

1971-1972

THE

COMMONWEALTH LAW
REPORTS

CASES DETERMINED IN THE

HIGH COURT OF AUSTRALIA

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JUSTICES OF THE HIGH COURT
OF AUSTRALIA

DURING THE CURRENCY OF THIS VOLUME

THE RIGHT HONOURABLE SIR GARFIELD EDWARD JOHN BARWICK,
G.C.M.G., CHIEF JUSTICE.

THE RIGHT HONOURABLE SIR EDWARD ALOYSIUS McTIERNAN, K.B.E.

THE RIGHT HONOURABLE SIR DOUGLAS IAN MENZIES, K.B.E.

THE RIGHT HONOURABLE SIR WILLIAM JOHN VICTOR WINDEYER,
K.B.E., C.B., D.S.O. (retired 29th February 1972).

THE RIGHT HONOURABLE SIR WILLIAM FRANCIS LANGER OWEN,
K.B.E. (died 31st March 1972).

THE RIGHT HONOURABLE SIR CYRIL AMBROSE WALSH, K.B.E.

THE RIGHT HONOURABLE SIR HARRY TALBOT GIBBS, K.B.E.

THE HONOURABLE SIR NINIAN MARTIN STEPHEN, K.B.E. (from 1st
March 1972).

THE HONOURABLE SIR ANTHONY FRANK MASON, K.B.E. (from 7th
August 1972).

ATTORNEY-GENERAL :

SENATOR THE HONOURABLE IVOR JOHN GREENWOOD, Q.C.

THE HONOURABLE EDWARD GOUGH WHITLAM, Q.C., M.P. (from 5th
December 1972).

SENATOR THE HONOURABLE LIONEL KEITH MURPHY, Q.C. (from 19th
December 1972).

MEMORANDA

1972

- July 7 —Death of THE RIGHT HONOURABLE SIR OWEN DIXON, O.M., G.C.M.G., who resigned as Chief Justice of the High Court of Australia on 13th April 1964.
- August 7 —Appointment of THE HONOURABLE ANTHONY FRANK MASON C.B.E., a Judge of the Supreme Court of New South Wales (Court of Appeal Division) to the office of a Justice of the High Court of Australia.
- August 11 —Death of THE HONOURABLE SIR WILLIAM FLOOD WEBB, K.B.E., who resigned as a Justice of the High Court of Australia on 16th May 1958.
- September 21—THE HONOURABLE ANTHONY FRANK MASON C.B.E., one of the Justice of the High Court of Australia, was appointed a Knight Commander of the Most Excellent Order of the British Empire.

THE LATE SIR WILLIAM WEBB

On 15th August 1972, at a sitting of the Full High Court at Sydney, BARWICK C.J. said :

SIR WILLIAM FLOOD WEBB died on Friday last, 11th August. Between 16th May 1946 and 16th May 1958 he was a Justice of this Court. When he was appointed to that office he had already had a distinguished career in his native State of Queensland and brought to the discharge of his duty as a Justice of this Court a wealth of legal and administrative experience. We sit this morning to pay our tribute to him. All Justices of the Court are present with the exception of Sir Edward McTiernan who is in Brisbane to represent the Court at the funeral ceremonies to be held there this morning. Sir Edward, I might mention, is the only one of us who sat with SIR WILLIAM during his twelve years on the Court, but some of us appeared before this Court many times when he sat as a member of it.

We are pleased that the Solicitor-General of the Commonwealth, in the unavoidable absence of the Attorney-General of the Commonwealth, Mr. Samuels Q.C. representing the Attorney-General of New South Wales, the Australian Bar Association and the Bar Association of New South Wales, Mr. J. K. Bowen, Vice-President of the Law Council of Australia, and Mr. Broadbent, President of the Law Society of New South Wales, as well as members of both branches of the profession, are present this morning.

SIR WILLIAM WEBB was born in Brisbane on 21st January 1887. He was educated in private schools and at the University of Queensland. Before being called to the Bar of that State on 4th June 1913 he served in the public service of his State. Shortly after his admission he was selected as official solicitor to the Public Curator of Queensland. That was in 1915. In the following year he was appointed the State's Public Defender. In 1917, at the early age of thirty, he became Crown Solicitor for the State of Queensland, an office he occupied until the year 1922 when he became Solicitor-General of the State. Whilst in that office he appeared before the Privy Council, as well as before the Supreme Court in important cases. He still held that office when, on 24th April 1925, he was appointed a Judge of the Supreme Court of Queensland and President of the Industrial Arbitration Court. As

well as carrying the burdens of these offices, in 1926 he assumed the duties of the Chairman of the Central Sugar Cane Prices Board. It will be recognized that the performance of the duties of President of the Industrial Arbitration Court and Chairman of the Cane Prices Board was central to the industrial and agricultural life of the State. Those duties he fully performed to the satisfaction of the citizens of his State.

But SIR WILLIAM was destined for further and higher duties. On 17th May 1940 he was appointed Senior Puisne Judge of the Supreme Court of Queensland. Shortly afterwards, on the death of Chief Justice Hugh Denis Macrossan, the Chief Justice of Queensland, SIR WILLIAM was appointed to that office. He served as Chief Justice with distinction till his resignation on 24th April 1946 in order to accept appointment to this Court. He had thus been a Judge of the Supreme Court of Queensland for twenty-one years. He left behind him in the annals of the Supreme Court of Queensland a record of great service to the law and to the community of the State.

SIR WILLIAM was made a Knight Bachelor in January 1942 and a Knight Commander of the Most Distinguished Order of the British Empire on 14th June 1954.

At the time of his appointment to the office of a Justice of this Court, SIR WILLIAM was the President of the International Military Tribunal for the Far East, an office he retained, and the duties of which he performed, until late in the year 1948. On that tribunal he was a dominant figure and his tact and tolerance contributed much to the outcome of its work. Because of his duties as President, it was not until November 1947 that SIR WILLIAM sat in a case in this Court. His first case was an important constitutional case, *Nelungaloo Pty. Ltd. v. The Commonwealth*. However, after the conclusion of the hearing of that case he returned to continue his duty as President of the International Military Tribunal, so that it was not until 1949 that he sat regularly with the Court. Thereafter, for the ensuing nine years he sat in a wide variety of cases, many of them involving important constitutional questions. Indeed, in that time, he sat in more than fifty highly important constitutional cases. I mention but a few of them as an indication of their range and significance. They were the *Australian Communist Party v. The Commonwealth*; *Hospital Provident Fund Ltd. v. Victoria*;

Hughes & Vale Pty. Ltd. v. New South Wales ; Reg. v. Richards, Ex parte Fitzpatrick and Browne ; Grannall v. Marrickville Margarine Pty. Ltd. ; Reg. v. Kirby, Ex parte Boilermakers Society of Australia. He was thus a Justice of this Court and played his part during an important phase of its history.

In his judicial work, as well as in his social contacts, SIR WILLIAM was equable and friendly, thoughtful and generous in his attitudes. On the Bench he was always attentive, most courteous, direct in his questioning and in his contribution to argument. He had a lively sense of humour and was always kindly in its employment. His judgments exhibit the practicality and knowledge of the law which were to be expected of a man with the wide and varied experience which he had had : experience of the law, of administration and of the affairs of the community. He rightly earned the affection and respect of those who practised before him. He was a good and co-operative colleague to his fellow Justices. He engendered during his years on this Bench much goodwill. He faithfully performed the burden of his office.

He retired on 16th May 1958, having served for twelve years. He had crowded into relatively few years a great record of public service, both to his State and to Australia, in the law, national and international, and in public administration. After his retirement he resided in Queensland with his wife Beatrice, Lady Webb, until her death in 1970. Since Lady Webb's death, SIR WILLIAM had been in indifferent health.

We mourn his death and extend our sincere sympathy to his two sons and four daughters, all of whom survive him.

THE mode of citation of this volume of the COMMONWEALTH LAW REPORTS
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CORRIGENDA.

127 C.L.R. page 78, line 22 : for "taxpayer" read "Commissioner of Taxation".

127 C.L.R. page 181, for footnote (2) substitute (1972 127 C.L.R. 226.