



HIGH COURT OF AUSTRALIA

SPECIAL SITTING

WELCOME TO

THE HONOURABLE JUSTICE KIRBY, AC, CMG

1379

AT

ADELAIDE

ON

MONDAY, 12 AUGUST 1996, AT 9.30 AM

KIRBY J

The following Judges were present in Court:

Federal Court

Justice Branson

Family Court

Justice Murray

Supreme Court

Chief Justice Doyle

Justice Cox

Justice Matheson

Justice Bollen

Justice Millhouse

Justice Prior

Justice Olsson

Justice Perry

Justice Duggan

Justice Mullighan

Justice Debelle

Justice Lander

Justice Williams

Speaker: Mr A.N. Abbott, President of the Law Society of South Australia

Also present at the Bar Table: Mr M.L. Abbott, QC, President of the Bar Association of South Australia

TRANSCRIPT OF PROCEEDINGS

HIS HONOUR: Yes, Mr Abbott?

MR ABBOTT: May it please the Court. Today I appear for the legal profession of South Australia to convey our very warm welcome to your Honour Justice Kirby on your first visit to this State as a member of the High Court. Your Honour has suffered quite a few of these welcomes since February and will have heard some of the things which I will briefly say this morning, but it is important for our profession to record these sentiments on the first day of this week's sittings.

Your Honour and your colleagues will also have heard representatives of other outlying States say how important it is that the High Court travels to them and that the Court continues with the tradition of participating in a welcome ceremony for the most recently appointed Justice. As the economic power of Sydney, Melbourne and Canberra grows, and as communication between far flung cities becomes easier, there is a tendency for major institutions to become centralised in the Sydney/Melbourne/Canberra triangle. However, the profession and the people of this State take the view that justice, which must be seen to be done as well as done, is not one of those institutions which can be exclusively concentrated in one place. Accordingly, we are grateful to the Court for continuing to visit and also to your Honour for agreeing to participate in this ceremony.

Your Honour is particularly welcome today because of the array of qualities and experiences which you bring to this Bench. One of the characteristics of the highest Court of the land ought to be that it reflects the diversity of the people over which it sits in judgment. Your Honour's appointment certainly meets that criterion.

Your Honour comes to the Court with achievements and experiences which in several ways are different from those of your colleagues. Perhaps most significantly, you have been a public figure and prepared to engage in intellectual debate in many different forums in many different countries. Moreover, you have been prepared to engage in that debate over a wide range of ethical and social issues, and you have not shrunk from the difficult issues such as those of bio-ethics.

Your Honour also brings to this Court an international perspective as a result of your frequent travel to far flung places outside Australia and your Presidency of the International Commission of Jurists. Your Honour's activities, writings and speeches remind us that Australia is not just an island in a strange sea, but a citizen of the world.

The Court will also benefit from your many years of experience as the Head of the Australian Law Reform Commission. In addition, you have served distinguished terms as a member of the Conciliation and Arbitration Commission and as President of the New South Wales Court of Appeal.

But we most particularly welcome your Honour today because you have in all of your public life shown an unwavering and energetic commitment to the attaining of justice and to the safeguarding of human rights. Those who carry these sometimes unpopular standards occasionally need to be acknowledged, and this is one such occasion. At the same time, your Honour adheres just as closely to the importance in the legal system of the traditional qualities of the duty of public service, integrity and impartiality, and to the need always to determine the correct legal policy.

For all those reasons, and not just because your experience of dealing with the down-trodden, disadvantaged and forgotten will induce you to encourage the Court to continue to visit South Australia, the legal profession of this State welcomes you to Adelaide today and looks forward with anticipation to your work on the Court and to continuing to welcome your Honour here for many years. If the Court pleases.

HIS HONOUR: Thank you, Mr Abbott. Your Honour the Chief Justice. Your Honours of the Federal and State Courts, and dear friends and colleagues in the law.

I realise that the most agreeable words which were uttered by Mr Abbott were directed not solely to me, but to the Federal Supreme Court which I have the honour now to have joined. On behalf of the High Court of Australia, I thank you all for attending this occasion to bid me welcome.

It is true that this is the third occasion on which I have been welcomed in one of the States of Australia. It would be easy on occasions such as this to become diverted by the words of praise that are uttered. However, I have received cautionary advice against hubris, in a book of poems by Dr John Bray, the former Chief Justice of this State, a great jurist of the common law. One of the poems was a translation by Chief Justice Bray of an ancient warning which is headed "To a Politician" but could easily have been written also to a judge:

Fortune has raised you high,
Knowing her favour groundless,
Merely to demonstrate
That her caprice is boundless.

I am very conscious of the fact, sitting as I do in this wonderful court room in the presence of the portrait of Sir Samuel Way and in the company of fine leaders of the legal profession of this State, that but for chance, some might say caprice, one of them would be sitting here and not I. I will be striving in my service in the Court to be worthy of what has been said today.

I first came to Adelaide as a Judge in 1975. It was soon after my appointment in 1974 as a Deputy President of the Australian Conciliation and Arbitration Commission. Soon after I came again, newly appointed as Chairman of the Law Reform Commission. At that time, the Supreme Court was constituted by Chief Justice Bray, Justices Hogarth, Bright, Mitchell, Walters, Zelling, Wells, Sangster, Jacobs and King. I am extremely glad that former Chief Justice King and Justice Jacobs are here today and I have had a warm message from Justice Mitchell. In Justice Nyland's chambers, which I will be inhabiting during this week, there is a marvellous photographic portrait of Dame Roma Mitchell to remind me of a great judge of the common law who will, in that sense, be my companion during the week.

I came to know all of those Judges of the Supreme Court of South Australia. I came to admire them all. I worked in the Law Reform Commission with Professor Alex Castles, who is here today, and with other colleagues, Professor James Crawford, Professor David Kelly and Justice Bruce DeBelle. I also had the assistance of Professor Horst Lücke and Professor John Keeler and Professor, later Judge, Arthur Rogerson. I am proud that many of those who laboured with me in the Commission are here today.

Professor Castles taught me, as he has taught many others, of the importance of legal history to our great tradition. Professor Crawford taught me the importance of international law in the age in which we live. Professor Lücke taught me the importance of comparative law. Professor Kelly taught me, shall we say in rather sharp terms, about the importance of conceptualising the law. David Kelly had a great influence upon my intellectual development. He is a fine product of the legal fraternity of South Australia. So is Bruce Debelle who broke away from a busy professional life in Adelaide to work for a time in Sydney, strengthening the vital links of the Australian Law Reform Commission with the practising legal profession.

Of the Judges when I was appointed, the ones I came to know best were those who were involved in law reform. Justice Roma Mitchell was the Chairman of the Criminal Law and Penal Methods Reform Committee. Justice Howard Zelling who, unfortunately, cannot be here today but who is another great spirit of the common law, was head of the Law Reform Committee. Justice Jacobs and Justice Bollen were participants in law reform at that time. In another place, Justice (later Sir) Richard Blackburn, whom I always really counted as a South Australian, was another person who was keenly interested in the developments of the common law and the reform of the law. These distinguished jurists contributed greatly to my understanding of the law and their example will always be with me, present in my mind.

There seems to be something in the history of South Australia, in its early settlers, in its different establishment, in the fact that many of the settlers came to this part of Australia themselves escaping persecution in Europe, that gave this State a different complexion, including in its legal profession. The State was blessed with a succession of politicians of different political persuasions who were devoted to reform of the law. I am thinking of Steel Hall and Donald Dunstan. I was pleased this morning to renew my acquaintance with the Hon Trevor Griffin, the Attorney-General, and with the Hon Chris Sumner, past Attorney-General here today. Chris Sumner I knew in student politics more years ago than either of us cares to remember. John Bannon was there too in those days and many others who came to be leaders of the South Australian community.

So South Australia is different. I do not speak only of its origins and of the Torrens system and of the other great legal reforms which it pioneered. Last night, I read that South Australia was the only colony which had women voting for the members of the Constitutional Conventions of the 1890s. It was the only colony in which a woman stood for election to the Constitutional Conventions which framed the Federal Constitution of which the High Court of Australia is the guardian.

More recently, under the governments of Steel Hall and Don Dunstan, and under other governments since, South Australia has pioneered important legislation for the reform of the law. It has led Australia in this respect: equal opportunity legislation, family provision legislation, de facto relationship legislation, credit law reform, legislation for the reform of homosexual offences and legislation for the reform of, and for a new approach to, the laws on drugs.

One of the poems in another book of Chief Justice Bray's writings, *The Emperor's Doorkeeper*, which I commend to you all, is a poem by John Shaw Nielsen. It is included in the History of Poetry in South Australia. Chief Justice Bray seemed always to have an eye for poems of this ironical character. The poem is as follows:

A savage old critic named Dyer
Renowned for his gloom and his ire
When to Hell he went down
He arrived with a frown
And began to belittle the fire.

I have come here this morning to quite another place, for the journey to Adelaide is definitely in the opposite direction to that described by Nielsen. I am here to be present with dear friends of many years and to be present in the company of the new members of the legal profession who will carry forward the torch of the rule of law into the next century and millennium.

I am very conscious of what you say, Mr Abbott, about the importance of the High Court visiting the States such as South Australia. There will be no stronger supporter for that tradition than myself. It has been so since 1904. At least so far as I am concerned, it will be so during the whole of my service.

I thank everybody for their welcome today. I thank particularly the Chief Justice for allowing me to use this magnificent and historical court room for a ceremonial occasion. I appreciate the presence of you all. I look forward to an association during the rest of my service with the legal profession of South Australia: a profession congenial to me: with a reformist instinct, and with high talents in the law.

The Court will now adjourn until 2.15 pm.

AT 9.43 AM THE COURT ADJOURNED