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EDITOR:

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JUDGES OF THE SUPREME COURT

THE HONOURABLE JOHN JEFFERSON BRAY, CHIEF JUSTICE.

*THE HONOURABLE SIR REGINALD RODERICK ST. CLAIR CHAMBERLAIN.

THE HONOURABLE DAVID STIRLING HOGARTH.

THE HONOURABLE CHARLES HART BRIGHT.

THE HONOURABLE ROMA FLINDERS MITCHELL, C.B.E.

THE HONOURABLE GEORGE HENRY WALTERS.

THE HONOURABLE HOWARD EDGAR ZELLING, C.B.E.

THE HONOURABLE WILLIAM ANDREW NOYE WELLS.

†THE HONOURABLE ALEXANDER KEITH SANGSTER.

ACTING JUDGE

‡THE HONOURABLE ALEXANDER KEITH SANGSTER.

ATTORNEY-GENERAL

THE HONOURABLE LEONARD JAMES KING, Q.C., M.P.

*Retired, 16th June, 1971.

†Appointed, 24th June, 1971.

‡From 19th November, 1970 to 23rd June, 1971.

MEMORANDUM

A special sitting of the Full Court was held on Wednesday, 16th June, 1971, on the occasion of the retirement of the Honourable Mr. Justice Chamberlain.

THE HONOURABLE THE ATTORNEY-GENERAL (*The Hon. L. J. King, Q.C.*):—May it please the Court: This occasion is necessarily tinged with sadness, being the last occasion upon which your Honour Mr. Justice Chamberlain will sit as a member of this Supreme Court. It is also an occasion upon which it is appropriate for me to express, on behalf of the Government and the Bar and the public of South Australia, the appreciation and gratitude which we all feel to your Honour for the long years of public service which you have given.

It is, I think, particularly incumbent upon me, by reason of the office which I hold, to express this appreciation and gratitude, because your Honour's professional life was spent in the direct service of the State and of the community.

Your Honour's origins were in the northern part of the State, as you were born at Quorn on 17th June, 1901. You were educated at St. Peter's College and the University of Adelaide, where you attained the degree of Bachelor of Laws. You joined the Crown Law Department of the State on 28th June, 1926, and thereafter spent, as I have said, the rest of your life in the direct service of the State. You were appointed Crown Prosecutor on 1st August, 1928, and held that office for twenty years.

When I commenced the study of the law, your Honour's achievements and prowess as an advocate in the criminal jurisdiction had already assumed the proportions of legend amongst the students of the time. Law students of my day looked upon your Honour with awe as one of the very great criminal advocates.

Your Honour practised as Crown Prosecutor in an era of giants at the criminal Bar. The great forensic battles which marked the criminal trials of those days are still remembered and talked about. Your Honour's reputation amongst your contemporaries was that of an advocate possessed of all the forensic skills to a very high degree and the art of cross-examination to a pre-eminent degree.

After twenty years as Crown Prosecutor, your Honour was appointed Assistant Crown Solicitor in 1948 and Crown Solicitor in July, 1952. You had been appointed one of Her Majesty's Counsel in 1947.

My personal acquaintance with your Honour occurred in the years that followed and I recall the deep impression which your Honour's qualities as counsel made upon me and I recall also the personal kindnesses and courtesies which you showed me, as you showed those kindnesses and courtesies to other members of the junior Bar.

Your Honour represented the State of South Australia in all Courts and all jurisdictions, including many appearances before the High Court of Australia and four before the Privy Council.

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In addition to your work as counsel, your Honour made many other notable contributions to the life of the State. As Crown Solicitor you were responsible for the legal business of the Government. In 1935 you drafted the *Criminal Law Consolidation Act*. Your Honour was responsible for the recommendations which led to the first appointment of Probation Officers in this State. You subsequently became Chairman of the State Parole Board and have rendered outstanding service in that capacity. Your report to the Commission of Inquiry into Sexual Offences was an outstanding contribution. You made a contribution to the Radium Hill venture by your membership of the Committee concerned with that operation, and I mention but a few of the contributions which your Honour has made over the years to the life of this State.

Outside the law, if I may use that expression with reference to a Judge of the Supreme Court, your Honour's interests have included the Chairmanship of the Anti-Cancer Foundation, the playing of golf and bridge, and membership of the Pickwick Club.

Your Honour was appointed a Judge of this Court on 16th November, 1959. This was the culmination of a brilliant career at the Bar. Your Honour brought to the judiciary, and applied in your judicial work, all the qualities which you had shown at the Bar and the experience which you had gathered there. You exhibited a deep knowledge of the law generally and a knowledge of the criminal law which can only be described as profound. You exhibited, moreover, an understanding of human nature and an insight into the motivation of human actions which you had gained and developed during your long years of practice, particularly in the Criminal Court.

Your Honour always had a strong sense of the importance of upholding the law which binds society and protects us all in our lives and property. This was coupled with a real concern for the welfare of the offender, as shown in your attitude to sentencing and in your work as Chairman of the Parole Board. Your judicial work was marked by courtesy to counsel and witnesses, concern to get at the truth and justice of a case, and impatience of technicalities which might impede a just solution to a problem before you.

All these qualities and attributes will now be greatly missed in this Court. All who have served with you, all who have appeared before you and all who have known you in your judicial work, regret that the passage of time makes it necessary for your membership of the Court to end.

Your Honour has rendered a long, devoted and valuable service to the people of South Australia.

I speak for all of them, and in particular for the Government and the legal profession, in wishing your Honour a long and happy retirement, and enjoyment of the leisure which your labours have so fully earned.

THE PRESIDENT OF THE LAW SOCIETY OF SOUTH AUSTRALIA (*Mr. B. A. Magarey*):—May it please the Court: I have the responsibility to convey to his Honour Mr. Justice *Chamberlain* on this occasion of his retirement the warmest regards of all the members of the Law Society of South Australia—all those members of the legal profession who will

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no longer have the pleasure, which we have enjoyed so much, of conducting our cases before his Honour. For the eleven and a half years during which his Honour has presided in this Court those of the profession who have been fortunate enough to appear before him have been treated with courtesy and tolerance—it has always been a pleasure to appear before him.

From the time when a very discerning lawyer and a former Acting Justice of this Honourable Court first prevailed upon his Honour to accept the appointment of Crown Prosecutor—some forty-four years ago—until today—his Honour has continuously served the people of this State with devotion and with great distinction. In the particular field of the law in which he has worked for so long—I refer to the administration of the criminal law—there would be no man in this generation whose knowledge stands higher than his Honour's or whose contribution to the subject has been greater—either as administrator, or advocate, or judge.

The deceptive simplicity with which his Honour deals with circumstantial evidence and his clear and precise style of expression will long stand as a model for future lawyers.

It is, I think, a further illustration of the breadth of his Honour's erudition and scholarship that upon elevation to the Bench his Honour should have been so successful in the matrimonial causes jurisdiction.

That the Governments of this country have been aware of his Honour's strong and practical sense of judgment there can be no doubt. In addition to his judicial duties and contemporaneously therewith his Honour has presided over the Electoral Commission and the Committee for recommendations on Radium Hill; he has acted as Arbitrator in the Snowy Mountains Authority and New South Wales Government dispute over Kosciusko National Park; and he is the first Chairman of the State Parole Board.

Reference has already been made by the Honourable the Attorney-General to his Honour's many other services to the State. I associate myself, if I may, with all that has been said—it is indeed true that his Honour steps down from this Bench secure in the knowledge that the records of this State abound with testimonies of his skill and labours.

The members of my profession—and his—wish him and Lady Chamberlain a happy and enjoyable time in their retirement. The more fortunate—and enlightened—of them will note with pleasure his readier availability for a round of golf.

THE HONOURABLE THE CHIEF JUSTICE: Mr. Attorney, Mr. *Magarey*, my brother *Chamberlain*, Your Honours, Ladies and Gentlemen of the Bar:

You, Mr. Attorney, and you, Mr. *Magarey*, have spoken on behalf of the State and the legal profession in appreciation of the services of my brother *Chamberlain* to the State and to the law, and you have made reference to his distinguished career at the Bar and on the Bench, and I will not recapitulate his biography. It remains for me, however, to speak on behalf of the Court.

If I may be permitted a personal reference, I have no memory of the legal profession which does not include Sir Roderick Chamberlain. I

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remember that the first case that I ever heard right through in this Court was a criminal case at which I was a somewhat bewildered spectator in the first weeks of my articles, and in that case Mr. Chamberlain, as he then was, was the Crown Prosecutor. Later he was on many occasions my opponent at the Bar, with varying success, and I appeared before him several times after his elevation, again, in a somewhat different sense, with varying success, and now I have sat beside him on the Bench as his colleague for something over four years.

As an advocate he was a formidable opponent, but always courteous and considerate, and the more formidable for being so. He brought to the Bench those qualities besides many others, and I may perhaps single out three of them—a clarity of thought and expression, a capacity to seize and retain a strong and definite line about the matters in hand, and an enviable and almost imperturbable equanimity.

It would be too much to say that we have always seen eye to eye on everything, but I would like to say how much I have appreciated the helpfulness and consideration which he has shown to me since I have been Chief Justice, and he has been the Senior Puisne Judge.

Now the inexorable operation of the *Supreme Court Act* decrees his retirement, but his severance from the law will not be complete. He will remain, for example, Chairman of the Parole Board, and I hope that in other respects he will retain some connection with the Court.

It remains that, not only on my own behalf, but on behalf of all the members of the Bench, and I think I can say on behalf of all the staff of the Court as well, I should express to him, and to Lady Chamberlain, our congratulations on his long and successful career and our best wishes for a long and happy retirement.

THE HONOURABLE MR. JUSTICE CHAMBERLAIN: Chief Justice, Mr. Attorney, Mr. *Magarey*, members of the profession and other friends:

“Time is like a fashionable host
That slightly shakes his parting guest by the hand,
And with his arms outstretch’d, as he would fly,
Grasps in the comer.”

The interval between the outstretched arms with which I was welcomed, nearly twelve years ago, and the slight handshake with which Time dismisses me, seems incredibly short; but at least, you Chief Justice and you Mr. Attorney and you Mr. President, have dealt with the parting guest more kindly than Time is said to do. Indeed you have dealt with me generously and graciously.

On that other occasion, in what could be called my policy speech, I undertook to do what I could to administer justice, with the help of my colleagues and the Bar. In so far as this amounted to a prediction of the help I would receive from my colleagues and from the Bar, it has been amply fulfilled. Beyond that I am not qualified to speak.

Today I am clothed with the full independent judicial powers that are so essential a part of our way of life. I could make an order for the issue of a writ of habeas corpus directed to the highest government authority.

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I could commit for contempt—I see no occasion for that at the moment. I could pass sentence or make orders that no one dare ignore, at least until they were set aside by an even more independent Court of Appeal. On the stroke of midnight, by a piece of statutory witchcraft, those powers will vanish like Cinderella's coach, and I will be left to console myself, as old men have done from time to time, with the contemplation of the advantages of advancing years. Very early in my career I read, in a language which to my great regret is no longer thought necessary for lawyers, that old age is a good thing, in that it cools down the fires that disturb the peace of mind of the young. More recently, on the retirement of the former Chief Justice, I quoted a line of Rabbi Ben Ezra, "the last of life for which the first was made", which I am bound to confess sounded then rather more plausible than it does today. What remains for me to do, as a Judge, is to make my acknowledgements to those to whom I owe so much—to you Chief Justice, to you Mr. Attorney-General, and to you Mr. President, for your kind remarks and good wishes, to my colleagues, amongst whom I number friends than whom I could not ask for better. And may I take this opportunity of saying how delighted I was to see my sister *Mitchell's* attainments and high standing recognised by Her Majesty. And here I would like to lay claim to having made, anyway, one contribution to the practice of this Court. You will remember the questions as to what her Honour should be called, "Madame Justice" or "Miss Justice" both sounded wrong, for different reasons; and no one could take the English idea of "Mr. Justice"; so her Honour settled for the title by which she is so well known in so many parts of the world. What is perhaps not so well remembered is the uncertainty that beset some of her colleagues when sitting with her in the Full Court. There were diffident references to "the learned Judge" or "my learned colleague", but I claim to have taken the initiative of referring boldly, and I may say with considerable pride, to "my sister Mitchell". May I also say how delighted I have been to have survived long enough to have my good friend and former good colleague, my brother *Wells* once again as a colleague and neighbour, this time on even terms, so that I no longer send him those peremptory notes of which he spoke on his taking his seat here (which allegation is denied), but knock on his door to draw on his great store of knowledge of the law and other matters.

I gratefully acknowledge the help and loyalty that I have received from the Masters and the officers of the Court and the pleasure I have had in the help and society of the young people who have been my Associates. These are a judge's channel of communication with, and a source of information about, the world outside the Bench, and very often his only confidants, and last night I had further evidence of my good fortune in the young people who have been my Associates, in a very magnificent dinner that they provided for me, and a very magnificent present—at least those of them who are in this country, and that seems to be a reasonable majority. Associates come and go, but I have been fortunate in having for nearly the whole of my time the help of Hugh O'Donnell as my tipstaff. No one could have asked for a better or more loyal helper, or a better friend.

One other matter that I feel entitled to boast about as perhaps my best achievement in the administration of justice is that I was directly responsible I think for the appointment of Miss McCarthy as the Court

Welfare Officer. It would be hard to overstate the comfort that she has been to me, and I think to all of us, in those most difficult problems, the custody of children, and that is to say nothing about the very great off the record help which she has always been to the people with whom she has had to deal.

The references to my golf lead me to say that I am delighted to see, paying all too rare visits to this Court, golfing friends to whom I should make public acknowledgement for having put up all these years with what some people are pleased to call my golf. I am indebted to the former Chief Justice of the High Court for the dictum that you can't be both a good golfer and a good judge. If my friends are able to apply the converse of this proposition I would have no doubt about their views of my judicial qualities.

I did not set out to make any great contribution to the store of legal learning. I have tried to apply the law as I have understood it, to the adjustment of the rights and the troubles of the people who have come before me, and to the upholding of good order in the community. I have been more interested in human problems than in the law as an intellectual exercise, fascinating as I recognise this to be. My career in the law has been full of interest throughout, and I could not have asked for a better ending to it than to have spent the years I have spent as a member of this Court.

The quotation with which I began concludes—"Welcome ever smiles, and farewell goes out sighing". I do not propose to do that. I have always thought and acted on the principle that the only worth-while question in any situation is, "What's to be done now?".

This is my last sitting as a member of this Court, but not, I hope, the last activity in which some use could be made of such experience and qualifications as I have acquired in a life devoted to the law.

My thanks again to you Chief Justice, to you Mr. Attorney-General, and to you Mr. President, for your all too kind words and good wishes, and to you who have paid me the compliment of coming here to support them, or at least to hear them without audible dissent.