

1912-1913.

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 SAMUEL WALKER GRIFFITH, P.C.,
G.C.M.G., CHIEF JUSTICE.

THE RIGHT HONOURABLE SIR EDMUND BARTON, P.C., G.C.M.G.

THE HONOURABLE RICHARD EDWARD O'CONNOR.

THE HONOURABLE ISAAC ALFRED ISAACS.

THE HONOURABLE HENRY BOURNES HIGGINS.

THE HONOURABLE FRANK GAVAN DUFFY.

THE HONOURABLE CHARLES POWERS.

ATTORNEY-GENERAL:

THE HONOURABLE WILLIAM MORRIS HUGHES, M.P.

MEMORANDA.

1912.

Nov. 18.—THE HONOURABLE RICHARD EDWARD O'CONNOR, one of the Justices of the High Court of Australia, died.

1913.

Feb. 11.—FRANK GAVAN DUFFY, ESQUIRE, K.C., was appointed one of the Justices of the High Court of Australia.

March 5.—CHARLES POWERS, ESQUIRE, Crown Solicitor for the Commonwealth, was appointed one of the Justices of the High Court of Australia.

THE LATE MR. JUSTICE O'CONNOR.

THE HON. RICHARD EDWARD O'CONNOR, one of the first three Justices of the High Court of Australia, died at Sydney, in the State of New South Wales, on Monday, 18th November 1912, aged 61 years.

On 20th November 1912, at the first subsequent sitting of the High Court in its original jurisdiction, before ISAACS J., His Honor referred to the death of the deceased Judge in the following terms:—

Before the business of the day is entered upon, it is my sad duty to refer to the loss, since we last met here, of a colleague whose public services and personal merit have raised for him in the memory of his countrymen the noblest and most enduring monument that a man can have. There are many who knew him far longer than I did—some, indeed, are present here to-day. But I had the good fortune to meet him first about fifteen years ago, and since then I have known him in many and varied relations. I have learnt to admire him, to respect, and to honor him. I first knew him in the historic Federal Convention of 1897. He was an active, laborious and influential member of that Convention. There was none there who could fail to be impressed with his great earnestness, his broadmindedness, his practical wisdom and sincerity; and if there was one characteristic of his that appealed to a man's mind more than another, it was his fairness of spirit. In the first Federal Parliament both as Senator and as Minister he played a distinguished part. Then he

became a member of this Court on its original organization, and from that time until his all too early death he maintained at the highest level the traditions of his office. He brought to the duties and responsibilities which he undertook—and, perhaps I might be permitted to say the very special duties and responsibilities—a well-trained and well-balanced mind, a natural judicial temperament, a deep and thorough knowledge of legal principles, a long experience and thorough application of those principles both at the Bar and on the Bench, a great knowledge of men and affairs, and not least the faculty he possessed in a high degree of winnowing circumstances, discarding the non-essential, seizing the substance of the matter, and having seized it, then dealing with it in the manner of a master. Needless to say with these high public qualifications he secured the entire confidence of his brethren of the Bench, and I think I will have your full concurrence when I say he commanded the confidence of the whole legal profession. By the death of Mr. Justice O'CONNOR, Australia has lost an illustrious citizen and a great Judge, and we his brethren here have lost an able and valued colleague and a good, kind and true friend.

At the first subsequent sitting of the Full Court of the High Court in Sydney, on 25th November 1912, GRIFFITH C.J. and BARTON and ISAACS JJ. being present, the following observations were made by those Justices:—

GRIFFITH C.J.—This is the first occasion since the death of our late brother O'CONNOR on which I have been able to take my seat on this Bench, where he has so often sat by my side; and, although a fitting tribute to his memory has already been paid by my brother ISAACS, I cannot let the occasion pass without adding for myself some reference to what he has been and has done as a member of this Court. I will say nothing of his political services, great as they were, rendered to his mother State, and later to the whole of Australia, and will confine myself to the character in which I knew him best—as a judicial colleague.

It is now just over nine years since he, with my brother BARTON and myself, took our seats as the first members of the High Court of Australia. My personal acquaintance with him was then little more than as a friend, but there grew up between us almost immediately a bond of affectionate regard and confidence that was never broken or weakened. Our minds ran to a great extent in similar grooves, to which fact, possibly, the similarity of our early training at our common University of Sydney may have in some degree contributed. And this I can say of him after those nine years of close association in the discharge of anxious and exacting duty: His knowledge of law both in principle and detail was sound and comprehensive: He was essentially fair, just and dispassionate: He was absolutely independent in judgment: He was unsparing of himself in the labour which he devoted to forming right conclusions upon the infinitely various questions—some of vast importance—that came before the Court, almost without intermission, and to formulating reasons for his conclusions; nor could any kindly remonstrance dissuade him from working for that purpose to the limit—and sometimes, I fear, beyond it—of his physical capacity. He was absolutely fearless in the performance of his judicial duties, not only, as all British Judges are assumed to be, as between the litigants, but in the rarer sense of not shrinking from the enunciation of first principles which are sometimes rather obscured than elucidated by judicial decisions. He possessed in large degree the inestimable gift of common sense, and did not fear to use it. These are qualities that go to make a great Judge and to compel respect and confidence. If he had any judicial fault it was a quality due mainly to his great kindness of heart, and one that is indeed generally regarded as a judicial virtue—I mean his long-suffering in the presence of tedious and irrelevant argument.

Whatever prestige or reputation the High Court may have earned for itself is largely owing to the character, influence and example of our deceased brother, which are an abiding possession.

May he rest in peace. His works do follow him.

BARTON J.—Great is the value of RICHARD O'CONNOR'S services to his countrymen. But his earnest spirit and his powerful intellect had still much to give, and his removal all too soon is a heavy blow to Australia.

I wish to say a few words as to the part he took in the making and organizing of this young Commonwealth, and in the labours of this Court. Fellow workers for years in State politics, he and I became comrades in the struggle for union. Of the merits of that controversy I cannot speak here. But it is fitting to say that in the army in which we both served there was no figure of nobler bearing or of higher courage than his from whom we have but now been parted. When the people of six States declared their will, and agreed to live together under the present Constitution, he, as a member of the first Government and leader of the Senate, was conspicuous in the making of the early laws, many of which he conducted through that House with unwearied care and consummate ability. In his third year of that work this Court was constituted by Statute, and with the complete approval of the public he became one of its first members. How fine a Judge he was is known throughout Australia, and far beyond her bounds. His ripe judgment, his keen discrimination, his deep learning, his resolute adherence to the principles of law and the ethics of judicial decision, and his calm disregard of the political point of view, the suggestion of which at least is sometimes almost unavoidable in arguments upon the meaning of a federal constitution—all these things are familiar to those who have heard or read his judgments. But to the almost too anxious care that he expended on their preparation, to his unceasing devotion to duty, in every respect, only we who have worked with him in this Court for nine years can fully testify. And, as I cannot but believe, that assiduous toil did much to shorten a life that was most precious.

The public, whose loss is so great, know that he was their true friend and servant. Those of us whose personal association with him was intimate, and my own affectionate friendship with him

endured unruffled from our boyhood, realize that a deep void has opened in our lives. His nature was sympathetic, his soul was pure, his honour without stain. In all things he was worthy of trust, steadfast and generous.

“His life was gentle, and the elements
So mix'd in him that Nature might stand up
And say to all the world, This was a Man.”

Statesmen and Judges, lawyers and laymen, rich and poor, all are stricken in the passing of such a man. May their own legitimate sorrow help them to realize the depth of the affliction which has befallen his family, and which can be lightened only by the proud remembrance of his unstinted labours for Australia, which have already borne much fruit, but of which happily much more is yet to ripen and be gathered.

May Australians ever hold him in grateful memory.

ISAACS J.—With profound sympathy I support all that my learned brethren have just said. I will not weaken by repetition what I have so recently expressed for myself.

THE mode of citation of this volume of the COMMONWEALTH LAW REPORTS will be as follows :—

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