

The Right Honourable Sir Adrian Knox KCMG, KC



AUSTRALIAN
CONSTITUTION
CENTRE

(b. 29.11.1863 d. 27.4.1932) (Chief Justice from 1919-1930)



As Chief Justice at a time of consolidation, he conducted his court with dignity and brought to it common sense and 'a wide knowledge of the world' and of men. His judgments were 'almost without exception short and to the point. Neither at the Bar nor on the Bench was he discursive: he reduced a problem to its simplest terms with a marked facility'.

By Martha Rutledge

Our second Chief Justice, Adrian Knox was born in Sydney in 1863. His father was the founder of the CSR sugar company. Knox attended High School at Waverley House in Sydney and in 1878 travelled to England to study law. When he returned to Australia in 1886 he was admitted to the bar and then worked as a very successful barrister, taking silk in 1906.

In 1884, he was elected to the NSW colonial parliament as a member of the free trade party for the seat of Woollahra and supported George Reid who became Premier at that election (and later became our fourth Prime Minister in 1904).

Knox did not recontest his seat at the next election in 1898 and went on to become one of the leading barristers in NSW. After the High Court was established in 1903 Knox gained a reputation as an outstanding constitutional lawyer and often took on cases for the Federal and State Governments. He appeared as counsel in the High Court in no less than 138 cases.

When WWI broke out, Knox travelled to Egypt as a Red Cross Commissioner and showed outstanding organisational ability, working among the many difficulties of war. When he returned from Gallipoli the following year, he was appointed to the Commonwealth advisory committee on legal questions arising out of war problems and was an official visitor to internment camps.

In 1919 Samuel Griffith retired as Chief Justice of the High Court and Knox was appointed as Chief Justice from outside the High Court. So that there could be no conflict of interest, he sold all his shares in CSR. By 1920 all the original Justices of the High Court had departed. The second generation of Justices, especially Isaac Isaacs, favoured a view of the Constitution that gave maximum scope to the Federal Government. These new views were more consistent with a literal interpretation of the Constitution in accordance with English principles of statutory interpretation, which suited Knox.

The new doctrine was set by the landmark *Engineers' case* in 1920. This judgment established that Commonwealth could make laws which bind the States and the Constitution should not be approached on the assumption that Commonwealth powers should be interpreted narrowly to preserve the power of the states. This was an early and important shift in the federal balance. Knox vigilantly guarded the independence of the High Court. Four times he refused to allow High Court Justices to act as Royal Commissioners, as he believed this may have drawn the Court into political controversy. He also advised the Government against changes to the Judiciary Act that would have allowed a single Justice to hear constitutional cases. He was appointed to the Privy Council in 1920 and four years later travelled to England to sit on a Judicial

Committee dealing with a disputed border in Ireland.

Knox retired from the High Court in 1930 when a great friend passed away and left him a large estate. He believed this estate and the business interests would cause a conflict of interest in his duties in the Court. He went on to become a business man and joined the board of AMP. He was also the director of the Bank of NSW and Commercial Union Assurance. A humble and principled man, he passed away at his home in Woollahra in 1932 and is buried at Waverley cemetery. On his death, Chief Justice Gavan Duffy described him as "a remarkable man, for he was not only a lawyer but also a man of the world and a man of affairs, and in every capacity a considerable personage."

Chief Justice Knox's quotes in constitutional decisions that encapsulate the vision of him as Chief Justice

1. The Knox Court has been described as having "shifted fundamentally from a constitutional interpretation that drew on principles of federalism and unexpressed understandings of how the Constitution was intended to operate in practice, to an interpretation which placed far more emphasis on the text of the Constitution". (Principle: What is the Australian Constitution?)

2. In *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* ("Engineers case") [1920] HCA 54; 28 CLR 129, Knox CJ, Isaacs, Rich and Starke JJ (in a joint judgment considered to have been authored by Isaacs J8) criticised earlier decisions of the Court as follows (141-2):

The more the decisions are examined, and compared with each other and with the Constitution itself, the more evident it becomes that no clear principle can account for them. They are sometimes at variance with the natural meaning of the text of the Constitution; some are irreconcilable with others, and some are individually rested on reasons not founded on the words of the Constitution or on any recognized principle of the common law underlying the expressed terms of the Constitution, but on implication drawn from what is called the principle of "necessity," that being itself referable to no more definite standard than the personal opinion of the Judge who declares it. The attempt to deduce any consistent rule from them has not only failed, but has disclosed an increasing entanglement and uncertainty, and a conflict both with the text of the Constitution and with

distinct and clear declarations of law by the Privy Council.
(Common law)

3. Their Honours explained the duty of the Court in interpreting the Constitution as (at 142):
It is ... the manifest duty of this Court to turn its earnest attention to the provisions of the Constitution itself. That instrument is the political compact of the whole of the people of Australia, enacted into binding law by the Imperial Parliament, and it is the chief and special duty of this Court faithfully to expound and give effect to it according to its own terms, finding the intention from the words of the compact, and upholding it throughout precisely as framed...

...We have anxiously endeavoured to remove the inconsistencies fast accumulating and obscuring the comparatively clear terms of the national compact of the Australian people: we have striven to fulfil the duty the Constitution places upon this Court of loyally permitting that great instrument of government to speak with its own voice, clear of any qualifications which the people of the Commonwealth or, at their request, the Imperial Parliament have not thought fit to express, and clear of any questions of expediency or political exigency which this Court is neither intended to consider nor equipped with the means of determining.
(Principle: What is the Australian Constitution?)

4. Chief Justice Knox similarly stated in *Re Yates; Ex parte Walsh* [1925] HCA 53; (1925) 37 CLR 36 (at 67) that:

The function of interpreting the Constitution is assigned by the Constitution to the judicial power of the Commonwealth, the question whether the subject of a law is within the ambit of one or more of the powers of legislation conferred by the Constitution on the Parliament being in every case a question depending on and involving the interpretation of the Constitution. Parliament itself has no power to define the ambit of any of those powers, nor can it confer such power on any person or tribunal except some competent organ of the judicial power. To hold otherwise would be to empower Parliament to disregard at will the limitations imposed by the Constitution on its power to make laws.
(Principle: Separation of powers)