

IN THE SUPREME COURT
OF NEW SOUTH WALES }
BANCO COURT }

CORAM: STREET, C.J.
and JUDGES OF THE SUPREME COURT

Friday, 14th December, 1979

SWEARING-IN CEREMONY OF THE HONOURABLE ANDREW JOHN ROGERS
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

ROGERS, J.: Chief Justice, I have the honour to announce that I have been appointed a Judge of this Court. I present my Commission.

STREET, C.J.: Thank you, Judge. Would you please be seated and I will have the Commission read.

(Commission read by Prothonotary, and oaths of office taken.)

Mr Justice Rogers, on behalf of all Judges of the Court and on my own behalf personally I extend to you warm congratulations and a sincere welcome on joining this Bench.

ROGERS, J.: Thank you Chief Justice.

R. P. MEAGHER ESQ., Q.C., PRESIDENT, NEW SOUTH WALES BAR ASSOCIATION:
May it please the Court, the Bar of New South Wales wishes to congratulate Your Honour, Mr Justice Rogers, on Your Honour's elevation. Your Honour has had a most distinguished career at the Bar. Your Honour's career got off to a glittering start when Your Honour's first brief was a brief to appear in the Privy Council. Having as it were been conceived in that august council as a barrister, Your Honour constantly returned to the womb. Your Honour then practised with utmost distinction in almost every branch of the law. In Equity Your Honour was a master, and in the most complicated and difficult cases. In Commercial Law Your Honour's practice was such that there were almost no briefs for other counsel. If one looks at Constitutional Law in the last ten years in the great

institutional battles of this country Your Honour seems to have been in every single case. Your Honour did not even displace the Common Law. If one reads the Commonwealth Law Reports or the State Reports one sees Your Honour's name constantly enumerated. In that sense Your Honour has the rare distinction of having attained in Your Honour's lifetime a monumentum aere perennius.

The Bar of New South Wales is delighted with Your Honour's appointment. It congratulates Your Honour upon it. It wishes Your Honour every success in that appointment. It is confident that in that appointment Your Honour will continue to display the same qualities of erudition, learning, intelligence, sheer hard work and courtesy which Your Honour displayed at the Bar.

STREET, C.J.: Mr McLachlan, on behalf of the solicitors of the Court.

D. E. McLACHLAN ESQ., COUNCILLOR OF THE LAW SOCIETY OF NEW SOUTH WALES: May it please the Court: having attended a great number of these ceremonies over the years I often wondered what position I would be in if three minutes before the start of the ceremony I was advised by the Chief Executive Officer of the Law Society that the President of our Society, Alan Mitchell, was held up in a traffic jam from which he could not extricate himself. I often wondered what I would say on those occasions if asked to say something on behalf of the solicitors. In the result I have taken the only piece of paper which I could find in my pocket, which is the back of my cheque-book, and I have written down some notes in the three minutes.

On behalf of the solicitors, Your Honour, we congratulate you. We know you are very well fitted for the appointment. We know that you have a great deal of experience not only in one field but in a great number of fields. The solicitors believe that this equips you very well for the position. We welcome you, and we assure you of our support and co-operation. If the Court pleases.

STREET, C.J.:

ROGERS, J.: Chief Justice, Mr President of the Bar Association, Mr McLachlan, fellow lawyers and my friends: Lately I have practised a certain amount in the jurisdiction where the Trade Practices Act has been looked at, and as you all know there are grave breaches of that Act when you make misleading and deceptive statements. Mr President, I shudder for you, I bleed for you, I worry about you. It will be sufficient to ensure that the Commonwealth will have no deficit in the next budget by levying the necessary pecuniary penalty. I am most grateful for all that you have said. I take it that Mr McLachlan will be passing his cheque-book up.

Mr President of the Bar Association, over the years I have seen you address yourself to a daunting task of making an unmeritorious and seemingly impossible and legally dubious case appear one which could and would inescapably result in your favour. You have once again done it. I am now convinced that in all the years past I have lived in error, in failing to recognise myself for the man that I am.

Mr President, you have failed to allude to one thing, and that is the luck that I have had which alone is responsible for the fact that I chose to be sworn in on a day which meant I am the first beneficiary of even more than the usual felicitous phrases that roll off your tongue as the new President of the Bar. If I may I should like to congratulate you, sir.

Mr McLachlan, my professional association with the Law Society and with your members has been restricted to a common interest in a number of cases. What you have said about me has shown a misleading impression in your mind. I am glad to report that in all these episodes which happen to one there is always some power at work which makes sure that your feet stay on the ground. I have played a role in a somewhat lengthy case recently which I had to discontinue, and my successor addressed himself to the Judge on the evidence called and in the course of it referred to me. "Oh yes," said the Judge, "do you claim Rogers was one of your witnesses or was he destroyed in cross-examination?"

I spoke of my luck, and it is truly my great good fortune that Sheppard, J. has decided to explore beyond the judicial boundaries of New South Wales. I am naturally deeply conscious of the size of the shoes I am called upon to fill, not at all assuaged by the fact that I am now swimming in His Honour's robes which I am privileged to wear. I look forward with great expectation and considerable apprehension to sitting in a jurisdiction which has been graced by names such as Walsh, J., Manning, J., Macfarlan, J. and Meares, J., as well as more recent occupants whose modesty I shall not invade by mentioning them by name.

May I make one exception to that and say that this day would have shone more brightly for me if I could have been taking up a role as a second-string to the late Mr Justice Jeffrey Mr Hughes, Q.C. and I appeared in the last case that His Honour heard and I am sure that he will remember, as I do, all the qualities which made his loss so heavy.

Apart from the usual thrill of a captive audience this occasion confers the great pleasure of allowing one to thank all those who have helped me along the rocky path to this point. I have a call-over at 11.30. You would still be all here at that hour if I named all those who have been instrumental in helping me over the years. Because of the number it would be invidious to refer to people by name. May I just say something about two people, because it illustrates I think the wonderful place the Bar is. I came to the Bar, notwithstanding the circumstances described by the President of the Bar Association, knowing very few people and people who were in no circumstance to help me with the acute shortage of Chambers that obtained at the time for the six months or so before Wentworth Chambers was finished. A gentleman at the Bar, whom I did not know, took me in and sheltered me for that period of time. To him I shall remain eternally grateful. I think it is a fair illustration of the camaraderie and the friendship of the Bar.

The other person I would like to mention is my clerk

that time, Norman Marks. No knows what I owe him and I want to thank him. Lost I should forfeit the friendship, which I treasure, of my more recent clerk, let me say that he handed me over to a man who was equally selfless and valuable in helping me away from the trials and tribulations of everyday life and allowing me to practise in peace.

Over the years my leaders got me into interesting cases and forgave my mistakes. My juniors strove mightily to put me on to the right path and they did not complain too much when I disgraced the arguments that they put in my hands.

To all of you I should like to say thank you both for the past and, indeed if I may, for the help which I am sure you will give me in the future and which I shall most certainly need. Those who are now my colleagues have been most warm in their welcome to me and those at the Bar I am sure will give me all the help I need. Notwithstanding this assistance I shall doubtless fall into error on frequent occasions such as at 2 o'clock today when I hear my first cause. The Court of Appeal I am sure will be ringing with rich phrases as they correct my errors.

To those who have helped me as instructing solicitors, and they start with my Master solicitor to whom I owe a great deal, I want to say that I think you all took your disappointments bravely, and most fortunately most of you have managed to stay my friends. I do hope that you will continue in both ways, as friends and as people who are going to serve the cause of justice on which we are all enjoined to work and in the particular jurisdiction which I will be sitting in.

If I may, I do not feel that this is the time or place to thank my wife and children for their forbearance over the years. I hope that they feel pleasure on this occasion which they did so much to bring about. But I do want to say this, that there is no man in this Court whose mother had to go through the difficulties mine did, and to whom I am most grateful, and she knows it.

In conclusion I want to take the opportunity of acknowledging the needs of the community for a sound and speedy commercial court, and with the help of the profession I will try to keep it so, not the least because I have a debt which I owe you, Chief Justice, and which I will never be able to describe, but which I will try to discharge in the only way I know how.

I thank you all for the honour you did me in coming today.

STREET, C.J.: The Court will now adjourn.