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IN MEMORIAM

ERNEST DAVID ROPER — 1901-1958

The melancholy necessity of recording our thanks for David Roper's life and work is a matter of infinite regret. It is, however, a task which may be undertaken with a degree of pride though with little hope that justice may be done to his memory in a few short lines. He was, of course, for many years a great Australian judge in whom the judicial qualities were combined in admirable proportions. Patience, kindness and unassuming dignity he had in abundance and to these qualities there was added a rare knowledge and understanding of legal principles. But he will be remembered also for his record of service in the affairs of the University and in other spheres and last, but not least, for his own quiet and loyal friendliness.

The late judge was born on St. David's Day in 1901 and, at the early age of 57 years, he died on the 27th June, 1958 having then accomplished the work of a very full lifetime. After an outstanding career in Arts and Law he came to the Bar in 1925. So was finally lost to the science of mathematics one of the ablest students in that field ever to pass through the University. But within a few years of his admission to the Bar he became the Challis Lecturer in Equity and Company Law, a branch of the law in which he had already demonstrated his unique capacity for perception and comprehension and in which he was soon to become an outstanding authority. He will be remembered with great affection by those many practitioners to whom, as students, he lectured. Then, after twelve years in practice he was appointed Judge of the Land and Valuation Court and on the 22nd May, 1940 he became, as from the 25th May, 1937, a Judge of the Supreme Court of New South Wales. During his time at the Bar he had acquired a leading practice and, particularly in the income tax field, work came to him from every State of the Commonwealth. In this field his work with the late Sir David Ferguson during 1933 and 1934 in the revision of the existing Federal income tax legislation had left him an acknowledged authority with a Commonwealth-wide reputation. At the time of his first appointment the Bar held rich rewards for him and it can be said with certainty that had he not accepted judicial office he would have enjoyed many years of interesting and lucrative practice.

As Judge of the Land and Valuation Court he was an immediate and conspicuous success though it was felt throughout the profession that his experience and capacity were to a large extent wasted in such a circumscribed jurisdiction. It was, therefore, with great pleasure that the profession heard of his appointment as a judge of the Supreme Court and learnt that he would assume the onerous duties of one of the judges sitting in Equity. This appointment must have occasioned him considerable gratification for it meant that he was to follow in the footsteps of John Musgrave Harvey and Reginald Heath Long Innes — two of the greatest equity lawyers produced in this country and for whom the late judge had the greatest admiration and affection. He was, it may be said, a most worthy successor.

After the retirement of Mr. Justice Nicholas the late judge succeeded him as Chief Judge in Equity and he continued to labour in that capacity until his death. "Labour" is the appropriate word, for the business of that jurisdiction was extremely heavy and for long periods an insufficient number of judges was assigned to that work. Indeed, for considerable periods he was without assistance of any kind. During these periods his devotion to the work of his office was a lesson to all judicial officers. But his efforts were not made without great personal sacrifice and there can be little doubt that they played a part in bringing his life to an early close. Yet he still found time, as a member of the Senate and, later, as Deputy Chancellor, to devote attention to the affairs of the University. Nor was the Law Society forgotten for he was its attentive and active President for many years.

It is extraordinary that he should have been able to do so much — and to do so much so well. Yet his work was done and the business of his Court conducted in a deceptively leisurely fashion. Looking back it seems as if he was possessed of a compensating faculty designed to enable him, quietly and with dignity, to accomplish within so short a span the work of a very full lifetime.

David Roper will be greatly missed and long remembered by his countless friends. Of these I count myself grateful to have been one.

A. R. TAYLOR.

It is fitting that this *Review* should honour the memory of Mr. Justice Roper, who was the first Chairman of its Board and by his wise counsel and constant encouragement contributed materially to its foundation and formative stages.

As a judge Mr. Justice Roper upheld the high traditions of the offices to which he was successively appointed. He had a mastery of the varied and exacting work of the Land and Valuation Court and the equitable jurisdiction, and he was equally at home in the common law when he came to sit on the Full Court. He was no over-speaking judge but combined patience and gravity of hearing with an easy despatch of business, quickly perceiving the essentials of a cause and disposing of it by an accurate application of principle and with clear, concise and cogent reasoning. By natural inclination and early discipline, as well as by inveterate modesty, he was not disposed to talk and write at large of the law but found ample intellectual satisfaction in the application of precise reasoning to the matter in hand in the case before him. He was as unsparing in his attention to the more humdrum and less congenial of his judicial duties as he was to the debate and decision of those nice questions of law in which was his greatest pleasure. He was

courteous and considerate to all who came before him, as counsel, litigants or witnesses.

David Roper's singular intellectual distinction would have been early remarked in whatever calling he had chosen to follow. What endeared him to those who knew him was the alliance to a sensitive and discriminating mind of a rare and indefinable quality of the spirit. "Charm" is too narrow and shallow a word, and debased by misuse. It was something more pervasive and enduring, at once perceptible to all alike, young and old, learned and unlettered; it was a quality which made of him an affectionate and understanding friend, a loyal colleague, and a delightful companion. Death plucked his ears and said "Live — I am coming", not, as with the great judge who made the quotation famous, at an advanced age, but at a time when many men have scarcely noticed that the sun is already westering. The quality of the spirit which was his, constantly and unwaveringly, in young manhood and maturer years, was with him to the end.

When Jethro advised his son-in-law to set judges over the people, he counselled that they should be "able men, such as fear God, men of truth, hating covetousness." Of such was David Roper, the judge and the man.

B. SUGERMAN

The untimely death on January 2, 1959 of Barry Bevan, of the Board of Student Editors, deprives the Review of one of its most promising Student Editors. Barry's academic record was outstanding. In his first year at the Law School he came ninth in his year, in his second year third, and in his third year first, winning the George and Matilda Harris Scholarship No. IIB for General Proficiency in all the subjects of his year. His closer friends have said that he was not quite sure at first whether he had done the right thing in taking law; but once he found his feet he settled down to legal studies with unremitting diligence until he reached the highest standards.

Barry joined the Review in March, 1958. He characteristically chose for his Note the most complex case from the long list selected for the Student Editors by the Editorial Committee — the decision of the Court of Appeal in *In re Marshall Dec'd, Barclay's Bank Ltd. v. Marshall and Others* (1957) Ch. 507. This was a private international law case, the more difficult for him since he had not yet covered the course in his formal programme. Yet Barry was the first Student Editor to complete his draft Note, and after he had carried out the few minor amendments suggested to him, his Note received final approval. It appears in the present issue, as a tragic reminder of the greatness of our loss. During December when news of the gravity of Barry's illness reached the General Editor, special steps were taken to expedite the galley-proofs of his Note, and they came in time for him to see them some two weeks before he passed away.

Barry was not only a diligent student and a devoted Student Editor. Law School men knew him as a friendly, gracious and sociable being, popular with everyone from lift-drivers to lecturers. He was always ready to help his fellow-students to understand intricate points of law which his own zeal and high mental powers had mastered.

Clearly Barry Bevan was a man marked by capacity for work, by intellectual calibre and by engaging personality, for the highest achievements in a legal career. He will be remembered so in our fellowship.

The Student Editors-in-Chief.