

THE
STATE REPORTS

SOUTH AUSTRALIA

1958

EDITED BY
R. M. HAGUE, LL.B.,
A PRACTITIONER OF THE SUPREME COURT OF SOUTH AUSTRALIA.

PUBLISHED IN ADELAIDE BY
THE LAW BOOK COMPANY OF AUSTRALASIA PTY LTD.

456 LITTLE COLLINS STREET, MELBOURNE.

SYDNEY - - 140 PHILLIP STREET

BRISBANE - 21 ADELAIDE STREET

Wholly set up and
printed in Australia
by The Griffin Press,
Adelaide.

JUDGES OF THE SUPREME COURT

THE HONOURABLE SIR JOHN MELLIS NAPIER, K.C.M.G., CHIEF
JUSTICE.

THE HONOURABLE SIR HERBERT MAYO.

THE HONOURABLE SIR GEOFFREY SANDFORD REED.

*THE HONOURABLE SIR GEORGE COUTTS LIGERTWOOD.

THE HONOURABLE CHARLES LEMPRIERE ABBOTT.

THE HONOURABLE DUDLEY BRUCE ROSS.

†THE HONOURABLE FRANCIS ERNEST PIPER, C.B.E.

ACTING JUDGE

‡THE HONOURABLE FRANCIS ERNEST PIPER, C.B.E.

ATTORNEY-GENERAL

THE HONOURABLE COLIN DAVIES ROWE, M.L.C.

* Retired, 14th October, 1958.

† Appointed, 15th October, 1958.

‡ From 1st August, 1957, to 14th October, 1958.

MEMORANDUM.

A special sitting of the Full Court was held on Friday, 28th February, 1958, to bid farewell to the Honourable Mr. Justice Ligertwood, on his retirement.

THE HONOURABLE THE ATTORNEY-GENERAL (The Honourable C. D. Rowe):—May it please your Honours: We are indebted to you for providing us with this opportunity of expressing in a few words our sincere appreciation of the worth and the work of his Honour Mr. Justice Ligertwood, and of extending to him and to Lady Ligertwood our sincere wishes for a long and happy and enjoyable retirement.

As you sit in this Court this morning, your Honour, your mind must be filled with the experiences and events which have occurred during the years since 1910, when you secured your degree of Bachelor of Laws and the Stow Medal, and when you commenced your first association with this Court as Associate to the then Chief Justice, Sir Samuel Way. You subsequently, in 1914, took up your duties as Deputy Master, which you continued until your services were required in connection with the first World War in the first A.I.F. in 1918 and 1919.

Upon your return from that, you were busily engaged at the Bar, and on 28th August, 1930 your work and industry were rewarded by your appointment as King's Counsel. And then followed, perhaps, what was the busiest and, maybe, in some respects the most successful period of your life, as King's Counsel, until 12th July, 1945, when you were elevated to your present position on the Bench.

Indeed, Sir, it seems to me that you have gone far towards achieving the goal set many years ago by the writer who described the life of the lawyer and the advocate as

“Mastering the lawless science of the law,
That codeless myriad of precedent,
That wilderness of single instances,
Through which a few, by wit or fortune led,
May beat a pathway out to wealth or fame.”

We all know, Sir, that since that verse was written, circumstances have changed very much indeed, and that today the profession of the law, whether practised on the Bench or at the Bar, leads neither to wealth nor to fame; but it does lead to a much greater responsibility and a much greater satisfaction, namely, that of maintaining in its rightful place the independence and the integrity of the judiciary, which is the sheet anchor of our democratic institutions.

It is because you have performed this difficult and responsible task in accordance with the best and the highest traditions of your high office, that we find so much pleasure this morning in extending to you our sincere appreciation of your work as a Judge, and of our esteem and affection for you as a brother in the law. In this matter we are supported by a large company of witnesses. Your integrity, and your judicial ability, have been acknowledged by the Commonwealth, first, in appointing you to enquire into the circumstances of the escape of Lieutenant-General Gordon Bennett, and secondly, in your appointment

as a member of the Royal Commission in connection with the Petrov Inquiry.

Further, your outstanding ability and your willingness to assist all good causes, has been evidenced by your service as a member of the Council of the University since 1942; as Warden of the Senate since 1945; as a member of the Council of Governors of Scotch College since 1924; and finally, by the knighthood which was conferred upon you in the New Year's Honours of 1956.

It is with a deep sense of gratitude and with the support of all those present here this morning, and of many others whom circumstances prevented from coming, that I voice these expressions of appreciation and goodwill, and I wish you and Lady Ligertwood everything that you would wish for yourselves in the years that are yet to be.

THE PRESIDENT OF THE LAW SOCIETY OF SOUTH AUSTRALIA (Mr. J. L. Travers Q.C.):—May it please your Honours: I wish to associate myself, if I may, with all that has been said by the Honourable the Attorney-General. I do so, not only on my own behalf, but also as spokesman for and on behalf of the Law Society of South Australia and all its members.

We of the legal profession are sad in the knowledge that the time has come for the retirement of his Honour, Sir George Ligertwood. One may, I feel, be pardoned for the thought that any country which feels that it can afford to be without the services of one with his Honour's record, must feel that it is indeed richly endowed with judicial talent. I, of course, have had the privilege of knowing well and practising both with and against his Honour when he was at the Bar. As a barrister, Sir George, in his own particular field—the civil law—was unsurpassed by any in Australia in my time. His reputation justifiably extended far beyond the boundaries of his own State. He was, and is, richly endowed with an enviable ability to separate essentials from non-essentials, and he has, to an almost frightening degree, the courage to discard what he deems to be unessential. He has, of course, taken this rare faculty with him to the Bench, and it is precisely that which has produced from him so many judgments which are short and crisp and clear, and which have done so much in clarifying the law.

The members of my profession—and his—would have me say to Sir George Ligertwood on this occasion: Well done; congratulations from us all on a splendid judicial career. We wish you well in your retirement, and may you have a pleasant, enjoyable, and very well-earned rest.

HIS HONOUR THE CHIEF JUSTICE (Sir Mellis Napier):—Mr. Attorney, Mr. Travers, and brethren of the Bench and Bar: You, Mr. Travers, and Mr. Attorney-General, have spoken as your offices entitle you to speak, for the profession of the law. And you, Mr. Attorney, have spoken also—as your office entitles you to speak—for the Government and people of South Australia. But it remains for me to speak for the Court, that is to say, for Sir George's colleagues on the Bench, and for all who, in this Court, have been privileged to work with our brother, and to see his work, as it were, from the inside. May I say that nothing, that has been said this morning, exaggerates in any degree the service which Mr. Justice Ligertwood has rendered to the law—in the first instance as an

advocate, and, later, as a Judge—or the esteem in which he has been, and is held, in this Court and in the State.

I may, perhaps, speak as one whose memory goes back to the time when Mr. Ligertwood, as he then was, was admitted as a practitioner of this Court. To some of you that may seem a reference to the dim, dark ages—the year 1910. But, as one who can remember those times, I well remember the brilliant academic career, and the reputation with which Sir George entered his profession—serving an apprenticeship in this Court as First Associate and as Chief Clerk and Acting Master; and later on, his enlistment and return from active service, when he entered upon the practice of his profession, and proceeded to establish the reputation that has been already referred to.

To us, who knew him in those days, it was no surprise that he should succeed and eventually achieve the reputation that was his. To anyone, who had the privilege of his acquaintance, it was a matter of common knowledge that he had the qualities of mind and character that must carry him to the front, and—given the opportunity—to the highest rank in his chosen profession. From this Bench I had the opportunity of seeing these expectations realised, and of appreciating how well his reputation was earned and how firmly it was established. I suppose that it might be said of him, that there never was a counsel at our Bar who was held in higher or wider esteem than the Mr. Ligertwood of those days. His experience was wide, carrying him afar, and into almost every aspect of life and affairs. If I may paraphrase—

“Much had he seen and known. Cities of men,
And manners, climates, councils, governments.
Himself not least, but honoured of them all,
And drunk delight of battle with his peers.”

After his career at the Bar, we counted ourselves fortunate to have him with us upon this Bench. He has been to us a tower of strength, and it is with the “sense of tears in mortal things” that we realise that the time has come when we must lose that strength and that fellowship—that we must part with one whom we can so ill afford to lose.

It is not for us, as Judges of the Court, to criticise the law that binds us, but as individuals we may express the regret that this should be as it is. The time has come, when Sir George must leave us, and we can only join with you in extending to him, and to Lady Ligertwood, our very warmest regards, and the very best of wishes for the well-earned holiday to which they are looking forward. May they enjoy themselves, and may they find interest and health and pleasure in the journey that they contemplate.

We look forward to seeing them on their return, regretting only that Sir George cannot come back to us in this Court. It is one of the tribulations of advancing years that time robs us of our companions, and it is with a heavy heart that I part from one with whom I strove in the far distant past, and with whom I have worked as a brother upon this Bench for more than a decade. Now that the time has come to say goodbye, I can only say it in its real, if archaic, meaning, of “May God be with you.”

THE HONOURABLE MR. JUSTICE LIGERTWOOD:—Your Honour the Chief Justice, my brother Judges, Mr. Attorney-General, and Mr. Travers, and Gentlemen and Gentlewomen of the Bar: I was reading a book recently which illustrated the difficulties of the Australian language. An Italian called "Nino" apparently wrote it, and he mentioned the cryptic power of the Australian language. On one occasion he was praising a meal which he had just enjoyed, and which had been prepared by his wife, and she said: "It was not that good." And as I listened to the words which have fallen from the lips of these three speakers, I could not help saying to myself all the time, "I am not that good"—and I am not, either. At the same time, I fully appreciate the compliment which is being paid to me here today by the presence of the Full Court and of my fellow members of the profession, and I sincerely thank you for the words which have fallen from your lips, however undeserved they may be.

I have enjoyed being a Judge—I don't mind saying that. I may not have enjoyed it as much as Mr. Acting Justice Hannan, but still I have enjoyed it. It is a very satisfying life to be a Judge. It is a very hard life, and it has got harder and harder as the years have gone on, and as the work of the Court has increased; and it is only by the intensive work of all the Judges of the Court that we are more or less keeping abreast of the work. There is no forty-hour week about a Judge—no nine to five job. He has to work very hard indeed to keep abreast of what has to be done.

One thing that has contributed to my enjoyment of the Bench is the fact that I have been associated with His Honour Sir Mellis Napier. I was nearly going to refer to the privilege of serving under the Chief Justice, but that would not be correct, because Judges don't serve under anybody. They are not anybody's servant. They administer the Queen's law, the Queen's justice, fearlessly and independently, even independent of the Queen herself. Nevertheless, it has been a great experience to be associated with Sir Mellis Napier—to see at close quarters the working of his powerful intellect, and to be amazed from day to day at the sweep and accuracy of his memory (as far as I can see, he never forgets anything); and also, to have the privilege of the kindness and help which he has extended to every one of his brother Judges. Then I have been fortunate, too, in my brother Judges. The five of us are all very much of an age—in fact, the Chief Justice is not much older than we are, although he seems to be older in some respects. But we are all of one generation. Maybe there is a danger in that. We worked together at the Bar and were friends at the Bar in friendly rivalry, and we came on here to the Bench and continued that friendship, and there has never been a ripple of discordance in all the years I have been here. I have been delighted with my colleagues, and delighted with the help they, too, have given to me, and which I have endeavoured to extend to them.

I want to refer to my relations with the profession. I knew I would have to say a few remarks this morning, so I turned back to what I said when I came on the Bench. I feared I might have to eat my words, but I find I don't, because I was wise enough to say, "I make no promises." But one thing I did ask for was the help and co-operation of

the profession. It is one occasion on which every wigged head of the Court nodded assent to what I was saying; and I took that as a promise, and it is a promise which has been very faithfully carried out by the members of the Bar. They have shown courtesy and respect to me and to all my brother Judges on every occasion, and the work of the Court could not go on without the co-operation of the legal profession. That is another thing we owe in some measure to the influence of our Chief Justice. He has encouraged an intimacy between the Bench and the Bar, which I think in South Australia is something novel, and it has been brought about by those social occasions which he has encouraged and in which we all meet together—Judges, seniors and juniors—and all can discuss the affairs of the profession amongst other matters as well. It is a very good thing that there should be that intimate relationship between the Bench and the profession, and, as I say, the Chief Justice has given every encouragement to it, and my brother Judges have been quick to follow his lead.

Perhaps in one respect the profession have not exactly kept up to their promises, or perhaps they have carried them out too much. I asked for their co-operation, and I found that too often they seemed to be conferring together and saying, "Leave it to the Judge"; then, having left it to the Judge, and the day of judgment coming, you see them walking out of Court sorrowfully wagging their heads and saying, "The judgment of Solomon." It is true we are more and more compelled to give judgments of Solomon, because Parliament seems to be leaving so much more to the discretion of the Judge, and it is much more difficult, I can assure you, to have to exercise your discretion than to be able blindly to follow a precedent. In that respect you are putting more and more responsibility upon the Judges.

Another great assistance which a Judge receives is from the staff of the Supreme Court. We get nothing but loyalty and service from those who work around us—from the Masters and their officers, from our own Associates and from the tipstiffs, who all contribute to our comfort, and the atmosphere in which we carry on our work. I want to express to them my gratitude. In fact, I used to wonder why it was we got such service from those all around us, until I let my egotism go by, and then I realised the service was not to the Judge—it was to the office, the office of the administration of justice. Nobody who comes within the four walls of this Court fails to appreciate the importance of the administration of justice and the key position which the courts hold in the land. They are, indeed, not only the *causa sine qua non* of civilisation; they are the *causa causans* of civilisation—if some members of the Bar still know a little Latin. History has shown that once the administration of justice fails, then civilisation fails, and from that point of view it is the duty of the profession—in fact, it is the duty of the whole of the community—to uphold the prestige of the courts from the highest to the lowest.

I made mention of the Associates. The Associate is a very important official of the Court. He has many duties to perform, and one of them is to be the friend and confidant of his Judge. Another is to be the liaison officer between the Judge and the profession. Associates used

to stay at this Court for much longer in the old days than they do now. I was Associate to Sir Samuel Way for a matter of two to three years. I think I also served for a short period with Sir George Murray. But nowadays they come and go much more frequently. In the twelve and a half years I have been on the Bench, I have had thirteen associates. I don't want to say much about them, because just about a week ago twelve of them, with a stand-in for the thirteenth, were all together in the one place, and they invited me in; whereupon we proceeded to express our opinions to one another jointly, severally, and in the alternative. Proof of the importance of the office of Associate is the way in which the profession snap them up as soon as we have taught them a little bit here in the Court, and they make good use of them. I want to say how much I have enjoyed the thirteen Associates I have had, and that they should have felt that they made me a friend just as I made them a friend.

When I came on this Bench, I received a letter from Sir John Latham, who was Chief Justice of the High Court at that time. Amongst other things he wrote, he said a word of warning. It was: "It is easy to decide; the difficult thing is to decide justly." And therein lies the anxiety which is always at the back of a Judge's mind. He never gets away from it. In all his waking hours—in fact, in all his sleeping hours—there is that feeling of anxiety: "Am I doing what is right?"

From the words which have fallen from the lips of the three speakers today, I can take some consolation in feeling that you seem to think that in some measure I have been able to solve the difficult task of deciding things justly; and if that is so, then I rest content.

Nothing remains now but to say farewell to you. I leave the Bench with regret. I have worked hard for many, many years—my family will tell you that—but nevertheless there is an intense satisfaction in congenial work, and there is no work more congenial to a person with a flair for the law than in pleading cases in court, and afterwards sitting on the Bench and deciding them.

I say farewell to you all.