

THE AUSTRALIAN LAW JOURNAL

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The Hon. Michael Kirby AC CMG

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John Charles Rowell Fieldsend, the first Chief Justice of Zimbabwe, died in England in February 2017. He was 95 years of age.

Born in England in 1922, he migrated with his family as a child to the then British colony of Southern Rhodesia. After graduating in law he practised as an advocate in Bulawayo and was appointed to the High Court in 1962 upon the elevation of Sir Hugh Beadle to be Chief Justice. When the British settler led government of Ian Smith declared unilateral independence of Rhodesia on 11 November 1965, Fieldsend remained in office but questioned the legality of new laws made by the Smith Government. Things came to a head in 1968 in a clash between the Governor (Sir Hugh Gibbs) and Beadle. The clash was tested in the High Court in murder appeals in which the British Government had advised the Queen to commute death sentences. A majority of the court rejected the power of the Queen to act in this way. He resigned from the High Court of Rhodesia when its Appellate Court, led by Beadle CJ, concluded that, although illegal, the governmental acts of the Smith regime had to be obeyed by the courts because it was in effective charge of the jurisdiction. That ruling persuaded Fieldsend that the law could no longer protect citizens. He returned to England where he

accepted appointment to the Library of the Law Commission of England the Wales. This is where this obituarist met him in 1976.

On the creation of independent Zimbabwe on 1 July 1980, one of the first acts of Robert Mugabe was to Fieldsend to return as first Chief Justice. However, when he did so, he found that the state of emergency, extended at six monthly intervals by Smith was continued by Mugabe. His appointment had been for a fixed term. However, he resigned once again and returned to England. There he resumed judicial duties for the British Government in residual colonies, finally as President of the Court of Appeal of Gibraltar. He was knighted in 1998. He died after a long illness with lung cancer.

Sir John Fieldsend left behind in Zimbabwe the memory and example of an independent judiciary of strength and integrity.