

**1972-1973**

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

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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. (died  
28th November 1973).

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).

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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).

MEMORANDUM

1973

November 28 - Death of THE RIGHT HONOURABLE SIR CYRIL  
AMBROSE WALSH, K.B.E., a Justice of the High  
Court of Australia.

## THE LATE SIR CYRIL WALSH

On 30th November 1973, at a sitting of the Full High Court at Sydney, BARWICK C.J. said :

On the evening before last, SIR CYRIL WALSH died. This morning we assemble in sorrow, and in the presence of this large audience which includes his relations and his many friends and admirers in the legal profession, to pay our tribute to him.

We are pleased that Sir Victor Windeyer, who before his retirement sat on this Bench with SIR CYRIL, is present with us, and that the Chief Justice of New South Wales, Chief Justice Kerr, has accepted our invitation to be present with us this morning to mark SIR CYRIL's great service on the Supreme Court as well as his own personal friendship for and admiration of him.

We are also pleased that the Attorney-General of Australia, Senator the Honourable L. K. Murphy, Q.C. ; the Attorney-General for New South Wales, the Honourable K. M. McCaw, M.L.A. ; the Solicitor-General for New South Wales, Mr. H. A. R. Snelling, Q.C. ; the President of the New South Wales Bar Association, Mr. T. E. F. Hughes, Q.C. and the President of the New South Wales Law Society, Mr. A. H. Loxton, are present.

It is but four years since in this place SIR CYRIL was sworn a Justice of this Court. His appointment was widely acclaimed and he was welcomed as a worthy addition to this Bench; and rightly so. He came as a distinguished and experienced judge, highly reputed in the State of New South Wales and beyond.

SIR CYRIL was admitted to the Bar of New South Wales in 1934. He had been a brilliant student in the University of Sydney, graduating in Arts with first class honours in several subjects and University Medals and subsequently in Law with first class honours and the University Medal. The quality and range of his academic successes evidenced that outstanding intellectual capacity which he was to exhibit and employ in his subsequent career at the Bar and on the Bench. He practised at the Bar of New South Wales, particularly on the equity side of the Supreme Court, but none the less widely. He early earned the respect of his fellow practitioners on both sides of the profession, both for his knowledge of the law and for his ability as an advocate, and developed for himself a substantial practice. In 1954 he was appointed a Judge of the

Supreme Court. He was then forty-five years of age. In this office he soon demonstrated his innate judicial qualities. He presided over trials with dignity and authority, with courtesy and understanding. He thus built a considerable reputation as a presiding judge in jury trials. In 1958 he became the Judge of the Commercial Causes Court where he sat without a jury. He held that office until 1962. By his work in this office he enhanced his reputation as a trial judge. For his skill in that commercial work he is specially remembered in New South Wales. From time to time, but with some regularity in the years 1962 to 1965, SIR CYRIL sat as a member of the Full Court of the Supreme Court. Upon the creation in the year 1966 of the Court of Appeal Division of the Supreme Court, SIR CYRIL was appointed one of the first members of that Division, an office he occupied until he resigned from the Supreme Court immediately before his appointment to this Court on 3rd October 1969. In the extensive and varied appellate work which he was called upon to perform in the Supreme Court, SIR CYRIL'S ability for calm and incisive analysis of the facts of a case and his percipience in identifying the legal principles which were apposite to the resolution of the case became apparent. Accordingly, his judgments written in appeals in the Supreme Court illumined the subject matter with which they dealt and gained currency amongst those practising and those teaching the law as enlightening and authoritative expositions.

SIR CYRIL, during his period on the Bench of the Supreme Court, maintained a lively interest in law reform and he was a member of the Chief Justice's Law Reform Committee in New South Wales whilst it functioned before the establishment of the Law Reform Commission. He was conscious of the need for changes in the law, both procedural and substantive, but always so that the law retained its coherence as a system of law upon the foundations of which human relations, personal, social and commercial, could reliably be formed and conducted.

In 1962 SIR CYRIL represented Australia in Bangkok at the working party of the United Nations Organization, the Economic Commission for Asia and the Far East, on the subject of commercial arbitration in the international sphere.

SIR CYRIL came to this Court, therefore not merely as a scholarly lawyer, as indeed he was, but as a Judge widely experienced in the administration of the law, both in trial and in appellate work. His

judicial temperament was well-known and the exercise of his outstanding intellectual capacity had already given great satisfaction to his judicial associates, to the legal profession and the litigating community. He had manifested his interest in the law itself, its simplification and its reformation.

With his transition to the Bench of this Court, SIR CYRIL assumed new and, in some respects, different judicial responsibilities. The work of this Court, embracing constitutional interpretation and protection, as well as the hearing of appeals from the courts of Australia, and in most instances as the final court of appeal, differs both in extent and in significance from the work of the courts from which appeals come here. Of this new responsibility SIR CYRIL was aware. In responding to the felicitations of the Law Officers of Commonwealth and State and of the representatives of the legal profession at the time of his assumption of office as a Justice of this Court, SIR CYRIL said: "There is no need for me to stress that I am conscious of the importance of the work of this Court, which is the apex of the judiciary of this great and growing Commonwealth in which we have the good fortune to live" ; and he expressed his anxiety as to his capacity to render service of the quality required by the responsibilities of his new office. He had in truth no need to feel anxious. The qualities and experience of which I have spoken soon evidenced themselves in his participation in the work of this Court and showed his eminent fitness for the place he had taken on its Bench.

In argument he was patient, courteous and painstaking, ever anxious to understand the submissions of counsel, ever alert to see that all aspects of the problem in hand received attention. His judgments betray the intense and unremitting research into the subject matter which he always undertook and the calm, penetrating and dispassionate consideration from which his decision resulted. He was completely independent of mind. He understood and spoke of the task of deciding "as one for which one is personally responsible and as an anxious and lonely one".

But, though always humble and careful in his exploration of a matter, once he reached a decision in the loneliness of his own mind he expressed himself in judgment clearly and firmly. In the short span of his occupancy of his office on this Bench he left in the recorded judgments of the Court his significant contribution to its jurisprudence.

SIR CYRIL, though obtaining pleasure and satisfaction from the exercise of his well-furnished mind, none the less had great joy in the companionship of his fellow men. He was fond of meeting and assembling with members of the legal profession, particularly when gathered on social occasions. Whenever opportunity offered he was to be found amongst those attending the conventions of the Law Council of Australia, the most recent of which he attended with evident pleasure in Perth last July.

SIR CYRIL was knighted in 1969 and made a member of Her Majesty's Privy Council in 1971.

SIR CYRIL spent his life in the law and of his career he said on the occasion of his swearing in:

“ I feel no regrets that I devoted my working life and such talents as have been given to me to the service of the law . . . I have had in my life in the law much satisfaction. One source of it has been the friendships which I have made . . . with members of both branches of the practising profession and with my colleagues on the Bench. In these friends there has been no fuss or ostentation, but they have imparted a warmth and richness to my life for which I must always be grateful.”

I interrupt the quotation of SIR CYRIL's remarks to observe that what he there described of others was true of his relationship to his friends, including my colleagues and me. SIR CYRIL went on:

“ Another reason for my satisfaction with my choice of the law as a career is that I found much of the work stimulating and enjoyable . . . the processes of clarifying the problem and of exchanging views about it, even in cases which appear to be dreary, are all grist to the mill of the mind and I have found those processes satisfying . . . I have found personal gratification in much of the work that I have done, but at the same time I have felt that we who spend our time as lawyers engaged in the adjustment, by the application of the rules of the law, of the relations between one man and another—or sometimes between the State and its citizens—and in the enforcement of their rights and obligations, are doing a thing which is well worth doing and which is of fundamental importance to our fellow men.”

His untimely death must be a great blow to his family which I know was justifiably proud of him. But the quotations I have just made may afford some solace to that family as they show that in the years of life vouchsafed to him—perhaps all too few—he had great pleasure and satisfaction amongst his many friends and in the exercise of his very considerable talents.



But those quotations serve also to call attention to the strong sense of humanity and of justice of which those in close association with SIR CYRIL came to appreciate. We who worked with him daily have found him companionable, co-operative in the affairs of the Court and helpful in discussion. He showed us so often his quiet and unassuming sense of humour, something which so much assists to relieve the exacting quality of our daily round. Although over more than the twelve months immediately past he has been afflicted by great and almost unbearable and unalleviated pain, which he bore with fortitude and without complaint, SIR CYRIL has maintained in good humour his companionship with us.

Remembering this morning all these things and conscious of his great capacity and personal qualities, we are saddened by a sense of deprivation. He was a great lawyer and a great judge. He had not reached his zenith. The Court has lost a Justice from whom increasingly distinguished service was confidently expected. The community has lost a great servant devoted to the maintenance of the law and of the freedom it protects. We have lost and mourn a friend.

We extend our deepest sympathy to SIR CYRIL'S widow, Lady Walsh, and his sons, Peter, Frank and Michael.





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