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HIGH COURT OF AUSTRALIA

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JUSTICES OF THE HIGH COURT
OF AUSTRALIA

DURING THE CURRENCY OF THIS VOLUME

THE HONOURABLE SIR ANTHONY FRANK MASON, A.C., K.B.E., CHIEF JUSTICE

THE HONOURABLE SIR FRANCIS GERARD BRENNAN, A.C., K.B.E.

THE HONOURABLE SIR WILLIAM PATRICK DEANE, A.C., K.B.E.

THE HONOURABLE SIR DARYL MICHAEL DAWSON, A.C., K.B.E., C.B.

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ATTORNEY-GENERAL

THE HONOURABLE MICHAEL JOHN DUFFY, M.P.

THE HONOURABLE DUNCAN JAMES COLQUHOUN KERR, M.P.
(from 15 March 1993)

THE HONOURABLE MICHAEL HUGH LAVARCH, M.P.
(from 27 April 1993)

MEMORANDA

1994

February 14 — Death of THE RIGHT HONOURABLE SIR FRANK KITTO, A.C., K.B.E., a Justice of the High Court of Australia from 1950 to 1970.

April 22 — THE RIGHT HONOURABLE SIR NINIAN MARTIN STEPHEN, A.K., G.C.M.G., G.C.V.O., K.B.E., a Justice of the High Court of Australia from 1972 to 1982, was appointed a Knight of the Most Noble Order of the Garter.

THE LATE SIR FRANK KITTO

On 1 March 1994, at a sitting of the Full High Court in Canberra, MASON C.J. said:

We sit this morning to express our tribute to SIR FRANK KITTO who died on Monday, 14 February at the age of ninety, and was a Justice of this Court for twenty years between 1950 and 1970.

SIR FRANK was born in Melbourne in 1903. Educated at North Sydney Boys' High School, he graduated from the University of Sydney as a Bachelor of Arts and Bachelor of Laws with First Class Honours. He worked in the New South Wales Crown Solicitor's office from 1921-1927 and was admitted to the New South Wales Bar in 1927. He established an extensive practice in equity, intellectual property, revenue matters and constitutional law. Three years after he was called to the Bar he appeared as junior counsel in *Trethowan's Case (Attorney-General (N.S.W.) v. Trethowan* (1931), 44 C.L.R. 394), a leading constitutional case. He was appointed King's Counsel in 1942 and appeared in many important cases in the Supreme Court of New South Wales and in this Court. He won a reputation as an outstanding lawyer and counsel, contending with his well-known contemporaries Sir Garfield Barwick and Sir Alan Taylor at a time when the New South Wales Bar produced its finest appellate advocates. He appeared in the *Banking Case (Bank of N.S.W. v. The Commonwealth* (1948), 76 C.L.R. 1; *The Commonwealth v. Bank of N.S.W.* (1949), 79 C.L.R. 497) and, according to no less an authority than Sir Garfield Barwick, was a principal architect of the successful argument which was presented.

Such was his reputation that his appointment to this Court at the age of 47 in 1950 was naturally greeted with enthusiasm.

On the occasion of his swearing in, he said:

"We are all in our several ways the servants of a great and fast growing nation. Its future will be influenced in no small degree by the quality of the work we do in upholding the rule of law and proving its worth and effectiveness in the development of a nation in whose righteousness must lie its greatness."

As those words revealed, SIR FRANK was a man with a profound sense of responsibility who was dedicated to upholding the rule of law. That dedication was the product of his deep knowledge and understanding of the principles of law and equity, his analytical skill and his appreciation of English legal history.

Added to those qualities was his elegant, yet powerful, literary style, so that his judgments were compelling expositions of his view of the law and of the correct outcome of the question to be decided. His fine blend of knowledge, perceptive judgment, sense of history, and style are exhibited in his concise judgment in *The Commonwealth v. Anderson* (1960) 105 C.L.R. 303; his foreword to the first edition of Meagher, Gummow and Lehane's *Equity Doctrines and Remedies* and his paper, "Why Write Judgments?", delivered to the Supreme Court Judges' Conference in 1973. His judgments, particularly in the field of equity, were esteemed in Australia and elsewhere. They contributed to the development of Australian law and enhanced the reputation of this Court.

SIR FRANK is remembered by those who appeared before him as a judge with a penetrating mind who did not hesitate to expose the propositions propounded in argument to rigorous examination. At the same time, when sitting at first instance especially, he was an understanding and perceptive judge.

He was knighted in 1955, was appointed a Privy Councillor in 1963 and was made a Companion of the Order of Australia in 1983. As a Privy Councillor he sat in the hearing of appeals by the Judicial Committee of the Privy Council. In 1982 he was awarded the honorary degrees of D.Litt. by the University of New England and LL.D. by the University of Sydney.

Throughout his career he took a keen interest in tertiary education. He lectured in Bankruptcy and Probate at the University of Sydney Law School from 1930-1933; he was a member of the Council of Wesley College at Sydney for twenty years and he was Deputy Chancellor and later Chancellor of the University of New England for many years.

Five years after his retirement from this Court he became the inaugural Chairman of the Australian Press Council, a position which he held with distinction until he resigned in 1982. He was largely involved in the formulation of the Council's objects, principles and procedures. The success and high standards of adjudication achieved during his period of office were a source of great pride to him.

SIR FRANK made a distinctive contribution to law, education and public affairs.

We extend our deepest sympathy to his three daughters.

The mode of citation of this volume of
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CORRIGENDA

- 166 C.L.R., page 187, paragraph 4: In holding (2), for “Brennan, Deane, Toohey and Gaudron JJ., Wilson and Dawson JJ. dissenting, Mason C.J. expressing no opinion”, substitute “Brennan, Deane, Toohey and Gaudron JJ., Wilson J. dissenting, Mason C.J. and Dawson J. expressing no opinion”.
- 175 C.L.R., page xi, column 1, line 27: For “Trades Practices Act 1974” read “Trade Practices Act 1974”.
- 177 C.L.R., page 574: Insert below title: “ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES”.
- 178 C.L.R., page 134: Insert below title: “ON APPEAL FROM THE FEDERAL COURT OF AUSTRALIA”.
- 178 C.L.R., page 173: On 12 November 1993, Mason C.J., Deane, Toohey and Gaudron JJ. directed that the following be substituted for the portion of the third paragraph, beginning “The Registrar did not appeal” and ending “the 1988 tax year”:
“Although the Registrar appealed against the determination of Jenkinson J. in the Federal Court on the ground that, if the interest was assessable income, it was incorrectly included in the assessment in respect of the 1988 tax year, that ground of appeal, although mentioned in the Registrar’s written outline of argument, was not developed in oral argument.”
- 178 C.L.R., page 175: On 12 November 1993, Mason C.J., Deane, Toohey and Gaudron JJ. directed that the following be substituted for the portion of the second paragraph beginning “In the present appeal” and ending “for the Abela family”:
“In the present appeal, the Commissioner has succeeded on each of the grounds of appeal relied on by the Registrar, with the exception of the ground relating to the correct year of income. As has been seen, we consider that the notice of assessment involved in this appeal was erroneous because it treated the \$2,718.69 as income derived by the Registrar as trustee for the Abela family . . .”
- 178 C.L.R., page 454, footnote (80): For “(1992) 35 F.C.R., at p. 292” read “(1992) 35 F.C.R., at p. 30”.

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