

1918-1919.

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 ISAAC ALFRED ISAACS.

THE HONOURABLE HENRY BOURNES HIGGINS.

THE HONOURABLE FRANK GAVAN DUFFY.

THE HONOURABLE CHARLES POWERS.

THE HONOURABLE GEORGE EDWARD RICH.

ATTORNEY-GENERAL :

THE RIGHT HONOURABLE WILLIAM MORRIS HUGHES, P.C., M.P.

MEMORANDA.

- 1919.
- Oct. 17.*—Resignation of THE RIGHT HONOURABLE SIR SAMUEL WALKER GRIFFITH, P.C., G.C.M.G., LL.D., of his commission as Chief Justice of the High Court of Australia, accepted.
- Oct. 18.*—Appointment of ADRIAN KNOX, ESQUIRE, C.M.G., K.C., to the office of Chief Justice of the High Court of Australia.

RETIREMENT OF THE CHIEF JUSTICE.

THE RIGHT HONOURABLE SIR SAMUEL WALKER GRIFFITH, P.C., G.C.M.G., having tendered his resignation of the office of Chief Justice of the High Court of Australia, it was accepted as from 31st August 1919 (which was subsequently altered to 17th October 1919).

At the sitting of the Full Court of the High Court in Brisbane on 25th July 1919, ISAACS, GAVAN DUFFY and RICH JJ. being present (COOPER, C.J. and REAL, CHUBB and LUKIN JJ. of the Supreme Court of Queensland also occupying seats on the Bench), ISAACS J. announced that the learned Chief Justice, of whose resignation they had all heard, had hoped to be present in Court that morning, but his medical adviser's orders precluded him from attending. In the circumstances, His Honor said, he would ask the Principal Registrar (Mr. J. W. O'Halloran) to read the Chief Justice's message.

THE PRINCIPAL REGISTRAR then read the following message from GRIFFITH C.J. :—" I had arranged to take my place on the Bench to-day, if only for the purpose of formally announcing my early retirement from the office of Chief Justice, which, however, will not take effect before the end of next month ; but, unfortunately, I cannot come into Court to-day. I have therefore asked the Principal Registrar of the High Court to read for me what I had intended to say in person.

" It is now more than a quarter of a century since I took my seat as Chief Justice of the Supreme Court of Queensland, and very nearly sixteen years since I became Chief Justice of the Commonwealth. In discharging the duties of my office I have—I hope not without success—endeavoured to maintain the prestige and honour

of the Court, and to serve the people of Australia and the Empire to the best of my ability. I am glad to think that my efforts have not been unrewarded by the appreciation and good-will of the majority of those whose servant I have been. The duties and obligations of the office, although not thrust into the public gaze, are very onerous. They require many qualifications, of which one, though perhaps not the most important, is an adequate knowledge of the principles of law.

“ I should like to say a great deal of the past : but there is a time for all things, a time to keep silence, and a time to speak ; and I do not think this is a time fit for me to make anything like a personal retrospective review of my work in the Court since its inception, or of my relations with suitors, or with my fellow members of the Bench, and of that great branch of national service, the profession of the law. I hope, however, that I may venture to claim, with Othello, that ‘ I have done the State some service in my time.’ Suffice it now to say that it is with great regret, and with cordial feelings of gratitude and good-will, that I take my leave of my associates on the Bench and at the Bar of the Commonwealth. Nor can I refrain from mentioning my especial regret at the absence of my oldest, and always trusty, colleague, Sir Edmund Barton, who is unhappily unable to be here to-day.

“ I hope to be able, when no longer bound by the trammels of judicial office, to make an occasional contribution to the solution of the social problems by which we are confronted. Although peace between the recent belligerents has been formally signed, we see the whole world threatened with the crudest and most uninstructed forms of revolution, defying all rule and order, and denying all obligations of duty. But I hope that the majority of the people, who have for centuries enjoyed the advantages of ordered government, will follow saner counsels.

“ I now say Farewell.”

SIR EDMUND BARTON forwarded the following message, which was read by ISAACS J. :—“ The announcement just made is of momentous importance. It marks the relinquishment of public service by one who, as statesman, and since as Judge, has served

the public for about half a century. I have sat with him since the inception of this High Court, and I testify to the ceaseless devotion, the unwearied labour, and the matchless ability with which his service has been performed. He has been a watchful guardian of the Constitution, conserving to Commonwealth and State alike the powers which that instrument of government allots to them for the liberty and welfare of the people. In him the Court loses a great Chief Justice, who will be to all who occupy his chair an example of learning and judicial conduct. Of the affection with which we, his colleagues, the legal profession of this Continent and the people alike regard him, it is unnecessary to speak."

ISAACS J. then said :—I now desire, not only for myself and my brothers present, DUFFY and RICH, but also for my brothers HIGGINS and POWERS, whose judicial duties in another State prevent them from being present to-day, to express our profound regret at the approaching severance of the learned Chief Justice from this Court, of which, since its creation, he has been the honoured and distinguished leader. We also bear willing testimony to the great learning and ability, and the fearlessness and the wholeheartedness, which Sir Samuel Griffith brought to the performance of the duties of his great office. We know that whatever status this High Court holds in the confidence of the Australian people is due in no small measure to the wisdom and capacity of its illustrious head. We sincerely deplore the circumstances which will so soon deprive us of the great talents, the ripe experience and the erudition of our Chief Justice. We shall always have his example; and we do sincerely trust that, although in retirement, he will long be spared to witness and, as he hopes, to assist in the development of his country and to watch the progress of this Court, of which he may at all times say, with absolute truth and pardonable pride, "*Quorum pars magna fui.*"

THE HONOURABLE LITTLETON E. GROOM, Acting A.-G. for the Commonwealth, being detained at the seat of Government by urgent public business, RYAN, A.-G. for Qd., at his request, after apologizing

on his behalf for his absence and expressing his regret for not being able to be present, read the following address, which, he said, had evidently been written by the Acting Attorney-General for the Commonwealth in anticipation of Sir Samuel Griffith being present:—"On behalf of the Government and the people of the Commonwealth, on this, the last occasion that your Honor will sit in this Court as Chief Justice of Australia, I desire to express grateful appreciation of your eminent services to the Commonwealth. It is but fitting that you should bid farewell to your judicial office in the State where you had already achieved a wide reputation as a statesman and a Judge before you accepted your present distinguished office. On 7th October 1903, when you took your seat for the first time in the High Court, and the felicitations of the Bars of the Australian States were tendered to you, you remarked in reference to the weighty and responsible duties that you were undertaking: 'How I will discharge those duties I do not know, but, as I said on another memorable occasion, "Let not him that girdeth on his harness boast himself as he that putteth it off."' You are now about to put that harness off, and are laying it aside after a great judicial career upon the High Court Bench, which has been marked by the exercise of those qualities and the preservation of those high ideals and noble traditions which have ever distinguished the British and Australian Judiciary. In 1903, when you and your colleagues were charged with the duty of the interpretation of the fundamental instrument of government and the settlement of the great issues which were inevitable under a written Constitution, legislation and administration under the Australian Constitution were only in their infancy. Since then the national functions of the Commonwealth have expanded to a wondrous extent, and the duties and responsibilities of the High Court have correspondingly increased. In the performance of those duties you brought to bear the strictest impartiality, great research and learning, and a judgment ripened by a wide experience obtained through the occupancy of the many high offices you have held in the State of Queensland. It is universally recognized by the profession and the public that your decisions have been wise and weighty, and have most materially helped to the efficient working of the Constitution and the progress of the

people under national administration. The High Court has also, under your presidency, won for itself as a Court of appeal from the Courts of the States the confidence of the citizens of those States, and in these decisions your individual judgments constitute an invaluable contribution to the law of Australia. On behalf of the members of the Bar, I wish also to express to you their appreciation of the courtesy and consideration you have constantly shown to them in the exercise of their high calling in this Court. We are all conscious of the great privilege it has been to appear before you. You are now retiring after a career rich in the accomplishment of lasting benefits to your country. The States, the Commonwealth and the Empire are under obligations to you for great work done in every office you have held. When the history of Australia is written, no name will be more honoured than that of the first Chief Justice of Australia. Our wishes are that you may now spend the rest of your days in rest and comfort, conscious of the esteem and regard of your fellow-citizens."

RYAN, A.-G. for Qd., then continued:—It now becomes my privilege to add a few valedictory words on behalf of the Government and people of Queensland, and of both branches of the legal profession. This is a great and memorable occasion—the occasion of the retirement of the first Chief Justice of the High Court of Australia, and, as Sir Edmund Barton remarked, the retirement of "a great Chief Justice," after a life of unexampled lustre and achievement. The life of Sir Samuel Griffith is unparalleled in the annals of Australia. He is a great lawyer, a great statesman, a great Judge and a great scholar. He was a member of the Queensland Parliament for a quarter of a century; and during that period he held sometimes the office of Premier and sometimes that of leader of the Opposition, and in both those capacities he showed himself worthy of leadership. He was a man with great ideals—and a man who had the power to translate those ideals into realities. The Statute book of Queensland and the pages of *Hansard* bear eloquent testimony to his ability, his industry and his patriotism. When he retired from Queensland politics, it was amidst the regrets of those who had been his political supporters, while at the same

time preserving the profound respect of his opponents. It was felt that a great force had disappeared from the public life of Queensland, and that Parliament had lost a stately and commanding figure. Even his political opponents of the time testified to his worth, and admitted the purity of his motives. Even in those matters in which they considered he had committed mistakes, they allowed that those mistakes were not due to any self-interest or self-seeking on his part. Sir Samuel then became Chief Justice of Queensland, and, although he was the successor to many eminent men in that position, he soon showed how far he excelled in legal knowledge, judicial capacity, urbanity and tireless industry. In 1903 the Commonwealth Government of the day selected him as the one man who was the suitable person to appoint to the high and honourable office of Chief Justice of the High Court of Australia. In that capacity he gave to the deliberations of this Court those characteristics which now distinguish it. His decisions always embodied the truth as it appeared to him, and they were always couched in language which was as luminous as it was concise. I think that not only his great mind but his previous experience in many high offices eminently fitted him for his important duties as Chief Justice of the Commonwealth. It gives me particular pleasure to be able to refer to the unfailing courtesy and encouragement which he always extended to young practitioners appearing before him in the delightful atmosphere of this Court. He is now retiring from the great position which he so long has occupied with so much lustre, and the best wishes of the people of Australia follow him. Queenslanders especially are proud of him—proud of the man who raised himself to such eminence in this State, and left so abiding a mark on its public and social life, on its legislation and jurisprudence. The people of the Commonwealth will ever hold in grateful remembrance the man who took so large a part in framing its Constitution, and who so worthily presided over its High Court. Throughout the Empire, where Sir Samuel's name is almost as well known as amongst ourselves, the loss which the Australian Bench will suffer by his retirement will readily be recognized. Though he retires from the Bench, I cannot imagine him spending his time idly, or letting his great faculties rust. I am sure that if

his services are required in any public capacity or good cause they will be promptly available. I feel that his life and ideals will be an example and an incentive to young men of honourable ambition ; and he may be pointed to as proof that in Australia the highest positions are open to men of great ability, combined with lofty character, untiring industry and exalted public spirit. I wish to express my deepest regret at parting company with Sir Samuel Griffith in his capacity as Chief Justice. My deep sympathy goes out to him in his illness, and my good wishes accompany him into his retirement. May I hope that he may still be able to render some service to the body politic.

FEETZ K.C. said :—After the many eloquent tributes that have been paid to the great man who is shortly throwing off his robes of office as Chief Justice of the Commonwealth, I feel great diffidence in adding anything to what has been said. Your Honors will pardon me for adding a few words in my own halting language, which, however inadequate to the occasion, is inspired by the deepest sincerity and most poignant regret. I wish to speak of Sir Samuel Griffith not only as a great Judge but also as a great friend. Before giving expression to the few sentences I wish to utter, I would like to say that I have been requested by the members of the Bar in Victoria, and also by the members of the Bar in New South Wales, to associate them with any remarks that I make to-day. I wish to express on behalf of those associations—the members of those two Bars—their extreme regret that they were unable to make arrangements for personal representation here to-day. That disability arises from the fact that this valedictory ceremony takes place before they have had sufficient notification of it. Sir Samuel Griffith, who has been described in the highest terms, and, as I sincerely believe, the truest terms, spent the greater portion of his life until his appointment as Chief Justice of the Commonwealth here in Queensland. He spent the earlier years of his life in the turmoil of politics, and in the strenuous activities of the profession to which we are all proud to belong, and I cannot help thinking that it was the great strain of the almost overwhelming amount of work he undertook, carrying on a big practice and at the same time governing the

destinies of this State, which unfortunately led to the disability which prevents him from any longer sitting on this Bench. I wish to speak of him not only as a Judge but also as a friend, and it is we of the Bar of Queensland who can particularly speak in that way. I cannot help remembering when I came to this Bar as a young, inexperienced man, without friends and practically unknown, the kindly welcoming hand that was held out to me by the man who was then my leader at the Bar, and who afterwards became Chief of the Court before which I practice. My experience was in no way singular. I think that every man—every junior who was called to the Bar—can look back and sincerely say that not only was Sir Samuel Griffith great in many other respects, but great always as a friend. His assistance was always open to us; his kindly help was always at our disposal; and when he left us to join the Bench in 1893 we all felt that we had lost a friend and adviser. I cannot help feeling the sad contrast between this day and that day early in 1893 when His Honor was welcomed as Chief Justice of Queensland. On that occasion the congratulations of the Bar were delivered by a man who would also have been a great man had he not unfortunately been taken comparatively early in life. I refer to the late T. J. Byrnes. I only wish my powers of speech were such that I could express myself as he did on that occasion, which was an occasion of rejoicing and felicitation. This is one of regret and valediction. His Honor, when he was sworn in as Chief Justice of Queensland in 1893, set before himself a very high ideal of judicial life. I sincerely believe that he has lived up to that ideal in all his years of splendid work on this Bench. He was chosen by acclaim over the whole of Australia as the man most fitted to be appointed as its first Chief Justice. His career as its Chief Justice shows that acclaim was well deserved. During sixteen years His Honor has occupied that high and dignified position, and during that sixteen years, luckily for Australia, he is, with the exception of that dear lovable man, Mr. Justice O'Connor, the only loss the Bench has suffered. The Chief Justice, during his tenure of office, exemplified what I believe to be the highest ideals of a great Judge. His inflexible integrity, his high conception of what was fair and just, his great ability, his comprehensive and exact knowledge of the law, his dignity and

fairness, his attention to arguments, his promptness in the despatch of business, and his phenomenal industry, set a very high standard of judicial life. He was, indeed, I think I can say with all sincerity, specially endowed with judicial attributes. His decisions were masterpieces of erudite and concise juristic opinion; they will become beacon lights of learning for the profession for all time. Well may His Honor truly lay the flattering unction to his soul that his great work has been nobly done. He retires from the Bench with his honours full upon him, and now that the time has come for him to lay aside the mantle of his high office, I am quite sure that everyone will agree with me when I say that he lays it down unsmirched and undefiled, and that the ermine that he was allowed to adopt when he became Chief Justice remains as pure as it was the day he put it on. They say no man is indispensable. Whether or not that aphorism is true, I am sure that everyone who knew His Honor will agree with me that he was as nearly indispensable in his office as any man could be. And I think we can all say with truth that we do not envy the onerousness of the task of his successor in that office. We say good-bye to our Chief in the truest sense of the word. We all hope that his release from the strain of work, the heavy work which we know is part of the office of the Judge of this Court, will enable Sir Samuel to obtain improved health. One of the saddest things that strike us on an occasion like this is the thought that, though that great mentality is still there, its usefulness is impaired by mere physical disability. All I wish to say further to our dear, our honoured, our respected and beloved Chief is "Good-bye."

PER CURIAM:—The Registrar is directed formally to record the day's proceedings.

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