

1928-1929.

THE

COMMONWEALTH LAW REPORTS

CASES DETERMINED IN THE

HIGH COURT OF AUSTRALIA.

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VOL. 41.

1928-1929—18 & 19 GEO. V.

Sydney, N.S.W. :

THE LAW BOOK COMPANY OF AUSTRALASIA LIMITED,
140 PHILLIP STREET.

Melbourne :
Harston, Partridge & Co. Pty. Ltd., Printers,
455-7 Little Collins Street.

JUSTICES OF THE HIGH COURT
OF AUSTRALIA

DURING THE CURRENCY OF THIS VOLUME.

THE RIGHT HONOURABLE SIR ADRIAN KNOX, P.C., K.C.M.G.,
CHIEF JUSTICE.

THE RIGHT HONOURABLE SIR ISAAC ALFRED ISAACS, P.C., K.C.M.G.

THE HONOURABLE HENRY BOURNES HIGGINS.

THE HONOURABLE SIR FRANK GAVAN DUFFY, K.C.M.G.

THE HONOURABLE CHARLES POWERS.

THE HONOURABLE GEORGE EDWARD RICH.

THE HONOURABLE HAYDEN ERSKINE STARKE.

THE HONOURABLE OWEN DIXON.

ATTORNEY-GENERAL :

THE HONOURABLE JOHN GREIG LATHAM, C.M.G., M.P., K.C.

MEMORANDA.

1929.

Jan. 13.—THE HONOURABLE HENRY BOURNES HIGGINS, one of the Justices of the High Court of Australia, died.

Feb. 4.—OWEN DIXON, ESQUIRE, K.C., was appointed one of the Justices of the High Court of Australia.

THE LATE MR. JUSTICE HIGGINS.

THE HONOURABLE HENRY BOURNES HIGGINS, one of the Justices of the High Court of Australia, died at "Heronswood," Dromana, in the State of Victoria, on Sunday, 13th January 1929, aged 77 years.

On 12th February 1929, at the first subsequent sittings of the Full Court of the High Court in Melbourne, KNOX C.J., ISAACS, POWERS, RICH and STARKE JJ. being present, the following observations were made by KNOX C.J. and ISAACS J. :—

KNOX C.J.—Since the last sittings of the Court death has taken from us our late brother HIGGINS, and it is right that we should on this occasion express our appreciation of the service he rendered as a Justice of this Court for more than twenty years. During nearly half that period he occupied the position of President of the Commonwealth Court of Conciliation and Arbitration, and so much of his time was necessarily taken up in the performance of the duties of that office that he was to a great extent detached from the ordinary work of the Court. He undertook the formidable task of giving effect to the system created by Acts of the Commonwealth Parliament—a task rendered more difficult by the fact that the legislation was, as appears from the frequent amendments that were found necessary, of an experimental nature, and he had therefore no precedents to guide him in administering its provisions. To the performance of this work he devoted for years his time, his talents, and his energy. The merits or defects of the system and of its administration will probably always, and certainly for many years to come, remain a matter of individual opinion on which it is neither necessary nor proper that we as Justices of the High Court, whose sole duty is to interpret the law, should express our views. But even those who deny the

efficacy of the system as a solvent of industrial trouble and those who have criticized its administration must recognize that Mr. Justice HIGGINS in the performance of his duties as President zealously and with his whole heart sought to carry out what he believed to be the intention of Parliament in creating the system. No criticism, however hostile—and he was the target of many critics—could deter him from doing what he conceived to be his duty, and he regarded no labour as too great for him to bestow in carrying out the exacting and thankless task which he had undertaken. Whether the views which he held and expressed so strongly prove in course of time to be right or to be wrong, the courage and determination which he showed in attempting to enforce them in the face of hostile criticism and inevitable difficulties must be regarded with respect and admiration. In matters involving what he regarded as questions of principle he was adamant even if he stood alone. Having resigned the office of President after years of strenuous and almost incessant labour, Mr. Justice HIGGINS returned to take his share in the ordinary work of this Court. To the performance of that work he brought long experience and untiring energy. His eminence as a lawyer—established in Victoria when he practised at the Bar—was recognized not only by his colleagues but by the members of the legal profession throughout Australia. In matters calling for the application of the principles of Equity he was a tower of strength to the Court. He was animated always by an earnest desire to come to a right conclusion—to do justice according to law—and he spared no effort in his endeavours to get to the root of every matter. Tenacious as he was in upholding his own conclusions when he had made up his mind, he never failed in courtesy to his colleagues or to those appearing before him. Of his distinction as a scholar, his devotion to the pursuit of knowledge, and his charm as a companion, there is no need to speak in the presence of those who had the privilege of a longer and more intimate acquaintance with him than fell to my lot. In brief, he was an earnest student, a fine scholar, an accomplished lawyer, a distinguished Judge, and always a courteous gentleman.

May he rest in peace.

ISAACS J.—In addition to what the learned Chief Justice has so fittingly said, and with which I agree, I feel bound to say some few words for myself.

Beyond the ordinary comradeship of the Bar, my late brother HIGGINS and I were closely associated for more than thirty-four years in various departments of public life—in the Victorian Parliament, the Federal Convention, the Commonwealth Parliament and this Court; and in all those relations HENRY BOURNES HIGGINS played a prominent, an honourable and a distinguished part. In another sphere, in which I was less closely associated with him—the Presidency of the Commonwealth Court of Conciliation and Arbitration—he for many years guided, I might almost say controlled, within the limits of the Constitution, the adjustment of industrial relations in Australia. As has already been said, this is not the time or the place to enter upon anything like a due appraisal of the earnest and valuable work that he contributed in those spheres, and, even though it be to some extent a repetition, I desire to say for myself something of the man himself and as to some of the characteristics that he brought into his work. His was a thoroughly independent mind. He sought his own solution of every problem that was brought before him, and, having reached his conclusion and considered it right, it mattered not to him whether it found favour or failed to find favour in the eyes of others. If it could be supported, well and good; but, if not, he always had the supreme consciousness of doing his duty as he saw it. He always seemed to me to illustrate in a marked manner what was once said by a great Chief Justice of Victoria (Chief Justice Higinbotham), that the responsibility of a Judge is not to do what is right, but to do what he believes to be right. When he was not coerced, as he thought, by precedent or authority, and particularly in the almost uncharted and perhaps unchartable domain that was for so many years his special solicitude—industrial conditions—I would say that this perhaps is what he, if he could express his wish himself, would say: that in searching for the right he lit the lamp that guided his feet by the generous flame of humanity. Wherever that showed him

the way, let the path be steep or easy, rugged or smooth, clear or thorny, he followed it fearlessly. His presence is for ever lost to us but his personality still remains ; and there will ever live in my memory his individual kindness of spirit—I never knew him to utter an unkind word,—his courtesy, his marvellous fortitude that enabled him to stand up to his duty even under a grief that was wellnigh devastating, his gentleness, his dignity under all circumstances. He has passed on. He has taken the road that all of us, sooner or later, have to take, but I think of the time that we passed together in all the different phases of our activities, and I would apply to that time the words of Tennyson :

The tender grace of a day that is dead
Will never come back to me.

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

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