IN THE SUPREME COURT OF QUEENSLAND Motion No. 29 of 1986

IN THE MATTER of the Rules relating to the admission of Barristers of the Supreme Court of Queensland

- and -

IN THE MATTER of an Application by BRUCE DANIEL QUINN for Admission as a Barrister of the said Court.

JUDGMENT of THE FULL COURT

Delivered the 14th day of MARCH 1986.

Bruce Daniel Quinn ("the applicant") has been admitted to practise as a barrister by this Court on 5th February, 1986 when we announced that reasons would be delivered at a later date.

The application was opposed by the Barristers' Board on the ground that the applicant was not resident in Queensland.

The applicant was admitted to practice as a barrister in New South Wales on 20th December, 1985, so that he complies with Rule 15(d)(4) of the Barristers' Admission Rules 1975 ("The Rules").

The applicant has not practised as a barrister of the Supreme Court of New South Wales.

The applicant filed an affidavit in the form of Form 10 in the Schedule to the Rules as required by Rule 38(d) (see Re Sweeney [1976] Qd.R. 296).

Paragraph 6 of Form 10 requires an applicant to state that he ceased to practise as a barrister in the state where he has been admitted to practice but it is clearly sufficient compliance for the applicant to have said that he has never practised as a barrister in that State see

Rule 57 of the Barristers' Admission Rules and Re Baston [1984] 2 Qd.R. 300 at p. 302.

The admission as a barrister in Queensland of a person admitted as a barrister and solicitor of another State of Australia who has signed and remains upon the roll of counsel of that State, is dependent upon his ceasing to practise as a barrister elsewhere and upon his taking up residence in Queensland (see Re Sweeney (supra), especially at pp. 309 and 312).

The applicant in his affidavit in the form of Form 10 stated that he arrived on 13th January, 1986 in the State of Queensland.

In an affidavit sworn on 3rd February, 1986 he stated that he was born in 1946 in New South Wales; that his mother and brother were born in Queensland, where the majority of his relatives lives; that he was educated in Queensland for a period of twelve months and was employed as a clerk by Club Motor Insurance, Brisbane, in 1966 for a period of twelve months; that he is a member of the New South Wales Police Force and has been since 1967; that he is presently entitled to twelve months leave, partly with and partly without pay; that he has been resident in New South Wales since 1967.

Previously he had been educated in New South Wales, leaving school in 1962, and had worked at different jobs in New South Wales until 1965.

In an affidavit sworn by him on 5th February, 1986 he said: "I am permanently residing at 4/37 Park Road, Yeronga, Brisbane with my Uncle Colin Oliver, and as soon as practical my wife and two children will take up residence with me in Queensland".

He has taken steps to obtain chambers for practice in Queensland and has begun negotiations in relation to chambers at Lilley Chambers, 27 Turbot Street, Brisbane.

He has not resigned from the New South Wales Police Force as an economic measure for the security of his family should he fail in his practice as a barrister. He further said that if his practice is reasonably successful he will resign from the New South Wales Police Force prior to the expiration of twelve months.

He explained that by delaying his resignation for twelve months he will become entitled to greater superannuation benefits.

He sought, through his counsel, to give an undertaking that if he fails in practice in Queensland he will return to the New South Wales Police Force and will not practise further anywhere. The Court did not insist upon receiving this undertaking but we regard the attempt as a demonstration of his good faith and of the accuracy of his statement that he has now taken up permanent residence in Queensland.

In our opinion, his not having yet resigned from the New South Wales Police Force places him in no different state from that of a person who has been continuously resident here and who has a present intention to remain permanently resident here, who commences practice at the Bar in the knowledge that he may not succeed. Such a person is none the less resident in Queensland because he decides that in the event of failure he would try his hand at practice in New Guinea or Darwin for example. As was pointed out in Re Baston (supra) at p. 301, whether or not a person is resident in or at a particular place is a question of fact to be determined in the particular circumstances of the case.

Counsel for the Barristers' Board relied upon statements in Henry v. Boehm [1973] 128 C.L.R. 482 in support of a contention that the applicant may not be regarded as resident in Queensland. That was a case in which it was held that rules requiring an applicant for admission to practice in South Australia as a "practitioner" to reside for at least three calendar months

in South Australia continuously and immediately preceding the filing of his Notice of Application for Admission did not infringe s. 117 of the Constitution. S. 117 provides that a subject of the Queen, resident in any State shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State. Certainly at p. 487 Barwick C.J. said:—

> "The concept of a resident of a State involves in my opinion some degree of permanence of residence and of identity by reason thereof with a State. Ordinarily, the place where a person has his home, without having acquired a domicile in that place by origin or by choice, will be the place where for the purposes of s. 117 that person will be resident."

Further the learned Chief Justice went on to say-

> "There may be lesser degrees of permanence of residence or of identity through residence which will satisfy the concept of residence in s. 117."

He went on to say that s. 117 contemplates by its terms the case of a resident of a State being in another State without having lost his residence in the first-mentioned State and that the rule established by the section is that whilst remaining resident of the first-mentioned State he will not be subject to any disability or discrimination whilst in the second State to which he would not be subject if he were a resident of that second State.

It was in that context that Menzies J. at p. 491 said -

> "A person does not cease to be resident in one State by crossing the border into another State where he is not resident. Indeed, a resident of a State could, without losing that residence, live in another State for a time. A person resides in a State where his home is for the time being, notwithstanding that he may from time to time be away from home."

Again it was in this same context at p. 497 of his decision that the statement quoted by Gibbs J. which appears in Quick and Garran "Commentary on the Constitution" at p. 960 was made. It reads thus -

> " 'In this section' (117) 'a resident in any State' means a person who permanently lives in a State: one who is not a mere visitor or sojourner; one who by his continued residence in a State has become identified with it and is regarded as one of its people'."

There is nothing in these statements which are concerned with the effect of s. 117 of the Constitution which suggests that the state of being a "resident" has a permanency which proscribes that "resident" from becoming a permanent "resident" of another State based upon a contingent decision to remain permanently resident there.

It is for these reasons that, upon the material placed before us we formed the view that the applicant is a resident of Queensland for the purposes of the Barristers' Admission Rules.