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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 REGINALD RODERICK ST. CLAIR
CHAMBERLAIN.

THE HONOURABLE JOHN LEO TRAVERS.

THE HONOURABLE DAVID STIRLING HOGARTH.

THE HONOURABLE CHARLES HART BRIGHT.

* THE HONOURABLE ROMA FLINDERS MITCHELL.

ATTORNEYS-GENERAL

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

THE HONOURABLE DONALD ALLAN DUNSTAN, Q.C., M.P.

* Appointed 23rd September, 1965.

MEMORANDUM

A special sitting of the Full Court (NAPIER, C. J., MAYO, CHAMBERLAIN, TRAVERS, HOGARTH, BRIGHT, and MITCHELL J. J.) was held on Tuesday, 21st December, 1965, to bid farewell to the Honourable Justice Mayo on his retirement.

HIS HONOUR THE CHIEF JUSTICE:—Mr. Attorney and Brethren, both of the Bench and at the Bar:

This sitting marks a milestone in the history of this Court. This is a sad day in one sense, but one on which all here are proud to pay a tribute of respect and esteem and affection for SIR HERBERT MAYO, who has taken his seat for the last time as the Senior Puisne Judge of this Court. It is more than twenty years, twenty-four years I think, since Sir Herbert first joined this Court. For the greater part of that time he has been the Senior Puisne and he has filled that office with the ability and the leadership that it requires. To me it is a sad thing that this long association of friendship—of brotherhood and affection—should be coming to an end. But as all things temporal must have their beginning, so likewise must they have their end, and with the ending of this year Sir Herbert will enter upon his leave with a view to retiring from the Court. To me, there is “the sense of tears in mortal things”, but these things must be, and this I do know, that whether Sir Herbert returns to this Court or not, we shall always wish him well. He can never relinquish the respect and the esteem and the affection in which he has been, and will be, held amongst us. He will be with us in sympathy and in our memories, if not in person.

THE HONOURABLE THE ATTORNEY GENERAL:—May it please the Court: As Leader of the Bar it falls to my lot to express the warm feeling and gratitude of the profession, the Government, and the people to Sir Herbert Mayo for his distinguished career of public service as a Judge and a Senior Puisne Judge of this Court. His erudition is renowned, his independence of mind determined, his industry awesome, and his courtesy and kindness unflinching.

I think there are few members of the profession who cannot remember instances of kindness which Sir Herbert has done for them. I certainly remember many myself. There is a strong bond of affection between the Bench and the Bar in South Australia, and his Honour has done much to build and foster it. In some places in the British Commonwealth the Bench tends to become aloof and remote from the common life of the community, and its joys and sorrows, and its afflictions and its triumphs. Sir Herbert has never done that. He has been involved in many community activities beyond the duties of his office, from such activities as the Kindergarten Union to the campaign for a Christian Christmas. He has with the passing years retained his vigour, his humour, and his keen enjoyment of life. I think to all those members of the profession whose ambition it may be one day to sit upon the Bench of this distinguished Court, he has been an example to emulate, and to those lesser mortals, like I, who never will be a Judge, he has been an example which we would wish all others to emulate. I am sure all members of

the profession will join with the Government and the people of this State as a whole in wishing Sir Herbert and Lady Mayo an enjoyable leave and an active period of retirement.

MR. A. K. SANGSTER, Q.C.:—May it please the Court: I desire to speak on behalf of the Law Society of South Australia. On your Honour Justice *Mayo* taking your seat in this Court on 30th March, 1942, the late Mr. Villeneuve Smith K.C. claimed to say, without presumption, that your Honour was (and I quote) “the possessor of a group of qualities by education and by nature that included the essential qualities that go to inspire success in a judicial office. The judicial ideal”, Mr. Smith continued, “is a pastiche of many virtues, both high and humble. Erudition and learning, humility, integrity, courtesy, forbearance—none of these by themselves will properly or adequately furnish the judicial mind. What is required is a medley of them. Great as the admiration of the Bar is for your rich gifts, nothing could match it but the affectionate regard in which you were held by all your companions at the Bar.” Mr. Smith then prophesied that your Honour would be best remembered by your Honour’s former colleagues of the Bar “for your knightly gentility and as the chevalier of the South Australian Bar.”

The years which have elapsed since those words were spoken have served to underline their truth, to deepen and extend the warm affection in which your Honour was then and is now held, to justify over and again the prophesy of a reputation for knightly gentility, and to acquaint a rising generation of lawyers with your Honour’s great learning and selfless service of the law, with your Honour’s deep respect for the law and for the procedures by which it is administered, with your Honour’s mastery of the English language, and with your Honour’s never-failing courtesy and modesty.

Your Honour’s modesty has almost succeeded in diverting attention from the many highlights of a lifetime of widespread service and achievement—in study and as an oarsman at Adelaide and Melbourne Universities; in the realism of country practice; in partnership with Messrs. Symon and Co., and then with Messrs. Finlayson and Co.; as University lecturer for eleven years, counting among your honour’s students three of your Honour’s colleagues on the Bench today and a fourth about to sit in your Honour’s place; twelve years as a silk; twice President of the Law Society; President of the Law Council of Australia; Acting Chief Justice; Governor’s Deputy; Knight Bachelor. Your Honour’s presence has been felt on the Board of Governors and as President of the Old Collegians of St. Peter’s College, as Chancellor of two dioceses, as a Fellow of the Royal Geographical Society, and as President for South Australia of many world-renowned bodies.

We wish your Honour and Lady Mayo health and happiness during your Honour’s leave and subsequent retirement.

THE HONOURABLE JUSTICE MAYO:—I thank the Chief Justice, the Attorney-General and the President of the Law Society for their benevolent and indulgent comments on my activities in the legal arena, which I am due to leave in the near future. It is indeed pleasant to hear such gracious words. I am grateful to them and to those for whom they speak.

I have found the Supreme Court a very happy and encouraging locality. The associations are cordial. The Chief Justice, my colleagues, the Masters, my Associates over the years, the staff, and the profession, none have ever been wanting when help has been required. I am more than grateful for all they have done to help me.

I am sure the appointment on Thursday last of the Master, George Walters, to the Bench is viewed with satisfaction by us all. Of that I entertain no doubt.

Of all the professions I think the legal profession is the most rewarding, not necessarily on the financial side, but in all other aspects, particularly in the professional contacts that are made. I will go a step further and suggest that the legal profession in this State of South Australia is the most congenial and harmonious of all such groups in the States of our Commonwealth. I base that statement on comments that I have heard from the lips of others from beyond our borders. For myself, I express my satisfaction at being associated with such a pleasant professional group.

Yet the profession as a whole, is not looked on by outsiders with cordiality and admiration at all times. May I quote Disraeli, Earl of Beaconsfield, who has been reported as once disparaging the profession in the following terms: "The legal mind consists in illustrating the obvious, explaining the self-evident, and expatiating on the commonplace". In point of fact that class of activity is rendered necessary because members of the community in their litigations make such work unavoidable. That is my retaliation.

I have passed, I believe, through periods of mental evolution which somebody has attributed to the judiciary. The first five years after appointment to the Bench are years in which the exponent believes his efforts and their results are quite beyond criticism. During the next five years he is not quite so certain. After ten years or so he is happy to do his best and not to let himself be harassed by feelings of uncertainty. He hopes all is well. The first two periods may be shortened by the arguments of counsel in appeals, and by the *ratio decidendi* of the appellate tribunal as it is reported.

An avenue in which mental energy is expended comprehends, *inter alia*, interpretation of statutes and ascertainment of principles of law from sources that are numerous and often highly perplexing. On the other hand, absence of authority may render more difficult the solution of a problem. It gives me pleasure to quote an extract from a recent address by the new Warden of Trinity College, Melbourne University, which I found in a Melbourne magazine of November, 1965. He is reported as saying (I quote):—"I have a favourite story about Sir Mellis Napier, the Chief Justice of South Australia. It appears that he was trying a case and counsel was endeavouring to persuade him to accept a certain proposition of law. But despite all his argument he was getting nowhere. The Judge kept insisting upon quite a different proposition. At last counsel threw down his papers in exasperation and said: 'But your Honour, there is no authority at present at all for the proposition

your Honour is putting to me,' The Judge smiled gently down at him: 'There soon will be', he said."

The legal side constitutes one large section of judicial work. But there is another equally large and important—the finding of facts that are in dispute. In that sphere comes the inference of some fact from circumstances. Here again is a field of work that calls up powers of induction and deduction. I have a story that involves the attempted use of this process. I must apologise for it, however, as it does not come from the Law Courts. Two diggers, members of the A.I.F. in World War I, spent a very hectic evening in London, and as a natural result became somewhat foggy mentally. When they tried to find their way to their quarters, wherever they had to go, they could get nowhere, fumbling and stumbling about. So they had a parley and decided unanimously to ask the next person who passed, where they were. Soon they heard footsteps and a British Officer in uniform, a very chesty and important individual, came within range. He was stopped by having his arm held. One of the diggers said; "Hey mate, we are lost. Tell us where we are." The officer then drew himself up to his full height of five feet two inches and said, "Do you know my name?", whereupon one of the diggers said; "Strike me pink, Bill, we're both lost, but here's a bloke who's forgotten his name!" An old and well-known story, but it is an illustration, gentlemen, and I use it as such, of an inference that was incorrect.

A question that is sometimes levelled at Judges who have reached a certain age, is whether when they appear to close their eyes they have actually gone to sleep. I will not deny that there are grounds for the idea on occasions. Even at the hands of the most entertaining of counsel there are passages of time during hearings when a state of drowsiness becomes almost inevitable. There is a story about Mr. Justice *A'Beckett* in Victoria near the turn of the century. That Judge was sitting and a certain newspaper reporter entered the Court. He noticed the attitude of the Judge and that his eyes were closed. Everything was proceeding very quietly. The newsman cautiously approached the Associate seated just below the Judge and whispered, "The old buffer is asleep." Buffer was not the actual word used. The old buffer at once opened his eyes and said, quite pleasantly: "You are quite mistaken. The old buffer is not asleep." Hurried exit by the news reporter. No account appeared in the papers the next morning. It is said that with increasing age the job of keeping awake becomes more and more difficult. I wonder.

I have referred briefly to some aspects of problems that occur in matters of litigation. I hope I have not overstayed my time limit. However, I will say the most impressive event that has happened during my association with the law, judicious and judicial, is the appointment of Roma Mitchell. That appointment has been approved by all. It leads me to assert general propositions. Statistically speaking, the mental capacity of a female of the species is quite as endowed with talent and facility as that of the male. Moreover, her subjection to emotional stimulus in the performance of duty, again speaking statistically, is no greater than that of the male.

It remains for me to bid you all a very fond farewell, to thank you for your kind consideration, and to wish you all a most happy Christmas and increasing success and joy in 1966, and the years to follow. I thank you.