnival which will

EDITOR'S NOTE

THIS is the last issue of *The Black Sash* to be published under the editorship of Mrs. Desirée Berman. Henceforth the magazine will be administered by the new headquarters region—Transvaal, and the editor will be Mrs. Dorothy Grant.

The retiring editor thanks all those who have so generously supported her during the past three years and wishes her successor good luck in an eminently worthwhile task.

bring all sections of the community together in a full day's enjoyment of sports and competitions, plus singing by African school children.

Border Bulletin

The Bulletin has been sent out in two special editions. The first of these, entitled "The Black Sash and You" and "What We Have Done" was issued in response to repeated requests at our Regional Conference last year for some form of written answer to questions repeatedly asked by prospective members. The second edition dealt with the Border resolution submitted this year to National Conference regarding Sash membership.

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Election, Basson is now ensconced in the safe U.P. seat of Bezuidenhout, and Fagan will receive a Senatorship. Fagan, still active at 72, took his share in the recent electoral campaign, and stood up to Nationalist heckling, often abuse, like a seasoned warrior. I feel sure that the Senate will be the richer for his presence.

This by no means exhausts the list of Judges who have been unable to resist the lure of political life. F. W. Beyers, always an intense Nationalist, set the fashion about 25 years ago, when, within a few months of his retirement from the Appeal Court, he stood for a Free State constituency, but without success.

Tielman Roos, it will be remembered, stepped down from the Appellate Division in 1932, hoping to head a new Coalition Government which would lead South Africa out of the then pre-

vailing economic doldrums. But his venture failed and he returned to practice at the Bar, dying a few years later a sadly disappointed man. Both Beyers and Roos were politicians first and Judges second.

This is not to suggest that while on the Bench our Judges are politicians; on the contrary they are sedulous to avoid any appearance of mingling in politics. They regard their function as strictly non-political. Sometimes an interest in political matters is inescapable. Every five years, for instance, a panel of three Judges has to redelimit South Africa into electoral divisions. Sometimes, though happily rarely, a Judge is appointed to a Commission whose functions are of a political nature, as happens in other countries as well. But I am happy to say that "the Judge is stronger than the politician." This means that, even if a man has been a controversial party politician, he forgets his politics when he goes on the Bench.