

1956-1957

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 SIR OWEN DIXON, P.C., G.C.M.G., CHIEF  
JUSTICE.

THE HONOURABLE SIR EDWARD ALOYSIUS McTIERNAN, K.B.E.

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ATTORNEY-GENERAL :

SENATOR THE HONOURABLE NEIL O'SULLIVAN.

### THE LATE SIR HAYDEN ERSKINE STARKE.

On 16th May 1958, at the Sittings of the High Court in Melbourne, DIXON, C.J. said :—

SIR HAYDEN ERSKINE STARKE who died suddenly on Wednesday afternoon became a Justice of this Court on 5th February 1920. He resigned office on 31st January 1950. For thirty years his strong intelligence, clear mind and great legal knowledge formed a conspicuous influence in the proceedings and decisions of this Court.

The decade at the beginning of which he took office was one of great and rapid constitutional development. The course of decision in this Court appeared to many to take a new direction. No one who at that time was familiar with the Court could fail to understand that the strong judicial character, clear vision and notable legal equipment of SIR HAYDEN STARKE had played a decisive part in establishing constitutional doctrines which up to that time had not received the support of a majority of the Judges. For over twenty years before his retirement I served with him upon this Bench and witnessed at first hand the powerful influence he exerted upon the work of the Court by his great legal capacity, his abundant knowledge and his singular ability to seize at once upon the decisive considerations of a case, casting aside unessentials. These characteristics SIR HAYDEN STARKE brought with him from the Bar where he held a commanding position. He was called to the Victorian Bar in 1892 at the age of twenty-one and by the time I was called some eighteen years later he had risen to an almost unexampled eminence as counsel. Although he refused to take silk he was recognised everywhere as a leader possessing the greatest power and prestige in the argument of causes before Courts *in banc* and in the conduct of heavy and intricate cases. To appear against him in any difficult case was in itself an education. His legal knowledge, his discriminating judgment as to what mattered, his clearness and directness of speech and the strength of his mind and character combined to give him a forensic power as formidable as I have seen.

Throughout his life he devoted himself to the profession of the law, of which he became a great master. His great professional mastery could be seen when, as he occasionally did, he sat to try causes in the original jurisdiction of the Court. His complete

competence, his quiet but justly confident control of the proceedings, his sure mastery of the law of evidence and procedure combined with a judicial manner and a quickness of decision to make a trial before him almost a model proceeding.

With age he had of late become physically a little frail but there was no weakening of his mental grasp. On Wednesday he and I spent an hour together and the talk was upon the courts and their doings. There was no reason to think that it was for the last time. But he would not have me speak here of personal matters. It would not be according to his nature.

It is as a Judge and counsel that he would like to be remembered amongst us. In both capacities he will stand in the history of the Court as a commanding figure. He will live in the memories of all who have known the Court and as time passes the understanding will increase of the influence he has had upon the public law of this country.

To him the Bar and the Bench ever stood as great institutions and to them he devoted his very exceptional talents. It is the duty of every successive generation of lawyers to strengthen and sustain these essential institutions of justice and of our social order.

To SIR HAYDEN STARKE we owe a debt for the distinguished part which in his turn he took in carrying on this great tradition.

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

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