

THE
STATE REPORTS
SOUTH AUSTRALIA
1959

EDITED BY
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A PRACTITIONER OF THE SUPREME COURT OF SOUTH AUSTRALIA.

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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 CHARLES LEMPRIERE ABBOTT.

THE HONOURABLE DUDLEY BRUCE ROSS.

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

‡THE HONOURABLE REGINALD RODERICK ST. CLAIR CHAMBERLAIN.

‡THE HONOURABLE JAMES FRANCIS BRAZEL.

ATTORNEY-GENERAL

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

• Retired, 30th October, 1959.

† Died, 27th September, 1959.

‡ Appointed, 16th November, 1959.

MEMORANDA.

I.

A special sitting of the Full Court (*Napier C.J., Mayo, Reed, Abbott and Ross JJ.*) was held on Monday, 28th September, 1959, following the death of the Honourable Mr. Justice Piper on 27th September, 1959.

HIS HONOUR THE CHIEF JUSTICE (Sir Mellis Napier):—Before the Court proceeds to the business of the day, this sitting has been appointed to give the members of the Court, and the profession of the law, an opportunity of expressing the grief and distress with which we have heard of the untimely death of our brother, Mr. Justice Piper, and to enable the profession to pay this tribute to his memory.

Mr. Justice Piper came of a family with the tradition of service to their fellow men, and the tradition of service to the State. Looking back, we can see that he spent himself, in the various activities in which he was interested, to an extent that has deprived us of the benefit of his wisdom and his help in years to come. That we can only regret, but his is a loss that we shall all feel. He was, I think, a friend not only of every member of this Court, but of every member of the profession. I doubt whether he had an enemy. It would have been a strange person who could be the enemy of such a one. His help was readily given to all of us, and his qualities of mind and character were such as made that help valuable and must, inevitably, have gained for him a great reputation in and beyond this Court.

It is useless to repine, but our sympathy goes out to his wife and family, and we can only say how much and how deeply we regret the sad and untimely loss of a valued colleague, for whom we had not only esteem and respect, but also affection.

MR. R. R. ST. C. CHAMBERLAIN, Q.C. (Crown Solicitor):—May it please your Honours: The Honourable the Attorney-General has asked me to convey to your Honours his deep regret that circumstances have prevented his resumption of his portfolio, and have therefore prevented him being present here in person. He has asked me to join in his name in the eloquent tribute that your Honour the Chief Justice has just paid to the late Mr. Justice Piper. The Attorney has reminded me, and your Honours will recollect, that he had the privilege, when his Honour assumed his high office, of speaking of the high things that he predicted of him, so tragically short a time ago, and of course it is quite obvious that the predictions that the Attorney-General was then able to make so confidently were more than fulfilled, even in the short time that his Honour was able to occupy this office.

In speaking on behalf of the Attorney-General, of the Government of which he is a member, and of the legal profession of which he is the titular head, I am also speaking as a life-long friend of Mr. Justice Piper—a friendship which was based, on my side, on the deep and lasting admiration of his good qualities, qualities which fitted him so eminently for the high office, and which have made his untimely death so tragic a loss to the community. First among these was—I have always thought

—a deep and instinctive sense of justice, and of right and wrong. With this, his Honour combined a brilliant legal brain, an infinite capacity for taking pains, an unsparing devotion to everything that he undertook, and to these might be added, an unaffected friendship for all those with whom he came in contact.

As your Honour the Chief Justice has said, there has been no more honoured name in the law in this State, and no one who could have done it greater honour than the Judge whose untimely death we are here to mourn.

Those for whom I have the privilege of speaking join the Court in expressing our very deepest sympathy to Mrs. Piper and family, whom most of us have seen grow up, and whom we know so well.

MR. J. L. TRAVERS, Q.C. (President of the Law Society of South Australia):—May it please the Court: I wish to associate myself, if I may, with what has just been said both by your Honour the Chief Justice, and by the Honourable the Attorney-General, through Mr. Chamberlain, Q.C., and I do so, not only wholeheartedly on my own behalf, but also on behalf of the Law Society of South Australia and all its members—the legal profession of this State.

It seems a very short time ago, tragically all short, since I stood in this very place to congratulate his Honour Mr. Justice Piper on his elevation to the Supreme Court Bench. On that occasion, I recalled with pride and with pleasure my own association and my own friendship with his Honour, which lasted or extended from boyhood days. I had the honour of presenting to this Court my commission as one of Her Majesty's counsel on the same day as did my friend the late Judge.

None who knew him could fail to recognise in him his outstanding judicial qualities. He was careful, he was painstaking, and he was just.

We had all looked forward to a long and successful career by Mr. Justice Piper as a Supreme Court Judge. We are grieved, indeed, that that career has thus been cut so short.

The legal profession has lost a valued friend. We of the Law Society extend to the Judges of this Court our deep sympathy on the loss of so valued a colleague, and we share, if I may say so, in our own way, with Mrs. Piper and her family their very deep sorrow.

II.

A special sitting of the Full Court (*Napier C.J., Mayo, Reed, Abbott and Ross JJ.*) was held on Friday, 30th October, 1959, to bid farewell to the Honourable Mr. Justice Abbott on his retirement.

THE HONOURABLE THE ATTORNEY-GENERAL (The Honourable C. D. Rowe):—Your Honours: It is with regret that we realise that the time has come when the Honourable Mr. Justice Abbott must leave the Bench and terminate his work in that capacity. It seems to me that since he was admitted to the degree of Bachelor of Arts in 1911, and subsequently to the degree of Bachelor of Laws in 1914, his life has been one of widening interests and of increasing activity and of greater service to the people whom he sought to serve. He first found an avenue for the use of his many talents in the political sphere, when he entered Parlia-

ment in the old multiple district of East Torrens in 1933, and subsequently became a member for Burnside in 1938. During that time, of course, he was pursuing his career as a barrister and solicitor as well; in 1943 he was appointed a King's Counsel; and in 1946 he was elevated to the Bench of this Honourable Court. In those years he had, during 1943 and 1945, occupied the position of President of the Law Society, and in 1944 was Vice-President of the Law Council of Australia. During the period that he was a member of Parliament, he was appointed in 1944 as Attorney-General and Minister of Industry and Employment, as well as Minister of Education, and I think, knowing as I do the onerous duties which devolved upon this portfolio—particularly the portfolio of Minister of Education—the fact that very soon after he vacated this position it became necessary to divide them, and have the work done by two separate people, provides evidence of the very great amount of work and the very satisfactory work that he did in that capacity. It will be remembered that in 1944 we were involved in the Second World War. The problems which confronted the Minister of Education at that stage were very many and varied, with the increasing school population and with the very great shortage of manpower and the very great shortage of materials; and if I may say so, I feel his Honour in that sphere provided an excellent foundation on which others have been able to build.

But apart from those activities, in the cultural sphere his Honour has also displayed very considerable interest. He was President of the Australian-American Association in 1946 and 1947, and Acting Dean of the Faculty of Law at the Adelaide University in 1943 and 1944, and lastly, and perhaps not least, he has found scope for his talents as Chairman of the Libraries Board of South Australia, a position which he has held from 1948, and which he still holds with very great distinction.

He also has taken his part in the field of sport, where he has held the position of President of the Australian Lacrosse Council, South Australian Lacrosse Association, and the South Australian Branch of the Royal Life Saving Society.

But we are here this morning, not so much to speak of those other activities, but to speak of the worth of his work, and the esteem and affection in which we all hold him, as a member of the Bench of this Honourable Court. I think it can be truly said, that he has carried out his work in that capacity with very great pains and with very great attention to duty, and that he has maintained in its fullest splendour the integrity and confidence which people have always held in this Court and which I believe they will always hold.

I do not think there is very much more that I can say, other than to say there is no greater tribute that I can pay, and I do very sincerely express to his Honour a very great appreciation of the worth of his work. We look back upon his period in this Court with very great pleasure, and we wish for him in the future all that he would wish for himself in the years that are yet to be.

THE PRESIDENT OF THE LAW SOCIETY OF SOUTH AUSTRALIA (Mr. D. S. Hogarth, Q.C.):—May it please your Honours: I wish to associate

myself with everything that has just been said so ably by the Honourable the Attorney-General. I do so for myself, and for those whom I represent—the Law Society of South Australia and its members. I have had the privilege of knowing his Honour from the time when he was still a member of the Junior Bar. At that time, in addition to conducting a busy practice, he was already, with his customary energy, taking an interest in public affairs, in which later he was to become so eminent. He later held high office, as has just been referred to, in the Law Society, and I refer particularly to his period as President of the Law Society. The law is, indeed, fortunate that, in spite of all his Honour's other interests and attainments, it was able to retain his affection, and that we have had him for so long in the high judicial office he has occupied and from which, unfortunately, he is about to retire.

Those of us who have practised in the Court over which his Honour presided, will long remember his keen and eager participation in the search for truth and justice, and when, as so often happens, there is something to be said in justice for each of the opposing parties, his Honour was ever ready with a practical solution which would see justice done to both. If I may descend to the particular, I can say that I have never experienced greater satisfaction in my work at the Bar, in association with other counsel, than in one most distressing divorce case, in which his Honour was at great pains to effect a reconciliation. It was one case which made me realise what it means to assist a Judge outside a court to arrive at, in effect, what is substantial justice. This is no isolated instance of his Honour's work.

We all rejoiced some years ago when his Honour triumphed over a serious illness which, it was feared, could have led to his premature retirement. We recognised and admired the courage and the determination which made it possible for his Honour to resume his judicial functions. It has often been said that the law is a hard taskmaster. It is never harder perhaps than when it says, "The time has come for us to part." But I know that there will be no complete parting in this case. I am sure that his Honour's interests and affection will remain with the law, and his knowledge of the law, enshrined in his judgments, will affect the future conduct of the law, so long as the common law remains in South Australia. His Honour will be long remembered in the profession and in the Courts, and I can only say, may his Honour's retirement be one of enjoyment and of well earned rest.

HIS HONOUR THE CHIEF JUSTICE (Sir Mellis Napier):—Mr. Attorney-General, Mr. Hogarth, and brethren of the Bench and Bar: This sitting has been arranged, as you know, for this particular purpose, and I desire to speak, not merely for Mr. Justice Abbott's colleagues on this Bench, but for the officers of the Court and others who have, throughout the years, assisted us in the performance of our judicial duties. I desire to thank you, Mr. Attorney-General, for your very able and eloquent precis, and you, Mr. Hogarth, for what you have said on behalf of the profession for whom you speak. My memory of Mr. Justice Abbott goes back, perhaps, beyond the things of which you have spoken. I am not sure of the exact sequence, but I certainly remember a time when Mr. Justice

Abbott used to row for the University on the Torrens River and elsewhere. I well remember rowing against his crew. That is, I think, my first recollection of my brother Abbott. Later I came to know him otherwise. I am not sure whether I can claim that, metaphorically, I set his faltering feet upon the pathway of the law, but he was articed to my partner, and, at any rate, I had some part in that delectable task. Thinking back to those days, I am reminded of the reputation that certain University students of that time had for practical jokes and pranks of one kind or another. It might, perhaps, be inadvisable to recall some of them now. But, at any rate, that was the way in which I and my brother Abbott first came to know one another.

Later, when I came to this Bench, I well remember my colleague, Mr. Justice Poole, calling my attention to the work that "Charlie Abbott" had been doing at the Junior Bar, and, when the time came for me to assume my present office, it was my pleasure and privilege to recommend Mr. Abbott for silk. If I remember rightly, it was my first recommendation. Later still, in his capacity of Attorney-General, and then as a colleague, we were once more brought together, eventually in the closer bonds of brotherhood upon this Bench. Throughout the years, my recollection of Mr. Justice Abbott has been of a loyal friend, an able counsellor, and a fearless advocate. As a Judge he has earned the reputation by which I think that any Judge would wish to be remembered. He has been one who "sought truth and loved justice," and it would I think be difficult to think of a better epitaph for a Judge. Now the time has come for Mr. Justice Abbott to retire, and his going leaves us the poorer by the loss from amongst our number of a good friend and an able colleague. We shall miss him, but there is this to be said: He may leave us, but he could not if he would, vacate the place that he will ever hold in our regard, esteem and affection. With you we join in wishing well to him and to Mrs. Abbott and to his family. Time takes its toll. We are not now that strength which in past days moved heaven and earth, but what we are we are. What the future holds we cannot know, but we can wish for our brother in his well-earned retirement the best of fortune and of health and happiness.

THE HONOURABLE MR. JUSTICE ABBOTT: Your Honour the Chief Justice, my Brethren on the Bench, Mr. Attorney-General, Mr. Hogarth, and members of the legal profession:

By a reference to the State Reports I find that I was appointed one of Her Majesty's Judges on 2nd May, 1946, so that I have been a member of this Court for thirteen and a half years—a not inconsiderable portion of my three score years and ten, though hardly to be mentioned in the same breath as the term of our beloved Chief Justice.

In the last few months, as I neared the date of my retirement, I have appreciated more and more how happy and full of interest the time has been for me—happy in the fact that the rush and bustle of the barrister's life, fraught with constant struggle and competition, had levelled out into a peaceful and unhurried career on the Bench, enlivened as it is by continual change of the subject matters coming before one for decision, and constantly of interest in the expansion of one's knowledge of the

law. I remember being told, as a young man, that the law was a hard task-mistress. I would prefer to describe her as a demanding mistress—one who requires your constant devotion, your appreciative attention to her every aspect, your untiring patience and curiosity. But the rewards which she bestows to the genuine seeker after her solution of a problem are rich and satisfying.

I found the atmosphere of the Court most congenial. I had been articulated to the partner of the Chief Justice, and I had lived and worked in keen competition but always in the warmest friendship with all my colleagues on the Bench. By all of them I have been helped and to all of them I am deeply grateful, especially in recent months to my dear brother Mayo.

I was surprised to find that I have had twelve Associates, young people who come usually soon after admission, who stay a year or so, and upon whom I quickly came to lean as heavily as I dared. I have always thought that I was probably a stern and unrelenting tutor demanding from them a high standard of conduct and knowledge. I am told by one of the Silks that I have the reputation amongst the profession of being a strict disciplinarian. Despite that—or possibly because of it—all my former Associates are friends of mine, as I am of them, and they have all established themselves in happy and useful careers in which I confidently anticipate their success. Indeed, some are already well known and outstanding partners in their firms.

To the Masters of the Court, and to the Deputy Registrar of Probates, I am also grateful for help and to the reporters and stenographers without whose services the value of the Judges' work would be much diminished.

Finally, let me acknowledge also the help I have received from the tipstuffs, staid men of mature years, who take a pride, not only in their work, but in the historic title of their office. I have been fortunate in having as my personal tipstaff the same man throughout my career, and I thank him for his forethought and unselfish attention to every detail by which he could ease my own labours. During his illness, I have been dependent on the help of the tipstuffs of my brother Judges, and it has been a surprise to find that they all have different methods of robing the judge. I express my thanks to them all.

I fear it will be an embarrassment to my beloved wife, but I cannot let this momentous occasion pass without publicly acknowledging her constant help and encouragement, her unswerving loyalty, her devotion to duty, her patience, her forbearance, her comfort, and her care. We have both been greatly blessed, I beyond my deserts, she less than she has merited.

Now may I turn to the members of the Bar, to whom a Judge looks for help and guidance. Just as cross-examination has been found to be the best method of eliciting the truth from a witness, so the presentation by each counsel in turn of the law as appears to him to be most helpful to his client guides the Judge to the solution of the problem of what the law is by which justice will be done to the parties. I think I have at times been a didactic Judge, especially in Chambers, but also very

often in Court. Although I have always had in mind the statement of the great Bacon that a "much-talking Judge is like an ill-tuned cymbal", there have been times when I have felt that instruction by word is as useful as instruction by example, and more likely to be quickly assimilated. I have been surprised and pleased when I have later received thanks from members of the profession for having thus enlightened them.

Through the kindness of the Deputy Master, who, with that thoroughness which is the hall-mark of all his work, has kept a copy of the addresses made when I presented my Commission, I am able to repeat some of my words on that occasion.

I quoted Lord Bacon who said: "The parts of a Judge are four: To direct the evidence; to moderate length, repetition and impertinency of speech; to recapitulate, select and collate the material points of that which hath been said; and to give the rule or sentence."

I think I may justly claim to have followed to the best of my ability that instruction. But there are one or two matters which were not referred to by Bacon, but which are clearly part of the judicial instruction. The first, and probably the most onerous, is the writing of judgments. I suppose every judge has found that a heavy burden. Barristers here today will, I am sure, agree with what used to be said when I was at the Bar, "Opinions are the worst paid work that a lawyer does." Hours of work are expended, numerous cases are examined, much midnight oil is burned, and ultimately an opinion is reached, with much doubt and heart-burning. Well, a judgment is merely an opinion. And just as the profession always wanted, and the client always demanded, an opinion that did not end up "sitting on the fence", but was decisive, one way or the other, so the litigant wants a decisive judgment. There is much the same burden in preparing it, but I have always tried to come down definitely on one side. When I have made up my mind, if there was an appeal, it left me wholly undisturbed, and I accepted with equanimity whatever the appellate court decreed.

I referred, when taking my seat on the Bench, to "the trust and confidence that are reposed and have always been reposed in this Court by the people of this State and the profound respect in which the Bench are held throughout Australia by those most competent to judge." Despite the horrifying attacks and quite unjustifiable criticism which some members of the Court have been called upon to endure in recent months, I am sure that the calm and outwardly unruffled manner in which they have proceeded on "the even tenor of their way", has redounded not only to their own credit, but has added to the stature of the Bench of South Australia.

The widespread confidence amongst all sections of the public in the integrity and capacity of the Judges of this State, despite what amounted to a sustained campaign of irresponsible invective, has never been more apparent.

My friend the Right Honourable Lord Merriman, a very eminent and highly respected member of the Judiciary in Britain, wrote to me when the muddy tide was in full flood: "Your Press seem to have a good deal more licence in criticising judges than is customary here." I hope, and

am happy in believing, that that exuberance of irresponsible journalistic licence is past, and that not again, in the lifetime of any of us, will it recur.

Well, Ladies and Gentlemen, I have I fear spoken at too great a length, but you will perhaps forgive the old man who is expressing his thoughts for the last time.

To you, my dear brethren on the Bench, I bid a fond and affectionate farewell. To you, my friends in my beloved profession, I say goodbye from this place, feeling confident that you, despite the words which so recently fell from a very high judicial authority, will continue to provide a reservoir of judges for this Court. For the benefit of my colleagues, may I hope that that reservoir may very soon be tapped.