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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 ADRIAN KNOX, P.C., 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.

THE HONOURABLE HAYDEN ERSKINE STARKE.

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ATTORNEY-GENERAL:

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

MEMORANDA.

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1920.

*Jan. 7.*—THE RIGHT HONOURABLE SIR EDMUND BARTON, P.C.,  
G.C.M.G., one of the Justices of the High Court of  
Australia, died.

*Feb. 5.*—HAYDEN ERSKINE STARKE, ESQUIRE, was appointed one  
of the Justices of the High Court of Australia.

## THE LATE SIR EDMUND BARTON.

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THE RIGHT HONOURABLE SIR EDMUND BARTON, P.C., G.C.M.G., one of the first three Justices of the High Court of Australia, died at Medlow Baths, in the State of New South Wales, on Wednesday, 7th January 1920, aged 70 years.

On 13th January 1920, at the first subsequent sittings of the Full Court of the High Court in Melbourne, KNOX C.J., ISAACS, HIGGINS, GAVAN DUFFY, POWERS and RICH J.J. being present, the following observations were made by KNOX C.J. and ISAACS J. :—

KNOX C.J.—It is fitting that on the occasion of the first sitting of the High Court since the lamented death of SIR EDMUND BARTON we should express our sense of the great loss which the Commonwealth has sustained by his death, our appreciation of the eminent public services which he rendered to the people of Australia throughout a long and honourable career, and our personal regret at the passing of a beloved colleague. In every public position which he held, and they were many, SIR EDMUND BARTON was distinguished, not merely by the ability with which he performed its duties but even more by the unflinching courtesy and kindness of heart which he ever displayed. It is given to few men to inspire, as he did, a feeling of affection in those with whom he came into contact in every phase of life. This rare power, springing from a nature richly endowed with the Divine gift of sympathy, conferred upon him a distinction all his own, and gave him an assured position in the hearts of the people of Australia.

After a brilliant career at the Sydney University he practised successfully at the New South Wales Bar for some years, but preferred to sacrifice the certainty of a distinguished professional

career in order to devote himself to the service at first of his State, and afterwards of the Commonwealth, in the wider sphere of public life. As member at one time or another of both Houses of Parliament, as Speaker of the Legislative Assembly, as a Minister of the State of New South Wales, as the protagonist of the cause of Federation, as one, and by no means the least, of those entrusted with the framing of the Constitution under which we live, as the first Prime Minister of the Commonwealth, and as a member of this Court from its creation till the day of his death—in all these capacities he gave ungrudgingly and without stint to the service of the country he loved, the best that was in him; and after more than forty years of strenuous labour he leaves behind him a name which his fellow Australians may well delight to honour, and a claim to their gratitude which admits of no denial. As a Judge of this Court he won the esteem and affection not only of his colleagues but also of the members of the Bar of every State. He was scrupulously impartial; his natural dignity was tempered by a charm of manner which endeared him to all who sat by his side or practised before him, and he showed by his example that a tenacious adherence to the view which he believed to be right was not inconsistent with courteous and ready recognition of the right of those who differed from him to entertain and to express their opinions. His mastery of constitutional law and principles was unsurpassed, and to this he added a thorough knowledge of the principles of the common law. My brethren, who had the advantage which was denied to me of a long and close co-operation with him in the work of this Court, desire me to express their concurrence in what I have said and am about to say, but they know better than I how great a degree of devotion to duty SIR EDMUND BARTON showed in carrying out his judicial functions. For myself, I desire to acknowledge the debt of gratitude I owe him for many acts of kindness from the time of my admission to the Bar until the day of his death. His cordial acceptance of my appointment to the office of Chief Justice meant more to me than any words of mine can express. He was a great statesman and a great Judge; but the man whose presence we miss to-day and whose passing

leaves a void in the hearts of many besides ourselves is not only the great statesman, nor the great Judge, nor the devout patriot—the man we mourn, is the loyal friend, the courteous gentleman who through forty years won and held not only the respect but the affection of all sorts and conditions of men. So long as this generation survives he has no need of an epitaph, but of him it may be truly said that he touched nothing that he did not adorn.

To his widow and family we can but offer our respectful sympathy in the hope that the burden of their sorrow may be lightened by the knowledge that it is shared by a multitude of friends. When time shall have healed their wounds they may derive consolation from the fact that SIR EDMUND BARTON, by his long and devoted service to the people of Australia, deserved that it should be said of him :

“ Well done, thou good and faithful servant.”

ISAACS J.—For all my other colleagues and myself, while identifying ourselves absolutely and sympathetically with all that has fallen from the Chief Justice, I will add a few additional words of commemoration.

As fellow-citizens we know that the name of EDMUND BARTON will for ever be inseparably linked with the history of Australia as a nation. Many names are justly dear to the constituent States—names of men who were pioneers in every path that led to provincial greatness. But from the point where Australia found her Nationhood, when, above and beyond the competing individuality of each separate part, there came the consciousness of a United People, one of the foremost names that for all time Australians will revere is that of EDMUND BARTON, the dauntless leader, the constructive statesman, the broad-minded and unselfish Prime Minister, and then the learned and just and fearless Judge, and withal in every sphere the ardent lover of his country.

Of his splendid leadership and great influence in the historic Constitutional Convention and in the first Federal Parliament, two of us present to-day, bear personal testimony. In both he shone conspicuously.

But we who were so long and closely associated with him in his final lifework on this Bench, who knew better than all others with what devotion and single-mindedness he performed that work, feel bound, by reason of that special association and that special knowledge, not merely to recognize his great learning and ability, his truly judicial temperament, his thorough acquaintance with the Constitution, his well-balanced judgment, his constant anxiety to maintain the true spirit of the law by making where at all possible its letter conform to right and justice, but also to record our own intimate experience of his unfailing gentleness of disposition, his personal attraction and warm sympathy of soul—qualities that always endeared him to his colleagues, and now that he is gone make them feel all the more keenly the loss that they individually, and this Court, and the whole Commonwealth, have sustained.

To the memory of EDMUND BARTON we offer the sincere tribute of a profound regret, and our abiding appreciation.



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

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