

IN MEMORIAM

SIR MELLIS NAPIER

The death of South Australia's fifth Chief Justice, Sir Mellis Napier, who died on 22nd March, 1976, at the age of 93, has brought to a close a notable career of service to the life of the law in this State. Virtually no aspect of the working of the law in South Australia in the middle years of the twentieth century was immune from the impress of his influence. Appointed to the Supreme Court Bench in 1924 at the age of 41, Sir Mellis Napier became Chief Justice of the Supreme Court in 1942 on the death of Sir George Murray. He retired from this office in 1967. Apart from his service to the law, Sir Mellis was Lieutenant-Governor of South Australia from 1942 to 1973. As Lieutenant-Governor there were 179 occasions, together constituting a period of more than nine years, when he administered the government of the State, both during absences of the official incumbent and pending the arrival of successive Governors of the State.

During his long career he was associated closely with the University of Adelaide. He graduated from the University with the degree of LL.B in 1902. He was a member of the Faculty of Law for 49 years, having taught as a part-time lecturer in the Law School during his years at the Bar. He was Chancellor of the University from 1946 to 1961. As a practitioner, he helped to revive the Law Society just before the First World War. He served on its Council for many years and was Vice-President for a period. Added to this, he took a close interest in many other facets of community life. As this journal noted on his retirement from the Supreme Court, "he always maintained an active, purposeful interest in public affairs not directly related to the life of the law" ((1967) 3 *Adelaide L.R.* 1, 3).

It is often hyperbole to remark on the death of a notable man that his passing has brought an era to a close. In the case of Sir Mellis Napier, however, such an assertion seems entirely justified. His death has severed links with an era which is now, for many, the history of another age. As a young man, Sir Mellis Napier was articled to Charles Cameron Kingston, Q.C., Premier of the State from 1893 to 1899, a politician who cast a large shadow over the State in the second half of the nineteenth century and who was one of the "Fathers of Federation". The former Chief Justice studied in the Adelaide Law School at the time when Sir John Salmond was a Professor here. Reputedly, Sir Mellis was the last surviving student of Salmond during his years at Adelaide. Following his admission in 1903, Sir Mellis Napier practised regularly before Sir Samuel Way who had been appointed Chief Justice in 1876 and who had been admitted to practice in 1861. Including his years as a student and articled clerk, Sir Mellis Napier's professional career spanned almost 70 years, encompassing in total almost half of the history of South Australia from its foundation as a colony in 1836.

Sir Mellis Napier's greatest legacy to the law is to be found in the volumes of the State Reports. His penchant for the civil side of the Court's jurisdiction is revealed in numerous cases. As this journal noted in 1967: "With a relish rarely equalled on the Bench, Sir Mellis Napier seems to have welcomed the opportunity to construe the terms of a difficult will or to determine the meaning of a deed of trust" (*loc. cit.*, 3). He built up an enviable record for the acceptance of first instance judgments both in the Full Court and in the High Court of Australia. Toward the end of his career, he came to figure prominently

in developments surrounding the Stuart Case, one of the great criminal *causes célèbres* in the annals of the law in this State. As a member of the Full Court and later in presiding over a three-man Royal Commission, appointed to inquire into the case, Sir Mellis Napier shared with judicial colleagues the unenviable task of unravelling the many problems posed by a controversy which engendered heated debate in South Australia and elsewhere. The memory of this case lingers on, resuscitated in recent years by the spirited defence of the Crown case by Sir Roderick Chamberlain, a former justice of the Supreme Court who was Senior Puisne Judge of the Court at the time of Sir Mellis's retirement and who was Crown Solicitor during the hearings on this case. At the same time, another set of perspectives on this case has been advanced by Professor K. S. Inglis in his book *The Stuart Case*, which has recently been reissued.

For some, the final assessment of Sir Mellis Napier may possibly be coloured by their views, whether of approval or disapproval, of his role during the Stuart case. But, in historical terms, the Stuart Case is only one facet of his life and work and, in some ways, a relatively insignificant one. The judgment of history must encompass 70 years of professional life and assess these overall, rather than leaning to tabloid-style newspaper judgments, based on a few short months in a long and distinguished career. Clearly, few servants of the law in South Australia since 1836 can be compared with Sir Mellis Napier in terms of the deep imprint he made on the life of the law in South Australia for so many years. He must rank, with Sir Samuel Way and Sir George Murray, in the forefront of those who have played a major role in developing the character of the law in this State. Changing times, with their new political social and economic outlooks will transmute the legacies of the past, in the Law Reports as elsewhere. But it can hardly be doubted that, in the time honoured fashion of the common law tradition, the past, as it helps to mould the present, will also play its role as an influence on the future. In these evolutionary processes, Sir Mellis Napier's many significant contributions to the law in this State will have continuing influence in the years to come.

A. C. C.