



SUPREME COURT OF THE
NORTHERN TERRITORY OF AUSTRALIA

CEREMONIAL SITTING
ON THE OCCASION
OF
THE SWEARING-IN OF
THE HONOURABLE MR. JUSTICE K.J.A. ASCHE

AT

DARWIN

MONDAY, 14 APRIL, 1986.

CORAM:

O'LEARY C.J.
GALLOP J.
NADER J.
KEARNEY J.
MAURICE J.
RICE J.

PRESENT IN COURT WERE:

The Honourable Ian Tuxworth M.L.A., Chief Minister
The Honourable M.B. Perron, M.L.A.,
Attorney-General
Colonel B.M. Kemp A.M., A.D.C.,
Commander 7th Military District
Captain C.J. Littleton, A.D.C., R.A.N.,
Naval Officer Commanding, North Australia Area
Group Captain I.H. Whisker, A.D.C.,
Officer Commanding, R.A.A.F. Base
Mr. R.I. Textor, Deputy Commissioner representing
Mr. R. McAulay, Commissioner of Police
Mr. Roy Edwards
Mrs. Daisy Ruddick

Apologies were received from The Administrator,
Commodore E.E. Johnston, A.M., O.B.E. and
Mr. Bob Collins, M.L.A., Leader of the Opposition

SPEAKERS:

The Honourable Marshall Perron, M.L.A.,
Attorney-General

Mr. Richard Giles, President, Law Society
of the Northern Territory

Mr. T. Pauling, Q.C., President,
N.T. Bar Association

Mr. T. Gardner, Director of Legal Services,
Attorney-General's Department

TRANSCRIPT OF PROCEEDINGS

O'LEARY CJ: Deputy Master, would you please invite Mr. Justice Asche to enter the court.

ASCHE J: Your Honour, the Chief Justice, I have the honour to announce that I have received a Commission from His Honour, the Administrator of the Northern Territory of Australia, appointing me to be a judge of this court. I present that Commission.

O'LEARY CJ: Thank you. Master, would you please read the Commission.

THE MASTER: Commission. The the Honourable Keith John Austin Asche, know ye that reposing full trust and confidence in your loyalty, learning, integrity and ability, I, Eric Eugene Johnston, Commodore, member of the Military Division of the Order of Australia, Officer of the Military Division of the Most Excellent Order of the British Empire, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council of the Northern Territory of Australia, in pursuance of section 32(1) of the Supreme Court Act 1979 do, by this, my Commission, appoint you, the Honourable Keith John Austin Asche, to be a judge of the Supreme Court of the Northern Territory of Australia following and including the 14th day of April in the year of Our Lord one thousand nine hundred and eighty six, to have, hold, exercise and enjoy the said office of judge of the Supreme Court of the Northern Territory of Australia under and subject to the provisions of the Supreme Court Act 1979 as amended from time to time during good behaviour with all the rights, powers, privileges, advantages, and jurisdiction thereto belonging or appertaining.

Given under my hand and the public seal of the Northern Territory of Australia, on the 27th day of March in the year of Our Lord one thousand nine hundred and eighty six, signed Eric E. Johnston, Administrator of the Northern Territory of Australia. By His Honour's Command, signed by the Attorney-General of the Northern Territory.

O'LEARY CJ: Thank you, Master.

I now invite you, by virtue of my appointment in that behalf by the Honourable the Attorney-General, to take the oaths of allegiance and of office.

ASCHE J: I, Keith John Austin Asche, do swear that I will bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors

according to law, that I will well and truly serve her in the office of Judge of the Supreme Court of the Northern Territory of Australia, and that I will do right to all manner of people according to law, without fear or favour, affection, or ill will. So help me God.

O'LEARY CJ: I now invite you to subscribe the oaths.

I now invite you to take your seat on the bench.

Master, I direct you to record the Commission, the oaths, and my appointment.

It is now almost 7 months since we met here to say farewell to Mr. Justice Muirhead, and Mrs. Muirhead. I spoke then of the great loss they would both be to the Northern Territory of Australia, and to the court. Just how great a loss, I said, we would not really appreciate until after they had gone. The time that has passed since then has proved how true that was.

Today, however, we come together on a happier note, for we assemble to welcome into our midst the Honourable Mr. Justice Asche, and his good wife, Doctor Valerie Asche. The Territory is fortunate indeed to have been able to attract the services of people such as they.

Mr. Justice Asche comes to us after a long and distinguished career at the Victorian Bar, and in public life in Victoria. I will leave it to others to speak in more detail of his career, but, as we all know, most recently he was the acting Chief Judge of the Family Court of Australia. That is only one of many high offices he has held throughout his life. He indeed is a person of true distinction in the Australian community; a worthy successor to that great Judge of this court, whose place he now takes. On behalf of us all, I extend to him a very warm welcome to the Northern Territory, and to the court. And I extend a no less warm welcome to his good wife, Doctor Asche, who is herself a person of great distinction in her own field of medicine. I have no doubt that the contributions they will both make to the life, and to the welfare of the Northern Territory, will be a very significant one indeed.

Unfortunately His Honour the Administrator is not able to be here this morning, but may I say how pleased we are to have with us the Honourable Ian Tuxworth, Chief Minister of the Northern Territory, as well as so many other distinguished guests who

have honoured us by their presence. Their presence, and the presence of so many here this morning, will, I am sure, leave Mr. Justice Asche and Doctor Asche in no doubt of the sincerity and the warmth of the welcome we extend to them both. Mr. Attorney-General.

MR PERRON: May it please the Court, I appear on behalf of the Northern Territory Government, and would like to express a warm welcome to His Honour Mr. Justice Asche and his wife, Dr. Valerie Asche, and to congratulate him on his appointment to the Supreme Court.

You come to us, Your Honour, with a long and distinguished career in the law. After graduating at Melbourne University, you practised at the Queensland Bar from 1951 to 1954 and at the Melbourne Bar from 1954 to 1975. In 1972 you were appointed as one of Her Majesty's Counsel, and in 1976 you were the first appointee in Victoria to the Family Court of Australia. You were Acting Chief Judge of the Family Court from 1985 to 1986.

You have also served as a Member of the Family Law Council, as a Presidential Member of the Institute of Family Studies and as Chairman of the Family Law Council Committee on Reproductive Technology.

You have also had a distinguished career as an educator and educational administrator. As a part-time lecturer at Melbourne University and the Royal Melbourne Institute of Technology. As a Member and Chairman of the Council of Frankston State College. As a Member and Deputy President of the State College of Victoria. As a Member, Vice President and President of the Council of the Royal Melbourne Institute of Technology. As Chairman of the Victorian Enquiry into Teacher Education. And as Chancellor of Deakin University.

Your Honour, I am pleased to note that the Territory will be able to benefit from your vast experience in the field of education as a result of your recent appointment as a Member of the Northern Territory University College Council.

Your Honour, I am please to be able not merely to welcome you to Darwin, but to say "welcome home". Your father was Crown Law Officer in Darwin for 12 years and you spent your formative years here. You were educated at Darwin Primary School, before going on to Melbourne Grammar and Melbourne University.

Darwin Primary School must have been an interesting school at that time. I understand that the Head Teacher (Mr. V. Lampe) also held concurrent appointments as a member of the Licensing Court and as a Special Magistrate.

An editorial in the Northern Territory Times and Gazette in the year in which your family arrived in Darwin (1926) gave an interesting account of the living conditions in the Territory at that time. The editorial concerned a certain newly-arrived itinerant teacher who had written to his friends down south about the Territory and the people who lived here. Unfortunately for the hapless teacher, his letter was published in the North Queensland Register and a copy found its way to Darwin.

In a tone of indignation, the Times and Gazette reported the contents of the teacher's letter:

"Writing of Darwin school, the teacher had said that, of the 25 children in his charge, 15 were Chinese, 5 half-caste Chinese, 1 Spaniard, and the remainder white or nearly so.

"The weather at Darwin, according to the teacher, was that beastly hot that four shower baths a day were not sufficient to make him comfortable.

"After referring in an uncalled-for manner to the parentage of his pupils at Rum Jungle, the teacher said the farmers at Adelaide River grew little else but whiskers.

"Then the teacher went tumbling over himself to unburden the great knowledge he had of our mines. Tanami, he said, cannot be reached except by camel teams. But no one should come to Darwin at all in the summer, as the heat is terrific, flies are plentiful, vivid thunderstorms without rain, wet season not yet commenced, but when it does commence they can look forward to rain, rain, rain, for months at a time. But he was not looking forward to repeating the performance of his predecessor by swimming alligator-infested rivers at floodtime in order to get his work done. Further, he could not find anything worth photographing except anthills".

With its tone of indignation ever increasing, the Times and Gazette commented that -

"The hospitality of our inland dwellers is proverbial. All people who arrive in Darwin overland speak in glowing terms of the unstinted hospitality meted out to them at homesteads along their line of march, and it is not likely that any exception would be made to the teacher's case, despite the protest that he has to boil his own billy at times."

I am pleased to say that the young itinerant teacher (Mr Tambling) managed to survive the hardships of his first year in the Territory. He in fact served with distinction until his retirement, and his children and grandchildren are Territorians.

Your Honour, I feel sure that the hospitality meted out to you will be unstinted and that you will not have to boil your own billy. I hope that it will not be necessary for you to swim crocodile-infested rivers.

On behalf of the Territory Government, myself and members of my Department, I welcome you to this Court and offer you our best wishes and congratulations on your appointment.

O'LEARY CJ: Thank you, Mr. Attorney-General.
Mr. President of the Law Society.

MR GILES: If the court pleases, I appear on behalf of the Law Society of the Northern Territory. It is both my pleasure and honour on behalf of the Society to welcome Your Honour, Mr. Justice Asche, to - or should I say back to - the Northern Territory.

It certainly has not gone unnoticed that Your Honour spent some of your early years in the Northern Territory, and in particular in the Top End. Although Your Honour has visited the Territory in the past few years, it must still be with some sense of amazement and pride that Your Honour returns to the Territory, bearing in mind the significant development that has taken place here, both physically, economically, and more to the point, in the legal system, the legal profession, and this court.

This court and the legal profession are certainly in times of rapid and, in some instances, dramatic change. These include the new appellate jurisdiction of this court, the increased jurisdiction of the Master, the proposed commercial causes rules, and, close to all our hearts, the new Judges Costs Advisory Committee set up under the

Chairmanship of His Honour, Mr. Justice Maurice. Changes also to the law affecting companies in the Territory, with the Territory joining N.C.S.C. as at 1 July 1986, and the present review and debate relating to work/health, and workers compensation in the Territory, will all make an impact on the operation of this court, the legal profession, and the public of the Territory. It is certainly a most interesting and exciting time for Your Honour to, as it were, return home, and take up your position as a judge of this court.

Your Honour's position as a judge, and in recent times acting judge, of the Family Court of Australia, will no doubt be of valuable assistance to this court, to barristers and solicitors practising in the Family Law jurisdiction, and the parties to matrimonial disputes. Whilst I'm aware that Your Honour will not be exclusively practising in the jurisdiction, the presence of a specialist in the field of Family Law will be welcomed by all concerned.

I am sure I speak with the unanimous support of all practitioners in the Territory when welcoming Your Honour, Mr. Justice Asche, and Doctor Asche, to the Territory, and Your Honour to this court. We do hope that Your Honour will not only enjoy his work on this court and his relations with practitioners, but will also enjoy Territory life and the many enjoyments it has to offer.

On behalf of the Law Society of the Northern Territory, I welcome Your Honour and Doctor Asche to the Territory and wish you both a pleasant stay here.

If the court pleases.

O'LEARY CJ: Thank you, Mr. Giles. Mr. President of the Bar Association.

MR PAULING: May it please the court. The first Chief Justice of the Northern Territory Supreme Court used to dole out a duty on a regular basis which he referred to as "Happy Family Law Day", and on those days, when he assigned himself such a duty, his face showed a combination of resignation and something less than glee; and visits from Family Law Court judges, most frequently from Your Honour, caused his visage, as it were, to relax, and the ordinary business of the court was conducted with something approaching esprit.

Now, Your Honour was a frequent visitor and while there were few occasions when I was drawn into the Family Court, there were many when I knew that you were sitting, and the other judges were more than usually happy in the despatch of the ordinary jurisdiction of the court.

My few appearances before Your Honour - and those of other members of the Bar - confirm that Your Honour brought humility, humanity, and commonsense together in a human situation where such qualities are most noticeably lacking, and this bodes well for the Northern Territory families, whose cohesiveness has unfortunately given way to division.

But Your Honour is not here just to do that work. For a specialist in a field to assume a judicial post in a general jurisdiction, may suggest some measure of bravado, but it could never be more than that shown by members of the Bar who accept or have accepted briefs in the Family Law jurisdiction.

We especially welcome Your Honour's appointment because, as others have pointed out, Your Honour is but an errant who having lost his way has found it again; for Your Honour, having found out in early times all there was then worthwhile to know about the Territory, mistakenly went elsewhere to use it. You are not alone in this. Your brother Rice, for example, for some reason took the south road out of Alice Springs instead of the north road, and found himself in Adelaide. It took him many years before he discovered the error of his ways. Your brother Gallop, having been a prosecutor here, left and ultimately came back to the bench. He may have thought he was gone from here, but he and I have reason to know better. Your brother Maurice is a product of the Bar, and the rest of Their Honours, I am very happy to say, so plainly now in the Territory, no one would be surprised if they suddenly said they had been here in their formative years, too.

The fact however, Your Honour, that you were here in your formative years, conforms with the Government's laudable objective that we should harvest local products where possible. Your Honour in your absence, no doubt in the process of learning, has also learnt much about the learning process - and perhaps I ought to, too - and others have attested to this. Your Honour comes back here, having been in very high administrative posts in tertiary education; and they have been described by the Attorney-General.

As to the first task that Your Honour is here to do, a matter for the bench, I can assure Your Honour of the unanimous support of the Bar. As to the second, in the world of academia, I can only wonder. The quality of assistance that one gets in courts it seems to me is forged in the cauldron of experience, rather than in learning processes. But even I, and the Bar I suppose, are all prone to learn something unexpected sometimes, and we hope that we can assist Your Honour, and learn a great deal.

You are most welcome.

O'LEARY CJ: Thank you, Mr. Pauling. Yes, Mr. Gardner.

MR GARDNER: May it please the court. On behalf of the Attorney-General of the Commonwealth of Australia, I respectfully join in the welcome to Your Honour, Mr. Justice Asche, and Doctor Asche.

On behalf of Mr. Patrick Brazil, the Secretary to the Attorney-General's Department, and, like Your Honour Mr. Justice Asche, a former member of the Queensland Bar, I join in the congratulations on this continuation of Your Honour's already distinguished judicial career.

I observe that Mr. Lindsay Curtis, the Senior Deputy Secretary of the Attorney-General's Department, has been able to join us this morning for this welcome to Your Honour.

As has been observed by those who have gone before me this morning, Your Honour comes to this court from the Family Court of Australia, where Your Honour served with distinction for over 10 years, and where in particular Your Honour was well known as being fair and imperturbable. Your Honour has also served with distinction as a member of the Family Law Council, and the Institute of Family Studies. Your Honour's great interest and distinguished service to education are well known.

Your Honour, I have been informed by what can only be described as impeccably reliable sources, that Your Honour had in Your Honour's chambers in Melbourne, a time piece, which although operating with an anti clockwise movement, continued to reveal the correct time. Is that, I respectfully venture to ask, evidence of Your Honour's capacity for appreciation of the paradoxical? Which capacity I suggest Your Honour will find even more useful in the Territory, than in Melbourne.

Sir Richard Blackburn on the occasion last year of his farewell as Chief Justice to the Australian Capital Territory observed, and I quote:

"I had the remarkable good fortune to be appointed to the bench of the Supreme Court of the Northern Territory. I do not know how this happened, but for me it was perhaps the greatest single stroke of good fortune which I have had in my working life."

We trust that Your Honour will, upon the eventual conclusion of Your Honour's service in this court, be able to express a like sentiment.

May it please the court.

O'LEARY CJ: Thank you, Mr. Gardner.

Mr. Justice Asche.

ASCHE J: Your Honour the Chief Justice, Your Honours, Chief Minister, Mr. Attorney-General, ladies and gentlemen. I do thank you for those very warm words of appreciation. Of course one is tempted to say immediately when one puts one's character at issue to this extent, one does perhaps ask for something in reply. But since I know my character better than anybody else's, and the murkier sides of it, I can, I suppose, keep silent on that particular aspect.

But of course I make no secret at all of my liking for Darwin. Indeed, as you have observed, I have managed to come up to Darwin from the Family Court far more often than any other judge in the Family Court. Very early in the formation of the Family Court, knowing that occasionally a judge would be deputed to Darwin, I announced publicly to my brother judges in the Family Court that I would use every dirty, low-down, rotten, sneaky, underhand means to get up to Darwin. I have fulfilled that promise quite satisfactorily.

Darwin, of course, is a very different city from that scattered, untidy town of about 3000 individuals, severely isolated from the other capital cities of Australia, where the greatest event each month was the arrival of a ship bringing supplies and letters from the south. That was the town that I was brought up in, and it is well said that the past is another country. That little friendly town, where children, including myself, roamed freely everywhere because everyone knew them and in a sense they were everyone's children, cannot be revived.

But it has been a great pleasure to see the growth of the town from time to time. Even when I left Darwin at the age of about 12 or 13, I was fortunate enough when I joined the Air Force, to be posted to the Darwin area and particularly to Bathurst Island; so I was able to see it again; and then of course I was able to visit from time to time in the Family Court. Other advantages have replaced the old scenes that I have known. The present city is an exciting and developing place which cannot fail to continue to progress because Australia's future depends so much on it.

But in case some might think me ungracious, I hasten to say that I in no way denigrate that lovely city of Melbourne in which I found so much absorbing work and made so many friends. We, as Australians, however, are fortunate to live in a country with a homogeneous population, and no Australian can or should feel alienated in any part of this country.

I was fascinated, Mr. Attorney, to hear you speak of Mr. Lampe and Mr. Tambling. Mr. Lampe, I did not know particularly well, though I knew his three sons, one at least of whom figured as a most prominent footballer in the most wonderful team of Waratahs, which I still understand plays and I will swear my undoubted and undying loyalty to it now. Mr. Tambling, however, certainly expiated any crimes against the Territory in his first years, by his later years. He was a teacher who was one whom I always remember, and as we know there are a few teachers who stay very much in the memory. Mr. Tambling instilled in me not only learning insofar as he could into a small boy of about 12, but a very very great love for the Northern Territory. He was able to tell us of all the characters in "We of the Never Never", and describe whence they came and on whom they were modelled. So that it was, when I left Darwin, with a feeling that several Darwinians had told me that you can leave Darwin but Darwin never leaves you; and I have always found that to be so.

It did occasion some embarrassment to a barrister who appeared before me in the Family Court many years ago. He did not know of these origins of mine. The case was a case of custody where one parent lived in Darwin and one parent lived in Melbourne. This barrister, appearing for the parent who lived in Melbourne, commenced by painting a most gloomy and dreadful picture of the fate of any child who went to Darwin; and indeed of the fearful and dreadful, almost criminal, character of any parent who would wish to take his

child to Darwin. I let him go for about 5 minutes, and then thought that one should put him out of his misery, and told him that I came from Darwin, I had gone to school there, and I was unable to see that any disadvantage at all could attach to any child going to Darwin. Like any good counsel, he immediately turned to another point, and went on.

It is, of course, a great challenge to me to move from, as you have pointed out, a somewhat specialist jurisdiction to a wider jurisdiction. It has been an irresistible temptation for me to take up this challenge, although whether I will succeed or not is entirely another matter; but, I do not leave the Family Court without regrets. I have enjoyed my time on the Family Court. It is a developing and important court for Australia, and I have been proud of what has been done there. But the temptation, as I say, to move to other fields would have been irresistible, but it was certainly irresistible when those fields are to be in Darwin.

Of course we, as lawyers, must always walk that interesting path between the strict adherence to precedent, and the better application of it through some discretion; and it is interesting to know that Tennyson himself portrayed both sides of it. He spoke on one occasion of "mastering the lawless science of the law, that codeless myriad of precedent, that wilderness of single instances, by which a few by wit and fortune led may beat a pathway out to wealth and fame." On the other hand, in another poem he spoke of England being "a land of settled government, a land of just and old renown, where freedom slowly broadens down from precedent to precedent." So he, in his own way, stated the common problem which faces all courts, and which I trust I will be endeavouring to resolve.

I would merely wish to remind myself today of my father and mother who both lived and worked in Darwin. My mother formed a great love of Darwin, although she did not when she first came; and my father who, in his capacity as Crown Law Officer in those days, was Crown Prosecutor, Parliamentary Draftsman, legal advisor to the government, and any other thing that happened to be around in the legal sense, because there was no other government lawyer there.

I would like to thank my wife for her loyalty in accompanying me to Darwin. She, of course, has not the same roots in Darwin that I have, but I consider that I have performed a remarkable feat of advocacy over the last 3 or 4 weeks in persuading her that this is really an exciting town to be in.

I would like to mention also the presence of Mr. Roy Edwards here, a very old friend of my family, who really epitomises the Territorian, and the Territory way of life. I would like to thank my fellow judges for their friendship, and great assistance to me already.

Finally, I would like to mention a charming and gracious lady, who had the misfortune to look after me for some years when I was a little boy. She was not much older than I was, really, but of course there seemed to be a great difference. She has remained in Darwin, and I have had the pleasure of visiting her and her three delightful daughters from time to time,; and one of the great pleasures in coming back to Darwin is that I will see much more of Daisy Ruddick, and I'm certainly delighted that she is here today.

Ladies, gentlemen, and friends, I thank you very much for the warmth of your welcome.

O'LEARY CJ: Thank you, Mr. Justice Asche. The court will now adjourn sine die.

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