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JUDGES OF THE SUPREME COURT

The Honourable Leonard James King, Chief Justice.

The Honourable George Henry Walters.

The Honourable Howard Edgar Zelling.

*The Honourable William Andrew Noye Wells.

The Honourable Samuel Joshua Jacobs.

The Honourable James Michael White.

The Honourable Christopher John Legoe.

The Honourable Brian Rothwell Cox.

The Honourable Robert Finey Mohr.

The Honourable Roderick Grant Matheson.

The Honourable Derek Willoughby Bollen.

The Honourable Robin Rhodes Millhouse.

The Honourable Elliott Frank Johnston.

The Honourable Graham Clifton Prior.

†The Honourable Leslie Trevor Olsson.

ATTORNEY-GENERAL

The Honourable Christopher John Sumner, M.L.C.

*Retired, 8th June, 1984.

†Appointed, 28th June, 1984.

MEMORANDUM

A special sitting of the Full Court was held on Monday, 4th June, 1984, on the occasion of the retirement of the Honourable Mr. Justice Wells.

THE HONOURABLE THE CHIEF JUSTICE: The purpose of this special sitting of the Court is to mark the retirement from the court of Mr. Justice Wells after fourteen years of distinguished service as a member of it.

Mr. Justice Wells was educated at St. Peter's College. He subsequently obtained his Bachelor of Laws degree at the University of Adelaide. His Honour's achievements as a student marked him as one bound for distinction in his later career. His achievements as a law student were brilliant. In consequence of those achievements during his law course he won three Stow Prizes and thereby became the Stow Scholar in 1945. He was awarded the Rhodes Scholarship for the year 1940. Before taking up this scholarship, he served in the A.I.F. during the war for five years. After the war he took up his Rhodes Scholarship at Oxford, where he obtained the degrees of Master of Arts and Bachelor of Civil Laws with first class honours. He was the Eldon Scholar of the year 1949. He was called to the Bar in England in 1949 and was admitted as a practitioner of this Court on 24th April, 1950.

After a short period with a private legal firm his Honour joined the Crown Law Office in 1950. He remained in the service of the State until appointed to this Court. He rose to the position of Crown Solicitor and became the first Solicitor-General of the State.

It would be impossible today to attempt even an outline of his Honour's outstanding career at the Bar and in the service of the State. He advised the government upon and appeared in almost all the important cases affecting government which arose during his career as a law officer of the Crown, including a number of cases of the highest constitutional importance. His arguments in every court in which he appeared were marked by the learning, the insights into the underlying principles and purposes of the law, and the clarity of reasoning, for which all his legal work has been noted. In his capacity as legal adviser to the government, he played a large part in the formulation and drafting of some of the most important pieces of legislation which have affected the lives of the people of the State in modern times. A notable example is the role which he played in the formulation of the legal concepts and rules necessary to give effect to modern town planning principles, which found expression in the *Planning and Development Act*. 1966.

His Honour never lost interest in the academic side of the law. He lectured for many years at the Adelaide Law School in the Law of Property and the Law of Evidence. His book *An Introduction to the Law*

of Evidence has been a very useful and practical guide to lawyers, justices of the peace, police officers and others who have felt the need for a clear understanding of the basic rules of evidence and a practical guide to their application.

During his career at the Bar, Mr. Justice Wells became an outstanding figure in the legal profession. Many fellow lawyers sought and obtained from him valuable advice which was always willingly provided from the enormous resources of his deep and widely respected erudition. His eminence at the Bar was recognised when he was appointed Queen's Counsel in 1962.

Mr. Justice Wells was appointed to this court on 6th March, 1970. He was no stranger to these precincts because he had served a period as an Associate to Herbert Mayo as a young man. During his tenure of office he has made an outstanding, in some respects a unique, contribution to the work of the Court and to the development of the law as a means of serving the needs of the community. His Honour's judgments in all the jurisdictions of the Court have been stamped with the mark of his scholarship. They demonstrate his Honour's extraordinary knowledge of the law and grasp of legal principle, his highly developed capacity for reasoning about legal issues, and a rare understanding and awareness of the basic jurisprudential principles which lie at the foundations of the law. I should make special mention of his Honour's work in the Land and Valuation Division of this Court. He was for many years the sole Judge in this division and has for some years been the senior of the three Judges now exercising the jurisdiction. As such he has fashioned the procedures of that division of the Court in a way which contributes greatly to the efficient disposition of the business of that division. In addition to his work in relation to valuation cases, his Honour has played the leading role in the development of a body of jurisprudence the purpose of which is the correct understanding and wise application of the planning laws of the State, in the pioneering stages of the framing of which laws he took such an important part. His Honour's scholarly, deeply considered, penetrating and stylishly expressed judgments will remain, long after he has departed the Court, quarries from which the material for judgments of this Court and other courts will be extracted.

Mr. Justice Wells has laboured long, industriously and productively during his term of office as a Judge. His retirement, which has been thoroughly earned, will leave a large gap in the judicial resources of the Court. He has elected to retire while in good health and at the height of his intellectual powers. I have no doubt that he will not be inactive in retirement and that the law and the community generally will yet receive much benefit from his labours. He will be greatly missed by his colleagues on the bench.

Mr. Justice Wells, I wish you, on my own behalf and on behalf of other members of the Court, a long and happy retirement. Our very best wishes are extended also to Mrs. Wells, whose presence at our various gatherings will be sadly missed and who, I hope, can now look forward to some well deserved relief from the stresses which the life of a busy

barrister and judge inevitably places on those who are closest to him in his personal life.

THE HONOURABLE THE ATTORNEY-GENERAL: I rise to add my respects to those of the Chief Justice on the occasion of the retirement of your Honour Mr. Justice Wells after a long and fruitful career of service to the law, to the Government, and to the South Australian community.

You were appointed to this Court fourteen years ago by a former Attorney-General and now fellow Judge, his Honour Mr. Justice Millhouse, who expressed confidence that your career on the Bench would be long and distinguished. I am sure that all South Australians, whether involved in the administration of the law or not, share my view that such confidence was completely justified and fulfilled.

Your appointment in March, 1970 came, as the Chief Justice has mentioned, after an outstanding service to the Government of South Australia as a member and eventually as head of the Crown Solicitor's Department and, for just over twelve months, as the first Solicitor-General for South Australia.

Your Honour's contribution to the law, both then and since, has been characterized by your Honour's capacity to link the theoretical and philosophical elements of life and the law with the very practical realities and difficulties of the day to day administration of justice. It was this capacity which enabled you to draft the legislation for the establishment of the intermediate court system, prepare the recommendations which led to the new compulsory acquisition of land legislation, to make a major contribution to ensuring that planning in South Australia was put on a sound and uniform basis through the *Planning and Development Act* and its important zoning regulations. You also made a major contribution to the *Petroleum (Submerged Lands) Act*. The preamble to that Act, subsequently followed by the Commonwealth, displays admirably your ability to state clearly and precisely a complex set of inter-related concepts in a straightforward manner.

These achievements reflect the essence of your judicial gifts and there are certainly many in Government and indeed, throughout both the profession and the general community, who are indebted to your role in the drafting of some very important laws of this State.

At the time you presented your commission to this Court your Honour bade those present to look not to the past but to what they might be capable of doing in the future.

In the period your Honour has served this Court you have indeed broken new ground and made a most significant contribution to the law and to the understanding and administration of justice in this State. Your appointment as the first Judge in the Land and Valuation Division of this Court ensured a continuity of thought for the initiative begun while you were Crown Solicitor. In particular, it was your initiative to establish a system of pre-trial conference which served to reduce the cost to litigants and enhance the function of the Court.

MEMORANDUM

The two qualities of mind to which I have referred, the intellectual capacity to distil difficult and disparate facts into a coherent set of propositions and a continuity of approach to the application of legal principles, are admirably illustrated in three cases over which your Honour presided.

Very shortly after your appointment you were sitting with two former colleagues in an appeal against convictions for two substantially identical offences in the case of *The Queen v. O'Loughlin*. The former Chief Justice, Dr. Bray, at the beginning of his judgment expressed this opinion—and the case dealt with the principles of *autrefois acquit* and *autrefois convict*. Referring to your Honour, Mr. Justice Wells, the then Chief Justice, Dr. Bray, said: “The Court, the legal profession and the academic lawyer are deeply indebted to him for his illuminating and thorough analysis of the history and the development of the principles under consideration and his exhaustive review of the cases.” This could have been said on a number of occasions—indeed, many occasions. I can only, respectfully, agree with that opinion of the former Chief Justice.

Later, when sitting with two other learned colleagues as a Court of Criminal Appeal, in the case of *Van Beelen*, you gave a judgment which, while a joint judgment, can readily be identified as displaying the principal hand of your Honour. That judgment has become a classic statement about the law of evidence. The judgment has been cited in the House of Lords with approval.

The study of the niceties and complexities of various rules which make up what we call the law of evidence has been, and remains, a strong recurring theme throughout your legal life—as a student, a practising lawyer, legal administrator, teacher, adviser to Government, Judge, and even into retirement. I understand you will continue to write in retirement on the principle of *res gestae* within the law of evidence.

Particularly in matters of evidence you have provided an indisputable service to the profession and the justice system in this State. Your introductory handbook on evidence remains invaluable reading, both to the student and the practitioner.

The third case I would mention which illustrates your Honour's ability to impose order on a mass of phenomena was the *Myer v. Queenstown* case. Your judgment clearly illustrated your impeccable thoroughness, your legal knowledge, your patience and your understanding. As an aside, it is both interesting and pleasing to note that three of the counsel in that case now sit with you on the bench of this Court.

Finally, in the case of *The Queen v. Williams* your Honour contributed to the law relating to the relationship between Aboriginal customs and European law and the conduct of the police in questioning Aboriginal suspects.

Your Honour has many wide and varied interests which you cultivated from quite early in life. They cover the broadest possible spectrum from philosophical and academic skills and interests to the practical and manipulative ones. These latter, I understand, even extend at present to boat building: whether there is any connection between that interest,

your retirement, and the South Australian challenge for the Americas Cup I would have to leave your Honour to reveal. Such a wide range of skills and talents have enabled you to attain the richest fulfilment, both within and outside your chosen career.

The conduct of your Honour's Court has always been marked by fairness and courtesy. You have listened carefully to all who appeared before you; you have used your own ingenious system of collecting, dissecting and categorizing information. There is no advocate who would ever question your recall of the evidence put to the Court. Your Honour's tables and summaries are legendary.

As I represent the Government here today, it is incumbent upon me to again express gratitude for the important role you played in enhancing the esteem of the Crown Law Office, attracting people of talent and ability to it, and making it an attractive and stimulating career choice for young lawyers.

Your Honour's service to the bench will long be remembered and your judgments will stand as a permanent witness of your abiding achievements on the bench.

In conclusion, allow me to express my personal best wishes and the good will of the bar, the Government and the community for your service to the Court and for a retirement that will be long, happy and productive.

MR. D. F. WICKS: May it please the Court: on behalf of the Law Society I join with the Honourable the Chief Justice and the Honourable the Attorney-General in extending to you, Mr. Justice Wells, our best wishes on your retirement from the bench of this Court.

Your Honour's career, though by no means the longest remarked upon on these occasions, has clearly been one of outstanding achievement.

As happens with so many of your Honour's generation, your legal studies were interrupted by a period of war service from 1940-1944.

Your Honour completed your studies for the L.L.B. degree at the University of Adelaide in 1945 and obtained your degree in that year. You were awarded the Stow Scholarship in 1945 and the Rhodes Scholarship in the same year.

Your Honour took up the Rhodes Scholarship at Magdalen College, Oxford in 1946, reading for the degrees of Bachelor of Arts and Bachelor of Civil Law. In the light of what I am going to say, it is appropriate to observe that your Honour's lecturers at Oxford included such well-known names as Cheshire, Fifoot and Goodhart and your tutors included Rupert Cross and J. H. C. Morris. Your Honour obtained the Degree of Bachelor of Arts in Jurisprudence (with First Class Honours) in 1948 and the Degree of Bachelor of Civil Law (again with First Class Honours) the following year—1949. In that year you were awarded the Eldon Scholarship, being the first Dominion student to have received that award since its establishment.

Your Honour was called to the English Bar in 1949 and admitted to practise in South Australia in 1950. Your Honour acted as an Associate to Mr. Justice Mayo in 1945 before departing for overseas and you commenced practice as a managing clerk in the office of Finlayson, Phillips, Astley & Hayward in 1950.

You subsequently joined the State Crown Law Office as an Assistant Crown Prosecutor under the leadership of Sir Roderick Chamberlain (whom I am pleased to see is here today). Your Honour remained at the Crown Law Office during your career in practice, assuming the office of Crown Solicitor in 1968 at a time when the incumbent of that office was recognised as the government's chief legal adviser and counsel.

You took silk in 1962. The Honourable the Attorney-General has already referred to your Honour's subsequent appointment as Solicitor-General and your elevation to the bench of this Court in 1970. Many practitioners made your Honour's early acquaintance through your course of lectures on the law of property. Generations of us heard those lectures which were delivered annually to undergraduates of the Law School at the University of Adelaide from 1952 to 1968. I myself was fortunate enough to be one of them. I think it was a shock to many of us to face up to the labyrinthine nature of the law of property. I think it was, and always will be, a deep and complex excursion into history, having as it does its roots deep in the Middle Ages. A student of that discipline was required to comprehend the meaning and effect of the Statutes of Uses, *Quia Emptores* and *De Donis Conditionalibus*, and the complex concepts of abeyance of seisin, springing and shifting uses, contingent remainders, the rule in *Shelley's* case (which I think is of particular importance here) and the rule against perpetuities—daunting concepts in any generation.

I pay tribute to your Honour's industry and scholarship and to the worthwhile service rendered to generations of the profession as a whole in delivering those lectures over the period to which I have referred in what is an essential and foundation subject in the disciplines of the law.

Despite your Honour's entreaty to us that we should read and become acquainted with that admirable text (Fearne on *Contingent Remainders*) I confess for myself that I have managed to survive over twenty years in practice without the pressing necessity to make more than a superficial acquaintance with that work. But your Honour's advice to us then, that much of the law cannot be understood without a proper comprehension of its history and development, is as true now as when that advice was given and should not be forgotten.

At the Bar your Honour had a reputation for great learning, and regularly appeared before the High Court, and occasionally before the Privy Council, in that wide range of cases which a Crown Solicitor or Solicitor-General is required to undertake. Your Honour has for many years displayed a keen interest in continuing legal education, particularly for younger practitioners. I make especial mention of the fact that your Honour has acted as judicial consultant to the Law Society's Committee for Continuing Legal Education from 1978 until 1984 and that you have held the position of Chairman of the Advisory Committee to the Graduate

Diploma Course in Legal Practice for a number of years and have made a significant contribution to the on-going success of that course.

But your Honour will be remembered most for your outstanding contribution as a Judge to the work of this Court. Your Honour came to the bench with a brilliant academic record, a deep understanding of and learning in the law, and a distinguished career at the Bar. You will leave the Bench with a substantial memorial to your work in the South Australian State Reports, where judgment after judgment will be found which exemplifies your Honour's thorough learning in the law, a keen grasp of principle and intensity of application, and an uncommon ability to expound and develop the law and apply it to facts.

But apart from skill and learning your Honour as a judge has at all times displayed those admirable qualities of patience, humility, common sense and sound judgment which, together with learning in the law, are the hallmarks of a distinguished judge. There is no doubt in the minds of those of the profession who are acquainted with your Honour's numerous achievements that you have made an outstanding contribution to the practice of the law and to the administration of justice in this State.

On behalf of the profession I extend to you, Mr. Justice Wells, our warmest wishes on your retirement from the bench of this Court. I am aware that you do not contemplate retirement in the full sense at this stage but that you intend writing a legal text or two and also undertaking some teaching. In those respects the Society wishes to commend your Honour and offers support and encouragement in any way it can.

THE HONOURABLE MR. JUSTICE WELLS: Chief Justice, my colleagues, past and present, Mr. Attorney, Mr. President, and my colleagues in the profession. Chief Justice, thank you very much for what you have been kind enough to say. It has been a privilege and an honour to work with my fellow Judges on this Court, and it has also been continuously interesting. All judges are different; they were different at the Bar and it is not to be thought that they would be all of the same mould on the bench. Therefore, they all have something special to contribute to the corporate life of the bench; but, in addition to that, every judge, in my experience, has some special corner of the law that he has made peculiarly his own, and I have been very grateful to be able to tap the various resources that are available from time to time when I have struck some knotty problem or other.

Take, for example, my brother Walters. My brother Walters occupies chambers above me, and has done ever since I have been up here, and I have often been to see him, more often than not, on matters of practice and procedure. I have sometimes wondered to myself whether my brother Walters ever asks himself how it comes about that with uncanny precision I am able to ring him at the very moment that he takes his seat at his desk. Well, there is a secret to this. His room has been bugged, not, let me say, by some horrendous contraption of modern technology, but by the friendly carpenter who made the room many, many years ago, because there are two boards that squeak. Therefore,

with the aid of a clock, and a little imagination, I have been able to follow his movements around the room with absolute precision, and therefore I know when to ring. May I thank all my colleagues for the pleasure that they have afforded working with them.

Mr. Attorney, thank you for your appearance today, and for your good wishes, and for the comments that you have been good enough to make. It is extremely gratifying to me, Mr. Attorney, that you, who number among your very heavy responsibilities as a Minister of the Crown, that of keeping yourself informed about the work of judges so as to make sure that they are neither misrepresented nor misunderstood—it is gratifying, I say, that you have been moved to speak as you have. Thank you very much for what you have said, and for the thoughts that prompted you to say it.

Mr. President, thank you for your very kind remarks. I hope it will not be regarded as trivial; it certainly is not—it is a fundamental proof—that judges could do little without the support of the profession, because books, radio, TV, and various other means of expressing what is said to be understood by the community, are all very misleading. The work of a court with two able counsel and a sincere Judge is a joint search for justice, and even though counsel must represent their respective clients and their respective clients' point of view, they all join together in a search for justice; and it is particularly pleasing to me, Mr. Attorney, Mr. President, that the teaching that has found some lodgment overseas, that counsel owe a duty only to their client but not to the court, has never found a place in the profession of this State.

I am most grateful for the assistance and the good will of the profession at all levels and I offer them my best wishes for the future.

I hope, in due course, to bring to the community a greater understanding of the workings of the law, and of the extensive benefits conferred on the community by the professions. That constitutes one of the projects to which you, Mr. Attorney, made reference.

Very many people have helped me, and supported and encouraged me, in my life and work as a Judge; but, obviously, it would be impossible to thank everybody, and I hope I may be permitted to take a moment to make special mention of one or two.

And the first mention must inevitably go to my wife. The wife and mother and partner of today, particularly after thirty-six years, has been called on to show various strengths of character and various talents—physical and moral courage, and executive and administrative qualities of the highest order—and I have been greatly blessed in that respect. Indeed, my feeling is that the wife and mother and partner of today, if she were snatched away from her everyday tasks, and given the job of taking over a multi-national company, would probably regard it as something of a rest cure. But, of course, the wives of judges, and, indeed, the wives of barristers, have a special burden to bear. It must be very disconcerting when the husband and wife are sitting down quietly at the end of the day to discuss the news of the family and the ways of the world—it must be disconcerting I say—for the wife to realize all of

a sudden that, although the husband is physically present, his mind is away in orbit somewhere—probably thinking about the direction he has to give on corroboration. And so I pay a tribute to the wives of all Judges—including mine—for that extra burden that they carry and for everything that she, and they, have done, which we all so much appreciate.

I would like to just make a brief mention to the two principal tutors of my time at Oxford—Dr. Cross and Dr. Morris. Dr. Cross many of you know. He was the supreme catalyst as a teacher, and generated enthusiasm and self-discipline, which he never allowed you to forget. Dr. Morris was an Equity man, a very trenchant, pungent speaker who could destroy a man, a judgment, or a Judge, in one sentence.

Just to give you one very simple and limited example: he had a particular dislike of students who underlined things in their essays, and he destroyed any notion of doing that in one sentence: he simply said: “Gentlemen, don’t shout.” The weekly tutorial, coupled with the weekly essay, represented not a chore, but a pilgrimage, and I owe them an immense debt.

When I undertook the establishment of the Land and Valuation Division I realized that its success would be very largely dependent upon the co-operation of valuers and the specialist bar; valuers principally—there were certainly other very important experts too—but principally valuers. And I am happy to be able to say that over these last fourteen years I have had the fullest co-operation from both. With respect to the valuers I can say this, that never once have I had to say I disbelieve Mr. So and So. Occasionally one has to choose between valuers, but I have always been able to choose, and constrained to choose, upon the basis of superior reasoning, better research, or the like. I have never said I disbelieve someone. And that is greatly to their credit. They have established themselves as independent experts, almost officers of the Court.

I have had the same sort of co-operation from the specialist bar, who embraced whole-heartedly the principles and the spirit of the new rules, and they have given me wonderful support and service throughout that time in that division.

Many times I have sat in the body of the court and heard judges give their farewells to the community and to the profession, and they have always had something nice to say about the Supreme Court staff, and when I was at the bar I used to wonder, “Well, isn’t that perhaps gilding the lily a little? Are they really as good as all that?” Well, I can say quite categorically that they are as good as all that. I have had, from the entire Supreme Court staff, nothing but the greatest possible assistance, always given cheerfully, always given efficiently; and I include everyone from the Supreme Court librarians (who live out in Siberia there) right through all the catacombs (where the various officers ply their trades) down to the front desk. They have been courteous, considerate, and efficient, and I am most grateful to them all.

I may be permitted perhaps to just mention two sections of them. The first I would mention are the reporters. I have always felt that I had a reasonably close affinity to the reporters. They may, indeed, have guessed

that, but they could never know the reason. The reason is quite simple: during most of my service in the war, I belonged to a small section of specialist wireless operators who went under the euphonious and informative title of "Ack Section", and our job was to maintain communications in various situations, sometimes with infantry, sometimes with the artillery; sometimes we did other jobs of one sort or another. But there was always one thing that stayed with us, and that was the 109 set. I dare say it had some good points, although they have escaped me. There was one thing that could always be said for the 109 set: if it developed a fault—as it frequently did—which baffled both the operators and the maintenance corporal—which it usually did—there was one way to bring it to life, and that was to give it two hard thumps on the top right-hand corner—the top right-hand corner, because that was its nerve centre; two, because if you gave one, you would not rouse it from its lethargy, and if you gave it three it was likely to crumble. But the feature of it that more particularly stuck attention was its superheterodyne section, which control the selectivity of the incoming signal. That was undoubtedly invented by Noah, and installed by Ham. Indeed, the reference to Noah has got a further relevance because of the sort of noise that it gave out when you put on the headphones was not dissimilar to the sorts of noises that Noah would have heard when he woke up in the morning. However that may be, our job was to use such skill as we possessed to make sense of curious sounds, said to be Morse code, coming over the air, reduce that to writing as a matter of record, and furnish that record to someone else for official purposes, all of which was done against a background of almost continuous interference. When you come to think of it, that is not a bad description of a reporter's job. Hence the affinity. I would wish to thank Mr. Claude Pearce, and all his troops, for the very good-natured way in which they have invariably carried out their duties and their almost incredible efficiency. I apologise if I have sometimes gone a bit too fast when summing up, but, in my own defence, I would say simply this, that, when you are summing up, part of your mind must be on the evidence, part on the law, part on counsel's addresses, part on the jury's faces, and part on the Court of Criminal Appeal. When your mind is thus occupied it is rather difficult to find room for controlling the speed of your utterances. Thanks to all of you for that work.

I would also wish to mention my personal staff. I have had only one secretary since I have been here, Jan Sheehy. From the point of view of efficiency and technique, she has done everything that possibly could have been asked of a secretary. In addition to that, by her own particular brand of charm and diplomacy she has maintained what Lord Louis Mountbatten termed "a happy ship". The ante-room has always been a happy place and the only sound that has ever filtered through is the sound of laughter. That being so, I do not think there is much I could possibly cavil at.

I have had three tipstiffs. The first was a gentle and courteous man by the name of Allan Fitzgerald, who unfortunately died early from a sudden heart attack. He was followed by Charlie Baker, who came with

the very considerable recommendation of a long period of service with the Royal Navy. That meant, of course, that there had to be a right way of doing everything, and everything was done just that way. His security was excellent, too, but, in addition to that, he had an indefinable characteristic that accompanies all ex-servicemen after a lengthy period of service; that is that somehow or another if there was any chattel personal that happened to be needed for the good of the chambers somehow or another it tended to filter our way. I am not saying for a moment that Charlie Baker indulged in any irregularities, it is simply that red tape presented less of an obstacle to him than it did to most people. When he retired he was followed by my present tipstaff, Fred Scantlebury, whom I have always thought of as an encapsulation of the jury because, to use the time-honoured phrase, he has common sense and knowledge of the way of the world, and he has helped me in innumerable ways which are far too many for me to mention now.

I have also been assisted by a series of Associates, admirable young men and women—I should say about in equal numbers, in case the Commissioner for Equal opportunity is here. They have done any amount of delving and all sorts of other jobs, keeping records and insulating me as they insulate all judges from the petty round of irritating duties and concerns, and they have enabled us to do (and they enabled me to do) what, after all, we are paid to do, and that is to think. So to my staff whom I have mentioned I give my especial thanks.

The life and work of a judge is not dissimilar to that of making a passage across an ocean. Every master of a ship knows—and a judge knows too—that he must use proper methods of navigation. Being an elemental sort of person, I have chosen to navigate by the stars, by five stars actually, and I would like briefly to mention who they are. The first was Mr. Justice Mayo, who has already been mentioned. He was a Judge of infinite courtesy and patience. He also had a great fund of common sense, and a determination to get to the core of the issue at all times. He also, strangely enough (and this topped it all off), had a peculiar, puckish sense of humour. I do not propose now to give you examples of it, but all I can say is that whenever he exercised it, it usually brought proceedings to a dead halt and witness, counsel, and everyone else gazed at one another realising it was an extreme example of humour, but not quite being sure whether they should laugh or not. He was a great trial Judge and a wonderful example for everyone to endeavour to attain.

The next star I would name was Sir Roderick Chamberlain, my old friend and mentor. He taught me many things, but probably one above everything, and that is that there is a great difference between what the enthusiastic amateur may say to himself after a case, and what a professional may say. The enthusiastic amateur may say, "Well tried, good show, better luck next time". The professional can say none of those things; he can only ask, "Did I do it right?", and once that is borne in mind it marks the distinction, clear and wide, between half doing a job and doing it properly; and his own work always exemplified that standard.

The third I would name is Sir George Jessel, that grand old Judge of the Victorian age who took such delight in carrying out his duties. He did everything with such relish. It is recorded (and it is well recorded) that he once said, "I may be wrong, I sometimes am, but I never doubt". Now, that remark has occasionally been attributed to him as a species of arrogance, but it was nothing of the sort. What he was really saying was this: that if you are on the point of giving judgment and you still doubt, then you have not thought enough. And I think you will agree with me that his judgments always exemplified that standard.

The fourth I would name is Sir Frank Kitto. I do not suppose that I have very effectively disguised my view that I regard Sir Frank Kitto as one of the great Judges, possibly the greatest Judge, that we have produced in Australia—certainly this century. There may have been other Judges who were able to pass him in point of scholarship—although I think you would have to look far and wide to find them—but what marked him out was his extraordinary intellectual integrity, and the way in which his judgments demonstrated a structure of logic that was unique. There is an inevitability about his judgments such as one only expects to find in a Bach fugue. The man himself—his character—was to be seen in his writing, which always displayed four qualities—simplicity, precision, economy and, where you could apply it, grace. It is always, I suppose, a little hard to be graceful about the income tax law. But, where it was possible, he did it. And I make no apology for taking a standard as high as that, because if you aim for a standard that is so obviously unattainable, then you are a little less concerned about your own performance in the eyes of others, and you are a little less likely to look over your shoulder. If you keep your eye on his standard then you have got very little else to worry about, and that is quite enough to occupy your time.

Finally, as a star from another country I have taken Mr. Justice Cardozo. He was introduced to me, as a student, by a former Chief Justice, Dr. Bray, and I was so enthralled when I first read his books, the two little books, *The Nature of the Judicial Process* and *The Growth of the Law*, that, in bland defiance of the law as to copyright I went away and typed them out, and they have been with me ever since. In fact, I have managed to assimilate some of them by heart—it is all right, I will not repeat them. But I have regarded him as a source of spiritual uplift, and when there have been any "down" periods I only have to read him to find myself on course again.

So by those five stars I have tried to navigate, and I have tried to do so with the assistance of the profession.

As is required of every Judge in this Court, I have sat, according to the roster, on trials, on justices appeals, in chambers, and on appeal. I have always found it very rewarding and interesting work. But I have also felt some slight unhappiness about appeal work. I have never been very easy in it. I am unhappy, really, about superseding retrospectively the judge who experienced the atmosphere of the trial. I suppose it is all very well, if one can detect an obvious blunder of law; one can, with perhaps some slight confidence, act. But even then, I am never quite sure,

and I would wish one day to see in the civil law the same provision as exists in the criminal law so that if, notwithstanding an error in the judgment below, there has been no miscarriage of justice, then the appeal should be dismissed. However, that is very much for the future.

As you have said, Mr. Attorney and you, Mr. President, I am retiring, not from life, but from the bench, and I hope to retain my associations with the law and with lawyers. I have three or four projects in mind, and I wanted to undertake them before I was robbed ultimately of health and strength to complete them. And that is what I am about to do. I hope that I may get some opportunity to teach, and I do certainly intend to write, and I certainly intend to maintain my associations with all facets of the law, and with lawyers.

I recall that when Sir Charles Bright was saying farewell he wished his audience, and I quote, "In some curious way, slightly more luck than you deserve." It would be a bold man who would want to cap any aphorism of Sir Charles Bright, but to the profession I would simply add a footnote that comes, not from me, but from the wisdom generated by a school almost as old as history: that is the sea. There is an old adage that "The winds and the tides favour the ablest navigator". So if you want your luck, you become an able navigator, because then it will come to you.

Chief Justice, Mr. Attorney, Mr. President, thank you once again for what you have said and for your good wishes. I shall carry them with me into a happy retirement.